

**INVESTIGATION OF WHITEWATER
DEVELOPMENT CORPORATION
AND RELATED MATTERS**

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DEPOSITIONS

BEFORE THE

**SPECIAL COMMITTEE TO INVESTIGATE
WHITEWATER DEVELOPMENT CORPORATION
AND RELATED MATTERS**

ADMINISTERED BY THE

**COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE
ONE HUNDRED FOURTH CONGRESS**

FIRST SESSION

VOLUME IX

ON

**WHETHER ADMINISTRATION OFFICIALS ENGAGED
IN IMPROPER CONDUCT WITH RESPECT TO
INVESTIGATIONS AND INQUIRIES RELATING TO
WHITEWATER DEVELOPMENT CORPORATION, CAPITAL
MANAGEMENT SERVICES, MADISON GUARANTY
SAVINGS & LOAN, AND RELATED MATTERS**

OCTOBER 20, 23, 24, 25, 26, 27, AND 30, 1995

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**DEPOSITION OF CHARLES A. BANKS
IN RE: S. RES. 120**

MONDAY, OCTOBER 23, 1995

**U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.**

Deposition of CHARLES A. BANKS, called for examination pursuant to notice of deposition, at 10:35 a.m. in Room 124 of the Dirksen Senate Office Building, before JOANNE LIVERANI, a Notary Public within and for the District of Columbia, when were present:

**LOUIS J. GICALE, Esq.
Majority Deputy Special Counsel
RICHARD BEN-VENISTE, Esq.
Minority Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.**

**CHARLES J. SGRO, Esq.
Special Assistant to the Deputy Attorney General
U.S. Department of Justice
Tenth Street & Constitution Avenue, NW
Washington, DC 20530
On behalf of the Deponent.**

ALSO PRESENT: TIMOTHY P. MITCHELL

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PROCEEDINGS

Whereupon,

CHARLES A. BANKS

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. GICALE:

Q Could you please state your name for the record.

A Charles A. Banks.

Q And your present business address?

A 425 West Capitol, Suite 1590, Little Rock 72201.

Q And what is your business phone number?

A 501-375-8700.

Q And what is your present position?

A I am an attorney.

Q Are you in practice with anyone else?

A Yes. Mac Dodson, M-a-c, D-o-d-s-o-n; Mike Spades, S-p-a-d-e-s; and Mark Carter.

4

Q And are you engaged in the general practice of law, or are you specialized in criminal law, or what is your specialty?

A I probably do primarily, 60 to 70 percent, civil litigation; I do criminal defense in the state and federal courts, and civil litigation in the state and federal courts.

Q Now, where were you employed between August 1992 and March of 1993?

A August of '92, March of '93, U.S. Attorney's Office.

Q You were the U.S. Attorney where?

A Eastern District of Arkansas, Little Rock.

Q How long were you the U.S. Attorney?

A I became interim U.S. Attorney in November of 1987 and was confirmed by the Senate in early February, I believe, of '88 and served continually until my last date of service, which was February of whatever -- 27th, 28th, last day of February of 1993. And I had given notice to my senator, and I think to the department, too, in early January that that would be my effective date of termination.

1 Q And it was from there that you went into
2 practice with Mr. Dodson and the other individuals
3 you named?

4 A Right, right. I had been in practice, in
5 private practice for a long time before I became U.S.
6 Attorney.

7 Q With those same individuals?

8 A No.

9 Q With which law firm?

10 A The law firm was Banks & Ritchey,
11 R-i-t-c-h-e-y, which is located in my home county of
12 Mississippi County, Arkansas, which is extreme east
13 Arkansas. I practiced in a primarily four-,
14 five-county area, for about 14 years before I became
15 U.S. Attorney.

16 Q Now, Mr. Banks, are you aware of -- let me
17 back up for a second. Could you strike that
18 question.

19 Now this deposition, Mr. Banks, is being
20 conducted pursuant to Senate Resolution 120. The
21 resolution establishes a special committee
22 administered by the Banking Committee to conduct an

1 investigation involving Whitewater Development
2 Corporation, Madison Guaranty Savings & Loan
3 Association, Capital Management Services, Inc., the
4 Arkansas Development Finance Authority and/or related
5 matters.

6 Section (1)(b)(2)(c) of Resolution 120
7 authorizes investigation and public hearings into
8 whether the Department of Justice has improperly
9 handled RTC criminal referrals relating to Madison
10 Guaranty Savings & Loan Association, or Whitewater
11 Development Corporation. This will be the focus of
12 today's deposition.

13 You were requested to testify on October
14 5, 1995, your deposition is in advance of public
15 hearings scheduled to take place in November. It is
16 possible you may testify at those public hearings.

17 We will ask you a series of questions. You
18 are testifying under oath. If you don't understand a
19 question, let us know and we will rephrase it.

20 The stenographer will prepare a record of
21 questions and answers. The deposition will be
22 treated as committee confidential until the

1 commencement of the hearings. Prior to the hearings,
 2 you will receive a letter from the committee telling
 3 you that you may come to the Senate to review the
 4 transcript of your deposition and make notes of any
 5 corrections for transcription on an errata sheet. If
 6 you are called to testify at a public hearing, you
 7 will be permitted to have a copy of your deposition
 8 transcripts four days in advance of your testimony.
 9 You may be represented by counsel.

10 Objections to the form of the questions
 11 will be noted for the record. Counsel may object on
 12 grounds of privilege or relevance. The committee
 13 chairman may rule on objections where the witness
 14 refuses to answer a question.

15 Do you understand?

16 A No, I don't understand all of that. I want
 17 to make a point of inquiry. If I am called back to
 18 appear before the Senate, I want to be sure I
 19 understand that you are saying that the only way I
 20 can receive a copy before I testify is to come to
 21 Washington? I won't receive a copy of this, in order
 22 to refresh my memory, if I am called to testify?

1 MR. GICALE: That's the present plan. Now
 2 I know something else is worked out with respect to
 3 Department of Justice. Off the record.

4 (Discussion off the record.)

5 MR. GICALE: Mr. Banks, you have indicated
 6 that you would like the opportunity review the
 7 transcript without having to come to Washington to do
 8 that, if you were required to testify before the
 9 Senate committee. And I have indicated to you that I
 10 have had a discussion with Mr. Ben-Veniste, and I
 11 would inquire into the possibility of doing that,
 12 with Mr. Chertoff, counsel to the Majority.

13 MR. BEN-VENISTE: It's been done before.
 14 Mr. Gicale was not on the staff at the time of the
 15 last hearings. As a regular course of our doing
 16 business, we provided to out-of-town witnesses copies
 17 of their deposition transcript on the representation
 18 that those witnesses would not make copies available
 19 to any other parties. And I am confident that such
 20 an accommodation would be appropriate in your case.

21 THE WITNESS: Certainly. I would not make
 22 it available to any other party.

1 MR. GICALE: I am not in a position to
2 offer it. I have to check with Mr. Chertoff to see
3 if that's appropriate. I am not disputing
4 Mr. Ben-Veniste's position on it.

5 THE WITNESS: Sure, I understand.

6 MR. GICALE: Any other questions at this
7 point?

8 THE WITNESS: No.

9 BY MR. GICALE:

10 Q Are you aware, Mr. Banks, of the
11 committee's document request to the Department of
12 Justice dated August 25, 1995?

13 A No.

14 Q Has the Department of Justice asked you to
15 search for -- did they notify you that there was a
16 request for documents?

17 A No.

18 Q Did you search for any responsive
19 documents, any documents with respect to your
20 deposition here today, and bring any --

21 A Just the letters. I got my letters out
22 that I wrote, the letter of January 27, and the

10

1 letter of October the 16th, and read those.

2 Q Now, where did you obtain those?

3 A I read them in his office this morning,
4 Mr. Sgro, as well as I read them before because I
5 gave a statement to the FBI and I gave them copies,
6 or they gave me copies of the letters, so --

7 Q Are the letters the only items you reviewed
8 before your testimony this morning?

9 A The letters, and the work notes. I made
10 some work notes when I did my analysis of the first
11 referral, and I looked at that before I came up.

12 MR. GICALE: Mr. Sgro, do you have copies
13 of those work notes, because we have not seen them?

14 MR. SGRO: I don't have copies of the work
15 notes, either. Can we go off the record for a
16 second.

17 MR. GICALE: Yes.

18 (Discussion off the record.)

19 BY MR. GICALE:

20 Q Did you keep a copy of your work notes?

21 A Sure, I have a copy of everything that I
22 gave the FBI, which was a copy of the referral, a

1 copy of my letters, and a copy of my -- I call them
2 rough notes, just notes that I sat there and made to
3 myself when I was going through the analysis of the
4 referral.

5 Q And you have kept copies of these documents
6 in your personal possession?

7 A Yes, yes.

8 Q Do you have them here today?

9 A No.

10 MR. SGRO: I would say if we get a request,
11 we will be more than happy to provide those to the
12 committee, upon receiving them from Mr. Banks.

13 MR. BEN-VENISTE: I don't understand why
14 they weren't turned over by independent counsel.

15 MR. SGRO: I don't know the answer to that.

16 THE WITNESS: I don't know the answer to
17 that, either.

18 MR. BEN-VENISTE: Do you know, Lou?

19 MR. GICALE: I don't.

20 BY MR. GICALE:

21 Q So, what you have back in Arkansas, I take
22 it, are copies of notes, the referral. Do you have a

1 copy of the criminal referral?

2 A Right.

3 Q And the two letters, the October --

4 A Actually, I think it was three letters,
5 it's a letter of October the 6th; October the 16th,
6 and January the 27th of '93. Those are the only
7 letters I wrote when I was U.S. Attorney that
8 pertains to that referral.

9 Q When you say October 6, who was that letter
10 to?

11 A That was Mac Dodson's letter.

12 THE WITNESS: May I explain this to you so
13 you will understand it better?

14 MR. BEN-VENISTE: Our problem is we have
15 made a request to the Justice Department which then
16 turns the request over to independent counsel because
17 apparently Justice does not have a copy of this.

18 MR. SGRO: We don't have a copy of this.

19 MR. BEN-VENISTE: I don't understand why
20 independent counsel hasn't turned this over to us by
21 this time. Do you understand this, Lou?

22 MR. GICALE: No, I don't. We received the

1 10/16 letter and the --

2 MR. SGRO: We had those two letters and
3 produced them.

4 MR. GICALE: We did not receive Mr. Banks's
5 notes and we were not aware he had a copy of the
6 referral.

7 BY MR. GICALE:

8 Q Just a couple of questions with regard to
9 these documents. You took these with you when you
10 left the office; is that correct?

11 A Yes, I took -- I had three or four boxes
12 because I tried lawsuits when I was a U.S. Attorney.
13 I wasn't just an administrator. And when I took all
14 my boxes out, one of the files in my boxes that I
15 stored in my attic after I went back to private
16 practice pertained to this referral, or I will call
17 it Whitewater. And when the FBI asked me about it, I
18 said I don't know what I've got, I'll have to go look
19 for it.

20 So I did, I went and looked and pulled it
21 out and that's what I had in there. And I gave them
22 a copy, they said would you please produce it for

1 us. I said certainly. I gave them the originals of
2 everything I had in my file, including, I think,
3 there was a newspaper article in there, dated like
4 March, in The Arkansas Democrat. And I made a copy
5 of everything that I handed over to the FBI.

6 Q Let me ask you this. Can you make copies
7 of this information available to Mr. Sgro and ask him
8 to turn it over to us?

9 A Sure. I don't have an attorney-client
10 relationship with this gentleman. I mean, I am
11 here -- I am not.

12 Q I understand.

13 MR. BEN-VENISTE: Why don't you elaborate
14 on that point because the record should reflect, as
15 has been the case with other witnesses who were
16 former employees of the Department of Justice, that
17 Mr. Sgro is here representing the Department of
18 Justice, if that is the case, and not you
19 personally.

20 THE WITNESS: Well, I don't really
21 understand, other than I met him for the first time
22 today. I talked to him on the phone this week for

1 the first time. And Mr. Fishman, I believe is his
2 name, called me, he was the first person to call me,
3 and indicated that the department would be present.
4 And I indicated that's fine, I have no problem with
5 that, I guess under your prior employee rule. But as
6 far as me being here, bringing personal counsel to
7 represent me, I do not. But if, in the former
8 employee relationship, I have that attorney-client,
9 then I guess I do.

10 BY MR. GICALE: In the alternative --

11 MR. BEN-VENISTE: Saves you the trouble of
12 making two copies, for the majority and minority, so
13 Mr. Sgro can take care of that.

14 MR. GICALE: And I think it also would be
15 helpful if the Department of Justice had copies.

16 MR. SGRO: I think what Mr. Banks said he
17 would not have a problem providing copies of the
18 document which we will in turn produce to the
19 committee.

20 THE WITNESS: I am assuming it is
21 permissible for me to give them. I gave them to the
22 special prosecutor, and if I am not violating the

1 procedure rules, I have no problem giving this to
2 you.

3 MR. SGRO: I want to put on the record that
4 the Department of Justice would want to notify the
5 Office of Independent Counsel that these documents
6 were provided to it, and that the department intends
7 to produce it to the committee, as has been the
8 practice throughout this document production.

9 MR. BEN-VENISTE: As long as it doesn't
10 delay any further production --

11 MR. SGRO: I think the documents could be
12 faxed.

13 MR. GICALE: Or at least overnight mail.

14 THE WITNESS: I can Fed Ex or fax them.

15 MR. SGRO: I will represent to the
16 committee the day the department receives them, they
17 will be provided to the committee, assuming the
18 Office of Independent Counsel has no objection.

19 BY MR. GICALE:

20 Q Now, the list that you have just recited,
21 are those all the documents that you have, you would
22 have --

1 A Yes.

2 Q -- with respect to this matter at that
3 point in time?

4 A Yes.

5 Q And with respect to what you reviewed this
6 morning before you testified, that was just limited
7 to -- that was limited to the October 16 and the
8 January 27 letters --

9 A Right. The last time I read or even tried
10 to look at the referral was back whenever I made my
11 statement to the FBI, which was in, I guess, the
12 summer or spring. I think it may have been a long
13 time ago.

14 MR. SGRO: I think it is important to note
15 when the reference to the FBI is made, it is made in
16 conjunction with the Office of Independent Counsel.
17 I think it is significant.

18 THE WITNESS: Yes.

19 BY MR. GICALE:

20 Q But with respect to this morning's review
21 at Justice, all you reviewed was two letters?

22 A Yes, two letters. One -- was the Dodson

1 letter in there?

2 MR. SGRO: No.

3 THE WITNESS: Sorry, just two then.

4 BY MR. GICALE:

5 Q Just two?

6 A Right.

7 Q Did you speak to any witnesses who may have
8 come to testify before this committee or who you know
9 who have come to testify before this committee, or
10 who you know are to testify in front of this
11 committee?

12 A Two. I talked to my partner, Mac Dodson.

13 Q When did you speak with him?

14 A I guess day before yesterday. He came up
15 last week and I got finished with a trial so it had
16 to have been -- what is today? Within the past two
17 or three days.

18 Q Did you talk to him about the substance of
19 your testimony or the substance of his testimony?

20 A We didn't talk more than I would say a
21 minute and a half. I asked him, you know, just
22 generally what went on, he said it is about the same

1 thing, and he was there for two -- a couple of hours,
 2 or words to that effect, and that it is the same
 3 thing we have already testified to. We didn't
 4 discuss dates, letters, review anything or prepare
 5 any substance. Just a casual --

6 Q Did he tell you the questions that were
 7 asked?

8 A Oh, no.

9 Q Did he tell you the answers he gave?

10 A No.

11 Q Did you tell him what you expected to
 12 testify to?

13 A No.

14 Q Who else did you talk to, that you know who
 15 has testified or is expected --

16 A Last week I called Paula Casey, and the
 17 substance of that conversation, was are you going to
 18 have to go up and give a deposition, and she said
 19 yes. I said anybody else going to have to go and she
 20 said yes, there are several of us. I said do you
 21 think there is any way we can get them to come down
 22 here and take all the depositions in Arkansas because

 20

1 it is a burden on me to go up there.

2 She said I don't see it, I have already had
 3 to give one. And that's about it. In fact, that's
 4 not about it. That is it.

5 So you will understand this: I have made a
 6 conscious rule that I would not discuss, except with
 7 my wife, way back at the beginning of this, the facts
 8 and circumstances or substance of my testimony with
 9 anybody. Not the press. I mean, I have had numerous
 10 inquiries to discuss it. I have refused across the
 11 board and still do.

12 Q And again that's all, did you not talk
 13 substance with Paula Casey?

14 A No, no. Never have talked substance with
 15 her since the beginning.

16 Q Did you talk with any other witnesses who
 17 have come to testify before this committee, or who
 18 you know expect to testify before the committee?

19 A No, I don't even know, other than you
 20 mentioned that Michael Johnson was up here. This
 21 gentleman mentioned Michael Johnson was here this
 22 afternoon. Other than that, I didn't know the

1 identity of anybody else that was testifying except
2 Mac Dodson and Paula.

3 Q Now, when did you first hear of an RTC
4 criminal referral referring to Madison Guaranty or
5 Whitewater Development Corporation?

6 A Well, of course, we had already prosecuted
7 McDougal, in I think '89 or '90. And my first
8 recollection of hearing anything about it was in -- I
9 want to say it was the second week in September of
10 '92, Mac came in and said we've gotten a referral
11 and --

12 Q Now, "Mac" is Mac Dodson?

13 A Yes, I'm sorry. Mr. Dodson was my first
14 assistant United States Attorney. And he came in and
15 indicated that we have a referral that's come in from
16 RTC. I said so what? He said, well, this referral,
17 or words to the effect, it is another referral on
18 McDougal. And he also said it lists Bill and Hillary
19 Clinton as witnesses. And I said, well, let's get it
20 in here and let's take a look, or words to that
21 effect.

22 Q I will show you what's marked as Bates

22

1 006695, which I believe is the criminal referral
2 number C0004 from the RTC, with respect to this
3 matter. Is that the referral that you received in
4 September of 1992, or a copy of it?

5 A Yes, let me look at it a second. I have
6 referenced it as C004 because that's how it was
7 referred to by the FBI special prosecutors. Let me
8 just flip through the pages. I am assuming --

9 Q You referenced it as C004 as opposed to
10 C0004. I want to make sure there was no
11 misunderstanding.

12 A Yes, C0004 is the referral that I have been
13 made aware of. When I use the term "Whitewater,"
14 that's the only referral I ever saw at any time.

15 Q That's the one you received in 1992?

16 A Right.

17 Q And that's the one you have a copy of at
18 home?

19 A Right, and that I gave a copy of it to the
20 FBI when they asked me about it. Yes, this is a copy
21 of that referral.

22 Q I am going to show you what's marked as

1 Bates number 6694. This is a letter dated September
2 1, 1992 to the Honorable Charles Banks from L.
3 Richard Iorio. Can you identify that for us,
4 please.

5 A I am assuming that that's the offer letter
6 that came with the referral. I don't remember
7 reading this. I mean, I just --

8 Q There is a date stamp of the U.S.
9 Attorney's office in Little Rock in the letter?

10 A Sure.

11 Q It is dated, I believe, September 3, 1992?

12 A Right.

13 Q Would that have been about the time you
14 received that referral?

15 A Yes, I would think so because I wouldn't
16 have received it directly. Mac would have gotten
17 this first.

18 Q Okay.

19 A That's Mr. Dodson. Yes, I don't quarrel
20 with that date. That's probably correct and accurate
21 because that looks like one of our stamp marks.

22 Q Now, you stated that once you received --

1 Mr. Dodson informed you that the referral had come
2 in, what, if anything, did you do with it?

3 A Well, the first thing I did, I said --
4 well, that's great or words to that effect. I said
5 let's -- bring it down here and let's take a look at
6 it. And at that point in time, I didn't do any
7 analysis of this referral, C0004. And I told Mac, I
8 said, I believe I told him to check with Sandra
9 Cherry and see if there was anything generally --
10 discuss it with her and see if there was anything new
11 in this referral that had not been looked at before.

12 And I wanted him to take it and hold on to
13 it and I did not want it assigned out because I was
14 going to try to look at this very carefully, very
15 cautiously, and not -- in fact, I think I told him at
16 that point in time we were not going to do anything,
17 I am almost sure I said we were not going to do
18 anything with this referral until after the
19 election. We will work it just like any other
20 referral.

21 Because I believe -- I don't remember if it
22 was the first conversation or shortly thereafter, he

1 came in and he said I have had a call from a woman
 2 named Jean Lewis and she wants to know what we are
 3 doing with this referral and whether we have issued
 4 grand jury subpoenas, and why not. And I said, well,
 5 forget it. Just forget it, we are not going to
 6 respond to Jean Lewis. I said we are going to let
 7 this alone for the time being and work it properly.

8 Q Now, when you say you weren't going to do
 9 anything until the election --

10 A After the election.

11 Q Until after the election, was it your
 12 intent to work it at the pace that was needed to get
 13 it done, or was it your intent to not work it until
 14 after the election?

15 A Well, my intent was that, when the election
 16 was over with, we would pick it up and work it, with
 17 the -- in the same manner that we basically worked
 18 it -- end up working it before the election, and that
 19 is we are going to see, get the FBI involved and see
 20 whether or not the referrals had merit, you see,
 21 because -- let me be sure about this.

22 Throughout this process, prior to the

1 election, there was no doubt in my mind, from the
 2 telephone calls coming in to that office from Jean
 3 Lewis and from the discussions that I had with the
 4 FBI, that the real --

5 MR. BEN-VENISTE: Hang on. Let him finish
 6 his answer.

7 THE WITNESS: That the real heart and soul
 8 of why there was such a sense of urgency is who the
 9 witnesses were, not Mr. McDougal and his wife. They
 10 were almost somewhat of an afterthought. Well,
 11 that's not a fair choice of words. They were not the
 12 focus of the sense of urgency.

13 BY MR. GICALE:

14 Q Okay. Now, who were you getting this
 15 information from which you led you to believe that
 16 they were not the focus of this, in terms of the
 17 sense of urgency?

18 A Well, the first person was by October
 19 the -- well, middle of October, prior to the 16th, we
 20 had at least, to my best memory, four or five
 21 telephone calls from Jean Lewis. And in visiting --
 22 and those were directly to Mr. Dodson. And he would

1 come in and tell me Jean Lewis has called again and
 2 wants to know what are we going do, why aren't we
 3 issuing grand jury subpoenas. And there was no doubt
 4 and question in my mind that there was a sense of
 5 urgency -- and my judgment was that that sense of
 6 urgency and I don't recall any specific words that
 7 Mac said -- but the sense of urgency was we need to
 8 do something about this right now and we need to get
 9 a grand jury investigation going. And my judgment,
 10 it was who the witnesses were, it was not Mr.
 11 McDougal.

12 Q Now, did you talk to Jean Lewis yourself at
 13 all?

14 A Never, not to this day. As a matter of
 15 fact, I think on the last call -- and there is
 16 nothing facetious about this, I am not trying to be
 17 facetious, I am trying to tell you the exact
 18 scenario -- when he came in the last time, he said
 19 she called again. I told him before we are going to
 20 handle it in due course and blah, blah, blah.

21 I said who in the hell is Jean Lewis,
 22 because it was a very unique way in which the

1 referral had come in to that office. I personally
 2 had not experienced that type of insistence from RTC
 3 in any S&L case and I was heavily involved in S&L
 4 cases personally. It was just something about it
 5 struck me as unusual.

6 Q Now, you earlier testified that you also --
 7 you formed this opinion based on conversations
 8 Mr. Dodson had with Jean Lewis, and conversations
 9 either you or Mr. Dodson or somebody else had with
 10 the FBI; is that correct?

11 A Yes.

12 Q Who at the FBI did you have conversations
 13 with?

14 A I talked with Don Pettus. I also talked
 15 with Steve Irons, and I don't remember if Don White
 16 had ever participated or not; I don't think so. And
 17 it seems like Gretchen -- I forget Gretchen's last
 18 name, special agent in specializing documents.

19 Q Was that Gretchen Hall?

20 A Yes, that would be Gretchen Hall. And I
 21 don't recall whether we met about it -- it seemed
 22 like we met three times total before my letter of the

1 16th, but I am not real sure about that. It may have
2 been two. But I remember looking at this once to --
3 looking at this criminal referral once, early on, to
4 see if there was anything in there that jumped at me
5 that there would be a sense of urgency, that we
6 needed to do something right now, that might be --
7 and then I remember doing it again a second time
8 where I sat down and really went through it in
9 conjunction with FBI going through the records, and
10 that was prior to the 16th.

11 Q So there was a meeting -- was it in your
12 office -- where you reviewed this with the FBI?

13 A Yes.

14 Q And there were, I think, some 300 exhibits;
15 is that correct, that went along with this?

16 A Right. I never looked at the box of 300
17 exhibits. I only did my work from this referral.

18 Q Did Mr. Dodson review the exhibits?

19 A I think he did some. But he didn't do it
20 in a manner that the FBI sent their agents over to do
21 it because that's how we broke it down. I was going
22 to look at this part of it. And they had document

30

1 examiners, one of them was an accountant, I think
2 Mr. Irons was a CPA. And they handled the 300
3 records.

4 Q So they would review the records, and then
5 you stuck to the referral and reviewed it?

6 A And, of course, I talked with them about
7 the records. And the end result was that their -- my
8 understanding was the FBI concurred with my analysis
9 of the case and I concurred with theirs.

10 Q What was your analysis of the case? You
11 have reviewed the referral and you discussed with
12 them what the documents --

13 A Well, it is basically contained in my
14 letter of October the 16th. The first analysis was
15 that, based on this one referral, which is all I ever
16 had and have ever seen to this day, that if there was
17 a case that was worthy of limited or, even,
18 investigation, the case was against Mr. McDougal,
19 Ms. McDougal, and I believe her name was
20 Ms. Anspaugh.

21 Q A-n-s-p-a-u-g-h; correct?

22 A I think that's right. And that I found no

1 probable cause, in my judgment, to institute a grand
2 jury investigation against Mr. and Mrs. Clinton or
3 any of the other witnesses at that point in time. I
4 just didn't see in it there.

5 Q Now, with respect to the letter you just
6 referred to, I am going to show you what's marked for
7 identification as Bates number 007051. It is a
8 letter dated October 16, 1992 to Don Pettus,
9 regarding referral number C0004 from you with a
10 copy -- cc to Mac Dodson. Is that the letter you are
11 referring to?

12 A Yes. Yes, it is. I'm sorry.

13 Q Now, in that letter you indicate in the
14 third paragraph that the only allegations having any
15 credibility of possible deliberation for
16 investigation exist against Mr. and Mrs. McDougal and
17 Lisa Anspaugh; is that correct?

18 A That's correct.

19 Q And that was consistent with your position
20 at that point?

21 A At that point in time, and it was taken in
22 context with the entire letter.

1 Q Going back to the first paragraph, you also
2 indicate in it, and I am referring to the third
3 sentence, that "While the participation of some or
4 all of these witnesses certainly suggests poor
5 judgment, possible conflicts of interest or ethical
6 infractions, proving specific intent or criminal
7 construct would be a prosecutorial burden that could
8 not be carried forward."

9 What poor judgment, possible conflicts of
10 interest or ethical infractions were you referring
11 to?

12 A Well, basically to summarize it, it
13 appeared to me that the allegations suggested that
14 they were borrowers that were allowed to receive
15 loans out of Madison.

16 Q Who were borrowers?

17 A I guess -- I can't remember the specific
18 loans or anything like that. But it would be
19 Mr. Clinton and Ms. Clinton and maybe Mr. Tucker; I
20 can't remember about his part of it. And I can't
21 remember whether they were undercollateralized or
22 whether there was no collateral. But my instinct

1 was, back at that point in time when I was working
2 with those things, and I had worked with them --
3 meaning S&Ls -- in three years, that they were in a
4 possible position to receive the benefits of a good
5 loan, a profitable loan and not the detriments of a
6 loan gone bad. But what I saw in here, more than
7 anything --

8 Q What do you mean by that, in a position to
9 receive a good loan versus a loan gone bad? What do
10 you mean by that?

11 A Well, my instinct was that, at most, what
12 they could have been accused of was based upon this
13 referral alone, was the fact that there appeared to
14 be -- and again, I would have to analyze the referral
15 again, and try to go back to what I was thinking at
16 that point in time -- but that they were like a lot
17 of borrowers that we never prosecuted in Arkansas,
18 that the insider permitted them to have loans, and
19 those loans would not necessarily cost them money out
20 of their pocket if they were unprofitable. But I
21 don't recall seeing anything in the referral that was
22 a tangible document or witness to anyone that says

1 these people have knowingly participated in a
2 criminal fraud on this institution. I saw things
3 that suggested to me that if anybody had perpetrated
4 a fraud on the institution it was Mr. McDougal,
5 Ms. McDougal and Ms. Anspaugh.

6 MR. BEN-VENISTE: For purposes of this
7 record, you haven't made a distinction between the
8 Clintons and Governor Tucker in connection with the
9 generalization that you have made about Arkansas
10 procedure as it may or may not apply to this
11 particular referral. And I wanted to make that clear
12 on the record because, as you may know, this record
13 may well become public. So generalizations that
14 might be appropriate and accurate as discussions
15 among lawyers take on or can potentially take on a
16 different connotation in a cold transcript that is
17 read after the fact.

18 So, my suggestion would be that if there
19 are distinctions to be made, and you ought to make
20 them, and that, if you are speaking generally from
21 your experience as compared with speaking from this
22 referral and supporting documentation that you have

1 seen, you ought to point that out.

2 THE WITNESS: Well, having said that, I am
3 not trying to make a distinction for any of the
4 witnesses. That was my feeling about the witnesses
5 that were included in the referral.

6 BY MR. GICALE:

7 Q Okay, and when you talk about loans that
8 they may have received that would be unprofitable,
9 give me an example of what you remember.

10 A Well, I don't --

11 MR. BEN-VENISTE: I am not sure he can
12 answer the question.

13 THE WITNESS: I don't know that I can.

14 BY MR. GICALE:

15 Q When you say "an unprofitable loan," you
16 mean a loan, for instance, an investment in real
17 estate where the real estate ultimately is not of
18 sufficient value to pay off the loan; is that an
19 example of an unprofitable loan?

20 A Sure, a loan that can't be collected by the
21 institution.

22 Q Now you also said in that letter that "In

1 due time," and I am referring to page 2 of that
2 exhibit, second-to-last paragraph, "In due time, I
3 will be happy to meet with you to discuss a limited
4 examination and the possibility of proving some of
5 the allegations regarding Mr. and Mrs. McDougal and
6 Ms. Anspaugh"; correct?

7 A Right.

8 Q And that's consistent with what your
9 position was at that point in time?

10 A What I was trying to say in that letter to
11 the FBI is this: When the election is over, if we
12 still want to pursue this particular aspect of the
13 referral, or this referral as it relates to the
14 people that I see here that have done something
15 wrong, then certainly we will do that or we will
16 discuss it and see what's going to happen about it.

17 Q Did you believe then, with respect to Mr.
18 and Mrs. McDougal and Lisa Anspaugh, that there was a
19 potential case to be made against them?

20 A I believe that there was a possibility that
21 we could make a case. But I also had reservations
22 about the wisdom and the use of resources to make

1 that case, and I certainly had reservations about
 2 trying to do it before the election. But
 3 Mr. McDougal had been prosecuted once and he had been
 4 successful. That was the one S&L case we lost. And
 5 Mr. McDougal had had what was publicly known at that
 6 point in time as some serious mental problems. I
 7 don't know if he had a mental breakdown or was
 8 diagnosed as a manic-depressive, but he was
 9 destitute, living in a mobile home, a borrowed mobile
 10 home behind someone's house.

11 And there were indications that I discussed
 12 with the FBI, look, we've got Savers, we've got First
 13 Federal, we've got some very other serious cases and
 14 we need to sit down and seriously determine whether
 15 or not this case is going to be worthy of
 16 reprosecuting again.

17 Also, I was considering the aspect that
 18 when he had been prosecuted in 1990, there were
 19 public statements which Mr. McDougal made saying that
 20 the prosecution was political and they were false.
 21 But at the same time, I did not want to take the
 22 Department of Justice or that office back down -- or

1 at least I wanted to seriously consider whether we
 2 would do that by going back that road and prosecute
 3 that case again.

4 Q So while you were saying there may be a
 5 case to be made here, it was a question of
 6 priorities, the priorities were a concern to you; is
 7 that correct?

8 A A question of not only priorities, but a
 9 question of proof.

10 Q Right.

11 A I mean, we -- and I think the FBI concurred
 12 with me on this, that we needed to be sure that we
 13 had proof that was substantial and knew that we
 14 weren't just reploting the same ground.

15 Q Now, when the case first came in, did you
 16 refer to it as a hot potato?

17 A Well, sure.

18 Q Why did you consider it that?

19 A Well, again, because of the implicit thing
 20 that was in every conversation about it, as to who
 21 the witnesses were, and particularly that you had a
 22 candidate for President of the United States, and the

1 governor of Arkansas and his wife involved in it, and
2 it was a very close to the national election.

3 Q Now, you indicated that you and Mac Dodson
4 and Sandra Cherry reviewed the referral?

5 A I don't know whether she reviewed the
6 referral or he just talked to her about the referral.

7 Q Now, who was Sandra Cherry, did she
8 prosecute Mr. McDougal before?

9 A Yes, I don't know whether she was lead
10 counsel or second chair, but she was -- she
11 participated in the prosecution along with Ken Stoll.

12 Q Was she asked to make a determination as to
13 whether these allegations in criminal referral C0004
14 were new compared to the ones that she had assisted
15 with in the prosecution of McDougal for in 1989?

16 A I think that's what she asked, yes.

17 Q Anything -- and she determined that these
18 indeed were new --

19 A I don't know how many. Yes, certainly a
20 number were new.

21 MR. SGRO: Could we take a break for a few
22 minutes.

1 MR. GICALE: Okay.

2 (Recess.)

3 BY MR. GICALE:

4 Q Now, in your discussions, Mr. Banks, with
5 the FBI, did you tell them that a complete and
6 factual determination of what transpired with respect
7 to this referral would take some time?

8 A I don't recall using those exact words,
9 no. I mean, what I recall discussing with the FBI
10 was, what do we have here on our hands now, where is
11 the merit in prosecuting Mr. McDougal, and should we
12 do anything with this referral prior to the
13 election. That's generally the content of what I
14 discussed with them.

15 Q Did you tell them that you had to do any
16 legal research or an analysis along with the referral
17 at some point?

18 A We did. I already told you that we did
19 that before the 16th, they sent two agents over. We
20 tried to do a good analysis of whatever we had on
21 hand early on rather than just -- like I told you, I
22 wasn't going to do anything during that three-week

1 period. And I wasn't going to do anything with it
2 until after the election.

3 But we would go on and decide whether we
4 would do something with it now, sit down and take a
5 look at it and see if we had anything on our hands
6 that merited getting the grand jury going with it
7 right then.

8 Q Now, again, after you finished that review,
9 you determined that you would come back to it at some
10 point in time. "In due time" I think was the quote
11 in your letter; correct?

12 A What I am saying to you is this: I was not
13 declining that referral at that point in time prior
14 to the national election. What I was doing, and what
15 I was saying in my letter of October the 16th, I will
16 not participate in any shape, form or fashion of
17 investigation that involves the grand jury trying to
18 get subpoenas out because it would invariably would
19 get to the media.

20 But after the election -- please let me
21 finish -- after the election, if we wanted to do a
22 limited investigation, if the FBI still felt like it

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1 was worthy, if I heard something from the Department
2 of Justice that we needed to go forward with it right
3 then after the election, yes, we would have gone and
4 done some 302s and tried to do something. But I had
5 some serious reservations as to whether that would
6 actually ever take place.

7 Q Now, did you have any discussions after you
8 received this referral -- strike that.

9 After you received this referral in
10 September 1992, did you have any discussions with
11 anybody in the Department of Justice with respect to
12 criminal referral C0004?

13 A Not before, not after, not till -- as we
14 sit here today. Now, Mr. Dodson did talk to -- I was
15 aware that he talked to, because I told him to,
16 Ms. Henneman and he sent her a letter and sent a
17 referral. And then I don't know whether he or my
18 secretary sent a copy of my letter of October the
19 16th. And we received, to my knowledge, no response,
20 and I had no conversation with anybody from the
21 Department of Justice, about this case, which I
22 thought was unusual.

1 Q Now, there are some phone call records for
2 September 4th, September 8th and September 9th, 1992
3 of Mr. Keeney, who was head of criminal -- excuse me,
4 at that point in time was a deputy to Mr. Mueller in
5 the criminal division?

6 A Mr. Who?

7 Q Keeney.

8 A I guess that's right. Are you saying
9 Keating?

10 Q Keeney, John Keeney.

11 A I would assume so. I just don't recall.

12 Q Well, those phone call records indicate
13 that you talked to him during that time period on
14 those dates, September 4, September 8 and September
15 9th of 1992.

16 A No --

17 MR. BEN-VENISTE: Excuse me, I don't see
18 where those records indicate that Mr. Banks talked to
19 anybody.

20 MR. GICALE: I'm sorry. The phone call
21 records indicate that your name is on his call
22 sheets. And I am just telling you that the phone

1 call records indicate that.

2 MR. BEN-VENISTE: They don't indicate that
3 anybody talked to anybody. There is a notation with
4 some phone numbers.

5 MR. GICALE: Let me ask the question.

6 BY MR. GICALE:

7 Q There are phone records that have your name
8 on them for those dates?

9 A From my office.

10 Q Your name on them, U.S. Attorney Banks, for
11 those dates?

12 A I don't have the slightest recollection of
13 talking to that gentleman.

14 MR. SGRO: I think he is unclear. They are
15 not your phone records. He is saying they're
16 Keeney's phone records.

17 MR. BEN-VENISTE: Number two, the
18 indication is, on two of them, that there was not any
19 conversation.

20 MR. GICALE: Well, that's two.

21 BY MR. GICALE:

22 Q Did you call John Keeney, September 4th,

1 September 8th or September 9th, 1992?

2 A No.

3 Q Did you discuss a criminal report with John
4 Keeney?

5 A No, I don't have the -- and I certainly
6 believe I would remember that. I don't know what
7 documents you are referring to, but would that same
8 telephone number be the one for Mac, could Mac have
9 talked to him?

10 Q I am going to show you what's marked for
11 identification as 184 and then there is a
12 501-324-5342 number. Is that your phone number?

13 A I think that was it. I believe that was
14 right.

15 Q That was yours as opposed to Mr. Dodson?

16 A I think so. I don't remember what my
17 telephone number was, but I believe that's it. But I
18 have absolutely no recollection whatsoever, I do not
19 believe I ever talked to that gentleman, in any
20 capacity.

21 MR. BEN-VENISTE: Well, there is a
22 reflection on the document there with the letters WCB

1 which, in my experience, means will call back, which
2 would reflect that there was a conversation.

3 THE WITNESS: What does he say?

4 MR. GICALE: For the time being I need to
5 ask you the questions.

6 BY MR. GICALE:

7 Q I am going to show you another document
8 dated September 8, 1992, document number 183. This
9 also has your name on it with the phone number
10 501-324-5347.

11 A Now that's my number, I think. That was my
12 number. Lord, I can't remember. I apologize. I
13 can't remember what my telephone number was. But
14 what I am telling you is you can show me any document
15 you want to. I do not have any recollection, and it
16 is my testimony that I talked to no one, not then,
17 not after the election, and not before leaving
18 office, about this referral or this case or any of
19 the parties involved in it.

20 Q No one at the Department of Justice?

21 A Right. I didn't talk with anybody about it
22 other than Mac Dodson. Within the office, excuse me,

1 and the FBI.

2 MR. BEN-VENISTE: So that the record is
3 complete on the document you just showed the witness,
4 that also has a notation WCB.

5 MR. GICALE: I think I pointed that out.

6 MR. BEN-VENISTE: No.

7 MR. GICALE: Yes. But if I did not point
8 it out, that has that as well; that's correct.

9 BY MR. GICALE:

10 Q I am going to show you what's marked for
11 identification as document number 1885. This is a
12 phone log of Mr. Keeney dated September 9th. And
13 your name and a time in the left-hand side, I
14 believe --

15 A Again, like the other documents that you
16 showed me, Mr. Keeney's records, I would have no way
17 of knowing what he was keeping, and all I know is
18 that's my name up there. And I did not talk to
19 Mr. Keeney. I mean, you would have to give me
20 something to tell me that I did. I just don't -- I
21 don't have any recollection. And I can assure you if
22 I talked with him that many times I would have

1 remembered that. I am getting old, but I am not that
2 old.

3 Q Now, I will show you what's marked for
4 identification as document number 17458. This is
5 a --

6 MR. GICALE: Off the record for a second.
7 (Discussion off the record.)

8 BY MR. GICALE:

9 Q This is a document dated October 7, 1992
10 from Lawrence McWhorter, and attached to it is
11 another document from Mr. McWhorter to Mr. Barr,
12 Mr. Terwilliger and Mr. Budd, regarding this criminal
13 referral. Are you familiar with this document? Did
14 you see this?

15 A I have never seen this document before.

16 Q Now, you indicate --

17 A That's consistent, though, with -- we sent
18 that information up there on the 6th, or the 5th.

19 Q When you say you sent it up on the 5th or
20 6th, again, that was Mr. Dodson who went it up?

21 A Yes.

22 Q Would he have talked to Mr. McWhorter or

1 somebody from Mr. McWhorter's office?

2 A He may have. I don't remember him saying
3 he ever talked with Mr. McWhorter. I thought -- my
4 only recollection is that he talked with
5 Ms. Henneman, Donna Henneman.

6 Q In the synopsis section of that document,
7 it indicates in that full paragraph there, that
8 second sentence, that it is the belief of the United
9 States Attorney's Office that further investigation
10 into this matter is warranted.

11 A Well, since I never talked to him, and I
12 don't know what Mac said, that's his language.

13 Q Well, is that consistent with what your
14 position was that the point?

15 A As I've previously told you -- let me see
16 if I can explain it this way, maybe make it a little
17 more clear. I was not trying to submarine that
18 referral, period, end of sentence. I was trying to
19 slow the referral down and to isolate who in that
20 referral, in my judgment, had committed crimes that
21 were -- or committed allegations that were worthy of
22 grand jury investigation.

50

1 And the McDougals were the primary persons
2 that I saw involved. There was no doubt that the
3 department, after I sent them this information and
4 had the FBI heard that after the election, they
5 wanted to start up and take a look, as I explained,
6 of what we had discussed for -- on two or three
7 occasions, yes. But this language seems to imply
8 that we need to do something right then and that is
9 not accurate. That is not consistent with my
10 position.

11 Q Well, did you believe at that time that
12 further investigation was warranted?

13 MR. BEN-VENISTE: Excuse me, I have to
14 object. You have asked the same question two or
15 three times up to this point, and I object to you
16 continuing to take up our time with redundant
17 questions. The witness has been asked a question, he
18 has responded at least two or three times to the
19 effect that he thought that the matter warranted a
20 further look, but that he was unwilling to institute
21 a grand jury proceeding prior to the election.

22 Now, I don't know how many different ways

1 he can give you the same answer.

2 MR. GICALE: I note your objection and I
3 would like an answer.

4 THE WITNESS: Okay. My answer again, and I
5 am trying to be consistent with what I have said
6 earlier and what my position was then, after the
7 election, and with the referrals having gone to
8 Washington and had the FBI wanted to come back in and
9 had we all said, hey, this has a sense of urgency now
10 again right after the election, I certainly would
11 have begun to take a limited look at it. It would
12 not have been on my list of top priorities to do the
13 day after the election.

14 It did not have the burning sense of
15 urgency that it seemed to have had then at that point
16 in time by RTC and what it seems to have today, but I
17 was not going to submarine the investigation at all.

18 But you've got to also remember this:
19 Please understand that after the election until
20 sometime in January, not one peep was heard about
21 this referral, not one iota, not from Justice, not
22 from the FBI, which suggested to me that suddenly

1 that there was not the same sense of urgency after
2 November 3rd, 1992, that apparently there seemed to
3 have been or was trying to be prior to that date.

4 Am I communicating with you clearly? Am I
5 not making good sense?

6 BY MR. GICALE:

7 Q I heard what you just said.

8 Now, with respect to the information that
9 was conveyed to the executive office, you did not
10 talk to Mr. McWhorter, you said Mr. Dodson did, you
11 believe?

12 A I don't know. He may have is what I said.

13 Q Now, at that time, there was an individual
14 in the executive office by the name of Wayne Rich; is
15 that correct? Did you talk to him about it, this
16 referral?

17 A I may have. I don't remember. I don't
18 really remember.

19 Q Did Mr. Dodson talk to --

20 A He might have. I know Wayne was the
21 person, if I talked to anybody about how do you
22 proceed, procedural, who do you need to get this to

1 or things like that, that is the person I normally
2 would call because Wayne was very, very helpful. I
3 don't remember talking to Wayne.

4 Q What was the purpose of notifying the
5 Executive Office at this point in time, in early
6 October of 1992?

7 A Well, twofold: Mac had come back from a
8 seminar, Mr. Dodson had, in which they had once again
9 announced that if you have hot button or hot potato
10 issues, we would like to know about them and here is
11 the woman's name. And so I was trying to comply with
12 the department procedures.

13 But secondly, my sense of the sense of
14 unusual urgency and the sense of pressure that
15 something had to be done before October the 16th, I
16 made up my mind that, hey, this needs to go on up
17 there now. And I told Mr. Dodson let's go on, send
18 this up there, let this woman know what's going on
19 and we will see what we hear.

20 Q Who said that something had to be done
21 before October 16?

22 A Well, my recollection is that at least the

1 second meeting or maybe the last meeting, I thought
2 we had analyzed the case and I thought we had had a
3 clear communication about how we were going to handle
4 it, and that we would do nothing that involved the
5 grand jury until after the election.

6 Then, there was this directive or policy
7 decision that had come through the FBI to me, I think
8 Don came back over and says my people in Washington
9 say I have to have this by October the 16th. And
10 that is when I wrote the letter of the 16th which
11 basically was saying -- let me make this record
12 perfectly clear -- this is what I am not going to
13 do.

14 Q Now, when you referred to Don, you are
15 talking about Don Pettus?

16 A Yes. I'm sorry, I'm sorry.

17 Q Are you saying that you were informed of
18 the October 16th deadline from Mr. Pettus of the FBI?

19 A Either he or Mr. Irons, one of the two that
20 had participated in the meetings.

21 Q But in any event, it was from the FBI, not
22 from the Department of -- not from main Justice?

1 A That's right. Which I also -- you know,
2 that struck me as being a little different. Because
3 by the 16th they had had this for what, a week or so,
4 and if FBI in Washington was giving directives to FBI
5 Little Rock that we had do something and we had to
6 have something done, the communication that was
7 coming to me, this has got to be done now, you have
8 got to do something now, otherwise never would I have
9 written a letter as strongly worded as I did my
10 letter of October 16th.

11 I was trying to say in my own way if
12 somebody is going to take this to the grand jury and
13 start this investigation based upon this referral I
14 have in hand before this national election, I am not
15 going to be a party to it, period, end of sentence, I
16 am not going to do it. I don't know how or why it is
17 coming this way. I don't know how or why the
18 Department of Justice is dead silent on it, but I
19 know what Chuck Banks, as United States Attorney and
20 as a pending federal judge nominee in the Senate, is
21 or is not going to do. I'm sorry, but that's just
22 the way it was.

1 Q But with respect to that, now, you felt
2 concerned about it, that it was a hot potato issue,
3 is I think how you described it, and I asked you
4 earlier whether or not you had said something to that
5 effect earlier. Can you tell us why, inasmuch as you
6 received this in September, early September 1992, you
7 waited until October 5th or 6th to let the Department
8 of Justice know about it?

9 A Well, first off, when I sat down and looked
10 at it, my confidence in the referral itself was not
11 100 percent, that it was something that could even be
12 taken to a grand jury, or proved in a court of law.
13 We would have to analyze those allegations
14 carefully. So as I have told you before, I was
15 not -- it was not my custom or habit to immediately
16 call or write or send notes to the Department of
17 Justice that I have a hot potato.

18 So I intended to do nothing with it until I
19 heard something else, saw something else, or there
20 was something that prompted me to do a grand jury
21 investigation, or a pre-grand jury analysis until
22 after the election. I mean, that was -- that was

1 intentional my part.

2 But --

3 Q What changed --

4 A -- what changed my mind was that Jean Lewis
5 continued to pressure our office. That was number
6 one. And then number two, the momentum began to
7 change from what the FBI was saying that they had to
8 do, that they had to do something and it had to be
9 done by such and such a date. So by the 1st of
10 October I said, look, we are going to have to do
11 something with this. We are not going to be able to
12 put it in a normal course of events.

13 And also, remember this, too: While people
14 now in retrospect act like there appeared a time
15 between September and October to pick up a referral
16 and start something, that -- except for the fact of
17 who these people were, that was real fast. I mean,
18 referrals were -- I mean, a lot of times it took six
19 months to get a case up and started and get
20 meaningful proof going in a S&L case. I mean, you
21 know that from your experience.

22 Q Right, but who these people were obviously

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1 made this a slightly different referral; correct?

2 A Obviously who these people were, and again,
3 except for the witnesses, there would have been no
4 hot potato to it.

5 Q So, it was a hot potato when it came in in
6 early September, it was a hot potato in early
7 October?

8 A And it's a hot potato as we sit here today,
9 it seems to me.

10 Q Were you told by the FBI that they were
11 instructed to conduct a limited investigation with
12 respect to this matter?

13 A No, I don't remember those words being
14 used. Here is my impression of what had happened:
15 We had done a preliminary analysis. It was unusual
16 for Don Pettus to participate, to come to my office
17 and participate. That was not customary for him and
18 in any individual investigation he may have done it
19 more than I recall, but I remember Don was personally
20 involved in that one.

21 I thought that we had agreed that this was
22 the prudent, proper, and ethical manner in which to

1 handle this referral. I thought we had agreed to
 2 that in late September, maybe, or middle September,
 3 when we first started saying okay, we need to take a
 4 look at this. And then, seems like the next thing,
 5 we had the records analyzed, we concurred that if
 6 there were targets in that referral, it was the
 7 McDougals, that there was not sufficient proof to
 8 justify a grand jury investigation against the
 9 witnesses, or the allegation where is not
 10 sufficiently documented or founded.

11 And then all of a sudden, it -- Jean Lewis
 12 called another three or four times, seemed like, and
 13 then Don comes back, and it was my distinct
 14 impression that he had received directives from FBI
 15 Washington. And this was after I had sent the
 16 materials up to the Department of Justice, it was my
 17 distinct impression that I had to have something done
 18 and something had to be done on this by October the
 19 16th.

20 Now whether I misunderstood his
 21 communication, I don't know. I don't think that I
 22 did but I know what my sense of it was. And --

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1 because that's when I said, I don't care what Don's
 2 directive is, I've heard nothing from the Department
 3 of Justice that tells me I need to be doing this, and
 4 I am not going to respond to any pressure that he may
 5 be getting from FBI in Washington. And I am not -- I
 6 am still not going to start with the grand jury. I
 7 am not going to do anything until after the election and
 8 then we will look at it again.

9 Q Did he tell you his instructions were to
 10 protect the identities of passive investor or
 11 witness, that his office in Little Rock should not
 12 conduct any overt investigations such as witness
 13 interviews or serving of grand jury subpoenas at that
 14 time?

15 A I don't remember him using those words, but
 16 that was my impression, that he agreed, a couple of
 17 weeks earlier or after our first meeting, that that
 18 was the way we should handle it. We should not do
 19 anything until after the election. And then there
 20 was a change; it seemed like there was something
 21 more -- to do something, I don't remember exactly
 22 what it was, he had to have something and he had to

1 have it by the 16th because I referred to it in my
2 letter.

3 Q There was a change in terms of the date,
4 but there was a change in terms of what Washington
5 was telling him with respect to witness interviews
6 and serving subpoenas?

7 A I don't know what Washington told him, I
8 was not privy to those meetings. I can't remember
9 exact words said. I am trying to recollect for you
10 my perception of the conversations that were going on
11 and the needs that the FBI seemed to have or wanted
12 at that point in time.

13 Q Do you know whether or not FBI
14 representatives met with individuals from the
15 Department of Justice, including, but not limited to,
16 Messrs. Mueller and Raphaelson in the Department of
17 Justice?

18 A Number one, I didn't know that and I don't
19 know that other than by hearsay. I read something in
20 the paper or someone said something to me, but I have
21 now learned they had some kind of meeting during this
22 time frame, which would have surprised me had they

1 not. But what was even more surprising to me was if
2 they were meeting in Washington about this, why was I
3 not being given some directive or some contact saying
4 you don't do this or you've got to do that.

5 You've got to remember, it seems to me
6 implausible to suggest that they were going to let
7 me, on my own initiative, without DOJ directive,
8 commence an investigation of a Presidential candidate
9 or, later, of the President of the United States
10 without guidance or oversight from the Department of
11 Justice. I mean, I can't imagine they were going to
12 let me indict the President down in Little Rock on my
13 own.

14 Q Well, did you seek any guidance from the
15 Department of Justice with respect to how to proceed
16 with respect to this criminal referral?

17 A No. What I did was what you know, I sent
18 the documents in there, I assumed that I would --
19 if -- and here is what I told the FBI. I said my
20 assumption was, when they interviewed me, I said my
21 assumption was that once we've sent that in there,
22 given the timing of when it went in and given the

1 contents of what the referral said and what my
 2 October 16th letter said, that if the department felt
 3 there was merit to the investigation, and especially
 4 merit as to that point in time of doing something
 5 right then involving Mr. and Mrs. Clinton and
 6 Mr. Tucker and the other witnesses, the roof would
 7 have come off the Department of Justice. I'd have
 8 heard something, I didn't hear anything. Then I
 9 didn't hear anything afterwards.

10 Q During that period of time, Mr. McWhorter
 11 left the Executive Office of the U.S. Attorneys and
 12 Mr. Moscato came into the office, do you recall that?

13 A I recall talking to him one time, I think,
 14 congratulatory when he came in, introducing myself.

15 Q Did you talk to him about this,
 16 Mr. Moscato?

17 A I don't believe so. I don't recall
 18 anything about that.

19 Q Do you recall, at this point in time,
 20 Douglas Frazier was working sometimes in the
 21 Executive Office and at later point, I think, in the
 22 Deputy Attorney General's office?

1 A Who?

2 Q Doug Frazier.

3 A I'm sorry, I am drawing a blank on that
 4 gentleman. I don't recall who that is.

5 Q And you don't recall -- do you recall
 6 having any conversations with a Douglas Frazier from
 7 the Deputy Attorney General's office, main Justice?

8 A No.

9 Q Mr. Mueller or Mr. Raphaelson, did you talk
 10 to them about this referral, C0004?

11 A No, I know I didn't talk to them for sure.
 12 I don't recall talking to anybody -- I don't recall
 13 talking to anyone within main Justice about the
 14 referrals, when it got there, how to handle it, what
 15 to do with it, what not to do with it, or anything as
 16 to the substance.

17 Q Now, you believe that the notice, which you
 18 were just reviewing, document number 17458, dated
 19 October 7, from Mr. McWhorter, you believe that that
 20 was -- that basically put this in place in terms of
 21 the Department of Justice and its decisionmaking and
 22 alerted them to this and if they wanted you to do

1 something, that was the document that alerted them to
2 the matter and would prompt them to get back to you?

3 A Well, again, I was relying as much as
4 anything on the information that Mr. Dodson had given
5 me, that that was the appropriate person and the
6 appropriate way to refer those. So unless there was
7 a breakdown in communication within the Department of
8 Justice, yes, I would assume that that was what was
9 necessary to let the appropriate official within the
10 Department of Justice know that I have an unusual
11 referral in my possession down here in Arkansas. And
12 again, what was unusual about it is, if it had just
13 been Mr. and Mrs. McDougal alone, I would never even
14 have referred -- I mean, I would never have even sent
15 it up there.

16 Q Would it be safe to say that you were not
17 just sending this for information purposes, you were
18 also sending it for decisionmaking purposes; is that
19 what you are saying, the notice to the Executive
20 Office?

21 A Well, I suppose that's it partially, but
22 for information, number one, to alert them that

1 here's this referral; and number two, how about some
2 guidance, do you want to get involved in this, do you
3 want to take this away, do you want to direct me to
4 do something or not do something. Here is the letter
5 telling you -- I thought that was pretty -- the
6 October 16th letter was pretty much a blunt way of
7 saying, here is what I am not doing down here. And
8 you guys up there in D.C., if you want to do
9 something different, you need to order me do it or
10 come down and do it if you want it done right now. I
11 am just not going to do that.

12 Q So you felt that that notice to the
13 Executive Office was an adequate way of notifying the
14 people in the Attorney General's office and the
15 Deputy Attorney General's office that this matter was
16 pending and you wanted their input; would that be
17 correct?

18 A That's what I thought.

19 MR. SGRO: I think he also referenced the
20 10/16 letter to Pettus.

21 THE WITNESS: Maybe I didn't understand
22 your question. The whole referral was sent -- the

1 cover letter of October 6 was sent and my letter of
2 October the 16th was sent.

3 BY MR. GICALE:

4 Q Well, but, to be fair, the letter of
5 October 16th stated that in due time you would be
6 happy to meet with officials to discuss the limited
7 examination --

8 A That was the letter to the FBI. Yes, I
9 would have been happy to meet with anybody. I am not
10 trying to be impertinent or rude, but to be fair, if
11 they were already meeting with FBI about it, if that
12 in fact was the case, officials from DOJ, what more
13 did they need than what I was sending?

14 Q How did you know that they were meeting?

15 A I didn't until now, just since this
16 started. I didn't know when I left the United States
17 Attorney's office, I had to assume that surely to
18 goodness the FBI or RTC or somebody was talking to
19 somebody over at DOJ about the nature of this
20 referral. I just couldn't imagine that Jean Lewis
21 would take it upon herself to demand, in the manner
22 that was going on, that this grand jury be instituted

1 right then. It just did then and still now strikes
2 me as -- just didn't strike me as being a normal way
3 to process a referral.

4 Q Well, at that point in time, Ira Raphaelson
5 was in charge of the prosecution of the S&L cases; is
6 that correct?

7 A Yes, I believe that's right, yes.

8 Q Did you know Mr. Raphaelson?

9 A Yes, I knew him. Not that we were personal
10 friends.

11 Q Had you ever talked to Mr. Raphaelson on
12 the phone about S&L prosecutions in other cases?

13 A I don't believe I ever talked to him about
14 it. I mean, just so you will understand -- this
15 might not be to my advantage.

16 What I did was I tried to be a hands-on
17 U.S. Attorney throughout my whole tenure. I tried
18 not to raise issues with the Department of Justice or
19 bother people within the Department of Justice unless
20 I was sure that I felt like that it was something
21 that they needed to be involved in and they didn't
22 know about it.

1 I felt like they needed to know about this,
2 but I frankly have to be 100 percent honest with you
3 about what was going on in my mind at that point in
4 time. I was real curious as to whether, after the
5 election, given what we had sent to them, given the
6 incessant communication of RTC, whether I would ever
7 hear another word about it. And that was going to
8 suggest to me whether or not there was merit to these
9 allegations, and I didn't hear anything. But as far
10 as did I get on a plane or come up here and meet with
11 Ira or get on the phone and call, no, I did not.

12 Q What about Mr. Terwilliger? Did you talk
13 to him? He was the deputy --

14 A No.

15 Q Or Mr. Barr, the Attorney General --

16 A No.

17 Q -- about this referral?

18 A No, I did not.

19 Q Now, so that the record is straight, at
20 this point in time when you say they had this
21 information in front of them, what they had in front
22 of them in October would have been the information

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1 conveyed to them by Mac Dodson which is included in
2 this report identified as 17458; correct?

3 MR. BEN-VENISTE: I object to the
4 redundancy of this. I can't believe that you
5 continue to ask whether the material that was sent to
6 the Department of Justice was received by the
7 Department of Justice in six different ways.

8 THE WITNESS: Yes.

9 BY MR. GICALE:

10 Q Is that the answer, yes?

11 A Wait a minute. No, that's not the answer.
12 Would you read the question back.

13 (The reporter read the record as requested.)

14 Well, yes. With this further explanation,
15 you hand me this document. What I'm telling you, the
16 same thing I told you before, they had a letter of
17 the 6th, they had the referral itself, they had my
18 letter of October the 16th. And now, I am led to
19 believe that they had whatever information they had
20 gained from the FBI or RTC. I am not privy to that.

21 Q Okay, and the letter of the 6th is the one
22 that we have not received.

1 A And I don't know why you've not received
2 it. I turned it over, I mean, you know -- I
3 didn't --

4 Q And you didn't think this was a serious
5 enough matter to call Mr. Terwilliger or Mr. Barr
6 about?

7 MR. BEN-VENISTE: I object; argumentative.
8 I mean, at this point, you've asked the witness
9 several different ways what he did and why he did
10 it. This is an argumentative question, and it is
11 objectionable.

12 MR. GICALE: I note the objection.

13 THE WITNESS: Certainly I thought it was
14 serious. But I also thought that, given the
15 information that they had at hand, that if it merited
16 that type of urgency, that I would hear something
17 from Department of Justice officials. There was not
18 a game of cat and mouse, and as I am told, I didn't
19 read this, that Mr. Barr said something was being
20 withheld from him, it was not being done in
21 Arkansas.

22 BY MR. GICALE:

1 Q Now, do you know whether Mr. Dodson talked
2 to any of the people that I asked you about earlier?

3 And I will go over the names. Mr. McWhorter?

4 A I just don't know, but he may have talked
5 to Larry McWhorter. He may have. I just don't
6 remember that.

7 Q Do you know -- and this is all with respect
8 to this criminal referral. Mr. Rich, did Mr. Dodson
9 talk to him about it?

10 A I don't know.

11 Q Mr. Moscato?

12 A I don't know.

13 Q Mr. Frazier?

14 A Who?

15 Q Doug Frazier.

16 A I don't know.

17 MR. BEN-VENISTE: You have asked these
18 questions already once before.

19 BY MR. GICALE:

20 Q Not with respect to Mr. Dodson.

21 Mr. Frazier?

22 A I just told you I don't know.

1 Q Okay. Mr. Mueller?

2 A No, I don't think he -- I am sure he didn't
3 talk to him.

4 Q Mr. Raphaelson?

5 A No, I am sure he didn't talk with him.

6 Q Mr. Terwilliger?

7 A No, I feel reasonably sure he didn't talk
8 to him.

9 Q Or Mr. Barr?

10 A No, I don't think he talked to Mr. Barr. I
11 believe he would have told me if he talked to those
12 last four or five individuals.

13 Q Do you know if he talked to anyone else at
14 the Department of Justice about this referral, main
15 Justice in Washington?

16 A I don't believe so. I believe that the
17 only persons he actually talked to was Jean Lewis and
18 to Ms. Henneman, that's my recollection in my
19 conversations with Mr. Dodson.

20 Q Now, what is your understanding of what
21 happened to the referral within the Department of
22 Justice after you forwarded this information to him?

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1 A I don't have an understanding of what
2 happened to it. I don't know what happened to it.

3 Q Earlier you testified to the fact that at
4 the time that this information came in, in September
5 and October of 1992, that you had been nominated for
6 a federal judgeship by President Bush; is that
7 correct?

8 A That's correct.

9 Q Now, how did that impact on your
10 decisionmaking, and why did you raise that in terms
11 of your answer?

12 A Well, first off, I forgot to put it in my
13 letter of the 27th, and I think I should have put it
14 in there because it was on my mind, but how did it
15 affect and impact? Well, I worked all my life to
16 build a reputation based upon integrity and honesty
17 and good character. I think that I was nominated to
18 be a federal judge, not just on political
19 partisanship.

20 And it seemed to me that, under the
21 circumstances, I not only had my oath of office as
22 United States Attorney to do the right thing and not

1 a political thing, but I also had the fact that I was
 2 a nominee pending in the Senate. And it seemed to me
 3 I should behave as a nonpartisan judge in the matter
 4 and try to do what was right. And in finality, it
 5 seemed to me that if you had pursued that
 6 investigation, given those circumstances of that one
 7 referral, there was no way that you didn't have a
 8 conflict of interest of doing the wrong thing.

9 If President Bush had won in November and
 10 those matters had been leaked to the media and been
 11 made public information without any more basis and
 12 proof than what I had, then it seems to me that would
 13 be perceived as punishing your political opponents.
 14 And if President Clinton, which he did win, and I had
 15 done the same thing, it would seem to me that it
 16 would be misuse of government power to try to punish
 17 your political opponents or somehow affect the will
 18 of the American people.

19 You've got to remember something else that
 20 had happened during that time frame. It seemed like
 21 in August or September of that year there had been
 22 something that had gone on about searching

1 Mr. Clinton's documents at the State Department by
 2 some employee for some type of adverse facts that
 3 would influence the election.

4 You've got to understand, I felt terribly
 5 uncomfortable with this situation that had landed in
 6 my lap. I didn't feel I needed to run and start
 7 doing anything more than what I was doing. I did not
 8 need to start trying to create any type of public
 9 attention to this, that it needed to be handled very
 10 quietlike, very circumspectly within the department
 11 and within that office. That's why I did not assign
 12 it out to a lawyer; Mac Dodson and I handled it.

13 I wanted to be sure there was not a basis
 14 for any leak, and it wasn't to take care of Bill
 15 Clinton. I sued Bill Clinton in 1983, you know. If
 16 the Republicans think that I was trying to do them a
 17 favor, knowing that a federal judgeship was going to
 18 go down the tubes with this, then I can't imagine if
 19 that's the attitude up here, I don't know, but --

20 Q Were you concerned that a decision made in
 21 this case would jeopardize your chances for a federal
 22 judgeship?

1 MR. BEN-VENISTE: Objection to the form of
2 the question.

3 THE WITNESS: No, no, no.

4 MR. BEN-VENISTE: A decision, you mean a
5 particular decision.

6 BY MR. GICALE:

7 Q A particular decision.

8 A No, because in my view, at that point in
9 time, in my judgment of what was going on, he is
10 probably going to win anyway. I mean -- I felt --
11 here is what I felt, here is what I was trying to do
12 and I tried to say it in my letter, maybe I made a
13 poor choice of words, but what I was trying to do is
14 this: I was trying to say I did not want to try to
15 influence that election even inadvertently, even if
16 it wasn't intentional.

17 I am not saying someone was doing it
18 intentionally. But given human nature, that there
19 were two full-time competing reporters walking the
20 halls and every time we did even grand jury subpoenas
21 for records, that got out in the media. And I knew
22 that that was what was going to happen. And what I

1 was trying to do is do what I thought my oath of
2 office, and what my moral duty called for, and not be
3 involved in something that I thought was politically
4 improper when I took an oath of office, to follow the
5 Constitution and not try to influence and try to help
6 my party. Sure, I wanted to help my people.

7 Q Well, when you said he was going to win
8 anyway, was it your intent if he won to seek his
9 assistance in obtaining this judgeship afterwards?

10 A Absolutely not. And let me tell you this,
11 since there's that implication in that question, I
12 have not.

13 MR. BEN-VENISTE: I didn't think that
14 implication refers to anything other than the
15 questioner here today.

16 THE WITNESS: Well, the point is I didn't
17 talk --

18 MR. SGRO: Let him say what he wants.

19 THE WITNESS: I didn't talk to
20 Mr. Clinton. I didn't talk to anybody over there
21 about a federal judgeship or anybody within the
22 Department of Justice about saving my job as U.S.

1 Attorney. My view was when the other side wins -- I
 2 was the sixth in the country to resign -- and they
 3 win, that's the end of it. And I had a high profile,
 4 very honorable position. And there had been
 5 instances of other U.S. attorneys around the country
 6 historically, lots of Democrats by the way, that
 7 wouldn't leave office. And I just said that's not
 8 the way I wanted to handle it. That's not my style.
 9 I am going resign and that's it. I well knew when
 10 Clinton won that there was not going to be a federal
 11 judgeship.

12 Q The letter you sent to Mr. Pettus on
 13 October 16, 1991, there was a cc to Mr. Dodson, and
 14 eventually you sent a copy of that to Ms. Henneman
 15 and the executive officer, Mr. Dodson sent it. Did
 16 anyone else receive a copy of that letter that you
 17 are aware of?

18 A No. I don't know why she put cc there on
 19 to Mr. Dodson other than to make sure that I wanted
 20 him to have a copy of it in addition to the copy I
 21 sent out to Don. Now I think he sent -- I think he
 22 sent either my copy or his copy right on to the

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1 department.

2 Q I am going to show you what's marked for
 3 identification -- off the record.

4 (Discussion off the record.)

5 BY MR. GICALE:

6 Q I am going to show you what's marked for
 7 identification, as a document identified as Bates
 8 number 6664. It is a letter dated October 16, 1992,
 9 to Donna Henneman from you, I believe, enclosing a
 10 copy -- would that be enclosing a copy of your letter
 11 to Mr. Pettus? Could that have been --

12 A That's what it is supposed to be. I mean,
 13 that's what I instructed I wanted done. I either
 14 told Mrs. Carter, my secretary, or Mr. Dodson, the
 15 first assistant, to send this on up to Washington,
 16 send this letter up there.

17 Q By the way, is that your signature or is
 18 that somebody signing for you?

19 A That's me.

20 Q And again, I was referring to document
 21 number 6664.

22 Now, after sending this letter on October

1 16, 1992 to Mr. Pettus and notifying the Executive
2 Office for U.S. Attorneys, this letter to
3 Ms. Henneman, when is the next time you had some
4 discussions with respect to what to do with respect
5 to this criminal referral in your office?

6 A I apologize, I am not sure I understood.
7 After when now? After the 16th?

8 Q Right.

9 A I don't recall having much more discussion
10 about it throughout November and December, other than
11 every once in a while, I think I would say to Mac,
12 have we heard anything from the FBI, have we heard
13 anything from DOJ about that referral. And I think
14 the general comment back was, no, I haven't heard
15 anything.

16 Then he came in, sometime around January
17 27, and said some confusion is going on here, they
18 called. I said who is they. He said this -- I'm
19 sorry, Ms. Lewis, is that her name, Jean -- Ms. Lewis
20 has called and wants to know -- wants me to give her
21 legal advice on how to handle a media inquiry or some
22 type of FOIA inquiry regarding these documents. And

1 I believe he said she wants to know the status of the
2 investigation. And I said, that's funny.

3 So, I said to myself or said to Mac, I
4 can't remember now, but I know we talked about it, I
5 said I think we need to get this clarified up there
6 once and for all, that we have heard nothing else
7 from the FBI, nothing else from RTC to today's date.
8 I have been busy with other things, busy with
9 gun-free, drug-free school zones program in Arkansas,
10 and also in a transition process of preparing when I
11 was going to resign and when I was going to leave.
12 They need to know we don't have any investigation
13 going on here, not in the classic sense, we are not
14 doing grand jury work.

15 Q So what steps did you take to clarify that
16 for them? And the "them" you are referring to is
17 main Justice.

18 A If you will let me see my letter, January
19 27, let me refresh myself.

20 Q Okay. I am going to show you what's marked
21 for identification as document 7049 through 7050, a
22 letter dated January 27, 1993 to Donna Henneman from

1 you --

2 A Right.

3 Q -- regarding criminal referral C0004.

4 A Okay. In reviewing this, what I was trying
5 to do in my letter of January 27 is correct any
6 confusion that may be in existence with RTC or with
7 the Department of Justice, that we did not have a
8 formal investigation initiated and ongoing. And
9 secondly, if that's what they wanted to do, in my
10 judgment, that it would -- that I had a conflict of
11 interest, to proceed on with it, that we ought to let
12 the new U.S. Attorney do it because I had told my
13 Senators, and I think I told DOJ sometime just prior
14 to the 27th, that I was going to resign and leave
15 March the 1st.

16 But I also indicated in the letter that if
17 they -- at least I was trying to indicate in the
18 letter, if they wanted to do something and get
19 something up and going on the McDougals with those
20 records, then I would hand them over and I will do
21 what they want to do to get it up and going. But I
22 basically was trying to say, if the department wants

1 to do this, then they need to send their career
2 prosecutor in here and do it.

3 And I mentioned to you the conflict that I
4 felt that I had, about being at that point in time I
5 was still, I guess, a nominee, but I might as well
6 say the federal judgeship, that was moot.

7 Q What was it that you felt was your conflict
8 at that point? Was it the judgeship or was it the
9 issue with respect to Mr. McDougal's past trial?

10 A Both. No question it was both.

11 I felt like that if we were really going
12 to -- if everyone wanted to fire up and take another
13 shot at Mr. McDougal, I think the department needed
14 to know that my participation in it would probably
15 lead to some more political embarrassment because I
16 didn't feel like the case deserved the resource
17 commitment and the case deserved the potential
18 embarrassment to the Department of Justice for the
19 reasons I said earlier; the condition of the man, we
20 weren't going to select any money, we had other S&Ls
21 that needed to be worked more.

22 And what I didn't put in here, but what I

1 discussed with Mac and my wife at that point in time,
2 is that it strikes me as inappropriate for a judicial
3 nominee to be engaged in pursuing this investigation,
4 if, in fact, that the real purpose of pursuing it is
5 to try to indict the witness instead of the real
6 principals involved in the crime. Because, as a
7 nominee, a federal nominee I just think there was no
8 way not look like I was misusing my office.

9 Q Now, at that point, in the last paragraph
10 of the first page of that letter dated January 27,
11 you indicated in the second sentence, that as
12 previously indicated, "it seems prudent that a
13 limited preliminary investigation of allegations
14 pertinent to Mr. and Mrs. McDougal and Ms. Anspaugh
15 should be considered" --

16 A Where are you? I'm sorry.

17 Q The last paragraph on the first page of
18 that letter.

19 A Okay.

20 Q Second sentence.

21 A I am not sure I understood what your
22 question was.

1 Q Without reading that sentence again, and
2 you have now read it, and then you went on to say in
3 the next sentence, "the taking of 302s from these
4 individuals should determine whether there is merit
5 to substantiate further investigation." Is that
6 consistent with what your feelings were at that point
7 in time?

8 A Well, it is consistent with this. My
9 feelings were, what I was trying to express in this
10 letter, was that I was not outright declining, as
11 United States Attorney, an investigation of that
12 referral as it relates to Mr. and Mrs. McDougal and
13 Ms. Anspaugh or anybody else. But what I was trying
14 to say, that if there was anybody that warranted an
15 investigation, that's who I saw had done something
16 that appeared to me to be criminal. I didn't see
17 from it my examination of the referral as to others.

18 And I was basically trying to reiterate
19 what I had said to the FBI, and what I said in the
20 previous letter, that I am not trying to can it, but
21 I really think it is worthy of only limited work. I
22 mean, it's --

1 Q Now, in the last paragraph of the second
2 page of your letter, the first sentence says "I would
3 appreciate and expect that any decision of the
4 investigation, indictment, prosecution or declination
5 to be the responsibility of the Department of
6 Justice." And what is it that you meant by that
7 sentence?

8 A Well, basically trying to sum it up, that I
9 felt like I had, and therefore the office had, a
10 conflict and we needed to recuse, given what I had
11 said before, in my previous letters. And that if
12 they wanted to take the case and work it and work it
13 right, then they should bring someone in to do it and
14 make a decision, make the call on that. I felt like
15 if I made the call, it might be contrary to what they
16 wanted to do, might be inconsistent with what they
17 thought was proper.

18 Q Well, was it your belief that you placed
19 the ball in main Justice's court at that point in
20 time, and you were asking them to make a decision as
21 to whether to proceed themselves, or --

22 A Yes. If you use the term placing the ball,

1 I thought I put the ball in play back in their court
2 in October. I thought what I was saying in this
3 letter, once and for all, look, if you want this case
4 worked, I've got a conflict here, and I don't have
5 time to work it -- I didn't say those words -- I'm
6 leaving and you need to get somebody on this and do
7 something with it, if that's what you want done and
8 you want it done right now.

9 That's what I was trying to say that hey,
10 here is a red flag, I've told you I had a hot potato,
11 then the hot potato sat there with nothing going on,
12 after the election, not a peep from anybody that I
13 recall ever saying do this, do that, don't do this or
14 don't do that. And here we are on the 27th, Jean
15 Lewis is fired up again and I was trying to say, I
16 need to get this clarified once and for all.

17 Q Did you think that, when you left, that
18 your office could still assume responsibility for the
19 prosecution?

20 A My office could still assume
21 responsibility, I don't know what I thought about --
22 I guess in retrospect probably -- I thought that if

1 the U.S. Attorney had a conflict and I thought that
 2 basically the office had a conflict or maybe it
 3 didn't work that way because I don't believe I ever
 4 declared a conflict in any case before that one. I
 5 can't recall. Maybe we did in one or two. But in
 6 any event, I don't really know how to answer your
 7 question. I will tell you, if you want to know, what
 8 was going on in my mind --

9 Q Yes.

10 A -- what I assumed.

11 Q Yes.

12 A This is the speculation.

13 I assumed that, if the Department of
 14 Justice would analyze the case, that they would
 15 concur with me. That based upon this one referral,
 16 not any more that's come in since then, that they
 17 would concur with me, that it did not justify working
 18 the case, just to try to convict Mr. and
 19 Mrs. McDougal. And that, if they felt that the case,
 20 that I was in error in my judgment of the first
 21 analysis as it relates to the witnesses and they felt
 22 it should be prosecuted, that they would send a

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1 battery of career people in, or remove the case and
 2 take it to Washington and main DOJ would take it
 3 over.

4 I didn't ever assume for a second that if
 5 the real target of who they were going to go after
 6 would be the witnesses that they would let the U.S.
 7 Attorney, regardless of who it was, in Little Rock,
 8 handle that without guidance and direction or
 9 participation, solely on his or her own.

10 (Whereupon, at 12:35 p.m., the deposition
 11 was recessed, to be reconvened at 1:30 p.m. this same
 12 day.)

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AFTERNOON SESSION (1:42 p.m.)

Whereupon,

CHARLES A. BANKS

resumed the stand and, having been previously duly sworn, was examined and testified further as follows:

EXAMINATION (Continued)

BY MR. GICALE:

Q Now, Mr. Banks, after you sent out the letter to Donna Henneman in January of 1993, January 27, did you have any further discussions with anybody at the Department of Justice with respect to your request for recusal and your request to have them make a decision with respect to this matter?

A No, I never heard anything else about the letter.

Q And do you know what happened with the letter or your request for recusal, where it went?

A No, it seemed like I heard -- seemed like I heard or read in the paper that the recusal was denied in March, or somebody said June, I am not sure, but it was after I was gone that there was even any response to the --

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Q And again, you left the last day of February, 1993?

A Right, whatever the last day of the month was. I think that was one of the long years.

Q Now, from the time you received criminal referral C0004, which would have been September of 1992, to the time you left the U.S. Attorney's Office at the end of February, 1993, did you or anyone in your office have any contacts with any present or former employee of the White House with respect to that referral?

A I can't speak for anyone in my office, but no one ever told me they had any contact with anybody up there. And if I understand your question correctly, no, I didn't talk with anybody. You are talking about the new administration?

Q No, the old administration.

A You mean the Republican administration?

Q Yes.

A No, I didn't have any -- I am getting confused. Isn't that what you just asked me a minute ago?

1 Q I asked you the dates and the time periods
2 were from September 1992 through the time period when
3 you left at the end of February 1993, so I suppose
4 that would include both administrations. Did you or
5 anyone in your office have any contacts with any
6 present or former employee of the White House related
7 to criminal referral C0004?

8 A Oh, the White House? I'm sorry.
9 Absolutely not. I can't speak for the rest of the
10 office, but I have to assume I would have heard
11 that. No, I can't imagine anybody talked to the
12 White House.

13 Q Anybody in the Bush Administration or the
14 Clinton Administration; is that correct?

15 A I know I have not talked with anybody, Bush
16 or Clinton Administrations, with any present or
17 former employee of the White House.

18 Q Do you have any knowledge of any contacts
19 between any member of the Department of Justice and
20 the White House regarding criminal referral C0004?

21 A Between the White House and the Department
22 of Justice?

1 Q Right.

2 A No.

3 Q Did you have any discussions with anyone,
4 other than the FBI and people that you have mentioned
5 here today, with respect to C0004 while you were the
6 U.S. Attorney?

7 A No.

8 Q September 1992 through the end of February
9 1993?

10 A No.

11 Q Did anybody attempt to influence you to
12 bring this prosecution?

13 A No.

14 Q Did you know anyone listed in the referrals
15 as a target or a witness?

16 A Let me go back to answer your last
17 question, other than what we discussed about I felt
18 like Ms. Lewis was --

19 Q Right.

20 A -- attempting to get us to prosecute the
21 case, obviously, but in the context of what you are
22 saying, no, nobody outside, no outsider or anybody

1 within the White House or DOJ or the political party
2 or whatever. I'm sorry to interrupt you.

3 Q Okay, so your answer is no?

4 A Right.

5 Q Did you know anyone listed in the referrals
6 as a target or a witness? Now, to answer that
7 question, do you need to look at a copy of the
8 referral again?

9 A Probably.

10 MR. BEN-VENISTE: You mean was he
11 personally acquainted with, was that the question?

12 BY MR. GICALE:

13 Q Yes, are you personally acquainted --

14 A First I knew everybody in the -- I think.
15 I am trying to remember. Are you talking about
16 Lieutenant Governor Tucker? Are you are talking
17 about Mr. Clinton? Are you are talking about
18 Mrs. Clinton?

19 Q Hold on. Again, I will show you what's
20 marked as Bates numbers 6694 through 6714, this is a
21 copy of the letter to your office, and then a copy of
22 the referral and there are a list of targets and

1 witnesses.

2 A What page is it? Here is the list of
3 witnesses.

4 Q Let's start with the targets first, the
5 McDougals, James McDougal, Ms. Susan McDougal.

6 MR. BEN-VENISTE: He prosecuted them. How
7 much time do we need to spend on this, Lou?

8 MR. GICALE: I understand.

9 BY MR. GICALE:

10 Q Were you personally acquainted with James
11 or Susan McDougal?

12 A No, I don't recall Mr. McDougal. He claims
13 when he ran for Congress, he made this statement to
14 the newspaper that I had come into his district and
15 made a speech or something against him, which is --
16 that's not accurate. No, I didn't know the man
17 until -- or his wife.

18 Q What about Lisa Anspaugh?

19 A No, I don't know her.

20 Q What about Jim Guy Tucker?

21 A Yes.

22 Q How did you know him?

1 A I knew him from both the fact that he was a
2 Democratic officeholder and a Democratic candidate.
3 And when he was Attorney General of Arkansas, I was
4 employed in the Attorney General's office for about
5 less than six months right out of law school.

6 Q As an Assistant Attorney General?

7 A No, I was a -- I don't know what they call
8 them, but I wasn't a deputy or an assistant. I was
9 just a beginner in the criminal division. I was
10 assigned to write criminal briefs.

11 Q Okay.

12 A I never even argued a case because I became
13 public defender and moved back to my home county
14 right after going to work there.

15 Q Did you know him prior to obtaining a job
16 there in the Attorney General's office?

17 A I am trying to remember. Seemed like I met
18 him, informally, during some type of political
19 function when I was in law school. But no, "know
20 him," meaning did I talk to him on the phone did I
21 socialize with him, no.

22 Q Did you socialize with him after working at

1 the Attorney General's office?

2 A No, I was only around him one time at the
3 time I was there and I was in a group when he made a
4 speech in Searcy, Arkansas.

5 Q And after leaving the Attorney General's
6 office, did you have any other -- spend any other
7 time with Mr. Tucker?

8 A I don't recall seeing Jim Guy Tucker but
9 maybe twice after I left there. I mean, just run
10 into him at some -- I think I ran into him one night
11 at a restaurant, shook his hand and said hello.

12 Q What about Bill Clinton and Hillary
13 Clinton?

14 A Yes, I know both Bill and Hillary Clinton.

15 Q How do you know them?

16 A Well, when he was -- when I was in the
17 Democratic party -- which I was at one time, I am
18 Republican by choice -- he was the nominee for
19 Attorney General --

20 MR. SGRO: Off the record.

21 (Discussion off the record.)

22 BY MR. GICALE:

1 Q Continue on.

2 A He was the nominee for Attorney General and
3 I supported him when he ran. I don't think I saw him
4 but one time during that period. He came to my
5 hometown and I introduced him to people over at the,
6 I think the courthouse and maybe someone downtown. I
7 don't recall him coming back again.

8 Q Did you have any other subsequent
9 relationship with him or any other contact with
10 Mr. Clinton?

11 A I am trying to remember. I supported him
12 in his -- when I say "supported," I mean I didn't do
13 anything for him in '78, that I recall. Seemed like
14 he ran in '78. I was still in the -- still a
15 Democrat. And I voted again for him and supported
16 him in 1990, but after that, that was --

17 Q In 1990?

18 A 1980.

19 Q 1980?

20 A Yes.

21 Q In his run for governor, I take it;
22 correct?

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1 A Yes, that's correct.

2 Q And did you have any other contact with him
3 after that 1980 race?

4 A Let's see. I saw him in 1982 on several
5 occasions just when you cross paths on the campaign
6 trail. I ran for -- I was the Republican nominee for
7 United States Congress in the First District of
8 Arkansas and he was a candidate for governor in
9 1982. And I would see -- you know, just passing, say
10 hi or something like that, and I don't remember doing
11 that very much.

12 Q Do you have any other contacts with him
13 after that?

14 A Yes, I had seen him in 1983. I was the --
15 I was in private practice and I was the Republican --
16 I was general counsel to the Republican party of
17 Arkansas. And I agreed to undertake a representation
18 of a gentleman, I think his name was George Smith,
19 who was the director or Commissioner of Labor for the
20 state of Arkansas, and we believed he had been
21 discharged due to his political affiliation after
22 Mr. Clinton won the election. And I filed a lawsuit

1 in United States Federal Court, sued Governor Clinton
2 officially, in his official capacity, and the
3 individual took the case to trial with a jury and we
4 lost.

5 Q Did you have any other contact with
6 Governor Clinton after that case?

7 A Let me think here just a second. After
8 1983? I think the only time I saw Mr. Clinton,
9 President Clinton after that, to the best of my
10 recollection, I saw him once at an Arkansas Trial
11 Lawyers meeting where he spoke and I spoke, but
12 obviously there was not a lot of warmth, just a
13 professional passing.

14 And I ran into him one day at the downtown
15 YMCA after he had been elected President and I spoke
16 and he spoke and that was it. And I don't recall
17 having seen him, been around him, talked to him,
18 socialized with him, visited with him or in any way
19 had any interaction with he or his wife other than
20 what I have told you. I mean, I --

21 Q Steven Smith, he is listed in this referral
22 as a potential --

1 A I know him only by sight and having met him
2 a couple of times, years and years ago. Just spoke
3 to him because he was an administrative assistant, I
4 think, at one time to Governor Clinton, early on, in
5 the early days of the Clinton Administration. But
6 other than that, I don't believe I have ever said
7 another word to Mr. Smith.

8 Q Now, earlier when you said that that was
9 the extent of your contact with Mr. and Mrs. Clinton,
10 you didn't outline any contacts with Mrs. Clinton at
11 all, so I take it --

12 A I am sitting here looking at that in my
13 mind -- I am trying to dig back and think, was there
14 any time -- I only think that I have been around
15 Mrs. Clinton -- I can't imagine more than three or
16 four times total. I mean just like speak to her
17 after a speech to the Pulaski County Bar Association,
18 that's the Little Rock Bar Association, after a
19 speech, hello.

20 Q Were they business or social contacts?

21 A Just a professional greeting. I mean --

22 Q That was the extent of your contact with

1 her?

2 A Yes, and one day I saw her at the YMCA and
3 said hello.

4 Q What about Webster Hubbell? Now, he is not
5 listed in this. Did you know him?

6 A Oh, yes. I know him. I am trying to think
7 how to phrase this question so it doesn't sound like
8 we're closer than what we actually were.

9 First off I got to know him when I played
10 high school football against him. And the only way I
11 got to know him then was because he was an
12 outstanding player and he introduced himself to me on
13 the field two or three times and he was a good
14 player, I knew who he was.

15 I later met him again only in an informal
16 capacity when we attended the University of Arkansas
17 School of Law. And he was also a Razorback football
18 player when we were both in undergraduate school.
19 But I don't recall ever seeing Web one time in
20 graduate school. And I don't recall ever doing
21 anything more than saying hello to Web Hubbell once
22 or twice in law school and once or twice in Little

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1 Rock, just see him in a restaurant and say hello. I
2 never had a case with him or against him. We didn't
3 socialize, we didn't have lunch, be in each other's
4 home or go to church or anything like that.

5 This Greg Young, I don't have any idea who
6 he is.

7 Q I'm sorry. What was your response on Greg
8 Young?

9 A I have no idea who that is.

10 Q And J.W. Fulbright?

11 A Of course, everybody knew Senator
12 Fulbright. I recall only being around him one time
13 and that was like '74. I was at a table at a dinner
14 where he was. And that -- I mean, that's the extent
15 of it. I was at the table.

16 Q Kirby Randolph, who is listed as a
17 receptionist at the Madison Savings --

18 MR. BEN-VENISTE: What conceivable
19 relevance could this have, Lou? Lou, is this --

20 MR. GICALE: I will go through it quickly.

21 THE WITNESS: No, I don't know Kirby
22 Randolph, Bonnie Cochran or Charles E. James. I

1 don't know those people.

2 BY MR. GICALE:

3 Q Now, did you or anyone from your office
4 have contacts with any individual who was listed as a
5 witness or a target in this referral about the
6 referral?

7 A No.

8 Q And again, the referral is C0004.

9 MR. BEN-VENISTE: Yes, it is.

10 BY MR. GICALE:

11 Q Do you have any knowledge of any improper
12 handling within the Department of Justice regarding
13 the referral of Madison Savings & Loan?

14 A No. I mean -- what do you mean by
15 "improper"? You mean something unethical --

16 Q Improper in your view.

17 A No.

18 Q Do you know, do you have any knowledge?

19 A I mean, as I told you earlier, I had
20 anticipated that I would hear something and I was
21 surprised when I didn't hear something from the
22 department after I sent them the initial

1 notification. But I don't deem that to be -- I mean,
2 I am not sure that wasn't anything, a paper or
3 referral getting misplaced, a miscommunication. I am
4 not trying to embarrass the department or anything
5 like that. I don't know anything that was done that
6 was improper.

7 Q Do you have any knowledge of information
8 relating to RTC criminal referrals being shared with
9 individuals other than employees of the Department of
10 Justice?

11 A No.

12 Q The FBI or the RTC?

13 A No.

14 Q Between the time that Mr. Clinton came into
15 office at the end of January 1993 and the time you
16 left the U.S. Attorney's Office at the end of
17 February 1993, did you or anyone in your office have
18 contacts with Webster Hubbell regarding criminal
19 referral C0004?

20 A No.

21 MR. GICALE: I have nothing further at this
22 point.

EXAMINATION

BY MR. BEN-VENISTE:

Q Mr. Banks, could you briefly provide your work history in chronological order. We kind of skipped around a little. From the time you left law school, I take it your first position was with the Attorney General of Arkansas in a research or clerking capacity?

A Yes, I was a member of the criminal division. I think I was there about four months. I am not even sure I was there that long anyway, but I started my actual substantive career first as public defender, Mississippi County, Arkansas. I served in that capacity from, I think July of '73, until -- my gosh, I can't remember now -- I think '75. At which time, I resigned and entered the private practice of law as a solo practitioner and also became the deputy prosecuting attorney for the north end of Mississippi County, Arkansas.

In 1978, I -- let me back up. 1977 I invested with three friends as principals, I was a company lawyer at first and then I became a full-time

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in-house lawyer for a company called Martech, which was a company we created to sell industrial products, paint and industrial solvents, coatings. And I did that for a year and we were unsuccessful. We could not make the company show a profit so we shut it down.

I resumed my private practice, and -- in 1978. I took in a partner, Dan Ritchey. The firm name was Banks & Ritchey. I practiced in that capacity through and until -- let's see, I started shutting my practice down in July of 1987 to take the position as United States Attorney.

I served as United States Attorney, as I said earlier, from like November 1987 until on about March the 1st, 1993. I am former president of the Arkansas Trial Lawyers. I am board certified as a civil trial specialist by the National Board of Trial Advocacy. I have tried probably 60 or more jury trials, and more nonjury trials than I can actually count. I don't mean to say that to be braggadocio. I am telling you primarily that's what I have done.

Q When did you first become active in

1 Republican politics?

2 A I got disenchanted with the Democratic
3 party, in the policies and the philosophies, where we
4 were going after the Jimmy Carter election. And I
5 first decided that I was not going to be active in
6 any party politics. And so, friends of mine, I had a
7 lot of mutual friends in Mississippi County that were
8 what I call the New Wave of Republicanism and they
9 encouraged me to get involved.

10 And I talked to a fellow who was a
11 congressman named Ed Methune and that was in like
12 1981, right after the 1980 election. Within about a
13 year I started giving some serious thought and by
14 1982, I liked Reagan. And by the way, I am a Reagan
15 appointee as United States Attorney.

16 Q So, by 1982, you were about to say, you had
17 decided to run for public office?

18 A Yes.

19 Q For national office?

20 A Yes, for Congress.

21 Q As --

22 A As a Republican.

1 Q As a Republican from your home district?

2 A Mississippi County.

3 Yes, First District of Arkansas.

4 Mississippi County was one of the 24 counties.

5 Q And thereafter, did you run for any other
6 elective office?

7 A No.

8 Q Did you continue to be active in Republican
9 politics?

10 A I did. 1983, '84, I served as legal
11 counsel for the Republican party and stayed fairly
12 active in '84, but because I am a small firm
13 practitioner and still am, and the litigation -- I
14 just couldn't stay active.

15 Q I am not criticizing you for not staying
16 active in Republican politics, but what I was trying
17 to get at is whether you ran for other office or
18 whether you were active in some capacity in the party
19 following your service as counsel to the Arkansas
20 Republican party.

21 A No.

22 Q And you were willing to be nominated by the

1 President and confirmed for United States Attorney
2 for the district by President Reagan?

3 A Oh, yes.

4 Q And in that capacity, did you attend the
5 normal Republican functions and so forth within the
6 state?

7 A Never.

8 Q And it was your view that, once you assumed
9 office, you would not only in fact be nonpartisan in
10 your actions, but you would give no appearance
11 otherwise?

12 A I tried my best not to.

13 Q Now, you indicated that at some point you
14 were nominated for federal judgeship. Could you
15 specify when that was?

16 A I was first selected by Congressman John
17 Paul Hammerschmidt sometime in the middle or early
18 summer, maybe it was like July or August, of '92.
19 Yes, '92. And then the names were submitted to the
20 Senate or I was confirmed -- I am not sure I am using
21 the right terminology. But I was then nominated, I
22 think, by the President and my name was submitted to

1 the Senate for confirmation.

2 Q And that was somewhere around Labor Day,
3 thereabouts?

4 A Step two was in like August or September,
5 and then it went over to the Senate in September of
6 '92.

7 Q Was it ever acted on?

8 A No.

9 Q Now, is it fair to say that you would very
10 much like to have been confirmed for that federal
11 judgeship; this was a high honor and the culmination
12 perhaps of many things that you had been working for
13 in your professional life?

14 A Yes, that's fair to say. It certainly was
15 a high honor to be nominated.

16 Q Nevertheless, in spite of your desire to be
17 confirmed as a federal judge and to have the backing
18 of your party, it was your view, was it not, that you
19 would not lend yourself to what you regarded to be a
20 politicized referral by an individual or individuals
21 at the RTC relating to the Madison bank matter?

22 A Well, there is no question the answer is

1 yes. I just want to make sure I am hearing your
2 whole question. Yes, I was trying not to -- I was
3 trying to avoid any decisions based upon politics.

4 Q Was there --

5 A I mean, don't get me wrong. It certainly
6 crossed my mind that there was an opportunity to help
7 the home team, but I just --

8 Q When I was in the Department of Justice,
9 which may have been a little earlier than you, there
10 was a motto that we went by that came from a decision
11 by one of America's noted jurists in which he
12 described the prosecution function, in which he said
13 that the prosecutor may deliver hard blows but not
14 foul ones.

15 And in your view, would you have considered
16 accelerating the investigation of this RTC referral,
17 beyond how such a referral might normally be handled
18 by your office, as potentially constituting a foul
19 blow?

20 A Absolutely, based upon the referral I had
21 at hand.

22 Q Now, earlier in your testimony, I believe,

1 you used the phrase "request slow down" to
2 characterize how you were treating the referral, by
3 Ms. Lewis and Mr. Iorio. In that regard, was what
4 you were saying that you were going to slow down
5 something beyond the way it would be normally
6 handled, or were you saying that you would not lend
7 yourself or your office to accelerating the matter
8 ahead of where it might normally be considered?

9 A At what point? I am not sure I am clear.

10 Q You talked about when you received this
11 referral in September of '92, and then you said that
12 you were of a mind to slow down the referral.

13 Do you mean by that slowing down the
14 posture that Ms. Lewis was taking in terms of urging
15 a grand jury to be --

16 A Yes.

17 Q -- convened?

18 A Yes.

19 Q Did you mean to say by that, that under
20 normal circumstances this referral, if it didn't
21 involve any of the people we have been talking about,
22 would have been handled in a more expeditious way?

1 A No.

2 Q Indeed, you indicated that it was very
3 unusual for an RTC investigator to be calling your
4 office and pushing the office to issue grand jury
5 subpoenas; is that correct?

6 A It was on from my experience. Now, the one
7 thing I don't want to suggest is that RTC
8 investigators or any investigator that's trying to
9 get his case moving would not talk to an individual
10 AUSA. But the fact that -- I thought it was made
11 clear to her -- that given the sensitivity of this
12 referral, we're not going to do anything right now,
13 would cause her to understand there is no need to
14 call back right now. We are going to take this in
15 due course.

16 But that is not what happened, and that's
17 what I thought was unusual.

18 Q Did you receive any inquiries from the
19 press relating to this matter, you or your office?

20 MR. GICALE: What time period are we
21 talking about?

22 MR. BEN-VENISTE: From the time he received

1 the referral.

2 THE WITNESS: I don't recall one, no.

3 BY MR. BEN-VENISTE:

4 Q With respect to the FOIA request that you
5 mentioned Ms. Lewis had brought to the attention of
6 Mr. Dodson, do you remember how you handled that?

7 A Not any more than what I testified to
8 earlier, when he came in and told me about it, and I
9 concluded there seemed to be some real confusion
10 about what we are doing and what we are not doing.
11 And I need to write a letter and send my letter of
12 October the 16th back up there and see if we can get
13 straight about where they think we are or where they
14 think we're not.

15 Q You mentioned that, among the things that
16 went through your mind during the period of time,
17 that you were considering how to handle this referral
18 was the fact that there had been reference during the
19 Presidential campaign to the search of various files
20 relating to Mr. Clinton's passport when he was a
21 younger man; do you recall that?

22 A Yes.

1 Q In drawing the parallel between that and
 2 this criminal referral, did it occur to you that
 3 there might be appropriate criticism of the
 4 Department of Justice, and possibly your office, were
 5 you to accelerate consideration of this matter by
 6 convening a grand jury or doing some -- taking some
 7 other overt step that would be of a piece with the
 8 passport office inquiry, which might come under the
 9 general rubric of misuse of official position or
 10 government office for partisan political reasons?

11 A I am not sure I totally understand your
 12 question, but I think I can answer it this way: I
 13 mentioned that as an aside of what I had read in the
 14 newspaper, and what I thought could come, even
 15 accidentally, from an improper handling of the
 16 referral and from the issuance prematurely of grand
 17 jury subpoenas, that it could easily, at that late
 18 stage, be turned into a media issue, that I thought
 19 could be detrimental or unfair to everybody, the
 20 President of the United States, President Bush,
 21 Department of Justice, the witnesses listed on there,
 22 that seemed to fly in the face of what we always

1 tried to do, have absolute secrecy surrounding a
 2 grand jury.

3 Q When you mentioned in that context that, as
 4 you looked at the referral and in the way it was
 5 written and in the context of the persistence of
 6 Ms. Lewis in the request that she was making, you
 7 indicated that the purpose seemed to be to indict the
 8 witnesses instead of the target.

9 Did you mean, by the use of the word
 10 "indict," to indict them in the eyes of the press as
 11 opposed to any formal indictment by a grand jury?

12 A No, no, I can't agree with that
 13 characterization.

14 What I was trying to say is that it was
 15 clear to me that the insistence of pressure for
 16 timeliness would not have come up were it not for the
 17 names of the people involved as witnesses.

18 I could not imagine, nor did I get the
 19 impression during any visit I had with Mr. Dodson or
 20 anybody else with the FBI, that the thirst for speed
 21 in that case was occasioned by Mr. and Ms. McDougal.

22 I mean, there was no hot potato in my view

1 without the witnesses.

2 Q And in that regard -- and I made a note of
3 it at the time -- you used the term "indict the
4 witnesses," and what I wanted to do was seek your
5 clarification for what you meant by that, if you
6 remember that part of your testimony.

7 I presume what you meant by that was to tar
8 them in the public eye with the existence of an
9 investigation as opposed to some notion of formally
10 indicting the witnesses along with the targets of
11 that referral.

12 A I don't know if -- I can't sit here and say
13 that Ms. Lewis had in the back of her mind that the
14 only reason she was calling was to see to it that one
15 of those witnesses got indicted, but it was my
16 judgement that Ms. Lewis was not calling exclusively
17 about the referral pertaining to Mr. and
18 Ms. McDougal. And I don't think Ms. Lewis ever asked
19 us to do anything improper, I don't think she did.

20 But I was under the impression Mr. Dodson
21 had explained to her the sensitivity of the matter
22 and she should know what the sensitivity was about,

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1 starting a grand jury investigation at that point in
2 time. And I'm sorry not to give you a yes or no, but
3 I feel like I need to try to explain it.

4 Q I am not sure I communicated the predicate
5 for my question adequately, but I think your answer
6 covers the grounds.

7 In your conversation with Mr. Pettus when
8 he came to visit your office, and he told you that
9 the director of FBI had communicated with him
10 directly and wanted a report from him of some nature,
11 was it your view that the folks at the director's
12 level at the FBI as well as the people in Washington
13 ought to know that you would not be a party to doing
14 anything regarding this referral that might bring
15 public attention to this matter prior to the
16 election?

17 A I apologize again. I am not sure I
18 understand totally your question, but the answer is
19 yes. I assumed from the conversation that there had
20 been communication from the FBI, and FBI Little
21 Rock. I don't remember Don Pettus -- remember, this
22 had been sometime back. I don't recall Don Pettus

1 saying I talked with Director Sessions and he said
2 such and such.

3 But the conversation was sufficient that I
4 had the impression or the distinct language that said
5 they had certain aspects they had to check. But to
6 answer your question, I assumed that -- at one point
7 I thought they agreed with me -- that the only proper
8 way to handle that was to not do anything until after
9 the election.

10 Q "They" meaning FBI Little Rock?

11 A When I say "they," I am basically talking
12 about Mr. Pettus and Mr. Irons, who were the heads of
13 that -- I think it was Squad 3 that handled usually
14 S&L white collar crime.

15 Q And then you saw some change of direction
16 was manifested in Mr. Pettus's visit to you, to
17 discuss some directive he had been given?

18 A The change in the direction, to the extent
19 that my perception, was that there was a deadline of
20 October the 16th, and that we needed to have some
21 type of action taken or decision made. And that's
22 when I basically said to Mac, I can't be on that

1 schedule; I don't know what they have to have done,
2 but I'm not going to participate in it.

3 Q Count me out, you were saying. If you want
4 to go forward with this thing in a way that may cause
5 someone to be tarred with the fact that an
6 investigation has been opened or is underway, then
7 count me out; is that what you were saying?

8 A Yes, but again, remember, I am saying count
9 me out if that's the effect of what is going to
10 happen. I wasn't saying it somewhat intentionally
11 was trying to use the FBI to somehow perfect that
12 scenario.

13 Q You were thinking about it as a
14 possibility?

15 A If that's the end result of this, if this
16 is where we are going with this, regardless of what
17 you call this deadline, I'm out. I'm not going to
18 it. Unless, as I said earlier, unless somebody from
19 DOJ calls me or tells me this is what's expected of
20 you and here is why, someone had to show me where I
21 was mistaken.

22 MR. BEN-VENISTE: I have nothing further.

1 EXAMINATION

2 BY MR. GICALE:

3 Q Just one other brief question. Mr. Pence,
4 he replaced you as interim U.S. Attorney; correct?

5 A Yes.

6 Q Did you discuss this case, C0004, before
7 you left and he assumed office?8 A I am sure I did, but I can't remember any
9 of the substance of it. I am sure I had to because I
10 know we reviewed a lot of cases in general. But I
11 don't recall having any sit-down visit and say you
12 need to do this and you need to do that, because
13 basically he was the nominated -- even though he was
14 interim, he was United States Attorney. And I just
15 assumed that there would be some forthcoming
16 directions of some sort.17 Q Okay, now also just to -- in
18 Mr. Ben-Veniste's cross-examination, when you
19 mentioned the conversation with Pettus you mentioned
20 Sessions, did Mr. Pettus indicate that there was a
21 conversation with Mr. Sessions with respect to the
22 direction?1 MR. BEN-VENISTE: I doubt he would have,
2 since there is no evidence of the conversation.3 THE WITNESS: Well, I was getting ready to
4 say I don't remember him saying such a thing. All I
5 remember is that -- I will use this terminology -- my
6 understanding of the communication with Mr. Pettus
7 was FBI Washington had said or given these directives
8 to FBI Little Rock and this is what we need do, we've
9 got to do. And I just sensed there was a sense of
10 pressure to get something done that involved doing
11 the investigation after I thought we had already all
12 agreed that that wasn't the way to handle it.13 And again I am not trying to -- I have a
14 lot of respect for Don Pettus, a lot of respect for
15 those people at the FBI. And I am not trying to say
16 they were up to some type of skulduggery, I am just
17 saying if the bureaucracy was taken over and if the
18 communication lines were coming from Washington,
19 Little Rock and Little Rock FBI over to my office and
20 the end result was to do what we all agreed what
21 shouldn't be done, then I said it is time for me to
22 write a letter and tell everybody where I stand on

1 this once and for all so there won't be any blurred
2 communications.

3 Remember, I didn't keep any notes of these
4 meetings. I didn't dictate a summary of so-and-so
5 did this and so-and-so did this, and sent it off to
6 somebody. I dealt with people at face value.

7 Q So that your October 16 letter is the
8 memorialization of that final position?

9 A Yes, as to where I was after the -- the
10 last space says with the FBI about we need to go get
11 this done.

12 MR. GICALE: Okay, I have nothing further.

13 MR. BEN-VENISTE: Nothing further. Thank
14 you.

15 (Whereupon, at 2:30 p.m., the deposition
16 was concluded.)

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19 CHARLES A. BANKS
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CERTIFICATE OF NOTARY PUBLIC & REPORTER

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I, JOANNE LIVERANI , the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the
District of Columbia

My Commission Expires

JULY 31, 2000