

# THE CASE AGAINST HILLARY

BY JAMES RING ADAMS & R. EMMETT TYRRELL, JR.



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WE MAY NOT YET HAVE the smoking gun on Whitewater, but a spate of new documents now gives us a pretty good fix on its caliber, its make, and the river the Clintons threw it in.

After a year of rumors that Hillary Rodham Clinton could draw a Whitewater indictment, new evidence shows just where she might be vulnerable to charges of fraud, conspiracy, and

obstruction of justice. It's still uncertain where the originals of key documents might be located, but the paper trail is firm enough to show just what they might be, and what it might have been in Vincent Foster's office that Hillary's aides appeared so anxious to keep from investigators in the hours after his death.

The national press has finally begun to pay attention to some of the serious questions raised over the past year by the Senate Whitewater Committee. Much of the focus fell on the William Kennedy notes jarred loose by the committee's threat of a subpoena battle; this account of the November 5, 1993 meeting of seven of the president's lawyers was too cryptic to be the smoking gun itself, but it certainly showed close powder burns. Take these notes together with a year's worth of hearings, and new documents from other sources, and we can reject the claim of the Whitewater committee Democratic counsel Richard Ben-Veniste (a veteran of the Watergate investigation) that there has been no proof of anything illegal or even improper. Remember the spate of phone calls between Mrs. Clinton, her chief of staff Margaret A. Williams, and Hillary's confidante and campaign aide Susan Thomases, right after Foster's death. Remember how Maggie Williams denied she took anything from Foster's office after a uniformed Secret Service officer testified that he saw her carrying out several large files. Remember that box of the Clintons' personal records that went from Foster's office to a White House closet, and how a former White House aide testified that he took them there because they "needed to be reviewed by the First Lady." It's been enough to convince investigators, and the rest of us too, that the White House is hiding something incriminating about Hillary and Whitewater that hasn't yet come out. What is it?

Here's one reconstruction that investigators close to the case have come to believe is true. It dates to the last year of James McDougal's financial empire, from 1985 through early 1986, when overdrafts and apparently fraudulent loans were coursing through his network of real estate developments in a desperate attempt to disguise massive losses at his

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## **FOR MORE THAN A YEAR, INFORMED SOURCES HAVE BEEN SAYING THAT THE FIRST LADY COULD BE INDICTED IN THE WHITEWATER INVESTIGATION. HERE'S WHY—THOUGH IF IT'S ANY CONSOLATION SHE IS NOT LIKELY TO GO DOWN ALONE.**

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Madison Guaranty Savings and Loan. The Clintons, of course, were partners with McDougal and his wife Susan in the Whitewater Development Co., but in this case the focus on Hillary starts elsewhere.

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money for, among other things, an illegal campaign contribution for Bill and a bailout of the overdrawn Whitewater checking account, this slip, investigators believe, made her vulnerable to a charge of bank fraud. But she might have dodged that bullet if she and Bill hadn't plunged in further. In trying to retire that loan in 1986, Bill Clinton became party to what a key witness describes as *nothing less than a conspiracy to defraud the United States*. But the ultimate irony followed what may precisely be called the tragedy of Vincent Foster's death. If one believes, as we do, that Hillary and her aides labored frantically to keep the documents about this deal from falling into the hands of Justice Department professionals, then the White House crew, first lady and all, becomes part of an ongoing conspiracy that embraces all the earlier charges. A tawdry long-ago case of bank fraud now becomes a major effort to pervert the due course of the federal government, an obstruction of justice at the highest level since Watergate.

**T**he story starts not with the McDougals' Madison Guaranty, but with a small-town bank in Stephens, Arkansas, in the southern tier of the state. On April 3, 1985, the Stephens Security Bank lent \$135,000 to James and Susan McDougal for their Flowerwood Farms real estate development in western Pulaski County, some 100 miles north. It's not clear why this small bank made such a large commitment outside its immediate lending area, but Stephens Security did have connections with the Little Rock elite. Until 1984 more than 90 percent of its stock was owned by First Arkansas Bankstock Corp., the predecessor to the Worthen Banking Corporation. Some corporate matters for Stephens Security were handled by C. Joseph Giroir, Jr., who as chairman of the Rose Law Firm hired Hillary Clinton in 1978.

Stephens Security Bank president Richard T. Smith, a former loan officer at Worthen, had his own history of questionable political lending. In 1984 he approved \$150,000 in loans to the last-minute congressional campaign of Little Rock Sheriff Tommy Robinson, even though Robinson never filled out a loan application. The Federal Election Commission investigated the loans but deadlocked on whether to take action about them.

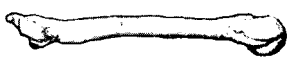
In addition to this networking, investigators for several agen-

cies now believe that Stephens Security had one other inducement to lend to the McDougals. They believe that Hillary Clinton gave her personal backing to the note, either as a co-signer or a guarantor. This suspicion was first reported in a series of columns by the *New York Post* business writer John Crudele last May, but like much of the *Post's* solid business reporting, his story was largely ignored. There had been earlier and vaguer reports that a former senior vice president at Madison named Don Denton had seen Hillary's name as guarantor on the back of a loan document in McDougal's loan file. The *Wall Street Journal* reported in August 1994 that Denton was telling the staff of the independent counsel that in 1986 he had seen her name, signed "Hillary Rodham," on a loan of between \$100,000 and \$300,000, but that the usual form for a guarantee was missing. At the time of the *WSJ* article, Clinton lawyer David Kendall issued the memorable but partial denial, "Any allegation that Mrs. Clinton guaranteed a loan in 1986 with the signature 'Hillary Rodham' has the unmistakable and clanging ring of falsity." (The loan would have been signed in 1985, not 1986.) More recently, however, Denton's memory has freshened, and he has reportedly given an affidavit to Independent Counsel Kenneth Starr stating that he was in the room when Hillary signed the loan.

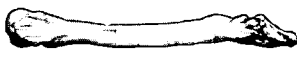
Curiously, nothing resembling this note turned up in the thousands of documents produced for the House Banking Committee, partly because Stephens Security fell out of the purview of the investigations of Madison. But there is another possible reason that this note has not surfaced. It would be one of the most damaging bits of evidence yet to emerge against the first family. Not only would it show their bad judgment in hobnobbing with the sociopathic McDougals; it would put Hillary squarely in the path of a possible indictment for bank fraud. Some of the Clintons' subsequent behavior, which seems strangely out of proportion to what we are told of Whitewater, suddenly begins to make sense when we take this note into account.

The April 3, 1985 note was secured by eleven lots in Flowerwood Farms, and the proceeds went into the Flowerwood Farms account at Madison Guaranty. But whatever the McDougals told Stephens Security about their plans for the \$135,000, the money immediately started clearing up problems in their other accounts. One check for \$24,559.90 (Number 194 on April 9) went to the WhiteWater (sic) Development Co. account to cover an overdraft of that amount from a week earlier. Since the Clintons were fifty-fifty partners in Whitewater with the McDougals, they directly benefited from this payment. This suggests a possible motive for Hillary Rodham Clinton's guarantee. Two more checks in the next ten days paid off \$140,000 of Jim McDougal's loans. By April 19, the Flowerwood account was back in the red with a \$50,000 overdraft.

One other check from the Flowerwood money appears to have wound up with Bill Clinton. Check number 192 (recorded on April 5, 1985) is a \$3,000 payment to Madison Guaranty inscribed for former U.S. Senator William J. Fulbright, who was letting McDougal handle his affairs. There is speculation this check was the source of Fulbright's \$3,000 contribution to Clinton at the infamous April 4, 1985 fundraiser at Madison Guaranty's Little Rock headquarters. This affair helped pay off a \$30,000 per-



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sonal loan Bill Clinton had taken out in his 1984 campaign.

The Stephens Security money had been gobbled up in two weeks, but the problems were just beginning. On July 9, 1985, the McDougals used the same eleven lots from Flowerwood to back another loan. This time they borrowed \$99,113 from their own Madison Guaranty. The terms of the three-year note would gladden the heart of a cash-starved entrepreneur; they were to pay a modest \$125 a month until the last day of the note, when a balloon payment of \$96,000 was due. The available documents don't show whether they informed their board that they had already mortgaged the Flowerwood lots for the existing note, or whether Hillary knew about the double-pledging. If the McDougals didn't bother to mention the earlier lien on the lots, this loan could be indictable as fraud on a federally insured institution.

But the days were rapidly ending in which the McDougals could dip so freely into their savings and loan. Federal regulators had been nervous about McDougal since at least 1983. (The Federal Deposit Insurance Corporation was first to sound the alarm after catching his shenanigans at his Madison Bank and Trust.) Examiners from the now defunct Federal Savings and Loan Insurance Corporation (FSLIC) had been keeping a watch on Madison Guaranty since their 1984 visit, and they were gearing up for a serious audit in early 1986.

The pressure was on Stephens Security as well. On December 9, 1985, Richard Smith called McDougal's office. The phone log records his message: "Examiners are after him to reduce their out of region real estate loans. Can you transfer Flowerwood elsewhere?" But McDougal already knew he had to find a new cash cow to milk.

**T**his is where David Hale enters the picture. Exactly two years ago we ran the first of our exclusive interviews with the Pulaski County municipal judge who lent money on the side to Arkansas's rich and famous. Readers will remember that he was under indictment for fraudulently getting federal backing for his Capital-Management Services, Inc., a Small Business Investment Corporation. He heard that he was going to be the

fall guy for Arkansas corruption, and he started talking to the national press (and ultimately *The American Spectator*) about his deals with McDougal, Jim Guy Tucker, and Bill Clinton. His charges were central to the charges Independent Counsel Kenneth Starr is now bringing against Tucker, the current governor of Arkansas. Clinton's friends have done everything they could to discredit Hale, but new evidence is proving out his story.

Hale told us that in the fall of 1985, McDougal started sounding him out about his lending company. On one evening, he said, Jim Guy Tucker drove him to McDougal's office at his Castle Grande development, where McDougal asked him how much he could help in cleaning things up for their "political family." Newly available phone logs from McDougal's office confirm these meetings. By January 1986, Hale's money started flowing to McDougal's political clan. He lent to Stephen Smith, once Clinton's chief of staff, and to Jim Guy Tucker's cable company. According to the phone logs, his contacts with McDougal intensified, and so did McDougal's meetings with Governor Clinton.

On January 3, Richard Smith called again from Stephens Security to ask about the Flowerwood note. On January 15, Nancy from the governor's office called to arrange a Saturday morning meeting at the mansion with McDougal. Just before the meeting, McDougal made a \$40,000 payment on the Stephens note. Why didn't McDougal pay off the rest? By coincidence, what he still owed Stephens Security roughly equaled the amount of his other mortgage on the Flowerwood lots. McDougal seemed to have decided he would take care of his other exposure first, because that is what he did. On February 20, he retired his Flowerwood Farms mortgage at Madison Guaranty two-and-a-half years early. What was the rush to retire this loan? Perhaps McDougal was concerned about the highly visible fraud from the double-pledging of the Flowerwood parcels.

This shuffle has another momentous impact. Something draws Clinton further into McDougal's dealing with Hale. Could it be the unpaid balance on the Stephens note? If Hillary's name is on it, that would be the hitherto missing motivation for what follows.

Hale's most serious charge is that Clinton personally pressured him to make an illegal loan to McDougal. He remembers that in "early 1986 but no later than February 28," McDougal asked him to meet Clinton after work at Castle Grande. McDougal had already asked him for a \$150,000 loan for Madison, mentioning an upcoming federal examination.

As Hale described the meeting, "Jim said we'll put it in Susan's advertising company. When we talked about how to structure it, Clinton explained that his name could not show up anywhere. McDougal made the statement that that was all taken care of. What he meant, I don't know." If Clinton and James McDougal had in fact been secret beneficiaries of the SBIC loan to Susan, their use of her to conceal their involvement in the loan in all likelihood would have been indictable fraud. Clinton has said that he didn't remember such a meeting, and McDougal has denied that it ever took place. But now we have phone logs that bear Hale out:

February 3, 9:15 a.m., "Bill Clinton called Re David Hale."

February 3, 9:23 a.m., "Bill Clinton called, 'Be in my office in hour.'"

February 4, 1:40 p.m. "David Hale called."

These notes look like the build-up to the meeting as Hale described it, and we know for sure that he made the loan. On April 3, the due date of the Flowerwood Farms note, David Hale wrote a check for \$300,000 to Susan McDougal, doing business as Master Marketing.

This loan has been one of the central facts of Whitewater since David Hale first went public in the fall of 1993. But new evidence shows just how closely it was connected to the Flowerwood note, and puts it in much sharper perspective. McDougal's phone log for April 1 shows a message from Richard Smith of Stephens Security. "Will try to close Wed.," it says. "Hasn't been in touch with his man." Two days later, Hale wrote the \$300,000 check, and Stephens Security records marked the Flowerwood note as paid. The Stephens bank was ahead of itself, however, since it would still be a while before it saw the money. Nothing with the McDougals was that simple, especially at this stage of their collapse.

Hale's money didn't even reach the McDougals' joint account (Madison Guaranty number 424) until April 8, 1986, the beginning of the next week. It has taken years to piece together the story of the path this money then took, and even now there are still large gaps. On paper, at least, the largest single payment went to Stephens Security, in cashier's check number 4878 for \$111,524.21, dated April 6. But the entry on the Stephens books could not have been accurate, and may have been fraudulent. The cashier's check bounced back and forth through McDougal's accounts as late as April 15. One investigator thinks there was a simple bookkeeping error (always a dangerous assumption with the McDougals), but the monthly statement for Madison Guaranty's cashier's checks shows no payment of that sum, and no redemption of check number



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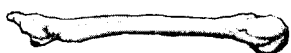




4878, at least through that April. The check itself shows a final clearing stamp dated September 1986, and the Flowerwood Farms mortgage isn't recorded as released until that September 23. Perhaps under pressure from federal examiners to close out the loan, Stephens Security faked a payment in April that did not occur until five months later.

The trail for the rest of Hale's loan is even more mysterious. Two checks totaling \$36,000 went to the International Paper Realty Corporation for a land deal that deserves further scrutiny. (International Paper, the parent corporation, received a large tax break about this time in a special bill pushed by Gov. Clinton.) Another \$42,000 went to two individuals, and, according to the RTC, the Madison Guaranty microfilm for the remaining \$110,000 or so is simply missing.

Any of the above transactions might account for the cryptic remark that David Hale reports was his last communication with Gov. Clinton. About ninety days after the loan, Hale remembers seeing Clinton on the street by west Little Rock's glitzy University Plaza mall. Perturbed, Clinton rushed over and said, "Have you heard what that f---ing whore Susan has done?" Hale hadn't heard, and Clinton rushed off without an explanation. When we first reported this exchange (in "Beyond Whitewater," TAS, February 1994), we didn't have a clue about its meaning, other than that Susan was prone to misuse money entrusted to her. Now we can understand the cause of the governor's anxiety. If, as we suspect, the Hale money was not being used as intended, not only was there developing a paper trail of a possible sweetheart deal with International Paper, but Hillary still remained on the hook for the Flowerwood mortgage.



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**T**his whole sequence of loans, from Stephens Security to Flowerwood Farms and the repayment from David Hale, caught the eye of investigators as soon as the Madison Guaranty case was reopened in 1992. It figured prominently in the first criminal referral from Jean Lewis, the RTC criminal investigator from Kansas City who bore the brunt of keeping the Madison case alive. (This referral, number C0004, went to the FBI and U.S. attorney in Little Rock on September 2, 1992, and promptly disappeared into the Washington bureaucracy.) Then—U.S. Attorney Charles Banks recently told the Senate Whitewater Committee that he rushed the referral out of his office without even reading its 300 attached exhibits. He admitted that he shied away from the politically charged case because, among other things, he was a candidate for a federal judgeship.

The criminal referral wasn't the only time bomb landing in Washington as Bill Clinton prepared to take office. David Hale had used a fraudulent maneuver to recapitalize his Capital-Management Services in 1992, and auditors in the Small Business Administration began to pry through his books. Their curiosity was bound to cause anxiety in the White House.

The connection between the Hale case and the criminal referrals was not widely known until Lewis testified last August before the House Banking Committee, but it now appears that the White House was tracking both simultaneously. Even before the inauguration, Clinton aide George Stephanopoulos called a senior Small Business Administration official to praise the way SBICs had helped out Arkansas, several SBA officials recently testified to the Senate Whitewater committee. He also asked pointed questions about the way assistant SBA administrator Wayne Foren was running the program. At the time, Hale's company was the only SBIC in the state. (White House spokesman Mark Fabiani says Stephanopoulos denies making such a call.)

Foren, a career SBA administrator, started to crack down on Hale in February 1993, even though Hale bragged about his influence with President Clinton. When Clinton appointed North Carolina financier Erskine Bowles as SBA administrator in May 1993, Foren said he briefed him about the Hale case and that Bowles replied he had passed the news on to Thomas "Mack" McLarty, then—White House chief of staff. Foren told the Whitewater committee that his staff took a call on June 14 from an FBI agent newly assigned to the Hale case. The agent had said he was pleased to get the case because "quote, 'it provides the missing pieces to the puzzle in the Madison Guaranty case.'"

(Foren impressed both the House and Senate committees by his professional conduct of the investigation. His reward was to be reassigned from the SBIC program, a move widely perceived as a demotion. He has since resigned. Erskine Bowles moved on to the White House, where he is now deputy chief of staff.)

With this level of interest in Hale, it becomes an even more striking coincidence that the FBI in Little Rock obtained its search warrant for Hale's office on the morning of July 20, 1993, just hours before Vincent Foster left the White House for the last time. The search warrant specified files on Susan McDougal's Master Marketing loan as one of its targets.

The Kennedy notes show that both the Hale case and the

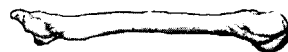
RTC criminal referrals were on the agenda for that November 5, 1993 meeting of seven lawyers that was a turning point in the White House effort at damage control. The notes record one focus of the meeting under the euphemistic talking point, "try to find out what's going on in investigation." The two investigations discussed at length were the indictment of David Hale and the RTC's look at Madison contributions to Clinton's campaign fund. (The notes make the startling comment that the FBI subpoena to Hale might have been a "factor" in Vincent Foster's death.) In one overlooked but damning line, Kennedy wrote "RTC—people trying to get BC [Bill Clinton] and JGT [Jim Guy Tucker]." This line comes just before the much discussed note: "Vacuum [space] Rose Law files [space] WWDC [Whitewater Development Co.] Docs—subpoena." The seven lawyers at the meeting, four of whom were on the federal payroll, seemed to regard the RTC's work as the product of a personal vendetta and hence fair game for interference. Certainly the meeting produced immediate results. On November 9, the "powers that be" removed Jean Lewis from the Madison case, as she noted in an e-mail to her Kansas City superiors.

The impact on the SBA case was more roundabout but no less real. On November 16, then-associate White House counsel Neil Eggleston, one of the seven lawyers at the meeting, obtained the SBA case file on David Hale. In fact, he picked it up in person from SBA General Counsel John Spotilla, who had been appointed in mid-September on the recommendation of Hillary Clinton's office. The Justice Department was so horrified when it learned of this leak that Eggleston returned the file to the SBA two days later, on a Sunday, but not before he photocopied at least one document. During his late November Whitewater committee hearing grilling, the long-time Clinton aide and confidant Bruce Lindsey admitted that he was the one who started Eggleston on his errand and that he wanted to see if the president or first lady were mentioned in the file.

Since Lindsey has played the point man on Whitewater from the beginning, this concern might seem routine, until we ask what connection Hillary Clinton was supposed to have with any of David Hale's loans. She would be completely insulated from the SBA case unless, indeed, the suspicions are true—and she did have her name on the Flowerwood Farms note. In that case, an investigation of the \$300,000 that Hale gave to Susan McDougal could have led right to her door.

It transpired that the SBA file held very little about the Master Marketing loan, and nothing that traced it to Flowerwood. Clinton's defenders argue that the absence of evidence shows that the request for the file was harmless and therefore not inappropriate. But financial institution fraud investigators verify that it can be very useful for someone trying to hide an incriminating document to know that at least one investigation hasn't stumbled across it. Everything else suggests that the White House was on a search-and-destroy mission, with one frenzied peak in the attempt to control the documents in Vincent Foster's office and another in the response to Jean Lewis's criminal referrals.

The significance of Hillary Clinton's personal guarantee is clear: It directly ties Hillary into a shady loan and thereby supports the inference that she was a willing player in a garden-vari-



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ety bank fraud. The location of the original document is still uncertain. David Kendall, the Clintons' lawyer, has issued a somewhat ambiguous denial seeming to say that it never existed, but David Hale and Don Denton remember such a transaction. Perhaps it was among those records that Hillary caused to be removed from the Governor's Mansion and shredded at the Rose Law Firm after the *New York Times* made Whitewater a campaign issue in March 1992. It might have been among those Whitewater records removed from Vincent Foster's office "for review by the First Lady" in the frantic days after his death. Maybe it was among the Foster files that were shredded at the Rose firm in February 1994, less than three weeks after the appointment of the Whitewater independent counsel. Whatever may have become of that document, however, we can understand why, in the words of Hillary's chief of staff, Maggie Williams, "the First Lady is paralyzed by Whitewater."

In a sense, it is ironic that the entire campaign of concealment—the shredding of Whitewater records, the public denunciations of cooperating witnesses, the troubling memory lapses before the Whitewater committee—makes it easier to prosecute the whole ball of wax. The original sordid scheme, including the misuse of the Flowerwood mortgage money, the employment of Susan McDougal as a mask for her husband and Bill Clinton on the Hale loan, and the falsification of the books and records of the federal institutions involved, might be subject to a statute of limitations defense. However, because of the principles that apply to the federal law of conspiracy, especially a conspiracy to conceal crime, the recent obstructive conduct of the Clintons might preserve the entire over-arching scheme from 1985 to the present. According to former Department of Justice prosecutors and white-collar defense lawyers, the misconduct of Clinton friends before the Whitewater committee, perhaps separately indictable as perjury or obstruction of justice, might be fairly charged as conduct in furtherance of the Clintons' grand scheme as well. If the facts of the Flowerwood Farms loan cycle fit this theory, and seasoned investigators believe they do, then Hillary isn't the only one at risk. The conspiracy would encompass her personal staff, the White House counsel's office, and ultimately President Clinton himself. ❧

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*Iran no longer pretends not to be developing nuclear weapons. But new information about sales by Russia and China, and*



JONATHAN ROSEN

**A**t a conference in commemoration of the bombing of Hiroshima and Nagasaki last September 30, a senior Iranian official made an astonishing statement about Iran's nuclear intentions. Asked whether Iran might be disguising a clandestine nuclear weapons program behind its very large civilian nuclear projects, Hassan Mashadi—a senior arms control adviser to Iran's foreign minister and for five years Iran's representative at the Geneva-based Conference on Disarmament—stated unequivocally that Iran was “keeping its nuclear options open.”

He argued that the tough security environment in which Iran lives, and the perceived threat Iran feels from the presence of the U.S. Navy and from Israel, were sufficient reason for devoting scarce resources to nuclear research. “While I do not believe Iran is actively seeking nuclear weapons,” he said, “at the same

time Iran is not going to renounce that option”—especially, he added, “if its survival is at stake.”

In private conversation after the conference, Mashadi told me that Iran needs long-range ballistic missiles “to deter an Israeli attack” on Iranian nuclear facilities or other military assets. But clearly, nuclear weapons provide the most comfort to Iran's leaders. “You cannot expect a nation with legitimate security concerns to sit idly by in the face of a threat,” he said. “If you tell them not to go nuclear, then what option do you leave open for them?”

At bottom, his argument amounted to this: Iran is seeking nuclear weapons not to dominate Middle East oil wells or to launch a sneak terrorist attack against the United States, but to win respect. “Iran is not a country to be ignored,” he said. “If these pressures [from the United States and Israel] continue, there will be an explosion, and the whole region will be on fire.”

Mashadi's comments should put to rest once and for all any

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