

FDW/DMD/JSB

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISIONNO. 5:04-CR-282-1B01NO. 5:04-CR-282-2B01

UNITED STATES OF AMERICA)

v.)

I N D I C T M E N T

FRANK W. BALLANCE, JR.)

GAREY M. BALLANCE)

The Grand Jury charges that:

INTRODUCTIONI. Events Leading to the State of North Carolina's Funding of John A. Hyman Memorial Youth Foundation, Inc., in 1994.

1. In 1982, FRANK W. BALLANCE, JR. ("FRANK BALLANCE"), defendant herein, an attorney from Warrenton, North Carolina, was elected to the North Carolina House of Representatives from the 7th House District. FRANK BALLANCE served in this position until his election in 1988 to the North Carolina Senate from the 2nd Senatorial District.

2. On June 28, 1985, Articles of Incorporation were filed for a non-profit entity named John A. Hyman Memorial Youth Foundation, Inc. ("Hyman Foundation"). As repeatedly stated by the Hyman Foundation in its disbursement requests to the State of North Carolina, the Hyman Foundation described its purpose to be ". . . substance abuse education, prevention and rehabilitation services

for indigent population of surrounding Halifax, Warren, and Hertford counties."

3. Following its incorporation, the Hyman Foundation filed with the Internal Revenue Service ("IRS") for tax exempt status pursuant to Section 501(c) of the Internal Revenue Code ("Code"). On December 9, 1985, the IRS granted the Hyman Foundation tax exempt status under Section 501(c)(3) of the Code. As a Section 501(c)(3) organization, the Hyman Foundation was required to file a Form 990 Return of Organization Exempt from Income Tax ("Form 990"), if, during any calendar year, the Hyman Foundation's gross annual receipts exceeded \$25,000.

4. As Chairman of the Hyman Foundation, FRANK BALLANCE executed its bylaws on June 28, 1985. According to the bylaws of the Hyman Foundation, FRANK BALLANCE was endowed as Chairman with the following powers:

The Chairman shall be the principal executive officer of the corporation and, subject to the control of the Board of Directors, shall in general, supervise and control all business and affairs of the corporation.

FRANK BALLANCE has served as Chairman of the Hyman Foundation since its inception in 1985.

5. As noted above, in 1988, FRANK BALLANCE was elected to the North Carolina Senate. In the mid-1990s, FRANK BALLANCE became Chairman of the Senate Appropriations Committee on Justice and Public Safety, commonly referred to as "JPS Subcommittee." In

1997, FRANK BALLANCE was elected Deputy President Pro Tempore of the Senate, a leadership position he held until leaving the North Carolina Senate in 2003 to serve as United States Representative. Due to the time demands relating to his position as Deputy President Pro Tempore, from 2001 through the end of his term in the North Carolina Senate, FRANK BALLANCE served as Vice-Chairman of the JPS Subcommittee.

II. North Carolina's Funding of the Hyman Foundation.

6. The Hyman Foundation remained largely inactive until early 1994, when it received its first state appropriation of \$167,000, pursuant to actions of the JPS Subcommittee.¹ According to the report from the Hyman Foundation's first annual meeting in late 1994:

The monetary appropriations that made the John Hyman Project possible were a result of the efforts of Senator Frank Ballance, Jr. His political influences, combined with his community involvement and concern, convinced the North Carolina General Assembly to fund the Project.

7. In 1995, the JPS Subcommittee approved an additional \$100,000 in state funding to the Hyman Foundation for the fiscal year ending 1995. Just prior to the end of fiscal year 1995, a surplus of approximately \$75,000 became available. After becoming

¹Legislative appropriations are made on the basis of a fiscal year beginning on July 1st and ending on the following June 30th. For instance, "fiscal year 1995" refers to the period from July 1, 1994, to June 30, 1995.

aware of the surplus, FRANK BALLANCE submitted a "special events fund request" for the appropriation of \$75,000 to the Warren Family Institute for use in the planning and implementation of a heritage festival.

8. FRANK BALLANCE's "special events fund request" was approved and, on June 30, 1995, the North Carolina State Controller issued a \$75,000 check to the Warren Family Institute, a non-profit entity operating in Warrenton, North Carolina. On July 17, 1995, FRANK BALLANCE wrote a letter to the Warren Family Institute directing it to forward \$58,500 to the Hyman Foundation and to retain \$16,500 for its own use. On July 26, 1995, the Warren Family Institute provided the Hyman Foundation with a check in the sum of \$58,500. Although the Form 990 filed for the Hyman Foundation 1995 tax year reflects the Hyman Foundation's receipt of a contribution of \$58,500, it refers to the contributor as the North Carolina Department of Cultural Resources, and omits any mention of the Warren Family Institute.

9. Beginning in 1996, the JPS Subcommittee changed the mechanism used to appropriate funds to the Hyman Foundation. Under the new approach, the North Carolina Department of Correction ("NC-DOC") was used as the disbursing agency for the annual appropriation to the Hyman Foundation. According to this arrangement, the Hyman Foundation was required to submit a

quarterly "Request for Payment of Appropriation Form" to the NC-DOC prior to receiving its quarterly disbursements.

10. The following is a breakdown of the amount of state funding received by the Hyman Foundation during the period from 1994 through 2003:

<u>Fiscal Year Ending</u>	<u>Amount</u>
June 30, 1994	\$ 167,000
June 30, 1995	100,000 58,500 ²
June 30, 1996	225,000
June 30, 1997	125,000 140,000 ³
June 30, 1998	343,750
June 30, 1999	312,500
June 30, 2000	250,000
June 30, 2001	250,000
June 30, 2002	225,000
June 30, 2003	101,250 ⁴
Total	\$2,298,000

²The \$58,500 was received from the Warren Family Institute, which had received it from the State of North Carolina.

³In addition to the funds received during this period from the NC-DOC, on January 14, 1997, the Hyman Foundation received an appropriation of \$140,000 from the North Carolina Department of Human Resources.

⁴Although the JPS Subcommittee authorized the disbursal of \$202,500, the portion of the appropriation due for the third and fourth quarters of the fiscal year ending June 30, 2003, were withheld by the NC-DOC due to the audit by the North Carolina State Auditor.

11. Notwithstanding the Hyman Foundation's obligation to file a Form 990 for each of the years in which it received state funding, the Hyman Foundation failed to file any federal tax returns until July 20, 2003, when it filed untimely returns covering tax years 1994 through 1997.⁵ Although the Hyman Foundation's accountant completed the preparation of its 1998-2002 tax years by December 11, 2002, none of these returns have been filed.

12. According to Section 143-6.1(a) of the North Carolina General Statutes, every organization receiving funds appropriated by the North Carolina General Assembly must use such funds "only for purposes for which they were appropriated by the General Assembly." Furthermore, recipients of such funds are required to file, within six months of the end of the recipient's fiscal year, "a sworn accounting of receipts and expenditures of the State funds." N.C. Gen. Stat. §143-6.1(c). If the disbursements to a recipient during any one-year period exceed \$300,000, the recipient must file an audited financial statement. N.C. Gen. Stat. §143-6-1(d). This statute also provides the North Carolina State Auditor with authority to audit the records of such a recipient. N.C. Gen. Stat. §143-6-1(f).

⁵The Hyman Foundation's tax returns are filed on a calendar year basis.

13. In addition to the financial reporting requirements imposed by state law, recipients of state funding must comply with conflict-of-interest standards. North Carolina law requires that a non-profit organization receiving state funding have conflict-of-interest policies preventing members of its governing body from benefitting, directly or indirectly, from disbursements by the non-profit organization. 2001 N.C. Sess. Laws 424. North Carolina law further requires such organizations to establish procedures aimed at avoiding even the appearance of impropriety. 2001 N.C. Sess. Laws 424. Thus, these laws make clear that prohibitions regarding self-dealing encompass both actual conflicts and transactions resulting in the appearance of impropriety.

14. The JPS Subcommittee made pass-through appropriations to the Hyman Foundation and three other non-profit organizations during the period from 1996 through 2003. As was the case with the Hyman Foundation, the JPS Subcommittee assigned NC-DOC to handle the disbursement of state funding to the three other non-profit organizations. The appropriations bills authorizing such funding for the other three non-profits included a requirement that each organization make a presentation to the JPS Subcommittee on an annual basis. However, the appropriations bills authorizing funding to the Hyman Foundation from the 1996 through 2000 sessions excluded such a reporting requirement.

15. In late 2000, a newly hired Fiscal Analyst for the Fiscal Research Division of the General Assembly raised questions regarding the Hyman Foundation's failure to file a sworn annual financial accounting and the fact that the Hyman Foundation was not required to make an annual presentation to the JPS Subcommittee. In response to such inquiries, the Fiscal Analyst was informed that the Hyman Foundation was afforded special treatment because it was FRANK BALLANCE's "pet project."

16. As a result of the Fiscal Analyst's inquiries, the Hyman Foundation, along with the other non-profit organizations receiving pass-through funds, was requested to appear before the JPS Subcommittee at 9:30 a.m. on March 7, 2001, in order to present a budgetary report.

17. On March 7, 2001, Eddie Lawrence, the Director of the Hyman Foundation, appeared at the JPS Subcommittee to make the budget presentation. Due to a misunderstanding, Director Lawrence was not prepared to present a written report. However, during the lunch hour, Director Lawrence used FRANK BALLANCE's legislative office to prepare a written report. The written report included a list of budget expenditures for the Hyman Foundation's fiscal year ending June 30, 2000, and an operating budget projecting expenditures for the Hyman Foundation's fiscal year ending June 30, 2001.

18. The information pertaining to the Hyman Foundation's fiscal year ending June 30, 2000, included the following disclosures: (a) revenue of \$250,000 from NC-DOC and \$720 in interest income; (b) a rental expense of \$1,800; and (c) "Administrative Fees" of \$25,000.

19. The information pertaining to the Hyman Foundation's fiscal year ending June 30, 2001, included the following disclosures: (a) revenue of \$250,000 from NC-DOC and no interest income; and (b) a rental expense of \$28,000. The report made no mention of the fact that FRANK BALLANCE had used Hyman Foundation funds to pay Greenwood Baptist Church the sum of \$35,000 on August 25, 2000. Likewise, the report made no mention of certificate of deposits in excess of \$143,000 held by the Hyman Foundation. Had the Hyman Foundation's surplus of funds been disclosed to the JPS Subcommittee, the amount of future appropriations might have been reduced significantly.

20. During the Hyman Foundation's budget presentation on March 7, 2001, several members of the JPS Subcommittee posed questions regarding the Hyman Foundation's budget. In response to an inquiry regarding the portion of the report disclosing a \$28,000 rent payment from the Hyman Foundation to Greenwood Baptist Church during the fiscal year ending June 30, 2001, FRANK BALLANCE, while sitting in his capacity as Vice-Chairman of the JPS Subcommittee, responded that the rental payment was for back rent owed to

Greenwood Baptist Church. During his response, FRANK BALLANCE failed to inform the JPS Subcommittee that the actual amount of the rental payment made to Greenwood Baptist Church was \$35,000, rather than \$28,000.

III. Hyman Foundation's Financial Operations.

21. The Hyman Foundation operated from the time it received its initial funding in late 1993 until 2004. From both an organizational and practical standpoint, FRANK BALLANCE was in complete control of the Hyman Foundation during this period. In his role as Chairman of the Hyman Foundation, FRANK BALLANCE split the Hyman Foundation's operations into two divisions.

22. The first division consisted of a substance abuse counseling program operated out of Greenwood Baptist Church in Warrenton, North Carolina. In addition to its operations at Greenwood Baptist Church, the Hyman Foundation eventually opened a small treatment program in Halifax County. FRANK BALLANCE, who was Chairman of the Board of Deacons at Greenwood Baptist Church during the entire period in question, created the position of director of the Hyman Foundation. The director was hired by FRANK BALLANCE for the purpose of attending to the day-to-day operations of the substance abuse program. The Hyman Foundation had four different directors during the period from 1994 through approximately 1999. Each director was hired by FRANK BALLANCE and served in a position subordinate to FRANK BALLANCE. In approximately 1999, FRANK

BALLANCE chose to let the third director's contract lapse and hired the Pastor of Greenwood Baptist Church, Eddie Lawrence ("Lawrence"), as the fourth director of the Hyman Foundation. Lawrence served as the director of the Hyman Foundation during the remainder of the Hyman Foundation's existence.

23. The Hyman Foundation operated out of one room on the first floor of the Greenwood Baptist Church. During the first half of its existence, the Hyman Foundation also maintained some space in the basement of Greenwood Baptist Church. During the last half of its existence, the Hyman Foundation gave up control of the basement area, but continued to operate in its one-room office on the first floor of the Greenwood Baptist Church. During its existence, the Hyman Foundation had access to the Greenwood Baptist Church's common areas (such as conference rooms and the basement) when such rooms were not otherwise in use by the Church.

24. Pursuant to FRANK BALLANCE's direction, the Hyman Foundation chose to purchase in 1985 approximately ten acres of land located adjacent to Greenwood Baptist Church. A picnic pavilion and basketball court were constructed on the land and available for the use of the Greenwood Baptist Church. The Hyman Foundation did not charge Greenwood Baptist Church rent for use of this property.

25. In addition to the substance abuse division, FRANK BALLANCE created a division of the Hyman Foundation responsible for

financial operations. FRANK BALLANCE retained complete control over the Hyman Foundation's financial operations, moving all of its financial records to his law office located at 113 West Market Street, Warrenton, North Carolina ("FRANK BALLANCE's Law Office").

26. At the time that the Hyman Foundation received its initial state funding, FRANK BALLANCE created a Hyman Foundation operations checking account at Branch Banking and Trust Company ("BB&T"). FRANK BALLANCE and the head legal secretary from his law firm ("Legal Secretary") were listed as the sole persons having signatory authority over the BB&T checking account.

27. In August of 1995, FRANK BALLANCE's son, GAREY M. BALLANCE ("GAREY BALLANCE"), defendant herein, who had graduated from law school in May of 1995, was employed as an associate attorney at FRANK BALLANCE's law firm. GAREY BALLANCE began working for his father at a starting salary of approximately \$18,750 per year. By December of 2000, when he left his father's law firm, GAREY BALLANCE's salary had increased to \$39,000.

28. On July 31, 1995, FRANK BALLANCE established a banking relationship between the Hyman Foundation and First Citizens Bank ("First Citizens"). FRANK BALLANCE and the Legal Secretary were listed as the sole persons having signatory authority over the Hyman Foundation's First Citizens checking and savings accounts. The Hyman Foundation's checkbooks were maintained at FRANK BALLANCE's Law Office and the bank statements were mailed to a post

office box accessed by FRANK BALLANCE's Legal Secretary. Upon retrieving the monthly statements and other mail pertaining to such accounts, FRANK BALLANCE's Legal Secretary delivered them to FRANK BALLANCE's Law Office.

29. FRANK BALLANCE's Legal Secretary was charged with the responsibility of paying the Hyman Foundation's routine monthly bills out of the Hyman Foundation's BB&T checking account. All other payments out of the Hyman Foundation's bank accounts were made either directly by FRANK BALLANCE or by the Legal Secretary pursuant to FRANK BALLANCE's specific instructions.

30. Throughout each year, but most commonly during the Thanksgiving and Christmas seasons, FRANK BALLANCE made it a point to make what he referred to as "mini-grants" to various churches and other organizations. One of the largest recipients of FRANK BALLANCE's mini-grants was NEBO Baptist Church and its affiliates ("NEBO"). The following is a summary of the mini-grants made by FRANK BALLANCE to NEBO:

<u>Date</u>	<u>Amount</u>
1994-95	\$ 8,500
10/25/96	53,000
01/20/98	40,000
12/12/98	55,000
01/07/00	30,000
10/02/00	4,500
07/31/02	1,000
10/04/02	1,500
12/31/02	25,000
Total:	\$218,500

31. In addition to the amounts given to NEBO from the Hyman Foundation, FRANK BALLANCE also secured special appropriations to NEBO of \$100,000 for the fiscal year ending 2001, and \$75,000 for the fiscal year ending 2002. Because FRANK BALLANCE arranged for such appropriations to be made as a line item charged against the NC-DOC's General Fund, there was no specific reference to NEBO in the NC-DOC's budget. Instead, the entity receiving the funds is described generally as a "community program in Northhampton County that works with substance abuse offenders." Despite this vague provision, the NC-DOC was informed that the funds were intended solely for NEBO.

32. On December 31, 2002, FRANK BALLANCE executed a Hyman Foundation check for \$25,000 payable to "NEBO ROADS Program." In the memorandum portion of the check, FRANK BALLANCE wrote "mini grant/loan." FRANK BALLANCE then informed the Pastor of NEBO ("NEBO Pastor"), who was about to succeed FRANK BALLANCE as a member of the North Carolina Senate, that if the NEBO Pastor were able to get a seat on the JPS Subcommittee and write his own continuing appropriation for NEBO, the \$25,000 payment would be considered a loan to be repaid by NEBO. FRANK BALLANCE then informed the NEBO Pastor that if a continuing appropriation was not provided to NEBO, NEBO could consider the \$25,000 payment as a grant from the Hyman Foundation.

33. The NEBO Pastor was able to get appointed to a seat on the JPS Subcommittee, but was unable to secure an appropriation to NEBO due in large part to the negative publicity surrounding the North Carolina State Auditor's audit of the Hyman Foundation.

34. On January 8, 1997, a document entitled "'Conflict of Interest' Policy for Non-State Agencies Receiving State Aid" ("Conflict of Interest Policy") was created in connection with the Hyman Foundation. The Conflict of Interest Policy contained a forged signature of the third director of the Hyman Foundation, but was notarized by FRANK BALLANCE's Legal Secretary.⁶ Included among the rules set forth in the Hyman Foundation's Conflict of Interest Policy was the following:

No officer, employee, or agent of the Agency [Hyman Foundation] shall participate in the selection, award, or administration of a purchase or contract with a vendor where, to his knowledge, any of the following has a financial interest in that purchase or contract:

- (1) The officer, employee, or agent;
- (2) Any member of their immediate family.

⁶Under North Carolina law, a proper notarial acknowledgment requires that the signer (1) physically appear before the notary, (2) be personally known to the notary or have his or her identity proven on the basis of satisfactory evidence, and (3) sign the document in the presence of the notary or state in the notary's presence that he or she has voluntarily signed the document.
N.C.G.S. § 10A-3.

The Conflict of Interest Policy also required such person to report any potential conflict to the Hyman Foundation's board and for the board to vote on the matter without the involvement of the conflicted party.

35. The Hyman Foundation was able to stockpile a large amount of money over the course of its existence. From the end of 1998, through the end of 2002, the Hyman Foundation routinely held between \$300,000 and \$350,000 in readily available funds. Although the Hyman Foundation was entitled to receive quarterly disbursements of its annual appropriation, FRANK BALLANCE and his Legal Secretary, due in part to the large surplus of readily available funds, would often forget to make quarterly requests for disbursements. As a result, the Hyman Foundation would sometimes wait for six months to elapse and then file two disbursement requests at once. Likewise, on at least one occasion the Hyman Foundation failed to submit a disbursement request prior to the end of the fiscal year and was in jeopardy of having the unclaimed funds revert to the state. In order to avoid this risk, FRANK BALLANCE was able to secure the passage of a special provision preventing the reversion of such funds to the state.

36. The official disbursement request form ("Disbursement Request") was entitled "Request for Payment of Appropriations from North Carolina General Fund." Each Disbursement Request listed the amount of "grant amount" due to the Hyman Foundation and stated the

purpose of the grant as follows: "Continuation of present substance abuse education, prevention and rehabilitation services for indigent population of surrounding Halifax, Warren, and Hertford counties." The Disbursement Request also contained an area to list the recipient's contact person and required the notarized signature of the "individual making the request."

37. During the period from July 1, 1996, through March of 2003, FRANK BALLANCE and the Legal Secretary proceeded as follows in preparing and submitting the Disbursement Requests: (a) the Legal Secretary would first complete the portion of the form requiring contact information by listing the Director of the Hyman Foundation; (b) the Legal Secretary would then type a transmittal letter for the signature of the director of the Hyman Foundation transmitting the Request for Disbursement to the NC-DOC; (c) the transmittal letter would contain the following notation under the space provided for the director's signature: "cc: Hon. Frank W. Ballance, Jr., Bd. of Directors, JAHSAP"; (d) the Legal Secretary, after completing the Disbursement Request, would carry the package from her desk in the reception area of FRANK BALLANCE's Law Office into FRANK BALLANCE's personal office and leave the package for FRANK BALLANCE's review; (e) FRANK BALLANCE would either personally forge the signature of the Director of the Hyman Foundation or get someone else to forge the signature; (f) FRANK BALLANCE would then

return to the Legal Secretary and instruct her⁷ to notarize the forged signature; (g) the Legal Secretary would then mail or, in a few cases, telefax the package to the NC-DOC; and (h) the Legal Secretary or another law firm employee would retrieve the checks resulting from the Disbursement Requests, which were mailed to Post Office Box 22, Warrenton, North Carolina, and deposit them in one of the various bank accounts maintained by the Hyman Foundation.

38. The following table provides information pertaining to the Disbursement Requests covering disbursements made to the Hyman Foundation for the first and second quarters of the fiscal year ending June 30, 2000, through the fiscal year ending June 30, 2003:

Approximate Date of Request	Period Covered	Authenticity of Signature	Disbursement Status
1/7/00	1st and 2nd quarters of fiscal year 2000	FRANK BALLANCE forged Director Lawrence's signature on a Disbursement Request and then instructed his Legal Secretary to notarize the forged signature.	\$125,000 check mailed on 1/11/00 by NC-DOC to Warrenton post office box and picked up by an employee of FRANK BALLANCE's Law Office.

⁷If the Legal Secretary was unavailable, FRANK BALLANCE would instruct one of his other employees to notarize the forged signature. Following November 1, 2000, when the Legal Secretary's notary commission expired, the Legal Secretary would arrange for another employee to notarize the forged signature.

5/22/00	3rd and 4th quarters of fiscal year 2000	FRANK BALLANCE forged Director Lawrence's signature on a transmittal letter and a Disbursement Request and then instructed an employee to notarize the forged signature on the Disbursement Request.	\$125,000 check mailed on 6/23/00 by NC-DOC to Warrenton post office box and picked up by an employee of FRANK BALLANCE's Law Office.
10/31/00	1st and 2nd quarters of fiscal year 2001	FRANK BALLANCE forged Director Lawrence's signature on a Disbursement Request and then instructed his Legal Secretary to notarize the forged signature on the Disbursement Request.	\$125,000 check mailed on 11/9/00 by NC-DOC to Warrenton post office box and picked up by an employee of FRANK BALLANCE's Law Office.
3/30/01	3rd quarter of fiscal year 2001	FRANK BALLANCE forged Director Lawrence's signature on a transmittal letter and a Disbursement Request and then instructed an employee to notarize the forged signature on the Disbursement Request.	\$62,500 check mailed on 5/1/01 by NC-DOC to Warrenton post office box and picked up by an employee of FRANK BALLANCE's Law Office.
4/20/01 and 6/21/01	4th quarter of fiscal year 2001	FRANK BALLANCE forged Director Lawrence's signature on two transmittal letters and a Disbursement Request and then instructed an employee to notarize the forged signature on the Disbursement Request.	\$62,500 check mailed on 6/22/01 by NC-DOC to Warrenton post office box and picked up by an employee of FRANK BALLANCE's Law Office.
10/12/01 and 11/6/01	1st and 2nd quarters of fiscal year 2002	FRANK BALLANCE forged Director Lawrence's signature on two transmittal letters and two Disbursement Requests and then instructed an employee to notarize the forged signature on the Disbursement Requests.	\$112,500 check mailed on 11/8/01 by NC-DOC to Warrenton post office box and picked up by an employee of FRANK BALLANCE's Law Office.

4/24/02	3rd quarter of fiscal year 2002	FRANK BALLANCE arranged for a law firm employee to forge the signature of Director Lawrence on a transmittal letter and a Disbursement Request and then to notarize the forged signature on the Disbursement Request.	\$56,250 check mailed on 5/1/02 by NC-DOC to Warrenton post office box and picked up by an employee of FRANK BALLANCE's Law Office.
5/28/02	4th quarter of fiscal year 2002	FRANK BALLANCE arranged for a law firm employee to forge the signature of Director Lawrence on a transmittal letter and a Disbursement Request and then to notarize the forged signature on the Disbursement Request.	\$56,250 check mailed on 6/6/02 by NC-DOC to Warrenton post office box and picked up by an employee of FRANK BALLANCE's Law Office.
10/21/02	1st and 2nd quarters of fiscal year 2003	FRANK BALLANCE arranged for a law firm employee to forge the signature of Director Lawrence on a transmittal letter and a Disbursement Request and then to notarize the forged signature on the Disbursement Request.	\$101,250 check mailed on 11/18/02 by NC-DOC to Warrenton post office box and picked up by an employee of FRANK BALLANCE's Law Office.
3/25/03	3rd and 4th quarters of fiscal year 2003	FRANK BALLANCE arranged for a law firm employee to forge the signature of Director Lawrence on a transmittal letter and a Disbursement Request and then to notarize the forged signature on the Disbursement Request.	Request denied by NC-DOC.

IV. FRANK BALLANCE's Diversion To His Personal Benefit of Funds the Hyman Foundation Received From the State.

39. During the period from late 1998 through January of 2003, FRANK BALLANCE was serving in the North Carolina Senate and also working as a practicing attorney. FRANK BALLANCE operated his law firm in a commercial building that he owned in downtown Warrenton. During this period, FRANK BALLANCE was Chairman of the Hyman Foundation and had complete decision-making authority over the manner in which Hyman Foundation funds would be spent.

40. During this period, FRANK BALLANCE diverted funds from the Hyman Foundation for the payment of attorney's fees to his law firm, the purchase of a luxury car for his son (and law firm employee) GAREY BALLANCE, the payment to his daughter for computer contracting services never actually performed, and the disbursement of funds to be controlled by his mother.

A. Diversion of Hyman Foundation Funds In Order to Pay Legal Fees to FRANK BALLANCE's Law Firm.

41. On or about December 20, 1998, a young man aged 17 years was arrested in Vance County, North Carolina ("State Defendant"), and charged with larceny, reckless driving, and resisting arrest. The mother of the State Defendant contacted FRANK BALLANCE regarding legal representation. The initial fee due in order to retain FRANK BALLANCE's firm was \$1,000. The State Defendant's mother borrowed from her sister and other family members in order

to obtain \$1,000 in cash. The next morning she was met by GAREY BALLANCE, who had traveled to Vance County to handle the bond hearing, on the courthouse steps. At this point, the State Defendant's mother paid GAREY BALLANCE \$1,000 in cash to begin the representation.

42. After a short time, the court ordered that the defendant be tried as an adult in Superior Court. During the pretrial phase of the case, FRANK BALLANCE convinced the District Attorney to allow the State Defendant to take a polygraph in order to determine his guilt or innocence. FRANK BALLANCE confirmed this agreement by letter dated September 2, 1999.

43. On November 18, 1999, after a slight delay in order to allow authorities to consider the results of the polygraph, the District Attorney dismissed the charges against the State Defendant. After obtaining the State Defendant's release, FRANK BALLANCE informed the mother of the State Defendant that she would need to pay an additional \$5,000 in attorney fees, an amount that she was unable to pay. The State Defendant's mother then contacted the Vance County Chapter of the NAACP ("Vance County NAACP") to solicit possible assistance in paying FRANK BALLANCE's legal fees.

44. In light of the State Defendant's mother's difficulty in paying FRANK BALLANCE's legal fees, FRANK BALLANCE arranged for payment of the legal fees to be made using Hyman Foundation funds. Rather than directly pay his law firm with a check from the Hyman

Foundation, FRANK BALLANCE funneled Hyman Foundation funds through the Vance County NAACP, as described in paragraphs 45 through 49 below.

45. On November 5, 1999, FRANK BALLANCE wrote a check, in the sum of \$25,000, payable to "Vance Co. Branch NAACP." The check, which was mailed to Vance County NAACP, was payable on the Hyman Foundation's First Citizens checking account. In the memorandum portion of the \$25,000 check, FRANK BALLANCE wrote "grant for substance abuse/police violence." Vance County NAACP did not seek these funds, and was not told that the money had come from State appropriations.

46. On November 8, 1999, three days after writing the \$25,000 check to Vance County NAACP, FRANK BALLANCE transferred \$40,000 from the Hyman Foundation's First Citizens savings account to the Hyman Foundation's First Citizens checking account.

47. The money received from the Hyman Foundation was a substantial windfall in that the Vance County NAACP usually had little, if any, available funds. In order to keep track of the infusion of funds, the Vance County NAACP opened a new BB&T checking account entitled "Special Projects."

48. The Hyman Foundation's 1999 tax return describes the payment as a grant to "Vance NAACP Youth Justice Project" which "provided assistance to schools and organizations with cultural, educational, recreational and youth leadership development programs."

49. In response to a bill from FRANK BALLANCE for work done in the State Defendant's case, the Vance County NAACP wrote a check, on December 28, 1999, for \$15,500, payable to FRANK BALLANCE's Law Office. This check, which was mailed to FRANK BALLANCE's Law Office, was payable on the Vance County NAACP's Special Projects account and personally benefitted FRANK BALLANCE.

B. Diversion of Hyman Foundation Funds in Order to Assist GAREY BALLANCE in Purchasing A Luxury Car.

50. In approximately 1995, Greenwood Baptist Church created an auxiliary church group named Young Black Men of Greenwood ("YBMG"). This group was formed by Pastor Lawrence in order to provide an opportunity for young members of Greenwood Baptist Church to attend sporting events, play in a basketball league, visit amusement parks, and attend cultural events. Greenwood Baptist Church's groups (such as the Choir, Board of Deacons, Board of Trustees, Deaconettes, Youth Group, Sunday School Classes, and YBMG) were designed to be voluntary in nature. As such, it was intended by the Pastor of Greenwood Baptist Church that such groups would be operated by volunteers, funded with church funds, and not have employees. GAREY BALLANCE became involved in the YBMG from its inception and volunteered his time to organize trips and to organize, and play on, the church basketball team. Although initially intended to be comprised of young adult men, nearly all

of its members were boys under the age of 18 years. Consequently, GAREY BALLANCE, as the lone adult, became the leader of the group.

51. On October 16, 1996, GAREY BALLANCE, without knowledge of the church, opened a bank account at BB&T under the name "Young Black Men of Greenwood c/o Garey M. Ballance." The monthly statements from the bank account were mailed to the post office used by FRANK BALLANCE's Law Office and picked up by the Legal Secretary for delivery to GAREY BALLANCE's desk at the law office.

52. On December 18, 1998, FRANK BALLANCE wrote a Hyman Foundation check, in the sum of \$5,000, made payable to YBMG. The check was provided to GAREY BALLANCE and deposited into the BB&T checking account that GAREY BALLANCE had opened for YBMG.

53. During the period from 1998, through February of 2000, GAREY BALLANCE's financial situation was precarious. By February of 2000, he was encountering severe cash flow problems. Although GAREY BALLANCE's annual salary working for his father had increased to approximately \$39,000, the following factors taken together were causing him cash flow difficulties: (a) he was having to deal with paying a mortgage on his first house; (b) he had become delinquent in the payment of a timeshare unit in Florida; (c) he was paying rent on an apartment in Hampton, Virginia; and (d) his credit card bills were getting so high that he would soon begin to obtain loans (eventually totaling \$27,000) from his father's law firm in order to pay down his credit cards.

54. Notwithstanding his cash flow problems, in February of 2000, GAREY BALLANCE decided to purchase a 2000 Lincoln Navigator. After learning that his son had decided to purchase a new luxury car, FRANK BALLANCE suggested the idea of providing GAREY BALLANCE with back "salary" relating to his involvement in YBMG. FRANK BALLANCE then suggested that GAREY BALLANCE prepare a written request for funds.

55. By letter dated February 25, 2000, GAREY BALLANCE requested a mini-grant from the Hyman Foundation for the purpose of assisting YBMG in achieving the following goals:

. . . The group was established in the wake of the Million Man March in October, 1995 and its purpose is to give young men positive outlets of expression, recreation, and learning to help them avoid the pitfalls of drugs, crime, and underachievement. Although the group is based at Greenwood Church, its members represent all the surrounding communities.

The organization achieves its goals by sponsoring educational trips to college campuses and museums, sponsoring recreational activities, such as our annual church basketball league and trips to view college and professional sports games. We have also taken the youth to places such as Kings Dominion and Emerald Point Water Park. Our goal is to get the children together for activities that are fun, educational, and positive. By teaching the young men to appreciate the places that they can go if they dream and achieve, we are seeking to boost their self esteem and keep them away from drugs, crime, and other negative aspects of life.

56. After preparing the letter on his law office computer, GAREY BALLANCE walked from his office into FRANK BALLANCE's personal

office and handed the letter to his father. On February 29, 2000, FRANK BALLANCE wrote two Hyman Foundation checks, each in the sum of \$10,000, payable to YBMG. FRANK BALLANCE handed the checks to GAREY BALLANCE. In the memorandum portion of each check, FRANK BALLANCE wrote "Mini Grant - Youth Development." One of the \$10,000 checks was written on the Hyman Foundation's BB&T checking account, and the other \$10,000 check was written on the Hyman Foundation's First Citizens checking account. On March 1, 2000, FRANK BALLANCE, using a check written on the Hyman Foundation's BB&T checking account, transferred \$25,000 into the Hyman Foundation's First Citizens checking account in order to cover the \$10,000 First Citizens check to YBMG. On the memorandum portion of the \$25,000 check, FRANK BALLANCE wrote "Administration." This transfer of funds was represented as "Administrative Fees" on the report submitted by the Hyman Foundation to the JPS Subcommittee on March 7, 2001.

57. On March 1, 2000, GAREY BALLANCE made a counter deposit of \$20,000 (comprised of the two \$10,000 Hyman Foundation checks) into YBMG's BB&T account. This deposit represented approximately 78 percent of all the funds ever deposited into YBMG's checking account. On this same date, GAREY BALLANCE wrote a check on YBMG's BB&T bank account for \$19,500 made payable to GAREY BALLANCE. GAREY BALLANCE then immediately deposited the \$19,500 check into his personal bank account at BB&T. Finally, on this same date, GAREY

BALLANCE wrote a check on his personal bank account at BB&T in the sum of \$19,233.96 payable to Capital Ford.

58. On March 2, 2000, GAREY BALLANCE purchased a new 2000 Lincoln Navigator from Capital Ford in Raleigh, North Carolina, for the sum of \$49,233.96. GAREY BALLANCE made a down payment of \$19,233.96, using a check written on his personal BB&T checking account, and financed the remaining \$30,000. As noted above, the \$19,233.96 down payment check was covered using Hyman Foundation funds funneled through YBMG's checking account and into GAREY BALLANCE's personal checking account. Soon after obtaining the new car, GAREY BALLANCE had television monitors installed in each of the car's four head rests.

59. On March 15, 2000, GAREY BALLANCE wrote a check for \$1,000 on YBMG's BB&T checking account that was payable to himself. GAREY BALLANCE used the \$1,000 to pay personal expenses.

60. Beginning as early as October of 1999, GAREY BALLANCE began providing consulting services to Mike Easley's 2000 campaign for Governor of North Carolina. GAREY BALLANCE was paid \$1,500 a month for such services, which involved some travel. GAREY BALLANCE finished his consulting work at the time of the Democratic primary in May of 2000.

61. On December 22, 2000, the Governor of North Carolina announced that GAREY BALLANCE would be appointed as District Court Judge for Judicial District 9A. Among other things, the news

release noted that GAREY BALLANCE "is a volunteer for the One-on-One Mentor Program and he is chairman of the Young Men of Greenwood." GAREY BALLANCE was sworn in as District Court Judge on January 6, 2001. At this point, GAREY BALLANCE left his father's law practice, but continued to receive periodic loans from his father's law firm throughout 2001.

62. On February 20, 2001, GAREY BALLANCE initiated contact with a certified public accountant ("CPA") with regard to the preparation of his 2000 federal income tax return, which was due April 16, 2001. In a telefax from his father's law firm, GAREY BALLANCE provided the CPA with his mortgage interest statement and his W-2 wage statement from his father's law firm. GAREY BALLANCE further informed the CPA that he was in the process of compiling additional information and would contact the CPA the following week. The letter made no reference to delinquent tax returns for years prior to 2000. The CPA did not hear from GAREY BALLANCE again until July 20, 2001.

63. On May 18, 2001, the Internal Revenue Service ("IRS") mailed notices to GAREY BALLANCE's last address of record, the residence of his father, providing notice of GAREY BALLANCE's failure to file his 1998 and 1999 federal income tax returns and requesting that some action be taken by June 22, 2001.

64. On July 20, 2001, the CPA received a letter from GAREY BALLANCE providing copies of the IRS notices pertaining to his

delinquent 1998 and 1999 tax returns, copies of his W-2 wage statements for such years, and copies of records relating to his receipt of \$7,500 for his work for the Easley Campaign in 2000. As to the IRS notice, GAREY BALLANCE wrote as follows:

I have also enclosed a letter from the IRS which I discovered this week which was sent to my parent's house regarding non-payment of my 1998 taxes. Seeing in the paper what happened to [other delinquent taxpayers] in Raleigh has me concerned. I didn't realize late payment could be confused with willful failure to file.

GAREY BALLANCE then wrote that he believed that he had filed extension requests with the IRS for 1998, 1999, and 2000. IRS records show that GAREY BALLANCE was granted an extension for each tax return making such return due no later than August 15th following the end of each tax year.

65. On July 23, 2001, the IRS mailed an additional notice of failure to file as to GAREY BALLANCE's 1999 tax return. This notice was mailed to FRANK BALLANCE's home. GAREY BALLANCE forwarded a copy of this notice to his CPA.

66. Because GAREY BALLANCE had represented that he had obtained an extension for his returns, the CPA worked diligently to have the returns prepared prior to August 15, 2001. Although the extensions for the 1998 and 1999 tax returns had lapsed, the due date for GAREY BALLANCE's 2000 tax return was set to expire on August 15, 2001.

67. In preparing GAREY BALLANCE's 2000 return, the CPA inquired as to whether GAREY BALLANCE had any income other than his law firm salary and his salary from working on the Easley Campaign. GAREY BALLANCE did not disclose any additional income received in the year 2000.

68. On August 4, 2001, GAREY BALLANCE met with the CPA and received completed copies of his 1998, 1999, and 2000 federal income tax returns, along with envelopes addressed to the IRS. The CPA provided GAREY BALLANCE with a final bill for the preparation of the returns. According to the CPA, it was understood that GAREY BALLANCE was to apply postage to the envelopes and mail the tax returns to the IRS. GAREY BALLANCE filed his 1998 and 1999 tax returns, but failed to file his 2000 tax return.

69. Immediately prior to the April 15, 2003, filing deadline for 2002 federal income tax returns, GAREY BALLANCE contacted the CPA and requested that an extension be obtained for filing of GAREY BALLANCE's 2002 tax return. GAREY BALLANCE also noted that he was delinquent in filing his 2001 tax return. GAREY BALLANCE made no mention of his choice to withhold filing of the 2000 tax return that had been completed by the CPA on August 4, 2001.

70. The CPA prepared GAREY BALLANCE's 2001 and 2002 tax returns and requested that GAREY BALLANCE meet at the CPA's offices on May 16, 2003, to sign the returns. On May 16, 2003, GAREY BALLANCE arrived at the CPA's office and executed his 2001 and 2002

tax returns. At this meeting, GAREY BALLANCE informed the CPA that the 2000 return had never been filed. The CPA was shocked and urged GAREY BALLANCE to immediately file the 2000 return. Although GAREY BALLANCE stated that he felt he might be entitled to reduce the \$7,500 in income from the Easley Campaign due to unpaid reimbursable expenses, GAREY BALLANCE made no mention of the income he realized from the YBMG account that he controlled. In order to ensure that GAREY BALLANCE actually filed the prepared returns, the CPA required GAREY BALLANCE to execute the newly-prepared returns and to write out a check payable to the IRS in the CPA's presence. GAREY BALLANCE's 2000, 2001, and 2002 federal income tax returns were received by the IRS in June of 2003.

71. By April of 2003, North Carolina State Auditor Ralph Campbell, Jr. ("State Auditor") had begun an audit of the Hyman Foundation. As part of the audit, the State Auditor's office obtained financial records relating to the Hyman Foundation and also interviewed various parties relating to the operations of the Hyman Foundation. In discussions with his father, GAREY BALLANCE was told that FRANK BALLANCE was concerned that the \$20,000 payment from the Hyman Foundation to YBMG might become an issue in the audit. The State Auditor's report was scheduled to become public in late October of 2003.

72. In mid-September of 2003, approximately one month prior to the anticipated release of the State Auditor's report, GAREY

BALLANCE contacted the CPA by telephone and stated that he had been going through some papers and had discovered some records which reminded him that he had received \$20,000 of income in 2000 in addition to the \$48,603 actually reported on his return.

73. In explaining the failure to provide this information to his CPA, GAREY BALLANCE stated first that he had forgotten about receiving the income and then stated that he assumed since the income related to work covering a five-year period, it did not need to be fully reported in one year. However, the CPA noted that the income had not been reported in GAREY BALLANCE's earlier returns. In response to the CPA's inquiry about whether GAREY BALLANCE had received a Form 1099 from YBMG, GAREY BALLANCE stated that "they did not send me a 1099." At no point did GAREY BALLANCE inform the accountant that he was in charge of the YBMG or that he had written the checks to himself.

74. On October 1, 2003, the CPA and GAREY BALLANCE executed amended state and federal income tax returns⁸ covering GAREY BALLANCE's 2000 tax year. The amended returns were then filed with the North Carolina Department of Revenue and the IRS. Attached to each amended return, GAREY BALLANCE prepared a written statement

⁸In addition to including \$20,000 in additional income, GAREY BALLANCE requested the CPA to reduce the amount of income previously reported as received from the Easley Campaign in order to reflect unpaid reimbursable expenses. As support for such a reduction, GAREY BALLANCE created a summary of trips he recalled taking on behalf of the Easley Campaign and then determined the mileage relating to such trips. As a result of this reduction, the net increase in income resulting from the amended return was \$18,418.

explaining the reason for his failure to initially include the income on his return. A draft of such attachment prepared by GAREY BALLANCE and found in his CPA's files, contained an alternative explanation. The following is a comparison of the two explanations:

<u>Explanation on amended returns filed with the IRS:</u>	<u>Explanation in draft found in CPA's files:</u>
This payment was inadvertently not included in my 2000 tax return, because I did not realize that is was not already included in my tax return for the years that I actually performed the services.	This payment was inadvertently not included in my 2000 tax return, because I did not receive a 1099 form from the organization at the end of 2000 and I forgot to include it in my tax return for that year.

C. Diversion of Hyman Foundation Funds to FRANK BALLANCE's Daughter for Services Never Performed.

75. In early 2001, FRANK BALLANCE's daughter entered into discussions pertaining to the creation of a computer learning lab within Greenwood Baptist Church. According to the discussions, the goal was to provide young members of the church and surrounding community with access to computers and for FRANK BALLANCE's daughter to teach a basic computer class.

76. On February 3, 2001, the Hyman Foundation entered into a contract under which FRANK BALLANCE's daughter, using the business name Consultech, agreed to coordinate and install a computer learning lab at Greenwood Baptist Church, teach Hyman Foundation staff to use the computer network, and design and teach four computer classes. The contract called for such services to be

completed by June 30, 2001, and for FRANK BALLANCE's daughter to be paid \$5,000.

77. On February 12, 2001, Trimet P.C. Services ("Trimet"), a computer installation company based in Zebulon, North Carolina, installed a computer learning lab consisting of seven computers and a network hub and router for installation in Greenwood Baptist Church. Trimet charged the Hyman Foundation \$9,432.94 for the equipment and the installation of the computer network. The amount of the fee relating to the installation, coordination, and set up of the computer network was \$2,500.

78. On February 12, 2001, FRANK BALLANCE executed a check in the sum of \$9,432.94 in full payment of such invoice. The check was written on the Hyman Foundation's BB&T checking account.

79. On April 9, 2001, FRANK BALLANCE executed a Hyman Foundation check in the sum of \$5,000 payable to his daughter's wholly owned company, Consultech. FRANK BALLANCE's daughter received such payment notwithstanding the fact that she did not install the computer, or design and teach computer classes.

D. Diversion of Hyman Foundation
Funds to Benefit FRANK
BALLANCE's Mother.

80. On November 28, 1997, FRANK BALLANCE wrote a \$4,250 Hyman Foundation check payable to Kiddie World Child Development Center ("Kiddie World"). Kiddie World was a daycare business operated in Windsor, North Carolina, by FRANK BALLANCE's mother. Although it

had non-profit status, Kiddie World was treated by FRANK BALLANCE's mother as a personally owned business. In addition to operating Kiddie World, FRANK BALLANCE's mother served on the board of directors of the Hyman Foundation since its inception in 1985.

81. Kiddie World operated out of leased space in a commercial building owned by FRANK BALLANCE in Windsor. In addition to the \$4,250 payment described above, Kiddie World received the following direct payments from the Hyman Foundation: (a) a check, dated May 24, 1999, for \$1,000, written by FRANK BALLANCE on the Hyman Foundation's BB&T checking account; and (b) a check, dated April 21, 2000, for \$1,500, written by FRANK BALLANCE on the Hyman Foundation's BB&T checking account.

82. In early 2001, the Executive Director of a non-profit entity named Bertie County Rural Health Association agreed to allow his Association to serve as a conduit for funds to be passed from the Hyman Foundation to Kiddie World and Kiddie World's related programs. FRANK BALLANCE's mother was a member of the board of directors of Bertie County Rural Health Association. On March 5, 2001, FRANK BALLANCE wrote a \$20,000 Hyman Foundation check payable to Bertie County Rural Health Association. The \$20,000 payment was segregated into a special account. FRANK BALLANCE's mother controlled disbursement of these funds, which were used to operate a program called "DDD," short for "Don't Do Drugs." The money was

used to pay stipends to FRANK BALLANCE's mother, as well as some of her employees and friends. "Rent" was also paid to Kiddie World.

83. On October 15, 2001, FRANK BALLANCE's mother filed Articles of Incorporation for a non-profit entity named The Alice Eason Ballance Education and Justice Foundation ("AEB Foundation").

84. On October 31, 2002, FRANK BALLANCE wrote a \$12,500 Hyman Foundation check payable to Bertie County Rural Health Association. The \$12,500 payment was segregated into a special account and disbursed between November 12, 2002, and March 17, 2003. This money was spent in the same manner as the first \$20,000.

85. By November of 2002, *The Littleton Observer* reported that the Hyman Foundation had failed to respond to inquiries regarding the manner in which the Hyman Foundation had expended the public funds it had received since 1994.

86. On November 5, 2002, FRANK BALLANCE was elected to serve as United States Representative from North Carolina's First Congressional District. On November 29, 2002, FRANK BALLANCE cashed out the First Citizens certificate of deposit that he had opened with a \$93,000 deposit on February 29, 2000. FRANK BALLANCE arranged for the balance in the certificate of deposit, which had grown to \$104,073.15, to be put into a cashier's check made payable to the Hyman Foundation. The cashier's check remained uncashed from November 29, 2002, through January 29, 2003.

87. On January 7, 2003, the NC-DOC mailed a letter to the Hyman Foundation stating that the request for disbursement of the \$101,250 due for the last two quarters of fiscal year 2003 would not be forthcoming unless the Hyman Foundation submitted the following: (a) financial statements for fiscal years 2001 and 2002; (b) a copy of its IRS tax exemption letter; (c) copies of by-laws and articles of incorporation; (d) a list of board members; and (e) a notarized statement of the Hyman Foundation's conflict-of-interest policy.

88. In response, by letter dated January 22, 2003, FRANK BALLANCE transmitted to the NC-DOC items (b) through (e) and noted that the financial statements would be forthcoming. The Conflict of Interest Policy (which was dated January 8, 1997) included in the package to NC-DOC bore the forged signature of the Hyman Foundation's third director and was notarized by FRANK BALLANCE's Legal Secretary.

89. On January 30, 2003, eight days after providing the NC-DOC with the Hyman Foundation's Conflict of Interest Policy, the \$104,073.15 cashier's check was cashed at St. Luke Credit Union in Windsor, North Carolina. The back of the cashier's check contained the following endorsement:

John A. Hyman Youth Foundation
Frank W. Ballance Bd. Chair

The proceeds from the \$104,073.15 cashier's check were used as follows: (a) to purchase a \$50,000 St. Luke Credit Union certificate of deposit in the name of the AEB Foundation with FRANK BALLANCE's

mother as the sole signatory; and (b) to purchase a St. Luke Credit Union cashier's check in the sum of \$54,073.15, payable to the AEB Foundation.

90. On January 30, 2003, following the transaction at St. Luke Credit Union, FRANK BALLANCE's mother cashed the \$54,073.15 cashier's check at Southern Bank in Windsor, North Carolina. The back of the cashier's check contained the following endorsement:

Alice Eason Ballance
Justice and Education
By Alice Eason Ballance

The proceeds from the \$54,073.15 cashier's check were used as follows: (a) to purchase a \$50,000 Southern Bank certificate of deposit in the name of the AEB Foundation with FRANK BALLANCE's mother as the sole signatory; and (b) as a deposit of \$4,073.15 into a Southern Bank checking account that had been opened by FRANK BALLANCE's mother on January 29, 2003, in the name of AEB Foundation.

91. On April 18, 2003, the Office of North Carolina State Auditor Ralph Campbell contacted Hyman Foundation Director Eddie Lawrence to schedule an interview relating to the Hyman Foundation. On April 21, 2003, Director Lawrence was interviewed by members of the State Auditor's Office. At FRANK BALLANCE's request, his mother returned the \$104,073.15 to the Hyman Foundation. This was accomplished on April 22, 2003, by writing an AEB Foundation check in said amount, payable to the Hyman Foundation and drawn on AEB

Foundation's checking account at Southern Bank. On the same date, FRANK BALLANCE's mother deposited \$109,712.02 into AEB Foundation's checking account to cover the check. This deposit consisted of the proceeds of the AEB Foundation's certificates of deposit and a check drawn on FRANK BALLANCE's personal account. On April 23, 2003, the Hyman Foundation deposited the \$104,073.15 check into its checking account at First Citizens.

92. The allegations set forth in the foregoing Introduction are hereby incorporated by reference into each count of this Indictment and realleged therein.

COUNT ONE
[Conspiracy to Commit Offenses
Against the United States;
18 U.S.C. § 371]

1. Beginning in or about early 1994 and continuing through on or about October 16, 2003, in the Eastern District of North Carolina and elsewhere, FRANK W. BALLANCE, JR. ("FRANK BALLANCE"), defendant herein, knowingly and unlawfully combined, conspired, agreed, and confederated with others, to commit offenses against the United States, specifically:

a. To knowingly use, and cause others to use, the mail for the delivery and receipt of matters and things for the purpose of executing a devised scheme and artifice to defraud by depriving the State of North Carolina and its citizens of the right to FRANK BALLANCE's honest services as a state senator, in violation of Title 18, United States Code, Sections 1341 and 1346;

b. To knowingly use, and cause others to use, the mail for the delivery and receipt of matters and things for the purpose of executing a devised scheme and artifice to defraud and to obtain monies by means of materially false and fraudulent pretenses, representations, and promises, in violation of Title 18, United States Code, Section 1341; and

c. To conduct financial transactions involving the proceeds of specified unlawful activity, to wit, mail fraud, knowing that the property involved in said transactions represented the proceeds of some form of unlawful activity, and knowing that the transaction was designed in whole or in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i).

Manner and Means

2. During the conspiracy, FRANK BALLANCE and others used the following means and methods, among others:

a. The duty of honest services: As a member of the North Carolina Senate, FRANK BALLANCE, defendant herein, occupied a position of trust with the public and owed a duty of honest services to the State of North Carolina and its citizens. As a public official, FRANK BALLANCE had a fiduciary duty to ensure that the public received honest services free of improper influence, corruption, fraud, deceit, self-enrichment, and self-dealing. FRANK

BALLANCE had a duty not to be improperly influenced or affected in the performance of his duties. FRANK BALLANCE had a duty to honestly disclose material information regarding conflicts of interest or personal gain.

b. The scheme and artifice regarding honest services: FRANK BALLANCE, together with others, devised a scheme and artifice to deprive the State of North Carolina and its citizens of the intangible right of honest services. The objects of this scheme and artifice to defraud were as follows:

(1) To deprive the State of North Carolina and its citizens of their right to have public officials perform their duties free from improper influence, corruption, and conflicts of interests;

(2) To deprive the State of North Carolina and its citizens of their right to disclosure of material information concerning the personal financial interests of public officials which may affect their decisions and the discharge of their duties; and

(3) To deprive the State of North Carolina and its citizens of their right to be informed of all relevant facts and circumstances concerning potential sources of influence on FRANK BALLANCE while serving as a North Carolina Senator.

c. The scheme and artifice to defraud of money: FRANK BALLANCE, together with others, devised a scheme and artifice to

defraud the Hyman Foundation, and to obtain money and property from it by means of materially false and fraudulent pretenses, representations, and promises.

d. Execution of the schemes and artifices:

(1) FRANK BALLANCE organized and operated the Hyman Foundation in such a manner that he exercised total control over its affairs.

(2) FRANK BALLANCE used his position as a member of the North Carolina Senate and as Chairman of the JPS Subcommittee to obtain millions of dollars in appropriations to ^{the JPS} Hyman Foundation.

(3) FRANK BALLANCE caused the Hyman Foundation not to file IRS Form 990s for each of the years in which it received State funding, thereby withholding from the IRS and the public material information about the Hyman Foundation's activities.

(4) FRANK BALLANCE caused the Hyman Foundation to be exempt from a requirement, applicable to other non-profit organizations receiving appropriations from the JPS Subcommittee, to make a presentation to the subcommittee on an annual basis, thereby withholding information from the public and the General Assembly about the activities of the Hyman Foundation.

(5) When a presentation and written reports were required, FRANK BALLANCE and others caused said presentation to omit material facts about the finances of the Hyman Foundation and to be misleading in other respects.

(6) FRANK BALLANCE purposefully failed to disclose to the public, the JPS Subcommittee, and the General Assembly information concerning FRANK BALLANCE's personal and financial interests affected by the expenditures of the Hyman Foundation, e.g., money that went to himself, his son, his mother, his daughter, and the church he headed.

(7) FRANK BALLANCE purposefully failed to disclose and actively concealed a large surplus of money the Hyman Foundation accumulated during the years it was funded by the State appropriations he arranged.

(8) FRANK BALLANCE used so-called "mini-grants" to funnel Hyman Foundation money to certain entities knowing that the money would then be converted to the use of FRANK BALLANCE, Garey Ballance, other BALLANCE family members, friends, and the church FRANK BALLANCE headed.

Overt Acts

3. In furtherance of the conspiracy and to effect the objects of the conspiracy, FRANK BALLANCE and other conspirators did, in the Eastern District of North Carolina and elsewhere, commit numerous overt acts, many of which are detailed in the Introduction to this indictment, and some of which are detailed below:

a. On numerous occasions, FRANK BALLANCE forged and caused to be forged signatures on documents submitted to the State of North Carolina in connection with the disbursement of

appropriated funds to the Hyman Foundation and, in order to conceal said forgeries, caused false notarial acknowledgments to be placed on said documents.

b. FRANK BALLANCE transferred \$25,000 in Hyman Foundation money to the Vance County NAACP, labeling it as a "grant for substance abuse/police violence," knowing that FRANK BALLANCE would shortly thereafter bill the Vance County NAACP for legal work he had already performed for a third party and for which he would receive \$15,500.00, out of the \$25,000 he had transferred to the Vance County NAACP.

c. FRANK BALLANCE and Garey Ballance funded the down payment on a luxury automobile for Garey Ballance by transferring \$20,000 in Hyman Foundation funds to Garey Ballance disguised as a "mini-grant" to YBMG, knowing that Garey Ballance would immediately take the money out of the YBMG account and use it to purchase said automobile.

d. FRANK BALLANCE transferred \$5,000 in Hyman Foundation funds to a company wholly owned by FRANK BALLANCE's daughter for work she did not complete and for which the Foundation had already paid another firm more than \$9,000.

e. FRANK BALLANCE diverted large sums of Hyman Foundation money to the personal benefit of his mother in the following ways: (1) transferring a total of \$6,750 to Kiddie World, a non-profit entity which was controlled by FRANK BALLANCE's mother and which was

renting a building from FRANK BALLANCE; (2) transferring a total of \$32,500 in Hyman Foundation money in the form of "mini-grants" to Bertie County Rural Health Association, knowing that this association would be used as a pass-through to an organization controlled by FRANK BALLANCE's mother, and knowing that, in turn, that organization would pay stipends to FRANK BALLANCE's mother and her friends and "rent" to Kiddie World; and (3) transferring approximately \$104,000 out of the accumulated surplus of the Hyman Foundation to FRANK BALLANCE's mother for the stated purpose of funding a foundation under her control, said \$104,000 later being returned to the Hyman Foundation at FRANK BALLANCE's request, after the North Carolina State Auditor's investigation was initiated.

f. FRANK BALLANCE caused the Hyman Foundation to pay \$69,169.10 in "rent settlements" to Greenwood Baptist Church where he served as Chairman of the Board of Deacons.

g. On numerous occasions, FRANK BALLANCE caused the mails to be used to effectuate the scheme, including mailing of disbursement requests and certifications of conflict-of-interest policy to the NC-DOC in Raleigh, mailing of checks from the NC-DOC to the Hyman Foundation at FRANK BALLANCE's law office in Warrenton, and mailing of checks to and from the Vance County NAACP in Henderson.

h. On several occasions, FRANK BALLANCE and others conducted financial transactions involving the proceeds of the mail

fraud including: (1) the deposit of a check in the amount of \$19,500.00, drawn on the account of YBMG at BB&T, into the account of Garey Ballance at BB&T; and (2) obtaining a cashier's check in the amount of \$104,073.15, drawn on First Citizens, payable to John A. Hyman Memorial Youth Foundation, endorsing said check on behalf of the Hyman Foundation, and causing said check to be delivered to FRANK BALLANCE's mother in Windsor, North Carolina.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO

[Failure to File Federal Income Tax Return;
26 U.S.C. § 7203]

During the calendar year 2000, in the Eastern District of North Carolina, GAREY M. BALLANCE, defendant herein, who was a resident of Warrenton, North Carolina, and practiced law and worked as a paid staffer in a gubernatorial campaign, was required by law, following the close of the calendar year 2000, and on or before August 15, 2001, to make an income tax return to the representative of the District Director of the Internal Revenue Service for the Internal Revenue District of North and South Carolina, at Greensboro, North Carolina, or to the Director, Internal Revenue Service Center, at Atlanta, Georgia, or other proper officer of the United States, stating specifically the items of his gross income and any deductions and credits to which he was entitled; that well-knowing and believing all of the foregoing, he did willfully fail to make an income tax return to said representative of the District Director of the Internal Revenue Service, to said Director of the Internal

Revenue Service Center, or to any other proper officer of the United States.

All in violation of Title 26, United States Code, Section 7203.

SENTENCING ALLEGATIONS

With respect to Count One of the Indictment:

(1) For purposes of United States Sentencing Guidelines ("USSG"), Sections 2S1.1(a), 2C1.7(b)(1)(A), and 2B1.1(b)(1), the greater of (a) the loss to the government, and (b) the value of anything obtained by the public official (FRANK BALLANCE) and others acting with said public official exceeded \$120,000.

(2) For purposes of USSG, Section 2C1.7(b)(1)(B), the offense involved an elected official and an official holding a high-level decision-making and sensitive position.

(3) For purposes of USSG, Section 2S1.1(b)(2)(B), a conviction on Count One would constitute a conviction under 18 U.S.C. § 1956.

(4) For purposes of USSG, Section 3B1.1(a)-(c), FRANK BALLANCE was an organizer, leader, manager, and supervisor of criminal activity that involved five or more participants and was otherwise extensive.

With respect to Count Two of the Indictment:

(1) For purposes of USSG, Sections 2T1.1(a) and 2T1.4, the tax loss was more than \$8,000.

(2) For purposes of USSG, Section 2T1.1(b)(1), GAREY BALLANCE failed to report and correctly identify the source of income exceeding \$10,000 in the year 2000 from criminal activity.

FORFEITURE NOTICE

Defendant FRANK BALLANCE is hereby given notice of the provisions of Title 18, United States Code, Section 981 (a) (1) (C), as made applicable herein by Title 28, United States Code, Section 2461(c), and Title 18, United States Code, Section 982(a) (7), that all the defendant's interest in all property specified herein is subject to forfeiture.

As a result of the foregoing offense in Count One of the Indictment, the defendant shall forfeit to the United States any and all property constituting, or derived from, any proceeds the said defendant obtained directly or indirectly as a result of the said offense.

The forfeitable property includes, but is not limited to, the gross proceeds of the defendant's illegal acts and all assets of the Hyman Foundation, including all funds, including any interest accrued thereon, in the escrow account at Wachovia Bank in the name of John A. Hyman Memorial Youth Foundation, Inc.;

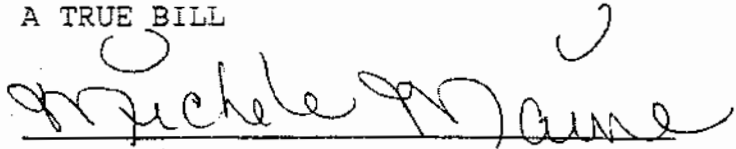
If any of the above described forfeitable property, as a result of any act or omission of the defendant,

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third person;
- (3) has been placed beyond the jurisdiction of the court;
- (4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of said defendant up to the value of the above forfeitable property.


A TRUE BILL




FOREPERSON

9-2-04

Date

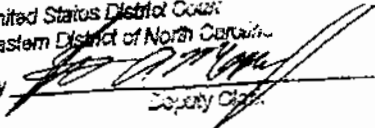

FRANK D. WHITNEY
United States Attorney

BY: 
DENNIS M. DUFFY
Assistant United States Attorney
Criminal Division

BY: 
JOHN STUART BRUCE
Executive Assistant United States Attorney

I certify the foregoing to be a true and correct copy of the original.

Clerk
United States District Court
Eastern District of North Carolina

By: 
Deputy Clerk