

PART B

**THE RELATIONSHIP OF MADISON GUARANTY, CMS, AND
THE ROSE LAW FIRM**

Chapter 2:

**Aftermath of the McDougals' Involvement with Madison Guaranty --
Federal Investigations and Attempted Cover-Ups (1986 to 1999)**

I. INTRODUCTION

This Chapter summarizes the evidence relating to events occurring after July 1986, when the federal regulators removed the McDougals as directors of Madison Guaranty. Madison Guaranty subsequently failed, costing the American taxpayers in excess of \$73 million. Various federal investigators examined the causes of and responsibility for that failure. In the main, this Chapter is the story of those investigations and the evidence relating to efforts to avoid and evade the investigators' scrutiny by those suspected of responsibility for the bank's failure. It is also the story of how some members of the Rose Law Firm, particularly Webster Hubbell, concealed the firm's prior representation of Madison Guaranty from the Resolution Trust Company ("RTC"), in an effort, at a minimum, to continue to generate revenue by representing the RTC.

As with all failures of financial institutions, the responsible federal agencies -- the Federal Home Loan Bank Board ("FHLBB"), Federal Deposit Insurance Corporation ("FDIC") and, later, the RTC -- examined the operations of Madison Guaranty to determine what went wrong and who was responsible. Typically, when an institution fails, the federal agencies look at the conduct of all of the professionals who had responsibility for the institution's conduct and whose action (or inaction) might have contributed to the institution's failure. For example, federal agencies typically examine the conduct of the directors and officers of the institution, to determine if the directors and officers exercised the appropriate duty of care in overseeing the institution; they examine the conduct of the institution's auditors to determine if the auditors were negligent in failing to account for the institution's books; and they examine the conduct of the attorneys who performed legal services for the institution to determine if their legal work

contributed to the losses by and failure of the institution.

In this regard, Madison Guaranty was not appreciably different from any other savings and loan association. After the McDougals were dismissed, the board of directors hired the law firm of Borod & Huggins to conduct a thorough review of the thrift's practices. Because the review uncovered substantial evidence of criminal conduct, Madison Guaranty referred the matters to the FHLBB and the FBI, which then conducted a criminal investigation. Madison Guaranty also initiated a lawsuit against Frost & Company ("Frost"), its auditing firm, charging that Frost had been negligent in its failure to uncover Jim McDougal's frauds. Madison Guaranty was placed into a conservatorship by federal regulators in March 1989. Thereafter, managed by the FDIC and, later, the RTC, Madison Guaranty continued the lawsuit against Frost and began considering suits against other professionals -- for example, Madison Guaranty's principal outside counsel, Mitchell, Williams, Selig & Tucker. The FDIC replaced the original outside counsel with the Rose Law Firm, which handled the Frost lawsuit until its conclusion in 1991.

Conduct that negligently contributes to the failure of a institution can result in civil liability. The same conduct, if knowing and deliberate, generally constitutes a federal criminal offense. Accordingly, in early 1987 the FBI began investigating Madison Guaranty. In 1989 and 1990, that investigation resulted in the guilty plea of thrift president John Latham and the indictment (and acquittal) of Jim McDougal. Following additional investigation, in September 1992, the RTC sent a criminal referral related to Madison Guaranty to the U.S. Attorney for the Eastern District of Arkansas and the FBI Little Rock field office. The referral listed the McDougals as suspects and the Clintons as witnesses. In the fall of 1993 the RTC sent nine

additional criminal referrals relating to Madison Guaranty to the U.S. Attorney for the Eastern District of Arkansas. These criminal referrals led to investigations by that U.S. Attorney's office, then by the Fraud Section of the Criminal Division of the U.S. Department of Justice, and then by regulatory Independent Counsel Robert Fiske, who was replaced in August 1994 by statutory Independent Counsel Kenneth Starr.

In 1987 Seth Ward sued Madison Guaranty to collect on the fictitious cross-loan note issued to him, claiming that it was a valid and lawful obligation owed by Madison Guaranty. Initially, in 1988, Ward's suit was successful and he received a favorable judgment from the Court. Webb Hubbell monitored the trial proceedings and then assisted Ward in his efforts to collect the judgment. Ward and the RTC ultimately settled the matter.

Thus, each of the three pending investigations -- the civil investigation of Madison's failure; the criminal investigation of the failure; and Ward's suit on the fraudulent cross-loan note -- implicated the conduct of attorneys at the Rose Law Firm. They had provided professional services to Madison Guaranty and, particularly, had provided legal counsel in connection with the cross-loan.

When, as it did in 1989, the FDIC takes over a failed institution and conducts a civil lawsuit against the professionals who provided services to the bank, the FDIC does not, typically, use its own attorneys to bring the suit. Rather, the FDIC (and RTC) hire outside counsel to represent them (and the failed institution) in the suit. In choosing whom to hire, the FDIC carefully screens potential lawyers and implements certain rules, known as conflict of interest rules. These conflict of interest rules serve two functions: First, broadly and generally, the FDIC

only hired law firms that were representing the FDIC on behalf of other failed institutions; it rarely hired any firms that represented, for example, directors, lawyers, or accountants who had been charged with negligent conduct. Second, and more particularly, because a law firm's earlier work for an institution that failed was, itself, subject to potential examination, the FDIC generally would not hire a law firm to represent the failed institution in a suit against professionals if the law firm had, itself, provided professional services to the bank that might arguably have contributed to the institution's losses.

The FDIC's conflict of interest rules also served an important function in ensuring the FDIC's success in lawsuits it brought on behalf of failed institutions. Typically, when a professional is sued by a failed institution for negligence, the professional answers by asserting that his conduct was not negligent. The professional will frequently invoke the greater negligence of other professionals as a defense of his own conduct. Thus, for example, the accountant will say (as Frost & Co. did) that the officers or directors engaged in fraud and that the lawyers were the truly negligent party. The FDIC's conflict of interest rules were, therefore, vital to insure that by hiring only law firms that had no connection to the failed institution, the FDIC's lawyers would never be the subjects of a counter-charge of negligence. The FDIC was entitled to be certain that the lawyers it hired aggressively sought recovery from any and every source responsible for causing the loss to the depositors and the American taxpayers without having to wonder if the lawyers were hesitating because of prior relationships the lawyers had with the prospective defendant.

The partners at the Rose Law Firm were painfully aware of these conflict of interest rules.

In the mid-1980s Rose had failed to disclose a significant conflict of interest resulting from prior work done by one of its partners, Joseph Giroir, to the FHLBB, another federal regulatory agency. As a result, when the conflict was discovered Rose was denied the opportunity to work for the FHLBB. Worse yet, Giroir and Rose were threatened with suit by the federal government and ultimately paid a substantial settlement to the United States because of losses to the institution arising from loans on which Giroir and Rose had worked.

In 1989, Rose (specifically Webb Hubbell) was hired to represent the FDIC's interest on behalf of Madison Guaranty in the Frost litigation. In securing the FDIC as a client, Rose and Hubbell concealed substantial conflicts of interest from the FDIC (and later the RTC). Hubbell failed to disclose: 1) Rose's and Mrs. Clinton's prior work for Madison Guaranty on Castle Grande; 2) his own representation of his father-in-law, Seth Ward, in connection with Ward's suit against Madison Guaranty; and 3) Rose's use of a Frost audit while representing Madison Guaranty before the Arkansas Securities Department ("ASD"). Rose and the RTC eventually settled the suit against Frost for \$1 million.

Rose's and Mrs. Clinton's connection to the failed Madison Guaranty became a matter of media interest in early 1992, as Governor Clinton was campaigning for President. Vince Foster, Webb Hubbell, and Mrs. Clinton reviewed Rose's and Mrs. Clinton's past representation of Madison Guaranty in order to respond. Rose Law Firm files and its Madison Guaranty billing records were retrieved from storage and examined by Hubbell and Foster. Foster annotated at least one copy of the billing records with some notes to Mrs. Clinton. Foster created a chronology of the representation; and Mrs. Clinton and Foster drafted a statement that ultimately

was not released. After Governor Clinton's election in November 1992, billing records and original files detailing Rose's and Mrs. Clinton's work for Madison Guaranty were removed from the firm.

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

At Congress's request, during 1994 and 1995, the FDIC's Office of Inspector General ("FDIC-OIG") and RTC's Office of Inspector General ("RTC-OIG") further examined Rose's representation of those agencies. Hubbell was referred for criminal prosecution for the false statements he had made to the FDIC-OIG and the RTC-OIG. Because substantial relevant evidence, particularly Rose's billing records, was not produced or provided, those agencies gave materially incomplete testimony to the United States Congress, particularly regarding Mrs. Clinton's role in the representation of Madison Guaranty, which they believed was minimal. It was not until January 1996, when Mrs. Clinton produced copies of Rose's Madison Guaranty billing records, that the investigators who had been involved in the FDIC-OIG and the RTC-OIG investigations understood the extensive legal work that she had done for Madison Guaranty. The FDIC-OIG then reopened its investigation (the RTC terminated on December 31, 1995, and its functions merged with the FDIC). The Independent Counsel ultimately prosecuted Hubbell for

concealing Rose's conflicts of interest and connection to Madison Guaranty, and he pleaded guilty to one felony count.

This Chapter summarizes the evidence relating to these events. It begins with a summary of Hubbell's statements to the FDIC and RTC -- statements that misled those investigators. The Chapter then summarizes the evidence relating to two events occurring outside of the Rose firm between 1986 and 1992 -- the criminal investigation of Madison Guaranty and Ward's suit against Madison Guaranty. The Chapter then summarizes the evidence relating to Rose's conflict of interest dispute with the FHLBB and to Rose's representation of the FDIC and RTC in the suit against Frost. The Chapter concludes with a description of events relating to the 1992 campaign and the early months of the Clinton Administration relating to the Rose Firm's representation of Madison Guaranty.

The evidence summarized in this Chapter is, in the judgment of the Independent Counsel, of dual significance. First, and most obviously, these facts are part of the historical record -- they have significance in their own right. Hubbell's conflict of interest and his concealment of those conflicts from the FDIC and RTC (both at the time Rose was retained and in his subsequent false statements to those agencies) resulted in his indictment in 1998 and his guilty plea to one felony count in 1999.

Second, the historical record provides a background against which to measure subsequent claims by individuals who would be expected to have knowledge of past events that they do not recall those events. As detailed more fully in Chapter 3 of this Part, since the Department of Justice and Independent Counsel Fiske's investigations began in 1994, and continuing through

this Independent Counsel's investigation, many individuals, including Mrs. Clinton, testified under oath and asserted a lack of recollection of events relating to Rose's representation of Madison Guaranty. They asserted, for example, that the intervening ten years had dimmed their memories.⁹⁹⁵ Although it was true that the work had been performed ten years earlier, it was also true that these events had taken on renewed significance in the 1992 Presidential campaign, resulting in a more recent review by the participants of their previous conduct. Thus, the Independent Counsel fully considered the claims of lack of memory against the evidence of recently refreshed recollection.

II. FINDINGS

The Independent Counsel reports the following findings and conclusions:

With respect to the initial investigations of Madison Guaranty:

- The FHLBB concluded that Madison Guaranty was insolvent and that Jim McDougal had diverted funds to himself and other insiders.
- The FHLBB concluded that the Castle Grande land transaction involved fraudulent "land flips."
- Madison Guaranty's outside counsel, Borod & Huggins, concluded in March 1987 that the McDougals used Madison Guaranty to benefit themselves and other insiders.
- Borod & Huggins also concluded that several individuals, including Seth Ward, may have engaged in criminal violations.

With respect to the Rose Law Firm's solicitation of business from the FSLIC:

⁹⁹⁵ "Well, I did work. I just can't remember ten years from the work exactly what the work was." H. Clinton 4/22/95 Depo. at 43.

- Rose asked to represent the FSLIC in the conservatorship of First South.
- The FHLBB asserted a malpractice claim against Rose because of Rose partner Joe Giroir's conduct.
- Rose partners, including Hubbell, Foster, and Mrs. Clinton, were made aware of the malpractice allegations.
- Rose settled the malpractice claim for \$3 million, \$500,000 of which was paid by Rose partners.

With respect to Seth Ward's lawsuit against Madison Guaranty:

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

With respect to Madison Guaranty's lawsuit against Frost & Company:

- Madison Guaranty sued accountants Frost & Company for malpractice.
- The FDIC hired Rose to represent it when Madison Guaranty went into receivership.
- In securing the representation of Madison Guaranty from the FDIC, Hubbell failed to disclose:
 - Rose's prior work for Madison Guaranty before the Arkansas Securities Department;
 - Mrs. Clinton's prior legal representation of work for Madison Guaranty in the Castle Grande transaction;
 - Hubbell's representation of Ward and POM, a Ward corporation;
 - Hubbell's close familial relationship with Seth Ward; and

- Rose's representation of a Frost partner.
- When later questioned about the nature of his relationship to Ward, Hubbell told the FDIC they were "not particularly close" and that he had "never represented" Ward.
- As part of his work for the FDIC and RTC in the Frost litigation, Hubbell and others reviewed:
 - Mrs. Clinton's and Rose's billing records relating to the representation of Madison Guaranty in 1985 and 1986;
 - The 1986 FHLBB report describing fraudulent land flips in the Castle Grande transaction; and
 - The Borod & Huggins report describing possible criminal conduct by Ward.
- When subpoenaed during the Frost litigation, former ASD Commissioner Beverly Bassett Schaffer reminded Hubbell of Rose's representation of Madison Guaranty, including Mrs. Clinton's work before the ASD, and suggested that it created a conflict of interest.

With respect to Governor Clinton's 1992 presidential campaign:

- In early 1992, the national news media asked about Governor and Mrs. Clinton's relationship with Jim McDougal, Whitewater Development, and Madison Guaranty.
- Because of the media inquiries, Hubbell and Foster collected and reviewed Rose records relating to Rose's representation of Madison Guaranty, including Mrs. Clinton's billing records.
- Campaign documents, including a draft press statement written by Mrs. Clinton with Hubbell's and Foster's assistance, asserted:
 - Rick Massey, and not Mrs. Clinton, was the source of Rose's Madison Guaranty business:
 - Mrs. Clinton's involvement with soliciting McDougal started in April 1985 when she asked him to pay past money owed to Rose, which the firm

demanded before doing additional work; and

- Mrs. Clinton did not represent anyone before an Arkansas state agency.
- After reviewing the Rose billing records, Foster created a detailed chronology showing that \$5,000 of Madison Bank and Trust's "old" bill was paid in October 1984.
- Campaign spokespersons asserted that Massey, not Mrs. Clinton, brought Madison Guaranty to Rose as a client.

With respect to Rose's conflict of interest in representing the FDIC in Frost:

- 1993 press accounts caused the FDIC to investigate whether its conflict of interest rules had been violated.
- Hubbell assured FDIC attorney April Breslaw that Rose's prior Madison Guaranty work had been minimal.
- In late 1993 and early 1994, the FDIC Legal Division spoke directly with Hubbell, who said that:
 - He was not aware of Rose's prior Madison Guaranty representation at the time when the FDIC hired Rose;
 - He did no legal work for Seth Ward;
 - He did not review the Borod & Huggins report; and
 - Rose's Madison Guaranty representation was limited to lending and collection work.
- As a result of these statements, the FDIC issued a report dismissing the conflict of interest allegation.
- In 1994, at Congress's request the FDIC-OIG and the RTC-OIG reexamined Rose's alleged conflicts of interest.
- Hubbell told the OIGs that:
 - He did not work on the Castle Grande transaction;

- He never represented Ward in dealings with Madison Guaranty;
 - He did not review the Borod & Huggins report until "absolutely necessary"; and
 - He had no knowledge of or involvement in Ward's agreements with Jim McDougal and Madison Financial.
- Because substantial evidence had not been produced or provided, the FDIC-OIG and the RTC-OIG gave inaccurate testimony to the United States Congress about the alleged Rose conflict.
 - In June 1999, Hubbell pleaded guilty to concealing by scheme a material conflict of interest from the FDIC and the RTC.

III. FACTUAL SUMMARY

A. Discovery of Rose's Conflicts and Hubbell's Statements to FDIC and RTC Investigators.

Chapter 1 of this Part detailed the myriad work that the Rose Law Firm, Hubbell, and Mrs. Clinton did for Madison Guaranty -- representing the institution before state regulators, and in connection with the purchase and development of the IDC/Castle Grande property. When Hubbell later sought to represent Madison Guaranty on behalf of the FDIC and the RTC, he concealed this prior representation. Still later, when public reports surfaced that Hubbell might have concealed the prior representation, the FDIC and the RTC investigated what had occurred. During the course of those investigations Hubbell again concealed his role and that of Mrs. Clinton in the representation of Madison Guaranty, making false statements to investigators and, ultimately, misleading them to such an extent that the investigators later gave inaccurate testimony to the United States Congress. This Section details FDIC and RTC investigations of Hubbell and identifies the statements made by Hubbell, which, upon further investigation, proved

to be false and inaccurate.

1. FDIC Legal Division and the RTC Investigated Rose Conflicts of Interest.

On September 28, 1993, April Breslaw, the FDIC attorney who had had supervisory responsibility for the Madison Guaranty case against Frost & Co., received a call from Washington Post reporter Susan Schmidt.⁹⁹⁶ Schmidt questioned Breslaw about the work Rose had performed for Madison Guaranty prior to the Frost case -- Schmidt asked whether Rose had a conflict of interest in the suit and the FDIC had been wrong to hire Rose.⁹⁹⁷ Breslaw told Schmidt she was unaware of any work Rose had performed for Madison Guaranty prior to Frost.⁹⁹⁸ Breslaw called Rick Donovan, a Rose attorney who had worked on the Frost case, at 6:15 p.m. on September 28, 1993, but did not immediately hear back from Donovan.⁹⁹⁹ Breslaw then called Hubbell at approximately 6:25 p.m.¹⁰⁰⁰

Rose member Ron Clark and Donovan called Breslaw the next morning.¹⁰⁰¹ Clark had no personal knowledge of Rose's work for Madison Guaranty before its failure, and Donovan "did

⁹⁹⁶ Breslaw 10/23/95 Senate Banking Comm. Depo. at 67-68; Breslaw 6/6/95 Senate Banking Comm. Depo. at 33-34.

⁹⁹⁷ 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. 34-35 (Aug. 10, 1995) (testimony of A. Breslaw) [hereinafter "House Banking Comm. Hearing"].

⁹⁹⁸ Id.

⁹⁹⁹ Breslaw 10/23/95 Senate Banking Comm. Depo. at 95-96; Telephone Log (Sept. 1993) (Doc. No. MU-00000027).

¹⁰⁰⁰ Telephone message slip from April Breslaw to Judge H[ubbell] (Sept. 28, 1993) (Doc. No. MU-00000023).

¹⁰⁰¹ Breslaw 10/23/95 Senate Banking Comm. Depo. at 100-01.

not really know the facts very well."¹⁰⁰² At 10:57 a.m. on September 29, 1993, Breslaw called Hubbell's office at the Justice Department,¹⁰⁰³ but he did not immediately return her call.¹⁰⁰⁴

At 11:41 a.m., Breslaw e-mailed two RTC colleagues:

I have now reviewed our old files and spoken to the Rose partners who worked with me on the Madison case. . . . Apparently, a Rose Firm lawyer spent a short amount of time in 1985 or 1986 evaluating a plan to help Madison raise capital. Susan Schmidt believes that the Rose lawyer was Mrs. Clinton. According to the Rose partners that I spoke with Mrs. Clinton did NOT work on this project. We can't find any documentation on this old work, so I don't believe that we can offer an opinion. For what it's worth, the Rose people believe that we don't have documentation because the project was so small that they doubt that they opened a file or billed for the time spent. In any event, the firm's press spokesman is Ron Clark. . . . Bottom line: I don't have any reason to think that the Rose firm misled us about conflicts. . . . I am not aware of any evidence to support the "cover up" allegation.¹⁰⁰⁵

Breslaw spoke with Hubbell a day or two later, and she testified that:

[h]e told me that he had not known that others in the Rose Law Firm had represented Madison before it failed; that he had not known that in 1989, when I retained him at the Rose firm, to represent the government in the accounting malpractice case. To the best of my current understanding, the representation

¹⁰⁰² Id. at 102.

¹⁰⁰³ Id. at 102-03; Telephone Log (Oct. 1993) (Doc. No. MU-00000038) (phone record of a 0.3-minute call by Breslaw to 202-514-9500, which was the number of the Associate Attorney General). See Telephone message slips from April Breslaw and Bill Kennedy to Judge H[ubbell] (Sept. 29, 1993) (Doc. No. MU-00000024). The first message indicates that Breslaw called Hubbell at 11:10 a.m. on September 29, 1993. The second message indicates that Bill Kennedy called Hubbell at 1:35 p.m. on September 29, 1993. Additionally, Document Number MU-00000037 is a phone record of a one-minute call by Breslaw at 6:17 p.m. on September 29, 1993 to 514-2000, which is the phone number of the Department of Justice.

¹⁰⁰⁴ Breslaw 10/23/95 Senate Banking Comm. Depo. at 107.

¹⁰⁰⁵ E-mail from April A. Breslaw to Stephen J. Katsanos and Felisa M. Neuringer (Sept. 29, 1993, 11:41:51 EDT) (Doc. Nos. MU-00000002 through 03). Breslaw testified that she thought Donovan told her that Hillary Clinton did not work on the project that involved raising capital for Madison Guaranty. Breslaw 10/23/95 Senate Banking Comm. Depo. at 104-105.

occurred in 1985 or 1986. So you have this scenario in which the firm does a relatively small volume of work in 1985 or 1986, and then they are retained several years later to represent the government. So it was plausible to me, in the fall of 1993, when I had this conversation with Hubbell, that he just had not known in 1989 about the prior representation.¹⁰⁰⁶

Hubbell left Breslaw with the impression that Hubbell had not personally represented Madison before it failed and that Rose had not had an effective way of checking conflicts in 1989.¹⁰⁰⁷ Breslaw also had the impression from Hubbell that Rose had done "a relatively small amount of work" for Madison Guaranty before it failed.¹⁰⁰⁸ According to Breslaw, Hubbell's story was "basically consistent with what Donovan had told [her]."¹⁰⁰⁹ At that time, Hubbell knew about Rose's 1985-86 work for Madison Guaranty -- he had just reviewed the billing records during the 1992 campaign -- and he later admitted as much.¹⁰¹⁰ April Breslaw then called

¹⁰⁰⁶ Breslaw 6/6/95 House Banking Comm. Depo. at 37-38. See id. at 145 (Hubbell asserted that in 1989 when Rose was engaged to handle the Frost litigation he had not been aware of Rose's prior representation); Breslaw 10/23/95 Senate Banking Comm. Depo. at 69, 76-79, 101-03, 106-09, 118-20, 140-42, 150-57 (generally discussing Breslaw's telephone conversation with Webb Hubbell in September 1993, including phone records related to that telephone conversation).

¹⁰⁰⁷ Breslaw 10/23/95 Senate Banking Comm. Depo. at 108.

¹⁰⁰⁸ Id.

¹⁰⁰⁹ Id. at 109. See id. at 156 ("My general recollection is that the things he [Hubbell] had to say were consistent with what Donovan and I believe Clark had already told me"); Senate Whitewater Comm. Hearing, supra note 147, at 27 (Nov. 30, 1995) (testimony of A. Breslaw) ("Neither [Rick Donovan nor Webster Hubbell] had a strong recollection of the [pre-Frost Madison] representation, which apparently took place eight years earlier, in 1986").

¹⁰¹⁰ Senate Whitewater Comm. Hearing, supra note 147, at 19-21 (Feb. 7, 1996) (testimony of W. Hubbell) ("I knew in '85 and '86 that the firm had closed the IDC loan, yes"); Hubbell 8/22/96 GJ at 21 ("I remember talking to Mr. Massey, and I remember talking to Mrs. Clinton, and I remember talking to my father-in-law about the work that was being done, yes At the time [1985-86], yes").

Hubbell and he asserted that he had disclosed Mrs. Clinton's prior representation of Madison Guaranty.¹⁰¹¹ Rick Donovan confirmed speaking with Hubbell, and that Hubbell said he was "pretty sure" he had disclosed Rose's pre-Frost work for Madison Guaranty to April Breslaw.¹⁰¹²

Breslaw has since testified about her conversation with Schmidt and her September 29 e-mail:

What I did not tell her was that this was the first time that I had ever heard the suggestion that the Rose firm had represented Madison at all. And so that was the first time that that had really been suggested to me. As a result because I was personally puzzled by hearing this from a reporter, I telephoned the Rose Law Firm and I believe I spoke with Rick Donovan and someone else mentioned in the e-mail, Ron Clark, and asked what is this about? Did you guys represent Madison before it had failed? As reflected in this e-mail, they told me that they didn't think that the Rose firm had done that, but it was apparent from the conversation that they were vague themselves on the facts. So I came out of the conversation with them still feeling puzzled, feeling that I was probably talking to people who didn't know one way or the other, but who were possibly trying to calm a former client who was a little annoyed at being -- at hearing about a potential conflict from a reporter and not from them. So I believe I placed one call to Web[b] Hubbell,

¹⁰¹¹ Senate Whitewater Comm. Hearing, *supra* note 147, at 163-65 (Dec. 1, 1995) (testimony of W. Hubbell) (discussing the September 1993 Hubbell-Breslaw telephone conversation in general terms); Hubbell 6/9/95 GJ at 53 (indicating that Rick Donovan told him that April Breslaw was going to call him to ask about "whether we had made full disclosure of our conflicts at the time we took on the representation"); Hubbell 4/10/95 Int. at 21 ("HUBBELL told BRESLAW he thought he had disclosed that information [Rose's work for Madison Guaranty during 1985 and 1986] to her. The conversation lasted maybe two to three minutes, and HUBBELL is certain there was no mention of an RTC referral"); Hubbell 3/16/95 FDIC-OIG Int. at 10 ("The last time he talked with Breslaw was when she called him while he was at the Department of Justice in September 1993. She said that people were asking her questions about what she was told when she hired Rose for the Madison Conservatorship. She did not say who was asking. He told her that when he accepted the case they discussed that Rose had done prior work for Madison and that his father-in-law was suing them. Breslaw told him that she did not recall him telling her those things and he responded that it was a brief conversation and he could see how she could have forgotten").

¹⁰¹² Donovan 1/21/98 GJ at 50.

who, at that time, was Associate Attorney General.¹⁰¹³

On September 30 or October 1, 1993, FDIC Deputy General Counsel Jack Smith also received a call from Susan Schmidt. She asked questions about alleged conflicts related to Frost, David Hale's September 23, 1993 indictment, and Jim McDougal.¹⁰¹⁴ Schmidt told Smith that April Breslaw handled the Frost case for the FDIC, and Smith called Breslaw.¹⁰¹⁵ On October 13, 1993, Breslaw sent a memorandum to Jack Smith entitled the "Inquiry from Susan Schmidt, Washington Post." Breslaw noted that Madison Guaranty's loans to Seth Ward "had been made long before the thrift closed," that "[t]he scope of the Rose Firm's representation of Madison prior to its failure is in dispute," and that "current partners at the Rose Firm have stated repeatedly that the inquiry to the Arkansas securities commissioner was a brief, 'What are the procedures if Madison decides to give this a try?' conversation."¹⁰¹⁶ Breslaw also wrote:

I have no reason to believe that the Rose Law Firm was on retainer to Madison "for 30 months during the mid-1980's," as Ms. Schmidt says she has been told. We have no documentation which suggests this. . . . When the Rose firm was substituted as government counsel in the Frost case, Mr. Hubble [sic] represented that the project did not pose conflicts of interest. I do not recall any specific discussion of prior work for Madison. I believe that the first time I became aware

¹⁰¹³ Breslaw 6/6/95 Senate Whitewater Comm. Depo. at 36-37. Breslaw's conversations with Schmidt, Hubbell, and Donovan became the topic of Congressional interest in 1995, as those conversations occurred contemporaneously with the nine RTC criminal referrals that related to Madison Guaranty. "I was not pleased to have this kind of inquiry coming in from a reporter under circumstances in which I think it is clear that there is no written disclosure from the Rose Law Firm of this issue," Breslaw later testified. Breslaw 10/23/95 Senate Whitewater Comm. Depo. at 94.

¹⁰¹⁴ Smith 2/5/98 GJ at 4-5, 33-34.

¹⁰¹⁵ Id.

¹⁰¹⁶ Memo from April Breslaw, RTC attorney to Jack Smith, FDIC Deputy General Counsel (Oct. 13, 1993) (Doc. No. 281-00002081).

of these allegations was when the Washington Post published a story which echoed the New York Times material in March 1992. (Copy attached.) By then, the Frost case had settled.¹⁰¹⁷

On Wednesday, November 3, 1993, an article by Susan Schmidt appeared in the Washington Post.¹⁰¹⁸ The article quoted Rick Donovan as saying, "I don't think we ever billed them [Madison Guaranty] a dime -- maybe we did -- I don't know."¹⁰¹⁹ Donovan said that -- despite his actually doing some of the prior work for Madison Guaranty -- he did not remember that prior work:

I remember [the conversation] like it was yesterday. I picked up the phone and there's this Susan Schmidt from the Washington Post. I'm an Arkansas boy. You know, this is big stuff. Boy, I'm going to really talk to her. And I did say that and was totally wrong. I had -- you know, that shows you what I knew about the previous work. And it shows you I wasn't even making the connection with the work that I had done with those memos. Yeah, I said all of that. I said a bunch of other stuff, too, that she didn't print.¹⁰²⁰

As a result, the FDIC Legal Division next initiated a review of Rose's work on Frost. Two high-ranking FDIC Legal Division attorneys, Jack Smith and Tom Schulz, directed another Legal Division attorney, John Downing, to review and investigate the matter.¹⁰²¹ Downing began

¹⁰¹⁷ Id.

¹⁰¹⁸ Susan Schmidt, Regulators Say They Were Unaware of Clinton Law Firm's S&L Ties, Wash. Post, Nov. 3, 1993, at A4.

¹⁰¹⁹ Id.

¹⁰²⁰ Donovan 1/6/98 GJ at 101; see also id. at 51 (discussing Donovan's conversation with Susan Schmidt).

¹⁰²¹ See Memo from Thomas A. Schulz, Assistant General Counsel, to Douglas Birdzell, Special Counsel (Nov. 16, 1993) (Doc. No. 281-00002011) (the memorandum states Jack Smith requested Schulz to look into whether there was a conflict of interest with the Rose Law Firm. Schulz directed Birdzell to deliver information on the matter to John Downing); Downing 1/22/98 GJ at 5-8.

his investigation during November 1993.¹⁰²² He interviewed April Breslaw, Rick Donovan, and Gary Speed, and reviewed various documents from Frost.¹⁰²³

On November 4, 1993, April Breslaw drafted a statement at Jack Smith's request entitled "Congressional Testimony: Rose Law Firm."¹⁰²⁴ That statement was to serve as a response to the November 3 Washington Post story.¹⁰²⁵ Breslaw's statement defended her decision to retain Rose for Frost, and rebutted claims that there were improper, undisclosed conflicts of interest between Rose and the FDIC. With regard to Ward, Breslaw wrote:

As to the Ward potential conflict, the Post implies that Ward's relationship to Madison was fully disclosed to the FDIC. Though Mr. Ward's debt and commission dispute were disclosed, his work for Madison's real estate subsidiary was not. At most, however, this matter involves the appearance of a non-representational conflict. Further, Ward did not benefit from the Rose Firm's Madison work. The Frost case publicized Ward's credit problems and he ultimately lost his commission claims.¹⁰²⁶

On November 16, 1993, John Downing of the FDIC Legal Division interviewed Breslaw. The report of that interview stated that "[i]f she had been told by Rose of some prior representation of Madison, she states she would have brought that to the attention of John

¹⁰²² Downing's notes on Rose Law Firm Possible Conflict Investigation (undated) (Doc. Nos. 281-00002012 through 27); Downing 1/22/98 GJ at 5-8.

¹⁰²³ Breslaw 4/7/94 FDIC/OIG Int.; Donovan 10/4/94 FDIC/OIG Int.; Speed 10/5/94 FDIC/OIG Int.

¹⁰²⁴ "Congressional Testimony: Rose Law Firm" drafted by April Breslaw (Nov. 4, 1993) (Doc. No. 281-00002060).

¹⁰²⁵ Memo from April Breslaw, RTC attorney to Thomas Schulz, Assistant General Counsel (Nov. 6, 1993) (Doc. No. 281-00002058).

¹⁰²⁶ "Congressional Testimony: Rose Law Firm" drafted by April Breslaw (Nov. 4, 1993) (Doc. No. 281-00002060).

Thomas [her supervisor]. However, she does not recall any such disclosure by Rose."¹⁰²⁷

Breslaw also told Downing, "She has no personal knowledge of any representation [of Madison] by Hil[l]ary Clinton. . . . She is unaware of anybody else within the FDIC who would have knowledge of prior representation of Madison by Rose."¹⁰²⁸

On January 10, 1994, Breslaw wrote another e-mail to colleagues at the FDIC/RTC:

When Madison became the government's responsibility in March 1989, I replaced the institution's counsel with the Rose firm. I did this because Madison's lawyer was severely conflicted. That firm was defending directors and officers in 3 separate lawsuits filed by the FDIC. The Rose firm had no such conflicts. . . . As I've told the FDIC investigators, I do not recall the Rose firm mentioning that it had previously represented Madison. Webb Hubble [sic] has said that he told me about this. However, I don't remember such a conversation and there is no correspondence which documents it. I was informed that Webb's father-in-law (Seth Ward) had business dealings with Madison. However, no one at the Rose firm ever represented Ward. . . . Further, the fact that Webb was related by marriage to someone who had dealing [sic] with Madison does not constitute an actual conflict. At most, this situation could be described as a potential "non-representational" conflict. If this kind of situation arose today in an open matter, I bel[ie]ve that relevant committees would waive it.¹⁰²⁹

Breslaw's statements and e-mails demonstrate that during late 1993 and early 1994, she believed Hubbell had accurately stated he did not represent Seth Ward and that, as she wrote on January 10, 1994, "no one at the Rose firm ever represented Ward."¹⁰³⁰

¹⁰²⁷ Memo from John Downing, FDIC attorney, legal division to File (Nov. 16, 1993) (Doc. No. 281-00002004).

¹⁰²⁸ Id.; see also Downing 1/22/98 GJ at 8 (indicating that Breslaw stated consistently that she had no knowledge of any work that the Rose Law Firm had done for Madison Guaranty prior to the Frost case).

¹⁰²⁹ E-mail from April Breslaw to Julie Yanda (Jan. 10, 1994) (Doc. No. CZ-00000573 through 74).

¹⁰³⁰ Press reports charged that Breslaw was a "tough" FDIC attorney who went "soft" on

From December 1993 to January 1994, the Whitewater/Madison controversy was, according to Hillary Clinton, "the subject of much conversation and concern."¹⁰³¹ Carl Stern, then Director of the Justice Department's Office of Public Affairs, sat down with Hubbell on three or four occasions to discuss the allegations of improper conflicts of interest related to the FDIC and Madison Guaranty.¹⁰³² Hubbell was "furious" and seemed "genuinely angry" about the allegations, and told Stern that he believed he had been literally correct in his FDIC certifications.¹⁰³³ Hubbell told Stern he viewed the FDIC as Madison Guaranty's successor, and that the FDIC and Rose had a "unity of interest" rather than a conflict because Rose and Madison Guaranty were on the same side in 1985 and 1986 when Rose represented Madison Guaranty, and again when Rose represented the FDIC in the Frost case.¹⁰³⁴

As the FDIC Legal Division Rose review continued throughout November and December of 1993, Jack Smith, Tom Schulz, and John Downing discussed whether they should interview Webster Hubbell, then the Associate Attorney General. "The allegations were that Webster Hubbell was the managing partner of [the Frost litigation], and that it was Webster Hubbell who

Rose. See, e.g., F. Murray, 'Tough' Federal Lawyer Went Soft On Hubbell In S&L Case, Wash. Times, Feb. 15, 1994, at A1 ("A government lawyer considered a hard-liner against law-firm conflicts of interest took relaxed stands on the role of the Rose Law Firm's Webster L. Hubbell in a \$10 million lawsuit to recoup taxpayer losses from Madison Guaranty Savings and Loan Association"). She later admitted that she felt mildly threatened by the Legal Division's review. Breslaw 10/23/95 Senate Whitewater Comm. Depo. at 187.

¹⁰³¹ H. Clinton 7/22/95 Depo. at 40.

¹⁰³² Stern 1/21/98 Int. at 1.

¹⁰³³ Id.

¹⁰³⁴ Id.

had conflicts of interest which hadn't been revealed to us," Smith testified. "So, naturally, the simple thing to do was just ask him the facts, and especially since April Breslaw seemed to be a little bit hazy on her recollection."¹⁰³⁵

On January 5, 1994, the Washington Post published an article by Susan Schmidt and Michael Isikoff discussing the growing controversy surrounding Seth Ward, Webster Hubbell, Hillary Clinton, Madison Guaranty, the FDIC, and the RTC.¹⁰³⁶ The article stated:

How much the FDIC knew when it hired Rose [to handle Frost] about the relationships among Madison and the firm and its partners is unclear. Hubbell has contended that his dealings with Madison were fully disclosed. A series of internal FDIC memos at the time warned against hiring Hubbell due to conflicts involving his father-in-law, and FDIC and RTC lawyers have been conducting an inquiry in recent weeks into whether the potential conflicts were properly reported.¹⁰³⁷

On January 6, Smith and Downing met to discuss Rose, and Downing reminded Smith that they had decided to interview Hubbell.¹⁰³⁸ Jack Smith scheduled Hubbell's interview for January 11.¹⁰³⁹ On January 7, at Hubbell's request, Downing sent him a variety of Frost-related documents to review prior to his January 11 interview.¹⁰⁴⁰

¹⁰³⁵ Smith 2/5/98 GJ at 10.

¹⁰³⁶ Susan Schmidt & Michael Isikoff, Arkansas Probe Sensitive From Start; Investigation of Collapsed S&L Affected by Links With the Clintons, Wash. Post, Jan. 5, 1994, at A1.

¹⁰³⁷ Id.

¹⁰³⁸ Smith 2/5/98 GJ at 12; Downing notes (Jan. 6, 1994) (Doc. No. 281-00002017).

¹⁰³⁹ Smith 2/5/98 GJ at 12; see Downing 1/22/98 GJ at 11; Downing notes (Jan. 6, 1994) (Doc. No. 281-00002017).

¹⁰⁴⁰ Downing 1/22/98 GJ at 9-11; Downing notes (Jan. 6, 1994) (Doc. No. 281-00002017). Included in the packet was a letter Hubbell had written on June 28, 1989 to David Paulson about Hubbell's relationship with Seth Ward.

On January 11, Smith and Downing met Hubbell for about 40 minutes at his Department of Justice office.¹⁰⁴¹ Hubbell told them, "At the time that Rose was retained he was not aware that they had represented Madison before the Arkansas securities commission and so [he] did not disclose [that representation] to FDIC."¹⁰⁴² Hubbell also said Rose did some limited lending and collection work for Madison Guaranty several years before Frost. Hubbell claimed that he was not allowed to review the Borod & Huggins Report because it involved his father-in-law, Seth Ward.¹⁰⁴³

Hubbell admitted attending the trial of Ward v. Madison Guaranty, but said he had no other involvement.¹⁰⁴⁴ Hubbell told Smith and Downing that he had not done legal work for Seth Ward.¹⁰⁴⁵ Downing later testified: "As a matter of fact, I believe Mr. Hubbell told me when we interviewed him that he had not had involvement with Mr. Ward in legal matters."¹⁰⁴⁶ Jack Smith and James Lantelme, another FDIC Legal Division attorney, later testified that Hubbell had not told them about the legal work he and Rose Law Firm had done for Seth Ward or about Hubbell's ownership interest in Ward's companies.¹⁰⁴⁷

On November 24, 1993, Donovan had told John Downing he "did not recall that any procedure was established to keep information from being passed to the Wards that was obtained

¹⁰⁴¹ Downing 1/22/98 GJ at 11; Smith 2/5/98 at 13.

¹⁰⁴² Hubbell 1/11/94 FDIC Int. at 1.

¹⁰⁴³ Id. at 1-2.

¹⁰⁴⁴ Hubbell 1/11/94 FDIC Int. at 2.

¹⁰⁴⁵ Id.; Downing 1/22/98 GJ at 13-14, 31; Smith 2/5/98 GJ at 18.

¹⁰⁴⁶ Downing 1/22/98 GJ at 31.

during the Frost litigation."¹⁰⁴⁸

Accordingly, Downing determined that there was a discrepancy between Hubbell and Donovan.¹⁰⁴⁹ On January 12, the day after Hubbell's interview, Downing called Donovan.¹⁰⁵⁰ Donovan told Downing that Rose "did not have a formal, written Chinese wall that would insulate Hubbell from information relevant to [Seth] Ward Sr.'s loans, but that informal procedures were followed."¹⁰⁵¹ Donovan also told Downing that Hubbell "was not permitted to see" the Borod & Huggins Report.¹⁰⁵²

On January 13, 1994, John Downing spoke with Jim Lantelme.¹⁰⁵³ Since 1989, Lantelme had served as a member of the various FSLIC, FDIC, and RTC conflicts committees.¹⁰⁵⁴

Downing's notes reflect the substance of their discussion:

There was a question of how the [Hubbell-Ward] relationship appeared, but because it was fully disclosed and Hubbell had agreed not to do work for the Wards and had not done work previously, he [Lantelme] did not believe the Conflicts Committee would consider it to be a conflict. The further fact I mentioned, that there was apparently an informal procedure to insulate Hubbell

¹⁰⁴⁷ Smith 2/5/98 GJ at 25; Lantelme 2/17/98 GJ at 49.

¹⁰⁴⁸ Downing notes of telephone conversation with Donovan (Nov. 23, 1993) (Doc. Nos. 281-00002046 through 47).

¹⁰⁴⁹ Downing 1/22/98 GJ at 15.

¹⁰⁵⁰ Id.

¹⁰⁵¹ Downing notes of telephone conversation with Donovan (Nov. 23, 1993) (Doc. No. 281-00002047).

¹⁰⁵² Id.

¹⁰⁵³ Lantelme 2/17/98 GJ at 42-43; Memo from John Downing regarding "conversations between myself and James Lantelme, and between Tom Schulz and Lauck Walton" (Jan. 1, 1994).

¹⁰⁵⁴ Lantelme 2/17/98 GJ at 42.

from information about Ward, would also be viewed as significant.¹⁰⁵⁵

Also, Lantelme told Donovan that any "collection and lending work would be 'no big deal.'"¹⁰⁵⁶

Lantelme later confirmed that he believed Hubbell had done no work for Seth Ward.¹⁰⁵⁷

The media continued reporting allegations relating to Hubbell, Madison Guaranty, Rose, Whitewater, Hillary Clinton, and Seth Ward.¹⁰⁵⁸ Jack Smith spoke with Hubbell on January 19 and asked Hubbell if he had worked for Seth Ward on the Castle Grande loans, which Hubbell flatly denied.¹⁰⁵⁹

The RTC Office of Contractor Oversight and Surveillance ("RTC-OCOS") reviewed

¹⁰⁵⁵ Id. at 42-43; Memo from John Downing regarding "conversations between myself and James Lantelme, and between Tom Schulz and Lauck Walton" (Jan. 14, 1994).

¹⁰⁵⁶ Lantelme 2/17/98 GJ at 42-43; Memo from John Downing regarding "conversations between myself and James Lantelme, and between Tom Schulz and Lauck Walton" (Jan. 14, 1994).

¹⁰⁵⁷ Lantelme 2/17/98 GJ at 44, 54.

¹⁰⁵⁸ See, e.g., Howard Schneider & Sharon Walsh, Solid Arkansas Image Wilts in Capital Hear, Wash. Post, Mar. 15, 1994 at A1 (quoting Harry Don Denton as saying that "Hubbell structured . . . the wording for Seth's non-recourse note. . . . There wasn't anyone obligated to repay it"; and indicating that Justice Department spokesman Carl Stern stated that Hubbell had "no clear recollection of drafting it [the terms of Ward's Madison Guaranty loans]"); Hillary Clinton's law firm subject of federal probe, The Star-Ledger, A.P., Jan. 13, 1994 available at 1994 WL 9401754 (discussing Ward's Madison Guaranty loans and indicating that "[t]hrough a Justice Department spokesman, Hubbell said he told the FDIC in 1989 about Ward's relationship to the thrift, and was told that the situation presented no conflict"); and Jerry Seper, Hillary Clinton's S&L ties probed Official hired away by dying thrift, Wash. Times, Jan. 12, 1994, at A1 ("Raising further conflict concerns are court records showing that Mr. Hubbell's father-in-law, Seth Ward, was an officer of a Madison real estate subsidiary at the time Mr. Hubbell agreed to handle the case").

¹⁰⁵⁹ Smith 2/5/98 GJ at 28.

Rose at the same time as the FDIC Legal Division.¹⁰⁶⁰ The RTC-OCOS investigation "focused only on whether or not Rose disclosed its previous representation of Madison to the FDIC and RTC."¹⁰⁶¹ The RTC-OCOS did not interview any then current or former Rose attorneys, but it did receive information and documents from April Breslaw, and the RTC-OCOS reviewed the documents.¹⁰⁶²

RTC-OCOS issued a report on February 8, 1994, finding that:

- 1) Rose represented Madison Guaranty prior to its failure;
- 2) Rose submitted the Frost audits on Madison Guaranty's behalf to the Arkansas Securities Department;
- 3) Webb Hubbell "was present at the trial of the Seth Ward matter and appeared to have been an interested (indirectly) participant in the Ward proceedings;" and
- 4) Seth Ward II had a suit against Madison Guaranty.¹⁰⁶³

The RTC-OCOS also found that Rose did not disclose these matters during the Frost case, although it observed that April Breslaw had learned of the Ward matters.¹⁰⁶⁴

Shortly thereafter, on February 17, 1994, Jack Smith spoke with Hubbell a final time. Hubbell told Smith he "did not feel then that the Ward litigation was an obstacle to taking the

¹⁰⁶⁰ RTC-Office of Contractor Oversight and Surveillance Inquiries and Investigations Branch, Report on the Rose Law Firm, RTC/OCOS - T94002 - WA (Feb. 8, 1994) (Doc. Nos. 006-DC-00000030 through 38).

¹⁰⁶¹ Id. at 1 (Doc. No. 006-DC-00000032).

¹⁰⁶² Id. at 1-3 (Doc. Nos. 006-DC-00000032 through 34).

¹⁰⁶³ Id. at 3-4 (Doc. Nos. 006-DC-00000034 through 35).

¹⁰⁶⁴ Id. at 4 (Doc. No. 006-DC-00000035).

Frost engagement."¹⁰⁶⁵ Later that day, the FDIC Legal Division issued its report, and sent Hubbell a copy.¹⁰⁶⁶ Hubbell read the report and faxed a copy to the White House.¹⁰⁶⁷

The FDIC report, unlike the RTC-OCSC report, cleared Hubbell and Rose of wrongdoing. Why one report found wrongdoing while the other did not is largely explained by one fundamental assumption made by the FDIC: "The whole report was founded on the fact that [Webster Hubbell] had told the truth," Jack Smith later testified.¹⁰⁶⁸ The FDIC Legal Division Report became quite controversial with members of Congress. "One of the accusations coming from the Hill was that there must be some plot in the FDIC to get the White House out of this, or that people -- we were being pressured by the White House," Jack Smith later recalled. "They were wanting our phone logs to see if there was any phone calls to the White House. And maybe the President had called me up and told me to write this. But, of course, none of that happened."¹⁰⁶⁹

¹⁰⁶⁵ Smith 2/5/98 GJ at 28-29.

¹⁰⁶⁶ FDIC Report on the Retention of the Rose Law Firm (Feb. 17, 1994); D. Jones 1/22/98 GJ at 11-13; Hubbell 3/16/95 FDIC-OIG Statement at 11. See February 4, 1994 draft of the FDIC Legal Division's report on the Rose Law Firm.

¹⁰⁶⁷ Hubbell 3/16/95 FDIC-OIG Int. at 11. During his March 16, 1995 interview with the FDIC's Office of Inspector General, Hubbell stated:

The Legal Division sent him [Hubbell] a copy of their report the day it was made public. He had not seen a draft of their report nor had he discussed their findings with them prior to the time the report was issued. He read the report and agreed with their findings.

Hubbell 3/16/95 FDIC-OIG Int. at 11 (emphasis added).

¹⁰⁶⁸ Smith 2/5/98 GJ at 43; see also D. Jones 1/22/98 GJ at 13 ("Q. With regards to the factual representations made in the report, the report relied on statements Webster Hubbell made to the Legal Division, correct? A. Among other things, yes").

¹⁰⁶⁹ Smith 2/5/98 GJ at 46.

On February 24, the Senate Banking Committee held a hearing on the Legal Division Report. Senator Alfonse D'Amato challenged the report and asked FDIC official Andrew Hove to conduct an investigation.¹⁰⁷⁰ On March 2, 1994, John E. Ryan, the Deputy and Acting Chief Executive Officer of the RTC, asked the RTC-OIG to investigate the conflict of interest allegations against Rose.¹⁰⁷¹

2. The FDIC and RTC Offices of Inspector General Investigated the Rose Conflicts Issue and Concluded There Were Substantial Conflicts.

The FDIC-OIG and the RTC-OIG investigated Rose from March 1994 to August 1995.¹⁰⁷² Investigators reviewed several thousand documents, interviewed hundreds of people, and successfully litigated against the Rose Law Firm.¹⁰⁷³ The RTC-OIG invested 13,000 hours among twenty-one different agents.¹⁰⁷⁴ Attorneys and supervisory personnel also worked on the RTC-OIG investigation.¹⁰⁷⁵ Similarly, nineteen investigators worked on the FDIC-OIG investigation.¹⁰⁷⁶

¹⁰⁷⁰ FDIC-OIG Report on Alleged Conflicts of Interest by Rose Law Firm, IO-94-096, Vol. 1 at 9 (July 28, 1995).

¹⁰⁷¹ RTC-OIG Report, Investigation Concerning Rose Law Firm, Case No. WA-94-0016 at I-1 (Aug. 3, 1995).

¹⁰⁷² Husok 2/4/98 GJ at 10.

¹⁰⁷³ See generally FDIC-OIG Report, Alleged Conflicts of Interest by the Rose Law Firm, Case No. IO-94-096 (July 28, 1995) and RTC-OIG Report, Investigation Concerning Rose Law Firm, Case No. WA-94-0016 (Aug. 3, 1995).

¹⁰⁷⁴ Husok 2/4/98 GJ at 10-11.

¹⁰⁷⁵ Id. at 10.

¹⁰⁷⁶ Id. at 11.

a. February 17, 1995 Submission from Rose to the FDIC and RTC Inspectors General.

On February 17, 1995, Rose's attorney gave the FDIC-OIG and the RTC-OIG a lengthy analysis describing Rose's work for Madison Guaranty, the Frost case, Seth Ward, the Ward companies, and other alleged conflicts of interest.¹⁰⁷⁷ Rose claimed that another Little Rock law firm, Mitchell, Williams, Selig, Jackson & Tucker, was Madison Guaranty's lead counsel and that Rose did limited legal work for Madison Guaranty.¹⁰⁷⁸ Under a section entitled "Rose's Prior Representation of Madison Guaranty," Rose omitted any reference to the Ward-Madison-Rose connection.¹⁰⁷⁹ In a section entitled "Seth Ward, Seth Ward II, and P.O.M.," Rose did not mention the firm's work on behalf of Seth Ward, Madison Guaranty, and Madison Financial.¹⁰⁸⁰ Rose's submission did not contain any reference to Rose's work for Seth Ward on the IDC/Castle Grande transactions.¹⁰⁸¹

b. Webster Hubbell's Statements to the FDIC-OIG and RTC-OIG.

Both the FDIC-OIG and RTC-OIG interviewed Hubbell after his December 1994 guilty plea. FDIC-OIG Senior Special Agents Karen Hepburn and Patrick McKenna interviewed Hubbell under oath with his attorney present all day on March 16, 1995.

¹⁰⁷⁷ See Submission of Rose Law Firm to the Inspector General of the Federal Deposit Insurance Corporation and the Inspector General of the Resolution Trust Corporation (Feb. 17, 1995).

¹⁰⁷⁸ See id. at 12.

¹⁰⁷⁹ See id. at 12-19.

¹⁰⁸⁰ See id. at 19-24.

¹⁰⁸¹ See id.

Hubbell claimed that he did not do any work on the IDC/Castle Grande matter.¹⁰⁸² He denied purposely hiding from April Breslaw Rose's advocacy for Madison Guaranty before the Arkansas Securities Department ("ASD").¹⁰⁸³ He claimed he never represented Seth Ward in his dealings with Madison Guaranty.¹⁰⁸⁴ He said that he did not review the Borod & Huggins Report when Rose first obtained it.¹⁰⁸⁵ Hubbell admitted that he spoke with April Breslaw in September of 1993, telling "her that when he accepted the [Frost] case they discussed that Rose had done prior work for Madison and that his father-in-law was suing them. Breslaw told him that she did not recall him telling her those things and he responded that it was a brief conversation and he could see how she could have forgotten."¹⁰⁸⁶

The FDIC-OIG investigators also asked Hubbell about the FDIC Legal Division review. Hubbell asserted that "he answered the Legal Division's questions to the best of his memory."¹⁰⁸⁷ According to Hubbell, the Legal Division "did not ask him any questions about any business relationship he may have had with Ward or about POM."¹⁰⁸⁸ Hubbell said he told Jack Smith and John Downing that he had told April Breslaw about Rose's prior "small amount of work" for Madison Guaranty and about his father-in-law's suit against Madison Guaranty the first time he

¹⁰⁸² Hubbell 3/16/95 FDIC-OIG Statement at 4-5.

¹⁰⁸³ Id. at 5.

¹⁰⁸⁴ Id. at 6, 8.

¹⁰⁸⁵ Id. at 7.

¹⁰⁸⁶ Id. at 10.

¹⁰⁸⁷ Id. at 11.

¹⁰⁸⁸ Id. As discussed in Chapter 1 of this Part, POM was a corporation owned by Ward for which Hubbell did legal work.

and Breslaw spoke.¹⁰⁸⁹ Hubbell said that he "just recently learned that he was mistaken about telling Breslaw those facts during the first time they talked, but he believes he told her a few weeks later after he had completed his conflicts check."¹⁰⁹⁰

On April 20, 1995, RTC-OIG agents interviewed Hubbell with his lawyer present. Hubbell said he did not see the Ward-Madison Guaranty dispute as connected to Rose's work for each of them as clients.¹⁰⁹¹ Hubbell said he did not review the Borod & Huggins Report until it was "absolutely necessary for him to do so because of an issue involving a ROSE attorney, [Patricia Heritage, who] had worked at MADISON GUARANTY."¹⁰⁹² Hubbell said he had no involvement in "preparing any of the agreements between [Seth] WARD and [Jim] MCDOUGAL."¹⁰⁹³ Hubbell disclaimed knowledge of or involvement in: (1) the September 23, 1985 draft agreement between Seth Ward and Jim McDougal; (2) the backdated September 24, 1985 agreement between Ward and Madison Financial, and (3) the December 11, 1986 letter from Ward to Madison Financial.¹⁰⁹⁴

¹⁰⁸⁹ Hubbell 1/11/94 FDIC-OIG Int. at 1.

¹⁰⁹⁰ Hubbell 3/16/95 FDIC-OIG Statement at 10.

¹⁰⁹¹ Hubbell 4/20/95 RTC-OIG Int. at 16.

¹⁰⁹² Id. at 17.

¹⁰⁹³ Id. at 24.

¹⁰⁹⁴ Id.

c. Federal Investigators Unwittingly Provided Incorrect Information to Congress Because They Were Unaware of the Work Mrs. Clinton Had Done for Madison Guaranty.

The FDIC-OIG issued its report on July 28, 1995. The RTC-OIG issued its report on August 3, 1995. Both reports found that Rose had concealed actual or potential conflicts of interest from the FDIC and RTC, especially in connection with the Frost case. On August 10, 1995, the House Committee on Banking and Financial Services held a hearing, taking testimony from members of FDIC and RTC OIGs.¹⁰⁹⁵ The witnesses generally testified about their reports and about Mrs. Clinton's work for Madison Guaranty.¹⁰⁹⁶ After Congressman Frank Lucas asked RTC-OIG attorney Patricia Black about Castle Grande and Seth Ward's role as a "straw purchaser," the questioning turned to Hillary Clinton's role in the Castle Grande transactions.¹⁰⁹⁷ Black testified that the RTC-OIG investigation found "no evidence that [Hillary Clinton] worked on Castle Grande."¹⁰⁹⁸ Then the following exchange:

Mr. Vento: With regards to the Castle Grande issue and the role of Hillary Clinton, Hillary Clinton was a billing clerk. She was actually keeping track of the hours that were worked by the individual attorneys in the firm. Is that correct, Mr. Adair? Is that your understanding of her role? Ms. Black?

¹⁰⁹⁵ See House Banking Comm. Hearing, supra note 997, at 2 (Aug. 10, 1995) (indicating John Adair, Inspector General and Patricia Black, Counsel to the RTC and James Renick, Inspector General to the FDIC would be testifying).

¹⁰⁹⁶ House Banking Comm. Hearing, supra note 997, at 7-9, 12-13, 15, 22-23, 30, 34-35, 43-44 (Aug. 10, 1995) (testimony of P. Black); House Banking Comm. Hearing, supra note 997, at 8-9, 13, 15-17, 22-23, 25, 27, 35-39 (Aug. 10, 1995) (testimony of J. Renick); House Banking Comm. Hearing, supra note 997, at 9, 13, 16-18, 23, 33, 35-36 (Aug. 10, 1995) (testimony of J. Adair).

¹⁰⁹⁷ House Banking Comm. Hearing, supra note 997, at 12 (Aug. 10, 1995) (questioning by B. Vento).

¹⁰⁹⁸ Id. (testimony of Black).

- Ms. Black: She was the billing partner, sir. I'm not sure exactly what that entailed within the Rose Law Firm.
- Mr. Vento: And so the fact is that she didn't necessarily work on the Castle Grande or any of the other direct investment issues that you examined, did she?
- Ms. Black: We have no evidence that she worked on Castle Grande.
- Mr. Vento: She didn't work on them; all she was doing was sending out the bills, is what my understanding is, and if I am wrong, we want to get to the bottom of this.
- Ms. Black: She did work for Madison, sir. We don't know what it was. The bills that were submitted by Rose had the names of attorneys who did the work at the top, and then they had a block discussion of the activities that occurred, so we don't know who did what.¹⁰⁹⁹

Another exchange between Congressman Frank Lucas and Ms. Black discussed Madison

Guaranty v. Frost:

- Mr. Lucas: But the people who helped do the transaction paperwork were now helping recover from the losses of the transaction paperwork?
- Ms. Black: Yes, sir, that is correct.
- Mr. Lucas: Thank you. If so, if the whole Frost suit went to trial, some very damaging information concerning Rose firm's complicity in insider fraud could be aired in public. In fact, if it could be proved that the Rose firm knowingly assisted Madison's fraudulent Castle Grande transaction, the Rose firm itself could be sued for the losses associated with the Castle Grande fiasco; isn't that right?
- Ms. Black: That series of events could have occurred.
- Mr. Lucas: Isn't this, in fact, what happened to many law firms that assisted in S&Ls that chose to have fraudulent schemes in the 1980's?

¹⁰⁹⁹ Id. (testimony of Black).

Ms. Black: Where the RTC could prove that the firm was culpable, it did pursue such cases.

* * *

Mr. Lucas: And, in fact, Rose eventually did settle the case for \$1 million, a pretty -- you call it a mere fraction of the original claim of \$10 million; isn't that correct?

Ms. Black: That is the amount of the settlement, yes, sir.

Mr. Lucas: Now, regarding Mrs. Clinton's involvement in the Castle Grande project, aren't there memos that are appended to your report, both to and from Mrs. Clinton, relating to the proposed construction of a brewery on the Castle Grande property?

Ms. Black: Yes, there are. Those occurred subsequent to the closing of the initial purchase transaction.

Mr. Lucas: OK. And aren't there also memos from a Rose associate named Rick Donovan to Mrs. Clinton relating to sewer and water issues at the Castle Grande property?

Ms. Black: Yes, sir, and those also are subsequent to the initial purchase.¹¹⁰⁰

Later, the following exchange occurred:

Mr. Bentsen: [W]e have no evidence that [Hillary Clinton] was familiar with the inner workings of Madison. We have no evidence that Mrs. Clinton was involved in Castle Grande, nor do we have any evidence whatsoever that she prepared any representations regarding that; is that correct?

Ms. Black: I would agree with everything except that there are bills that have Mrs. Clinton's name on them. We do not know what those represent, and your statement as to any work with that may well be correct also. I just don't know.

Mr. Bentsen: But in fact, you all found no such information in your research?

¹¹⁰⁰ Id. at 14-15 (testimony of Black).

Ms. Black: Other than the bills, no sir.

* * *

Ms. Black: I understood your question on Mrs. Clinton and Castle Grande to deal with the initial purchase transaction, and my answer stands as to that. There was some involvement by Mrs. Clinton at a later time on the issue of the brewery and whether the township was wet or dry.

Mr. Bentsen: But not, if the Chair will indulge me a little bit, with respect to representations, because the discussion here today has not been as much to that as it has been to the structure of the transaction, and in the fact that Rose acted as the closing counsel, which is a broad term, which we're not sure what that means, but to whether or not they prepared any certificates or representations with respect to the structure of the transaction.

Ms. Black: That is correct. It was not representation on the initial acquisition but on subsequent issues.¹¹⁰¹

Hubbell and Breslaw testified next. Hubbell stated the pre-Frost Rose-Madison Guaranty relationship did not constitute a conflict.¹¹⁰² Breslaw agreed.¹¹⁰³ At the time, however, Breslaw did not know all the facts about Rose's prior work for Madison Guaranty, and she acknowledged that Hubbell had told her during Frost that "he was not representing Mr. Ward and that he would not do so in the future. He also told me that his relationship with his father-in-law was not a close one. I recall him saying that Mr. Ward was an ardent Republican and that he was an active Democrat."¹¹⁰⁴

¹¹⁰¹ Id. at 34-35 (testimony of Black).

¹¹⁰² Id. at 51, 58 (testimony of Hubbell).

¹¹⁰³ Id. at 58 (testimony of Breslaw).

¹¹⁰⁴ Id. at 46 (testimony of Breslaw).

The true nature of the Rose-Madison Guaranty relationship was never fully revealed during the FDIC-OIG and RTC-OIG investigations. At the August 10, 1995 hearing, Hubbell claimed another law firm worked with the FDIC on matters related to Madison Guaranty and that people at Madison Guaranty knew all about the pre-Frost Rose-Madison relationship:

Mrs. Kelly: It was not a secret that [Hillary Clinton] had done work with the Madison case?

Hubbell: That is correct.

Mrs. Kelly: So most of you knew that?

Hubbell: We did know that. We didn't know necessarily what she did versus other lawyers on specific cases, but we knew that she was the billing partner within Madison.

Mrs. Kelly: Well, then, as I understand this, you say that you knew this, but you accepted the RTC as a client without disclosing this to the RTC. Is that correct?

Hubbell: I don't believe I have ever said that, Mrs. Kelly, but I do know that I do not consider it a conflict to have represented Madison and then to inherit a case that Madison itself had filed and then be asked by the RTC to take it over. It was a case that our client had filed, a different law firm, but the same client.

Mrs. Kelly: If you will forgive me, the picture I have in my mind is that -- I mean, if I were a member of a big powerful law firm and I had the opportunity to represent a client and in that be afforded the opportunity to protect one of my partners, and if I weren't concerned with the ethical implications of accepting that client, I have to admit it would tempt me. It would probably tempt all of us.

I can't think of a better way, really, to control access to information about my partner than to control the questions that were going to be asked and keep everything focused away from potentially embarrassing actions, and that that partner might have taken.

Hubbell: Mrs. Kelly, in response to that, our engagement was in connection with

one lawsuit. Another law firm in Little Rock was representing the institution and the FDIC in a myriad of workouts and had access to the same information I did.

So we were only handling this one malpractice case. Another firm, as well as the Madison auditors, and everyone else was there.

In addition, I think one thing that people don't realize about Madison, and if you don't mind me saying this, normally when the FDIC or the RTC comes into an institution, most of the management was gone. Most of the management is gone.

In this case, only Mr. McDougal and Mr. Latham were gone. All of the people who did the day-to-day work were still in the institution. They knew everything about my father-in-law. They knew everything about the prior representation. They knew about every one of these loans. It was not your typical case, and I just say that to put this in context to the other work that we did.

When we take over -- when we help do the professional liability review of First Federal, for example, all of the management was gone... There wasn't anybody who knew what was going on.

In this case, the senior management of Madison was still working for the Federal Government, the FDIC.¹¹⁰⁵

¹¹⁰⁵ Id. at 93-94 (testimony of Hubbell). Hubbell told a similar story to the Senate on Feb. 7, 1996: "Rightfully or wrongfully I assumed that they [the employees of the Madison Conservatorship] remembered better than I the transactions involving Castle Grande and IDC." Senate Whitewater Comm. Hearing, supra note 147, at 37 (Feb. 7, 1996) (testimony of W. Hubbell). Contrary to Hubbell's statement that, "[t]hey knew everything about the prior representation" others had left Madison Guaranty between July 1986 (when Rose ended its relationship with Madison Guaranty) and March 1989 (when Rose took over the Frost case). Notably absent from Madison Guaranty were Seth Ward and Seth Ward's long-time friend and Madison Guaranty colleague, Harry Don Denton. Denton 9/6/96 FDIC Int. at 5 (indicating Ward's employment was terminated on July, 1986). Denton was one of the few individuals who claimed to have direct knowledge about the involvement of Hillary Clinton and Webb Hubbell in the IDC and Castle Grande transactions. Denton 6/26/96 Int. at 5. The only Madison Guaranty employee still employed during the Frost litigation that might have known about Rose's 1985-86 work for Madison that this Office is aware of was Sue Strayhorn who worked at Madison

During the August 10, 1995 hearing, when asked about Mrs. Clinton's work for Madison Guaranty, Hubbell said he "was not aware of the nature of the matters, but aware that the firm had represented Madison in 1985 and 1986 and aware that Mrs. Clinton was the billing attorney."¹¹⁰⁶

d. Rose's Response to the Investigative Reports.

The Rose Law Firm submitted responses to the OIG reports on September 12, 1995.¹¹⁰⁷ Rose generally argued two points: 1) none of the actual or potential conflicts of interest identified by the OIG reports are actual conflicts of interest; and 2) Rose reasonably relied on Hubbell to disclose conflicts to the government.¹¹⁰⁸ According to Rose, Hubbell alone was responsible for any failure to disclose conflicts.¹¹⁰⁹

As for Rose's work on IDC, Rose said that it "played an extremely limited role in connection with the IDC property," "so slight that neither John Latham, Madison Guaranty's president, nor Seth Ward, who supervised the transaction, recall Rose being involved in the transaction at all."¹¹¹⁰ Rose said it "did not represent Madison Guaranty -- or anyone else -- in

Guaranty as a secretary. Strayhorn 4/7/94 RTC Affidavit at 1. There is no evidence that Strayhorn knew about the pre-Frost Rose work for Ward on the Castle Grande matter.

¹¹⁰⁶ House Banking Comm. Hearing, supra note 997, at 49 (Aug. 10, 1995) (testimony of W. Hubbell).

¹¹⁰⁷ Rose Law Firm's Responses to the Reports of the Inspector General (Sept. 12, 1995).

¹¹⁰⁸ Id. at 1-2.

¹¹⁰⁹ Id.

¹¹¹⁰ Id. at 49.

connection with the sales of the property, including sales of Castle Grande."¹¹¹¹ Rose asserted, also inaccurately, that none of the matters Rose "handled" on the IDC or Castle Grande transactions became an issue in Frost.¹¹¹²

OIG attorney Patricia Black wrote the reply to Rose's response, which she submitted to the RTC-OIG on October 27, 1995. She concluded that "the Rose Response is replete with misstatements of fact and mischaracterizations of the OIG report. Accordingly, as a factual response, it warrants little, if any, regard."¹¹¹³

e. Fall 1995 Senate Special Whitewater Committee Hearings.

On November 30, 1995, Breslaw testified at a public hearing before the Senate Banking Committee. Breslaw was asked about the 1986 FHLBB examination reports describing Seth Ward and Madison Guaranty as having engaged in fictitious sales. Ms. Breslaw testified that she knew nothing about Rose's involvement with the fictitious sales and that she believed Hubbell lied to her when she hired him.¹¹¹⁴

Hubbell testified the next day. Hubbell repeated his claim that there was no conflict, that he disclosed his father-in-law's suit, common Frost-Rose clients, and Rose's prior work to April Breslaw, all during a short "30-second conversation."¹¹¹⁵ The prior work he said he disclosed

¹¹¹¹ Id. at 50.

¹¹¹² Id. at 51.

¹¹¹³ OIG Reply to Rose Law Firm's Resp. to the Investigation Concerning the Rose Law Firm at 1 (Oct. 27, 1995).

¹¹¹⁴ Senate Whitewater Comm. Hearing, supra note 147, at 129 (Nov. 30, 1995) (testimony of A. Breslaw).

¹¹¹⁵ Senate Whitewater Comm. Hearing, supra note 147, at 98-102 (Dec. 1, 1995)

involved "minor lending work," which referred to "closing loans."¹¹¹⁶ Hubbell testified that he learned of Rose's prior ASD work during the Frost case. He also testified that he considered whether Rose's ASD work might constitute a conflict of interest, but concluded there was no conflict and had no memory of telling Breslaw about the matter.¹¹¹⁷ Hubbell claimed that he, Gary Speed, and Rick Donovan took "certain steps" to keep Hubbell from "having certain knowledge" about "those reports" regarding Seth Ward.¹¹¹⁸ Hubbell said that he "would not look at that [Borod & Huggins] report for a period of time."¹¹¹⁹ The Frost billing records and Hubbell's fingerprints on the Borod & Huggins report show otherwise.¹¹²⁰

Also at the December 1, 1995 Senate Banking Committee hearing, Hubbell responded to April Breslaw's assertions made the previous day, that Hubbell lied to her. "I would apologize if I did lie to her," Hubbell said, "but I don't believe I did."¹¹²¹ Hubbell admitted that he spoke by telephone with Rick Donovan and April Breslaw on or about September 29, 1993.¹¹²² He said Breslaw told him "she had no recollection that I had told her about the prior representation of the

(testimony of W. Hubbell).

¹¹¹⁶ Id. at 101 (testimony of Hubbell).

¹¹¹⁷ Id. at 115.

¹¹¹⁸ Id. at 116-118.

¹¹¹⁹ Id. at 117.

¹¹²⁰ Federal Bureau of Investigation Laboratory Report (Nov. 21, 1997); Rose Law Firm Billing Records (Mar. 7, 1990) (Doc. No. 264-000264); Rose Law Firm Billing Records (Mar. 14, 1991) (Doc. No. 264-00020682).

¹¹²¹ Senate Whitewater Comm. Hearing, supra note 147, at 138 (Dec. 1, 1995) (testimony of W. Hubbell).

¹¹²² Senate Whitewater Comm. Hearing, supra note 147, at 163 (Feb. 7, 1996) (testimony of W. Hubbell).

firm of Madison, and she wanted to raise that with me."¹¹²³ Hubbell said he told Breslaw that he recalled telling her in 1989 about Rose's pre-Frost work for Madison Guaranty in a "very brief, less-than-30-second conversation."¹¹²⁴ Hubbell said that although he was not initially concerned about any conflict of interest investigation, "[o]bviously, it grew."¹¹²⁵

f. Pillsbury Madison & Sutro Reports.

On February 4, 1994, the RTC issued an Order of Investigation to examine Rose, Madison Guaranty, and Frost.¹¹²⁶ The RTC retained the law firm of Pillsbury, Madison & Sutro to investigate whether the RTC could bring civil claims against anyone formerly associated with Madison Guaranty.

On December 28, 1995, Pillsbury issued "A Report on the Rose Law Firm's Conduct of Accounting Malpractice Litigation Pertaining To Madison Guaranty Savings & Loan."¹¹²⁷ Pillsbury determined that Rose's "representation of the RTC in the Frost case was adverse to the interests of Ward."¹¹²⁸ Pillsbury also concluded:

[w]hile, in different circumstances, it could have been appropriate to screen Hubbell from any participation in the Frost case overall, because of his relationships with Ward, it is unthinkable to keep the lead attorney in a contested litigation in the dark concerning issues material to the case, particularly without

¹¹²³ Id. at 164.

¹¹²⁴ Id.

¹¹²⁵ Id. at 166.

¹¹²⁶ Pillsbury Madison & Sutro LLP, General Report on the Investigation of Madison Guaranty Savings & Loan and Related Entities: Prepared for Resolution Trust Corporation 1 (December 28, 1995)

¹¹²⁷ Id.

¹¹²⁸ Id. at 9.

informing the client.¹¹²⁹

Despite this, Pillsbury concluded that although "a claim could be asserted that the Rose Law Firm had an impermissible conflict of interest in the Frost case, which it did not adequately disclose or waive . . . litigation would be difficult, the outcome would be uncertain and the expected recovery would not cover the costs of litigation."¹¹³⁰ Pillsbury recommended that the RTC not sue Rose.

3. Billing Records Were Discovered in the White House, and for the First Time, Federal Investigators Learned the Extent of Mrs. Clinton's Work for Madison Guaranty.

The RTC ceased to exist on December 31, 1995, and the FDIC and RTC merged on January 1, 1996.¹¹³¹ On Friday, January 5, 1996, Mrs. Clinton's lawyer, David Kendall produced the Rose Law Firm's Madison Guaranty billing records.¹¹³² The FDIC-OIG reopened the RTC-OIG investigation in light of the recently produced billing records.¹¹³³ On September 20, 1996,

¹¹²⁹ Id. at 10-11.

¹¹³⁰ Id. at 19, 21.

¹¹³¹ Husok 2/4/98 GJ at 6.

¹¹³² See Letter from David E. Kendall, attorney for the Clinton's, to John D. Bates, Associate Independent Counsel, at 1 (Jan. 5, 1996); see also Rose Law Firm Billing Records (1985-1986) (Doc. Nos. DEK 014936 through 5049).

¹¹³³ FDIC-OIG, Supplemental Report on Rose Law Firm Conflicts of Interest, WA-94-0016 (Sept. 20, 1996); see also FDIC-OIG Supp. Rep. on Rose Law Firm Conflicts of Interest at 1 (Sept. 20, 1996) ("Because the discovery of Rose Law Firm billing materials provided significant new and highly relevant information which was unavailable to the RTC OIG during the course of its investigation, we elected to reopen the original case"). Additionally, Pillsbury issued a supplemental report on February 25, 1996. That report concluded that while the evidence did not exonerate anyone, there was no reasonable basis for filing a claim related to IDC/Castle Grande against the Rose Law Firm. Pillsbury Madison & Sutro LLP, A Supplemental Report on the Representation of Madison Guaranty Savings & Loan by the Rose

the FDIC-OIG issued a Supplemental Report on Rose Law Firm Conflicts of Interest. That report concluded:

[E]ntries in the billing materials and other evidence suggest that former Rose Law Firm partners Hillary Rodham Clinton and Webster L. Hubbell performed work that appears to have facilitated the payment of substantial commissions to Ward, who acted as a straw buyer for Madison Financial in the IDC transaction The method of payment of the commissions evaded regulations designed to protect the safety and soundness of the institution, and violated the integrity of its books and records. Further, Madison Guaranty used a document drafted by Clinton to deceive federal bank examiners as to the true nature of the payments to Ward.¹¹³⁴

FDIC-OIG senior counsel Fred Gibson Jr. explained the impact of the billing records on the investigation:

[T]he Rose Law Firm's billing records . . . shed a tremendous amount of light on a relationship that up until then we had not known much about. It opened up significant new avenues of inquiry for us So there was significant information that we developed as a direct consequence of these records that was new to us despite the first investigation.¹¹³⁵

FDIC-OIG counsel Patricia Black realized based on the billing records and the 1996 FDIC-OIG investigation, that her August 10, 1995 House Banking Committee testimony had been wrong. She testified about this realization before the grand jury:

Q. And did you have occasion to be involved in issuing a report on August 3rd,

Law Firm: Prepared for Federal Deposit Insurance Corporation 164 (Feb. 25, 1996).

¹¹³⁴ FDIC-OIG, Supplemental Report on Rose Law Firm Conflicts of Interest, WA-94-0016 at ii-iii (Sept. 20, 1996); see also *id.* at 1 ("Because the discovery of Rose Law Firm billing materials provided significant new and highly relevant information which was unavailable to the RTC OIG during the course of its investigation, we elected to reopen the original case").

¹¹³⁵ Gibson 2/19/98 GJ at 117. Gibson and FDIC-OIG counsel Patricia M. Black worked on 1994-1995 RTC-OIG investigation, the August 3, 1995 RTC-OIG Report, the reopened 1996 FDIC-OIG investigation, and the September 20, 1996 FDIC-OIG Supplemental Report. Gibson 2/19/98 GJ at 3-4; Black 2/19/98 GJ at 3-4, 7-8.

1995?

A. I did.

Q. And did your report reveal certain facts about the Rose Law Firm and its disclosure or nondisclosure of actual and potential conflicts of interest?

A. Yes, that was -- report was the result of an exhaustive investigation that had taken place over several months. And we put together a number of facts about those conflicts of interest.

Q. Now, did you testify in front of the House of Representatives of the United States Congress about your report after you issued your report?

A. Yes, I did.

Q. Would that be your testimony on or about August 10, 1995?

A. That is correct.

Q. Now, during your testimony before the House of Representatives, were you asked questions about the Rose Law Firm's actual and/or potential conflicts of interest?

A. We were.

Q. Were you asked questions about what your investigation uncovered about the Rose Law Firm's involvement in a series of transactions that's come to be known as Castle Grande?

A. Several questions, yes, sir.

Q. And after this 16 month investigation, what did you know about the Rose Law Firm's involvement in the series of transactions that has come to be known as the Castle Grande transactions, also known as the IDC transactions?

A. Not nearly as much as we found out later. In the summer of '95, we had in our possession four, I think, invoices indicating that work had been done by the Rose Law Firm for Madison Guaranty. One of those invoices reflected the initial September -- I'm sorry -- the initial October -- the closing in October -- purchase of the overall IDC property. Another of the invoices indicated involvement in a couple of minor aspects of that transaction.

- Q. All right. Now, you were under oath when you testified on August 10, 1995, before the House of Representatives, weren't you?
- A. Yes, sir.
- Q. And you gave truthful testimony as you understood the facts at that time, correct?
- A. Absolutely, as I understood the facts at that time.
- Q. Now, Ms. Black, in January of 1996, the Rose Law Firm/Madison Guaranty billing records were discovered allegedly at the White House. Did you become aware of that fact?
- A. Yes, I did.
- Q. Did you have occasion to review the Rose Law Firm's/Madison Guaranty billing records after their discovery at the White House?
- A. Yes, after their discovery, the Senate Whitewater committee. . . asked us to reopen our investigation in light of the discovery of this material evidence, which we did immediately.
- Q. Did your review of the then recently discovered Rose Law Firm/Madison Guaranty billing records change your understanding of the Rose Law Firm's relationship with Madison Guaranty Savings & Loan?
- A. Substantially. As I had testified in the House, I believed that that involvement was minor and brief. As evidenced by the billing records, it was neither. My testimony, in short, was wrong.
- Q. Although truthful?
. . . .
- A. It was truthful, and I believed it was correct at the time I gave it. It was correct to the best of my knowledge. After our review of the records and evidence which we found following leads that we derived from those records, I just found out I was flat out wrong in August.
- Q. And did your reopened investigation reveal that Hillary Rodham Clinton was much more involved with Madison Guaranty than you previously thought?
- A. Substantially. In our August report -- at the time of our August report, we knew

the regulators came to close -- came to criticize the subsequent land flips that were a part of the Castle Grande/IDC transaction. But we had absolutely no indication that the Rose Law Firm or Mrs. Clinton had any involvement in that subsequent series of land flips. The records and, as I said, evidence that we discovered following those records indicated to the contrary.¹¹³⁶

The Rose Madison Guaranty billing records revealed that Hillary Clinton performed much more work on Madison Guaranty than was previously known. The billing records revealed that Hillary Clinton billed Madison Guaranty for work on the IDC matter.¹¹³⁷ Her billings on the IDC matter included billing entries for numerous conferences with Seth Ward during 1985 and 1986.¹¹³⁸ Mrs. Clinton billed Madison Guaranty for drafting an option agreement on May 1, 1986.¹¹³⁹ Federal examiners concluded that this option agreement misled them about Ward's sham loans to and from Madison Guaranty and Madison Financial.¹¹⁴⁰

The FDIC-OIG 1996 investigation found that Webb Hubbell worked with Ward on IDC and Castle Grande, and that Hubbell's secretary, Martha Patton, typed several of Ward's Madison Guaranty documents, including: 1) a September 23, 1985 draft of Ward's agreement with Madison Financial; 2) a backdated September 24, 1985 agreement between Ward and Madison Financial that Ward gave to Madison on July 14, 1986; and 3) a December 1986 quitclaim deed

¹¹³⁶ Black 2/19/98 GJ at 4-7 (emphasis added).

¹¹³⁷ Rose Law Firm Billing Records (Feb. 12, 1992) (Doc. No. DEK014937).

¹¹³⁸ Rose Law Firm Billing Records (Nov. 22, 1985) (Doc. No. DEK014991); Rose Law Firm Billing Records (Jan. 21, 1986) (Doc. Nos. DEK015009, DEK015012, DEK015014); Rose Law Firm Billing Records (Mar. 28, 1986) (Doc. No. DEK015022).

¹¹³⁹ Rose Law Firm Billing Records (May 13, 1986) (Doc. No. DEK015032).

¹¹⁴⁰ FDIC-OIG Supplemental Report on Rose Law Firm Conflicts of Interest (WA-94-0016) at ii-iii, 42-45 (Sept. 20, 1996).

relinquishing Ward's remaining Castle Grande property (Holman Acres) to Madison Guaranty.¹¹⁴¹

Martha Patton testified that she never received typing directly from Seth Ward, but received work for Ward from Hubbell.¹¹⁴² Her testimony contradicted Hubbell's statements that Ward directly worked with Hubbell's secretary.¹¹⁴³

4. The FDIC-OIG and RTC-OIG Reports Led to Criminal Referrals to this Office of Hubbell and Others.

Both the FDIC-OIG and the RTC-OIG sent criminal referrals to the OIC. On July 10, 1995, the FDIC-OIG issued a criminal referral to the Office of the Independent Counsel ("OIC ") that alleged that Rose and Hubbell (and other members of the Rose Law Firm) might have committed numerous federal felonies.¹¹⁴⁴ On September 25, 1995, the RTC-OIG issued a criminal referral to the OIC that alleged that Hubbell's 1991 certifications might have constituted false statements in violation of 18 U.S.C. § 1001.¹¹⁴⁵

¹¹⁴¹ FDIC-OIG Report, Alleged Conflicts of Interest by the Rose Law Firm, Case No. IO-94-096 at 4 (July 28, 1995); Quitclaim Deed signed by Seth Ward (Dec. 12, 1986) (Doc. Nos. SEN 33135 through 36).

¹¹⁴² Patton 3/17/98 GJ at 6-7.

¹¹⁴³ Senate Whitewater Comm. Hearing, *supra* note 147, at 11 (Feb. 7, 1996) (testimony of W. Hubbell); Patton 3/17/98 GJ at 6-7, 13.

¹¹⁴⁴ The alleged violations included 18 U.S.C. §§ 4 (misprision of a felony), 287 (false, fictitious or fraudulent claims), 657 (lending, credit and insurance institutions; embezzlement, willful misapplication of moneys), 1001 (false statements generally), 1007 (making or inviting reliance on false, forged, or counterfeit statements, documents, or things for the purpose of influencing the FDIC), 1341 (mail fraud), and 1343 (fraud by wire, radio, or television).

¹¹⁴⁵ Letter from James A. Renick, Acting Inspector General, FDIC Office of Inspector General to Kenneth Starr, Independent Counsel (July 10, 1995); Letter from Clark W. Blight, RTC Assistant Inspector General for Investigation to Kenneth Starr, Independent Counsel (Sept. 25, 1995).

On January 31, 1996, following the discovery of Mrs. Clinton's billing records, the FDIC-OIG sent the OIC a letter alleging that Hubbell may have violated federal criminal law on January 11, 1994, during his interview with FDIC Legal Division attorneys Jack Smith and John Downing. The FDIC-OIG alleged that Hubbell may have lied when he said he did not review the Borod & Huggins Report, where Frost billing records recorded that Hubbell reviewed the Borod & Huggins report on February 2, 1990, the day after April Breslaw forwarded the report to Rose, and again on February 8, 1991 and February 12, 1991.¹¹⁴⁶

To determine the merit of these allegations, the OIC conducted a thorough investigation of Hubbell's conduct in the Frost litigation and related matters that bore upon his knowledge and state of mind at the time of his interviews with the FDIC-OIG and RTC-OIG. The remainder of this Chapter summarizes the evidence uncovered by that investigation.

B. Events Outside of the Rose Firm -- the FBI Investigation of Madison Guaranty and Ward's Lawsuit against Madison Guaranty.

In order to determine whether Hubbell's statements to FDIC and RTC investigators were materially false, this Office reviewed the historical evidence relating to Rose and its representation of the FDIC and RTC in the suit against Frost. Two aspects of that evidence were deemed important -- both the activity of the Rose firm itself, and the public actions of others, relating to Madison Guaranty, of which Hubbell and others at the Rose firm were aware.

In this Section we summarize the evidence relating to events occurring outside of the Rose Law Firm -- events of which the Rose partners were aware but which did not bear directly

¹¹⁴⁶ Letter from Carolyn R. Ryals, Deputy Inspector General, FDIC to Robert J. Bittman,

on actions at the Rose Firm. Principal among these are two highly public events that engaged the attention of the Rose partners and the public in Little Rock. An FBI criminal investigation of Madison Guaranty resulted in the 1989 indictment of Jim McDougal, in the 1990 guilty plea of Madison Guaranty President John Latham, and the eventual trial and acquittal of Jim McDougal. During roughly the same time period, Seth Ward was engaged in litigation against Madison Guaranty, first winning a judgment, then using the services of Webb Hubbell to attempt to collect on that judgment and, ultimately, settling the matter with the RTC by agreeing to relinquish the monies he had gotten.

- 1. Investigations of Misconduct at Madison Guaranty -- FHLBB, Borod & Huggins, and the FBI.**
 - a. The FHLBB Issued Madison Guaranty a Cease and Desist Order, and Filed a Critical Report of Examination.**

On August 15, 1986, the FHLBB issued Madison Guaranty an Order To Cease And Desist.¹¹⁴⁷ The FHLBB's Order restricted Madison Guaranty from engaging in real estate deals like Castle Grande.¹¹⁴⁸ Additionally, the FHLBB's Order required that Madison Guaranty "not . . .

Associate Independent Counsel (Jan. 31, 1996).

¹¹⁴⁷ Id.

¹¹⁴⁸ FHLBB Order to Cease and Desist at 3 (Aug. 15, 1986) (Doc. No. NE-00000545). For example, the FHLBB's Order stated in part: "Madison Guaranty shall not engage in any transactions (including making loans or otherwise extending credit and exclusive of receipt or transfers of payments on existing loans), directly or indirectly, with any of the following persons or entities or their affiliates, without the prior written approval of the Supervisory Agent: Castle Sewer and Water Company, Castle Industries, Inc., the Wilson Co., Inc., . . . [and the] Industrial Development company of Little Rock[.]" Id. at 13 (Doc. No. NE-00000555); see also id. at 11 (Doc. No. NE-00000553) (With certain enumerated limited exceptions [in writing] and "[u]nless legally obligated to do so as of the effective date of this Order, Madison Guaranty shall

release any borrower or guarantor from liability under any loan except where full payment of the loan, in cash, is obtained."¹¹⁴⁹

In the fall of 1986, the federal examiners completed their Madison Guaranty examination. On November 24, 1986, Examiner-In-Charge James Clark submitted a Report of Examination discussing the Castle Grande and other transactions.¹¹⁵⁰ The report warned that Castle Grande was one of three real estate projects causing "losses" that "could render the Institution insolvent."¹¹⁵¹ The report added that "[i]f the profits were booked properly, the Institution would be, in fact, insolvent" and observed that "[i]n addition to [Madison Guaranty's] improper accounting entries, management blatantly disregarded numerous regulations."¹¹⁵² The Report said that Jim McDougal's control of Madison Guaranty "enabled him to divert substantial amounts of funds from the [large land development] projects to himself and others, who are considered to be

not, without the prior written approval of the Supervisory Agent: (a) make, invest in, purchase or refinance (or commit to make, invest in, purchase or refinance), or otherwise modify any loans secured by real estate or any participation therein (including any acquisition, construction and development loans) or real estate investments, or any group of such loans, participations, or investments").

¹¹⁴⁹ FHLBB Order to Cease and Desist at 13 (Aug. 15, 1986) (Doc. No. NE-00000555).

¹¹⁵⁰ FHLBB Office of Examinations and Supervision, Report of Examination Madison Guaranty Savings and Loan Assoc., Docket No. 7601 at 2a (Nov. 24, 1986) (Doc. No. 99-00046750) ("These [large land] developments have been determined to be of questionable economic worth and significant losses are apparent. Of particular concern are the Campobello, Maple Creek and Castle Grande projects. If recognized, losses associated with these projects could render the Institution insolvent").

¹¹⁵¹ FHLBB Office of Examinations and Supervision, Report of Examination Madison Guaranty Savings and Loan Assoc., Docket No. 7601, at 2a (Nov. 24, 1986) (Doc. No. 99-00046750).

¹¹⁵² FHLBB Office of Examinations and Supervision, Report of Examination Madison Guaranty Savings and Loan Assoc., Docket No. 7601, at 2a (Mar. 4, 1986).

insiders (relatives of Jim McDougal, employees, relatives of employees and friends)."¹¹⁵³

The report said the Castle Grande "land was purchased and sold in a series of fictitious transactions involving the McDougal-Henley Group members and Madison Financial. These sales were usually fully financed by Madison Guaranty, and down payments generally came from the proceeds of loans or fees paid by Madison Guaranty or its subsidiaries."¹¹⁵⁴ The report identified Seth Ward's February 25, 1986 \$70,000 loan and the remaining \$300,600 balance of his \$400,000 March 31, 1986 loan as among the "Mortgage Loans Considered Direct Investments."¹¹⁵⁵ The report observed:

The total current investment in this project exceeds its current economic value, in part, because of the inflated profits and payments to insiders. The classified investment includes the direct investment of Madison Financial and the commercial loans by Madison Guaranty to fully finance sales of land to McDougal-Henley Group members who apparently acted as straws. Since Madison Guaranty has apparently retained the risks of ownership on these loans, they are also considered direct investments.¹¹⁵⁶

FDIC-OIG Senior Counsel Fred Gibson later characterized the Castle Grande transaction as a "land flip," which he described as follows:

A land flip is a transaction in which an individual or group will purchase property to resell it. Inherently, there's nothing wrong with reselling property. But in this particular case [of Seth Ward and Castle Grande], what you're doing is you're reselling it quickly at a series of inflated prices. In other words, you'll buy a piece of land for a million dollars and resell it shortly thereafter for \$2 million whether that \$2 million represents the value of the property or not. The transaction is typically financed 100% by the institution, the savings and loan, in the case of this

¹¹⁵³ Id.

¹¹⁵⁴ Id. at 8.2.

¹¹⁵⁵ Id.

¹¹⁵⁶ Id. at 8.3.

transaction, without regard to the underlying value of the property.

The insiders of the institution typically participate in these transactions by taking commissions on the sale of the property or fees that are structured in some other way. So you'll have a whole series of sales of the property at increasing values. At each step along the way, people will be taking commissions or other forms of payments in the forms of fees to take money out of the transaction, but there's no underlying arm's-length transaction. The transaction is structured between these individuals, in essence, for the purpose of generating their own fees.¹¹⁵⁷

b. Borod & Huggins Investigated Misconduct at Madison Guaranty and Referred the Matter to the FBI which Opened a Criminal Investigation.

As described in Chapter 1 of this Part, on July 11, 1986, the FHLBB ordered the removal of the McDougals and Madison Guaranty President John Latham from control of Madison Guaranty. Madison Guaranty's board later hired the Memphis law firm of Borod & Huggins to investigate Madison Guaranty's prior activities and transactions, an action recommended by Madison Guaranty's General Counsel, John Selig of Mitchell, Williams, Selig, Jackson & Tucker.¹¹⁵⁸ On December 1, 1986, Jeffrey C. Gerrish, a partner at Borod & Huggins, began the investigation.¹¹⁵⁹

Gerrish interviewed numerous witnesses and issued a report on March 3, 1987.¹¹⁶⁰ That report discussed the McDougals' use of Madison Guaranty to benefit themselves and other

¹¹⁵⁷ Gibson 2/19/98 GJ at 11-12.

¹¹⁵⁸ Borod & Huggins, Madison Guaranty Savings & Loan Association Special Counsel Investigative Report at 1 (Mar. 3, 1987) [hereinafter "Borod & Huggins Report"]. Gerrish & McCreary, the successor firm to Borod & Huggins, issued a supplemental report on August 31, 1988.

¹¹⁵⁹ Id. at 1.

¹¹⁶⁰ See id.

insiders. It concluded, "[F]rom the time the McDougals acquired Madison Guaranty . . . they began to use it for their personal benefit and that of their friends. . . . [For the entire time of the McDougals' control,] the record is replete with various transactions to or for the benefit of the McDougals and their friends and relatives."¹¹⁶¹ The report noted:

The most flagrant of these transactions involves the overall use of Madison Financial . . . and its development projects. In connection with these development projects, numerous tracts of land were sold or "flipped" at inflated values and subject to even greater inflated appraisals known to be false by the principals involved. Such sales of service corporation property generated substantial "paper profits" for the service corporation which, due to Jim McDougal's compensation system of 10 percent of net profits of the service corporation, directly enabled him to receive substantial compensation from the service corporation.

In addition to general buying and selling of property to generate inflated "profits" at the service corporation, McDougal employed various friends and relatives, including his wife Susan and several individuals in his wife's family, including Jim, David, and Bill Henley and [Susan's sister,] Paula Sorenson. The compensation of most of these individuals was directly related to the development and sale of property by Madison Financial. Several of the individuals were on commission and the inflated sales prices for the property inflated those commissions as well. Other commissions would be paid when no real estate brokerage or sales services were performed. Other individuals provided marketing and public relation services or design services for the properties.

In addition to taking care of their friends and relatives through development fees, commissions and work on properties owned by Madison Financial, Mr. and Mrs. McDougal, from the beginning, caused Madison Guaranty to extend credit to themselves and to their friends and relatives. As early as March 5, 1982, Jim and Susan McDougal began to personally borrow money from the Association. In addition, as early as December 4, 1982, Pat Harris, Jim Guy Tucker and later Freddie Whitener, R.D. Randolph and the Henley brothers began to borrow substantial sums from the Association.¹¹⁶²

¹¹⁶¹ Id. at 4.

¹¹⁶² Id. at 5-6.

The Borod & Huggins Report charged that numerous persons -- including Seth Ward -- had committed "apparent criminal violations."¹¹⁶³

As a result of this report, on March 19, 1987, Madison Guaranty Secretary Sarah Hawkins sent criminal referrals to the U.S. Attorney's office and the FBI field office in Little Rock, attaching the Borod & Huggins Report.¹¹⁶⁴ Hawkins sent the identical information to the FHLBB.¹¹⁶⁵

c. The FBI Investigated Madison Guaranty.

In April 1987, a meeting was held between FHLBB personnel, Special Agent Aaron, and Assistant United States Attorneys Ken Stoll and Sandra Cherry to discuss strategy.¹¹⁶⁶ They decided to focus the investigation on the Castle Grande and Maple Creek Farms projects.¹¹⁶⁷

¹¹⁶³ Id. at 12.

¹¹⁶⁴ See Letter from Sarah Hawkins, Secretary, Madison Guaranty Board of Directors, to Federal Bureau of Investigation (Mar. 19, 1987). This was not the first information the FBI had received about Madison Guaranty. On January 9, 1987, a confidential source told Special Agent Gary Aaron of the FBI Little Rock field office there had been insider transactions and land flips at Madison Guaranty involving, among others, Jim McDougal and Jim Guy Tucker. FBI Memorandum from SA Gary A. Aaron to SAC (Jan. 16, 1987). Special Agent In-Charge Don Pettus notified the U.S. Attorney for the Eastern District of Arkansas, George Proctor, that the FBI had opened a case and that Jim Guy Tucker had received an insider loan from Madison Guaranty for the Castle Grande project. Letter from Don K. Pettus, Special Agent in Charge FBI Little Rock Field Office, to the Honorable George W. Proctor (Jan. 23, 1987); Letter from Don K. Pettus, Special Agent in charge FBI Little Rock Field Office, to the Honorable George W. Proctor at 5 (Feb. 25, 1987).

¹¹⁶⁵ Letter from John H. Mitchell, Supervisory Agent, Federal Home Loan Bank of Dallas to Don K. Pettus, Special Agent in Charge, FBI Little Rock Field Office (Mar. 28, 1988).

¹¹⁶⁶ FBI Memorandum from SA Gary A. Aaron to [Don Pettus], Special Agent in Charge (May 1, 1987).

¹¹⁶⁷ Id.

In May 1987, Worthen Bank -- majority controlled by Jack Stephens and Rose attorney C. Joseph Giroir -- was subpoenaed for documents by the federal grand jury.¹¹⁶⁸ In July 1987, the grand jury subpoenaed Madison Guaranty, to produce various loan documents, including loan records relating to David Hale, Dean Paul, and Jim McDougal.¹¹⁶⁹ In October 1987, Special Agent Aaron and Assistant United States Attorney Stoll narrowed the focus of the investigation, focusing on transactions involving appraiser Robert Palmer, David Hale, Dean Paul, and Madison employee Davis Fitzhugh.¹¹⁷⁰ On October 20, 1987, Special Agent Aaron met with Madison Guaranty CEO Tommy Trantham and requested documents on loans to Palmer, Hale, Paul, and Fitzhugh.¹¹⁷¹ On October 23, 1987 Don Denton's secretary, Barbara Spears, produced records to the FBI.¹¹⁷²

The FBI investigation intensified in January 1988. On January 5, Special Agent Aaron tried to interview Robert Palmer,¹¹⁷³ who was represented by David Wood of Wood & Hargis.¹¹⁷⁴ One of Wood's partners was Bob Wilson Jr., the son of Bob Wilson Sr. -- Seth Ward's longtime

¹¹⁶⁸ Subpoena to Testify Before Grand Jury Issued to Custodian of the Records, Worthen Bank & Trust Co., Little Rock, Arkansas (E.D. Ark. May 29, 1987).

¹¹⁶⁹ Subpoena to Sarah Hawkins, or Any Authorized Officer of Madison Guaranty Savings & Loan Association U.S.D.C. (E.D. Ark. July 2, 1987).

¹¹⁷⁰ FBI Memorandum from SA Gary A. Aaron to [Don Pettus], Special Agent in Charge (Oct. 28, 1987).

¹¹⁷¹ Id.

¹¹⁷² See Inventory of Property Acquired as Evidence, FBI Field File No. 29A-2459 (Oct. 26, 1987) (recorded evidence acquired from Spears on Oct. 23, 1987).

¹¹⁷³ Memorandum from SA Gary A. Aaron to [Don Pettus], Special Agent in Charge (Feb. 16, 1988).

¹¹⁷⁴ Palmer 1/5/88 FBI Int. at 1.

friend and a former Union Bank official.¹¹⁷⁵ The FBI told Palmer he was being investigated because Madison Guaranty records showed that he had prepared fictitious and fraudulent appraisals for various loans. Wood said that Palmer was innocent of any wrongdoing concerning Madison Guaranty appraisals.¹¹⁷⁶ Wood, however, asked for immunity in exchange for Palmer's cooperation.¹¹⁷⁷

Numerous banks were subpoenaed over the next few weeks, including Superior Federal, First National, and Twin City Bank.¹¹⁷⁸ Twin City Bank had made allegations of bank fraud involving Hale and other investors -- including Mike Berg who was interviewed by the FBI -- in the River Front Warehouse project. One of Twin City's executives was Margaret (Davenport) Eldridge, who was also on the board of Arkansas Department of Financial Affairs and a good friend of Mrs. Clinton.¹¹⁷⁹

¹¹⁷⁵ Wilson Sr.'s investment company (Wilson Co.) had loaned McDougal money for his Campobello project and Wilson had been retained as a consultant on that project. Wilson 10/4/94 Int. at 3-4; FHLBB Letter to Board of Directors, Madison Guaranty Savings and Loan at 3 (June 19, 1986) (Doc. No. 99-00038784) (Wilson Co., had been included on the list of restricted insider companies in the FHLBB's June 19, 1986 letter to Madison Guaranty's board of directors.); Wilson Senior, had also attended a July 15, 1986 meeting at the Rose Firm with Webb Hubbell and others to discuss the possibility of him succeeding McDougal at Madison Guaranty. Latham 8/20/96 GJ at 68-69.

¹¹⁷⁶ Memo from SA Gary A. Aaron to [Don Pettus], Special Agent in Charge (Feb. 16, 1988).

¹¹⁷⁷ Id.

¹¹⁷⁸ Subpoena to Any Authorized Officer, Superior Federal Bank U.S.D.C. (E. D. Ark. Jan. 11, 1988); Subpoena to Any Authorized Officer, First National Bank, U.S.D.C. (E.D. Ark. Jan. 11, 1988); Subpoena to Any Authorized Officer, Twin City Bank U.S.D.C. (E.D. Ark. Jan. 11, 1988).

¹¹⁷⁹ Senate Whitewater Comm. Hearing, supra note 147, at 140-41 (May 9, 1996) (testimony of M. Davenport).

On January 19, 1988, Palmer's attorney notified Special Agent Aaron that his client was postponing any decision concerning a plea agreement until after he reviewed his Madison Guaranty work.¹¹⁸⁰ On January 29, 1988, Palmer's attorney received a target letter from United States Attorney Charles Banks.¹¹⁸¹

On March 4, 1988, Madison Guaranty Senior Vice President Sarah Hawkins sent the FHLBB a criminal referral related to Palmer Properties.¹¹⁸² This was forwarded to the U.S. Attorney's Office for the Eastern District of Arkansas and the FBI field office in Little Rock.¹¹⁸³ In August 1988, Madison Guaranty's CEO, Tommy Trantham, was subpoenaed for documents relating to several persons, including Jim Guy Tucker.¹¹⁸⁴

d. Federal Investigations of Madison Guaranty Led to a Guilty Plea and Trial.

On August 18, 1988, agents and Assistant United States Attorneys Stoll and Cherry met to further plan a strategy for the investigation of Madison Guaranty.¹¹⁸⁵ They decided to concentrate their efforts on falsification of Madison Guaranty records, with John Latham as the

¹¹⁸⁰ Memo from SA Gary A. Aaron to [Don Pettus], Special Agent in Charge (Feb. 16, 1988).

¹¹⁸¹ Letter from Charles A. Banks, United States Attorney, Eastern District of Arkansas, to David M. Hargis, Attorney at Law (Jan. 29, 1988).

¹¹⁸² Letter from Sarah Hawkins, Senior Vice President, Madison Guaranty, to Director of Examinations, FHLBB of Dallas (Mar. 4, 1988).

¹¹⁸³ Letter from John H. Mitchell, FHLBB, to Don K. Pettus, Special Agent in Charge (Mar. 28, 1988).

¹¹⁸⁴ Subpoena to Tommy Trantham U.S.D.C. (E.D. Ark. Aug. 18, 1988).

¹¹⁸⁵ Memo from SA Gary A. Aaron to [Don Pettus], Special Agent in Charge at 1 (Sept. 8, 1988).

potential target; David Hale's loans with Madison Guaranty, which were believed -- correctly as it turned out -- to have been obtained with false information; the 1308 Main Street land flip involving Jim Guy Tucker; and the Castle Grande development, including Davis Fitzhugh's purchase of the Levi Strauss building, Jim Guy Tucker's purchase of 34 acres, and the acquisition of the utility by Castle Sewer and Water transactions involving Tucker and R.D. Randolph; and the specific roles of Palmer, Hale, and Dean Paul.¹¹⁸⁶

Various individuals were interviewed over the next several months including Madison Guaranty CFO Greg Young, Jim and Bill Henley, Susan McDougal, Don Denton, Dean Paul, Jim McDougal, John Latham, John Selig, and David Hale.¹¹⁸⁷ Latham was interviewed again in October 1989.¹¹⁸⁸ On February 16, 1990, John Latham pleaded guilty to falsifying the records of Madison Guaranty on February 28, 1986 in violation of 18 U.S.C. § 1006, by switching Davis Fitzhugh's October 1985 nonrecourse note for a recourse note.¹¹⁸⁹ The note had been signed for the loan Fitzhugh had received to purchase the Levi-Strauss building located in the Castle Grande development. Latham admitted that he instructed another employee to switch the notes to deceive the regulators.¹¹⁹⁰

¹¹⁸⁶ Id. at 1-3.

¹¹⁸⁷ See Young 3/1/89 FBI Int.; J. Henley 6/26/89 FBI Int.; B. Henley 6/12/89 FBI Int.; S. McDougal 7/17/89 FBI Int.; Denton 7/26/89 FBI Int.; Paul 8/1/89 FBI Int.; J. McDougal 8/9/89 FBI Int.; Latham 8/30/89 FBI Int.; Selig 9/8/89 FBI Int.; Hale 10/10/89 FBI Int.

¹¹⁸⁸ See Latham 10/11 & 11/14/89 FBI Int.

¹¹⁸⁹ Tr. at 5-11, United States v. Latham, No. LR-CR-89-29 (E.D. Ark. Feb 16, 1990) (Doc. Nos. 341-00002832 through 50).

¹¹⁹⁰ Id. at 5-6, Judge George Howard Jr. sentenced Latham to 36 months imprisonment, suspended 30 months of that sentence in favor of probation, and permitted the remaining 6

On November 20, 1989, a Little Rock grand jury indicted Jim McDougal, Jim Henley, and David Henley on charges related to the IDC/Castle Grande transactions.¹¹⁹¹ The charges and progress of the case were reported prominently in the Little Rock daily newspapers.¹¹⁹² The indictment focused on two transactions, "In one transaction, a Madison Guaranty salesman purchased land for \$525,000 and was paid a \$50,000 commission for arranging the sale to himself. In the other, the Henleys and another developer had borrowed from Madison Guaranty the entire \$472,000 purchase price for a parcel."¹¹⁹³

About three weeks before the criminal trial, Sam Heuer, Jim McDougal's attorney, sent Webb Hubbell a letter warning that Seth Ward "might have some type of criminal exposure under these broad bank fraud violations that the U.S. Attorney's Office seems so happy to use these days."¹¹⁹⁴ Heuer said he was "in a pretty tight situation on this McDougal case," and that "Seth Ward, who I understand to be your father-in-law, appears to be a pretty critical witness in

months to be served in a half-way house. Id. at 16-17.

¹¹⁹¹ See Indictment, United States v. McDougal, et al., No. LR-CR-89-161 (E.D. Ark. Nov. 20, 1989).

¹¹⁹² See, e.g., Larry Ault, Ex-Madison Owner Faces Fraud Counts, Ark. Democrat, Nov. 21, 1989, at D1; George Wells, Ex-Congressional Nominee Indicted, Ark. Gazette, Nov. 21, 1989, at B1; George Wells, Ex-banker: No Assets; Court Names Attorney for Fraud Charge Defense, Ark. Gazette, Dec. 1, 1989, at B1; Claude R. Marx, Ex-Head of S&L Pleads Innocent, Ark. Democrat, Dec. 2, 1989, at B2; Larry Ault, S&L Ex-Owner Faces Pretrial Mental Exam, Ark. Democrat, Dec. 22, 1989, at D3; George Wells, McDougal's Life: Highs and Lows, Ark. Gazette, Jan. 14, 1990, at A1.

¹¹⁹³ See Indictment, United States v. McDougal, et al., No. LR-CR-89-161 (E.D. Ark. Nov. 20, 1989).

¹¹⁹⁴ Letter from Sam T. Heuer, attorney for Jim McDougal, to Webster L. Hubbell (May 7, 1990) (Doc. No. 212-00011968).

this case."¹¹⁹⁵ Heuer asked to interview Ward.¹¹⁹⁶ Hubbell did not respond.¹¹⁹⁷

The McDougal/Henley trial began on May 29, 1990. None of the defendants were convicted. McDougal and his attorney alleged that the prosecution was a political witch-hunt and a sham.¹¹⁹⁸

The McDougal trial was well publicized in the Little Rock newspapers.¹¹⁹⁹ It also appears

¹¹⁹⁵ Id.

¹¹⁹⁶ Id. Hubbell's co-counsel in Frost, Rick Donovan, learned of Heuer's May 7, 1990 letter to Hubbell about Seth Ward's possible criminal exposure on January 6, 1998 when Donovan testified before the Little Rock grand jury. Donovan 1/6/98 GJ at 100 ("This is the first I've ever heard of anything like that").

¹¹⁹⁷ Heuer 4/1/97 GJ at 96 ("The letter went out. Hubbell never got back to me. If I called, he didn't call me back. So we just went on to trial"). But see id. at 97 ("After [McDougal's 1990 criminal trial] was over, I talked to him. But prior to that, he may have -- he may have called me back after I wrote the letter to ask what I -- where I could see potential criminal exposure and me explaining it to him and him communicating that he did not want me to talk to his father-in-law. That may very well have happened. I don't remember").

¹¹⁹⁸ See Cary Bradburn, McDougal Case Termed 'Witch Hunt,' Ark. Gazette, June 7, 1990, at 7B, available at 1990 WL 7512712 (noting McDougal's attorney characterized case as "witch hunt" in closing arguments); George Wells, Pair Acquitted of Bank Fraud, Ark. Gazette, June 8, 1990, at 1A, available at 1990 WL 7512832 ("This was a political show trial that would do Joe Stalin proud,' McDougal said after the verdicts were read").

¹¹⁹⁹ See, e.g., George Wells, Thrift Industry Woes Complicate Jury Choice, Ark. Gazette, May 30, 1990, at B1; Larry Ault, Jury Seated in Fraud Case Against Former Banker, Ark. Democrat, May 30, 1990, at D1; Larry Ault, Jury Told of Banker's Alleged Cash Shifting, Ark. Democrat, May 31, 1990, at C1; Joe Nabbefeld, \$525,000 Madison Loan 'Sham,' Lawyer Testifies, Ark. Democrat, June 1, 1990, at D1; Joe Nabbefeld, Laborer Testifies He Signed Papers That Hid S&L Deal, Ark. Democrat, June 2, 1990, at D1; Joe Nabbefeld, Judge Dismisses Defendant in Bank Fraud Case, Ark. Democrat, June 5, 1990, at D1; Cary Bradburn, Henley's Memory Clearer than McDougal's, Ark. Gazette, June 6, 1990, at B6; Joe Nabbefeld, McDougal Portrays Self as Naive Victim, Ark. Democrat, June 6, 1990, at D2; Joe Nabbefeld, McDougal Real Victim Lawyer Says; Attorney Decries S&L 'Which Hunt', Ark. Democrat, June 7, 1990, at D1; George Wells, Pair Acquitted of Bank Fraud; Defendant Declares it was a 'Sham Trial', Ark. Gazette, June 8, 1990, at A9; Joe Nabbefeld, Jury Finds McDougal, Henley Innocent in S&L Fraud Case, Ark. Democrat, June 8, 1990, at A1.

that both Governor and Mrs. Clinton kept up with the trial proceedings. Sam Heuer, the attorney who represented Jim McDougal at this trial, lived in the neighborhood near the Governor's Mansion.¹²⁰⁰ According to Heuer, he and Governor Clinton had talked on an occasion or two about Heuer's representation of McDougal, with Governor Clinton expressing a friendship with McDougal.¹²⁰¹ During the trial, according to Heuer, Governor Clinton stopped by Heuer's house and chatted about the trial.¹²⁰² Governor Clinton asked where they were in the trial, and Heuer advised him that they were about to do closing arguments.

And [Clinton] was giving me his ideas about closing. You know, he said, "Well, gosh you can say that Jim McDougal is a man that's helped thousands of people and helped the economy of our --" you know, in just President Clinton's rambling way, I guess it would be described.¹²⁰³

Later, Heuer told McDougal in a joking manner, "Well, the President wrote your closing argument for you."¹²⁰⁴

According to Heuer, immediately after the acquittal, Governor Clinton called Heuer to congratulate him; he was also looking for Jim to congratulate him when he called.¹²⁰⁵

McDougal said that after his acquittal he did indeed receive a telephone call from Governor

¹²⁰⁰ Heuer 4/1/97 GJ at 15.

¹²⁰¹ Id. at 13.

¹²⁰² Id. at 14.

¹²⁰³ Id. at 13-14.

¹²⁰⁴ Id. at 14. Later in his Mar. 11, 1992 interview with campaign officials Jim Blair and Loretta Lynch, McDougal repeated that the Governor had helped write his closing argument in the trial. Jim Blair's handwritten notes (Mar. 11, 1992) (Doc. No.264-000206960).

¹²⁰⁵ Heuer 4/1/97 at 19-20.

Clinton congratulating him.¹²⁰⁶ According to McDougal, Governor Clinton told him that they -- the Clintons -- had spent some money on Whitewater and that he wanted McDougal to send them some money, which McDougal remembered as \$3,000.¹²⁰⁷

After the acquittal, Jim McDougal requested Heuer's assistance in trying to resolve matters relating to Whitewater Development.¹²⁰⁸ On July 3, 1990, Heuer wrote a letter to Hillary Clinton. In this letter he made reference to conversations he had had with both Governor Clinton and Jim McDougal about Whitewater.¹²⁰⁹

According to Heuer, Hillary Clinton called him back and invited him to lunch.¹²¹⁰ Heuer believed his lunch with Mrs. Clinton was about a month after McDougal's acquittal.¹²¹¹ At this lunch meeting, according to Heuer, the two things discussed were Jim McDougal's trial and Whitewater.¹²¹² According to Heuer, Mrs. Clinton did not give him much information about

¹²⁰⁶ J. McDougal 4/3/97 GJ at 46.

¹²⁰⁷ J. McDougal 4/3/97 GJ at 46-47. According to Heuer, McDougal told him about this conversation with the President much later. Heuer 4/1/97 GJ at 20.

¹²⁰⁸ Heuer 4/1/97 GJ at 22-23.

¹²⁰⁹ *Id.* at 24. According to Heuer, he probably said something to Governor Clinton when he saw him along the lines, "AHey, we need to get this Whitewater thing resolved." And according to Heuer, Governor Clinton said, "AWell you need to talk to Hillary about that," Heuer adding that his impression was that, "AShe handled all of that kind of business of and all of that kind of stuff." *Id.*

¹²¹⁰ *Id.* at 26.

¹²¹¹ *Id.* at 101. On June 17, 1990, several lengthy articles analyzing the McDougal trial appeared in the Little Rock papers. Joe Nabbefeld, Madison: S&L Crisis in Microcosm, Ark. Democrat, June 17, 1990, at G1; Joe Nabbefeld, Castle Grande 'Bargain' Took Root 20 Years Ago, Ark. Democrat, June 17, 1990, at G1; Joe Nabbefeld, Madison Case Near-Blueprint for Bankrupt S&L, Ark. Democrat, June 17, 1990, at G5.

¹²¹² Heuer 4/1/97 GJ at 29, 101-102.

Whitewater,¹²¹³ and it was Heuer's impression that Mrs. Clinton was not interested in letting go of the Whitewater corporation although she did not indicate why.¹²¹⁴ According to Heuer, Mrs. Clinton was knowledgeable about Jim McDougal's criminal trial as it was well publicized at the time.¹²¹⁵ According to Heuer, they discussed the trial in a general sense.¹²¹⁶

The Rose Law Firm litigation section attorneys handling the Madison v. Frost case, had closely monitored the criminal trial of Jim McDougal, billing the government for their attendance at the trial.¹²¹⁷ Rose attorney Rick Donovan recalled that the Washington lawyer with the FDIC told them, "[m]ake sure you go to McDougal's trial and report back to me accordingly."¹²¹⁸

e. Later Criminal Investigations.

Two years later, in September 1992, the RTC sent a new criminal referral naming Jim McDougal and Madison Guaranty to the United States Attorney and the FBI's Little Rock field office. On July 20, 1993, based on a criminal referral from the Small Business Administration ("SBA"), the FBI obtained a search warrant for the office of David Hale's Capital Management Services.¹²¹⁹ Hale and two other attorneys were indicted by a federal grand jury in Little Rock on

¹²¹³ Id. at 29.

¹²¹⁴ Id. at 26.

¹²¹⁵ Id. 102.

¹²¹⁶ Id.

¹²¹⁷ Donovan 1/6/98 GJ at 84-86. Rose Law Firm billing memo on FDIC, Madison Guaranty v. Frost (Jun. 20, 1990) (Doc. No. 105-00083613) (LR GJ Exh. No. 1629).

¹²¹⁸ Donovan 1/6/98 GJ at 85-86.

¹²¹⁹ Irons 5/21/96 GJ at 67, 72.

September 23, 1993.¹²²⁰ On the day of his indictment, Hale made public allegations against former associates, including McDougal, the Clintons, and then-Governor Jim Guy Tucker, concerning the misuse of Capital Management funds.¹²²¹

On September 27, 1993, the RTC's Kansas City office forwarded nine more criminal referrals about Madison Guaranty and Jim McDougal to its Washington office. On October 8, 1993, these referrals were sent to the U.S. Attorney and FBI in Little Rock.

On November 3, 1993, the new U.S. Attorney for the Eastern District of Arkansas recused herself and her entire office from the Hale prosecution, the RTC's Madison Guaranty referrals, and other Madison-related matters. Donald Mackay, a career prosecutor with the Fraud Section of the Department of Justice's Criminal Division, took over Hale's prosecution and the RTC criminal referrals involving Madison Guaranty.

On January 12, 1994, President Clinton requested the appointment of a special counsel to investigate the Whitewater-Madison Guaranty controversy.¹²²² The Justice Department investigation was turned over to regulatory Independent Counsel Fiske on January 20, 1994. He was later replaced by statutory Independent Counsel Starr.

¹²²⁰ Indictment, United States v. Hale et al., No. LR-CR-93-147 (E.D. Ark. Sep. 23, 1993).

¹²²¹ James B. Stewart, Blood Sport 326 (1996).

¹²²² See John King, Clinton to Request Special Counsel for Whitewater, Chi. Sun Times, Jan. 12, 1994, at 3.

2. Ward and Madison Guaranty.

a. Initial Attempts by Madison to Collect from Ward.

Madison Guaranty's outside counsel and investigators at Borod & Huggins learned in December 1986 that Seth Ward had made no payments on the remaining \$300,000 debt from his March 31, 1986 loan or his \$70,000 debt from June 1986. Ward faced no personal liability because the June 1986 amendments made the loans nonrecourse, secured by the Holman Acres property. In lieu of making any payments, Ward simply deeded Holman Acres back to Madison Guaranty.¹²²³ The legal paperwork necessary to accomplish this was prepared with some assistance by Webb Hubbell.¹²²⁴ In 1992, the RTC sold Holman Acres for \$38,000.¹²²⁵

By the end of 1986, Madison Guaranty had loaned or paid Ward a total of \$474,000:

- 1) \$300,000 from the March 31, 1986 loan;

¹²²³ Borod & Huggins Report, supra note 1158, App. at 111, 127.

¹²²⁴ Letter from Seth Ward, Madison Guaranty employee, to H. Don Denton, Senior Vice President (Dec. 11, 1986) (Doc. No. 396-00000551). See Quitclaim Deed (Dec. 12, 1986) (Doc. Nos. 396-00000552 through 53); Patton 3/17/98 GJ at 9-14. Hubbell explained: "I remember that Seth would ask me -- that he said he got a computer notice of -- saying that he owed the note, and that it was a nonrecourse note. I remember him asking me how -- how you pay it back, how do you pay back a nonrecourse note, and I believe that ultimately I told him how you do it, which is send the deed back." Hubbell 8/22/96 GJ at 42. Hubbell also added, "[I] do recall telling him how to do it. . . . I'm trying to say, I was involved. To the extent I was involved, I don't know." Id. at 43. In 1996, Mrs. Clinton was shown the December 11, 1986 letter from Ward to Denton and stated that she did not recall Hubbell working on that aspect of Ward's dealing with Madison Guaranty. H. Clinton 2/14/96 FDIC Int. at 96-97.

¹²²⁵ Sale Agreement Commercial Property, Seller: RTC, Buyer: The Dorothy Ensminger Trust (May 12, 1992) (Doc. Nos. MGSL-FR-00000050 through 53). In 1988, during the trial of Ward v. Madison Guaranty, an appraiser testified that lot 27 and 28 of Holman Acres was worth \$170,000. Tr. at 299, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark. Aug. 31, 1988) (testimony of Michael Pyron) (Doc. No. NE-00000311).

- 2) \$1,000 from the May 1, 1986 option;
- 3) \$70,000 from Ward's June 1986 loan;
- 4) \$93,000 from Ward's June 1986 loan;
- 5) \$10,000 from a payment Ward received in June 1986.

Also, Ward had in his possession the unfunded \$300,000 April 7, 1986 cross note listing Ward as lender and Madison Financial as borrower, and the backdated September 24, 1985 agreement, which gave Ward \$35,000 for an option on Holman Acres. As explained below, Ward subsequently sued Madison Guaranty over the unfunded \$300,000 April 7, 1986 note and the backdated September 24, 1985 agreement.

For its part, Madison Guaranty had title to Holman Acres and the unfunded \$70,943.47 April 7, 1986 note. As explained above, Ward returned the unfunded \$70,943.47 April 7, 1986 note in June in exchange for the conversion of his loans to nonrecourse loans.

Deeding Holman Acres to Madison Guaranty for the cross loans did not end Madison Guaranty's attempts to collect from Ward. Ward still had the June 1986 \$93,000 loan outstanding. When Madison Guaranty tried to collect, Ward hired the law firm of Wright, Lindsey & Jennings to explore possible civil claims against Madison Guaranty for the "commissions" Ward claimed he was owed, commissions Ward had not asserted a right to until Madison Guaranty said it was going to collect on the \$93,000 loan.¹²²⁶

¹²²⁶ Madison's Interrog. Resp. No. 13 at 10, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark. Mar. 1, 1988) (Doc. No. NE-00000061). See Memo in Support of the FSLIC's Motion for Reconsideration or, Alternatively, to Stay Remand of This Action Pending Appeal, Ward v. FDIC, No. 89-180 (E.D. Ark. May 12, 1989) (Doc. No. NE-00000582) ("The suit by the

b. Ward Sued Madison.

On September 2, 1987, Ward filed suit, alleging that Madison Guaranty and Madison Financial owed him "not less than \$381,236.06" based on a September 3, 1985 memorandum between Ward and McDougal, the backdated September 24, 1985 agreement, and the \$300,000 April 7, 1986 unfunded cross note.¹²²⁷ The complaint stated that Ward's unpaid \$93,000 June 1986 loan should be a "set-off against the defendants' indebtedness to him."¹²²⁸ On June 2, 1988, Madison Guaranty counterclaimed against Ward for repayment and interest on the \$93,000 June 1986 loan,¹²²⁹ as well as excess commissions Madison Guaranty asserted should not have been paid to Ward.¹²³⁰

Plaintiff Seth Ward in this action was apparently instituted in response to Madison Guaranty's attempt to collect \$93,000 that Ward had borrowed").

¹²²⁷ Complaint, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark. Sept. 2, 1987) (Doc. Nos. NE-00000012 through 15); Memo from Jim McDougal to Seth Ward (Sept. 3, 1985) (Doc. No. NE-00000016); Letter and Addendum from Seth Ward to James B. McDougal (Sept. 24, 1985) (Doc. Nos. NE-00000017 through 19); Loan Agreement between Seth Ward and Madison Financial Corporation (Apr. 7, 1986) (Doc. No. NE-00000020). On September 3, 1987, the Arkansas Democrat ran a small article entitled Commission Member Sues S&L over Debt (Doc. No. 396-00001148). The article explained that Seth Ward, a member of the Little Rock Airport Commission, had filed a lawsuit against Madison Guaranty Savings and Loan seeking to recover more than \$400,000 in real estate commissions. Mrs. Clinton, who was the attorney for the Little Rock Airport Commission, learned "at some point" that Ward was suing Madison Guaranty "for what he said were commissions." H. Clinton 4/25/98 Depo. at 102.

¹²²⁸ Complaint at 3, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark. Sept. 2, 1987) (Doc. No. NE-00000014).

¹²²⁹ Counterclaim at 1-2, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark. June 2, 1988) (Doc. Nos. NE-00000067 through 68).

¹²³⁰ Id. at 2.

Ward v. Madison Guaranty was tried before a jury on August 30-31, 1988.¹²³¹ Ward prevailed, and the trial court entered a judgment in Ward's favor of \$468,306.25, offset by the \$93,000 plus interest Ward owed Madison Guaranty, for a total judgment of \$353,502.57.¹²³²

¹²³¹ The key individuals involved in the IDC transaction and later development of the parcel as Castle Grande testified at trial. The sworn testimony of the former Madison Guaranty personnel was at odds with what Madison Guaranty told federal examiners about Ward's option and cross loans in 1986. In both his deposition and trial testimony, John Latham said the \$400,000 March 31, 1986 loan from Madison Guaranty to Ward was to pay him commissions Madison Financial owed on the IDC transactions. Latham testified that the unfunded April 7, 1986 note showing a loan from Ward to Madison Financial was prepared because Ward wanted documentation of MFC's obligation to him for \$300,000. See Tr. at 222, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark. Aug. 30, 1988) (Doc. No. 341-00004133) (testimony of John Latham). Latham said the option was drafted because Seth Ward was holding Holman Acres as security for the payment of his commissions. Latham said the parties did not intend for Ward to receive both the \$300,000 commission payment and title to Holman Acres. When the option was exercised, the unfunded April 7, 1986 Madison Financial note was supposed to be destroyed. See Latham 6/8/88 Depo. at 23-24; Tr. at 100, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark. Aug. 30, 1988) (Doc. No. NE-00000234-235) (testimony of John Latham). During later grand jury testimony, Latham reaffirmed his Ward v. Madison Guaranty testimony. Latham 8/20/96 GJ at 24-25. Don Denton's deposition similarly confirmed prior memoranda he had written supporting Ward's claim that the cross loans were related to paying Ward's commissions, a proposition Denton had denied to federal examiners in 1986. See Memo from Don Denton, Chief Lending Officer, to John Latham, Chief Executive Officer and Chairman of Madison Guaranty (July 1, 1986) (Doc. No. 34-00004839); Memo from Don Denton, Chief Lending Officer, to John Latham, Chief Executive Officer and Chairman of Madison Guaranty (July 14, 1986) (Doc. No. 34-00004837). Only Seth Ward's testimony was at all consistent with the explanations that had been given to the examiners. Ward testified that the \$400,000 loan he received from Madison on March 31, 1986 was for "personal needs" and did not represent a payment of his commissions. Ward 5/19/88 Depo. at 34, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark.) He also testified that the option agreement was not related to his commission -- Jim McDougal simply wanted the property so Ward sold him an option. Ward 5/19/88 Depo. at 35-40, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark.)

¹²³² Judgment, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark. Sept. 6, 1988) (Doc. Nos. NE-00000084 through 85).

c. Ward Attempted to Collect His Judgment.

After the trial court entered judgment, Ward sought to collect by filing writs of garnishment against his own relatives and business, seeking an order directing them to pay him money they otherwise owed Madison Guaranty.¹²³³ Webster Hubbell represented the garnishees, that is, his and Seth Ward's relatives and associates.¹²³⁴ The garnishment actions became unnecessary when Madison Guaranty deposited \$400,000 with an escrow agent as security for the judgment during its appeal of Ward's judgment.¹²³⁵

Hubbell later said that he had not disclosed his involvement in the Ward v. Madison Guaranty case from the FDIC and the RTC, because "it was insignificant."¹²³⁶ Hubbell also said that he considered the writs of garnishment to be very minor and not a conflict.¹²³⁷

¹²³³ Writ of Garnishment, Allegations and Interrogatories and Certificate of Service, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark. Sept. 21, 1988) (Doc. Nos. NE-00000102 through 05 and NE-00000109 through 13).

¹²³⁴ Answers to Allegations and Interrogatories, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark. Sept. 27, 1988) (Doc. Nos. NE-00000117 through 20); Order, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark. Nov. 16, 1988) (Doc. Nos. NE-00000129 through 30) (signed on behalf of garnishees by Webb Hubbell).

¹²³⁵ Supersedes Order And Escrow Agreement, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark. Nov. 15, 1988) (Doc. Nos. NE-00000125 through 28); Plaintiff's Reply to Defendant's Response in Opposition to Motion to Remand at 1, Ward v. FDIC, No. 89-180 (E.D. Ark. Apr. 19, 1989) (Doc. No. NE-00000522).

¹²³⁶ Hubbell 3/16/95 FDIC-OIG Int. at 7.

¹²³⁷ Hubbell 4/20/95 RTC-OIG/OIC Int. at 23-24. Additionally, Skeeter Ward filed a lawsuit against Madison Guaranty in December 1988. The dispute concerned the interest rate on a loan Skeeter Ward then had with Madison Guaranty. The district court granted summary judgment in Madison Guaranty's favor in January 1990. FDIC-OIG Report, Alleged Conflicts of Interest by the Rose Law Firm, Case No. IO-94-096 at 33 (July 28, 1995).

d. The FDIC Unsuccessfully Tried to Remove the Ward v. Madison Guaranty Case to Federal Court.

After the FDIC took responsibility for Madison Guaranty in February 1989, the FDIC was substituted as the party defendant in the action. On March 10, 1989, while the appeal of Ward's state verdict was pending, FDIC attorneys filed to remove Ward v. FDIC to federal district court in Little Rock.¹²³⁸ The firm of Friday, Eldredge and Clark replaced Mitchell, Williams, Selig, Jackson & Tucker in representing the FDIC/Madison Guaranty in this suit. Ward's attorneys opposed removal, and asked the federal court to remand the case back to the state court.¹²³⁹

Also in March, Ward hired attorney Thomas Ray because Ward's previous trial lawyer, Alston Jennings, had a conflict of interest.¹²⁴⁰ Ray affirmed that he still called "Jennings and/or Hubbell when something [he] considered significant had occurred concerning the court proceedings."¹²⁴¹ Ray also confirmed that he "provided copies of most significant briefs or other papers [he] filed to Jennings and Hubbell."¹²⁴²

¹²³⁸ Notice of Removal, Ward v. FDIC, No. 89-180, (E.D. Ark. Mar. 10, 1989) (Doc. Nos. NE-00000002 through 04). See Federal District Court Docket Sheets, Ward v. FDIC, No. 89-180 (E.D. Ark. June 24, 1989) (Doc. Nos. NE-00000787 through 92). According to Ward's attorney, March 10, 1989, was also the same day that the trial court's court reporter completed the trial court transcript and record. Plaintiff's Reply to Defendant's Response in Opposition to Motion to Motion to Remand, Ward v. FDIC, No. 89-180 (E.D. Ark. Apr. 19, 1989) (Doc. No. NE-00000523).

¹²³⁹ Motion To Remand and Plaintiff's Memorandum Of Law In Support Of Motion To Remand, Ward v. FDIC, No. 89-180 (E.D. Ark. Mar. 22, 1989) (Doc. Nos. NE-00000413 through 60).

¹²⁴⁰ Ray 4/28/94 RTC-OIG Aff. at 1-2.

¹²⁴¹ Id. at 6.

¹²⁴² Id. Ray "did so as a matter of courtesy to keep them informed and not for the purpose of seeking substantive input or advice from either Jennings or Hubbell regarding my

The FDIC's response to Ward's request for remand asserted "Ward's entire case" against Madison Guaranty and Madison Financial "depended upon . . . undisclosed and disputed agreements and records."¹²⁴³ Of the September 24, 1985 agreement, the FDIC charged:

[A]fter litigation began, for the first time, [Ward] produced what he claimed was bestowed upon him by his cohort, Jim McDougal, president of Madison Financial, and a copy of the original [September 24, 1985] agreement marked "Void." Ward admitted the new agreement was backdated so that it bore a false date. The case was replete with such other alleged mysterious, backdated or "restructured" agreements not appearing in the official records of Madison.¹²⁴⁴

The FDIC added that excerpts from the "400 pages of testimony and exhibits" from the state trial court record revealed a "general idea of the heavy 'odor' of the conduct of the institution, in violation of federal law, diverting illegal profits to the officers, directors, employees and stockholders at the expense of the federally insured depositors."¹²⁴⁵

On April 28, 1989, the federal district court ordered Ward v. FDIC remanded to the state court.¹²⁴⁶ The case returned to the Arkansas Court of Appeals.¹²⁴⁷ On June 13, 1989, the FDIC

representation of Ward." □ Id. Ray "wanted to keep Hubbell informed of significant developments in the case so that he could be of possible assistance in passing along information to Ward, who was seriously injured in the summer of 1989; underwent major surgery; and, then suffered a stroke." Id. at 7. According to Ray, once Ray began representing Ward, Hubbell "stayed completely clear of the legal issues involved with Ward." Id.

¹²⁴³ Response of Federal Deposit Insurance Corporation, Conservator for Madison Guaranty Savings and Loan Association, in Opposition to Motion to Remand and Brief in Support at 4, Ward v. FDIC, No. 89-180 (E.D. Ark. Apr. 12, 1989) (Doc. No. NE-00000469).

¹²⁴⁴ Id. at 5 (Doc. No. NE-00000470).

¹²⁴⁵ Id. at 11 (Doc. No. NE-00000476).

¹²⁴⁶ Order, Ward v. FDIC, No. 89-180 (E.D. Ark. Apr. 28, 1989) (Doc. No. NE-00000578); Ray 4/28/94 RTC-OIG Aff. at 3.

¹²⁴⁷ Ray 4/28/94 RTC-OIG Aff. at 3.

appealed to the United States Court of Appeals for the Eighth Circuit the federal district court's decision to remand.¹²⁴⁸

e. The Statute Creating the Resolution Trust Corporation Altered the Outcome of the Federal Ward v. FDIC Appeal.

The United States Court of Appeals for the Eighth Circuit initially ruled it did not have jurisdiction to review the district court's decision to remand the case to the state court -- a victory for Ward.¹²⁴⁹ However, on August 9, 1989, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") became law.¹²⁵⁰ As a result, the RTC succeeded FSLIC as Madison Guaranty's conservators, and replaced the FDIC as Madison Guaranty's managing agent.¹²⁵¹ The RTC therefore replaced the FDIC as the party defendant in Ward's suit.

On October 20, 1989, the Eighth Circuit reversed its earlier decision and ruled that the FIRREA provided it with jurisdiction to review the district court's decision to remand Ward's suit to the state court.¹²⁵²

¹²⁴⁸ See Notice of Appeal, Ward v. FDIC, No. 89-180 (E.D. Ark. June 13, 1989) (Doc. Nos. NE-00000690 through 91).

¹²⁴⁹ In re: Fed. Sav. and Loan Ins. Corp., 881 F.2d 564, 565-66 (8th Cir.), reh'g granted and vacated, 888 F.2d 57 (8th Cir. 1989), on reh'g sub nom., Ward v. RTC., 901 F.2d 694 (8th Cir. 1990).

¹²⁵⁰ Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 (1989); In re: Resolution Trust Corp., 888 F.2d 57, 58 (8th Cir. 1989), on reh'g sub nom., Ward v. RTC., 901 F.2d 695 (8th Cir. 1990).

¹²⁵¹ Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, § 501. Motion For Substitution Of Parties, RTC v. Frost, No. 89-216 (E.D. Ark. Feb 1, 1991) (Doc. Nos. CT-00000834 through 35). When Madison Guaranty later entered receivership on November 30, 1990, the RTC became Madison Guaranty's receiver.

¹²⁵² In re: Resolution Trust Corp., 888 F.2d 57 (8th Cir. 1989), on reh'g sub nom., Ward v. RTC., 901 F.2d 694-695 (8th Cir. 1990).

Meanwhile, the state appeal of Ward's suit remained pending in the Court of Appeals of Arkansas, until that court dismissed the appeal because the RTC failed to file a brief on time.¹²⁵³ The case returned to the state trial court in Little Rock, and the RTC again sought to remove it to federal district court.¹²⁵⁴ This time, Ward did not challenge the removal.¹²⁵⁵ The RTC (as successor to Madison Guaranty) and Madison Financial asked the district court to vacate the state court judgment.¹²⁵⁶ The district court declined and entered judgment for Ward.¹²⁵⁷ The Eighth Circuit reversed the district court.¹²⁵⁸ The Eighth Circuit held that the RTC and Madison Financial could assert defenses previously unavailable when the case was tried before the state trial court, including that "Ward's claim for real estate sales commissions is based on an unrecorded side agreement [the backdated September 24, 1985 agreement] barred by [federal law]. These defenses were available to the RTC as receiver, but were not available to Madison Guaranty or Madison Financial during the state trial."¹²⁵⁹

Ward unsuccessfully sought review of the Eighth Circuit's decision in the Supreme Court of the United States.¹²⁶⁰ Ward and the RTC settled the case on April 30, 1993, and Ward agreed

¹²⁵³ RTC v. Ward, No. CA 89-124, 1989 WL 126294 (Ct. App. Ark. Oct. 25, 1989); Ray 4/28/94 RTC-OIG Aff. at 3-4.

¹²⁵⁴ Ward v. RTC., 901 F.2d 694 (8th Cir. 1990).

¹²⁵⁵ Id.

¹²⁵⁶ Ward v. RTC., 972 F.2d 196, 197-98 (8th Cir. 1992).

¹²⁵⁷ Id. at 198.

¹²⁵⁸ Id. at 199.

¹²⁵⁹ Id.

¹²⁶⁰ Ward v. RTC., 507 U.S. 971 (1993).

to pay the RTC \$325,000.¹²⁶¹

C. Activity at the Rose Law Firm -- The FSLIC/Giroir Conflict, Mrs. Clinton's Madison Billing Records, and the Representation of Madison in the Suit against Frost & Company.

This Section now turns its attention to activity at the Rose Law Firm. While the FBI investigation and the Ward lawsuit were proceeding, the Rose firm was involved in a conflict of interest dispute with the FSLIC. That dispute resulted in a judgment against the Rose firm of \$3 million, of which the partners were personally responsible for \$500,000. And, at roughly the same time, Mrs. Clinton had her Madison Guaranty records destroyed. Notwithstanding the cautionary events relating to the FSLIC conflict over FirstSouth, Hubbell sought appointment as the FDIC's counsel representing Madison Guaranty against Frost while concealing much of Rose's prior connection to Madison Guaranty.

1. The Rose Firm and the FSLIC.

a. Rose Law Firm Solicited Work on the FirstSouth Matter, but Was Disqualified by a Conflict of Interest.

In the fall of 1986, the FHLBB prepared for the failure of Arkansas savings and loan institution FirstSouth, which Webb Hubbell described as "the largest savings and loan in Arkansas."¹²⁶² The FHLBB negotiated with various law firms for work on the FirstSouth receivership, including Rose. On Wednesday, November 5, 1986, Vince Foster circulated a

¹²⁶¹ Ray 4/28/94 RTC-OIG Aff. at 2-3; Ward 2/12/96 Senate Whitewater Comm. Depo. at 119. Ward stated (apparently mistakenly) that he "paid them \$330,000" to settle Ward v. Madison Guaranty, but the settlement agreement states that the amount was \$325,000. Id.

¹²⁶² Attachment to Attorney's Liability Assurance Society, Ltd., Claim Form at 5 (Feb. 9, 1987) (Doc. No. 2625-00001113).

memorandum to all attorneys at Rose discussing FirstSouth and the significance of checking for conflicts of interest.¹²⁶³ Rose received a conflicts list from the FHLBB/FSLIC, and the firm held a meeting at which "everyone was asked whether they had any conflicts with the list."¹²⁶⁴ Rose members raised senior Rose member Joe Giroir's involvement with FirstSouth.¹²⁶⁵ In 1985 and 1986 Giroir had acted as both borrower and lawyer on a series of transactions causing substantial losses to FirstSouth.¹²⁶⁶

Foster prepared a response for the FSLIC, informing it only that Giroir had loans with FirstSouth, and proposing to screen Giroir from FirstSouth matters.¹²⁶⁷ On Friday, November 7, 1986, Rose members Foster and Herbert Rule proposed Rose as the FSLIC's counsel on FirstSouth.¹²⁶⁸ The FHLBB, however, learned that Giroir's FirstSouth involvement was substantial, and therefore a disqualifying conflict of interest for Rose.¹²⁶⁹

In a November 24, 1986 memorandum, Vince Foster informed Rose's members about his recent efforts to obtain FSLIC business:

Since the policy of avoiding potential conflicts was implemented last spring,

¹²⁶³ Memo from Vincent Foster Jr., Rose Law Firm attorney, to All [Rose Law Firm] Attorneys (Nov. 5, 1986) (Doc. No. 281-00024992).

¹²⁶⁴ Hubbell 4/20/95 RTC-OIG/OIC Int. at 11.

¹²⁶⁵ See Rule 3/3/98 GJ at 51-52.

¹²⁶⁶ See id.

¹²⁶⁷ Hubbell 3/16/95 FDIC-OIG Int. at 12.

¹²⁶⁸ Fax transmittal sheet and letter from Vincent Foster Jr., Rose Law Firm attorney, and Herbert C. Rule III, Rose Law Firm attorney, to John Beaty, Trial Attorney, FHLBB (Nov. 7, 1986) (Doc. Nos. 281-0029941 through 46).

¹²⁶⁹ Memo from Vincent Foster, Rose Law Firm attorney, to All [Rose Law Firm] Members (Nov. 24, 1986) (Doc. Nos. 264-00022318 through 22).

various lawyers, primarily litigators, have turned down or resigned from a significant amount of representation (see attached memo of David Williams), but I am also aware of at least three transgressions of the policy. I recommend we either reconfirm or rescind the policy. If we conclude to continue to avoid conflicts, then there has to be 100% participation.¹²⁷⁰

On December 4, 1986, FirstSouth was declared insolvent, and the FHLBB appointed FSLIC receiver.¹²⁷¹ The FHLBB believed there was a viable legal malpractice claim against Rose based on Joe Giroir's involvement with FirstSouth.¹²⁷² Rose considered whether it should resign from all future FSLIC work.¹²⁷³

b. FSLIC's Action against the Rose Firm.

In early February of 1987, Hubbell met with FHLBB Deputy General Counsel Jack D. Smith to discuss whether Giroir should leave Rose.¹²⁷⁴ Hubbell and Foster met with three FSLIC attorneys in Washington on February 9.¹²⁷⁵ The FSLIC told them it was investigating a malpractice claim against Rose because of opinion letters Rose issued about Giroir and FirstSouth. Hubbell later wrote:

¹²⁷⁰ Id.

¹²⁷¹ See Settlement Agreement and Release at 4 (Jan. 28, 1988) (Doc. Nos. 281-00003202 through 17).

¹²⁷² Smith 2/5/98 GJ at 16. "And we had talked at that time to members of the Rose Law Firm about what they were going to do about it," then FHLBB attorney Jack Smith remembered later. "And we were going to sue them for recovery." Id.

¹²⁷³ Memo from Webb Hubbell, Rose Law Firm attorney, to All [Rose Law] Firm Members (Jan. 20, 1987) (Doc. No. 319-00034691).

¹²⁷⁴ Memo from Vincent Foster Jr., Rose Law Firm attorney, to Bill Kennedy, Rose Law Firm attorney, and Webb Hubbell, Rose Law Firm attorney (Apr. 10, 1987) (Doc. Nos. 281-00024965 through 68); Hubbell 3/16/95 FDIC-OIG Int. at 12.

¹²⁷⁵ Attachment to Attorney's Liability Assurance Society, Ltd., Claim Form at 3-4 (Feb.

Vince and I were summoned to Washington to be lectured by FSLIC officials They then outlined what they termed "a most serious claim" against our firm Vince, after circulating a conflicts memo, had certified to FSLIC that the Rose firm had never represented FirstSouth. Now we learned we had. And the representation was on a major deal involving one of our partner. . . .

It was unlikely that we were going to get any more FSLIC business, they said, and they were appalled at our bidding for the FirstSouth business in light of this situation. But they accepted Vince's explanation (lame as it seemed) that none of our partners had told us about the conflicts.

Finally, they made it absolutely clear that if they had to sue us, they would.¹²⁷⁶

The next day, Hubbell sent letters to Rose's three malpractice carriers, advising them of the potential claim and describing Giroir's interactions with FirstSouth.¹²⁷⁷ He observed that if FSLIC sued Rose, "one [of] our members [Giroir] [would be] in litigation with a client [FSLIC] on a business matter at the same time we are representing that client."¹²⁷⁸

On March 18, FHLBB attorney John Beaty wrote a memorandum to FHLBB Associate General Counsel Dorothy L. Nichols and Jack Smith recommending that Rose should be fired as counsel for either FHLBB or FSLIC because of the conflict problems.¹²⁷⁹ Foster met with Jack

9, 1987) (Doc. Nos. 2625-00001112 through 13).

¹²⁷⁶ Webb Hubbell, Friends in High Places 130-31 (1997).

¹²⁷⁷ Letters from Webster L. Hubbell, Rose Law Firm attorney, to Simpson, Thatcher & Bartlett; Shand Morahan & Company, Inc., malpractice insurance company; and Professional Managers Incorporated, malpractice insurance company (Feb. 10, 1987) (Doc. Nos. 2625-00001114 through 35).

¹²⁷⁸ Letter from Webster L. Hubbell, Rose Law Firm attorney, to Shand Morahan & Company, Inc., malpractice insurance company at 4 (Feb. 10, 1987) (Doc. No. 2625-00001128).

¹²⁷⁹ Memo from John B. Beaty, Trial Attorney, FHLBB, to Dorothy L. Nichols, Associate General Counsel, and Jack D. Smith, Deputy Counsel at 1 (Mar. 18, 1987) (Doc. No. 281-00003274).

Smith, John Beaty, and others in Washington on April 9, 1987,¹²⁸⁰ which Foster described in a memorandum to Hubbell and Rose member William Kennedy.¹²⁸¹ At the meeting, Smith stressed that the FSLIC's "number one rule on fee counsel was that there could be no litigation between FSLIC and another party represented by fee counsel."¹²⁸² Jack Smith told Webb Hubbell that Rose would be disqualified from FSLIC if the FirstSouth conflict was not resolved.¹²⁸³

Hubbell wrote that at this point he, Foster, and Mrs. Clinton began meeting in her office about the problem "almost daily":

Hillary was angry, too. She had participated in several of Vince's phone calls to the FSLIC assuring them that we had no conflict. She felt betrayed. She also worried that a \$10 million claim would finally put the oldest law firm west of the Mississippi out of business. Years later, she would tell me that the years 1987-88 were the two hardest years of her life.¹²⁸⁴

Rose and the FSLIC continued negotiating, but on July 16, 1987, the FSLIC's outside counsel advised Rose that:

The actions (and omissions) of the Rose Law Firm give rise to civil claims against the firm for breach of fiduciary and professional responsibilities as well as for aiding and abetting the breach by certain FirstSouth officers of their fiduciary duties. Accordingly, demand [for \$8 million] is hereby made upon the Rose Law Firm for satisfaction of these claims.¹²⁸⁵

¹²⁸⁰ Rose Law Firm Billing Records (May 27, 1987) (Doc. No. 264-00017613).

¹²⁸¹ Memo from Vincent Foster Jr., Rose Law Firm attorney, to Bill Kennedy, Rose Law Firm attorney, and Webb Hubbell, Rose Law Firm attorney (Apr. 10, 1987) (Doc. Nos. 281-00024965 through 68).

¹²⁸² *Id.* at 3 (Doc. No. 281-00024967).

¹²⁸³ Smith 2/5/98 GJ at 17; Smith 1/12/98 Int. at 1.

¹²⁸⁴ Hubbell, *Friends in High Places* 132 (1997).

¹²⁸⁵ Letter from F. Thomas Hecht, Partner, Hopkins & Sutter, to Managing Partner, The

Hubbell said that Foster and other Rose attorneys "had brought in more than a million dollars in fees from FSLIC [and they] were trying to salvage that relationship," while Hubbell had "spearheaded the settlement of the claim."¹²⁸⁶ On August 20, attorneys for Rose met with FSLIC officials, described by FHLBB attorney John Beaty:

[T]he Rose Law Firm's counsel suggested that they would be willing to recommend to their client a payment of \$500,000. We responded that an additional zero would be more appropriate. Further discussion persuaded the Rose Law Firm's counsel by the close of the meeting to raise their recommendation to \$2 million, with some of the money purportedly coming from the firm's insurers and some from the Rose Law Firm itself.¹²⁸⁷

After months of negotiations, on January 28, 1988, FSLIC and Rose agreed that Rose would pay FSLIC \$3 million, \$500,000 of which was paid directly by Rose's partners.¹²⁸⁸ Hubbell signed the settlement agreement.¹²⁸⁹

On November 10, 1994, when asked about FirstSouth, Hillary Clinton told the FDIC-OIG "there were issues involving C. Joseph Giroir, a former Rose partner, but [she] was unaware of what those issues may have been. She stated she had no involvement with the FSLIC and any

Rose Law Firm at 2-3 (July 16, 1987) (Doc. Nos. 2625-00000965 through 66).

¹²⁸⁶ Hubbell, Friends in High Places 133 (1997).

¹²⁸⁷ Memo from John B. Beaty, Trial Attorney, FHLBB, to Jordan Luke, General Counsel and Brian Neuberger, Acting Director of SLIC at 8 (Sept. 22, 1987) (Doc. No. 281-00018778).

¹²⁸⁸ Letter from Thomas Ray, Partner, Shults, Ray & Kurrus, to John Beaty, Trial Attorney, FHLBB (Jan. 28, 1988) (Doc. No. 281-00018334); Settlement Agreement and Release between FSLIC Corporate and Rose Law Firm (Jan. 28, 1988) (Doc. Nos. 281-00018782 through 97); Hubbell 1/28/88 Aff. (Doc. Nos. 281-00018798 through 99); Escrow Agreement between FSLIC and Rose Law Firm (Jan. 28, 1988) (Doc. Nos. 281-00018800 through 05); Smith 2/5/98 GJ at 16.

¹²⁸⁹ Smith 2/5/98 GJ at 17.

negotiations involving FirstSouth or Mr. Giroir."¹²⁹⁰

c. Vince Foster Tried to Get FSLIC to Hire Rose as Fee Counsel.

In October and November 1988, Vince Foster tried to get the FSLIC to hire Rose as fee counsel for six Arkansas savings and loan institutions about to enter conservatorship or receivership.¹²⁹¹ One of those institutions was Madison Guaranty. On October 17, 1988, Thomas Hinde of the FHLBB's Office of General Counsel asked whether Rose would like to submit a proposal to work as FSLIC's fee counsel, which Foster did four days later.¹²⁹²

On October 31, Foster received the conflicts checklists for the six Arkansas institutions.¹²⁹³ The conflicts list for Madison Guaranty referred to Jim and Susan McDougal, Frost partner James Alford, and Castle Grande.¹²⁹⁴ It listed those law firms and lawyers that

¹²⁹⁰ H. Clinton 11/10/94 FDIC-OIG Int. at 5. Additionally, Hubbell testified in 1996 that he "may have taken" his FirstSouth files from Rose when he left Rose and came to Washington in January 1993. Senate Whitewater Comm. Hearing, supra note 147, at 158 (Feb. 7, 1996) (testimony of W. Hubbell).

¹²⁹¹ Conservatorship occurs when a failed savings and loan institution operates under the control of the appropriate federal regulatory body (the FSLIC, FDIC, or RTC). In receivership, the federal regulatory body will close the failed institution and sell off its assets to minimize losses. See, e.g., Thomas 2/19/98 GJ at 15-17.

¹²⁹² See Letter from Vincent Foster Jr., Rose Law Firm attorney, to James Lantelme, FSLIC attorney at 1 (Nov. 8, 1988) (Doc. No. RIC113874); Letter from Vincent Foster Jr., Rose Law Firm attorney, to Tom Hin[d]es, Litigation Division, Office of General Counsel, FHLBB (Oct. 21, 1988).

¹²⁹³ See Letter from Vincent Foster Jr., Rose Law Firm attorney, to Tom Hin[d]es, Litigation Division, Office of General Counsel, FHLBB (Nov. 1, 1988) (Doc. No. RIC113961).

¹²⁹⁴ Memo from Vincent Foster Jr., Rose Law Firm attorney, to All Attorneys with Conflicts Checklist as attachment (Nov. 1, 1988).

FSLIC knew had performed legal work for Madison Guaranty.¹²⁹⁵ The conflicts list did not mention Rose.¹²⁹⁶

The next day, Foster circulated a memorandum to all Rose attorneys attaching the conflicts checklists. Foster also sent Hides a letter that informed Hides that Rose represented a party adverse to the FSLIC in a case called Universal Savings & Loan Association v. First Investment Securities,¹²⁹⁷ which Hides told Foster "was deemed to be a conflict of such a nature to disqualify [Rose] from being fee counsel on any new receivership."¹²⁹⁸

On November 3, Foster circulated another memorandum to Rose attorneys:

[u]nder current FSLIC policy we are disqualified from receiving any new business while [the Universal] case is pending. Accordingly, you should ignore the conflicts memorandum circulated earlier regarding Arkansas savings and loan institutions which are prospects for receivership. We should focus our efforts on trying to represent buyers instead of receivers.¹²⁹⁹

Foster kept petitioning the FHLBB and FSLIC for the business with another letter to each,¹³⁰⁰

¹²⁹⁵ Id.

¹²⁹⁶ Id.

¹²⁹⁷ Letter from Vincent Foster Jr., Rose Law Firm attorney, to Tom Hin[d]es, Litigation Division, Office of General Counsel, FHLBB (Nov. 1, 1988) (Doc. No. RIC 113961).

¹²⁹⁸ Letter from Vincent Foster Jr., Rose Law Firm attorney, to James Lantelme, FSLIC attorney at 1-2 (Nov. 8, 1988) (Doc. Nos. RIC113874 through 75).

¹²⁹⁹ Memo from Vincent Foster Jr., Rose Law Firm attorney, to All [Rose Law Firm] Attorneys (Nov. 3, 1988) (Doc. No. 281-00024945).

¹³⁰⁰ Letter from Vincent Foster Jr., Rose law Firm attorney, to Tom Hin[d]es, Litigation Division, Office of General Counsel, FHLBB (Nov. 3, 1988) (Doc. Nos. 281-00029590 through 91); Letter from Vincent Foster Jr., Rose Law Firm attorney, to James Lantelme, FSLIC attorney (Nov. 8, 1988) (Doc. Nos. RIC113874 through 78).

which was ultimately successful.¹³⁰¹ Foster's letters disclosed neither Rose's 1985-86 work for Madison Guaranty,¹³⁰² nor Hillary Clinton's business partnership with the McDougals, Rose's work on Castle Grande, or Rose's legal work for Jimmie Alford's company, Precision Industries, all potential conflicts of interest.¹³⁰³

2. Mrs. Clinton Ordered the Destruction of Her Madison Guaranty Files in July 1988.

On July 21, 1988, while the Ward suit against Madison was pending, and nearing trial, Mary Russell, a Rose Firm employee in charge of storing the firm's files, sent Mrs. Clinton a list of her closed files.¹³⁰⁴ Ms. Russell asked Mrs. Clinton to review the list and indicate which files should be kept, which microfilmed, and which destroyed.

Mrs. Clinton reviewed Ms. Russell's cover memorandum and wrote:

C - Pls review + discuss w/ me. ¹³⁰⁵

"C" was Cheryl Park, Mrs. Clinton's secretary.¹³⁰⁶ On the bottom of the memorandum, Mrs. Clinton wrote a note to Park:

¹³⁰¹ Letter from Thomas L. Hinds, Litigation Division, Office of General Counsel, FHLBB, to Vincent Foster, Rose Law Firm attorney (Nov. 21, 1988) (Doc. No. RIC113937).

¹³⁰² Rose member Herb Rule thought Foster told the regulators about the prior work, while acknowledging he "could certainly be wrong." Rule 3/3/98 GJ at 78-79. Rule responded, "Not offhand" when asked if he was aware of any documents supporting his recollection. Rule 3/3/98 GJ at 79.

¹³⁰³ Lantelme 2/17/98 GJ at 12-16.

¹³⁰⁴ Memo from Mary Russell, Rose Law Firm Operations Manager, to Mrs. Clinton (July 21, 1988) (Doc. Nos. FDICHRC 0162 through 63).

¹³⁰⁵ Id.; see H. Clinton 2/14/96 FDIC Int. at 97-98 (identifying the writing as hers).

¹³⁰⁶ Huber 3/11/94 Int. at 2.

C - I have marked with D[estroy], K[ee]p + M (for microfilm) + marked some files I want pulled + returned to me.

There are, however, so many duplicate listings I can't tell what's being described. Can you review list over next week + mark apparent duplicates + note any file I left off marking. Then discuss w/ Mary Russell

In the memorandum's margin Mrs. Clinton added:

Also -

I would like prepared an updated typed list of all these files + the [form?] they're kept in

- I want list of all matters even if destroyed

The list of Mrs. Clinton's files included four separate Madison Guaranty matters:

A8734	.1	Madison Guaranty S&L	:	Babcock
	.2	"	"	: Ward Option
	.3	"	"	: I.D.C.
	.4	"	"	: (Matters 1, 2, 3, 4) 98262 ¹³⁰⁷

These files were marked "D" for destroy. In the entire list, twelve files or sets of files were marked to be destroyed, and two were marked to be kept. None were designated for microfilm. Mrs. Clinton identified the handwritten notations designating each file's disposition as hers.¹³⁰⁸

Mrs. Clinton said she did not recall whether she contacted Seth Ward or anyone at

¹³⁰⁷ Memo from Mary Russell, Rose Law Firm Operations Manager, to Mrs. Clinton at 2 (July 21, 1988) (Doc. No. FDICHR 0163). Before Rose produced this document, it redacted the names of files not related to Madison Guaranty.

¹³⁰⁸ H. Clinton 2/14/96 FDIC Int. at 97-98.

Madison Guaranty before ordering the files' destruction.¹³⁰⁹ She also said that at that point she knew nothing about the Ward v. Madison Guaranty litigation or Madison Guaranty's financial condition.¹³¹⁰

3. Madison Guaranty's Suit against Frost & Company.

After Borod & Huggins' 1987 report concluding Madison Guaranty had a viable malpractice claim against Frost & Company, Madison Guaranty and Madison Financial filed a five-count complaint in Arkansas state court against Frost & Company, and other individuals, including Jimmie D. Alford (a Frost director), in 1988.¹³¹¹ Madison Guaranty alleged that Frost was negligent when it performed the 1984 and 1985 audits.¹³¹² After the FDIC took over as Madison Guaranty's receiver, the Rose Law Firm was hired to take over the representation of the FDIC's interest in the pending suit. Hubbell acted as the "[l]ead trial counsel; chief tactician and negotiator in all tactical and settlement discussions;" attended depositions; and was the "primary contact with defense counsel, April Breslaw and other RTC/FDIC personnel."¹³¹³

¹³⁰⁹ Id. at 101.

¹³¹⁰ Id. at 101-02.

¹³¹¹ Complaint, Madison Guaranty v. Frost, No. 88-1193 (E.D. Ark. Feb. 28, 1988) (Doc. Nos. CT-00000023 through 28).

¹³¹² Id.

¹³¹³ Rose Law Firm document describing Hubbell's role in the litigation (Mar. 28, 1994) (Doc. No. 105-00077232). Speed 3/17/98 GJ at 60.

a. Madison Guaranty Was Declared Insolvent; and the FDIC Hired the Rose Law Firm to Represent it in the Frost Litigation.

On February 28, 1989, the FHLBB determined that Madison Guaranty was insolvent and so it obtained an appointment of the FDIC (and later the RTC) as Madison Guaranty's conservator.¹³¹⁴ At about the same time, Webb Hubbell came under substantial pressure to make more money for the Rose firm. In January 1989, Rose members told Hubbell they "wanted [him] out of firm management altogether."¹³¹⁵ Hubbell "resolved to build up [his] practice, increase [his] billings[, and] began lawyering with a vengeance."¹³¹⁶ Along with Vince Foster, Hubbell focused on obtaining more FSLIC and FDIC work, as he "was in the process of trying to dramatically increase [his] billings at the firm."¹³¹⁷ □ □

¹³¹⁴ Notice of Removal, Ward v. FDIC, No. 89-180 (E.D. Ark. Mar. 10, 1989) (Doc. No. NE-00000002). See Response of Federal Deposit Insurance Corporation, Conservator for Madison Guaranty Savings & Loan Association, in Opposition to Motion to Remand and Brief in Support, Ward v. FDIC, No. 89-180 (E.D. Ark. Apr. 12, 1989) (Doc. Nos. NE-00000466 through 88) (FDIC filing in Ward v. Madison Guaranty that explains the history of the relationships with FHLBB, FSLIC, and FDIC with Madison); FHLBB Appointment of Conservator for Madison Guaranty Savings and Loan Association, McCrory, AR, Order 89-483 (Feb. 28, 1989) (Doc. Nos. NE-00000599 through 616) (Order No. 89-483, which appointed the FSLIC as Madison's "sole conservator" and which states that Madison Guaranty "is insolvent in that its assets are less than its obligations to its creditors and others, including its withdrawable account holders"); Management Agreement among the FHLBB, the FSLIC, and the FDIC (Feb. 7, 1989) (Doc. Nos. NE-00000617 through 49).

¹³¹⁵ Hubbell, Friends in High Places 145 (1997).

¹³¹⁶ Id. Hubbell's Rose Law Firm "fee allocations" that related to FHLBB/FSLIC/FDIC/RTC work increased dramatically after January 31, 1989. Those fee allocations nearly quadrupled from January 31, 1989 to January 31, 1990. By January 31, 1992, Hubbell's FHLBB, FSLIC, FDIC, and RTC fee allocations had increased more than six times from the amount Hubbell was allocated on January 31, 1989. The allocations rose from \$13,674.07 for the 1988-89 fiscal year to \$88,961.49 for the 1991-92 fiscal year. Fee allocations represent monies collected by and allocated to a particular attorney at Rose. Independent

On Tuesday, February 28, 1989, the same day Madison Guaranty was declared insolvent, Vince Foster sent letters to the FHLBB, FSLIC, and the FDIC soliciting legal work for the Rose firm. He did not mention the Rose Law Firm's prior work for Madison Guaranty in those letters, although he did acknowledge that:

From time to time we have provided specialized services to some savings and loan associations in such areas as employment discrimination, work-out of participation loans and bankruptcy. We do not represent any of these clients on an on-going basis, other than Savers Federal Savings & Loan Association in the labor and employment area. Also, we have represented clients in borrowing and other transactions with certain savings and loan associations. Accordingly, while there may be individual transactions or situations where a conflict of interest could arise, we believe that the Firm would not be ethically disqualified from serving as fee counsel as generally discussed herein.¹³¹⁸

After Madison Guaranty was declared insolvent, the FHLBB appointed the FSLIC to act as sole conservator.¹³¹⁹ FSLIC asked the FDIC to serve as FSLIC's managing agent.¹³²⁰ April

Counsel Request for Fee Allocations (Feb. 23, 1998) (Doc. No. 2625-00001253).

¹³¹⁷ Hubbell, Friends in High Places 146-47 (1997).

¹³¹⁸ Letter from Vincent Foster Jr., Rose Law Firm attorney, to John V. Thomas, Assistant General Counsel, RTC and Donald B. McKinley, Regional Counsel for Liquidations in Dallas at 8 (Feb. 28, 1989) (Doc. No. 281-00003368). The language of Foster's February 28 letter mirrors a similar solicitation letter Foster and Herb Rule sent to the FSLIC on October 3, 1986. See Fax transmittal form and letter from Herbert C. Rule III, Rose Law Firm attorney, and Vincent Foster Jr., Rose Law Firm attorney, to John Beaty, Litigation Division, Office of General Counsel, FHLBB (Oct. 3, 1986) (Doc. Nos. 281-00029947 through 54).

¹³¹⁹ FHLBB Appointment of Conservator for Madison Guaranty Savings and Loan Association, McCrory, AR, Order 89-483 (Feb. 28, 1989) (Doc. Nos. CT-00000429 through 47). Cf. Letter from FHLBB/FSLIC to Beverly Bassett, Savings and Loan Supervisor, ASD (Mar. 2, 1989) (Doc. No. 105-00022985).

¹³²⁰ Notice Of Removal, Madison Guaranty v. Frost, No. LR-C-89-216 (E.D. Ark. Mar. 30, 1989) (Doc. Nos. CT-00000008 through 10). See Management Agreement among the FHLBB, FSLIC, and FDIC (Feb. 7, 1989) (Doc. Nos. CT-00000448 through 80); Motion To Substitute Party, Madison Guaranty v. Frost, No. LR-C-89-0216 (E.D. Ark. Nov. 24, 1989)

Breslaw, an FDIC attorney, determined that Borod & Huggins's successor, Gerrish & McCreary, had too many conflicts of interest to represent the FDIC in the Frost case.¹³²¹ She contacted Rick Donovan at Rose and asked if Rose could take the case. Donovan directed her to Hubbell.¹³²² Webb Hubbell was the Rose attorney responsible for reporting all actual and potential conflicts of interest to the FDIC and the RTC.¹³²³

Hubbell circulated to other Rose attorneys a memorandum about conflicts of interest related to Madison v. Frost.¹³²⁴ According to Hubbell he "was aware that Mrs. Clinton had been the billing attorney in 1985 and 1986 . . . [and] that for a period of time, [Rose] had done some work for Madison."¹³²⁵ According to Hubbell, Rick Massey "disclosed that there had been prior work done at the Securities Department," either in the fall of 1988 or after Hubbell circulated his March 21, 1989 memorandum.¹³²⁶ Hubbell claimed later that he did not consider the prior Rose work to be a conflict "because we were standing in the shoes of Madison in suing its former

(Doc. Nos. CT-00000486 through 87).

¹³²¹ See Breslaw 6/16/94 GJ at 8.

¹³²² See Hubbell 1/11/94 FDIC Int. at 1.

¹³²³ Donovan 1/21/98 GJ at 13-14; Donovan 1/6/98 GJ at 102; Speed 3/17/98 GJ at 72-73.

¹³²⁴ Memo from Webb Hubbell, Rose Law Firm attorney, to All [Rose Law Firm] Attorneys (Mar. 21, 1989); House Banking Comm. Hearing, supra note 997, at 47 (Aug. 10, 1995) (testimony of W. Hubbell).

¹³²⁵ House Banking Comm. Hearing, supra note 997, at 47 (Aug. 10, 1995) (testimony of W. Hubbell).

¹³²⁶ Id. at 59. Under either scenario, Hubbell knew about Rose's Arkansas Securities Department work at the time Rose accepted the Frost case, and concealed that information from the FDIC and the RTC.

accountants."¹³²⁷

Hubbell gave varying accounts of his initial conversations with Breslaw. In testimony before the grand jury in 1995, after Hubbell had agreed to cooperate with the government, Hubbell acknowledged that Breslaw asked about conflicts and that he did check into them. Hubbell claimed he informed Breslaw about the conflicts and that she stated they were not a problem.¹³²⁸

In his Senate testimony, Hubbell claimed he told Breslaw that Rose did some minor lending work for Madison Guaranty.¹³²⁹ Hubbell later slightly altered this:

Q. Did you tell [Breslaw] the nature of the work that the Rose Law Firm had done for Madison before?

A. Not initially, no.

Q. Why didn't you?

A. At the time I was focusing on the conflict between Madison and Frost, not on the conflict between my father-in-law and Madison or the firm and Madison. I looked on Madison -- the RTC taking over Madison as stepping into the shoes of Madison when it sued Frost, and I focused on

¹³²⁷ House Banking Comm. Hearing, supra note 997, at 49 (Aug. 10, 1995) (testimony of W. Hubbell). Hubbell later wrote that Vince Foster informed him that the FDIC told Rose that they "were eligible to work on all the thrift closings except Madison's -- we had too many conflicts there." Hubbell, Friends in High Places 146 (1997). No evidence supports Hubbell's assertion that the FDIC found Rose disqualified from working for the Madison Conservatorship. And, more importantly, Hubbell's comment reveals that he understood that Rose's prior work could constitute a disqualifying conflict of interest. In fact, Hubbell admitted as much: "I naturally assumed that the conflicts involved the Rose firm's past work for Madison and Seth's lawsuit against Madison." Id.

¹³²⁸ Hubbell 6/9/95 GJ at 48-51.

¹³²⁹ Senate Whitewater Comm. Hearing, supra note 147, at 98-101 (Dec. 1, 1995) (testimony of W. Hubbell).

that conflict.

Q. What did you tell her about your father-in-law?

A. At that first conversation nothing more.¹³³⁰

Breslaw testified: "I have no recollection of ever being told by anyone at the Rose Law Firm that the Rose Law Firm had previously represented Madison before it closed."¹³³¹

Furthermore, she testified, "[w]hen I retained the Rose Firm to work on Madison -- the Madison accounting case, it disclosed no conflicts of interest."¹³³²

¹³³⁰ Hubbell 8/22/96 GJ at 114-15.

¹³³¹ Breslaw 7/28/94 Senate Banking Comm. Depo. at 28-29.

¹³³² Senate Whitewater Comm. Hearing, supra note 147, at 25 (Nov. 30, 1995) (testimony of A. Breslaw). Breslaw was criticized by many in Congress and elsewhere for her decision to hire Rose for the Frost case. Ms. Breslaw explained:

When a client hires a law firm, and the government was a client, the law firm has an obligation to ensure that there are no conflicts of interest. The ethical rules require lawyers to do this, even if they are not asked. The client cannot do this job itself. Short of issuing a subpoena, the government does not know and has no way of knowing who the Rose Law Firm's other clients are. Only the Rose Law Firm has that information. When I retained the law firm on behalf of the government, it disclosed no conflicts of interest. . . . The conclusion that others have made, that there was a conflict of interest, is based on information that I did not have.

House Banking Comm. Hearing, supra note 997, at 45-46 (Aug. 10, 1995) (testimony of A. Breslaw). When asked whether she believed Hubbell had lied to her, she stated "Yes, sir, I do." Senate Whitewater Comm. Hearing, supra note 147, at 129 (Nov. 30, 1995) (testimony of A. Breslaw). Hubbell replied, "I'm sorry she feels that way. I don't know exactly what the basis of that is, but in any regard, I would apologize if I did lie to her but I don't believe I did, Senator, but I don't know what the basis of her statement was." Senate Whitewater Comm. Hearing, supra note 147, at 138 (Dec. 1, 1995) (testimony of W. Hubbell).

b. The FDIC Completed a Report on Madison Guaranty and Recommended Suit against Mitchell, Williams, Selig, Jackson & Tucker; Because the Rose Law Firm's Role Was Unknown, it Was Not Named.

Once Madison Guaranty entered conservatorship, during March and April of 1989, the FDIC investigated Madison Guaranty.¹³³³ FDIC Liquidation Assistant Michael D. Hamerly conducted the investigation.¹³³⁴ Hamerly spoke with Madison Guaranty's examiners, and he read Madison Guaranty's board minutes and the FHLBB examination reports.¹³³⁵ Hamerly also reviewed correspondence between the Rose Law Firm and April Breslaw.¹³³⁶

On April 10, 1989, Hamerly issued two memoranda. Hamerly's first memorandum recommended terminating the directors and officers liability investigation of Madison Guaranty on the grounds that any recovery would likely be swallowed by legal fees.¹³³⁷

Hamerly's second memorandum reviewed Madison Guaranty's history, discussed James B. McDougal's operation of the institution, and explained that McDougal and "his group of

¹³³³ Hamerly 3/17/98 GJ at 5.

¹³³⁴ Id. at 4-6.

¹³³⁵ Id. at 6-7.

¹³³⁶ Letter from April Breslaw, RTC attorney, to Rick Donovan, Rose Law Firm Attorney, (Mar. 24, 1989) (cc: Mike Hamerly) (Doc. No. 281-00003360); Letter from April Breslaw, RTC attorney, to Billy Carroll, Madison Guaranty Savings and Loan Managing Agent (Mar. 28, 1989) (cc: Mike Hamerly, Rick Donovan, Paul Jeddeloh) (Doc. No. 0000028); Hamerly 3/17/88 GJ at 9-13.

¹³³⁷ Confidential Memorandum from Michael D. Hamerly, FDIC Investigator, to Cecil Underwood, Assistant General Counsel; John Thomas, Assistant General Counsel; Roy Ahrens, Senior Attorney; April Breslaw, RTC attorney; Paul Drago, SLS/Investigations (Apr. 10, 1989) (Doc. No. 281-00001712); Hamerly 3/17/98 GJ at 14-20.

insiders . . . enriched themselves to the detriment of the association."¹³³⁸ Hamerly's memorandum discussed the Borod & Huggins Report,¹³³⁹ and relied on the 1986 FHLBB report's conclusion that McDougal used Madison Guaranty to "develop large land developments [and] to divert substantial amounts of funds from the projects to himself and others, who are considered to be insiders' The losses on those projects rendered the association insolvent."¹³⁴⁰

Hamerly noted that in 1988, Madison Guaranty filed a \$10 million lawsuit against Frost & Company, observing, "[t]he association's outside counsel estimated that the probability of prevailing is good."¹³⁴¹ Hamerly identified "[o]nly one potential attorney malpractice claim" -- against the firm of Mitchell, Williams, Selig, Jackson & Tucker for "work that the Mitchell firm performed for the subject association on the Maple Creek development project."¹³⁴² Hamerly's second memorandum stressed that "[a]dditional potential claims may be disclosed as FDIC attorneys become more familiar with the many lawsuits that Madison Guaranty is involved in."¹³⁴³

In 1986, federal examiners pointed to the Maple Creek Farms as one of the three largest

¹³³⁸ Survey Summary Report from Michael D. Hamerly, FDIC Investigator, to Cecil Underwood, Assistant General Counsel; John Thomas, Assistant General Counsel; Roy Ahrens, Senior Attorney; April Breslaw, RTC attorney; Paul Drago, SLS/Investigations at 2 (Apr. 10, 1989) (Doc. Nos. 281-00001713-0000714).

¹³³⁹ Id.

¹³⁴⁰ Id.

¹³⁴¹ Id. at 5 (Doc. No. 281-00001717).

¹³⁴² Id. at 6 (Doc. No. 281-00001718).

¹³⁴³ Id.

real estate projects causing substantial losses to Madison Guaranty,¹³⁴⁴ Castle Grande, and Twelfth & Main being the other two.¹³⁴⁵ Hamerly testified that if he had known that the Rose Law Firm had been involved in the Castle Grande project, it would have been mentioned in his second memorandum for possible civil action.¹³⁴⁶ Hamerly was not, however, aware that Rose represented Madison Guaranty in the Castle Grande matter.¹³⁴⁷ Rose's involvement was at that time unknown to federal regulators.¹³⁴⁸

Hamerly also referred to the Borod & Huggins Report in his second memorandum, noting that Madison Guaranty made a "major criminal referral" "encompass[ing] all of the known improper activities of James McDougal, his family and his associates."¹³⁴⁹ Hamerly concluded that "[c]onsiderable criminal activity apparently occurred at Madison Guaranty" and that "[a]n FDIC Fraud Squad probably could find instances that have not yet been revealed. However, the

¹³⁴⁴ FHLBB Office of Examinations and Supervision, Report of Examination (as of Mar. 4, 1986) (Doc. Nos. 56-00014666 through 68).

¹³⁴⁵ Id. (Doc. Nos. 56-00014668 through 69; 56-00014673 through 74).

¹³⁴⁶ Hamerly 3/17/98 GJ at 40-43, 51-53.

¹³⁴⁷ Id. at 51.

¹³⁴⁸ The FDIC and later the RTC did not learn of the Rose Law Firm's role in the Castle Grande transactions until the investigations by the FDIC-OIG and RTC-OIG that resulted in reports dated July 28, 1995 and August 3, 1995. And, of course, the extent of the Rose Law Firm's involvement with the Castle Grande matter was not more fully known until the investigations that followed the disclosure of the billing records at the White House on January 5, 1996. Hamerly 3/17/98 GJ at 40-43; 51-53.

¹³⁴⁹ Survey Summary Report from Michael D. Hamerly, FDIC Investigator, to Cecil Underwood, Assistant General Counsel; John Thomas, Assistant General Counsel; Roy Ahrens, Senior Attorney; April Breslaw, RTC Attorney; Paul Drago, SLS/Investigations at 8 (Apr. 10, 1989) (Doc. No. 281-00001720).

FBI is actively investigating this institution."¹³⁵⁰ Therefore, Hamerly recommended that "[t]he FBI [agent] or the U.S. Attorney should be contacted to determine their scope, before additional resources are dedicated to this operation."¹³⁵¹ In response to Hamerly's two memoranda, April Breslaw recommended terminating the Madison Guaranty investigation, and her superiors agreed.¹³⁵²

c. Sue Strayhorn and Others Complained about Rose's Conflicts of Interests.

In June 1989, approximately three months after the FDIC hired Rose, a "noticeably agitated" Madison Guaranty employee, Sue Strayhorn, informed Paul Jeddelloh, Madison Guaranty's intervention attorney, that Hubbell, Seth Ward, and Seth Ward II were in-laws.¹³⁵³ Jeddelloh told Breslaw,¹³⁵⁴ but felt she was unresponsive to what he believed was a significant conflict of interest.¹³⁵⁵ On June 8, 1989, Jeddelloh wrote a letter to Breslaw highlighting Hubbell's

¹³⁵⁰ Id.

¹³⁵¹ Id.

¹³⁵² Breslaw 10/23/95 Senate Banking Comm. Depo. at 188-89.

¹³⁵³ Jeddelloh 3/15/94 FDIC-OIG Int. at 6. Jeddelloh's role "was to enter the institution with representatives of FHLBB, FSLIC, and FDIC, assist in serving the 'closing' papers on the CEO of Madison and take control and assist other FDIC staff and an inventory of the institution, its assets, and litigation on behalf of the conservator." Jeddelloh was also responsible for: 1) "meeting with outside counsel hired by Madison to review pending matters, conflicts of interest, and to facilitate referrals to other counsel where appropriate;" 2) "preparing a litigation report" for FDIC officials; and 3) "obtaining local representation of the institution . . . for general institution matters." Id. at 2-4.

¹³⁵⁴ Breslaw 10/23/95 Senate Banking Comm. Depo. at 244-45; Jeddelloh 3/15/94 FDIC-OIG Int. at 6.

¹³⁵⁵ Jeddelloh 3/15/94 FDIC-OIG Int. at 6-7.

in-law relationship with Seth Ward and Seth Ward II.¹³⁵⁶ Jeddelloh explained that both Wards had suits pending against the Madison Guaranty conservatorship,¹³⁵⁷ and that Hubbell appeared to have some interest.¹³⁵⁸

Breslaw addressed the Ward matter with Rick Donovan on June 20, 1989.¹³⁵⁹ Donovan confirmed that Ward and Hubbell were in-laws, but Donovan stated he did not think Hubbell had any involvement in the Ward litigation.¹³⁶⁰

Breslaw then spoke with Hubbell:

[Hubbell] went to some lengths to make me have the impression that he was not particularly close to his father-in-law and that he was not representing his father-in-law and that he would not represent his father-in-law in the future. I said, please put that in writing. Confirm what you've just said in writing and send me a letter to that effect. And I believe he did that in June of 1989.¹³⁶¹

Breslaw kept the Frost case at the Rose Law Firm in part based on Hubbell's representation that Ward was not a Rose client.¹³⁶²

¹³⁵⁶ Letter from Paul Jeddelloh, FDIC attorney, to April Breslaw, RTC attorney (Jun. 8, 1989).

¹³⁵⁷ Id.

¹³⁵⁸ Id.

¹³⁵⁹ Donovan 1/21/98 GJ at 18-20; Donovan's handwritten notes of conversation with Breslaw (June 20, 1989) (Doc. No. RLF1 48859).

¹³⁶⁰ Donovan 1/6/98 GJ at 93-94.

¹³⁶¹ Breslaw 6/6/95 Senate Banking Comm. Depo. at 23; see also Breslaw 10/23/95 Senate Banking Comm. Depo. at 246-47; Senate Whitewater Comm. Hearing, supra note 147, at 25-26, 41-42 (Nov. 30, 1995) (testimony of A. Breslaw); Breslaw 6/7/94 Fiske Int. at 2-3.

¹³⁶² Breslaw 10/23/95 Senate Banking Comm. Depo. at 247-49; see id. at 249 ("I believe that if I had understood in June of 1989 that Hubbell did represent Ward or Ward's interests, that I would have taken that up with supervisors. And I don't know what they would have advised me to do").

Hubbell directed Rick Donovan to draft a letter to David Paulson, the FDIC's managing agent for Madison Guaranty.¹³⁶³ Donovan gave the draft to Hubbell.¹³⁶⁴ Donovan testified he was unaware of Hubbell's and Hillary Clinton's Castle Grande work for Madison Guaranty and Seth Ward when he drafted the letter.¹³⁶⁵ On June 23, 1989, Breslaw sent a letter to David Paulson, explaining that Hubbell did not represent Ward, that Hubbell had not and would not submit any pleadings for Ward.¹³⁶⁶

On June 27, 1989, Hubbell billed the FDIC for "letter to Paulson; telephone conference with and letter to Gary Green, conference with R. Donovan."¹³⁶⁷ On June 28, 1989, Hubbell sent the letter to Paulson, copying April Breslaw and Rick Donovan.¹³⁶⁸ The letter read:

Dear Mr. Paulson:

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

¹³⁶³ Donovan 1/21/98 GJ at 20-22.

¹³⁶⁴ Id.

¹³⁶⁵ Id. at 24-28. Donovan forgot the client for whom he had drafted the wet/dry memos to Mrs. Clinton. He also had no knowledge of Hubbell's involvement in the Ward case.

¹³⁶⁶ Letter from April Breslaw, RTC attorney, to David Paulson, Madison Guaranty's FDIC Managing Agent (June 23, 1989) (Doc. Nos. 000021 through 22).

¹³⁶⁷ Rose Law Firm Billing Records (Jun. 27, 1989) (Doc. Nos. 264-00020291; 264-00020172; 264-00004969, 72).

¹³⁶⁸ Donovan did not know whether Hubbell edited Donovan's draft of the June 28, 1989 letter. Donovan 1/21/98 GJ at 23-24.

Mr. Ward or his son in the future concerning any matter relating to Madison Guaranty.¹³⁶⁹

In 1989, as part of his work on the Frost case, Hubbell read the 1986 FHLBB exam reports, and, in particular, the May 8, 1986 exam report criticizing Ward and the Castle Grande transactions.¹³⁷⁰ In 1990 and 1991, Hubbell read the Borod & Huggins Report, which described Ward's dealings with Madison as involving fictitious sales, sham loans, and potential civil and criminal liability.¹³⁷¹ "When I read those reports, obviously it raised a flag to me," Hubbell said later, "and I read them, and I was concerned about it."¹³⁷²

¹³⁶⁹ Letter from Webb Hubbell, Rose Law Firm attorney, to David Paulson, Madison Guaranty's FDIC Managing Agent (June 28, 1989); see also Hubbell 12/27/95 Telephone Int. at 39 (identifying letter). In her June 1994 sworn statement with the RTC-OIG, Breslaw stated as follows:

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

Breslaw 6/8/94 RTC-OIG Sworn Statement at 10-11; see also Senate Whitewater Comm. Hearing, supra note 147, at 26 (Nov. 30, 1995) (testimony of A. Breslaw). In her RTC statement Breslaw added, "I am not aware of any representation that Hubbell ever undertook for Seth Ward or Seth Ward II." Breslaw 6/8/94 RTC-OIG Statement at 18 (sworn testimony).

¹³⁷⁰ Senate Whitewater Comm. Hearing, supra note 147, at 217-18 (Feb. 7, 1996) (testimony of W. Hubbell).

¹³⁷¹ See Senate Whitewater Comm. Hearing, supra note 147, at 217-18 (Feb. 7, 1996) (testimony of W. Hubbell) (Hubbell discusses his review of the 1986 FHLBB reports that discussed the IDC/Castle Grande transactions); id. at 16-17 (indicating that Hubbell did not disclose any of Rose's involvement in the IDC/Castle Grande-Seth Ward transactions to April Breslaw); id. at 233 ("[A]bout the same time I was reading exam reports and other reports and I was concerned about the allegations that were being made").

¹³⁷² Senate Whitewater Comm. Hearing, supra note 147, at 217-18 (Feb. 7, 1996) (testimony of W. Hubbell); see id. at 16-17 (indicating that Hubbell did not disclose any of

Additionally, Seth Ward's loans from Madison Guaranty, including the IDC and Castle Grande loans, were potential evidence of damages in the Frost suit.¹³⁷³ Rose lawyers prepared exhibits detailing the "bad land deals" causing Madison Guaranty's losses -- including those at Castle Grande.¹³⁷⁴ Rose and FDIC lawyers later removed the Ward loans from damage calculations because they "did not have the jury appeal we were looking for."¹³⁷⁵ Hubbell says that as far as Breslaw was concerned, his June 28, 1989 letter put the Ward-Hubbell conflict issue to rest.¹³⁷⁶ But in late June or early July of 1989, FDIC credit specialist Ken Schneck was assigned to the Madison Guaranty conservatorship.¹³⁷⁷ Sue Strayhorn told him that Webb Hubbell was Seth Ward's son-in-law, that Ward was a Madison Guaranty borrower, that Ward was suing the conservatorship,¹³⁷⁸ and that Seth Ward II was also in litigation against Madison

Rose's involvement in the IDC/Castle Grande-Seth Ward transactions to April Breslaw); id. at 233 ("[A]bout the same time I was reading exam reports and other reports and I was concerned about the allegations that were being made").

¹³⁷³ See Speed 5/19/94 Fiske GJ at 29-30.

¹³⁷⁴ Speed 3/17/98 GJ at 52-55; Rose Law Firm exhibit titled "Madison Guaranty Savings & Loan, Where did All the Money Go?" (Doc. No. 105-00073039) and Rose Law Firm exhibit titled "Madison Guaranty Savings & Loan Association Affiliated Entities" (Doc. No. 105-00019639).

¹³⁷⁵ Hubbell did not participate in the decision to remove the Ward loans, and neither Rick Donovan nor Gary Speed, Hubbell's co-counsel who were involved with the decision, knew of Hubbell's, Mrs. Clinton's, and Rose's involvement with Ward and the Castle Grande transactions. See Donovan 1/6/98 GJ at 92-98; Speed 3/17/98 GJ at 71-72.

¹³⁷⁶ Hubbell 1/11/94 FDIC Int. at 2 ("Last time the relationship with either Ward came up during the Frost case was when he wrote the June 28th letter").

¹³⁷⁷ Schneck 3/21/94 FDIC-OIG Statement at 1.

¹³⁷⁸ Id. at 1-2. Schneck stated that he did not remember exactly who it was with whom he spoke, though "[i]t may have been Sue." Schneck "d[id] not recall Sue's last name," but he believed it to be Strayhorn. Id.

Guaranty.¹³⁷⁹

In late July or early August 1989, Schneck, Paulson, and Breslaw discussed the Frost case with Rose attorneys.¹³⁸⁰ Schneck told Breslaw what he had learned regarding Hubbell and Ward,¹³⁸¹ and that he thought she should "hire a new law firm. Ms. Breslaw told [Schneck] that this was no concern of [his] and that it was a [FDIC Professional Liability Section] issue."¹³⁸² Schneck then raised the issue with John O'Donnell, the FDIC's "S&L project coordinator for Arkansas."¹³⁸³ Schneck warned O'Donnell about the Hubbell-Ward connection:

In the process of our suit against Frost & Company, we will most certainly examine practices and procedures Madison Guaranty used in day to day operations. We are making this information available, in detail, to Hubbell. To believe that none of this information will make it back to his family is naive. I do not know whether or not any information upcoming will be damaging. However, I would like someone with a wider scope of authority to review the situation and possibly eliminate this conflict.¹³⁸⁴

In 1994, Breslaw stated:

I do not recall ever discussing Schneck or the possibility of removing Schneck from any involvement with the Frost suit, with Paulson or anyone else. As a staff attorney, I had no authority to give such direction to a managing agent. However, I do wonder whether Schneck, a credit specialist, had any legitimate reason to have been involved in the matter. I do not know whether he had any documented

¹³⁷⁹ Id. at 2.

¹³⁸⁰ Id.

¹³⁸¹ Id.

¹³⁸² Id.

¹³⁸³ Id.; Letter from Ken K. Schneck, Credit Specialist, to John O'Donnell, FDIC S&L Project Area Coordinator (Aug. 10, 1989).

¹³⁸⁴ Letter from Ken K. Schneck, Credit Specialist, to John O'Donnell, FDIC S&L Project Area Coordinator (Aug. 10, 1989).

basis for suggesting that Hubbell might behave unethically.¹³⁸⁵

d. Hubbell Concealed Potential Conflicts of Interest Brought to His Attention from the FDIC and RTC while the Frost Suit Was Pending.

i. Hubbell's Knowledge of Rose Billing Records.

In late 1989 or early 1990, Rose attorney Gary Speed reviewed papers from Frost's Madison Guaranty audits. Speed "came across a standard audit response letter to Frost and Company from the Rose Law Firm."¹³⁸⁶ Speed learned that Rose had performed legal work for Madison Guaranty relating to Frost.¹³⁸⁷ Speed also found a letter signed by Hillary Clinton to Frost mentioning "their work in connection with the audit."¹³⁸⁸ He "wanted to find out the nature of the work and to assure [himself] that there were no conflicts of interest."¹³⁸⁹ Speed later remembered, "[w]hen I found that letter, then I investigated further and found where we had done some work in this time frame."¹³⁹⁰

Speed went to Rose's accounting department and requested copies of the bills Rose had submitted to Madison Guaranty.¹³⁹¹ Speed reviewed the bills, and spoke with Rick Massey about

¹³⁸⁵ Breslaw 6/8/94 RTC-OIG Aff. at 11.

¹³⁸⁶ Speed 6/30/95 RTC-OIG Statement at 5.

¹³⁸⁷ Speed 8/7/96 Int. at 1.

¹³⁸⁸ Speed 3/17/98 GJ at 37.

¹³⁸⁹ Speed 6/30/95 RTC-OIG Statement at 5; see also Speed 5/19/94 Fiske GJ at 80-89 (discussing Speed's discovery during the Frost case of Rose's 1985-1986 work for Madison and Speed's discussions with Hubbell about the need for disclosure to the FDIC and the RTC).

¹³⁹⁰ Speed 3/17/98 GJ at 38.

¹³⁹¹ Speed 6/30/95 RTC-OIG Statement at 5; Speed 8/7/96 Int. at 1-2.

Rose's work for Madison Guaranty before the Arkansas Securities Department.¹³⁹² Speed also spoke with Hubbell, who "was the lead attorney on the Frost case, was the primary contact with FDIC, and was knowledgeable about the ethical rules concerning conflicts."¹³⁹³ Speed asked Hubbell if he was aware of Rose's prior work for Madison Guaranty:

[Hubbell] said he had been aware of some collection work. I showed him the bills I had retrieved concerning the ASD work. He said he would talk about it with April Breslaw. . . . Within a day or so, Hubbell told me that he had spoken to Ms. Breslaw about the ASD work and that she agreed it was not a conflict. I recall that conversation clearly. I do not believe that I ever spoke to Ms. Breslaw personally about the matter, and I do not believe I ever wrote anything about the matter.¹³⁹⁴

Speed showed the billing records to Hubbell "to make sure that he was aware that we had done some work for [Madison Guaranty]."¹³⁹⁵ Speed still did not know that Hubbell had done legal work for Seth Ward, or that Mrs. Clinton had billed Madison Guaranty for multiple conferences with Seth Ward about IDC.¹³⁹⁶ When Speed reviewed the billing records, he noted that Mrs. Clinton and Rick Massey had recorded most of the billable time.¹³⁹⁷

Breslaw later testified that Hubbell did not disclose Rose's work for Madison Guaranty

¹³⁹² Speed 5/19/94 Fiske GJ at 86; Speed 8/7/96 Int. at 1-2.

¹³⁹³ Speed 6/30/95 RTC-OIG Statement at 5; see also Speed 8/7/96 Int. at 2-3 (describing Speed's discussion with Hubbell about the Rose Madison Guaranty billing records).

¹³⁹⁴ Speed 6/30/95 RTC-OIG Statement at 5-6; see Speed 5/19/94 Fiske GJ at 88 ("Well, at a later time, [Hubbell] came back to me and said, 'I've talked with April Breslaw about these and she says there's no problem . . . that it's just not a problem'").

¹³⁹⁵ Speed 3/17/98 GJ at 38; see also Speed 8/7/96 Int. at 2 (indicating that Speed gave the Rose Madison Guaranty billing records to Hubbell).

¹³⁹⁶ Speed 3/17/98 GJ at 38, 46-47.

¹³⁹⁷ Speed 8/7/96 Int. at 2.

before the ASD, though she added that whether this would have disqualified Rose was a closer question than the work for Ward or the IDC/Castle Grande transactions.¹³⁹⁸

ii. Hubbell's Review of the Borod & Huggins Report.

In January 1990 -- at the same time that Webb Hubbell negotiated an indemnification agreement between Ward and Ward's former law firm in connection with Ward v. RTC¹³⁹⁹ -- Rose requested a copy of the Borod & Huggins Report.¹⁴⁰⁰ Gary Speed described some difficulty they encountered:

For months and months, we had heard about the Borod & Huggins report, but Ms. Breslaw had never sent it to us. And my recollection is that the first time we ever saw the Borod & Huggins report, we had information that it was already in the hands of the Frost & Company's attorneys, Mr. [Peter] Kumpe. And Mr. Kumpe, at trial, was going to take the Borod & Huggins report and essentially, as we were pointing the finger at his clients, the accountants, the accountants' attorney was going to point the finger at Mr. McDougal and the Henleys and all these other people that were involved in these related party transactions. So it really came to a point where we really needed to know what was in the Borod & Huggins report because that had a material effect on our lawsuit that we were trying to maintain against the accountants.¹⁴⁰¹

Madison Guaranty employee Sue Strayhorn objected to providing Rose a copy of the Borod & Huggins Report because Ward and Hubbell were in-laws. On January 25, 1990,

¹³⁹⁸ Senate Whitewater Comm. Hearing, supra note 147, at 40-41 (Nov. 30, 1995) (testimony of A. Breslaw). Hubbell testified he did not recall whether he discussed the ASD work with Breslaw, but he would not disagree with Breslaw's statement that he had not told her of the ASD work. Hubbell 4/20/95 RTC-OIG/OIC Int. at 18; Senate Whitewater Comm. Hearing, supra note 147, at 114-17 (Dec. 1, 1995) (testimony of W. Hubbell).

¹³⁹⁹ Hubbell 4/20/95 RTC-OIG Int. at 23 (Hubbell was asked by Wright, Lindsey & Jennings to help get an indemnification agreement with Ward regarding the funds Madison Guaranty had deposited into escrow).

¹⁴⁰⁰ Speed 3/17/98 GJ at 19-21.

Strayhorn wrote Breslaw opposing giving the Borod & Huggins Report to Rose.¹⁴⁰² Strayhorn detailed various concerns, including protection of attorney-client privilege and the discussion of Ward's involvement in Castle Grande that was still being litigated between Ward and Madison Guaranty, which could jeopardize any recovery by Madison Guaranty in that or other litigation, such as that against the Frost accountants.¹⁴⁰³

Breslaw spoke with her supervisor, John Beaty, who approved her decision to provide Hubbell with the Borod & Huggins Report.¹⁴⁰⁴ Breslaw understood from her previous discussions with Hubbell that he and Ward were related.¹⁴⁰⁵

On Thursday, February 1, 1990, Hubbell met with Gary Speed and spoke with April Breslaw.¹⁴⁰⁶ Breslaw sent the Borod & Huggins Report to Rose,¹⁴⁰⁷ and Hubbell and Speed reviewed the Report the next day.¹⁴⁰⁸ Hubbell also billed the RTC for his time reviewing the

¹⁴⁰¹ Id. at 21-22.

¹⁴⁰² Letter from Sue Strayhorn, Madison Guaranty Corporate Secretary, to April Breslaw, RTC Attorney (Jan. 25, 1990).

¹⁴⁰³ Id.

¹⁴⁰⁴ Breslaw 6/6/95 Senate Banking Comm. Depo. at 24-25.

¹⁴⁰⁵ Breslaw 6/8/94 RTC-OIG Sworn Statement at 9; see Breslaw 6/6/95 Senate Banking Comm. Depo. at 24-25.

¹⁴⁰⁶ Rose Law Firm Billing Records (Mar. 7, 1990) (Doc. No. 264-00020682).

¹⁴⁰⁷ Memo from April Breslaw, RTC Attorney, to Gary Speed, Rose Law Firm Attorney (Feb. 1, 1990) (Doc. No. RLF1 28105).

¹⁴⁰⁸ Rose Law Firm Daily Timesheet for Gary Speed (Feb. 2, 1990) (Doc. No. 264-00009459); Rose Law Billing Record (Mar. 7, 1990) (Doc. No. 264-00020682).

Report on February 8, 1991, and February 12, 1991.¹⁴⁰⁹

During the subsequent investigations, Hubbell initially denied that he ever saw the Borod & Huggins Report.¹⁴¹⁰ Later he claimed that his Frost co-counsel initially kept the report from him but that he looked at the report later,¹⁴¹¹ or that he did not look at the Report until absolutely necessary because of the revelation about Rose Associate Pat Heritage's prior role at Madison Guaranty, which had not been previously disclosed.¹⁴¹² The FBI found Hubbell's latent fingerprints on five pages of the report, including pages discussing Seth Ward's role in various transactions and possible criminal liability.¹⁴¹³ Hubbell's billing records reflect that on February 2, 1990, he billed the RTC for reviewing the report.¹⁴¹⁴

iii. Hubbell's Knowledge of Rose Associate Pat Heritage's Involvement with Madison.

Rose attorneys focused on the Borod & Huggins Report's description of Patricia Heritage's employment at Madison Guaranty from 1985 to 1986, because Heritage had recently started as a Rose associate. The Borod & Huggins Report claimed that Heritage, who worked as a secretary at Madison Guaranty, created fictitious Madison Financial board meeting minutes at

¹⁴⁰⁹ Rose Law Firm Billing Records (Mar. 14, 1991) (Doc. Nos. 264-00020802 through 03).

¹⁴¹⁰ Hubbell 1/11/94 FDIC-OIG Int. at 1-2; Hubbell 3/16/95 FDIC-OIG Int. at 7; see Downing 1/22/98 GJ at 13-14.

¹⁴¹¹ Hubbell 8/22/96 GJ at 115-116.

¹⁴¹² Hubbell 4/20/95 RTC-OIG/OIC Int. at 17, 19.

¹⁴¹³ Federal Bureau of Investigation Laboratory Report (Nov. 21, 1997).

¹⁴¹⁴ Hubbell 4/20/95 RTC-OIG/OIC Int. at 17. Jack Smith testified that if the FDIC knew Hubbell would bill the agency for reviewing the Borod & Huggins Report, Rose would not have

John Latham's direction.¹⁴¹⁵ With regard to bonuses paid to Madison insiders, Heritage told the Borod & Huggins investigators that "they had to specifically make sure the bonuses were approved in the minutes prior to the time that they were actually funded by [Madison Guaranty] or [Madison Financial]."¹⁴¹⁶ Heritage specifically mentioned, "a board resolution dated April 4, 1986 authorizing Madison Financial to borrow \$300,000 from Seth Ward."¹⁴¹⁷ This was the resolution providing Madison Financial with authority for the unfunded \$300,000 April 7, 1986 cross note (described in Chapter 1 of this Part). The Borod & Huggins Report listed Heritage as third (after Jim McDougal and John Latham) in significance to the investigation of Madison Guaranty.¹⁴¹⁸

After Speed read the Borod & Huggins Report, he was "concerned about the hiring of Ms. Heritage by" Rose Law Firm.¹⁴¹⁹ On April 4, 1990, Gary Speed, Rick Donovan, and Jim Birch interviewed Patricia Heritage about her Madison Guaranty work.¹⁴²⁰ Speed thought that Heritage's files had served as part of the evidence against Latham and the Henleys.¹⁴²¹

been hired. Smith 2/5/98 GJ at 48-49.

¹⁴¹⁵ Borod & Huggins Report, supra note 1158, App. at 61.

¹⁴¹⁶ Id.

¹⁴¹⁷ Id. at 62.

¹⁴¹⁸ Id. at 169. By this point, Latham had pleaded guilty to falsifying Madison Guaranty records and McDougal was under indictment.

¹⁴¹⁹ Speed 6/30/95 RTC-OIG Int. at 7-8; see also Hubbell 3/16/95 FDIC-OIG Int. at 11; and Hubbell 4/20/95 RTC-OIG/OIC Int. at 19.

¹⁴²⁰ Rose Law Firm Billing Record (Jun. 20, 1990) (Doc. No. 105-00083613).

¹⁴²¹ Speed 3/17/98 GJ at 72.

Speed met with Hubbell on April 4, 1990.¹⁴²² Speed later stated that he and Hubbell told Breslaw about Pat Heritage,¹⁴²³ but Breslaw later denied having been told about it.¹⁴²⁴ Breslaw stated that it was not until January 1994 when she learned that Heritage had once worked at Madison and that Gerrish had accused her of editing minutes of Madison board meetings.¹⁴²⁵ Hubbell stated that they did not discuss this matter with Breslaw, although they probably should have talked with her about it.¹⁴²⁶

iv. Other Conflicts Not Disclosed.

ASD -- On April 13, 1990, Frost attorney Steven W. Quattelbaum deposed former Madison Guaranty president John Latham.¹⁴²⁷ Both Gary Speed and Rick Donovan billed the RTC for attending Latham's deposition.¹⁴²⁸ Quattelbaum questioned Latham about Rick Massey's work for Madison Guaranty before the ASD.¹⁴²⁹ There is no evidence that anyone informed

¹⁴²² Id. at 29-30.

¹⁴²³ Speed 6/30/95 RTC-OIG Statement at 8-9.

¹⁴²⁴ Breslaw 6/8/94 RTC-OIG Statement at 20 (sworn testimony); Breslaw 7/18/95 RTC-OIG Int. at 7.

¹⁴²⁵ Breslaw 6/8/94 RTC-OIG Statement at 20 (sworn testimony); see also Breslaw 7/18/95 RTC-OIG Int. at 7 ("I do not recall anyone from Rose discussing Patricia Heritage with me in any context during the Frost litigation").

¹⁴²⁶ Hubbell 3/16/95 FDIC-OIG Int. at 12; see also Hubbell 4/20/95 RTC-OIG/OIC Int. at 19-20 (Hubbell stated that he did not discuss the matter with Breslaw).

¹⁴²⁷ Latham 4/13/90 Depo. at 2, RTC v. Frost, Case No. LR-C-89-216 (E.D. Ark.) (Doc. Nos. 85-00080961 through 81058).

¹⁴²⁸ Rose Law Billing Records (June 20, 1990) (Doc. No. 264-00020695).

¹⁴²⁹ Latham 4/13/90 Depo. at 93-95, RTC v. Frost, No. LR-C-89-216 (E.D. Ark.) (Doc. Nos. 85-00081053 through 81055). Quattelbaum explained:

I asked [Latham] these questions at the very end of the deposition. I probably

Breslaw about Quattelbaum's questions to Latham about Rose's ASD work.

Gary Speed's Wife -- During the Frost case, Gary Speed learned that before they were married, his wife had an ownership interest with James McDougal in Madison Guaranty.¹⁴³⁰ Speed informed Hubbell of this, but Hubbell concealed it from April Breslaw.¹⁴³¹ Speed said that Hubbell told him that he had disclosed Speed's wife's potential conflict to Breslaw.¹⁴³² Hubbell later told the FDIC-OIG that the Rose attorneys had concluded there was no conflict to report.¹⁴³³

On April 4, 1990, when Gary Speed, Rick Donovan, and Jim Birch met with Patricia Heritage to discuss Heritage's prior Madison Guaranty employment,¹⁴³⁴ they also discussed

brought this issue up just to worry the Rose Attorneys. I did not consider this to be an important or significant matter. I just wanted the Rose attorneys to know that we were aware of their prior representation so that would be one more thing they would have to be prepared to discuss if it came up in the trial.

Quattelbaum 5/18/95 FDIC-OIG Statement at 1.

¹⁴³⁰ Speed 5/19/94 GJ at 83-88. Speed's wife, Julie Baldrige Speed, had been married to Steve Smith.

¹⁴³¹ Compare Speed 6/30/95 RTC-OIG Statement at 11-12 ("Hubbell later told me that he had spoken to Ms. Breslaw about it [Mrs. Speed's business relationship with Jim McDougal and Madison Guaranty] and Ms. Breslaw said that it was not a problem"), with Hubbell 2/1/95 Int. at 22 ("SPEED may have mentioned that his wife at the time, JUDY [sic] BALDRIDGE SPEED, worked at MGS&L and that she was on their Board of Directors. BALDRIDGE SPEED held stock in MGS&L for a few months. HUBBELL did not disclose this information to BRESLAW. HUBBELL has not held any discussions of this matter with GARY SPEED since he disclosed the information to HUBBELL"); and Hubbell 3/16/95 FDIC-OIG Int. at 3 ("Baldrige's ownership was prior to the time Frost audited Madison. Since the time frame did not overlap, they decided it was not a conflict of interest. He does not recall discussing the issue with Breslaw when he learned of it but either he, Speed or Donovan could have mentioned it to her"). Donovan did not tell Breslaw about Julie Baldrige Speed. Donovan 1/21/98 GJ at 47.

¹⁴³² Speed 5/19/94 GJ at 87-88.

¹⁴³³ Hubbell 3/16/95 FDIC-OIG Int. at 2-3.

¹⁴³⁴ Speed 3/17/98 at 29-33.

Heritage's work for Precision, and agreed that "Jim [Birch] will cut her out of it."¹⁴³⁵

Rose member Tim Boe, the lead attorney on Precision, learned from Jim Birch that Jimmie Alford was going to testify in the Frost case.¹⁴³⁶ When Boe learned Alford was involved in the Frost case, Birch and Boe "went to Hubbell and brought this to his attention."¹⁴³⁷ Boe, Birch, and Hubbell "sat and discussed it, the fact that [Boe] had been doing the work for Precision Industries, the corporation, and Jim Birch had also been doing the work for Precision Industries, the corporation."¹⁴³⁸ They concluded that there was not a formal conflict of interest -- "because we did not represent Alford as an individual" -- but Boe, Birch, and Hubbell "all agreed that we would contact and, for purposes of good client relations, tell our respective clients."¹⁴³⁹ As they left the meeting, "Hubbell said that he would take care of it. [Boe] understood that to mean that he would inform the RTC of what the situation was."¹⁴⁴⁰

Boe and Birch informed Alford that Rose "would withdraw as counsel representing Precision if that's what they wanted to do."¹⁴⁴¹ Boe also offered to set up a conflict screen between Hubbell and the Precision matters, and recommended that Alford consult with outside

¹⁴³⁵ Id. at 31-32 (the quote "Jim will cut her out of it" is from Speed's handwritten notes of the meeting (Doc. No. RIC-038820)).

¹⁴³⁶ Boe 2/4/98 GJ at 6-7.

¹⁴³⁷ Id. at 6.

¹⁴³⁸ Id.

¹⁴³⁹ Id. at 7.

¹⁴⁴⁰ Id.

¹⁴⁴¹ Id.

counsel.¹⁴⁴² Alford chose to continue with Rose.¹⁴⁴³

Boe encountered Hubbell "days or weeks later."¹⁴⁴⁴ Boe said, "[T]he subject came up of whether or not he had contacted the RTC. I understood that he had and [Hubbell] represented to me words to the effect that it had been taken care of. And I understood that to refer to our earlier meeting that he would make that contact."¹⁴⁴⁵

Hubbell did not tell the RTC that Jimmie Alford was a Frost defendant at the same time he was president and part owner of a Rose client. The first Breslaw heard of Rose's representation of Alford's company was in 1995 when the RTC-OIG interviewed her.¹⁴⁴⁶ On March 16, 1995, Hubbell told FDIC-OIG investigators that he was very concerned when he learned of the Alford-Precision matter.¹⁴⁴⁷ He stated that Donovan, Speed, and he discussed what to do about this although they did not mention this to Breslaw.¹⁴⁴⁸ Hubbell asserted that before they came to a decision as to what to do, the Frost lawsuit settled.¹⁴⁴⁹ On April 20, 1995, Hubbell

¹⁴⁴² Id. at 8.

¹⁴⁴³ Id.

¹⁴⁴⁴ Id. at 7.

¹⁴⁴⁵ Id. at 7-8. Jim Birch corroborated Boe's version of events. Birch 3/20/98 Int. at 1. See Speed's handwritten notes of meeting with Patricia Heritage (Apr. 4, 1990) (Doc. Nos. RIC-038818 through 23). Rick Donovan's testimony corroborated Boe's version of events. Donovan 1/21/98 GJ at 64-65.

¹⁴⁴⁶ Breslaw 7/18/95 RTC-OIG Statement at 9-10.

¹⁴⁴⁷ Hubbell 3/16/95 FDIC-OIG Int. at 14.

¹⁴⁴⁸ Id.

¹⁴⁴⁹ Id.

repeated a similar story to RTC-OIG investigators.¹⁴⁵⁰

POM -- In May 1990, Hubbell concealed yet another conflict from the RTC. On May 4, 1990, Webb Hubbell and the Rose Law Firm filed a patent infringement and anti-trust lawsuit for Seth Ward's company, POM, against Duncan Industries.¹⁴⁵¹ Representing Ward's company was a significant potential conflict of interest for Rose because Ward was still a plaintiff in a lawsuit against Rose's client, Madison Guaranty's conservator, the RTC.

Hubbell did not disclose Rose's representation of POM to April Breslaw. Hubbell admitted that the June 28, 1989 letter he drafted to the RTC to detail his relationship with Ward was "artfully crafted" because his letter referred only to Ward individually, omitting reference to Hubbell's work for Ward's company,¹⁴⁵² even though Hubbell admitted he was POM's lawyer, before, during, and after the letter.¹⁴⁵³ However, in interviews with the FDIC and RTC OIGs, Hubbell asserted that the letter was not crafted to mislead anyone.¹⁴⁵⁴ In 1994, April Breslaw

¹⁴⁵⁰ See Hubbell 4/20/95 RTC-OIG/OIC Int. at 14-15, 21-22.

¹⁴⁵¹ See RTC-OIG Records Examination (June 21, 1994) (indicated that RTC-OIG agents Philip L. Sprague and Patrick S. Durkin examined court records for the United States District Court of the Eastern District of Arkansas, Western Division in the case of POM, Inc. v. Duncan Indus. LR-C-90-293 (E.D. Ark.); Ward II 3/30/95 RTC/OIG Int. at 2.

¹⁴⁵² Hubbell 2/1/95 Int. at 22.

¹⁴⁵³ Id.

¹⁴⁵⁴ Hubbell 4/20/95 RTC-OIG/OIC Int. at 16 ("HUBBELL said that the wording of the letter was not meant to be narrowly worded or to mislead anyone"); Hubbell 3/16/95 FDIC-OIG Int. at 7 ("He said he did not artfully word the letter to Breslaw, he just put down that he was not and would not represent either Ward in their disputes with Madison. He did not think that he was prohibited from representing the Wards on other matters").

confirmed for RTC-OIG investigators that she was unaware of Rose's POM work.¹⁴⁵⁵

e. McDougal's Criminal Trial and the Frost Matter.

For Rose, Jim McDougal's indictment in 1989 and trial in 1990 "complicated the [Frost] case greatly."¹⁴⁵⁶ Gary Speed at Rose drafted a memorandum that discussed the indictment,¹⁴⁵⁷ noting that "[t]he acts alleged by the indictment of McDougal and the Henleys begin with the approval of the purchase by Madison Financial Corporation (MFC) of the Castle Grande Estates property for \$600,000 on September 9, 1985 and flow from there."¹⁴⁵⁸ Speed also observed, "[a]ll the other fraudulent acts alleged occurred in 1986."¹⁴⁵⁹ The Rose Law Firm had represented Seth Ward and Madison Financial at the October 4, 1985 closing with IDC.

While no one ever deposed McDougal in Frost, McDougal did meet with the attorney for

¹⁴⁵⁵ Breslaw 6/8/94 RTC-OIG Int. at 18.

¹⁴⁵⁶ Donovan 1/6/98 GJ at 83. Donovan also testified of McDougal's indictment:

I didn't think it made a whole heck of a lot of difference the fact he had been indicted. It was all in the newspapers. The fact that clearly we were not going to be able to say that these insiders were lily-white clean and ran this institution in a fine way -- I mean, that was clear after looking through these files. It was clear after listening to the evidence there. So it didn't make any difference. Our case had been demonstrably hurt by the indictment. And even without the indictment, there was enough shenanigans in the files themselves that I did not feel like that we were going to be able to say, "Here is this fine, upstanding management who were not served right by their auditors."

Id. at 86.

¹⁴⁵⁷ Memo from Gary N. Speed, Rose Law Firm Attorney, to RTC/Madison Litigation Team (Mar. 28, 1994) (Doc. Nos. 105-00077228 through 77239); Speed 3/17/98 GJ at 57-60.

¹⁴⁵⁸ Memo from Gary N. Speed, Rose Law Firm Attorney, to RTC/Madison Litigation Team at 3 (Mar. 28, 1994) (Doc. No. 105-00077230).

¹⁴⁵⁹ Id.

Frost, Peter Kumpe, who concluded that McDougal would be helpful to Frost's defense.¹⁴⁶⁰ One of Frost's defenses to the RTC's accounting malpractice claim was that Madison Guaranty's officers and directors were corrupt, and that any losses to Madison Guaranty were the fault of the "crooks running the institution."¹⁴⁶¹ According to Rick Donovan, Rose felt that "the other side certainly would" depose McDougal because "they wanted to paint McDougal as the criminal" and "we had nothing to gain and everything to lose by that man being on the witness stand."¹⁴⁶² Donovan's testimony is supported by Gary Speed: "McDougal was not seen as helpful to the case because McDougal did not like the government, McDougal had lost his savings and loan and his ability to deal, and [Rose] was afraid of anything McDougal might say."¹⁴⁶³ Hubbell billed the RTC for "conferences" with McDougal's criminal defense lawyer Heuer on at least four occasions "re: McDo[u]gal" from July 17, 1990 to September 5, 1990.¹⁴⁶⁴

f. Beverly Bassett Schaffer Criticized Rose for its Conflict of Interest in Frost.

In 1990, Rose was considering calling Beverly Bassett Schaffer as a witness.¹⁴⁶⁵ Hubbell telephoned Bassett Schaffer to advise her that he either had a subpoena or was going to issue a

¹⁴⁶⁰ Kumpe 2/3/98 GJ at 4-5.

¹⁴⁶¹ Donovan 1/6/98 GJ at 81.

¹⁴⁶² Id. at 98-99.

¹⁴⁶³ Speed 1/29/98 Int. at 3.

¹⁴⁶⁴ Rose Law Firm Billing Records (Aug.-Oct. 1990) (Doc. Nos. 105-00083428; 105-00083432; 105-00083435 through 83436; 105-00083411).

¹⁴⁶⁵ On August 7, 1990, Hubbell billed the RTC for a "telephone conference with B. Bassett." Rose Law Firm Billing Records (Aug. 7, 1990) (Doc. No. 105-00083422). Bassett Schaffer testified that her conversations with Hubbell occurred in "roughly July or August of

subpoena to her for testimony at trial. According to Bassett Schaffer, in this conversation she

asked him if he was not aware of that previous representation [Rose's work for Madison Guaranty] and asked him how it was that he could be representing the government now for -- in a lawsuit accusing Frost & Company of malpractice and negligence covering the very same audits that were supplied to us by the Rose Law Firm in 1985 in support of their effort to get the brokerage firm approved and to show us the financial condition of the institution for purposes of the preferred stock offering. And I just expressed my disapproval that I didn't appreciate him putting the State in that position, involving the State in that lawsuit, after their own law firm, whose partner was the governor's wife who represented Madison before the department and now sought to put the State and my office, me possibly, in a bad light in a civil lawsuit to recover for the government from an accounting firm who is their partner, I mean, essentially worked with them presenting what they did to our office. And I just told him I didn't appreciate it, wasn't going to cooperate. And he -- when I asked him about the previous representation and wasn't it true that he had previously represented -- that their firm had, and he didn't answer. And I said he needed to go talk to Rick Massey, and that they had files and that we had files that clearly showed they had done that.¹⁴⁶⁶

Bassett Schaffer was "angry with Webb Hubbell," so she called Frost's lawyer, Peter Kumpe, and "told Peter . . . what Webb had done . . . and asked Peter if he was aware that the Rose Law Firm had represented Madison before the [Arkansas Securities] department throughout 1985, and that there were documents and files to that effect, numerous documents that would reflect that at the department."¹⁴⁶⁷ Kumpe issued a subpoena and obtained the records.¹⁴⁶⁸ Bassett Schaffer later received a call from a Rose paralegal telling her that the case settled.¹⁴⁶⁹

When Hubbell was confronted with Basset Schaffer's claims, he testified:

1990." Bassett Schaffer 11/8/95 GJ at 135.

¹⁴⁶⁶ Bassett Schaffer 11/8/95 GJ at 131-32.

¹⁴⁶⁷ Id. at 133.

¹⁴⁶⁸ Id. at 134.

¹⁴⁶⁹ Id. at 135.

Congressman, as I said before, I don't recall the specifics of that conversation. I know that I talked to Ms. Schaffer about this case because she would be a critical witness in the case. I don't recall the specifics of it, but she's a very fine person and I don't doubt what she said is true.

I think I said that either the documents were provided to me first or that she told me. So if she said she was the first one to tell me, I don't have any reason to doubt that. I just don't have any recollection of that first conversation.¹⁴⁷⁰

There is no evidence that Hubbell informed Breslaw or anyone else at the FDIC or the RTC about Beverly Bassett Schaffer's comments to him. Neither Rick Donovan nor Gary Speed learned of her comments to Hubbell about her view of Rose's conflict.¹⁴⁷¹

g. Patricia Heritage Was Deposed Shortly before Frost Settled.

Frost was scheduled for trial on March 25, 1991. The parties reached a tentative settlement agreement by mid-February 1991, which was formalized on April 8, 1991.¹⁴⁷² Frost agreed to pay the RTC \$1.025 million.¹⁴⁷³

During the time that the parties were negotiating the settlement, Pat Heritage was deposed. On January 24, 1991, counsel for the Frost defendants served a Notice To Take Oral

¹⁴⁷⁰ House Banking Comm. Hearing, supra note 997, at 51 (Aug. 10, 1995) (testimony of W. Hubbell) (quoting Bassett Schaffer's Inspector General statement).

¹⁴⁷¹ Donovan 1/21/98 GJ at 47-48; Speed 3/17/98 GJ at 35.

¹⁴⁷² Breslaw 10/23/95 Senate Banking Comm. Depo. at 241-42; Breslaw 6/8/94 RTC-OIG Statement at 13 (sworn testimony); Donovan 1/21/98 GJ at 44-45; Memo from April Breslaw, RTC Attorney, to Gerald Jacobs, Special Counsel to the RTC, and William Roelle, Deputy Executive Director (Feb. 26, 1991).

¹⁴⁷³ FDIC-OIG Report, Alleged Conflicts of Interest by the Rose Law Firm, Case No. IO-94-096), Vol. 1 at 17 (July 28, 1995).

Deposition naming Pat Heritage, among others.¹⁴⁷⁴ One week later counsel for the Frost defendants filed a Motion To Compel Discovery or Exclude Testimony.¹⁴⁷⁵ The Motion To Compel complained that "the RTC is withholding specific loan files pertaining to loans made to Seth Ward."¹⁴⁷⁶ The Motion To Compel listed no other loan file by name.¹⁴⁷⁷

April Breslaw issued an authority to settle memorandum on February 26, 1991,¹⁴⁷⁸ recommending settlement of Frost for \$1.025 million.¹⁴⁷⁹ The next day defense attorneys deposed Heritage for just over an hour at the Rose Law Firm.¹⁴⁸⁰ Rick Donovan from Rose attended the deposition on the RTC's behalf.¹⁴⁸¹ Heritage testified that she began working at Madison Guaranty in June of 1985 as an "[a]dministrative assistant to John Latham," doing "anything John wanted me to do."¹⁴⁸² Heritage testified that she eventually became a "collection officer" at

¹⁴⁷⁴ Notice to Take Oral Deposition, RTC v. Frost, No. LR-89-216 (E.D. Ark. Jan. 24, 1991) (Doc. Nos. CT-00000795 through 796).

¹⁴⁷⁵ Motion to Compel Discovery or, in the Alternative, to Exclude Testimony, RTC v. Frost, No. LR-89-216 (E.D. Ark. Jan. 31, 1991) (Doc. Nos. 85-00094672 through 94674).

¹⁴⁷⁶ Statement in Support of Motion to Compel Discovery or Exclude Testimony, RTC v. Frost, No. LR-89-216 (E.D. Ark. Jan. 31, 1991) (Doc. Nos. 85-00094684 through 94687).

¹⁴⁷⁷ Motion to Compel Discovery or, in the Alternative, to Exclude Testimony, RTC v. Frost, No. LR-89-216 (E.D. Ark. Jan. 31, 1991) (Doc. Nos. 85-00094672 through 94674); see Kumpé 2/3/98 GJ at 10 ("I believe that there were other files that were on that [expert witness bad loan] list, but certainly Seth Ward was the only one identified by name").

¹⁴⁷⁸ Memo from April Breslaw, RTC Attorney, to Gerald Jacobs, Special Counsel to the RTC, and William Roelle, Deputy Executive Director (Feb. 26, 1991).

¹⁴⁷⁹ Id. at 1.

¹⁴⁸⁰ Heritage 2/27/91 Depo. at 1, 39, RTC v. Frost, No. LR-89-216 (E.D. Ark.) (Doc. Nos. 557-00003348, 3386).

¹⁴⁸¹ Rose Law Firm Billing Records (Aug. 21, 1990) (Doc. No. 105-00083441).

¹⁴⁸² Heritage 2/27/91 Depo. at 6-7, RTC v. Frost, No. LR-89-216 (E.D. Ark.) (Doc. Nos.

Madison.¹⁴⁸³ In that capacity, "there were certain people [she] was not allowed to send letters to, certain people [she] was not allowed to call."¹⁴⁸⁴ "I couldn't send letters to any of the Henleys, McDougals, friends of the McDougals," Heritage explained. These "friends and relatives"¹⁴⁸⁵ included Seth Ward.¹⁴⁸⁶

Heritage left Madison Guaranty in June 1987, graduated from law school in 1989, and became an attorney at Rose.¹⁴⁸⁷ Heritage testified she did no work on Frost while at Rose.¹⁴⁸⁸ Heritage also said she agreed with "most of" the content of the Borod & Huggins Report.¹⁴⁸⁹ Heritage explained that she prepared Madison Financial board minutes at Latham's direction even though the meetings had not occurred.¹⁴⁹⁰ "John had them -- had them prepared so that they would be -- there would be a written record of the [Madison Financial]'s business transactions for the examiners to review," Heritage testified.¹⁴⁹¹

Heritage explained that for Madison Guaranty financial real estate project loans Madison

557-00003353-54).

¹⁴⁸³ Id. at 18 (Doc. No. 557-00003365).

¹⁴⁸⁴ Id.

¹⁴⁸⁵ Id.

¹⁴⁸⁶ Id. at 27 (Doc. No. 557-00003374).

¹⁴⁸⁷ Id. at 4, 5, 7, 27 (Doc. Nos. 557-00003351 through 3352, 3354, 3374).

¹⁴⁸⁸ Id. at 29 (Doc. No. 557-00003376).

¹⁴⁸⁹ Id. at 12 (Doc. No. 557-00003359).

¹⁴⁹⁰ Id. at 12-13 (Doc. Nos. 557-00003359 through 60). Heritage also said of Don Denton that, "I think Don had a good background and knew what he was doing, yes." Id. at 28 (Doc. No. 557-00003375).

¹⁴⁹¹ Id. at 14 (Doc. No. 557-00003361).

Financial used appraiser Robert Palmer who "never went out and looked at any of the properties."¹⁴⁹² "He just, you know, sat in his office and had his secretary type up an appraisal," Heritage said.¹⁴⁹³ "[A]nd whatever value -- I mean, it was common knowledge, I think, that Robert was an appraiser that you could say, 'I need something to appraise at \$80,000,' and he would appraise it at \$80,000."¹⁴⁹⁴ No one at Rose told Breslaw about the Heritage deposition.¹⁴⁹⁵

Shortly afterwards, the Rose firm settled the Frost case for \$1,025,000.¹⁴⁹⁶ Rose obtained significant additional work from the RTC after the case settled.¹⁴⁹⁷

¹⁴⁹² Id. at 31-32 (Doc. No. 557-00003378 through 79).

¹⁴⁹³ Id. at 31.

¹⁴⁹⁴ Id. In December 1994, Palmer pleaded guilty to one felony count of conspiracy under 18 U.S.C. § 371 relating to his preparing backdated appraisals for Madison Guaranty. United States v. Palmer, No. LR-CR-94-240 (E.D. Ark.).

¹⁴⁹⁵ Breslaw 2/23/95 RTC-OIG Int. at 4; Speed 6/30/95 RTC-OIG Statement at 9-10. Breslaw did have access to the Borod & Huggins Report during 1989, and that report discussed Heritage's work at Madison Guaranty. See Hubbell 4/20/95 RTC-OIG/OIC Int. at 19-21 (discussing the Pat Heritage matter).

¹⁴⁹⁶ FDIC-OIG Report, Alleged Conflicts of Interest by the Rose Law Firm, Case No. I0-94-096, Vol. 1 at 17 (July 28, 1995).

¹⁴⁹⁷ According to the RTC's 1995 report on Rose conflicts of interest, Rose represented 17 institutions, including Madison Guaranty, in RTC matters, and failed to disclose actual or potential conflicts of interest for 7 of those institutions. RTC-OIG Report, Investigation Concerning Rose Law Firm, Case No. WA-94-0016, at I-3 (Aug. 3, 1995). In addition, Rose actually represented a party in a matter adverse to the RTC. Id. In addition to the actual or potential conflicts of interest involving Madison Guaranty, Rose also failed to disclose actual or potential conflicts of interest regarding other institutions, including the following:

Home Federal Savings and Loan Association: In August 1991, the RTC engaged Rose to analyze and bring actions against former directors and officers for their parts in the failure of Home Federal. RTC-OIG Report, Investigation Concerning Rose Law Firm, Case No. WA-94-0016, at I-19 (Aug. 3, 1995). On June 14, 1991, the RTC sent a list of potential conflicts regarding Home Federal to Rose; that list included Jerry Grisby, a former Chairman of the Board and former Director of Home Federal. Id. Rose did not disclose that Grisby had been a Rose

client -- the firm had represented him in two separate matters involving financial institutions. Id. The RTC paid Rose \$4,965 for its representation regarding Home Federal. Id. In 1995, Hubbell told the RTC that the conflicts certification was incorrect. He also stated that he did not sign the document, but had authorized his signature to be put on it. Hubbell 4/20/95 RTC-OIG Int. at 4.

Independence Federal Savings and Loan Association: Independence Federal entered conservatorship in February 1989, and the RTC assumed responsibility for that conservatorship after the enactment of FIRREA in August 1989. RTC-OIG Report, Investigation Concerning Rose Law Firm, Case No. WA-94-0016, at I-20 (Aug. 3, 1995). In 1990, Rose represented Gus Blass III in his settlement of a defaulted \$4 million loan from Independence Federal. Id. The RTC established a loss due to this loan of more than \$2.3 million. Id. In July 1991, in an effort to solicit business regarding Independence Federal, Rose certified that it had no conflicts regarding the institution, although Blass's name was on the list of potential conflicts provided by the RTC. Id. The RTC hired Rose and in February 1992, Rose filed suit against 10 individuals involved in Independence Federal's failure. Id. The complaint itself identified the loan to Blass as one having caused losses to Independence Federal. Id. at 20-21. Independence Federal's insurer ultimately settled by paying the RTC \$500,000, and the RTC paid Rose \$145,716 for its services in the matter. Id. Hubbell later conceded that Rose should have informed the RTC about its prior representations. Hubbell 4/20/95 RTC-OIG Int. at 6.

Western Gulf Savings and Loan Association: In January 1989, Western Gulf sued Commercial Bank & Trust Company. Two months later, in March 1989, Western Gulf entered conservatorship, and in August 1989, the RTC took over as its conservator, thus becoming its receiver when the institution failed and went into receivership in November 1990. RTC-OIG Report, Investigation Concerning Rose Law Firm, Case No. WA-94-0016, at I-21 (Aug. 3, 1995). In October 1989, Rose became co-counsel with another firm representing Commercial Bank in its litigation against Western Gulf. Id. Herb Rule from Rose represented Commercial Bank, and argued on Commercial Bank's behalf before the Court of Appeals in September 1991. Id. The RTC learned of Rose's representation of Commercial Bank in November 1991, and Rule took the position that until Western Gulf entered receivership, Rose neither had no conflict or duty of disclosure. Id. at I-21 to I-22. On the other hand, in 1995, Hubbell stated to the RTC that there had been a conflict that should have been disclosed to the RTC. Hubbell 4/20/95 RTC-OIG Int. at 3.

First Federal Savings and Loan Association: In May 1991, the RTC hired Rose to represent its interest in First Federal by bringing suit against the institution's former directors and officers. RTC-OIG Report, Investigation Concerning Rose Law Firm, Case No. WA-94-0016, at I-22 (Aug. 3, 1995). Rose did not disclose two different potential conflicts of interest: In 1988, Rose had represented parties adverse to First Federal in two separate law suits, but in May 1991, Rose did not disclose this past representation to the RTC. Id. Interestingly, in 1989, both of

D. 1992: Governor Clinton's Presidential Campaign.

Chapter 1 described the relationship between the Rose Law Firm and Madison Guaranty. The earlier sections of this Chapter described how Hubbell first concealed this connection from the FDIC when he was hired to represent the FDIC and, later, concealed this connection from FDIC and RTC investigators when he was asked about it.

The scrutiny of the connection between the Rose Law Firm and Madison Guaranty arose as a result of Governor Clinton's successful campaign for President in 1992. Governor Clinton's candidacy thrust both him and his family into the public spotlight. This section details the initial

these potential conflicts had been disclosed to the FDIC when the FDIC was First Federal's conservator, and Rose was soliciting FDIC work. Id. The RTC paid Rose more than \$135,000 for its work regarding First Federal. Id.

Savers Savings and Loan Association: Savers was an institution in RTC conservatorship. Beginning in October 1990, Rose represented Fairfield Communities in its Chapter 11 bankruptcy proceeding. Savers was a creditor of Fairfield Communities. RTC-OIG Report, Investigation Concerning Rose Law Firm, Case No. WA-94-0016, at I-23 (Aug. 3, 1995). Rose did not disclose its work for Fairfield Communities to the RTC or seek a waiver from the RTC for any potential conflict. Id. During the RTC's investigation, Rose's counsel told the RTC that Rose did not perceive its representation of Fairfield Communities as adverse to the RTC. Id. While Rose was representing Fairfield Communities, it also represented Savers and the RTC in a separate bankruptcy proceeding. Id.

Arkansas Federal Savings Bank: In May 1991, the RTC hired Rose to analyze whether it had viable claims against the officers and directors of Arkansas Federal. RTC-OIG Report, Investigation Concerning Rose Law Firm, Case No. WA-94-0016, at I-24 (Aug. 3, 1995). Rose certified that it had no conflicts in the representation, but two of the names on the list of potential conflicts that the RTC sent to Rose were in fact Rose clients. Id. Moreover, during the time when Rose represented the RTC's interest in Arkansas Federal, Herb Rule represented a debtor of the institution in an attempted work out. Id. Rose earned almost \$25,000 in fees from the RTC for its work on the Arkansas Federal matter. Id. In 1995, Hubbell conceded that Rose should have informed the RTC about its prior representation of parties in potential conflict. Hubbell 4/20/95 RTC-OIG Int. at 5.

reaction of Hubbell, Vince Foster, and Mrs. Clinton to that spotlight when it came to focus on the Rose Law Firm.

1. The Campaign Reacts to Media Scrutiny Over Hillary Rodham Clinton's Representation of Madison Guaranty.

a. February 11, 1992.

On February 11, 1992, New York Times investigative reporter Jeff Gerth went to the Arkansas Securities Department ("ASD") to review its public files of Madison Guaranty Savings and Loan and Madison Financial Corporation records. Gerth was able to review and make copies of the records, and Securities Commissioner Joe Madden approved the request.¹⁴⁹⁸

Madden also reviewed the records Gerth pulled and came across several letters back and forth between the Securities Department and the Rose Law Firm, including some referring to Hillary Rodham Clinton.¹⁴⁹⁹ Madden called the Governor's office because of ramifications for the presidential campaign.¹⁵⁰⁰ Madden told Betsey Wright at the Clinton campaign that a reporter from the New York Times was there looking at Madison Guaranty files and that he was sure the reporter would be interested in a letter from Arkansas Securities Commissioner Beverly Bassett

¹⁴⁹⁸ Arkansas Securities Department Review of Public Files Log Sheet (Feb. 11, 1992) (Doc. No. LR-00000007); see Madden 11/4/97 GJ at 23. Madden was appointed Arkansas Securities Commissioner by Governor Clinton and served in that capacity from January 4, 1991 to September 9, 1996. Id. at 5-6, 8.

¹⁴⁹⁹ Madden 11/4/97 GJ at 27-28. Madden recalled an opinion letter from the Rose Law firm that referenced contacting Hillary Rodham Clinton or Rick Massey, and a letter from Beverly Bassett to Mrs. Clinton addressed "Dear Hillary." Id. at 28.

¹⁵⁰⁰ Id. at 26-27.

to Mrs. Clinton, addressing her, "Dear Hillary."¹⁵⁰¹ Madden received a return call from campaign staffer Loretta Lynch, who asked to look at the records reviewed by the reporter and copies were given to her.¹⁵⁰²

b. Gathering Information at the Rose Law Firm.

The Clinton campaign, assisted by Vince Foster and Webb Hubbell at Rose,¹⁵⁰³ began gathering information on Mrs. Clinton's Madison work. On February 12, 1992, the day after Gerth obtained records at the Securities Department and the campaign was notified, the accounting office at the Rose Law Firm printed a copy of the "Client Billing & Payment History" relating to Hillary Clinton's Madison Guaranty work.¹⁵⁰⁴ Hubbell and Foster retrieved the Madison accounting and client files from the firm's remote storage facility.¹⁵⁰⁵ On February 14, 1992, Rose records management employee Mary Russell, checked out the Madison Guaranty

¹⁵⁰¹ Id. at 28-30.

¹⁵⁰² Madden 11/4/97 GJ at 30.

¹⁵⁰³ Webb Hubbell and Vince Foster served as the liaisons between the law firm and the campaign. Hubbell 12/19/95 GJ at 81-82. On at least one matter, Bill Kennedy was the only other Rose Law Firm employee who acted as a liaison between the firm and the campaign. Id. at 82. Hubbell was also charged with answering press inquiries that were directed to the firm instead of the campaign. Id.

¹⁵⁰⁴ Rose Law Firm Client Billing and Payment History (runoff date Feb. 12, 1992) (Doc. Nos. DEK014936 through 40). Ronald Clark, the Rose chief operating officer testified that these billing records had a run date of February 12, 1992 at 8:41 a.m., which meant that the report was printed off the system on that date. Clark 12/2/97 GJ at 4, 93. Clark says anyone at the firm could have asked the accounting department to print out a billing and payment history for any client. Id.

¹⁵⁰⁵ Hubbell 12/19/95 GJ at 91-92.

accounting records for 1985 to 1987.¹⁵⁰⁶ These included files labeled: "'85 Madison Guaranty," "'86 (M's)," and "87 (M's) Paid Client."¹⁵⁰⁷ On February 21, 1992, Russell also checked out records relating to Madison Bank and the Bank of Kingston from 1981 and 1982.¹⁵⁰⁸ These included "81 & 82 B's and K's," "Madison Bank" and "Bank of Kingston."¹⁵⁰⁹ These two sets of files involved only Madison-related work and filled 1-2 bankers boxes of 3-4 feet in length.¹⁵¹⁰ The files included the bills and statements for legal services that had been sent to Madison Guaranty.¹⁵¹¹

Hubbell admitted that he reviewed the Madison Guaranty billing records during the 1992 campaign in testimony to the Senate Banking Committee. He also admitted reviewing Hillary Clinton's bills for multiple telephone conferences with Seth Ward on the IDC matter --knowledge

¹⁵⁰⁶ Rose Law Firm Accounting Department Check Out Logs (Feb. 1992) (Doc. Nos. 105-00054217, 54214). Russell 4/16/96 GJ at 4-6, 23-24.

¹⁵⁰⁷ Rose Law Firm Accounting Department Check Out Log (Feb. 1992) (Doc. No. 105-00054214).

¹⁵⁰⁸ Id. (Doc. No. 105-00054214 through 54215).

¹⁵⁰⁹ Id.

¹⁵¹⁰ Hubbell 12/19/95 GJ at 92-93.

¹⁵¹¹ Id. at 94-95. In the subsequent prosecution of Webb Hubbell for concealing the Rose Law Firm conflicts from the FDIC and RTC, it proved significant that he reviewed the Rose Law Firm's Madison Guaranty billing records during the 1992 campaign and that he actively participated in providing information to the campaign and to the national media about the Rose-Madison Guaranty relationship. House Banking Comm. Hearing, supra note 997, at 54-55 (Aug. 10, 1995) (testimony of W. Hubbell) ("I was involved in gathering information, disclosing what information [about Mrs. Clinton's representation of Madison] we could to the campaign. . . . I had been designated by the firm . . . as the spokesperson for the firm with regard to campaign issues"). Shortly thereafter, in late 1993 and early 1994, Hubbell made statements to FDIC attorneys about his knowledge (or lack of knowledge) regarding the relationship of Rose and Madison Guaranty prior to the Frost case.

Hubbell later failed to disclose to the FDIC Legal Division.¹⁵¹²

Hubbell also later acknowledged that in early 1993 when he left Little Rock for Washington, he and Vince Foster took Rose Law Firm files from Rose to Washington.¹⁵¹³ He said he took the files "to maintain their integrity."¹⁵¹⁴ Hubbell testified that he never disclosed the existence of the Rose files to the FDIC Legal Division Investigators.¹⁵¹⁵

c. Early Campaign Investigation -- February 11 to 19.

Clinton campaign staffer Loretta Lynch compiled background information in a memorandum beginning on February 18, 1992.¹⁵¹⁶ This memorandum included information that people told her about Jim McDougal, the Clintons' investment in Whitewater Development, the Rose Law Firm's Madison Guaranty representation, and tasks that needed to be completed.¹⁵¹⁷ The memorandum noted that Gerth contacted Webb Hubbell on February 18, 1992, focusing on four issues:¹⁵¹⁸

¹⁵¹² Senate Whitewater Comm. Hearing, *supra* note 147, at 20-21 (Feb. 7, 1996) (testimony of W. Hubbell). This testimony relates to Hubbell's interview on January 11, 1994 with Jack Smith and John Downing, which we discuss below

¹⁵¹³ *Id.* at 136-37 (testimony of W. Hubbell).

¹⁵¹⁴ *Id.* at 137 (testimony of W. Hubbell). "I did not consider them my property, but I took them to Washington," Hubbell later admitted. *Id.* at 140 (testimony of W. Hubbell).

¹⁵¹⁵ *Id.* at 141-46 (testimony of W. Hubbell).

¹⁵¹⁶ Lynch 2/1/96 GJ at 7-8, 12; Draft memo from Loretta Lynch, Clinton Campaign staff to David Wilhelm and Bruce Reed, Clinton Campaign staff (Feb. 18, 1992) (Doc. Nos. 263-00000348 through 60). Lynch testified that this document spanned from February 18 until February 22, 1992. Lynch 2/1/96 GJ at 13.

¹⁵¹⁷ Draft memo from Loretta Lynch, Clinton Campaign staff, to David Wilhelm and Bruce Reed, Clinton Campaign staff (Feb. 18, 1992) (Doc. Nos. 263-00000348 through 60).

¹⁵¹⁸ Memo from Loretta Lynch, Clinton Campaign staff, to David Wilhelm and Bruce

Gerth called Webb 2/18: focus on four issues: (1) Rose firm represented Madison -- (HRC brought it to the firm); (2) any firm policy re: HRC doing work where she had direct contact with the state (file indicates that HRC had some minimal contact with B Bassett) (3) representation of the RTC after they took over Madison (disclosed and no problem) (4) terms of the settlement with the accounting firm that they sued and Webb told him that they were confidential. Gerth had a lot of information when he talked to Webb -- he also mentioned the NYT reporter had been down here for a few weeks on the Madison Guaranty issue.¹⁵¹⁹

Lynch reviewed all the documents Gerth saw at the ASD.¹⁵²⁰ Among the papers, Lynch noticed the Rose letter to Beverly Bassett, and Bassett's "Dear Hillary" reply.¹⁵²¹ This caused Lynch to examine the extent of work performed by both Mrs. Clinton and Rick Massey for Madison Guaranty.¹⁵²² By February 20, 1992, Lynch spoke with Beverly Bassett Schaffer.¹⁵²³ According to Lynch's notes, Bassett Schaffer told her:

In 1985, after BB was Commissioner, the Rose Law Firm's involvement was through Rick Massey -- to go raise capital -- had been told repeatedly that they were not meeting their net worth requirements by the Federal Home Loan Bank Board. . . . Letter was written by "The Rose Law Firm" with a contact line of Rick Massey or HRC.¹⁵²⁴

Additionally, Bassett Schaffer explained that there had been at least one contact between Mrs.

Reed, Clinton Campaign staff (Feb. 18, 1992) (Doc. No. 263-00000352).

¹⁵¹⁹ Id.

¹⁵²⁰ Lynch 2/1/96 GJ at 15.

¹⁵²¹ Id. at 16-17.

¹⁵²² Id.

¹⁵²³ Schaffer 11/8/95 GJ at 139; see Memo from Loretta Lynch, Clinton Campaign staff member, to David Wilhelm and Bruce Reed (Feb. 18, 1992) (Doc. No. 263-00000355).

¹⁵²⁴ Memo from Loretta Lynch, Clinton Campaign staff member, to David Wilhelm and Bruce Reed (Feb. 18, 1992) (Doc. No. 263-00000355).

Clinton and herself on Madison Guaranty-related issues.¹⁵²⁵

d. Susan Thomases' Efforts -- February 20 to 23.

Susan Thomases, a long time friend of the Clintons, was asked by the campaign to respond to Jeff Gerth's questions about the Clintons' Whitewater investment and Mrs. Clinton's representation of Madison Guaranty.¹⁵²⁶ Thomases called Gerth to determine what he was investigating.¹⁵²⁷ Gerth inquired how the relationship between Rose and Madison Guaranty "came about."¹⁵²⁸ Thomases's annotated notes of this conversation include Mrs. Clinton's responses.¹⁵²⁹ Mrs. Clinton said Rick Massey, then a Rose associate and friend of Madison Guaranty President John Latham, brought the business to the firm.¹⁵³⁰

On February 21, 1992, Thomases told Lynch what she had learned from Mrs. Clinton. Mrs. Clinton said she was the billing partner because "McDougal insisted that she be the contact person."¹⁵³¹ Lynch's notes reflect that Thomases told her that "apparently it was Latham coming

¹⁵²⁵ Lynch 2/1/96 GJ at 17; see also Schaffer 11/8/95 GJ at 139. Before February 25, 1992, Bassett Schaffer had already spoken with Lynch two or three times. No one in the campaign ever told Bassett Schaffer about the connection between the Rose Law Firm's representation of Madison and the Whitewater development issues Gerth was looking at. Schaffer 11/8/95 GJ at 167-68.

¹⁵²⁶ Thomases 2/29/96 GJ at 22-23.

¹⁵²⁷ Id. at 34.

¹⁵²⁸ Id.

¹⁵²⁹ Id. at 35, 37; Thomases's handwritten notes (Feb. 20, 1992) (Doc. No. 790-00000018).

¹⁵³⁰ Thomases 2/29/96 GJ at 36; Thomases's handwritten notes (Feb. 20, 1992) (Doc. No. 790-00000018) ("HC: Latham who work for MacDougald [sic]. Rick Massey was friend of Latham. RM did the contact and sec[urity] lawyer").

¹⁵³¹ Lynch GJ 2/1/96 at 18; Memo by Loretta Lynch (undated) (Doc. No. 263-00000357).

because of Rick Massey According to HRC -- Latham asked Massey to represent Latham. McDougal said only if HRC were involved. Talk to Rick Massey about this. Partner at Rose Law Firm."¹⁵³²

Lynch and Thomases recognized that the Rose billing records would provide additional details on Mrs. Clinton's activities, which Lynch considered a "hot topic."¹⁵³³ She enlisted Thomases's help in "pressing" Hubbell to do a more thorough review of Rose's records.¹⁵³⁴

e. Webb Hubbell -- February 24.

Hubbell focused on Rose's securities representation for Madison Guaranty.¹⁵³⁵ He came across an opinion letter addressed to Beverly Bassett with a corporate signature of the "Rose Law Firm."¹⁵³⁶ There was no indication of who signed the letter, and Hubbell later stated that Rick Massey told him he did not think he had signed it.¹⁵³⁷ Hubbell also saw the reply letter of approval from Beverly Bassett Schaffer to Mrs. Clinton.¹⁵³⁸ Hubbell said he reviewed the client bills and noticed a "time entry" for Mrs. Clinton for a quarter of an hour call with Ms. Bassett

¹⁵³² Draft memo by Loretta Lynch, Clinton Campaign staff, to David Wilhelm and Bruce Reed, Clinton Campaign staff (Feb. 18, 1992) (Doc. No. 263-00000357, 359).

¹⁵³³ Lynch GJ 2/1/96 at 16.

¹⁵³⁴ Id. at 19-20; see Lynch memo (undated) (Doc. No. 263-00000357) ("We need to confirm that Massey did 95% of the work. Identify correspo[n]dence that went out over HRC's signature. Get all correspondence from the file. Does HRC have a chron file of her own?").

¹⁵³⁵ Hubbell 12/19/95 GJ at 96.

¹⁵³⁶ Id.

¹⁵³⁷ Id. As discussed in Chapter 1 of this Part, in fact Massey had signed the letter.

¹⁵³⁸ Id.

and Massey on the subject.¹⁵³⁹

Thomas spoke with Hubbell on February 24, 1992.¹⁵⁴⁰ According to her notes, Hubbell discussed the following:

1. preferred stock offering. 4/85, summer 1985. 2. Broker dealer. Massey had relationship w/ Latham and HC had relationship w/ MacD [sic]. Rick will say he had r[e]l[ationship] w/ Latham and had a lot to do w/ getting the client in. She did all the billing. Acc[ording] to time rec[ords], HC had numerous conf[erences] w/ Latham, Massey and McDougall [sic] on both transactions. She reviewed some doc. She had one t[elephone] c[onference] in 4/85 at beginning of the deal w/ Bev. Neither deal went through. Broker dealer was opposed by staff but approved by Bev under certain conditions which they never met. Preferred stock?! But for Massey it would not have been there. But HC was billing partner and attended conferences. He had major role ____ hrs vs HC's ____ hrs.¹⁵⁴¹

Thomas's notes say "acc to time rec" -- reflecting Thomas's understanding that Hubbell was relying on time records for this information.¹⁵⁴² Thomas, however, later said she was not sure whether Hubbell had the records in his possession at the time of their conversation, or whether his comments were based upon an earlier review of them.¹⁵⁴³

Lynch went to the Rose Firm on February 24, 1992, to discuss the Madison files and what

¹⁵³⁹ *Id.* at 93-97. In an OIC interview, Hubbell recalled the additional detail that his own investigation had established that the call came from Bassett to Massey and was transferred to Massey as he was sitting in Mrs. Clinton's office. Hubbell 2/1/95 Int. at 7.

¹⁵⁴⁰ Thomas 2/29/96 GJ at 43; Thomas's handwritten notes (Feb. 20, 1992) (Doc. No. 790-00000020).

¹⁵⁴¹ Thomas's handwritten notes (Feb. 20, 1992) (Doc. No. 790-00000020).

¹⁵⁴² Thomas 2/29/96 GJ at 46-47; Thomas's handwritten notes (Feb. 20, 1992) (Doc. No. 790-00000020).

¹⁵⁴³ Senate Whitewater Comm. Hearing, *supra* note 147, at 53 (Dec. 18, 1995) (testimony of S. Thomas).

work the Rose Firm had done for Madison Guaranty with Hubbell.¹⁵⁴⁴ Lynch said, "I was very specific the week before that, that because I had been given a lot of different answers, I wanted him to go check those billing records and the files."¹⁵⁴⁵ Hubbell told Lynch he had checked the billing records.¹⁵⁴⁶

Hubbell recounted for her what Rose had done for Madison Guaranty and Madison Bank, starting with the Bank of Kingston breach of contract dispute.¹⁵⁴⁷ As for representing Madison Guaranty before the Securities Department, Hubbell told Lynch that Mrs. Clinton was the billing attorney and that Rick Massey had a relationship with John Latham.¹⁵⁴⁸ Lynch's notes reflect that Hubbell also told her that: "20% of HRC was allocated to McDougal. - 10 - 15% of total # of hrs in matter from HRC. 200 hrs. total -- she had conversations with state employees according to time records - at least 1 conversations with BB - April of 1985 - conversation occurred."¹⁵⁴⁹ Lynch concluded from this that the campaign could not claim that Mrs. Clinton performed no work for Madison Guaranty.¹⁵⁵⁰

¹⁵⁴⁴ Lynch 2/1/96 GJ at 23.

¹⁵⁴⁵ Id. at 73-74.

¹⁵⁴⁶ Id. at 73.

¹⁵⁴⁷ Lynch 2/1/96 GJ at 23-24; Loretta Lynch handwritten notes (Feb. 24, 1992) (Doc. No. 263-00000711).

¹⁵⁴⁸ Lynch 2/1/96 GJ at 24; Loretta Lynch handwritten notes (Feb.24, 1992) (Doc. No. 263-00000711).

¹⁵⁴⁹ Loretta Lynch handwritten notes (Feb. 24, 1992) (Doc. No. 263-00000711). Lynch 2/1/96 GJ at 24-25 (Lynch interpreted her notes to reflect that, "Webb then told me that she, meaning Hillary, had conversations with state employees, according to the time records, at least one conversation with Beverly Bassett").

¹⁵⁵⁰ Lynch 2/1/96 GJ at 25-26.

Hubbell also told her about matters regarding Madison Guaranty involving a subscription agreement and a broker/dealer license, neither of which were accomplished.¹⁵⁵¹ Lynch said Hubbell reviewed other matters Rose did for Madison Guaranty that were not before the Securities Department.¹⁵⁵² According to Lynch's notes, one "involved [an] acquisition of [a] large tract of land toward Pine Bluff - Industrial Development Corporation property."¹⁵⁵³ The next matter involved Susan McDougal's interior decorating. According to Lynch, at that point she thought Susan McDougal had a firm.¹⁵⁵⁴

The last matter Hubbell discussed with Lynch was Rose's advice to Madison Guaranty about participation with Savers' Loans, which Lynch thought was a bank or financial

¹⁵⁵¹ Id. at 26. Loretta Lynch handwritten notes (Feb. 24, 1992) (Doc. No. 262-00000712). In conjunction with the "subscription agreement" entry in her notes, Lynch wrote, "Fulbright Trust was lined up to buy." Id. As discussed elsewhere, McDougal had his former employer, and sometimes investor, Senator Fulbright lined up to buy preferred stock of Madison Guaranty. There is no mention of Senator Fulbright in the Rose Law Firm billing records, meaning Hubbell must have received that information from another file or person.

¹⁵⁵² Lynch 2/1/96 GJ at 26-27; Loretta Lynch handwritten notes (Feb. 24, 1992) (Doc. No. 263-00000712).

¹⁵⁵³ Loretta Lynch handwritten notes (Feb. 24, 1992) (Doc. No. 263-00000712); Lynch 2/1/96 at 27.

¹⁵⁵⁴ Lynch 2/1/96 GJ at 27. Loretta Lynch handwritten notes (Feb. 24, 1992) (Doc. No. 263-00000712). The actual entry in the note reads: "also involved w/ conversations re: Susan's interior decorating." The only entry on the Rose Law Firm billing records of Madison Guaranty mentioning Susan McDougal was for a one hour entry for Mrs. Clinton on July 18, 1985 recorded under Matter 2 - Limited Partnership which reads: "Telephone conference with R. Massey (2); Telephone conference with S. McDougal (2); Review Memo." What Hubbell told Lynch indicates that in addition to looking at the billing records Hubbell had information either from files or talking with one or more other persons. Rose Law Firm Billing Record (July 18, 1985) (Doc. No. DEK014983).

institution.¹⁵⁵⁵ She and Hubbell also discussed Whitewater Development issues.¹⁵⁵⁶ Lynch's notes reflect that Hubbell told her: McDougal used to say that state offices were located in his S&L building; a federal examination report criticized some of Madison Guaranty's loans; the Frost accountants' clear opinion from 1985 and 1986 were the certified financials given to the Securities Department and regulators; suit against Frost for malpractice relating to those opinions was filed in 1987 or 1988; and in 1989, while Rose was representing Madison Guaranty for the RTC, Rose settled the case against Frost.¹⁵⁵⁷

f. Beverly Bassett Schaffer -- February 25 to 28.

Jeff Gerth called Beverly Bassett Schaffer, asking about Rose's representation of Madison Guaranty before the ASD, and whether Jim McDougal influenced her appointment as Arkansas Securities Commissioner.¹⁵⁵⁸ Bassett Schaffer called Charles Handley, still employed at the ASD.¹⁵⁵⁹ Handley confirmed that a reporter from the New York Times had made copies of documents from the Madison Guaranty files.¹⁵⁶⁰ She received copies of the documents Gerth had

¹⁵⁵⁵ Lynch 2/1/96 GJ at 27; Loretta Lynch handwritten notes (Feb. 24, 1992) (Doc. No. 263-00000712).

¹⁵⁵⁶ Lynch 2/1/96 GJ at 27-29; Loretta Lynch handwritten notes (Feb. 24, 1992) (Doc. No. 263-00000712 through 713).

¹⁵⁵⁷ Loretta Lynch handwritten notes (Feb. 24, 1992) (Doc. No. 263-00000713 to 714).

¹⁵⁵⁸ Memo from Beverly Bassett Schaffer to Jeff G[e]rth at 1-3 (Feb. 25, 1992) (Doc. Nos. 65-00000066 through 78); Schaffer 11/8/95 GJ at 137. Governor Clinton appointed Bassett Schaffer as the Arkansas Securities Commissioner in January 1985. Id. at 45. She held that position until she resigned in January 1991. Id. at 6-7.

¹⁵⁵⁹ Schaffer 11/8/95 GJ at 137.

¹⁵⁶⁰ Id.

copied.¹⁵⁶¹

Bassett Schaffer wrote two separate memoranda to Gerth, one on February 25, 1992,¹⁵⁶² and, following a second conversation with Gerth on February 26, 1992, another one on February 28, 1992,¹⁵⁶³ explaining her appointment and the actions taken by the Securities Department.¹⁵⁶⁴ Bassett Schaffer denied that McDougal influenced her appointment.¹⁵⁶⁵ She stated that approval for Madison Guaranty to issue preferred stock was based on what she still believed to be a correct interpretation of the law.¹⁵⁶⁶ As for the request of Madison Guaranty to engage in brokerage services, she stated that the Securities Department conditioned approval on Madison Guaranty's compliance with its net worth requirement.¹⁵⁶⁷ Because Madison Guaranty could not raise sufficient capital within the prescribed time frame, they never engaged in brokerage activities.¹⁵⁶⁸ Bassett Schaffer denied, "the involvement of the Rose Law Firm in these matters

¹⁵⁶¹ Id. at 137-38.

¹⁵⁶² Memo from Beverly Bassett Schaffer to Jeff G[e]rth at 1-3 (Feb. 25, 1992) (Doc. Nos. 65-00000066 through 78).

¹⁵⁶³ Memo from Beverly Bassett Schaffer to Jeff G[e]rth (Feb. 25, 1992) (Doc. Nos. 65-00000079 through 83).

¹⁵⁶⁴ Schaffer 11/8/95 GJ at 137-38, 140, 144. She gave copies of her memos to the Clinton campaign, but did not receive any campaign assistance in preparing them.

¹⁵⁶⁵ Memo from Beverly Bassett Schaffer to Jeff G[e]rth at 3 (Feb. 25, 1992) (Doc. No. 65-00000068). "I do not believe Jim McDougal, a man I have never met, had anything to do with my appointment." Id.

¹⁵⁶⁶ Memo from Beverly Bassett Schaffer to Jeff G[e]rth at 5-6 (Feb. 25, 1992) (Doc. No. 65-00000070 through 71).

¹⁵⁶⁷ Id. at 6-7 (Doc. No. 65-00000071 through 72).

¹⁵⁶⁸ Id. at 8 (Doc. No. 65-00000073).

influenced the Department's decisions in any way."¹⁵⁶⁹ She did not describe her contacts with Mrs. Clinton or the Rose Law Firm.¹⁵⁷⁰ She denied knowing that Madison Guaranty was insolvent when the stock offering was approved.¹⁵⁷¹

g. Other Campaign Activities Prior to Publication.

The campaign's knowledge of Mrs. Clinton's work on Madison Guaranty's preferred stock was summarized in a March 1, 1992 memorandum Lynch prepared for Jim Hamilton, Mickey Kantor, Jim Lyons, Kevin O'Keefe, and Susan Thomases.¹⁵⁷² The memorandum chronicled Rose's representation of Madison Guaranty, the requests to the Securities Department, and their subsequent decision making process, and Beverly Bassett's qualifications as Securities Commissioner.¹⁵⁷³ The memorandum included: "4/85 John Latham, Madison's CEO and friend of Rick Massey's, Rose Law Firm's securities lawyer, talks with Rick about Securities

¹⁵⁶⁹ Id.

¹⁵⁷⁰ Bassett Schaffer told Loretta Lynch that both Mrs. Clinton and Rick Massey represented Madison Guaranty. Schaffer 11/8/95 GJ at 168. Bassett Schaffer believed then that Madison was Mrs. Clinton's client, not Massey's client. Id. at 170.

¹⁵⁷¹ Memo from Beverly Bassett Schaffer to Jeff G[e]rth (Feb. 28, 1992) (Doc. No. 65-00000079 through 83).

¹⁵⁷² Memo from Loretta Lynch, Clinton Campaign staff, to Jim Hamilton, Mickey Kantor, Jim Lyons, Kevin O'Keefe, Susan Thomas[e]s (Mar. 1, 1992) (Doc. Nos. 263-00000048 through 50). Lynch sent a substantially identical chronology to Mrs. Clinton, Eli Segal, and Jim Blair on March 20 (Doc. Nos. DEK 009885 through 88).

¹⁵⁷³ Memo from Loretta Lynch, Clinton Campaign staff member, to Jim Hamilton, Mickey Kantor, Jim Lyons, Kevin O'Keefe, Susan Thomas[e]s at 1 (Mar. 1, 1992) (Doc. No. 263-00000048). The information concerning Bassett appears to be taken from her previous memos to Jeff Gerth. Memo from Beverly Bassett Schaffer to Jeff Gerth (Feb. 28, 1992) (Doc. No. 65-00000079 through 83).

representation. Madison hires the Rose Law Firm . . . (as per RM recollection)."¹⁵⁷⁴ The chronology included dates for the firm's opinion letter to the Securities Department on the preferred stock, the Department's internal memos, and the letter from Bassett to Mrs. Clinton agreeing with the opinion letter.¹⁵⁷⁵

On March 5, 1992, Lynch again spoke with Hubbell about Rose and Madison Guaranty.¹⁵⁷⁶ Hubbell told Lynch that he had spoken with Massey and Latham, and neither remembered how Madison Guaranty hired Rose.¹⁵⁷⁷ Lynch's notes also described Hubbell's conversations with the Clintons. The entry about Mrs. Clinton is unclear: "HRC -- ever conversed with Rose Law Firm/McDougal."¹⁵⁷⁸ The reference to Governor Clinton is clearer: "No recollection of having anything to do w/Rose law firm."¹⁵⁷⁹

¹⁵⁷⁴ Memo from Loretta Lynch, Clinton Campaign staff member, to Jim Hamilton, Mickey Kantor, Jim Lyons, Kevin O'Keefe, Susan Thomas[e]s at 1 (Mar. 1, 1992) (Doc. No. 263-00000049).

¹⁵⁷⁵ Id. at 3 (Doc. No. 263-00000050).

¹⁵⁷⁶ Lynch 2/1/96 GJ at 50.

¹⁵⁷⁷ Id. at 54; Loretta Lynch, handwritten notes (undated) (Doc. No. DEK008878). The notes stated: "Massey has no recollection." Id. Lynch later stated that Massey told Hubbell that "I don't remember this matter. I don't remember who did what." Lynch 2/1/96 GJ at 51; Memo from Loretta Lynch, Clinton Campaign staff member, to Jim Hamilton, Mickey Kantor, Jim Lyons, Kevin O'Keefe, Susan Thomas[e]s (Mar. 1, 1992) (Doc. Nos. 263-00000048 through 50). As for John Latham, the notes stated that he "had no recollection of hiring the Rose firm." (Doc. No. DEK008878).

¹⁵⁷⁸ Loretta Lynch, handwritten notes (undated) (Doc. No. DEK008878). Memo from Loretta Lynch, Clinton Campaign staff member, to Jim Hamilton, Mickey Kantor, Jim Lyons, Kevin O'Keefe, Susan Thomas[e]s (Mar. 1, 1992) (Doc. Nos. 263-00000048 through 50). Lynch is confident this is not a scrivener's error and could not have been "never." Lynch 2/1/96 GJ at 52.

¹⁵⁷⁹ Memo from Loretta Lynch, Clinton Campaign staff member, to Jim Hamilton, Mickey Kantor, Jim Lyons, Kevin O'Keefe, Susan Thomas[e]s (Mar. 1, 1992) (Doc. No.

On March 5 and 6, 1992, Lynch and Thomases met with Gerth for several hours.¹⁵⁸⁰

Thomases told the campaign she had successfully delayed publication of the article until after the Super Tuesday presidential primary.¹⁵⁸¹ Gerth had asked whether Mrs. Clinton had spoken with Jim McDougal about Madison Guaranty retaining the Rose Law Firm.¹⁵⁸² Thomases responded that Mrs. Clinton believed Latham had sent the business to Massey.¹⁵⁸³ Gerth also asked Thomases to confirm Jim McDougal's recollection that he spoke with Governor Clinton about

DEK008878); Lynch 2/1/96 GJ at 53.

¹⁵⁸⁰ Lynch 2/1/96 GJ at 41.

¹⁵⁸¹ Id. at 42, 66.

¹⁵⁸² Thomases's handwritten notes (Mar. 4, 1992) (Doc. No. 790-00000026).

¹⁵⁸³ Thomases 2/29/96 GJ at 49; Thomases's handwritten notes (Mar. 4, 1992) (Doc. No. 790-00000026). Thomases had never spoken with Massey and based her statement on information received from Mrs. Clinton and Hubbell. Id. Thomases annotated this question in her notes with this answer: "introduce J. McD[ougal] to Rick Massey w/ John Leather [sic]." Id. (Doc. No. 790-00000027). Thomases later testified that she could not recall whether this answer was in fact provided to her by Mrs. Clinton, she believed that the notes reflected answers she could have gotten from Mrs. Clinton. Thomases 2/29/96 GJ at 57-58; Senate Whitewater Comm. Hearing, supra note 147, at 93 (Dec. 18, 1995) (testimony of S. Thomases); Thomases's handwritten notes (Mar. 4, 1992) (Doc. No. 790-00000027). To the contrary, her substantive understanding was that the Massey-Latham relationship cemented the client relationship. Id. at 91. And Thomases acknowledged that there is no person other than Mrs. Clinton whom she was likely to have asked for this information. Id. at 94. Moreover, the answer to the second question on the list of questions for Mrs. Clinton concerning the relationship of Rolling Manor to Whitewater contains the notation "HC does not remember," seemingly indicating that Thomases had in fact spoken directly with Mrs. Clinton. Thomases's handwritten notes (Mar. 4, 1992) (Doc. No. 790-00000027). In fact, Thomases did have a conversation with Mrs. Clinton on March 6, 1992. Thomases 2/29/96 GJ at 62; Thomases's handwritten notes (Mar. 4, 1992) (Doc. No. 790-00000030). Her notes from the conversation reflected Mrs. Clinton's opinion that the Whitewater investment was the "only stupid dumb thing we ever did." Id.; Thomases's handwritten notes (Mar. 4, 1992) (Doc. No. 790-00000030).

appointing Beverly Bassett to Securities Commissioner.¹⁵⁸⁴ Thomases spoke with Governor Clinton about this, and he claimed no recollection of such a conversation.¹⁵⁸⁵ Governor Clinton also told her he lost money on Whitewater, and would not make the investment if he had to do it over again, in part to avoid the appearance of a conflict of interest.¹⁵⁸⁶

2. The Clinton Campaign's Reaction to the New York Times's Article.

a. March 7-8.

Gerth's article, titled "The 1992 Campaign: Personal Finances; Clintons Joined S&L Operator in an Ozark Real-Estate Venture,"¹⁵⁸⁷ became available electronically March 7, 1992, and in print the next day.¹⁵⁸⁸ The article focused on the Clinton's Whitewater investment with the McDougals, and Madison Guaranty's financial difficulties.¹⁵⁸⁹ It also mentioned Governor Clinton hiring a Securities Commissioner, who formerly worked in a firm that represented Madison Guaranty.¹⁵⁹⁰ The article referred to Mrs. Clinton's legal representation of Madison Guaranty: "The new commissioner approved two novel proposals to help the savings and loan

¹⁵⁸⁴ Thomases 2/29/96 GJ at 56; Thomases's handwritten notes (Mar. 4, 1992) (Doc. No. 790-00000026).

¹⁵⁸⁵ Thomases 2/29/96 GJ at 60; Thomases's handwritten notes (Mar. 4, 1992) (Doc. No. 790-00000028).

¹⁵⁸⁶ Thomases 2/29/96 GJ at 52-53; Thomases's handwritten notes (Mar. 4, 1992) (Doc. No. 790-00000031).

¹⁵⁸⁷ Jeff Gerth, The 1992 Campaign: Personal Finances; Clintons Joined S&L; Operator in an Ozark Real Estate Venture, N.Y. Times, Mar. 8, 1992, at A1.

¹⁵⁸⁸ Lynch 2/1/96 GJ at 35.

¹⁵⁸⁹ Jeff Gerth, The 1992 Campaign: Personal Finances; Clintons Joined S&L; Operator in an Ozark Real Estate Venture, N. Y. Times, Mar. 8, 1992, at A1.

¹⁵⁹⁰ Id.

that were offered by Hillary Clinton, Governor Clinton's wife and a lawyer. She and her firm had been retained to represent [Madison Guaranty]."¹⁵⁹¹ The article concluded this "raises questions of whether a governor should be involved in a business deal with the owner of a business regulated by the state and whether, having done so, the governor's wife through her law firm should be receiving legal fees for work done for the business."¹⁵⁹²

On the afternoon the article first appeared, the Clinton campaign scrambled to respond.¹⁵⁹³ Lynch went to Rose to get Whitewater documents about the Clintons' Whitewater losses from Hubbell.¹⁵⁹⁴ Lynch said they reviewed Whitewater related documents Webb Hubbell had released to the campaign.¹⁵⁹⁵ Lynch said she was more concerned with Whitewater than Mrs. Clinton's representation of Madison Guaranty before the ASD because she already knew that Beverly Bassett Schaffer would provide a helpful statement.¹⁵⁹⁶ Lynch had numerous discussions with Susan Thomases, Jim Lyons, George Stephanopoulos, Bruce Lindsey, other campaign staff, Bassett Schaffer, and Sam Heuer.¹⁵⁹⁷

Bassett Schaffer received a copy of the New York Times article from the campaign in the evening of March 7.¹⁵⁹⁸ She "went to bed and didn't worry about it."¹⁵⁹⁹ The next day, Lynch

¹⁵⁹¹ Id.

¹⁵⁹² Id.

¹⁵⁹³ Lynch 2/1/96 GJ at 35.

¹⁵⁹⁴ Id. at 45-46.

¹⁵⁹⁵ Id. at 36.

¹⁵⁹⁶ Id. at 45.

¹⁵⁹⁷ Id. at 44.

¹⁵⁹⁸ Schaffer 11/8/95 GJ at 150.

drafted a statement for Bassett Schaffer, similar to the memoranda Bassett Schaffer had written for Gerth,¹⁶⁰⁰ and released the statement as part of a press packet on March 8, 1992.¹⁶⁰¹ The statement explained how Bassett Schaffer became Securities Commissioner, justified the Department's decisions concerning Madison Guaranty, and asserted that Rose's involvement with Madison Guaranty had no influence.¹⁶⁰²

The campaign staff contacted Sam Heuer, Jim McDougal's attorney,¹⁶⁰³ about the article either the evening of March 7 or the morning of March 8.¹⁶⁰⁴ Heuer testified it was probably Jim Blair who contacted him.¹⁶⁰⁵ Heuer read the article and wrote a statement for Jim McDougal.¹⁶⁰⁶ The statement claimed McDougal had documents disproving the article's claim that money was diverted from Madison Guaranty to Whitewater, an assertion McDougal charged was "not only false but probably actionable by Mr. McDougal against the New York Times."¹⁶⁰⁷ The statement said Beverly Bassett's appointment had nothing to do with Madison Guaranty's failure.¹⁶⁰⁸ Heuer

¹⁵⁹⁹ Id.

¹⁶⁰⁰ Lynch 2/1/96 GJ at 37; Schaffer 11/8/95 GJ at 151-52.

¹⁶⁰¹ Lynch 2/1/96 GJ at 49-50.

¹⁶⁰² Statement of Beverly Bassett Schaffer, former Arkansas State Securities Commissioner (undated) (Doc. Nos. DEK008698 through 8700).

¹⁶⁰³ Sam Heuer began representing Jim McDougal when he was indicted in November 1989. Heuer 4/1/97 GJ at 2, 9-10.

¹⁶⁰⁴ Id. at 37-38.

¹⁶⁰⁵ Id. at 37-38, 42-43.

¹⁶⁰⁶ Id. at 38.

¹⁶⁰⁷ Statement of Sam Heuer, Attorney for James McDougal (undated) (Doc. No. DEK008695).

¹⁶⁰⁸ Id. (Doc. Nos. DEK008695 through 8697).

said he tried to contact Jim McDougal before releasing the statement, but was not able to reach him.¹⁶⁰⁹

Lynch also drafted a response about Rose's retention by Madison Guaranty:

The Rose Law Firm (of which Hillary Clinton is a partner) was retained to represent Madison Guaranty. The business was brought to the firm not by Hillary Clinton, but by Richard Massey, long-time friend of John Latham, Madison's CEO. Hillary Clinton did not intervene or attempt to influence any matter concerning Madison Guaranty with the State Securities Commission or any other State regulator. Rick Massey, not Hillary Clinton, was the Rose Firm's lawyer who met with State regulators. . . .¹⁶¹⁰

Lynch said Massey brought in the Madison Guaranty business even though she knew from Hubbell that neither of them had such a recollection.¹⁶¹¹ Lynch said she did this because that was what Susan Thomases believed, it was Thomases's issue, and Thomases had spoken with more Rose Law Firm attorneys, so Lynch thought Thomases had more information.¹⁶¹²

b. The "Unpaid Bill" -- March 9 & 10.

The initial story did not address the question of how Mrs. Clinton came to be retained by McDougal. The subject took on prominence on March 9, 1992,¹⁶¹³ when Gerth sent Thomases

¹⁶⁰⁹ Heuer 4/1/97 GJ at 42 ("I don't think I ever got hold of him").

¹⁶¹⁰ Lynch 2/1/96 GJ at 48-49; Loretta Lynch, handwritten notes (Feb. 1992) (Doc. No. 263-00000087). The statement was sent to George Stephanopoulos, Bruce Reed (two high level campaign aides), and Bill and Hillary Clinton. Lynch 2/1/96 GJ at 49.

¹⁶¹¹ Lynch 2/1/96 GJ at 54; Loretta Lynch, handwritten notes (Feb. 1992) (Doc. No. DEK008878).

¹⁶¹² Lynch 2/1/96 GJ at 55-56.

¹⁶¹³ Letter from Jeff Gerth, writer for New York Times, to Susan Thomases, Willkie, Farr, and Gallagher attorney (Mar. 9, 1992) (Doc. Nos. 790-00000036 through 37).

some follow-up questions.¹⁶¹⁴ Gerth wrote:

You have said that Hillary recalls the Madison account being brought into the Rose firm by Rick Massey. McDougal says it came after a request from Governor Clinton who discussed it in Mr. McDougal's office, mentioning the couple's need for financial help. By Mr. McDougal's account, Hillary came by a few hours later and discussed a retainer arrangement with Mr. McDougal. Do either of the Clintons have any recollections concerning this?¹⁶¹⁵

Thomases called Governor Clinton, annotating the letter with the notation: "BC has no recollection."¹⁶¹⁶ In a separate notation, partially indecipherable, Thomases wrote: "Ret -- [illegible] received for [illegible] called vs. [illegible] April of 1985 bill vs. [illegible]".¹⁶¹⁷

On March 9 Jim Hamilton attended another meeting where Madison Guaranty's retention of Rose was discussed.¹⁶¹⁸ His notes stated: "How client got to law firm -- Massey -- (needed part[ner])."¹⁶¹⁹ Hamilton also took notes of a conversation with Susan Thomases on March 11.¹⁶²⁰ "H[illary] took M[assey] to meet McD[ougal] -- before all this Rose worked for McD[ougal] -- he didn't pay. . . . Latham asked Mass[ey] to handle preferred stock -- part[ner] said no -- no pay -- Mass[ey] came to H[illary] -- can you help -- H[illary] took Mass[ey] to McD[ougal] - said

¹⁶¹⁴ Id.

¹⁶¹⁵ Id.

¹⁶¹⁶ Id. Thomases does not recall whom she received this information from and cannot recall whether it was Governor Clinton. Senate Whitewater Comm. Hearing, supra note 147, at 87 (May 14, 1996) (testimony of S. Thomases).

¹⁶¹⁷ Letter from Jeff Gerth, writer for New York Times, to Susan Thomases, Willkie, Farr, and Gallagher attorney (Mar. 9, 1992) (Doc. No. 790-00000036).

¹⁶¹⁸ Jim Hamilton's Notes (Mar. 9, 1992) (Doc. No. 000332)

¹⁶¹⁹ Id.

¹⁶²⁰ Hamilton 2/28/96 GJ at 65-66; Jim Hamilton's Notes (Mar. 9, 1992) (Doc. No. 000342).

must have retainer -- [Therefore] [letter] referred to her as contact person (by Massey) --

Mass[ey] says sec[retary] misunderstood."¹⁶²¹

Susan Thomases also took notes from a conversation with an unnamed person that she had on March 10.¹⁶²² These notes stated:

In 1981 Rose firm did work for MacD [sic] and he did [sic] pay. When Latham came to Massey, Massey went to security lawyers and they said no because he did not pay his bills. Took Rick Massey to MacD [sic]. Massey's agent to commence engagement was HC. Billed \$20,000 over 2 years half of which was the preferred stock deal. Never TC Bev Bassett. One ministerial t[elephone] c[onference] to Bev[erly] Bass[ett's] office.¹⁶²³

c. Dealing with Jim McDougal -- March 11-16.

On March 11, 1992, Jim Blair and Loretta Lynch met with Jim McDougal and Sam Heuer.¹⁶²⁴ At Lynch's request, Blair prepared a memorandum of the meeting that evening.¹⁶²⁵

These notes recorded that McDougal said he gave Gerth about eight or ten check stubs,¹⁶²⁶ and that McDougal complained about lack of support from Governor Clinton during McDougal's

¹⁶²¹ Jim Hamilton's Notes (Mar. 9, 1992) (Doc. No. 000342); Hamilton 2/28/96 GJ at 68.

¹⁶²² Thomases's handwritten notes (Feb. 1992) (Doc. No. 790-00000032). Thomases said she could not remember who gave her this information. Thomases 2/29/96 GJ at 68. She testified that she could have gotten the information from Mrs. Clinton, Loretta Lynch or Webb Hubbell. Id.

¹⁶²³ Thomases's handwritten notes (Feb. 1992) (Doc. No. 790-00000032).

¹⁶²⁴ Blair 12/7/95 GJ at 8-9; Jim Blair notes (Mar. 11, 1992) (Doc. Nos. DEK004883 through 87).

¹⁶²⁵ Blair 12/7/95 GJ at 24; Memo from Jim Blair to File (Mar. 11, 1992) (Doc. Nos. DEK004883 through 87). Blair believes these notes cover virtually everything that was discussed in the meeting. Blair 12/7/95 GJ at 9, 49. Blair therefore believes that unmentioned items, such as, for example, a discussion of Mrs. Clinton's work before the ASD, were not discussed. Blair 12/7/95 GJ at 49.

1990 criminal trial.¹⁶²⁷ McDougal said that the Clintons did not understand the Whitewater development, and when he tried to discuss it, the Governor's "eyes would glaze over."¹⁶²⁸

In Blair's notes, McDougal also addressed Governor Clinton's solicitation of legal work for his wife:

He said he remembered explicitly that in 1984, he had a new leather contour chair -- Bill C came jogging by and came in and laid down in the chair and his sweaty body left a permanent stain. He claimed that Bill said they needed money -- that McD[ougal] needed to give Hillary some legal work -- he said he thought one lawyer could screw up deals as good as another. . . . He said it wasn't two hours later that Hillary came by to set up the retainer. He said he and Susan McD[ougal] joked about giving Hillary legal business.¹⁶²⁹

Heuer later testified that this was the first time he heard about the "jogging incident" story.¹⁶³⁰

¹⁶²⁶ Blair 12/7/95 GJ at 26.

¹⁶²⁷ Id. at 29; Memo from Jim Blair to File (Mar. 11, 1992) (Doc. No. DEK004884).

¹⁶²⁸ Blair 12/7/95 GJ at 34; Memo from Jim Blair to File (Mar. 11, 1992) (Doc. No. DEK004887).

¹⁶²⁹ Blair 12/7/95 GJ at 38; Memo from Jim Blair to File (Mar. 11, 1992) (Doc. Nos. DEK004887, 4885). Blair said that he did not speak with either Mr. or Mrs. Clinton about these comments made by Jim McDougal. Blair 12/7/95 GJ at 51-52. In Blair's opinion, however, Governor Clinton was never concerned about money, though Mrs. Clinton was more so. Id. 40-41. Moreover, he does not believe that the underlying premise, that the Clintons needed money, was true. Id. at 43. Lynch testified that some investigation was done on the "jogging incident" rumor. Lynch 2/1/96 GJ at 104. Lyons spoke with Governor Clinton about it and he told him that they could not recall such an incident. Id.

¹⁶³⁰ Heuer 4/1/97 GJ at 108-09. On March 12, 1992, Susan McDougal was quoted in the Washington Post about Mrs. Clinton soliciting business from Jim McDougal.

"Hillary came in one day and was telling us about the problem. The problem was finances, her finances. . . . She came to Jim's [McDougal's] office. I remember Jim laughing and saying afterward, 'Well, one lawyer's as good as another, we might as well hire Hillary.' . . . She was on retainer. I remember everyone sitting around laughing and saying: 'We need to hire Hillary Clinton.'"

David Maraniss & Michael Weisskopf, Lawyer Will Review Arkansas Land Deal, Wash.

Blair asked McDougal to stop talking to the press.¹⁶³¹ Blair said he asked this on his own initiative because he believed McDougal's actions were harmful to McDougal and the campaign.¹⁶³² Everyone in the meeting agreed that McDougal should not talk to the press.¹⁶³³ According to Blair's notes, McDougal also explained that funds had not gone from Madison Guaranty to Whitewater, but came lawfully from Madison Marketing, an affiliate owned by Susan McDougal.¹⁶³⁴ Also according to Blair's notes, McDougal blamed political factors for closing Madison Guaranty.¹⁶³⁵ McDougal admitted, however, that John Latham had falsified certain board minutes and granted himself an unauthorized bonus.¹⁶³⁶

On March 16, 1992, Jim Blair wrote a letter to Sam Heuer, which Heuer showed to Jim McDougal.¹⁶³⁷ In this letter, Blair said the Clintons "will characterize ['WWDC' --Whitewater Development Company] as a bad business deal where money was lost."¹⁶³⁸ Blair continued:

Although the Statute of Limitations may not have run as to civil or criminal

Post, Mar. 12, 1992, at A1.

¹⁶³¹ Blair 12/7/95 GJ at 62; Memo from Jim Blair to File (Mar. 11, 1992) (Doc. No. DEK004885).

¹⁶³² Blair 12/7/95 GJ at 62-63.

¹⁶³³ Heuer 5/20/97 GJ at 3.

¹⁶³⁴ Blair 12/7/95 GJ at 65; Memo from Jim Blair to File (Mar. 11, 1992) (Doc. No. DEK004885).

¹⁶³⁵ Blair 12/7/95 GJ at 69; Memo from Jim Blair to File (Mar. 11, 1992) (Doc. Nos. DEK004885 through 86).

¹⁶³⁶ Blair 12/7/95 GJ at 71; Memo from Jim Blair to File (Mar. 11, 1992) (Doc. No. DEK004886).

¹⁶³⁷ Letter from Jim Blair to Sam Heuer (Mar. 16, 1992) (Doc. No. 263-00000264). Heuer 4/1/97 GJ at 109-10. J. McDougal 4/3/97 GJ at 50-51.

¹⁶³⁸ Jim Blair letter to Sam Heuer (Mar. 16, 1992) (Doc. No. 263-00000264).

liability on the part of anyone who may have misused funds of WWDC (assuming such activity was concealed) there is no intent under the current state of developments to try to prosecute, sue or even point the finger at any such person, if any.

The McDougals have been through a lot of trauma. The Clintons are sure that the accusations made by the New York Times about Jim are not true. I regret that the McDougals gave away records we did not have copies of etc. without talking to you - obviously they were taken advantage of. I hope they will seek your counsel in advance in the future. I hope this clarifies the Clinton position.¹⁶³⁹

Jim McDougal said he understood the letter as "a definite threat."¹⁶⁴⁰ Heuer testified that in his view as well, Blair had threatened to sue McDougal in that letter. Heuer said the wording of that letter would cause him to tell a client "you might get sued here, you better be careful."¹⁶⁴¹

Blair said he wanted McDougal to understand that if he did not stop saying the things he was saying, he was vulnerable both criminally and civilly.¹⁶⁴² Blair believed that McDougal knew him well enough to know "that if he did enough bad things to my friends that I thought action had to be taken, that I was capable of doing that."¹⁶⁴³ Blair said that because he sent a copy of the letter warning McDougal to Loretta Lynch, he believed he had the campaign's authorization to send it.¹⁶⁴⁴ Blair said he did not speak with the Clintons about the letter and

¹⁶³⁹ Id.

¹⁶⁴⁰ J. McDougal 4/3/97 GJ at 50-51.

¹⁶⁴¹ Heuer 4/1/97 GJ at 109-10.

¹⁶⁴² Blair 12/7/95 GJ at 81.

¹⁶⁴³ Id. at 84.

¹⁶⁴⁴ Id. at 87; Fax cover sheet to Loretta Lynch and Letters from Jim Blair to Sam Heuer, attorney for Jim McDougal (Mar. 16, 1992) (Doc. Nos. DEK005290 through 92).

assumed he had their authorization to do what he felt was necessary.¹⁶⁴⁵

Heuer discussed Blair's letter and warning with Jim McDougal.¹⁶⁴⁶ Heuer said they would have welcomed a lawsuit in order to retrieve Whitewater documents previously given to the Clintons.¹⁶⁴⁷ They felt that if the Clintons wanted a fight, they would have a fight.¹⁶⁴⁸

d. The Brown-Clinton Debate and Mrs. Clinton's Public Statements -- March 15 - 16.

During a March 15, 1992 debate, Jerry Brown criticized Governor Clinton about Mrs. Clinton's work before state regulators at the same time he was Governor.¹⁶⁴⁹ Governor Clinton defended Mrs. Clinton and her ethics.¹⁶⁵⁰ The next day on March 16, 1992, Mrs. Clinton responded by saying she had done no work before state agencies and received no compensation for work Rose did before state agencies.¹⁶⁵¹ Specifically, Mrs. Clinton said: "As far as I know,

¹⁶⁴⁵ Blair 12/7/95 GJ at 79, 87.

¹⁶⁴⁶ Heuer 5/20/97 GJ at 11.

¹⁶⁴⁷ Id. Susan McDougal told the Washington Post that she had given all the Whitewater documents to her brother to give to Governor Clinton at Mrs. Clinton's request. Maraniss and Weisskopf, Lawyer Will Review Arkansas Land Deal, Wash. Post., Mar. 12, 1992, at A1.

¹⁶⁴⁸ Heuer 5/20/97 GJ at 11.

¹⁶⁴⁹ See Jerry Roberts, Angry Clash Between Clinton and Brown/ Dispute over Ethics at end of Democratic Debate, S.F. Chron., Mar. 16, 1992, at A1 ("I think he's got a big electability problem. . . . He is funneling money to his wife's law firm as state business, that's number one. Number two, his wife's law firm is representing clients before state of Arkansas agencies, his appointees").

¹⁶⁵⁰ See David Lauter, Brown and Clinton in Bitter Clash Democrats: Californian accuses opponent and wife of conflicts of interest. Angry Clinton calls him an unprincipled politician, L.A. Times, Mar. 16, 1992, at 1 (Governor Clinton explained that his wife has avoided representing clients directly before the state: "My wife is a fine person who has not done anything unethical").

¹⁶⁵¹ See Dan Balz, Edward Walsh, Clinton's Wife Finds She's Become Issue; Arkansas

I'm the only lawyer related to a public official that I'm aware of in the country who had actively practiced law who has never even shared in a penny of state funds that have ever gone to my firm."¹⁶⁵² Press reports also quoted her as saying that her legal work for Madison Guaranty "was not related to the S&L's dealings with state regulators."¹⁶⁵³

e. Subsequent Press Inquires -- March 22 - 23.

On March 22, 1992, the Washington Post sent the campaign questions directed to Mrs. Clinton, including her representation of Madison Guaranty, general representation before state agencies, and Whitewater.¹⁶⁵⁴ On March 24, 1992, Lynch prepared draft responses.¹⁶⁵⁵ The draft answers contain someone's handwritten addition: "HRC never rep[resente]d anyone before a st[ate] ag[ency] and does not recall any instance other than the one related to Mad[ison] G[uaranty] when her name was even listed as a contact."¹⁶⁵⁶ This became the statement that "Hillary Clinton knows of no instance in which she ever represented anyone before a state agency. Further Mrs. Clinton does not recall any instance other than the matter related to

Lawyer Denies Impropriety but Vows to Rethink Her Role, Wash. Post, Mar. 17, 1992, at A6; Gwen Ifill, Hillary Clinton Defends Her Conduct in Law Firm, N.Y. Times, Mar. 17, 1992, at A1.

¹⁶⁵² Dan Balz, Edward Walsh, Clinton's Wife Finds She's Become Issue; Arkansas Lawyer Denies Impropriety but Vows to Rethink Her Role, Wash. Post, Mar. 17, 1992, at A1.

¹⁶⁵³ Gwen Ifill, Hillary Clinton Defends Her Conduct in Law Firm, N.Y. Times, Mar. 17, 1992, at A20.

¹⁶⁵⁴ Id. (Doc. Nos. 263-00000193 through 94).

¹⁶⁵⁵ Draft responses from Loretta Lynch for Hillary Clinton (Mar. 24, 1992) (Doc. Nos. 263-00000124 through 26).

¹⁶⁵⁶ Draft responses from Loretta Lynch for Hillary Clinton (undated) (Doc. Nos. DEK 200951 through 57, at 53).

Madison Guaranty in which her name was even listed as a contact for any representation."¹⁶⁵⁷

Mrs. Clinton appears to have been directly involved in formulating some of the responses. On March 23, 1992, Diane Blair sent Mrs. Clinton proposed answers to Gerth's pending questions, in which she "marked those where Betsey or I made slight changes."¹⁶⁵⁸ The original document produced to the OIC has blue ink writing, in what appears to be Mrs. Clinton's hand, making small editorial changes to the draft answers.¹⁶⁵⁹ Two of the questions and answers that Mrs. Clinton apparently read (but made no editorial changes to) were: "Q. Did you discuss with Jim McDougal in 1984 or 2985 [sic] the retention of you and your firm by Madison Guaranty? A. I recall one conversation with Jim McDougal in April of 1985 concerning the retention of the firm by Madison Guaranty. I am prohibited by the Arkansas Rules of Professional Conduct from elaboration on the process of retention."¹⁶⁶⁰ And: "Q. Have you ever been involved with a Rose Firm client on a matter that involves regulation or action by the State of Arkansas? . . . A. I have tried to avoid such involvement and cannot recall any instance other than the Madison Guaranty matter in which I had any involvement, and my involvement there was minimal."¹⁶⁶¹

¹⁶⁵⁷ Draft responses from Loretta Lynch for Hillary Clinton (undated) (Doc. Nos. 263-00000124 through 26) (Doc. Nos. 263-0000124 through 26 at 25).

¹⁶⁵⁸ Fax from Diane Blair to Hillary Clinton at 2 (undated) (Doc. Nos. DEK 009733 through 34).

¹⁶⁵⁹ Hillary Clinton handwritten response to draft of proposed answers (undated) (Doc. Nos. DEK 009736).

¹⁶⁶⁰ Hillary Clinton response to draft of proposed answers (undated) (Doc. No. DEK 009741).

¹⁶⁶¹ Hillary Clinton response to draft of proposed answers (undated) (Doc. No. DEK 009742).

f. At the Rose Law Firm -- March 23 - 26.

When Rick Massey learned newspaper articles had criticized Rose's representation of Madison Guaranty, he ordered his files for the preferred stock matter and the broker dealer matter from remote storage.¹⁶⁶² His secretary, Vera Hitt, retrieved the files from storage on March 24, 1992.¹⁶⁶³ Vince Foster asked Massey for these files.¹⁶⁶⁴ Foster told him he needed the files to prepare a response on behalf of the firm.¹⁶⁶⁵ Massey had his files copied for Foster.¹⁶⁶⁶

On March 26, Massey signed a memorandum about representing Madison Guaranty before the ASD.¹⁶⁶⁷ Massey later speculated that either Vince Foster or Loretta Lynch prepared the memorandum.¹⁶⁶⁸ The relevant portion stated:

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

¹⁶⁶² Massey 12/3/97 GJ at 34.

¹⁶⁶³ (Doc. No. 105-00054216); Massey 12/3/97 GJ at 34-36. Also on March 25, "Millie" checked out files labeled "HRC Time Sheets." RIC 121481. Millie Alston does not recall checking out any of Mrs. Clinton's time sheets. Alston 4/16/96 GJ at 20; Alston 5/30/96 Int. at 2-3. Mrs. Clinton's time sheets from 1985-86 have never been produced.

¹⁶⁶⁴ Massey 12/3/97 GJ at 40.

¹⁶⁶⁵ Id.

¹⁶⁶⁶ Id. at 41.

¹⁶⁶⁷ Massey memo (Mar. 26, 1992) (Doc. Nos.1180-00000233 through 35).

¹⁶⁶⁸ Massey 12/3/97 GJ at 56-57. The original of this document was found in Foster's briefcase in the attic of his residence in July 1997. It contained Massey's original signature. See Massey 12/3/97 GJ at 55. The campaign did not produce a copy of this document. Furthermore, the campaign never released it to the press. This document appears to be the memo that Hubbell said Foster prepared after he and Foster interviewed Massey. See Hubbell 12/19/95 GJ at 91.

meaningfully influenced the ASD's ultimate determination with respect to this matter.¹⁶⁶⁹

The memorandum contained the same statement concerning the legal representation of Madison Guaranty over the broker dealer matter.¹⁶⁷⁰ The memorandum does not discuss how Madison became a Rose client.¹⁶⁷¹ When Massey signed this memorandum he had reviewed his files,¹⁶⁷² but not the billing records.¹⁶⁷³ He testified he would not have made the same statements if the billing records been available for his review, because they indicated that Mrs. Clinton had a telephone call with Beverly Bassett, the Securities Commissioner.¹⁶⁷⁴

Massey said that around March 26, 1992, he had a brief meeting with Jim Blair and Loretta Lynch at the campaign headquarters.¹⁶⁷⁵ Massey said Blair and Lynch discussed whether the work performed by the Rose Law Firm for Madison Guaranty was proper and whether Mrs. Clinton used political influence with Bassett to get the Securities Department to approve Madison Guaranty's preferred stock request.¹⁶⁷⁶ Massey said nothing done for Madison Guaranty

¹⁶⁶⁹ Massey memo (Mar. 26, 1992) (Doc. Nos. 1180-00000233 through 34).

¹⁶⁷⁰ Massey memo at 2 (Mar. 26, 1992) (Doc. No. 1180-00000234).

¹⁶⁷¹ Massey 12/3/97 GJ at 61.

¹⁶⁷² Id. at 59.

¹⁶⁷³ Id. at 60.

¹⁶⁷⁴ Id.

¹⁶⁷⁵ Id. at 38-39. Massey initially identified Susan Thomases rather than Lynch, but changed his mind when he saw Thomases on television. Massey 11/7/95 GJ at 38. Massey then testified that Lynch was the woman at the meeting. Massey 12/3/97 GJ at 38. Blair denied speaking with Massey. Blair 12/7/95 GJ at 57. Lynch stated that she could not remember whether she had talked to Massey or if someone else did. Lynch 5/14/96 Senate Whitewater Comm. Depo. at 99-100, 122; Blair 12/7/95 GJ at 57.

¹⁶⁷⁶ Massey 12/3/97 GJ at 39.

was improper.¹⁶⁷⁷ They gave Massey a copy of the Bassett memoranda she prepared for Gerth.¹⁶⁷⁸ Massey testified he had never discussed these issues with Mrs. Clinton.¹⁶⁷⁹ Massey also testified that he did not remember asking Mrs. Clinton to be the billing partner on Madison Guaranty,¹⁶⁸⁰ and Mrs. Clinton never told him she had spoken with Bassett Schaffer.¹⁶⁸¹

Hubbell had a conversation with Mrs. Clinton about her representation of Madison Guaranty perhaps within a month of the press focus on that issue.¹⁶⁸² He told her the billing records showed she had one conversation with Bassett.¹⁶⁸³ Mrs. Clinton responded she did not remember the call, and Hubbell replied, "Well, it's in the bills and Rick does remember that it was in your office."¹⁶⁸⁴

By March 26, 1992, Foster prepared a chronology on his firm computer¹⁶⁸⁵ about Rose's representation of Madison Guaranty, beginning with Jim McDougal's April 3, 1981 hiring the

¹⁶⁷⁷ Id.

¹⁶⁷⁸ Massey 11/7/95 GJ at 92.

¹⁶⁷⁹ Id. at 93-94.

¹⁶⁸⁰ Id. at 95-96.

¹⁶⁸¹ Id. at 93; Massey 12/3/97 GJ at 52.

¹⁶⁸² Hubbell 12/19/95 GJ at 177-78.

¹⁶⁸³ Id. at 178.

¹⁶⁸⁴ Id.

¹⁶⁸⁵ This document originated on Foster's computer at the Rose Law Firm. Clark 12/2/97 GJ at 135-36. Clark identified the numbers that appear on the second page, "RLL1860.WP5" as a document number under the computer system. Id. at 136. He was able to call up the document on their system which showed that the document was created for Foster by his secretary, Lorraine Cline. Id. Furthermore, the additional numbers on second page, "032692," is the date the document was printed, and it changes every time it is printed. Id. at 137. Clark was able to de-archive the document and print it off. Id. at 136-37. His printed version had a date of "120197."

firm to represent Bank of Kingston and ending with a February 21, 1990 Arkansas Gazette report of John Latham admitting to falsifying records.¹⁶⁸⁶ The chronology was found in Vince Foster's briefcase in his attic in July 1997.

The chronology included the following entries:

- 07/30/82 Final bill of Rose Law Firm to Bank of Kingston (a/k/a Madison Bank & Trust) of \$5,000 fees and \$893 in costs (contains note in Giroir's hand: "Have Hillary bill with letter to McDougal -- will pay.")
- 1983 Bank of Kingston final bill written off
- 10/23/84 \$5,000 paid on Bank of Kingston bill
- 04/85 Latham, as Madison's CEO, hired the Rose Law Firm to request an interpretative ruling of the S&L statutes from the S&L Administrator.¹⁶⁸⁷

The chronology does not refer to Rick Massey bringing the business to the firm, nor is there any mention of Mrs. Clinton's telephone call with Beverly Bassett Schaffer.¹⁶⁸⁸

Foster's chronology is also significant because of the "computer card" name associated with the document on the Rose Law Firm computers.¹⁶⁸⁹ This document, when discovered on the computers in December 1997, was entitled "Clinton campaign document II."¹⁶⁹⁰ This enabled

Id. at 137.

¹⁶⁸⁶ Timeline Re: Madison Guaranty Representation (undated) (Doc. No. 1180-00000236 through 40).

¹⁶⁸⁷ Id. (Doc. Nos. 1180-00000236 through 37).

¹⁶⁸⁸ Id. (Doc. Nos. 1180-00000236 through 40).

¹⁶⁸⁹ Clark 12/2/97 GJ at 137-38.

¹⁶⁹⁰ Id. at 138.

Rose to de-archive another document entitled, "Clinton campaign document I."¹⁶⁹¹

The "Clinton campaign document I" from Foster's computer, presumably prepared prior to the March 26, 1992 document II, was an edited copy of a draft campaign statement prepared by Mrs. Clinton. The document that Mrs. Clinton had drafted was produced to the OIC by her attorney.¹⁶⁹² Additionally a copy of the statement with handwritten changes was found in Foster's attic in July 1997.¹⁶⁹³ Mrs. Clinton testified that the handwriting belonged to Vince Foster.¹⁶⁹⁴

The version on Foster's computer at the Rose Law Firm contained Mrs. Clinton's original statement, amended by the handwritten changes.¹⁶⁹⁵ As modified on Foster's computer, Mrs.

Clinton's statement read:

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

¹⁶⁹¹ Id. at 138-39; Clinton Campaign Document I (prepared on Vince Foster's computer) (undated) (Doc. No. MGSL-FR-00000014-17).

¹⁶⁹² H. Clinton Draft Campaign Statement (1992) (Doc. Nos. DEK200962 through 63) (LR GJ Exh. No. 1601). Mrs. Clinton stated that as best she could recall, her purpose in writing the statement was to put down her memory of what happened at the time Madison Guaranty was represented by the firm. H. Clinton 1/26/96 GJ at 54. She was unable at that time to identify when, during the campaign, she drafted the document. Id. She did not believe that the statement was ever publicly released. Id. at 53-54.

¹⁶⁹³ Fax from Diane Blair to Webb Hubbell (Mar. 23, 1992) (Doc. No. 1180-00000012 through 13).

¹⁶⁹⁴ H. Clinton 4/25/98 Depo. at 29. Mrs. Clinton was unable to say whether she had asked Foster to edit her statement, but explained that "Vince Foster edited everything." Id. at 29-30.

¹⁶⁹⁵ Compare Clinton Campaign Document I (prepared on Vince Foster's computer) (undated) (Doc. No. MGSL-FR-00000014-17), with Fax from Diane Blair to Webb Hubbell (Mar. 23, 1992) (Doc. No. 1180-00000012 through 13) (copy with Foster's handwritten changes).

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

When I visited [McDougal], I told him that I understood Latham wanted Massey to do some work for them. . . . McDougal called Latham into the meeting . . . McDougal told Latham he could proceed with Massey, and he told me that he would arrange to pay the past due bill.

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

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

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

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

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

As I have said repeatedly, I did not have any substantive involvement in the work our Firm did for Madison that involved the Securities Commissioner. I did not discuss the merits of that matter with the Commissioner or anyone in her office. . . . I can see how in retrospect that to avoid even the appearance of conflict I should not have become involved at all [in helping Rick Massey work out the delicate client engagement problem he encountered]. . . .¹⁶⁹⁶

The precise nature of Foster's interaction with Mrs. Clinton in drafting this document remains an open question. However, contemporaneous evidence established that it was a collaborative effort and that Diane Blair and Webb Hubbell were aware of Foster and Mrs.

¹⁶⁹⁶ Clinton Campaign Document I (prepared on Vince Foster's computer) (undated) (Doc. No. MGSL-FR-00000014-17).

Clinton's working together on this. On March 23, 1992, Diane Blair faxed five pages (including a cover sheet) to Hubbell, of which only the first two pages have been produced to the OIC.¹⁶⁹⁷ The second page has Diane Blair's handwritten note: "Webb -- Vince + Hillary are drafting her answers on law practice. Ignore marginal notes. D."¹⁶⁹⁸ These documents and Mrs. Clinton's statements regarding them are discussed in detail in Chapter 3 of this Part.

g. April Breslaw Learned from the Media Coverage That Rose Had Some Involvement with Madison Guaranty before Frost.

Gerth's article appeared on Sunday, March 8, 1992, eleven months after Frost settled. On Monday, March 16, 1992, April Breslaw wrote the first of two brief memoranda discussing media interest in Frost and Rose's Madison Guaranty work:

First, it's my understanding that Hilary [sic] Clinton's representation of Madison consisted of limited work related to raising capital for the S&L. It's also my understanding that Ms. Clinton's representation had finished four years before the S&L failed. Consequently, I don't believe there was an existing conflict of interest at the time we retained the Rose firm to work on the Frost case in 1989. The reason we fired the law firm originally hired by Madison to work on this case is also worth mentioning. At that time, Borod and Huggins was representing former directors and officers of several failed banks against the FDIC. . . . Because the Borod and Huggins firm was in direct conflict with us, they were replaced.¹⁶⁹⁹

On Tuesday, March 17, 1992, Breslaw wrote:

Recent news stories have raised questions about Ms. Clinton's representation of clients before Arkansas regulatory agencies during her husband's governorship. In one instance, it appears she contacted Arkansas savings and loan authorities on

¹⁶⁹⁷ Fax Transmission Sheet from Diane Blair to Webb Hubbell (Mar. 23, 1992) (Doc. No. 852-00001932 through 33).

¹⁶⁹⁸ Id.

¹⁶⁹⁹ Breslaw 3/16/92 Memo. (Doc. No. MGSL-FR-00000045).

behalf of Madison Savings. It is my understanding that this limited inquiry had to do with a plan for raising capital for the S&L in 1985.¹⁷⁰⁰

Breslaw's March 17, 1992 memorandum discusses Rose's retention by the FDIC in 1989, and the firing of Borod & Huggins, which she wrote, "had conflicts which were both direct and severe."

She added: "I'm not sure that any of this is relevant to anything, including the election."

However, because the Washington Post and New York Times have asked for information about the Frost suit, it seemed appropriate to provide you with some background."¹⁷⁰¹ Breslaw, apparently, forgot this issue until the next year, when Susan Schmidt of the Washington Post brought the question to a head.

E. Evidence Relating to Mrs. Clinton.

During the early years of the Clinton Administration, Mrs. Clinton received at least one memorandum regarding the Frost litigation. In the course of investigations conducted by the FDIC, the RTC, and this Office, Mrs. Clinton gave several statements relating to her knowledge of Hubbell's conduct and her own representation of Madison Guaranty.

1. Associate White House Counsel Neil Eggleston Drafted a Memorandum Discussing the FDIC and RTC Investigation of Rose.

On Monday, February 28, 1994, Associated Press reporter Larry Margasak published a story reviewing Frost documents about Seth Ward, criticizing the FDIC Legal Division's "recent

¹⁷⁰⁰ Breslaw 3/17/92 Memo. (Doc. No. MGSL-FR-00000046-47).

¹⁷⁰¹ Id. (some underlining not in original); see also House Banking Comm. Hearing, supra note 997, at 70-72 (Aug. 10, 1995) (testimony of A. Breslaw) (discussing memo); Breslaw 10/23/95 Senate Banking Comm. Depo. at 46-52 (discussing the 1992 press reports about Hillary Clinton's and the Rose Law Firm's involvement with Madison Guaranty).

finding that cleared the Rose Law Firm, where Mrs. Clinton worked, of any conflicts," and observing that the FDIC-OIG was going to investigate.¹⁷⁰²

That same day, Associate Counsel to the President W. Neil Eggleston sent White House Deputy Chief of Staff Harold Ickes a memorandum entitled "Whitewater -- FDIC and RTC Rose Law Firm Issues."¹⁷⁰³ Eggleston's memo reviewed the FDIC Legal Division and RTC-OCOS reports.¹⁷⁰⁴ Eggleston observed that FDIC Chairman Andrew Hove agreed to have the FDIC-OIG investigate, and that "[w]e should assume . . . that the IG will adopt the broadest possible interpretation of its mandate."¹⁷⁰⁵

Eggleston wrote that Rose could be "permanently barred from any further work for the RTC or the FDIC."¹⁷⁰⁶ Eggleston considered the possibility of "[c]riminal liability for the Rose firm," but said this "would seem even more remote" than a civil action against Rose by the RTC.¹⁷⁰⁷ The memo cautioned that:

An ultimate finding that Rose had not disclosed either the prior representation of Madison Guaranty or the Ward relationship would be a finding that Mr. Hubbell was not truthful in his recollection. Mr. Hubbell told the FDIC that he advised FDIC attorneys about the prior Rose representation of Madison Guaranty and believes that he also advised the government attorneys about his relationship with

¹⁷⁰² Larry Margasak, Regulators Raised Conflicts Issue But Were Overruled, Docs. Show, A. P., Feb. 28, 1994.

¹⁷⁰³ Memorandum from W. Neil Eggleston, Associate Counsel to the President to Harold Ickes, Deputy Chief of Staff (Feb. 28, 1994) (Doc. Nos. 006-DC-00000014 through 20).

¹⁷⁰⁴ Id. at 2 (Doc. No. 006-DC-00000015).

¹⁷⁰⁵ Id. at 2-3 (Doc. Nos. 006-DC-00000015 through 016).

¹⁷⁰⁶ Id. at 4 (Doc. No. 006-DC-00000017).

¹⁷⁰⁷ Id.

Mr. Ward.¹⁷⁰⁸

On March 1, Harold Ickes sent a memorandum entitled "Resolution Trust Corporation" directed to "The First Lady."¹⁷⁰⁹ Ickes attached a copy of Eggleston's memorandum, mentioned a meeting Ickes attended with Roger Altman, Bernie Nussbaum, and "others concerning the RTC statute of limitations," and observed that Altman "received an opinion from an ethics officer of the Treasury Department that he, as acting head of RTC, did not have to recuse himself from matters involving Rose/Madison Guaranty."¹⁷¹⁰ Ickes's memo told Mrs. Clinton to "let me know if you want to discuss the attached."¹⁷¹¹ Mrs. Clinton later testified that she told Ickes she did not want to read the memorandum, and did not do so.¹⁷¹²

2. Mrs. Clinton's 1994 Statements to the FDIC-OIG and the RTC-OIG.

During the course of their investigations, both the FDIC-OIG and the RTC-OIG questioned Hillary Clinton about her work at Rose for Madison Guaranty. When asked about the 1985 Arkansas Securities Department work Rose did for Madison Guaranty, Mrs. Clinton asserted by affidavit that "[w]hile I was billing partner on this matter, the great bulk of the work was done by Mr. Richard Massey, who was then an associate at Rose."¹⁷¹³

On November 10, 1994, FDIC-OIG Special Agents Karen Hepburn and Patrick McKenna

¹⁷⁰⁸ Id. at 3 (Doc. No. 006-DC-00000016).

¹⁷⁰⁹ Memorandum from Harold Ickes, Deputy Chief of Staff to the First Lady (Mar. 1, 1994) (Doc. No. 006-DC-00000013).

¹⁷¹⁰ Id.

¹⁷¹¹ Id.

¹⁷¹² H. Clinton 4/25/98 Depo. at 139-40.

interviewed Mrs. Clinton. Mrs. Clinton declined to provide a sworn statement.¹⁷¹⁴ During the interview, Mrs. Clinton said:

- 1) she did not consider herself to be the attorney of record for Rose's representation of Madison before the ASD;
- 2) she does not believe Rose had a conflict of interest in the Frost case;
- 3) she did not recall the IDC matter;
- 4) Rick Donovan handled the "wet/dry" research related to IDC; and
- 5) she knew Seth Ward as Suzy Hubbell's father and believed that Hubbell represented Ward as an individual on many issues.¹⁷¹⁵

When asked about FirstSouth, Mrs. Clinton said she recalled there were issues involving C. Joseph Giroir but was unaware of what those issues may have been.¹⁷¹⁶

3. Mrs. Clinton's 1995 Sworn Statements.

On April 22, 1995, Mrs. Clinton testified under oath at the White House about Rose's relationship with Madison Guaranty. She testified about how the work came to Rose.¹⁷¹⁷ When asked about any work she had done for Madison Guaranty other than the Arkansas Securities Department work, Mrs. Clinton testified:

- Q. Now, think just a minute and I want to try to get, from your recollection, from the time of the advance against fees or retainers started in May of '85 until it was terminated in July of '86, do you recall today doing any other

¹⁷¹³ H. Clinton 9/16/94 FDIC-OIG Aff. at 5.

¹⁷¹⁴ H. Clinton 11/10/94 FDIC-OIG Int. at 1.

¹⁷¹⁵ Id. at 3-4.

¹⁷¹⁶ Id. at 5.

¹⁷¹⁷ H. Clinton 4/22/95 Depo. at 8-11.

work on anything other than the matter with the Arkansas Securities Department?

A. I have a recollection of the firm during that time doing some other minor matters for Madison, but I couldn't tell you what they were right now.

Q. Do you recall what you might have done --

A. No.

Q. -- personally?

A. No, I cannot recall that.¹⁷¹⁸

Mrs. Clinton said that she did not know that Madison had "any regulatory net worth problem."¹⁷¹⁹

Similarly Mrs. Clinton stated: "I think IDC is something different from the stock offering, but I don't have any memory of that."¹⁷²⁰ She also stated: "[T]here was some property that Madison either owned or was trying to develop that was partially in a township that was dry and they were curious about how to make it wet, or something like that. That's all I remember right now."¹⁷²¹ As to her work for Madison Guaranty, Mrs. Clinton admitted, "Well, I did work. I just can't remember 10 years from the work exactly what the work was."¹⁷²²

¹⁷¹⁸ Id. at 30-31.

¹⁷¹⁹ Id. at 33-34.

¹⁷²⁰ Id. at 41.

¹⁷²¹ Id. at 42.

¹⁷²² Id. at 43. See id. at 21 (when questioned about the origin of the April 23, 1985 date in her FDIC affidavit (a date contained in the subsequently discovered Rose-Madison Guaranty billing records), Mrs. Clinton testified, "At this moment I cannot reconstruct where it came from"); id. at 29 (with regard to Rose's work for Madison Guaranty before the Arkansas Securities Department, Mrs. Clinton testified, "I was not substantively involved in any way that I can even imagine, and certainly that I can recall, with the preparation of any of these documents").

Mrs. Clinton answered RTC Interrogatories on May 24, 1995. She asserted that she did not recall reading: 1) the FSLIC Report of Examination of Madison Guaranty as of January 20, 1984, which concluded that Madison Guaranty had a negative net worth; 2) the 1984 Supervisory Agreement between Madison Guaranty and FSLIC; 3) the FSLIC Report of Examination of Madison Guaranty as of March 4, 1986; and 4) FSLIC's August 15, 1986 cease and desist order to Madison Guaranty.¹⁷²³ Mrs. Clinton denied that she was the lawyer who brought Madison Guaranty to Rose in 1985, saying Rick Massey approached her with the idea.¹⁷²⁴ Mrs. Clinton said that some Rose lawyers "were opposed to doing any more work for Jim McDougal or any of his companies until he paid his bill."¹⁷²⁵ She said that she visited McDougal at his office on April 23, 1985, and told him that Rose would not let Massey do work for him until Madison Guaranty paid its old bill.¹⁷²⁶ Mrs. Clinton said, "McDougal agreed that Massey could proceed with the work and informed me he would arrange to pay the past due bill. McDougal also indicated that he was agreeable to some kind of prepayment arrangement."¹⁷²⁷

Mrs. Clinton stressed that she "was not 'in charge' of the Rose Law Firm's work for Madison Guaranty in 1985-86," although she was the billing partner.¹⁷²⁸ According to her, Rick Massey did "the great bulk of the work" and she "was not involved in the day-to-day work on the

¹⁷²³ H. Clinton 5/24/95 Interrog. Resp. at 33.

¹⁷²⁴ Id. at 34-35.

¹⁷²⁵ Id. at 34

¹⁷²⁶ Id. at 34-35

¹⁷²⁷ Id. at 35.

¹⁷²⁸ Id.

project."¹⁷²⁹ Mrs. Clinton agreed that she "may have made one telephone call to the Arkansas Securities Department to find out to whom Mr. Massey should direct any inquiries regarding an S&L matter."¹⁷³⁰ She said she did not remember to whom she spoke.¹⁷³¹

Mrs. Clinton claimed Rose "performed only a very few specific legal tasks for Madison Guaranty."¹⁷³² When asked about a January 30, 1986 invoice for Rose's work on Madison Guaranty's IDC matter, Mrs. Clinton said she had no recollection of any conference with John Latham, pointing out that the invoice "does not indicate which Rose lawyer worked on what matter or how much time each lawyer spent."¹⁷³³ Mrs. Clinton also said she did not believe she knew anything about Castle Grande.¹⁷³⁴

IV. ANALYSIS

A. Webb Hubbell and the Rose Conflicts.

This Office's investigation established that the Rose Law Firm's representation of the FDIC and RTC as receivers of Madison Guaranty was rife with conflicts of interest, which, if known to the FDIC when Rose was retained, might have resulted in Rose's disqualification. Rose arguably earned legal fees it would not otherwise have earned, and enabled itself subsequently to earn fees from the FDIC and RTC as outside counsel in other matters.

¹⁷²⁹ Id. at 40.

¹⁷³⁰ Id. at 41.

¹⁷³¹ Id.

¹⁷³² Id. at 37.

¹⁷³³ Id. at 44.

¹⁷³⁴ Id. at 73-74.

The evidence also established that, at the time these conflicts were initially concealed in March 1989, the partners at Rose (including Webb Hubbell, Vince Foster, and Hillary Clinton) must have been aware of the consequences of such conflicts and their possible effect on the firm. The record contains numerous references to the issue in the Rose files. It also reflects a particularly noteworthy event -- the malpractice allegations against Giroir -- in the then-recent past that a reasonable trier of fact would conclude was known to the partnership. As a result of Giroir's actions, the partners were personally liable for a settlement of \$500,000 and their insurance carrier paid a settlement of \$2.5 million. Giroir, then the head of the firm, left Rose and took his clients with him. By Hubbell's own admission, he, Foster, and Mrs. Clinton were all angry and upset over this.

It was therefore the judgment of the Independent Counsel that it was untenable for Hubbell to maintain (as he did when initially questioned) that the conflicts of interest were of no consequence. To the contrary, the grand jury found probable cause to believe that Hubbell had willfully concealed a host of conflicts of interest, and Hubbell ultimately pled guilty to a felony charge relating to concealing a material conflict of interest from the RTC. Among the conflicts Hubbell concealed were: Mrs. Clinton's work for Madison Guaranty before the ASD; Mrs. Clinton's work for Madison Guaranty on the Castle Grande transaction; his own work for Ward in connection with that transaction; his work for Ward in connection with Ward's suit against Madison Guaranty; his other work for Ward and Ward's corporation, POM; and Rose's work for a Frost officer, Jimmie Alford. Taken individually, and collectively, these conflicts would likely have been sufficient to preclude Rose's representation of the FDIC and RTC.

The Independent Counsel also determined that the evidence strongly supported the conclusion that Hubbell repeatedly lied to FDIC and RTC investigators to conceal his misconduct. When first questioned by the FDIC Legal Division, Hubbell was serving as Associate Attorney General of the United States, the third-highest ranking official in the Department of Justice. When later questioned by the FDIC and RTC OIGs, he concealed his role with Ward and Mrs. Clinton's role with Madison Guaranty. His statements were contradicted both by the testimony of others and by physical evidence (Hubbell's fingerprints and his own billing records). Partially as a result of Hubbell's actions, the United States Congress was misled when regulators testified based on his misconduct.

B. The Prominence of Ongoing Events.

This investigation also developed evidence from which a jury could reasonably infer that Hubbell's concealment of the conflicts of interest was motivated by a desire to conceal the Rose firm's connection to potentially criminal behavior.

As a result of his involvement in Frost, Hubbell reviewed both the FHLBB examination report calling the Castle Grande land deal a fraud, and the Borod & Huggins Report suggesting that his father-in-law was subject to potential criminal liability. He was reminded of possible conflicts by former-ASD Commissioner Schaffer, who pointedly reminded him that Rose (through Massey and Mrs. Clinton) had used the Frost accounting reports as affirmative support for its arguments to the ASD. Based on the foregoing, and Hubbell's own involvement in the Castle Grande transaction, Hubbell recognized the potential criminal exposure of his family member Ward and the potential connection of that criminal exposure to his firm, himself, and

Mrs. Clinton.

The potential for criminal proceedings was more than hypothetical. At virtually the same time Rose undertook its representation of the FDIC and the RTC in the Frost matter, the FBI was conducting a parallel criminal investigation of Madison Guaranty -- a fact well known to Hubbell and the other Rose partners. This investigation resulted in John Latham's guilty plea and the indictments of Jim McDougal and Jim and David Henley (Susan McDougal's brothers). These events could not have gone unnoticed by Hubbell or Mrs. Clinton. Indeed, the evidence established that Hubbell, Mrs. Clinton, and Governor Clinton all followed McDougal's trial with some interest.

McDougal's trial and the Frost case were not, of course, the only events from which one could conclude that Hubbell was conscious of Rose's representation of Madison Guaranty. During the same period, Seth Ward sued Madison Guaranty and won a judgment based upon the unfunded April 1986 cross-note -- the same cross note that Hubbell advised Ward on when it was executed and that the option agreement drafted by Mrs. Clinton concealed from the federal regulators. Hubbell attended Ward's trial and even helped him attempt to collect on his judgment.

In 1992, the glare of the national media spotlight focused on the Clintons, Whitewater, the Rose Law Firm, and Madison Guaranty. That spring, Hubbell, Foster, and Mrs. Clinton reviewed Rose records relating to Madison Guaranty, including Mrs. Clinton's billing records. Foster created a detailed chronology of events relating to the Madison Guaranty representation. The evidence supports the inference that Foster shared his thoughts with both Hubbell and Mrs.

Clinton. Hubbell independently reviewed Mrs. Clinton's billing records and provided detailed summaries of them to campaign staff. Further highlighting the apparent importance of the issue, Hubbell and Foster each then removed some of the Rose records -- Hubbell taking his to Washington, Foster placing certain documents in his family attic, and Foster hiding other documents in Washington.

This evidence cannot, of course, conclusively resolve the issue one way or the other. Nonetheless, a trier of fact could reasonably conclude that the recency, significance, and frequency of events arising between 1986 and 1992 refreshed the memories of Hubbell and Mrs. Clinton about their involvement with Madison Guaranty. In the view of the Independent Counsel, the evidence would appear to support such an inference. Particularly telling is that, at the time of the first official inquiries into their conduct in 1994, Hubbell and Mrs. Clinton's detailed review of the Rose records of the Madison Guaranty representation under the glare of national scrutiny was only two years in the past.

V. CONCLUSION

After Jim McDougal's departure from Madison, many investigations -- some civil, some criminal and some by the media -- examined the connections between Madison Guaranty and the Rose Law Firm. Webb Hubbell initially concealed those connections from the FDIC and the RTC. Later, in 1994, when he was questioned about those connections, he continued to conceal them, notwithstanding his recent and detailed review of the Rose Law Firm records during the Clinton Presidential campaign.