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MEMORANDUM

To: Kenneth W. Starr
Independent Counsel

All OIC Attorneys

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

Date: November 1, 1995

Re: Investigation of Campaign Contributions by Herby Branscum, Jr., Robert M. Hill, and other persons associated with them, to the 1990 Clinton for Governor Campaign and the 1992 Clinton Presidential Campaign

INTRODUCTION

This memorandum summarizes the status of our investigation of political contributions by Herby Branscum, Jr., Robert M. Hill, and other persons associated with them to the 1990 Clinton for Governor campaign and the 1992 Clinton presidential campaign. Branscum and Hill are directors and the principal owners of the Perry County Bank ("PCB"). PCB is a state-chartered, federally insured financial institution, located in Perryville, Arkansas.

While we have made substantial progress in completing this investigation, there remains a significant quantity of evidence that is not yet available to us. Beginning in late June of this year, Branscum, Hill and PCB refused to comply with our subpoenas for documents on the grounds that the OIC does not have prosecutorial authority to investigate or prosecute the matters in question.

After months of briefing and argument, Chief Judge Reasoner upheld the validity of our subpoenas, holding that the Attorney General's decision to refer these matters to the OIC is not subject to judicial review. The subpoenaed parties nonetheless refused to comply with the subpoenas, and on September 8, 1995, Judge Reasoner found Branscum, Hill, their professional associations, and PCB in civil contempt. He ordered that, beginning September 15, 1995, Branscum and Hill and their professional associations would be fined \$1,000 for each day of noncompliance with the subpoenas, and that PCB would be fined \$5,000 for each day of non-compliance.

The subpoenaed parties immediately filed notices of appeal. Judge Reasoner and the Court of Appeals both refused to grant a stay of the contempt sanctions pending appeal. Facing the imposition of sanctions, on September 15, 1995, Herby Branscum, Jr., Robert Hill's professional association, and PCB complied with the subpoenas. Branscum's professional association and Robert Hill, individually, have not complied. All of the subpoenaed parties have continued to press their appeals. The Court of Appeals has scheduled argument for December 12, 1995.

In the meantime, we have analyzed the documents produced on September 15, and have issued two more subpoenas to PCB for additional materials. A number of ~~requests~~ requests are still outstanding, and we will not be able to get all of the materials we are seeking until mid-November. We will not know until we receive the outstanding materials whether we will need to issue any additional subpoenas.

We are submitting this memorandum to facilitate discussion of whether we should proceed to seek an indictment of these matters, and if so, what offenses should be charged, and when an indictment should be sought.

A. Case Summary

The evidence gathered to date indicates that Branscum and Hill engaged in an illegal conspiracy to mislead federal bank examiners, create false entries in PCB's records, and misapply over \$13,500 in PCB funds, in violation of 18 U.S.C. §§ 371, 1005, and 656.¹

¹ Section 371 provides:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

Section 1005 provides in part:

Whoever makes any false entry in any book, report, or statement of such bank, company, branch, agency, or organization with intent to injure or defraud such bank, company, branch, agency, or organization, or any other company, body politic or corporate, or any individual person, or to deceive any officer of such bank, company, branch, agency, or organization, or the

(continued...)

Branscum and Hill misapplied over \$13,500 from PCB to reimburse themselves and others for political contributions made to as many as four candidates or office holders:

- (1) Bill Clinton's 1990 gubernatorial campaign (\$7,200);
- (2) Bill Clinton's presidential exploratory committee (\$6,100);
- (3) Charlie Daniels, a candidate in 1990 for Arkansas State Land Commissioner (\$200); and
- (4) Jimmie Lou Fisher, who was Arkansas State Treasurer in 1993 (\$250).

In misapplying these funds, Branscum and Hill caused false entries to be made in PCB's ledgers indicating that the funds were for legitimate business expenses, when in fact the expenses were to reimburse Branscum, Hill and others for political contributions made to the candidates or office holders indicated above.

Branscum and Hill used others, typically their wives, mothers, brothers, and children, as conduits to make contributions to the Clinton gubernatorial and presidential campaigns. Branscum and Hill evidently did so, at least in part, to circumvent the limitations that Arkansas and federal law impose on the amount a contributor may give to a candidate in an election. Through the 1990 general election, Arkansas law limited contributions to \$1,500 for each primary and general election; thereafter, it limited contributions to \$1,000 for each

¹(...continued)

Comptroller of the Currency, or the Federal Deposit Insurance Corporation, or any agent or examiner appointed to examine the affairs of such bank, company, branch, agency, or organization . . . shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

Section 656 provides in part:

Whoever, being an officer, director, agent or employee of, or connected in any capacity with any . . . insured bank . . . embezzles, abstracts, purloins or willfully misapplies any of the moneys, funds or credits of such bank . . . shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both: but if the amount embezzled, abstracted, purloined or misapplied does not exceed \$100, he shall be fined under this title or imprisoned not more than one year, or both.

does FECA apply to state elections?

primary and general election. Ark. Code Ann. § 7-6-203(b). The Federal Election Campaign Act ("FECA") limits contributions to \$1,000 per election. 2 U.S.C. § 441a(a)(1)(A).

Both Arkansas law and FECA prohibit contributors from making contributions in another person's name. Ark. Code Ann. § 7-6-205(b); 2 U.S.C. § 441f. Arkansas law permits corporations to make contributions, subject to the same limitations set forth above. FECA, however, prohibits corporate contributions in any federal election. 2 U.S.C. § 441b. The FDIC does not prohibit FDIC insured institutions from making otherwise lawful campaign contributions in state or local elections. See Memorandum from Pamela E.P. LeCren, FDIC Senior Counsel, to Joseph A. Sano, FDIC Regional Counsel, dated May 9, 1995.²

Arkansas law provides that a person who knowingly or willfully violates its campaign finance laws may be convicted of a misdemeanor punishable by imprisonment of up to one year, a fine of up to \$1,000, or both.³ FECA violations are Class A misdemeanors, punishable by imprisonment of up to one year, and fines of up to \$100,000 in the case of an individual, and up to \$200,000 in the case of a corporation. 18 U.S.C. §§ 3559, 3571.⁴

B. Background

This investigation came about as a result of information provided to us by Neal T. Ainley. Ainley, the former President of the Perry County Bank, was indicted by the Grand Jury in Little Rock on February 28, 1995 on 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.

On May 2, 1995, pursuant to a plea agreement, Ainley pleaded guilty to a two-count Superseding Information charging him with willfully delivering and disclosing to the Secretary of the Treasury documents known to be fraudulent or false as to a material matter, in violation of 26 U.S.C. § 7207. In accordance with the plea agreement, Ainley has cooperated with the OIC in its investigation of the matters set forth herein.

² Federal law prohibits national banks from making contributions in any federal, state or local campaign. 2 U.S.C. § 441b. The Perry County Bank is not a national bank.

³ We have found no reported cases of prosecutions for violations of Arkansas' campaign finance laws.

⁴ For reasons discussed below, we have concluded that we should not charge Branscum and Hill with such offenses.

During a debriefing session with Ainley shortly after his plea, we learned for the first time about a possible misapplication of PCB funds by Ainley, Branscum and Hill in connection with the 1990 Clinton for Governor campaign. Ainley advised us that he, 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. Ainley told us that, at Hill's direction, he submitted claims to PCB for legal or miscellaneous expenses to cover more than \$1,000 in contributions Ainley and his wife made to Clinton. Ainley told us that Branscum and Hill likewise made applications to PCB for reimbursement of contributions they made.

Originally, we were interested in these allegations because we believed that, if they were true and could be corroborated, they would give us leverage in attempting to persuade Hill and Branscum to come clean on the CTR transactions and Bruce Lindsey's role in those transactions. Branscum and Hill each holds a professional license which would be jeopardized by a felony conviction. Their future involvement in PCB would also be at risk if convicted.

But there have been no overtures from Branscum and Hill about "calling off the dogs" as our investigation has progressed. We believe that Branscum and Hill have concluded that their challenge to our prosecutorial jurisdiction is their best strategy for escaping unscathed. We doubt seriously that they will plead to any charge until at least the Court of Appeals rules on whether the OIC has jurisdiction over the matters under investigation.

C. The Subjects

The subjects of this investigation, Herby Branscum and Robert M. "Rob" Hill, are by now fairly well known to this Office. Each played a prominent role in the CTR offenses. In 1985 or 1986, Branscum and Hill purchased controlling shares in PCB. Each is a 50% shareholder in Perry County Bankshares, Inc., the bank holding company that owns the Perry County Bank.

Branscum is an attorney in private practice in Perryville. He served as the Arkansas State Democratic Party Chairman from 1976 to 1982. Branscum consistently has made political contributions to Clinton gubernatorial campaigns, and was an early backer of the 1992 Clinton presidential bid, as discussed

below. As discussed below, Branscum was appointed by Governor Clinton to the State Highway Commission in January 1991.⁵

Branscum is married to Billie Jo Branscum. Their children include Elizabeth Ann "Beth" Branscum and John C. "Chris" Branscum of Perryville. Their eldest son, James S. Branscum, is married to Colette Branscum and lives in Little Rock.

Rob Hill is a certified public accountant in Perryville. He is a former IRS revenue agent. Like Branscum, Hill has been active in state Democratic party politics, and has served as chairman of the Perry County Democratic Party for the past 10 years. Hill has also made numerous political contributions to Clinton campaigns.

In 1987, Hill was appointed to a four-year term on the Arkansas State Banking Commission by Governor Clinton. On December 31, 1991, Governor Clinton appointed Hill to another four-year term on the banking commission.

Hill is married to Shirley Hill. They have three daughters, Tracy Hill Price and Becky and Kayla Hill, all of whom live in Perryville. The Hills also have a son, Robert M. Hill, Jr., a high school student who still lives at home.

Hill's mother, Elise Hill, is the widow of his father, Woodrow Hill. Hill's brother, Harold, is the proprietor of Perry County Oil, Inc. Harold is married to Mary Kay Hill.

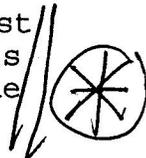
Hill is represented by Little Rock attorney Jack Lassiter, while Branscum is represented by Dallas attorney Dan C. Guthrie.

FACTS

A. Neal Ainley

As stated above, earlier this year Neal Ainley began cooperating pursuant to the terms of his plea agreement. According to Ainley, he discussed the topic of politics with Rob Hill at some point in time between his June 1989 arrival at the bank and about March 1990. Ainley recalled that he mentioned to Hill that he did not know much about politics, and asked that Hill provide advice and guidance to him concerning any political matters that concerned Ainley as bank president. Ainley recalled that Hill stated during their conversation that politics were

⁵ 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.



very important to both him and Herby Branscum, and Hill agreed to advise Ainley on political issues affecting him as president of PCB.

Ainley told us that, on the morning of May 23, 1990, Hill approached him and notified him that he was raising money for Bill Clinton's gubernatorial campaign. According to Ainley, Hill asked him to contribute \$200 to the Clinton campaign, and Ainley agreed to the request. Ainley wrote out a \$200 check on his business account and gave the check to Hill.

Later that same morning, according to Ainley, Hill instructed him to go see Naomi Chambliss, the PCB employee who oversaw the bank's expense account, and to have Chambliss issue a PCB expense check to Ainley for \$200 to reimburse him for the contribution to Clinton. At Hill's direction, Ainley had Chambliss record the disbursement in the expense ledger as a "Conventions" expense.⁶

Ainley stated that, after the May 23 contribution, he understood that he would be reimbursed by PCB for any future political contributions made at the request of either Hill or Branscum. Thereafter, when asked for such a contribution by Hill or Branscum, Ainley would inquire how he should "handle" their request. On each such occasion, Hill or Branscum typically would instruct Ainley to obtain from PCB a reimbursement for the requested political contribution.

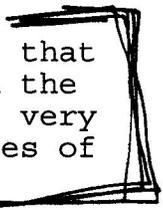
B. Branscum and Hill's financial support for the 1990 Clinton gubernatorial campaign

At various times throughout calendar year 1990, Branscum and Hill made campaign contributions in their own names to the 1990 Clinton for Governor campaign. Branscum and Hill also arranged for conduit contributions to be made to the Clinton campaign through Neal Ainley, Branscum's secretaries, and members of the Branscum and Hill families. In a number of cases, mainly occurring in December 1990, Branscum and Hill arranged for PCB to pay to them and to Neal Ainley "expense" checks, booked in PCB's ledgers as "legal and professional" expenses, the proceeds of which were passed on through conduits to the Clinton campaign.

⁶ According to Ainley, he had attended a bank convention in April in Hot Springs, along with Branscum and Hill. Indeed, Hill and Branscum received reimbursement checks, for \$100 and \$329.50, respectively, by PCB checks next in sequence to that received by Ainley. Nonetheless, Ainley insists that his reimbursement was for the political contribution, and not for the convention, despite the ledger entry.

NOT
QUID PRO QUO

As discussed above, under Arkansas law in force in 1990, individuals were permitted to make political contributions of up to \$1,500 for each of the primary and general elections. Arkansas law also prohibited contributors from making contributions in the names of others. Likewise, federal law prohibited misapplications of bank assets, as well as false entries describing financial transactions.

We believe that Branscum and Hill probably had several motives for violating both state and federal law by making conduit contributions with bank funds falsely recorded as expenditures for legal or professional services. We believe that the primary motive was to permit Branscum and Hill to exceed the legal limits for campaign donations. Branscum and Hill were very likely also motivated to do this to improve Branscum's chances of obtaining an appointment to the State Highway Commission. 

1. Contributions preceding the Arkansas primary election

The Arkansas state primaries were held on May 29, 1990. By check dated April 7, 1990, nearly two months in advance of the Democratic primary, Branscum donated the legal maximum under state law, \$1,500.

On April 27, 1990, Shirley Hill, Rob's wife, made the maximum \$1,500 contribution to Clinton for Governor. Herby Branscum's wife, Billie Jo, contributed \$800 by check dated April 30. Finally, on May 11, Rob Hill made a \$1,500 donation to the Clinton campaign.

Thus, more than two weeks before the May primary, each of the principals, Branscum and Hill, had made their legal maximum individual donations under state law. Shirley Hill had also made the maximum individual donation, and Billie Jo Branscum had made close to her individual maximum.⁷ It was also on May 23, 1990, the week preceding the primary election, that Neal Ainley was asked to make his \$200 contribution to Clinton for Governor, as discussed above.

⁷ We believe that it is important to focus on the contribution amounts of not only Branscum and Hill, but their wives as well, because at a trial the defense will attempt to prove lack of criminal intent by demonstrating that what we have alleged were illegal conduit contributions could lawfully have been made by Branscum, Hill or their wives in their own names, and therefore there would be no motive to disguise the contributions by making them in the names of their children or others.

2. Contributions preceding the Arkansas general election

In June 1990, a few weeks after the primary election, Herby Branscum paid each of his secretaries, Paula Franklin and Debbie Halbrook, \$500 in checks drawn on the Herby Branscum, Jr., P.A. law account at PCB.⁸ On June 13, 1990, Debbie Halbrook and her husband, Wes, by sequentially-numbered checks, each made \$250 contributions to Clinton for Governor. On June 12 and 13, 1990, respectively, Paula Franklin and her husband, Garry, likewise made individual \$250 contributions to Clinton for Governor.

Halbrook, who no longer works for Branscum, has been interviewed regarding these and other contributions made to Clinton. Halbrook told us that Herby Branscum approached her and Paula Franklin in June 1990, and told them that he had reached his lawful limit for campaign contributions to Clinton for Governor.⁹ According to Halbrook, Branscum requested that they and their husbands pass on money from him to the campaign, and they agreed to do so. Franklin, who continues to work for Branscum, has not yet been interviewed. (We are waiting until we get copies of the relevant documents.)

In the months preceding the November general election, Branscum and Hill each made relatively small contributions in their own names to Clinton for Governor. On September 4, 1990, Rob Hill donated \$200 to the campaign. Later, approximately one week before the November 6 general election, there was a small spate of contributions made to the campaign. On October 29, 1990, Herby Branscum and Rob Hill each made \$250 contributions to Clinton for Governor. Also on October 29, Branscum's son, John, and Hill's daughter, Tracy, each made \$250 contributions to the campaign. Although monthly account statements for John Branscum and Tracy Hill covering October 1990 each show corresponding \$250 deposits into their respective accounts on October 29, 1990, we have not yet received subpoenaed deposit items which would reveal the sources of their contributions.

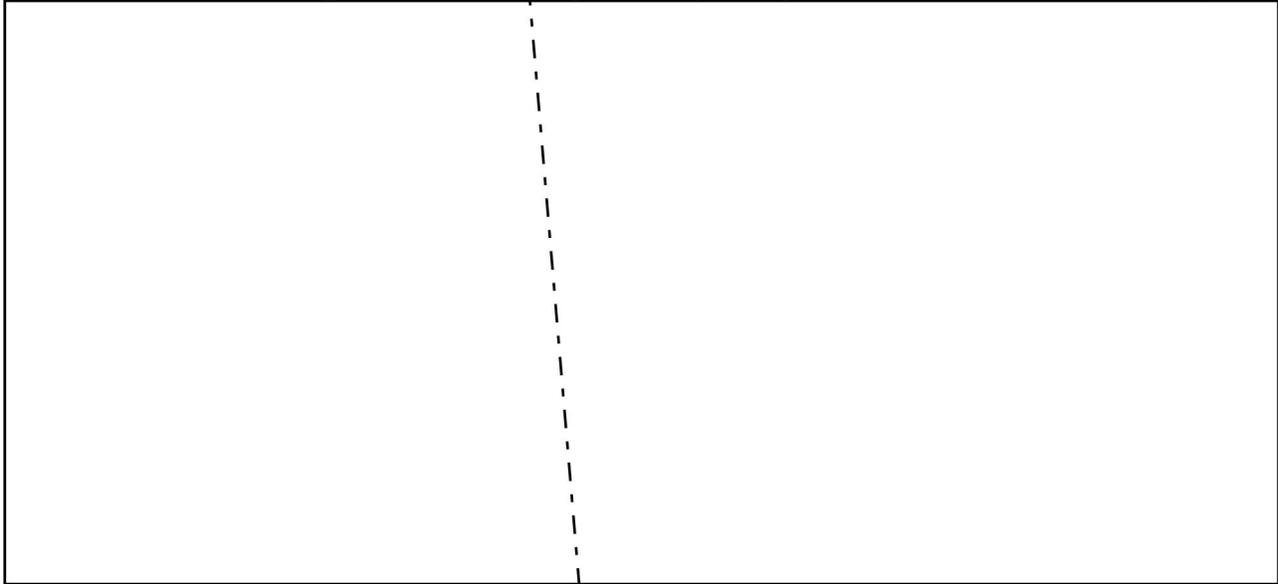
⁸ Branscum's P.A. has resisted production of these checks. Although also under subpoena from PCB, we have not yet received either of the checks paid by Branscum to his secretaries.

⁹ Branscum's statement is a bit puzzling. Because the primary had concluded by the time of his June 1990 request that his secretaries contribute in their names, and because Bill Clinton had won the primary, Branscum was free to make an additional \$1,500 in contributions in his own name which would have been attributed to the November general election.

3. Availability of Arkansas State Highway Commission post

At some point in 1990, it became apparent that a position on the Arkansas State Highway Commission was or would soon become available, and both Hill and Branscum wanted Governor Clinton to fill the slot with Branscum. Ainley recalls that, around the time of the December 1990 Clinton for Governor contributions, Branscum was peeved that Clinton had not already appointed him to the position. In mid-December, after Clinton had been reelected in the November general election, Hill spearheaded a fundraising initiative designed to win for the Governor's appointment for Branscum.

Richard Tiago was the Mayor of Perryville from 1979 to 1994.



4. Contributions after the Arkansas general election

As part of the effort to push Branscum's candidacy for Highway Commissioner over the top, Branscum and Hill arranged for additional moneys to be funneled to Clinton for Governor from the PCB. These transactions are summarized in Exhibit 1 attached hereto.

Ainley has stated that, on December 11, 1990, Rob Hill approached him and, as in the past, advised Ainley that he was collecting money for the Clinton gubernatorial campaign. Hill



instructed Ainley to contribute \$800, and to have his wife, Becky, contribute separately an additional \$200.

On December 11, 1990, Ainley wrote an \$800 check on his business account, payable to "CLINTON FOR GOV." He also obtained a \$200 check from his wife, made payable to "Clinton for Governor." Ainley provided the \$1,000 proceeds to Hill.

Ainley has informed us that, on December 11, 1990, he was instructed by Hill to have Naomi Chambliss prepare three PCB expense checks, totalling \$7,000, to be charged as "legal and professional" expenses. Chambliss prepared the expense checks as follows:

<u>Chk No.</u>	<u>Date</u>	<u>Payee</u>	<u>Amount</u>
13850	12/11/90	Herby Branscum, Jr.	\$3,000
13851	12/11/90	Robert Hill, CPA	3,000
13852	12/11/90	Neal Ainley	1,000

Each of the three checks was charged against PCB general ledger account #54750, styled "Legal and Professional" expenses, as instructed by Hill. Ainley deposited the \$1,000 check into his own account, and thereafter reimbursed his wife the \$200 she had contributed in her name. See Exhibit 2. Ainley provided to Branscum and Hill the \$3,000 checks made out to them as legal and professional expenses by Naomi Chambliss.

As illustrated on Exhibit 1, by a series of checks dated between December 9, 1990 and December 13, 1990 (all of which cleared the bank on the same date, December 17, 1990), six members of the Branscum family, James, Colette, Elizabeth, John, Billie Jo and Herby, each made out separate \$500 checks, totalling \$3,000, all payable to Clinton for Governor.

A review of the bank records presently available for Herby Branscum's accounts at PCB discloses that, on or about December 14, 1990, Branscum deposited into his professional account, "Herby Branscum, Jr., P.A.", the \$3,000 check which had been prepared by Naomi Chambliss. As shown on Exhibit 3, on December 13, 1990, Branscum paid out of his professional account \$500 each to his daughter Elizabeth and his son John, and \$1,000 to his son James and daughter-in-law Colette. Thus, each of his children and daughter-in-law who made contributions to Clinton for Governor in December 1990 had identical sums deposited into their respective checking accounts before the contribution checks had even cleared the bank.

We have not to date discovered a similar direct reimbursement of Herby and Billie Jo Branscum of their contributions from his professional account.

Analyzing the money flow corresponding with the Hill family's political contributions is more problematic. We are suspicious that Hill, a former IRS revenue agent, may have had the foresight to cover his tracks a bit as to these transactions. Whether by design or not, it is evident that retracing Hill's money trail is much more difficult than for Branscum.

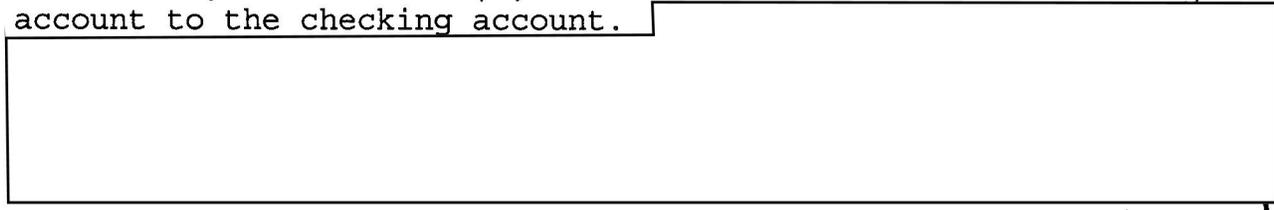
The Hill family's contributions to the Clinton for Governor campaign are summarized in Exhibit 1. Between December 12 and 14, 1990, four members of Rob Hill's family made contributions. Daughter Tracy contributed \$750, wife Shirley contributed \$1,000, mother Elise (Mrs. Woodrow) Hill contributed \$1,000, and brother Harold contributed \$250. Like the Branscum family contributions, the Hills contributed a total of \$3,000 to Clinton for Governor.

The evidence establishing reimbursements to Rob Hill's family members is incomplete. As summarized in Exhibit 4, on December 13, 1990, Rob Hill deposited the \$3,000 PCB expense check into his professional account, styled "Rob Hill, CPA." On that same day, Hill wrote a check on that account, payable to "Cash," in the amount \$2,000.

On December 14, an \$800 check drawn on a separate Rob Hill personal account was deposited into Tracy Hill's account. On December 17, 1990, an additional \$1,000 check from Rob Hill's personal account was deposited into Tracy's account. Presumably, the first check from Hill was to reimburse his daughter for the political contribution. We do not know the reason why he wrote the second check.

On December 11, 1990, Rob Hill's wife, Shirley, contributed a check for \$1,000 to Clinton for Governor. Thereafter, a \$400 check from Rob Hill's CPA account was deposited into Shirley Hill's account on December 14, 1990. As with daughter Tracy, an additional \$1,000 check from Rob Hill's personal account was deposited into Shirley Hill's account on December 17, 1990. Again, the evidence is less clear than in the Ainley and Branscum transactions.

In analyzing the bank records corresponding with the December 12, 1990 campaign contribution from Rob Hill's mother, Elise Hill, we see that \$1,000 was transferred from her savings account to the checking account.



The final political contribution by a Hill family member during this time period involved Harold Hill. As mentioned above, Harold Hill is the proprietor of Perry County Oil, Inc., and is Rob Hill's older brother. According to records in our possession, Harold Hill made a \$250 contribution to Clinton for Governor by a check dated December 14, 1990. On that same day, according to the monthly account statement for Harold Hill's checking account at PCB, a \$250 cash deposit was made into the account.

C. Branscum and Hill's appointments by Clinton

A memorandum prepared by ~~Fonda Lyle~~, Governor Clinton's assistant scheduler, indicates that on December 11, 1990, Bruce Lindsey called her and asked for an appointment for Rob 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.¹¹ Fonda Lyle has no independent recollection of the call from Lindsey.

Hill and Dollar met with Governor Clinton on December 14 at the Governor's Office.

On January 23, 1991, Clinton officially appointed Branscum to the Highway Commission.

On December 31, 1991, Clinton also re-appointed Hill to the State Banking Board. (Clinton had initially appointed Hill to the Banking Board in 1987.)

¹¹ This memorandum contains several layers of hearsay, and may not be admissible for its truth. We are sufficiently concerned about its admissibility that we recommend that, in assessing the strength of this case, the Office assume that the memorandum will not be admitted into evidence.

[REDACTED]

D. Branscum and Hill's financial support for the Clinton presidential exploratory committee

In September 1991, Branscum, Hill, their employees and family members again made campaign donations to the Clinton presidential exploratory committee, and the pattern of contributions and reimbursements in late 1991 resembled that of the previous year's campaign. The Clinton Exploratory Committee received \$3,000 in contributions from each of the Branscum and Hill families and employees. These transactions are summarized in Exhibit 5.

In examining financial records corresponding with the contributions, it appears that the funds with which Hill made reimbursements to his family members can be traced back to an inflated PCB expense check. However, in the case of Branscum, the source of proceeds used to reimburse his family members has not yet been shown to be PCB funds, as discussed below.

1. Branscum contributions/reimbursements

Between September 23 and 26, 1991, Branscum family members made a total of \$2,000 in contributions to the Exploratory Committee, in the following denominations: John (\$250); Billie Jo (\$500); Herby (\$500); James (\$250); Colette (\$250); and Elizabeth (\$250). During that same three-day time frame, Branscum's secretaries, Debbie Halbrook and Paula Franklin, and their respective husbands, each gave checks in their own names for \$250, or \$1,000 in total additional contributions.

As summarized in Exhibit 6, a series of transactions, all occurring on September 24, 1991, reveal both the paper trail associated with reimbursements to Branscum family members and employees, and the difficulty in understanding the precise source of the funds used to make reimbursements.

On September 24, Herby Branscum deposited a total of \$50,145 into his professional account.¹²

On September 26, 1991, Branscum wrote \$500 checks to Halbrook and Franklin from this professional account. That corresponds to the amounts Halbrook and Franklin and their husbands contributed to the Exploratory Committee.

¹² The source of these funds is unknown; deposit items and other backup documentation have been subpoenaed.

Thereafter, Branscum wrote a \$50,000 check on his professional account to himself, and deposited that sum into the joint account he shared with his wife, Billie Jo. The same day, Branscum wrote a \$46,000 check from the joint account payable to the Perry County Bank. The memo portion on the face of that check reads, in what appears to be Branscum's handwriting, "\$1000 Kids Dep, Loan Pymts." Bank records show that on the same day the \$46,000 check cleared, deposits were made into the accounts of Branscum's children in amounts identical to their respective contributions to the Exploratory Committee.

2. Hill contributions/reimbursements

Between September 25 and 26, 1991, members of Rob Hill's family made a total of \$3,000 in contributions to the 1991 Clinton Exploratory Committee. As shown on Exhibit 7, contributions were made by Hill family members in the following denominations: Tracy (\$250); Mrs. Woodrow Hill (\$250); Robert Jr. (\$250)¹³; Kayla (\$250); Rob (\$1,000); and Shirley (\$1,000).

On September 26, 1991, Rob Hill deposited a check for \$250 into the account of his mother, Elise (Mrs. Woodrow) Hill. A few days later, on September 29, Rob Hill deposited \$550 into the accounts of each of his daughters, Tracy and Kayla.

On October 3, 1991, Rob Hill received an expense check in the amount \$3575.55, recorded in PCB's ledger as a legal or other professional expense. The bill submitted by Hill "For Professional Services" which corresponds with the \$3575.55 payment breaks down as follows:

For Services Rendered	\$3,300.00
Reimbursement of Expenses	<u>275.55</u>
	3,575.55

During this time period, Rob Hill received a retainer of \$300 per month to handle PCB's payroll preparation. It appears that Hill simply inflated his normal \$300 retainer amount by \$3,000, the total amount of his family's contributions, to obtain reimbursement by the Bank.

¹³ Although the contribution was recorded in Clinton campaign financial records as from Robert Hill, Jr., the boy was thirteen at the time of the contribution in 1991. Moreover, we have been advised that Hill, Jr. had no accounts at PCB in 1991. We are, therefore, presently unaware of the financial instrument used to make the \$250 contribution in his name.

3. Ainley contribution/reimbursement

Although not close in time to the September 1991 contributions made by the Branscum and Hill families discussed above, Neal Ainley has advised us that, at the request of Hill or Branscum, he made a \$100 contribution to "CLINTON FOR PRES. COMMITTEE" on February 18, 1992. In accordance with his arrangement with Branscum and Hill, Ainley obtained a \$100 reimbursement check on February 20, 1992, which was booked in PCB's ledger as a "miscellaneous" expense. See Exhibit 5.

E. Other Perry County Bank-related contributions

Neal Ainley has advised us that, aside from the contributions made by him and Branscum and Hill to the Clinton campaigns discussed above, there were two instances in which he was instructed to make contributions to candidates for much lower public offices. On October 25, 1990, Ainley was instructed by Branscum or Hill to make a \$100 contribution to Charlie Daniels, who was then a candidate for Arkansas State Land Commissioner. Ainley stated that he made the contribution and obtained a corresponding \$100 reimbursement check from PCB, which was recorded as a "miscellaneous" expense. Branscum made a similar contribution and was similarly reimbursed.

Similarly, on October 28, 1993, Ainley made a \$250 campaign contribution to Jimmie Lou Fisher, who was the Arkansas State Treasurer and up for re-election in 1994. As before, Ainley received a reimbursement check on November 3, 1993.¹⁴

Ainley recalled that he made the Fisher contribution at Branscum's request, and also recalled that he gave the contribution to Fisher at a fundraiser reception attended by Branscum and "by nearly every banker in Arkansas."

THE DEFENSE STRATEGY

Branscum and Hill and their lawyers have not given us a preview of what their defense strategy might be. If we decide to proceed with an indictment, we plan to issue target letters to Branscum and Hill and invite them to testify before the grand jury. (We would expect them to decline this invitation.) We also plan to invite Jack Lassiter and Dan Guthrie to tell us why we should not indict their clients.

Even in the absence of such conversations, however, a few lines of defense are obvious. Branscum and Hill will undoubtedly continue to press their jurisdictional challenge until it is

¹⁴ The documentation for this reimbursement is under subpoena from PCB.

finally resolved. Assuming that the courts hold that we have prosecutorial authority to proceed with these matters, we would expect Branscum and Hill to argue some combination of the following:

① That Branscum and Hill provided legitimate legal and accounting services to the Bank, and the expense checks they received from the Bank were to pay them for those services. We cannot dispute that Branscum and Hill provided legal and accounting services to the Bank. But Branscum and Hill will need convincing evidence to persuade a jury that they just happened to receive expense checks for legitimate services at the same time they and their relatives were making political contributions, and moreover, that the amounts of the expense checks just happened to correspond exactly with the aggregate amounts of the contributions made.

② That Branscum and Hill did not know it was illegal for the Bank to reimburse them for their political contributions. Branscum and Hill will emphasize that Arkansas law permits corporate contributions to state campaigns, and that the Bank ~~could have made the contributions in its own name~~. They may argue further that they believed that the same was true under federal law governing the presidential campaign.

is just defense



This defense has several problems. First, while Arkansas law permits corporate contributions, every contributor is limited to \$1500 for each of the primary and general elections. The aggregate Branscum/Hill/Ainley contributions to Clinton's 1990 campaign exceeded that amount. Second, federal law prohibits corporate contributions in any amount. Third, to be credible, the defense must provide some lawful explanation as to why Branscum and Hill arranged for conduit contributions and tried to hide the Bank's reimbursements. It is not apparent to us what that explanation could be.

IS IT A DEFENSE AS A MATTER OF LAW



③ That Ainley is a convicted criminal, and that his allegations against Branscum and Hill are simply an effort to secure lenient treatment from the OIC and the sentencing court. They will emphasize Ainley's favorable plea agreement, and his protestations of innocence prior to his plea. In response, we would emphasize that Ainley's allegations are supported by contemporaneous documents.

④ That the OIC must have found Ainley incredible, as it never charged anyone other than Ainley with the CTR violations to which he pleaded, even though Ainley admitted that he had conspired with others. Branscum and Hill will emphasize the fact that Ainley did not tell us about the illegal campaign contributions until after he pleaded guilty, and argue that he did so only after realizing that we were not going to pursue his CTR allegations against Branscum, Hill and Bruce Lindsey.

5. That Branscum and Hill, as the owners of PCB, had no incentive to misapply funds from the bank. If they took money from PCB, they were simply taking it from themselves, and they had no reason to do that. We can try to counter this by explaining that the victim here was the FDIC, not the Bank. The FDIC limits the amount of money Branscum and Hill could take out of the Bank in the form of salary and dividends, and that the phoney expense checks were a way around this problem.

6. That if funds were misapplied or false entries made, this was done by Ainley, and that Branscum and Hill were unaware of his wrongdoing. This, Branscum and Hill will say, is consistent with Ainley's history of misconduct at PCB. An "audit" by Kent Dollar after Ainley's departure charged, among other things, that Ainley and his wife improperly charged personal expenses to the bank; that Ainley and his wife submitted false financial statements exaggerating their assets in order to obtain a business loan; that Ainley violated banking laws and PCB policies by holding checks for which the customer (Ainley's friend and business partner, Jeff Glenn) had insufficient funds; and that Ainley violated banking laws and PCB policies by inflating PCB's income statement by including interest from a loan on non-accrual status.

Ainley has a plausible explanation for each of these alleged misdeeds. In addition, Dollar's credibility will be tainted by his participation in Hill's December 14, 1990 meeting with Governor Clinton at which he presented the contributions to the gubernatorial campaign.

We believe that these lines of defense will not be successful.

MATTERS FOR IMMEDIATE CONSIDERATION

A. Should we indict this case?

There are several factors that support indicting Branscum and Hill with respect to the matters discussed herein.

First, we believe that there is strong evidence that Branscum and Hill committed repeated violations of Title 18, and that they have engaged in a pattern of abuse of PCB for their own purposes. While the dollar amounts involved are not huge, they are also not insignificant. After all, if a bank teller had misapplied \$13,000 over 3 years, there is little doubt that he or she would be prosecuted.

Second, Branscum and Hill were the instigators of these crimes. Unlike Ainley, who was following orders in committing both the CTR violations to which he pleaded guilty, as well as

*Civil
resolution*

the false entries discussed in this memorandum, Branscum and Hill were the principal wrongdoers in these crimes.

Third, the offenses discussed herein are not of the same "technical" character as the CTR violations which we have investigated. Even persons who question whether CTR violations that do not otherwise involve criminal activity are proper matters for criminal prosecution are likely to agree that owners and directors of a federally insured financial institution should be prosecuted for misusing the institution's funds and intentionally misleading bank examiners.

Nonetheless, there are some potential criticisms that could be leveled against us for pursuing these matters. While we should not be deterred simply because we might be criticized, we should consider whether these potential criticisms might undermine our other prosecutions, especially our success in the McDougal trial scheduled for January 1996.

~~First~~, the defendants would argue, and many people would probably agree, that the case is clearly not at the core of our mandate. The proper scope of our prosecutorial authority has, of course, been the subject of much debate and litigation here in Arkansas. On the other hand, if the case is to be prosecuted, this Office is the only real candidate to do so. We are confident that both the local U.S. Attorney's Office and the Department of Justice would conclude that they would have a conflict of interest, as the case involves contributions to President Clinton's state and federal campaigns. Accordingly, if our Office does not pursue this matter, no one will.

We nonetheless need to consider whether pursuing this case would give ammunition to those who are attempting to convince potential jurors that we are overstepping our bounds. We would be interested in hearing from the 825 team and others as to whether they believe that our prosecution of this case would have a detrimental effect on their prosecution.

Also relevant to the public perception of this case is that it does not involve a large amount of money. Independent Counsel Smaltz's recent prosecution of James Lake for his involvement in funnelling approximately \$5,000 in illegal campaign contributions to Mike Espy's brother has been the subject of some criticism for this reason, among others.

We are advised, however, that this case would fall within the prosecutorial guidelines of the local U.S. Attorney's Office, which prosecutes all criminal wrongdoing by bank management, regardless of the amount involved. In addition, the Justice Department's guidelines for prosecution of campaign finance fraud provide that, while illegal activity involving less than \$10,000 should normally be charged as a misdemeanor, illegal activity

involving over \$10,000 should be considered for felony prosecution. Federal Prosecution of Election Offenses 115 (6th ed. 1995).

Finally, and perhaps most seriously in light of the other potential criticisms, prosecution of this case might be viewed as an inappropriate effort to damage President Clinton as the election season begins. Fonda Lyle's memorandum linking the December 1990 contributions to Clinton's appointment of Branscum to the State Highway Commission is particularly volatile. We would not suggest, nor do we believe, that the evidence to date indicates that Governor Clinton "sold" the Highway Commission position in exchange for the contributions. But the press and those critical of the President might attempt to characterize our case as implying that there was such a quid pro quo.

We believe that the draft indictment we have prepared largely avoids this problem. It charges that Branscum and Hill engaged in a pattern of wrongdoing that involved contributions to four different campaigns or office holders, including two who are not affiliated with Clinton. Nonetheless, Bill Clinton would inevitably be part of the trial, as we would attempt to introduce evidence of Branscum and Hill's desire to get Clinton to appoint Branscum to the Highway Commission, evidence of Hill's in-person meeting with Clinton on December 14, 1990 to deliver the contributions, and evidence of Clinton's appointment of Branscum in six weeks later.

B. If we decide to proceed, who and what should we charge?

Assuming that a decision is made to indict this matter, we would propose an indictment along the lines of the draft attached hereto as Exhibit 8. Count One of the draft charges Branscum and Hill with engaging a single Section 371 conspiracy with two objects: to impede the FDIC, and to commit violations of Sections 1005 and 656. Counts Two through Four and Eighth and Nine charge Branscum and Hill with substantive violations of Section 1005, and Counts Five through Seven and Ten and Eleven charge them with substantive violations of Section 656.

The **conspiracy** includes the contributions to all four campaigns and office holders; the substantive offenses are limited to the contributions made to the 1990 Clinton for Governor campaign and the 1991 Clinton Exploratory Committee. We deemed the much smaller contributions to Charlie Daniels and Jimmie Lou Fisher to be too small to warrant separate substantive charges.

We have considered whether we can properly charge any other persons in this indictment. We cannot charge Ainley, as we agreed that we would not prosecute him for any criminal conduct

about which he gives us truthful information during the course of his cooperation.

We have also concluded that it would not be appropriate to charge Branscum and Hill's relatives in this indictment. We have not found any evidence that they knew that Branscum and Hill were reimbursing them with PCB funds, or that they knew that Branscum and Hill were making false entries in the Bank's records.¹⁵

We do not recommend charging PCB itself in this indictment. A corporation may be held criminally liable for the criminal act of persons controlling the corporation. See, e.g., United States v. Carter, 311 F.2d 934, 942 (6th Cir. 1963); Minisohn v. United States, 101 F.2d 477 (3d Cir. 1939). But typically corporations are charged when the criminal conduct of the individual defendant was for the benefit of the corporation. Here, by contrast, Branscum and Hill were acting to the institution's detriment. Moreover, even if we could charge the Bank, there appears to be no significant tactical advantage in doing so.

We have also considered whether to include additional charges against Branscum and Hill in the indictment.

We have decided against charging ~~FECA~~ violations for the conduit contributions to the Clinton presidential campaign.¹⁶ Since the statute of limitations for FECA misdemeanor violations is three years from the date of the violation, 2 U.S.C. § 455, the statute has run on any FECA misdemeanor violations relating to the contributions to the Clinton presidential campaign in 1991.

¹⁵ It appears that the relatives did knowingly permit their names to be used for conduit contributions in violation of 2 U.S.C. § 441f. But even if we could get around the three-year statute of limitations for this misdemeanor violation (see discussion in text infra), "[t]he Justice Department has a long-standing practice of not prosecuting persons who are used as conduits to disguise another person's illegal contribution, provided that allowing their names to be used by another is the extent of their participation in the scheme." Federal Prosecution of Election Offenses 117 (6th ed. 1995).

¹⁶ FECA does not apply to contributions to campaigns for state office.

FOIA(b)(3) - Fed. R. Crim. Pro. 6(e) - Grand Jury

At least two courts of appeals have held, however, that FECA's misdemeanor provisions are not the exclusive criminal penalties for conduct based on FECA violations. Those courts have permitted prosecutions of campaign finance violations under Section 371, and the false statements statute, 18 U.S.C. § 1001. See United States v. Curran, 20 F.3d 560, 563-66 (3d Cir. 1994); United States v. Hopkins, 916 F.2d 207 (5th Cir. 1990). // *

The Third Circuit has held that the general five-year statute of limitations, 18 U.S.C. § 3282, and not the three-year FECA statute of limitations, applies to such felony prosecutions. Therefore, we are probably not time-barred from charging Branscum and Hill with a conspiracy to impede the lawful functioning of the Federal Election Commission, or causing the treasurer of the Clinton Exploratory Committee to make a false statement to the FEC. However, we have decided against including such charges.

We believe that the best prosecutorial theory is to make the FDIC the victim of the scheme. Recent case law makes it much more difficult to prove that Branscum and Hill had the requisite intent to impede the function of, or to make false statements to, the FEC. The Third Circuit held in Curran that where the government charges such crimes, it must prove that the defendants knew of the campaign treasurer's duty to submit accurate contribution reports to the FEC, and that the defendants intended to thwart this requirement by causing the treasurer to make a false report. 20 F.3d at 567-68, 571. We lack any clear evidence that Branscum and Hill knew of this campaign obligation, or that they intended to cause the campaign treasurer to file a false report with the FEC. Charging a conspiracy to impede the FDIC does not present this problem, as Branscum and Hill will not be able to contend seriously that they did not know that their Bank was required to maintain accurate records of its expenses. *

We have also considered whether to charge the CTR violations as part of Branscum and Hill's Section 371 conspiracy. We decided against that for several reasons. First, we were not sure the facts would support such a charge, as it is far from clear that the CTR violations were part of the same conspiracy to make false entries regarding reimbursement of the campaign contributions. Second, Ainley's uncorroborated testimony continues to be our only evidence against Branscum and Hill on the CTR offenses. Ainley's testimony with respect to the misapplications and false entries, on the other hand, is wholly corroborated by bank records. Third, inclusion of the CTR offenses might help the defense, as those offenses are more easily claimed to be technical in nature than the misapplications and false entries. Finally, the CTR offenses directly implicate Bruce Lindsey; Branscum and Hill would undoubtedly call him as a defense witness to deny Ainley's allegations. Leaving the CTR offenses out of the case should keep Lindsey out of the case as well. |||

We also considered charging Branscum and Hill with violations of the bank fraud statute, 18 U.S.C. § 1344.¹⁷ We are inclined not to do so, as it seems merely repetitive of the conspiracy and misapplication counts. If the indictment contains numerous counts, it may appear to the jury that we are "piling on."

Finally, the IRS has urged us to consider including a money laundering charge under 18 U.S.C. § 1956(a)(1).¹⁸ While the facts of this case may fall within the literal proscriptions of Section 1956, we are likewise concerned that use of the money laundering statute here may appear to a judge and jury to be overkill. If others believe that a money laundering charge is

How do
THEY know?

¹⁷ Section 1344 provides:

Whoever knowingly executes, or attempt to execute a scheme or artifice --

- (1) to defraud a financial institution; or
- (2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises;

shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

¹⁸ That statute provides:

Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity --

(B) knowing that the transaction is designed in whole or in part --

- (i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity

shall be sentenced to a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

Title 18, U.S.C., Section 1956(c)(7), defines "specified unlawful activity" as including 18 U.S.C. §§ 656 and 1005.

appropriate here, we recommend that we confer with consultants experienced in money laundering prosecutions. yes

C. If we decide to proceed, what should our schedule be?

The schedule for seeking an indictment should be consistent with our need to get all of the relevant evidence, especially with respect to the contributions to the Clinton presidential campaign, which provides one of the best bases for this prosecution. At this point, we do not have the necessary information to trace all of the funds used for those contributions. In the attached charts summarizing the money flow, we have highlighted in red the facts that we cannot yet prove with the evidence we have.

Assuming that we get full compliance with our outstanding subpoenas, we might have the necessary information as early as November 8. However, further subpoenas may be, and probably will be, required. We believe that the end of November is a reasonable target date for an indictment, subject to further developments.

There are potential investigative reasons not to delay proceeding with an indictment beyond the end of the month. If Branscum and Hill decide to cooperate, it would be useful to debrief them before the statute of limitations runs on any potential violation relating to Governor Clinton's appointment of Branscum to the Highway Commission, which could occur, at the earliest, in mid-December. However, we believe that, even if we advised Branscum and Hill that they will be indicted by the end of the month, they will not plead to any charge until after their challenge to our prosecutorial authority is heard and decided.

If we decide to seek an indictment, we need to consider whether to seek the return of an indictment before or after the Eighth Circuit rules on the pending appeals. The Eighth Circuit might consider it bad form for us to indict Branscum and Hill just weeks before argument is to be heard on their challenges to our prosecutorial jurisdiction. Moreover, if we indict the case, and some weeks later the Court of Appeals rules that we do not have jurisdiction, some might contend that we knew that we were out of bounds, but nonetheless returned the indictment to try to damage the President.

However, in our view, we are not obliged to wait for resolution of the jurisdictional issue, and we do not recommend waiting. After all, Judge Reasoner has held that we have jurisdiction, and we believe that we have jurisdiction. Until

[Redacted]

the Eighth Circuit rules differently, we have authority to proceed.

We also note there is precedent for our proceeding with an indictment notwithstanding that a target has challenged our authority. In the months immediately preceding the indictment of the LMS bankruptcy matter, Governor Tucker moved to discharge the grand jury and to quash a grand jury subpoena on the grounds that the OIC lacked prosecutorial authority over that case. Judge Reasoner denied the motions. The same day that Tucker filed his notice of appeal, the grand jury returned the indictment.

Irrespective of whether we wait for the Eighth Circuit to resolve the jurisdictional challenge, we need to give Branscum and Hill notice of their target status and an opportunity to appear before the grand jury. As noted above, at this point we have not issued target letters to Branscum and Hill with regard to the matters discussed herein. If we target the end of November for the possible return of an indictment, we could give ample notice to Branscum and Hill.

KWS

- ① systematic failure of law enforcement in ED Ark
↳ does this matter?
- ② culture of corruption
 - no accountability
 - HOLD FIRM AGST. FED INVESTIGATORS
- ③ 2d check w/ Attorney General
- ④ Reasoner ⇒ not fishing on top of water
↳ relationship

SD: not a crusade appointed to investigate

- cannot justify this indictment on broader context
- has to stand on its own

Brad ⇒ if all this involves is Hill & Branscum, then should not do it

THINK: ① does CTR bit?

② focus on DOJ → talk to DOJ + see what should be done

③ Fisher FOIA RD 56806 (URTS 16302) DocId: 70104944 Page 26

**Summary of 12/90 Gubernatorial Contributions/Reimbursements
(All transactions at Perry County Bank)**

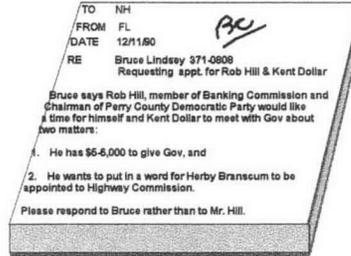
Contributions

12/09/90
Branscum, J.S. \$500.00
 ck# 256, Acct#
Branscum, C. \$500.00
 ck# 257, Acct#
 12/11/90
Branscum, E. \$500.00
 ck# 951, Acct#
 12/12/90
Branscum, J.C. \$500.00
 ck# 1829, Acct#
Branscum, B.J. \$500.00
 ck# 9647, Acct#
 12/13/90
Branscum, H. \$500.00
 ck# 1053, Acct#

12/10/90
Hill, T. \$750.00
 ck# 158, Acct#
 12/11/90
Hill, S. \$1,000.00
 ck# 3678, Acct#
 12/12/90
Hill, W. \$1,000.00
 ck# 6544, Acct#
 12/14/90
Hill, H. \$250.00
 ck# 4330, Acct#

12/11/90
Ainley, N. \$800.00
 ck# 156, Acct#
Ainley, B. \$200.00
 ck# 646, Acct#

12/14/90 Meeting with Clinton



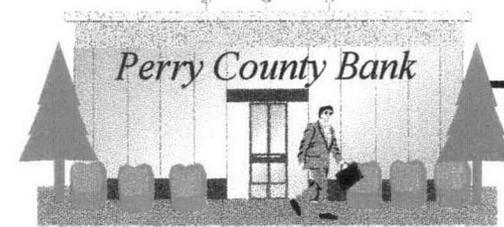
FOIA(b)(4)

Branscum, J.S.	\$500.00
Branscum, C.	500.00
Branscum, E.	500.00
Branscum, J.C.	500.00
Branscum, B.J.	500.00
Branscum, H.	500.00
	<u>\$3,000.00</u>

Hill, T.	\$750.00
Hill, S.	1,000.00
Hill, W.	1,000.00
Hill, H.	250.00
	<u>\$3,000.00</u>

Ainley, N.	\$800.00
Ainley, B.	200.00
	<u>\$1,000.00</u>

**Reimbursements by PCB
to Branscum, Hill and Ainley**



Herby Branscum
 12/11/90 \$3,000.00 PCB
 ck# 13850, Acct#
 Expensed: #54750 Legal
 and Professional

Robert Hill
 12/11/90 \$3,000.00 PCB
 ck# 13851, Acct#
 Expensed: #54750 Legal
 and Professional

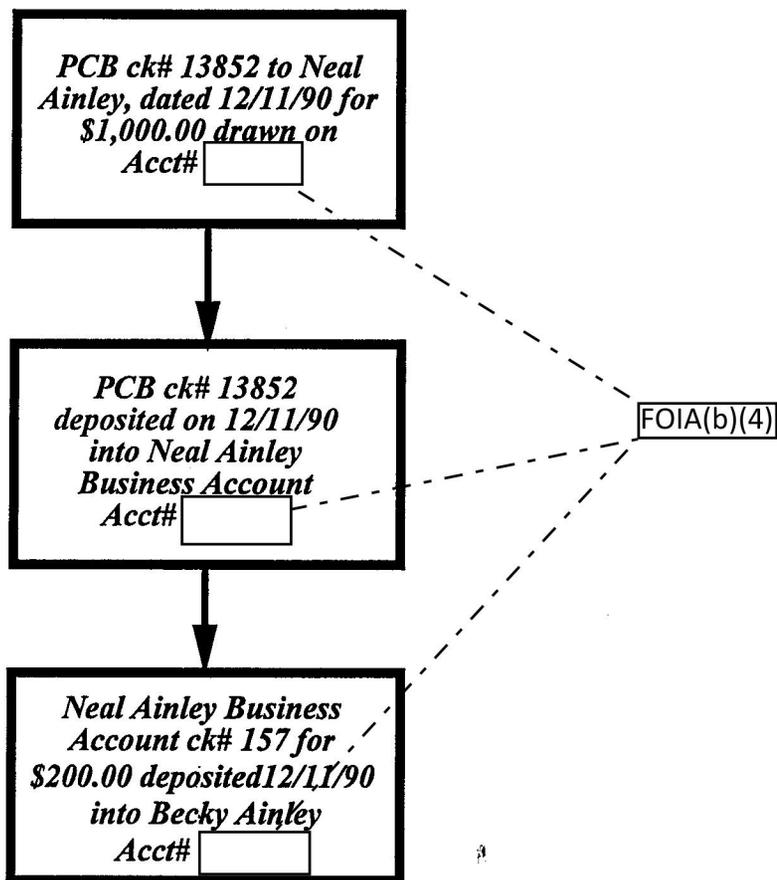
Neal Ainley
 12/11/90 \$1,000.00 PCB
 ck# 13852, Acct#
 Expensed: #54750 Legal
 and Professional

Draft: 11/1/95

Information not yet
known or available
highlighted in red.

**Summary of Neal Ainley's Reimbursement of 12/90
Gubernatorial Conduit Contributions**

(All transactions at Perry County Bank)

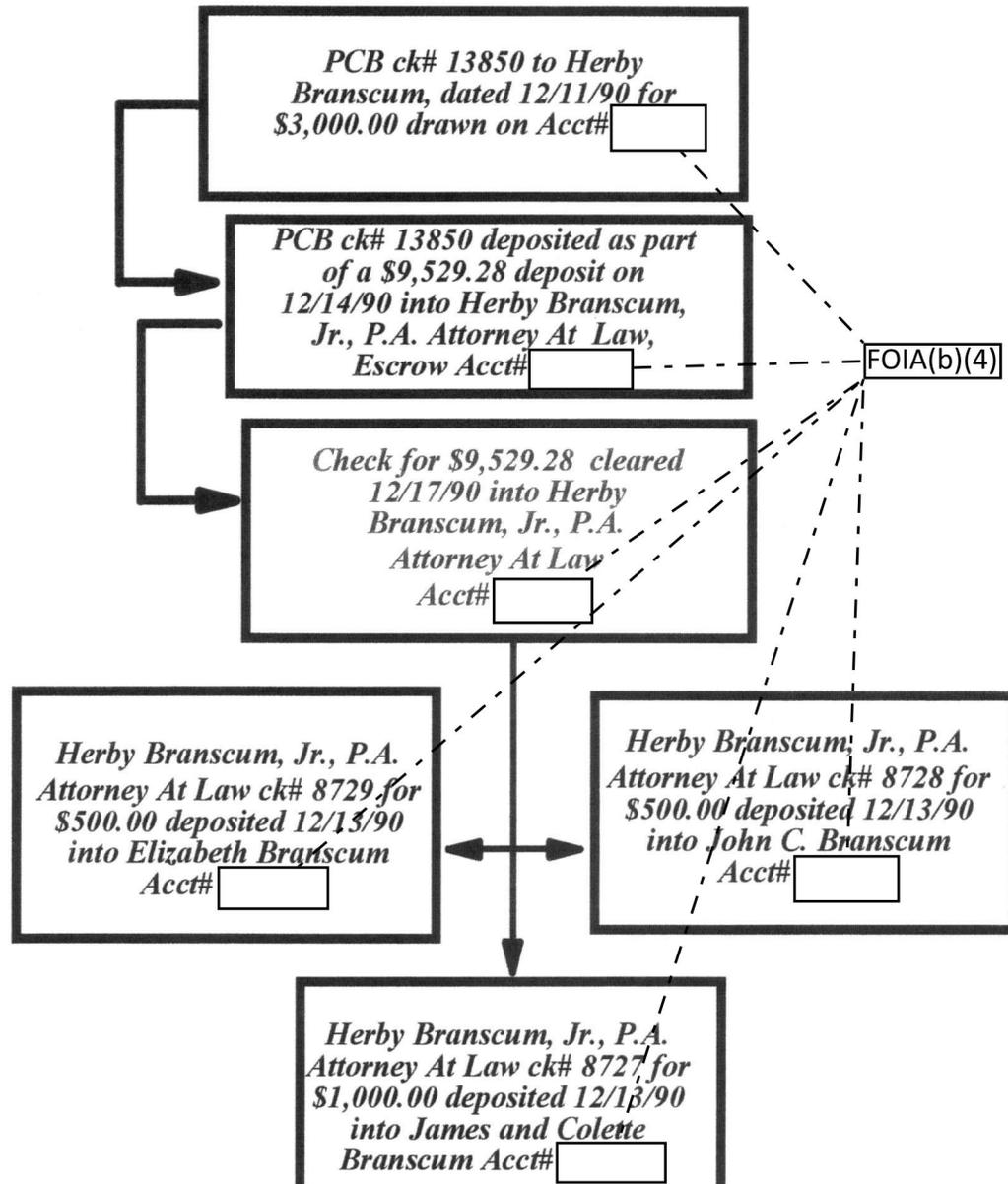


Draft: 11/1/95

Information not yet known or available highlighted in red.

*Summary of Herby Branscum's Reimbursement of 12/90
Gubernatorial Conduit Contributions*

(All transactions at Perry County Bank)



FOIA(b)(4)

Draft: 11/1/95

Information not yet known or available highlighted in red.

Summary of Presidential Contributions/Reimbursements (All transactions at Perry County Bank)

Contributions

9/23-26/91		
Branscum, J.C.	\$250.00	
ck#2117, Acct#		
Branscum, B.J.	\$500.00	
ck#1114, Acct#		
Branscum, H.	\$500.00	
ck#1069, Acct#		
Branscum, J.S.	\$250.00	
ck#573, Acct#		
Branscum, C.	\$250.00	
ck#574, Acct#		
Branscum, E.	\$250.00	
ck#1219, Acct#		
Halbrook, D.	\$250.00	
ck#2020, MSB#		
Halbrook, W.	\$250.00	
ck#2021, MSB#		
Franklin, P.	\$250.00	
ck# unk		
Franklin, G.	\$250.00	
ck# unk		

9/25-26/91		
Hill, T.	\$250.00	
ck#229, Acct#		
Hill, S.	\$1,000.00	
ck# unk, Acct# unk		
Hill, R.	\$1,000.00	
ck# unk, Acct# unk		
Hill, W.	\$250.00	
ck# 7190, Acct#		
Hill, R. Jr.	\$250.00	
ck# unk, Acct# unk		
Hill, K.	\$250.00	
ck#176, Acct#		

2/18/92		
Ainley, N.	\$100.00	
ck#1384, Acct#		

FOIA(b)(4)

Clinton Exploratory Committee September 30, 1991	
<hr/>	
Branscum, J.C.	\$250.00
Branscum, B.J.	500.00
Branscum, H.	500.00
Branscum, J.S.	250.00
Branscum, C.	250.00
Branscum, E.	250.00
Halbrook, D.	250.00
Halbrook, W.	250.00
Franklin, P.	250.00
Franklin, G.	250.00
	<hr/>
	\$3,000.00
<hr/>	
Hill, T.	\$250.00
Hill, S.	1,000.00
Hill, R.	1,000.00
Hill, W.	250.00
Hill, R. Jr.	250.00
Hill, K.	250.00
	<hr/>
	\$3,000.00

Reimbursements by PCB to Branscum, Hill and Ainley



Herby Branscum (unknown)

Robert Hill 10/03/91 \$3,575.55 PCB ck# 14812, Acct#
Expensed: 54750 Legal and Professional

Neal Ainley 2/20/92 \$100.00 PCB ck# 15302, Acct#
Expensed: 53560 Misc

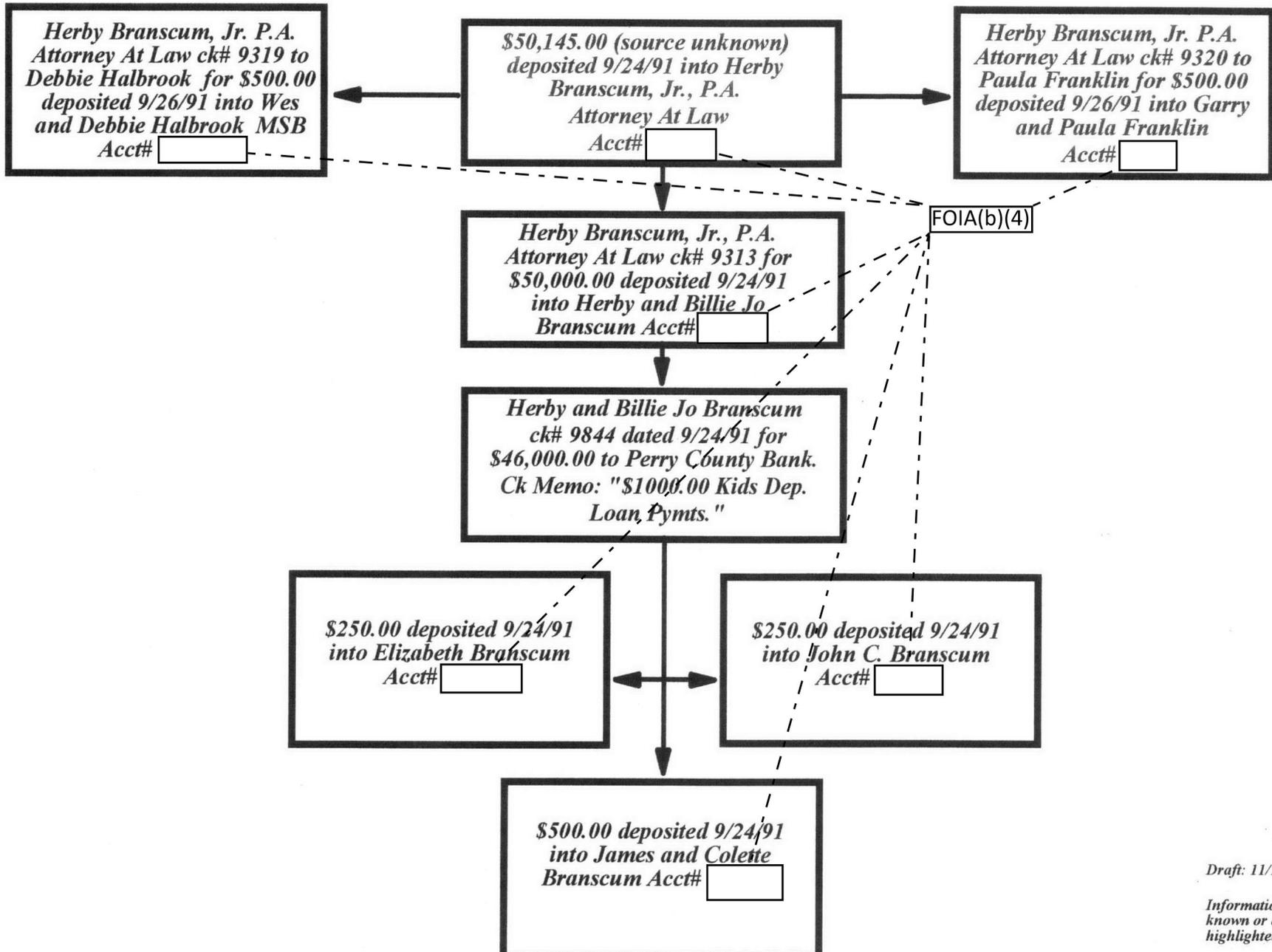
Ainley, N.	\$100.00
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Draft: 11/1/95

Information not yet known or available highlighted in red.

*Summary of Herby Branscum's Reimbursement of 9/91
Presidential Conduit Contributions*

(All transactions at Perry County Bank)

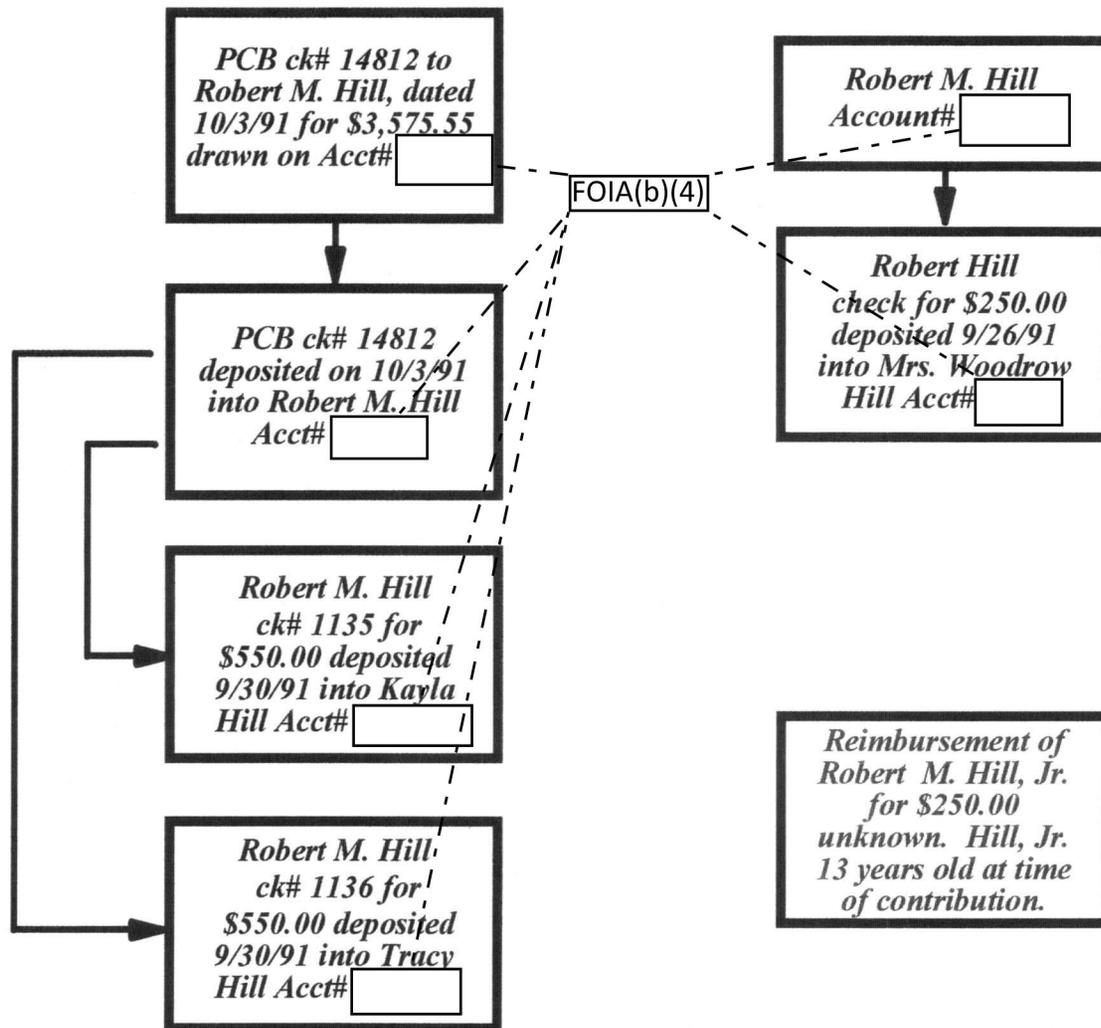


Draft: 11/1/95

Information not yet known or available highlighted in red.

**Summary of Robert Hill's Reimbursement of 9/91
Presidential Conduit Contributions**

(All transactions at Perry County Bank)



assure that the Perry County Bank was operated in a safe and sound manner in conformance with, among other things, the laws and regulations prohibiting self-dealing, theft, embezzlement or misapplication of bank moneys and funds by persons affiliated with the Perry County Bank.

5. Beginning in or about 1985, and continuing until the present, Defendant HERBY BRANSCUM, JR. was a director of the Perry County Bank and a controlling shareholder of Perry County Bankshares, Inc. On or about January 23, 1991, the Governor of Arkansas, William Jefferson Clinton, appointed Defendant HERBY BRANSCUM, JR. a Commissioner of the Arkansas State Highway Commission.

6. Beginning in or about 1985, and continuing until the present, Defendant ROBERT M. HILL was a director of the Perry County Bank and a controlling shareholder of Perry County Bankshares, Inc. On or about December 31, 1991, the Governor of Arkansas, William Jefferson Clinton, re-appointed Defendant ROBERT M. HILL a Commissioner of the Arkansas State Banking Commission.

7. In or about June 1989, Defendants HERBY BRANSCUM, JR. and ROBERT M. HILL hired Neal T. Ainley as the President of the Perry County Bank. Neal Ainley was the President of the Perry County Bank from in or about June 1989 until in or about March 1994.

8. Clinton for Governor was a political campaign organization established to conduct William Jefferson Clinton's

campaign in 1990 for re-election as Governor of the State of Arkansas.

9. Charlie Daniels was a political candidate for election as Arkansas State Land Commissioner in 1990.

10. The Clinton Exploratory Committee was a political campaign organization established to explore the possible candidacy of William Jefferson Clinton for election as President of the United States in 1992.

11. Jimmie Lou Fisher was Arkansas State Treasurer in 1993.

B. The Conspiracy

12. Beginning on or about May 1990, and continuing thereafter through at least October 1993, in the Eastern District of Arkansas, Defendants HERBY BRANSCUM, JR. and ROBERT M. HILL combined, agreed and conspired together (a) to defraud the United States by impairing, impeding, obstructing and defeating the lawful function of the FDIC; and (b) to violate Title 18, United States Code, Sections 656 and 1005.

13. It was an object of the conspiracy that Defendants HERBY BRANSCUM, JR. and ROBERT M. HILL intentionally would obstruct, impair and impede the FDIC in the lawful discharge of its function of examining the books and records of the Perry County Bank to assure that the Perry County Bank was being operated in a safe and sound manner and in conformity with applicable laws and regulations.

14. It was a further object of the conspiracy to

permit Defendants HERBY BRANSCUM, JR. and ROBERT M. HILL to misapply moneys and funds belonging to the Perry County Bank without detection by state or federal banking regulators, and to funnel the misapplied funds through Defendants, members of Defendants' families, and others to various political campaigns, candidates and office holders, including the Clinton for Governor campaign in 1990, the campaign of Charlie Daniels for Arkansas State Land Commissioner in 1990, the Clinton Exploratory Committee in 1991, and Jimmie Lou Fisher, Arkansas State Treasurer, in 1993.

15. It was a further object of the conspiracy that Defendants HERBY BRANSCUM, JR. and ROBERT M. HILL would cause false and misleading entries to be made in the books of the Perry County Bank, as follows:

a. Defendants caused at least \$7,200 in checks made payable to Defendants and others to be recorded in the Perry County Bank's ledgers as payments for convention expenses and for legal and professional services rendered to the Perry County Bank, when in fact, as the Defendants well knew, the payments were not for convention expenses and for legal or professional services rendered to the Perry County Bank, but instead were to reimburse Defendants, members of Defendants' families, and others for political contributions they made to the 1990 Clinton for Governor Campaign at the direction of the Defendants;

b. Defendants caused at least \$200 in checks made payable to Defendant HERBY BRANSCUM and Perry County Bank

President Neal Ainley to be recorded in Perry County Bank's ledgers as payments for miscellaneous business expenses, when in fact, as Defendants well knew, the payments were not for miscellaneous business expenses incurred on behalf of the Perry County Bank, but instead were to reimburse Defendant HERBY BRANSCUM and Perry County Bank President Neal Ainley for political contributions they made to the campaign of Charlie Daniels for Arkansas State Land Commissioner at the direction of the Defendants;

c. Defendants caused \$3,000 of a check in the amount of \$3,575.55 made payable to Defendant ROBERT M. HILL to be recorded in Perry County Bank's ledgers as a payment for legal and professional services rendered to the Perry County Bank, when in fact, as the Defendants well knew, \$3,000 of the \$3,575.55 payment was not for legal and professional services rendered to the Perry County Bank, but instead was to reimburse Defendant ROBERT M. HILL and members of his family for political contributions they made to the Clinton Exploratory Committee at his direction;

d. Defendants caused a check in the amount of \$[insert] made payable to Defendant HERBY BRANSCUM, JR. to be recorded in Perry County Bank's ledgers as a payment for [insert], when in fact, as the Defendants well knew, the payment was not for [insert], but instead was to reimburse Defendant HERBY BRANSCUM, JR., members of his family and certain of his employees for political contributions they made to the Clinton

Exploratory Committee at his direction;

e. Defendants caused a check in the amount of \$250 made payable to Perry County Bank President Neal Ainley to be recorded in Perry County Bank's ledgers as a payment for [insert], when in fact, as the Defendants well knew, the payment was not for [insert], but instead were to reimburse Perry County Bank President Neal Ainley for a political contribution he made to Jimmie Lou Fisher, Arkansas State Treasurer, at the direction of the Defendants.

C. The Means of the Conspiracy

16. The means and methods used to accomplish this conspiracy were as follows:

a. Defendants HERBY BRANSCUM, JR. and ROBERT M. HILL combined and agreed to obtain and misapply at least \$7,200 in moneys and funds belonging to the Perry County Bank by obtaining "expense" checks from Perry County Bank's operating account, falsely reported as payments for convention expenses and for legal and professional services rendered to the Perry County Bank, and thereafter using such proceeds to reimburse Defendants, members of Defendants' families, and others for political contributions made in their names to the 1990 Clinton for Governor Campaign; and

b. Defendants HERBY BRANSCUM, JR. and ROBERT M. HILL combined and agreed to make, and to cause to be made, false entries in the records of the Perry County Bank by:

(1) withdrawing from the Perry County Bank

at least \$200 in the form of an expense check made payable to Perry County Bank President Neal T. Ainley, on or about May 23, 1990, and causing such expenditures to be falsely recorded as for convention expenses;

(2) withdrawing from the Perry County Bank at least \$200 in the form of expense checks made payable to Defendant HERBY BRANSCUM, JR. and Perry County Bank President Neal T. Ainley, on or about October 25, 1990, and causing such expenditures to be falsely recorded as for miscellaneous business expenses;

(3) withdrawing from the Perry County Bank at least \$7,000 in the form of expense checks made payable to Defendants and Perry County Bank President Neal T. Ainley, on or about December 11, 1990, and causing such expenditures to be falsely recorded as for legal or other professional services;

(4) withdrawing from the Perry County Bank at least \$3,000 in the form of an expense check in the amount of \$3575.55 made payable to Defendant ROBERT M. HILL, on or about October 3, 1991, and causing such expenditures to be falsely recorded as for legal or other professional services;

(5) withdrawing from the Perry County Bank at least \$[insert] in the form of an [insert] made payable to Defendant HERBY BRANSCUM, JR., on or about [insert], and causing such expenditures to be falsely recorded as for

[insert]; and

(6) withdrawing from the Perry County Bank at least \$250 in the form of an expense check made payable to Perry County Bank President Neal T. Ainley, on or about [insert], 1993, and causing such expenditure to be falsely recorded as for [insert].

D. Overt Acts

17. In furtherance of the conspiracy and to accomplish its unlawful objectives, Defendants HERBY BRANSCUM, JR. and ROBERT M. HILL committed and caused to be committed various overt acts in the Eastern District of Arkansas, among which were the following:

a. On or about May 23, 1990, a \$200 expense check was drawn on Perry County Bank operating account [redacted] check no. 13179, payable to Perry County Bank President Neal Ainley. [FOIA(b)(4)]

b. On or about December 11, 1990, a \$3,000 expense check was drawn on Perry County Bank operating account [redacted] check no. 13850, payable to Defendant HERBY BRANSCUM JR.

c. On or about December 14, 1990, a \$3,000 expense check was drawn on Perry County Bank operating account [redacted] check no. 13850, payable to Defendant HERBY BRANSCUM JR., was deposited into the account of Herby Branscum, Jr., P.A. Attorney at Law Escrow, at the Perry County Bank, account no.

[redacted]

d. On or about December 11, 1990, a \$3,000

expense check was drawn on Perry County Bank operating account [redacted] check no. 13851, payable to Defendant ROBERT M. HILL.

e. On or about December 13, 1990, a \$3,000 expense check was drawn on Perry County Bank operating account [redacted] check no. 13851, payable to Defendant ROBERT M. HILL, was deposited into the account of Rob Hill, CPA, at the Perry County Bank, account no. [redacted].

f. On or about December 11, 1990, a \$1,000 expense check was drawn on Perry County Bank operating account [redacted] check no. 13851, payable to Perry County Bank President Neal Ainley.

g. On or about December 11, 1990, a \$1,000 expense check drawn on the Perry County Bank account [redacted] check no. 13852, payable to Perry County Bank President Neal Ainley, was deposited into his business account at the Perry County Bank, account no. [redacted].

h. [reimbursement to Branscum -- information not yet available]

i. On or about [insert], [insert] was deposited into the account of Herby Branscum, Jr. P.A. Attorney at Law, at the Perry County Bank, account no. [redacted].

j. On or about October 3, 1991, a \$3,575.55 expense check was drawn on Perry County Bank operating account [redacted] check no. 14812, payable to Defendant ROBERT M. HILL.

k. On or about October 3, 1991, a \$3,575.55 expense check drawn on Perry County Bank operating account [redacted].

check no. 14812, payable to Defendant ROBERT M. HILL, was deposited into the account of Robert M. Hill, at the Perry County Bank, account no. [redacted] - - - - - FOIA(b)(4)

1. On or about [insert], a \$250 expense check was drawn on Perry County Bank operating account [redacted] check no. [insert], payable to Perry County Bank President Neal T. Ainley.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO

18. Paragraphs 1 through 12 of Count One are hereby realleged and incorporated as though set forth in full herein.

19. On or about December 11, 1990, within the Eastern District of Arkansas, Defendants

HERBY BRANSCUM, JR.
and
ROBERT M. HILL,

with intent to deceive the FDIC and the examiners appointed to examine the affairs of the Perry County Bank, knowingly and willfully made and caused to be made a false and misleading entry in the books of the Perry County Bank, in that the Defendants caused Check No. 13850, a \$3,000 check made payable to Defendant HERBY BRANSCUM, JR., to be recorded in Perry County Bank's ledgers as payment for legal and professional services rendered to the Perry County Bank, when in fact, as the Defendants well knew, the payment was not for legal or professional services rendered to the Perry County Bank, but instead to reimburse Defendant HERBY BRANSCUM, JR. and members of his family for political contributions they made to the 1990 Clinton for Governor Campaign at the direction of Defendant HERBY BRANSCUM, JR.

All in violation of Title 18, United States Code, Section 1005 and Title 18, United States Code, Title 2.

COUNT THREE

20. Paragraphs 1 through 12 of Count One are hereby realleged and incorporated as though set forth in full herein.

21. On or about December 11, 1990, within the Eastern District of Arkansas, Defendants

HERBY BRANSCUM, JR.
and
ROBERT M. HILL,

with intent to deceive the FDIC and the examiners appointed to examine the affairs of the Perry County Bank, knowingly and willfully made and caused to be made a false and misleading entry in the books of the Perry County Bank, in that the Defendants caused Check No. 13851, a \$3,000 check made payable to Defendant ROBERT M. HILL, to be recorded in Perry County Bank's ledgers as payment for legal and professional services rendered to the Perry County Bank, when in fact, as the Defendants well knew, the payment was not for legal or professional services rendered to the Perry County Bank, but instead to reimburse members of the family of Defendant ROBERT M. HILL for political contributions they made to the 1990 Clinton for Governor Campaign at the direction of Defendant ROBERT M. HILL.

All in violation of Title 18, United States Code, Section 1005 and Title 18, United States Code, Title 2.

COUNT FOUR

22. Paragraphs 1 through 12 of Count One are hereby realleged and incorporated as though set forth in full herein.

23. On or about December 11, 1990, within the Eastern District of Arkansas, Defendants

HERBY BRANSCUM, JR.
and
ROBERT M. HILL,

with intent to deceive the FDIC and the examiners appointed to examine the affairs of the Perry County Bank, knowingly and willfully made and caused to be made a false and misleading entry in the books of the Perry County Bank, in that the Defendants caused Check No. 13852, a \$1,000 check made payable to Neal T. Ainley, to be recorded in Perry County Bank's ledgers as payment for legal and professional services rendered to the Perry County Bank, when in fact, as the Defendants well knew, the payment was not for legal or professional services rendered to the Perry County Bank, but instead to reimburse Neal Ainley and his wife for political contributions they made to the 1990 Clinton for Governor Campaign at the direction of Defendants HERBY BRANSCUM, JR. and ROBERT M. HILL.

All in violation of Title 18, United States Code, Section 1005 and Title 18, United States Code, Title 2.

COUNT FIVE

24. Paragraphs 1 through 12 of Count One are hereby realleged and incorporated as though set forth in full herein.

25. On or about December 11, 1990, within the Eastern District of Arkansas, Defendants

HERBY BRANSCUM, JR.
and
ROBERT M. HILL

each connected in a capacity with the Perry County Bank, a financial institution the accounts of which were insured by the FDIC, with intent to injure and defraud the Perry County Bank, knowingly and wilfully misapplied and caused to be misapplied moneys and funds in excess of \$100 belonging to the Perry County Bank, in that the Defendants caused the issuance of Check No. 13850, drawn on the Perry County Bank's legal and professional expenses account, in the amount \$3,000, payable to Defendant HERBY BRANSCUM, JR., knowing full well that the \$3,000 proceeds were not in payment for legal or other professional services rendered to the Perry County Bank, but rather to provide funds for Defendant HERBY BRANSCUM, JR. to reimburse himself, and to pass on reimbursement to members of his family, for political contributions they made to the 1990 Clinton for Governor Campaign at the direction of Defendant HERBY BRANSCUM, JR.

All in violation of Title 18, United States Code, Section 656 and Title 18, United States Code, Section 2.

COUNT SIX

26. Paragraphs 1 through 12 of Count One are hereby realleged and incorporated as though set forth in full herein.

27. On or about December 11, 1990, within the Eastern District of Arkansas, Defendants

HERBY BRANSCUM, JR.
and
ROBERT M. HILL

each connected in a capacity with the Perry County Bank, a financial institution the accounts of which were insured by the FDIC, with intent to injure and defraud the Perry County Bank, knowingly and wilfully misapplied and caused to be misapplied moneys and funds in excess of \$100 belonging to the Perry County Bank, in that the Defendants caused the issuance of Check No. 13851, drawn on the Perry County Bank's legal and professional expenses account, in the amount \$3,000, payable to Defendant ROBERT M. HILL, knowing full well that the \$3,000 proceeds were not in payment for legal or other professional services rendered to the Perry County Bank, but rather to provide funds for Defendant ROBERT M. HILL to reimburse members of his family for political contributions they made to the 1990 Clinton for Governor Campaign at the direction of Defendant ROBERT M. HILL.

All in violation of Title 18, United States Code, Section 656 and Title 18, United States Code, Section 2.

COUNT SEVEN

28. Paragraphs 1 through 12 of Count One are hereby realleged and incorporated as though set forth in full herein.

29. On or about December 11, 1990, within the Eastern District of Arkansas, Defendants

HERBY BRANSCUM, JR.
and
ROBERT M. HILL

each connected in a capacity with the Perry County Bank, a financial institution the accounts of which were insured by the FDIC, with intent to injure and defraud the Perry County Bank, knowingly and wilfully misapplied and caused to be misapplied moneys and funds in excess of \$100 belonging to the Perry County Bank, in that the Defendants caused the issuance of Check No. 13852, drawn on the Perry County Bank's legal and professional expenses account, in the amount \$1,000, payable to Neal T. Ainley, knowing full well that the \$1,000 proceeds were not in payment for legal or other professional services rendered to the Perry County Bank, but rather to reimburse Perry County Bank President Neal Ainley and his wife for political contributions they made to the 1990 Clinton for Governor Campaign at the direction of Defendants HERBY BRANSCUM, JR. and ROBERT M. HILL.

All in violation of Title 18, United States Code, Section 656 and Title 18, United States Code, Section 2.

COUNT EIGHT

30. Paragraphs 1 through 12 of Count One are hereby realleged and incorporated as though set forth in full herein.

31. On or about [insert], within the Eastern District of Arkansas, Defendants

HERBY BRANSCUM, JR.
and
ROBERT M. HILL,

with intent to deceive the FDIC and the examiners appointed to examine the affairs of the Perry County Bank, knowingly and willfully made and caused to be made a false and misleading entry in the books of the Perry County Bank, in that the Defendants caused [insert reimbursement -- information not yet available] but instead to reimburse Defendant HERBY BRANSCUM, JR., members of his family, and certain of his employees for political contributions they made to the Clinton Exploratory Committee at the direction of Defendant HERBY BRANSCUM, JR. in September 1991.

All in violation of Title 18, United States Code, Section 1005 and Title 18, United States Code, Title 2.

COUNT NINE

32. Paragraphs 1 through 12 of Count One are hereby realleged and incorporated as though set forth in full herein.

33. On or about October 3, 1991, within the Eastern District of Arkansas, Defendants

HERBY BRANSCUM, JR.
and
ROBERT M. HILL,

with intent to deceive the FDIC and the examiners appointed to examine the affairs of the Perry County Bank, knowingly and willfully made and caused to be made a false and misleading entry in the books of the Perry County Bank, in that the Defendants caused Check No. 14812, a \$3,000 check made payable to Defendant ROBERT M. HILL, to be recorded in Perry County Bank's ledgers as payment for legal and professional services rendered to the Perry County Bank, when in fact, as the Defendants well knew, the payment was not for legal or professional services rendered to the Perry County Bank, but instead to reimburse Defendant ROBERT M. HILL and members of his family for political contributions they made to the Clinton Exploratory Committee at the direction of Defendant ROBERT M. HILL in September 1991.

All in violation of Title 18, United States Code, Section 1005 and Title 18, United States Code, Title 2.

COUNT TEN

34. Paragraphs 1 through 12 of Count One are hereby realleged and incorporated as though set forth in full herein.

35. On or about [insert], within the Eastern District of Arkansas, Defendants

HERBY BRANSCUM, JR.
and
ROBERT M. HILL

each connected in a capacity with the Perry County Bank, a financial institution the accounts of which were insured by the FDIC, with intent to injure and defraud the Perry County Bank, knowingly and wilfully misapplied and caused to be misapplied moneys and funds in excess of \$100 belonging to the Perry County Bank, in that the Defendants caused [insert reimbursement to Branscum -- information not yet available] but rather to provide funds for Defendant HERBY BRANSCUM, JR. to reimburse himself, and to pass on reimbursement to members of his family and certain of his employees, for political contributions they made to Clinton Exploratory Committee at the direction of Defendant HERBY BRANSCUM, JR. in September 1991.

All in violation of Title 18, United States Code, Section 656 and Title 18, United States Code, Section 2.

COUNT ELEVEN

36. Paragraphs 1 through 12 of Count One are hereby realleged and incorporated as though set forth in full herein.

37. On or about October 3, 1991, within the Eastern District of Arkansas, Defendants

HERBY BRANSCUM, JR.
and
ROBERT M. HILL

each connected in a capacity with the Perry County Bank, a financial institution the accounts of which were insured by the FDIC, with intent to injure and defraud the Perry County Bank, knowingly and wilfully misapplied and caused to be misapplied moneys and funds in excess of \$100 belonging to the Perry County Bank, in that the Defendants caused the issuance of Check No. 14812, drawn on the Perry County Bank's legal and professional expenses account, in the amount \$3,000, payable to Defendant ROBERT M. HILL, knowing full well that the \$3,000 proceeds were not in payment for legal or other professional services rendered to the Perry County Bank, but rather to provide funds for Defendant ROBERT M. HILL to reimburse himself, and to pass on reimbursement to members of his family, for political contributions they made to the Clinton Exploratory Committee at the direction of Defendant ROBERT M. HILL in September 1991.

All in violation of Title 18, United States Code,
Section 656 and Title 18, United States Code, Section 2.

A TRUE BILL.

FOREMAN

KENNETH W. STARR
INDEPENDENT COUNSEL

Dated: November __, 1995