

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

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AUSTIN DIVISION
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WESTERN DISTRICT OF TEXAS
U.S. CLERK'S OFFICE
BY: lc
DEPUTY

UNITED STATES OF AMERICA,)

NO. A-03-CR-

Plaintiff,)

I N D I C T M E N T

A-03-CR-85 55

v.)

[Vio: 18 USC 1341, Frauds
and swindles; 18 USC 371,
Conspiracy; 26 USC 7206(1),
Making and filing false
income tax return; 18 USC
1014, False statement in a
loan application; 18 USC 2,
Aiding and abetting.]

DANIEL C. MORALES,
MARC DOUGLAS MURR,

Defendants.)

The Grand Jury Charges:

COUNTS ONE THROUGH SIX
[18 U.S.C. §§ 1341 & 2]

Introduction

1. From 1990 until December 31, 1998, Defendant Daniel C. Morales, the elected Attorney General of Texas, was a fiduciary of the State. He was obligated to be loyal, honest, and fair, and to provide honest services to the State. Defendant Morales was a candidate and an officeholder who received political contributions and made expenditures.

2. The Texas Ethics Commission was a rule making body of the State empowered to regulate political contributions and expenditures, to file campaign finance reports submitted by candidates and officeholders, to investigate violations, and to

enforce campaign finance laws.

3. Texas law authorized candidates and officeholders to accept and spend political contributions only for purposes specified by law and required that campaign finance reports about political contributions and expenditures be filed under penalty of perjury. Texas law prohibited candidates and officeholders from converting political contributions to personal use, including the purchase of real estate, and required that unused funds be delivered to the State or otherwise disposed of according to law.

4. As a candidate and officeholder, Defendant Morales accepted political contributions. He regularly deposited political contributions into a checking account in the name of the Dan Morales Campaign. When the contributions accumulated, certificates of deposit were purchased in the name Dan Morales Campaign at various banks, including Frost National Bank, First State Bank of Austin, First National Bank, Bastrop, Texas, and First Service Bank of Lindale.

The scheme

5. Beginning in or about January 1997 and continuing until in or about October 1999, in the Western District of Texas and elsewhere, Defendant Morales devised and intended to devise a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses,

representations, and promises.

Objectives

6. The objectives of the scheme were:

a. to convert hundreds of thousands of dollars of political contributions to the personal use and benefit of Defendant Morales;

b. to conceal Defendant Morales' unlawful conversions from the State, the Texas Ethics Commission, contributors, his campaign finance report preparer, and others through false representations, omissions, and other forms of deception; and

c. to hinder and impede the lawful functions of the State and the Texas Ethics Commission.

Manner and means

7. It was part of the scheme that in or about the years 1997 through 1999, Defendant Morales routinely defrauded the State, the Texas Ethics Commission, contributors, his campaign finance report preparer, and others by converting political contributions to personal use and by making false representations to cover up the conversions.

8. It was part of the scheme that Defendant Morales charged purchases of personal goods and services, as well as political expenditures, to personal credit cards. Defendant Morales authorized another person to charge personal goods and services

on the same credit cards. On occasions, as credit card bills came due, Defendant Morales converted political contributions to his personal use and benefit by negotiating checks drawn on the Dan Morales Campaign account.

9. It was part of the scheme that Defendant Morales made false representations to, and withheld material information from, his campaign finance report preparer and caused the preparer to enter inaccurate, incomplete, and untrue information in reports filed with the Texas Ethics Commission.

10. It was part of the scheme that in January 1998, Defendant Morales contracted to buy a \$775,000 house in Travis County knowing that he had insufficient savings and income to afford the house.

11. It was part of the scheme that Defendant Morales made false representations, concealed material information, and told half-truths to the Attorney General's press office, Assistant Attorneys General, supporters, and the public about the purchase of the Travis County house. Defendant Morales represented that the purchase was being financed with the proceeds of the sale of a prior residence. In truth, the Defendant was financing the house with political contributions converted by the Defendant in violation of law, as well as with money from the sale of a prior residence.

12. It was part of the scheme that in anticipation of

closing, Defendant Morales cashed three certificates of deposit containing political contributions of \$305,737.61 and transferred the proceeds to a checking account in the name of Dan Morales.

13. It was part of the scheme that on or about March 11-12, 1998, Defendant Morales paid \$155,279 and \$3,515 from his personal checking account to an Austin title company to pay the down payment and closing costs for the purchase of the house. At least \$70,000 of the monies Defendant Morales paid to the Austin title company were political contributions.

14. It was part of the scheme that on or about March 26, 1998, Defendant Morales cashed in a fourth certificate of deposit consisting of \$105,406.27 in political contributions and transferred the proceeds to a checking account in the name of Dan Morales.

15. It was part of the scheme that after the closing on the house and continuing until at least January 1999, Defendant Morales spent political contributions to make payments to the seller of the house, to make improvements, and to pay other personal expenses.

16. It was part of the scheme that from in or about January 1997 and until in or about October 1999, Defendant Morales, under penalty of perjury, made and filed with the Texas Ethics Commission campaign finance reports which he knew to be false in the following respects:

a. material information had been omitted, that is, Schedule I, Non-Political Expenditures Made From Political Contributions, on which schedule Defendant Morales was required to report expenditures of political contributions for personal expenses, was not included;

b. political expenditures were fabricated and inflated;
and

c. personal expenditures were mis-characterized as political expenditures.

17. It was part of the scheme that Defendant Morales, having left the Attorney General's office, having learned the new Attorney General was investigating State contracts given by Defendant Morales to Marc Douglas Murr, and having received a bonus of \$832,332 from the SBC companies, transferred \$500,000 to an account in the name of Dan Morales Campaign intending to cover his prior conversions of political contributions.

18. On or about each of the following dates in the Western District of Texas, Defendant,

DANIEL C. MORALES,

for the purpose of executing the aforesaid scheme and artifice and attempting to do so, did deposit and cause to be deposited with a commercial interstate carrier and/or in the United States mail, a matter which was to be sent and delivered by the carrier and/or the United States Postal Service and did cause the matter

to be delivered by such carrier and/or the Postal Service according to the direction thereon:

	<u>Date</u>	<u>Matter</u>
<u>COUNT ONE:</u>	April 1998	Check to American Express
<u>COUNT TWO:</u>	April 1998	Check to Tanya Hill
<u>COUNT THREE:</u>	May 1998	Check to Tanya Hill
<u>COUNT FOUR:</u>	January 1999	Candidate/Officeholder Campaign Finance Report
<u>COUNT FIVE:</u>	February 1999	Check to Citibank AAdvantage
<u>COUNT SIX:</u>	August 1999	Candidate/Officeholder Campaign Finance Report

All in violation of Title 18, United States Code, Sections 1341 and 2.

COUNTS SEVEN THROUGH NINE
[18 U.S.C. §§ 1341 & 2]

Introduction

1. Defendant Daniel C. Morales, a lawyer and the elected Attorney General of Texas, was a fiduciary obligated to be loyal, honest, and fair, and to provide honest services to the State.

2. Defendant Marc Douglas Murr, a longtime personal friend and campaign advisor to Defendant Morales, was a lawyer and owned a corporation named "Law Offices of Marc D. Murr, P.C."

The tobacco case

3. In 1994-95 a number of state Attorneys General, including those in Mississippi, Florida, and Minnesota filed lawsuits against tobacco companies (Tobacco) to recover money spent by the states to provide health care to people suffering ailments caused by tobacco products.

4. In 1995, Defendant Morales decided to file a similar tobacco lawsuit on behalf of the State of Texas. Defendant Morales stated that he wanted to hire outside lawyers who would be willing to pledge their careers, earnings, and accomplishments towards the important, but previously impossible task of establishing civil liability against Tobacco.

5. Defendant Morales hired Texas law firms owned and/or managed by Walter Umphrey, John Eddie Williams, Jr., Harold Nix,

Wayne Reaud, and John O'Quinn (Private Counsel). On March 22, 1996, in a written outside counsel agreement, Private Counsel agreed to sue Tobacco and to pay the initial \$10 million of expenses of the suit. Defendant Morales assigned 15% of the State's recovery to Private Counsel. If there was no recovery, Private Counsel would receive nothing and would not be reimbursed for their expenses. Defendant Morales assigned Assistant Attorney General Harry Potter to work with Private Counsel and to report the progress of the lawsuit.

6. In or before April, 1996, Defendant Morales publicly announced he had hired Private Counsel and released a copy of the March 22, 1996, outside counsel agreement in response to requests from the public.

7. At the insistence of Defendant Morales, Private Counsel hired and paid George Shipley, a long time political consultant for Defendant Morales. With the consent of Defendant Morales, Private Counsel associated the Ness Motley law firm of South Carolina to provide legal services. Ness Motley, which also represented Mississippi and Florida in tobacco suits, agreed with Private Counsel to share fees. Private Counsel agreed to provide financial support to Ness Motley.

8. In March 1996, Private Counsel sued Tobacco on behalf of the State of Texas in the United States District Court for the Eastern District of Texas at Texarkana. During 1996, Private

Counsel collected evidence and prepared for trial.

Solicitation of contributions

9. In a November 15, 1996, letter to Walter Umphrey, Defendant Morales solicited substantial political contributions from Private Counsel. Defendant Morales told John Eddie Williams, Jr. that he wanted \$250,000 in political contributions, that is, \$50,000 from each firm.

10. In December 1996, Defendant Morales traveled to Beaumont on John Eddie Williams, Jr.'s private plane to obtain the \$250,000 from Wayne Reaud. Reaud advised Morales that he had decided against making such a contribution and that it would be unwise for Defendant Morales to accept \$250,000. Reaud told Morales that, if Morales was going to be mad at somebody, to be mad at Reaud. Defendant Morales returned to Austin without the money.

Four Seasons meeting

11. On or about January 8, 1997, Defendant Morales convened a meeting with Private Counsel at the Four Seasons Hotel in Austin and announced his intention to hire attorneys Defendant Murr and Will Pryor to work with Private Counsel. Defendant Morales announced that Defendant Murr's corporation would be paid 3% of the State's recovery. Defendant Morales announced that Will Pryor, a personal friend and the former First Assistant Attorney General, would be responsible for administrative matters

and, as his fee, would be paid 3% of the State's recovery. The State would pay the fees of Defendant Murr's corporation and Pryor in addition to the 15% fee of Private Counsel. Defendant Morales advised that Defendant Murr and Pryor would pay up to \$2.5 million of the tobacco case expenses. Defendant Morales stated, that at a later date, a group of diversity attorneys might be added to the tobacco team with an additional fee of 3%.

12. Private Counsel balked at Morales' announcement, stated that Defendant Morales' plan would waste 9% of the State's recovery, stated that additional attorneys were unneeded, and announced that, if Defendant Morales insisted that Private Counsel sign a new contract to add Pryor and Defendant Murr, Private Counsel would walk away from representation of the State. On January 15, 1997, Defendant Morales advised Walter Umphrey that Morales would probably go forward with a separate contract for Pryor and Defendant Murr.

13. Later in January 1997, Defendant Morales asked Will Pryor to meet him and Defendant Murr in Dallas for lunch, but did not tell Pryor why. During their lunch meeting on January 31, 1997, Defendant Morales explained that he needed to let Private Counsel know that he was in charge. He asked Pryor and Defendant Murr to enter into an outside counsel agreement which was similar to the agreement with Private Counsel. Pryor and Defendant Murr would provide legal services in the tobacco case and Defendant

Morales would assign 6% of the State's recovery to Defendant Murr's corporation and to Pryor. Pryor and Defendant Murr's corporation would advance costs and expenses of the tobacco case in an initial amount not to exceed \$2 million. Pryor told Defendant Morales that he could not afford to pay any of the expenses of the lawsuit. Defendant Morales agreed to waive this requirement.

14. On or about February 7, 1997, Defendant Morales directed that pleadings and correspondence be forwarded to Defendant Murr and Pryor. Private Counsel did not comply with Defendant Morales' request to include Defendant Murr and Pryor on the pleadings and correspondence lists.

15. During 1996 and 1997, the law firms of Private Counsel filed hundreds of pleadings, collected millions of documents, took depositions and statements of hundreds of witnesses, attended dozens of hearings, and spent millions of their dollars to prepare the State's case.

16. Defendant Murr and Pryor did not file pleadings, did not take depositions or statements of any witness, did not attend any hearing, and spent no money to prepare the State's case for trial. Pryor received no assignments from Defendant Morales and had no significant participation in the litigation. In the latter half of 1997, Pryor advised Defendant Morales that he was uncomfortable with the contract and they agreed to tear up the

contract.

17. Tobacco began a series of meetings with the states about settlement of all claims. On June 20, 1997, Defendant Morales announced that a global settlement had been reached, pending approval by the U.S. Congress. In July and August 1997, while congressional approval was sought, the Mississippi and Florida tobacco lawsuits settled.

18. In or about August 1997, Gay Erwin, a senior executive and personal friend of the Attorney General, met with Defendant Morales and expressed her concerns about rumors that Defendant Morales had given an outside counsel agreement to his friends, Defendant Murr and Pryor. Erwin was unaware of any work done by Defendant Murr or Pryor in the tobacco case. Defendant Morales denied there was a contract.

19. By September 1997, the U.S. Congress had not approved the global settlement and the trial of the Texas lawsuit was imminent. Private Counsel moved to Texarkana to prepare for trial, however, the trial was postponed by the court until January 1998.

20. On December 2, 1997, Defendant Morales announced that he would not "be a candidate for re-election or for any other elective office in 1998." He noted that he had "recently acquired a family." Defendant Morales married in July 1997.

21. In December 1997 and January 1998, negotiations to

settle the Texas lawsuit were conducted. Defendant Morales attended the first negotiation meeting with attorneys for Tobacco by himself. At this meeting, he told Tobacco that the structure of the Mississippi and Florida settlements was acceptable to him. Defendant Morales predicted that the only issue that needed extensive negotiation was attorney's fees. In later discussions and negotiation meetings, Defendant Morales explained to Tobacco that, in addition to Private Counsel's 15% attorney's fee, there was a group of diversity counsel with a 6% fee. Defendant Morales identified Defendant Murr as diversity counsel and stated Defendant Murr performed unspecified public relations and lobbying activities. Defendant Morales advised Tobacco that he would take care of the payment of Defendant Murr's fees, that is, the State would pay Defendant Murr.

22. On January 12, 1998, Defendants met with attorneys for Private Counsel and solicited millions of dollars for Defendant Murr. On January 13, 1998, Defendant Morales met with Private Counsel and again solicited millions of dollars for Defendant Murr.

Settlement

23. On January 16, 1998, the State and Tobacco filed a settlement agreement which provided:

- a. Tobacco would pay an estimated \$15.3 billion to the State over a term of years;

b. Tobacco would pay reasonable attorney's fees to the State's outside counsel in installments, with the amount to be determined by a national arbitration panel;

c. Tobacco would reimburse Private Counsel the expenses of the lawsuit;

d. the State and Tobacco would each pay a \$50 million advance to Private Counsel as credit on the award of attorney's fees to Private Counsel which was to be determined by a national arbitration panel; and

e. in a "most favored nation" provision, Tobacco agreed to revise the settlement with the State of Texas to incorporate terms as favorable as those agreed to with any other state in future settlements.

24. Also on January 16, 1998, Defendant Murr made his first appearance in court in the tobacco case in order to apply for the payment of attorney's fees. Jointly, Defendants advised the court that they were unable to agree on Murr's fee and requested that the court order arbitration by a three member panel. Defendant Murr would select one panel member, the State of Texas would select one panel member, and the third panel member would be selected by the court. The motion for arbitration was granted.

25. In early 1998, Texas counties and hospital districts responsible for indigent health care intervened in the tobacco

case alleging the Attorney General had negotiated away their separate claims against Tobacco without authority. They sought the payment of damages from Tobacco or a trial. The Governor, certain legislators, and a candidate for election intervened and raised issues about attorney's fees.

26. In May 1998, Minnesota settled its tobacco suit on terms more favorable than the Texas settlement. Texas exercised its "most favored nation" provision and negotiations with Tobacco commenced.

27. Between May 18, 1998, and July 24, 1998, the State and Tobacco negotiated a settlement of the State's "most favored nation" provision which increased the recovery to approximately \$17.3 billion. Despite his previous representation that the State would pay Defendant Murr, during the "most favored nation" negotiations Defendant Morales insisted that Tobacco allow Murr to apply to the national arbitration panel for payment of attorney's fees. Texas counties and hospital districts agreed to settle their intervention in exchange for the extra \$2 billion in recovery.

The Austin "arbitration"

28. In September 1998, Defendants conducted the "arbitration" which they had solicited from the court. Defendant Murr was awarded, subject to court approval, 1.5% of all payments to the State. One and one half percent was estimated to be \$260

million.

The national arbitration

29. On December 5, 1998, the national arbitration panel met in New York to determine the amount of attorney's fees to be paid by Tobacco to Private Counsel and Defendant Murr. Defendant Murr was awarded \$1 million.

The new Attorney General's investigation

30. In January 1999, the new Attorney General of Texas, John Cornyn, began an investigation of Defendant Murr's claim for attorney's fees. On May 5, 1999, Attorney General Cornyn advised the court that Murr's 1.5% award had been procured by fraud, that the January 31, 1997, "reasonable fee" contract was a fake created by Defendant Morales, and that Morales also had created a bogus 3% contingency fee contract for Murr and backdated it to October 17, 1996.

Defendant Murr abandoned his claim

31. Defendant Murr did not contest Attorney General Cornyn's representations, did not defend the 1.5% award, and instead asked that it be vacated by the court.

Defendant Murr returned the money

32. By May 25, 1999, Defendant Murr had received approximately \$80,000 of his \$1 million award by the national arbitration panel. Defendant Murr returned the money received from Tobacco and withdrew his claim.

The scheme

33. Beginning in or about 1997 and continuing until in or about June 1999, in the Western District of Texas and elsewhere, Defendant Morales and Defendant Murr, aiding and abetting one another, devised and intended to devise a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises.

34. The objectives of the scheme were to fraudulently obtain for Defendant Murr millions of dollars from the State of Texas, Tobacco, and Private Counsel, to disguise the money as attorney's fees, and to conceal the scheme.

Trading on the authority and prestige
of the State and the Office of Attorney General

35. It was part of the scheme that Defendant Morales used the authority, prestige, and influence of the State and the Office of the Attorney General to barter the State's interests for the benefit and enrichment of Defendant Murr. For example, Defendant Morales solicited:

- a. payment of millions of dollars to Defendant Murr's corporation from Tobacco;
- b. payment of millions of dollars to Defendant Murr's corporation from Private Counsel;
- c. an agreement by Tobacco that Defendant Murr would be allowed to present a claim for attorney's fees to the national arbitration panel; and

d. an agreement from Private Counsel not to denigrate Defendant Murr.

Fabrication of "reasonable fee"
agreement dated January 31, 1997

36. It was part of the scheme that Defendants fabricated an outside counsel agreement, backdated to January 31, 1997, which purportedly required the State to pay a reasonable fee to Defendant Murr's corporation.

Fraud on the court

37. It was part of the scheme that on January 16, 1998:

a. Defendant Murr filed with the court a fraudulent application for ^{an}award of reasonable attorney's fees in which Defendants falsely advised that the State and Defendant Murr's corporation made an outside counsel agreement on January 31, 1997, which purportedly required the State to pay a reasonable fee to Defendant Murr's corporation;

b. Defendants falsely advised the court that the State and Defendant Murr's corporation had been unable, after substantial time and effort, to negotiate a mutually agreeable settlement of attorney's fees, when in truth, the Defendants were in agreement that Defendant Murr was to receive 3% of the State's recovery; and

c. Defendants fraudulently caused the court to order arbitration of the issue of a reasonable fee for Defendant Murr's corporation, in part, to conceal Defendants'

intention to obtain millions of dollars for Defendant Murr.

In truth, Defendants conducted a "sweetheart" arbitration cloaked with the legitimacy and esteem accorded an order of the United States District Court.

Fabrication of 3% agreement dated October 17, 1996

38. It was part of the scheme that well after the tobacco lawsuit settlement and in anticipation of the Austin "arbitration," Defendants fabricated another outside counsel agreement, backdated to October 17, 1996, which assigned 3% of the State's recovery to Defendant Murr's corporation. Defendant Morales directed a State employee to type and then backdate the bogus agreement. Three percent of the State's recovery was estimated to be \$520 million.

Fraud at the Austin "arbitration"

39. It was part of the scheme that in September 1998, Defendants concocted a "sweetheart" arbitration in Austin. The purpose was to obtain an award of 3% of the State's recovery. The Defendants also intended to use the award to persuade the national arbitration panel to order Tobacco to pay Defendant Murr 3%. Defendants submitted a letter and three volumes of written documents, which included the fabricated agreements dated October 17, 1996, and January 31, 1997. Thereafter, Defendants Morales and Murr orchestrated the Austin arbitration as follows:

- a. all three arbitrators were selected by Defendants

in contravention of the arbitration agreement which provided that the court was to select one of the arbitrators;

b. Private Counsel and Tobacco were not invited to participate and were not advised that any award would be used as evidence before the national arbitration panel;

c. only Defendants and their chosen representatives appeared before the panel;

d. the arbitration panel was instructed to utilize "a percentage of the fund methodology" to determine Defendant Murr's fee;

e. despite Defendants' contrary representation to the court, there was no contested issue; Defendant Murr requested 3% of the State's recovery and Defendant Morales urged the panel to grant it, advising the arbitrators that Murr's request was "fair, reasonable, and justifiable";

f. Defendants fraudulently passed off as legitimate their fabricated 3% agreement dated October 17, 1996, arguing that it was the best evidence of what the State and Defendant Murr intended for compensation;

g. Defendants fraudulently passed off as legitimate their fabricated January 31, 1997, agreement which purportedly required the State to pay Murr's corporation a reasonable fee;

h. Defendant Morales fraudulently advised the Austin

panel that Tobacco would pay the Austin panel's award to Murr; and

i. Defendants falsely advised the panel that during settlement negotiations, Private Counsel wanted to forego inclusion of the "most favored nation" provision in the settlement agreement, but Defendant Murr insisted on inclusion.

The panel awarded Defendant Murr 1.5% of the State's recovery and made the award subject to court approval.

Fraud at the national arbitration panel

40. It was part of the scheme that in December 1998, Defendants defrauded the State, Tobacco, Private Counsel, and the public at the national arbitration panel. Defendant Murr on behalf of his corporation and Defendant Morales on behalf of the State urged the panel to award Defendant Murr's corporation an amount equal to 3% of the State's recovery, \$520 million, which Tobacco would be obligated to pay. Defendants attempted to manipulate the arbitration through the following acts and omissions:

a. Defendants fraudulently passed off as legitimate their fabricated October 17, 1996, agreement, stating the agreement justified an award equal to 3% of the State's recovery;

b. Defendant Morales stonewalled Tobacco's pre-hearing

request for production of the original October 17, 1996, agreement, by not providing the document for inspection and by stating that inspection had been prevented by a State holiday;

c. Defendants fraudulently passed off as legitimate their fabricated January 31, 1997, agreement which purportedly required the State to pay a reasonable fee;

d. only Defendant Morales and Defendant Murr's counsel appeared before the panel to press for a 3% award for Murr;

e. Defendants urged the panel to place great weight on the 1.5% award of the Austin arbitration panel and Defendant Morales stated that the State would be "on the hook" for any obligation to Defendant Murr which remained unsatisfied by the panel's award;

f. Defendant Morales made the following false representation to the national arbitration panel:

In addition, I was asked on several occasions [by the Austin arbitration panel] whether I supported Mr. Murr's application in his request for three percent. I said no, the State does not support it. The State basically stands silent, as I did in Mr. Umphrey's contract.

Well, Judge Folsom understood that for what it was. This arbitration panel I think took my statements as opposition. They interpreted it as State opposition, and I think that worked against Mr. Murr's interest.

And I took the same position on the Murr contract that I took on the Umphrey contract; that is, they fulfilled the contributions of their contract, they did a good job for Texas, but I did not explicitly endorse any particular contractual amount.

In truth, Defendant Morales had not remained silent before the Austin arbitration panel, but had encouraged a 3% award to Defendant Murr's corporation, both orally and in writing; and

g. Defendant Morales fraudulently represented to the panel that Will Pryor withdrew from the tobacco case because he was unable to make the \$2 million financial commitment on time. In truth, Defendant Morales had not required Will Pryor to make a \$2 million financial commitment and Will Pryor had performed no meaningful work and received no assignments from Defendant Morales.

Violation of fiduciary duties and State laws

41. It was part of the scheme that Defendant Morales:

a. violated his fiduciary duties of honesty, loyalty, and fair dealing and deprived the State of its right to honest services; and

b. committed felonies against the State, including:

(1) Forgery of governmental records by making two purported outside counsel agreements, dated October 17, 1996, and January 31, 1997, and including false dates and information in violation of Texas Penal

Code § 32.21(b);

(2) Theft of State property by a public servant in violation of Texas Penal Code § 31.03; and

(3) Abuse of official capacity in violation of Texas Penal Code § 39.02(a)(2).

Fraudulent representations about Defendant Murr and the tobacco case

42. It was a part of the scheme that Defendants made fraudulent representations, mis-characterized, told half truths, exaggerated, and concealed material facts about Defendant Murr and the tobacco case in order to disguise payments received by Defendant Murr as legitimate attorney's fees. For example, Defendants deceived and attempted to deceive others to make them believe the following untruths:

a. that Defendant Murr had substantial input in the drafting of the Private Counsel's outside counsel agreement;

b. that Defendant Murr served as primary negotiator with regard to settlement negotiations and played a substantial role in negotiations; and

c. that Defendant Murr was lead counsel with regard to the "most favored nation" negotiations and lead counsel with regard to the county and hospital district issues.

Concealment of public documents

43. It was part of the scheme that Defendant Morales concealed public documents of the State, both real and

fabricated, from public disclosure.

44. On or about each of the following dates in the Western District of Texas, Defendants,

DANIEL C. MORALES,
MARC DOUGLAS MURR,

aiding and abetting one another, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, did deposit and cause to be deposited with a commercial interstate carrier a matter which was to be sent and delivered by the carrier and did cause the matter to be delivered by such carrier according to the direction thereon:

	<u>Date</u>	<u>Matter</u>
<u>COUNT SEVEN:</u>	09/21/98	Letter and two volumes of material shipped from attorney for Defendant Murr, at Austin, Texas, to an arbitrator at Houston, Texas
<u>COUNT EIGHT:</u>	11/02/98	Letter, notebooks, videotapes, and CD shipped from attorney for Defendant Murr, at Austin, Texas, to a national arbitrator, at Reston, Virginia
<u>COUNT NINE:</u>	11/11/98	Letter, affidavit, and videotape of Defendant Morales shipped from Office of Attorney General at Austin, Texas, to a national arbitrator at San Francisco, California.

All in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT TEN
[18 U.S.C. § 371]

Beginning in or about 1997, and continuing until in or about June 1999, in the Western District of Texas and elsewhere,
Defendants,

DANIEL C. MORALES,
MARC DOUGLAS MURR,

willfully did conspire, confederate, and agree to devise and execute the mail fraud scheme described in paragraphs one through forty-four of Counts Seven through Nine, which paragraphs are incorporated into this count as if fully set forth, in violation of Title 18, United States Code, Section 1341.

In furtherance of the conspiracy and to effect its objects and purposes, the Defendants committed the following overt acts and others:

a. on or about December 18, 1997, Defendants traveled from Austin to Chicago;

b. on or about January 8, 1998, Defendant Morales traveled from Austin to Dallas;

c. on or about January 12, 1998 in Austin, Defendants met with attorneys for Private Counsel and solicited money for Defendant Murr;

d. in September 1998, Defendants appeared before a panel of arbitrators in Austin;

e. on November 2, 1998, Defendant Murr caused a letter, notebooks, videotapes, and CD to be shipped from Austin to a national arbitrator, at Reston, Virginia; and

f. on or about November 11, 1998, Defendant Morales caused a letter, affidavit, and videotape to be shipped from Austin to a national arbitrator at San Francisco, California.

A violation of Title 18, United States Code, Section 371.

COUNT ELEVEN

[26 U.S.C. § 7206(1) & 18 U.S.C. § 2]

On or about October 15, 1999, in the Western District of Texas, Defendant,

DANIEL C. MORALES,

a resident of Austin, Texas, willfully did make and subscribe a joint Individual Income Tax Return, Form 1040, on behalf of his spouse and himself, for the calendar year 1998 which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Director, Internal Revenue Service Center at Austin, Texas, which income tax return he did not believe to be true and correct as to every material matter in that the return stated that their joint taxable income for the calendar year was \$39,734, whereas, as the Defendant then and there well knew and believed, their joint taxable income was substantially in excess of that stated in the return.

A violation of Title 26, United States Code, Section 7206(1) and Title 18, United States Code, Section 2.

COUNT TWELVE
[18 U.S.C. §§ 1014 & 2]

On or about January 25, 1999, in the Western District of Texas, Defendant,

DANIEL C. MORALES,

knowingly made false statements for the purpose of influencing the action of PNC Bank, N.A., the accounts of which were insured by the Federal Deposit Insurance Corporation, and its wholly owned subsidiary PNC Mortgage Corporation of America, upon an application for a \$600,000 loan and the false statements were as follows:

- a. Defendant Morales substantially and materially understated liabilities by omitting liabilities of approximately \$400,000;
- b. In the Borrower's Certification, Defendant Morales certified that he had "not incurred additional debts that would impair his ability to repay the mortgage loan in the monthly installments as provided" when in truth the Defendant had incurred such additional debts of approximately \$400,000; and
- c. In the Borrower's Certification, Defendant Morales certified that he knew of "no circumstances that would change his ability to meet the obligations mentioned above in the near future" when in truth the Defendant knew of such circumstances,

that is, the Defendant knew that he had converted to personal use approximately \$400,000 in political contributions which made him civilly liable to the State of Texas for an amount equal to the amount of the converted contributions plus reasonable court costs.

A violation of Title 18, United States Code, Sections 1014 and 2.

A True Bill.

William H. Hall
Foreperson of the grand jury

Johnny Sutton
United States Attorney