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February 24, 1997

DELIVERED BY HAND

Honorable Janet Reno
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Re: In re Henry G. Cisneros

Dear Attorney General Reno:

We make this submission in further support of our Request for Expansion of Prosecutorial Jurisdiction Pursuant to 28 U.S.C. § 593(c) ("Expansion Request") in the above-referenced matter.

1. As set forth in our Expansion Request, specific, credible and substantial information exists that Cisneros inaccurately reported his taxable income for tax years 1989, 1991, 1992 and 1993 and took improper deductions for tax year 1992.
2. The inaccuracy of Cisneros' returns, independently developed during this Office's investigation, was apparently finally conceded to the Department by his attorney, Cono R. Namorato, Esquire, during a February 20, 1997, meeting with Deputy Assistant Attorney General Robert S. Litt and other Department officials.¹
3. It appears that the principal remaining issue is whether Cisneros acted willfully.



¹Namorato, who has represented Cisneros since September, 1994, appeared before the Department in connection with its initial inquiry and preliminary investigation concerning Cisneros.

4. Willfulness, an essential element of 26 U.S.C. §§ 7201 (tax evasion) and 7206 (filing a false return) goes to whether Cisneros voluntarily and intentionally violated the law. Thus, willfulness goes to Cisneros' state of mind.
5. As set forth in our Request for Expansion, including its attached Roberts Affidavit, and as subsequently conveyed to Tax Division and Public Integrity Section attorneys by this Office, substantial, clear, and credible evidence exists of Cisneros' willfulness.
6. Apparently Cisneros, through Namorato's representations to the Department, is now attempting to negate the willfulness element by asserting a "reliance" on and/or "shifting of responsibility" to his accountant defense(s).
7. This is inconsistent with Namorato's position during the Department's initial inquiry and preliminary investigation and in direct contradiction with Cisneros' own words on January 26, 1995. On that date, while being interviewed by IRS Special Agents, Cisneros asserted that:
 - a. he was "scrupulous, meticulous and uncompromising in making sure that everything was reported for taxes."
 - b. to the best of his knowledge, all of his income was reported on his income tax returns for the years 1989 to 1993.
8. The "reliance" on and/or "shifting of responsibility" to accountant defense(s) do not remove the issue of "willfulness" from jury consideration.
9. Aside and apart from showing reliance, in order to properly raise these defense(s), the taxpayer must show, among other things, that he did not withhold vital information from, or take action to mislead, the accountant.
10. Cisneros conducted his financial affairs in such a manner by failing to deposit income checks and cashing them so as to make it unlikely at best for his accountant to know about them, thereby including such figures as income. As he told Medlar, in a recorded December 30, 1992 telephone conversation:

Medlar: "Don't panic. they didn't say anything about the money?"

Cisneros: "No. but I talked to Sylvia and she said that they talked to Luis Hernandez. the accountant. and asked him today whether he knew of any payments and he said no. he did not because he does not. he doesn't get involved in that. he accounts for the money we put into the system and **the money that I help you with comes before that, comes out before it gets to him.**" (emphasis added).

11. Luis Hernandez, C.P.A., the accountant in question, provided conflicting versions of whether, among other things:
 - a. information was withheld from or not provided to him; and
 - b. whether he was aware that not all income items were being deposited into Cisneros' business account.
12. Notably, during Cisneros' background investigation, Hernandez asserted that he knew that not all funds were being deposited into Cisneros' accounts. In 1995, after Hernandez knew that Cisneros was under FBI and IRS investigation, Hernandez changed his story and said that he had no fear that all income checks were not being deposited because Cisneros told him that all checks were and each employee knew it.
13. Not only can Cisneros not show that there was complete disclosure to, and no information withheld from, Hernandez, on this record Cisneros has not specifically shown what advice was given and actually and reasonably relied on. Nor has Cisneros shown that he did not know, or later discover, the advice, whatever it was, to be wrong, or that he did not doubt or later come to doubt it.
14. It is therefore unclear whether Cisneros would even be entitled to a "theory of defense" charge regarding any "reliance" on or "shifting of responsibility" to his accountant defense.
15. Even if no information was withheld from Hernandez and Cisneros has a "plausible rebuttal" of evidence that is adverse to him, the issue remains whether he acted willfully in light of all of the evidence. That determination goes to his state of mind.

16. Cisneros had a motive to underreport his income. By the last quarter of 1992, he was short of funds and knew that if then candidate Clinton won the election he would be offered a Cabinet position. Accepting a Cabinet position would result in a substantial decrease in his salary. In order to keep Medlar happy and thus quiet, he had to pay her substantial sums of money. Indeed, after becoming HUD Secretary, he liquidated his assets to pay her.
17. Regardless of what figures Hernandez included on the returns, as the person who earned the income which he spent, Cisneros would have known that the income figures were inaccurate. Hernandez's performance cannot excuse Cisneros' responsibility. Therefore, his intent or state of mind is still in issue: did he act willfully or not?
18. Since there is conflicting evidence of Cisneros' willfulness, there cannot be "clear and convincing evidence" that he lacked the requisite "state of mind" with respect to, *inter alia*, 26 U.S.C. §§ 7201 and 7206.
19. Since there is no "clear and convincing evidence" that Cisneros lacked the requisite state of mind, a finding that there are "no reasonable grounds to believe that further investigation is warranted" cannot be made pursuant to 28 U.S.C. § 592(a)(2)(B)(ii).

Attached hereto and incorporated by reference herein are the following Exhibits:

- Exhibit A: An analysis of the "reliance" on and "shifting of responsibility" to accountant defenses.
- Exhibit B: A factual analysis regarding Cisneros' willfulness.
- Exhibit C: An analysis of 28 U.S.C. § 592(a)(2)(B)(ii).

Notwithstanding counsel's attempt to shift the blame for his client's actions, there is substantial, credible and specific information which warrants further investigation. The circumstances of Hernandez's (and anyone else's) conflicting version of events presents precisely the situation where an independent counsel must be given jurisdiction to resolve the matter due to, among other things, the subjective judgments that are

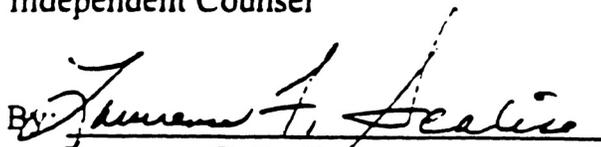
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required to be made as to Cisneros' intent. This is especially so given Hernandez's own obvious self-interest and loyalty to Cisneros. Only by an investigation utilizing the full powers of the grand jury will the factual issues surrounding Cisneros' actions and intent be fully, fairly and completely determined.

Thank you for your continued attention to this matter. Should you or the Department require further information or explanation, this Office will provide it.

Very truly yours,

David M. Barrett
Independent Counsel

By: 
Lawrence F. Scalise
Deputy Independent Counsel

Attachments

LFS/jab

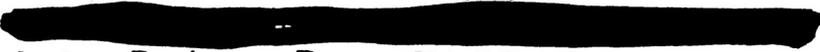
cc: Robert S. Litt, Deputy Assistant Attorney General, Criminal Division
Mark E. Matthews, Assistant Attorney General, Tax Division
Stanley F. Krysa, Senior Division Counsel, Tax Division
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Lee J. Radek, Chief, Public Integrity Section

Jo Ann. Farrington, Deputy Chief, Public Integrity Section
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EXHIBIT A

WILLFULNESS AND THE "GOOD FAITH RELIANCE" ON AND "SHIFT OF RESPONSIBILITY" TO ACCOUNTANT DEFENSES

To establish tax evasion under 26 U.S.C. § 7201, the government must show:

1. the existence of a tax deficiency;
2. an affirmative act constituting an evasion of taxes; and,
3. willfulness.

Sansone v. United States, 380 U.S. 343, 351 (1965).

To establish "tax perjury" or filing a false return under 26 U.S.C. § 7206, the government must show that the defendant:

1. made and subscribed a return or other document under penalty of perjury;
2. knew it was not true and correct as to a material matter; and,
3. acted willfully.

United States v. Pomponio, 429 U.S. 10 (1976) (per curiam).

Understatement of income, standing alone, is insufficient to establish either tax evasion or tax perjury. United States v. Doan, 710 F.2d 124, 125 (3d Cir. 1983). There must also be evidence of willfulness. Willfulness is defined as the voluntary, intentional violation of a known legal duty. United States v. Pomponio, 429 U.S. at 11-13. Conduct is not willful if it is the result of negligence, even gross negligence, inadvertence, accident, or mistake, or due to a good faith misunderstanding of the law. Evidence of

iffulness is ordinarily circumstantial. It may be inferred from: "concealment of assets or covering up sources of information, handling of one's affairs to avoid making the

records usual in transactions of the kind, and any conduct, the likely effect of which would be to mislead or conceal. (emphasis added). Spies v. United States, 317 U.S. 492, 499 (1942).

Thus, there are no limits on the type of conduct from which willfulness can be inferred, and that evidence is admissible of any type of conduct, as long as the "likely effect" of that conduct would be to mislead or conceal. Moreover, willfulness does not require proof of evil motive or bad intent. United States v. Pomponio, 429 U.S. at 12.

In an effort to negate willfulness, taxpayers sometimes assert a "good faith reliance on accountant defense." The essential elements of the reliance defense are:

1. full disclosure of all pertinent facts; and,
2. good faith reliance on the accountant's advice.

United States v. Whyte, 699 F.2d 375, 380 (7th Cir. 1983). Thus, this defense is available only if a defendant:

1. completely and fully disclosed all of the facts to which the advice pertained;
2. the accountant gave the taxpayer advice; and
3. the taxpayer actually and reasonably relied on the advice, which he believed to be correct.

United States v. Brimberry, 961 F.2d 1286, 1290 (7th Cir. 1992), (citing Whyte, 699 F.2d at 380); United States v. Conforte, 624 F.2d 869, 877 (9th Cir. 1980). However, one cannot hide behind advice that one knows or subsequently discovers is wrong or doubts or discovers reason to doubt. United States v. Benson, 941 F.2d 598, 614 (7th Cir. 1991).

Likewise, a taxpayer may defend against a charge that his conduct was willful by asserting that any errors, deficiencies or omissions were the responsibility of the return preparer or bookkeeper. The "shifting responsibility" defense, like the reliance defense, negates the willfulness element. A defendant, however, cannot shift responsibility for admitted deficiencies to the accountant who prepared the return if the taxpayer withholds vital information from, or takes positive action to mislead, the preparer or bookkeeper. United States v. Scher, 476 F.2d 319,321 (7th Cir. 1972), (citing Bender v. Commissioner of Internal Revenue, 256 F.2d 771, 774 (7th Cir. 1958)).

Furthermore, the law is clear that where a defendant attributes underpayment to inefficient bookkeeping and a negligent accountant, the question of willfulness is **not** removed from jury consideration. United States v. Venditti, 533 F.2d 217, 219 (5th Cir. 1976), (citations omitted). Likewise, even good faith reliance on one's accountant is **not** a complete defense to tax evasion. United States v. Chessons, 933 F.2d 298, 304 (5th Cir. 1991), (citing Venditti, 533 F.2d at 219). Thus, the proper test is not whether a taxpayer has a "plausible rebuttal" to evidence that is "prima facially adverse" to his case, but rather, notwithstanding that evidence, can a rational fact finder determine that there is evidence of willful underreporting beyond the approximate standard. See United States v. Doan, 710 F. 2d at 127.

If filing a false return is charged as an act of evasion or a defendant is charged with filing a false return, the defendant must show, notwithstanding any asserted "reliance" or "shift of responsibility" defense, that he adopted and filed the return without having any

reason to believe it is incorrect. See, Whyte, 699 F.2d at 379. Furthermore, intent may be established where the taxpayer decides to keep himself uninformed as to the full extent that the return is inaccurate. United States v. Drape, 668 F.2d 22, 26 (1st Cir. 1982).

When the defendant claims reliance on, and a shift of responsibility to, an accountant, the government need not show that the defendant ordered the accountant to falsify the return. The government can defeat the defense by showing that the defendant (1) was aware of the contents of the return and (2) knew that the reportable income significantly exceeded the amount reported on the return. United States v. Olbres, 61 F.3d 967, 973 (1st Cir.), cert. denied 116 S.Ct. 522 (1995).

Guilty knowledge and willfulness may be inferred from the “handling of one’s affairs to avoid making the record usual in transactions of the kind...,” Ingram v. United States 360 U.S. 672, 677 (1959). Thus, a “reliance” or “shifting responsibility” defense has been held untenable where the taxpayer:

1. Fails to record fees received or to deposit them in an office account thereby making it virtually impossible for his accountant to include them in his tax returns. United States v. Callahan, 450 F.2d 145, 148 (4th Cir. 1971).
2. Keeps irregular books but relies on his bank records to reflect his income where he fails to deposit payments from business customers. United States v. Garavaglia, 566 F.2d 1056, 1059 (6th Cir. 1977). Such conduct was deemed to be a “deceptive practice.” Id.

'Since the taxpayer by his practices has made it impossible for the accountant to accurately prepare the return by effectively withholding information, he cannot reasonably rely on the accuracy of the return (since he knows it cannot contain all income). Such conduct is in and of itself an act of evasion. *id.* and also tends to show that the defendant knew the return was false. A "blind reliance" on accountant defense was rejected in Olbres, 61 F.3d at 970-74, where the government established willfulness by showing, among other things, that the defendants' substantial expenditures were in excess of the amount reported on the return, failed to deposit receipts which they knew were taxable into a business checking account or record the receipts, diverted the unrecorded receipts to other accounts and withheld information from their accountant.

A criminal defendant is only entitled to a "good faith reliance" on or "shift of responsibility" to accountant defense instruction if:

1. the defendant proposes a correct statement of law;
2. the defense has some foundation in the evidence; and,
3. failure to give the instruction would deny defendant a fair trial.

District courts are justified in not giving the instruction where any of the prerequisites are not met. Brimberry, 961 F.2d at 1290. In any event, a proper willfulness instruction has been held sufficient even where a defendant had adduced some evidence in support of the defense(s) since a jury determination of willfulness would necessarily negate any possibility of "good faith." United States v. Kelley, 864 F.2d 569, 573 (7th Cir. 1989).

EXHIBIT B

EVIDENCE OF WILLFULNESS, i.e., STATE OF MIND

The following substantial, specific and credible evidence of willfulness as recognized by the courts, has been established to date:

1. Background and experience of defendant.

Cisneros is highly educated, holding several post-graduate degrees and is financially sophisticated. He was, among other things, a long-term mayor of a major American city, a successful businessman, a bank director, Deputy Chairman of FRB, Dallas, member of Texas Governor's Task Force on Revenue. See Exhibits 1 and 2 attached hereto.

2. Evidence of a consistent pattern of underreporting large amounts of income.

- 1989 - Cisneros understated his gross income in the amount of \$16,000.00, a portion of which went to Medlar. Roberts Affidavit at ¶ F.6.
- 1991 - Cisneros underreported approximately \$126,000.00 in taxable income, according to information gathered by the IRS during its administrative tax investigation. Roberts Affidavit at ¶ G.6.
- 1992 - Cisneros understated his gross income in the amount of \$158,109.00, a portion of which went to Medlar. Roberts Affidavit ¶ H.8. Moreover, Cisneros took an improper \$30,000.00 deduction for a \$30,000.00 distribution from Lincoln Benefit. Roberts Affidavit at ¶ H.7.
- 1993 - Cisneros underreported his gross income in the amount of \$33,531.75. Roberts Affidavit at ¶ I.8.

3. Motive Due to Poor Financial Condition:

Throughout the period 1989 through 1994, Cisneros had a relatively serious cash flow problem which was exacerbated by his making regular cash payments to Medlar. Cisneros also had credit problems evidenced by, among other things, his wife's inability to obtain a certain department store's credit card because of a poor credit history. Cisneros' assets steadily dissipated through this period. Roberts Affidavit at ¶ D.5. Moreover, in late 1992, when Cisneros decided to accept the Cabinet appointment, he knew that his income would be reduced to \$148,000.00 per year. Nevertheless, in order to keep Medlar happy and thus quiet, he continued to pay her and liquidated his assets in early 1993 to do so.

Furthermore, in 1994, Cisneros had to borrow money in order to pay his 1993 taxes. In June, 1994, after the IRS rejected Cisneros' request to pay \$70,625.00 in taxes due via an installment plan, Cisneros borrowed \$100,000.00 from a Texas financial institution and applied \$67,000.87 of the loan proceeds to pay the IRS. Roberts Affidavit at ¶ I.6.

4. The taxpayer signed the returns:

The returns contained a declaration, executed under the penalties of perjury, that the taxpayer "examined th[e] return and its accompanying schedules and states, to the best of the [taxpayer's] knowledge and belief, they are true, correct and complete." When Cisneros signed his 1992 and 1993 returns, filed on April 15, 1993 and April 15, 1994, respectively, he was in poor financial condition, as outlined above. His signing of the returns permits the inference that he read his return and knew their contents.

Cisneros knew that substantial amounts of income were received by him from October, 1992 through December, 1992. Investigation to date has revealed that Cisneros did not report income in the amount of \$75,364.00 during this period and that at least \$28,500.00 went to Medlar. Roberts Affidavit at ¶ H.5.

During the February 20, 1997 meeting with Department officials, Namorato provided a document entitled, "Analysis of Medlar Deposits" (p. 2), further identified as Ex. 2, listing \$28,400.00 funds paid to Medlar which were not declared as income by Cisneros. The document states that bank statements

were "not available." As set forth below, on April 4, 1995, Hernandez was told by Cisneros and his employees that any income received by Cisneros after early October, 1992, was de minimus and that he (Hernandez) asked for but never received bank statements for that period.

5. Failure to supply an accountant with accurate and complete information and conducting financial affairs so as to preclude accountant from learning of income:

- a. During a telephonic conversation between Cisneros and Medlar on December 30, 1992, which she tape recorded, Cisneros purportedly made the following statement regarding the taxation of money he was giving her:

Medlar: "Don't panic, they didn't say anything about the money?"

Cisneros: "No, but I talked to Sylvia and she said that they talked to Luis Hernandez, the accountant and asked him today whether he knew of any payments and he said no, he did not because he does not, he doesn't get involved in that, he accounts for the money we put into the system and the money that I help you with comes before that, comes out before it gets to him." (emphasis added). Roberts Affidavit at ¶ H.6.b.

- b. Based on a deposit analysis to ascertain sources of funds, SA Roberts calculated that Cisneros did not report income in the amount of \$75,364.00 for the last three months of 1992.

This figure encompasses speaking fees and taxable travel reimbursements. Cisneros deposited additional funds received totaling \$11,564.00 in the last three months of 1992.

Cisneros utilized at least \$28,500.00 to make payments to Medlar during the months of October, November and December, 1992.

Hernandez made the following statements regarding the preparation of Cisneros' 1992 tax return:

- i. Hernandez stated that he used the "deposit method" to calculate Cisneros' Schedule C Income in 1992 as all deposits were treated as income. (FBI SAs George Parks and Claude Martin January 26, 1995. interview of Hernandez in San Antonio, Texas);
- ii. Hernandez stated that he was unaware of any deposits/income after the first week of October, 1992. (IRS SAs Barrows and Lange April 4, 1996. interview of Hernandez in San Antonio, Texas);
- iii. Cisneros advised Hernandez that he did not give any lectures after the first part of October, 1992, because he was involved with the Clinton Presidential campaign and that the only income received after the first part of October would be *de minimis*. (IRS SAs Barrows and Lange April 4, 1996, interview of Hernandez in San Antonio, Texas);
- iv. Hernandez requested from Cisneros and his employees, bank statements for the end of 1992; however, he never received any. (IRS SAs Barrows and Lange April 4, 1996, interview of Hernandez in San Antonio, Texas). Roberts Affidavit at ¶ H.4;
- v. Hernandez advised that he did not fear that income checks were not being deposited since he had been told by Cisneros that all income checks were deposited. (IRS SAs Barrows and Lange April 4, 1996, interview of Hernandez, in San Antonio, Texas). Roberts Affidavit at ¶ H.5;
- vi. **Numerous income checks were not deposited into Cisneros' business accounts but rather were cashed and deposited into Medlar's accounts. This practice became the norm beginning in October, 1992, and Cisneros thereafter denied the receipt of income to his accountant and did not provide him with bank statements;**

- vii. Hernandez stated that Cisneros, Ramirez and Arce-Garcia all told him that the \$2,500.00 Lincoln Benefit monthly payment was for a retirement plan. (IRS SAs Barrows and Lange, October 19, 1996. Interview of Hernandez.); and
- viii. Hernandez made the following statements regarding distributions made from Cisneros' Mass Mutual Accounts: Hernandez was not told by Secretary Cisneros of any distributions from Mass Mutual or (Lincoln Benefit) in 1993, nor did he receive any form 1099s for these accounts from Cisneros. (IRS SAs Barrows and Lange, October 19, 1996, interview of Hernandez).

6. Engaging in suspicious cash transactions and the use of nominees:

- a. Cisneros "structured" two payments of \$8,000.00 to Medlar's Broadway National Bank account on December 16, 1992, and December 18, 1992, both of which Sylvia Arce-Garcia, an employee of Cisneros, deposited into this account.¹ Cisneros knew that he would be subject to a FBI background investigation in connection with his HUD appointment when these payments occurred. Medlar used the \$16,000.00 to purchase a new home in Lubbock, Texas. This house was purchased by Medlar via "straw-borrowers," namely, Medlar's sister, Patsy J. Wooten, and her husband, Allen R. Wooten, in violation of 18 U.S.C. §§ 1014 and 1344. Cisneros was aware that the house was not being purchased in Medlar's name. The house was ostensibly purchased in the Wooten name in order to, among other things, conceal Cisneros' connection with the transaction. Medlar purchased the house with the understanding that Cisneros' funding would enable her to pay off the bank's lien. In March, 1995,

¹ On December 31, 1992, Arce-Garcia denied knowledge of payments from Cisneros to Medlar during Cisneros' background investigation.

after the Cisneros payments stopped. Medlar, through her relatives, was forced to sell the house; and

- b. On February 26, 1991, Ramirez, at the direction of Cisneros, deposited \$12,000.00 into Medlar's bank account at Broadway National Bank, account number [REDACTED]. According to Medlar's bank records, this was the first payment Cisneros made to Medlar that exceeded \$10,000.00. Because the deposit was made in cash and exceeded \$10,000.00, Broadway National Bank, pursuant to federal law, filed a CTR with the IRS regarding this transaction. A review of the CTR revealed that Ramirez did not disclose the fact that the deposit was made on behalf of Cisneros, i.e., there is no information contained within the CTR that links Cisneros to the deposit. Nevertheless, from that day forward, all additional payments from Cisneros to Medlar were made in increments of less than \$10,000.00 to, *inter alia*, avoid the creation of CTRs and to ensure the payments would be kept secret.

7. Extensive use of currency/checks cashed and currency deposited in "out of town" accounts:

Virtually all funds paid to Medlar, a significant portion of which were undeclared, were made in the form of currency.

Checks were cashed at Cisneros' bank and deposited into Medlar's account at a different bank. Furthermore, Cisneros, a highly visible person in San Antonio, did not conduct the majority of the transactions. Cash transactions, while not impossible to detect, are difficult to track.

8. False statements to agents, false exculpatory statements, whether made by a defendant or initiated by him, and any conduct in which a tax evasion motive played any role, even if the conduct also served another purpose such as concealment of another crime:

- a. IRS SAs Kesha Lange and Dorman Barrows interviewed Secretary Cisneros in the presence of counsel in Washington,

D.C. on January 26, 1995. At that time, Cisneros knew not only that the IRS was investigating whether he paid federal income taxes on his income, including funds paid to Medlar, but that DOJ was conducting a preliminary investigation to determine whether his conduct with respect to Medlar warranted the appointment of an Independent Counsel. The IRS report of the interview provides in pertinent part:

Cisneros stated he was **“meticulous, scrupulous and uncompromising in making sure that everything was reported for taxes.”** To the best of his knowledge, all of his income was reported on his income tax returns for the years 1989 to 1993.

IRS Report of SAs Lange and Barrows, p.6 (emphasis added).²

It can be inferred from his January 26, 1995, statement that Cisneros:

- i. **was intimately involved in the recordation of income/expenses at his business and the preparation of his tax returns;**
- ii. **insured no mistakes were made;**
- iii. **nothing was undeclared; and**
- iv. **no funds paid to Medlar were unaccounted for and thus undeclared as income.**

At that time Cisneros didn't say:

²These apparently false statements made on January 26, 1995, are consistent with Secretary Cisneros' false statements to the FBI made two years earlier on January 7, 1993. In that January 7, 1993, interview, Secretary Cisneros told the FBI: (1) that he paid taxes on all receipts he received in connection with his communication (speech) business; and (2) that he paid federal, state and local taxes on all monies he received. Roberts Affidavit at ¶ D.10.)

- i. turned over/left tax matters to CPA and/or any employees:
- ii. that the CPA gave him advice:
- iii. that he actually relied on it;
- iv. that he had no reason then or later to know it to be incorrect or doubt it; and
- v. CPA in effect left to his own devices.

In sum, Cisneros did not assert his "reliance" on Hernandez nor did he attempt to "shift responsibility" to him. For him to do so now is **inconsistent, evidence of a guilty mind and further evidence of willfulness.**

- b. Cisneros' then employees, Arce-Garcia, Rosales and Ramirez all concealed information from the FBI during Cisneros' background investigation. They were all ostensibly rewarded with government jobs. Without their participation in the initial concealment and its subsequent cover-up, Cisneros could not have obtained and kept his cabinet post. They have already demonstrated their willingness to lie on Cisneros' behalf.

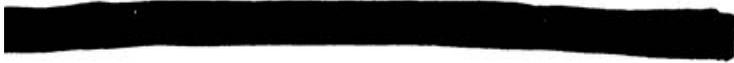
Any continued concealment by these three individuals not only protects Cisneros, it also protects themselves from liability for their original concealment. Thus, these individuals have even more of a motive to lie now than before.

Furthermore, these individuals, all of whom continue to be closely associated with Cisneros and ostensibly involved in a joint-defense, have asserted their Fifth Amendment rights during the OIC investigation.

While this assertion cannot be used against them in any proceeding, it is neither improper nor unfair to use it as a factor in assessing their credibility with respect to the issue of

Cisneros' willfulness. While it is proper for them to assert their privilege as a shield, it would be incongruous to give Cisneros the benefit of that shield as well. Their use of the privilege would, in effect, be used as a sword to selectively provide information in a form only beneficial to Cisneros.

- c. Hernandez has made a number of conflicting statements concerning, among other things:
 - i. how he calculated Cisneros' income;
 - ii. when he became aware of payments made by Cisneros to Medlar;
 - iii. when he was aware of funds not being deposited by Cisneros; and
 - iv. whether he was provided with accurate and complete financial information.
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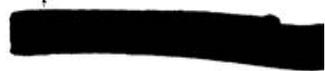
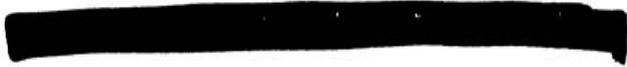


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HEARING
BEFORE THE
COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE
ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

NOMINATION OF HENRY CISNEROS, TO BE SECRETARY, DEPARTMENT
OF HOUSING AND URBAN DEVELOPMENT

JANUARY 12, 1993

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(iii)

LIST OF PRESIDENTIAL NOMINEES

Name: 133 Henry Cabriel
 Position to which nominated: Secretary, Housing Urban Development 17/17/72
 Date of birth: 6/11/47 Place of birth: San Antonio, TX, Bessar Co. BMD
 Marital status: single for name of spouse Mary Alice Perez Clano
 Name and ages of children: [REDACTED]
 Education: John Paul Clements, S

Institution	Dates attended	Degree received	Dates of degrees
Central Catholic High	1960-64	Diploma	1964
Texas A&M University	1964-68	Bachelor Arts	1968
Texas A&M University	1968-70	Master Urban & Regional Planning	1970
Harvard University	1972-73	Master Public Administration	1973
Mass. Inst. Technology	1973-74	None	N/A
George Washington Univ.	1976-77	DPA, Public Administration	1976

honors and awards: list below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.
Sept 1972 - June 1973 Ford Foundation Grant Recipient John F. Kennedy School of Government, Harvard University
Sept 1971 - Sept 1972, White House Fellow/ Office of the Secretary of Health, Education, and Welfare, Washington, DC
See Attached as per honorary degrees, etc.

Memberships: list below all memberships and offices held in professional, fraternal, civic, charitable and other organizations.

Organization	Office held (if any)	Date
<u>SEE ATTACHED - ORGANIZATIONS</u>		
<u>SEE ATTACHED - PROFESSIONAL RECORD</u>		

Employment record: list below all positions held since college, including the title or description of employment, location of work, and dates of inclusive employment.

of interest:

Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated

It is unlikely that any of my business associates and their clients will be affected by HUD policies. Nevertheless, I have submitted a personal commitment letter to the Ethics Officer of HUD which has been approved by HUD and by the Office of Government Ethics.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated

It is unlikely that any of my investments, obligations, liabilities or other relationships will involve potential conflicts of interest. Nevertheless, I have submitted a personal commitment letter to the Ethics Officer at HUD which has been approved by HUD and by the Office of Government Ethics.

3. Describe any business relationships, dealing or financial transaction (other than the payed) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

NOTE: I have submitted a personal commitment letter to the Ethics Officer at HUD which has been approved by HUD and by the Office of Government Ethics. This personal commitment letter relates to efforts I will undertake to receive myself from any possible conflict of interest, the assurance from certain companies, the creation of a voting trust for stock, and refusal procedures.

List any lobbying activity during the past 10 years in which you have engaged or participated directly or indirectly influencing the passage, defeat or modification of legislation at the national level of government or affecting the administration and execution of national law or public policy.

While Mayor and President of the National League of Cities I conferred with Congress on legislative issues

3. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

N/A

4. Criminal and Investigatory History:

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

NONE

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

NONE

ORGANIZATIONS

ALBUQUERQUE - SAN ANTONIO

- General Chair, San Antonio Target '90, 1983-89
- President, Greater Austin-San Antonio Corridor Council, Inc., 1985
- Chairman, Fire & Police Pension Fund, 1981-89
- Chairman, San Antonio Education Fund, 1989-Present
- Chairman, Stadium Advisory Committee, Alamodome, 1989-Present

TEXAS & NATIONAL AFFILIATIONS

- Past President, National League of Cities, 1986
- Past President, Texas Municipal League, 1985
- Member, Council on Foreign Relations, New York, 1985-Present
- Member, President's National Bipartisan Commission on Central America, 1983-84

ORGANIZATIONS - CONTINUED

- Trustee, Notre Dame University, 1985-1988
- Member, Board of Regents, Texas A&M University System, 1985-87
- Co-Chair, Texas Response to the 1985 Mexico Earthquake, 1985
- Member, Bilateral Commission on the Future of U.S. - Mexican Relations, Ford Foundation, 1986-1989
- Member, Board of Trustees, Baylor College of Medicine, 1987-Present
- Member, InterAmerican Dialogue, 1989-Present
- Member, Rockefeller Foundation, Board of Trustees, 1989-Present
- Chairman, National Civic League, 1989-Present
- Member, Governor's Task Force on Education Finance in Texas, 1989
- Board Member, Texas Rivera Center, Claremont, California, 1989-Present
- Board Member, National Endowment for Democracy, 1990-Present
- Deputy Chairman, Federal Reserve Bank of Dallas, 1991-Present
- Member, Governor's Task Force on Revenue, 1991
- Board Member, The American Assembly, 1991-Present
- Board Member, Lyndon B. Johnson Foundation, 1991-Present
- Co-Chair, National Hispanic Leadership Agenda, Present
- Member, Commission on America in the New World, Carnegie Institute of International Peace

1984

Chairman, Cisneros Asset Management Company (investment firm managing \$150 million in fixed income accounts); Chairman, Cisneros Benefit Group (investments, group health, and insurance planning); Chairman, Cisneros Communications (Television program and radio commentary).

1981 - May 1989

Elected Mayor of San Antonio; Re-elected 1983 - Margin of Victory 94.3% of vote; Re-elected 1985 with 73% of vote; Re-elected 1987 with 67% of vote.

1975 - May 1981

Member, City of San Antonio, City Council; Re-elected 1977 and 1979.

1974 - Jan 1987

Faculty Member, Public Administration Program, University of Texas at San Antonio; Faculty Member, Department of Urban Studies, Trinity University

1972 - Aug 1974

Ford Foundation Grant Recipient John F. Kennedy School of Government, Harvard University; Teaching Assistant, Department of Urban Studies and Planning, Massachusetts Institute of Technology.

Sept 1971 - Sept 1972

White House Fellow/Office of the Secretary of Health, Education, and Welfare, Washington, D.C.

Jan 1970 - Sep 1971

Assistant to the Executive Vice President, National League of Cities, Washington, D.C.

Jan 1969 - Jan 1970

Assistant Director, Department of Model Cities, San Antonio, Texas

Sept 1969 - Jan 1969

Administrative Assistant, Office of the City Manager, Bryan, Texas

May 1968 - Sept 1969

Administrative Assistant, Office of the City Manager, San Antonio, Texas

EXHIBIT C

ANALYSIS OF 28 U.S.C. § 592(a)(2)(B)ii (STATE OF MIND)

28 U.S.C. § 592(a)(2)(B)(ii) provides as follows:

- (2) Limited authority of Attorney General. -- (A) In conducting preliminary investigations under this chapter, the Attorney General shall have no authority to convene grand juries, plea bargain, grant immunity, or issue subpoenas.

(B)(ii) The Attorney General shall not base a determination under this chapter that there are no reasonable grounds to believe that further investigation is warranted, upon a determination that such person lacked the state of mind required for the violation of criminal law involved, unless there is clear and convincing evidence that the person lacked such state of mind. (emphasis added).

Thus, in making a determination not to expand an independent counsel's jurisdiction pursuant to 28 U.S.C. § 593(c)(2)(A), the Attorney General must find "clear and convincing evidence" of the subject's lack of criminal intent. This "state of mind" provision was added to the statute when it was amended in 1987 because of the Department's then practice to decline to appoint an independent counsel due to a lack of evidence of criminal intent. While the statutory standard then was the same as it is now, whether there are "reasonable grounds to believe that further investigation is warranted," the Attorney General had used a different standard to decide on the need for an Independent Counsel in two matters: "whether, based on the evidence collected during the preliminary investigation, the case offered a 'reasonable prospect of conviction.'" S. Rep. No. 100-123, 100th Cong., 1st Sess. 1987, reprinted in 1987 U.S.C.C.A.N. 2150 (Re P.L. 100-191 Independent Counsel Reauthorization Act of 1987.) The legislative history makes it clear that the Attorney General was prohibited:

in cases where there is 'conflicting or inconclusive evidence' on the subject's state of mind, from refusing to conduct a preliminary investigation or to apply for the appointment of an independent counsel solely because the subject of the investigation 'lacked the state of mind' required to prove a criminal violation. (emphasis added). S. Rep. No. 100-123.

The underlying rationale was (and is) that:

States of mind are inherently difficult to prove, particularly when the investigator is prohibited from using such tools as grand juries and subpoenas. **Even after a full investigation, determination of a person's state of mind often necessitates the type of subjective judgments which should not be made by the Attorney General, in light of the limited role reserved for the Department of Justice in the independent counsel process. For these reasons, questions about a subject's state of mind, unless the answer is without dispute, should not play a decisive role in the Attorney General's determination to close a case under the statute.**

It is theoretically possible that the Attorney General would have a case in which the evidence disproving criminal intent is so compelling that it justifies closing the entire matter. The provision thus leaves open the possibility of discontinuing a case due to evidence clearly disproving a criminal state of mind. **However, in the more common situation where there is conflicting or inconclusive evidence on the subject's state of mind, the provision prohibits the Attorney General from closing the case solely because he or she has evaluated the evidence and found the evidence against intent more persuasive or the evidence establishing intent insufficiently strong. The provision requires that, in such cases, the Attorney General must leave that issue to an independent counsel. (emphasis added). S. Rep. No. 100-123**

In 1994, when Congress reconsidered the reimplemention of the Independent Counsel Act, it again considered "state of mind" and reached the same conclusion:

Conference agreement

The conference agreement follows the House bill. Congress believes that the Attorney General should rarely close a matter under the independent counsel law based upon finding a lack of criminal intent, due to the subjective judgments required and the limited role accorded the Attorney General in the independent counsel process.

Congress also believes that at least one Attorney General abused his authority in this area, that this abuse was the impetus for the statutory restriction in the expired law, and that a statutory restriction remains necessary to prevent future problems. (emphasis added). **H.R. Conf. Rep. No. 103-511**, 103rd Cong., 2d Sess. 1994, reprinted in 1994 U.S.C.C.A.N. 792. (Re: P.L. 103-270 Independent Counsel Reauthorization Act of 1994.)¹

Both the statutory standard and the legislative history are clear: the Attorney General cannot and should not decline to confer jurisdiction on an independent counsel where the subject's criminal intent is unclear. The subjective judgments necessary in determining intent must be left to an independent counsel.

¹ The proposed House amendment of the 1994 Independent Counsel Act followed the 1987 law. **H.R. Conf. Rep. No. 103-511**. (Re: P.L. 103-270 Independent Counsel Reauthorization Act of 1994.) The proposed Senate bill would have permitted the Attorney General to close a matter after either a threshold inquiry under section 591(d) or a preliminary investigation under section 592, if the Attorney General determined there were "no reasonable grounds to believe that the subject acted" with criminal intent and "no reasonable possibility that further investigation would develop such evidence." **H.R. Conf. Rep. No. 103-511**