

COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, ex rel.,
ERVIN AND ASSOCIATES, INC.

Plaintiffs

Civil Action No.: 96-CV-1258 (LFO) (AK)

v.

THE HAMILTON SECURITIES GROUP, ET
AL.

Defendants

HAMILTON SECURITIES GROUP, INC.
ET AL.

Plaintiffs

Civil Action No.: 96-CV-1258 (LFO)
(AK)

v.

ERVIN & ASSOCIATES, INC.

Defendants

DEFENDANTS' ANSWER AND COUNTERCLAIM TO PLAINTIFFS'
COMPLAINT

Defendants Ervin and Associates and John J. Ervin (hereinafter collectively referred to as "Ervin" or "Defendant Ervin") hereby answer the allegations set forth in Plaintiffs' Complaint as follows:¹

1. Defendants deny as phrased the allegations in Paragraph 1 of Plaintiffs' Complaint.

¹ Though Hamilton is listed as a Defendant above, they have filed suit against Defendant Ervin in a case that has been consolidated into the above matter and will therefore be referred to as Plaintiff or Plaintiffs.

2. The allegations of paragraph 2 contain jurisdictional allegations to which no response is required. To the extent a response is deemed necessary, Defendants deny the same.

3. The allegations of paragraph 3 contain jurisdictional allegations to which no response is required. To the extent a response is deemed necessary, Defendants deny the same.

4. Defendants admit that Hamilton Securities Group, Inc., is a Delaware corporation. Defendants are without sufficient knowledge or information to admit or deny the remaining allegations in paragraph 4, and therefore deny the same.

5. Defendants admit that Hamilton Securities Advisory Services, Inc., is a Delaware corporation. Defendants are without sufficient knowledge or information to admit or deny the remaining allegations in paragraph 5, and therefore deny the same.

6. ~~As to the allegations in paragraph 6, Defendants admit that Defendant~~
Ervin is a Delaware corporation with its principal place of business in Maryland. Defendants deny the remaining allegations contained in paragraph 6 of Plaintiffs' Complaint.

7. As to the allegations in paragraph 7, Defendants admit that John J. Ervin is the President of Ervin and Associates. Defendants deny the remaining allegations in paragraph 7 of Plaintiffs' Complaint.

8. Defendants are without sufficient knowledge or information to admit or deny the allegations in paragraph 8, and therefore deny the same.

9. Denied.

10. Defendants are without sufficient knowledge or information to admit or deny the allegations in paragraph 10, and therefore deny the same.

11. Denied.

12. Defendants are without sufficient knowledge or information to admit or deny the allegations in paragraph 12, and therefore deny the same.

13. As to the first and second sentences in paragraph 13, Defendants are without sufficient knowledge or information to admit or deny the allegations, and therefore deny the same. As to the last sentence in paragraph 13, it is denied.

14. As to the allegations in paragraph 14, Defendants admit that it bid on a very small number of asset management and financial advisor contracts. Defendants deny the remaining allegations in paragraph 14 of Plaintiffs' Complaint.

15. Admitted.

16. Defendants admit that Hamilton was awarded a "crosscutting" contract from HUD. Defendants are without sufficient knowledge or information to admit or deny the remaining allegations in paragraph 16, and therefore deny the same.

17. Denied.

18. As to the allegations in paragraph 18, Defendants admit that they filed the Bivens action. Defendants deny as phrased the remaining allegations in paragraph 18 of Plaintiffs' Complaint.

19. Defendants admit that the referenced Complaint speaks for itself. Furthermore, Defendants deny that the allegations in the Bivens' lawsuit are false. All remaining allegations in Paragraph 19 are denied.

20. As to the allegations in paragraph 20, Defendants admit that they acted as the relator for purposes of filing the *qui tam* suit and that the suit was unsealed for very limited purposes. Defendants deny all remaining allegations contained in paragraph 20 of Plaintiffs' Complaint.

21. As to the allegations in paragraph 21, Defendants admit that articles concerning the Plaintiffs appeared in several publications and that the articles speak for themselves. Defendants deny the remaining allegations in paragraph 21 of Plaintiffs' Complaint.

22. As to the allegations in paragraph 22, Defendants admit that an investigation of the Plaintiffs was begun by the HUD Office of the Inspector General and that said investigation continues and that as a result of said investigation several subpoena were issued. Defendants deny the remaining allegations in paragraph 22 of Plaintiffs'

Complaint.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Defendants repeat and re-allege their responses as set forth in paragraphs 1 through 26 of the Answer as if set forth at length herein.

28. Defendants admit that Hamilton had a contract with HUD. Defendants are without sufficient knowledge or information to admit or deny the remaining allegations in paragraph 28, and therefore deny the same.

29. Admitted.

30. Denied.

31. Denied.

32. Defendants repeat and re-allege their responses as set forth in paragraphs 1 through 31 of the Answer as if set forth at length herein.

33. The allegations contained in paragraph 33 contain conclusions of law to which no responses are required and which are, therefore, deemed denied. To the extent that the allegations of paragraph 33 are deemed not to contain conclusions of law, then Defendants deny all such allegations.

34. Denied.

35. Denied.

36. Denied.

37. Defendants repeat and re-allege their responses as set forth in paragraphs 1 through 36 of the Answer as if set forth at length herein.

38. Denied.

39. Denied.

40. Denied.

41. Defendants deny each and every allegation not specifically admitted above.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The Complaint fails to state a claim for which relief can be granted.

Second Affirmative Defense

All claims set forth in the Complaint are barred by the statute of limitations.

Third Affirmative Defense

All claims set forth in the Complaint are barred by the doctrine of waiver.

Fourth Affirmative Defense

All claims set forth in the Complaint are barred by the doctrine of estoppel.

Fifth Affirmative Defense

Plaintiffs have been contributorily negligent in bringing about the alleged damages of which they complain.

Sixth Affirmative Defense

All claims set forth in the Complaint are barred by a lack of damages to the Plaintiffs.

Seventh Affirmative Defense

~~Any alleged damages proven by Plaintiffs were caused by the Plaintiffs' own acts and/or omissions and not by any actions of the Defendants.~~

Eighth Affirmative Defense

Plaintiffs' claims are barred because Plaintiffs' alleged damages, if any, were or may have been proximately caused by acts and/or omissions of persons or entities other than the Defendants.

Ninth Affirmative Defense

The Plaintiffs' injuries, losses and damages, if any, resulted from intentional, negligent or supervening negligent acts of others.

Tenth Affirmative Defense

All claims set forth in the Complaint and any alleged damages to the Plaintiffs are barred by a lack of proximate cause.

Eleventh Affirmative Defense

Plaintiffs' claims are barred by the doctrine of unclean hands.

Twelfth Affirmative Defense

Plaintiffs' claims are barred by the doctrine of *in pari delecti*.

Thirteenth Affirmative Defense

Any and all statements made by Defendants during the course of ongoing litigation are protected by the litigation privilege.

Fourteenth Affirmative Defense

No government contractor that is subject to the federal acquisition regulations can have an expectation of future contracts.

Fifteenth Affirmative Defense

Defendants reserve the right to assert additional defenses that may come to light as this litigation develops.

WHEREFORE, Defendant Ervin and Associates and John J. Ervin request that this Honorable Court dismiss this Complaint with prejudice.

DEFENDANTS' COUNTERCLAIM

Defendants/ Counter-Plaintiffs, Ervin & Associates, Inc. and John J. Ervin for their Counterclaim state as follows:

PARTIES INVOLVED

1. Upon information and belief, Plaintiff/Counter-Defendant, Hamilton Securities Group, Inc., (hereinafter "HSG") is a Delaware corporation with its principal place of business in the District of Columbia.

2. Upon information and belief, Plaintiff/Counter-Defendant, Hamilton Securities Advisory Services, Inc. (hereinafter "HSAC") is a Delaware corporation and subsidiary of HSG with its principal place of business in the District of Columbia.

3. Defendant/Counter-Plaintiff, Ervin and Associates, Inc. (hereinafter "Ervin & Assoc.") is a Delaware corporation with its principal place of business in Maryland.

4. Defendant/Counter-Plaintiff John J. Ervin (hereinafter "Ervin") is the President of Ervin & Associates.

FACTUAL ALLEGATIONS

5. On June 5, 1996, these Defendants/Counter-Plaintiffs filed a Bivens action in the United States District Court for the District of Columbia against, *inter alia*, the United States Department of Housing and Urban Development (hereinafter "HUD").

~~6. On June 6, 1996, these Defendants/Counter-Plaintiffs acted as the relator~~
for a *qui tam* action also filed under seal in the United States District Court for the District of Columbia.

7. Both suits allege that there existed widespread corruption and favoritism in a HUD directed direct loan auction program.

8. These Plaintiffs/Counter-Defendants had been actively involved in the loan auction program as financial advisors to HUD.

9. The HUD OIG has independent authority under the federal inspector General Act to investigate allegations of fraud, waste, and abuse. Pursuant to this authority, the HUD OIG, in coordination with the Department of Justice, controlled all

aspects of the investigation, including the issues to be investigated and the ultimate duration of the investigation.

10. Part of the investigation, which was conducted under the auspices of this Court, focused on the activities of these Plaintiffs/Counter-Defendants as they related to the HUD loan auction program, and involved the issuance of subpoenas aimed at obtaining certain records and other evidence held by these Plaintiffs.

11. On November 19, 1997, this Court ordered a partial lifting of the seal in the *qui tam* case to notify these Plaintiffs/Counter-Defendants that they had been named as defendants in the *qui tam* action and were under investigation by the HUD OIG and the Department of Justice.

12. On April 21, 1999, Hamilton's counsel in a widely published letter to ~~Senator Fred Thompson (R-TN), Chairman of the United States Senate Government Affairs Committee, identified Defendant Ervin as filing the still sealed *qui tam* Complaint~~ while acknowledging that Hamilton did not know the allegations in the *qui tam* suit. (See Letter to Sen. Fred Thompson attached hereto and incorporated herein as Exhibit 1).

13. Between 1998 and 1999, Hamilton's counsel filed various complaints against Inspector General Gaffney with the President's Council on Integrity and Efficiency ("PCIE") in connection with the investigation of Hamilton. In each case, the Inspector General was exonerated.

14. In May 1999, without standing, Hamilton Securities Group moved this court to unseal the file and to oppose the Attorney General's requests for further extensions of time.

15. On June 4, 1999, Hamilton in an attempt to break the seal in the *qui tam* case and to determine the content and direction of the investigation through discovery filed this suit in the Superior Court of the District of Columbia.

16. Upset at the inability to break the *qui tam* seal and learn the details of the ongoing investigation through discovery, these Plaintiffs conjured up all sorts of conspiracy theories in an effort to explain away any improper activities they may have been involved in.

17. Prior to the initiation of her claims against Ervin and Ervin and Associates, the founder and former President of Hamilton, C. Austin Fitts, made allegations and accusations against others, asserting that they had been the cause of damage which Hamilton now attributes to Ervin and Ervin and Associates. These allegations and accusations are legally and factually inconsistent with the legal theories and factual ~~allegations put forth in this case. For example Ms. Fitts has gone so far as to develop a~~ Web site through which she posits that the White House and the HUD OIG have intentionally ruined Hamilton and her business prospects.

18. By way of another example, in a May 1999 article entitled "From the Wilderness," C. Austin Fitts claims that all of the injuries suffered by these Plaintiffs/Counter-Defendants are directly related to the creation of a certain type of financial software by these Plaintiffs/Counter-Defendants that revealed "ethnic cleansing" being carried out by the United States Government and various intelligence organizations. (See Article entitled "From the Wilderness" attached hereto and incorporated herein by referenced as Exhibit 2).

19. In retaliation for the filing of the *qui tam* lawsuit, Plaintiffs/Counter-Defendants instituted the instant suit against these Defendants/Counter-Plaintiffs knowing that their claims were frivolous and in an effort to force Ervin and Associates to drop their prosecution of the *qui tam* lawsuit

COUNT I
(Abuse of Process)

20. Defendants/Counter-Plaintiffs hereby incorporate paragraphs 1 through 19 of the Counterclaim as though fully set forth herein.

21. The Plaintiffs/Counter-Defendants knew prior to the filing of their lawsuit that Ervin and Ervin and Associates were neither legally nor factually the cause of any of the alleged injuries of which they complain.

22. The Affidavit and words of C. Austin Fitts, founder and former Preesident of Plaintiff/Counter-Defendant Hamilton make it clear that they have asserted that others

have caused the injuries which they now assert were caused by Ervin. (See Affidavit of C. Austin Fitts and incorporated herein by reference as Ex. 3).

23. At all times in question herein, the Plaintiffs/Counter-Defendants knew before they filed this suit that these Defendants/Counter-Plaintiffs had absolutely nothing to do with any injury suffered by them. (See Id.).

24. The Affidavit and words of C. Austin Fitts, founder and former President of Plaintiff/Counter-Defendant Hamilton make it clear that these Plaintiffs/Counter-Defendants have asserted that others have caused the injuries which they now assert were caused by Ervin. (See Affidavit of C. Austin Fitts and incorporated herein by reference

as Ex. 3); (See Statements of C. Austin Fitts attached hereto and incorporated herein by reference as Ex. 4).

25. By filing a suit against the Defendants/Counter-Plaintiffs in the face of Ms. Fitts' admission that someone else caused their injuries, Plaintiffs/Counter-Defendants demonstrated that they has an ulterior motive to file this suit, namely to harass and intimidate these Defendants/Counter-Plaintiffs in an effort to prevent any more of their improper acts from coming to light.

26. Plaintiffs/Counter-Defendants had a further ulterior motive in improperly filing suit to break the seal on the *qui tam* case.

27. The Plaintiffs/Counter-Defendants' ulterior motives are clear from the writings of the founder of Plaintiff Hamilton, C. Austin Fitts, namely that these ~~Plaintiffs/Counter-Defendants wished to illegally harness the machinery of the judicial system in an improper manner against these Defendants/Counter-Plaintiffs.~~

28. By filing this suit to harass and intimidate these Defendants/Counter-Plaintiffs and in an effort to improperly break the seal on the *qui tam* case, the Plaintiffs/Counter-Defendants undertook to illegitimately use the machinery of the judicial process in a perverse manner as a tool to enact revenge against these Defendants/Counter-Plaintiffs for bringing to light the improper acts undertaken by the Plaintiffs/Counter-Defendants.

29. It is clear that the Plaintiffs/Counter-Defendants' objective in perverting the use of the judicial system by filing this vexatious lawsuit was to achieve a goal that was not otherwise available to them under the law, namely a measure of revenge against these Defendants/Counter-Plaintiffs.

30. The Plaintiffs/Counter-Defendants' filing of the instant lawsuit with full knowledge that these Defendants/Counter-Plaintiffs did nothing to cause them any injury constitutes a gross misuse of the scales of justice and an abuse of process.

31. As a result of the Plaintiffs/Counter-Defendants' abuse of process, these Defendants/Counter-Plaintiffs have suffered substantial compensatory damages in the amount of \$250,000.

32. The Plaintiffs/Counter-Defendants' actions were intentional, reckless, and malicious as set forth more particularly hereunder which entitle Defendants/Counter-Plaintiffs to punitive damages.

WHEREFORE, Defendant Ervin and Associates and John J. Ervin request that this Honorable Court enter judgment in their favor as to their Counterclaim and that the Court award to them the sum of \$250,000 in compensatory damages and \$500,000 in punitive damages and such further relief as justice requires.

Respectfully submitted,



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*Attorneys for Defendants John J. Ervin and
Ervin & Associates and Counterclaimants*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of March, 2001, a copy of the foregoing Defendants' Answer and Counterclaim was mailed, first-class, postage prepaid to:

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April 21, 1999

HAND-DELIVERED

The Honorable Fred Thompson
Chairman, Government Affairs Committee
Room SD-523
Dirksen Senate Office Building
Washington, D.C. 20510-6250

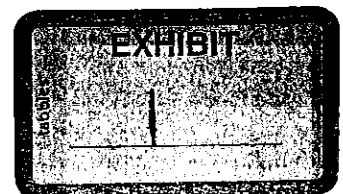
Re: Hamilton Securities Group, Inc., and Hamilton Securities Advisory Services

Dear Senator Thompson:

We represent Hamilton Securities Group, Inc. and Hamilton Securities Advisory Services, collectively referred to as "Hamilton". Hamilton is an investment banking firm that for a number of years was an outside contractor to the Department of Housing and Urban Development. In the mid 90s, Hamilton served in an instrumental capacity as HUD's financial advisor developing and implementing a number of sales of HUD's mortgage loan portfolio which saved the U.S. taxpayers in excess of \$2.1 billion in credit subsidy savings. In June of 1996, another HUD contractor, Ervin & Associates, filed suit against HUD, the Small Business Administration, then-Secretary of HUD Henry Cisneros, and other government officials, more fully described below (as the "Bivens lawsuit"), and a sealed *qui tam* lawsuit against a number of undisclosed parties. Hamilton was not named as a defendant in the Bivens action, but while we do not know the allegations or the identity of the other defendants, we do know that Hamilton was named as a defendant in the *qui tam* action. As a result of these two lawsuits, Susan Gaffney, the HUD Inspector General, launched an investigation of Hamilton purportedly based on the allegations raised in the two lawsuits. In August of 1996, the HUD Office of Inspector General served two subpoenas on Hamilton, requesting the production of hundreds of thousands of pages of Hamilton's documents. Hamilton immediately began to work with the OIG to produce the requested documents.

In mid-November of 1996, Hamilton discovered the possibility of an error in the computer optimization program used to determine the winning bids in one of the mortgage loan sales. Hamilton immediately investigated the matter, including meetings with the subcontractor who developed the program, Lucent Technologies. Hamilton reported this matter in early December of 1996 to HUD, and followed-up with a written report to HUD of its investigation results. Hamilton believed that any

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potential error had been corrected, and that the matter was closed. Hamilton heard nothing more on this matter, and in fact, continued to work on the development and implementation of future mortgage loan sales. Then on October 17, 1997, HUD suddenly and without warning terminated Hamilton's contracts. Even though at that time HUD apparently had not investigated the matter further, it cited the computer optimization model as the basis for Hamilton's termination. HUD refused to pay Hamilton for work that Hamilton had already completed at the time of the termination (approximately \$2 million), and that dispute is now in the Federal Court of Claims.

One week later, on October 24, 1997, the HUD OIG served a third subpoena on Hamilton, which Hamilton immediately began to respond to. All told, Hamilton has spent in excess of \$2 million responding to the OIG subpoenas. While the HUD OIG has repeatedly claimed that it is investigating both civil and criminal matters purportedly involving Hamilton, after nearly three years of this "investigation" the OIG has taken no formal action, although it does continue to burden Hamilton with requests for yet additional document production.

We represent Hamilton in all matters relating to the actions of the HUD OIG. Over the course of our working on it, there have been many aspects of this case which have been very puzzling to us, things and procedures which, in our experience, were unexplainable within the context of how cases are normally and reasonably handled. For example, other than oblique references to the sealed *qui tam* complaint and the 253-page *Bivens* filing, the government has repeatedly alluded to serious criminal and serious wrongdoing on the part of our clients, yet refuses to provide any meaningful specifics of what it contends our clients did wrong. This investigation has taken entirely too long based upon its purported genesis. The subpoenas issued by the HUD Inspector General Susan Gaffney are unusually broad for this type of investigation, and have gone well beyond the bounds of anything necessary to obtain relevant information. And most curious, this investigation is not being done consistent with procedures and practices normally seen in similar types of investigations, either by the FBI or Offices of Inspector General, in other words, it is not consistent with normal investigatory procedures. This is highlighted by Judith Hetherington's heavy involvement in this matter, which far exceeds any statutory authority she may have as Counsel to the IG, and which has included an extraordinary injection of factually incorrect yet sensationalist and prejudiced inquiries of a very personal nature into the lives of certain parties to this matter. Investigations are usually run by investigators, not the OIG's counsel. Yet that is clearly what is happening here. This indicates an unusual interest by the IG herself, who we now believe has a personal agenda inconsistent with the authority and mandate of her official position.

Since our introduction to this case nearly one year ago, we have repeatedly asked the government, through several different inquiries and on many separate occa-

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sions, just precisely what is the nature, focus, intent and purpose of what to us now appears to be a politically motivated, never-ending and pointless investigation of Hamilton and some of its former employees. To date, the information we have obtained leads us to believe that this matter is being driven by questionable motives, for which the HUD OIG is directly responsible and accountable.

As a matter of first course, it would seem to be a simple enough proposition to at least be able to find out who is actually leading this investigation. Apparently no one is, or at least no one has been willing to accept or acknowledge that responsibility. Both Dan Van Horn (the Assistant United States Attorney representing the HUD OIG in court proceedings in this matter) and Ms. Hetherton have repeatedly advised us that neither one of them is running the investigation, and we have been directed to AUSAs Tony Alexis (civil) and Dick Chapman (criminal) as those in charge. We have met with both Mr. Alexis and Mr. Chapman, who impressed us as being professional, reasonable and straightforward in their discussions with us. They both advised us that they too were not running the investigation, but they believed that Ms. Hetherton was. We believe that she is, at least on a day-to-day basis. Given that Mr. Van Horn and Ms. Hetherton have repeatedly suggested both civil and criminal implications from whatever "it" is, I believe we are at the very least entitled to know who is running the show.

Equally mysterious is just what is being investigated? We have repeatedly asked that question, and after nearly three years of an investigation I am amazed at the government's inability to articulate any meaningful response to that question. I have worked opposite the U.S. Attorney's Office in both civil and criminal cases before, and while I do not expect the government to give away their strategy or the inner workings of their case, I have never had anyone so unwilling or unable to tell me simply and precisely what they were investigating. Yet Mr. Van Horn and Ms. Hetherton have felt free to suggest in court proceedings that significant wrongdoing has taken place, perhaps even fraud, and have apparently provided the Court (Judge Stanley Sporkin, United States District Court for the District of Columbia) with some indication of what they are investigating for its *in camera* review. Yet for some unknown and unexplained reason they are afraid to address that issue with us. Initially, we concluded that whatever it is that has been given the Court in secret must indicate that the investigation is focused in reality on some other party, and not on Hamilton, for we could think of no other legitimate reason why that basic information was not shared with us. We also believe that whatever it is the OIG has told the Court must be so irrefutably disproven by the facts that disclosing that information to us would give us cause to have the investigation terminated immediately, and those responsible for it punished. But it appears that the truth is even more ominous than that; this is not simply just a case of an investigation yielding no results, but rather an investigation aimed from its inception at destruction rather than illumination.

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Ms. Hetherington has told us that the HUD OIG began its investigation in July of 1996, at the request of the U.S. Attorney's Office. The HUD OIG was to investigate the allegations contained in Mr. Ervin's *qui tam* suit, filed in June of 1996. That suit was filed and remains under seal, and Hamilton has not been made aware of any of the allegations contained in that lawsuit. Therefore, for her to tell us that Hamilton is being investigated for the allegations raised in the *qui tam* is to tell us nothing at all. Yet Mr. Van Horn and Ms. Hetherington have obviously seen those allegations, as they were the premise for Mr. Van Horn's *in camera* submissions to the Court. By now, as a result of the past two and a half years of production of documents, Mr. Van Horn has had access to virtually all of Hamilton's documents. How is that neither Mr. Van Horn nor the OIG can tell us the specifics? It is fundamentally unfair that Hamilton has been subjected to numerous leaks to the press, conjectures and statements about potential civil and criminal wrongdoing for three years without being able to respond to these secret allegations.

The HUD OIG also asserts that Hamilton is being investigated as a result of the allegations in Mr. Ervin's *Bivens* action, but that too tells us absolutely nothing. Our question has always been rather pointed and direct: Precisely what is it that Hamilton or any of its employees did wrong? The *Bivens* action sheds no meaningful light on that. First, Hamilton is not even a defendant. Second, while Hamilton is mentioned in the complaint, the best that can be gleaned from those references is that those defendants who are alleged to have done something wrong used Hamilton to do so. What are the accusations that Hamilton did wrong?

The *Bivens* action, 253 pages long, with 851 numbered paragraphs, was filed against Helen Dunlap, former Assistant Secretary of HUD; Henry Cisneros, former Secretary of HUD; Philip Lader, former Administrator of the Small Business Administration; HUD itself; the Small Business Administration; and the United States. The complaint describes itself in ¶ 12, which states:

reduced to its essence, this complaint is about power, money and Dunlap's close relationships with HUD's contractors and subcontractors. The thrust of this Complaint is that Dunlap has usurped control and exercised unlawful influence over HUD's contract procurement process to confer huge procurements on her favored handpicked contractors and personal friends and companions, and to prevent Ervin from winning new contracts or have its existing contracts renewed or extended. Her efforts, and those of individuals at HUD under her control, are orchestrated to bypass the normal procurement processes which are intended to prevent the very abuses to which Dunlap has subjected and is subjecting Ervin and others.

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Much of the complaint deals with Ervin's allegations that Ms. Dunlap abused her power to discriminate against him and other white males, specifically alleging that Ms. Dunlap had turned HUD into "white boy's hell", yet ironically alleging at the same time that the beneficiaries of Ms. Dunlap's actions were prominent Wall Street big money firms - firms predominantly populated, directed and run by white men. Hamilton is not directly accused of any wrongdoing, but is mentioned in the complaint as a woman-owned company which did obtain HUD contracts, and whose contracts were extended. Hamilton did act as HUD's financial advisor for HUD's loan sales, and Ervin does assert that the optimization model employed by Hamilton used in selecting the successful bidders was "intentionally complex", giving "advantages" to only the biggest bidders, a curious allegation given that the complaint also acknowledges that in the first loan sale, small investors were in fact successful. But these flimsy assertions can and should have been readily and quickly investigated, and are hardly justification for the OIG's oppressive actions.

There are additional factors which demonstrate that the OIG's assertion that the investigation is based on the *qui tam* and *Sivens* complaints simply makes no sense. For example, the *Sivens* matter makes complaints about Williams Adley (another HUD contractor) and suggests improper conduct relating to the contracts between Williams Adley and HUD and Williams Adley and Hamilton. Yet, in an audit report issued by the OIG more than three months after the *Sivens* action was filed, and a month after the OIG issued its first subpoena to Hamilton, some Williams Adley contracts were noted as having been audited. It is inconceivable to us that if the OIG was truly concerned about the *Ervin* allegations, it would not have looked further at Williams Adley than it did in that audit. And, despite sharing information with Ervin at various times during the course of his three-year pursuit of the *Sivens* case, no evidence has surfaced in any way implicating Hamilton in wrongdoing. Thus, the justification that the investigation was spurred by the *Sivens* action rings hollow.

We also know that John Ervin made about \$7 million a year servicing mortgages for HUD, and he has admitted that he loses out if those loans are sold to private-sector companies. Prior to the commencement of the loan sales, Ervin was a consistent beneficiary of HUD contracts. Between 1989 and 1994, he won more than \$25 million in HUD contracts. His firm, Ervin & Associates, grew from a staff of five to more than 40 people, although the head count has fallen back significantly since the loan sales began. Yet, this is the man on whose word this investigation has begun, and on whose allegation the investigation is based? While Mr. Ervin has ugly motives for destroying Hamilton, and may be acting in collusion with the OIG, we believe that the OIG has its own motives for destroying Hamilton.

The question arises then, is the OIG conducting this investigation in an attempt to collect information and evidence relating to the allegations made in the *qui*

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tam action? If that is the case, we believe that is patently illegal, and we are entitled at this point to know exactly who authorized this investigation, and under what authority. In addition, we ask why is it taking so long and why is the government allowing it to take so long?

It is impossible to believe, based on the meager statements in a complaint directed entirely at other parties, that justification exists for a two and a half year investigation, which has cost Hamilton millions of dollars in actual costs and tens of millions of dollars in lost shareholders' equity and opportunity costs. Hundreds of thousands of documents have been produced, many witnesses have been questioned by the OIG and the FBI, yet no conclusions or recommendations, or even basic information, has been turned over to the U.S. Attorneys' Office. While initially we didn't understand why the OIG so singularly pursued Hamilton with such a vengeance, we now believe that we do.

We have serious reason to suspect that the HUD IG, Susan Gaffney, is directing a personal vendetta, the goal of which is to destroy Hamilton and the reputations and economic well being of its former employees. The best evidence of this is her handling of an OIG audit which we reference as the "Denver audit". In the regular course of conducting the loan sales, an OIG audit of the sales was to be conducted. Because of the close association of the Washington OIG office with the loan sales, the Denver field office was asked to do the audit, to avoid the potential of a "friendly" audit being conducted. We believe, however, that Susan Gaffney was personally responsible for having the Denver audit buried, precisely because the audit was very favorable to Hamilton, a conclusion that Susan Gaffney did not want to hear. We have reason to believe that Ms. Hetherington, and the investigators assigned to work with her on this particular matter, closely monitored the development of the Denver audit, even though the whole purpose of having the audit done out of the Denver office was to avoid coloration by the D.C. office. We have reason to believe that, at the personal direction of Susan Gaffney, the Denver audit was shut down for purely political purposes, over the objection of the team conducting the audit, and has been suppressed even though Ms. Gaffney personally promised Catherine Austin Fitts (Hamilton's President and CEO) that the Denver audit would not be withheld, because to do so "would be unethical".

We also think we know why Ms. Gaffney has followed this contemptible course. Hamilton and its successor, with the information and knowledge they developed, stand in the way of both Ervin and the OIG in their quest for money. Hamilton was instrumental in the development, management and oversight of the HUD loan sale programs, which involved over \$9 billion worth of sales at a known savings of over \$2 billion to the U.S. taxpayers, and Ms. Fitts was the driving force behind the disclosure and performance-based policies that favored taxpayers and communities, but were

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offensive to traditional "players" working for HUD. Thus what was at stake here, to both Ervin and the OIG, was to make sure that no more loan sales take place. Ervin managed HUD properties, that's where he made most of his money. If HUD sells off its properties, there's nothing for Ervin to manage and he doesn't make any money. With the advent of these lawsuits and the OIG's investigation, the HUD loan sale process essentially came to a halt. As funds were transferred away from loan sales, almost identical corresponding funds were provided to the OIG to expand its power and to beef-up its enforcement proceedings. Obviously, if HUD has no properties, then the HUD OIG has no authority for its enforcement efforts at what are now privately-held properties. The OIG needs the government to maintain control over the housing to enable it to obtain bigger budgets and more power.

In our view, this explains why the OIG would so viciously pursue Hamilton. We respectfully request that you immediately investigate these concerns. We ask that you consider the following matters as well.

The OIG has had, for years now, hundreds of thousands of pages of documents relating to the loan sales, produced by Hamilton, HUD, and other parties. Well over a year ago, the OIG interviewed several people who were involved with or had knowledge of Hamilton's work with HUD. Throughout the course of Hamilton's document production, the OIG had the benefit of meeting with former Hamilton employees, who described exactly the nature of Hamilton's document keeping and what was being produced to the government. The OIG has had the benefit of both the document production and deposition discovery taken by Ervin's lawyers in the *Bivens* case. The OIG has had access to Hamilton's financial records, and has subpoenaed Ms. Fitts' personal bank accounts, even those which did not come into existence until long after Hamilton's work with HUD had been terminated. The OIG has even harassed elderly members of Ms. Fitts' family, causing agents to show up at their doors with subpoenas for records of a family-owned farmhouse that does not even have complete indoor plumbing.

We would like to know just what governmental purpose was served by these actions, or for that matter any of this unending and seemingly unfocused investigation? What benefits are being provided to the taxpayers for an investigation that is no closer to reaching any conclusions than it was nearly three years ago when the investigation began, and which has taken nearly three times as long as it took to investigate, litigate (through several trips to the Court of Appeals and Supreme Court), impeach and try the President of the United States? I suggest to you that the OIG has reached no conclusions for two reasons: first, because there's only one that can be reached, but one that is very embarrassing to the OIG, i.e., nothing wrong or illegal took place, certainly as regards to Hamilton or any of its employees. Second, there

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was never any intent to reach any useful conclusions, but only to destroy Hamilton for purely self-serving reasons.

We are also mindful of the fact that the OIG is investigating the optimization issue relating to certain loan sales in which Hamilton served as an advisor to HUD. We understand that the OIG has reviewed documents from Lucent Technologica, the creator of the optimization program, and has spoken with employees of Lucent Technologies. If the OIG has taken the time to understand and master the optimization issue, and has looked at the information relating to its use in the loan sales, the OIG must now know that there was no wrongdoing or illegality involved on the part of Hamilton or any of its employees. The entire optimization issue was brought to the attention of HUD by Hamilton! It is astounding that by bringing forth an issue that would never have been discovered except by its own due diligence, and which at most indicates a potential error that at most could have resulted in an economic correction representing a tiny fraction of the overall value of the loan sales, Hamilton has been driven out of business and its former employees have been denied access to the marketplace, at great cost. All this because the OIG cannot competently and honestly conclude what should have been a rather straightforward investigation. This is highlighted by the fact that Ms. Gaffney refuses to provide Hamilton access to the Denver audit, which she knows speaks favorably of Hamilton's actions regarding the loan sales. The OIG's behavior is nothing short of outrageous, and we believe this is but further proof of the true intent of its "investigation".

Ironically, the loan sales themselves were initiated in response to an OIG audit report which claimed that HUD's holding of the mortgages at issue was a "material weakness in its operations". It was this report that provided the basis for the OIG's headquarters' close involvement in all aspects of the loan sales as they were taking place, and that close involvement was the reason why the audit function was shipped to Denver. As part of the audit, members of the Denver OIG audit team actually sat in on one sale, and concluded that there was no way that bid rigging could have taken place, and that in a sealed bid auction (as were the loan sales), you can't favor any one bidder, particularly with the use of the optimization model and where there is open access to all loan information to all interested and qualified bidders. Surely the government should have been able to confirm these findings by now, yet the investigation continues. Hamilton is entitled to know why.

We are also very concerned about the tie-in between the withholding of Hamilton's nearly \$2 million plus fees owed by HUD, and the investigation. Hamilton was assured some time ago that the \$1.5 million withheld from it was not tied to the investigation. We don't believe that. For one thing, the justification advanced by HUD for withholding Hamilton's money is that it is a set-off for a purported \$3.8 mil-

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lion loss resulting from the optimization issue, the same optimization issue which is the subject of the investigation.

In yet another irony, in their answers to Ervin's requests for admissions filed in the *Bivens* action, the HUD defendants deny those of Ervin's assertions that attempt to involve Hamilton in any wrongdoing. Indeed, the government appears to be taking positions in that case that contradict the positions it is taking regarding the investigation of Hamilton.

In addition, the timing of the OIG's third subpoena (issued in October of 1997), which specifically sought information relating to the loan sales and the optimization issue, is extraordinarily suspicious, as it was served only one week after HUD determined to terminate Hamilton's contracts, refused to pay the monies owed to Hamilton, and made a claim for \$3.8 million against Hamilton. Our suspicion is heightened by the fact that Hamilton had reported the optimization issue to HUD nearly one year previously, in December of 1996, and by the fact that the existence of the subpoena had to have been leaked to the press, since it was reported in the newspaper before it was served on Hamilton.

This ties-in with our concern about the length of time it is taking for the government to take any action on the *qui tam* case. By statute, once a *qui tam* has been filed by a private party, the government has 60 days within which to either accept the case for handling by the government or allow the private party to proceed on its own. The fact that the government has continued to roll-over the 60-day decision-making period for nearly three years now, gives rise to our suspicion that the OIG is either working closely with Ervin's lawyers in the development of information through the *Bivens* case, or that the government, lacking any supporting evidence on which to base the handling of the *qui tam* action, is unjustly prolonging its decision-making process in the hopes that, finally, something will develop as a result of the Ervin/OIG investigation. Who is guiding the decision to continually roll over the *qui tam*? Surely after nearly three years the government knows something.

To date, the OIG's investigation has achieved the following dismal results:

- Many of the experienced and highly-dedicated professionals in the Office of Housing/FHA have left HUD in frustration, and several have been forced to retain legal counsel personally to fend off unjustified charges of contracting abuse, mismanagement and other illegal activities.
- HUD's loan sales program, which had saved the U.S. taxpayers in excess of \$2.1 billion in credit subsidy savings, has been sus-

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pended indefinitely, leaving a large inventory of loans secured by rent subsidized properties to be worked out by state housing finance authorities, depriving the taxpayers of hundreds of millions of dollars more in credit subsidy savings.

- The financial advisors in the Office of Housing that had a grasp of the complex FHA portfolio problems and how they could be resolved consistent with HUD's mission to serve communities, residents and taxpayers have had their contracts with HUD terminated. One of them, Hamilton Securities, once a thriving, cutting-edge business employing 40 extremely talented professionals, has essentially been put out of business, as a result of a two and a half year campaign of leaks of false information to the press and Congressional staff, the wrongful withholding of nearly \$2 million of funds from Hamilton, and the nearly \$2 million expended by Hamilton to respond to the unfocused and repetitive demands of the OIG in pursuing its subpoenas, all of which have destroyed the full value of shareholders' equity. As a result, Hamilton has lost tens of millions of dollars of shareholders' equity and opportunity costs in lost business revenue.
- As a result of the OIG's unjustified destruction of Hamilton and the false allegations made against it, Hamilton's former employees have been deprived access to the marketplace for many of the ideas and concepts they had developed while at Hamilton, at a loss of millions and millions of dollars, and personal financial security for their families.
- Legislative support for introducing competition into management servicing and ownership of HUD supported properties and FHA insured loans has been thwarted, and the unworkable "demonstration program", which favors the owners and managers of assisted-housing projects and state HFAs, has been extended.

This is hardly an enviable achievement, although I'm sure the OIG takes solace in the fact that its own budget, through enforcement roundups in public housing developments and asset forfeitures to be used as cash acquisitions for the OIG, has been increased. Surely this is not a result that those who believe in honest government would be proud of, and it cannot be said that the millions of dollars spent on this investigation by the government have been worthwhile.

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The government's actions have been so inappropriate that, as I noted earlier, we have even considered whether or not Hamilton is the true target of any investigation, for surely within nearly three years' time someone of competence and integrity, with the taxpayers best interests in mind, heading such an investigation would have reached some type of conclusion. Certainly, the fact that Mr. Van Horn insists on hiding behind "in camera" justifications demonstrates this possibility, as well as indicates that the government has no case, no evidence, and no justification for its continued actions. Good investigators and prosecutors who know they have a case do not fear sharing that with targets. We can only conclude that any allegations Mr. Van Horn has contrived to the Court are without merit, at least as far as Hamilton is concerned. If there is another target, there's no justification for the continued harassment of Hamilton. It is neither moral nor legal to destroy Hamilton just to get to another party.

Finally, what consideration has been given, and by whom, of the effects that the government's action has had on Hamilton and its former employees? Surely at some point in this Orwellian nightmare someone has said that the fairness to the citizens involved must be considered, that the needless toll taken by this investigation must be ended, and even compensated. We are aware of the statutory provisions that allow for compensation from those responsible for the type of harm that has befallen Hamilton and its former employees, and we are now investigating the means to pursue those remedies.

Hamilton and its former employees, over whom the government has held the threat of both civil and criminal prosecution for nearly three years, are entitled to know the status of this investigation. They are entitled to know why the government won't release information favorable to them, and they are entitled to know who is responsible for prolonging their difficulties and causing them such great financial loss.

Again, we ask that you initiate an immediate inquiry into this most serious matter. We stand ready to render whatever assistance is needed and will gladly answer any questions you may have.

Very truly yours,



Michael J. McManus

MJM/gw

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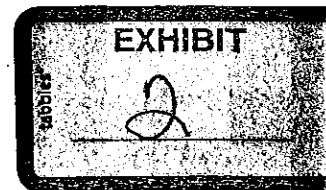
cc: Mr. Thomas J. Pickard
Assistant Director
Federal Bureau of Investigation

Ms. Sylvia Matthews
Acting Deputy Director for Management
Office of Management & Budget

The Honorable June Gibbs Brown
Inspector General - PCIE
Department of Health & Human Services

The Honorable Robert H. Haast
Acting Assistant Comptroller General
General Accounting Office

The Honorable Dan Burton
Chairman, Government Reform Committee
United States Congress



Former Bush Assistant Secretary for HUD Reveals "Ethnic Cleansing"

Connected to CIA Drug Dealing in Los Angeles

Government Spends Millions in Campaign to Silence Former Wall Street Banker, Cover Up Connections to Dark Alliance Stories & CIA Inspector General Report on Drug Trafficking

Special to From The Wilderness,

May 1999

by

Catherine Austin Fitts

I was ten years old when the combined action of HUD housing investment and heroin trafficking destroyed my West Philadelphia neighborhood. The combined real estate and drug play destroyed the equity in our homes and businesses. Many of us left. Those who stayed were embroiled in the increasing stress of what happens as neighborhoods deteriorate into crime and decay. I decided that I would learn how money worked. I was too young to understand fully how the combination of HUD investment and drugs could move control and ownership from the many people who lived in a community to a few people who lived outside the community. -- C.A.F. * * * * *

I'm an investment banker. In the eighties I was a Managing Director and member of the Board of Directors at the Wall Street investment bank Dillon, Read & Co., Inc. I managed the firm's large municipal and government clients. My projects included the financing of billions of dollars of improvements in New York City's subway, bus and commuter rail systems. I also organized the financing for hundreds of millions in renovations to the infrastructures of New York and New Jersey. I regularly handled hundreds of millions of dollars in transactions.

I also helped to make tens of millions of dollars in profits for my firm and I raised tens of thousands of dollars for the George Bush Presidential campaign in 1988. Nicholas Brady, who became George Bush's Treasury Secretary, had been my partner and boss at Dillon Read.

I was a Wall Street insider and a political insider - or so I thought. I was successful at Dillon Read because I created new investment models that helped ordinary people while making a profit. I thought "outside the box." When Iran-Contra came and went I was oblivious. I had no idea about the drugs. It never entered my mind. Yet today I am convinced that the illegal drug trade, the enormous cheap capital it generates, and the CIA's role as enforcer/protector for the profits of that trade is a dominant factor in the economy of this country. It is a factor, which is destroying the entire American culture and is utterly out of control. As an investor and banker and as a former Cabinet level appointee, I tell you this is true.

My evolution came slowly. In 1989 I was named Assistant Secretary of Housing-FHA Commissioner under Housing and Urban Development Secretary Jack Kemp. I managed \$300 billion of mortgage insurance, mortgages and properties of the Federal Housing Administration and, as Commissioner, I advised the Secretary on another \$1 trillion of mortgage financing. I was fired by Jack Kemp in late 1990 because I would not go along with the questionable political practices, which seem to be built into HUD's machinery and purpose. But still I did not see the bigger picture.

In 1990, after leaving HUD, I started my own investment company, The Hamilton Securities Group, and I devised new and creative ways to save taxpayers billions of dollars. In 1993, Hamilton secured contracts with HUD through Secretary Henry Cisneros. Hamilton saved taxpayers billions of dollars by taking defaulted HUD housing mortgages, repackaging them and auctioning them on the private market. Hamilton began putting wealth back into inner city projects by hiring women living in HUD housing and teaching them how to use computers to build data bases on how money works in 63,000 neighborhoods throughout America. Hamilton started a data processing company with these women in a HUD project (Edgewood Terrace) in Washington. The women who lived there earned stock in the company. The company made money and proved the concept of what on-line access in communities could do to build jobs and businesses. We used the success of that effort to persuade HUD to fund computer learning centers in other housing projects. Hamilton was extremely successful. We made millions and we saved the government billions.

Fulfilling my childhood dream, Hamilton also created new software and money management tools, which were, for the first time ever, able to map down to the neighborhood, exactly how HUD and other federal money worked, who profited when loans defaulted, and how money came into or left a community. For example, we were often able to see where HUD was spending \$100-250,000 per unit on apartment buildings when there was

single family housing available within walking distance for \$25-50,000.

Secretary Cisneros had been extremely supportive of our work. We had unrestricted access to rich quantities of government financial data that was supposedly public but hard to understand. We were translating that into useable information so that people in any community could see how the money flowed through their neighborhood. We helped HUD get increasing amounts of data up on its web site. An unforeseen side effect for the women at Edgewood, and for Hamilton, was that by seeing clearly how the clean money worked, we also began to see how the dirty money

worked.

As an investor for more than twenty years, I believed that it was actually more profitable for people to own their own neighborhoods and businesses and to know exactly how the money worked. The MONEY MAPS we made were so simple to understand that they looked like comic books.

As it turns out we mapped a great deal more than we knew.

In 1996, as reporter Gary Webb was busy writing a series of stories connecting CIA and the Contras to the crack cocaine epidemic in Los Angeles, I was busy using the money maps in a way that would help people move people from government subsidies to home ownership and entrepreneurship.

I was also advocating that U.S. government investment in communities should be subject to the same public disclosure rules that private companies are obligated to follow under the Securities and Exchange Commission Rules. If you are a shareholder in a company, that company is using your money. The law requires that they use your money legally and that they do their best to protect your money and make you more. To earn money, and to do so in a fair, honest and competitive way, federal and state laws require companies to report performance and key transactions to you, the shareholder. Every citizen is a shareholder in the government. If governments worked like they require corporations to work, they would be required to report to you, in the sunshine, exactly how the money was working, in your neighborhood, and you could either approve - or disapprove of the fairness and effectiveness of that, based upon your understanding of your own needs. That is very threatening to those who have used agencies like HUD as a trough to pay off political cronies.

On August 1, 1996, I gave the keynote address at a *Neighborhood Networks* conference in Boston, Massachusetts to 500 owners, managers and tenants in private HUD housing. As part of the speech I showed a slide of one of our money maps of Los Angeles (*Map on Page 5*). As I put the slide up I made the following statement:

"One of the products that has been most successful for the first data servicing sites, Edgewood Technology Services, has been "geo-coding" databases and mapping. I wanted to show you this map; it's up on the World Wide Web. This is a map of Los Angeles. Can anyone figure out where south central LA is from looking at where the HUD properties are on this map? This is the same thing as the Washington DC map I showed earlier. The little red dots are single family properties that were financed by (now) defaulted HUD-held mortgages. This map was geo-coded and designed and programmed by a woman who, four months before, had been on unemployment compensation and is a tenant in HUD housing."

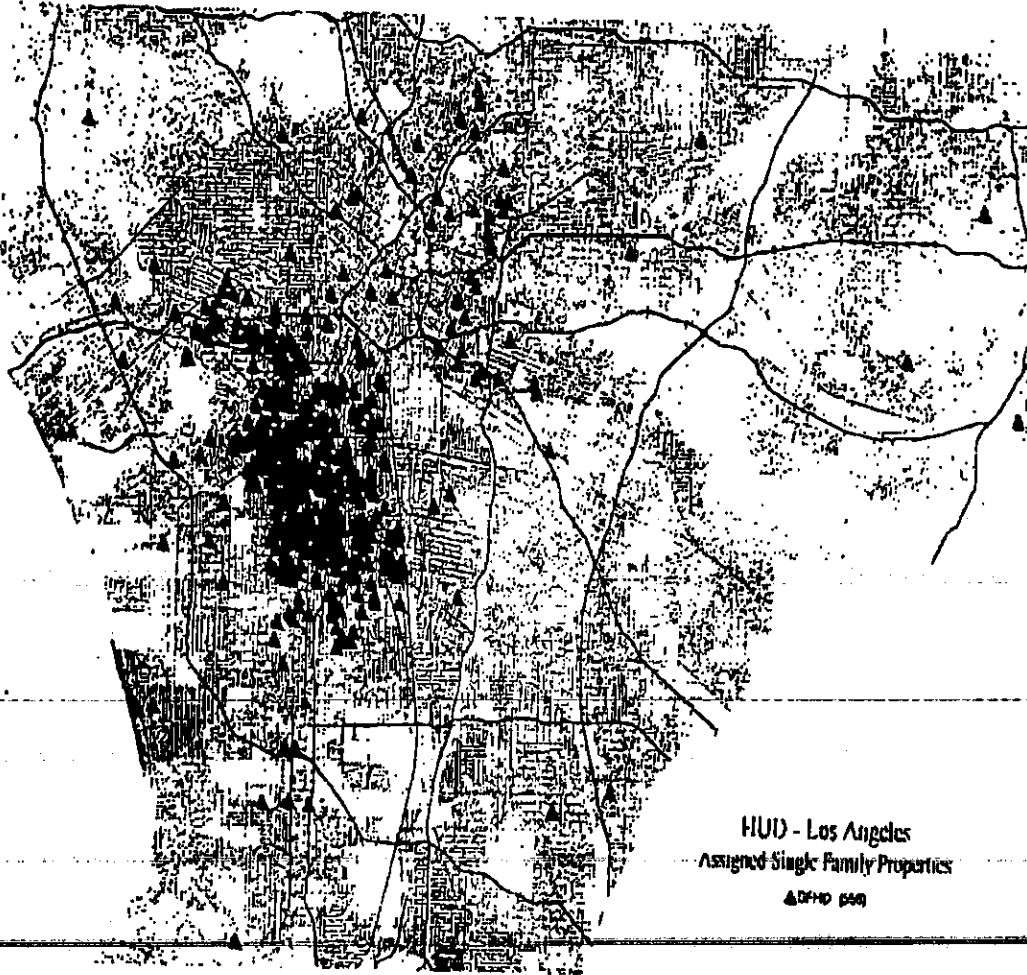
If you compare this map with the fact that Freeway Ricky Ross - the crack cocaine kingpin described in Gary Webb's *Dark*

~~*Alliance*~~ was known for buying up real estate along the Harbor Freeway and selling drugs throughout this exact area - the mathematical correlation is staggering. Every dot represents a HUD mortgage where the taxpayers lost money in a defaulted FHA loan and where somebody else bought the property for pennies on the dollar. Most of those loans defaulted as the crack cocaine epidemic ravaged Los Angeles. The taxpayers bear the costs of not only the defaulted mortgages, but also deterioration in property value, the crime, and ultimately the depopulation due to very expensive prison warehousing and welfare.

Exactly who bought and traded in properties throughout this area should be the subject of congressional hearings looking into corrupt HUD practices from the period and continuing to this day. I suspect that many of the same players connected to the Savings and Loan scandals, who have also been tied to Iran-Contra and CIA's drugs will surface yet again. Demographically it is also easy to see now that the racial composition of South Central has changed radically and that African-Americans have been geographically and politically fragmented as, I believe, an intended result. Their political power has been weakened.

Just days after showing this first map, I received a subpoena from the Office of the Inspector General of HUD asking for extensive data and records from Hamilton. Suddenly, the loan sales and Hamilton were under investigation. The HUD IG's actions were doubly surprising given their intimate involvement in and positive feedback about the loan sales program and because a HUD OIG audit team had just finished an audit of the loan sales program and had informed our project manager and HUD that our performance was excellent and there were no problems whatsoever.

At the same time, we got calls from a team of reporters from US News & World Report. They had been assured "at the highest levels" of the HUD Inspector General's office that we were guilty of criminal action and that I and would soon be indicted. The recent favorable audit disappeared. Investigators started doing interviews where they did more seed planting than information gathering.



HUD - Los Angeles
Assigned Single Family Properties
AUG 10 1999

The "investigators" at HUD started suggesting to reporters that bid rigging had occurred in the loan sales. This was just after members of the HUD IG audit team had actually sat in on one sale, and concluded that bid rigging was impossible. They had also concluded that there was no way that "rigging" could have taken place because in a sealed-bid auction, you cannot favor one bidder when all bidders have access to the same information. That audit report was suppressed while the IG investigators pushed the exact opposite notion to reporters.

On August 10, Bob Dole announced Jack Kemp as his running mate. Meantime, the Republican appropriations committee, chaired by Republican Congressman Jerry Lewis of San Bernardino, gave Susan Gaffney, the HUD IG a large appropriations increase for her program Operation Safe Home, which targeted black communities for visible media "wag-the-dog" roundups of drug offenders. At the same time, our model for computer learning and data processing by people who had a stake in the company that did the work was adopted by Unicorp. Unicorp is the Department of Justice private business that markets prison labor to federal agencies.

Suddenly, the black people who were apparently not smart enough to do database and software development near their children and parents were more than competent enough to do it in prison. The prison investment boom was taking off, fueled by

now and longer mandated sentences. We at Hamilton felt like we were walking around with a big bullseye on our back because we wanted the communities of America to know what we knew, which was how to make maps that tracked the money flow in their own home towns.

I was not the only one dealing with Inspector General inquiries. The HUD officials working with me were also inundated with an investigation marked by leaks and dirty tactics. The former Deputy Assistant Secretary for Multifamily at HUD, Helen Dunlap, was one of the people targeted. She was from California and had previously run the California Housing Partnership. She had lots of experience in real estate and community development in Los Angeles. Gary Squier, the Housing Commissioner of LA, on loan from Los Angeles, who was not involved in mortgage sales with Hamilton, nonetheless found himself dealing with similar probes from the HUD OIG. He was later to be turned down for a position by the White House despite impeccable credentials. No one could figure out why.

Suddenly I was persona non grata to long time friends and business relations in and around the government. I believe the leak campaign was far more sophisticated than something the HUD Inspector General could or would do on her own. It appeared that major economic and political powers had ordered that Hamilton be destroyed. More importantly, they wanted the evidence of what we knew - the maps - destroyed. That is also why, to this day, we believe the Federal government has destroyed many, but not all, of our tools and databases.

We didn't realize it at the time, but I am now convinced that in the summer of 1996, our software and mapping techniques uncovered evidence of ethnic cleansing on Los Angeles. Hamilton's map revealed that one of the most significant effects of the crack cocaine epidemic was that black homeowners, faced with payments on unlivable and unsellable properties, simply defaulted and fled the city to get away from the shootings and the drugs. Those properties: industrial, residential and commercial were scooped up for pennies on the dollar. Wouldn't it be fascinating to know who bought the properties and how much money has been made on them since?

Thanks to people like Gary Webb, Peter Dale Scott (*Cocaine Politics*), Alex Cockburn (*Whiteout*), Mike Ruppert, brave DEA Agents like Celerino Castillo - and now to the CIA's own reports - we can prove that the CIA knew full well what it was doing. And, as is his particular gift, Mike Ruppert, who gives us permission to see the obvious, has established that blacks were targeted by CIA and that the people who control our intelligence agencies are the same ones who control our economy and Wall Street. Mike has taken great pains to document these things in previous issues of *From The Wilderness*.

ETHNIC CLEANSING IN LOS ANGELES

Ethnic cleansing is a bit trickier in South Central Los Angeles than it is in South Central Europe. It is essential in a "democracy" to have people do it in a way that makes it look like they're "doing it" to themselves. You need a socially induced suicide.

So how do you get people to commit suicide? You make it very attractive for their children to make money doing something illegal.

Then you arrest them for it in a very visible way (Remember the battering rams and armored cars?). You design stories to make people blame themselves for what has happened. This is how branding works. Pepsi = tastes good. Black people = cause illegal drugs and crime. Support all this by a national media owned by defense contractors and other corporate interests. That way the nightly news has lots of moneymaking incentives to cover HUD OIG sponsored drug raids in black communities rather than doing a story on CIA drug trafficking.

The most efficient ethnic cleansing is self-financed or, better yet, profitable. Drugs and alcohol are excellent tools toward this end, especially when they are combined with easy access to guns. Sell large amounts of addictive substances to a group of people in an area you want to take over, then use the cash flow to buy up their homes and commercial real estate for 10 cents on the dollar, without much competition, while you enjoy the full value of their cash flow. You can then afford the long holding period required to make the land profitable again after the cleansing period is over.

I believe that if the Federal government would make citizens' data (and it is our data) available, instead of trying to suppress it, it would prove that taxpayers are losing money to fund ethnic cleansing while the people in South Central LA are losing their lives. And I believe that it was the effectiveness of our maps which threatened to expose the deeper financial agendas of the eighties. I believe our current model, the Solar Investment Model, (www.solarivillage.com) which I am still developing, may well tie Iran-Contra, The Savings and Loan Scandals and the HUD scandals of the late 1980s into one big economic package designed to benefit a very few. The way to start to do this is to look closely at all the government investment, credit and regulations in Los Angeles since 1980.

Our maps suggest to me and others that the crack cocaine epidemic, created by the CIA was, I believe, just as much a program of ethnic cleansing and land grabbing economic warfare as it was about a bunch of rebels in Central America who were not the equivalent of our Founding Fathers. But this kind of ethnic cleansing was hard to contain and it spread to other races and classes. It reached the rural and suburban neighborhoods of places like Iowa, Ohio and Tennessee. By the end of the 1980's it had reached all my friends and relatives who listen to Rush Limbaugh, voted for George Bush and donated money to Oliver North - not knowing that, according to CIA's own reports, the networks he controlled were the key to the supply of drugs flowing to their kids and communities. As Michael Ventura once wrote, "We all live in the South Bronx now." White families all across America were hurt by drugs and violence and their pocketbooks also got drained, even as the media reinforced the notion that drugs were a black problem.

After the 1996 election, Secretary Cisneros was asked to resign from HUD. The choice of Cisneros' successor seemed strange and somehow connected to Hamilton's predicament. The Afro-American mayor of Seattle was widely considered to be a shoe-in. After the White House floated his name, another investigation by the HUD OIG into possible misuse of HUD monies in Seattle caused him to be dropped. Two days later we were assured that an Afro-American woman from Los Angeles, Yvonne Braithwaite-Burke, was the President's leading candidate. Then suddenly, she disappeared from the radar screen and Andrew Cuomo was announced with surprisingly strong bipartisan support for someone with such a partisan history.

Cuomo moved into the Secretary's office at HUD from his then current position as Assistant Secretary for Community Development and Planning. Rumors started to float around the HUD networks about minorities and people sympathetic to minorities being moved out. Meantime, the new Secretary made it clear that his top priority was enforcement and it appeared that the Secretary and the OIG were going to compete for an over-growing budget via media-worthy enforcement actions. So, then came the Urban Fraud Initiative and increased funding for Operation Safe Home, targeting tenants, real estate owners and managers in black communities. At the time, we made no connection between these actions and the promotion of prison privatization by Vice President Gore's National Performance Review. New Federal sentencing guidelines helped increase

black inmates to approximately 50% of a rapidly expanding prison population. All this at an extraordinary cost to taxpayers.

As the audits of Hamilton continued, forcing us to spend hundreds of thousands on legal fees, Secretary Cuomo and the Inspector General's staff, who were later to withhold \$2 million in payments, became obsessed with seizing our data and software. This was software we were planning on giving away via the web! The critical issue from October 1997 through the following March seemed to be - our knowledge! In October, great emphasis was placed on our returning all of our HUD databases, including those that were supposed to be publicly available, and certifying that we had done so. In the following months, the HUD OIG tried to seize all of our documents, including originals, with no basis in law. After demanding physical access to our computers, government employees made back-ups of our data which, whether intentionally or not, seriously damaged it.

And no one has yet officially accused us of any wrongdoing. We were, and are to this day, only being investigated. It is clear to us that the intent of this campaign was to drive the company into bankruptcy. The leak campaign against the company and me has since reached new heights of absurdity. As the HUD IG keeps assuring the media that that I am guilty of criminal violations they now have investigators focusing on my sex life! Worse still, HUD IG agents recently showed up at the home of my 72 year old uncle with a subpoena for records of a family owned farm house that doesn't even have indoor plumbing, implying some kind of fraudulent transaction. Members of my family have reduced or cut off communications, fearing they could be targeted too.

After court battles and negotiation, in March of 1998 HUD insisted that all of our computers be scrubbed. We were not going to be allowed to transfer our own proprietary data and the Federal District Court Judge, Stanley Sporkin, appointed a Special Master as trustee to manage all our digital and paper records. Inexplicably, HUD was quite upset when they found we had taken our main server with us and not sold it, in spite of the government's destruction of its files. The HUD investigator made it clear that we could not keep the server because - "We were not allowed to have any of the knowledge". We could not explain this bizarre position and neither could they.

What I did not know until approximately a year later, after reviewing tapes of Mike Ruppert's lectures, was that hearings were held on Volume I of the CIA Inspector General's report on the Dark Alliance allegations on March 16 of 1998. At the same moment the government was trying to steal Hamilton's data and knowledge.

We also did not notice in February when Vice President Al Gore announced that Secretary Cuomo was bestowing an empowerment zone and \$300 million in tax credits on Maxine Waters' congressional district. That was just before the March 16th hearing where Maxine Waters performed brilliantly against CIA in a show that nobody watched. We were busy, at the time, moving our computers over to our law firm to protect the MONEY MAPS from a series of break-ins and other harassment around my home.

Our growing fear of being set up in an asset forfeiture case, after the Department of Justice threatened my assets personally, dominated our lives and does so to this day.

~~And so we did not notice when the damning Volume II of the CIA Inspector General's report was released on October 8th, one hour after Henry Hyde's Committee started the impeachment inquiry. And we did not notice that Maxine Waters' voice suddenly fell almost silent as Bill Clinton saved his presidency by blackmailing the Republicans with Volume II and its contents. I made efforts to communicate with Maxine Waters in November and December 1998 about possible connections between our case and CIA drug dealing but, aside from an initial contact, our calls were not returned. [FTW placed telephone and e-mail requests to both the LA and Washington offices of Maxine Waters to ascertain whether the \$300 million tax credit award in March, 1998 was spontaneous or the result of a previously submitted request. As of press time we have received no response. - FF]~~

To date we estimate that the HUD Inspector General investigation targeting my companies and me has cost the American taxpayer \$35MM. To date we have not been successful in getting the Department of Justice or the HUD OIG to tell us what they are investigating or even who is in charge of the investigation. The investigation continues with no end in site. We have multiple lawsuits filed against HUD and are filing more. We continually hear Judge Stanley Sporkin, rule against us with statements that he disagrees with the law so we should take it up with Congress.

The company I founded, Hamilton, was liquidated a year ago to pay the bills of the ongoing campaign to discredit us. As a result of the persecution we have lost more than one hundred million dollars. I have sold my home, lost millions of dollars in unpaid HUD contracts, endured eighteen audits, burglaries, physical harassment and an unending smear campaign which has produced not a single complaint or indictment after almost three years. I believe this is because I have the pieces to help prove that what Gary Webb stumbled upon was ethnic cleansing - American style.

My bottom-line? For those of you pushing for testimony on Volume II, let's try another tactic. Let's push for a Congressional and GAO investigation on how all the federal investment, credit and regulation worked in Los Angeles from 1980 to 1994. Let's look at how our government was used, from CIA to DEA to HUD, to destroy and loot our communities. The key is HUD. Let's look at how the Section 8 owners, managers and tax partnership beneficiaries worked along side the drug traffickers. Let's look for patterns of loan brokering, money laundering, cleansing and other relationships between real estate, land, prison growth and privatization and the kind of investors who control CIA and intelligence networks. Then let's look how this ties in to campaign fundraising.

The present economic and political system is not sustainable and must collapse - or change. New investment models in the information age will show us that integrity, honesty and win-win investment models, rooted in community and place based autonomy are actually more profitable than

the liquidate and destroy models currently operating. Like the auto mechanic said

to the car owner who needed repairs, "You can either pay some now - or pay a lot more later." But we have to solve some problems first. Finding the will to do that is made easier for me as I recall the words of Bishop Alfred Owens of the Greater Mount Calvary Holy Church, "If we can face it. God can fix it."

After a lifetime of study, from Wharton to the inner sancta of government, I believe I have found the solution to a very real corruption which neither Congress nor Wall Street presently possess the ability to stop. It is a new investment model, born of the Information Age, which will save both the just and the unjust alike by turning the current Industrial Age investment model upside down and making what was once secret - available to all. As the edge of the precipice approaches and as our economic snake eats its own tail it shouldn't be long before those who have scoffed at the truth-tellers recognize that we are the ones with the maps to lead them out of the jungle.

You can learn more about the Solari investment model by visiting www.solari.com.

Catherine Austin Fitts, J.D. is a 1978 Graduate of the Wharton School of Business with an MBA in Finance. From 1978 to 1989, at the Wall Street investment bank Dillon, Read & Co she served in the Corporate Finance, Energy Finance, Mergers and Acquisitions and Public Finance Departments. From 1986-9 Fitts was a Managing Director and member of the Board of Directors.

From 1989-90 Fitts served as Assistant Secretary of Housing - Federal Housing Commissioner at the Department of Housing and Urban Development. From 1991-7 she served as President/CEO of the Hamilton Securities Group with aggregate revenues of \$50 million, an employee base of 50 and portfolio strategy responsibilities for \$400 billion of financial assets.

She is now President and CEO of Solari, Inc, a Washington consulting firm specializing in equity based neighborhood investment models for the Information Age.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE HAMILTON SECURITIES GROUP, *et al.*)
)
 Plaintiffs,)
 v.)
)
)
 UNITED STATES DEPARTMENT OF)
 HOUSING AND URBAN DEVELOPMENT,)
 et al.)
)
 Defendants.)

AFFIDAVIT OF C. AUSTIN FITTS

City of Washington)
District of Columbia) ss:

I, C. Austin Fitts, do hereby state the following:

A. Background

1. I am the founder of the Hamilton Securities Group, Inc. ("Hamilton").
2. The information in this affidavit is based on my personal knowledge or beliefs.
3. I was Assistant Secretary of Housing/Federal Housing Commissioner at the Department of Housing and Urban Development ("HUD") from 1989 to 1990, under former HUD Secretary Jack Kemp.
4. In 1990, I founded Hamilton, a Delaware corporation, with its principal place of business in Washington, D.C. Hamilton provides investment banking and other financial advisory services to its clients.



B. FHA's Provision Of And Problems With Mortgage Insurance

5. The Federal Housing Administration ("FHA") provides insurance for single-family and multifamily residential housing mortgages. The availability of this insurance creates more opportunities for low and moderate income people to rent decent, safe and sanitary housing and buy their own homes.

6. During the 1980's, the number of defaulted FHA loans grew substantially. By 1993, HUD had accumulated a backlog of 2,400 multifamily mortgages and 95,000 single-family mortgages with an aggregate unpaid principal balance of \$11 billion. This inventory was so large that HUD staff had only enough time and resources to service its most troubled loans. Other loans were practically neglected, which meant HUD did little to prevent them from becoming troubled.

7. Because of this backlog, the larger mission of overseeing HUD's \$400 billion insured loan portfolio was virtually ignored. HUD's Inspector General ("IG") and FHA's outside auditors both found the huge inventory of past due mortgages to be a "material weakness" in HUD's internal controls. HUD became the only agency to be placed in its entirety on the General Accounting Office's "high risk" list.

8. HUD implemented a loan sale program to deal with problems in its portfolio. The HUD mortgage loan sale program was expressly approved by Congress. In response to challenges to HUD's statutory authority to sell mortgage

loans from its inventory, Congress passed three amendments to Section 203 of the National Housing Act and then, in the Multifamily Housing Property Disposition Reform Act of 1994 (Pub. L. 102-233, approved April 11, 1994), Congress completely rewrote Section 203(k). These pieces of legislation eased the statutory requirements that HUD had to meet in order to sell mortgage loans.

9. The program, authorized by Congress, has been critical to HUD's improved management of its defaulted loan problem. Moreover, the loan sale program itself was a key element of a broader effort to re-invent HUD and create a new FHA based on the principles of sound financial management.

C. Hamilton's Relationship With HUD

10. Prior to its relationship with HUD, Hamilton had engaged in business with other clients. Specifically, these clients included Battery Park City Authority, General Electric Capital Asser Management Corporation, the Ford Foundation, the National Housing Partnership, the Maryland Department of Housing and Community Development, and others. As Hamilton's business with HUD increased, its business with other paying clients tapered off until, by the start of Hamilton's crosscutting services contract with HUD in 1996, Hamilton had dropped all other paying business clients who had any dealings with HUD or related assets and liabilities so that Hamilton could serve as HUD's crosscutting financial advisor without creating potential conflicts of interest.

11. In February 1993, HUD issued a Request for Proposals ("RFP") seeking a financial advisor to assist it in the sale of single-family and multifamily

mortgages, as well as to provide other housing advisory services. The scope of the RFP anticipated the future sale or refinancing of HUD-held mortgages. Hamilton submitted a bid for this contract.

12. After an eight-month competitive process, Hamilton won the procurement and signed a contract with HUD on September 30, 1993. The contract initially authorized up to \$5 million in services over a four-year period.

13. Hamilton has served as HUD's financial advisor since the inception of HUD's loan sale program in 1993. With the support of Hamilton and other financial advisors, HUD has successfully conducted 19 loan sales, disposed of more than 115,000 mortgages, and collected \$6.5 billion in proceeds. This program has saved the U.S. Government \$2.1 billion in avoided costs, as calculated on a "credit reform" basis, which represents a savings of \$21 for every American household. HUD has boasted to Congress and the media about the success of this program and the Clinton Administration has pointed to the program as one of its major accomplishments.

14. From the outset, HUD, with Hamilton's support, involved many HUD divisions as well as outside agencies, including the Department of the Treasury, in the design and implementation of the loan sale program. They also made sure that HUD's own Office of Inspector General ("OIG"), Office of the Chief Financial Officer and Office of General Counsel ("OGC") all had significant input and on-going involvement in the program. The Office of Management and Budget ("OMB") reviewed and approved cost savings estimates before and after.

each sale. Congress, too, was involved from the beginning and remained a participant in the mortgage sale effort -- including the passage of 1994 legislation authorizing the program. Proposed rules for the sales were published regularly in the Federal Register. Both HUD's OIG and OGC reviewed the bid process, sales designs and internal controls and were regularly provided with written descriptions.

15. At no time during the sales design or implementation process did Hamilton receive negative feedback, complaints, questions, or contract inquiries from any of these participants. In fact, Hamilton received numerous compliments and commendations from HUD, OMB and other participants due to its work in this program. Indeed, the loan sale program itself, with Hamilton's advisory role, received a Hammer Award given by Vice President Gore as a model for improved efficiency and re-engineering of government programs.

16. The following chart summarizes Hamilton's assignments for HUD during the period 1993 to 1997 demonstrating HUD's continued confidence and trust in Hamilton's abilities.

SUMMARY OF HAMILTON'S ASSIGNMENTS FOR HUD: 1993 - 1997

Contract/Prime	Assignment	Time Frame	Task Order
HC-18161/Hamilton	Financial advisor on sale of Section 221(g)(4) multi-family mortgages	1993	001
HC-18161/Hamilton	Financial advisor on sale of Section 221(g)(4) single family mortgages	1993-1994	002

Contract/Prime	Assignment	Time Frame	Task Order
HC-18161/Hamilton	Development of multifamily disposition plan, called the MAP	1993-1994	003
HC-18161/Hamilton	Design/implementation of pilot sales of subsidized mortgages to state housing finance agencies. Analysis of the Section 8 portfolio and consulting on policy alternatives	1995-1996	004
HC-18161/Hamilton	Financial advisor and due diligence support on sale of multifamily mortgages in the southeast	1994-1995	005
HC-18161/Hamilton	Support for FNMA reassignment; design of sales; marketing	1994-1996	006
HC-18161/Hamilton	Financial advisor on sale of multifamily mortgages in the West and South	1995-1996	007
HC-18161/Hamilton	Disposition analysis of the Section 530 premiums	1995	008
HC-18161/Hamilton	Financial advisor on two single family sales	1995-1996	009
HC-18161/Hamilton	Support for building relationships between FHA and rating agencies	1995	010
HC-18410/Williams Adley (Hamilton as subcontractor)	Design/implementation of the first structured transaction of partially subsidized multifamily mortgages	1995-1996	004
HC-18410/Williams Adley (Hamilton as subcontractor)	Financial advisor for sale of performing multifamily mortgages	1995	005
HC-18410/Williams Adley (Hamilton as subcontractor)	Consulting on credit reform issues and exploration of value of developing template models to estimate the credit subsidy of sales	1995	006

Contract/Prime	Assignment	Time Frame	Task Order
HC-18161/Hamilton	Development of multifamily disposition plan, called the MAP	1993-1994	003
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HC-18410/Williams Adley (Hamilton as subcontractor)	Consulting on credit reform issues and exploration of value of developing template models to estimate the credit subsidy of sales	1995	006

Contract/Prime	Assignment	Time Frame	Task Order
HC-18410/Williams Adley (Hamilton as subcontractor)	Consulting for the financial advisor on the sale of Title I loans	1995	009
HC-18437/Price Waterhouse (Hamilton subcontractor)	Multifamily product market, pricing and design support	1996	002
HC-16986/Coopers & Lybrand (Hamilton subcontractor)	Services and support in development a computer-based model to evaluate HUD's portfolio	1995	009
HC-16986/Coopers & Lybrand (Hamilton subcontractor)	FHA strategic planning	1994	010
HC-18505/Hamilton	Crosscutting financial advisory services on \$400 billion portfolio and mortgage sales	1996-1997	001

D. The Crosscutting Advisory Contract

17. With respect to HC-18505, the "crosscutting" services contract, ~~Hamilton was to provide HUD with financial advisory services with respect to the~~ management, investment, and sales associated with HUD's \$400 billion portfolio for the period 1996 to 1997. *See Exhibit A (Contract and Task Order)*. In this crosscutting role, Hamilton helped HUD coordinate the work of up to 17 different contractors, including other financial advisors, due-diligence contractors, multiple law firms, and other HUD consultants; shared the experience and technology gained from all other previous loan sales in which they served as consultants; and insured consistency in policies and protocols

18. As part of this work, Hamilton worked in several vital areas for HUD. These included mortgage sales, budgetary/credit subsidy support, strategic communications, portfolio strategy, and other portfolio-related work, including new product design and analysis and staff development.

19. For its work on this assignment, Hamilton was to be paid \$10.4 million per year, over a two-year period. Of this amount, Hamilton paid a significant portion to its many sub-contractors. This contract, in the period involved, amounted to almost all of Hamilton's paid work and income. To service this contract, Hamilton assigned a substantial amount of its non-administrative staff and a majority of all of its staff. In addition, Hamilton hired numerous contractors and outside companies, including Edgewood Technology Services, Global Business Network, Horizon Consultants, KFS, Ltd., Lucent Technologies/ Bell Laboratories, MelaNet/New Perspective Technologies, Ravitch, Rice and Company, and others.

20. To perform its work for HUD, Hamilton staffed their company and forewent other types of work, including potential broker-dealer and investment advisory operations. Indeed, the crosscutting contract made it extremely difficult for Hamilton to work for other private clients outside of other Federal and other government agencies, due to the need for Hamilton to avoid potential conflicts of interest. This requirement, plus the later adverse publicity caused by HUD, made it impossible for Hamilton to work for another Federal and other government agency

The RTC liquidations were winding down in 1995. If HUD had delayed its scheduled sales while new advisors were being procured, some of those distressed asset departments would have been dismantled, and the number of major bidders who would then later participate in HUD's sales would be reduced. Such lower competition would have translated into lower prices, again on the order of millions of dollars.

25. Hamilton agreed to take on the additional sales advisory work that HUD urgently requested in 1995. At the same time, Hamilton continued to advise HUD to seek additional loan sale advisors.

26. In summer 1995, HUD proposed legislation, called "mark-to-market," that would enable HUD to restructure thousands of over-subsidized multifamily projects, many of which had been financed with syndicated tax shelters over the last two decades. This initiative mobilized the private subsidized rental housing real estate owners and developers in opposition because they stood to lose substantial fee income if property ownership and servicing were opened to the competitive selection and price negotiation process. In addition, private investors were concerned about adverse income tax aspects of the legislation.

27. By late 1995, HUD had sold over \$2.8 billion in loans from its portfolio, saving the government an estimated \$540 million in costs. These savings represented improved private servicing of the loans by winning bidders. The loan sales provided substantial improvement in HUD's recovery rates and lower expense rates than prior work-out strategies that had been used by HUD and its

contractors. Property owners and managers who were now required to meet contractual debt servicing obligations, renegotiate their loans or face foreclosure did not always welcome the loan sales. Existing HUD owners and managers could no longer negotiate such attractive work-out costs with HUD and its contractors, like Ervin & Associates, but instead would have to negotiate with more aggressive loan sale winners. Parties who were no longer competitive in the market place had every reason to want to stop the loan sale program.

28. Notwithstanding the praise of the loan sale program and the fact that HUD had no complaints about Hamilton's performance, HUD program staff did receive complaints from defaulted borrowers, owners, managers, and servicers and political inquiries and interference prompted by them. They suffered, or were concerned they would suffer, economic loss because of the increased efficiency caused by HUD's loan sale and mark-to-market efforts. In fact, defendant Retsinas

told me in early 1996 that White House officials had told him and Marilyn Davis, then-Assistant Secretary of Administration, that they wanted to make sure that Hamilton was not awarded any of the contracts.

29. At the same time, the 1996 Presidential election was in progress, creating an atmosphere of administrative caution at HUD. As in all agencies, politically-appointed officials at HUD wanted to minimize the chance that their actions during an election year would be publicly criticized or become a subject of the campaign. This caution and concern provided those who had an interest in

undermining the loan sale program and halting the advent of "mark-to-market" with the opportunity for expressing and effecting their opposition.

30. In January 1996, HUD finally hired additional advisors as Hamilton had recommended. Hamilton was among the four selected. The other three were Merrill Lynch, Cushman Wakefield, and CS First Boston. Hamilton had absolutely no role in the selection of these advisors.

31. Two disappointed bidders -- Ervin & Associates and Ernst & Young -- protested the award of the four selected by HUD. Rather than litigating the issue through the courts, HUD decided to re-open bids for a new evaluation. Subsequently, CS First Boston dropped out of the competition, and HUD chose Ernst & Young to be the replacement. Again, Ervin & Associates was not chosen, and again Hamilton had no part in the selection process.

32. HUD conducted its "Partially Assisted Sale" in May and June 1996. The sale of almost \$900 million in multifamily loans collateralized by projects receiving some form of affordable housing assistance from HUD validated HUD's earlier "mark-to-market" proposal and further alarmed large, subsidized real estate owners and developers, as conventional and corporate servicers continued to successfully out-bid and out-perform them on both loan sales and subsequent loan servicing contracts, and they intensified their public relations and lobbying efforts opposing Hamilton and the loan sales program

33. At about the same time, Ervin & Associates filed another protest, and, before that was resolved in the administrative process, filed a lawsuit against

HUD in federal court in June 1996. In addition to filing a 700 paragraph complaint against the agency, Ervin & Associates also released its complaints and other allegations to the media. In an apparent attempt to widen its allegations as broadly as possible, Ervin & Associates included in its charges the claims that HUD had improperly favored Hamilton and also that Hamilton had improperly favored certain businesses with which it had relationships in the award of contracts and sub-contracts.

34. Ervin's actions may have had ulterior motives in addition to dissatisfaction with the outcome of the HUD contract selection process. As the largest servicer of HUD multifamily loans, Ervin had every reason to be upset when the success of HUD's loan sale program substantially outperformed the relatively low recoveries HUD had been getting from, as well as the high expense rates experienced with, Ervin's existing loan servicing. In addition, Ervin's relationships with the Department appeared to deteriorate as his additional bids on asset management contracts and financial advisory contracts were not successful.

35. The Ervin & Associates' complaint and public relations campaign created media attention and publicity. *See Exhibit E.* It also provided critics of HUD and especially the loan sale program and "mark-to-market" proposals with ammunition. HUD and the other defendants felt this pressure. Despite the obvious motives for Ervin & Associates' complaint, the lack of any role Hamilton had in the selection of contract winners, and the track record of success and savings that Hamilton had created (albeit at the expense of defaulted borrowers and the existing

servicing and property management infrastructure), in August 1996, HUD and all or some of the other defendants decided to open an Inspector General inquiry into various of the charges that Ervin & Associates was making.

36. When HUD and all or some of the other defendants opened the inquiry into Hamilton that is at issue in this action, HUD was close to concluding an audit that its IG Office had undertaken of the entire loan sale program in early 1996. This audit was conducted by the Denver Field Office of the HUD IG, rather than the IG's headquarters in Washington, to insure that the audit was done independently, by those with no prior knowledge of or bias towards the program. In the spring and summer of 1996, before the publicity generated by the Ervin & Associates complaint, members of the audit team told me and other Hamilton officials that they were working on a positive report, and that a circulation draft with positive comments was already prepared.

37. The allegations by Ervin & Associates and the media to which it had spoken also spawned inquiries from Congress and the Department of Justice. The now accelerating snowball of inquiries were all directed at either HUD or its financial advisors, including Hamilton.

38. In summary, by mid-1996, HUD was faced with the past criticism of its troubled loan portfolio, the controversy surrounding its decision to undertake its ambitious loan sale program and its even more controversial "mark-to-market" proposal, the new attention the loan sale program was getting because of its success at saving the government money and because of the media's inquiries, the

need to defend itself against Ervin & Associates' complaint, and the questions that were being raised by Congress and others. Because of these events, HUD and all or some of the other defendants decided to retreat from its support of its commitment to the program and to Hamilton. More than that, HUD and the other defendants began acting in a way to make its contract with Hamilton the scapegoat for the criticisms and scrutiny being directed at HUD.

F. Defendants Began Taking Steps, Putting Hamilton Out Of Business.

39. Separate from the HUD IG Denver field office audit of the entire FHA loan sale program, which was almost completed and which I and others at Hamilton had been told would result in positive conclusions, the HUD IG opened up an investigation into Hamilton itself. By August of 1996, the IG began issuing broad and burdensome subpoenas to Hamilton.

40. This (in effect) second investigation of Hamilton has already lasted for 17 months, with long periods of silence punctuated by short bursts of activity. Despite the mountains of information that Hamilton has provided to the IG over the span of the inquiry, there is no evidence that the HUD IG has spent its time learning, understanding and acquiring the depth of knowledge about mortgages, loan sales and optimization that it will need to do a real inquiry.

41. At this point, the HUD IG has issued three subpoenas to Hamilton and one to me. The first two subpoenas were issued to Hamilton more than a year and five months ago, on August 6 and August 22, 1996. *See Exhibit B (August 1996 Subpoenas)*. The third subpoena was issued to Hamilton on October 24,

1997. See Exhibit C (October 1997 Subpoenas). Although 14 months elapsed between the second and third subpoenas, much of the information requested in the third subpoena was repetitive of that requested in the earlier subpoenas, suggesting that for more than a year the IG made no progress on its investigation or that the newest subpoena was issued solely to harass Hamilton.

42. Moreover, the manner in which this investigation is being conducted is both not credible and not professional, illustrating bad faith. When IG auditors have in recent weeks interviewed a former Hamilton employee closely involved in the loan sale program, it became clear from their questions that they are no further along in understanding the basic facts about Hamilton's work for HUD nor the loan sale program than they were at the start of the investigation. For example, they demonstrated very limited knowledge of how loan sales were conducted, what bid procedures were used, and how optimization worked. Their questions failed to ~~provide any more depth than interviews conducted long before.~~ In the same period, in November 1997, Hamilton delivered 101 boxes to their attorneys to be made available to HUD IG attorneys after they stated that it was urgent for the IG investigators to have access to them. Yet since that time, no one has performed a detailed review of the contents or copied them but only counted the number of boxes delivered.

43. It obviously would not comport with the actions HUD and the other defendants were taking to have the Denver audit report, complimentary to the loan sale program and Hamilton's role in it, be disclosed.

44. Despite the completion of the interviews and the meetings with me and other Hamilton officials in which IG investigators indicated the report was drafted and ready to be released, HUD has never released it or indicated why it has not done so. When I and other Hamilton officials in August 1996 asked Washington IG Office officials whether the Office was going to withhold the report because of the other actions being taken against Hamilton, defendant Gaffney herself stated that it would be unethical to not release the Denver Office's audit report. Nevertheless, this 14-month-old report, which in a circulation draft appeared to be favorable to the program and Hamilton's role in it, has never been released.

45. The IG's Office and/or others at HUD have persisted in leaking to the media privileged and confidential, as well as known inaccurate and misleading, information about Hamilton and the on-going investigation.

46. In August 1996, the IG purportedly began an investigation of Hamilton. However, soon thereafter, and long before any substantive conclusion could have been warranted, I was told by a reporter at *U.S. News & World Report* that someone at HUD identified as of "the highest authority in the HUD IG's office" leaked misinformation that Hamilton was guilty of criminal misconduct.

47. Information was leaked by the HUD IG Office to *The Washington Times* in October 1997 about a HUD IG subpoena of Hamilton's records even before the subpoena was issued or delivered to Hamilton. *See Exhibit R.*

48. In February 1996, Hamilton notified HUD that certain documents requested under the Freedom of Information Act ("FOIA"), as part of the bidding process, should be treated as confidential and not be disclosed, as is customary for most businesses submitting these kinds of proposals. HUD's FOIA Office assured Hamilton that it would not release this information and would treat it as proprietary to Hamilton and subject to exclusion from FOIA under the Privacy Act. Nonetheless, excerpts of these documents, which had been supplied to the HUD IG in early fall 1996 pursuant to the original subpoena, were leaked to the press. These excerpts, as well as the misinformation leaked in October 1996, were included in a November 11, 1996 *U.S. News & World Report* story about Hamilton. Many of these same leaks have been repeated in the trade press (i.e., *Housing Affairs' Letter* and *Housing and Development Reporter*). See Exhibit F.

49. On October 20, 1997, bankers at Franklin National Bank, Hamilton's primary creditor, told me that they received an anonymous call stating that Hamilton was going out of business. This occurred right after HUD sent a hand-delivered letter to Hamilton canceling its crosscutting contract. I was calling the to notify it of the cancellation, but was told by the bank that some anonymous person already made the "going out of business" call.

50. Then, in November 1997, the Federal Deposit Insurance Corporation ("FDIC") initiated an audit of Franklin National Bank's loan to Hamilton soon after HUD and the other defendants began leaking information to the press and taking other actions directed at Hamilton. This audit appears unusual

as that very same loan had been previously reviewed by the regulators just a few months earlier in mid-1997.

51. Not content with its own levels of review, summonses and inquiries, I was told by people on Capitol Hill that the HUD IG has been lobbying staff members of the Committee on Banking, Housing, and Urban Affairs of the Senate to hold hearings on the issue of HUD's contract problems, with emphasis on Hamilton's activities under the financial advisory contract. This would result in Hamilton's having to respond to and pay for additional requests and subpoenas, and use time that it needed to keep itself in business, to comply with new inquiries.

52. On December 31, 1997, Hamilton was asked by the Department of Labor to help provide materials for an "inquiry" by the General Accounting Office ("GAO") on a closed joint venture contract that was Hamilton's only non-HUD federal contract except for an earlier contract with the RTC. *See Exhibit J.* On January 5, 1998, GAO thereupon issued its own series of comprehensive written questions to Hamilton, demanding answers 8 days later, by January 13, 1998. The Department of Labor had audited this very same contract in 1996 during the normal closing procedures.

53. In August 1997, the Internal Revenue Service began a tax audit of the Hamilton profit sharing plan. This occurred just prior to HUD's termination of its crosscutting services contract with Hamilton. No Hamilton entity had ever before been audited by the Internal Revenue Service.

54. In August 1996, I asked Sean Gaffney if the Denver audit would be withheld because it complimented the program and Hamilton, to which Ms. Gaffney replied that such action would be unethical. Hamilton was then promptly served with the second August 1996 subpoena.

55. Finally, after 17 months, the delivery of tens of thousands of pages of electronic and paper documents, the expenditure of over \$1 million in responding to HUD's requests, the loss of business, the laying off of employees, and the prospect that the campaign against it would not end, on December 10, 1997, I sent a letter from Hamilton's legal counsel to the Department of Justice and to HUD asking that the investigation be closed, that summonses be discontinued, that funds owed the company be released, and that Hamilton's good name be restored and Hamilton be cleared of any wrongdoing. *See Exhibits H and G.*

56. The letter was delivered by hand to the agencies in the morning.

That afternoon, Hamilton's attorneys were called by Judith Heatherton, counsel to the HUD IG, to ask if they would accept service of a new summons, this one, for the first time, directed at me personally and seeking all of my personal financial records at Franklin National Bank from October 1993 to December 1997. *See Exhibit I.* The period went far beyond the term of the crosscutting contract, and this subpoena increased the anxiety of Franklin National Bank, which had refused to extend additional credit to Hamilton, causing further injury to the company.

57. In October through December 1996, Hamilton discovered a discrepancy between the instructions in the packages sent to would-be bidders of

defaulted FHA loans and the operation of the "optimization model," a software program by which the bids submitted would be evaluated, in part of the loan sale program. Hamilton promptly brought this discrepancy to the attention of defendant Retsinas and other senior HUD officials when the error was understood and quantified. At that point, Hamilton's work had helped save the government \$1.9 billion in avoided costs, according to estimates reviewed and approved by OMB. These savings would rise to \$2.1 billion by the time the crosscutting contract was terminated in October 1997. Hamilton estimated the potential maximum effect of the modeling discrepancy on sales proceeds to be \$3.8 million, or approximately 0.05% of total proceeds and 0.18% of total net savings. Hamilton acted as an agent in the loan sale and not as a guarantor or underwriter and was not paid according to net proceeds. HUD and Hamilton recognized at the time that Hamilton was not financially liable for the discrepancy.

58. None of these officials made any response to or criticized Hamilton at the time. Nor did these or any other officials, including officials from the Office of the IG, ever dispute or independently try to verify Hamilton's estimate of the potential effect of the discrepancy on loan sale proceeds at that or any other time. Indeed, the officials notified said they appreciated the fact that Hamilton had found the discrepancy and had taken corrective actions so as not to disrupt the progress of scheduled loan sales.

59. Hamilton corrected the optimization model floor bid instructions and even instituted new and more stringent internal control procedures and then

proceeded in its work as HUD's crosscutting financial advisor. Three subsequent sales of defaulted mortgage loan packages went forward, with representatives of HUD's program offices and General Counsel present, and with Hamilton playing this role over the next nine months. As before, Hamilton did the work, submitted invoices, and was paid in a timely manner.

60. Then in April 1997, HUD notified Hamilton without warning that HUD intended to consolidate various contracts and would cancel the crosscutting contract "for convenience of the government" at the time a new crosscutting contract was to be put into place. No default, breach, or failure to perform by Hamilton was alleged. Despite the claim that this cancellation was for "convenience," HUD also announced that it would be seeking bids on a new similar advisory contract. At this time, a year was left on the contract, with payments to Hamilton of approximately \$10 million still to be paid.

61. Hamilton decided to enter the bidding for any new contract that was awarded and to find additional or alternative work to replace that which was going to be potentially lost. The companies planned their activities around use of the money still owed by HUD and still being earned. Neither HUD nor any of the defendants made any statements that Hamilton's work should stop while a new contract was designed; nor did the defendants indicate that HUD would stop paying on the invoices submitted for the work that had been or was being done.

62. In light of the announced plans for a new contract, Hamilton developed a new non-HUD related project requiring it to raise \$10 million in the

first year. It began preparations for a private placement memorandum and solicitation. Again, it was counting on HUD to follow government regulations and on HUD's history of paying Hamilton for work being done and invoices being sent. The new project required approximately \$2.0 million for its start-up phase.

63. Despite announcing in April that it would end the crosscutting contract only when a new contract was awarded, HUD then notified Hamilton on October 17, 1997, by a hand-delivered letter, that it was abruptly ordering Hamilton to stop work immediately, even though no new awards had been made, even though Hamilton had submitted a new bid of its own which was still pending, even though Hamilton was still engaged in providing advisory services to HUD under the contract, including services in connection with two pending loan sales, the preparation of HUD's Fiscal Year 1999 budget request, and the reengineering of HUD's multifamily programs, and even though October 17 was the date HUD approved the payment for services provided through September 26, 1997. *See Exhibit D.*

64. Prior to October 17, 1997, despite Hamilton's weekly meetings with and written reports to authorized program and contracting representatives, Hamilton received no notification under the contract that any problem existed. In fact, within a few weeks of this action, HUD's Chief Financial Officer testified at Congress that "we have a successful asset sales program that has made us the leader in the federal government in this area (emphasis added)."

65. HUD then withdrew the pending financial advisory RFP and thereby suspended the loan sale program. As a result, HUD ended up stopping all loan sales, which is causing HUD substantial losses on advisory fees expended in preparing for the canceled sales and on future losses of recoveries on the loans as they deteriorate in HUD's portfolio. These losses far exceed the \$3.8 million loss that HUD alleges Hamilton contributed to causing. *Real Estate Alert* reported in its November 17, 1997 issue that HUD was "abruptly" canceling loan sales pending replacement of Hamilton as crosscutting financial advisor. *See Exhibit K.* A HUD spokesman was reported as saying, "we're trying to figure things out."

F. Hamilton has repeatedly requested that defendants stop ignoring or violating regulations in withholding funds due and owing to it and defendants have refused.

66. In the October 17 letter announcing HUD's decision to withhold funds, HUD official Annette Hancock stated that, "The Department is currently withholding any further payments due and owing Hamilton under the terms and conditions of Contract DU100C000018505 and Task Order 001 until such time as the debt [the \$3.8 million Hamilton estimated the bidding discrepancy might cost] is satisfied" (emphasis added). *See Exhibit L.* The October 17 letter goes on to ask that Hamilton make this as a "voluntary payment."

67. Hamilton objected to HUD's withholding of payments as illegal. As early as October 22, 1997, Hamilton's attorney's asked to meet with HUD as soon as possible. Hamilton has repeatedly asked HUD officials to pay the invoices and

not to hold them up as part of any action HUD was taking against Hamilton as part of the so-called investigation or otherwise. *See Exhibit M.*

68. Neither HUD nor any of the other defendants responded. Therefore, on December 10, 1997, I sent another letter to HUD complaining about HUD's action and pointing out how they violated regulations and failed to respond to Hamilton's request for a deferment, especially in light of their insurance coverage. *See Exhibit G.* Moreover, in my letter of December 10, 1997, I requested that if HUD did nothing else, it at least should issue a final decision so that Hamilton could appeal the withholding of funds under the Contract Disputes Act, providing Hamilton with an avenue to challenge the withholding. In addition, Hamilton's attorneys sent a letter to the Department of Justice on the same day explaining the impact the delayed investigation and subpoenas had and were having on Hamilton, and that HUD was without legal authority for withholding payments owed Hamilton. *See Exhibit H.* Neither Hamilton, its attorneys, nor I received a written response or explanation from HUD or the defendants.

69. On December 22, 1997, Hamilton attorneys and I sent a series of letters to HUD again complaining about the agency's actions, requesting that the withheld funds be released and explaining the harm the agency was causing, including a letter I wrote to Secretary Cuomo himself, explaining that the agency's actions and inactions would soon cause Hamilton to go out of business. *See Exhibit N.*

70. HUD sent a response on December 22, 1997 stating that it had not leaked information to the media and that the agency expected full compliance with the subpoenas to which Hamilton objected. *See Exhibit O.* The response made no statements regarding the other issues that had been raised. On December 23, 1997, HUD officials, after over two months of refusing to meet when asked in October 1997, did agree to a meeting to be held on January 2, 1998. Hamilton explained that this was pushing it to the brink of disaster because, among other things, another payroll was due on December 31, 1997. HUD did not provide Hamilton with any earlier date.

71. On December 29, 1997, I again wrote to HUD stating that it had no basis to withhold the payments because Justice Department attorneys had now indicated that the money could be delinked from the investigation of Hamilton and Hamilton's insurance company had reiterated the coverage of a liability policy.

See Exhibit D.

72. On December 30, 1997, Deputy General Counsel Howard Glaser sent a response to Hamilton. *See Exhibit Q.* In his letter, Glaser again asserted that HUD had regulatory authority, pursuant to 48 C.F.R. § 32.610, to withhold the funds that the agency had conceded were due and owing. Specifically, Glaser wrote: "HUD is exercising its common law right, and right in accordance with the Federal Acquisition Regulations, to withhold and/or set-off the debt... There is nothing in [the contracts with Hamilton] which would preclude HUD from exercising these rights . . ."

73. On January 2, 1998, Hamilton's attorneys met with Howard Glaser, John Kennedy, John Opitz, and others from HUD. Again, they complained about HUD's actions and inactions and specifically requested the release of funds so that Hamilton could stay in business to contest the events described in this complaint. Again, they contested that the FAR set-off regulation did not apply to the situation of an error reported by Hamilton a year before, that HUD had not followed its regulations in undertaking such a set-off provision (*e.g.*, determining the debt amount, issuing a final decision, granting a request for deferment), or that HUD was acting outside its discretion in applying this regulation in light of the irreparable harm being caused to Hamilton (*i.e.*, putting it out of business). HUD officials stated that they had the power to take the actions and provided no relief to Hamilton.

G. Defendants' Actions Have Caused And Continue To Cause Irreparable Harm In That They Are Designed Or Will Result In Putting Hamilton Out Of Business.

74. Publicity that a company is under an Inspector General investigation and under suspicion of criminal wrongdoing can cause the company to lose business and financial backing. Because of the potential impact of publicity and sensitive to preserving an entity's presumption of innocence, there are strict regulations which prohibit leaking of law enforcement information. Indeed, virtually all codes of professional responsibility and court rules include prohibitions against leaks of investigative materials to the public. In addition,

various statutes protect against the disclosure of information about a company or of the fact that the company asks to be exempt from disclosure.

75. In addition to the harm that can be caused by even accurate publicity about an investigation, inaccurate and incomplete information can cause even greater harm, particularly if that information raises doubts about the core operations of business, such as the financial integrity of a fiduciary concern, like a financial advisor. If government agents provide the press with only one side or with misleading bits and pieces of their work, then subsequent news articles can be even more harmful to those involved.

76. As a result of the leaks that have occurred in this case, Hamilton has been told by prospective clients and business partners that they do not want to do business with it. Few federal, state or local government agencies, or private clients want to contract with a firm that is under federal investigation. This investigation is especially harmful to Hamilton's potential advisory and broker-dealer activities.

77. Similarly, these leaks have made it impossible for Hamilton to raise new capital from financial institutions, private investors or the capital markets, thereby restricting Hamilton's access to the capital needed to pursue its new business interests or significantly raising Hamilton's cost of capital.

78. In addition, HUD's actions have been financially devastating. Hamilton's income flow has gone from approximately \$900,000 per month in September 1997 to essentially \$0 per month today. Hamilton has had to lay off

employees. In order to make the November payroll for the remaining employees, I had to liquidate my retirement savings in Hamilton's profit-sharing plan and in the process incur substantial taxes and penalties for taking an early distribution. Hamilton has had to cancel contracts, is being threatened with legal action by contractors and vendors seeking payment of debts, and in addition to its payroll costs, is accumulating substantial debts.

79. Hamilton has spent considerable time and expense building its reputation, its potential client base, and the expertise among its personnel and business associates. With respect to Hamilton's remaining employees, this includes a licensed architect, investment banker, broker-dealer, systems analyst, computer scientist, attorney, graphic designer, certified public accountant, communications specialist, and Internet specialist.

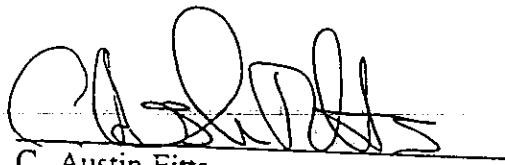
80. Unless it is able to have the \$1.5 million it already has earned and properly invoiced released by HUD, plus the funds that will be due from HUD in future audited contract costs, plus the funds that are being withheld for contract close-out expenses, and unless it is able to clear its good name of the unsubstantiated charges openly and surreptitiously leveled against it, Hamilton will have no ability to finance continuing operations, to pursue new business opportunities, or to keep the personnel and clients in which it has invested so much. No award of damages in the future in this and other litigation will be sufficient to compensate Hamilton for these losses or enable Hamilton to overcome the irreparable loss to its business reputation. Without immediate release,

Hamilton will face the likelihood of having to close down and be forced into bankruptcy to obtain protection from its creditors.

81. Hamilton's situation is urgent. By the time that defendants decide that HUD has investigated Hamilton enough or even by the time this Court will hear the merits of this case in the ordinary schedule of the courts, it will be too late. Once it defaults on its future obligations, has to lay off more or the rest of its staff, and loses its potential private sector clients, Hamilton will not be able to put things back together if later on it should be found to have been right on all pending issues and will not be in a position to pursue its current new business interests

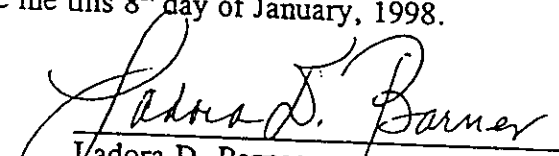
Further affiant sayeth not.

Dated this 8th day of January, 1998.



C. Austin Fitts

Subscribed and sworn to before me this 8th day of January, 1998.



Ladora D. Barnes
Notary Public

My commision expires 9/30/02



HOME: LEGAL: INVESTIGATIONS/AUDITS

Introduction • Our Story • Timeline •

"Swat" is the term we use to refer to a multiple action/agency effort by government agencies, often with the participation and assistance of private contractors. With the HUD loan sales, Hamilton was helping to reengineer and decentralize government to advantage taxpayers and communities.

- Salaries were kept low, bonuses were paid with equity, all checks required multiple signatures, monthly financials were prepared and reviewed.
- All of Fitts's assets were kept within the United States and all personal financial records were disclosed to Hamilton's chief of staff.
- Hamilton was audited by Big 6 accounting firms, had a Board of Directors and audit committee overseeing the Chief Financial Officer.
- Because of the viciousness with which the charge of "conflict of interest" was raised through carefully placed "rumors" and innuendo, Hamilton was forced to resign.

Unfortunately, Hamilton did not anticipate the ferociousness with which HUD would attack and that such attack would involve the use of the "Swat" team.

In the two sections that follow, we have attempted to describe all the events over the last four years that we judge may have constituted a "Swat" operation.

In viewing this pattern we would make several comments:

- The nature of a successful covert operation is to achieve one's goals without the general public's being aware that a single individual is responsible.
- The best way to prevent someone from harming your credibility by exposing the truth is to carry out a preemptive attack in order to control the narrative.
- In many, if not most, instances of scandalous and immoral behavior by those in positions of authority, plausible deniability is essential.

It is not necessary to the success of a covert operation that each participant has the same or even similar interests to those of other participants.



Section I: The Swat List: Audits, Investigations, Inquires, Leaks, and Conflicts of Interest

- United States Department of Housing and Urban Development (Qui Tam)
- Federal Government Agencies
The White House
US Department of Justice, Civil Division, Commercial Litigation Branch
United States Congress
United States Department of Housing and Urban Development
United States Department of Labor
United States Federal Deposit Insurance Corporation ("FDIC")
Federal Courts
Federal Elections Commission
General Accounting Office
Internal Revenue Service
- The Smear Campaign: Whispers, Leaks, and Negative Press
- District of Columbia Government and State Agencies
District of Columbia Department of Taxation
District of Columbia Department of Employment, Department of Tax and Revenue and IRS
District of Columbia Department of Public Works
District of Columbia Zoning Building Office
- Private Parties
Hamilton's Bank
Hamilton's Errors and Omissions Insurance Carrier

Section II: Suspicious Occurrences: Coincidence or Unknown Government Agency or Private Govern

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ON BEHALF OF DEPARTMENT OF JUSTICE (*QUI TAM*)

Date	Description	Persons Affected or Involved/Cost
August 6, 1996	The HUD OIG serves The Hamilton Securities Group, Inc. a subpoena <i>duces tecum</i> , requiring Hamilton to produce by August 13 an exhaustive amount of documents, including documents and records pertaining to two sealed bid auctions for single family mortgages, contract accounting papers since the inception of work for HUD and Hamilton financial statements for 1992 - 95. The subpoena asserts that HUD had information indicating that Hamilton may have had information relevant to an "ongoing investigation."	The Federal False Claims Act requires that Hamilton be informed that it is the "Target" of a <i>Qui Tam</i> suit when it is served with a subpoena. Delegating the Investigation from the Department of Justice ("DOJ") to The US Department of Housing and Urban Development ("HUD"), which is not permitted by the Act, DOJ claims is not obligated to comply with the disclosure provisions of the Law. Hamilton believes that if the government had complied with the disclosure provisions, it would be a financially successful company today. This was the first of many efforts by the government to obfuscate and omit critical information. Subpoena preparation service and response required involvement of the HUD OIG lawyers, US Marshall Office employees, Hamilton's law firm, Hamilton board, Hamilton "Jedi Knights" team (organized to review documents and deal with the subpoena) and Hamilton information systems team (to write programs to locate and segregate information from Hamilton's server and employee laptops).

PARTIES WITH ACCESS TO NON-LETHAL WEAPONS AND HIGH-TECH SURVEILLANCE AND WIRE-TAPPING EQUIPMENT

Date	Description	Persons Affected or Involved/Cost
February, 1997	A break-in attempt occurs at Fraser Court while Fitts is in China. The first floor tenant reports that someone was throwing rocks at a window.	
November, 1996	Catherine Austin Fitts moves into Fraser Court (a converted coach house located in an alley behind a mansion that now serves as the headquarters of the Church of Scientology in the Dupont Circle of Washington, DC). After a number of similar incidents, and fearing that she may become a target as the result of her business activities, Fitts purchases an expensive closed circuit/video alarm system and acquires a dog.	
Spring, 1997	Fitts complains of unexplained buzzing at night following unusual construction on the roof of apartment building next door. For the first time in her life she has trouble sleeping, and experiences muscle cramps and unusual symptoms.	
Summer, 1997	A tenant in the ground floor apartment of Fitts's residence at 7 Fraser Court is mugged in the alley surrounding the house by an attacker whom she describes as an "MBA-type" made up to look like street person. She expresses the opinion that he was part of covert operations/harassment, not a real thief. Several weeks later she is mugged again in a similar incident.	
Fall, 1998	A close friend of Fitts moves in so Fitts is no longer living alone.	
Spring/ Summer, 1998	A masseuse who gave a massage near the French doors in the master bedroom of 7 Fraser Court complains of a pair of laser-like burns placed on her back and stomach in a manner she believed indicated "entrance" and "exit" points. When she consults a doctor, the doctor is not able to identify what could have caused burns of this sort. She tells Fitts that "they" are "testing silent, invisible weapons." Fitts believes this is absurd until soon thereafter she wakes up in a cold sweat in the middle of the night saying "cyclotron," a term she has never heard before. The masseuse thereafter refuses to give massages near the door on later occasions. This is the same French door, which leads out to a roof garden, that later falls off its hinges, apparently as the result of vibrations (see entry below). On another occasion, the masseuse, following a session at Fraser Court, reports she has been followed by two cars in sequence from Fraser Court to her street in a Virginia suburb of Washington.	
April, 1998	Hamilton's offices are left by government in dreadful state. Pizza, food, and cigarettes ground into the rug, are clear indications that much was done to systematically harm office and its beautiful "spirit". This office had once won an Advance Technology best design award given by the <u>American Architects Institute</u> . The design was an "open office" layout that resulted in substantially lower cost and space per employee. It was designed around a sophisticated high-tech telephone and computer system that permitted flexible workforce and outsourcing as well as telecommuting and "hoteling."	The worst part was the smell. This is serious spiritual warfare. Fitts funds the clean-up out of personal funds; another Solari employee leads a cleaning team in the hardest clean up there is. Morale suffers, but kindness on the part of building management made the expenditure worthwhile
Late spring, 1998	Catherine Fitts hears footsteps on the first floor above her when she is working in the first floor Solari offices at Fraser Court late one Saturday night with her dog at her feet. She finds that the roof deck door has been pried open, but nothing appears to have been stolen. On another occasion, when she arrives home, her burglar alarm has been set off. When police arrive, she reports that she has heard houseguests on the roof with their guests and believes they have set off the alarm - only later does she discover that one houseguest was	Neighborhood police, who are called on multiple occasions and are given license numbers of cars that appear to be engaged in surveillance, appear to be confused and unsure whether to believe the stories they hear. The gardener who

		<p>roof garden for plants that might have been left there by intruders in an attempt to set up Fitts for a drug bust. Fitts harbors these suspicions after reading about seizures of valuable property by federal law enforcement personnel. She fears authorities may be planning to seize her only remaining asset: her home.</p>
	<p>Cars of Solari employees parked in the alley around the coach house appear targeted for parking tickets. One employee never received notice of any fines, but his car is towed away for more than \$1,000 in fines and penalties when parked off-street the following year.</p>	<p>The employee was afraid to retrieve the car, believing that the police might have planted drugs in it, so the car is given up to the city. Presumably, the car is sold at auction for less than its value, and the employee never hears about it again.</p>
<p>Winter, 1999</p>	<p>Physical evidence of strange vibrations appears at Fraser Court: an iron planter falls out of a brick wall; French doors in Fitts's bedroom come loose from their hinges; another resident of the house loses seven crowns in her teeth during a three-month period (and her dentist confirms that vibrations such as those experienced by earthquake victims have been known to cause this type of phenomenon).</p>	<p>These occurrences are expensive to correct at a time when Solari employees have minimal health insurance and monetary resources.</p>
	<p>Buzzing at night grows worse in regular pattern from 9am - 5pm. Fitts/Solari engage in various attempts to hire private security firms, but they decline to become involved after expressing initial interest. One consultant suggests that Fitts purchase birds to test for non-lethal weapons and airborne biological agents in a canary-in-the-mine tactic. Fitts purchases two birds. For the first night, the buzzing stops. It resumes at a much lower level the following night. The next morning the birds are disoriented and sluggish and one falls off its perch. Click to memo on symptoms in Gideon archive</p>	
<p>Summer, 1998</p>	<p>When a houseguest at Fraser Court is walking Fitts's dog, two neighborhood kids, without any prompting, ask whether he noticed someone is following him. At around this time, when Fitts is on her way to church on a Sunday morning, a car tries to run her off the road.</p>	
	<p>Catherine Fitts wakes up to intolerable, middle-of-night vibrations/rays followed by diarrhea, which is also experienced by a housemate and pets. The uncomfortable symptoms when she sleeps in her room lead Fitts to in an adjoining walk-in dressing closet and other places around her house and she. On these same occasions, the following morning she and a housemate wake up exhausted or sick. The same housemate experiences an inexplicable fall down the stairs leading to the roof garden and suffers moderately serious injuries. A pet dog "goes wild" when she detects something out of the ordinary on the roof garden on several occasions. link to Memo on Non-lethal weapon symptoms. A private detective who is called in confirms that the telephones are tapped and warns that low-grade biological agents are the primary risk in situations like this. After this visit, he is unable to perform further consulting work due to a big international security job.</p>	<p>Solari victims experience moderately disabling and highly uncomfortable or painful conditions, lose sleep, live in a state of anxiety and hypersensitivity to even ordinary occurrences. Many friends to whom they describe these phenomena express either fear or suspicion that the victims are somehow "imagining things." Doctors and dentists who are consulted about symptoms give quizzical looks to Solari employees when the subject of nonlethal weapons is broached. Solari bears the costs of additional security precautions (additional cameras and videos added to the \$50,000 closed-circuit security system) and costs of retaining a private detective.</p>
<p>1998-9</p>	<p>Evidence of the use of nonlethal weapons appears at Fraser Court.</p>	<p>Hamilton's advisors are highly</p>

Spring, 1998 – Winter, 2000	Solari employees experience long-lasting bronchial illnesses and develop strange flu-like symptoms over and over. Fitts believes she has experienced these symptoms a total of seventeen times between from December, 1998 to February, 2000.	Time is lost by all employees and houseguests, and medical bills increase.
Throughout 1999	Hamilton's lead counsel suffers a variety of illnesses, including bouts of pneumonia.	
1998 - 99	Solari's in-house counsel experiences an unusual number of flat tires under strange circumstances, and an important appointment book disappears and is never found. Her office computer crashes several times and her home computer unexpectedly crashes, leaving nothing on the hard drive. A new computer crashes not long after its purchase.	Solari's records are left in fragmented form on many media and equipment, making them difficult to access. Some records are lost. Some work must be redone. Employee bears the cost of new computer equipment. Solari pays \$500 to recover Solari information from a damaged hard drive. This compounds the problems caused by the near destruction of the Hamilton systems and lost e-mail during the office seizure and by the earlier information systems disruptions as the result of subpoena compliance from 1996 until the closing of Hamilton's offices.
October, 1998	Fitts hires a member of the Capitol Hill Police Department who has been recommended by members of her church to make a presentation to Solari employees regarding security at Fraser Court. He gives a relatively standard lecture over a 1-2 hour period and is told to let Solari know his fee for the service. Solari receives no bill or advice regarding amounts owed, so the accountant waits to hear from the policeman. He then Solari's office and is highly abusive to a Solari employee and demands that a payment of \$500 be delivered "now" to the mailroom in a remote part of a House of Representatives office building on Capitol Hill.	Fitts and other Solari employees are stunned at this event. Given parking restrictions in the Capitol Hill area, two Solari employees have to leave work for to deliver the check in what amounts to something of a wild goose chase.
January, 1999	The house at Fraser Court is put on the market for sale to raise funds to pay Solari employees. Soon after the listing agreement is signed, when using a treadmill on the ground floor, Fitts notices she can see daylight through the brick wall where an antique metal star has been removed	Solari employees suspect a listening or other hidden device has been removed and the intruder who has removed it has forgotten to replace the star, leaving a hole. Alternatively, a security firm has warned Solari to look for such holes being used to introduce low grade biological warfare agents.
March, 1999	When a contractor employed by a neighbor finds a copy of the front door key in the garden, the locks are changed. Soon after this incident, a dead rat is found directly in front of the front door.	
March - May, 1999	After a contract for the sale of the Fraser Court house is signed in March, with an upcoming closing scheduled for May, buzzing at night gets much more aggressive, and physical symptoms intensify. Just before moving, Fitts asks her housemate to stay at another Solari employee's house, because she believes her own home is not safe for her friend. Another Solari employee experiences the same symptoms one night in the office when he comes in to do late-night work. To stay clear-headed, Fitts sleeps at the home of friends when they are out of town. [Click here to see sales brochure and article on sale of Fraser Court]	
April, 1999	At an evening birthday party for a Solari employee, with a number of former Hamilton employees in attendance, Fitts's dog goes wild on the roof deck, running around excitedly and trying to dig up	Solari employees wonder if there is some sort of high frequency device planted on

	<p>...involving the sighting by two people of what a government covert operations expert believes is an electromagnetic pulse weapon in a neighboring apartment. Fitts sees the weapon a total of four times during the time span of a month or two. On one occasion, Fitts spies the strange, metal, telescope-like instrument when she returns from a trip late at night and asks her housemate get out of bed to confirm that she is not seeing things." The housemate is mystified, too, and agrees the obviousness of its positioning and the existence of a light in the apartment is suspicious. While standing outside talking with neighbors, feeling "terrific," suddenly experiences the sensation of being suddenly "shot" by some unseen force. On the spot, she develops severe diarrhea.</p>	<p>skeptical and don't know what to recommend. When told of events like this, a number of Fitts's family members express concern that associating with her would cause them unnecessary risk and give consideration to distancing themselves. This appears to simply follow the trend of numerous former colleagues and friends.</p>
<p>Summer, 1998</p>	<p>A friend of Solari's in-house counsel, who is an officer in the US Army Reserves, asks that the Solari employee not contact her by telephone or email. She attributes her anxiety to instances in which, she says, she has been "followed by men in black cars" and has experienced other disconcerting events after such contacts, indicating, to her, that she is under surveillance. When this Solari employee conducts a yard sale at the home of this same friend, the friend believes that a "customer" wearing an FBI tee-shirt has appeared for purposes of surveillance.</p>	<p>Whether or not these events are the result of surveillance, third parties believe they are and feel hesitant to continue close relationships with Solari employees.</p>
<p>1996 - 97</p>	<p>Problems occur with neighbors and with the zoning board and permitting authorities in connection with first floor construction at Fraser Court.</p>	<p>These events cause concern on the part of Solari employees and contractors.</p>
<p>Late summer and fall, 1998</p>	<p>While Solari is attempting to engage in normal business operations, employees and houseguests at Fraser Court see strange vehicles traveling slowly and suspiciously through the alley. Individuals on bicycles and on foot, who appear dressed as homeless persons, engage in highly intelligent conversations with employees and guests entering and leaving Fraser Court, leading them to believe the individuals were conducting surveillance. Solari receives many telephone calls in which the caller does not identify himself or herself. When employees use a caller-ID system, they find that the numbers have been blocked. Constant efforts are needed to deal with Ervin and Hamilton creditor subpoena.</p> <p>Servers. For example, one server targeted Fitts on Sundays, when she regularly left the house to attend church. A weekend guest was followed and accosted by a belligerent subpoena server while walking Fitts's dog on a Sunday morning before leaving for church. Another delivered a subpoena during a Solari seminar-workshop at Fraser Court.</p>	<p>Activities like this make it difficult or impossible to conduct routine business operations. All but the most loyal employees distance themselves from these events. Neighbors behave in a suspicious manner as if they have been contacted by someone regarding Fitts.</p>
	<p>Solari employees spend time calling the city to request that the city request towing for suspicious cars that sport, among other things, an unusual number of sophisticated-looking antennas. Fitts is followed to church at night. A hole is discovered in the first floor brick wall at Fraser court. Solari employees have no way of knowing how long it has been there. Fitts experiences an unusual, frightening near accident on the highway that she believes is an intentional attempt to run her off the road. From then on, she practices defensive driving, in fear of surveillance and covert operations activities.</p>	<p>Neighbors seem progressively more distant and careful. Several former friends and colleagues default on loans and other obligations to Fitts.</p>
<p>Late summer, 1998</p>	<p>Fitts's dear friend and colleague, who had remained loyal since their initial association in the 1980s when she served as Fitts's assistant at Dillon, Read and who had been one of the founding shareholder/employees at Hamilton, dies of cancer after a long and painful illness. Fitts and others believe her illness was exacerbated by the Hamilton "swat" and, for this reason, the trauma of her death is intensified. In a gesture of loyalty and confidence, the shareholder who died had refused Fitts's offers to sell her Hamilton stock. When Hamilton closed down, her stock became worthless. As a result, the value of her estate was significantly diminished. At the funeral, former Hamiltonians make little or no contact with Fitts and the other former Hamilton employees at Solari. At the time of the funeral, Hamilton's bank conducts joint marketing seminars for women-owned businesses with Tucker, Flyer and Lewis. Ervin & Associates' law firm. When Fitts objects that Tucker, Flyer has participated in actions that led to a default on Hamilton's bank loan.</p>	<p>The most stressful night of the year is the 24-hour period during which Solari employees fear that she will not be able to maintain health and disability insurance coverage as a result of the discontinuance of Hamilton's operations. Fortunately, alternative provisions are made at Solari's expense.</p>