

PART A

**THE CLINTONS, THE McDOUGALS,
AND THE WHITEWATER DEVELOPMENT COMPANY**

I. INTRODUCTION

At the core of this Office's investigation lies a parcel of land near the White River in Marion County, Arkansas called "Whitewater." Two couples, Jim and Susan McDougal, and Attorney General and Mrs. Clinton, purchased this land in 1978 and soon after formed a corporation -- the Whitewater Development Company, Inc. ("Whitewater Development" or "Whitewater") -- to manage lot sales and other developments. The financial arrangements relating to the land and the company came under scrutiny during the 1992 presidential campaign. Press reports questioned the relationship between the Clintons, the McDougals, their land investments, and the banking activity at two McDougal-controlled financial institutions -- Madison Bank & Trust ("Madison Bank") and Madison Guaranty Savings & Loan Association ("Madison Guaranty"). In 1986, Madison Guaranty failed, costing U.S. taxpayers \$73 million to pay off the federally insured depositors.

On September 1, 1992, the Kansas City, Missouri office of the Resolution Trust Corporation ("RTC") submitted Criminal Referral No. C-0004 to the U.S. Attorney for the Eastern District of Arkansas and the FBI Little Rock field office. The RTC's referral examined criminal allegations relating to Madison Guaranty and other entities controlled by its owner, Jim McDougal. Among these entities was Whitewater Development. The RTC's referral named Mr. and Mrs. McDougal as suspects and both Governor and Mrs. Clinton as potential witnesses.

Scrutiny of the Clintons' involvement in Whitewater intensified in 1993 when Little Rock Municipal Court Judge David Hale told reporters that his company, Capital Management Services, Inc. ("CMS"), had made an illegal loan to Susan McDougal, and that then-Governor

Bill Clinton had personally pressed him to make the loan.¹

Also in 1993, RTC agents prepared nine additional criminal referrals concerning Madison Guaranty. As a result of these ten criminal referrals, criminal investigations concerning Madison Guaranty were initiated during mid-1993 and early 1994 by senior Justice Department officials: first by the United States Attorney in Little Rock, Arkansas; then under the direction of veteran Department of Justice trial attorney and former United States Attorney Donald Mackay; and later under regulatory Independent Counsel Robert B. Fiske Jr., also a former United States Attorney.

The Attorney General eventually requested the appointment of an Independent Counsel to investigate the business dealings of Jim McDougal, the Clintons, Whitewater Development, Madison Guaranty, and CMS. This Part is devoted to one aspect of that inquiry -- the relationship between Jim McDougal, the Clintons, and Whitewater Development.

II. FINDINGS

Having concluded the investigation of the McDougals and the Clintons' relationship with Whitewater Development, the Independent Counsel reports the following findings and conclusions.

Concerning the Whitewater property and Whitewater Development:

- The Clintons and McDougals purchased the Whitewater property in 1978 as an equal partnership. They transferred the land to the Whitewater Development Company, Inc. in 1979.
- Whitewater Development failed, losing over \$80,000.

¹ See, e.g., Richard Keil, White House Seeks to Disassociate Clinton from Probe, A.P., Nov. 2, 1993.

- Jim McDougal bought out the Clintons' share of Whitewater Development in 1992 for \$1,000.

Concerning the operation and management of Whitewater Development:

- The Clintons contributed approximately \$36,862.33 to the venture.
- The McDougals contributed approximately \$80,076.03.
- The McDougals exercised substantially all managerial and operational control from 1978 until 1986.
- After 1986, Mrs. Clinton took a more active role in the management and operation of Whitewater Development.

Concerning the Whitewater Development loans:

- The principal mortgage acquisition loan for the purchase of the Whitewater land -- Citizens Bank & Trust loan no. 5885 -- was sometimes in arrears, and payments were irregular.
- On occasion, Jim McDougal, Whitewater Development, and the Clintons and McDougals together took out loans to pay Whitewater Development's obligations.
- Mrs. Clinton took out a loan in her name from Madison Bank to construct a model home on Whitewater Estates.
- Governor Clinton took out a loan from Security Bank of Paragould in substitution of Mrs. Clinton's construction loan, because bank regulators had asserted that Mrs. Clinton's loan violated banking regulations.
- A loan from Madison Guaranty was taken out in Governor Clinton's name to retire another loan taken out by Jim McDougal in the name of Whitewater Development at Madison Bank, because bank regulators had also asserted that the Whitewater Development loan violated banking regulations.
- The Madison Guaranty loan taken out in Bill Clinton's name was satisfied by a nominee loan to Chris Wade, and a payment from the James B. McDougal trustee account. The Wade nominee loan was paid off with a Whitewater Development check to Wade's Ozark Realty Co., which caused an overdraft in Whitewater Development's account at Madison Guaranty that was covered with funds from a

\$135,000 loan taken out by Flowerwood Farms, Inc. (a McDougal entity) at Stephens Security Bank.

- Jim and Susan McDougal fraudulently secured a \$300,000 loan from CMS. They used \$111,524.21 to pay off the \$135,000 loan at Stephens Security Bank; \$25,000 of the CMS loan was used as a down payment for Whitewater Development's purchase of property known as Lorange Heights.
- Jim and Susan McDougal executed a note, contract, and mortgage with International Paper on behalf of Whitewater Development in 1986 to fund the remainder of the Lorange Heights purchase. In December 1986, Whitewater Development, through Jim McDougal as president and Susan McDougal as secretary, transferred title to another real estate entity controlled by the McDougals.

Concerning the criminal culpability of Jim McDougal and Chris Wade:

- Jim McDougal engaged in numerous fraudulent financial transactions for the benefit of Whitewater Development involving Madison Guaranty and other corporate entities. Jim McDougal was convicted of felonies in May 1996 arising from a series of fraudulent transactions he committed involving Madison Guaranty and CMS. Susan McDougal was convicted of felonies in May 1996 involving the fraudulent loan she received from CMS.
- Chris Wade committed bankruptcy fraud when he purchased Lot 7 of Whitewater Estates. Wade pleaded guilty to two felony counts in March 1995.

Concerning President Clinton and Mrs. Clinton:

- Insufficient evidence exists to prove beyond a reasonable doubt that Mrs. Clinton knowingly participated in the criminal financial transactions Jim McDougal engaged in to benefit Whitewater Development.
- Insufficient evidence exists to prove beyond a reasonable doubt that Governor Clinton knew of, or approved of, the fraudulent \$300,000 CMS loan to Susan McDougal.
- Insufficient evidence exists to prove beyond a reasonable doubt that President Clinton knowingly gave false testimony when he denied receiving a loan from Madison Guaranty.
- Insufficient evidence also exists to prove beyond a reasonable doubt that President

Clinton knowingly gave false testimony about his lack of knowledge of the Lorraine Heights acquisition. In light of these conclusions, the Independent Counsel also determined that there was no "substantial and credible information" warranting referral of these allegations to Congress for consideration of impeachment under 28 U.S.C. § 595(c).

- Insufficient evidence exists establishing that Governor Clinton knowingly participated in the criminal financial transactions Jim McDougal engaged in to benefit Whitewater Development.

III. FACTUAL SUMMARY

This Part summarizes the facts and evidence the investigation uncovered about the relationship between the Clintons, the McDougals, and the Whitewater partnership and corporation.²

First, this Part summarizes the relationship between the Clintons, the McDougals, and Whitewater, from its inception in 1978 to its conclusion in 1992.

Second, this Part details the ten separate loans associated with Whitewater taken out in its name or which conferred a benefit on the business and its owners. Many of these loans were

² This Volume contains five appendices relating to Whitewater:

Appendix 1 details sales of Whitewater lots from 1980 through 1991.

Appendix 2 contains reconstructed repayment schedules for all loans made to or which conferred a benefit on the Whitewater partnership and/or corporation.

Appendix 3 depicts the cash flow transactions linking the \$300,000 loan by CMS to the \$27,600 loan taken out in Bill Clinton's name, and Madison Bank's \$30,000 loan to Whitewater Development.

Appendix 4 lists all the loans, advances, and repayments made by and to the Clintons and the McDougals relating to the Whitewater venture. Appendix 4 also includes a listing of the errors found in the Lyons Reports.

Appendix 5 describes the illegal financial transactions Jim McDougal engaged in with Whitewater Development.

interrelated.

Third, this Part details the Clintons' and the McDougals' management of Whitewater Development and summarizes loans and advances to Whitewater Development made by both the Clintons and the McDougals.

Fourth, this Part reviews the Clintons' personal and corporate tax filings for the relevant years.

Fifth, this Part discusses Jim McDougal's crimes involving Whitewater, and Chris Wade's crimes committed through the purchase and sale of a Whitewater lot.

A. The Clintons' Involvement with Whitewater Began in 1978, When the Partnership First Purchased 230.24 Acres, and Ended in 1992, When the Clintons Were Bought Out by Jim McDougal.

1. The Clintons' Participation in Whitewater Grew Out of Personal, Political, and Professional Ties Between Bill Clinton and Jim McDougal.

a. President Clinton Met Jim McDougal in 1968.

Bill Clinton and Jim McDougal met in Little Rock during the summer of 1968, shortly after Clinton graduated from Georgetown University.³ Lee Williams, the administrative assistant to Senator J. William Fulbright, introduced them at the Arkansas senator's Marion Hotel reelection headquarters.⁴ McDougal was in charge of constituent services for Senator Fulbright,

³ J. McDougal 4/2/97 GJ at 12-13; see also W. Clinton 5/24/95 Interrog. Resp. at 2-3 ("As of August, 1978, . . . I had known Jim McDougal for about ten years").

⁴ J. McDougal 4/2/97 GJ at 12; Jim McDougal & Curtis Wilkie, Arkansas Mischief 113 (1998).

and was helping with the campaign.⁵ Clinton had worked part-time for Senator Fulbright while attending college and volunteered to help the campaign before he left for Oxford University.⁶

After Clinton and McDougal became friends,⁷ McDougal became Clinton's political supporter.⁸ From 1974 until 1978, McDougal saw Bill and Hillary Rodham, whom McDougal met in the early to mid-1970s,⁹ regularly.¹⁰ McDougal went to their October 1975 wedding, and the Clintons went to McDougal's wedding to Susan Henley the following May.¹¹

b. Bill Clinton and Jim McDougal Began Their Financial Relationship in 1977.

In 1977, after becoming attorney general, Clinton purchased five acres from Rolling Manor, Inc. ("Rolling Manor"), an Arkansas corporation Jim McDougal and Senator Fulbright

⁵ Jim McDougal & Curtis Wilkie, Arkansas Mischief 113 (1998).

⁶ W. Clinton 4/28/96 Depo. at 9-10, 13, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.). But see J. McDougal 4/2/97 GJ at 12-13 (recalling his introduction to Mr. Clinton at the Marion Hotel in 1968).

⁷ The Clintons did not consider themselves social friends of the McDougals, however. W. Clinton 7/22/95 Depo. at 8; H. Clinton 7/22/95 Depo. at 53-54; H. Clinton 4/25/98 Depo. at 13.

⁸ W. Clinton 7/22/95 Depo. at 42; see also W. Clinton 5/24/95 RTC Interrog. Resp. at 53.

⁹ Mrs. Clinton said she did not meet McDougal until the middle or late 1970s. H. Clinton 3/24/95 RTC Interrog. Resp. at 5. McDougal remembered meeting Mrs. Clinton in Hot Springs at the 1974 Arkansas Democratic Convention, when Mr. Clinton was the Democratic nominee for Congress for the Third District. See J. McDougal 4/2/97 GJ at 13; Jim McDougal & Curtis Wilkie, Arkansas Mischief 140 (1998).

¹⁰ J. McDougal 4/2/97 GJ at 72.

¹¹ W. Clinton 7/22/95 Depo. at 42. President Clinton met Susan Henley shortly before she married Jim McDougal. W. Clinton 4/28/96 Depo. at 30, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.). Mrs. Clinton said she had known Susan McDougal since the middle or late 1970s, through her husband's friendship with Jim McDougal. H. Clinton 5/24/95

jointly owned.¹² Clinton purchased the land in an Arkansas development known as Saltillo Heights.¹³ According to McDougal, Clinton borrowed \$8,000 to finance the purchase.¹⁴ When later questioned about it, President Clinton could not remember the details, but believed he made monthly payments.¹⁵

McDougal divided the property into three-acre tracts and made improvements.¹⁶ By May 17, 1978, two months after Clinton had purchased his property, McDougal sold the lots.¹⁷ Clinton's parcel netted him approximately \$2,100,¹⁸ which was reported on the Clintons' 1978 tax returns.¹⁹

The Saltillo Heights transaction proved significant for two reasons. First, the venture's success influenced Clinton's decision to form the Whitewater partnership and corporation with

RTC Interrog. Resp. at 75.

¹² J. McDougal 4/2/97 GJ at 15-16; W. Clinton 4/28/96 Depo. at 10-11, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.); see also W. Clinton 4/22/95 Depo. at 10-13.

¹³ J. McDougal 4/2/97 GJ at 15-16; J. McDougal 9/96 Int. at 1. See W. Clinton 4/22/95 Depo. at 10-13.

¹⁴ J. McDougal 4/2/97 GJ at 61-62. The purchase agreement said Clinton made a down payment. See Purchase Agreement (Saltillo Heights) (Doc. Nos. DEK002225 through 26). But see Letter from Jim McDougal to Bill Clinton (Feb. 4, 1977) (Doc. No. DEK002222). The following week, however, McDougal wrote Clinton: "Between now and April 1st please mail us your down payment of \$400.00 - If you have it to spare." Id. There was no evidence that Attorney General Clinton ever made the payment.

¹⁵ W. Clinton 4/22/95 Depo. at 11.

¹⁶ J. McDougal 4/2/97 GJ at 63.

¹⁷ W. Clinton 5/24/95 Interrog. Resp. at 3; J. McDougal 4/2/97 GJ at 63.

¹⁸ W. Clinton 4/28/96 Depo. at 10-11, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.); see also W. Clinton 5/24/95 Interrog. Resp. at 3; J. McDougal 4/2/97 GJ at 61 ("I have read that he made about \$2,000 and that sounds about right").

the McDougals by confirming Clinton's belief that McDougal could construct successful real estate ventures.²⁰ Clinton was satisfied with the money he made on the deal, which he called a "nice profit."²¹ Second, McDougal opened an account in 1978 to receive the mortgage payments from Attorney General Clinton's Saltillo Heights lot sales, which he (McDougal) later used for a loan he took out in Bill Clinton's name at Madison Guaranty in 1982.²²

2. The Clintons and the McDougals Formed the Whitewater Partnership in 1978.

In 1978, Chris Wade, a real estate agent in Flippin, Arkansas, told McDougal a large tract of land was available along the White River in Marion County, in the north-central part of Arkansas.²³ Marion County was considered a prime development area for vacationers from the Midwest and the South.²⁴ Shortly after learning about the land, McDougal ran into the Clintons

¹⁹ W. Clinton 5/24/95 RTC Interrog. Resp. at 3.

²⁰ Id. McDougal was also of the belief that the Saltillo Heights transaction probably served to reinforce Attorney General Clinton's trust in him as a real estate developer. J. McDougal 9/96 Int. at 1.

²¹ W. Clinton 4/28/96 Depo. at 10-11, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.).

²² The trustee account was set up by Susan McDougal to collect mortgage payments from the Clinton-owned Saltillo Heights lot sales, so that the lot payments could pay off the loan Attorney General Clinton used to buy the land. J. McDougal 4/2/97 GJ at 53-54, 62; J. McDougal 8/96-6/97 Int. at 30. As discussed infra, McDougal used this then dormant account, along with the \$25,000 Wade nominee loan, to pay the principal and interest due on the \$27,600 Madison Guaranty loan made in Bill Clinton's name.

²³ J. McDougal 9/96 Int. at 1.

²⁴ See W. Clinton 5/24/95 Interrog. Resp. at 4-5; Statement of Hillary Clinton, Whitewater Press Conference (Apr. 22, 1994).

and invited them to join him as partners.²⁵ The Clintons, pleased with the Saltillo Heights profits, agreed.²⁶

On June 15, 1978, McDougal purchased for himself and the Clintons 230.24 acres of the Marion County land.²⁷ The purchase price was \$202,999.10, or \$881.68 per acre. The Clintons and the McDougals planned to divide the property into lots to sell as vacation home sites.²⁸ They named the development "Whitewater Estates" because of the White River frontage.²⁹

The Clintons and the McDougals never executed a written agreement about their obligations to the partnership, but rather shared an oral understanding about their personal obligations.³⁰ All four partners believed they had an equal ownership interest in the 230.24 acres of land.³¹ The Clintons "would share equally with the McDougals in expenses and profits."³²

²⁵ J. McDougal 9/96 Int. at 2.

²⁶ Id.

²⁷ Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 15 (Apr. 24, 1995).

²⁸ Map of Whitewater Development (undated) (Doc. No. 53-00000005). See Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 15, 25 (Apr. 24, 1995); see also David Maraniss, First In His Class 374 (1995).

²⁹ J. McDougal 4/2/97 GJ at 16.

³⁰ W. Clinton 5/24/95 RTC Interrog. Resp. at 5-6 ("Our agreement with Jim and Susan McDougal about the financing of the Whitewater project was oral and not formalized by a writing").

³¹ Wade, who had first alerted McDougal about the availability of the 230.24-acre tract and who also served on the board of Citizens Bank, testified that "they took title to it as Bill and Hillary and Jim and Susan, I believe." Wade 4/12/94 GJ at 43-44.

³² W. Clinton 5/24/95 RTC Interrog. Resp. at 6 ("There was no particular definition of, nor limitation on, our financial commitment to the project, except that we anticipated that we

Finally, "any inequalities [in the respective contributions of the Clintons and the McDougals] ultimately would be evened out from revenues of the venture or when the venture was sold."³³

3. The Whitewater Development Company Was Incorporated to Develop the Marion County Land in 1979.

On June 18, 1979, accountant Charles James incorporated Whitewater Development in the state of Arkansas.³⁴ McDougal did not consult with the Clintons on the incorporation decision.³⁵ The McDougals and the Clintons conveyed all assets to the new corporation on September 30, 1979.³⁶

Jim McDougal capitalized Whitewater Development with 1,000 shares of stock at \$1 per

would share equally with the McDougals in expenses and profits"); see also J. McDougal 4/2/97 GJ at 79.

³³ W. Clinton 5/24/95 RTC Interrog. Resp. at 7.

³⁴ James 10/16/96 GJ at 15, 18. Whitewater Development was incorporated:

(a) to engage in the business of owning, selling, developing, managing, and improving real property; (b) to purchase or in any way acquire for investment or for sale, or otherwise, lands, contracts for the purchase or sale of lands, buildings, improvements, and any other real or personal property of any kind; and to sell, lease, convey, mortgage or otherwise deal with all or any part of the real or personal property of the corporation; (c) to acquire, promote, construct, operate, or manage residential, multi-family or commercial enterprises or any other improvements with the development of any real properties in which the corporation may have an interest; (d) to conduct any other business enterprise not contrary to law; (e) to exercise all of the powers enumerated in Section 4 of the Arkansas Business Corporation Act.

Whitewater Development Articles of Incorporation (June 18, 1979) (Doc. Nos. 70-00000020 through 24).

³⁵ J. McDougal 9/96 Int. at 4-5.

³⁶ See Warranty Deed (Sept. 30, 1979) (Doc. Nos. 70-00000025 through 27). The deed was recorded on December 19, and filed on December 28, 1979. Id.

share with the fiscal year ending May 31, 1980.³⁷ McDougal originally intended to make Mrs. McDougal and Mrs. Clinton the sole shareholders, though the evidence was unclear about how the shares were divided.³⁸ The Clintons' and McDougals' understanding remained that Whitewater was a fifty-fifty arrangement,³⁹ so that profits and expenses would be shared equally.⁴⁰

4. Whitewater's Lot Sales Were Sluggish.

a. Chris Wade of Ozarks Realty Conducted Much of the Marketing and Sales.

The Clintons relied on the McDougals to oversee Whitewater's sales, marketing, and development.⁴¹ Jim McDougal hired Ozarks Realty Company, a small real estate brokerage Chris

³⁷ A Whitewater general ledger allocated the capital stock equally amongst the four partners. See Whitewater General Ledger (as of May 31, 1980) (Doc. Nos. DEK000218 through 19).

³⁸ J. McDougal 9/96 Int. at 5. Charles James, the accountant for Whitewater Development, testified that he believed that Mrs. Clinton and Susan McDougal were the original shareholders. James 10/16/96 GJ at 22-23. The Clintons do not believe they received share certificates when Whitewater Development was incorporated. H. Clinton 5/24/95 RTC Interrog. Resp. at 58.

³⁹ According to Mrs. Clinton, "the ownership of the corporation was 50/50." Statement of Hillary Clinton, Whitewater Press Conference (Apr. 22, 1994); see also W. Clinton 5/24/95 RTC Interrog. Resp. at 7.

⁴⁰ W. Clinton 5/24/95 RTC Interrog. Resp. at 6.

⁴¹ Id. at 9 ("I do not recall that we ourselves had any particular agreement, expectation, or understanding with respect to such things as the prices of lots, the terms on which lots would be sold, the methods by which the lots would be marketed, how much money would be spent on marketing, the size of down payments, who would be the broker, the method of computing commissions, and the size of commissions"). Id.

Wade operated, to do this.⁴² Wade arranged for surveys, roads to be cleared, and gravel to be laid where needed.⁴³ The 230.24-acre Whitewater property was subdivided into forty-four lots.⁴⁴ A problem with the original survey, however, caused a delay of approximately one year before lots could be marketed.⁴⁵ McDougal believed this delay hurt sales, because interest rates rose and real estate sales fell by the time Whitewater lots could be sold.⁴⁶

Ozarks Realty conducted most of the marketing and sales.⁴⁷ From 1978 to 1992, Ozarks Realty or Wade received between \$72,998 and \$79,519 in commissions and other payments for Whitewater-related work.⁴⁸

After a Whitewater lot was sold, the proceeds were to be deposited into Ozarks Realty's real estate trust account.⁴⁹ After the closing, any funds left over were then deposited into Whitewater Development's checking account at Citizens Bank & Trust ("Citizens Bank") in Flippin, Arkansas.⁵⁰ The shareholders envisioned that the funds deposited into this escrow

⁴² J. McDougal 4/2/97 GJ at 38.

⁴³ Wade 4/12/94 GJ at 89-90.

⁴⁴ W. Clinton 5/24/95 RTC Interrog. Resp. at 9.

⁴⁵ J. McDougal 9/96 Int. at 4.

⁴⁶ Id.

⁴⁷ J. McDougal 9/96 Int. at 3; Wade 3/17/95 Int. at 8; see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 23-24 (Apr. 24, 1995).

⁴⁸ See Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 23-24 (Apr. 24, 1995).

⁴⁹ Wade 3/30/95 Int. at 8.

⁵⁰ Wade 6/7/94 GJ at 18; Wade 3/30/95 Int. at 8.

account would be used to service the debt on Citizens Bank loan no. 5885, which had been taken out to finance purchase of the property.⁵¹ Mrs. Clinton "assumed that the revenues from the escrow contracts were being used for these purposes."⁵²

b. Jim McDougal Exchanged the Remaining Whitewater Lots with Chris Wade for a Piper Seminole Airplane in 1985.

By May 1985, only twenty of the forty-four Whitewater lots were under contract for deed.⁵³ Frustrated, McDougal told Wade he was "tired of messing with Whitewater" and asked Wade to buy the unsold lots.⁵⁴ Wade owned a part of Ozark Air Services ("Ozark Air"), a small airline charter service.⁵⁵ McDougal originally wanted \$75,000 cash for the lots,⁵⁶ but Wade offered to trade one of Ozark Air's airplanes -- a 1979 Piper Seminole -- for the lots.⁵⁷ McDougal agreed,⁵⁸ and the transaction was completed on May 4, 1985.⁵⁹ McDougal did not consult with Governor or Mrs. Clinton,⁶⁰ and the Clintons said that they did not learn about the exchange until

⁵¹ See Strange 5/12/94 GJ at 29.

⁵² H. Clinton 5/24/95 RTC Interrog. Resp. at 49.

⁵³ J. McDougal 9/96 Int. at 9.

⁵⁴ Wade 4/12/94 GJ at 107-11.

⁵⁵ Id.

⁵⁶ Wade 3/30/95 Int. at 11.

⁵⁷ Wade also agreed to make \$35,000 in payments on the 1978 loan at Citizens Bank. Wade 4/12/94 GJ at 111; see also J. McDougal 9/96 Int. at 9.

⁵⁸ J. McDougal 9/96 Int. at 9. McDougal sold the airplane to Seth Ward, Webster Hubbell's father-in-law. Ward obtained approximately \$13,000 from Madison Financial Corporation, a subsidiary of Madison Guaranty created to handle real estate transactions, to pay for the additional expenses associated with Ward's airplane purchase and subsequent sale. Id.

⁵⁹ See Security Release Agreement (May 4, 1985) (Doc. Nos. 70-00000114 through 15).

⁶⁰ J. McDougal 9/96 Int. at 9. President Clinton testified that McDougal did not consult

1986.⁶¹

5. The Clintons Ended Their Relationship with Whitewater in December 1992 by Selling Their Remaining Whitewater Shares to Jim McDougal.

The Clintons and members of the presidential transition team initiated the Clintons' divestment from Whitewater.⁶² James Blair, a Clinton friend who had helped with the presidential campaign, negotiated the Clintons' sale of their remaining interest.⁶³ Blair testified:

I set out to extricate them from Whitewater, and decided the best way to do it was to persuade McDougal to buy them out for a nominal sum. He couldn't buy them out for more than a nominal sum because he didn't have any money, and it probably wasn't worth any money. So if he had any money, he probably wasn't going to give it anyhow for that. So I talked to [Sam] Heuer [Jim McDougal's attorney]. There was a little trickle of money that came from some escrow contracts that were still being paid on where some of the Whitewater lots had been sold, and it was worth something to him. And so Heuer and McDougal eventually agreed they would buy out the Clintons for the sum of \$1,000. And I either prepared or I talked to Vince [Foster] and had Vince type out a very simple transaction, transferring their stock.⁶⁴

with him before the transfer of the lots, nor did McDougal tell him that all of the Whitewater lots had been sold or transferred when they renewed the Citizens Bank loan in the fall of 1985. W. Clinton 4/28/96 Depo. at 81-84, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.). Mrs. Clinton said in her Interrogatory Responses to the RTC that McDougal told her in 1986 that the remaining Whitewater lots had been sold to Wade the previous year. H. Clinton 5/24/95 RTC Interrog. Resp. at 28.

⁶¹ H. Clinton 5/24/95 RTC Interrog. Resp. at 28; W. Clinton 5/24/95 RTC Interrog. Resp. at 27.

⁶² Blair 12/7/95 GJ at 99. Questions about the Clintons' relationship with Whitewater had been raised during the 1992 campaign. Blair told the grand jury that Loretta Lynch and Susan Thomases strongly felt, as he did, that the Clintons needed to be out of Whitewater. Blair 12/7/95 GJ at 99.

⁶³ H. Clinton 6/12/94 Fiske Depo. at 26.

⁶⁴ Blair 12/7/95 GJ at 99.

Mrs. Clinton stated she knew about Blair's efforts,⁶⁵ but President Clinton stated he did not.⁶⁶

When Blair was unable to attend the closing, Vince Foster took his place.⁶⁷ Mrs. Clinton knew Foster was involved in their divestment from Whitewater and knew that her tax counsel and accountant had consulted Foster about the transaction.⁶⁸ The closing agreement, drafted by Blair and Foster, made the Clintons responsible for preparing the Whitewater corporate tax returns and required them to give all corporate records to McDougal within ninety days.⁶⁹

On December 22, 1992, the Clintons formally severed all economic ties with the Whitewater corporation.⁷⁰ McDougal did not have the necessary \$1,000 to purchase the stock, so Blair provided the money by writing a check to Sam Heuer's trust account, which then disbursed a check to the Clintons.⁷¹ McDougal testified he was unaware Blair had provided the funds, and

⁶⁵ H. Clinton 6/12/94 Fiske Depo. at 26.

⁶⁶ W. Clinton 6/12/94 Fiske Depo. at 40.

⁶⁷ Blair 12/7/95 GJ at 99.

⁶⁸ H. Clinton 7/22/95 Depo. at 6-7.

⁶⁹ Letter from Vincent J. Foster Jr. to Yoly Redden, Clinton's accountant (Dec. 23, 1992) (Doc. Nos. DEK004357 through 59). Foster, on the Clinton's behalf, offered to have Yoly Redden, the Clinton's accountant, and her firm prepare the returns. Id.; see also W. Clinton 6/12/94 Fiske Depo. at 11; J. McDougal 4/3/97 GJ at 53-54. On June 16, 1993, McDougal called Foster at the White House leaving a message that he was calling about the Whitewater tax returns. This call was not returned, but a few days later, McDougal received the prepared tax returns in the mail, unaccompanied by the corporate records. Id. at 55-56. Letter from Yoly Redden, Clinton's accountant, to James Blair (June 23, 1993) (Doc. No. DEK009076). The letter reflected that those returns were completed and about to be filed.

⁷⁰ Blair 2/19/96 Senate Whitewater Comm. Depo. at 69, 84.

⁷¹ Check No. 0166 from the account of Sam Heuer payable to Bill and Hillary Clinton for \$1,000.00 (Dec. 24, 1992) (Doc. No. DEK004365). At the time of the sale, Heuer was representing McDougal as counsel.

consequently never repaid him or anyone else for the \$1,000 stock purchase.⁷²

B. While the Clintons Were Owners of Whitewater, Ten Loans, Many Interrelated, Were Taken Out in the Name of, or which Conferred a Benefit on, the Whitewater Partnership and/or Corporation.

Revenues from Whitewater lot sales were rarely sufficient to keep up with loan payments, development costs, and other expenses. The Clintons and the McDougals personally loaned the corporation money, and the corporation borrowed money from various financial institutions.⁷³ In all, ten loans were taken out in the name of, or which conferred some benefit on, the Clinton/McDougal Whitewater partnership or corporation. These ten loans were:

- 1) Union National Loan No. 4197 made to William J. Clinton and James B. McDougal (June 19, 1978);
- 2) Citizens Bank Loan No. 5885 made to William J. Clinton, Hillary Rodham, James B. McDougal and Susan McDougal (August 2, 1978);
- 3) Bank of Cherry Valley Loan No. 25997 (and successor loans) made to James B. McDougal (June 19, 1980);
- 4) Bank of Kingston/Madison Bank & Trust Loan No. 23039 made to Hillary Rodham (December 16, 1980);
- 5) Madison Bank and Trust Loan No. 23337-01 made to Whitewater Development (August 14, 1981);

⁷² J. McDougal 4/3/97 GJ at 52-53. McDougal testified that he was asked during a television interview about Blair and the funding of the stock purchase: "I said on the program, 'Well, I never paid it. I never had \$1,000.' And, you know, he said, 'Did Jim Blair loan you a thousand?' I said, 'No. I never paid the thousand, period.' And almost immediately, I got a call from Sam [Heuer]. He was sort of frantic. And he said, 'Well, Jim [Blair] is down --' and I thought he meant right then, '-- testifying before a committee in Congress that he loaned you the thousand.' And I said, 'You know, when you guys are making these stories up, you need to let me in on it because I didn't know that.'" Id.

⁷³ J. McDougal 4/2/97 GJ at 38.

- 6) Security Bank Loan No. 957-585 (and successor loan) made to Bill Clinton (September 30, 1982);
- 7) Citizens Bank Loan No. 10295 made to Whitewater Development (November 1, 1982);
- 8) Madison Guaranty Savings & Loan Cashier's Check No. 924 made payable to "Bill Clinton" (November 15, 1982);
- 9) Capital Management Services Loan made to Susan McDougal d/b/a Master Marketing (April 3, 1986); and
- 10) International Paper Real Estate Note and Mortgage signed by Jim McDougal and Susan McDougal on behalf of Whitewater Development (October 10, 1986).

The repayment history for these loans appears in Appendix 2 of this Volume.

1. The Clintons and the McDougals Took Out Two Loans from Two Arkansas Banks in 1978 to Purchase the Land.

Two Arkansas banks, Union National Bank ("Union National") of Little Rock and Citizens Bank & Trust ("Citizens Bank") of Flippin loaned the funds for the initial \$203,000 Whitewater purchase price.⁷⁴ McDougal said he did not discuss with anyone his decision to borrow all the money for the purchase, including the down payment.⁷⁵ McDougal felt this was unnecessary, as he had made numerous real estate purchases before with one hundred percent

⁷⁴ Union National Loan No. 4197 and Citizens Bank Loan No. 5885 accounted for \$202,611.20 of the purchase price. Records do not show where the remaining \$388.80 came from. Union National Bank of Little Rock participated in 50% of the Citizens Bank loan, purchasing \$91,305.60 of the \$182,611.20. See Certificate of Participation (Aug. 2, 1978) (Doc. No. 70-00000006).

⁷⁵ J. McDougal 9/96 Int. at 2.

financing.⁷⁶

The Clintons were personally liable on these two loans, but their exceeding belief that the financing would be secured by the real estate itself, and that the personal exposure of the four partners would be limited, influenced their decision to enter into the venture.⁷⁷ Jim McDougal assured the Clintons he could quickly sell enough lots to make the project self-financing.⁷⁸

a. The \$20,000 Loan from Union National Bank in Little Rock for the Down Payment.

The Clintons and the McDougals borrowed the \$20,000 down payment from Union National in Little Rock on June 19, 1978.⁷⁹ Jim McDougal negotiated the terms, conditions, and origin of the loan.⁸⁰ Recorded as no. 4197, the loan took the form of a one-year note, which Attorney General Clinton and Jim McDougal signed.⁸¹ The loan was renewed on June 19, 1979, September 17, 1979, and December 17, 1979. Payments from McDougal's personal account from Great Southern, another company McDougal operated, and from Whitewater Development,

⁷⁶ Id. at 2-3.

⁷⁷ W. Clinton 5/24/95 RTC Interrog. Resp. at 5; W. Clinton 7/22/95 Depo. at 66.

⁷⁸ W. Clinton 5/24/95 RTC Interrog. Resp. at 5-6.

⁷⁹ See Union National Bank of Little Rock Promissory Note No. 4197 (June 19, 1978) (Doc. Nos. GS-00014383 through 84). The loan was extended for an additional year on June 19, 1979.

⁸⁰ J. McDougal 9/96 Int. at 3 (stating that McDougal believed he handled the application and procurement of the \$20,000 loan and that Bill Clinton did not have anything to do with the loan). But see Paul C. Berry 5/10/96 Senate Whitewater Comm. Depo. at 18-19 (claiming that Governor Clinton, and not McDougal, originated the loan).

⁸¹ See Union National Bank of Little Rock Promissory Note No. 4197 (June 19, 1978) (Doc. Nos. GS-00014383-84).

serviced the loan.⁸²

To pay off Union National loan no. 4197, Jim McDougal personally borrowed \$20,000 on June 19, 1980 from the Bank of Cherry Valley, which he deposited into a Whitewater Development account the next day.⁸³ President Clinton did not remember when the Union National loan was retired,⁸⁴ but did remember that the loan shifted to the Bank of Cherry Valley.⁸⁵ The Clintons regarded the loan as an acquisition loan for which they and the McDougals were personally liable.⁸⁶ President Clinton remembered that McDougal handled the servicing of the loan.⁸⁷

Union National loan no. 4197 was paid on June 23, 1980, by Whitewater Development, using funds from the Bank of Cherry Valley loan no. 25997.⁸⁸ From April 1981 until September

⁸² Union National Bank of Little Rock Statement of Whitewater Development account (5/30-6/30/80) (Doc. No. GS-00014674); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 28 (Apr. 24, 1995).

⁸³ Purchaser's receipt no. 10043 from Bank of Cherry Valley to Jim McDougal in the amount of \$20,000.00 (June 19, 1980) (Doc. Nos. GS-00014672); Deposit slip from Jim McDougal to Union National Bank in the amount of \$20,000.00 (June 20, 1980) (Doc. No. GS-00014673); Union National Bank of Little Rock Statement of Whitewater Development account (5/30-6/30/80) (Doc. No. GS-00014674); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 30 (Apr. 24, 1995).

⁸⁴ W. Clinton 3/31/95 Interrog. Resp. at 16.

⁸⁵ Id.

⁸⁶ Id. at 13. The reconstructed loan repayment schedule for Union National Loan No. 4197 and for Bank of Cherry Valley Loan No. 25997 and successor loans may be found in Appendix 2 of this Volume.

⁸⁷ W. Clinton 3/31/95 Interrog. Resp. at 16.

⁸⁸ See Loan No. 25997 Debit Sheet (June 19, 1980) (Doc. No. 204-00000158); see also

1984, the Bank of Cherry Valley loan was refinanced several times, resulting in new notes with new loan numbers.⁸⁹ To make the payments, Jim McDougal used the funds of the subsequent loan to pay the amounts due on the prior note.⁹⁰ A payment from Whitewater Development finally retired the loan on January 4, 1985.⁹¹

b. The Clintons and the McDougals Took Out a \$182,611.20 Loan from Citizens Bank & Trust in Flippin to Finance the Remaining Purchase Price.

i. Citizens Bank & Trust Loan No. 5885.

The Clintons and the McDougals borrowed \$182,611.20 on August 2, 1978, in the form of a sixth month mortgage,⁹² recorded as loan no. 5885,⁹³ from Citizens Bank in Flippin,

Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 30 (Apr. 24, 1995).

⁸⁹ Denton 5/7/96 Senate Whitewater Comm. Depo. at 59, 62-63.

⁹⁰ Bank of Cherry Valley Loan No. 25997 was repaid with Loan No. 26731 on April 13, 1981; Loan No. 26731 was repaid with Loan No. 27572 on April 13, 1982; Loan No. 27572 was repaid with Loan No. 27851 on August 12, 1982; Loan No. 27851 was repaid with Loan No. 28262 on July 7, 1983; Loan No. 28262 was repaid with Loan No. 28861 on June 20, 1984; Loan No. 28861 was repaid with Loan No. 28997 on September 12, 1984; and Loan No. 28997 was satisfied after payment by Whitewater Development on January 9, 1985. See Appendix 2 of this Volume for a detailed accounting of payments.

⁹¹ Check No. 000128 from the account of White Water Development Corporation Incorporated signed by James McDougal payable to the Bank of Cherry Valley for \$5,071.23 (Jan. 4, 1985) (Doc. No. DEK501631); Endorsement of Check No. 000128 from the account of White Water Development Corporation Incorporated signed by James McDougal payable to the Bank of Cherry Valley for \$5,071.23 (Jan. 4, 1985) (Doc. No. DEK501632); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 67 (Apr. 24, 1995).

⁹² See Mortgage with Power of Sale, signed by the McDougals and Clintons (Aug. 2, 1978) (Doc. No. 70-00000014). The loan was originally scheduled to mature on June 19, 1979, but was renewed a number of times after its original maturation date. See, e.g., Citizens Bank

Arkansas.⁹⁴ All four partners personally signed as guarantors.⁹⁵ The real estate itself secured the loan and the mortgage, and expressly held the four principals personally liable for any deficiency if foreclosure and sale of the land proved insufficient to pay any amount outstanding.⁹⁶ If Whitewater Development failed to generate sufficient revenue to satisfy Citizens Bank loan no. 5885, and one of the McDougals or the Clintons had to pay off more than his or her proportionate one-fourth share of the loan deficiency, then the other three loan co-signers "would be obligated to pay their individual share of any deficiency disproportionately paid by the one [who had to overpay]."⁹⁷

According to testimony, the Clintons understood the scope of their liability. Mrs. Clinton testified that both she and her husband were liable on the Citizens Bank note until its satisfaction in 1992.⁹⁸ Jim McDougal told the grand jury, "it didn't make any difference if we borrowed as individuals or in the corporation. Either way, if the corporation borrowed it, we had to stand

Loan No. 5885 Extension Agreement (Nov. 11, 1979) (Doc. No. 70-00000028).

⁹³ See Citizens Bank, Flippin, Arkansas Promissory Note No. 05885 (Aug. 2, 1978) (Doc. No. MGSL-FR-00000002). Flippin was the closest town to the Whitewater property.

⁹⁴ See id.

⁹⁵ Id.

⁹⁶ W. Clinton 5/24/95 RTC Interrog. Resp. at 6-7.

⁹⁷ Id. at 15.

⁹⁸ H. Clinton 4/25/98 GJ at 11-12; see also Statement of Hillary Clinton, Whitewater Press Conference (Apr. 22, 1994) ("The liability on the underlying debt was 100 percent for each one of us. I mean there was not gift in that. When my husband and I signed that mortgage and when we resigned guarantees, we assumed the whole responsibility. I mean, if Jim had gone into bankruptcy early on, if Susan had left, we would not have only 50 percent of the obligation, we would have 100 percent of the obligation").

good for it as individuals."⁹⁹

On August 6, 1979, Citizens Bank notified the Clintons and the McDougals that the balance of loan no. 5885 was due on August 5, 1980.¹⁰⁰ The bank offered the option of annual renewals subject to a ten percent yearly reduction on the principal loan amount.¹⁰¹ On November 9, 1979, Jim McDougal and Governor Clinton signed an agreement with the bank, which extended the loan until August 5, 1981.¹⁰² Citizens Bank refinanced the loan with similar renewal and modification agreements nine times, until it was paid off in 1992.¹⁰³

In 1983, TC Bancshares purchased Citizens Bank and renamed it 1st Ozark National Bank ("1st Ozark"). The purchase converted the bank to a national charter institution, subjecting it to examination by federal regulators.¹⁰⁴ The Clintons and McDougals continued to renew the

⁹⁹ J. McDougal 4/3/97 GJ at 39.

¹⁰⁰ See Letter from Frank Burge, President of Citizens Bank, to James and Susan McDougal and Bill and Hillary Clinton (Aug. 6, 1979) (Doc. No. DEK007656).

¹⁰¹ Id.

¹⁰² See Extension Agreement (Nov. 9, 1979) (Doc. No. 70-00000028). The Independent Counsel was unable to determine as to why the letter sent by Citizens Bank noted that the loan matured on August 5, 1979 but the extension agreement was not entered into until three months later.

¹⁰³ See Extension and Modification Agreement, applicants Bill Clinton and James B. McDougal (Aug. 5, 1980) (Doc. No. DEK002853); Extension and Modification Agreement applicants Bill Clinton, Hillary Rodham, James B. McDougal, and Susan H. McDougal (Aug. 5, 1981) (Doc. No. 70-00000047); Extension and Modification Agreement applicants Bill Clinton, Hillary Rodham, James B. McDougal, and Susan H. McDougal (Nov. 1, 1982) (Doc. No. 70-00000067). See Appendix 2 of this Volume for a complete history of the loan's extension schedule.

¹⁰⁴ Proctor 9/27/94 GJ at 34.

original Citizens Bank loan through 1st Ozark.¹⁰⁵

In October 1983, 1st Ozark Vice President Ron Proctor was assigned loan no. 5885, previously the responsibility of the bank's president.¹⁰⁶ Proctor discovered that the pay down schedule was irregular.¹⁰⁷ Proctor knew Whitewater Development faced high interest rates and a deteriorating real estate market¹⁰⁸ and was concerned about Jim McDougal's management of the subdivision.¹⁰⁹ 1st Ozark's loan committee met on October 5, 1983 and decided that, despite missed payments and other concerns, McDougal's net worth warranted an extension agreement.¹¹⁰ The loan committee also felt "safer with the loan because of the Governor's signature."¹¹¹

On October 30, 1984, Jim McDougal wrote Proctor that the partners were unable to make the required principal reduction, enclosed a check for \$18,000, and promised \$6,000 within thirty days.¹¹² This constituted the first significant principal reduction made on loan no. 5885 "in quite some time."¹¹³ Proctor assumed that the funds came from sources other than lot sales.¹¹⁴

¹⁰⁵ Id. at 7-8.

¹⁰⁶ Id. at 8, 13-14.

¹⁰⁷ Id. at 12-13.

¹⁰⁸ Id. at 21-22.

¹⁰⁹ Id. at 22.

¹¹⁰ Id. at 20.

¹¹¹ Id.

¹¹² Id. at 32.

¹¹³ Id. at 23.

¹¹⁴ Id. at 24. Proctor based his assumption on the status of Whitewater Development's accounts, also held at 1st Ozark, which did not have the funds to cover the amount paid. Id. Proctor said "[t]he \$18,000 payment smoothed a lot of the problems." Id. at 32.

First Ozark became more insistent on requiring the McDougals and the Clintons to submit current financial statements in order to comply with federal regulations.¹¹⁵ The financial statements were generally incomplete and received late.¹¹⁶ 1st Ozark then said it would permit extensions and modifications with the McDougals and the Clintons only on receipt of current, accurate, and completed financial statements.¹¹⁷

A payment from Chris Wade's company, Ozark Air -- the result of McDougal having sold the remaining lots to Wade in exchange for an airplane in May, 1985 -- retired the Citizens Bank loan on May 12, 1992.¹¹⁸ Over its history, payments from the following sources serviced the loan: Jim and Susan McDougal's personal account, Bill Clinton and Hillary Rodham's personal account, Whitewater Development, Chris Wade and/or Ozark Air, Flowerwood Farms and Rolling Manor (two additional companies operated by the McDougals), and when possible, various lot sale proceeds or escrow payments.¹¹⁹ A second loan taken out at Citizens Bank in 1982, discussed below, which covered the mounting overdue interest, also serviced the loan.¹²⁰

¹¹⁵ Id. at 29-30.

¹¹⁶ Id. at 30, 33-34.

¹¹⁷ Id. at 40-41.

¹¹⁸ Id. at 116-17.

¹¹⁹ See Appendix 2 of this Volume for a detailed accounting of loan no. 5885 payments.

¹²⁰ Proctor 9/27/94 GJ at 16-17, 28.

ii. Citizens Bank & Trust Loan No. 10295.

On November 1, 1982, the Clintons and the McDougals, doing business as Whitewater Development, took out loan no. 10295 from Citizens Bank for \$20,000¹²¹ to pay the overdue interest on Citizens Bank loan no. 5885, the original acquisition mortgage loan.¹²² Under the terms of the agreement, the purpose of the loan, which was required to be disclosed, was stated as "advance of funds for Whitewater Develop. Co."¹²³

Neither President nor Mrs. Clinton remembered this loan,¹²⁴ why it was obtained, what it was used for, or whether it was ever repaid.¹²⁵ The Clintons co-signed with the McDougals personally, although neither was certain that the signature appearing on the copy they were shown was theirs.¹²⁶ The Clintons thought they might have signed for the loan at Jim McDougal's request, but neither could remember.¹²⁷

The balance of the loan was paid October 20, 1983.¹²⁸ Proctor, assigned both Citizen

¹²¹ Id. at 65.

¹²² R. Ritter 2/8/95 GJ at 35; see Loan Agreement No. 10295 from Citizens Bank and Trust Company to Whitewater Development (Nov. 1, 1982) (Doc. No. 70-00000079).

¹²³ Loan Agreement No. 10295 from Citizens Bank and Trust Company to Whitewater Development (Nov. 1, 1982) (Doc. No. 70-00000079).

¹²⁴ W. Clinton 5/24/95 RTC Interrog. Resp. at 25; H. Clinton 5/24/95 RTC Interrog. Resp. at 25.

¹²⁵ W. Clinton 5/24/95 RTC Interrog. Resp. at 25; H. Clinton 5/24/95 RTC Interrog. Resp. at 25.

¹²⁶ W. Clinton 5/24/95 RTC Interrog. Resp. at 25; H. Clinton 5/24/95 RTC Interrog. Resp. at 25-26.

¹²⁷ W. Clinton 5/24/95 RTC Interrogatory Responses at 25; H. Clinton 5/24/95 RTC Interrogatory Responses at 25.

¹²⁸ Check No. 000111 from the account of White Water Development Corporation

Bank loans for the bank, nevertheless testified he did not know of any relationship between the two loans.¹²⁹ Proctor said if he had known the Clintons and McDougals were borrowing money so they could pay interest on the original loan, he would have viewed the propriety of the second loan less favorably.¹³⁰

2. Hillary Rodham Took Out a \$30,000 Loan from the Bank of Kingston/Madison Bank & Trust in 1980 to Build a Model Home on Whitewater Lot 13.

a. Bank of Kingston/Madison Bank & Trust Loan No. 23039.

In 1980, Jim McDougal built a model home on one of Whitewater's interior lots -- Lot 13 -- to spur overall sales.¹³¹ When McDougal asked the Clintons to help, Mrs. Clinton agreed to take out a loan.¹³² She later could not remember the details of the transaction.¹³³ She did remember, however, that the corporation would receive the loan proceeds, which would be used to build the model home.¹³⁴

Incorporated signed by Susan McDougal payable to Citizens Bank of Flippin for \$18,455.34 (Oct. 14, 1983) (Doc. No. DEK501566); Endorsement of Check No. 000111 from the account of White Water Development Corporation Incorporated signed by Susan McDougal payable to Citizens Bank of Flippin for \$18,455.34 (Oct. 14, 1983) (Doc. No. DEK501567); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 53-54 (Apr. 24, 1995).

¹²⁹ Proctor 9/27/94 GJ at 16.

¹³⁰ Id. at 28.

¹³¹ J. McDougal 9/96 Int. at 5.

¹³² H. Clinton 5/24/95 RTC Interrog. Resp. at 15-16.

¹³³ Id.

¹³⁴ Id.; see also H. Clinton 4/25/98 Depo. at 13-14.

On December 16, 1980, the Bank of Kingston loaned Mrs. Clinton \$30,000.¹³⁵ McDougal had purchased this bank in October 1980 and shortly thereafter renamed it Madison Bank & Trust.¹³⁶ Mrs. Clinton's loan carried an interest rate of twenty percent and was due on December 16, 1981.¹³⁷ Lot 13 secured this loan.¹³⁸

The Clintons thought the corporation was responsible for the loan's repayment.¹³⁹ As they understood it, Whitewater Development would repay the Madison Bank loan from the lot sale proceeds and escrow payments.¹⁴⁰

Mrs. Clinton anticipated that Lot 13 -- for which she was record owner -- would be sold

¹³⁵ Loan Statement No. 23039, Bank of Kingston to Hillary Rodham (Dec. 16, 1980) (Doc. No. DEK502014).

¹³⁶ Bunch 1/20/98 GJ at 35.

¹³⁷ Loan Statement No. 23039, Bank of Kingston to Hillary Rodham (Dec. 16, 1980) (Doc. No. DEK502014); Disclosure form for Hillary Rodham (Dec. 16, 1980) (Doc. No. GS-00014419); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 41 (Apr. 24, 1995).

¹³⁸ Warranty Deed of Tract 13 paid by Hillary Rodham in the amount of \$10.00 (filed on Jan. 22, 1981) (Doc. No. DKRT900021).

¹³⁹ H. Clinton 5/24/95 RTC Interrog. Resp. at 17-18.

¹⁴⁰ Id. For instance, when the Clintons received a letter from Madison Bank dated August 5, 1982 stating that the monthly payments on the loan were insufficient, Mrs. Clinton conveyed via letter her "understanding that the [\$30,000] loan has been paid out of proceeds from sales by the Whitewater Development Corporation," and that if there were to be increased monthly payments, "Mr. or Mrs. McDougal will have to authorize those increases." H. Clinton 5/24/95 RTC Interrog. Resp. at 18 (citing Doc. No. DKRT700318). The loan was repaid in full in October 1983 with proceeds from Governor Clinton's personal loan at Security Bank of Paragould. Id. Mrs. Clinton said that she did not know why the loan was shifted from Madison Bank to Security Bank. H. Clinton 5/24/95 RTC Interrog. Resp. at 21.

quickly.¹⁴¹ Because the corporation was responsible for marketing the real estate, it received the proceeds of the sale of Lot 13 and the model home, leaving Mrs. Clinton still liable on the note.¹⁴²

According to McDougal, Mrs. Clinton twice asked him whether the Clintons could deduct the interest payments on the \$30,000 note on their personal income tax returns.¹⁴³ McDougal said he told her she could not claim an expense on her personal tax returns that the corporation paid, and that it had already been claimed as an expense on Whitewater's corporate tax returns.¹⁴⁴

On April 15, 1983, Governor Clinton appointed Marlin Jackson as Bank Commissioner of the Arkansas State Bank Department.¹⁴⁵ Jackson soon learned that there were problems at Madison Bank.¹⁴⁶ In the fall of 1983, the Federal Deposit Insurance Company ("FDIC") and the Arkansas State Bank Department jointly issued a Cease and Desist Order to Madison Bank, ordering the institution, among other things, to stop making an inordinately high percentage of out-of-territory loans,¹⁴⁷ such as the loan to Mrs. Clinton to build on Whitewater Estates' Lot

¹⁴¹ H. Clinton 5/24/95 RTC Interrog. Resp. at 15-16.

¹⁴² Id.

¹⁴³ J. McDougal 8/96-6/97 Int. at 32.

¹⁴⁴ J. McDougal 8/96-6/97 Int. at 32. McDougal said that Mrs. Clinton asked him the same question approximately a year later. Id.

¹⁴⁵ Jackson 9/18/96 GJ at 8.

¹⁴⁶ Jackson 9/18/96 GJ at 25-26.

¹⁴⁷ Jackson 9/18/96 GJ at 31-33. State regulations prohibited the bank from lending money to real estate projects outside its geographic boundaries. Hearings Relating to the Investigation of Whitewater Dev. Corp. and Related Matters Before the Senate Special Comm. to Investigate Whitewater Dev. Corp. and Related Matters of the Senate Comm. on Banking, Housing, and Urban Affairs, 104th Cong. 25-27 (Jan. 23, 1996) (testimony of W. Lyon) [hereinafter "Senate Whitewater Comm. Hearing"]. Whitewater was outside of this territory.

13.¹⁴⁸

b. Security Bank of Paragould Loan No. 957-585.

Marlin Jackson testified that he ran into Governor Clinton at the Capitol building shortly after meeting with the Madison Bank board of directors about the Cease and Desist Order.¹⁴⁹ Jackson told Governor Clinton that he had issued an "official appropriate document" against the Governor's "former staff members over at the Bank of Kingston."¹⁵⁰ Governor Clinton told Jackson to "do whatever is necessary to do a great job as bank commissioner and don't you worry about the politics of it."¹⁵¹

President Clinton said Jackson may have told him on "one or more occasions about regulatory action he had taken or was taking with regard to banks owned or operated by friends of supporters of mine."¹⁵² President Clinton told Jackson to do what he considered appropriate, but had no more recollection on the matter.¹⁵³ Clinton said he did not learn about the FDIC Madison Bank Cease and Desist Order until he read the RTC's interrogatories.¹⁵⁴

Jackson, however, testified that either in that conversation or in one within the next ten or fifteen days, Governor Clinton asked about "either Hillary's or his and Hillary's loan" at the

¹⁴⁸ Jackson 9/18/96 GJ at 33-36; Jackson 11/7/94 Int. at 3.

¹⁴⁹ Jackson 9/18/96 GJ at 38-39.

¹⁵⁰ Id. at 39. Both Jim McDougal and fellow Bank of Kingston owner Steve Smith had been on Governor Clinton's staff in 1979.

¹⁵¹ Id. at 40; Jackson 11/7/94 Int. at 3-4.

¹⁵² W. Clinton 5/24/95 RTC Interrog. Resp. at 20.

¹⁵³ Id.

¹⁵⁴ Id.

bank.¹⁵⁵ According to Jackson, he told Governor Clinton, "I just think it makes good sense for you to put some distance between yourself and a problem financial institution."¹⁵⁶ Jackson said he replied that he (Clinton) did not have any choice but to move the loan to another bank when it came due.¹⁵⁷ Jackson did not specifically remember suggesting that Governor Clinton move the loan to Security Bank of Paragould, where Jackson had served as president and chairman, but thought he likely included the bank in the ten or so banks he suggested.¹⁵⁸

Jim McDougal remembered Jackson calling him at some point after the Arkansas State Bank Department criticized Madison Bank's loan to Mrs. Clinton, stating, "Since they've criticized that as being out of territory, we'd better move that loan over to the [Security] Bank of Paragould."¹⁵⁹ McDougal said he also received a call from Governor Clinton, who said, "Marlin Jackson said they criticized these loans and that I should move my loan over to his bank."¹⁶⁰

In September 1983, Governor Clinton obtained a loan, recorded as no. 957-585, for \$20,800 from Security Bank of Paragould.¹⁶¹ Clinton said he did not remember why the loan was

¹⁵⁵ Jackson 9/18/96 GJ at 40.

¹⁵⁶ Id. at 40-41.

¹⁵⁷ Id. at 40; Jackson 11/9/94 Int. at 3-4.

¹⁵⁸ Jackson 9/18/96 GJ at 42. Jackson testified that when he became Bank Commissioner, he placed all the stock his family owned in Security Bank into a blind trust. Jackson 9/18/96 GJ at 14-15.

¹⁵⁹ J. McDougal 4/2/97 GJ at 21.

¹⁶⁰ Id. at 21-22. McDougal told investigators that Governor Clinton later requested his help in the mechanics needed to transfer of the loan from Madison Bank to Security Bank. J. McDougal 9/96 Int. at 7.

¹⁶¹ W. Clinton 5/24/95 RTC Interrog. Resp. at 20-21; Promissory Note No. 957-585 from Security Bank of Paragould to Bill Clinton for \$20,800.00 (Sept. 30, 1983) (Doc. No. GS-

shifted from Madison Bank to Security Bank.¹⁶² Governor and Mrs. Clinton regarded this loan as the successor to the Bank of Kingston/Madison Bank loan, and a Whitewater Development corporate obligation.¹⁶³ The proceeds from the Security Bank loan satisfied Mrs. Clinton's Lot 13 model home loan at Madison Bank.¹⁶⁴

Security Bank renewed the loan on September 30, 1984 and October 11, 1985.¹⁶⁵ On November 1, 1985, Bank Commissioner Marlin Jackson wrote to the vice president of Security Bank, enclosing the extension agreement Governor Clinton signed.¹⁶⁶ Jackson testified that Security Bank's senior credit officer asked him to get the Governor's signature on the extension agreement.¹⁶⁷ In the letter, Jackson said his understanding that "Jim McDougal, a close friend as well as business associate of Governor Clinton," was to forward a check for the interest then due on the note.¹⁶⁸

The Clintons refinanced the loan on March 5, 1987, which was recorded as Security Bank

00014477).

¹⁶² W. Clinton 5/24/95 RTC Interrog. Resp. at 22.

¹⁶³ Id. at 20-21; H. Clinton 5/24/95 RTC Interrog. Resp. at 19.

¹⁶⁴ W. Clinton 5/24/95 RTC Interrog. Resp. at 20-21; H. Clinton 5/24/95 RTC Interrog. Resp. at 19.

¹⁶⁵ W. Clinton 5/24/95 RTC Interrog. Resp. at 37.

¹⁶⁶ Letter from Arkansas State Bank Department Bank Commissioner Marlin D. Jackson to Charles D. Campbell, Vice President, Security Bank (Nov. 1, 1985) (Doc. No. DEK20026).

¹⁶⁷ Jackson 9/18/96 GJ at 63.

¹⁶⁸ Letter from Arkansas State Bank Department Bank Commissioner Marlin D. Jackson to Charles D. Campbell, Vice President, Security Bank (Nov. 1, 1985) (Doc. No. DEK20026).

loan no. 838-608.¹⁶⁹ In late 1988, the Clintons repaid the Security Bank loan in full by personally buying back Lot 13 (and the model house on it) out of the Bankruptcy Court and reselling it for \$27,500.¹⁷⁰

3. Jim McDougal Obtained a \$30,000 Loan in Whitewater's Name from Madison Bank in 1981 That He Repaid through a Series of Fraudulent Transactions.

In August 1981, Madison Bank loaned Whitewater Development an additional \$30,000,¹⁷¹ recorded as loan no. 23337-01.¹⁷² The following year, the FDIC said the loan violated Regulation O, a federal provision limiting loans made to corporations that a bank's directors owned.¹⁷³ The issue came up at a Madison Bank board of directors meeting on October 12, 1982, with FDIC regulators in attendance.¹⁷⁴ Susan McDougal also attended as a director of Madison Bank.¹⁷⁵

¹⁶⁹ W. Clinton 5/24/95 RTC Interrog. Resp. at 37. Both Governor and Mrs. Clinton were listed as "borrower" on the renewal note dated March 5, 1987. See Security Bank Loan Application for \$14,117.59 in the name of Bill Clinton (Mar. 5, 1987) (Doc. Nos. 72-00000074 through 75); Promissory Note from Security Bank of Paragould to Bill and Hillary Clinton in the amount of \$14,117.59 (Mar. 5, 1987) (DEK007546 through 47); W. Clinton 5/24/95 RTC Interrog. Resp. at 21. The reconstructed loan repayment schedule for the Security Bank loans may be found in Appendix 2 of this Volume.

¹⁷⁰ H. Clinton 5/24/95 RTC Interrog. Resp. at 23-24.

¹⁷¹ J. McDougal 4/2/97 GJ at 38-39.

¹⁷² Loan Agreement No. 23337-01 from Bank of Kingston to Whitewater in the amount of \$30,000.00 (Aug. 1981) (Doc. No. GS-00014453).

¹⁷³ Minutes of Special Meeting of Board of Directors of Madison Bank and Trust, Kingston, Arkansas at 1, 3-4 (Oct. 12, 1982) (Doc. Nos. 79-0005645, 47, & 48). Regulation O applied to loans made to executive officers, directors, and principal shareholders of member banks. See Banks and Banking Federal Reserve System, 12 C.F.R. § 215 (1979).

¹⁷⁴ Minutes of Special Meeting of Board of Directors of Madison Bank and Trust, Kingston, Arkansas at 1 (Oct. 12, 1982) (Doc. No. 79-00005645).

¹⁷⁵ Id.

Five days later, the board met again, and Jim McDougal agreed to move the Whitewater loan (the balance of which approximated \$27,600) within the next thirty days.¹⁷⁶ Mrs. McDougal attended this meeting as well.¹⁷⁷

Once Jim McDougal began cooperating with the Independent Counsel's investigation in 1997, he told investigators (and later the grand jury) that to repay Whitewater Development's Madison Bank loan, then-Governor Clinton took out a personal loan at Madison Guaranty.¹⁷⁸ In April 1997, McDougal testified before the grand jury that he had told then-Governor Clinton how the Whitewater loan was considered out of territory and how it was being counted against the McDougals' personal line of credit as long as it was related to Whitewater Development.¹⁷⁹ Governor Clinton, according to McDougal, agreed to assume the responsibility of taking out a new loan to get the Whitewater Development loan off the Madison Bank books.¹⁸⁰

However, at the trial of Jim Guy Tucker and the McDougals in 1996, President Clinton

¹⁷⁶ Minutes of Madison Bank and Trust Meeting of the Board of Directors at 4-5 (Oct. 17, 1982) (Doc. Nos. 79-00005671 through 72). The relevant portion of the minutes read: "Another 30,000 is owned by a corporation owned by Bill Clinton, his wife, Susan, and myself. It will be moved within 30 days." Id.

¹⁷⁷ Minutes of Madison Bank and Trust Meeting of the Board of Directors at 1 (Oct. 17, 1982) (Doc. No. 79-00005668) (noting that all directors with the exception of Dr. Austin Smith were present). The board met again on November 16, with no mention of the Whitewater loan being made. Minutes of Madison Bank and Trust Meeting of the Board of Directors (Nov. 16, 1982) (Doc. Nos. 79-00005633 through 35).

¹⁷⁸ J. McDougal 4/2/97 GJ at 43-44. See Letters from Independent Counsel Kenneth Starr to Sam Heuer, Attorney for Jim McDougal (July 30, 1996 and Aug. 8, 1996) (outlining cooperation agreement).

¹⁷⁹ J. McDougal 4/2/97 GJ at 41.

¹⁸⁰ Id. at 43-44.

testified that he never borrowed any funds from Madison Guaranty:

Q. Mr. President, did you ever have any loan relationship with Mr. McDougal's savings and loan known as Madison Guaranty concerning your investments?

A. No, sir, I did not, I never borrowed any money from Madison Guaranty.

Q. Did you ever cause anybody to borrow any money for your benefit, Mr. President?

A. No, I did not.

Q. Did you ever have any personal loan with Madison Guaranty at any time, Mr. President?

A. No, sir, I didn't.¹⁸¹

Mrs. Clinton was also asked about her knowledge of this loan in a video taped deposition for the grand jury in April 1998. Mrs. Clinton testified that she was unaware of the loan and had never seen any documentation to support its existence.¹⁸²

Through both documentary and testimonial evidence, the Independent Counsel confirmed that Jim McDougal obtained a loan in Bill Clinton's name at Madison Guaranty, and that the proceeds of this loan were used to repay Whitewater Development loan no. 23337-01 at Madison Bank. As discussed below, McDougal ultimately used a series of fraudulent nominee loans -- loans taken out in the name of someone else -- to repay the obligations this initial Madison Bank loan to Whitewater Development created. These transactions ultimately proved to be related to

¹⁸¹ W. Clinton 4/28/96 Depo. at 11, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. 1996).

¹⁸² H. Clinton 4/25/98 GJ at 14-15,19.

the fraudulent \$300,000 loan CMS made to Susan McDougal in 1986. There is, however, insufficient evidence to prove the Clintons knew about these transactions.

a. Madison Bank & Trust Loan No. 23337-01.

Although the stated purpose of the Madison Bank loan to Whitewater Development was for "Capital expenses," McDougal testified that the loan was taken out to make payments on the Citizens Bank acquisition loan.¹⁸³ Evidence confirmed that \$15,902.11 of the loan proceeds were used to make an interest payment on the Citizens Bank acquisition loan, and an additional \$1,300.00 was used to make an interest payment on McDougal's outstanding loan at the Bank of Cherry Valley.¹⁸⁴

On November 12, 1981, Jim McDougal caused Whitewater Development Check No. 126, from the corporation's Bank of Kingston/Madison Bank account, to pay down the balance of the loan.¹⁸⁵ McDougal wrote the check in the amount of \$4,553.40 and paid down the loan balance to

¹⁸³ Loan Agreement No. 23337-01 from Bank of Kingston to Whitewater in the amount of \$30,000.00 (Aug. 1981) (Doc. No. GS-00014453); Statement of Account No. 0001-040-5 (July 31-Aug. 31, 1981) (Doc. No. GS-00014463); Deposit ticket for Madison Bank and Trust in the amount of \$30,000.00 (Aug. 14, 1981) (Doc. No. GS-00014464); Peat Marwick Work Papers from 1986 audit of Madison Guaranty (Doc. No. GS-00014464); J. McDougal 4/2/97 GJ at 43-44.

¹⁸⁴ Check No. 112 from the account of Whitewater Development Co. Inc. payable to Bank of Cherry Valley for \$1,300.00 (June 1, 1981) (Doc. No. DEK002738); Check No. 115 from the account of Whitewater Development Co., Inc. signed by James B. McDougal payable to Citizens Bank and Trust for \$15,902.11 (Aug. 11, 1981) (Doc. No. DEK002739).

¹⁸⁵ Check No. 126 from the account of Whitewater Development Co. signed by Blenda Howard payable to Madison Bank and Trust for \$4,553.40 (Nov. 12, 1981) (Doc. No. GS-00014460).

\$27,000.¹⁸⁶ That same day, the balance of the Madison Bank loan was rolled over into a new note.¹⁸⁷ In April 1998, Mrs. Clinton testified she was unfamiliar with this loan.¹⁸⁸

b. Madison Guaranty Loan in Bill Clinton's Name.

McDougal testified in April 1997 that in late 1982 then-Governor Clinton agreed to obtain a loan to relieve the regulatory scrutiny surrounding Whitewater Development's obligation at Madison Bank.¹⁸⁹ On November 15, 1982, Madison Guaranty issued Cashier's Check No. 924 made payable to "Bill Clinton" in the amount of \$27,600.00.¹⁹⁰ McDougal testified that he intentionally left all reference to Bill Clinton out of the minutes of all Madison Guaranty board meetings, as he did not want to draw the regulators attention by using yet another note to pay off an already criticized loan.¹⁹¹ The Madison Bank loan to Whitewater Development was repaid in full on November 18, 1982 with the Madison Guaranty cashier's check. Corresponding records failed to state the source of the funds.¹⁹²

¹⁸⁶ Id.

¹⁸⁷ Promissory Note, Disclosure, and Security Agreement No. 23337-01 from Bank of Kingston for Whitewater Development in the amount of \$27,000.00 (Nov. 12, 1981) (Doc. No. DEK006521).

¹⁸⁸ H. Clinton 4/25/98 Depo. at 14, 18.

¹⁸⁹ J. McDougal 4/2/97 GJ at 44.

¹⁹⁰ Id. at 43-45; J. McDougal 8/96-6/97 Int. at 26. See Cashier's Check No. 924 from the account of Madison Guaranty signed by John B. Thomas payable to "Bill Clinton" for \$27,600 (Nov. 15, 1982) (Doc. Nos. MD-00000001 through 03); see also Jim McDougal & Curtis Wilkie, Arkansas Mischief 195 (1996).

¹⁹¹ J. McDougal 4/2/97 at 48-49; see also Madison Guaranty Savings and Loan Associations Minutes of Meeting of the Board of Directors (Nov. 16, 1982) (Doc. Nos. 79-0005633 through 35).

¹⁹² J. McDougal 4/2/97 GJ at 43-44.

McDougal could not remember how Check No. 924 was actually disbursed.¹⁹³ He was unable to remember whether he signed a sixty-day note for Clinton on November 15, 1982, or whether a note was even issued.¹⁹⁴ He did remember that it was difficult reaching Clinton, because Mr. Clinton had been defeated in 1980 and was trying to regain the governorship.¹⁹⁵ McDougal remembered that Governor Clinton (who won reelection in November 1982) signed a replacement six-month note in McDougal's presence in January 1983 standing in the doorway to his statehouse conference room.¹⁹⁶

i. Microfilm.

In early December 1996, the OIC found the microfilm copy of the Madison Guaranty cashier's check to "Bill Clinton." The check was for \$27,600.00 and dated November 15, 1982.¹⁹⁷ The microfilm showed there was no handwritten endorsement, and endorsement stamps on the back of the check showed it had been processed at Madison Bank.¹⁹⁸ The check amount matched

¹⁹³ Id. at 45.

¹⁹⁴ Id. at 65-66. McDougal testified that he sometimes signed Bill Clinton's name to some of the notes at Citizens Bank and other financial institutions. Id. at 47.

¹⁹⁵ Id. at 46-47.

¹⁹⁶ Id. at 45-46. At the time, McDougal was acting as an informal advisor to the Governor; see also Jim McDougal & Curtis Wilkie, Arkansas Mischief 196 (1996).

¹⁹⁷ Patkus 1/21/98 GJ at 7-8; see also Cashier's Check No. 924 from the account of Madison Guaranty signed by John B. Thomas payable to "Bill Clinton" for \$27,600 (Nov. 15, 1982) (Doc. No. 54-17913-00000224).

¹⁹⁸ See Reverse Side of Cashier's Check No. 924 from the account of Madison Guaranty signed by John B. Thomas payable to "Bill Clinton" for \$27,600 (stamped paid Nov. 19, 1982) (Doc. No. 54-17913-00000225).

the amount owed in November 1982 on the Madison Bank loan to Whitewater Development.¹⁹⁹

ii. Original Check.

On July 10, 1997, the original cashier's check for \$27,600.00 was discovered in the trunk of an abandoned car near Little Rock.²⁰⁰ Like its microfilm copy, the check had endorsement stamps on its back without a handwritten endorsement.²⁰¹ The stamps showed the check was processed at Madison Bank.²⁰²

The abandoned car belonged to a former employee of Madison Guaranty named Henry Floyd.²⁰³ Floyd testified that he was supposed to deliver some old Madison Guaranty records to a warehouse for storage but instead took the car to be repaired on November 15, 1988.²⁰⁴ Because the car's value was the same or less than the bill, Floyd never returned to pick it up.²⁰⁵ The transmission shop owners moved the car to a junkyard.²⁰⁶ In July 1997, after a tornado damaged the junkyard, the transmission shop owners discovered the original check in the trunk of Floyd's

¹⁹⁹ Promissory Note, Disclosure and Security Agreement from Whitewater Development Co. to Bank of Kingston for Loan No. 23337-01 (as of Nov. 18, 1982) (Doc. No. DEK002953).

²⁰⁰ Floyd 8/6/97 GJ at 17, 98-99; see also Cashier's Check No. 924 from the account of Madison Guaranty signed by John B. Thomas payable to "Bill Clinton" for \$27,600 (Nov. 15, 1982) (Doc. No. MD-00000001).

²⁰¹ See Reverse Side of Check No. 924 from the account of Madison Guaranty signed by John B. Thomas payable to "Bill Clinton" for \$27,600 (stamped paid Nov. 19, 1982) (Doc. No. MD-00000002) (original); see also Patkus 4/1/97 GJ at 9.

²⁰² Patkus 4/1/97 GJ at 8-9.

²⁰³ Floyd 8/6/97 GJ at 5.

²⁰⁴ Id. at 5, 65.

²⁰⁵ Id. at 11.

²⁰⁶ Lawhon Jr. 7/15/97 GJ at 11.

car.²⁰⁷ The Independent Counsel then acquired this check.²⁰⁸ The Independent Counsel transmitted the original check to the FBI laboratory in Washington, D.C. for a latent fingerprints examination. The FBI concluded there were no latent prints on the document.²⁰⁹

c. The Madison Guaranty Loan to "Bill Clinton" Was Repaid by a Nominee Loan to Chris Wade and a Payment from the James B. McDougal Trustee Account.²¹⁰

Jim McDougal testified that in early 1983, Governor Clinton asked how the Madison Guaranty loan would be repaid.²¹¹ McDougal told Governor Clinton that Chris Wade would help.²¹² According to McDougal, Wade would cooperate because of their longstanding business relationship and because he was a strong supporter of Governor Clinton.²¹³

²⁰⁷ Id. at 23-30.

²⁰⁸ Irons 7/15/97 GJ at 6-9.

²⁰⁹ Federal Bureau of Investigation Laboratory Report (Nov. 20, 1997). In addition to these documents, Howard Taylor, who had worked at Madison Guaranty, testified that he saw the name "Bill Clinton" listed on a computer printout of outstanding Madison Guaranty loans in August 1983. Taylor 11/18/97 GJ at 11-12. According to Taylor, the loan was in the range of "25-, 30-, or \$35,000." Taylor 4/2/98 Int. at 1.

²¹⁰ A flow chart detailing how Jim McDougal repaid this loan is contained in Appendix 3 of this Volume.

²¹¹ J. McDougal 4/2/97 GJ at 49-50.

²¹² See Jim McDougal & Curtis Wilkie, Arkansas Mischief 196 (1996).

²¹³ J. McDougal 4/2/97 GJ at 51; see also Wade 11/6/96 GJ at 26-28, 74 (sharing Jim McDougal's recollection about Wade's willingness to take out the loan, but not recalling any mention of Bill Clinton's name or involvement).

i. Wade Nominee Loan.

When the Clinton loan came due six months later, Madison Guaranty made a \$25,000 nominee loan to Chris and Rosalee Wade.²¹⁴ McDougal recalled trying to convince Wade to take out the loan and then let McDougal use the proceeds to pay off the Bill Clinton loan.²¹⁵ Wade testified he did not remember this meeting, though he recalled taking out a loan for Jim McDougal for approximately \$25,000.²¹⁶ Wade testified he did not remember the loan being connected to Bill Clinton.²¹⁷

On July 11, 1983, Madison Guaranty Cashier's Check No. 3678 for \$25,000 was issued to Chris Wade.²¹⁸ The check was deposited into Wade's account at First Bank & Trust Co. ("First Bank") four days later.²¹⁹ That same day, Wade wrote Check No. 298 from his First Bank account to Madison Guaranty for \$25,000.²²⁰ Jim McDougal used this money to pay off most of

²¹⁴ See Promissory Note from Madison Guaranty to Chris and Rosalee Wade (June 16, 1983) (Doc. No. 56-00117646).

²¹⁵ J. McDougal 4/2/97 GJ at 51.

²¹⁶ C. Wade 11/6/96 GJ at 26-27.

²¹⁷ Id. at 28.

²¹⁸ Check No. 2678 from the account of Madison Guaranty signed by Diana M. Warren payable to Chris Wade for \$25,000.00 (July 11, 1983) (Doc. No. 339-00000677); J. McDougal 4/2/97 GJ at 50-51.

²¹⁹ Deposit ticket for First Bank & Trust Co. (date illegible) (Doc. No. 339-00000675). Wade provided the Independent Counsel with his ledger card for this and other loans. Recorded on this card for this loan was the notation "Jim," connecting the loan to McDougal (Doc. No. 335-00053706).

²²⁰ Check No. 298 from the account of Chris Wade payable to Madison Guaranty Savings for \$25,000 (July 15, 1983) (Doc. No. 339-00000681).

the Clinton loan.²²¹ On August 1, 1983, the McDougals paid \$5,081.82 from the James B. McDougal Trustee account to satisfy the remainder of the Clinton loan.²²²

ii. "Payoff Clinton" Microfilm.

In November 1996, this Office found Madison Guaranty microfilm of Check No. 201 from James B. McDougal's Trustee account, which Susan McDougal had signed, payable to Madison Guaranty for \$5,081.82.²²³ In the check's memo section, in Mrs. McDougal's handwriting, are the words "Payoff Clinton."²²⁴ After reviewing the check and corresponding documentation, Jim McDougal testified that the check concerned the Whitewater Development loan at Madison Bank.²²⁵

The Independent Counsel also located documentary evidence establishing the direct link

²²¹ J. McDougal 4/2/97 GJ at 50-51.

²²² See Check No. 201 from the account of James B. McDougal Trustee signed by S. H. McDougal payable to Madison Guaranty for \$5,081.82 (Aug. 1, 1983) (Doc. No. 54-17853-00000247). This by now dormant trustee account was originally set up by Mrs. McDougal to collect mortgage payments from the Clinton-owned Saltillo Heights lot sales, so that the lot payments could pay off the loan Attorney General Clinton used to buy the land. J. McDougal 4/2/97 GJ at 53-54, 62; J. McDougal 8/96-6/97 Int. at 30.

²²³ See Check No. 201 from the account of James B. McDougal Trustee signed by S. H. McDougal payable to Madison Guaranty for \$5,081.82 (Aug. 1, 1983) (Doc. No. 54-17853-00000247). On January 26, 1998, the OIC sent the microfilm check to the IRS Criminal Investigation National Forensic Laboratory in Chicago for a handwriting analysis to determine whether the signature on the bottom of the check matched the handwriting exemplars of Susan McDougal already on file. The Report of Laboratory Examination concluded that the signature on the check matched Susan McDougal's known exemplars. See Internal Revenue Service Criminal Investigation National Forensic Laboratory Report of Examination (Mar. 31, 1998).

²²⁴ Check No. 201 from the account of James B. McDougal Trustee signed by S H McDougal payable to Madison Guaranty for \$5,081.82 (Aug. 1, 1983) (Doc. No. 54-17853-00000247).

²²⁵ J. McDougal 4/2/97 GJ at 54.

between the Madison Guaranty loan taken out in Bill Clinton's name and the Wade nominee loan used to pay off the former. One document was a handwritten Madison Guaranty ledger listing loans to individuals.²²⁶ The document reflected adjustments in the loan ledger for loans recently paid off and loans that had recently been added.²²⁷ On the left side of the document, under the column titled "subledger," appears the notation "B. Clinton" and "\$-2,600."²²⁸ This reference corresponded to the \$2,600 principal balance remaining on the Madison Guaranty loan to Bill Clinton after the application of the \$25,000 from the Wade nominee loan. There is no other known loan involving "B. Clinton" to which this entry might otherwise refer.

The second document was a handwritten calculation of interest and principal payments on the \$27,600 loan.²²⁹ The document records the figure "\$2,477.19" and the phrase "INT from 11-15-82 to 7-25-83" -- the respective dates of Madison Guaranty Cashier's Check No. 924 issued to Bill Clinton, and the day that Wade's July 15, 1983 Check No. 298 to Madison Guaranty was processed.²³⁰ Beneath these figures is written "463 int from 7-25-81."²³¹ Adding the two interest amounts together -- \$2,477.19 and \$463 -- the resulting sum is \$2,481.82 -- the exact amount of interest remaining on the loan. Underneath the two interest figures was written \$5,081.82, the

²²⁶ Madison Guaranty Handwritten Ledger (Doc. No. 174-00235453). The OIC obtained copies of this document from the RTC, and the FDIC as records custodian for Madison Guaranty.

²²⁷ Madison Guaranty Handwritten Ledger (Doc. No. 174-00235453).

²²⁸ Id.

²²⁹ Handwritten calculation of interest and payments (July 25, 1983) (Doc. No. 174-00139837). This document was also obtained from the FDIC.

²³⁰ Id.

²³¹ Id.

total amount of \$2,481.82 interest and \$2,600 principal remaining and the exact amount of the James B. McDougal Trustee account check with the "Payoff Clinton" handwritten notation.²³²

The Independent Counsel questioned Mrs. Clinton about this loan and (as discussed more fully below) about Mrs. McDougal's refusal to answer questions about it, to which Mrs. Clinton replied she had "no information whatsoever."²³³

4. A \$300,000 Loan from CMS to Susan McDougal and Master Marketing Was Used to Benefit the Whitewater Corporation.

In 1994, David Hale alleged that Whitewater Development benefited from a \$300,000 loan made by CMS, Hale's small business investment company ("SBIC"), to Susan McDougal's business called Master Marketing.²³⁴ CMS was restricted to lending money only to disadvantaged businesses, which were defined by federal law.²³⁵ The loan was made even though Mrs. McDougal and her business, Master Marketing, did not qualify as a disadvantaged business under federal law.²³⁶ Mrs. McDougal signed the loan form as both a sole proprietorship and as an

²³² Id.

²³³ H. Clinton 4/25/98 Depo. at 19.

²³⁴ Hale 6/2/94 Int. at 1-2; U.S. Small Business Administration Portfolio Financing Report for Susan H. McDougal, d/b/a Master Marketing (Apr. 3, 1986) (Doc. No. H-00004194).

²³⁵ Tr. at 2287-88, 2291 United States v. McDougal, et al., No. LR-CR-95-173 (E.D. Ark. Mar. 27, 1996) (testimony of Patricia DiMuzio) (discussing section 301(d) of SBA, which stated: "[A] small business investment company, the investment policy of which is that its investments will be made solely in small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages." Pub.L. 85-699 § 301(d) (repealed 1996)).

²³⁶ Foren 10/26/95 Senate Whitewater Comm. Depo. at 106-07.

individual, stating that the money would be used for her advertising work.²³⁷

The Independent Counsel determined that no entity called Master Marketing ever existed, that the proceeds of the loan were not used for its represented purpose,²³⁸ and that the loan was never repaid.²³⁹ The Independent Counsel also determined that the McDougals used the \$300,000 to pay preexisting debts and invest in additional projects, including land sold to Whitewater Development by International Paper, which McDougal named "Lorance Heights."²⁴⁰

a. The Lorance Heights Purchase.

In the spring of 1986, Jim McDougal wanted to buy the Lorance Heights property and turn it into a Madison Financial Corporation ("Madison Financial") (a real estate service corporation controlled by the McDougals) development similar to already-developed Maple Creek Farms, located further south.²⁴¹ Lorance Heights was landlocked, but there was a potential

²³⁷ Loan Agreement By and Between Susan H. McDougal d/b/a Master Marketing and Capital-Management Services, Inc. (Doc. Nos. AAU-00000820 through 27). Susan McDougal later submitted other forms indicating that the loan was for real-estate brokerage and land development (Doc. Nos. AAU-00000817 through 19; 174-00001144-106 through 107).

²³⁸ See Chapter 1 of Part B of this Report for a description of how the proceeds were used.

²³⁹ Tr. at 3377, 3380, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. 1996) (testimony of Hale).

²⁴⁰ Id. at 7421-22 (testimony of Jim McDougal); Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 118 (Apr. 24, 1995).

²⁴¹ J. McDougal 8/96-6/97 Int. at 17. The McDougals formed Madison Financial in 1982 as a service corporation subsidiary of Madison Guaranty for the development of residential housing.

entry 200 feet from International Paper property.²⁴² McDougal tried to obtain an easement from the owner of the property, International Development Company ("IDC"),²⁴³ which IDC declined and instead offered to sell McDougal the property, later known as "Castle Grande."²⁴⁴

The McDougals could not purchase the property using Madison Guaranty money and Madison Financial, because the law prohibited them from investing more than six percent of the savings and loan's assets in the service corporation.²⁴⁵ To avoid this prohibition, the McDougals bought the Lorange Heights property using the Whitewater corporation.²⁴⁶ On March 4, 1986, Whitewater Development, through Jim McDougal, signed a contract with International Paper to purchase the 810.22-acre parcel for \$550,950.00.²⁴⁷ The contract required a \$25,000 payment by check on execution of the agreement.²⁴⁸ On April 21, 1986, McDougal wrote Check No. 1280 for \$25,000, to International Paper from his Madison Guaranty account to satisfy the required down

²⁴² Id.

²⁴³ J. McDougal 8/96-6/97 Int. at 17.

²⁴⁴ Id. See Part B of this Report for additional discussion of the Castle Grande acquisition.

²⁴⁵ J. McDougal 4/2/97 GJ at 26-27; J. McDougal 4/3/97 GJ at 7-8.

²⁴⁶ J. McDougal 4/3/97 GJ at 7-8. Jim McDougal felt that because of Whitewater's tax loss, and because the Clintons were partners, funding would be easier to obtain by putting the land in Whitewater's name. Id. at 8. McDougal's acquisition of the Castle Grande property is discussed at length in Chapter 1 of Part B of this Report.

²⁴⁷ Contract for Sale Between International Paper and Whitewater Development and Amendment (Mar. 4, 1986) (Doc. Nos. 43-00001745 through 63). Although International Paper had previously opened a file on the transaction and listed McDougal as the buyer (and Jim Guy Tucker as the attorney) (Doc. No. 43-00001723), the closing statement (dated October 10, 1986) listed Whitewater Development Corp. as the purchaser (Doc. No. 43-00001770).

²⁴⁸ Contract for Sale Between International Paper and Whitewater Development at 2 (Mar. 4, 1986) (Doc. No. 43-00001746).

payment.²⁴⁹ As a result of this investigation, the Independent Counsel concluded the funds to pay the \$25,000 were derived from the \$300,000 CMS loan to Master Marketing because the Master Marketing proceeds had been deposited into the McDougals' account on April 7, 1986.²⁵⁰

b. Jim and Susan McDougal Executed a Note and Mortgage for Whitewater Development to Cover the Remainder of the Lorraine Heights Purchase.

On October 10, 1986, Jim and Susan McDougal signed a real estate note and letter amending a contract of sale with International Paper on Whitewater Development's behalf.²⁵¹ Whitewater Development obligated itself to pay International Paper the principal sum of \$440,760.00 plus interest at an annual rate of ten-and-one-half percent to fund the remaining balance. On December 1, 1986, Jim McDougal transferred Whitewater Development's ownership of Lorraine Heights to Great Southern, another company the McDougals controlled.²⁵²

²⁴⁹ Check No. 1280 from the account of James B. McDougal payable to International Paper Realty Corporation for \$25,000.00 (Apr. 21, 1986) (Doc. No. 56-81992-00000510).

²⁵⁰ J. McDougal 4/3/97 GJ at 15-16; Deposit Ticket (Apr. 7, 1986) (Doc. No. 054-01006138).

²⁵¹ Real Estate Note (Oct. 10, 1986) (Doc. Nos. 138-00006919 through 20); Letter to Whitewater Development Amending Contract of Sale Between Whitewater Development Corp. and International Paper (Oct. 10, 1986) (Doc. No. 43-00001764). Based on these documents, it appears that McDougal apparently signed an additional note for \$30,000 with International Paper to provide a portion of the sum due at the closing date.

²⁵² J. McDougal 4/3/97 GJ at 34. The deed was recorded on December 15, 1986. Warranty Deed (filed Dec. 15, 1986) (Doc. Nos. 43-00000875 through 76); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 120 (Apr. 24, 1995).

i. Jim McDougal and David Hale Alleged That Bill Clinton Knew about the CMS Loan and the Lorange Heights Purchase.

David Hale alleged that Jim McDougal previously asked him for a loan to help clean up some matters "for the political family in Arkansas," which McDougal said included Governor Clinton.²⁵³ President and Mrs. Clinton denied any knowledge of the \$300,000 CMS loan to Mrs. McDougal or its illegality.²⁵⁴

During the 1996 trial of the McDougals and Governor Tucker, Hale testified he met Jim McDougal and Governor Clinton in a trailer at McDougal's Castle Grande real estate development in January or February of 1986 and discussed the CMS loan with them.²⁵⁵ Hale could not remember what time the meeting took place but recalled that it was dark and chilly outside.²⁵⁶ Hale remembered walking in and finding McDougal and Governor Clinton inside, standing around and talking about politics.²⁵⁷ Hale said Governor Clinton was wearing jogging clothes.²⁵⁸ After they "visited a minute," McDougal said that he needed a loan in the name of "Susan's advertising company."²⁵⁹ Hale said Governor Clinton offered him a security interest "in

²⁵³ Hale 8/2/95 GJ at 62-63.

²⁵⁴ W. Clinton 5/24/95 RTC Interrog. Resp. at 45; H. Clinton 5/24/95 RTC Interrog. Resp. at 55; see also W. Clinton 7/22/95 Depo. at 78.

²⁵⁵ Tr. at 3220-21, United States v. McDougal et al., No. LR-CR-95-173 (E. D. Ark. Apr. 2, 1996) (testimony of Hale).

²⁵⁶ Id. at 3221 (testimony of Hale).

²⁵⁷ Id. at 3222 (testimony of Hale).

²⁵⁸ Id. at 4558-60 (testimony of Hale).

²⁵⁹ Id. at 3222 (testimony of Hale).

some raw land in Marion County" as collateral on the loan to Mrs. McDougal,²⁶⁰ though it was later decided that Hale would rely on the McDougals' personal guaranty for the loan.²⁶¹ Hale testified that Governor Clinton reminded McDougal "[m]y name cannot show up," and McDougal replied, "I've already taken care of that."²⁶²

Hale also testified he had two more conversations with Governor Clinton about the CMS loan, one before the alleged trailer meeting and one after. Hale said that sometime during the 1985-86 holiday season, Governor Clinton saw him at the Capitol Building and asked whether "he was going to be able to help he and Jim out."²⁶³ Hale said he saw Governor Clinton again two or three months after the loan was made, this time at the University Mall in Little Rock.²⁶⁴ Hale said he was walking out of J.C. Penny's when Governor Clinton came over and asked, "Have you heard what that [expletive deleted] Susan has done?"²⁶⁵ Hale replied no, and that he did not really want to know.²⁶⁶ Hale believed Governor Clinton was referring to Susan McDougal and her use of the loan money.²⁶⁷

Before he agreed to cooperate with this investigation, Jim McDougal denied the Castle

²⁶⁰ Id. at 3223 (testimony of Hale).

²⁶¹ Id.

²⁶² Id. at 3224 (testimony of Hale).

²⁶³ Hale 8/2/95 GJ at 24.

²⁶⁴ Id. at 25-26.

²⁶⁵ Id. at 26.

²⁶⁶ Id.

²⁶⁷ Id.

Grande meeting with Hale and Governor Clinton.²⁶⁸ After agreeing to cooperate, McDougal admitted to withholding information about the meeting.²⁶⁹ In his April 1997 grand jury testimony, Jim McDougal confirmed that there had been a meeting where the loan to Susan McDougal was discussed.²⁷⁰ McDougal testified that he met with Hale and Governor Clinton about the CMS loan one evening around dusk at the Castle Grande office.²⁷¹ McDougal said the meeting occurred sometime between March 18, 1986 (when Susan McDougal applied for the loan) and April 3, 1986 (when CMS issued the loan).²⁷²

McDougal said that shortly after Hale arrived for the scheduled meeting, Governor Clinton walked up the sidewalk and the three men engaged in a friendly conversation by discussing the CMS loan to Mrs. McDougal:

We shook hands and did the usual things that people in politics do. You know, we made a minute or two of polite conversation. And either David or I one said, "We've been discussing -- or I've got the application for Susan's loan." And at that -- when it came up, however, it came up, the governor said something to the effect, "I sure hope you can help us out on that."²⁷³

McDougal also remembered that Governor Clinton then raised the possibility of using the

²⁶⁸ See Pat Lynch radio show (Feb. 8, 1996); Tr. at 7033-34, United States v. McDougal et al., No. LR-CR-95-173 (E. D. Ark. May 7, 1996) (testimony of Jim McDougal).

²⁶⁹ J. McDougal 4/3/97 GJ at 16-20; J. McDougal 8/96-6/97 Int. at 46.

²⁷⁰ See generally J. McDougal 4/2-3/97 GJ.

²⁷¹ J. McDougal 4/3/97 GJ at 16-20.

²⁷² Id. at 16-21; Arkansas State Police Governor's security logs recorded that on March 19, 1986, Governor Clinton went jogging at 4:30 p.m. (no return time was noted). The next entry was for 9:20 p.m. that evening when Clinton went to the airport to pick up Mrs. Clinton. See Governor Security Logs (Mar. 19, 1986).

²⁷³ J. McDougal 4/3/97 GJ at 20.

Marion County land as collateral.²⁷⁴

Jim McDougal testified that he did not expect Governor Clinton that evening.²⁷⁵

McDougal stated he thought he might have told the Governor about the loan, the plan to have Mrs. McDougal sign it, and his intent to use some of the funds as a down payment on Lorraine Heights when the two men had met previously at the Capitol in early March 1986:

Well, I first told him that I was very embarrassed at how poorly we had done [with the Whitewater investment] and that I thought I had found something that would make us whole . . . give us a chance to recoup what we had put in and hopefully to make some more money and to have the advantage of the tax write off.

. . .

He said, "How are we going to pay for it?" I said, "Well, we're buying it from International Paper, and they have an in-house financing where they'll carry it to sell it to us . . . but we have to make a down payment."

. . .

I told him that David Hale had agreed to help us with the down payment -- get the money for the down payment.²⁷⁶

McDougal thought this conversation occurred March 4, 1986, when he met alone with Governor

²⁷⁴ Id. at 21-22.

²⁷⁵ Id. at 20-21.

²⁷⁶ Id. at 10-11. On this and other matters, McDougal's testimony, after signing a cooperation agreement with the United States, differed substantially from his testimony during his criminal trial. See, e.g., Tr. at 7332-37, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. May 8, 1996) (testimony of Jim McDougal) (testifying that he did not tell Governor Clinton about Whitewater Development's purchase of the Lorraine Heights property on March 4, and that he believed that the Clintons had relinquished their shares of Whitewater before that date). After he entered into a cooperation agreement with the United States, McDougal explained that he thought that the White House did not want him to testify and that President Clinton perjured himself during his testimony. J. McDougal 8/96-6/97 Int. at 59.

Clinton in the Governor's office before the scheduled arrival of Health Department officials.²⁷⁷

Other records suggest this conversation could have occurred January 16, 1986, when, according to Governor Clinton's calendars, McDougal met with Governor Clinton at the Governor's Mansion.²⁷⁸ Hale testified that in early January 1986, McDougal referred to the CMS-McDougal loan and said, "I'm going by and talk to Clinton about it on Saturday at the Governor's Mansion."²⁷⁹ McDougal did not remember this January 16 meeting.²⁸⁰

Jim McDougal was certain he had not told Governor Clinton about meeting Hale at Castle Grande, but that he had told Mrs. McDougal about it.²⁸¹ By 1986, Susan McDougal had begun to manage the McDougals' businesses because of Jim McDougal's medical problems.²⁸² Regardless, Mrs. McDougal knew about the Lorance Heights transaction from inception to closing.²⁸³ McDougal believed that Mrs. McDougal spoke with Governor Clinton frequently, so

²⁷⁷ McDougal was lobbying Governor Clinton to reassign a Health Department sanitation inspector who had been creating problems for a McDougal development. J. McDougal 4/3/97 GJ at 9-10; see also W. Clinton 4/28/96 Depo. at 22, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. Apr. 11, 1996); W. Clinton 7/22/95 Depo. at 67-68 (noting a meeting with McDougal and officials from the health department). Other witnesses, however, testified that McDougal had no opportunity to talk with the Governor alone that day. Butler 8/27/97 Int. at 2; Butler 3/8/95 Int. at 2-3; Hill 9/4/97 Int. at 1-2.

²⁷⁸ J. McDougal 8/96-6/97 Int. at 39.

²⁷⁹ Tr. at 4335, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. Apr. 10, 1996) (testimony of Hale).

²⁸⁰ J. McDougal 8/96-6/97 Int. at 39.

²⁸¹ Id. at 46 (emphasis supplied). At the time of the alleged meeting, the McDougals were separated, but still maintained a working relationship. The McDougals separated in mid-1985. J. McDougal 8/96-6/97 Int. at 81.

²⁸² J. McDougal 4/3/97 GJ at 29-30.

²⁸³ Id. at 29.

that she might have told him about the Hale meeting.²⁸⁴

ii. President and Mrs. Clinton Denied Hale's and McDougal's Allegations Concerning the CMS Loan.

The President testified that he did not know in late 1985 or early 1986 of any discussions between McDougal, Hale, and Tucker about getting money for the "political family" of Arkansas.²⁸⁵ The President also testified that he knew nothing about the CMS loan to Mrs.

²⁸⁴ J. McDougal 8/96-6/97 Int. 48, 53, 63. James B. Stewart, Susan McDougal's Silence, *The New Yorker*, Feb. 17, 1997, at 65 ("She has acknowledged being in frequent contact with [Clinton]-not at the time of the loan, necessarily, but several months afterward"); *id.* at 66 ("Susan told me in an earlier interview . . . that she was on the phone with Clinton nearly every day [in late 1986 and 1987]").

²⁸⁵ W. Clinton 7/22/95 Depo. at 77-78. Jim Guy Tucker, in testimony before the grand jury, remembered that then-Governor Clinton once used the phrase "political family" in a conversation with then-Lieutenant Governor Tucker during the 1992 campaign. Tucker had requested a meeting with Governor Clinton to discuss whether he would step down as governor during the campaign. In notes from the meeting, dated April 14, 1992, Tucker had written:

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

Tucker 4/21/98 GJ at 107-08. Tucker pointed out that he considered Hale to be a liar and thought Hale lied to the grand jury and the Independent Counsel. *Id.* at 108. Nevertheless, Tucker said that:

"The political family" is a term that I don't recall ever having heard used in Arkansas. It's not a term I used. It's not a term that is familiar with me. I've been told by others that it's a phrase commonly used in Chicago and in other locations. I never heard it used in Arkansas, never, until David Hale used it in his testimony. I was surprised to note in my notes that that was a phrase that Governor Clinton had used.

Id. at 109.

McDougal, the Castle Grande meeting with Hale, or the Lorance Heights purchase.²⁸⁶ The President denied attending any meeting between Jim McDougal and David Hale.²⁸⁷ The President denied asking Hale to loan money to Jim or Susan McDougal or pressuring Hale to make any loans.²⁸⁸ He denied ever discussing the CMS loan with Jim or Susan McDougal and denied receiving any proceeds from the loan.²⁸⁹

The President testified that he learned that Whitewater Development once briefly owned Lorance Heights from press reports.²⁹⁰ President Clinton said that since he did not know Whitewater Development owned Lorance Heights, he had no reason to question why Jim McDougal transferred the property out of Whitewater Development²⁹¹ and never even discussed Lorance Heights with McDougal.²⁹² Mrs. Clinton testified that she did not know before 1989 that McDougal wanted to purchase the Lorance Heights parcel from International Paper.²⁹³

President and Mrs. Clinton denied Hale's and McDougal's allegations in answers to the RTC's interrogatories in 1995. The President said:

²⁸⁶ W. Clinton 4/28/96 Depo. at 32-33, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. 1996); see also W. Clinton 7/22/95 Depo. at 86-88, 90.

²⁸⁷ W. Clinton 4/28/96 Depo. at 18-19, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. 1996).

²⁸⁸ Id. at 20; see also W. Clinton 7/22/95 Depo. at 80.

²⁸⁹ W. Clinton 4/28/96 Depo. at 32-33, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.).

²⁹⁰ Id. at 35.

²⁹¹ Id. at 34.

²⁹² Id. at 92-93, 97, 100.

²⁹³ H. Clinton 5/24/95 RTC Interrog. Resp. at 59.

I don't know what "alleged claim" David Hale has made. I don't recall any conversation with David Hale about loaning money to Jim McDougal, Susan McDougal, Master Marketing, Madison Guaranty, or any entity owned by the McDougals, and I am certain I never "pressured" Hale or any company he owned to make any loan.

.....

I don't recall any conversations with Jim or Susan McDougal about the subject of David Hale or Capital Management loaning money to Jim McDougal, Susan McDougal, Master Marketing, Madison Guaranty or any entity owned by the McDougals.²⁹⁴

The First Lady's denial was similar:

I don't know what "alleged claim" David Hale has made. I did not have any conversation with David Hale about loaning money to Jim McDougal, Susan McDougal, Master Marketing, Madison Guaranty, or any entity owned by the McDougals.²⁹⁵

Mrs. Clinton also denied any related conversations:

I did not have any conversations with Jim or Susan McDougal about the subject of David Hale or Capital Management loaning money to Jim McDougal, Susan McDougal, Master Marketing, Madison Guaranty or any entity owned by the McDougals.²⁹⁶

Mrs. Clinton also said that she did not know about this loan and thus had no conversations with her husband about it.²⁹⁷

²⁹⁴ W. Clinton 5/24/95 RTC Interrog. Resp. at 45.

²⁹⁵ H. Clinton 5/24/95 RTC Interrog. Resp. at 54-55; see also H. Clinton 7/22/95 Depo. at 62-63.

²⁹⁶ Id.

²⁹⁷ H. Clinton 7/22/95 Depo. at 66.

c. The CMS Loan's Effect on the Madison Guaranty Loan to "Bill Clinton."

In addition to the \$25,000 down payment for Whitewater Development's purchase of land from International Paper, the CMS loan to Susan McDougal also had an indirect impact on Whitewater. On March 22, 1985, Jim McDougal paid off the Wade nominee loan (obtained to repay the November 1982 Madison Guaranty "Bill Clinton" loan) using Whitewater Development Check No. 137. This check was drawn on Whitewater's Madison Guaranty account, payable to Wade's Ozarks Realty for \$25,000.00.²⁹⁸ This overdrew the Whitewater Development Madison Guaranty account by \$24,470.90.²⁹⁹ The shortfall was covered eight days later with proceeds from a one-year \$135,000 loan the McDougals took out through another of their real estate operations, Flowerwood Farms from Stephens Security Bank on April 3, 1985.³⁰⁰ Flowerwood Farms Check No. 194 for \$24,455.90 was written to "White Water Development" on April 9, 1985.³⁰¹ McDougal signed the check and deposited it into Whitewater's Madison Guaranty account.³⁰²

²⁹⁸ Check No. 00137 from the account of Whitewater Development Corporation, Inc. signed by James B. McDougal payable to Ozark Realty Co. for \$25,000 (Mar. 22, 1985) (Doc. No. DEK002099).

²⁹⁹ Whitewater Development Corp. Bank Statement (Apr. 30, 1985) (Doc. No. DEK002105); J. McDougal 4/2/97 GJ at 56-57.

³⁰⁰ J. McDougal 4/3/97 GJ at 5; J. McDougal 4/2/97 GJ at 57-60, 66-67; see Check No. 194 from the account of Flowerwood Farms signed by James B. McDougal payable to White Water Development for \$24,454.90 (Apr. 9, 1985) (Doc. No. 54-17988-00000392); Check No. 032237 from the account of Stephens Security Bank signed by Carol Reaves payable to

Jim McDougal then paid off the Stephens Security Bank loan on April 7, 1986 with a cashier's check³⁰³ using \$111,524.21 of the \$300,000 Master Marketing loan from CMS.³⁰⁴

Flowerwood Farms for \$135,000 (Apr. 1, 1985) (Doc. Nos. 35-00000057 through 58); Mortgage Agreement between James B. McDougal and Susan H. McDougal, d/b/a Flowerwood Farms, Inc. and Stephens Security Bank (Apr. 3, 1985) (Doc. Nos. 35-00000007 through 11).

³⁰¹ Check No. 194 from the account of Flowerwood Farms signed by James B. McDougal payable to White Water Development for \$24,454.90 (Apr. 9, 1985) (Doc. No. 54-17988-00000392); Whitewater Development Corp. Bank Statement (Apr. 30, 1985) (Doc. No. 54-00003167-A).

³⁰² Id. The word "Loan" appeared in the check's memo section. Based on standard first-in, first-out accounting convention, the check to Whitewater Development was totally funded by the \$135,000 Stephens Security Bank loan. See Tr. 6734-68, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. May 2, 1996) (testimony of Michael Patkus)

³⁰³ Cashier's Check No. 4878 from the account of Madison Guaranty Savings and Loan Association signed by Jamie Moring payable to Stephens Security Bank for \$111,524.21 (Apr. 7, 1985) (Doc. Nos. 35-00000004 through 05).

³⁰⁴ J. McDougal 4/2/97 GJ at 60; see also Tr. 6734-68, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. May 2, 1996) (testimony of Michael Patkus) (explaining how the first-in, first-out accounting convention was employed to determine how the \$135,000, and later the \$300,000, were used). McDougal's account was erroneously debited twice. One debit was for \$122,459.79, funding the \$111,524.21 check plus another cashier's check. The second debit was for \$111,500, reflecting a transfer of funds from the McDougals' personal account to their Flowerwood Farms account. The Flowerwood Farms account was debited for \$111,524.21 and the McDougals' personal account was credited for that amount. See The McDougals' account statement reflecting debits and credits (Apr. 30, 1986) (Doc. Nos. 174-00000953 through 55); Debit to the McDougals' account for transfer to Flowerwood Farms account in the amount of \$111,500 (later reversed) (Apr. 30, 1986) (Doc. No. 174-00000953); Deposit ticket to Flowerwood Farms account showing the deposit of the \$111,500 from the McDougals' personal account (Apr. 4, 1986) (Doc. No. 054-01006140); Debit to McDougals' account for the charge of the two Cashier's Checks (one being the payment to Stephens) (Apr. 8, 1986) (Doc. No. 56-81990-00000339) (Apr. 7, 1986) (Doc. Nos. 054-00170454 through 55, 460 through 461); Check No. 4878 from the account of Madison Guaranty Savings and Loan signed by Jamie Moring payable to Stephens Security Bank for \$111,524.90 (Apr. 7, 1986) (Doc. No. 35-000000004); Flowerwood Farms account statement showing the deposit of \$111,500 and the transfer of \$111,524.21 back to the McDougals' personal account to correct the double debit (Apr. 30, 1986) (Doc. No. 56-00110713); Debit to Flowerwood Farms account for \$111,524.21 for the transfer of funds back to the McDougals' personal account (date illegible) (Doc. No. 56-81992-00000514);

5. Susan McDougal Refused to Answer All Questions about President Clinton's Involvement in and/or Knowledge of the Madison Guaranty Loan, the Lorraine Heights Purchase, or the CMS Master Marketing Loan.

The Independent Counsel concluded that Susan McDougal may have had information about these transactions and whether, and to what extent, President Clinton knew of them due to testimony of witnesses and documentary evidence:

- Susan McDougal was an officer of Madison Guaranty and a director of Madison Bank and attended the meetings when the Madison Bank loan to Whitewater Development was scrutinized.³⁰⁵
- Susan McDougal listed herself as owner of the fictitious sole proprietorship that received the CMS loan proceeds and was convicted by a jury for her involvement with the subsequent illegal expenditure of the proceeds.³⁰⁶
- Jim McDougal believed that Mrs. McDougal might have asked Governor Clinton to "do something related to the [CMS] loan."³⁰⁷ He thought it probable that Governor Clinton believed the Clintons would get some financial benefit from the CMS loan to Mrs. McDougal.³⁰⁸

Deposit ticket to the McDougals' personal account for credit of the \$111,524.21 from Flowerwood Farms' account (Apr. 15, 1986) (Doc. No. 58-81991-00000420).

³⁰⁵ Minutes of Special Meeting of Board of Directors of Madison Bank and Trust, Kingston, Arkansas (Oct. 12, 1982) (Doc. No. 79-00005645).

³⁰⁶ Order, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. Aug. 14, 1996); Tr. at 8121-22, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. May 28, 1996). During an ABC News interview, Susan McDougal said she did not know, when she took out the loan at Hale's CMS, that the funds could only go to disadvantaged clients: "I ran in, signed the documents and he [Hale] handed me a check for \$300,000, which is a huge amount of money. And I said, 'That was easy. Boy, that was easy.'" Prime Time Live: Tr. of Diane Sawyer Interview of Susan McDougal at Doc. No. 2053-00000131 (ABC television broadcast, Aug. 30, 1996) (transcript contains additional interview portions not included in the public broadcast).

³⁰⁷ J. McDougal 8/96-6/97 Int. at 55.

³⁰⁸ Id.

- Susan McDougal executed two documents in October 1986 to fund Whitewater's Lorance Heights purchase.³⁰⁹

In an effort to obtain Susan McDougal's testimony regarding these transactions, the Independent Counsel sought immunity for Mrs. McDougal pursuant to 18 U.S.C. § 6002. On September 2, 1996, Mrs. McDougal was granted immunity and ordered by a federal judge to "provide testimony and other information as to all matters about which she may be interrogated before the Grand Jury."³¹⁰ Consistent with 18 U.S.C. § 6002, the immunity order provided that Mrs. McDougal's testimony could not be used against her in any case, except a prosecution for perjury or false statements.³¹¹

On September 4, 1996, Mrs. McDougal was asked the following three questions before the grand jury:

Q. Did you ever discuss your loan from David Hale with William Jefferson Clinton?³¹²

.....

Q. Did you ever discuss Lorance Heights with William Jefferson Clinton?³¹³

³⁰⁹ Real Estate Note (Oct. 10, 1986) (Doc. Nos. 138-00006919 through 20); Letter to Whitewater Development Amending Contract of Sale Between Whitewater Development Corp. and International Paper (Oct. 10, 1986) (Doc. Nos. 43-00001764).

³¹⁰ Order Compelling Testimony, In re: Grand Jury Proceedings, No. GJ-96-3 (E.D. Ark. Sept. 3, 1996).

³¹¹ Id.

³¹² S. McDougal 9/4/96 GJ at 9. In an interview with ABC News, Susan McDougal also declined to answer this question, stating, "[t]hat's probably something that my attorney would not want me to talk about." Prime Time Live: Tr. of Diane Sawyer Interview of Susan McDougal at Doc. No. 2053-0000108 (ABC television broadcast, Aug. 30, 1996) (transcript contains additional interview portions not included in the public broadcast).

³¹³ S. McDougal 9/4/96 GJ at 9.

.....

Q. To your knowledge, did William Jefferson Clinton testify truthfully during the course of your trial?³¹⁴

Mrs. McDougal refused to answer these questions, and Chief Judge Susan Webber Wright of the United States District Court for the Eastern District of Arkansas held her in contempt.³¹⁵ Judge Wright then held a civil contempt hearing.³¹⁶ All defenses raised by Mrs. McDougal's attorney were rejected (including Mrs. McDougal's charge that she could not answer because Independent Counsel Starr only "wanted me to tell them something bad about the Clintons").³¹⁷ Judge Wright held Mrs. McDougal in contempt and sentenced her to civil confinement until she agreed to testify truthfully before the grand jury.³¹⁸

On April 23, 1998, Mrs. McDougal again appeared before the grand jury under the same

³¹⁴ Id. During an interview with ABC News, Susan McDougal said, "I don't know of anything illegal that Bill or Hillary Clinton ever did." Prime Time Live: Tr. of Diane Sawyer Interview of Susan McDougal at Doc. No. 2053-00000111 (ABC television broadcast, Aug. 30, 1996) (transcript contains additional interview portions not included in the public broadcast). It was pointed out to Susan McDougal that the President's knowledge of the CMS loan would not necessarily have been illegal, and that her refusal to answer questions created the implication that the President did indeed know about the loan. Id. Susan McDougal said that she hoped that that implication was not created. Id. at 112.

³¹⁵ S. McDougal 9/4/96 GJ at 9. During media interviews, Susan McDougal also refused to answer these and related questions because of the interest expressed by the Independent Counsel. See, e.g., Prime Time Live: Tr. of Diane Sawyer Interview of Susan McDougal at Doc. Nos. 2053-00000017 through 167 (ABC television broadcast, Aug. 30, 1996) (transcript contains additional interview portions not included in the public broadcast); Frontline, Once Upon a Time in Arkansas, Oct. 7, 1997.

³¹⁶ Order, In re: Grand Jury Subpoena, No. GJ-96-3 (E.D. Ark. Sept. 6, 1996).

³¹⁷ Hearing on Motion to Vacate Civil Contempt Order at 45, United States v. S. McDougal, No. GJ-96-3 (E.D. Ark. Sept. 13, 1996).

³¹⁸ Order, In re: Grand Jury Subpoena, No. GJ-96-3 (E.D. Ark. Sept. 6, 1996).

grant of immunity. Prosecutors and grand jurors asked her about the meaning of her "Payoff Clinton" notation on the check she wrote.³¹⁹ She again refused to answer all questions posed to her.³²⁰ Following her continued refusal to answer, a federal grand jury returned an indictment that charged her with two counts of criminal contempt (18 U.S.C. § 401(3)) and one count of obstruction of justice (18 U.S.C. § 1503) for knowingly and willfully disobeying and resisting the lawful order of a court of the United States, and refusing to answer questions or provide testimony and other information as to all matters about which she was questioned before the federal grand jury.³²¹

At trial, Mrs. McDougal testified in her own defense and responded to the questions asked of her during her April 1998 grand jury appearance. Questioned by her own attorney about the \$27,600 loan check to Bill Clinton and the \$5,081.82 check with the "Payoff Clinton" notation, she denied knowledge of the loan or what the "Payoff Clinton" notation meant, speculating it could refer to property the McDougals owned in Clinton, Arkansas:

³¹⁹ See generally S. McDougal 4/23/98 GJ. In an interview with ABC News, Susan McDougal did state that "[t]he Clintons never had a loan at Madison Guaranty. Jim and I did. And if Jim gave them money from Madison Guaranty it would be easily be traceable. It's a federal institution. All the money going in and all the money going out has been accounted for and looked and examined and reexamined. And I've never seen one document, one shred of evidence, that any money left Madison Guaranty going to the Clintons illegally." Prime Time Live: Tr. of Diane Sawyer Interview of Susan McDougal at Doc. Nos. 2053-00000055 through 056 (ABC television broadcast, Aug. 30, 1996) (transcript contains additional interview portions not included in the public broadcast).

³²⁰ See generally S. McDougal 4/23/98 GJ.

³²¹ On April 12, 1999, the jury found Susan McDougal not guilty of one count of obstruction of justice and was hung on the two counts of criminal contempt. On May 25, 1999, the Independent Counsel announced his decision not to retry Susan McDougal and moved to

Q. [Y]ou heard a lot about a \$5,000 loan, is that correct, or a \$5,000 check for pay off Clinton?

A. Yes.

Q. Now, at the time, back in April of '98, what was your reaction when you saw the \$5,000 check with pay off Clinton?

A. I thought it was possibly to pay off some land that we owned in Clinton, Arkansas. That was my first thought.

Q. And how about -- were you asked [about]. . . . [t]he \$27,600 check to Bill Clinton?

A. Have I seen it? Is that the question?

Q. Yes.

A. I think it was shown to me when I was in the grand jury.

Q. Had you ever seen that?

A. I had never seen it before, I mean, to my knowledge. It was so many years ago. I don't remember what year but it was 14 years ago or something. I don't remember ever having seen that before. I don't know why I would have seen it before.³²²

Mrs. McDougal later testified that even though there were documents introduced into evidence showing the connection between the amount owed on the Clinton loan and the amount

dismiss the pending counts of the indictment.

³²² Tr. at 1845-46, United States v. S. McDougal, No. LR-CR-98-82 (E.D. Ark. Mar. 24, 1999) (testimony of Susan McDougal). The Independent Counsel conducted an exhaustive search of Arkansas land records but was unable to find any records identifying any property associated with the McDougals or any McDougal affiliated entity in Clinton, Arkansas, or in surrounding Van Buren County, at the time of this payment. Grand Jury Subpoena No. 76 (E.D. Ark. Jan. 12, 1994); Grand Jury Subpoena No. 212 (E.D. Ark. Mar. 29, 1994).

of the check drawn on the trustee account, she still had no personal knowledge of the loan.³²³ She agreed she wrote the check, but only because Jim McDougal asked her to do so.³²⁴

C. The Clintons and the McDougals Had Varied Roles Managing and Funding Whitewater.

1. The Clintons and the McDougals Assumed Different Responsibilities During the Whitewater Venture.

a. The McDougals Exercised De Facto Control over Whitewater from Approximately 1978 until 1986.

The McDougals managed Whitewater's finances from the outset in 1978 until about 1986, when Jim McDougal suffered a nervous breakdown and moved to California.³²⁵ During these eight years, the McDougals kept the books and records, and the Clintons allowed Jim McDougal to manage the finances as he saw fit.³²⁶ The McDougals or their authorized employees signed the company's checks, and no documents available to this office's investigation suggested the Clintons signed any of the company's checks.³²⁷ One excerpt from corporate minutes was

³²³ Tr. at 2101, United States v. S. McDougal, No. LR-CR-98-82 (E.D. Ark. Mar. 30, 1999) (testimony of Susan McDougal).

³²⁴ Id. at 2098-2102 (testimony of Susan McDougal).

³²⁵ J. McDougal 8/96-6/97 Int. at 81; J. McDougal 9/96 Int. at 11.

³²⁶ J. McDougal 9/96 Int. at 4-5.

³²⁷ See C. James 5/5/96 Senate Whitewater Comm. Depo. at 235 (stating that, along with Jim and Susan McDougal, he was the only one authorized to sign Whitewater checks); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 23-24 (Apr. 24, 1995). The available documentation did not include a corporate minute book for Whitewater. See Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 24 (Apr. 24, 1995).

located, apparently drawn up at the request of a bank.³²⁸ There was no indication based on the reconstructed books and records that regular board meetings were held, meaning that the Clintons' participation in such meetings was limited or non-existent.

The Clintons stated they considered themselves "passive investors" and relied on the McDougals to manage and operate Whitewater.³²⁹ The Clintons relied on the McDougals to tell them when to make a financial contribution to the venture and believed they did so whenever requested.³³⁰ The Clintons signed extensions or renewals of various Whitewater-related bank loans, but did not receive annual or regular reports or financial summaries.³³¹ As described above, the Clintons were involved in or aware of certain loan transactions related to Whitewater Development during the venture's first eight years.

The Clintons were not told of all the actions by Whitewater Development, and did not know what the McDougals spent on Whitewater, the sources of money, or the nature of an expense.³³² President Clinton said that after they invested in Whitewater, "it just sort of held its own. We didn't have to put any more money into it for a few years. So, we didn't have to talk about it."³³³ Mrs. Clinton said she had infrequent contact with McDougal in the early 1980s.³³⁴

³²⁸ J. McDougal 4/2/97 GJ at 41-42.

³²⁹ W. Clinton 5/24/95 RTC Interrog. Resp. at 35-36; see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 2 (Apr. 24, 1995).

³³⁰ W. Clinton 5/24/95 RTC Interrog. Resp. at 7.

³³¹ H. Clinton 5/24/95 RTC Interrog. Resp. at 46.

³³² Id.

³³³ W. Clinton 7/22/95 Depo. at 65.

Letters to or from the Clintons were relatively infrequent, and available documents suggest that the Clintons corresponded less than twenty times on Whitewater from the project's inception in 1978 to the end of 1986.³³⁵

b. Hillary Clinton Took a More Active Role in Whitewater in 1986.

i. Problems at Madison Guaranty.

In a report to Madison Guaranty's directors dated June 1, 1984, the Federal Home Loan Bank Board ("FHLBB") warned that "[t]he viability of the institution is jeopardized through the institution's current investment and lending practices in real estate development projects."³³⁶ As discussed in more detail in Part B, Chapter 1 of this Report, FHLBB regulators presented the Madison Guaranty board with a Cease and Desist Order on July 11, 1986, leading to McDougal's immediate resignation. This regulatory scrutiny over management of Madison Guaranty led Betsey Wright, Governor Clinton's Chief of Staff, to send a written query to the Governor:

White Water stock
(McDougal's Company)

³³⁴ H. Clinton 2/14/96 FDIC Int. at 32.

³³⁵ See Letter from Hillary Rodham, Rose Law Firm attorney, to James B. McDougal, President of Madison Guaranty Savings & Loan (Oct. 12, 1981) (Doc. No. GS-00013925); Letter from Jim McDougal to Hillary Rodham (Oct. 6, 1981) (Doc. No. GS-00013926); Letter from James B. McDougal to Hillary Rodham (Oct. 4, 1984) (Doc. No. GS-00014506); Letter from James B. McDougal to Governor and Mrs. Bill Clinton (Dec. 16, 1986) (Doc. No. GS-00014013); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 24 (Apr. 24, 1995).

³³⁶ FHLBB Office of Examinations and Supervision, Report of Special Limited Examination (as of Jan. 20, 1984) (Doc. Nos. 99000270 through 71); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 8 (Apr. 24, 1995).

Do you still have? (pursuant to Jim's current problems
If so, I'm worried about it.³³⁷

Governor Clinton replied on the bottom of Wright's memorandum:

No - Don't have any more

B³³⁸

President Clinton says he learned at some point that Madison Guaranty was in trouble and that appropriate action would have to be taken.³³⁹ He remembered being a little surprised at Madison Guaranty's problems; it had been his impression that most of the troubled savings and loans were "making crazy loans out of state, or were building indoor country clubs in Dallas, or what all stuff they were doing."³⁴⁰

On November 14 and December 16, 1986, Jim McDougal sent the Clintons a status report, offering to buy them out of Whitewater.³⁴¹ The Clintons remembered McDougal's offer.³⁴² They said McDougal felt guilty the project was a failure, though it might have utility as a loss for tax purposes.³⁴³ The Clintons were initially in favor of selling out because they had spent a great

³³⁷ Memo from Betsy Wright to Governor Clinton (July 14, 1986) (Doc. No. 1221-00000901).

³³⁸ Id. (emphasis in original).

³³⁹ W. Clinton 7/22/95 Depo. at 58.

³⁴⁰ Id.

³⁴¹ J. McDougal 4/3/97 GJ at 32-34. See Letter from James B. McDougal to Mr. and Mrs. Bill Clinton (Nov. 14, 1986) (Doc. No. DKRT200475).

³⁴² W. Clinton 7/22/95 Depo. at 43; H. Clinton 5/24/95 RTC Interrog. Resp. at 57.

³⁴³ W. Clinton 7/22/95 Depo. at 43; H. Clinton 5/24/95 RTC Interrog. Resp. at 57.

deal of money and received no return,³⁴⁴ but they did not want to lose their equity while remaining personally liable on the mortgage for the Lot 13 model home.³⁴⁵ The Clintons determined that because they could not get released from this loan, it made no sense to surrender their Whitewater equity to the McDougals.³⁴⁶

ii. Jim McDougal Became Too Ill to Manage Whitewater.

Jim McDougal said that because of illness between the end of 1986 and 1992, he had no involvement in the administration or corporate responsibilities of Whitewater Development.³⁴⁷ Mrs. McDougal and Mrs. Clinton took over various aspects of the corporate responsibilities.³⁴⁸ In an interview with ABC News, Mrs. McDougal said that since "Jim was so sick," she tried to

³⁴⁴ H. Clinton 5/24/95 RTC Interrog. Resp. at 57.

³⁴⁵ Id.

³⁴⁶ W. Clinton 7/22/95 Depo. at 43; H. Clinton 5/24/95 RTC Interrog. Resp. at 57; see also Prime Time Live: Tr. of Diane Sawyer Interview of Susan McDougal at Doc. No. 2053-00000078 (ABC television broadcast, Aug. 30, 1996) (quoting Susan McDougal: "Since they [the Clintons] had responsibility on the loan, she [Mrs. Clinton] felt she should not give the company to Jim") (transcript contains additional interview portions not included in the public broadcast).

³⁴⁷ J. McDougal 9/96 Int. at 11.

³⁴⁸ Id. Susan McDougal recounted in an ABC News interview how she and Mrs. Clinton became more involved with Whitewater after McDougal fell ill. Susan McDougal said she once approached Mrs. Clinton about refinancing a Whitewater loan so incoming lot payments would cover loan payments, but Mrs. Clinton dismissed the idea and said, "I'll talk to the bank myself and I'll handle it myself." Prime Time Live: Tr. of Diane Sawyer Interview of Susan McDougal at Doc. Nos. 2053-00000087 through 88 (ABC television broadcast, Aug. 30, 1996) (transcript contains additional interview portions not included in the public broadcast). Susan McDougal said she replied: "'Okay, talk with the bank directly,' and my heart and my conscience were clear because I had structured it and it was working, and I felt good about it and I went off to California, knowing that Whitewater, as far as I was concerned, was taken care of." Id. at 88.

keep their companies "going and everything."³⁴⁹ Mrs. Clinton said that since her husband was fully occupied as Governor, she monitored Whitewater to ensure that its affairs were conducted in accordance with the law.³⁵⁰

Jim McDougal said around this time that Mrs. McDougal told him the Clintons wanted Whitewater's records.³⁵¹ Mrs. McDougal said Governor Clinton called and asked her for the documents.³⁵² She told him, "Certainly. Please. You can have everything."³⁵³ Jim McDougal remembered Susan taking the Whitewater records out of a banker's box so that her brother, Bill Henley, could deliver them to the governor's mansion.³⁵⁴ Jim McDougal thought Susan documented the transfer.³⁵⁵

iii. Mrs. Clinton's Whitewater Management.

Mrs. Clinton tried to make sure escrow contracts were signed, loan renewals were executed, real estate taxes were paid, and tax returns and franchise tax reports were filed.³⁵⁶ Mrs.

³⁴⁹ Prime Time Live: Tr. of Diane Sawyer Interview of Susan McDougal at Doc. No. 2053-00000085 (ABC television broadcast, Aug. 30, 1996) (transcript contains additional interview portions not included in the public broadcast).

³⁵⁰ H. Clinton 5/24/95 RTC Interrog. Resp. at 13.

³⁵¹ J. McDougal 8/96-6/97 Int. at 31.

³⁵² Prime Time Live: Tr. of Diane Sawyer Interview of Susan McDougal at Doc. No. 2053-00000093 (ABC television broadcast, Aug. 30, 1996) (transcript contains additional interview portions not included in the public broadcast).

³⁵³ Id.

³⁵⁴ J. McDougal 8/96-6/97 Int. at 31. McDougal remembered that Henley later confirmed this fact. See Henley 6/18/96 GJ at 39-42; see also James B. Stewart, Blood Sport 155 (1996).

³⁵⁵ J. McDougal 8/96-6/97 Int. at 31.

³⁵⁶ H. Clinton 5/24/95 RTC Interrog. Resp. at 13-14.

Clinton accepted lot payments and made loan and tax payments.³⁵⁷ Around 1988, Mrs. Clinton paid Whitewater's delinquent taxes and handled certain other matters.³⁵⁸

Sometime in 1987, Mrs. Clinton learned that Hilman Logan, who had purchased Lot 13 with the model home, had declared bankruptcy.³⁵⁹ She asked Allen Bird, a Rose Law Firm ("Rose") lawyer, to help her protect the Clintons' rights under the escrow contract.³⁶⁰ Mrs. Clinton said Bird negotiated an arrangement with the Hilman Logan estate and the federal bankruptcy trustee in Mississippi allowing the Clintons to pay \$8,000 into the bankruptcy court to purchase the Logan estate's equity in Lot 13.³⁶¹ Wade then found someone willing to pay \$27,500 for the lot.³⁶² This allowed the Clintons to pay off the loan at Security Bank in Paragould, recover their \$8,000 personal investment, and make \$1,640, which was reported as a capital gain on their 1988 taxes.³⁶³

On September 5, 1989, Wade wrote Mrs. Clinton and said that Whitewater Development needed a president and a secretary to sign a deed to go into the escrow file.³⁶⁴ Neither Governor

³⁵⁷ Id.

³⁵⁸ Id. at 21-24.

³⁵⁹ Id. at 23.

³⁶⁰ Id.

³⁶¹ Id. at 24.

³⁶² Lauramoore 2/26/97 Int. at 1; see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 134 (Apr. 24, 1995).

³⁶³ Schedule D, Form 1040, Capital Gains and Losses, William J. Clinton and Hillary Rodham (1988) (Doc. No. DEK000881).

³⁶⁴ Letter from Chris V. Wade to Hillary Clinton (Sept. 5, 1989) (Doc. No. DKRT700148).

nor Mrs. Clinton was then an officer or director.³⁶⁵ On October 28 and November 28, 1988, Mrs. Clinton wrote and asked Jim McDougal for power of attorney on Whitewater.³⁶⁶ The November 28 letter read:

I am enclosing a Power of Attorney for you to sign, authorizing me to act on your behalf with respect to matters concerning Whitewater Development Corp.

The letter also discussed the remaining Whitewater property:

We are trying to sell off the property that is left and get out from under the obligations at both Flippin and Paragould.³⁶⁷

Mrs. Clinton received no response from the McDougals.³⁶⁸

On June 21, 1990, Mrs. Clinton signed documents stating that as of December 31, 1987, and December 31, 1988, she was Whitewater Development's president.³⁶⁹ McDougal said all the corporation did at this point was funnel money from customers to the banks to cover interest.³⁷⁰ Whitewater's 1987, 1988, and 1989 federal income tax returns (and state franchise tax reports for 1987 and 1988) were filed in June 1990.³⁷¹ McDougal said that in 1990, Governor Clinton asked

³⁶⁵ H. Clinton 5/24/95 RTC Interrog. Resp. at 60-63, 69, 70.

³⁶⁶ Id. at 61-62. See Senate Special Comm. to Investigate Whitewater Dev. Corp. and Related Matters, Final Report, S. Rep. No. 280, 104th Cong., 2d Sess. 307 (1996).

³⁶⁷ Letter from Hillary Rodham Clinton to Jim McDougal (Nov. 28, 1888) (Doc. No. 212-00006075).

³⁶⁸ H. Clinton 5/24/95 RTC Interrog. Resp. at 62.

³⁶⁹ Corporate Franchise Tax Report for Whitewater Development Company, Inc. (1988, 1989) (Doc. Nos. DKRT700618 through 19).

³⁷⁰ J. McDougal 4/2/97 GJ at 35.

³⁷¹ Mrs. Clinton said that Rose manager Carolyn Huber completed the necessary forms following instructions she received from the Secretary of State's office. H. Clinton 5/24/95 RTC Interrog. Resp. at 14; see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings &

him to reimburse them for the \$3,000 they paid for taxes.³⁷² McDougal said Clinton asked this a day or two after McDougal was acquitted in his first trial.³⁷³ McDougal told Governor Clinton he could not help and that he should contact Sam Heuer, the attorney representing McDougal.³⁷⁴ A month later, Heuer had lunch with Mrs. Clinton to discuss Whitewater matters, including dissolution.³⁷⁵

In 1991, Mrs. Clinton mentioned to Rose partner William Kennedy III that the Whitewater investment was a problem.³⁷⁶ Kennedy offered to help.³⁷⁷ Mrs. Clinton provided Whitewater's records, which Kennedy said were in shambles.³⁷⁸ Mrs. Clinton provided Kennedy an overview of the investment so that he could understand what the records were.³⁷⁹ Kennedy reviewed the records and concluded that franchise taxes had not been paid.³⁸⁰

Mrs. Clinton worked with many members of the 1992 presidential campaign team -- including Webb Hubbell, Vince Foster, and Jim Blair -- to define her role in Whitewater in

Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 24 (Apr. 24, 1995).

³⁷² J. McDougal 4/3/97 GJ at 46-48.

³⁷³ J. McDougal 8/96-6/97 Int. at 60. President Clinton remembered that it was possible that he called McDougal and said congratulations and talked to him briefly after McDougal's acquittal. W. Clinton 7/22/95 Depo. at 63.

³⁷⁴ J. McDougal 4/3/97 GJ at 46-47.

³⁷⁵ Heuer 10/8/97 GJ at 5, 28-29.

³⁷⁶ W. Kennedy 12/17/97 GJ at 74-75.

³⁷⁷ Id. at 75.

³⁷⁸ Id. at 75-76, 79, 83.

³⁷⁹ Id. at 76.

³⁸⁰ Id. at 88.

response to press inquiries. Blair and Loretta Lynch met with McDougal and Heuer, and McDougal told them about Whitewater.³⁸¹ Blair wrote to Heuer, that the "Clinton's . . . will characterize [Whitewater] as a bad business deal where money was lost."³⁸² Blair also wrote:

Although the Statute of Limitations may not have run as to civil or criminal liability on the part of anyone who may have misused funds of [Whitewater] (assuming such activity was concealed) there is no intent under the current state of developments to try to prosecute, sue or even point the finger at any such person, if any.³⁸³

Blair wrote he knew the McDougals had been "through a lot of trauma," that the Clintons "are sure that the accusations made by the New York Times about Jim [McDougal] are not true" and that the McDougals "were taken advantage of."³⁸⁴

2. The Final 1994 Lyons Report, the RTC, and the Independent Counsel Agreed on the Clintons' and McDougals' Fundings of Whitewater.

Two previous reports -- the Clinton campaign's commissioned "Lyons Report" and the RTC's commissioned Pillsbury Madison & Sutro Report -- detailed the Clintons' and the McDougals' financial contributions to the Whitewater venture. This section reports on the additional investigation of that issue completed by the Independent Counsel. All three investigative entities reached substantially the same conclusions:

³⁸¹ Jim Blair's notes (Mar. 11, 1992) (Doc. No. 264-0020696).

³⁸² Letter from Jim Blair, General Counsel for Tyson Foods to Sam Heuer, Attorney for Jim McDougal (Mar. 16, 1992) (Doc. No. DEK005290).

³⁸³ Id.

³⁸⁴ Id.

CLINTON CONTRIBUTIONS	
Final Lyons Report (as Amended in 1994)	\$46,635.75³⁸⁵
RTC/Pillsbury Madison & Sutro	\$42,192.00³⁸⁶
Independent Counsel	\$36,862.33³⁸⁷

There was also reasonable agreement between the Independent Counsel and the Final Lyons Report (as amended in 1994) over the amounts contributed by the McDougals and entities they controlled contributed towards the Whitewater partnership and corporation:

McDOUGAL CONTRIBUTIONS	
Final Lyons Report	\$92,200.00³⁸⁸
Independent Counsel Report	\$80,076.03³⁸⁹

³⁸⁵ Letter from James N. Lyons, Attorney, to David E. Kendall, Attorney for the Clintons, at 2 (Mar. 22, 1994) (Doc. Nos. 863-00000006-07).

³⁸⁶ Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation (Apr. 24, 1995); Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Supplemental Report to the Resolution Trust Corporation (December 13, 1995).

³⁸⁷ The Clintons actually invested a total of \$42,553.53 in Whitewater. They also received the benefit of a \$5,691.20 payment that Whitewater Corporation made on February 22, 1982 towards a personal loan that Governor Clinton had at Citizens Bank & Trust, Jonesboro, Arkansas (Doc. Nos. DEK500067 through 68); see also letter from J. McDougal to W. Clinton (Mar. 1, 1982) (stating that he had made a Whitewater Development payment towards Governor Clinton's personal note at Citizens Bank of Jonesboro as part of the Clintons investment in Whitewater). The net funds the Clintons advanced to Whitewater were therefore \$36,862.33.

³⁸⁸ Letter from Norris L. Weese, Vice President of Patten, McCarthy & Associates, Inc. and Leslie A. Patten, President of Patten, McCarthy & Associates, Inc. to James M. Lyons, Attorney at 7 (Mar. 23, 1992) (Doc. Nos. 863-00000171-77).

³⁸⁹ See Appendix 4 of this Volume.

Pillsbury Madison & Sutro did not determine the total amount of the McDougals' contributions to Whitewater over its entire lifespan. It did determine that the McDougals' contributed \$158,523 towards Whitewater through the end of fiscal year 1986.³⁹⁰

a. The Final 1994 Lyons Report Determined That the Clintons Contributed Approximately \$46,635.75 and the McDougals \$92,200.00 to Whitewater.

In March 1992, Mickey Kantor, chairman of the Clinton presidential campaign, and Governor and Mrs. Clinton asked James Lyons, a Denver attorney and friend of the Clintons, to review the Clintons' Whitewater involvement.³⁹¹ Lyons collected documents from the Rose Law Firm, the Clintons, and other public sources.³⁹² Seven file boxes of Whitewater material came from the Rose Law Firm.³⁹³ Lyons retained Norris Weese of Patten, McCarthy & Associates ("Patten McCarthy"), a Denver accounting firm, to conduct the review.³⁹⁴

On March 18, 1992, Patten McCarthy submitted its draft report ("Draft Lyons Report") to Lyons, which he reviewed with Mrs. Clinton.³⁹⁵ Mrs. Clinton received faxes on March 19 and 20 about the accounting and, on at least one occasion, received a complete fifty-four page draft of

³⁹⁰ Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 3 (Apr. 24, 1995).

³⁹¹ Lyons 7/25/95 GJ at 6; Lyons 7/30/96 GJ at 131-32.

³⁹² Lyons 7/25/95 GJ at 6.

³⁹³ Lyons 7/30/96 GJ at 65.

³⁹⁴ Id. at 73.

³⁹⁵ Id. at 147.

the report.³⁹⁶ Mrs. Clinton made detailed handwritten notes on the substance of the report.³⁹⁷ The March 20 fax Mrs. Clinton received included the accountant's nine-page summary letter.³⁹⁸ The fax cover page contained the handwritten notation, "To V Foster 375-1309," Rose's fax number.³⁹⁹

The final accounting reduced the Clintons' contributions for lack of corroborating documents.⁴⁰⁰ On March 23, these conclusions, colloquially known as the "Final Lyons Report," were made public,⁴⁰¹ concluding that the Clintons provided \$68,900 to Whitewater from 1978 until 1991.⁴⁰² The report also said that as of May 31, 1991, the McDougals provided \$92,200 to Whitewater through themselves or entities they controlled,⁴⁰³ or one-third more than the Clintons.⁴⁰⁴ Patten McCarthy did not consult with Jim McDougal.⁴⁰⁵

³⁹⁶ Facsimile cover sheet and Draft Lyons Report (Mar. 19, 1992) (Doc. Nos. DEK 001129 through 83).

³⁹⁷ H. Clinton handwritten notes (undated) (Doc. No. DEK 009752); Draft Lyons Report with handwritten notes (Mar. 20, 1992) (Doc. Nos. DEK 009757 through 68).

³⁹⁸ Facsimile cover sheet and letter from Les Patten to Hillary Rodham Clinton (Mar. 20, 1992) (Doc. Nos. DEK 0009827 through 33). The cover sheet identifies ten pages to be transmitted, but only seven pages were produced to this Office.

³⁹⁹ Facsimile cover sheet from Les Patten to Hillary Rodham Clinton (Mar. 20, 1992) (Doc. No. DEK 009827).

⁴⁰⁰ Lyons 7/30/96 GJ at 161-62.

⁴⁰¹ See Final Lyons Report (Mar. 23, 1992) (Doc. Nos. 863-00000171 through 80).

⁴⁰² Id.

⁴⁰³ These entities included Great Southern Land Company, Inc.; Flowerwood Farms, Inc.; Pembroke Manor, Inc.; McDougal & Associates; Rolling Manor, Inc. ("Rolling Manor"); Tucker-Smith-McDougal; Smith-McDougal; and Madison Marketing. Final Lyons Report at 1 (Mar. 23, 1992) (Doc. No. 863-00000171).

⁴⁰⁴ See Final Lyons Report at 7 (Mar. 23, 1992) (Doc. No. 863-00000177). Campaign

In March 1994, the Final Lyons Report calculations were amended when the 1982 Clinton check to Madison Bank for \$20,744.65 was found to be unrelated to Whitewater.⁴⁰⁶ President Clinton was reviewing his late mother's autobiography in 1994 when he remembered that this Madison Bank loan was to purchase his mother's house and not for Whitewater.⁴⁰⁷ Lyons subtracted the \$20,744.65 loan and related interest of \$1,500, leaving the Clintons' investment at \$46,636.75. The Clintons' total investment was less than half the McDougals'.⁴⁰⁸

b. The RTC Found the Clintons Contributed \$42,192 to Whitewater.

The RTC retained outside counsel, Pillsbury Madison & Sutro ("Pillsbury Madison") to investigate Madison Guaranty and Whitewater Development's relationship and to issue a report.⁴⁰⁹ On April 24, 1995, Pillsbury Madison issued its Preliminary Report on Madison Guaranty Savings & Loan and Whitewater Development Company, Inc. A Supplemental Report followed on December 13, 1995. Pillsbury Madison concluded that the Clintons contributed

aide Loretta Lynch said the campaign did not release documents to support this figure "[b]ecause we knew at the time we didn't have everything." Lynch 3/15/95 GJ at 180.

⁴⁰⁵ Weese 8/29/94 Int. at 2-3.

⁴⁰⁶ See Letter from James M. Lyons to David E. Kendall (Mar. 22, 1994) (Doc. Nos. 863-00000006 through 07). Lyons 7/30/96 GJ at 130. President's News Conference (Mar. 24, 1994); see also Virginia Clinton Kelley, Leading with My Heart 239 (1994).

⁴⁰⁷ See Letter from James M. Lyons to David E. Kendall (Mar. 22, 1994) (Doc. Nos. 863-00000006 through 07); see also Virginia Clinton Kelley, Leading with My Heart 239 (1994).

⁴⁰⁸ Letter from James M. Lyons to David E. Kendall at 2 (Mar. 22, 1994) (Doc. No. 863-00000007). The Clintons later affirmed this figure in Interrogatory Responses submitted to the RTC. H. Clinton 5/24/95 RTC Interrog. Resp. at 66-67; W. Clinton 5/24/95 RTC Interrog. Resp. at 49.

⁴⁰⁹ RTC Order of Investigation, in the matter of Madison Guaranty Savings & Loan

\$42,192 and the McDougals \$158,523 to Whitewater.⁴¹⁰ The RTC and the Final 1994 Lyons Report figures were within \$4,000 of each other on how much the Clintons contributed. The difference can be reconciled by making four minor adjustments to the total of the Lyons figure.⁴¹¹ The largest correction is for a \$1,636 mathematical error in Lyons' calculations.⁴¹² Lyons conceded that the Pillsbury Madison reports were prepared with access to additional relevant records and two years additional time to focus on the accounting, without the "intensity of a presidential campaign[.]"⁴¹³

c. The Independent Counsel Found That the Clintons Loaned or Advanced Approximately \$36,862.33 and the McDougals \$80,076.03 to Whitewater.

The Independent Counsel concluded that the Clintons contributed approximately \$36,862.33 toward Whitewater Development's cash shortfall.⁴¹⁴ The McDougals, personally or through entities they controlled, contributed approximately \$80,076.03 in cash to Whitewater. McDougal said he and his wife contributed more, partly due to his embarrassment over the

(7236), McCrory, Arkansas (Feb. 4, 1994).

⁴¹⁰ Compare Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 132 (Apr. 24, 1995).

⁴¹¹ Id. at 132-33.

⁴¹² Id.

⁴¹³ Jim Lyons, Letter to the Editor, Wall St. J., Oct. 28, 1999.

⁴¹⁴ See Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 130 (Apr. 24, 1995).

project's failure.⁴¹⁵ Mrs. Clinton said the McDougals never complained about the amount invested by the Clintons in Whitewater.⁴¹⁶

i. The Independent Counsel Reconstructed the Available Books and Records.

Whitewater's financial books and records were incomplete compared to those ordinarily maintained by a corporation. The Independent Counsel reconstructed all available corporate documents relevant to the Clintons' and the McDougals' financial involvements in Whitewater. This Office tracked, through a computerized accounting program general ledger, the funds contributed by the Clintons and the McDougals. This ledger reflected transactions conducted through the Whitewater bank accounts, transactions entered from the Whitewater accountant's adjusted entries, off-book payments on the acquisition loans, and other off-book payments the shareholders and McDougal-related entities made. Pre-incorporation expenses the Clintons, McDougals, and McDougal-related entities paid were added and tracked in this reconstructed ledger. The reconstructed general ledger and pre-incorporation expenditures reflect all known Whitewater transactions involving the Clintons, the McDougals, and McDougal-controlled entities.

⁴¹⁵ J. McDougal 9/96 Int. at 6.

⁴¹⁶ H. Clinton 4/22/95 Depo. at 20.

ii. The Independent Counsel Determined That the Lyons Reports Overstated the Clintons' and McDougals' Contributions to Whitewater.

The Draft and Final Lyons Reports incorrectly identified the source of several payments in calculating the McDougals' or their businesses' contribution. The Independent Counsel determined that the Draft and Final Lyons Reports mistakenly attributed payments to Whitewater Development that were unrelated to Whitewater.

The Draft and Final Lyons Report also did not reflect reimbursements by the Clintons to the McDougals or misstated specific payment amounts. These payments are listed in Appendix 4 to this Part, along with their actual origins where the Independent Counsel was able to determine sources. Payments included in the Draft Lyons Report, inexplicably omitted from the Final Lyons Report, are also included.

D. The Clintons' Personal Tax Returns and the Whitewater Corporate Tax Returns Required Corrective Adjustments.

Investigation of the Clintons' Whitewater-related income tax focused on two areas, the Clintons' tax treatment of Whitewater-related transactions, including cash infusions to the corporation, and Whitewater corporate tax returns.

1. Improper Deductions and Unreported and Underreported Income Relating to Whitewater on the Clintons' Personal Tax Returns Totaled \$26,348.

The Whitewater partners' failure to file partnership tax returns for the years 1978 and 1979 had no effect on the Clintons' personal tax liability. The partners were personally liable for the pre-incorporation loans and were entitled to deduct their pro rata share of the interest expense on their personal tax returns.

In 1979, Whitewater's second year, the partnership's original 230 acres were transferred to Whitewater Development, a corporation taxable under Subchapter C of the Internal Revenue Code.⁴¹⁷ The Clintons' ownership interest in the profits and losses of the real property continued through their ownership of fifty percent of the Whitewater Development stock.⁴¹⁸

After evaluating the Clintons' treatment of Whitewater on their individual income tax returns, the Independent Counsel determined that although the returns were not in full compliance with federal tax laws, there was no intent to evade federal income tax. The following chart details the income and itemized deduction adjustments the Clintons made from 1978 through 1992, and the corresponding adjustments (including one favorable to the Clintons) that IRS employees made that were assigned to the investigation, and which this Office reviewed.

FISCAL YEAR	ITEM ADJUSTED	PER TAX RETURN	AS CORRECTED	ADJUSTMENT
1979	Interest Expense	\$11,987.00	\$9,590.02	\$2,396.98 ⁴¹⁹

⁴¹⁷ See 26 U.S.C. §§ 301-385.

⁴¹⁸ Stock Certificate from Whitewater Development Co., Inc. to Hillary Rodham for 150 shares (June 18, 1979) (Doc. Nos. DEK004381 through 82); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 20 (Apr. 24, 1995).

⁴¹⁹ A review of Whitewater Development's books showed that \$2,400.00 of the total amount the Clintons deducted as interest expense in 1979 consisted of a loan to Whitewater for that amount. Whitewater Development Co., Inc. ledger sheet (May 31, 1980) (Doc. No. DEK000575). But see Letter from David E. Kendall to John D. Bates, Office of the Independent Counsel (May 24, 1996) (enclosing a letter sent to Hon. James A. Leach, Chairman, Committee on Banking and Financial Services, United States House of Representatives, where Kendall argued that the deduction was proper, noting that the IRS audited the Clintons' 1979 federal tax returns in 1982 and did not make any changes).

FISCAL YEAR	ITEM ADJUSTED	PER TAX RETURN	AS CORRECTED	ADJUSTMENT
1980	Interest Expense	\$13,350.00	\$4,350.00	\$9,000.00 ⁴²⁰
1982	Income from Repayment of Personal Loan by Whitewater Development	\$0.00	\$5,691.20	\$5,691.20 ⁴²¹
	Interest Expense	\$0.00	\$691.20	\$(691.20) ⁴²²

⁴²⁰ Check No. 598 from the account of Bill Clinton and Hillary Rodham signed by Hillary Rodham for \$9,000 (Aug. 23, 1980) (Doc. No. DEK000398). Mrs. Clinton omitted the payee. The reverse side of the check was negotiated and stamped by Citizens Bank, on September 5, 1980. The principal on acquisition Loan No. 5885 was reduced by \$9,000.00 on September 5, 1980. This conclusion was also reached in the Lyons Report. See Draft Lyons Report at 5 (Mar. 18, 1992) (Doc. No. DEK001135). But see Letter from David E. Kendall to John D. Bates, Office of the Independent Counsel (May 24, 1996) (enclosing a letter sent to Hon. James A. Leach, Chairman, Committee on Banking and Financial Services, United States House of Representatives, where Kendall argued that although documents of the deduction were not dispositive, additional facts about the \$9,000 interest deduction provide support for its inclusion).

⁴²¹ Payment of \$5,691.00 was made by the Whitewater Corporation on the Clintons' personal Loan No. 585-070 at Citizens Bank & Trust, Jonesboro, Arkansas on February 22, 1982. The Clintons failed to report this income on their 1982 tax return, which was taxable at that time because it was a recovered amount previously deducted on their 1978 return. But see Letter from David E. Kendall to John D. Bates, Office of the Independent Counsel (May 24, 1996) (enclosing a letter sent to Hon. James A. Leach, Chairman, Committee on Banking and Financial Services, United States House of Representatives, where Kendall said, "[b]ased on the contemporaneous statement in Jim McDougal's letter to Mr. Clinton dated March 31, 1982, however, [Whitewater Development]'s payment of \$5,691 appears to have been a repayment of a Whitewater-related loan, which would have no federal income tax consequences").

⁴²² Whitewater Development paid \$5,691.00 on the Clintons personal loan at Citizens Bank & Trust, Jonesboro, Arkansas, fully repaying the loan. The interest portion of the loan pay off is deductible by the Clintons. The Daily Trial Balance of Madison Bank showed that on February 22, 1982, the loan balance was \$5,000.00, with accrued interest of \$719.27. On February 24, 1982, the Daily Trial Balance showed a loan balance of \$0. Daily Trial Balance of Madison Bank (Feb. 22, 1982) (Doc. Nos. 145-0000006 through 08). The portion of the final payment attributable to interest is the amount of the check over \$5,000.00, or \$691.20. The Clintons are entitled to this additional interest deduction of this amount on their 1982 tax returns.

FISCAL YEAR	ITEM ADJUSTED	PER TAX RETURN	AS CORRECTED	ADJUSTMENT
1984	Interest Expense	\$2,811.20	\$0.00	\$2,811.00 ⁴²³
1985	Interest Expense	\$2,322.00	\$0.00	\$2,322.00 ⁴²⁴
1987	Interest Expense	\$2,561.00	\$0.00	\$2,561.00 ⁴²⁵

⁴²³ Whitewater Development made and deducted this interest payment as a tax expense. Whitewater Development Check No. 121, dated October 4, 1984, was drawn on Madison Bank in the amount of \$4,811.19 and was posted to Loan No. 957-585 on October 10, 1984. Check No. 121 from the account of White Water Development Co., Inc., signed by James B. McDougal payable to Security Bank for \$4,811.19 (Oct. 4, 1984) (Doc. Nos. GS-00014509 through 10). \$2,811.19 was applied to interest and the remainder to principal. Loan No. 957-585 was acquired in the name of Bill Clinton to pay off Loan No. 23039 at Madison Bank, which Mrs. Clinton had taken out in order to build the model home on Lot 13. The liability Loan No. 957-585 represented was considered Whitewater Development's corporate liability and not a personal liability of the Clintons. The Lyons Report conceded that this deduction was improper. See Draft Lyons Report at 4 (Mar. 18, 1992) (Doc. No. DEK001134).

⁴²⁴ Whitewater Development made and deducted this interest payment as an expense. Whitewater Development Check No. 145, dated November 7, 1985 was drawn in the amount of \$7,322.42, and posted to Loan No. 957-585 on December 12, 1985. Check No. 145 from the account of White Water Development Co., Inc. signed by James B. McDougal payable to Security Bank of Paragould for \$7,322.42 (Nov. 7, 1985) (Doc. Nos. GS-00014519 through 20). \$2,322.42 went to interest and the remainder to principal. The loan was a corporate liability and not a personal liability of the Clintons. The Lyons Report conceded that this deduction had been improper. See Lyons Report at 4 (Mar. 18, 1992) (Doc. No. DEK001134).

⁴²⁵ The Clintons' Federal Income Tax Return for 1987 reported an interest deduction of \$2,561.00, comprised of various payments on Security Bank Loan Nos. 957-585 & 838-608. The loan was a corporate liability and not a personal liability of the Clintons. Handwritten sheets titled Interest Paid 1987 (undated) (Doc. Nos. 133-00005138; 319-00003735 through 36). But see Letter from David E. Kendall to John D. Bates. Office of the Independent Counsel (May 24, 1996) (enclosing a letter sent to Hon. James A. Leach, Chairman, Committee on Banking and Financial Services, United States House of Representatives, where Kendall said: "Since Mr. and Mrs. Clinton took a deduction on their 1986 federal income tax return for the \$1,636 of interest that they paid by check on December 28, 1986, an interest deduction for the same amount could not be taken in 1987. In addition, interest paid by Hillman Logan in 1987 was not deductible").

FISCAL YEAR	ITEM ADJUSTED	PER TAX RETURN	AS CORRECTED	ADJUSTMENT
	Real Estate Taxes for Whitewater Development	\$1,275.15	\$0.00	\$1,275.15 ⁴²⁶
1988	Gain on Sale of Lot 13	\$1,640.00	\$3,313.22	\$1,673.22 ⁴²⁷
1992	Sale of Whitewater Development Stock	\$1,000.00	\$500.00	\$(500.00) ⁴²⁸
Total Adjustment:				\$26,539.35

The December 1992 stock transfer from the Clintons to McDougal was a taxable event reported on the Clintons' 1992 individual income tax return.⁴²⁹ The document reflecting the transaction was styled "Assignment of Interest Separate from Certificate and Indemnity Agreement." President-elect Clinton, Mrs. Clinton, and Jim McDougal signed this document,

⁴²⁶ In 1988, property taxes were assessed against Whitewater Development on property it owned. Treasury Regulation 1.164-1 provides taxes are deductible only by the person upon whom they are imposed. Although Mrs. Clinton paid the taxes assessed, neither she nor her husband were imposed with the tax and therefore could not deduct it. Check No. 2353 from the account of Bill Clinton or Hillary Rodham Clinton signed by H R Clinton payable to Ozark Realty Co. for \$1,275.15 (Oct. 28, 1988) (Doc. No. DEK000405); Letter from Hillary Rodham Clinton to Rosalee Wade (Oct. 28, 1988) (Doc. No. 133-00005374).

⁴²⁷ The Clintons erroneously reported the cost basis on the sale of Lot 13 as \$22,118.00. The actual basis was \$20,444.78, due to payments made by Hilman Logan of principal and interest on the bank debt until September 1987. Worksheet for William and Hillary Clinton Capital Gain 1988 (Apr. 11, 1989) (133-00005362); see also Letter from David E. Kendall to John D. Bates, Office of the Independent Counsel (May 24, 1996).

⁴²⁸ The Clintons reported a \$1,000.00 long-term capital gain on their 1992 Federal Income Tax Return, from the sale of 500 shares of Whitewater but neglected to claim their \$500.00 basis in the stock. §§ 1001, 1011, 1012, and 1016 of the 1986 IRS Code governed the gain from the sale of stock. The basis in the stock was its cost, \$500.00. The other funds advanced to or paid for Whitewater were treated as loans, not payments to capital, and thus would not be considered in determining the basis of the stock. The sales price of \$1,000.00, less the adjusted basis of \$500.00, resulted in a recognizable long-term capital gain in 1992 of \$500.00.

⁴²⁹ William J. & Hillary R. Clinton 1992 Federal Income Tax Return (1992) (Doc. No.

with McDougal signing as Whitewater Development's authorized representative and on his personal behalf as grantee.⁴³⁰

The Stock Assignment released the Clintons from any liability to Jim McDougal personally.⁴³¹ For tax purposes, the Clintons treated this release as having no value, and their 1992 Form 1040 referred to no release from Whitewater Development related liabilities they may have owed the McDougals.⁴³²

2. Whitewater Development Company's Corporate Tax Returns Corrections Reduced Reported Losses from (\$115,588.60) to (\$80,290.09).

The Independent Counsel also reviewed Whitewater Development's corporate tax returns. In 1979, the partnership's real estate assets were transferred to Whitewater Development, a corporation taxable under Subchapter C of the Internal Revenue Code.⁴³³ The Clintons' ownership interest in the profits and losses continued through their ownership of fifty percent of the Whitewater Development stock.⁴³⁴ Because Whitewater Development always operated at a loss, no adjustments would have created an additional tax obligation for the Clintons. The

IJ-00001363).

⁴³⁰ See Assignment of Interest Separate from Certificate and Indemnity Agreement (Dec. 22, 1992) (Doc. Nos. 777-00000364 through 67).

⁴³¹ See id.

⁴³² William J. & Hillary R. Clinton 1992 Federal Income Tax Return (1992) (Doc. No. IJ-00001363). There was no discharge of indebtedness issue associated with the Clintons' sale of their Whitewater stock since they received no income or economic benefit. Additionally, no issue existed because all loans for which the Clintons were personally liable had already been paid.

⁴³³ See 26 U. S. C. §§ 301-385.

⁴³⁴ See Assignment of Interest Separate from Certificate and Indemnity Agreement (Dec.

following chart compares income filed on Whitewater Development Corporate Tax Returns for fiscal years 1980-1992 with income as reconstructed by the Independent Counsel.⁴³⁵

	PER INCOME TAX RETURN	INDEPENDENT COUNSEL ADJUSTMENTS	CORRECTED TOTALS
INCOME:			
Gross Profit	\$ 29,833.22	\$ 26,068.42	\$ 55,901.64
Interest Income	\$ 82,612.27	\$ 14,003.71	\$ 96,615.58
Income from Defaults	\$ 22,424.32	\$ 22,424.32	
Other Income	\$ 39,695.76	\$(24,810.11)	\$ 14,885.65
TOTAL INCOME	\$152,141.25	\$ 37,686.34	\$189,827.59

The following chart compares deductions filed on Whitewater Development Corporate Tax Returns for fiscal years 1980-1992 with deductions as reconstructed by the Independent Counsel.

	PER INCOME TAX RETURN	INDEPENDENT COUNSEL ADJUSTMENTS	CORRECTED TOTALS
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22, 1992) (Doc. Nos. 777-00000364 through 67).

⁴³⁵ The Independent Counsel determined that corrections to Whitewater's tax returns were needed for a variety of reasons: 1) adjustments to the reported basis of land; 2) corrections to allocation of principal and interest on lot payments; 3) corrections for bank service charges; 4) adjustments made for errors in basis computing; 5) errors due to defaults in earnest deposits; 6) adjustments to the actual interest expense deductible by the corporation on acquisition loans; 7) errors in the amount of survey expenses; 8) omitted commission expenses; 9) reclassified bank charges; 10) posting errors; 11) unreported insurance premiums and expenses; 12) adjustments due to reclassification of full payment of a note receivable by a lot purchaser; 13) absence of working papers; 14) erroneous accountancy related to overdrafts; 15) unreported expenses for needed repairs; 16) lot payments not deposited; 17) unreported processing fees; 18) taxes paid by Ozark Escrow with Whitewater lot payments; and 19) real property taxes not paid by the corporation.

	PER INCOME TAX RETURN	INDEPENDENT COUNSEL ADJUSTMENTS	CORRECTED TOTALS
DEDUCTIONS:			
Interest Expense	\$ 146,609.49	\$ 24,008.22	\$170,617.71
Taxes	\$ 1,217.99	\$ 4,231.44	\$ 5,449.43
Depreciation	\$ 21,028.61	\$(21,028.61)	
Advertising	\$ 4,486.99		\$ 4,486.99
Surveys and Plats	\$ 8,210.33	\$ (4,060.31)	\$ 4,150.02
Professional Fees	\$ 34,815.50	\$(25,135.76)	\$ 9,679.74
Insurance	\$ 330.50	\$ 441.50	\$ 772.00
Office Expense	\$ 62.00	\$ 44.88	\$ 106.88
Repairs	\$ 4,453.60	\$ 67.50	\$ 4,521.10
Commissions	\$ 37,350.60	\$ 16,234.40	\$ 53,585.00
Bank Charges	\$ 2,330.00	\$ 1,729.98	\$ 4,059.98
Miscellaneous	\$ 6,834.24	\$ 5,854.59	\$ 12,688.83
TOTAL DEDUCTIONS	\$ 267,729.85	\$ 2,387.83	\$270,117.68
TAXABLE INCOME	\$(115,588.60)	\$ 35,298.51	\$(80,290.09)

The Independent Counsel found no evidentiary basis upon which to pursue a tax-related criminal prosecution of the Clintons over either their personal filings or the corporate filings of Whitewater Development.⁴³⁶ Those matters are now closed.

⁴³⁶ The Independent Counsel's resolution of questions concerning the Clintons' criminal liability for tax-related offenses does not resolve their civil tax liability, if any, because civil tax matters are not within the jurisdiction of this Office.

3. Tax Treatment of Additional Income or Loss Arising from Outstanding Loans the Clintons Made to Whitewater.

While the Clintons were stockholders in Whitewater, they advanced, loaned, or paid expenses for the corporation totaling \$42,553.53. They received the benefit of Whitewater Development paying off then-Governor Clinton's personal loan at Citizens Bank & Trust, Jonesboro, Arkansas, in the amount of \$5,691.20.

Of the \$42,553.53 the Clintons advanced, they deducted a total of \$38,808.79 on their federal tax returns. The remaining \$3,744.74 advanced to Whitewater by the Clintons may qualify as a bad debt deduction by them.

E. Crimes Jim McDougal and Chris Wade Committed Concerning Whitewater Development.

The investigation of Whitewater Development operations disclosed criminal conduct. In particular, the investigation identified several instances where Jim McDougal conducted illegal financial transactions for Whitewater Development's benefit. The investigation also discovered evidence of Wade's bankruptcy fraud concerning the sale of Lot 7 at Whitewater Estates.

1. Jim McDougal Committed Numerous Financial Crimes to Meet His Financial Obligations.

The initial criminal referral from the RTC prompted the Independent Counsel's investigation of Jim McDougal and Madison Guaranty,⁴³⁷ which ultimately disclosed that McDougal committed various financial crimes involving defalcation, embezzlement, and misuse

⁴³⁷ RTC Crim. Ref. No. C-0004 (Aug. 31, 1992).

of position and bank fraud that benefited Whitewater Development.⁴³⁸

a. McDougal's Financial Crimes with Madison Guaranty and Other McDougal-Controlled Entities, Including Whitewater Development, Were First Detailed in RTC Criminal Referral No. C-0004.

The RTC's Criminal Referral No. C-0004, submitted to the United States Attorney for the Eastern District of Arkansas and the Little Rock FBI field office on September 1, 1992, focused on the relationship between Madison Guaranty and other McDougal-related entities, including Whitewater Development.⁴³⁹ The RTC's referral named Jim and Susan McDougal as suspects, and Governor and Mrs. Clinton as potential witnesses.⁴⁴⁰

The RTC's referral alleged that the McDougals' control of some twelve accounts at Madison Guaranty -- including the Whitewater Development account -- caused insufficiently funded checks written on the Whitewater Development account to pay Whitewater Development's obligations at other banks:

Between February 1984 and July 1987, James B. McDougal, Susan H. McDougal, Lisa A[u]nspaugh, Jim Guy Tucker, Stephen A. Smith, Bill Clinton, Hillary Rodham Clinton, and other individuals who are as yet unidentified, were principals in at least one, and possibly more, of the following companies and/or business interests, each of which maintained a checking account at Madison Guaranty Savings & Loan ("MGSL"):

Madison Marketing
McDougal & Associates
Flowerwood Farms, Inc.
Pembroke Manor, Inc.
Great Southern Land Co.

Designers Construction
Madison Financial Corporation
Whitewater Development Corp, Inc.
Rolling Manor, Inc.
Tucker-Smith-McDougal

⁴³⁸ Id.

⁴³⁹ Id. at 5.

⁴⁴⁰ Id. at 2, 3, 18.

[From September 1984 through May 1985], some or all of the principals of the aforementioned companies allegedly allowed, or participated in, numerous questionable cash flow and "loan" transactions between the combined companies, and other financial institutions. The transactions . . . allege excessive overdrafts resulting in unauthorized loans, check kiting, possible forgery (or at the very least, extensive use of unauthorized signatures), potential misappropriation of funds, possible illicit campaign contributions, diversion of loan proceeds, and potential bank fraud; each of these actions, compounded by the extended time frame during which they occurred, lends causation to the probability that some or all of the McDougal's business associates and partners, the collective principals of these combined companies, had knowledge of these activities. The extensive nature of these activities could allegedly constitute ongoing criminal and regulatory violations, which lasted for a period of three or more years, and could have ultimately contributed to the failure of the Association.⁴⁴¹

The allegations of wrongdoing contained in the RTC's C-0004 criminal referral focused on three federal criminal statutes: 1) conspiracy (18 U.S.C. § 371); 2) defalcation, embezzlement, or misuse of position (18 U.S.C. § 657); and 3) bank fraud (18 U.S.C. § 1344).⁴⁴²

b. Jim McDougal Unlawfully Moved Funds through Various Accounts, Including Whitewater's while Operating Madison Guaranty.

Whitewater's cash flow shortages consistently plagued the venture and required additional cash from the McDougals and Clintons.⁴⁴³ Lot sales did not keep up with loan payments, development costs, and other expenses.⁴⁴⁴ From 1980 to 1986, while Jim McDougal operated

⁴⁴¹ Id. at 5. The RTC ultimately submitted ten referrals identifying additional suspected criminal activity by McDougal and others.

⁴⁴² Id. at 1.

⁴⁴³ See Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 28-29 (Apr. 24, 1995).

⁴⁴⁴ Id.

Madison Guaranty and Madison Bank, he shuffled the Whitewater debt among loans at various institutions, payable to various entities and individuals.⁴⁴⁵ McDougal used several methods to keep the loans current, including running overdrafts and shifting money among his various accounts at Madison Guaranty.⁴⁴⁶ McDougal said that he took money from any available account he controlled to cover loan payments for other obligations among entities he controlled.⁴⁴⁷ When one loan matured, McDougal would pay it off by borrowing money in a different name, which McDougal called "gathering the butter and egg money" due to his cannibalizing his various entities to meet his loan obligations.⁴⁴⁸

The Independent Counsel identified numerous instances of McDougal's use of corporate entities that he controlled to transfer funds to Whitewater Development while he controlled Madison Guaranty. These contributions and flow-through events are described in Appendix 5 to this Part.

The financial contributions made to Whitewater all directly corresponded with either scheduled Whitewater loan payments or were made to help clear overdrafts that Whitewater Development loan payments caused. The two flow-through events represent situations where McDougal engineered the transfer of funds to Whitewater Development to clear large overdrafts caused by expenditures unrelated to Whitewater. These transactions, if done with the requisite criminal intent, would be criminal violations of federal banking law. These transactions and

⁴⁴⁵ J. McDougal 9/96 Int. at 7-8.

⁴⁴⁶ Id. at 7.

⁴⁴⁷ Id.

flow-through events are discussed in Appendix 5 to this Part.

c. Nominee Loans.

Jim McDougal participated in two nominee transactions, one on July 11, 1983 involving Chris Wade, and one on November 15, 1982 in the name of Bill Clinton. The Independent Counsel concluded that these transactions violated 18 U.S.C. § 657 (regarding defalcation, embezzlement, or misuse of position).

2. Chris Wade Committed Criminal Acts Selling Whitewater Estates Lot 7.

While Wade's personal bankruptcy action was pending in 1980, he purchased Whitewater Development's Lot 7 under the name of an acquaintance. That person, commonly known as a "straw purchaser," applied for a bank loan, pledging Lot 7 as security without disclosing that Wade was the real owner. Because these actions raised questions about whether Wade or others had committed the federal offenses of bank fraud, bankruptcy fraud, or tax fraud, the Independent Counsel sought and received specific referrals from the Special Division covering this matter, by orders dated December 19, 1994 and July 28, 1995.

The investigation revealed that on October 14, 1980, Whitewater Development sold Lot 7 to Wade for \$33,250.⁴⁴⁹ Wade bought the lot for \$35,000 without commission.⁴⁵⁰ Whitewater

⁴⁴⁸ J. McDougal 9/96 Int. at 7.

⁴⁴⁹ Offer and Acceptance Between Ozark Realty Co. and Whitewater Development Corp. (Oct. 8, 1980) (Doc. No. 337-0000372); Warranty Deed Between Whitewater Development Co., Inc. and Chris V. Wade and Associates, Ozark Realty Co. (filed Oct. 14, 1980) (Doc. Nos. 337-00000379 through 80); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 35 (Apr. 24, 1995).

Development used \$30,370 of the net cash paid by Wade to make a principal payment on Citizens Bank loan no. 5885.⁴⁵¹ The payment reduced the principal balance to \$143,241.⁴⁵² After this payment, Whitewater Development received net proceeds of \$2,349.95.

Citizens Bank released Lot 7 (along with Lot 13) to the McDougals and the Clintons on October 16, 1980.⁴⁵³ On November 1, 1989, Wade and his wife filed for bankruptcy under Chapter 11 of the Bankruptcy Code seeking reorganization.⁴⁵⁴ Wade had verified under penalty of perjury that he had outstanding debts to unsecured creditors of approximately \$489,000, and assets of just over approximately \$371,000.⁴⁵⁵

While Wade's bankruptcy was pending, he repurchased Lot 7 from a person living in Texas.⁴⁵⁶ Wade purchased Lot 7 by transferring 120 acres of property that Wade owned in northern Arkansas to the Lot 7 owner.⁴⁵⁷ Wade concealed the transaction by having title to Lot 7

⁴⁵⁰ Wade 4/28/95 Int. at 3-4.

⁴⁵¹ See Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 35 (Apr. 24, 1995).

⁴⁵² Id.

⁴⁵³ Lot 13 was released to the McDougals and the Clintons, even though the Madison Bank loan to Mrs. Clinton was not executed until December 1980.

⁴⁵⁴ Senate Whitewater Comm. Hearing, supra note 147, at 150-51 (May 8, 1996) (testimony of J. Patterson).

⁴⁵⁵ Petition, In re: Christopher V. Wade and Rosalee Wade, (United States v. Wade), No. 89-13144 (E.D.Ark. Nov. 14, 1990).

⁴⁵⁶ Wade 4/7/94 Int. at 6.

⁴⁵⁷ Id.

placed in someone else's name.⁴⁵⁸ In June 1991, Wade caused the other person to apply for a \$45,000 loan from Citizens Bank of Lavaca.⁴⁵⁹ The loan application was fraudulent because the application asserted the loan was for the benefit of Wade's surrogate, and he and Wade intended this loan for his (Wade's) own benefit, which occurred when he used it to build his home on Lot 7.⁴⁶⁰ In September 1991, Wade again helped the straw purchaser obtain a loan from the Lavaca Bank, concealing his own connection and used the \$15,015 received to pay for more work on his house.⁴⁶¹

On March 7, 1995, Wade agreed to plead guilty to one felony count of bankruptcy fraud and one felony count of false application and certification to a financial institution. He also agreed to cooperate with the Office's ongoing investigation. On December 1, 1995, Judge Susan Webber Wright sentenced Wade to fifteen months imprisonment followed by three years supervised release, and a \$3,000 fine.⁴⁶²

IV. ANALYSIS

The investigation uncovered evidence of criminal conduct concerning four potential groups of criminal charges: 1) allegations that Governor Clinton knew of, and approved of, CMS's fraudulent \$300,000 loan to Susan McDougal; 2) allegations that President Clinton committed perjury in denying that he had ever taken out a loan from Madison Guaranty; 3)

⁴⁵⁸ Id. at 7.

⁴⁵⁹ Id. at 7-8.

⁴⁶⁰ Wade 4/7/94 Int. at 7-8.

⁴⁶¹ Lauramoore 3/1/94 Int. at 3.

⁴⁶² Judgment, United States v. Wade, No. LR-CR-95-48-001 (E.D.Ark. Dec. 4, 1995).

allegations that Governor Clinton knew about the Lorance Heights transaction; or, 4) allegations that Jim McDougal engaged in criminal conduct during the course of various financial transactions concerning Whitewater Development and Madison Guaranty.

A. Governor Clinton's Knowledge and Approval of CMS's \$300,000 Loan to Mrs. McDougal.

David Hale and Jim McDougal each testified that Governor Clinton knew about and approved of their decision to have CMS make a loan to Mrs. McDougal. Both said that Governor Clinton participated in a meeting with them at Castle Grande -- McDougal's real estate development -- during which they discussed the CMS loan. Documentary records relating to Governor Clinton's movements partially corroborated aspects of this testimony. President Clinton denied, under oath, the veracity of the Hale/McDougal allegations.

The testimony of both Hale and McDougal was also subject to substantial impeachment. Both witnesses were convicted felons who testified pursuant to cooperation agreements with the United States, from which they expected to benefit. McDougal had also previously given sworn testimony contrary to his later sworn declarations about Governor Clinton's participation in the Castle Grande meeting. Mr. McDougal is now deceased. Mrs. McDougal, who could reasonably be expected to have additional information relating to Governor Clinton's knowledge and participation in this transaction (if any), has engaged in contumacious conduct and refused to provide evidence to this Office's investigation.

The Independent Counsel concluded that this evidence was insufficient to warrant prosecution of President Clinton because the evidence did not establish Governor Clinton's

knowing participation in a criminal scheme.⁴⁶³

B. President Clinton's Knowledge of the \$27,600 Loan, Taken Out in His Name at Madison Guaranty, and Whitewater's Acquisition of Lorraine Heights.

At the trial of Governor Tucker and the McDougals, President Clinton testified that he had never taken out a loan from Madison Guaranty and did not know about Whitewater Development's purchase of Lorraine Heights. Following his conviction, Jim McDougal agreed to cooperate with the Independent Counsel. As part of that cooperation, McDougal provided the Office with information about both transactions.

McDougal directed the Office to a loan taken out in the name of "Bill Clinton" at Madison Guaranty in 1982. According to McDougal, he discussed this loan with Governor Clinton. Other than McDougal's testimony, however, no other testimonial or documentary evidence existed to corroborate McDougal's allegation that Governor Clinton had personal knowledge of the \$27,600 Madison Guaranty loan. Neither the microfilm records nor the original check contain evidence of then-Governor Clinton's receipt and/or endorsement of the loan check. In light of the absence of corroboration, the Independent Counsel concluded that the admissible evidence would probably be insufficient to obtain and sustain a conviction of President Clinton concerning this allegation.

McDougal also provided the Independent Counsel with information about President Clinton's alleged knowledge of Whitewater Development's acquisition of the Lorraine Heights parcel. No additional evidence, however, corroborated these allegations. In light of the absence

⁴⁶³ United States Attorneys' Manual, Title 9 § 9-27.230.

of corroboration, the Independent Counsel, again, concluded that the admissible evidence would probably be insufficient to obtain and sustain a conviction of President Clinton concerning this allegation.⁴⁶⁴

C. Jim McDougal's Financial Transactions.

As set forth more fully above, the Independent Counsel uncovered substantial evidence that Jim McDougal engaged in numerous and varied financial transactions involving Madison Guaranty and Whitewater Development. Collectively, Jim McDougal intended these transactions to confer substantial financial benefit on Whitewater Development. These beneficial transactions were knowingly undertaken in derogation of various federal and state banking regulations. Accordingly, the Independent Counsel concluded that there was sufficient evidence to prove beyond a reasonable doubt that McDougal had engaged in fraudulent conduct in violation of federal banking laws and other provisions of federal criminal law.

In an exercise of prosecutorial discretion, the Independent Counsel determined not to present these charges to the grand jury for indictment. In the judgment of the Independent Counsel, the criminal charges brought against McDougal concerning the \$300,000 CMS loan to Mrs. McDougal represented the most serious readily provable criminal charges. After his conviction on those charges, McDougal entered into a cooperation agreement with the United States. Accordingly, additional prosecution of McDougal on criminal charges relating to

⁴⁶⁴ The Independent Counsel reached these conclusions (and the conclusion concerning the \$300,000 loan) before the death of McDougal. In light of those conclusions the Independent Counsel also determined, in December 1997, that there was no "substantial and credible information" warranting referral of these allegations to Congress for consideration of

Whitewater Development served no substantial federal interest. For this reason, the Independent Counsel chose not to prosecute McDougal for financial offenses relating to Whitewater Development. McDougal satisfactorily cooperated with the Independent Counsel's investigation until his death in March 1998.

V. SUMMARY CONCLUSION

The Clintons' investment in Whitewater was financially unsuccessful. They invested a substantial amount of personal funds and realized no profit from the venture. In the main, they permitted Jim McDougal to manage the investment, and McDougal failed in making the venture profitable.

Indeed, the Whitewater investment was so unsuccessful that McDougal was obliged to engage in a series of fraudulent transactions to keep the venture afloat. The evidence is unequivocal that, concerning almost all of the fraudulent transactions, the Clintons were unaware of McDougal's criminal conduct. Although they indirectly benefited from these actions (inasmuch as they forestalled any foreclosure on the property) there is, save in two instances, no substantial evidence that they participated in or knew of McDougal's acts. And in those two instances (relating to Governor Clinton's knowledge of the \$300,000 CMS loan and the \$27,600 loan), while evidence does exist to indicate Governor Clinton's knowing participation, that evidence was, ultimately, of insufficient weight and insufficiently corroborated, to obtain and sustain a criminal prosecution beyond a reasonable doubt.

Accordingly, this matter is now closed.

impeachment under 28 U.S.C. § 595(c).