

LINDSEY - STRUCTURING

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Memorandum

Office of the Independent Counsel

To : All OIC Attorneys

From : Jackie M. Bennett, Jr.
Timothy J. Mayopoulos

Subject: Status of CTR investigation

Date 5/15/95

Attached for your review is a memorandum describing the status of our investigation into currency transactions by the 1990 Clinton for Governor campaign at the Perry County Bank in May and November 1990.

We are scheduled to discuss this matter on Wednesday, May 17, at 1:30 p.m. Central time.

Meeting - May 17

- what was Lindsey's motivation?
- Ainley's credibility?
- KWS: what was Ainley's motivation?

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CONTAINS RULE 6(e) MATERIAL

MEMORANDUMDRAFT VERSION

To: Kenneth W. Starr
Independent Counsel

All OIC Attorneys

From: Jackie M. Bennett, Jr.
Timothy J. Mayopoulos
Associate Counsel

Date: May 15, 1995

Re: Status of investigation of currency transactions by the
1990 Clinton for Governor at the Perry County Bank

INTRODUCTION

This memorandum summarizes the status of our investigation of criminal activity in connection with currency transactions by the 1990 Clinton for Governor campaign at the Perry County Bank in Perryville, Arkansas. Neal T. Ainley, the former President of the Perry County Bank, was indicted by the Grand Jury in Little Rock on February 28, 1995 on five felony charges relating to his failure to prepare and file currency transaction reports of two cash withdrawals by the 1990 Clinton for Governor campaign in May and November 1990. Approximately two weeks ago, Ainley pled guilty to reduced charges, and is currently cooperating with our investigation.

Apart from Ainley, the other principal actors in the May and November 1990 currency transactions were Bruce R. Lindsey, then treasurer of the Clinton for Governor campaign and now a senior advisor to President Clinton; Robert M. Hill, an accountant in Perryville and a 50% owner of the Perry County Bank; and Herby Branscum, Jr., a lawyer and well-known Democratic party figure in Arkansas, and the other 50% owner of the Perry County Bank.

[FOIA(b)(7) - (C)]

A. Case Summary

On May 25, 1990, four days before the Arkansas primary election, Bruce Lindsey, treasurer of the 1990 Clinton for Governor campaign, went to the Perry County Bank (PCB) and withdrew \$30,000 in cash from the campaign's account using four checks, each in the amount of \$7,500. Neal Ainley, then president of PCB, handled the transaction. Although the four checks aggregated well over the \$10,000 threshold for triggering the preparation and filing of a Currency Transaction Report, at the request of Lindsey and Ainley's superior, Robert Hill, Ainley did not prepare or file such a report with the Internal Revenue Service as required by law. The Clinton campaign used the cash withdrawn from PCB to make so-called "Get Out the Vote" or "GOTV" payments to black leaders and activists to turn out the black vote on election day.

On November 2, 1990, this time four days before the Arkansas general election, Lindsey arranged for the Clinton for Governor campaign to withdraw \$22,500 in cash from its account at PCB, again for use in the campaign's election day GOTV efforts among black voters. On this occasion, PCB personnel prepared a CTR, and Ainley left a photocopy of the document in the bank's files for eventual scrutiny by bank examiners. However, Ainley, at Hill's urging, removed the original CTR from the bank's outgoing mail so that the transaction would not be reported to the Internal Revenue Service.

On February 20, 1991, Ainley falsely stated on a FDIC bank examiner's questionnaire that PCB had filed a CTR for all transactions requiring such a report. Ainley did so because he knew that if he indicated that PCB had not filed CTRs for all transactions requiring them, the examiners would review the bank's currency transactions and discover that CTRs had not been filed for the withdrawals by the 1990 Clinton campaign. Ainley did not consult with Lindsey, Hill or Branscum with regard to his false statement to the bank examiners.

B. Prosecution of Neal Ainley

Neal T. Ainley served as president of PCB from June 1989 through March 28, 1994. Before becoming president of PCB, Ainley served as a bank examiner and a supervisor for the Arkansas State Banking Department from June 1983 through June 1989. As a state bank examiner, Ainley reviewed bank-compliance with, among other things, CTR regulations.

On February 28, 1995, we indicted Ainley on five felony counts relating to the May and November 1990 currency transactions, including conspiracy, substantive violations of the CTR reporting statute, and causing false entries and statements. As we stated in our previous prosecution memorandum, that

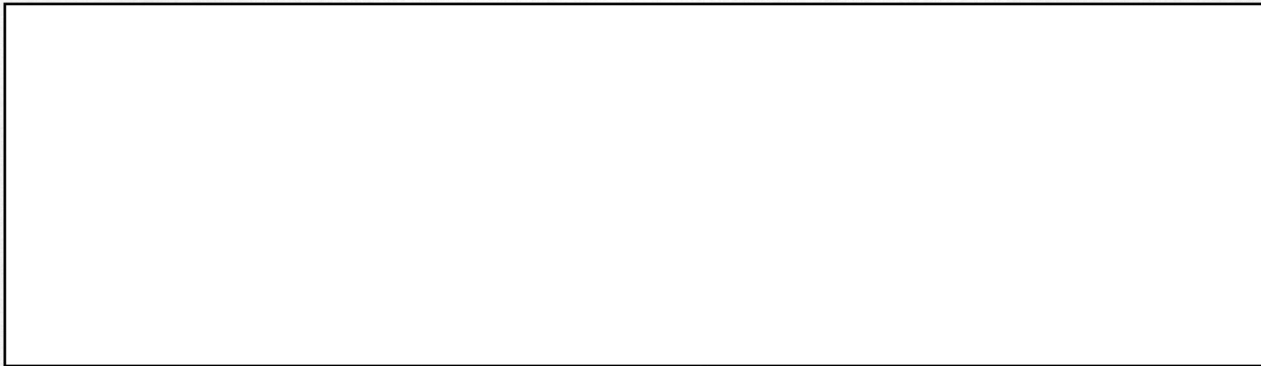
prosecution was designed to charge appropriately Ainley's criminal misconduct and to set the stage for potential cooperation by him in a prosecution of Lindsey and others.

At the time, we hoped that we would obtain a speedy trial which would permit us to convict Ainley before we lost the ability to charge Lindsey and others with regard to the May 25, 1990 currency transaction. We also hoped that, in the absence of an early trial, Ainley would agree to plead to at least one felony count and cooperate with the investigation.

When the initial trial date of April 10 was pushed back to July 5, and Ainley's counsel expressed a willingness to accept a misdemeanor plea but refused to ever consider a felony resolution, we had to choose between proceeding with our case against Ainley alone -- and losing our best potential count against Lindsey and others -- or agreeing to a misdemeanor disposition which would keep alive the possibility of bringing an additional case before May 25. We opted for the latter alternative.

On May 2, 1995, Neal Ainley pled guilty to two misdemeanor counts charging that he delivered and caused to be delivered to the Secretary of the Treasury or his delegate a document known to be false and fraudulent as to a material matter in violation of 26 U.S.C. § 7207. In exchange for the reduced charges, Ainley agreed to cooperate with the investigation. In entering his plea, Ainley admitted to the same underlying conduct with which he had been charged in the felony indictment. The parties made no agreements whatsoever with respect to Ainley's sentence.

what is max. sentence? what are guidelines?



Lindsey is an attorney and was a partner in Wright, Lindsey & Jennings, a prominent Little Rock law firm founded by his father. Described in recent press accounts as "perhaps Clinton's closest political confidant," Lindsey is a longtime friend and supporter who served as treasurer of the 1990 Clinton for Governor campaign. He also served as a key strategist and operative in a number of Clinton campaigns, including the 1992 presidential race. For years he has been a member of Clinton's select inner circle of advisers.

Lindsey has been a senior advisor to the President from the beginning of the Clinton administration, and currently holds the position of Deputy White House Counsel. Recent press accounts have commented on Lindsey's role as President Clinton's ubiquitous traveling companion -- "a signal of presidential confidence no other staffer comes close to receiving" -- and have portrayed Lindsey as the last survivor among the Arkansas political insiders who came to Washington to be part of the administration.

Hill is a certified public accountant and a 50% shareholder of Perry County Bancshares, a bank holding company that owns the Perry County Bank. Active in Democratic party politics, Hill has served as chairman of the Perry County Democratic Party for the past 10 years. Hill has made numerous political contributions to Clinton campaigns.

Branscum, is an attorney in private practice in Perryville. He served as the Arkansas State Democratic Party Chairman from 1976 to 1982. Like Hill, he is a 50% shareholder in Perry County Bancshares. Also like Hill, Branscum consistently has made political contributions to Clinton gubernatorial campaigns.

Lindsey is represented by Washington attorneys Allen R. Snyder and William D. Nussbaum of Hogan & Hartson, and by Little Rock attorney Winslow Drummond of the McMath Law Firm. (While he has not surfaced in any dealings with us, a senior partner in the McMath firm, Sandy McMath, is considered the most highly regarded trial lawyer in Arkansas, and would probably represent Lindsey at a trial.) Hill is represented by Little Rock attorney Jack Lassiter, a highly respected member of the Arkansas defense bar. Branscum is represented by Dallas attorney Dan C. Guthrie.

FACTS

A. The 1990 Clinton for Governor campaign

In the spring of 1990, then Governor Clinton began putting together a team for his campaign for re-election. Gloria Cabe, a former Arkansas legislator and Clinton loyalist who had worked on all of Clinton's gubernatorial campaigns since 1980, was selected to be manager of the 1990 campaign.

As previously noted, Lindsey acted as treasurer of the 1990 campaign. A third key member of the campaign team was Carol D. Willis. Willis had worked on every campaign that Clinton had conducted since 1974, his principal responsibility having been to manage the GOTV initiatives in black communities outside Pulaski County (the county in which Little Rock is located). Willis is now Senior Advisor to the Chairman of the Democratic National Committee in Washington, D.C.

B. The Perry County Bank campaign account

Although Clinton's earlier gubernatorial campaigns had maintained their bank accounts at the Bank of Cherry Valley, for unknown reasons the 1990 Clinton for Governor campaign departed from that practice and opened a checking account on March 9, 1990, at the Perry County Bank in Perryville, Arkansas. Both Hill and Branscum claim that PCB did not seek the campaign's business.

Bruce Lindsey and Gloria Cabe were the authorized signatories on the campaign checking account at PCB. Lindsey was listed on the opening account document as the contact person on the account. Neal Ainley functioned as the campaign's principal contact at PCB, and Robert Hill served as the contact when Ainley was unavailable. (Hill and Branscum were not officers of the bank, and did not maintain offices at the bank.)

PCB's banking relationship with the campaign commenced with the origination of an unsecured campaign loan to the Clintons in the amount of \$50,000, which was eventually repaid. Neal Ainley was responsible for originating and documenting the loan.

C. The Clinton campaign's currency transactions

The Arkansas Democratic and Republican primary elections were held on May 29, 1990. The general election was held on November 6, 1990. In both the primary and general elections, the Clinton campaign made cash withdrawals from its account at PCB, and used those funds in connection with Carol Willis' black GOTV program.

Gloria Cabe has stated that, as treasurer, Lindsey would have been aware of all cash withdrawals from the campaign's account at PCB.

1. The May 25, 1990 transaction

Ainley has told us on several occasions that his first contact on May 25, 1990 regarding the \$30,000 withdrawal was from Branscum, who advised him that Lindsey would be in touch with him and that he should help Lindsey. Ainley said that Branscum told him in very general terms to do what Lindsey wanted.¹ (Long

¹ In questioning Ainley, we have pressed him to be as precise as he can be about the specific conversation he had with Branscum on May 25. After thoroughly questioning him on this point, our assessment of the evidence is that, although Ainley is confident that Branscum knew full well about the CTR issue and the Clinton campaign's desire to keep the cash withdrawal secret, the actual words Branscum used in his conversation with Ainley on

distance telephone toll records corroborate that Branscum could have spoken with Lindsey about the withdrawal. The telephone records show that several very short calls were made from the Clinton campaign headquarters to Branscum's home and law office between 8:00 a.m. and 9:00 a.m. on May 25. At 9:08 a.m., a call was made from Branscum's law office to the Clinton headquarters; the call lasted 12 minutes.)

Shortly after speaking with Branscum, Ainley called Lindsey, or Lindsey called Ainley (Ainley is not sure which), and they spoke about the withdrawal. Ainley has stated that in his telephone call with Lindsey, Lindsey asked whether the transaction had to be "reported" which Ainley interpreted as meaning reported as a large currency transaction to the IRS, since that is the only kind of report that is made of currency withdrawals. Ainley has stated that he explained to Lindsey that the transaction had to be reported, and that Lindsey asked whether there was any way around the rules.

is it clear that is what Lindsey meant?

Ainley told us that, in response, he suggested to Lindsey two avenues by which the campaign could, in Ainley's view, withdraw the cash while lawfully avoiding the CTR requirement. One suggestion Ainley made was for the campaign to withdraw several thousands of dollars per week over a series of weeks. Ainley said that, while it was a fine line, he would consider that legal and not requiring a CTR. Lindsey said that he could not do that as he needed the money that day. Ainley said that he also suggested to Lindsey that the campaign could go to a variety of local banks and cash a check at each bank. (Ainley explained that Little Rock banks would probably cash a check for the Governor's campaign, even if the campaign did not maintain an account at that bank.) Lindsey said that he did not want to do that.

Ainley has stated that, after Lindsey rejected Ainley's suggestions, the conversation continued and either Ainley or Lindsey suggested that the \$30,000 be withdrawn in amounts less than \$10,000. Ainley claims he specifically suggested that the campaign make three withdrawals of \$9,900 and a fourth in the amount needed to bring the total withdrawal to \$30,000. Lindsey responded that he did not want to use \$9,900 amounts, stating that he instead wanted to divide the \$30,000 amount by four, and thus write four checks for \$7,500. Ainley has also stated that Lindsey indicated that he wanted the cash in \$100 bills.

Ainley suggested, it Lindsey must have thought it

We have not been able to corroborate the telephone call between Ainley and Lindsey. While telephone toll records show a telephone call from PCB to Wright, Lindsey & Jennings at 9:33

May 25 were sufficiently vague that a case against Branscum would not be viable on the strength of Ainley's testimony alone.

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a.m. on May 25 (just a 13 minutes after the call between Branscum's office and the Clinton campaign ended), the records indicate that the call lasted only one minute. It seems unlikely that the conversation that Ainley has described could have taken place in just one minute. We have not been able to identify a return call from Lindsey to Ainley at PCB.

if a 1-minute call only, that suggests no discussion of reporting reqt.

Following his initial conversation with Lindsey, Ainley determined that PCB was approximately \$23,000 short of having sufficient cash on hand to accommodate Lindsey's withdrawal request. Accordingly, someone at PCB contacted the First National Bank in Morrilton to ask to purchase cash to conduct the transaction requested by Lindsey. Long distance telephone toll records show a four-minute telephone call from PCB to the Morrilton bank at 9:48 a.m.

After determining that cash could be obtained from First National, Ainley claims he called Lindsey to tell him that the \$30,000 he requested was available. Long distance telephone records do not show such a call:

According to Ainley, Robert Hill's daughter, Tracy Hill, who was then a Perry County Bank employee, was dispatched to First National to obtain the additional cash necessary to accommodate Lindsey's requested withdrawal.

[Redacted]

To obtain the cash, Tracy Hill apparently took with her a cashier's check dated May 25, 1990, in the amount of \$23,000, made payable to First National. The check was signed by Ainley and indicated Perry County Bank as the remitter. The check had on it a notation which read: "For currency, \$20M -100 & 3M - 50" indicating that the amount requested was \$20,000 in hundreds and \$3,000 in fifties. First National's "Cash Out Credit" document evidences that First National paid \$23,000 in "Big Bills to Perry Co Bank."

Later on May 25, 1990, Lindsey traveled to PCB's office in Perryville. Prior to Lindsey's arrival, Ainley spoke with Robert Hill. It is not clear whether this conversation was before or after Ainley's initial conversation with Lindsey. According to Ainley, Hill was concerned about the currency reporting requirement. Ainley claims that Hill asked if a transaction over \$10,000 had to be reported, and that he responded in the affirmative. Ainley stated that Hill mentioned that Marty Satterfield, the person at PCB who ordinarily prepared and filed CTRs, was on vacation. Hill said that since Satterfield was not on the premises, if Ainley took care of the transaction, it would

not be reported.² Satterfield has confirmed that he was out of town on May 25. He has also acknowledged that the \$30,000 withdrawal was suspicious and that he would have required a CTR to be filed.

According to Ainley, Lindsey arrived at PCB shortly before or shortly after Tracy Hill returned from First National with the cash. Ainley and Lindsey waited in Ainley's office where another bank employee, PCB vice president Helen Brandon, delivered and counted out the \$30,000 cash in their presence. At this time, according to Ainley, Lindsey gave Ainley four checks in the amount of \$7,500 each. Each check is in the amount of \$7,500, and was signed by both Lindsey and Gloria Cabe. (Cabe does not deny signing the checks, but claims that she has no recollection about them whatsoever.)

Both the amounts of the checks and the payees are in Lindsey's handwriting. Check no. 326 is made payable to Committee to Re-elect Governor Clinton; no. 327 is made payable to Clinton for Governor Campaign Committee; no. 328 is made payable to Clinton for Governor Committee; and no. 329 is made payable to Clinton for Governor Committee. However, the check stubs indicate that each check is written to the Clinton for Governor Committee. Ainley believes that Lindsey endorsed the checks while they were in the office. After Brandon delivered the cash, Lindsey stayed another twenty minutes or so and then departed.

Ainley has stated that a CTR was not prepared for this transaction because, during the conversation between Ainley and Lindsey when the withdrawal was first requested, they specifically agreed to break down the transaction into amounts less than \$10,000 so that no CTR would be filed. Ainley stated that Lindsey made the ultimate decision on how this transaction would be conducted. Ainley said that no one at the campaign, including Lindsey, had ever expressed concern regarding the processing of checks, and noted that checks drawn on PCB accounts are processed in-house.³ Ainley stated that he informed both Robert Hill and Bruce Lindsey that no CTR had been filed.

did Lindsey know structuring was illegal?

² Since a call between Hill's office or residence and PCB is a local call, it is not possible to corroborate a telephone call between Ainley and Hill by reference to telephone toll records.

³ See discussion of Lindsey's concern about check processing below.

2. The November 2, 1990 transaction

As with the primary election that had been held in May, the Clinton campaign spent a substantial amount of cash to fund its GOTV initiative for the November 6, 1990 general election. As before, the campaign sought the cash four days in advance of the election.

Ainley has stated that his first contact with regard to the November 2 withdrawal was with Robert Hill. Ainley believes that this call occurred the morning of November 2. According to Ainley, Hill informed him that the Clinton campaign needed to make a cash withdrawal, and several times asked whether it needed to be reported. Ainley stated that he replied that such currency transactions did have to be reported. Ainley claims that, at Hill's prompting, he asked Marty Satterfield whether it was Satterfield's view that the transaction would need to be reported. Satterfield agreed that it did.

Ainley said that after he spoke with Hill, he spoke with Lindsey. Ainley claims that Lindsey said that the campaign needed to withdraw cash, and expressly asked whether the withdrawal would have to be reported. Ainley said that he told Lindsey it did, and that Satterfield was going to be handling the transaction.

Long distance telephone records do not indicate any telephone calls between PCB and the Clinton campaign or Wright, Lindsey & Jennings during the morning of November 2. The records for November 1 show a one-minute telephone call from PCB to Wright, Lindsey & Jennings. Perhaps that was when Ainley and Lindsey spoke. The records for November 2 show a call from PCB to the Clinton campaign headquarters at 3:33 p.m., but that is hours after the transaction occurred.

Ainley said he proceeded to process the withdrawal requested by Lindsey. Ainley said that he asked Satterfield whether PCB had a sufficient inventory of cash for the campaign to withdraw \$22,500. Satterfield checked and reported that PCB had sufficient cash funds to honor the withdrawal request in that amount.

On November 2, 1990, campaign manager Gloria Cabe approached Glenda Cooper, a campaign volunteer at the campaign offices, and asked her to drive to PCB in Perryville to pick up a package. Cooper has testified that Cabe gave her the name of a man at PCB (Cooper cannot remember the name) and told her that this man would give her something to bring back to the campaign office. Cooper assumed that the items she was to pick up were campaign related articles, such as signs. Cooper left campaign headquarters at approximately 10:00 a.m. and arrived at the bank at approximately 11:00 a.m.

Upon her arrival at PCB, Cooper identified herself and was escorted to an office and met with a female bank representative and a male bank representative, whose names she cannot remember. One of the bank personnel in the room asked Cooper to provide a check or checks so that they could give her cash for the campaign. At this point, Cooper first learned that the purpose of her trip to the bank was to obtain cash.

Cooper said that she advised the bank personnel that Cabe had not provided her with any checks or documents, and the male representative said that he would telephone the campaign and attempt to obtain authorization to provide Cooper with the cash to be withdrawn. The male representative then left the office; he returned a short time later and advised Cooper that the mechanics of the cash withdrawal had been resolved.⁴ The male representative then instructed the female representative to obtain the cash necessary to complete the withdrawal. Cooper said that the female representative left the room and later returned with the cash.

Marty Satterfield recalled that, at some point Ainley contacted him and asked him to withdraw \$22,500 from the vault and to bring the money to Ainley's office. Satterfield went to the vault, obtained \$14,000 in hundreds, \$6,000 in fifties and \$2,000 in twenties. He recorded the withdrawal from the vault on a "Cash Out" ticket. Five hundred dollars was withdrawn from the teller's drawer, thus bringing the total withdrawal to \$22,500. Satterfield took the cash to Ainley's office. Glenda Cooper recalled the female representative counting out the \$22,500 in her presence. The cash was put into a plastic bank bag. Cooper said that she put the cash in a secret compartment of her Volvo station wagon and left the bank at about 11:30 a.m. She returned to the campaign headquarters with the cash at approximately 12:30 p.m.

According to Cooper, when she arrived back at the headquarters, she immediately went to Cabe's office, gave Cabe the plastic bag of cash, told Cabe that she had been uncomfortable picking up such a large amount of cash, and stated that she never again wanted to be put in that position. Cooper said that Cabe later approached her and advised Cooper that she had spoken with Lindsey. Cabe stated that Lindsey was unhappy that Cooper had been sent to PCB to pick up the currency on behalf of the campaign.

According to Cooper, Cabe informed her that Lindsey had instructed Cabe to tell Cooper that the IRS might contact her in

⁴ Telephone toll records do not show a call between PCB and the Clinton campaign headquarters during the morning of November 2.

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the future regarding this currency withdrawal. Cooper said that Cabe informed her that banks are required to file a form with the IRS reporting cash transactions over \$10,000. Cooper said that Cabe had recounted to her that Lindsey had stated that, should the IRS contact Cooper regarding this transaction, he would take care of it and that she should not be concerned about the possibility of being contacted by the IRS.⁵

Bank records confirm that \$22,500 was disbursed on November 2, 1990, pursuant to a request by Lindsey made by telephone to Ainley, and that the funds were received by Cooper at 11:08 a.m. Satterfield recalls that he prepared a CTR for this transaction. He signed the document, obtained Ainley's signature on it and placed it in the stack of mail to be delivered to the Post Office. A copy of the CTR was placed in PCB's files.

According to Ainley, a short time after the November 2 transaction, Hill called him and asked him if he could "get his hands on" the CTR. Ainley said that he understood that Hill was referring to the CTR report prepared covering the November 2 withdrawal. Telephone toll records show a telephone call between Branscum's office and the Clinton campaign headquarters at approximately 11:18 a.m.

Ainley said that, aware that neither Lindsey nor Hill wanted the CTR filed, he went through PCB's outgoing mail and retrieved

⁵ Cooper said that a short time after November 2, she questioned her neighbor, Tom Holland, a certified public accountant, concerning bank reporting requirements of cash transactions. Cooper said that Holland advised her that banks are required to file a form with the IRS which reports cash transactions in excess of \$10,000. Cooper said that she did not specifically discuss the \$22,500 transaction with Holland. Holland said in an interview that, while he could not deny that Cooper had discussed CTR requirements with him, he had no recollection of that conversations.

Cooper has advised us that, due to her concern that the use of cash by the 1990 Clinton campaign could be analogized to the Watergate conspiracy, and that she might be described as a "bag lady," she has not discussed with anyone her involvement in the cash withdrawal.

the CTR. Ainley said that he later told Hill in a telephone conversation that he had pulled the CTR.

Ainley maintains that, on a following Friday morning, he gave the CTR to Hill before a meeting they both were attending. Branscum was also present. Ainley said he delivered the CTR to Hill stating "you may want this." The CTR was still in the original envelope addressed to the IRS. According to Ainley, Hill accepted the envelope, folded it, and put it into his pocket. Ainley left the copy of the CTR in PCB's files in the event that bank examiners reviewed the file.

3. Branscum and Hill's appointments

Five weeks after Governor Clinton won re-election, Bruce Lindsey called Clinton's scheduler and asked for an appointment for Robert Hill and Kent Dollar (a friend of Hill's and the outside auditor of PCB) to meet with Clinton to give him \$5,000 to \$6,000, and to "put in a word for Herby Branscum to be appointed" to the State Highway Commission.⁶ Gloria Cabe testified that she had no knowledge about this meeting, but that it was unusual for Lindsey to get involved in commission appointments.

Hill and Dollar met with Governor Clinton on December 14 at the Governor's Office. Dollar testified that the meeting lasted about 15 minutes. He said that he delivered about \$4,000 in contributions from other persons to the Governor. He did not know how much Hill delivered, but campaign records indicate that Hill and Branscum and persons related to them gave approximately \$10,000 in contributions on December 14. Dollar said that Clinton asked him whether Branscum would make a good Highway Commissioner, and Dollar indicated that he would. Dollar said that Clinton did not discuss the issue with Hill at the meeting. On January 23, 1991, Clinton officially appointed Branscum to the Highway Commission.

At the end of 1991, Clinton also re-appointed Hill to the State Banking Board. (Clinton had initially appointed Hill to the Banking Board in 1987.) Cabe said that she had one passing conversation about Hill's 1991 re-appointment with Craig Smith, Clinton's staffer in charge of making appointment recommendations. She testified that Smith mentioned to her that Hill was going to be appointed, and that "we might as well appoint our friends." Cabe testified that she did not know why

⁶ The Arkansas State Highway Commission is one of the most powerful governmental agencies in the State. The Commission is one of only two commissions constitutionally independent of the Governor. An appointment to the Highway Commission is for 10 years.

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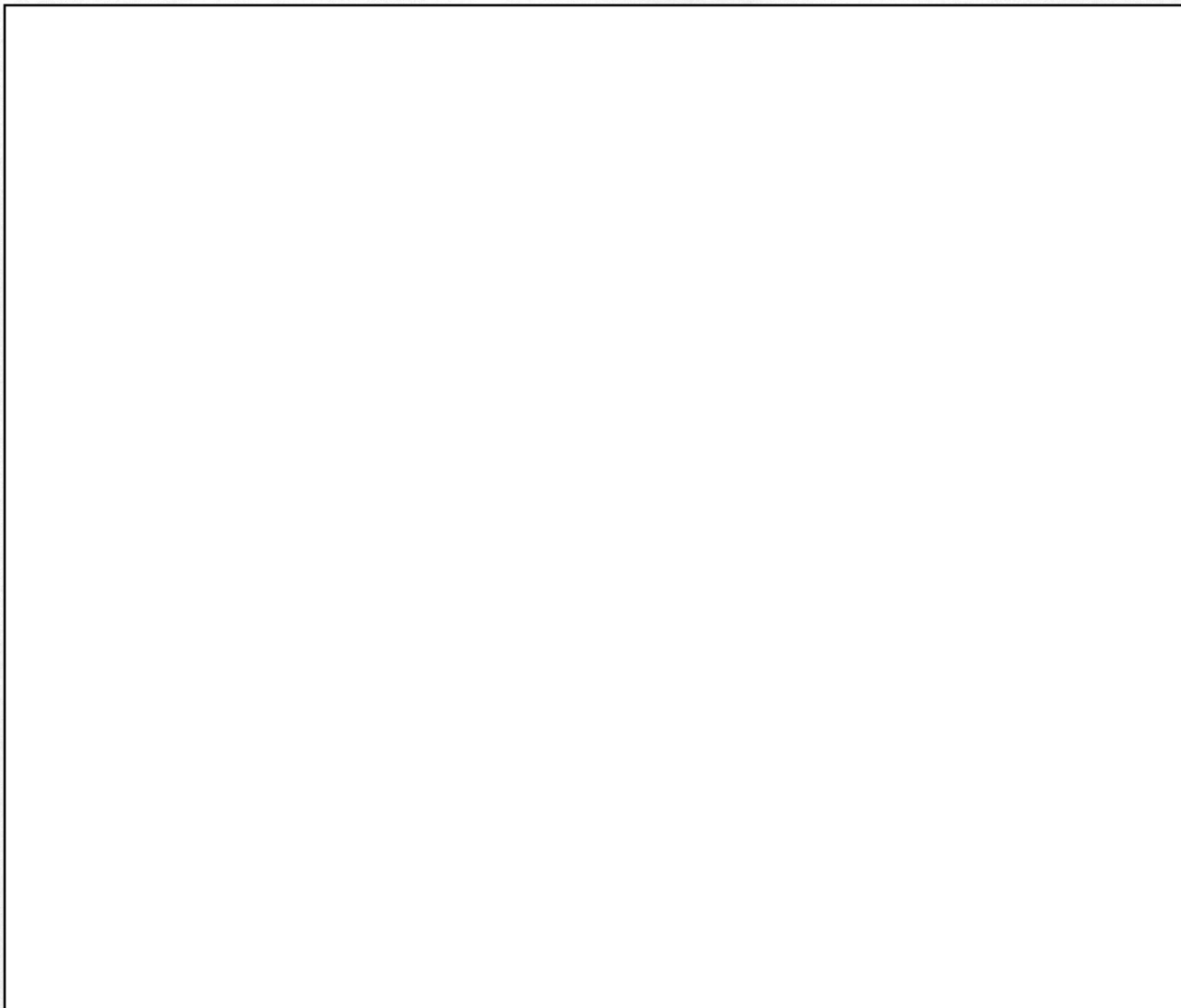
Clinton would consider Hill to be a "friend," as she had never heard of Hill in political or banking circles. Smith does not recall any of the specifics of the appointments of Hill or Branscum.

Apart from the timing of the appointments (especially Branscum's), we have not been able to corroborate that the appointments were rewards to Branscum and Hill for their efforts in avoiding the filing of CTRs for the currency withdrawals. Branscum and Hill will presumably be able to call witnesses to establish legitimate reasons, such as party loyalty and expertise, for Clinton to have appointed them to their respective positions.



defense

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b. Press reports of Lindsey's explanations

In connection with news accounts disclosing Lindsey's target status, Lindsey's principal counsel, Allen Snyder, has indicated that Lindsey will deny in all particulars the allegations made by Neal Ainley concerning their conversations about CTR reporting requirements.

In an Associated Press article published May 9, 1995, Snyder "offered the explanation for a transaction that Whitewater prosecutors have called an 'overt act' of a criminal conspiracy in which an Arkansas banker already has pleaded guilty." According to Snyder, Lindsey used four checks of \$7,500 each not to avoid filing a CTR for a \$30,000 transaction, but instead "to

avoid creating an issue for political opponents, who might somehow exploit an 'unusually large transaction.'"⁷

Through the press reports, Snyder also has amplified Lindsey's alleged concern that bank check processors might leak to the press that the Clinton campaign had withdrawn large sums of cash. According to the Associated Press account, Snyder stated that people who stamp checks at banks during weekends often come from outside firms or are temporary employees.⁸ "An article might appear on a Monday or Tuesday when there wasn't even time for the campaign to respond to whatever kind of allegation might be made," Snyder is quoted to have said.

5. Hill and Branscum's account

Hill and Branscum have twice stated in interviews with us that they had no knowledge at or about the time of the currency transactions that the transactions had even occurred. Hill and Branscum have both claimed that they first learned that the Clinton campaign had withdrawn cash from its account in late 1991 or early 1992 when Ainley mentioned in passing to them and Charles Roland (a director of PCB) that the Clinton campaign had withdrawn cash during the 1990 gubernatorial campaign for "the brothers in east Arkansas."

While he does not recall the specific conversation, Ainley admits that it sounds like something he would say.

There are no documents which indicate that Hill or Branscum were involved in the cash withdrawals. A case against Hill depends entirely on Ainley's testimony. In our view, there is no case to be charged against Branscum on the current record.

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⁷ When interviewed on April 22, 1995, at the White House, President Clinton did not refer to the \$30,000 transaction as being "unusually large." Instead, the President stated that because the sum of cash was only a "modest" amount, there would be no need he could think of to have to hide the transaction from anyone.

⁸ Ainley has told us that PCB did not use temporary employees during this time period.

D. The campaign's explanation of the withdrawals --
the 1990 Get Out the Vote Initiative

As discussed above, the Clinton campaign conducted a Get Out the Vote program during the primary and general elections in 1990. Carol Willis was responsible for the GOTV program outside of Pulaski County. According to Cabe, GOTV generally consisted of small payments of an average of \$40 made out of a small petty cash fund of \$200. GOTV monies from the fund were given to persons to drive voters to the polls, purchase gasoline and to buy lunches for campaign workers. Cabe described the program in race-neutral terms. Cabe acknowledged that Arkansas law prohibits cash disbursements by a campaign in excess of \$50.

Cabe was responsible for deciding what cash would be allocated for the GOTV program and specifically what Willis would receive to conduct the GOTV programs in areas outside of Pulaski County. The campaign trusted Willis to spend his GOTV monies properly. Willis believes that he was the only person in the campaign to receive cash.

Willis explained the GOTV program differently than Cabe. He stated that Clinton's campaign strategy relied heavily on winning the black vote. According to Willis, the white vote in Arkansas is split about evenly between the Democratic and Republican candidates. Accordingly, for Clinton to win he needed to capture the support of the black community. (Cabe confirmed this as well.) According to Willis, GOTV was primarily a black voter initiative.

Willis recalls requesting \$30-34,000 for the 1990 primary for his use in getting out the black vote. He believes he may only have received \$25,000. He believes that he asked for \$50,000 for the general election but believes he received only about \$30,000. Willis claimed that he received his cash funding in envelopes in installments of about \$7,000. He began receiving installments about a week before the applicable election. The largest installment he recalls receiving was about \$10,000. He received his funding in installments because the campaign did not have sufficient sums to give him all that he wanted in a lump sum.⁹ Willis would divide the money, place it into other envelopes which would be delivered to county coordinators. He claims that he ordinarily requested his GOTV cash in \$20 bills because large bills were hard to break and the payments he made generally were in small amounts.

⁹ As noted above, the May 25 and November 2 withdrawals were made on the Friday before the election, or only four days before the electorate voted.

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One of the GOTV programs Willis developed was entitled "preventative maintenance." Willis claimed that this program had not been used in any previous campaign. "Preventative maintenance" included cash payments to blacks which, according to Willis, was for them to give speeches in support of Clinton, against his opponent, or to be neutral in the election.

Prior to the general election, Willis prepared a memorandum addressed to Cabe and Clinton in which he outlined GOTV programs he proposed. The memorandum was prepared three or four weeks before the November 1990 general election. In the memorandum "preventative maintenance" was described as follows: "In every campaign there are persons that cannot do much for you but can stifle your efforts with their personal prestige. Something has to be budgeted to mediate that threat." Included in the memorandum was a list of people to whom he proposed to make "preventative maintenance" payments. This memorandum, which lists eighteen separate individuals in a county-by-county breakdown, budgets payments ranging from \$200 to \$500.¹⁰ While Willis sometimes made projections or estimates of proposed GOTV expenditures, Willis did not keep records of his actual GOTV expenditures. Rather he kept the records "in his head."

Willis acknowledged that he directly or indirectly made cash payments at or near the amounts indicated to a large number of

¹⁰ Willis said that he gave the memorandum to Cabe, but does not know if Governor Clinton or Lindsey received it. Cabe admitted that both she and Clinton received copies of the memorandum, but said that neither she nor Clinton read it in any detail. Cabe said that she knows that Clinton did not read it because the two of them discussed during the campaign that they had not read it. Cabe said that Willis was the only person at the campaign who used the phrase "preventative maintenance."

Lindsey said that he had never seen the memorandum until recently, and that he did not know whether Willis had conducted a preventative maintenance program similar to what is described in the memorandum. Still other campaign representatives have denied ever hearing of "preventative maintenance."

the people listed as "preventative maintenance" payment recipients.¹¹ These generally were teachers and preachers. Initially, Willis said that "preventative maintenance" payments were in the \$50 range. However, after being referred to the "preventative maintenance" amounts listed in the memorandum, he acknowledged that the "preventative maintenance" payments he made were far greater than \$50 and were close to those listed on page 6 of his memorandum. He noted that one person probably received \$500. Willis claims that he was unaware of the \$50 limit on cash expenditures by a campaign.

E. Ainley's post-guilty plea allegations of misapplication of PCB funds by Branscum and Hill

Within a day of his guilty plea, we began to debrief Ainley, and when we touched upon Ainley's contributions to the Clinton campaign in 1990, his lawyer gave us a proffer in Ainley's presence that implicated Ainley, Branscum and Hill in a possible misapplication of bank funds. Ainley's counsel, Jay Bequette, advised us that Ainley, Branscum and Hill all made contributions to Clinton's 1990 gubernatorial and 1992 presidential campaigns, and that each of them sought and received reimbursement of those contributions from PCB. Bequette said that, at Hill's direction, Ainley submitted claims to PCB for "miscellaneous expenses" to cover more than \$1,000 in contributions Ainley and his wife made to Clinton. Bequette said that Ainley knew that Branscum and Hill likewise made applications to PCB for reimbursement of contributions they made.

Ainley more criminal than Lindsey

We were particularly interested in these allegations because we believed that, if they were true, they would give us leverage in attempting to persuade Hill and Branscum to come clean on the CTR transactions and cooperate with the investigation. The day we received the allegations we issued a subpoena to PCB for bank records regarding reimbursement of miscellaneous and travel and entertainment expenses to Ainley, Hill and Branscum during the relevant time period. On Friday, May 11, we received most of the subpoenaed records. They do not corroborate Bequette's proffer.

We have advised Bequette of the results of our subpoena and asked him to confer with Ainley immediately to see whether Ainley has any further information to substantiate his allegations. Today Bequette provided us with additional information, and by Wednesday we hope to be able to determine whether PCB did in fact reimburse Ainley for his contributions, and if so, how. At this time, however, we cannot be sure that with additional time we

¹¹ A number of the individuals identified in the memorandum have been interviewed, and have acknowledged receiving sums at or near the amounts listed.

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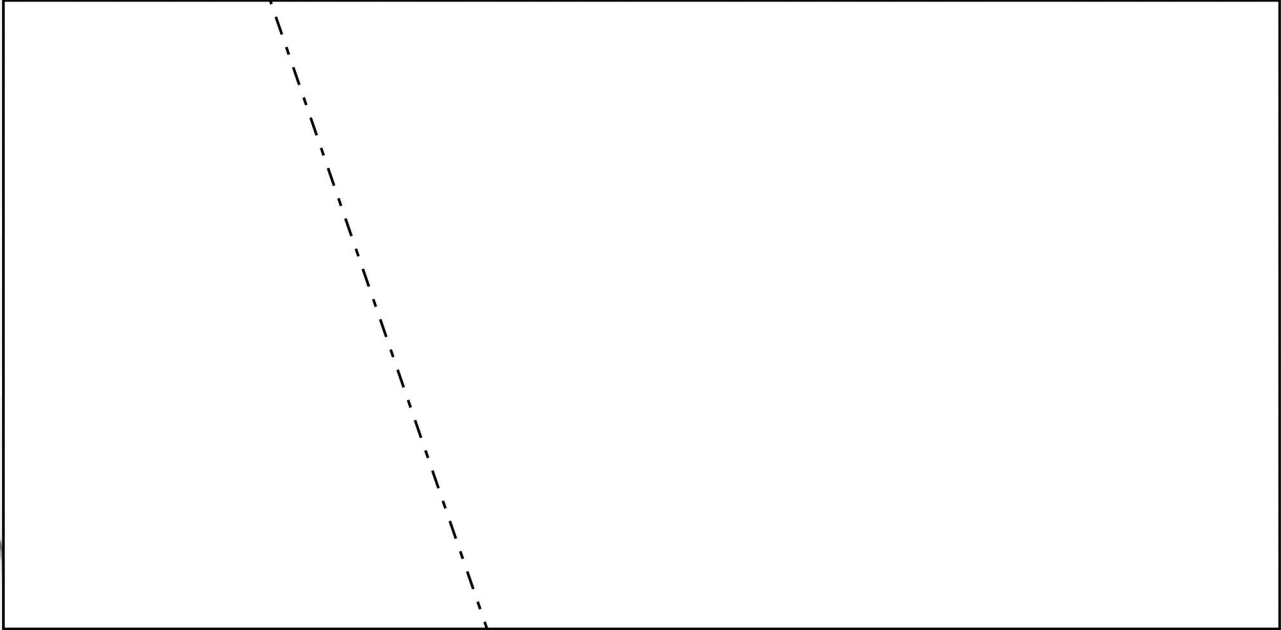
money

C. Other Substantive charges and limitations periods

In addition to the CTR offenses and possible conspiracy charges, the facts would support charging one or both of the following substantive offenses, on the theory that were "reasonably foreseeable" acts by a co-conspirator (Ainley) in furtherance of the conspiracies discussed above. Under Pinkerton v. United States, 328 U.S. 640, 647-48 (1946), each member of a conspiracy is liable for each substantive offense committed by a co-conspirator in furtherance of the conspiracy, provided that the substantive offense could be "reasonably foreseen as a necessary or natural consequence of the unlawful agreement."¹⁴

¹⁴ The issues of whether an act (a) was in furtherance of a conspiracy and (b) was reasonably foreseeable to the co-conspirators are factual determinations for the jury. Here,

First, there is Ainley's false statement in violation of 18 U.S.C. § 1001 when he falsely certified to the FDIC on February 20, 1991 that PCB had filed a CTR for every currency transaction in excess of \$10,000. The limitations period for a Section 1001 violation is five years from the date of the statement, which here would take us to February 1996.



There appears to be a valid argument that Ainley committed a Section 1005 violation when he failed to prepare a CTR for the May transaction and failed to retain a copy in the bank's files. The regulations under Title 31 not only required Ainley to prepare and file a CTR with the IRS, but also required him to retain in the bank's files a copy of each CTR filed. 31 C.F.R. § 103.27(a)(3). We would contend that the failure to place a copy of a CTR in the bank's files had the tendency to deceive bank examiners into believing that no currency transaction had occurred for which a CTR was warranted.¹⁵



¹⁵ Note that this is superficially inconsistent with our charge against Ainley that his causing a copy of the CTR of the November 1990 transaction to be maintained in the files of the bank was a false entry on the theory that the copy of the CTR represented something that was not true, i.e., that a CTR had been filed with respect to that transaction. But we believe that the two false entry charges are reconcilable: the failure to place a CTR of the May withdrawal in the bank's files was a false

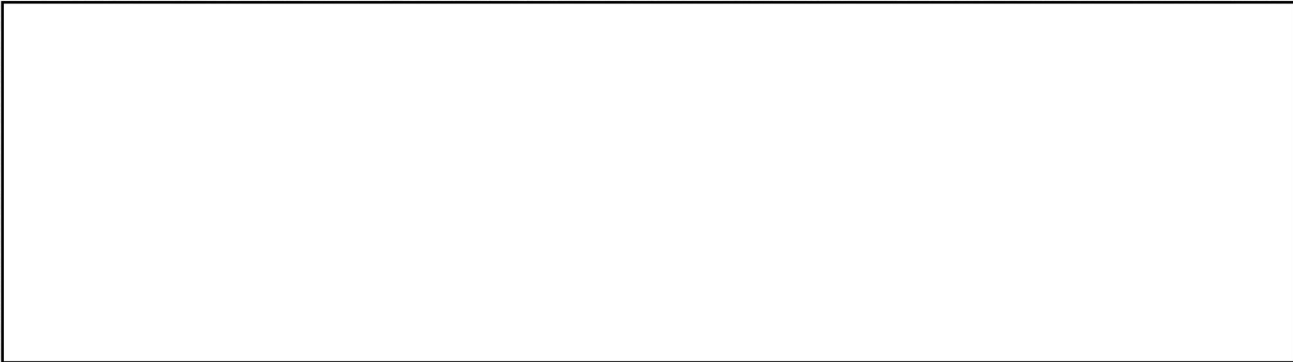
The proposed theory would appear to fall within the generally accepted principle that an omission where an honest entry would otherwise be made can be a false entry for Section 1005 purposes. United States v. Copple, 827 F.2d 1182, 1187 (8th Cir. 1987), cert. denied, 484 U.S. 1073 (1988). The law is well-settled that, where there is a duty to accurately record a transaction, a failure to make such a record constitutes a false entry. Eighth Circuit Model Jury Instructions, Instruction No. 6.18.1005.

However, we have not found any case in which a court has considered whether the failure to retain a CTR in the bank's files (where no original CTR was sent to the IRS) constitutes a Section 1005 violation. Note that, if a court were to accept this theory, it would essentially convert every failure to file a CTR into a false entry violation. That may make the theory unpalatable to some courts, and we need to recognize that there is an unquantifiable risk that this Section 1005 charge may be declared legally invalid.

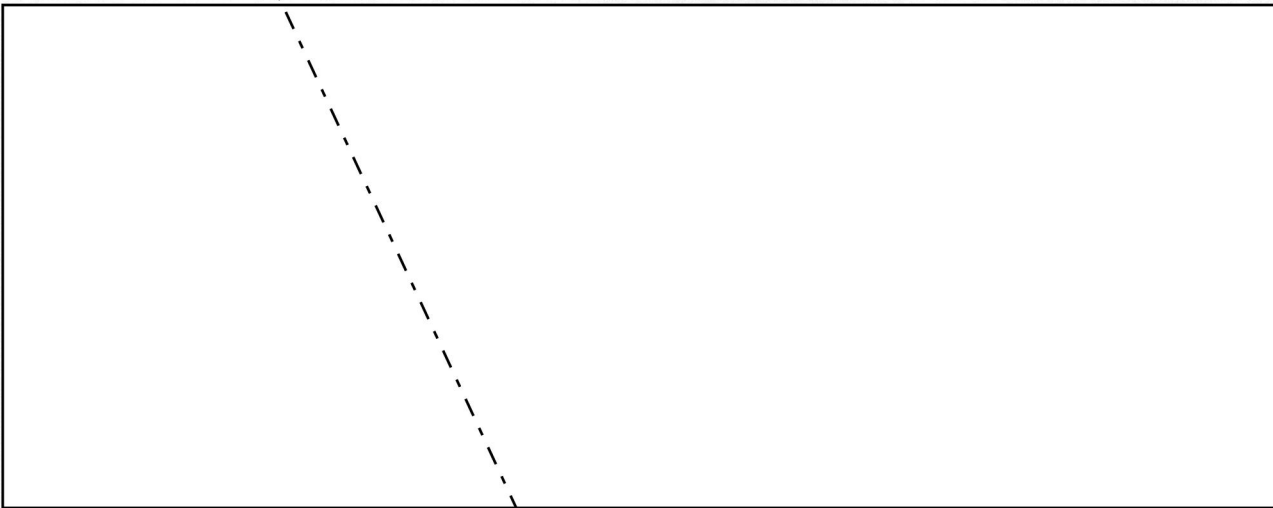


do we have any proof that this is not true?

THE DEFENSE STRATEGY AND OTHER PROBLEMS



entry because it misled bank examiners into believing that no reportable currency transaction had occurred, while placing a copy of a CTR of the November transaction in the bank's files was a false entry because misled the examiners into believing that the November withdrawal had been reported to the IRS. In both cases, the bank's records failed to reflect accurate information regarding the underlying transactions.



A. Ainley's motive to commit the crime

The best argument we have is that Ainley had no personal motive to violate the CTR requirements, unless instructed to do so, as he otherwise had nothing to gain.



B. Ainley's demeanor

Ainley is a youthful and clean-cut "All American" sort from a prominent family in northeastern Arkansas. He has a wife and two small children, and will probably make a good initial impression on a jury.

However, even with extensive preparation, we can expect Ainley to be very nervous if called upon to testify. He was visibly shaking during his guilty plea.

Moreover, Ainley's recollection is sometimes faint, and he cannot always recall with specificity what was said in critical conversations. He often does not speak clearly, and frequently recounts the same conversation in ways that are significantly different from one recitation to the next. Ainley is not



especially bright, and is not the sort of witness who will be able to fend well for himself under an extended cross-examination.

C. Specific cross-examination attacks

We can anticipate strong attacks on Ainley's credibility in cross-examination, including lines of attack as to the following areas:

1. Ainley's plea agreement, described by White House Counsel Abner Mikva as "fabulous," in which five felony counts exposing Ainley to thirty years incarceration were reduced to two misdemeanors with a maximum of two years imprisonment. The defense will contend that Ainley has agreed to provide a particular version of the facts in accord with what the prosecutors want to hear.

2. Discrepancies and inconsistencies in statements made by Ainley to investigators on June 21, 1994 and July 5, 1994, as set forth in 302s:

a. In his first interview on June 21, Ainley initially told the agents that a CTR had been filed for the November 2 transaction. Only when confronted later in the interview did he admit that a CTR had not been filed.

b. Ainley stated that he withdrew the CTR that Marty Satterfield prepared for the November 2 transaction from the outgoing mail and destroyed it. On July 5th Ainley stated that he gave the CTR to Hill and that he had not destroyed it as he claimed earlier.

c. Ainley stated several times during his June 21 interview that the campaign conducted only one cash transaction for an amount greater than \$10,000. At the time, Ainley knew that there was a second transaction in May 1990, but he did not admit to this transaction and the failure to file a CTR until the July 5 interview.

d. On June 21 Ainley stated that the bank did not have sufficient cash to accommodate the \$22,500 withdrawal requested by Lindsey in November and the bank had to purchase cash from another institution. However, the bank had sufficient cash in November. It was the May withdrawal where cash had to be purchased.

e. On June 21 Ainley recalled that Lindsey had asked whether there was any way around the reporting requirement. Ainley said that he suggested consecutive checks of less than \$10,000 negotiated over consecutive days. Ainley claims that Lindsey responded that he needed the cash that

day. It appears that this discussion of checks negotiated on consecutive days may have occurred in connection with the May transaction rather than the one that transpired in November.

3. Ainley's protestations of innocence, as articulated by his lawyers and family members, at the time of his arraignment on five felony counts, contrasted with Ainley's admissions in open court during his guilty plea to two misdemeanor counts, in which he agreed that he had engaged in misconduct identical to that for which he originally had been indicted.



6. That Ainley has an axe to grind against PCB because PCB accused Ainley's friend and business partner, Jeff Glenn, of check forgery, the event that led to Ainley's resignation from the bank. This charge so infuriated Glenn that two months ago he filed a defamation suit against PCB.¹⁷

7. That Ainley is biased against Clinton, and therefore against Lindsey. Ainley voted against Clinton in every election except the 1990 gubernatorial race; he voted for Clinton then only because Clinton was a PCB customer.

Not all of the above-described areas of potential cross-examination give us significant concern. For example, we can establish that the so-called audit of Ainley's activities after his departure from PCB was expressly "commissioned" by Robert Hill to discredit Ainley after federal investigators began to make inquiries about the Clinton campaign's transactions at PCB. Nor are we overly concerned with criticism about Ainley's

¹⁷ In addition, if we are unable to substantiate Ainley's allegations that Hill and Branscum obtained reimbursement of their contributions to the 1990 and 1992 Clinton campaigns, the defense will also contend that Ainley's allegations were lies.

favorable plea bargain -- such criticisms are typical and are to be expected in criminal cases. Nonetheless, there is certainly potential for some of this expected cross-examination of Ainley to find its mark.

D. Lindsey character testimony

In addition to hostile attacks on Neal Ainley's credibility, and suggestions of his motives to lie to incriminate Lindsey and Hill, we should anticipate a virtual parade of character witnesses in support of Lindsey and, to a lesser extent, Hill. Lindsey has long-standing relationships with a number of prominent Arkansas political figures independent of his relationship with Bill Clinton, and we can expect such individuals to be called to testify about Lindsey's good character. We would expect both of Arkansas' United States Senators, Dale Bumpers and David Pryor, to be among this group.

Moreover, in view of a recent news account discussing Lindsey's explanation for the cash withdrawals, we can even expect to hear testimony favorable to Lindsey from the person who arguably was one of the victims of the GOTV effort, Clinton's principal opponent in the Democratic primary, Tom McRae. In a front page story in the Arkansas Democrat Gazette on May 12, 1995, McRae is described as "accepting" Lindsey's benign explanation for cashing four \$7,500 checks rather than one \$30,000 check, that is, that "Bruce had a mild concern that if there were a \$30,000 check, somebody processing checks at the bank might be a very hostile anti-Clinton partisan" and "go to the press" on the eve of the election.

E. Other "environmental" factors

Apart from the particular facts of the case, we can expect to face the following additional problems:

1. The defense will stress the "technical" nature of the crime. The jury will hear much about the fact that the Clinton campaign had every right to withdraw cash from its own account, and that this case is merely about the bank's failure to file a one-page form with the federal government. The defense will stress that, while there may be a legitimate governmental need for CTRs where it is necessary to detect drug trafficking or money laundering, the prosecution here, even with all of the resources of the OIC, cannot prove that the funds were used for an illegal purpose.

2. The defense will contend that this technical crime would not have been prosecuted if one of the defendants were not a senior advisor to the President. The jury will be told that this is a politically motivated effort to embarrass local boys who have made good, to denigrate Arkansas, and to reinforce

negative public perceptions (by "Northerners" or "Easterners") of "Arkansas mores."

3. We are outsiders, to both the jury and the judges. In the past few weeks we have had occasion to appear before district judges on matters including Neal Ainley's guilty plea and several in camera hearings on motions to quash grand jury subpoenas. The judges presiding over those matters have made comments that make us worry whether the OIC will be treated impartially in a highly publicized and politically-charged proceeding.

In one episode, occurring in Judge Susan Webber Wright's chambers following the Ainley plea, Judge Wright commented that she had read in news accounts that several sentencing had been put off to permit time for the defendants to cooperate with the OIC, and that this office's practice of asking for delays in sentencing had been the subject of some criticism in the community (which we understood to mean within the federal courthouse). Judge Wright expressed hope that Ainley's sentencing would not be delayed, and stated that a request for a delay would be looked upon with disfavor (although she indicated that she would probably grant such a motion to postpone sentencing if asked to do so).

Another episode involved Chief Judge Reasoner, who in the last week entertained three separate motions to quash subpoenas for documents, including a motion filed by Lindsey. In the course of the hearings on these motions, Judge Reasoner referred to Bruce Lindsey's good reputation in the local legal community, and questioned us about news accounts he had read in which Lindsey's attorneys had claimed that Lindsey had no motive to hide the transactions because the campaign made a public reporting of GOTV expenditures only a short time after the elections. Also, in discussing our arguments, Judge Reasoner essentially reformulated our burden in the hearing such that we were required to show that the Clinton campaign was so worried about the risk of losing the election that Bruce Lindsey would be tempted to do something that he would never otherwise do -- violate the law.

FOIA(b)(7) - (C)

CONCLUSION

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