

**APPENDIX 3**

**JURISDICTIONAL GRANTS AND REFERRALS**

This Appendix briefly describes the referrals received by the Independent Counsel.<sup>1</sup> It discusses the scope of jurisdiction, investigative steps, and the results of any investigation conducted.

A review of the evidence leading to the various referrals demonstrates that the overwhelming number of allegations investigated by the Office of the Independent Counsel were originally the subject of investigation by the U.S. Attorney for the Eastern District of Arkansas appointed by President Clinton, the Department of Justice, and finally Robert Fiske, the regulatory Independent Counsel appointed by Attorney General Janet Reno. By the time Independent Counsel Starr was appointed on August 5, 1994, the record of allegations to be investigated had already been thoroughly developed by the combined efforts of the Department of Justice and the regulatory Independent Counsel.

The formal law enforcement investigations -- eventually leading to the Office of the Independent Counsel's jurisdiction over matters covered in the main body of the Final Report began in August 1992 when the Resolution Trust Corporation ("RTC") referred allegations of criminal activity to the U.S. Attorney for the Eastern District of Arkansas. These investigations related to the administration of the Madison Guaranty Savings & Loan Association ("Madison

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<sup>1</sup> This does not include referrals to the Independent Counsel that have or will likely be addressed in separately filed Final Reports, including: Final Report of the Independent Counsel (In re: Madison Guaranty Sav. & Loan Ass'n) In re: William David Watkins and In re: Hillary Rodham Clinton, (published Oct. 18, 2000) (reporting on matters commonly referred to as the "Travel Office" investigation); Final Report of the Independent Counsel (In re: Madison Guaranty Savings & Loan Ass'n) In re: Anthony Marceca, (July 28, 2000) (reporting on a matter commonly referred to as the "FBI Files" matter); Final Report of the Independent Counsel (In re: Madison Guaranty Sav. & Loan Ass'n), and In re: Bernard Nussbaum, (July 28, 2000) (reporting on a matter related to the FBI Files matter); Report on the Death of Vincent W. Foster Jr. (Oct. 10, 1997).

Guaranty"), a defunct Arkansas savings and loan controlled by Jim McDougal. McDougal had also been a partner in a real estate venture known as the Whitewater Development Company, Inc. ("Whitewater Development") with then-Governor and Mrs. Clinton.<sup>2</sup>

Following the 1992 election, Paula Casey, the U.S. Attorney for the Eastern District of Arkansas appointed by President Clinton, inherited the original RTC referral and nine additional referrals of criminal activity relating to Madison Guaranty.<sup>3</sup> U.S. Attorney Casey was involved in prosecuting Arkansas municipal court judge David Hale for defrauding the Small Business Administration ("SBA") through his investment company, Capital Management Services, Inc. (a small business investment company licensed by the SBA) ("CMS").<sup>4</sup> During plea negotiations, Hale made a number of allegations of criminal activity by McDougal and the Clintons, among others, through the misuse of CMS funds.<sup>5</sup>

In November 1993, the U.S. Department of Justice's Criminal Division took over the prosecution of Hale, as well as the investigation into the RTC's allegation of misapplication of Madison Guaranty funds, after U.S. Attorney Casey recused herself from further investigation based on her personal relationships with those under investigation, including McDougal and the

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<sup>2</sup> See Application of Attorney General Janet Reno to the Court Pursuant to 28 U.S.C. § 592(c) (1) for the Appointment of an Independent Counsel at 1, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] July 1, 1994).

<sup>3</sup> Casey 5/10/95 Int. at 1-4, 11.

<sup>4</sup> See Application of Attorney General Janet Reno to the Court Pursuant to 28 U.S.C. § 592(c) (1) for the Appointment of an Independent Counsel at 1, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] July 1, 1994); see also Final Report of Robert B. Fiske Jr., Independent Counsel, In re: Madison Guaranty Savings and Loan Association at 15 (D.C. Cir. [Spec. Div.] (Oct. 6, 1994) (under seal) [hereinafter "Fiske Report"]).

<sup>5</sup> See Application of Attorney General Janet Reno to the Court Pursuant to 28 U.S.C. § 592(c) (1) for the Appointment of an Independent Counsel at 1, In re: Madison Guaranty Sav. &

Clintons.<sup>6</sup>

**A. Investigation of Madison Guaranty under Regulatory Independent Counsel Robert Fiske.**

On January 20, 1994, Attorney General Janet Reno appointed Robert B. Fiske Jr. as regulatory Independent Counsel to investigate matters commonly referred to as "Whitewater."<sup>7</sup>

By Final Rule dated January 31, 1994,<sup>8</sup> the Attorney General defined Fiske's jurisdiction as follows:

(a) The Independent Counsel: In re Madison Guaranty Savings & Loan Association shall have jurisdiction and authority to investigate to the maximum extent authorized by part 600 of this chapter whether any individuals or entities have committed a violation of any federal criminal or civil law relating in any way to President William Jefferson Clinton's or Mrs. Hillary Rodham Clinton's relationship with:

- (1) Madison Guaranty Saving & Loan Association;
- (2) Whitewater Development Corporation; or
- (3) Capital Management Services.

(b) The Independent Counsel: In re Madison Guaranty Savings & Loan Association shall have jurisdiction and authority to investigate other allegations or evidence of violation of any federal criminal or civil law by any person or entity developed during the Independent Counsel's investigation referred to above, and connected with or arising out of that investigation.

(c) The Independent Counsel: In re Madison Guaranty Savings & Loan Association shall have jurisdiction and authority to investigate any violation of section 1826 of title 28 of the U.S. Code, or any obstruction of the due administration of justice, or any material false testimony or statement in violation

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Loan Ass'n, (D.C. Cir. [Spec. Div.] July 1, 1994).

<sup>6</sup> See id. at 2; Casey 6/1/95 Int. at 1; Casey 5/10/95 Int. at 12-14.

<sup>7</sup> See Application of Attorney General Janet Reno to the Court Pursuant to 28 U.S.C. § 592(c) (1) for the Appointment of an Independent Counsel at 2, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] July 1, 1994).

<sup>8</sup> Jurisdiction of the Independent Counsel: In re: Madison Guaranty Sav. & Loan Ass'n, at 28 C.F.R. § 603.1 (1994).

of federal law, in connection with any investigation of the matters described in paragraph (a) or (b) of this section.

(d) The Independent Counsel: In re Madison Guaranty Savings & Loan Association shall have jurisdiction and authority to seek indictments and to prosecute, or to bring civil actions against, any person or entities involved in any of the matters referred to in paragraph (a), (b), or (c) of this section who are reasonably believed to have committed a violation of any federal criminal or civil law arising out of such matters, including persons or entities who have engaged in an unlawful conspiracy or who have aided or abetted any federal offense.

Fiske conducted a broad investigation. Allegations of criminality forming the core of his investigation would be inherited by this Office. Fiske noted in his own report that his office likewise

inherited an existing investigation in Little Rock from a team of DOJ attorneys. Their investigation broke down into three basic subject areas. The first area involved President and Mrs. Clinton's relationships with Whitewater and Madison Guaranty. Initially, this area consisted of three principal issues:

(1) Whether funds were diverted from Madison Guaranty for the benefit of Whitewater;

(2) Whether funds were diverted from Madison Guaranty for the benefit of President Clinton's gubernatorial campaigns in the 1980s; and

(3) Whether the Clintons were offered a fifty percent ownership interest in Whitewater by James McDougal without any, or with only a minimal, financial contribution in return for some quid pro quo and, if so, whether the quid pro quo was that then-Governor Clinton, directly or indirectly, allowed Madison Guaranty to remain open after it became insolvent.<sup>9</sup>

Some of these allegations were raised in RTC criminal referrals that had been transmitted to the FBI in Little Rock and to the U. S. Attorney for the Eastern District of Arkansas in October 1993.<sup>10</sup>

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<sup>9</sup> Fiske Report, supra note 4, at 13-14.

<sup>10</sup> Id. at 13-14.

The second subject area involved the investigation of allegations made by David L. Hale, a former municipal judge in Little Rock and the former President of CMS.<sup>11</sup> According to press accounts, Hale alleged in the fall of 1993 that in 1986, then-Governor Clinton and James McDougal pressured Hale to arrange a CMS loan worth \$300,000 to Master Marketing, a business owned and controlled by McDougal's wife, Susan.<sup>12</sup> It was further alleged that Mr. Clinton and Mr. McDougal caused a portion of the proceeds from the \$300,000 loan to be improperly diverted to their joint real estate enterprise, Whitewater.<sup>13</sup> The investigation also included whether Hale had agreed to make the \$300,000 Master Marketing loan, as well as several other loans, in return for \$502,000, which would be used to recapitalize CMS.<sup>14</sup> This represented the net proceeds of a fraudulent \$825,000 loan from Madison Guaranty.<sup>15</sup>

The third area of the investigation involved the remaining allegations in the ten criminal referrals received from the RTC.<sup>16</sup> By January 1994, FBI personnel in Little Rock had begun to organize and investigate the RTC's allegations relating to Madison Guaranty.<sup>17</sup> Generally, these referrals alleged a broad range of criminal conduct at Madison Guaranty on the part of James

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<sup>11</sup> Id.

<sup>12</sup> Id. at 14.

<sup>13</sup> Id. at 14-15.

<sup>14</sup> Id. at 15.

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Id.

McDougal, Susan McDougal, and other Madison Guaranty insiders.<sup>18</sup> Two referrals alleged possible criminal violations involving Arkansas Governor Jim Guy Tucker.

[Fiske's] Office immediately assumed responsibility for all aspects of the DOJ investigation described above. In addition, because of Hale's status as a key witness in that investigation, the Office took over the prosecution of United States v. David L. Hale, Charles Matthews, and Eugene Fitzhugh. This case had been indicted in September 1993 and was scheduled for trial in March 1994.<sup>19</sup>

The broad areas of investigation within Fiske's jurisdiction were not original to his Office, but were actually investigations begun by the Department of Justice and the U.S. Attorney for the Eastern Division of Arkansas appointed by the President.

Other matters investigated by Fiske included:

- Contacts between and among White House, United States Department of the Treasury, and RTC officials on the subject of the RTC's investigation into Madison Guaranty, determining whether any of the participants in the contacts acted with the intent to obstruct justice;<sup>20</sup>
- Whether an official within the RTC or the Department of Justice took any action to obstruct the ongoing RTC investigation into Madison Guaranty;<sup>21</sup>
- The handling and removal of documents in White House Deputy Counsel Vincent J. Foster Jr.'s office by White House officials immediately following his July 20, 1993 death;<sup>22</sup>
- Whether Chris Wade engaged in bankruptcy fraud by failing to disclose in bankruptcy filings that he owned Whitewater Lot 7, previously reserved for purchase by Governor Clinton, during Wade's personal bankruptcy proceedings;<sup>23</sup>

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<sup>18</sup> Id.

<sup>19</sup> Id. at 13-15.

<sup>20</sup> Id. at 13.

<sup>21</sup> Id.

<sup>22</sup> Id. at 13, 21-30.

<sup>23</sup> Id. at 53.

- Whether the Rose Law Firm destroyed materials relevant to the grand jury's investigation of Whitewater Development and related matters;<sup>24</sup>
- Whether Webster Hubbell engaged in fraudulent billing practices while a partner at the Rose Law Firm;<sup>25</sup>
- Whether any violations of federal criminal law occurred in connection with then-Governor Clinton's 1990 campaign for re-election;<sup>26</sup>
- Whether Arkansas Governor Jim Guy Tucker and others committed bank fraud and criminal tax violations in connection with the acquisition and resale of certain cable television systems;<sup>27</sup>
- Whether real estate appraisers who regularly worked for Madison Guaranty, including Robert Palmer and George Betts, committed any federal crimes in connection with such work;<sup>28</sup>

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<sup>24</sup> Id. at 16, 33-35.

<sup>25</sup> Id. at 16. This aspect of Fiske's investigation arose in April, 1994, when a confidential witness "stated that Hubbell had over billed the Federal Deposit Insurance Corporation ("FDIC") and the RTC in connection with the Rose Law Firm's representation of the FDIC and RTC in a lawsuit against Frost & Co., a Little Rock accounting firm. . . . The Office concluded that there were substantial questions raised regarding Hubbell's billing practices." Id. at 41.

<sup>26</sup> Id. at 16, 50-51. Fiske explained that while investigating "whether MGS&L funds were diverted to campaigns conducted by President Clinton or Whitewater, certain issues arose regarding transactions involving the 1990 Clinton campaign account at the Perry County Bank. This led to an investigation of two possible federal criminal violations involving the 1990 gubernatorial campaign account at the Perry County Bank." Id. at 50. These included the failure to file Currency Transaction Reports and whether certain withdrawals from the bank occurring four days before the 1990 primary and general elections were for the purpose of providing cash illegally to influence those elections. Id. at 50.

<sup>27</sup> Id. at 16, 45-49. Fiske examined whether Tucker and William J. Marks engaged in several possible frauds relating to the bankruptcy action In re: Landowners Management Systems, Inc., United States Bankruptcy Court, Northern District of Texas, Case No. 787-70392 (Nov. 30, 1987), and whether they committed reporting and non-filing tax violations. Id. at 46. Fiske also investigated RTC Criminal Referral 730 CR 0190, which alleged that Jim Guy Tucker misapplied a portion of the proceeds of a \$260,000 Madison Guaranty loan to purchase a 34-acre tract of land from Madison Guaranty's wholly owned subsidiary, Madison Financial Corporation ("Madison Financial"), in the Castle Grande development for \$125,000. Id. at 49.

<sup>28</sup> Id. at 16, 51-53.



- Whether Jim McDougal and others engaged in a series of fraudulent sales of a single tract of commercial real estate as alleged in RTC Criminal Referral 730CR0198, and whether McDougal and others misused loan proceeds from those sales;<sup>29</sup>
- Whether Jim McDougal used a nominee borrower to conceal his ownership of a lot and house ("Lot 747") in Madison Financial Corporation's ("Madison Financial") Maple Creek Farms project, and diverted proceeds for his personal benefit;<sup>30</sup>
- Whether Jim McDougal used Whitener and Associates, Madison Financial's investment partner in the Gold Mine Springs project, to obtain loans from Madison Guaranty and then fraudulently diverted those loan proceeds for his personal benefit, and whether McDougal and other Madison Guaranty insiders schemed to conceal Madison Financial's interest in the partnership from Federal Home Loan Bank Board ("FHLBB") examiners in connection with the 1986 FHLBB examination of Madison Guaranty;<sup>31</sup>
- Whether a group of Madison Guaranty insiders, including Jim McDougal, John Latham, Pat Harris, and Bill Henley, generated a series of fictitious sales of property in Madison Financial's land developments for the purpose of generating (a) higher commissions for Madison Financial salesmen and (b) improper bonuses for Jim McDougal and John Latham;<sup>32</sup>
- Whether Seth Ward fraudulently agreed with McDougal and others at Madison Guaranty to hold certain real estate in his name for the purpose of misleading FHLBB examiners, and whether McDougal caused Madison Financial to compensate Ward with inflated commission income in return;<sup>33</sup>
- Whether Jim McDougal, Robert Wilson, and others participated in a scheme whereby Madison Guaranty loans were issued to Wilson who thereafter diverted some or all of the proceeds to Madison Financial; and whether McDougal and Wilson entered into this arrangement to allow Madison Guaranty to advance

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<sup>29</sup> Id. at 54.

<sup>30</sup> Id. at 16-17, 54-55.

<sup>31</sup> Id. at 17, 55.

<sup>32</sup> Id. at 17, 57.

<sup>33</sup> Id. at 17.

money to Madison Financial beyond what was permitted by law;<sup>34</sup>

- Whether then-Governor Clinton arranged for various political supporters and contributors to receive bond underwriting and bond counsel business in connection with bonds issued by the Arkansas Development Finance Authority;<sup>35</sup>
- Whether funds obtained from individuals, businesses, and loans from financial institutions that were deposited in accounts established by Governor Clinton for what purported to be programs to promote his legislative agenda, were improperly diverted for use in political activities, including federal political campaigns or exploratory activities, and whether there was any diversion of these funds to Whitewater Development;<sup>36</sup>
- Whether Jim and Susan McDougal diverted Madison Guaranty funds to pay for expenditures on their home;<sup>37</sup> and
- Whether Governor Clinton arranged for political supporters and contributors to receive bond underwriting and bond counsel business in connection with bonds issued by the Arkansas Development Finance Authority, including Dan Lasater.<sup>38</sup>

Fiske's investigation led to David L. Hale's guilty plea on March 22, 1994, to one felony violation of 18 U.S.C. § 371 (conspiracy), and one felony violation of 18 U.S.C. §§ 1341 & 2 (mail fraud).<sup>39</sup> Hale admitted to having engaged in a conspiracy to defraud the SBA of \$900,000, and in a course of conduct from 1985 through 1991 in which he caused CMS to make loans to various individuals and entities in order to improperly benefit himself and various other people.<sup>40</sup>

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<sup>34</sup> Id. at 17-18.

<sup>35</sup> Id. at 18.

<sup>36</sup> Id. at 18.

<sup>37</sup> Id. at 58.

<sup>38</sup> Id. at 60-61; Fiske noted that press accounts reported that the Rose Law Firm and Dan Lasater were among the beneficiaries. Id. at 60.

<sup>39</sup> Tr. at 2-30, United States v. David L. Hale, No. LR-CR-93-147 (E.D. Ark. Mar. 22, 1994).

<sup>40</sup> Fiske Report, supra note 4, at 32.

On March 25, 1996, Hale was sentenced to twenty-eight months in prison; three years supervised release, a \$10,000 fine, and restitution in the amount of \$2,040,000.<sup>41</sup>

Charles Matthews pleaded guilty on June 23, 1994, to two misdemeanor violations of 18 U.S.C. § 215 (receipt of gifts), and on January 3, 1995, was sentenced to sixteen months in prison.<sup>42</sup>

Eugene Fitzhugh pleaded guilty on June 23, 1994, to one misdemeanor violation of 18 U.S.C. § 215 (receipt of gifts).<sup>43</sup> On January 3, 1995, he was initially sentenced to one year in prison, followed by one year of supervised release.<sup>44</sup> Following appeal, Fitzhugh was re-sentenced to ten months in prison.<sup>45</sup> In light of further appeals and health problems, on December 22, 1999, the Court further altered Fitzhugh's sentence to five months in a Bureau of Prisons halfway house, to be followed by five months of home detention, and then one year of supervised release.<sup>46</sup>

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<sup>41</sup> Tr. at 35, United States v. David L. Hale, No. LR-CR-93-147 (E.D. Ark. Mar. 29, 1996).

<sup>42</sup> United States v. Charles Matthews, No. LR-CR-93-147 Docket No. 126 (E.D. Ark. Jan. 8, 1995).

<sup>43</sup> Superseding Information, United States v. David L. Hale, et al., No. LR-CR-93-147 (E.D. Ark. June 23, 1995).

<sup>44</sup> United States v. Eugene Fitzhugh, No. LR-CR-93-147 Docket No. 124 (E.D. Ark. Jan. 3, 1995)

<sup>45</sup> Judgment, United States v. Eugene Fitzhugh, No. LR-CR-93-147 Docket No. 271 (E.D. Ark. Jan. 3, 1995).

<sup>46</sup> Amended Judgment, United States v. David L. Hale, et al., No. LR-CR-93-147 (E.D. Ark. Dec. 15, 1999).

**B. Continued Madison Guaranty Investigation under Statutory Independent Counsel Kenneth W. Starr.**

After the June 30, 1994 enactment of the Independent Counsel Reauthorization Act of 1994, the Attorney General applied to the United States Court of Appeals for the District of Columbia Circuit, Division for the Purpose of Appointing Independent Counsels ("Special Division"), for the appointment of an independent counsel to pursue the matters then under investigation by Independent Counsel Fiske.<sup>47</sup> Although the Attorney General requested the Special Division to appoint Fiske as the statutory Independent Counsel, to continue his investigation,<sup>48</sup> on August 5, 1994, acting pursuant to its authority under 28 U.S.C. § 593(b), the Special Division declined the Attorney General's suggestion and instead appointed Kenneth W. Starr as Independent Counsel In re: Madison Guaranty Savings & Loan Association. The Special Division said Judge Starr's appointment was not "inten[ded] to impugn the integrity of the Attorney General's appointee [Fiske], but rather to reflect the intent of the Act that the actor be protected against perceptions of conflict."<sup>49</sup>

**1. Original Jurisdiction.**

Judge Starr, who was sworn into office on August 9, 1994, was granted jurisdiction:

to investigate . . . whether any individuals or entities have committed a violation of any federal criminal law, other than a Class B or C misdemeanor or infraction, relating in any way to James B. McDougal's, President William Jefferson Clinton's, or Mrs. Hillary Rodham Clinton's relationships with Madison Guaranty

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<sup>47</sup> See Application of Attorney General Janet Reno to the Court Pursuant to 28 U.S.C. § 592(c) (1) for the Appointment of an Independent Counsel, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] July 1, 1994).

<sup>48</sup> Id. at 4.

<sup>49</sup> Order Appointing Independent Counsel at 4, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] Aug. 5, 1994).

Savings & Loan Association, Whitewater Development Corporation, or Capital Management Services, Inc.<sup>50</sup>

Additionally, the Court's order said the Independent Counsel had "jurisdiction to investigate other allegations or evidence of violation of any federal criminal law, other than a Class B or C misdemeanor or infraction, by any person or entity developed during the Independent Counsel's investigation referred to above and connected with or arising out of that investigation."<sup>51</sup>

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<sup>50</sup> Id. at 1-2

<sup>51</sup> Id. at 2. The Court's Order further provided that the Independent Counsel has: jurisdiction and authority to investigate any violation of 28 U.S.C. § 1826, or any obstruction of the due administration of justice, or any material false testimony or statement in violation of federal criminal law, in connection with any investigation of the matters described above.

Id. at 2. The Court's Order also provided that the Independent Counsel, in addition to investigative authority,

shall have jurisdiction and authority to seek indictments and to prosecute any person or entities involved in any of the matters described above, who are reasonably believed to have committed a violation of any federal criminal law arising out of such matters, including person or entities who have engaged in an unlawful conspiracy or who have aided or abetted any federal offense.

Id. at 2-3. Finally, according to the Court's Order, the Independent Counsel's authority includes:

prosecutorial jurisdiction to fully investigate and prosecute the subject matter with respect to which the Attorney General requested the appointment of independent counsel, as hereinbefore set forth, and all matters and individuals whose acts may be related to that subject matter, inclusive of authority to investigate and prosecute federal crimes (other than those classified as Class B or C misdemeanors or infraction) that may arise out of the above described matter, including perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses.

Id. at 3.

## 2. Investigations under Original Jurisdiction.

The Independent Counsel's full investigation and conclusions about the matters referred in the above Order are covered in detail within the body of the Final Report. For the "Arkansas Phase" of the Independent Counsel's investigation of the matters assigned to the Independent Counsel on August 5, 1994, namely "whether any individuals or entities have committed a violation of any federal criminal law, . . . relating in any way to James B. McDougal's, President William Jefferson Clinton's, or Mrs. Hillary Rodham Clinton's relationships with Madison Guaranty Savings & Loan Association, Whitewater Development Corporation, or Capital Management Services, Inc.," the Independent Counsel conducted three jury trials and convicted three defendants. The Office also secured fourteen convictions of twelve defendants by guilty plea.

On March 4, 1996, the first of these trials, United States v. James B. McDougal, Susan McDougal, and Jim Guy Tucker, commenced before Judge George Howard Jr., in the United States District Court for the Eastern District of Arkansas. On May 28, 1996, the jury returned guilty verdicts against all three defendants.

- James B. McDougal was convicted on eighteen felony counts: one count of conspiracy in violation of 18 U.S.C. § 371; two counts of wire fraud in violation of 18 U.S.C. § 1343; one count of bank fraud in violation of 18 U.S.C. § 1344; three counts of mail fraud in violation of 18 U.S.C. § 1341; one count of false bank entries in violation of 18 U.S.C. § 1006; three counts of false loan applications in violation of 18 U.S.C. §§ 2 & 1014; four counts of misapplication of bank funds in violation of 18 U.S.C. §§ 2 & 657; and three felony counts of false bank entries in violation of 18 U.S.C. §§ 2 & 1006.<sup>52</sup> McDougal was sentenced to concurrent terms of five years imprisonment for fifteen of the counts

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<sup>52</sup> Tr. at 8117-20, United States v. James B. McDougal, et al., No. LR-CR-95-173 (E.D. Ark. May 28, 1996).

upon which he was convicted, with two years suspended.<sup>53</sup> On the remaining three counts, imposition of sentence was suspended in lieu of three years' probation.<sup>54</sup> McDougal was fined \$10,000, and ordered to pay \$4,274,301.27 restitution divided between the Federal Deposit Insurance Corporation and the Small Business Administration.<sup>55</sup> McDougal died while incarcerated on March 8, 1998, of natural causes.<sup>56</sup>

- Susan McDougal was convicted on four felony counts: one count of mail fraud in violation of 18 U.S.C. § 1341; one count of misapplication of bank funds in violation of 18 U.S.C. §§ 2 & 657; one count of false bank entries in violation of 18 U.S.C. §§ 2 & 1006; and one count of false loan applications in violation of 18 U.S.C. §§ 2 & 1014.<sup>57</sup> McDougal was sentenced to twenty-four months on three counts of conviction (the court suspended sentence on the fourth count), followed by three years of probation; restitution of \$300,000; a \$5,000 fine; and 300 hours of community service.<sup>58</sup>

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<sup>53</sup> Sentencing Hearing of Jim McDougal at 40, United States v. James B. McDougal, et al., No. LR-CR-95-173 (E.D. Ark. Apr. 14, 1997).

<sup>54</sup> Id.

<sup>55</sup> Id. at 41.

<sup>56</sup> Pete Yost, Whitewater Figure Jim McDougal Dies, A.P., Mar. 9, 1998.

<sup>57</sup> Tr. at 8121-22, United States v. James B. McDougal, et al., No. LR-CR-95-173 (E.D. Ark. May 28, 1996).

<sup>58</sup> Sentencing Hearing of Susan McDougal at 86, United States v. Susan H. McDougal, No. LR-CR-95-173 Docket No. 709 (E.D. Ark. Aug 20, 1996). Susan McDougal's appeal of her conviction and sentence was denied by the United States Court of Appeals for the Eighth Circuit. United States v. McDougal, 137 F.3d 547 (8th Cir. 1998). United States District Judge Susan Webber Wright had found McDougal in contempt based on McDougal's refusal to respond to the grand jury about Madison Guaranty and Whitewater Development. Though McDougal could have purged her contempt by testifying, she refused to do so. Order, In re: Grand Jury Subpoena, No. GJ-96-3 (E.D. Ark. Sept. 6, 1996). On June 25, 1998, after McDougal had served three and one-half months of her 24 month criminal sentence, Judge Howard commuted McDougal's criminal sentence to time served, whereupon she served a 90 day period of home confinement as a condition of probation. Order, United States v. Susan McDougal, No. LR-CR-95-173 Docket No. 777 (E.D. Ark. June 25, 1998).

On May 4, 1998, Susan McDougal was indicted on two counts of criminal contempt in violation of 18 U.S.C. § 402, and one count of obstruction of justice in violation of 18 U.S.C. § 1503. United States v. Susan H. McDougal, No. LR-CR-98-82, Docket No. 2 (E.D. Ark. May 4, 1998). Trial began on March 8, 1999, with Judge Howard presiding. Clerk's Minutes, United States v. McDougal, No. LR-CR-98-82 (E.D. Ark. Mar. 8, 1999). On April 12, 1999, the jury returned a verdict of not guilty of obstruction, and deadlocked on the two counts of criminal

- Jim Guy Tucker was convicted on two felony counts: one count of conspiracy in violation of 18 U.S.C. § 371; and one count of mail fraud in violation of 18 U.S.C. § 1341.<sup>59</sup> Tucker was sentenced to eighteen months of home confinement as part of a four year probationary term; restitution of \$150,000; a \$25,000 fine; and specified community service.<sup>60</sup>

There were also convictions resulting from guilty pleas relating to this aspect of the Independent Counsel's jurisdiction. Robert W. Palmer pleaded guilty on December 5, 1994, to one felony violation of 18 U.S.C. § 371 (conspiracy), and was sentenced to three years probation, including home detention with electronic monitoring the first year, and a \$5,000 fine.

Stephen Smith pleaded guilty on June 8, 1995 to one misdemeanor violation of 18 U.S.C. § 371 (conspiracy), and was sentenced to one year probation, a \$1,000 fine, and 100 hours community service.

Larry E. Kuca pleaded guilty on July 13, 1995, to one misdemeanor violation of 18 U.S.C. § 371 (conspiracy), and was sentenced to two years probation, 80 hours of community service, and ordered to pay restitution in the amount of \$65,862.

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contempt. Judge Howard declared a mistrial on the contempt counts, and on May 25, 1999, the Independent Counsel filed a motion to dismiss the remaining counts in the indictment. United States v. McDougal, No. LR-CR-98-82 Docket No. 135 (E.D. Ark. May 25, 1999).

<sup>59</sup> Tr. at 8120-21, United States v. Jim Guy Tucker, No. LR-CR-95-173 (E.D. Ark. Aug. 20, 1996).

<sup>60</sup> United States v. James B. McDougal, et al., No. LR-CR-95-173 Docket No. 708 (E.D. Ark. Aug. 20, 1996). Tucker's appeal challenging the sufficiency of the evidence against him was denied by the United States Court of Appeals for the Eighth Circuit, though that Court did remand the matter for further proceedings on Tucker's claim of juror misconduct. United States v. Tucker, 137 F.3d 1016 (8th Cir. 1998). Following extensive evidentiary hearings on that issue, on February 17, 1999, Judge Howard denied the juror misconduct claim, which Tucker again appealed. On February 27, 2001, the Eighth Circuit upheld Jim Guy Tucker's conviction.



### **3. RTC Referrals Relating to Madison Guaranty Savings & Loan.**

As discussed more generally above in describing the jurisdictional mandates assigned first to regulatory Independent Counsel Fiske and then statutory Independent Counsel Starr, most of the allegations falling within the core of their jurisdiction had their genesis in the RTC's investigation into the collapse of Madison Guaranty. The allegations developed and referred to the Office of the Independent Counsel by the RTC are described in further detail in this subsection.

#### **a. The Ten Original RTC Criminal Referrals to the U.S. Attorney for the Eastern District of Arkansas.**

During the period August 31, 1992 through September 23, 1993, the RTC completed ten criminal referrals relating to Madison Guaranty. The first was forwarded directly to the FBI Office in Little Rock, Arkansas, and the U.S. Attorney for the Eastern District of Arkansas in early September 1992. The other nine were forwarded to their offices on October 8, 1993, after being reviewed by RTC officials in Washington, D.C. After Clinton-appointed U.S. Attorney Paula Casey recused herself on November 3, 1993,<sup>61</sup> the matters were assigned to attorneys in the Justice Department's Criminal Division. Regulatory Independent Counsel Fiske assumed responsibilities for the investigation of these referrals upon his appointment on January 20, 1994. Independent Counsel Starr inherited these investigations when he assumed the Office of the Independent Counsel from Fiske. The results are described briefly below.<sup>62</sup>

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<sup>61</sup> Casey 6/1/95 Int. at 1.

<sup>62</sup> For Fiske's discussion of his own investigations of these ten referrals, see Fiske Report, supra note 4, at 49, 56-57.

**i. RTC Criminal Referral No. C-0004 (August 31, 1992).<sup>63</sup>**

In this referral, the RTC alleged that between December 1984 and May 1985, Madison Guaranty insiders Jim McDougal (Madison Guaranty President), Susan McDougal (wife of Jim McDougal), and Lisa Anspaugh (Madison Guaranty employee) by various means defrauded Madison Guaranty of \$350,000 to \$1 million.<sup>64</sup> The possible crimes alleged to have been committed were check kiting, misuse of position, bank fraud, forgery, and conspiracy.

The FBI established a database tracking the funds in the various accounts at issue, revealing the accounts were frequently overdrafted by checks written between the accounts, or to Jim and Susan McDougal and their friends, associates, and family members.<sup>65</sup> In some instances "loans" would be issued from Madison Guaranty to an overdrawn account's possessor (often McDougal-related) to cover the deficit, with no evidence in many instances that the "loans" from Madison Guaranty to the overdrawn accounts were ever paid back.<sup>66</sup>

**ii. RTC Criminal Referral No. 730CR0198 (August 4, 1993).**

The RTC alleged in this referral that Jim McDougal, Jim Guy Tucker, Susan McDougal, Lisa Anspaugh, and Bill Henley may have engaged in bank fraud, misuse of position, false statements, and conspiracy.<sup>67</sup> The RTC alleged that from February 1984 through January 1986,

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<sup>63</sup> The cover page to this referral identifies it as Criminal Referral # C-0004, which is the number assigned to it under the RTC's system. A presumably typographical error appears in the header on the succeeding 13 pages following the cover page, where the matter is erroneously identified as Criminal Referral C0001. The Independent Counsel and all other entities reviewing this referral, have identified this referral by the C-0004 on the cover page.

<sup>64</sup> RTC Crim. Ref. No. C-0004 (Aug. 31, 1992).

<sup>65</sup> Id.

<sup>66</sup> Id.

<sup>67</sup> RTC Crim. Ref. No. 730CR0198 at 1-6 (Aug. 4, 1993).

Madison Guaranty insiders and close associates, including Jim McDougal, Jim Guy Tucker, Lisa Anspaugh, and Bill Henley, sold among themselves a property located at 1308 Main Street, Little Rock, Arkansas, at fraudulently inflated prices in order to generate profits for the participants in the land flip scheme.<sup>68</sup>

The Independent Counsel's investigation led to Jim McDougal's August 17, 1995 indictment by the grand jury in the United States District Court for the Eastern District of Arkansas, in which counts seventeen through nineteen were based on the allegations in this referral.<sup>69</sup> McDougal was convicted on all three counts of misapplying Madison Guaranty funds in violation of 18 U.S.C. § 657.<sup>70</sup> No other charges against any other person were filed based on the allegations in the referral.

**iii. RTC Criminal Referral No. 730CR0190 (August 12, 1993).**

The possible crimes alleged in this referral included false statements, misuse of position, bank fraud, and conspiracy by named suspects Jim McDougal, Jim Guy Tucker, John Latham, and Don Denton.<sup>71</sup> The RTC alleged that Jim Guy Tucker misapplied proceeds from a \$260,000 Madison Guaranty loan obtained by Tucker to purchase thirty-four acres in a Madison Financial real estate development known as Castle Grande. Tucker allegedly diverted a portion of the proceeds to pay off an unrelated real estate debt he owed.<sup>72</sup>

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<sup>68</sup> Id. at 7-8.

<sup>69</sup> Indictment at 41-43, United States v. James B. McDougal, et al., No. LR-CR-95-173 (E.D. Ark. Aug. 17, 1995).

<sup>70</sup> United States v. James B. McDougal, et al., No. LR-CR-95-173 Docket No. 600 (E.D. Ark. May 28, 1996).

<sup>71</sup> RTC Crim. Ref. No. 730CR0190 at 1-5 (Aug. 12, 1993).

<sup>72</sup> Id. at 6-7.

The allegations within the referral served as the basis for one of the overt acts in furtherance of the conspiracy charged against Tucker and the McDougals,<sup>73</sup> which resulted in the convictions of Tucker and McDougal for engaging in an unlawful conspiracy in violation of 18 U.S.C. § 371.<sup>74</sup> The loan could not, however, be charged as an independent substantive offense because the Independent Counsel's investigation did not reveal any documentary evidence reflecting the represented purpose for the loan when it was made.

**iv. RTC Criminal Referral No. 730CR0192 (August 13, 1993).**

The RTC alleged in this referral that suspects Jim McDougal and former U.S. Senator J. W. Fulbright may have committed the crimes of false statements, misuse of position, bank fraud, embezzlement, and money laundering.<sup>75</sup> The RTC alleged that Jim McDougal covered \$50,000 in overdrafts on his personal checking accounts as well as on the Whitewater Development accounts at Madison Guaranty, by having the savings and loan pay him a fraudulent bonus and disbursing him a non-existent loan.<sup>76</sup> President and Mrs. Clinton were named as witnesses with possible information because of their association with McDougal as partners in Whitewater Development.<sup>77</sup> The \$50,000 allegedly went to Senator Fulbright through two cashiers checks made payable to him in the amounts of \$30,000 and \$20,000.<sup>78</sup> The RTC noted that Senator

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<sup>73</sup> See Indictment at 41-43 (Counts 17-19), United States v. James B. McDougal, et al., No. LR-CR-95-173 (E.D. Ark. Aug. 17, 1995).

<sup>74</sup> United States v. James B. McDougal, et al., No. LR-CR-95-173 Docket No. 600 (E.D. Ark. May 28, 1995).

<sup>75</sup> RTC Crim. Ref. No. 730CR0192 at 1-3 (Aug. 13, 1993).

<sup>76</sup> Id. at 4.

<sup>77</sup> Id. at 6.

<sup>78</sup> Id. at 4.

Fulbright's endorsement did not appear to be in his handwriting, but rather McDougal's.<sup>79</sup>

No charges were brought by the Independent Counsel based on the allegations in this referral. The evidence of McDougal's criminal intent was contradictory at best, including evidence showing he was lawfully entitled to an even larger bonus than the allegedly fraudulent one that Madison Guaranty paid.<sup>80</sup> The Independent Counsel determined as a matter of prosecutorial discretion that the activity charged against McDougal in the August 17, 1995 indictment was more likely to result in his conviction.

**v. RTC Criminal Referral No. 730CR0195 (August 15, 1993).**

The RTC alleged in this referral that Jim McDougal, Susan McDougal, John Latham, Greg Young, and Bill Henley may have committed the crimes of false statements, misuse of position, conspiracy, and bank fraud.<sup>81</sup> The RTC alleged that from January 1985 through March 1986, the suspects abused their positions as Madison Guaranty officers, directors, and insiders to divert money from Madison Guaranty for their own personal benefit by creating business entities that received operational funding from Madison Guaranty, but for which Madison Guaranty accrued no benefit.<sup>82</sup> The alleged loss to Madison Guaranty was \$8,932,900.<sup>83</sup>

After a thorough investigation, the Independent Counsel determined the evidence presented was insufficient to prove beyond a reasonable doubt that the suspects committed any federal criminal violations relating to the allegations in the referral.

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<sup>79</sup> Id. at 4-5.

<sup>80</sup> Young 12/15/94 Int. at 5-6; Hays 1/13/95 Int. at 1-3.

<sup>81</sup> RTC Crim. Ref. No. 730CR0195 at 1-7 (Aug. 15, 1993).

<sup>82</sup> Id. at 8-11.

<sup>83</sup> Id. at 15.

**vi. RTC Criminal Referral No. 730CR0196 (August 18, 1993).**

Those suspected of criminal activity according to this referral were Jim McDougal, Charles Peacock III, and the Bill Clinton Political Committee Fund.<sup>84</sup> The alleged crimes were false statements, misuse of position, conspiracy, and bank fraud.<sup>85</sup> This referral alleged that on April 4, 1985, Jim McDougal caused Madison Guaranty to issue a cashier's check for \$50,000 to Charles Peacock, III, a shareholder and former director of Madison Guaranty, ostensibly to fund the down payment for a real estate purchase by Peacock.<sup>86</sup> The RTC noted that the cashier's check was dated April 4, 1985, the day before the April 5, 1985, date of the loan.<sup>87</sup> April 4, 1985, was also the date of a fundraiser hosted by Jim McDougal at Madison Guaranty to raise money to retire Governor Clinton's outstanding gubernatorial campaign debt.<sup>88</sup> The RTC alleged that Peacock diverted \$38,940 of the funds to purchase real estate not named in the loan application.<sup>89</sup>

The referral also contained allegations that Peacock diverted additional funds from the loan in the form of two \$3,000 cashier's checks, also dated April 4, 1985, made payable to Bill Clinton and then deposited into the Bill Clinton Political Committee account at the Bank of Cherry Valley in Cherry Valley, Arkansas.<sup>90</sup> The referral further alleged that on April 4, 1985,

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<sup>84</sup> RTC Crim. Ref. No. 730CR0196 at 2-5 (Aug. 18, 1993).

<sup>85</sup> Id. at 1.

<sup>86</sup> See id. at 6.

<sup>87</sup> Id. at 6.

<sup>88</sup> J. McDougal 4/2/97 GJ at 118.

<sup>89</sup> RTC Crim. Ref. No. 730CR0196 at 6 (Aug. 18, 1993).

<sup>90</sup> Id. at 6. The referral noted that the Bank of Cherry Valley was not only the home of the Bill Clinton Campaign Fund, but that it also held two outstanding loans to Whitewater

Jim McDougal caused other Madison Guaranty accounts to issue an additional \$3,000 cashier's check to the Bill Clinton Campaign Fund, purchased in the name of former U.S. Senator J.W. Fulbright, though signed in handwriting appearing to be McDougal's.<sup>91</sup> The RTC alleged that a fourth \$3,000 check payable to Bill Clinton and deposited into the Bill Clinton Campaign Fund account at Cherry Valley was signed and written by Susan McDougal on the McDougals' Madison Guaranty checking account at a time when the account was already showing a negative balance and could only be paid on McDougal's order to force pay it.<sup>92</sup> Finally, the RTC alleged that a similar pattern of campaign contributions to Governor Clinton totaling \$10,500 occurred in February and October 1985, funded with checks on accounts held at Madison Guaranty which were already overdrawn when the checks were force paid.<sup>93</sup> The RTC said in this referral that it was unable to trace the funds involved in these transactions completely because financial institutions outside the RTC's jurisdiction were involved.<sup>94</sup>

The referral attempted to show a possible link between McDougal's use of Madison Guaranty funds to support Governor Clinton's political interests and Madison Guaranty's own legal interests pending when the contributions were given.<sup>95</sup> The referral noted later that in the same month - April 1985 - the Clinton campaign contributions were routed through Madison Guaranty, Mrs. Clinton served as counsel to Madison Guaranty seeking approval from a state

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Development. Id. at 7-8.

<sup>91</sup> Id. at 6.

<sup>92</sup> Id. at 6-7.

<sup>93</sup> Id. at 7.

<sup>94</sup> Id.

<sup>95</sup> Id. at 8.

regulatory agency, the Arkansas Securities Department, to issue preferred stock in order to raise capital for Madison Guaranty.<sup>96</sup> This action was necessary because Madison Guaranty was then below Federal Home Loan Bank Board ("FHLBB") capitalization limits.<sup>97</sup> The referral further noted that the state agency official contacted by Mrs. Clinton, Beverly Bassett Schaffer, had been appointed as the Savings & Loan Supervisor by Governor Clinton, and that Schaffer was a former law partner of Jim Guy Tucker, a subject in other RTC criminal referrals.<sup>98</sup> The referral said that Madison Guaranty's request to issue stock was approved, though Madison Guaranty did not ultimately issue the stock.<sup>99</sup>

The Independent Counsel's subsequent investigation revealed evidence of approximately \$30,000 in contributions to Governor Clinton's campaign having been raised at the April 4, 1985 fundraiser. There was some evidence that one employee of Madison Guaranty made a contribution at the fundraiser, and that Madison Guaranty funds were then used to reimburse the employee for the contribution.<sup>100</sup> The Independent Counsel's investigation of this fundraiser, however, did not reveal any other Madison Guaranty employee whose contribution was similarly reimbursed, nor did any evidence show that Governor Clinton had any knowledge of the thrift's reimbursement of the employee's campaign contribution.

After a thorough investigation, the Independent Counsel determined that the evidence was insufficient to prove beyond a reasonable doubt that the suspects named in this referral

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<sup>96</sup> Id.

<sup>97</sup> Id.

<sup>98</sup> Id.

<sup>99</sup> Id. at 9.

<sup>100</sup> Pharis 7/19/95 Int. at 1.



committed any federal criminal violations relating to the allegations in the referral.

**vii. RTC Criminal Referral No. 730CR0203 (August 30, 1993).**

Eugene Patrick Harris and Jim McDougal were named in this referral as suspects of violating federal criminal laws against misuse of position and bank fraud.<sup>101</sup> The referral alleged that Harris, in 1985, with McDougal's help, abused his position as an Madison Guaranty officer when he obtained a loan for himself from Madison Guaranty for 100 percent of the \$152,665 purchase price on property located at 13th and Main Street in Little Rock, Arkansas, while eventually reselling the property to a third-party entity for \$203,000, with Madison Guaranty extending a \$350,000 loan to the third-party entity.<sup>102</sup> The RTC said in the referral it was unable to trace from Madison Guaranty's records the purpose of extending the second loan at 172 % of the purchase price, or even document what happened to the excess \$147,000.<sup>103</sup>

The Independent Counsel's investigation determined the RTC had been mistaken in a number of material respects. Harris was never even employed by Madison Guaranty, but rather was a sales agent for Madison Financial, Madison Guaranty's wholly owned subsidiary.<sup>104</sup> He could not have abused his position as a loan officer in violation of the law. The Independent Counsel determined the evidence was insufficient to prove beyond a reasonable doubt that the suspects named in this referral committed any federal criminal violations relating to the allegations contained within.

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<sup>101</sup> RTC Crim. Ref. No. 730CR0203 at 1-4 (Aug. 30, 1993).

<sup>102</sup> Id. at 5.

<sup>103</sup> Id.

<sup>104</sup> Harris 12/23/86 Int. 1.

**viii. RTC Criminal Referral No. 730CR0199 (August 30, 1993).**

This referral alleged that suspects Chris V. Wade, Jim McDougal, Sheffield Nelson, Jerry Jones, Larry Wallace, and John Flake may have violated federal laws prohibiting embezzlement, false statements, misuse of position, conspiracy, and bank fraud.<sup>105</sup> The RTC alleged that in 1983, Wade individually, and McDougal for Madison Financial, purchased 3,900 acres at Campobello Island, New Brunswick, Canada to develop a resort.<sup>106</sup> The RTC alleged that the suspects, along with other persons and entities, executed a series of transactions designed to obscure the degree to which Madison Guaranty funded the \$825,000 purchase. Madison Guaranty was limited to a 6% investment in Madison Financial (its service corporation) which regulators said the bank violated in 1984.<sup>107</sup> The RTC alleged that McDougal and Wade intended to procure fees for themselves and their family members and friends, entirely at the expense of Madison Guaranty through Madison Financial's ownership and development of Campobello.<sup>108</sup>

The Independent Counsel found the documentation for the loan from Madison Guaranty to Wade accurately reflected the loan so that regulators could not have been deceived. The Independent Counsel also found that the transactions for funding from entities other than Madison Guaranty were legitimate; that those non-Madison Guaranty-related entities were economically at risk because of the transactions; and that McDougal did not have any secret agreements, otherwise making Madison Guaranty liable for their risk. The Independent

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<sup>105</sup> RTC Crim. Ref. No. 730CR0199 at 1-8 (Aug. 30, 1993).

<sup>106</sup> Id. at 9.

<sup>107</sup> Id.

Counsel's investigation revealed no evidence of payments to McDougal family members or friends for work not actually performed for Campobello. The RTC alleged that McDougal and Wade violated a federal law known as the Interstate Land Sales Act,<sup>109</sup> but the Independent Counsel's investigation determined that even if there had been such a violation, the sales were not fraudulently conducted and would not be material either to Madison Guaranty or the real estate joint venture. Accordingly, the Independent Counsel determined the evidence was insufficient to prove this referral's alleged criminal violations beyond a reasonable doubt.

**ix. RTC Criminal Referral No. 730CR0210 (September 17, 1993).**

The suspects named in this referral were Jim McDougal, Lorene McDougal (his mother and a Madison Guaranty employee), and Andrew Clark, whom the RTC alleged may have committed the crimes of false statements, misuse of position, bank fraud, wire fraud, conspiracy, and misappropriation of funds.<sup>110</sup>

The referral's allegations related to a real estate subdivision project in Independence County, Arkansas, known as Goldmine Springs.<sup>111</sup> Goldmine Springs was a partnership between Madison Financial and Madison Guaranty borrower and insider Freddie Whitener, who served both as contractor and managing partner on the project.<sup>112</sup> The RTC alleged that Madison Guaranty's records showed a Madison Guaranty loan of \$50,600 made out to a couple to fund a

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<sup>108</sup> Id.

<sup>109</sup> 15 U.S.C. §§ 1701-1720.

<sup>110</sup> RTC Crim. Ref. No. 730CR0210 at 1-6 (Sept. 17, 1993).

<sup>111</sup> Id. at 6.

<sup>112</sup> Id.

purchase of several Goldmine Springs lots.<sup>113</sup> The RTC was unable to locate any verification through land sale records maintained by the county where the Goldmine Springs project was located confirming that any such transaction had occurred.<sup>114</sup>

The RTC located a check for \$50,600 -- drawn on a Madison Guaranty checking account, dated just over one month after the date of the \$50,600 loan from Madison Guaranty to the couple for the uncorroborated land purchase -- payable to Lorene McDougal, who was employed at Madison Guaranty as a "greeter" for the thrift.<sup>115</sup> Lorene McDougal had endorsed the check, deposited the proceeds into her Madison Guaranty account, and wired \$50,000 out of the account to a Texas bank where she purchased a \$50,000 certificate of deposit.<sup>116</sup> The RTC referral alleged that the \$50,600 loan from Madison Guaranty to the couple for the supposed purchase of Goldmine Springs property was fraudulent, and that the funds had been diverted back to McDougal or his mother for their own benefit.<sup>117</sup>

These allegations were investigated and largely completed during the tenure of regulatory Independent Counsel Fiske.<sup>118</sup> After McDougal's trial and conviction on other matters,<sup>119</sup> he began cooperating with the Independent Counsel's overall investigation. He told the Independent Counsel that the RTC had incorrectly assumed that the transactions surrounding the \$50,600

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<sup>113</sup> Id.

<sup>114</sup> Id.

<sup>115</sup> Id. at 6-7.

<sup>116</sup> Id. at 6.

<sup>117</sup> Id. at 7.

<sup>118</sup> Fiske Report, supra note 4, at 55-56.

<sup>119</sup> United States v. James B. McDougal, et al., No. LR-CR-95-173 Docket No. 600 (E.D. Ark. Apr. 17, 1997).

amounts were related to Goldmine Springs.<sup>120</sup> McDougal said the sale had involved his parent's residence after the death of his father and was entirely legitimate.<sup>121</sup> It should not have appeared in the court records searched by the RTC because the home was not located in the same county as Goldmine Springs.<sup>122</sup> Based on McDougal's information, which this Office's additional investigative steps did not contradict, the Independent Counsel determined that the evidence was insufficient to prove beyond a reasonable doubt that the suspects named in this referral committed any federal criminal violations relating to the allegations in the referral.

**x. RTC Criminal Referral No. 730CR0211 (September 23, 1993).**

The RTC asserted in this referral that suspects Jim McDougal, Susan McDougal, and Charles Peacock, III, had potentially committed the crimes of false statements, misuse of position, conspiracy, and bank fraud.<sup>123</sup> The RTC alleged the suspects misappropriated Madison Guaranty loan proceeds for their own personal gain by causing Madison Guaranty to extend a loan to purchase 29.77 acres of undeveloped land in Pulaski County, Arkansas, at ten times its objective worth using an obviously inflated appraisal by Robert Palmer.<sup>124</sup> The referral said that the loan was made to a company owned by Peacock, which purchased the land from Madison Financial.<sup>125</sup> The referral further alleged that some of the loan proceeds went to Susan

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<sup>120</sup> J. McDougal Int. 8/1/96-6/9/97 at 96-97.

<sup>121</sup> Id.

<sup>122</sup> Id.

<sup>123</sup> RTC Crim. Ref. No. 730CR0211 at 1-5 (Sept. 23, 1993).

<sup>124</sup> Id. at 6.

<sup>125</sup> Id.

McDougal in the form of a \$33,000 sales commission on the transaction.<sup>126</sup> Finally, the referral questioned the propriety of more than a half million dollars paid by Madison Financial to another company owned by Peacock, allegedly for landscaping at the Pulaski County and other projects.<sup>127</sup>

After a thorough investigation, including interviews with McDougal and Palmer after their convictions,<sup>128</sup> the Independent Counsel determined the evidence was insufficient to prove beyond a reasonable doubt that the suspects named in the referral committed any federal criminal violations related to the allegations.

**b. Additional RTC Referrals (July 1994).**

In July 1994, the RTC told Fiske's Office there were additional potential criminal violations. Fiske however, did not start an investigation out of deference to the newly appointed statutory Independent Counsel.<sup>129</sup>

**i. RTC Investigative Memorandum about Maple Creek Sewer Improvement District (July 1, 1994).<sup>130</sup>**

The RTC alleged that over \$1 million in Madison Guaranty funds had been funneled to

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<sup>126</sup> Id.

<sup>127</sup> Id. at 6-7.

<sup>128</sup> See, e.g., J. McDougal FBI Int. 8/1/96 through 6/9/97 at 99; see also R. Palmer 3/3/95 Int. at 1.

<sup>129</sup> Fiske Report, supra note 4, at 18-19.

<sup>130</sup> The RTC internally referred to this investigative memorandum as a "soft referral," meaning that the allegations had not been fully advanced through all RTC procedures required to generate an official referral. Memo from C. Duane Curtis, Acting Section Chief for RTC Kansas City Office, to Andrew E. Tomback, RTC Deputy General Counsel (July 15, 1994). Curtis recommended "that the referrals be forwarded formally by Washington, D.C. Litigation 'as is' to the Office of the Independent Counsel" because the allegations in the "soft referrals" had already been informally discussed with the Office of the Independent Counsel. Id. at 2.

"Madison Guaranty insiders" through a Madison Financial real estate development project called, Maple Creek Farms.<sup>131</sup> The RTC alleged that Madison Guaranty had permitted Maple Creek Farms's "sewer improvement district account" to maintain an over-drafted account between January and May 1985, with an "average \$75,000 overdrawn, with a high figure of \$142,568.92 on May 29, 1985."<sup>132</sup> During the same time, the RTC alleged that \$1,863,446.89 in Maple Creek funds were derived from Madison Guaranty and paid to Susan McDougal, Jim McDougal, Pat Harris, R.D. Randolph, Jim Guy Tucker, Ken Peacock, Eric Sorenson, and Chris Wade.<sup>133</sup> The RTC's investigative memorandum concluded as follows:

The internal documentation indicates that approximately \$1,000,000 was expended by Madison Guaranty for the purpose of installing a sewer system at Maple Creek Farms. According to employees of Madison Guaranty, the terms, conditions, and accountability of part of those funds is unknown. . . . As evidenced by the high level of funds paid to Madison Guaranty insiders, a check should be made to determine if all of the \$1,000,000 went to the sewer system or was paid to insiders as well.<sup>134</sup>

**ii. RTC Investigative Memorandum about Castle Grande and Seth Ward (July 6, 1994).**

In its investigative memorandum, the RTC alleged that Jim McDougal, John Latham, Don Denton, Greg Young, and Seth Ward participated in a fraudulent scheme in which Ward acted as a straw purchaser to hide Madison Financial's purchase of Castle Grande property.<sup>135</sup>

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<sup>131</sup> Memo from Gary Davidson, RTC Investigator/Civil Fraud (Kansas City, MO) to Julie O'Sullivan, Associate Independent Counsel at 1-2 (July 1, 1994).

<sup>132</sup> Id. at 2.

<sup>133</sup> Id.

<sup>134</sup> Id. at 4.

<sup>135</sup> Memo from C. Edward Noyes, RTC Sr. Criminal Investigator to Julie O'Sullivan, Associate Independent Counsel re: RTC Allegations of Criminal Wrong-Doing/SETH V. WARD, et al. (July 6, 1994).

The Independent Counsel's full investigation and conclusions about the matters addressed in this investigative memorandum are covered in detail within the body of the Final Report.

**iii. RTC Report of Apparent Crime RTC Log # 730 000 000 000 00072 (July 28, 1994).**

The RTC alleged in this referral that Madison Guaranty's suddenly increased deposits were the result of laundered funds generated by criminal activities.<sup>136</sup> The Independent Counsel declined to pursue these allegations.

**4. Efforts to Impede the RTC's Investigation of Madison Guaranty, Whitewater Development, and CMS.**

Soon after Fiske was appointed the regulatory Independent Counsel, he was told "that officials of the Kansas City RTC office are being gagged and possibly coerced by the Washington RTC office."<sup>137</sup> He conducted a thorough grand jury investigation of various alleged efforts to impede the RTC Madison Guaranty investigation, and eventually focused most prominently on contacts between the White House and the RTC about the RTC's investigation of Madison Guaranty and Whitewater Development.<sup>138</sup>

After Independent Counsel Starr's appointment, this Office completed its full investigation into any alleged efforts by the White House to interfere or obstruct the RTC's investigation of Madison Guaranty, including allegations relating to contacts between the White House or Department of Treasury officials and the RTC about Madison Guaranty. After a

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<sup>136</sup> Id.

<sup>137</sup> Letter from Rep. James A. Leach, to Robert B. Fiske Jr. at 3 (Mar. 10, 1994).

<sup>138</sup> Fiske Report, supra note 4, at 4, 13, 20-21. Fiske deemed his examination of the alleged RTC-White House contacts complete and declined to bring any criminal charges. Id. at 20.



thorough investigation, the Independent Counsel determined the evidence was insufficient to prove beyond a reasonable doubt that any federal criminal offenses were committed during contact between White House or Department of Treasury personnel and the RTC about the RTC's investigation of Madison Guaranty and Whitewater Development, as set forth in the body of this Final Report.

**5. Perry County Bank's Relations with the 1990 Clinton Gubernatorial Campaign.**

Based on information previously developed by regulatory Independent Counsel Fiske, on August 29, 1994, Independent Counsel Starr requested, pursuant to 28 U.S.C. § 594(e), that the Attorney General refer to him investigative and prosecutorial jurisdiction over the following matters:

(1) Whether any person committed any federal crime in connection with accounts maintained by the 1990 Clinton gubernatorial campaign at the Perry County Bank; and

(2) Whether any person committed any federal crime, including crimes involving IRS filing requirements, in connection with funds maintained in accounts belonging to or connected with the Clintons at the Perry County Bank.<sup>139</sup>

On September 2, 1994, the Department of Justice referred the requested jurisdiction to the Independent Counsel.<sup>140</sup>

Following the Department's referral, the Independent Counsel notified the Special Division of the referral, as required by 28 U.S.C. § 594(e), and to avoid any challenge to the

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<sup>139</sup> Letter from Independent Counsel Kenneth W. Starr, to Attorney General Janet Reno (Sept. 2, 1994). The information upon which the request was based was developed during Fiske's investigation. See *id.* at 1-2; Fiske Report, *supra* note 4, at 16, 50-51.

<sup>140</sup> See Letter from John C. Keeney, Acting Assistant Attorney General, Criminal Div., to Independent Counsel Kenneth W. Starr (Sept. 2, 1994).

Independent Counsel's jurisdiction on the ground that a referral from the Special Division was necessary, also requested the Court enter an Order referring the same matters. The Special Division entered such an order on December 19, 1994.<sup>141</sup>

Neal T. Ainley, who had been previously identified as a suspect by Fiske,<sup>142</sup> pleaded guilty on May 2, 1995, to one misdemeanor violation of 26 U.S.C. § 7207 and 18 U.S.C. § 2 and one misdemeanor violation of 26 U.S.C. § 7207.<sup>143</sup> Ainley was sentenced by United States District Judge Susan Webber Wright to two years probation, a \$1,000 fine, and 416 hours of community service.<sup>144</sup> On January 30, 1998, Judge Wright found that Ainley had violated the terms of his probation and sentenced him to three months confinement in a halfway house.<sup>145</sup> Ainley's superiors, Herby Branscum and Rob Hill, were also indicted for conspiring with Ainley to impede the IRS in violation of 18 U.S.C. § 1005, and causing Ainley to certify falsely that Perry County Bank had filed the required Currency Transaction Reports. The jury acquitted Branscum and Hill of both of these charges.

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<sup>141</sup> Order, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] Dec. 19, 1994).

<sup>142</sup> See Letter from Independent Counsel Kenneth W. Starr, to Attorney General Janet Reno at 2 (Sept. 2, 1994).

<sup>143</sup> United States v. Neal T. Ainley, No. LR-CR-95-43 Docket No. 17 (E.D. Ark. May 2, 1995).

<sup>144</sup> United States v. Neal T. Ainley, No. LR-CR-95-43 Docket No. 26 (E.D. Ark. Jan 23, 1996).

<sup>145</sup> United States v. Neal T. Ainley, No. LR-CR-95-43 Docket No. 37 (E.D. Ark. Jan 30, 1998).

**6. Landowners Management System, Inc. Bankruptcy Proceeding and William J. Marks Sr.**

Continuing another investigative matter first developed during regulatory Independent Counsel Fiske's tenure, on August 31, 1994, Judge Starr requested that, pursuant to 28 U.S.C. § 594(e), the Attorney General refer investigative and prosecutorial jurisdiction over matters relating to the bankruptcy action In re: Landowners Management Systems, Inc., United States Bankruptcy Court, Northern District of Texas, Case No. 787-70392.<sup>146</sup> On September 2, 1994, the Attorney General referred the following matters in response to this request:

(1) Whether any person committed any federal crime relating to the bankruptcy action entitled In re: Landowners Management Systems, Inc., Tax Identification No. 75-2001914, Debtor, United States Bankruptcy Court, Northern District of Texas, Case No. 787-70392 (Chapter 11); and

(2) Whether William J. Marks Sr. failed to file personal tax returns for 1987 and 1990 in violation of 26 U.S.C. § 7203.<sup>147</sup>

Following the Department's referral, the Independent Counsel notified the Special Division of the referral, as required by 28 U.S.C. § 594(e).<sup>148</sup> To avoid any challenge to the Independent Counsel's jurisdiction on the ground that a referral from the Special Division was necessary, the Independent Counsel requested that the Court enter an Order referring the same matters. The Special Division entered such an order on December 19, 1994.<sup>149</sup>

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<sup>146</sup> Letter from Independent Counsel Kenneth W. Starr, to Attorney General Janet Reno (Aug. 31, 1994). This matter had been previously identified by Fiske. See Fiske Report, supra note 4, at 16, 45-49.

<sup>147</sup> See Letter from John C. Keeney, Acting Assistant Attorney General, Criminal Div., to Independent Counsel Kenneth W. Starr (Sept. 2, 1994).

<sup>148</sup> Order, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] Dec. 19, 1994).

<sup>149</sup> Id.

William J. Marks Sr. pleaded guilty to one felony count of conspiring to defraud the IRS, in violation of 18 U.S.C. § 371.<sup>150</sup> Marks was sentenced to four years probation and ordered to pay restitution to the United States in the amount of \$1 million.<sup>151</sup>

On February 20, 1998, Jim Guy Tucker, who had been previously identified as a suspect by Fiske,<sup>152</sup> pleaded guilty to one felony count of conspiring to defraud the IRS, in violation of 18 U.S.C. § 371.<sup>153</sup> Tucker was sentenced to four years probation, including four hours of community service during each week of his probation, fined \$6,000, and ordered to pay \$1 million in restitution to the United States.<sup>154</sup> Tucker successfully appealed the amount of the restitution order, and on June 3, 2000, the United States Court of Appeals for the Eighth Circuit remanded the case to the district court for resentencing on the amount of restitution.<sup>155</sup>

On February 20, 1998, John Haley pleaded guilty to one misdemeanor count of aiding and abetting the willful failure to supply information to the IRS in violation of 26 U.S.C. § 7203.<sup>156</sup> Haley was sentenced to three years probation, including the requirement that he perform

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<sup>150</sup> United States v. William J. Marks, No. LR-CR-95-117 Docket No. 177 (E.D. Ark. Aug. 28, 1997).

<sup>151</sup> United States v. Jim Guy Tucker, et al., No. LR-CR-95-117 Docket No. 287 (E.D. Ark. May 22, 1998).

<sup>152</sup> See Fiske Report, *supra* note 4, at 16, 45-49.

<sup>153</sup> United States v. Jim Guy Tucker, et al., No. LR-CR-95-117 Docket No. 265 (E.D. Ark. Feb. 20, 1998).

<sup>154</sup> United States v. Jim Guy Tucker, et al., No. LR-CR-95-117 Docket Nos. 316, 320 (E.D. Ark. May 17, 1999).

<sup>155</sup> United States v. Tucker, 217 F.3d 960 (8th Cir. 2000). The remanded restitution issue has not yet been resolved by the District Court. The Independent Counsel has deemed the matter insufficient to further delay the filing of this Final Report.

<sup>156</sup> United States v. John H. Haley, No. LR-CR-98-29 Docket Nos. 1-2 (E.D. Ark. Feb. 20, 1998).

eight hours of community service during each week of the probationary period, fined \$30,000, and ordered to pay \$40,000 in restitution to the United States.<sup>157</sup>

**7. Herby Branscum Jr. and Robert M. Hill and the 1990 Clinton Gubernatorial and 1992 Presidential Campaigns.**

On December 19, 1994, the Special Division referred jurisdiction over an investigation begun under regulatory Independent Counsel Fiske, namely:

[w]hether any person committed any federal crime in connection with accounts maintained by the 1990 Clinton gubernatorial campaign at the Perry County Bank.<sup>158</sup>

Neal T. Ainley provided the Independent Counsel with information showing that two principal shareholders and directors of Perry County Bank -- Herby Branscum Jr. and Robert M. Hill -- made political contributions to Governor Clinton's 1990 gubernatorial and 1991 presidential exploration campaigns, and that they submitted no backup expense claims or false expense claims to the Perry County Bank in order to obtain reimbursement for those contributions.<sup>159</sup> Additional information raised the possibility that contributions made in the names of Branscum's and Hill's family members and associates may also have been reimbursed by the bank.<sup>160</sup>

On June 8, 1995, the Independent Counsel requested that the Attorney General refer

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<sup>157</sup> United States v. John H. Haley, No. LR-CR-98-29 Docket No. 9 (E.D. Ark. Aug. 20, 1998).

<sup>158</sup> Order, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] Dec. 19, 1994); see also Fiske Report, supra note 4, at 16, 50-51 (confirming that this investigation began under Fiske).

<sup>159</sup> Application for Order of Referral and Order of Jurisdiction of Independent Counsel, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] July 21, 1995).

<sup>160</sup> Id.

investigative and prosecutorial jurisdiction over the following matter:

Whether any person committed any federal crime in connection with contributions made by Herby Branscum Jr., Robert M. Hill, members of their families, or any other persons associated with them, to the 1990 Clinton gubernatorial campaign or the 1992 Clinton presidential campaign.<sup>161</sup>

On June 21, 1995, the Attorney General referred the requested jurisdiction to the Independent Counsel under 28 U.S.C. § 594(e), on the grounds that it was related to matters previously referred to the Independent Counsel.<sup>162</sup> The Special Division entered an Order to the same effect on July 28, 1995.<sup>163</sup>

The trial of United States v. Herby Branscum Jr. and Robert Hill began on June 17, 1996, presided over by United States District Judge Susan Webber Wright.<sup>164</sup> On August 1, 1996, the jury deadlocked on seven felony counts: one count under 18 U.S.C. § 371 (conspiracy); three counts under 18 U.S.C. § 1005 (false bank entries); and three counts under 18 U.S.C. § 656 (embezzlement).<sup>165</sup> The jury returned not guilty verdicts for both defendants on two felony counts related to this referral: one count under 18 U.S.C. § 371 and one count under 18 U.S.C. § 1005.<sup>166</sup> A mistrial as to the deadlocked counts was declared by the Court, and on September 13,

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<sup>161</sup> Letter from Independent Counsel Kenneth W. Starr, to Attorney General Janet Reno (June 8, 1995).

<sup>162</sup> Letter from Assistant Attorney General Jo Ann Harris, to Independent Counsel Kenneth Starr (June 21, 1995).

<sup>163</sup> Order, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] July 28, 1995).

<sup>164</sup> United States v. Herby Branscum Jr., et al., No. LR-CR-96-49 Clerk Minutes (E.D. Ark. June 17, 1996).

<sup>165</sup> United States v. Herby Branscum Jr., et al., No. LR-CR-96-49 Docket Nos. 126, 127 (E.D. Ark. Aug. 2, 1996).

<sup>166</sup> Id.

1996, the Independent Counsel filed a motion to dismiss the remaining counts.<sup>167</sup>

**8. Purchase of Property in Lee County, Arkansas, by the Arkansas Development Finance Authority or Arkansas Department of Corrections.**

While Fiske was the regulatory Independent Counsel, "[v]arious articles appeared in the media early in the investigation alleging that Governor Clinton, directly or indirectly, arranged for various of his political supporters and contributors to receive bond underwriting and bond counsel business in connection with bonds issued by the Arkansas Development Finance Authority" ("ADFA").<sup>168</sup> Later it was alleged the Arkansas Department of Corrections ("ADOC") purchased land in Lee County, Arkansas, in 1990 at a price fraudulently inflated above reasonable market value for the purpose of establishing a prison farm, and that the purchase was financed by ADFA through a bond offering.<sup>169</sup> The excess money from the transaction reportedly went to pay a debt owed to a private company. The private company was represented by the same attorney serving as bond counsel to ADFA for the bond issue that financed the transaction.<sup>170</sup> The attorney was a partner with the firm Wright, Lindsey & Jennings, Clinton Administration official Bruce Lindsey's former law firm.<sup>171</sup>

On June 23, 1995, Independent Counsel Starr detailed the above allegations and information to Attorney General Janet Reno, and asked her to make a determination as to

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<sup>167</sup> Id.

<sup>168</sup> Fiske Report, supra note 4, at 60.

<sup>169</sup> Letter from Independent Counsel Kenneth W. Starr, to Attorney General Janet Reno at 2 (June 23, 1995). Under state law, the transaction had to be approved by Governor Clinton, and one of the Governor's political advisors also acted as ADFA's President when the transaction was approved. Id. at 2-3, 5.

<sup>170</sup> Id.

<sup>171</sup> Id.

whether: 1) the matter was related to the Independent Counsel's existing jurisdiction so that it should be referred to the Independent Counsel under 28 U.S.C. § 594(e); or 2) whether the matter was not related to the Independent Counsel's jurisdiction and should not be referred to this or any other independent counsel, but instead referred to an appropriate section within the Justice Department for further investigation.<sup>172</sup> The Independent Counsel did not recommend the Attorney General which alternative he believed was correct or preferable; instead the Independent Counsel offered to, in the event that the Attorney General opted to refer the matter to the Justice Department, re-detail the agents who had investigated the matter for the Independent Counsel over to the Department in order to ensure continuity of investigative knowledge and effort.<sup>173</sup>

The Attorney General concluded the matter was related to the Independent Counsel's existing jurisdiction, and therefore referred it to the Independent Counsel instead of continuing the investigation at the Justice Department.<sup>174</sup> The Special Division entered an Order on July 28, 1995 confirming the Independent Counsel's jurisdiction over:

Whether any person committed any federal crime in connection with the purchase of property in Lee County, Arkansas, by the Arkansas Development Finance Authority or the Arkansas Department of Corrections.<sup>175</sup>

With the statute of limitations on any potential crimes within weeks of expiring,<sup>176</sup> the

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<sup>172</sup> Id.

<sup>173</sup> Id.

<sup>174</sup> Letter from Assistant Attorney General, Crim. Div., Jo Ann Harris, to Independent Counsel Kenneth W. Starr (June 28, 1995).

<sup>175</sup> Order, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] July 28, 1995).

<sup>176</sup> Letter from Assistant Attorney General, Crim. Div., Jo Ann Harris to Independent



Independent Counsel investigated the allegations and determined that there was insufficient evidence to prove beyond a reasonable doubt that any person had committed a federal crime. Accordingly, the Independent Counsel closed the matter.

**9. Chris and Rosalee Wade Fraud and Bankruptcy.**

October 25, 1994, Judge Starr requested that the Attorney General, in accordance with 28 U.S.C. § 594(e), refer to this Office investigative and prosecutorial authority over certain matters relating to Christopher V. Wade and Rosalee Wade, who had been previously identified as potential criminal suspects by Fiske.<sup>177</sup> On December 7, 1994, the Department of Justice responded by referring jurisdiction over the following matters:

(1) Whether Mr. and Mrs. Chris Wade and others acting in concert with them violated any federal criminal law by defrauding Red River Valley Bank and Trust in connection with loan applications made to and loans received from the bank;

(2) Whether Mr. and Mrs. Wade and others acting in concert with them violated any federal criminal law in connection with the bankruptcy action filed by the Wades in 1989; and

(3) Whether Mr. and Mrs. Wade filed fraudulent income tax returns.<sup>178</sup>

Following the Department's referral, the Independent Counsel notified the Special Division of the referral, as required under 28 U.S.C. § 594(e), and to avoid any challenge to the Independent Counsel's jurisdiction on the ground that a referral from the Special Division was necessary, also requested that the Court enter an Order referring the same

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Counsel Kenneth W. Starr at 1 (June 28, 1995).

<sup>177</sup> Letter from Independent Counsel Kenneth W. Starr, to Attorney General Janet Reno (Oct. 25, 1994); see Fiske Report, *supra* note 4, at 53.

<sup>178</sup> Letter from Lee Radek, Public Integrity Section Chief, Dept. of Justice Criminal Division, to Independent Counsel Kenneth W. Starr (Dec. 7, 1994).

matters. The Special Divisions entered such an order on December 19, 1994.<sup>179</sup>

Chris Wade pleaded guilty, on March 21, 1995, to one felony violation of 18 U.S.C. § 152 (false statement) and one felony violation of 18 U.S.C. § 1014 (false statement to lending authority), and was sentenced to fifteen months in prison, three years supervised release, and fined \$3,000.<sup>180</sup>

#### **10. FDIC and RTC Referrals Relating to Rose Law Firm.**

On July 10, 1995, the Acting Inspector General of the Federal Deposit Insurance Corporation ("FDIC") sent the Independent Counsel a "Referral of Possible Criminal Violations" involving the Rose Law Firm.<sup>181</sup> In that referral, the FDIC outlined possible criminal violations by members of the Rose Law Firm, including conflicts of interest when it represented the RTC and FDIC, and its failure to disclose relevant information to the FDIC when undertaking that representation, including its prior representation of Madison Guaranty.<sup>182</sup> The FDIC said it had investigated allegations of Rose's failure to disclose that:

1) in 1985 the firm had represented Madison Guaranty before the Arkansas Securities Department;<sup>183</sup> 2) a former Rose partner, Webster L. Hubbell, was the son-in-law of a Madison Guaranty borrower [Seth Ward] and consultant who was in litigation with the Madison Conservatorship; and 3) another former Rose

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<sup>179</sup> Order, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] Dec. 19, 1994).

<sup>180</sup> United States v. Christopher V. Wade, No. LR-CR-95-48 Docket Nos. 5 & 31 (E.D. Ark. Dec. 12, 1995).

<sup>181</sup> Letter from James A. Renick, Acting Inspector General, FDIC Office of Inspector General, to Independent Counsel Kenneth W. Starr (July 10, 1995).

<sup>182</sup> Id.

<sup>183</sup> This allegation relates to Mrs. Clinton's representation of Madison Guaranty addressed in RTC Crim. Ref. No. 730CR0196 at 8-9 (Aug. 18, 1993), which was originally brought to Fiske's attention by the RTC.

partner, Hillary Rodham Clinton, had assisted in litigation on behalf of the First American Conservatorship and that the owner of the defendant corporation in the First American litigation was a personal friend of Mrs. Clinton's family and a contributor to her husband's political campaign for Governor of Arkansas. We also were requested to examine a review conducted by the FDIC Legal Division into the circumstances surrounding the retention of Rose to perform legal work for the Madison Conservatorship. In addition, we completed a review of payments made to Rose by the FDIC for legal services.<sup>184</sup>

The FDIC sent the referral to the Independent Counsel because it had "been directed previously by the Justice Department to bring matters related to these violations to the attention of your office [the Office of the Independent Counsel]."<sup>185</sup> The FDIC said that although its investigation did not reveal evidence of criminal violations by Mrs. Clinton, it had reasonable grounds to believe that Webster Hubbell or other Rose employees had violated a number of federal criminal prohibitions.<sup>186</sup>

A referral containing similar allegations was received by the Independent Counsel on September 25, 1995, from the Assistant Inspector General for Investigation of the RTC.<sup>187</sup> The RTC alleged that "certifications which were signed by Webster Hubbell, former partner of the Rose Law Firm, and submitted to the RTC to enable the Rose Law Firm to perform legal services may constitute false statements covered by 18 U.S.C. [§]1001."<sup>188</sup>

On September 29, 1995, the Independent Counsel told the Attorney General about these

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<sup>184</sup> Letter from James A. Renick, Acting Inspector General, FDIC Office of Inspector General, to Independent Counsel Kenneth W. Starr at 1 (July 10, 1995).

<sup>185</sup> Id. at 7.

<sup>186</sup> Id. at 1-2.

<sup>187</sup> Letter from Clark W. Blight, RTC Assistant Inspector General for Investigation, to Independent Counsel Kenneth W. Starr (Sept. 25, 1995).

<sup>188</sup> Id. at 1.

referrals, and, pursuant to 28 U.S.C. §§ 593 & 594(e), requested that the Attorney General refer jurisdiction over further investigation of the matters to the Independent Counsel as related to the matters the Independent Counsel had already been granted jurisdiction over by the Special Division in its initial Order.<sup>189</sup> On January 17, 1996, Acting Assistant Attorney General John C. Keeney told the Independent Counsel of the Attorney General's "conclusion that these matters are encompassed by the language of your original grant of jurisdiction, and therefore can be properly handled by you."<sup>190</sup>

On August 15, 1996, the Special Division ordered:

that the investigative and prosecutorial jurisdiction over the matters referred by Attorney General Janet Reno to Independent Counsel Kenneth W. Starr and to the Office of the Independent Counsel as related matter pursuant to 28 U.S.C. § 594(e), by letter dated January 17, 1996 from Acting Assistant Attorney General John C. Keeney to Independent Counsel Kenneth W. Starr, namely matters referenced in the Federal Deposit Insurance Corporation referral dated July 10, 1995 and the Resolution Trust Corporation referral dated September 25, 1995 and their related reports, be referred to Independent Counsel Kenneth W. Starr and to the Office of the Independent Counsel as related matters pursuant to 28 U.S.C. § 594(e).<sup>191</sup>

The Independent Counsel's investigation led to Hubbell's June 30, 1999 guilty plea on one felony count of falsifying, concealing, and covering up by scheme material facts within the

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<sup>189</sup> Letter from Independent Counsel Kenneth W. Starr, to Attorney General Janet Reno (Sept. 29, 1995).

<sup>190</sup> Letter from Acting Assistant Attorney General John C. Keeney, to Independent Counsel Kenneth W. Starr (Jan. 17, 1996).

<sup>191</sup> Order at 1, In re: Madison Guaranty Savings & Loan Assoc., (D.C. Cir. [Spec. Div.] Aug. 15, 1996). The FDIC continued to investigate whether members of the Rose Law Firm had informed the FDIC or RTC of representations of current or former clients that raised potential conflicts of interest with the FDIC or RTC, but failed to bring such conflicts to their attention and request a waiver. This resulted in additional referrals from the FDIC to the Office of the Independent Counsel, which in turn resulted in an additional grant of related jurisdiction. See

jurisdiction of the FDIC and the Resolution Trust Corporation, in violation of 18 U.S.C. § 1001.<sup>192</sup> Judge James Robertson of the United States District Court for the District of Columbia sentenced Hubbell to one year of probation.<sup>193</sup>

#### **11. Webster L. Hubbell's Rose Law Firm Billing and Expense Practices.**

In the course of investigating the allegations surrounding Madison Guaranty, regulatory Independent Counsel Robert Fiske received information about alleged billing misconduct by Webster L. Hubbell while he was a member of the Rose Law Firm.<sup>194</sup> Fiske became aware of these allegations from a public March 2, 1994 report indicating the Rose firm was investigating its former partner's billing practices.<sup>195</sup> Fiske received information in April 1994 from a confidential source that said that Hubbell had overbilled the RTC and FDIC in the course of representing those agencies in a lawsuit.<sup>196</sup> After reviewing subpoenaed information received to investigate those allegations, Fiske then explored whether Hubbell had used client advance checks of the firm to pay more than \$300,000 in personal credit card bills from 1989 through January 1993.<sup>197</sup>

When Judge Starr assumed matters previously under investigation by Fiske, Independent Counsel Starr petitioned the Special Division, pursuant to 28 U.S.C. § 594 (e), to refer

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Order, In re: Madison Guaranty Savings & Loan Assoc., (D.C. Cir. [Spec. Div.] Feb. 3, 1998).

<sup>192</sup> Plea Agreement, United States v. Webster L. Hubbell, No. 98-0394 (D.D.C. June 30, 1999).

<sup>193</sup> Judgment, United States v. Webster L. Hubbell, No. 98-0394 (D.D.C. July 1, 1999).

<sup>194</sup> Fiske Report, supra note 4, at 16, 40-43.

<sup>195</sup> Id. at 41.

<sup>196</sup> Id.

<sup>197</sup> Id. at 42-43.

investigative and prosecutorial jurisdiction over the following matter related to and arising out of the Independent Counsel's existing Madison Guaranty jurisdiction:

Whether Webster L. Hubbell, a covered person under the statute, violated any federal criminal law (including mail fraud and criminal tax violations) in his billing or expense practices while a member of the Rose Law Firm.<sup>198</sup>

On September 1, 1994, the Special Division granted the requested jurisdiction.<sup>199</sup>

Hubbell pleaded guilty on December 6, 1994, to one felony violation of 18 U.S.C. § 371 (conspiracy), and one felony violation of 26 U.S.C. § 7201 (tax evasion), and was sentenced to twenty-one months imprisonment, three years supervised release, and restitution to Rose in the amount of \$135,000.<sup>200</sup>

**12. Matters Relating to Webster L. Hubbell's Income Received since January 1, 1994.**

As noted above, the Special Division referred prosecutorial and investigative jurisdiction to the Independent Counsel over the related matter of "whether Webster L. Hubbell . . . violated any federal criminal law (including mail fraud and criminal tax violations) in his billing or expense practices while a member of the Rose Law Firm."<sup>201</sup> This referral was based on information developed during the tenure of regulatory Independent Counsel Fiske.<sup>202</sup> On

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<sup>198</sup> Letter from Independent Counsel Kenneth W. Starr, to Special Division Judges David B. Sentelle, John D. Butzner Jr., and Joseph T. Sneed at 3 (Aug. 31, 1994).

<sup>199</sup> Order, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] Sept. 1, 1994).

<sup>200</sup> Judgment, United States v. Webster L. Hubbell, No. LR-CR-94-241 (E.D. Ark. Aug 15, 1995).

<sup>201</sup> Order, In re: Madison Guaranty Sav. & Loan Ass'n (Webster L. Hubbell), (D.C. Cir. [Spec. Div.] Sept. 1, 1994).

<sup>202</sup> Fiske Report, supra note 4, at 16, 41-42.

December 6, 1994, Hubbell pleaded guilty to two felony counts related to his Rose Law Firm billing and expense practices, and as part of his plea agreement with the Independent Counsel, Hubbell agreed to cooperate fully with the Independent Counsel's continuing investigation.<sup>203</sup>

During the Independent Counsel's continued investigation, this Office received information about payments to Hubbell from individuals and entities associated with the Clinton Administration.<sup>204</sup> These payments were first made in 1994, when Hubbell was publicly known to have been under criminal investigation by the Independent Counsel.<sup>205</sup> This Office initiated a preliminary investigation into whether these payments were related to Hubbell's lack of substantial assistance to this Office's ongoing investigations.<sup>206</sup> As a result, the grand jury heard evidence about the payments, including evidence that Hubbell may have committed fraud and tax crimes.<sup>207</sup>

In light of the above, and on the grounds that payments to Hubbell were related to a possible obstruction of justice of the existing investigation, on December 31, 1997, the Independent Counsel petitioned the Special Division for an order referring investigative and prosecutorial authority over:

(i) whether Webster L. Hubbell or any individual or entity violated any criminal law, including but not limited to criminal tax violations and mail and wire fraud, regarding Hubbell's income since January 1, 1994, and his tax and other debts to

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<sup>203</sup> Plea Agreement, United States v. Hubbell, No. LR-CR-94-241 (E.D. Ark. Dec. 6, 1994).

<sup>204</sup> Application for Order of Referral to Independent Counsel at 3, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] Dec. 31, 1997).

<sup>205</sup> Id.

<sup>206</sup> Id.

<sup>207</sup> Id. at 3-4.

the United States, the State of Arkansas, the District of Columbia, the Rose Law Firm, and other; and

(ii) whether Webster L. Hubbell or any individual or entity violated any criminal law, including but not limited to obstruction of justice, perjury, false statements, and mail and wire fraud, related to payments that Hubbell has received from various individuals and entities since January 1, 1994.<sup>208</sup>

On January 6, 1998, the Special Division entered its Order confirming the above jurisdiction.<sup>209</sup> For the reasons stated in the body of the Final Report, the Independent Counsel concluded that there was insufficient evidence to prove beyond a reasonable doubt that any of Hubbell's clients hired or paid him in order to buy his silence.

On April 30, 1998, Hubbell and three other defendants were indicted by a federal grand jury in the District of Columbia on ten felony counts of various tax-related offenses.<sup>210</sup> On July 1, 1998, United States District Judge Robertson dismissed the indictment on the grounds that it was beyond the jurisdiction of the Office of the Independent Counsel<sup>211</sup> and because the government had based the indictment on the contents of documents Hubbell had produced pursuant to a limited order of immunity. Accordingly, Judge Robertson held that the government's use of those documents against Hubbell was a violation of his Fifth Amendment rights under the United States Constitution.<sup>212</sup> The Independent Counsel appealed both aspects

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<sup>208</sup> Id.

<sup>209</sup> Order, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] Jan. 6, 1998).

<sup>210</sup> Indictment, United States v. Webster L. Hubbell, Suzanna W. Hubbell, Michael C. Schaufele and Charles C. Owen, No. 98-015 (D.D.C. Apr. 30, 1998).

<sup>211</sup> Memo Opinion, United States v. Webster L. Hubbell, et al., No. 98-0151 (D.D.C. July 1, 1998).

<sup>212</sup> Id.



of the ruling.

On January 26, 1999, the United States Court of Appeals for the District of Columbia Circuit reversed the district court. It held that the indictment was within the Independent Counsel's jurisdiction and that the lower court had applied the incorrect standard in evaluating Hubbell's Fifth Amendment claim.<sup>213</sup> The Court of Appeals remanded the case to Judge Robertson for application of the articulated standard. The Office of the Independent Counsel then entered into a plea agreement with Hubbell because it concluded that it could not prevail under the standard.

Pursuant to the plea agreement, Hubbell pleaded guilty to a superseding criminal information on June 30, 1999, which charged him with one misdemeanor count of willful tax evasion in violation of 26 U.S.C. § 7203. The government agreed to dismiss the indictment of the remaining three defendants.<sup>214</sup> The government also agreed to dismiss Hubbell's misdemeanor conviction if unable to obtain Supreme Court review of the Court of Appeals' decision, or if the Supreme Court's decision did not materially improve the government's ability to use the contents of Hubbell's production of documents.<sup>215</sup>

On July 26, 1999, the government filed a petition for certiorari with the United States Supreme Court, which the Court granted on October 12, 1999.<sup>216</sup> The parties argued the case on

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<sup>213</sup> United States v. Webster L. Hubbell, 167 F.3d 552 (D.C. Cir. 1999).

<sup>214</sup> Plea Agreement, United States v. Webster L. Hubbell, et al., Nos. 98-0151, 0394 (D.D.C. June 30, 1999).

<sup>215</sup> Id.

<sup>216</sup> United States v. Webster L. Hubbell, 120 S.Ct. 320 (1999).

February 22, 2000.<sup>217</sup> On June 5, 2000, the Supreme Court ruled in Hubbell's favor, holding that the indictment against Hubbell impermissibly used the contents of the documents he had produced under immunity.<sup>218</sup> Consistent with the plea agreement, the Office of the Independent Counsel moved to vacate Hubbell's misdemeanor conviction.<sup>219</sup> That motion was granted.<sup>220</sup> Hubbell's prior felony convictions, described earlier, remained unaffected by the Supreme Court's ruling.

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<sup>217</sup> United States v. Webster L. Hubbell, 530 U.S. 27 (2000).

<sup>218</sup> Id.

<sup>219</sup> Motion Of The United States To Vacate Judgment Of Conviction And Dismiss The Superseding Criminal Information, United States v. Webster L. Hubbell, et al., No. 98-0151 (D.D.C. 2000).

<sup>220</sup> Order, United States v. Webster L. Hubbell, No. 98-0151 (D.D.C. Oct. 20, 2000).