

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
(TOPEKA DOCKET)

(COPY)

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 CLINTON ODELL WEIDNER II, and)
 DAVID C. WITTIG)
)
 Defendants.)
 _____)

Case No.

INDICTMENT

The Grand Jury Charges:

Introduction:

1. At all times material to this indictment, the defendant, **CLINTON ODELL WEIDNER II**, was the President, Chief Executive Officer and General Counsel of Capital City Bank, Topeka, Kansas ("Capital City Bank"), an institution the deposits of which are insured by the Federal Deposit Insurance Corporation, an agency of the United States of America. **WEIDNER** also made loans for and on behalf of Capital City Bank.

2. At all times material to this indictment, the defendant, **DAVID C. WITTIG**, was Chairman of the Board, President, and Chief Executive Officer of Western Resources, Inc., later called Westar Energy of Topeka, Kansas, and a borrower from Capital City Bank. **WITTIG's** loan officer at Capital City Bank was **CLINTON ODELL WEIDNER II**.

3. The Federal Deposit Insurance Corporation ("FDIC") was created in 1933 to maintain the stability of and public confidence in the nation's financial system by insuring deposits and promoting safe and sound banking practices.

4. The FDIC, in conjunction with other federal and state regulatory agencies, examines financial institutions to ensure they are conducting business in a way that minimizes risk to their customers and to the deposit insurance funds. These periodic, on-premise FDIC examinations help assess an institution's financial condition, policies and procedures, and adherence to certain laws and regulations. Safety and soundness examinations are considered a vital tool in protecting the financial integrity of the deposit insurance funds and promoting public confidence in the banking system and individual banks.

5. Part of any FDIC examination includes a review of insider transactions to ensure that no conflicts of interest or preferential dealings by insiders of the institution take place. The FDIC relies upon the integrity of the books and records of the institution to identify the true nature of loan transactions, including, but not limited to: personal financial statements; loan files; and Officer's Questionnaires, which require officers of federally insured institutions, under penalty of perjury, to disclose any extensions of credit made for the accommodation or direct benefit of anyone other than those whose names appear either on the note or on other related credit instruments, and which also require an officer to indicate if any executive officer, principal shareholder, director, or their related interest was involved in receiving the benefits of any loan proceeds.

6. As of April 30, 2001, **DAVID C. WITTIG** had a line of credit in the amount of \$3,500,000 at Capital City Bank.

7. On or about April 3, 2001, WEIDNER brought an investment opportunity to WITTIG known as the Eagle Ridge project in Scottsdale, Arizona, which required a \$1,500,000 down payment to be made on or before April 30, 2001. WITTIG declined the opportunity but agreed to make a loan to WEIDNER if WEIDNER would increase his line of credit at Capital City Bank by \$1,500,000 to provide the proceeds for the loan.

8. On or about April 26, 2001, WEIDNER contacted Capital City Bank customers Michael Earl and Tim Burns, who were negotiating to acquire the Eagle Ridge project, and agreed to provide the down payment of \$1,500,000 for the development. Michael Earl and Tim Burns assigned a 50% interest in the Scottsdale Sierra Development, LLC, to WEIDNER. Thereafter, the name of the project was changed to Scottsdale Sierra Eagle Ridge, LLC.

9. On or about April 30, 2001, WEIDNER prepared and caused to be prepared a Loan Proposal to increase WITTIG's line of credit at Capital City Bank by \$1,500,000, that is, from \$3,500,000 to \$5,000,000. In the Loan Proposal, WEIDNER stated: "David is President and CEO of Western Resources, Inc. He utilizes the line of credit to purchase stock and make business investments. He is also using the line to complete the final renovation costs of the Landon mansion as well as their personal funds."

10. On or about April 30, 2001, WEIDNER caused \$1,500,000 to be wire transferred from WITTIG's account #2406522 at Capital City Bank to Firstar Bank Milwaukee, N.A., and then transmitted to account #600980101 at Firstar Metropolitan Bank and & Trust, Phoenix, Arizona, for credit to Security Title Agency, Escrow No. 96-96-05368-MS, to provide the down payment for the Eagle Ridge project, in which WEIDNER had a 50% interest.

11. On or about May 1, 2001, **WEIDNER** provided **WITTIG** a Promissory Note in the amount of \$1,500,000.

Count 1

CONSPIRACY,
IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 371

12. Paragraphs 1 through 11 are incorporated herein.

13. In the District of Kansas and elsewhere, from on or about April 3, 2001, the approximate date when the defendants, **CLINTON ODELL WEIDNER II**, and **DAVID C. WITTIG**, first discussed an investment in the "Eagle Ridge project" and continuing thereafter until on or about March 16, 2002, the date the true nature of the loan was discovered and **WEIDNER** was placed on administrative leave from Capital City Bank, the defendants,

CLINTON ODELL WEIDNER II, and
DAVID C. WITTIG,

knowingly and willfully conspired and agreed together and with each other, to:

- a) submit false entries, books, reports, and statements to a federally insured bank in violation of Title 18, United States Code, Section 1005;
- b) misapply money, funds, and credits of a federally insured bank in violation of Title 18, United States Code, Section 656; and,
- c) launder money, in violation of Title 18, United States Code, Section 1957.

14. In furtherance of the conspiracy and to effect the objects of the conspiracy, commencing on or about April 3, 2001, **WEIDNER** and **WITTIG** agreed to conceal the material fact that an extension of credit in the amount of \$1,500,000 made to **WITTIG** by **WEIDNER**, as an officer of Capital City Bank, was in fact going to be used by **WEIDNER** to

make the down payment on a real estate development in Scottsdale, Arizona, in which WEIDNER would thus acquire a 50% interest.

15. In furtherance of the conspiracy and to effect the objects of the conspiracy, the defendants submitted and caused to be submitted deceptive personal financial statements to Capital City Bank to conceal the true beneficiary of the \$1,500,000 in loan proceeds.

16. In furtherance of the conspiracy and to effect the objects of the conspiracy, the defendants caused deceptive loan records to be submitted to and maintained by Capital City Bank.

17. In furtherance of the conspiracy and to effect the objects of the conspiracy, the defendants committed overt acts, including, but not limited to, the substantive crimes set forth in Counts 2 through 7.

Count 2

FALSE BANK ENTRIES, REPORTS, AND TRANSACTIONS, IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTIONS 2 & 1005

18. On or about April 30, 2001, in the District of Kansas, the defendants,

**CLINTON ODELL WEIDNER II, and
DAVID C. WITTIG,**

with the intent to deceive any officer of Capital City Bank, an institution the deposits of which are insured by the FDIC, and any agent and examiner of the FDIC appointed to examine the affairs of such bank, knowingly made and caused to be made a material false entry in the books, reports, and statements of Capital City Bank, a federally insured institution, in that the defendants falsified and caused to be falsified a Loan Proposal to increase WITTIG's line of credit by \$1,500,000, that is, from \$3,500,000 to \$5,000,000, stating that: "David is President

and CEO of Western Resources, Inc. He utilizes the Line of credit to purchase stock and make business investments. He is also using the line to complete the final renovation costs of the Landon mansion as well as their personal funds." In truth and in fact, as the defendants well knew, the \$1,500,000 was going to be used to make the down payment on a real estate development in Scottsdale, Arizona, in which WEIDNER had a 50% interest.

Count 3

MISAPPLICATION OF CREDITS,
IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTIONS 2 & 656

19. On or about April 30, 2001, in the District of Kansas, the defendants,

CLINTON ODELL WEIDNER II, and
DAVID C. WITTIG,

embezzled, abstracted, purloined and misapplied, and caused to be embezzled, abstracted, purloined and misapplied, the moneys, funds and credits of Capital City Bank, an institution the deposits of which are insured by the FDIC, and an institution where defendant WEIDNER was an officer, in that the defendants misapplied and caused to be misapplied \$1,500,000 in loan proceeds that were ostensibly a loan made to WITTIG, but which in fact were used as a down payment on a real estate development in Scottsdale, Arizona, in which WEIDNER, the bank officer who had prepared and caused to be prepared the loan proposal, had a 50% interest.

Count 4**FALSE BANK ENTRIES, REPORTS, AND TRANSACTIONS,
IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTIONS 7 & 1005**

21. On or about May 14, 2001, in District of Kansas, the defendants,

**CLINTON ODELL WEIDNER II, and
DAVID C. WITTIG,**

with the intent to deceive any officer of Capital City Bank, an institution the deposits of which are insured by the FDIC, and any agent and examiner of the FDIC appointed to examine the affairs of such bank, knowingly made and caused to be made a material false entry in the books, reports, and statements of Capital City Bank, a federally insured institution, in that the defendant **WEIDNER**, under penalty of perjury, signed an Officer's Questionnaire, in which he responded as follows:

Question 3: List all extensions of credit made for the accommodation or direct benefit of anyone other than those whose names appear either on the note or on other related credit instruments. Only include extensions of credit made since the previous FDIC examination. Indicate if any executive officer, principal shareholder, director, or their related interest (per Federal Reserve Board Regulation O definitions) is or was involved.

Answer: None

In truth and in fact, as the defendants well knew and believed, **WEIDNER** had received a direct benefit in the amount of \$1,500,000 from the \$1,500,000 line of credit increase for **WITTIG**, for which **WEIDNER** was the loan officer.

Count 5**FALSE BANK ENTRIES, REPORTS, AND TRANSACTIONS,
IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTIONS 2 & 1005**

20. On or about May 31, 2001, in the District of Kansas, the defendants,

**CLINTON ODELL WEIDNER II, and
DAVID C. WITTIG,**

with the intent to deceive any officer of Capital City Bank, an institution the deposits of which are insured by the FDIC, and any agent and examiner of the FDIC appointed to examine the affairs of such bank, knowingly made and caused to be made a material false entry in the books, reports, and statements of Capital City Bank, a federally insured institution, in that the defendants filed and caused to be filed a May 1, 2001, Personal Financial Statement of **CLINTON ODELL WEIDNER II**, that concealed the fact that **WEIDNER** had borrowed \$1,500,000 from **DAVID C. WITTIG**, the proceeds of which were obtained from a \$1,500,000 increase to **WITTIG**'s line of credit at Capital City Bank, for which **WEIDNER** was the loan officer.

Count 6**FALSE BANK ENTRIES, REPORTS, AND TRANSACTIONS
IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTIONS 2 & 1005**

22. On or about January 11, 2002, in District of Kansas, the defendants,

**CLINTON ODELL WEIDNER II, and
DAVID C. WITTIG,**

with the intent to deceive any officer of Capital City Bank, an institution the deposits of which are insured by the FDIC, and any agent and examiner of the FDIC appointed to examine the affairs of such bank, knowingly made and caused to be made a material false entry in the books,

reports, and statements of Capital City Bank, a federally insured institution, in that the defendant **WITTIG** submitted and caused to be submitted a January 8, 2002, Balance Sheet which concealed the material fact that **WITTIG** had made a loan to defendant **WEIDNER** in the amount of \$1,500,000, which loan was funded by the \$1,500,000 increase in **WITTIG**'s line of credit at Capital City Bank, for which **WEIDNER** was the loan officer.

COUNT 7

**MONEY LAUNDERING,
IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 1957**

23. On or about April 30, 2001, in the District of Kansas and elsewhere, the defendants,

**CLINTON ODELL WEIDNER II, and
DAVID C. WITTIG,**

knowingly engaged, attempted to engage, and caused each other to engage, in a monetary transaction, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, that is, the withdrawal and transfer of \$1,500,000 in funds from **WITTIG**'s Capital City Bank account #2406522, such property having been derived from specified unlawful activity, that is, the submission of false statements to a federally insured bank, in violation of Title 18, United States Code, Section 1005, as alleged in Count 2, and conspiracy to submit false statements to a federally insured bank, in violation of Title 18, United States Code, Section 371, as alleged in Count 1.

COUNT 8

FORFEITURE ALLEGATIONS

24. The allegations of the foregoing counts of this indictment are realleged, and by this reference fully incorporated herein, for the purpose of alleging forfeitures to the United States of America, pursuant to the provisions of Title 18, United States Code, Section 982(b), and Title 21, United States Code, Section 853(p).

25. As a result of the offenses alleged in the foregoing counts,

**CLINTON ODELL WEIDNER II, and
DAVID C. WITTIG,**

shall forfeit to the United States:

- A) any property, real and personal, involved in violation of Title 18, United States Code, Section 1957, as alleged in Count 7, and all property traceable to such property; and
- B) any property, real and personal, constituting and derived from proceeds the defendants obtained directly and indirectly as the result of the violations of Title 18, United States Code, Sections 371, 656, and 1005, as alleged in Counts 1 through 6, including, but not limited to:
 - 1) \$1,500,000 in United States currency, and all interest and proceeds traceable thereto;
 - 2) Real Property listed in Exhibit A, attached hereto and incorporated herein by reference.
 - 3) If any of the property described above as being subject to forfeiture, as a result of any act or omission of the defendants –
 - a) Cannot be located upon the exercise of due diligence;

- b) Has been transferred or sold to, or deposited with, a third person;
- c) Has been placed beyond the jurisdiction of the Court;
- d) Has been substantially diminished in value; or
- e) Has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 18, United States Code, Section 982(b)(1) and Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendants, up to the value of said property listed above, as being subject to forfeiture.

A TRUE BILL.

DATE

FOREMAN OF THE GRAND JURY

ASSISTANT UNITED STATES ATTORNEY
District of Kansas

[It is requested that trial be held in Topeka, Kansas]

Bond Set At: \$ _____
Clinton Odell Weidner II

Bond Set At: \$ _____
David C. Wittig

960105368/MS/REB

EXHIBIT "A"

PARCEL NO. 1:

A PARCEL OF LAND SITUATED IN A PORTION OF THE SOUTH HALF OF SECTION 17, TOWNSHIP 3 NORTH, RANGE 6 EAST, GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 17, FROM WHICH POINT THE SOUTHEAST CORNER OF SECTION 17 BEARS N88°48'58"E A DISTANCE OF 2835.21 FEET; THENCE N50°32'27"E A DISTANCE OF 120.32 FEET, TO THE POINT OF BEGINNING, SAID POINT BEING A POINT OF CURVATURE OF A NON TANGENT CURVE, THE CENTER OF WHICH BEARS S82°44'02"W A DISTANCE OF 270.00 FEET;

THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, TO THE LEFT, CONCAVE SOUTHWESTERLY, THROUGH A CENTRAL ANGLE OF 18°31'38", A DISTANCE OF 87.31 FEET, TO A POINT OF REVERSE CURVATURE, THE CENTER OF WHICH BEARS N44°12'24"E A DISTANCE OF 215.00 FEET;

THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, TO THE RIGHT, CONCAVE NORTHEASTERLY, THROUGH A CENTRAL ANGLE OF 31°56'01", A DISTANCE OF 118.83 FEET, TO A POINT OF REVERSE CURVATURE, THE CENTER OF WHICH BEARS S78°08'25"W A DISTANCE OF 320.00 FEET;

THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, TO THE LEFT, CONCAVE SOUTHWESTERLY, THROUGH A CENTRAL ANGLE OF 45°01'03", A DISTANCE OF 251.42 FEET, TO A POINT OF REVERSE CURVATURE, THE CENTER OF WHICH BEARS N44°07'22"E A DISTANCE OF 20.00 FEET;

THENCE NORTH ALONG THE ARC OF SAID CURVE, TO THE RIGHT, CONCAVE EAST, THROUGH A CENTRAL ANGLE OF 88°27'22", A DISTANCE OF 30.18 FEET, TO A POINT OF REVERSE CURVATURE, THE CENTER OF WHICH BEARS N62°25'18"W A DISTANCE OF 700.00 FEET;

THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, TO THE LEFT, CONCAVE WESTERLY, THROUGH A CENTRAL ANGLE OF 10°26'07", A DISTANCE OF 127.49 FEET;

THENCE N17°08'37"E A DISTANCE OF 110.16 FEET, TO A POINT OF CURVATURE, THE CENTER OF WHICH BEARS S72°51'23"E A DISTANCE OF 444.00 FEET;

THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, TO THE RIGHT, CONCAVE SOUTHEASTERLY, THROUGH A CENTRAL ANGLE OF 38°02'39", A DISTANCE OF 279.32 FEET;

THENCE N53°11'18"E A DISTANCE OF 13.38 FEET;

THENCE S33°29'09"E A DISTANCE OF 15.30 FEET;

THENCE N46°03'04"E A DISTANCE OF 7.58 FEET;

THENCE S89°30'36"E A DISTANCE OF 33.60 FEET;

20010440968

20010440968

20010440968

THENCE S 38°27'05"E A DISTANCE OF 70.18 FEET, TO A POINT OF CURVATURE, THE CENTER OF WHICH BEARS S51°32'44"W A DISTANCE OF 765.00 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE, TO THE RIGHT, CONCAVE EASTERLY, THROUGH A CENTRAL ANGLE OF 19°26'07", A DISTANCE OF 258.50 FEET;

THENCE S70°56'26"W A DISTANCE OF 58.50 FEET;

THENCE S20°57'52"W A DISTANCE OF 53.15 FEET;

THENCE S01°19'04"W A DISTANCE OF 78.79 FEET;

THENCE S20°20'24"E A DISTANCE OF 189.31 FEET;

THENCE S35°20'11"E A DISTANCE OF 154.56 FEET;

THENCE S68°36'54"W A DISTANCE OF 301.86 FEET, TO THE TRUE POINT OF BEGINNING;

EXCEPT all coal, oil, gas and other mineral deposits as reserved in the Patent, and

EXCEPT all oil, gases and other hydrocarbon substances coal, stone, metals, minerals, fossils and fertilizers of every name and description, together with all uranium, thorium, or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, and except all underground water in, under or flowing through said land, and water rights appurtenant thereto, as reserved in instrument recorded in Document No. 850347757, records of Maricopa County, Arizona.

PARCEL NO. 2:

A PARCEL OF LAND SITUATED IN A PORTION OF THE NORTHWEST QUARTER OF SECTION 20 AND THE SOUTH HALF OF SECTION 17, TOWNSHIP 3 NORTH, RANGE 6 EAST, GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 20, FROM WHICH POINT THE NORTHEAST CORNER OF SECTION 20 BEARS N89°48'58"E A DISTANCE OF 2635.21 FEET; THENCE N89°50'04"W A DISTANCE OF 232.38 FEET, TO THE POINT OF BEGINNING;

THENCE N89°50'23"W A DISTANCE OF 308.82 FEET;

THENCE S07°18'10"W A DISTANCE OF 12.14 FEET;

THENCE S89°39'19"W A DISTANCE OF 309.11 FEET;

THENCE N00°20'41"W A DISTANCE OF 234.82 FEET;

THENCE N40°35'08"E A DISTANCE OF 589.96 FEET;

THENCE N18°21'31"E A DISTANCE OF 269.37 FEET;

THENCE N14°48'03"W A DISTANCE OF 397.83 FEET;

20010440968

20010440968

THENCE N30°01'10"W A DISTANCE OF 381.62 FEET;

THENCE S23°15'18"E A DISTANCE OF 273.84 FEET;

THENCE S06°01'25"W A DISTANCE OF 50.00 FEET, TO THE POINT OF CURVATURE OF A NON TANGENT CURVE, THE CENTER OF WHICH BEARS S06°01'25"W A DISTANCE OF 47.00 FEET;

THENCE FROM EASTERLY TO SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, TO THE LEFT, CONCAVE EASTERLY, THROUGH A CENTRAL ANGLE OF 146°41'40", A DISTANCE OF 120.34 FEET, TO A POINT OF REVERSE CURVATURE, THE CENTER OF WHICH BEARS S39°19'36"W A DISTANCE OF 392.29 FEET;

THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, TO THE RIGHT, CONCAVE SOUTHWESTERLY, THROUGH A CENTRAL ANGLE OF 44°57'40", A DISTANCE OF 260.75 FEET, TO A POINT OF REVERSE CURVATURE, THE CENTER OF WHICH BEARS N84°17'16"E A DISTANCE OF 170.00 FEET;

THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, TO THE LEFT, CONCAVE NORTHEASTERLY, THROUGH A CENTRAL ANGLE OF 39°42'30", A DISTANCE OF 114.85 FEET;

THENCE S44°25'14"E A DISTANCE OF 6.39 FEET, TO A POINT OF CURVATURE, THE CENTER OF WHICH BEARS S45°34'46"W A DISTANCE OF 20.00 FEET;

THENCE SOUTH ALONG THE ARC OF SAID CURVE, TO THE RIGHT, CONCAVE TO THE WEST, THROUGH A CENTRAL ANGLE OF 80°51'38", A DISTANCE OF 28.23 FEET, TO A POINT OF REVERSE CURVATURE, THE CENTER OF WHICH BEARS S53°33'38"E A DISTANCE OF 420.00 FEET;

THENCE SOUTH ALONG THE ARC OF SAID CURVE, TO THE LEFT, CONCAVE TO THE EAST, THROUGH A CENTRAL ANGLE OF 19°17'47", A DISTANCE OF 141.45 FEET;

THENCE S17°08'37"W A DISTANCE OF 187.08 FEET, TO A POINT OF CURVATURE, THE CENTER OF WHICH BEARS N72°51'23"W A DISTANCE OF 680.00 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE, TO THE RIGHT, CONCAVE WESTERLY, THROUGH A CENTRAL ANGLE OF 32°33'51", A DISTANCE OF 376.11 FEET, TO A POINT OF REVERSE CURVATURE, THE CENTER OF WHICH BEARS S40°17'33"E A DISTANCE OF 320.00 FEET;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, TO LEFT, CONCAVE EASTERLY, THROUGH A CENTRAL ANGLE OF 22°25'50", A DISTANCE OF 125.28 FEET, TO A POINT OF REVERSE CURVATURE, THE CENTER OF WHICH BEARS N62°43'23"E A DISTANCE OF 19.00 FEET;

THENCE WESTERLY ALONG THE ARC OF SAID CURVE, TO THE RIGHT, CONCAVE NORTHERLY, THROUGH A CENTRAL ANGLE OF 73°58'54", A DISTANCE OF 24.53 FEET, TO A POINT OF REVERSE CURVATURE, THE CENTER OF WHICH BEARS S11°16'31"W A DISTANCE OF 47.00 FEET;

THENCE FROM WESTERLY THROUGH TO EASTERLY ALONG THE ARC OF SAID TO THE LEFT, THROUGH A CENTRAL ANGLE OF 265°10'04", A DISTANCE OF 217.52 FEET, TO A POINT OF REVERSE CURVATURE, THE CENTER OF WHICH BEARS S73°54'33"E A DISTANCE OF 280.00 FEET;

20010440968

20010440968

THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, TO THE RIGHT, CONCAVE SOUTHEASTERLY, THROUGH A CENTRAL ANGLE OF 33°37'01", A DISTANCE OF 184.28 FEET;

THENCE N49°42'27"E A DISTANCE OF 101.08 FEET, TO A POINT OF CURVATURE, THE CENTER OF WHICH BEARS N40°17'33"W A DISTANCE OF 700.00 FEET;

THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, TO THE LEFT, CONCAVE NORTHWESTERLY, THROUGH A CENTRAL ANGLE OF 16°45'33", A DISTANCE OF 192.53 FEET, TO A POINT OF REVERSE CURVATURE, THE CENTER OF WHICH BEARS S56°03'05"E A DISTANCE OF 20.00 FEET;

THENCE EASTERLY ALONG THE ARC OF SAID CURVE, TO THE RIGHT, CONCAVE TO THE SOUTH, THROUGH A CENTRAL ANGLE OF 87°17'05", A DISTANCE OF 30.47 FEET, TO A POINT OF COMPOUND CURVATURE, THE CENTER OF WHICH BEARS S31°14'00"W A DISTANCE OF 280.00 FEET;

THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, TO THE RIGHT, CONCAVE SOUTHWESTERLY, THROUGH A CENTRAL ANGLE OF 44°54'25", A DISTANCE OF 219.46 FEET, TO A POINT OF REVERSE CURVATURE, THE CENTER OF WHICH BEARS N76°08'25"E A DISTANCE OF 255.00 FEET;

THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, TO THE RIGHT, CONCAVE NORTHEASTERLY, THROUGH A CENTRAL ANGLE OF 31°56'01", A DISTANCE OF 142.12 FEET, TO A POINT OF REVERSE CURVATURE, THE CENTER OF WHICH BEARS S44°12'24"W A DISTANCE OF 230.00 FEET;

THENCE S 78°35'04"W A DISTANCE OF 285.07 FEET, TO THE TRUE POINT OF BEGINNING;

EXCEPT all coal, oil, gas and other mineral deposits as reserved in the Patent, and

EXCEPT all oil, gases and other hydrocarbon substances coal, stone, metals, minerals, fossils and fertilizers of every name and description, together with all uranium, thorium, or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, and except all underground water in, under or flowing through said land, and water rights appurtenant thereto, as reserved in instrument recorded in Document No. 850347787, records of Maricopa County, Arizona.

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF KANSAS
 (TOPEKA DOCKET)

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No.
)	
CLINTON ODELL WEIDNER II, and)	
DAVID C. WITTIG)	
)	
Defendants.)	
_____)	

PENALTY PAGE

The maximum penalty for a conviction of Title 18 United States Code Section 371, as charged in Count 1, is a term of imprisonment of not more than 5 years, a fine of not more than \$250,000 [§3571(b)(4)], a term of supervised release of not more than 3 years [§§3559 & 3583], and a special assessment of \$100.00 [§3013].

The maximum penalty for a conviction of Title 18 United States Code Section 1005 and 656 as charged in Counts 2, 3, 4, 5 and 6 is a term of imprisonment of not more than 30 years, a fine of not more than \$1,000,000 [§3571(b)(1)], a term of supervised release of not more than 5 years [§§3559 & 3583], and a special assessment of \$100.00 [§3013].

The maximum penalty for a conviction of Title 18 United States Code Section 1957, as charged in Count 7, is a term of imprisonment of not more than 10 years, a fine of not more than \$250,000 [§3571(b)(4)], a term of supervised release of not more than 3 years [§§3559 & 3583], and a special assessment of \$100.00 [§3013].



U.S. Department of Justice
United States Attorney
District of Kansas

NEWS RELEASE

Eric Melgren, U.S. Attorney

Contact: Kena Rice

(316) 269-6481

Headquarters
1200 Epic Center
301 N. Main
Wichita, Kansas 67202
(316) 269-6481
FAX (316) 269-6484

Topeka Office
444 Quincy
Topeka, Kansas 66683

Kansas City Office
500 State Avenue
Suite 360
Kansas City, Kansas 66101

FOR IMMEDIATE RELEASE

November 7, 2002

CEO OF WESTAR AND FORMER PRESIDENT OF CAPITAL CITY BANK INDICTED BY FEDERAL GRAND JURY IN TOPEKA

TOPEKA, Kan. – United States Attorney Eric Melgren announced that Clinton Odell Weidner, II, 49, former President of Capital City Bank, and David C. Wittig, 47, Chief Executive Officer of Westar Energy, formerly known as Western Resources, both of Topeka, Kansas, were indicted on Thursday, November 7, 2002, by a federal grand jury in Topeka, Kansas.

Melgren said that Weidner and Wittig are each scheduled to make their initial appearance on November 19, 2002, at 10:00 a.m. in U.S. District Court in Topeka, Kansas, before U.S. Magistrate Judge Gerald L. Rushfelt.

Weidner and Wittig are each charged with one count of conspiracy; four counts of submitting false entries, books, reports, and statements to a federally insured bank; one count of misapplying money from a federally insured bank; one count of money laundering; and one count of forfeiture.

The indictment alleges that from April 3, 2001, through March 16, 2002, Wittig was the Chief Executive Officer of Westar Energy of Topeka, and a borrower from Capital City Bank, Topeka, Kansas, and Weidner was then the President of Capital City Bank and Wittig's loan officer. The indictment further alleges that in April 2001 Weidner proposed a real estate development investment opportunity in Scottsdale, Arizona, to Wittig which required a down payment of \$1,500,000. The indictment alleges that Wittig declined the opportunity but agreed to make a loan of \$1,500,000 to Weidner if Weidner would increase Wittig's line of credit at Capital City Bank by \$1,500,000 to provide the proceeds for the loan. The indictment alleges that Weidner prepared a Loan Proposal to increase Wittig's line of credit at Capital City Bank by \$1,500,000 and that on April 30, 2001, Weidner wire transferred \$1,500,000 from Wittig's account at Capital City Bank to provide the down payment for the real estate development project. The indictment alleges that on April 26, 2001, a 50% interest in the real estate development project was assigned to Weidner and on May 1, 2001, Weidner provided Wittig a promissory note for \$1,500,000. The indictment further alleges that Weidner and Wittig

-MORE-

Page 2

conspired to conceal the fact that the extension of credit in the amount of \$1,500,000 made to Wittig was used by Weidner to make the down payment on the real estate development project. The indictment further alleges that Weidner and Wittig submitted false entries, books, reports, and statements to the bank; misapplied money from the bank, and laundered money.

The indictment alleges that on March 16, 2002, the true nature of the loan was discovered by Capital City Bank and Weidner was placed on administrative leave.

If convicted, Weidner and Wittig each face a maximum of five years in federal prison, without parole, for conspiracy; a maximum of thirty years for submitting false entries to a bank; and a maximum of ten years for money laundering. The case was investigated by the FBI and is being prosecuted by Assistant U.S. Attorney Rich Hathaway.

"Maintaining public confidence in our financial institutions and markets requires that filings be complete and accurate," United States Attorney Melgren said. "Those who submit false reports, or who make filings deliberately calculated to mislead, deceive or conceal the true state of matters, jeopardize public confidence in the accuracy and integrity of those institutions, which threatens the underpinnings of our national economy. This administration has made it clear that we take these types of crimes very seriously, and will be very aggressive in investigating and prosecuting them."

Copies of the indictment may be picked up from the receptionists at the U.S. Attorney's Offices in Wichita, 1200 Epic Center, 301 N. Main; Kansas City, Kansas, 500 State Avenue, Suite 360; or Topeka, 290 Federal Building, 444 SE Quincy. All questions should be directed to Kena Rice at (316) 269-6481. File stamped copies of the indictment may be obtained from the Clerk of the U.S. District Court, 444 SE Quincy, Topeka, Kansas, (785) 295-2610.

As in any criminal case, a person is presumed innocent until and unless proven guilty. The charges filed merely contain allegations of criminal conduct.