

Approved: 3/15/94
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran on February 23, 1994, 12:30 p.m.,
Room 531-N of the Capitol.

All members were present except: Senator Harris (excused)

Committee staff present: Darlene Thomas, Committee Secretary

Conferees appearing before the committee:

Chuck Stones, Kansas Bankers Association
Chuck Henson, Kansas Bankers Association
Jim Gilliland, Hutchison
Monty Taylor, Parsons
Jim Scaletty, Parsons
William Henry, Kansas Association of Defense Council
Carolyn Hill, Youth and Adult Services, Social and Rehabilitation Services
Sydney Hardman, Kansas Action for Children
Lisa Moots, Sentencing Commission
Don Moler, Kansas League of Municipalities
Mike Santos, Senior Assistant City Attorney, Overland Park
Gregory J. Bird, Byron Bird and Associates
Senator Marian Reynolds
Charles W. German of Rouse, Hendricks, German, May & Shank
James Clark, Kansas County and District Attorneys Association

Others attending: See attached list

SB 763--mandatory fingerprinting for municipal ordinance violations comparable to misdemeanors

Don Moler, Kansas League of Municipalities testified in support of SB 763 and answered questions from the Committee. He said SB 763 essentially requires fingerprinting upon conviction or plea of guilt for a Class A or B type misdemeanor offense in municipal court and it gives the municipal judge the authority to order the person convicted to go to a reasonable location to be fingerprinted and failure to complete the fingerprinting process by the individual would be a contempt of court.

List Moots, Kansas Sentencing Commission testified regarding SB 763 and the manner in which it relates to criminal history record.

Mike Santos, Senior Assistant City Attorney, Overland Park provided written testimony in support of SB 763 (Attachment No. 1).

A motion was made by Senator Emert, seconded by Senator Ranson to report SB 763 favorably. The motion carried.

SB 762--liability of officers and directors of certain financial institutions

Chuck Stones, Kansas Bankers Association testified in support of SB 762 and provided written testimony (Attachment No. 2).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 531-N Statehouse, at 12:30 p.m. on February 23, 1994.

Chuck Henson, Kansas Bankers Association testified in support of SB 762. He said SB 125 was passed last year setting the threshold of liability at gross negligence, however, the law did not provide a retroactive application. Mr. Henson said if SB 762 was passed it would be a clear indication of legislative intent of retroactive application.

Jim Gilliland, Hutchison testified in support of SB 762. He said he was a member of the Board of Directors of First Federal Savings and Loan of Hutchison and has been sued by Resolution Trust Corporation. He said the suit against the Board of Directors of First Federal Savings and Loan involved an allegation of simple negligence. He related pressures on board members who were doing a civic duty and now face bankruptcy if judgments are obtained against the board of directors.

Monty Taylor, First National Bank and Trust, Parsons testified in support of SB 762 and provided written testimony (Attachment No. 3).

Morris Hildreth, Coffeyville provided written testimony in support of SB 762 (Attachment No. 4).

Jim Scaletty, Parsons testified in support of SB 762. He is a former president of People's Savings and Loan of Parsons, sued by Resolution Trust Corporation and has taken personal bankruptcy as a result.

William Henry, Kansas Association of Defense Counsel testified in support of SB 762 and provided written testimony (Attachment No. 5).

Gregory J. Bird, Byron Bird and Associates provided written testimony in support of SB 762 (Attachment No. 6).

Senator Marian Reynolds provided written testimony regarding SB 762 (Attachment No. 7).

Charles W. German of Rouse, Hendricks, German, May & Shank provided written testimony in support of SB 762 (Attachment No. 8).

Chairman Moran closed the hearings on SB 762.

SB 806--juvenile offenders; violations of municipal ordinances/county resolutions

Carolyn Hill, Youth and Adult Services, Department of Social and Rehabilitation Services testified in opposition to SB 806 and provided written testimony (Attachment No. 9).

Sydney Hardman, Kansas Action for Children, Inc. testified in opposition to SB 806 and provided written testimony (Attachment No. 10).

Lisa Moots, Sentencing Commission testified in support of SB 806 and answered questions from the Committee.

James Clark, Kansas County and District Attorneys Association testified in support of SB 806 and answered questions from the Committee. He said this bill is not aimed at the status offenses because those are dealt with in K.S.A. 38-1602. This bill allows violations of municipal ordinances by juveniles to be adjudicated under the juvenile code.

A motion was made by Senator Oleen, seconded by Senator Parkinson to report SB 806 adversely. The motion carried.

SB 741--Evaluation of and notice to guardians and conservators by psychologists

A motion was made by Senator Bond, seconded by Senator Petty to report SB 741 favorably. The motion carried.

The meeting adjourned at 1:30 p.m.

The next meeting is scheduled for February 24, 1994.

GUEST LIST

COMMITTEE: Senate Judiciary Committee

DATE: 2/23/94

NAME (Please Print)	ADDRESS	COMPANY/ORGANIZATION
Mike Boyer	Topeka	KBTI
Bill Henry	Topeka	KADC
Chuck Stone	"	KBA
Jeff Sams	Topeka	KALC
James R. Killiland	Hutchinson	Self
Monte Taylor	Panama	Self
Steven Passer	Overland Park	Self
Donna Salvini	Ottawa	Ottawa University
Charles Henson	Topeka	KBA
Don Moler	Topeka	League of KS Mun.
Lisa Moolis	"	KSC
M. D. VAUGHN	11915 BLUE JACKET, OVERLAND PARK, KS.	SELF
Jim Scaletty	KCMO	SELF
Frank Gross	Lane	Ottawa University
Paul Turner	Brandenburg MO.	Ottawa University
Scott Stephens	Ottawa	Ottawa University
MIKE SANTOS	Overland Park	City of Overland Park
Matt Lynch	Topeka	Twd Council
Jim Clark	Topeka	KCPAA

City Hall • 8500 Santa Fe Drive
Overland Park, Kansas 66212
913/381-5252 • FAX 913/381-9387
PROCOMM 913/381-0558

February 23, 1994

Chairman Jerry Moran
and Members of the Senate Judiciary Committee

RE: Mandatory Fingerprinting and Municipal Offenses
Senate Bill 763.

Thank you for permitting the City of Overland Park to present testimony concerning the mandatory fingerprinting requirements found at Sections 5 and 6 and 15 of Chapter 291 of the 1993 Session Laws and proposed changes as addressed by Senate Bill 763.

We believe that the new fingerprinting provisions place a significant logistical burden on municipal courts. This burden stems from the fact most individuals charged with city ordinance violations that are comparable to Class A and B misdemeanors are not arrested or taken into custody by municipal police departments. As you know, K.S.A. 12-4212 permits the arrest of ordinance violators in very limited cases. Because these violators are not arrested, when they appear in court for their arraignment, they have not been processed or fingerprinted. The dilemma for the municipal court judge is how to insure these individuals who have never been in custody are processed and fingerprinted. If the judge orders the person to be fingerprinted and processed prior to a trial on the merits, there is arguably an appearance of prejudging the person. In addition, there may be legal issues concerning the existing authority of municipal judges to order a person who has not yet been found guilty, to be processed and fingerprinted. These issues are primarily focused on the statutory requirement that the court ensure fingerprinting and processing, "upon the offender's first appearance", rather than after conviction. The result of the existing statutory requirement is that persons that are found not guilty or perhaps not even brought to trial are required to be fingerprinted and processed, even though they were never arrested.

We believe the simplest solution would be to limit the requirement for fingerprinting and processing to those individuals actually "convicted" of ordinance violations

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attachment 1-1

Chairman Jer. Moran
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comparable to Class A and B misdemeanors. While this would not necessarily eliminate all of the logistical issues, we believe it would significantly reduce the scope of the problem.

We also support the League's proposal that there be specific statutory authority for municipal court judges to order the fingerprinting and processing of persons convicted of the specified ordinance violations. This authority would include language affording the municipal court's the option to charge court costs to recover the expenses incurred in the mandatory fingerprinting and processing.

Our office is available to assist you as necessary in addressing these issues.

Sincerely,



Michael R. Santos
Senior Assistant City Attorney

cc: Ed Eilert, Mayor
Thomas C. Owens, Chairman Public Safety Committee
Don Pipes, City Manager
Bob Watson, City Attorney
Myron Scafe, Chief of Police
John Douglass, Assistant Chief of Police



#1
The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

February 23, 1994

TO: Senate Judiciary Committee
RE: SB 762 - Liability of outside directors of financial institutions

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to present comments concerning SB 762. This bill would extend existing statutory provisions relating to outside directors of financial institutions to any actions filed prior to May 20, 1993. Members of the committee will recall that the issue of retroactivity was part of the discussion on SB 125 during the 1993 session. At the request of the Senate conferees on that bill, the retroactive provisions of the bill were ultimately removed.

The KBA was supportive of the retroactive provisions of SB 125 and we would reiterate that support by requesting favorable action on SB 762. Current law has permitted the Resolution Trust Corporation (RTC) to file actions against outside directors whose only shortcoming was not being able to foresee hyper inflation, collapse of the oil industry, and a complete shift in federal tax policy relating to real estate investments.

We do not believe any directors guilty of fraudulent activities should escape prosecution, but the RTC and other federal agencies bringing actions against these directors should be required to prove gross negligence in such situations. We would request that the committee report SB 762 favorably.


James S. Maag
Senior Vice President

Office of Executive Vice President • 1500 Merchants National Building
Eighth and Jackson • Topeka, Kansas 66612 • (913) 232-3444

FAX (913) 232-3484

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attchment 2-1



Good Morning, Senators,

I have never had the honor of addressing any State Committee and therefore felt it best if I read a brief statement to the committee and then I will be happy to answer any questions.

My name is Montie Taylor, and I have served as President of First National Bank and Trust Company, Parsons, Kansas, since 1986. Our bank holds a "five star" Bauer Financial rating and although we are not permitted by National bank regulators to publicly disclose our national bank rating, I will tell you it is very, very good.

I would like to give you a personal chronology of myself, if I may. I graduated from Pittsburg State university in 1972, and went to work for a thrift in Parsons, Kansas, eventually becoming a Vice President in 1975, and a Director in 1980.

20 a stock corporation

The thrift was established in 1924, survived the Great Depression, and had been profitably run as a conservative traditional thrift, making home loans and offering savings plans.

In October, 1979, our Federal government deregulated the money supply and a short time later deregulated the thrift business. Banking 101 requires that a financial institution should collect

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more interest from loans than the bank pays to savers. This is obviously called "profit".

While many persons benefited from this inflationary deregulated environment by earning higher rates on savings than they were having to pay on long term borrowings, financial institutions became insolvent by the hundreds. One of those institutions was locally owned, Peoples Savings and Loan Association, Parsons, Kansas.

In 1983, at the urging of federal regulators, Peoples Savings' Board of Directors, comprised of ten local business people, acquired some short term, high rate loan participations in the fast growing Sunbelt.

In May, 1990, Peoples Savings failed and was liquidated. In February, 1992, all of the Directors of Peoples Savings who were on the Board in 1983 were sued for negligence based on three loan participations that were acquired in 1983. No fraud or self dealing has been alleged by the government.

These former directors were pillars of our community who took their Director responsibilities seriously, and who today, with the benefit of 20/20 hindsight made three bad loans. They also made thousands of good ones.

These former Directors have spent hundreds of thousands of dollars trying to defend their honor and integrity against an opponent with unlimited resources. The personal stress caused by the litigation has been severe. The outside directors, as one might expect, were generally older than the inside directors. In our case, one director has died. He was an outside director. I understand that the stress and health problems are not unique to our case.

Financial institution Directors greatly appreciate the passage of Senate Bill 125 which offers protection to Directors against simple negligence, going forward.

In closing, I want you to know that I am not here today, looking for a handout or expecting you to feel sorry for me. *as I fall within the definition of an inside Director under SB 125*
Senate Bill #762 does nothing for me. However, I do ask for your support of Senate Bill #762 which will retroactively help dozens of community minded former directors who are involved in financial institution litigation based on simple negligence which occurred during an unprecedented time in the history of savings and loans.

Thank you for your time and I would be happy to answer any questions that you may have.

4

I am appearing before you today on behalf of my friend, Jim C. Page, who was my next door neighbor for 27 years.

He was a Director of Coffeyville Industries, Inc. for 21 years; a two-term Trustee on the National Small Business Association; Director of the Kansas Chamber of Commerce; a Director of Kansas Industrial Development Corporation; and a three term Trustee of World Neighbors. He was an officer and director of The Page Milk Company of Merrill, Wisconsin, which operated a Grade "A" and Grade "C" milk processing plant in Coffeyville, Kansas. He was an ordinary citizen and was and still is a dedicated public servant, was and still is a man of limited means.

He was one of the outside directors of First Federal Savings and Loan of Coffeyville, Kansas, during the period from 1979 thru 1985 when difficult problems arose in the oil industry and agricultural industry which were aggravated by the changing tax laws. These difficulties in the local economics finally led to the collapse of value of commercial real estate. It was also during these years that the government was pressuring savings and loans to become engaged in lending on commercial real estate because it realized that the accelerated interest rates that banks and savings and loans had to pay to attract funds required them to lend "long term" at the same time they were required to borrow "short term". The loans upon which these directors were sued were made from 1982 thru 1985.

Shirley J. J. J.
2-23-94
attachment 4-1

All of the First Federal directors did the best that they knew how. Theirs were no exceptions. Theirs was one of the 179 banks and 42 savings and loan failures that occurred during that period.

Our Kansas courts have held that Directors of corporations are chargable only with gross negligence, but have set a lower standard to apply to Directors of banks and savings and loan associations, that of negligence.

You may wonder why I am here. I represent Jim Page who was a member of the Board of Directors of First Federal Savings & Loan of Coffeyville, Kansas, who is not accused of gross negligence, fraud, self-dealing, or any criminal misconduct, yet he has been sued for 12.8 million dollars. He, along with the other directors, are defending the lawsuit. The cost of defense will bring financial ruin to several of the directors and harm to all.

Senate Bill No. 762 makes the retroactive provisions of last year's Senate Bill No. 125 applicable to a wider range of actions. It requires the plaintiff to establish acts or omissions that constitute wilful or gross and wanton negligence.

It is for this reason that I appear before you today asking you to support Senate Bill No. 762.

DATED THIS 23rd day of February, 1994.

Respectfully submitted,



Route 1, Box 17
Edna, KS 67342
January 8, 1994

Senator Robert Dole
444 SE Quincy
Topeka, KS 66683

Dear Sir:

I am presently being sued for \$12,737,052.00 by RTC, due to serving on the Board of Directors of First Federal Savings & Loan Association, Coffeyville, Kansas, which was closed by RTC in August, 1989. I was first notified of this pending suit in a letter from RTC, dated September 10, 1991, stating the Board was guilty of mismanagement of the institution. RTC is well-aware that no illegal activities, nor self-dealing was done by any board member, but are accusing them of over-sight. Formal filing of the suit was made February 27, 1992.

It was the practice of First Federal of Coffeyville to include two employees on the Board of Directors: (1)--the President/Managing Officer who carried the same responsibilities as the outside board members; (2)--one other officer-for the purpose of taking the minutes and interpreting reports from various departments, and not for the purpose of setting company policy. I was appointed to the Board, in this second capacity, in 1979. My position in the Association was Senior Vice-President, specifically in charge of personnel, supervision of the departments on the second floor (Accounting, Loan Servicing, Data Entry, Print Shop), supervision of the Branch Manager at Caney, Kansas and the Janitorial staff. From time to time, I did exercise my right of vote, especially in areas of personnel benefits, purchase of equipment and other general operational decisions of which I had knowledge. I was not involved in the lending area of the Association, as this was specifically supervised by the managing officer.

I was employed at First Federal for 30 years. Ironically, RTC presented an award to me on Thursday, which stated it was for "Outstanding and devoted service for 30 continuous years", then closed the company on Friday. I was advised on leaving that "I would not be pursued due to the closing of the company". This was a great surprise, as I did not believe anyone would "be pursued" if they had not acted illegally. The bad loans at our Association were the result of the collapse of the oil industry and Coffeyville's loss of two large industries, plus high cost of savings rates. Unfortunately our Directors did not have a crystal ball to foretell these problems.

Senator Robert Dole, January 8, 1994, Page 2

The Federal Home Loan Bank had our Board of Directors sign a "Consent Agreement" in September, 1985, when our losses first appeared. This agreement effectively put us under the management of the FHLB, rather than our Board. Then Franklin Savings offered to merge with us and this seemed to be favorable with FHLB. However, approval was delayed by Washington for almost two years. Franklin subsequently withdrew their offer. We were actually "put on hold" by FHLB and Franklin during this period, causing great deterioration of our company. It would appear to me that since our Board was not in a managerial position after September, 1985, the statute of limitations for RTC suit would have long since expired.

First Federal's liability policy expired in 1985 and will not cover cost of our defense in this suit. My own legal costs to date are \$74,464.63 (see attached). My husband is a small farmer, and I am on Social Security. Our savings will soon be exhausted by my defense costs, and also the medical costs resulting from the emotional stress of this suit.

Since RTC first took over management of the association in March, 1989, I have suffered 2 Retina detachments; pneumonia, resulting from the second Retina surgery; hiatal hernia surgery, including 4 other major repairs due to the damage of the hiatal hernia; heart surgery for replacement of the Aortic valve; blood clot in right lung after the heart surgery; and major loss of vision.


It is my understanding that the Association's attorneys (who do have liability coverage) have offered RTC a settlement of \$1,000,000, and the Chairman of the Board has offered \$250,000. RTC attorneys have not accepted this offer and have apparently stated "why should we settle, we get paid by the hour."

Our Board of Directors were honest, hard working people who served as a matter of civic responsibility and not for any personal gain. I hope that you will investigate this matter and halt the squandering of tax funds by RTC.

My attorney is Mr. Robert Hecht, Scott, Quinlan & Hecht, 3301 Van Buren. Topeka. KS 66611, 913) ~~267-6745~~. Thank you.

267-0070

Yours very truly,


Laurretta (Ruth) Eikenberry

LRE:re
enc.

Legal Costs--Lauretta Ruth Eikenberry, in defense of suit by RTC.

<u>DATE</u>	<u>CHECK NO.</u>	<u>PAYABLE TO</u>	<u>AMOUNT</u>
11-6-91	3971	T. Richard Liebert, Atty.	\$ 50.00
11-6-91	3970	Scott, Quinlan & Hecht, Attys.	1,803.50
12-6-91	4053	Scott, Quinlan & Hecht, Attys.	90.00
1-3-92	4112	Scott, Quinlan & Hecht, Attys.	840.00
2-4-92	4171	Scott, Quinlan & Hecht, Attys.	238.50
3-2-92	4214	Scott, Quinlan & Hecht, Attys.	135.00
4-8-92	4297	Scott, Quinlan & Hecht, Attys.	5,237.80
5-15-92	4367	Scott, Quinlan & Hecht, Attys.	4,832.54
6-2-92	4415	Scott, Quinlan & Hecht, Attys.	919.36
7-10-92	4494	Scott, Quinlan & Hecht, Attys.	5,420.26
8-4-92	4549	Scott, Quinlan & Hecht, Attys.	488.44
9-6-92	4626	Scott, Quinlan & Hecht, Attys.	4,761.78
10-7-92	4683	Scott, Quinlan & Hecht, Attys.	2,561.55
11-2-92	4696	Scott, Quinlan & Hecht, Attys.	3,372.57
12-7-92	4762	Scott, Quinlan & Hecht, Attys.	937.50
12-31-92	4857	Scott, Quinlan & Hecht, Attys.	883.15
2-11-93	4523	Scott, Quinlan & Hecht, Attys.	4,037.15
3-2-93	4977	Scott, Quinlan & Hecht, Attys.	1,452.85
4-3-93	5061	Scott, Quinlan & Hecht, Attys.	15.00
5-15-93	5154	Scott, Quinlan & Hecht, Attys.	4,589.58
6-6-93	5199	Scott, Quinlan & Hecht, Attys.	558.50
7-5-93	5296	Scott, Quinlan & Hecht, Attys.	2,107.50
8-5-93	5346	Scott, Quinlan & Hecht, Attys.	1,907.73
9-10-93	5429	Scott, Quinlan & Hecht, Attys.	4,170.89
10-12-93	28	Scott, Quinlan & Hecht, Attys.	8,928.28
11-10-93	36	Scott, Quinlan & Hecht, Attys.	3,573.26
12-3-93	5596	Scott, Quinlan & Hecht, Attys.	7,898.74
12-31-93	5650	Scott, Quinlan & Hecht, Attys.	<u>2,653.20</u>
Total legal costs 1991, 1992, 1993 - - - - -			\$74,464.63 =====

JANUARY - MAY 1993

5 MONTHS

compiled 4/70

K.C.M.O. - firm

1. MORRISON & HECKER	WASHINGTON, D.C.	6,466,769
2. HUGHES, HUBBARD & REED	WASHINGTON, D.C.	2,687,551
3. BROWNSTEIN, ZEIDMAN & LORE	WASHINGTON, D.C.	2,482,573
4. SCHNADER, HARRISON	WASHINGTON, D.C.	2,243,013
5. DUKER & BARRETT	NEW YORK, NY	2,151,191
6. KUTAK, ROCK & CAMPBELL	OMAHA, NE	2,097,078
7. HOPKINS & SUTTER	CHICAGO, IL	1,812,189
8. BAKER & HOSTETLER	HOUSTON, TX	1,721,367
9. HOLLAND & HART	DENVER, CO	1,613,784
10. PETTIT & MARTIN	LOS ANGELES, CA	1,439,694
11. LINOWES AND BLOCHER	SILVER SPRING, MD	1,327,682
12. BROBECK, PHLEGER & HARRISON	SAN FRANCISCO, CA	1,307,682
13. SACHNOFF & WEAVER	CHICAGO, IL	1,298,691
14. PILLSBURY, MADISON & SUTRO	LOS ANGELES, CA	1,266,569
15. PORTER, WRIGHT, MORRIS	DAYTON, OH	1,251,065
16. LORANCE & THOMPSON	HOUSTON, TX	1,164,467
17. HOGAN & HARTSON	WASHINGTON, D.C.	1,161,830
18. MULLIN, HOARD & BROWN	LUBBOCK, TX	1,100,455
19. FINKELSTEIN, THOMPSON	WASHINGTON, D.C.	1,019,663
20. TUTTLE & TAYLOR	LOS ANGELES, CA	1,000,404
21. WEST, ADAMS, WEBB & ALBRTTTON	BRYAN, TX	964,466
22. ROSEMAN & COLIN	NEW YORK, NY	929,716
23. CARLTON, FIELDS, WARD	WEST PALM BEACH, FL	905,842
24. WRIGHT & L'ESTRANGE	SAN DIEGO, CA	902,072
25. WALT, DYER, JAMES & TAYLOR	NASHVILLE, TN	880,915
26. RIVKIN, RADLER & KREMER	NEW YORK, NY	826,728
27. KOBAYASHI & ASSOCIATES	DENVER, CO	816,794
28. CADWALADER, WICKERSHAM & TAFT	NEW YORK, NY	815,584
29. POWELL, GOLDSTEIN	WASHINGTON, D.C.	767,249
30. BAYH, CONNAUGHTON	WASHINGTON, D.C.	751,729
31. HUNTON & WILLIAMS	NORFOLK, VA	743,855
32. LISKOW & LEWIS	NEW ORLEANS, LA	723,104
33. HOLLAND & KNIGHT	TAMPA, FL	715,630
34. SHEA & GOULD	BRADENTON, FL	701,318
35. THACHER, PROFFITT & WOOD	NEW YORK, NY	696,393
36. MCANANY, VAN CLEAVE	LENEXA, KS	666,149
37. BAKER & BOTTS	AUSTIN, TX	659,591
38. LATHROP & NORQUIST	OVERLAND PARK, KS	650,231
39. DEWEY BALLANTINE	LOS ANGELES, CA	642,348
40. PIPER & MARBURY	WASHINGTON, D.C.	619,657
41. SEYFARTH, SHAW	CHICAGO, IL	611,183
42. LISA GREER QUATEMAN	LOS ANGELES, CA	530,737
43. STEPTOE & JOHNSON	PHOENIX, AZ	526,632
44. HILL, LEWIS	PHOENIX, AZ	517,841
45. NOVACK & MACEY	CHICAGO, IL	508,964
46. WINTHROP, STIMSON	NEW YORK, NY	506,878
47. KLUGER, PERETZ	MIAMI, FL	488,357
48. POOLE, KELLY & RAMO	ALBUQUERQUE, NM	486,164
49. BARACK, FERRAZZANO	CHICAGO, IL	482,885
50. CONANT, WHITTENBURG	AMARILLO, TX	481,253

1/11/94

Rut.

I thought you might be interested in the payment made to the RTC law firm on our case.



Thank you for your subscription to *Regulatory Watchdog*. As promised, here is the information on legal fees paid to the law firm about which you inquired. The information was obtained for you under the provisions of the Freedom of Information Act.

Law Firm Lathrop & Norquist

	<u>RTC</u>	Amount Paid By: <u>FDIC</u>	<u>Total</u>
1990	\$ ---	\$ N/A	\$ ---
1991	\$ 750,879	\$ ---	\$ 750,879
1992	\$ 1,006,081	\$ ---	\$ 1,006,081
1993 ¹	<u>\$ 752,968</u>	<u>\$ 15,694</u>	<u>\$ 768,662</u>
Total	\$ 2,509,928	\$ 15,694	\$ 2,525,622

¹ FDIC Fees Through September 30, 1993; RTC Fees Through June 30, 1993.

I expect you are outraged by the amount of taxpayer money being spent on this law firm. If the situation is typical, the amount spent on fees is smaller than the government can ever hope to collect based on the merits of the cases and the resources of the defendants. The fact that goes unnoticed by the press, and unmentioned by politicians, is that this witch hunt is *not* about restitution. It's rather a wildly expensive PR campaign by Congress to create private sector scapegoats. The only beneficiaries beyond members of Congress are their close friends and loyal lobbyists from the American Trial Lawyers Association.

I hope you can use this information with your local media and political representatives. The law firm involved will not be happy to have the amount of fees it has (so far) collected become generally known. Please make sure the taxpayer rip-off is revealed in your community.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Edward L. Morris'.

Edward L. Morris, PhD.
Publisher



Regulatory Watchdog's First Six Months

With six months behind us, here is an overview of what the Watchdog has done to counter the out-of-control regulatory agencies:

- We've launched the *Regulatory Watchdog* newsletter, publishing and distributing six issues to members, U.S. senators and representatives, trade associations and key media contacts nationwide. With our seventh issue, we have covered every angle of the regulatory nightmare, from the personal histories of individual D&Os to the analysis of the agencies' statistical reports.
- The Watchdog has become a registered lobbyist, officially recognized by legislators and their aides for our work in formulating reform. The Watchdog was invited to participate in a group on Capitol Hill that is drafting corrective legislation.
- We've held two conferences, both receiving coverage in *The Wall Street Journal* and other newspapers. In addition to providing members with ammunition for their own battles, these conferences have formed a national network for D&Os. Rep. Sam Johnson (R-Texas) chose our September conference to announce new legislation he and Rep. Bill McCollum (R-Fla.) are introducing in the House that will define simple vs. gross negligence at the federal level.
- We have used our position to extract information from the government regarding settlements, fees paid to law firms, recovery statistics and more. In some cases, this is information that has been refused to our members as individuals.
- We have raised the profile of the regulatory nightmare through the media. With well-placed articles in *The Wall Street Journal*, *American Banker*, the *National Law Journal* and others, the Watchdog is making this issue mainstream.
- The Watchdog has become a recognized source on regulatory issues. It was the Watchdog's analysis of RTC recovery data that spawned articles in several publications on the government's wasteful litigation.

In short, in six months the Watchdog has become an effective clearinghouse for members, media, legislators and the public at large as the regulators' tactics and motives are exposed.

McLarty's Got It Right

We'd be remiss not to note Washington's continuing harassment of people who did any kind of business with the savings and loan industry. One fellow who got caught up in the nightmare described the government as "chasing 'deep pockets' in response to political pressure."

These words were uttered by a utility executive named Mack McLarty. Prior to becoming Bill Clinton's chief of staff, Mr. McLarty ran a gas company, Arkla, that had bought another gas company that had once owned a savings and loan. Sometime after all this, the S&L went belly up. On this tenuous history, the government is suing Arkla.

We've also returned from time to time to the case of Far West Federal Bank. It was going broke in 1987 when the regulators persuaded Trinity Ventures, an investor group formed by David Nierenberg, to take it over. Congress reneged on crucial terms in the deal when it passed FIRREA, the S&L bailout law. Far West Federal was rendered technically a dead duck, and the bank examiners rushed in to apply the coup de grace.

As luck would have it, Judge Owen Panner of the Ninth federal circuit holds the view that the government ought to honor its contracts. Last spring, he ordered the Office of Thrift Supervision to give back the \$27 million the Trinity partners had invested in the process of taking Far West off the government's hands. This sum is now accruing interest at 12% while the government appeals.

The RTC, in addition to cleaning up the thrift mess, is under orders to find some "crooks" and make them disgorge their booty. Being a creature of Congress, the RTC isn't about to point the finger there. So Mr. Nierenberg has been learning something about this side of Washington's S&L neurosis, too.

Over the summer, he and nine partners received subpoenas from the RTC, inquiring about the nature and disposition of their personal assets and whether there's a pot of insurance money. Such snooping usually precedes a legal shakedown and is aimed at establishing whether the subject is a ripe target.

Any day now Mr. Nierenberg and friends expect to be sued for gross negligence and malfeasance in the downfall of Far West Federal, notwithstanding a \$27 million judgment by a federal court that says it was the government that screwed up.

The provenance of Washington's legal jihad against the S&L survivors was explained last week by Ira H. Parker, until recently the RTC's associate general counsel. Though 90% of the lawsuits are of doubtful merit, he told a conference sponsored by the group Regulatory Watchdog, they're basically waved through to appease Capitol Hill.

"Having sat for only a month and having testified before Senator Riegle's committee as to why one action hasn't been brought, you know that if you make the decision not to bring the action... that you're going to be called before some committee someplace up on the Hill," Mr. Parker explained.

"That's literally what goes through your mind. You're going to be asked to explain your decisions and it's not going to be a private forum, it's not going to be in chambers, or just to Congressional staffers. It's going to be sitting up there with C-Span glaring in your face or Sam Donaldson glaring in your face because it will be shown on some stupid show.

"I do know one thing. If I go ahead and authorize the litigation, nobody's going to criticize me."

This would almost be funny if it weren't wrecking people's lives and dragging down the economy. While authorizing another pile of money for the RTC this month, the House added two years to the statute of limitations for thrift lawsuits.

Lawyers usually advise these victims to settle out of court rather than spend their lives fighting Uncle Sam. Even so, according to Regulatory Watchdog's Ed Morris, the Drexel and Keating cases account for the lion's share of the \$435 million collected through last year. Only 4% came from suing bank directors and officers like Mr. Nierenberg. Just the same, the government has filed lawsuits against about 1,700 individuals and has hundreds more in the pipeline.

By their nature these tend to entangle economically useful people. Neil Bond and Reid Dennis of the Trinity defendants, are venture capitalists who've provided seed money for such stellar performers as Seagate Technology and Silicon Graphics. Of course, you can't be out creating jobs if you're tied up in court.

Presumably Mr. McLarty is safely out the way now, but the government's lawsuit against Arkla rumbles on. At last word, a judge threw out nine of the 10 counts in the RTC's original indictment, but the agency rearranged the paragraphs and came back with 12 new counts. The RTC also saw fit to reduce the damages from \$535 million to \$520 million, maybe because Arkla's attorney got a big laugh from the judge when he testified that the original figure represented \$1 million for every member of Congress.

Treasury deputy Roger Altman, who's been holding down the top job temporarily at RTC, wrote legislators this summer to argue against the statute of limitations extension. We suspect he knows how silly the S&L vendetta has become, and we hope he passes his thoughts along to Stan Tate, the Florida real estate man nominated to succeed him.

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Editorial and Corporate Headquarters:
200 Liberty Street, New York, N.Y. 10281.
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TESTIMONY
Senate Judiciary Committee
February 23, 1994

Chairman Moran, members of the Committee, I am Bill Henry, Executive Secretary of the Kansas Association of Defense Counsel. I appear before you today on behalf of the KADC in support of the passage of SB 762.

SB 125, which was passed during the last legislative session, affects the liability of officers and directors for certain financial institutions. In essence, an outside director of a financial institution in the State of Kansas can be held liable for breach of duty only when his/her acts or omissions arise at least to the level of gross negligence.

Once again, SB 125 is the law in Kansas only as it affects outside directors. Outside directors represent citizens from towns and cities around the state who have been asked serve to on the boards of directors for financial institutions as a civic and community service. These directors serve for little and sometimes no remuneration and, in the case of savings and loan associations represent an ongoing effort to ensure that Kansans have a place to turn for financing in the purchase of their homes.

In the Summer, 1989, the United States Government chartered the Resolution Trust Corporation (RTC) into existence. In the beginning, the RTC took over failing thrifts and pursued individuals, usually officers and inside directors, who had, through fraud, self-dealing and insider activity, personally benefitted from their positions as directors for financial institutions. Since these initial lawsuits, however, the RTC has turned its attention to filing lawsuits against officers and outside directors of failed financial institutions, based upon simple negligence.

The RTC is authorized to bring a lawsuit based upon simple negligence, only if authorized under state law. The federal standard is a gross negligence standard. Prior to the last session's passage of SB 125, the Kansas Legislature had not spoken on this point. SB 762 now clarifies that the law in the State of Kansas for outside directors is that they cannot be held personally liable unless they commit acts which rise at least to the level of gross negligence. SB 762 is not an attempt to thwart present

Senate Judiciary
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legislation, but rather, an effort to do right by those citizens of our state who have lent their time, energies, hearts and reputations to the service of communities as members of boards of directors for financial institutions.

On behalf, the KADC asks that you send these individuals a signal, not only that their work is appreciated but that they were and are expected to serve as directors to the best of their capabilities, exercising reasonable care and diligence.

Respectfully Submitted,

William M. Henry, Executive Secretary
Kansas Association of Defense Counsel



BYRON BIRD AND ASSOCIATES, CHARTERED

CERTIFIED PUBLIC ACCOUNTANTS

JB 762

316-624-1994
224 N. LINCOLN
LIBERAL, KANSAS 67901

Senate Judiciary Committee
Topeka, Kansas
C/O Senator Marian K. Reynolds

My name is Gregory J. Bird, and I am a Certified Public Accountant in Liberal, Kansas. I was an outside director for Colonial Savings and Loan from April 1986 to February 1989. I am currently involved in litigation with the Resolution Trust Corporation.

When I accepted the position on the board, I understood my responsibility was to help guide and direct Colonial Savings and Loan in their overall business plan and help establish overall policies and procedures. I also understood my fiduciary responsibility to promote and represent Colonial in the business world. I do not believe that it is an outside directors responsibility to prepare the documentation of loan underwriting, become a certified appraiser, or be a financial genius able to predict what loans might go bad.

After spending three days in depositions with RTC's attorney's, it became obvious to me that RTC is trying to make the outside directors responsible for the actual preparation of loan underwriting documentation, not just setting policy, and experts on preparing appraisals. A large part of the three days were spent reading the past minutes of Colonials board meetings so that I could agree that was what was written. My attorney called it the trained chimpanzee response. If this is cost effective litigation I would hate to see what they consider not cost effective.

Finally, I just want you to know that I made the best decisions I could with the information available at the time.

Sincerely

Gregory J. Bird

Gregory J. Bird

*Senate Judiciary
2-23-94
attachment 6-1*



DR. STEVE T. CAUBLE
DR. ERIC W. LAMP
1401 W. 15th - BOX 2317
(316) 624-4371
LIBERAL, KS 67905-2317

FACSIMILE COVER LETTER

DATE: 2-23-94
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SPECIAL
INSTRUCTIONS.



STEVE T. CAUBLE, O.D.
ERIC W. LAMP, O.D.

DOCTORS OF OPTOMETRY

February 21, 1994

Senator Marian Reynolds
State Capitol Building
Topeka, Ks

Dear Senator Reynolds,

I would like to write to you concerning Senate Bill 762 which deals with the laws suits of "failed" Savings and Loan outside directors. I encourage the bill to be brought out of committee and at least brought before the entire Senate for debate. These law suites and the total misuse of federal money needs to be told to the public. We need you to help in getting it out of committee.

In my personal case, the RTC took control of Colonial Savings and Loan of Liberal which I served on the Board of Directors as an outside director. The RTC is playing a political game where they blame the directors for outside influences. The RTC claims the board caused the loans to go bad and that we caused the institution to go under. The loans were all made four to six years before the RTC took over the institution. They were all made and all repaid.

Senate Judiciary
2-23-94
7-1

many state and federal audits and examinations.
The RTC has used its excessive power of the press to make all
S and L Directors to look criminal. I first learned about
the lawsuit in the local newspaper. I had no way of telling
my family about it before they read an article that had been
"leaked to the press".

I honestly feel the changes in federal tax laws on
investments as well as the RTC selling property at the below
market value lead to many S and L going under. We as
outside directors followed the advice of federal and state
auditors.

I feel the damage to my reputation has been deep by the use
of the press and the harassment by the RTC on our home loan.
The RTC need to be stopped now and I urge the passage of SB
762.

Sincerely,



Steve T. Cauble

FAX # 713.296.6718

2/21/94

MARIAN REYNOLDS -

MY APOLOGIES FOR THIS BEING HANDWRITTEN BUT WANTED TO GET THIS TO YOU AS SOON AS POSSIBLE - I WAS ASKED TO SERVE AS AN OUTSIDE DIRECTOR IN 1981. LEONARD THOMAS, A DEVELOPER FROM DALLAS BOUGHT COLONIAL SAVINGS IN NOV. '84. HE BEGAN BRINGING LOANS TO OUR BOARD THAT WERE LOCATED ALL OVER THE U.S. - AT ONE MEETING HE BROUGHT OVER 30 MILLION IN LOANS WHICH WE WERE EXPECTED TO REVIEW & ACT ON IN AN 8 HOUR BOARD MEETING - HE WAS THE 100% STOCKHOLDER & HAD TOTAL CONTROL OVER OUR BOARD - OUR BOARD CONSISTED OF LOCAL BUSINESSMEN THAT ALL SERVED OUR COMMUNITY IN MANY VOLUNTEER CAPACITIES - THE RTC CLOSED COLONIAL IN DEC '89 AND DUE TO ECONOMICAL REASON (THE PRICE OF OIL DROPPING FROM 20⁺ TO 10⁺ A BARREL) THE TEXAS LOANS & OTHERS BEGAN FAILING - APPROX 95% OF THE LOANS WERE GOOD LOANS WHEN ORIGINATED - OUR LAWSUIT WAS FILED IN OCT '91 - OUR TRIAL HAS BEEN POSTPONED FOR

THE 4TH TIME I IS SET FOR OCT '94.
IN THE MEANTIME THE DEFENDANTS
CONTINUE TO PAY LEGAL FEES. I
HAVE SPENT 10,000 MYSELF & I KNOW
2 OF THE DEFENDANTS THAT HAVE
SPENT 28,000 EACH. ALL THIS TIME
THE RTL CONTINUES TO BILL THE
TAXPAYERS - THE ENCLOSED INFORMATION
WILL HOPEFULLY HELP YOU UNDERSTAND
OUR SITUATION - THANKS FOR
YOUR TIME & LISTENING -

Mike Riney

ARTICLES ENCLOSED:

- 2/22 RTL - COST TO TAXPAYERS 150 BILLION +
- INSIDER ABUSE BY RTL - \$ PAID TO LAW FIRM REP.
RTL IN OUR CASE
- OUR CASE IS A CIVIL CASE / IN CRIMINAL CASES - SHOWS
\$ PAID BACK BY TOP 5
S&L OFFENDERS
- MAKING WRONG PEOPLE PAY / TELLS OUR STORY -

BUSINESS IN BRIEF

Resolution Trust nears conclusion of its mission

Nearly five years after the government launched its cleanup of the savings-and-loan industry, the end is in sight, but the cost to the taxpayers is \$150 billion and counting.

Last year, only 10 S&Ls failed, the fewest since 1979. None have failed so far this year. The industry — about half its former size — is profitable. It's earned \$8.9 billion since the start of 1992.

The Resolution Trust Corp., the agency in charge of the cleanup, has whittled its work force from a peak of 8,800 to 6,740. It has wrapped up the affairs of 680 S&Ls and disposed of \$394 billion in assets — the equivalent of the country's two biggest banks, Citicorp and BankAmerica Corp., combined.

By the time the RTC shuts down, it expects to have handled an additional 63 failed thrifts now operating under its control and sold the \$64 billion in assets left in its portfolio.

Cattle, hog prices mostly steady

Cash prices for cattle and hogs were mostly steady Monday, a day when commodity futures exchanges were closed for the Presidents Day holiday. Slaughter-ready steers in western Kansas sold for \$74 per hundred pounds, steady with prices late last week. Butcher hogs were \$45 per hundred pounds at Clearwater and \$44.50-\$46 at Arkansas City, 50 cents lower than last week. Sows brought \$32-\$37 at Clearwater and \$34 at Arkansas City.

BMW buys rest of Rover Group

BMW said Monday in Frankfurt, Germany, that it would take over the remaining 20 percent of Britain's Rover Group from Honda Motor Co.

The agreement would give Bayerischer Motoren Werke AG full control of Rover Group Ltd. Last month, BMW announced plans to acquire an 80 percent stake in the Rover Group.

That accord, as well as the new agreement, are subject to the approval of shareholders of British Aerospace, owner of the Rover holding company.

Under the transaction, Honda's 20 percent stake in Rover would revert to the Rover holding company, giving BMW a 100 percent stake.

Innovative CD center of attention

A small Browning, Mont., bank owned by the Blackfeet Indian Tribe is offering a controversial new investment that's captured the attention of bank and insurance executives across the nation.

Blackfeet National Bank is selling a "retirement certificate of deposit" that is insured like a bank deposit and offers many of the tax advantages of an annuity. Annuities are investment contracts, usually purchased from insurance companies, that make a series of payments over a specific period.

The CD appears headed for legal challenges, since banks traditionally have been unable to underwrite investment products such as annuities. The Comptroller of the Currency, the arm of the Treasury Department that regulates nationally chartered banks, has

Employees desert

Run-down hotel can't house groups

By Steve Painter

The Wichita Eagle

Nearly all the remaining employees of the Century II Plaza Hotel in downtown Wichita, where workers haven't been paid in nearly two months, walked out Saturday after a meeting with a potential new manager, former workers said Monday.

The workers said that Mark Guilds, whose company manages the Wichita Royale Hotel, met with them and said he was considering a proposal to manage the Century Plaza. Guilds said he could guarantee them wages in the future but would not cover back pay, the workers said.

Guilds also told the workers he would not proceed with any plans to manage the hotel until he checked out reports that withholding taxes on employees' wages had not been paid to the Internal Revenue Service, the workers said.

The 30 or so workers walked off the job after the meeting. Guilds and Ed

Winkler, the Ohio businessman who owns the hotel, did not return telephone calls Monday.

No more than 10 workers were on the job Monday at the Century Plaza, and they were being paid in cash daily at a rate that some former workers said was double their normal pay.

Meanwhile, the hotel has begun notifying convention groups that had booked rooms that they will be unable to house them, according to Sherry Graham, public relations director for the Wichita Convention and Visitors Bureau. Those groups include the Kansas Music Educators Association, which is bringing an estimated 5,000 people to town Thursday through Saturday and which would have filled the Century Plaza and several other hotels and motels.

Don Daugherty, who works for Winkler as temporary manager, arrived at the hotel early Monday afternoon from an out-of-town trip and said he had no idea what discussions were taking place regarding new management. He referred inquiries to Winkler.

Nan Massey attended the Saturday meeting even though she had left her job as head of housekeeping three weeks

"Special Edition"



CE 22 1994 10 00011 FRONT 3 BENEATH INSURANCE 191323588718 P.05

An opponent of Russian President Boris Yeltsin ties a Liberal Democratic Party flag to a statue in Moscow on Thursday. Also on Thursday, the Russian legislature held a late-night session

Insiders' abuses compound S&L mess

By David Hess

Eagle Washington bureau

WASHINGTON — If you thought the \$500 billion savings and loan scandal was a disaster for taxpayers, you should hear what's happening at the Resolution Trust Corp., the agency created to clean up the mess.

A litany of horror stories about the RTC's haphazard pursuit of S&L wrongdoers and sloppy disposal of overvalued properties was delivered Thursday by 13 current and former agency employees in testimony before the Senate Banking Committee.

In one case in Atlanta, outside attorneys gained access to confidential RTC billing records and were "given the authority to use the system to pay their own bills," according to computer specialist William Henderson, who worked in the RTC's legal division.

The result? "Duplicate, even triplicate payments dispensed to law firms for a sin-

See **WASTE**, Page 6A

Students' FA Companies pledge to limit work hours

By Suzanne Perez

The Wichita Eagle

Flipping burgers or bagging groceries past midnight can make it difficult to concentrate on calculus the next morning.

That's why Wichita-area educators hope to limit the hours high school students spend working part-time jobs.

As part of a new program called

INSIDE

Business & Farm	8B
Cityline Index	3D
Classified Marketplace	4D-16D
Comics	10C, 11C
Editorials	8A, 9A
Kansas	1D-3D
Living	1C-12C
Markets	9B-11B
Movie Listings	3C-5C
Obituaries	2D
Sports	1B-7B
TV	9C
Weather	2D

News summaries and how to reach us, 2A

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4 sections, 90 pages



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WASTE

Punishment dealt to whistle-blowers

From Page 1A

gle invoice for legal services," Henderson said.

The overall cost to taxpayers of the 4-year-old RTC's alleged incompetence was estimated at \$30 billion to \$50 billion, according to one independent analysis cited by a senator.

The panel of whistle-blowers — from RTC's offices in Denver, Dallas, Atlanta, Chicago and Newport Beach, Calif. — accused several regional higher-ups and lawyers of offenses ranging from gross mismanagement of real estate assets to sexual harassment and job-retaliation against subordinates who objected to their misdeeds.

The panel also included a special agent for the agency's inspector general, who accused some employees from the same branch of helping cover up misdeeds by high-ranking RTC officials.

"The General Accounting Office has (already) documented that RTC has never had adequate controls on its operations," said Sen. John Kerry, D-Mass. "A number of private law firms, accounting firms and real estate contractors have taken advantage of RTC's management weaknesses to rip off the public, increasing the overall cost of the S&L bailout."

Sen. Howard Metzenbaum, D-Ohio, said the bipartisan National Commission on Financial Institution Reform had estimated that 10 to 15 percent of the bailout costs "are due to culpable misfeasance."

Padding of bills by lawyers, accountants and other RTC consultants is commonplace, according to agency whistle-blowers, and is probably costing taxpayers millions a year.

Hans Mangelsdorf, an assets-disposal specialist in the RTC's California office, said the agency's practice of auctioning commercial properties has led to deflated prices for the



"A number of private law firms, accounting firms and real estate contractors have taken advantage of RTC's management weaknesses to rip off the public, increasing the overall cost of the S&L bailout."

Sen. John Kerry

property, inflated transaction costs — and millions of dollars in losses to taxpayers.

"In effect," he said, "through these auctions, the RTC and American taxpayer pay a high cost for sales only to achieve discounted sales prices."

James Romer, a contracting officer at the RTC's Dallas office, said the agency there had not always observed competitive bidding and, on occasion, appeared to be awarding contracts to favored bidders with connections to key agency officials.

In one case, Romer said, he was ordered to award two contracts to a second-ranked bidder whose chairman was friends with several of the senior staff members at RTC.

When he protested and threatened to report the case to the RTC's ethics office, the order was withdrawn. But, Romer said, senior management then "dictated that the second-ranked firm be awarded (other) business."

Debbie Sherrill, a claims-settlement specialist at the RTC's Atlanta office, said the agency there routinely "wastes tens of thousands of dollars" on many financial asset trans-

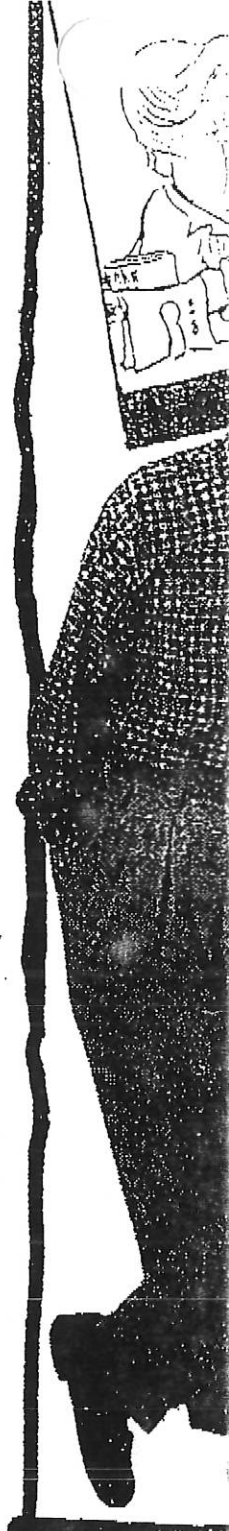
fers by failing to shift the assets promptly to banks buying them.

Michael Koszola, a special agent for the RTC inspector general, accused his department of failing to vigorously investigate accusations of wrongdoing — and even of helping accused executives cover up alleged misdeeds.

Koszola said the inspector general "engaged in rewriting reports to avoid embarrassment, misleading Congress, covering up high-level misconduct, shredding incriminating documents and grossly distorting the agency's investigative priorities."

In one incident, Koszola said a higher-up denied his request to investigate a tip that the girlfriend of a high-ranking RTC executive was buying RTC-controlled properties in Dallas for the executive.

In virtually every case in which the whistle-blowers spoke out against what they perceived as wrongdoing and wastefulness, they suffered retaliation from bosses — ranging from withheld promotions to transfers to dead-end jobs. Koszola has been put on administrative leave with pay, after being ordered not to have any further contacts with congressional investigators.



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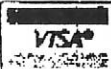
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L. J. H.

--Regulatory
WATCHDOG



Thank you for your subscription to the Regulatory Watchdog. As promised, here is the information on legal fees paid to the law firm about which you inquired. The information was obtained for you from the RTC and FDIC under the provisions of the Freedom of Information Act.

Law Firm	Amount Paid By:		
	RTC	FDIC	Total
1991	\$317,416	\$347,354	\$664,770
1992	438,638	601,062	1,039,700
	\$756,054	\$948,416	\$1,704,470
1993 - Jan 1 - Apr 30		171,499	\$1,875,969

I expect you are outraged by the amount of taxpayer money being spent on this law firm. If the situation is typical, the amount spent on fees is smaller than the government can ever hope to collect based on the merits of the case and the resources of the defendants. The fact that goes unnoticed by the press, and unmentioned by politicians, is that this witch hunt is not about restitution. It's rather a wildly expensive PR campaign by Congress to create private sector scapegoats. The only beneficiaries beyond members of Congress are their close friends and loyal lobbyists from the American Trial Lawyers Association.

I hope you can use this information with your local media and political representatives. The law firm involved will not be happy to have the amount of fees it has (so far) collected become generally known. Please make sure the taxpayer rip-off is revealed in your community.

Very truly yours,

Edward L. Morris,
Editor and Publisher

litical season



Kim D. Johnson/The Wichita Eagle

n silence in Aggie Berkebile's sixth-grade class at Christ the King
sh Wednesday, which marks the beginning of Lent, Catholics receive
is on the forehead as a reminder to do penance.

Pillagers not paying S&L fines

Some say huge sums may never be repaid

By Richard Keil
Associated Press

WASHINGTON — More than 100 savings-and-loan defendants who escaped long prison terms in exchange for making penalty payments have repaid less than a half-penny per dollar of the \$133.8 million they owe, according to a review of federal court records.

Some defendants — and some government officials, too — readily acknowledge there is little chance that the 109 convicted S&L figures who received plea bargains will ever repay the huge fines and restitutions.

"The restitution orders in these cases are thrown around like there are nickels and dimes involved," said Woodrow Brownlee, former president of Dallas-based Commodore Savings Association. He has repaid just \$3,000 of the \$1 million in restitution ordered in a plea bargain that spared him any prison time.

When asked about his slow repayment, Brownlee, who earns about \$15,000 per year in commissions from a sales job, pounded on his calculator.

"Let's see — I'm 53, and let's say I have a life expectancy of 75 years," Brownlee said. He figures that his annual repayment works out to \$47,500 per year.

Though prosecutors can try to revoke probation for defendants who fail to pay up, the Justice Department has forgone a get-tough approach and left it instead to overburdened probation and parole officers to collect the money.

George Calhoun, a senior Justice Department prosecutor, said an aggressive approach would do little because "in a good number of the cases ... they've pretty well been stripped clean by the time they get to court."

Attorney Christopher Cannon, who represented the head of a San Francisco thrift convicted of misusing funds in 1990, said the fines are "unenforceable" and "do nothing more than give the appearance of government action."

Cannon's client, Ted Musacchio, was given five years' probation and ordered to pay \$9.3 million in restitution to his former thrift. Musacchio paid less than \$1,000 before dying of cancer last month.

"He had zero assets, and everybody knew at the time

**Prosecutors
have given up on
collecting,
instead leaving
that task to
overworked
probation and
parole officers.**

See **REPAYMENT**, Page 4A

7-9

des REPAYMENT

From Page 1A

protests. "I don't think Clinton" to way to raise dged that "a cannot be al- would steal

expressed at mittee hear-

Mont., said ut his state's d because it s of power. a., from an , wondered x couldn't be ry tax. And N.D., said a would be hit

asury Secre- sponded that still making plan.

of sentencing that he had no assets," Cannon said.

A Justice Department document shows Musacchio and Brownlee are far from alone.

Overall, the government has recovered just 4.5 percent of the \$846.7 million in fines and restitution orders assessed in the 2,603 S&L criminal cases from October 1988 through the end of 1992, according to the General Accounting Office, the investigatory arm of Congress.

And the recovery rate for defendants involved in plea bargains is 0.43 percent, \$577,540 of \$133.8 million.

More than two dozen plea bargain defendants listed in the Justice report escaped without any prison time at all and those who did serve time spent fewer months behind bars on average than car thieves, the review also found.

The average prison term for an

Top five S&L offenders

Name; banking institution; prison term; fine; amount paid

1. E. Frank Neisch, Puget Sound National Bank, Tacoma, Wash.; 3 years; \$19,950,943; \$0
2. E. Michael Sheheen, Bullmount Mortgage Co. of Camden, S.C., and other institutions; 9 years; \$11,849,507; \$0
3. Gerald Cernero, City Federal Savings Bank, Jersey City, N.J.; 1 year; \$10,788,873; \$0
4. Larry G. Frankenhous, Puget Sound National Bank, and institutions in six other states; 2 years, 3 months; \$9,972,500; \$0
5. James R. Cruce, Peoples Heritage Federal Savings and Loan Association of Salina; 14 years; \$8,000,000; \$0

Wm. J. Castello/Associated Press

S&L convict is 21 months; the average car thief convicted in federal court spends 28 months behind bars. Even though most defendants

don't pay up, the Justice Department frequently touts the large fines and restitution orders as a sign of its success in prosecuting S&L cases.

For instance, the Justice Department boasted in its 1991 report to Congress that Oklahoma banker Gary Hobbs was penalized with a 7½-year jail term and a \$10.2 million restitution order for defrauding a thrift. But the 1992 Justice document shows that Hobbs has repaid just \$204,830.

Ira Raphaelson, the former Justice Department special prosecutor who coordinated the government's attack on S&L fraud, conceded, "It misleads the public to suggest that there will be a substantial recovery."

"The recovery rate is going to be quite low" because many defendants simply lack the assets, Raphaelson recently told a congressional commission.

He said that prosecutors often agree to the plea bargains to avoid costly trials. And they often ask for the large penalties hoping "there will be a lottery winning or an insurance settlement."

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From Page 1A

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mance by a duo or group for the album "Achtung Baby."

Other rock winners were Melissa Etheridge for female rock vocal with "Ain't It Heavy" and the late Stevie Ray Vaughan for rock instrumental performance for "Little Wing." Vaughan also won the contemporary blues album trophy for "The Sky Is Crying."

"I'm so happy it hurts. I felt like I had to get off the stage before I cried," said Vaughan's close friend, Chris Layton, who accepted the award.

"I Still Believe in You" earned the best country song Grammy for songwriters Vince Gill and John Barlow Jarvis.

Mary-Chapin Carpenter won female country vocal performance for "I Feel Lucky" and Emmylou Harris & The Nash Ramblers won country performance by a duo or group with vocal.

The top country vocal collaboration was "The Whiskey Ain't Workin'" by Travis Tritt and Marty Stuart, while Chet Atkins and Jerry Reed won the country instrumental

James Brown, the godfather of soul, took the suspense out of Clapton's pop vocal performance victory by inadvertently ripping open the envelope and reading "Tears in Heaven" before the other nominees were announced.

male vocal performance for the album "Heaven and Earth." The Miles Davis album "Doo-Bop" won the instrumental performance Grammy. The top R&B song was "End of the Road," recorded by Boyz II Men.

Classical album of the year was "Mahler: Symphony No. 9" with Leonard Bernstein conducting the Berlin Philharmonic Orchestra. Michael Fine was classical producer of the year.

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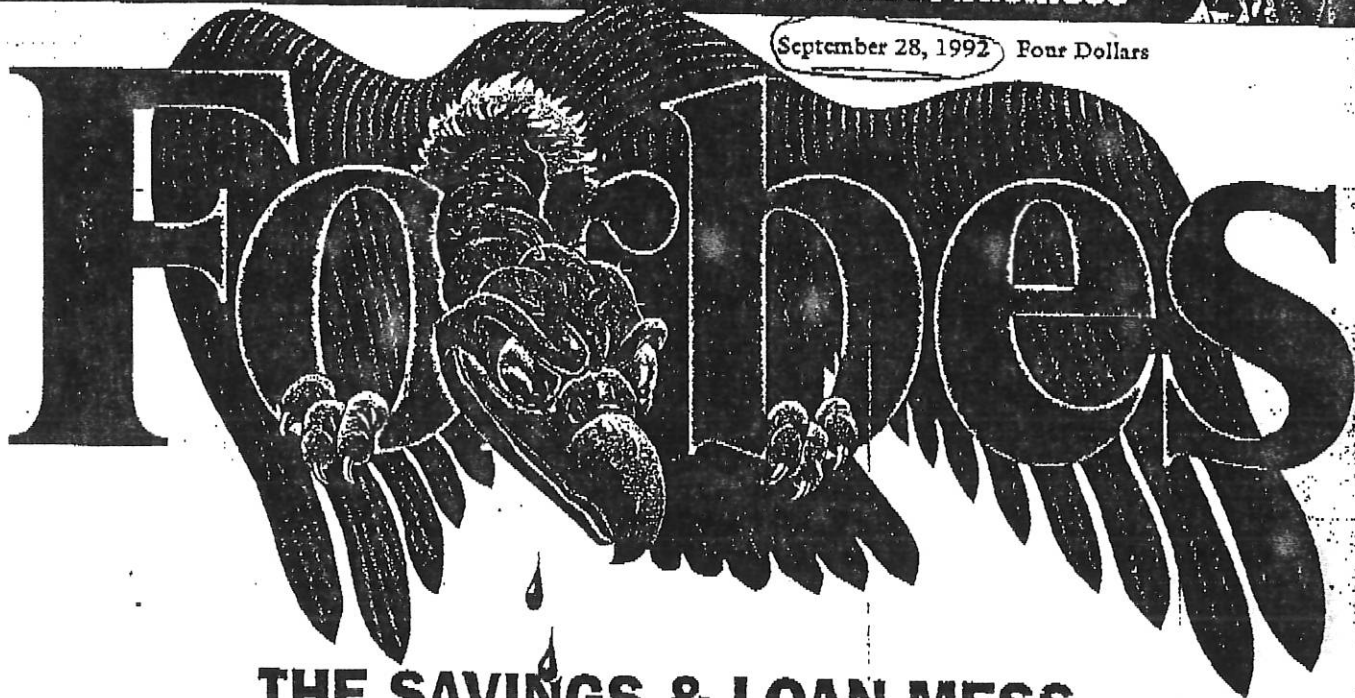
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The Top 40

Who's hot and what's hot in the entertainment business

September 28, 1992 Four Dollars



**THE SAVINGS & LOAN MESS
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PEOPLE PAY**



In the name of recovering money for the taxpayer, two government agencies are destroying the livelihoods of innocent people and scaring bankers into closing their loan windows.

What did pop expect to happen when he gave the kid his credit card?

By Gretchen Morgenson

RICHARD BLAIR, 69, a lawyer who lives in McLean, Va., was much like the other outside members on the board of McLean Savings & Loan, a medium-size Virginia thrift. He was chosen for the position because of his local prominence and business connections. In 1975 he joined a retired army general, a newsletter editor, a book publisher and a psychiatrist on the board, along with several of the bank's managers.

Late one Friday afternoon in July 1988 the Federal Deposit Insurance Corp. stormed McLean's headquarters—making sure that a local television news crew was there to record the event—and locked the doors. The thrift failed. McLean had lost millions through a mortgage

subsidiary that wrote too many home loans in Texas.

Thus began an ordeal for Blair and his family.

To recover some of the money the government lost in paying off McLean's depositors, the FDIC sued the S&L's officers and directors, alleging breach of fiduciary duty and gross negligence in loan practices. Blair was amazed to find himself a defendant. He had even voted no on one of the loans that the government said was negligently made. Even more shocking: For most of the time that the allegedly negligent lending had taken place, Blair had been lying comatose in a hospital bed.

All three magistrates in the Eastern District of Virginia that have presided over the McLean case at various times

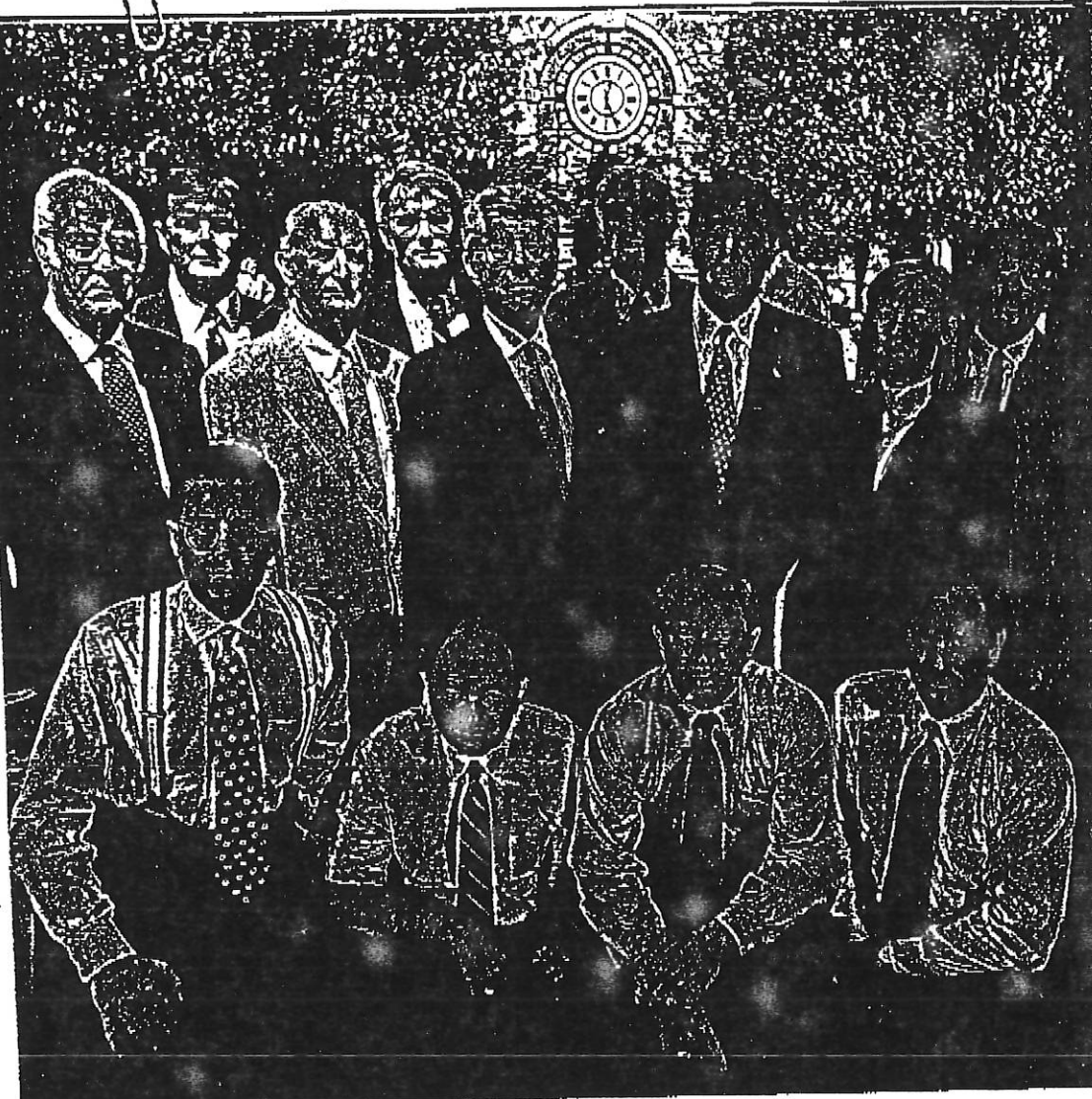
Illustration



Forbes ■ September 28, 1992

S&L mess

Standing, left to right: Richard Blair, John Ham II, Major General Lloyd Ramsey, Marshall McClean, Harvey Cohen, Robert Goldstein, John Harrison, Sandra Hughes, Thomas Leonard III; kneeling: Frank Howard, Vincent Callahan Jr., Jack Wuerker, Jonathan Schraub. **McLean S&L's board and lawyers have won two battles against the FDIC. But not the war.**



have criticized the FDIC for improper conduct or for failure to follow rules or prior court orders. The last judge ordered the agency to pay \$6,600 in court, transcript and deposition costs because the FDIC's case was abusive.

Still, the FDIC presses on, regardless of cost and regardless of the merits of its case. This is a government agency utterly out of control, terrorizing innocent bystanders and frequently costing the taxpayers far more in legal fees than it is recovering.

To date, the FDIC has spent an estimated \$10 million on its case against the Virginia thrift's officers and directors. The defendants have spent about \$1 million. Recovery to the FDIC: \$40,000 so far, from two officers settling immediately for \$20,000 each. Most of the other defendants, including Blair, are still fighting. The legal bills will continue, since the FDIC is appealing yet again.

Why this miscarriage of justice, this waste of taxpayer money? Because the private law firms that have been hired to recover money lost in bank and thrift failures are billing by the hour for their services. They have no real incentive

to settle cases and every incentive to drag them on.

No matter how absurd their claims, or how little the prospect for a recovery, they can bill the taxpayers for their time on these professional liability cases, at \$200 an hour and up. Total costs? Well over \$100 million of the FDIC and Resolution Trust Corp.'s legal budget, which comes to a combined \$1 billion this year for outside law firms. (Much of the rest is for routine collections and foreclosures.)

No one knows how much the defendants are spending fighting the professional liability cases, but it is enough to break many of them financially. And the defendants are not all Charles Keating types who cynically bilked unsuspecting people. Plenty of them are honest citizens whose connection to the events was peripheral.

This is the S&L crisis, part II. In part I, the federal government in effect lent out its own capital by providing an all but unlimited guarantee of deposits and allowing the deposit takers to speculate with the money. As it turned out, this was equivalent to giving your 14-year-old kid your American Express card and telling him to go out and



Candice Brown, a student at Oregon State University
Of the government's \$28 million case
against her late father: "I know we'll
win. But it's a struggle."

have a good time.

The payoff was that the federal government expects to lose \$300 billion (not counting future interest payments) in making good the credit card charges. In part II, the government looks for scapegoats. Instead of blaming itself for letting the kid have the card, it tries to pin the blame on the merchants who sold stuff to the kid. With its band of legal mercenaries, the two government agencies responsible for closing more than 2,100 institutions that have failed so far are suing accountants, lawyers, neighborhood real estate appraisers and anyone else remotely connected to a sick thrift or bank.

The worst that many of these folks can be accused of is taking a businessman's risk, voting yes on a loan that looked solid but that later failed, not because of fraud or wrongdoing, but because of an economic downturn.

Lawrence Brown was a well-respected real estate appraiser in Medford, Ore. In the early 1980s Brown appraised the value of six apartment complexes in California for a subsidiary of Pacific Savings Bank. In 1989 Pacific

bank, which the FDIC closed it down, the agency sued a group of 20 officers, directors and associated professionals for \$70 million.

Brown was included in the suit for allegedly overvaluing the properties in his six appraisals. Never mind that four of the six appraisals were made months and in one case more than a year after Pacific had financed the properties, so that Brown's appraisals had nothing to do with the bank's decision to make these loans. Brown was sued for \$28 million, \$3 million more than the value of the properties he had appraised.

Brown died two years ago in a farming accident at the age of 52. His insurer has had to pay \$400,000 in legal bills. In 1991, after two years of litigation, a U.S. district court judge in California threw out the case, ruling that the FDIC's law firm, Tuttle & Taylor of Los Angeles, had never proved that the appraisals it said were negligently prepared by Brown were prepared by him at all.

Not to be stopped, the agency has appealed the judge's decision. Meanwhile, its \$28 million in claims against Brown's estate has effectively locked up what remains of his assets, about \$1.5 million. Thanks to this regulatory extortion, Brown's daughter Candice, in her junior year at Oregon State University, is having trouble paying her college bills. "It was hard enough when my dad was alive. Now he's not even here to defend himself," she says.

Cost to the FDIC of six lawyers and three paralegals in the Brown case: about \$400,000, with more to come. Cost to the defendant: \$400,000. Recovery to the taxpayer: zero.

Torquemada, updated. The Bill of Rights gives procedural protections to criminal defendants, but it doesn't protect the innocent against financial ruin from lawyers' bills.

Lincoln Savings & Loan Association, not to be confused with Keating's Lincoln, was a solvent thrift in Miami Beach owned by a group of local businessmen. In 1984 they sold Lincoln to a cadre of Texas investors. Unfortunately, these folks didn't know much about the S&L business. Lincoln failed in 1989.

Earlier this year the RTC sued the entire 1984 board of Lincoln for selling it to the Texas folks. The government's claim? The board should have known Lincoln's buyers would run it into the ground five years after they bought the thrift. It is almost comical that the RTC is pursuing Lincoln's directors and officers in spite of the fact that the federal government itself approved the thrift's sale to the Texas investors. The RTC is even suing Fred Rizk, an advisory director to the Texas owners who never voted on bank matters. Oddly, the RTC is suing only one other member of Lincoln's board, letting the other Texas directors off the hook.

Who's funding this witch-hunt? You are, the taxpayers. Any money spent on outside lawyers pursuing ridiculous cases reduces the net amount the government collects by liquidating the assets of failed banks and thrifts, and thus increases the taxpayers' or, in the case of the FDIC, the bank depositors' outlays needed to bail out the industry.

The defense costs are in the first instance borne by individuals and some insurance companies. But in the long run those costs spread into the economy as a whole. The threat of litigation has a lot to do with the disastrous drop

7-14

in bank lending that has added to the severity of the recession. Commercial loans outstanding in March totaled \$562 billion, \$54 billion below the total a year earlier.

In part because the RTC has terrorized everyone, small businesses, which created much of the growth of the 1980s, can no longer get financing to expand their operations. According to the National Federation of Independent Business, the fraction of firms borrowing on a regular basis today has fallen to 34%, from 41% ten years ago. Says Timothy Harris, a Los Angeles lawyer defending the estate of the Oregon appraiser: "The FDIC's eagerness to sue has made the threat of possible litigation a silent partner in every loan decision made in the U.S."

Caseloads at both bailout agencies are exploding. Of the more than 200 professional liability cases at the RTC, half were filed in the first six months of this year; another 240 are expected over the next few years. The FDIC has about 300 of these claims pending and more coming. Pending RTC cases against accounting firms seek more than \$1.4 billion in damages.

This little growth industry extends into other arms of the government as well: The RTC is now a major employer of FBI agents who don't have enough counterintelligence work to keep them busy.

How do the FDIC and RTC justify their cause? "The FDIC

has a statutory and fiduciary duty to the American people to maximize recovery," orates FDIC general counsel Alfred Byrne III. He insists: "We do not file suit for mistaken, ill-formed business judgment."

Oh no? To hear the government talk about the *s&L* losses, you'd think they were all a result of massive fraud and misdealings. The RTC claims that 81% of *s&L* failures involved fraud or wrongdoing. That simply isn't so. Many of the government's cases boil down to what Victor Simon, a lawyer and editor of *Bank Bailout Litigation News* in Washington, D.C., calls 20-20 hindsight. Says Simon, "If members of Congress who make our banking laws don't have a clue about how banks work, why should outside directors?"

The staffs at the FDIC and RTC say they closely monitor outside firms' expenses. But the fact remains that outside law firms have but one incentive: to keep on billing.

Even before its cases get to trial, the FDIC and RTC seem more interested in litigating than in settling. The FDIC says settlement discussions always take place prior to suits being filed today; this was not the case a year and a half ago. At the RTC, such talks are only a "general practice." One target of a professional liability suit, who fears retribution if he is identified, says he was never invited to a prelitigation discussion before the RTC sued him for over \$1 million.

Other stories emerge of settlements offered, only to be rejected by the government. Minneapolis lawyer Susan Barnes is defending a \$5 million case, involving a Wisconsin bank, in which the insurer for one of the directors offered a settlement of \$325,000. Even though its chances of getting more out of the defendant were slim, the FDIC rejected the offer and continued to litigate.

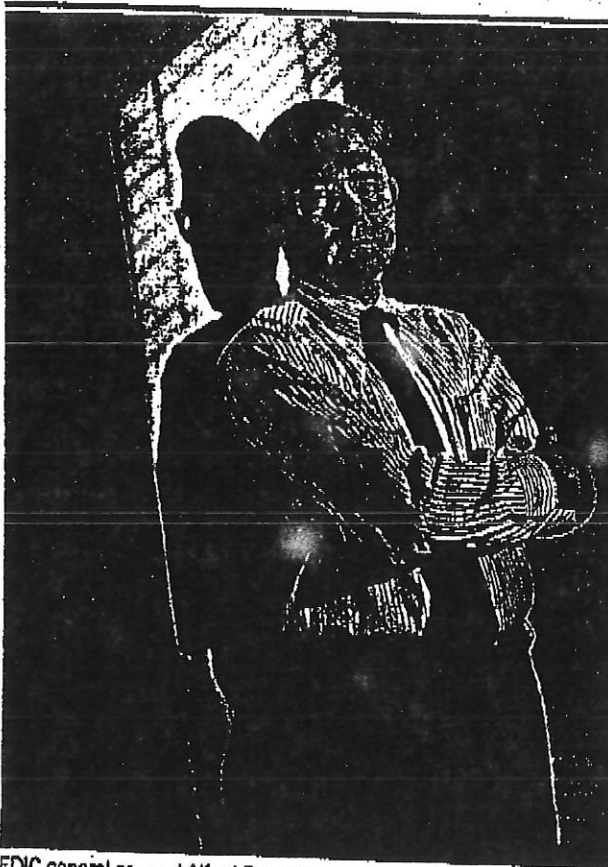
This, in spite of the fact that the insurer had won its case in two venues. Both judges ruled against the FDIC because the insurance policy carried a clause nullifying coverage if the director is sued by a regulatory agency. Still, to avoid more legal bills, the insurer offered to settle. The director has no other assets that the FDIC could get its hands on. No matter, the case is pending in appellate court in Wisconsin; it is highly likely the government will lose it. The defendant's cost of litigating the case so far is an estimated \$150,000. The FDIC's costs are probably greater.

The government's tactics aren't merely impractical, they are abusive. One is to convince a defendant in a suit to provide information the government needs in return for promising to drop the defendant's name from the suit; then the government sues him or her anyway.

Morrison & Hecker, the Kansas City-based law firm that is getting rich litigating the RTC's case against Charles Keating—it earned \$11 million from the RTC last year alone—used this trick on Lee Henkel Jr., the former head of the Federal Home Loan Bank Board and a lawyer involved in the Keating case.

In May 1990 Henkel was named as a defendant in *Shields v. Keating*, the securities law case Keating lost this past year. In January 1991 Henkel was told by Morrison & Hecker that if he helped the RTC in its case against Keating, it would advise the government to settle his case and not sue him further. Henkel agreed to the proposal and provided information to the RTC late that month.

Three weeks later, having gotten what it wanted, Morri-



FDIC general counsel Alfred Byrne III
Now a silent partner in every
loan decision made in the U.S.

S&L mess



RTC acting general counsel Richard Aboussie
Escalating legal costs don't seem to
trouble him. "You've got to
spend money to develop cases."

son & Hecker withdrew its settlement offer and began legal proceedings against Henkel. Soon after his lawyers brought the government's egregious turnabout to light, the proceedings were quietly settled.

Another abusive tactic: changing the venue in a lawsuit. In a case alleging "undue enrichment" involving Heritage Bank, a California institution that failed in 1983, the FDIC filed suit in state court to recover some \$200,000 in money advanced to Heritage customers. The case dragged on for years and was about to be dismissed in early 1988, when the FDIC brought a new suit in federal court. Having spent five years and hundreds of thousands of dollars litigating in state court, the defendants now have to fight the FDIC all over again in federal court.

FDIC lawyer Byrne claims his operation is cost-effective, taking in \$2.50 in cash or in judgments "highly likely to be collected" for every dollar spent. The folks at the RTC can't say what their recovery ratio is; Ira Parker, associate general counsel for litigation, says: "You can't expect our recoveries to be as high as the FDIC's," because the agency's upfront expenses have been high and recoveries come later.

Unfortunately for the folks ultimately paying these bills, the FDIC's 2.5-to-1 recovery ratio is highly suspect. Here are just two examples, turned up in a review of a

handful of cases. In papers filed by the FDIC to close a receivership in a Wisconsin bank, the government says it recovered \$303,000 in a directors' and officers' liability claim. But the FDIC has not received a dime, according to the only lawyer defending the directors and officers in the case. And in the McLean suit, the FDIC listed in its papers a \$250,000 "likely-to-be-recovered" settlement. In fact, the settlement was for a range of \$30,000 to \$250,000, based on a percentage of the defendant's annual income in a given year; and the high-end figure is unlikely to be recovered. The defendant, a small-town physician, would have to make \$1 million in income during the year to cough up that settlement. So far, no money has changed hands.

As for the expense side of the balance sheet: When the RTC figures its recoveries against its costs, it includes only outside counsel fees, not internal RTC lawyer or investigatory costs. And where the FDIC is concerned, litigation costs are understated because they are often billed to the failed institution itself rather than to the FDIC.

And so, even as litigation costs are skyrocketing, the chances of the government's recovering cash are declining. The single biggest source of liability case recoveries is the insurance industry, accounting for 95% of recoveries received by the FDIC between 1989 and 1991. But this fountain of funds is drying up. Fewer failed institutions have insurance coverage today than had it in the past. What's more, the so-called regulatory exemption, which lets an insurer off the hook if a regulatory agency sues a director or officer of a failed institution, is now a feature in almost all directors' and officers' insurance policies and has been deemed enforceable by nine out of ten appellate courts across the U.S.

The FDIC supports pending legislation that could make this exemption illegal. If the law is enacted, insurance premiums will go up accordingly. The government also wants to extend the statute of limitations on professional liability cases from three years to five, thereby giving the freelance lawyers two more years of legal hours to bill.

The real villains of the great S&L escapade—the likes of Charles Keating, Vernon S&L's Don Dixon and Centrust's David Paul—are, thankfully, behind bars and facing huge civil lawsuits. Michael Milken, who may or may not have caused some thrifts to buy bonds that subsequently went bad, has coughed up a \$400 million restitution fund, a sizable chunk of which is likely to end up with the RTC and FDIC. But crooks account for only a fraction of the money lost, and junk bonds for almost none.

It's time for Congress to call off this witch-hunt and face up to its own responsibility in causing the disaster. What did Congress think would happen when it handed Uncle Sam's credit cards to a lot of people and didn't put proper restrictions on how they used them?



Forbes ■ September 28, 1992

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February 21, 1994

1-296-6718

Senator Tim Emert
State Capital
300 S.W. 10th, Room 143N
Topeka, KS 66612-1504

Re: Senate Bill 762

Dear Senator Emert:

We represent many of the former members of the board of directors of Franklin Savings Association, and one of its former officers. Franklin was the largest savings association in Kansas before its seizure by the federal government in February 1990. Consistent with the federal government's "thrift crisis" tactics elsewhere, and for the apparent purpose of trying to justify its continued presence at Franklin four years after the ill-advised seizure, the Resolution Trust Corporation has sued our clients for over \$135 million. We are writing to urge your support of Senate Bill 762, which we understand would establish a retroactive gross negligence standard for director and officer liability.

Specifically, we represent: Ernest M. Fleischer; Mary Louise Greene; Ted Greene; Harry Coffman; Stanley Dreher; Lawrence Kramer; Harold Yokum; Glenn McGuire (Mr. McGuire recently died--the RTC reportedly intends to pursue these claims against Mrs. McGuire as her husband's personal representative); and John Scowcroft. Mr. Yokum and Mr. Dreher resigned from the Franklin board in 1985, five years before the RTC was placed in control. The claims asserted by the RTC against these people arise from two areas of Franklin's operations: (i) sixteen transactions in 1983-86, in which Franklin participated in public bond financing of low and moderate income multi-family housing; and (ii) the acquisition by a subsidiary of Franklin of three securities firms. Ironically, none of these matters were among the reasons cited by the government as reasons for Franklin's seizure.

Much could be written about the tragedy of the government's intervention at Franklin Savings Association. In time, the full story of this case will be understood. For now, however, Senate Bill 762 presents an opportunity for our legislature to provide justice to people whose lives are being ruined by undeserved litigation.

Senate Judiciary
2-23-94
attach ment 8-1

February 21, 1994
Page 2

The RTC's claims are based solely on claims of simple negligence, as confirmed by the RTC's "expert witness," John Carr, the man who was appointed to manage Franklin for the RTC after the seizure. The RTC is represented by a law firm that has assigned at least ten lawyers to the case. The result of all this litigation could well be financial devastation to most of the defendants, even if we ultimately prevail.

There is no just reason for people to endure this kind of abuse. If a plaintiff can prove gross mismanagement by an institution's directors, the law should provide a remedy for any damages caused by such conduct. On the other hand, if a plaintiff can do no more than prove an erroneous business judgment--simple negligence--directors and officers of financial institutions should not be forced to devote their lives to the defense of hindsight based litigation. The distinction between claims of gross and simple negligence should be susceptible to an early court ruling as a matter of law, so that claims that do not meet the higher standard can be dismissed without protracted proceedings. As a matter of fairness, this distinction should apply to pending cases.

As we understand its provisions, Senate Bill 762 strikes this balance in a proper manner, and could put a stop to the unjust process in which our clients have been embroiled by the RTC. This kind of legislative action should clarify the Kansas law applicable in these kinds of cases, making plain that the exercise of informed business judgment does not open the door to years of litigation. Please support this legislation. If we can provide you any further information about the Franklin case or general information on this subject--we will be happy to respond.

Very truly yours,

ROUSE, HENDRICKS, GERMAN,
MAY & SHANK, P.C.

By


Charles W. German

CWG:dja

cc: Mr. Ernie Fleischer
Mrs. Mary Louise Greene
Mr. Ted Greene
Mr. Harry Coffman
Mr. Stanley Dreher
Mr. Lawrence Kramer
Mrs. Isabel McGuire
Mr. John Scowcroft
Mr. Harold Yokum

8-2

9

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Donna L. Whiteman, Secretary

Senate Judiciary Committee
Testimony on Senate Bill 806

February 23, 1994

SRS Mission Statement

"The Kansas Department of Social and Rehabilitation Services empowers individuals and families to achieve and sustain independence and to participate in the rights, responsibilities and benefits of full citizenship by creating conditions and opportunities for change, by advocating for human dignity and worth, and by providing care, safety and support in collaboration with others."

TITLE

An Act concerning juvenile offenders; relating to violations of municipal ordinances and county resolutions; amending K.S.A. 38-1602 and repealing the existing section.

Mr. Chairman, on behalf of Secretary Whiteman, I am pleased to provide you with this testimony in opposition to Senate Bill 806 which makes youth who violate a county resolution or municipal ordinance Juvenile Offender's.

EFFECT OF PASSAGE

The bill would create a large but unpredictable increase in the number of youth adjudicated as juvenile offenders. The impact could easily double the present number of juvenile offenders. Under current statutes these additional offenders could be placed in the custody of the Secretary or committed to state youth centers. At the least they would require SRS services in their homes and communities.

In order to cope with the number of juvenile offenders newly created by this bill, substantial increases in staff will be required. While it is difficult to estimate the number of additional juvenile offenders and the staff needed to provide them services, even a modest ten percent increase in staff would cost the state an estimated \$3.7 million dollars annually.

This bill results in local problems which are best addressed by local responses being transferred to a state agency. It will result in municipal and county violations being prosecuted in a state court. Many communities have local laws which create offenses for acts which, if committed by an adult, would not be an offense (e.g. curfews, "cruising," and gang-membership laws). These are referred to as status offenses as they create offenses based on the offender's status as a child. The department is concerned lest communities see this bill as a means of ridding themselves of youth who commit minor but aggravating infractions of the laws by having them adjudicated as juvenile offenders.

Senate Judiciary
2-23-94
Attachment P-1

This bill runs counter to current efforts to reduce the number of youth unnecessarily coming into State custody or committed to state youth centers. For example, Senate Bill 584 would restrict commitments to state youth centers to felony-type convictions in order to focus state habilitative efforts on the worst offenders. Senate Bill 400, which the Department also supports, would require reasonable efforts to avoid unnecessary out-of-home placements in an effort to draw down additional federal funds to provide services to juvenile offenders in their communities. The bill now before this committee would expand state responsibility into what are properly community concerns and burden the state system with additional misdemeanor-type offenders.

If detention or incarceration results from such "status offenses," it would jeopardize eligibility for the State to receive federal funds under the federal Juvenile Justice and Delinquency Prevention (JJDP) Act .

Kansas will receive approximately \$600,000 in federal JJDP funds next year. The JJDP requires a fine of one-fourth of the grant for violation of each provision of the act. Substantial violation, however, could result in total ineligibility. Minimum loss is estimated at \$150,00.

It would be impossible to stay abreast of all the county and municipal resolutions and ordinances. It would be impossible to advise each council and commission of the impact of local laws on State finance in advance of passage or even to know when a resolution or ordinance in violation of the JJDP had been passed. The potential for the state being out of compliance with the JJDP act is virtually guaranteed.

RECOMMENDATION

The Department of Social and Rehabilitation Services requests the committee not give favorable consideration to Senate Bill 806.

Carolyn Risley Hill, Commissioner
Youth and Adult Services
Department of Social and
Rehabilitation Services

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TESTIMONY TO: SENATE JUDICIARY COMMITTEE

RE: S.B. 806

BY: SYDNEY HARDMAN

FEBRUARY 23, 1994

I am Sydney Hardman, Advocacy Coordinator of Kansas Action for Children. KAC is a statewide citizens advocacy organization. We provide no direct services to children and families, but we seek to change systems to make them more responsive to the needs of children.

I am speaking in opposition to S.B. 806 for a couple of reasons. First, we question whether it is needed. We understand the concern of some County and District Attorneys who are trying to reduce handguns in the possession of juveniles. However, we believe the action taken by this committee and the full Senate, in making such possession a violation of state law, has eliminated the need for a remedy such as S.B. 806.

Second, if there are other serious offenses, requiring the various resources and services of the state, which are now in municipal ordinances or county resolutions, we would support those offenses being written into Kansas statutes. The appropriate way to deal with such serious offenses is exactly as you have done with handguns — identify the specific problem and develop a state response.

However, what S.B. 806 does is to rope in a whole series of other offenses which most of us would not envision as the responsibility of already-strained state resources. Two years ago, this same bill was referred to this committee. At that time, it was at the request of the District Attorney of Douglas County, who had a problem with juveniles skateboarding on the KU campus and bicycling on the sidewalks. I don't want to minimize the problems of skateboarding and bicycling — nor the dilemma faced by local officials who want to control such problems and have no tools to do so within the municipal court system. However, my agency questions whether our district courts, CSO services, and other state resources should be devoted to such problems. At a time when we are struggling to provide appropriate services and sufficient funding to deal with the most violent juvenile offenders, we would not like to see our system clogged with skateboarders and other minor offenders.

Steve J. J. J.
2-23-94
attache 10-1