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# THE WALL STREET JOURNAL

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★ ★ ★ EASTERN EDITION

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WHITE OAK, MARYLAND

\*\*\*\* 75 CENTS

## Citizen Scaife

### Heir Turned Publisher Uses Financial Largess To Fuel Conservatism

### A 'Key Force' in Support Of New-Right Causes Shies From the Mellons \$200 Million and Counting

By PHIL KUNTZ

Staff Reporter of THE WALL STREET JOURNAL  
WASHINGTON — The ballroom of the Hyatt Regency on Capitol Hill was overflowing with hundreds of wildly cheering conservatives. It was just a week after the Republicans won control of Congress, and the leader of the revolution was about to address what had just become the capital's most influential think tank.

But first, House Speaker-to-be Newt Gingrich took time to pay tribute to the small-town newspaper publisher sitting at his side for helping make it all happen. "Dick Scaife is a remarkable citizen," Mr. Gingrich told the Heritage Foundation and a nationwide cable-TV audience. The white-haired Pennsylvanian, he said, "has spent many years as a key force in sustaining conservative ideas" and was among those who "really created modern conservatism."



Richard M. Scaife

Normally, one could dismiss such praise as *de rigueur*, given Mr. Scaife's \$10,000-a-year contributions to the Georgia congressman's political-action committee and thousands more to other Republicans. But Richard Mellon Scaife, of the Mellon bank and oil clan, is the conservative movement's most valuable asset. He is nothing less than the financial archangel for the movement's intellectual underpinnings.

The Cato Institute, the American Enterprise Institute, the Center for Strategic and International Studies and American Spectator magazine are just a few of the beneficiaries of the well over \$200 million Mr. Scaife has given to such causes in recent decades. The Heritage Foundation is one of many conservative groups that

## What's News—

### Business and Finance

**JIM MANZI** abruptly resigned as head of Lotus, 99 days after its takeover by IBM and following a push by Manzi to control IBM's \$12 billion-a-year software business. The departure raises questions, including whether top software developers will follow the controversial Manzi and if IBM will renege on its promise of autonomy for Lotus. Some observers believe it will be absorbed in IBM's software unit.

(Article in Column 6)

**AT&T is expected to announce** today that it has chosen Alex Mandl to be its next president, making him the clear No. 2-ranked executive at the company after its breakup. The telecommunications giant also will name Henry Schacht, a director, to run AT&T's equipment spinoff. Richard McGinn, now president of AT&T's Network Systems, will be president and CEO of the equipment giant.

(Article on Page A4)

**U S West got Justice Department** permission to offer long-distance services outside its 14-state service territory. The plan needs court approval.

(Article on Page A3)

**Senate Republicans are weighing** an alternative to the House's proposed \$500-a-child tax credit, but the draft plan may slightly raise taxes for some middle- and upper-income families.

(Article on Page A3)

**Michael Steinhardt**, one of the best-known money managers, is shutting his \$2.6 billion investment partnerships and says he will return most of the money to investors by year end.

(Article on Page C1)

**Chrysler posted a 46% drop** in third-period earnings, slightly better than expected during a generally down quarter for the industry. It cited expensive vehicle launches, high incentives and sagging sales in Mexico.

(Article on Page A2)

Company earnings aren't any

### World-Wide

**A MEDICARE OVERHAUL BILL WON** approval from a House committee.

The Ways and Means Committee approved Republican legislation to fundamentally alter the health-care program for the elderly and save \$270 billion over seven years. Capping three days of rancorous debate, the 22-14 party-line vote came after Republicans brushed aside a Democratic alternative designed to save \$90 billion over seven years. "We don't need a Democratic Band-Aid solution," said Sam Johnson of Texas. But California Democrat Pete Stark argued that "seniors have a reason to be frightened that they'll be forced into untried, untested plans" run by private companies. (Articles on Page A24)

*The Commerce Committee was rushing to finish work on an identical Medicare bill, which would clear the way for a vote by the full House next week.*

**A CEASE-FIRE TOOK EFFECT** in Bosnia, U.N. officials announced.

The 60-day truce, part of a U.S.-led effort to bring peace to the Balkans, was delayed for two days while utilities were restored in Sarajevo. The Muslim-led government and its Croat allies seized two Serb-held towns in northwest Bosnia just before the truce began. And Serbs were rushing to expel up to 20,000 non-Serbs remaining in northern Bosnia. Bosnian Foreign Minister Muhamed Sacirbey, speaking in Brussels, Belgium, said the truce could be endangered if the expulsions continued.

*NATO officials approved a plan for a peace force that could include 50,000 troops, with Americans accounting for one-third to one-half of the total.*

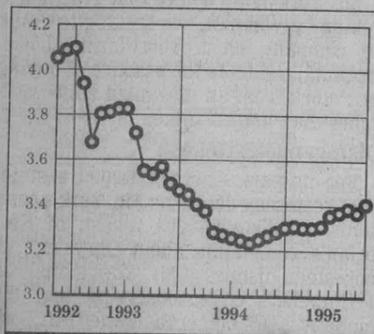
**GOP presidential candidates** opened the primary election season with a televised debate marked by gentle jabs at front-runners Bob Dole and Phil Gramm as "Washington insiders" who won't appeal to restless voters. (Article on Page A10)

**Palestinians celebrated** by firing shots into the air as Israeli soldiers loaded their equipment into trucks and withdrew from the West Bank villages of Qabatiyeh, Yatta and Kharbata after 28 years of occupation. Under an Israel-PLO accord, Israeli troops will leave Palestinian towns and villages during the next six months.

**France's prime minister** staved off a forced resignation after escaping possible court action in a housing scandal. However,

## Aluminum Production

Annual rate, in millions of metric tons.



**ALUMINUM PRODUCTION** in the U.S. rose to an annual rate of 3,408,224 metric tons in September from 3,370,721 metric tons in August, the Aluminum Association reports.

## Old Tires Fire Up The Imaginations Of Myriad Inventors

### California Waste Board Spins Ideas, Some Half-Baked; Hey, Let's Bake Them

By JEFF BAILEY

Staff Reporter of THE WALL STREET JOURNAL  
**SACRAMENTO**—Always a trendsetter, California is trying to make heaps of old tires vanish by way of cutting-edge technology and visionary thinking.

A solar-powered house made of tires? Undersea tire reefs hospitable to marine life? Tires as electromagnetic-radiation absorbers — to keep the wireless information superhighway from blasting through the walls of office buildings?

Yes, says Michael Contreras, head of the California Integrated Waste Management Board's tire-grant program. "It's our intention to leave no viable stone unturned."

### Burning Rubber

Such long shots might seem worth a small bet, except for one fact: The national tire problem is on the verge of solving itself cheaply and neatly. Cement kilns and industrial boilers are burning more and more tires as fuel. It's about as polluting as burning coal and, pound for pound, produces 70 percent less sulfur dioxide. By the turn of the century, the U.S. could be consuming more waste tires than it generates. The stockpile would then begin to disappear. "The problem has been solved, guys."

## Business Bulletin

### A Special Background Report On Trends in Industry And Finance

**E-MAIL ETIQUETTE** starts to take shape for business messaging.

Don't "shout." Don't ramble. Don't pretend you didn't get it. Do punctuate. Do reply quickly. Some lessons are learned the hard way. In New York, Simon & Schuster Inc.'s Andrew Giangola thought he had found an efficient way to answer e-mail: Simply type into the message using capital letters to distinguish the reply. But his correspondent asked, "Why are you screaming at me?" The company has a task force working on e-mail protocol, such as when to phone and when to transmit.

Poor (or no) punctuation, misspellings and lack of format irk business users, says Eric Arnum of Electronic Mail & Messaging Systems newsletter, in Washington. E-mail has the immediacy of a phone call and formality of a document, yet often a message is just "a hastily-written letter," he says. A pet peeve from Hewlett-Packard Co. employee Patrice Palleson: Complaints are broadcast to all; praise isn't. Weyerhaeuser Co. executive David Still bristles at folks who fill the screen with trivia, like lunch plans.

*Ford Motor Co., which has some 40,000 users on its global system, says e-mail can be highly preferable to phoning overseas.*

**'CHANGE AGENTS' face change, too, as the human-resources position evolves.**

Human-resources officers — the people who shepherd workers in restructurings—face changes in their own jobs, too, says the Conference Board, a business research group in New York. Its survey of 314 member companies found that 58% of the outfits "dramatically" changed their "HR" structures in the past three years to four years. Departments are getting smaller and are focusing on improving the bottom line, not filling administrative duties, it says.

HR staffers who formerly were viewed as "people practitioners" are now seen as "business enhancers," the report adds. Consultant Arthur Andersen, which sponsored the research and itself provides human-resources services, says that in the future, more HR tasks may be farmed out, much like payroll and recruiting are now. "Human resources is at a critical point in its transformation," says Charles Roussel of Andersen.

**BUSINESS GIFTS to the arts rise with the economy. Small companies help gains.**

Business support to the arts rose to \$875 million in 1994 from \$518 million in 1991, the last year businesses were polled for the Business Committee for the Arts, an industry

## 99 Days

### Manzi Quits at IBM And His Many Critics Are Not at All Surprised

### Lotus Chief, Tempestuous And Quick to Fire Aides, Leaves Fast—and Rich Life With 'Louie' Gerstner

By LAURIE HAYS

Staff Reporter of THE WALL STREET JOURNAL  
**CAMBRIDGE, Mass.** — In his sleek office overlooking the Charles River at Lotus headquarters here, Jim Manzi was taking bets recently. At best, the wagering had it that Mr. Manzi would last under IBM's new ownership only until next summer; others bet he would be gone by year end.

Mr. Manzi savored the guessing game. Flashing a smile, he declared: "I have all the cards."

Yesterday, Mr. Manzi folded. He suddenly resigned from his job as head of

Lotus Development Corp., the company he had run for a decade as the *enfant terrible* of the software world. Mr. Manzi lasted a mere 99 days after International Business Machines Corp.'s acquisition of the company.

His resignation, announced after a meeting between him and IBM Chairman Louis V. Gerstner Jr., poses a spate of new questions about the future of IBM's \$3.5 billion investment in the software firm. Among them: Will top Lotus developers leave in his wake? Will IBM renege on its promise of autonomy for Lotus? And who will take over the operation?

IBM didn't immediately name a replacement. Instead, John M. Thompson, IBM's senior vice president of software, will temporarily run Lotus. Some observers believe that Lotus will be fully absorbed into IBM's software unit, adding the popular Lotus Notes networking software to the IBM product line. An IBM spokesman declined to comment on Mr. Manzi's departure, though Mr. Gerstner put out an internal memo.



Jim Manzi

**POINTS & DISCOUNTS**

**BY**

**J. G. SCHNEIDER**

**A Column of  
PUNS-OPINIONS  
And Other  
IMPERTINENCIES**

IF YOU'RE EVER AROUND MEREDITH, New Hampshire, with grandchildren, you'll want to stop into "Franken Sundae", an ice cream shop that provides the materials for visitors to make their own sundaes. In fact, the firm's motto is "Build Yourself A Monster!" The kids really go at it with a vengeance, and, with a little more practice, they'll some day be able to match the heavy-set lady who didn't have enough room in the plastic dish to add the marshmallow topping, so she put it around the saucer. She was conceded to be the winner by the people in our party. .... PERHAPS THIS IS A REFLECTION on our sense of humor, but we have been thoroughly enjoying the "one-liners" feature that has been running several times a week in Kankakee's *Daily Journal*. The wise-cracks are on current topics, and some are very clever. Our favorite over the past few weeks was: Cutler Daily Scoop, on the new book about Barbra Streisand: "It claims that she and Elvis had a fling in 1969. They even planned on doing a musical together: "The King... and Oy". .... WE'VE BEEN INTERESTED IN OLD POSTCARDS for quite a number of years, and recently bought one which may be something of a classic. It has a copyright dated 1906 and shows a group of about 45 enlisted men--in sailor uniforms--below decks on a ship where they are circled around a cleared space. Two of the men next to the ring are holding roosters, and the caption is: "Cock fight on board U. S. Man O' War". We can assure that such a practice is no longer countenanced by the U. S. Navy, and we're not even sure that it had official approval back in 1906. .... WHILE ON MARITIME SUBJECTS, we note that the U. S. Post Office has issued a series of stamps with representative lighthouses on them. We received a letter the other day which had a stamp featuring the St. Joseph, Michigan, lighthouse. .... ONE OF OUR READERS reports that one

of the hardest things he has had to teach his son is not to spill things--especially to his mother. .... BUT ABSOLUTELY THE HARDEST THING to teach children is to return tools to the place from which they have borrowed them. It took us a long time to understand why our own father got so irate when he was looking for a tool and couldn't find it because one of his kids had borrowed it. We believe that was the only time we heard our father swear. Well, when we had kids in the house, we finally understood what made our father mad. And then, just the other day, we received a small package in the mail which contained, along with a poem, our By Scout hunting knife, which had been missing for only about 27 years. But, along with the poem explaining this mysterious syndrome of fathers getting upset when tools aren't returned, the knife was nicely sharpened and had a brand new sheath, so we welcomed this knife that had been missing since a couple of 15-year old boys took a canoe trip down the Kankakee River from Shelby, Indiana, to Kankakee. .... WHEN CONGRESS PASSED THE National Voter Registration Act (the so-called "motor voter law") a couple of years ago the opponents to the measure feared that it would result in voting by aliens in federal elections. That's exactly what has happened in a number of places, according to Universal Press Syndicate columnist, Georgie Anne Geyer. When she recently arrived in Brownsville, Texas, the front page of the *Brownsville Herald* carried a major story of the illegal voting and " ...the incredible way in which the federal government is actually, willy-nilly, encouraging it". Apparently, under this law the one who wants to vote just has to request an application at the place where he/she gets a drivers license or food stamps, and need not make any showing of citizenship in order to get on the voting rolls. This is insanity,  
(Continued on Page 4. . .)

and Congress should not waste any more time getting rid of the law which serves to partially disenfranchise those of us who are legally qualified to vote. .... WE THINK IT'S TIME TO REMIND our readers that this is one of the few publications in the nation which did not carry a story about "Windows 95" on its front page this month. See, we can show some restraint! ..... WE'LL BE ETERNALLY GRATEFUL to our Denver correspondent for sending us a copy of the advertisement of The Independence Institute of Golden, Colorado, which was carried earlier this month in the *Rocky Mountain News*. That ad showed a copy of the warning leaflet which was dropped by our Air Force over Hiroshima two days before the atomic bombing of that city. See page one for more details. .... ONE OF THE COMPLETELY UNEXPLAINED things in connection with the death of presidential aide Vincent Foster two years ago just begs for an explanation, and we believe that before special investigator Kenneth Starr completes his study of the Whitewater matter there may be some attention given to this point. Foster, a supposed suicide, was found on the ground in a park several hundred yards away from where his car was parked. It has been presumed by all involved with the investigations that Foster walked that distance. Yet, there was no dust on his shoes! Some unidentified fibers such as from carpeting were also located on his clothing, but none of the investigators thought those were worth looking into. The lack of dust on his shoes certainly indicates to us the possibility that Foster's body was carried to the location at which it was found. If that is true, the questions "by whom" and "for what reason" occur to us. It seems

possible that Foster could have died elsewhere, but some people did not want his body discovered at that unknown location. That the investigators in the Washington area--including the FBI--did not make serious inquiries into these matters is certainly strange. In spite of all of its faults which have come to light over the past few months, we doubt if the Los Angeles Police Department would have conducted such a flawed investigation had it been the police group in charge. Anyone want to bet that we've heard the last of the Vincent Foster case? ..... WE DID TAKE IN THREE sessions of the 24th Annual Bix Beiderbecke Memorial Jazz Festival in Davenport, Iowa, the home of the legendary cornet player of the '20s and '30s who died at a very early age. But his bell-toned notes are still remembered. The festival had four locations this year and featured eight bands. Our group felt the best one was The New Red Onion Jazz Babies from Kansas City on the "Mo" side. The festival is held the last weekend of July, and if you like traditional jazz, we strongly urge you to take it in next year. .... FINALLY, WE'LL LEAVE YOU with this well-worn jungle fable: The lion came up to the monkey and demanded to know: "Who is the king of the jungle?" "Oh, you are, O mighty one!" The lion then asked the jackal the same question. "Oh, it is you, mighty lion!" he replied. Then the lion swaggered up to the elephant with the same query. Whereupon the elephant picked up the lion, dashed him to the ground, picked him up again and threw him into the river. As the lion regained the shore and saw that the elephant was ready to renew the attack, he shouted: "Well, you don't have to get so sore just because you don't know the right answer!"

\* \* \* \* \*

**RIBBIT, RIBBIT!!**

(with thanks to our Harris Bank correspondent... )

A little boy sitting on his grandfather's lap asked, "Grandpa, can you make a noise like a frog?"

Grandpa replied, "Well, yes, I can. Why do you ask?"

"Because daddy said we can't go to Disney World until you croak!!"

\* \* \* \* \*

Routing Slip

FD-4 (Rev. 8-8-89)

Date \_\_\_\_\_

To:  Director **KEN STARR**

FILE # \_\_\_\_\_

Att.: \_\_\_\_\_

SAC \_\_\_\_\_

Title \_\_\_\_\_

ASAC \_\_\_\_\_

Supv. \_\_\_\_\_

Agent \_\_\_\_\_

OSM \_\_\_\_\_

Rotor # \_\_\_\_\_

Steno \_\_\_\_\_

Typist \_\_\_\_\_

M \_\_\_\_\_

RE: \_\_\_\_\_

Room \_\_\_\_\_

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|---|--|--|
| <input type="checkbox"/> Acknowledge                              | <input type="checkbox"/> For Information                               | <input type="checkbox"/> Return assignment card                      |
| <input type="checkbox"/> Assign <input type="checkbox"/> Reassign | <input type="checkbox"/> Handle  | <input type="checkbox"/> Return file <input type="checkbox"/> serial |
| <input type="checkbox"/> Bring file                               | <input type="checkbox"/> Initial & return                              | <input type="checkbox"/> _____                                       |
| <input type="checkbox"/> Call me                                  | <input type="checkbox"/> Leads need attention                          | <input type="checkbox"/> Return with action taken                    |
| <input type="checkbox"/> Correct                                  | <input type="checkbox"/> Mark for indexing                             | <input type="checkbox"/> Return with explanation                     |
| <input type="checkbox"/> Deadline _____                           | <input type="checkbox"/> Open case                                     | <input type="checkbox"/> Search and return                           |
| <input type="checkbox"/> Delinquent                               | <input type="checkbox"/> Prepare lead cards                            | <input type="checkbox"/> See me                                      |
| <input type="checkbox"/> Discontinue                              | <input type="checkbox"/> Prepare tickler                               | <input type="checkbox"/> Type  |
| <input type="checkbox"/> Expedite                                 | <input type="checkbox"/> Recharge file <input type="checkbox"/> serial |  |
| <input type="checkbox"/> File                                     | <input type="checkbox"/> _____   |  |
|   | <input type="checkbox"/> Send to _____                                 |  |

I noted on the 302 re  
White House logs that Hubbell  
was @ White House 7/20/93

IN 9:21 Am  
OUT 9:36 Am

- This is EST -

I'm trying to find the search warrant copy  
for the time I wrote it out - I believe it was  
SAC \_\_\_\_\_  
Office \_\_\_\_\_  
See reverse side

FPI-RBK

between 10 Am - 11 Am CST.

There was also the possibility  
of even prior notice. The affidavit  
was given to the AUSA/magistrate  
7/19/94.

Also was Kennedy in/out ~~7/20~~

11:15 in

11:49 out

As part of the Rose "Starbuddi" episode -  
I suggested OLC get <sup>ENTRY</sup> log<sup>UPAME</sup> @ Rose for  
a time period that would have included  
the 7/93 time frame. I never knew what  
came of it but it might show?

TO: MR. STARR

Fm: S. SIMONS

## Justice delayed and justice denied in the file search case

By Mike Mitchell

People passing by the State Department can be forgiven if they think they are hearing the sound of splintering wood and twisting steel.

Those are the sounds that represent the final destruction of the legislative wall once known as the Privacy Act, a barrier erected over 20 years ago to keep Big Brother and others from disclosing information about ourselves from confidential government records. This month marks the first anniversary of Clinton officials' illegal search of Bush State Department political appointees' personnel files. And the administration still refuses to take the matter at all seriously.

It is understandable if the public does not quite remember the events surrounding this particular scandal. With Whitewater, controversy surrounding the president's sexual conduct, the lawsuit over Hillary's health care task force violating federal meeting laws, authorities probing the cozy arrangement between Agriculture Secretary Mike Espy and Tyson Foods Inc., not to mention Travelgate, Americans have been forced to keep track of many boats on what has become a sea of political filth. According to the latest opinion polls, even the bilge pumps at the White House cannot keep the president's rickety ship of public confidence afloat. This is a truly remarkable achievement for an administration that came charging into office swinging a self-described sword of ethics and morality.

The State Department files scandal is a case study in the double standard the Clinton administration seeks to operate under, imposing its view of the law on others while operating above the law it professes to uphold. This particular case began when the director of State's White House liaison office, Joe Tarver, mysteriously had the personnel files of Bush political appointees pulled out of cold storage a half year after Clinton took office. It was not long before information from these files began appearing in the press.

In a column written last year by Washington Post reporter Al Kamen, information from Elizabeth Tamposi's and Jennifer Fitzgerald's files was splashed

across the newspaper. Divulging any information from a personnel file is a direct violation of the Privacy Act and a criminal offense. Senate Minority Leader Bob Dole and Kentucky Sen. Mitch McConnell, among others, forced the administration to investigate

the leak. Shortly thereafter, State Department Inspector General Sherman Funk issued a report that found unambiguous evidence of criminal misconduct.

In particular, Mr. Funk identified Mark Schulhof, a staff aide to Assistant Secretary for Public Affairs Thomas Donilon, as one of the people involved in disclosing information from the personnel files to Mr. Kamen. During the course of his inquiry, Mr. Funk found that evidence directly relating to the case was deliberately destroyed by another Clinton appointee, and other officials were responsible for "acts of omission or commission" in this crime. Mr. Funk stated to Senate Republicans he briefed on his investigation that "criminal violations of the Privacy Act provable beyond a reasonable doubt" occurred.

The administration immediately sought to distance itself from both Mr. Tarver and Mr. Schulhof, calling their actions unsupervised, rogue operation. Mr. Funk could not establish a credible reason why the files were brought back to State from their storage area because Mr. Tarver has offered explanations that range from unbelievable to ridiculous. Mr. Donilon, who is widely regarded as Warren Christopher's lifeline to the White House, swore that he knew nothing of Mr. Schulhof's calls to Mr. Kamen and characterized Mr. Schulhof as a low-level gofer prohibited from speaking to the press — someone whose only responsibilities were answering phones and ordering cars from State's limousine service.

Yet according to the report, State telephone logs record that after learning of the files, Mr. Schulhof placed 45 calls to Mr. Kamen's direct line. This amounts to one phone call every two working days from the point at which Mr. Schulhof found out about the files to the publication of Mr. Kamen's article. Mr. Funk even documents Mr. Schulhof using Mr. Donilon's private line to call Mr. Kamen. In addition, he received testimony from

Mr. Donilon's executive secretary, who stated she heard Mr. Schulhof talking to Mr. Kamen.

Mr. Donilon denies knowing anything. Yet reporters who cover State claim Mr. Schulhof was Mr. Donilon's right-hand aide, someone they had routine contact with and who was comfortable enough to place telephone calls from the assistant secretary's personal office. It is a long, hard stretch of the imagination to believe that Mr. Schulhof did not at some point mention to Mr. Donilon what was upstairs in Mr. Tarver's office. Either Mr. Donilon is so detached from his office that he has no idea what his charges are doing or he has a case of selective memory.

The question remains: Why would anyone go through all the trouble to recall and review the files. The simple answer is that these personnel records contain sensitive information — such as financial reports, medical histories, job-performance evaluations, and most important, a background check conducted by State's own investigative service. In short, the files represent an A-to-Z repository of a person's entire life. This information was, and still could be, used to embarrass, humiliate and destroy Bush political appointees.

Mr. Funk completed his findings and turned the information over to Janet Reno's Justice Department for action. Despite overwhelming evidence, Justice announced that it declined to prosecute in this matter. The case, the administration hoped, was closed — buried under the collective weight of the White House, State and Justice departments.

Fortunately, they are wrong. As damning as the Inspector General's report was, it raised other serious

questions that now demand answers. Among them:

■ Why did Mr. Donilon withhold information from White House

1) STARR  
2) EWING  
Cont'd

*The State Department files scandal is a case study in the double standard the Clinton administration seeks to operate under, imposing its view of the law on others while operating above the law.*

Since Janet Reno abdicated her role in upholding the public trust, the ball now is passed back to Capitol Hill. Republican lawmakers can and should call for an independent counsel investigation of this matter. It is the only avenue left to restore credibility and integrity to the Privacy Act.

*Mike Mitchell was a political appointee at the State Department during the Bush administration.*

presidential adviser Bruce Lindsey? When Mr. Lindsey called Mr. Donilon the evening the story broke

to find out what was going on, Mr. Donilon told Mr. Lindsey about Mr. Tarver's involvement in this episode. However, Mr. Donilon was clearly aware of the major role that his assistant, Mr. Schulhof, had in leaking the information. Yet none of this was brought to Mr. Lindsey's attention.

■ Where was Mr. Donilon? Margaret Donovan, a deputy assistant secretary in State's legislative affairs branch, asked Mr. Schulhof to represent the public affairs office at a high-powered meeting held by Assistant Secretary for Administration Patrick Kennedy, where two other deputy assistant secretaries and State's legal advisers were gathered to discuss Mr. Kamen's article. If people felt comfortable enough to ask Mr. Schulhof to represent his office, it contradicts Mr. Donilon's claim that Mr. Schulhof was some low-level clerk. It also raises questions why Mr. Donilon, State's chief mouthpiece, was not asked to attend.

■ How many files were pulled and examined? Mr. Tarver estimated that there were from 350 to 425 files. Mr. Kamen cited 160 in his article, State investigators took possession of 197. Evidently, Mr. Schulhof and Mr. Tarver had access not only to political appointees' files but also to Ambassadorial files. How broad their access was needs to be answered.

■ Did the Clinton administration pull personnel files from any other government agencies?

■ Did the White House or any Clinton official at Justice play a role in blocking indictments from being handed down? And why did Justice refuse to prosecute this crime?

3\*

## President Is Ready to Move On White House Shakeup

### Press Secretary Is Expected to Be Replaced

By DOUGLAS JEHL

Special to The New York Times

WASHINGTON, Sept. 22 — After months of discussions about shaking up the White House staff, President Clinton is about to make changes that may sideline its most prominent woman but would, in the view of some officials there, fail to resolve the communications shortcomings that prompted the moves.

In the most public shift, Dee Dee Myers, the White House's most visible female aide, is likely to be replaced as the chief spokeswoman by Michael D. McCurry, who now holds that job at the State Department, Administration officials said today.

The moves would be part of a realignment that Leon E. Panetta, the chief of staff, has been plotting since June to reshape the image that President Clinton and his team present to the public. But officials cautioned today that Mr. Clinton had not yet given final approval to Mr. Panetta's recommendations. An announcement of the changes is expected on Friday.

Rather than confront questions about her future, Ms. Myers this afternoon first postponed and then canceled her daily briefing. Surrounded later by two dozen reporters in a cramped suite outside his office, Mark D. Gearan, the communications director, who is also expected to be reassigned, would say only that it would be "inappropriate" to discuss any job changes before Mr. Panetta makes an announcement.

But as word spread through the White House that an announcement was imminent — and that its most prominent feature may be to install a different person as Mr. Clinton's day-to-day spokesman — there was some disappointment, even by some ranking officials. While they cautioned that they did not know all of the changes that Mr. Panetta has recommended, some said they worried that the moves would fail to resolve broader inadequacies within the White House staff while depriving the Administration of an important female role model.

"They don't have any message," one White House official said of his colleagues who have been charged with the task of shaping communications strategy. "They don't have any message discipline, and they haven't been able to define what they want to say."

There were also bitter feelings among officials close to Ms. Myers, who say endless speculation about her fate in the three months since Mr. Panetta promised to announce a staff overhaul "earlier rather than later" has made her life particularly unpleasant.

Among the few changes that officials said were absolutely settled today is a job swap between Philip Lader, a deputy White House chief of

staff, and Erskine Bowles, director of the Small Business Administration. They said they also expected that George Stephanopoulos and Bruce Lindsey, both senior advisers to Mr. Clinton who once carried broad portfolios, would be given new titles and narrower responsibilities as part of the change.

In moving out of the communications director's job, in which he has focused mainly on daily developments, Mr. Gearan is expected to be given a broader role in planning and shaping communications strategy. But they said they did not believe that anyone would be dismissed as part of the shake-up, and did not expect that any prominent outsider would be added to Mr. Clinton's team.

White House officials who said they believed the changes were insufficient said they still believed it was important that Mr. Clinton find someone with the experience and skill of a David R. Gergen or Michael K. Deaver to try to better hone and project his message.

Mr. McCurry, who is 39, is highly regarded throughout the Administration for the stature and confidence he has projected on behalf of the State Department. A veteran Democratic strategist, he has worked as a press secretary and strategist on Capitol Hill, for the Democratic National Committee, for

three failed Democratic Presidential candidates, and for Lloyd Bentsen's 1988 vice presidential campaign. He is known for his wry and witty sense of humor, and after months in which Mr. Clinton complained to aides that the public does not hear enough about his accomplishments, senior officials said today that Mr. Panetta believed that moving Mr. McCurry to the White House could help accomplish that task with ease and authority.

Ms. Myers, who is 33, has worked for Mr. Clinton since October 1991, when she joined his Presidential campaign. She was the first woman ever to become White House press secretary, but had to make do with a lower rank, smaller salary and smaller office than her predecessors. She also had to serve as an understudy to Mr. Stephanopoulos, the then-communications director, who for the first five months of Mr. Clinton's Presidency acted as his principal spokesman.

Since taking over the daily White House briefings in May 1993, Ms. Myers has mastered details of a dizzying spectrum of domestic and foreign policy issues while maintaining a hip style. But she has complained to associates that she has been given too little access to decision-making, a shortcoming that has sometimes left her to make incomplete and even misleading public statements.

She is regarded as one of Mr. Clinton's most loyal aides, and Mr.

Panetta has considered offering her another high-level White House job, officials said. Among the possibilities mentioned today were that she would become Mr. Clinton's traveling press secretary, or given an insider's role in working with Cabinet officers to coordinate their communications strategy. But while she and Mr. McCurry are friendly, she has told associates in recent weeks that she would be uncomfortable staying on in the White House if asked to relinquish her chief spokesman's role.

The prospect that Ms. Myers, who

Cont'd

after Hillary Rodham Clinton is the Administration's most visible woman, will be replaced comes in the wake of some quiet changes and an anticipation of more to come that have left other women in the White House embittered. Ricki Seidman, the White House scheduler, is being replaced by Billy Webster, a former aide to Education Secretary Richard W. Riley; Christine Varney, the Cabinet secretary, has made known that she plans to leave by the end of the year, and Joan Baggett, Marcia Hale and Alexis Herman, who all now carry the title of assistant to the

President as White House directors, respectively, of political affairs, intergovernmental affairs and public liaison, were described by some officials today as likely to be demoted to the rank of deputy assistant as part of Mr. Panetta's promised effort to sharpen lines of authority.

Meanwhile, the Pentagon has announced that Kenneth Bacon, a former reporter and editor for The Wall Street Journal, will take the spokesman's job held until recently by Kathleen DeLaski, who is on maternity leave.

And after months in which Mr.

Clinton has turned to men like Mr. Panetta, Lloyd N. Cutler, Tony Coelho and Abner J. Mikva to fill prominent vacancies in his inner circle, there was considerable grousing today among female White House staff members, who share with Ms. Myers the view that women have been given too little access to decision-making.

"They're perpetuating the role that it's the white boys who make all the decisions," one White House official said today. "That is sad, because this is the Administration that's supposed to look like America."

# The Washington Times

DATE: 9-1-95PAGE: A-13

## Foster's widow to remarry

Her fiance will  
be federal judge

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By Jerry Seper  
THE WASHINGTON TIMES

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LITTLE ROCK, Ark. — Lisa Foster, the widow of Deputy White House Counsel Vincent W. Foster Jr., will be married this year to a lawyer whom the Senate recently confirmed for a federal judgeship.

James M. Moody, 55, who was nominated earlier this year by President Clinton to be a U.S. district judge for the Eastern District of Arkansas, told reporters the couple will be married sometime "close to Christmas," but declined to give a specific date.

Mr. Moody, a widower himself, has told friends that a small ceremony is planned with mostly family members present. He said to intimates that the wedding would probably be Dec. 23.

Mr. Foster died July 20, 1993, in what federal authorities have said was a suicide. Reasons for his death have not been determined.

Mrs. Foster and the couple's three children moved from Little Rock, where Mr. Foster had been a partner in the Rose Law Firm, in early 1993. Since her return to Little Rock after her husband's death, Mrs. Foster has resumed her career as a mathematics teacher at the private Anthony School.

Mr. Moody was formerly a partner at the Little Rock law firm of Wright, Lindsey and Jennings, where Mr. Clinton practiced during the two years he was out of the governor's office in the 1980s. Mr. Moody is expected to take the oath of office later this month.

Mrs. Foster could not be reached for comment on her engagement.

THE DEATH OF VINCENT FOSTER. WHAT REALLY HAPPENED?

--Jeremiah Films

This video was produced by the same people who produced "The Clinton Chronicles." It begins with a statement to the effect, "The following information is documented, and true." Some of the highlights of this video are as follows:

INTRODUCTION

Excerpts from Vince Foster's May 8, 1993, commencement address at the University of Arkansas Law School.

Shot of the cannon at Fort Marcy Park on July 20, 1993.

Picture of Vince Foster, and then Fort Marcy Park.

Confirmation by the media that it was a suicide.

It was six months until the mainstream media questioned this. [Shows copy of Chris Ruddy's article in the New York Post.]

Vince Foster excelled in high school as a student and an athlete. He did well at the University of Arkansas Law School and joined the prestigious Rose Law Firm. [It shows a picture of Vince Foster, a video of Hillary Clinton at a much younger age, and a video of Webb Hubbell.]

The Citizens for Honest Government presents: "The Death of Vince Foster. What really happened?"

I. PART ONE - THE INCONSISTENCIES

At Bill Clinton's and Janet Reno's insistence, the matter was investigated by the U.S. Park Police. It was not until seven months later that the FBI was allowed in. The Fiske Report issued on June 30, 1994, confirmed that it was a suicide. However, there are alarming contradictions.

1 - Very little blood at scene.

Sergeant George Gonzalez, who was the first on the scene, said he was shocked at the lack of blood at the scene.

Chris Ruddy - Most people on the scene that night had never been interviewed. In January 1994, I met with some of the EMT's and the police. Many confirmed that there was very little blood on the scene. One said, "This one

was different."

Gene Wheaton (GW) - former homicide investigator and special agent with the U.S. Army CID - I was hired to go to Washington and look into this. The events surrounding the investigation indicate that it had to be a cover-up. Never in my career had I seen a case like this. In most gunshot wounds to the mouth, there is a "blow back." A .38 caliber stuck into the back of the mouth, would produce a large amount of gases.

Citation to the Fiske Report.

Richard Mason disagrees, giving his opinion about heart activity.

Citation to Fiske Report, page 52. This is contradicted on page 36 by Dr. Haut. It is reported in the Fiske Report that Haut says that there was a large pool of blood. Haut disputes this. Cory Ashford, one of the people who moved the body, said he could not even see an exit wound.

Ruddy - quoting Ashford.

- 2 - Foster's head assumes four different positions after death.

Ruddy - There were four different blood tracks.

Reed Irvine Accuracy in Media - U.S. Park Police realized this was a problem. There was an analysis of blood staining patterns. In the Fiske Report, they talk about the position of the head. It is stated, with no evidence, we conclude that someone at the scene must have moved the head. George Gonzalez denies this.

- 3 - No skull fragments found at the scene.

Copy of the autopsy report shown, indicating the size of the exit wound. The autopsy report shows a one inch hole. It was stated in some report that the surrounding ground was excavated to a depth of eighteen inches.

CW .. There is an oddity that no skull fragments were found at the scene. Where are they? They should have been around the body. Therefore, it is most logical: (1) that they were picked up and destroyed, or (2) the body was moved.

The Fiske Report rejected this.

4 - Gun found in Foster's hand.

GW - I have investigated hundreds of deaths. There is a recoil from a .38 caliber weapon. I can't recall ever finding a pistol in a victim's hand after a death with a large caliber weapon like a .38.

Ruddy - Normally, the gun is not in the hand, and it is thrown away from the body. In this case, it was almost neatly at his side.

GW - I have seen cases of suicide where the weapon is sometimes thirty to forty feet away. It is never in the hand.

5 - Gun found in wrong hand.

The Fiske Report states that the gun was reportedly in the right hand. Foster was left-handed. This was not mentioned in the report.

GW - It is illogical to think Foster shot himself with his right hand. I have even been told he was almost non-functional with his right hand, because he was such a seriously left-handed person. If someone staged the suicide scene, it would be a normal assumption that he was right-handed, since most people are right-handed.

6 - Foster's fingerprints not on gun.

According to the FBI, there were no prints of Vince Foster developed on the gun.

The Fiske Report, page 46, tries to explain this, by stating latent prints can be destroyed by certain things such as heat.

There was one latent print on the underside of the grip that did not belong to Vince Foster. There was no attempt made to determine whose it was.

7 - Powder residue suggests Foster did not fire gun.

Ruddy - There was powder residue reported on the right index finger, in the web of the hand, and on the left index finger. This would indicate that his hands were around the front cylinder gap. The fact that he had powder burns on both hands means he would have had both hands over the cylinder, with no grip on the butt of the gun. It would be very, very difficult to fire the weapon in that manner.

Now, despite the Fiske Report, most forensic experts doubt that Foster pulled the trigger himself.

8 - Powder on Foster's clothing did not match gun.

The gun powder on Foster's clothing did not match the powder on Foster's hands.

According to the Fiske Report, this possibly occurred because that powder possibly blew on there from the exhaust fan at the Park Police lab. Fiske was not able to support this with any evidence.

9 - Gun not positively identified as Foster's.

The Colt .38 has yet to be positively identified. Foster's three children all said it was not the one they had seen at home. Lisa Foster said that they kept only one gun at home, and it was found that night.

Irvine - The gun was a 1913 Colt Army special made from parts of two guns. It is almost untraceable.

GW - This is the classic type weapon used by pro political assassins or organized crime hit men.

There were only two bullets. There was no ammunition for this gun in Foster's house.

Irvine - They apparently were the only two bullets he had.

GW - If the gun was at home, he would have had a box of rounds there. This is a classic assassination type scenario.

10 - Fatal bullet never located.

The bullet has yet to be found. Later, the FBI did a search of the area and found seventy pieces of metal, some going back to the Civil War. There were twelve modern-day bullets found, but no bullet that matched the gun.

11 - No gunshot heard.

The Fiske Report, page 56, states that one of the reasons something might not have been heard was because of traffic in the area.

GW - This is illogical. There would be a most explosive-type noise in and around the cylinder.

✓ Contrary to usual police procedures, not one resident nearby was contacted to see if a gunshot was heard.

12 - No dust found on Foster's shoes.

Page 12 of the FBI lab report states there were mica particles. It also says it did not contain any coherent soil samples.

Ruddy - This is impossible. If you walked in the park, there would be soil on your shoes.

GW - Nothing at that crime scene makes sense. Nobody has questioned this officially, and I can't understand why.

Why has there not been a stronger reaction to this phony, flawed investigation and final report.

Despite Fiske Report's conclusion that there is "overwhelming evidence" of suicide, there is not overwhelming evidence.

Six pieces of evidence which indicate it is likely Foster did not die in the park.

1. Very little blood
2. Four different head positions
3. No skull fragments
4. No bullet
5. No gunshot reported
6. No dust on shoes

Three pieces of evidence which indicate it is more than likely Foster did not fire gun himself.

1. Gun still in hand
2. Gun in wrong hand
3. Untraceable weapon used

GW - Based on the entire scenario of Vince Foster's death, the preponderance of the evidence indicates he did not commit suicide.

In addition, the FBI found in or on his clothing other items including: (1) multi-colored carpet fibers; (2) seaman; (3) long blonde hairs.

Ruddy - The FBI did suction analysis on the clothing. Fort

Marcy Park is not carpeted. Was he on a carpet before he died? Or was the carpet involved in the movement of the body?

Ruddy - The FBI investigators who appeared before the Senate Banking Committee said something interesting, "Well, these things were there, but it could have been anything, and we dismissed it out of hand."

[Video shows agents Monroe and Colombell, and Dr. Hirsch.]

Irvine - The Fiske Report indicates no effort was made to find out what carpet might have been in contact with Foster, what hairs, seaman, etc. This evidence could have provided clues as to where Foster was between 1:00 and 6:00 p.m. Yet, this evidence was never investigated!

## II. PART II THE COVER-UPS

### A. Cover-ups

There were a number of cover-ups related to the Foster death.

#### 1. Falsified position of the body - a second crime scene created that night

Initial interviews of some of the people on the scene by Chris Ruddy indicated that the body was closer to cannon #1, rather than cannon #2, as indicated in the official reports.

Ruddy - The official report says the body was some 600 feet from the parking lot. There were two cannons at Fort Marcy Park that day, and two sites. One of the paramedics drew me a map (Gonzalez). This map sketch by Gonzalez was similar to a sketch drawn for Reed Irvine by Dr. Haut. It indicates that the body was 20-50 feet from the first cannon.

Concerning photographs of the crime scene, originally, the official position was that there were no photographs. They later said that they took photographs, but they were overexposed.

Ruddy - In a normal homicide investigation, one of the things that should not be in dispute is where the body was found. It was originally reported there were no photographs taken. Then they released thirteen close-up polaroids, which is against all procedures of taking crime scene photographs. They then said they took some others, but they were not exposed properly.

GW This makes no sense.

ABC News released one of the polaroid pictures. It depicted certain foliage around Foster's body. The foliage contradicts the official report that the body was near cannon #2. The path below cannon #2 is all dirt. There is a lot of foliage in the spot where the people reported that the body was near cannon #1.

A second crime scene was created that night.

As to the bullet, it was originally said that no metal detectors were used. Later, they said they did use metal detectors. The Fiske people and FBI found seventy pieces of metal near the cannon #2 site, including twelve modern-day bullets; yet, the bullet matching the gun in Foster's hand was not found.

The Fiske Report, page 56, stated that in all likelihood, further searches would be "unproductive."

2. White House demanded key evidence, and Park Police gave it to them. This included papers, etc., given back.

[Video of John Rolla testifying before the Senate Banking Committee]

Ruddy - Park Police gave crime scene evidence away within hours of finding the body, including the White House beeper, which possibly could have had latent prints, etc. [Video of Senate Banking Committee hearing]

The next day, papers, etc., were given back.

[Video of Senate Banking Committee. Senator Domenici asks special agent Monroe about the job of the Park Police in the investigation. Monroe stated words to the effect, "I think they did an adequate job. I feel inadequate to evaluate another agency's work."

The FBI was kept out of the investigation. [News clip regarding Judge Sessions and his firing]

Bill Clinton fired the head of the FBI.

Ruddy - Sessions charged that this "lead to a compromised investigation."

Fiske recommended to Bill Clinton that he fire Sessions and hire Freeh.

[Video showing Senator Faircloth asking a question as to why the Park Police were in charge]

[Video of Senate Banking Committee showing Dr. Beyer, and investigators Cheryl Braun and John Rolla, at the table]

The national news media fell in line with Bill Clinton's explanation.

Ruddy - The Park Police tested the gun on August 12, yet they ruled it was a suicide on August 10, before they tested the gun.

GW - You always approach a death from the standpoint of a homicide, until you prove that it is not.

[Scene showing pallbearers carrying the casket at the funeral. Webb Hubbell and Bill Kennedy appear to be the pallbearers in the back.]

At the time of death, no one called it from a depression.

Irvine - Lisa Foster won't talk. I asked Mrs. Foster on the phone whether Vince Foster was right handed or left-handed. She said, "No comment."

GW - All the Park Police were ordered to keep their mouths shut.

Debra Gorham, White House employee, was interviewed by Reed Irvine. He asked if she was pressured not to talk, and she replied, "No comment."

GW - The investigators did not think it was a suicide. Their superiors ordered them to write it up that way.

B. Was Foster suicidal?

Initially, the answer was, "Absolutely not." The secretary said there was nothing unusual. Bill Clinton said there was nothing unusual.

But the Fiske Report said that he was depressed, he organized his desk, he paid bills, he was apparently stiff that morning, and he was apparently distracted.

Apparently, Foster had a Trazadone prescription from the family doctor.

Everyone fell in line that he was depressed.

[Video] Hillary Clinton said on April 22, 1994, "No one had a clue. Neither did the people who spent the weekend with him."

Day of death - no suicide indications

1. Drove children to work
2. No final words
3. No final preparations
4. Arrived on time
5. Worked conscientiously
6. Set up future appointments
7. Ate lunch
8. Read the newspaper
9. Checked out a pager
10. Said he would return later
11. Wrote no suicide note

[Representative Dan Burton - video - They said they found a note on July 26, 1993. They said they missed the note in the first search.]

Irvine - There was not anything in this "note" about suicide.

GW - How they could claim that they missed 27 pieces of a note is ludicrous. They were not searching a warehouse. They were searching a briefcase.

There were no prints on the note.

CW - Prints are easily obtained from a piece of paper. How can you not tear a piece of paper into 27 without leaving prints, unless you use gloves?

Burton - [shown holding up a copy of the Fiske Report] - This is not worth the paper it is written on.

Faircloth - Referring to the Fiske Report as superficial.

Ruddy - [holding up Fiske Report] - The report looks very thick, when in actuality it is only 58 pages long. Most of it is indexes containing the various biographies of those experts used by Fiske.

Dr. Beyer, who did the autopsy, has had two of his prior

suicide rulings reversed, due to flawed autopsies.

Ruddy - [goes in to the claimed x-rays and the later claim that there were no x-rays] - X-rays would have shown the exit wound, and the trajectory of the bullet. The autopsy report checked that x-rays were done. Also, in the narrative of the report, it indicates that x-rays were done. Yet, later, no x-rays turned up.

GW - This 76 year old pathologist has given very inconsistent statements.

Irvine - The technical man said that the x-ray machine was new equipment. The first service call concerning this machine was in October '93. Thus, it was in good working condition on July 20, 1993.

GW - If Fiske is serious about the investigation, he would have gotten an order exhuming the body, and had the autopsy redone.

✓ Ruddy - Fiske did not use subpoena power.

✓ GW - There was a failure to use the federal grand jury and to put the various witnesses under oath.

Bill Clinton gave conflicting versions of Foster's state of mind.

He at first said there was no depression. He said he had contact with him on July 18 and July 19. He said he was unaware of Foster's depression. He later said that he called on the night of the 19th to cheer up Foster.

### III. PART III - THE RAID ON FOSTER'S OFFICE

[Viewed, but no detailed notes made]

[Shows pictures of Bernie Nussbaum, Maggie Williams, Patsy Thomasson, etc.]

Ending quote:

"Don't believe a word you hear; it was not a suicide."

- Webb Hubbell, July 20, 1993

At the conclusion of this video, it says you can call 1 800 828-2290, for additional copies or information.

\*\*\*\*\*  
\*\*\* ACTIVITY REPORT \*\*\*  
\*\*\*\*\*

RECEPTION OK

TX/RX NO. 6234

CONNECTION TEL

CONNECTION ID

START TIME 05/15 12:00

USAGE TIME 06'41

PAGES 11

RESULT OK

4/21/95

Tom Galvin  
NY Post  
202-393-1787

Tom got a call from a Charlie Stein. Stein said he had a discussion with Vince Foster about medical supply stuff before Foster died. Stein said he spoke with someone from the FBI about a week ago named William Baumgartner, and Stein is supposed to be trying to recreate some documents that he sent to Foster.

Tom's first thought was that this guy Stein was a "looney" but followed up by calling Baumgartner. Baumgartner would not comment and referred the call to me. Tom thinks there might be something to what Stein said since Baumgartner didn't say he never heard of Stein or the call and since Stein had Baumgartner's name.

I told Tom we couldn't comment on an ongoing investigation.

TUESDAY, JUNE 27, 1995

1A

# Whitewater report supports Clintons

BY TERRY LEMONS  
AND JANE FULLERTON

Democrat-Gazette Washington Bureau

WASHINGTON — A report prepared for federal regulators supports contentions by President Clinton and first lady Hillary Rodham Clinton that they had little direct involvement running Whitewater Development Corp. during the Marion County real estate venture's early years.

Sources said Monday that the report to the Resolution Trust

• President's powerful, unseen adviser called "smart cookie" 3A

Corp., prepared by a Republican critic of the president's, showed the Clintons had minimal knowledge about financial transactions conducted by their Whitewater partner, James McDougal.

The RTC was created to dispose of the assets of failed savings and loans and to recover losses when possible. The agency is trying to determine whether anyone

should be sued over the failure of McDougal's Madison Guaranty Savings and Loan Association.

The review said the Clintons in 1994 overstated their losses in Whitewater by almost \$4,000. According to the report, the Clintons lost \$42,192 on Whitewater rather than the \$46,137 they reported in 1994.

During the 1992 presidential campaign, Clinton, then Arkansas governor, issued a report estimating losses of \$68,900.

The Clintons were partners from 1978 to 1992 with James and Susan McDougal in the failed 230-acre residential development along the White River. The report said the development triggered losses at Madison, which collapsed in 1989 at a cost to taxpayers of \$65 million. One source familiar with the report said the review indicated Whitewater led to at least \$88,000 in losses at Madison and questioned McDougal's bookkeeping practices.

McDougal, who now lives near Arkadelphia, took issue with the findings of the report's author, Jay Stephens, a former Republican U.S. attorney in Washington, and his law firm, Pillsbury Madison & Sutro.

McDougal called the report a "Republican fairy tale."

"There was no illegal transfer of funds from any Madison entity to Whitewater," he said.

McDougal, who has not worked See **WHITEWATER**, Page 5A

# Whitewater

•Continued from Page 1A

regularly since being forced out by the Madison board in 1987, said he was not contacted by Stephens or the law firm. He threatened to sue Stephens.

"As soon as I can get this Republican jerk into court, I will cram this report up his tail feathers," McDougal said.

Allegations that money was transferred illegally between Madison and Whitewater accounts have been at the heart of an investigation that began in January 1994 when Attorney General Janet Reno appointed special counsel Robert Fiske Jr. In August, a panel of three federal judges replaced Fiske with independent counsel Kenneth Starr.

Starr's investigation is separate from the RTC's inquiry into Madison's 1989 failure. Starr refused to comment Monday on Stephens' report.

The report, prepared on a \$3.6 million budget, is said to be at least 220 pages.

Mark Fabiani, a White House spokesman, said the administration would have no comment. David Kendall of Washington, the Clintons' private lawyer, had no comment except to say the president and first lady had "cooperated with the RTC."

RTC officials familiar with the report, who spoke on condition of anonymity, gave differing views about its conclusions. Some said it still ties the Clintons to questionable business dealings. Others said it vindicates them as passive investors.

The Clintons have contended they were unaware of many Whitewater transactions handled by McDougal, who worked in 1979 in Bill Clinton's first gubernatori-

al administration.

"The evidence also suggests that the Clintons had little direct involvement in Whitewater's financial management until 1988, by which time all the lots had been sold and McDougal had suffered a nervous breakdown," the report said.

The report concluded that Hillary Clinton assumed a more active role from 1988-91.

The report said the Clintons had little financial risk, putting no money into Whitewater between 1982 and 1986, when the development was struggling. McDougal funneled \$134,294 into the project during that period from other entities he owned in an attempt to cover shortfalls.

"Generally speaking, the transfers of cash from McDougal-related entities were timed either to prevent or cure overdrafts," the report said.

Stephens said McDougal's contributions included \$88,022 from Madison that apparently became part of the S&L's losses. The other \$46,272 couldn't be traced because of missing documents and the fact that Madison's records were sloppily kept, the report said.

Administration critics argued Monday that the Clintons, by not investing in Whitewater during a crucial five-year period, shifted losses onto McDougal and ultimately the taxpayers through the failure of Madison.

Stephens questioned a \$30,000 bonus to McDougal from a Madison subsidiary. The money was deposited in McDougal's Whitewater account and covered an overdraft created by a \$30,000 payment to another McDougal business partner, Sen. J. William Fulbright, D-Ark.

One source said the report does not cite the Clintons or Fulbright for wrongdoing in that incident. The source said the Clintons

knew "absolutely nothing" about McDougal's business activities during Whitewater's early years.

The RTC's selection of Stephens to review Madison's failure elicited outrage from George Stephanopoulos and other White House advisers last year. Stephens had been fired as a U.S. attorney by Clinton in early 1993. Efforts by Stephanopoulos and others to get the RTC to reconsider its selection of Stephens became an issue last year during congressional hearings into whether the Clinton administration improperly meddled in RTC business.

"It cannot be determined how much, if anything, the Clintons knew about McDougal's advances to Whitewater, the source of the funds used to make those advances or the source of the 11 payments made on bank debt," the report said.

Stephens said the Whitewater partnership was doomed by slow sales and rising interest rates. His report was turned over to the RTC several months ago and recently circulated to members of House and Senate banking committees.

One official familiar with the report said the Clintons "should have known that Whitewater wasn't generating enough money to pay its bills."

An administration supporter countered that the report "confirms that the Clintons were real investors and lost nearly the amount of money they said they did."

*The Associated Press and Scripps Howard News Service contributed to this article.*

## Feedback

### Ignoring state's citizens

When Jim Guy Tucker says it would be easy to fix the school funding problem if he could just fix the state Constitution, I hear him saying state takeover, forced consolidation and higher taxes.

When lawyer John Echols, who is involved in drafting the new constitution, says he disagrees with the Arkansas Supreme Court's decision limiting county sales taxes, I anticipate the new constitution will have no limits on the elite's ability to tax the working poor.

Tucker and his working group have ignored proper procedure and the citizens of Arkansas during this attempt at constitutional revision. We cannot anticipate an elegant, simple document from this group; rather, we can expect legal gibberish with plenty of loopholes for lawyers and no limits on their ability to tax and coerce the rest of us.

Tucker should not let constitutional revision detract from his legal preparations to defend himself on my account.

I have seen enough already. I will enjoy voting against his new constitution of, for and by the elite.

**DENNIS HEDGE**  
Lincoln

# Unloading half-baked opinions

For the past couple of weeks, I've been preoccupied. Sorry. But I can explain. For the past couple of days, I've been actively ferrying boxes of books from our old house near downtown to our new house in far West Little Rock. Tomorrow the big truck comes, and by the time this column works its way to the surface, we will have slept a few nights in our new neighborhood.

I say neighborhood because that is what it is. Yesterday a neighbor came up and introduced himself, told me about his family, their cats and their border collie. Everything will be all right. If there is something about moving out that feels like desertion, there is something about moving in that feels like arriving.

This is a good city, a city where neighborhoods still exist. My new one will be different from my old one, but things will work out. Karen will find a new route to run the dogs. I'll get used to the 10-mile commute. Or else do more work at home.

One consequence of the inevitable upset and distraction of switching houses is that my professional routine has been disrupted. For the past few days, I have been watching and hearing the news in tiny bites. I catch snatches of newscasts on the car radio and skim this newspaper. This week I've gotten my news from Don Imus and CNN, from Lyncho and Limbaugh and ESPN's Sportscenter.

My copy of the *Economist* has been directed elsewhere this week. I haven't flipped open *The New Republic* or *The New Yorker* or *The New York Review of Books* or *National Review*. (One of the best things about this job is that one can, without guilt or fear, sit quietly at one's desk for hours simply reading.)

Haven't looked at the *New York* or *Washington Times* all week. Haven't browsed the



*Wall Street Journal* or the *Village Voice*. Haven't picked greedily through our wire services or even made it all the way through my mail.

In short, I have lived the past week as though I had a real job, a job that demanded my attention and didn't allow me the luxury of reading, researching and thinking about stuff.

Which is all kind of interesting, if not exactly liberating. I've never felt compelled to have—much less issue—an opinion on every event or idea that comes to public notice. Most human predicaments are more complex than they appear. I try not to let my knee jerk too often.

There is something to be said for a counter-intuitive approach.

Still, I find that over the past couple of days I've developed these opinions. I don't exactly trust them, but now it's time to write this column and they're really all I have. So I offer them with the caveat that they are what some people might call ill-informed. All I can vouch for is that they are genuine.

Darryl Strawberry is a thug. But if you look around your office, your home, your life, you'll see plenty of people who have been given second, third and seventh chances. Sometimes people disappoint you, and sometimes they surprise you. I don't know if I'd give Strawberry another chance; I don't know him. I've given other people second, third and seventh chances and sometimes they haven't let me down.

Mike Tyson doesn't deserve a parade, but he does deserve a break. He served his time.

Dr. Henry Foster (and his handlers) lied about his history. Yet Phil Gramm and the GOP made a tactical error when they denied him a vote by way of filibuster. The American people are going to view the whole business as the worst kind of weasel-ly. No one cares who the surgeon general is anyway.

No one cares about Whitewater, either. If Ken Starr really wants to be on the Supreme Court one day, he has two constituencies—the Republican establishment and the legal establishment. He can't afford to play politics too hard if he wants to retain his political viability. Newt Gingrich will run for president, because the hard-liners don't trust Bob Dole and neither Gramm nor Pat Buchanan can win. I don't think Newt can win, either, though I also think Bill Clinton is trying to throw the race.

Jesse Jackson will not run, though it would be good for Clinton if he did. It would force him to stop trying to appease people who are never going to vote for him anyway, because they think he's a draft-dodging (he is), philandering (who knows? who cares?) liberal (wrong). If Jackson runs, Clinton might have to think about more than campaign tactics.

Bob Dornan is just kooky. If the Clinton administration is friendly to gays and lesbians, they need no enemies.

O.J. Simpson is still innocent until proven guilty. But it looks bad.

That's it. Those are the half-baked, under-informed opinions I've offered up special, this week only. Bet some of you can't tell the difference.

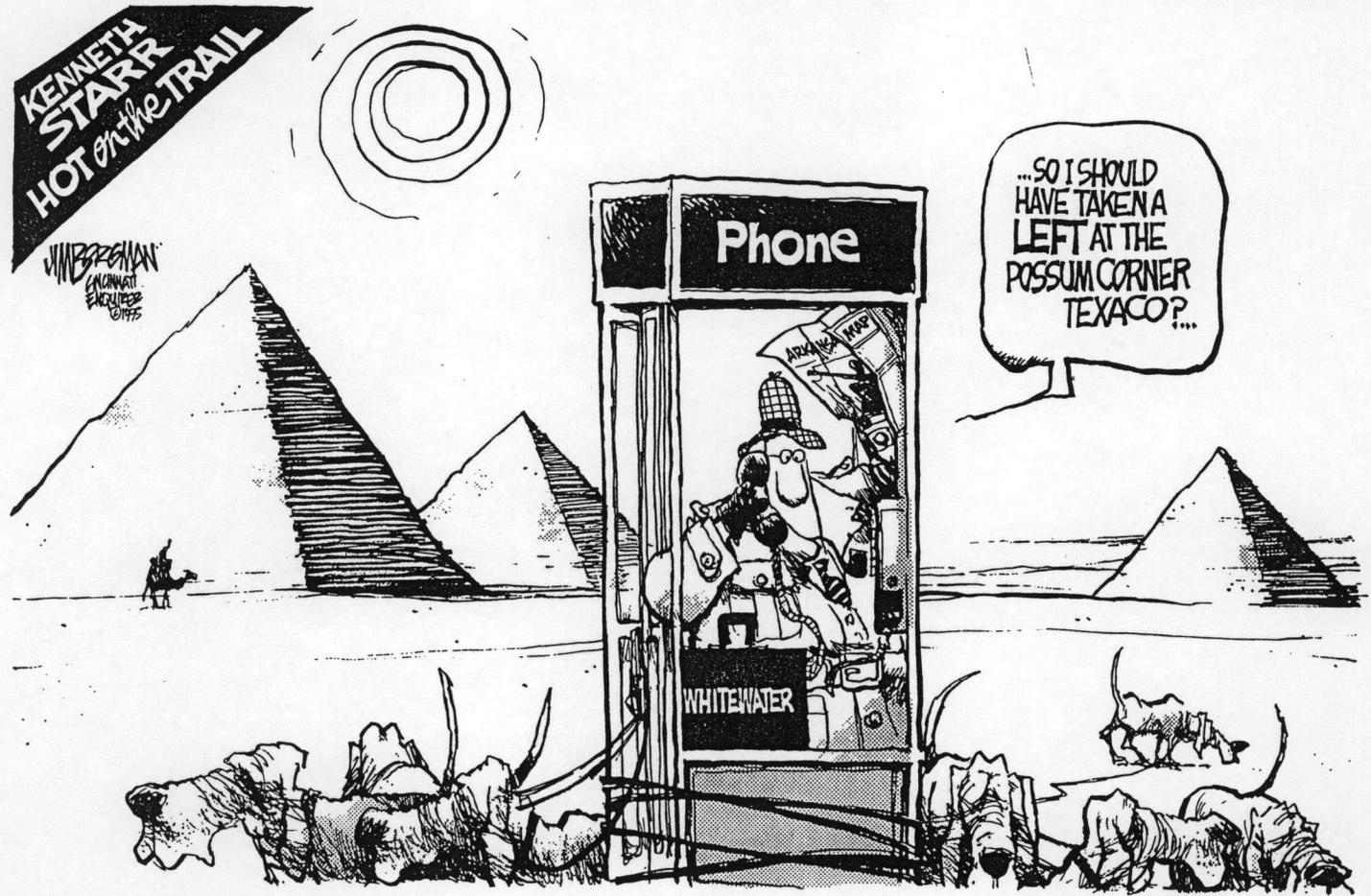
Philip Martin's column appears here every Tuesday and in *Perspective* every Sunday.

7B

# OPINION

6/24/95

THE CINCINNATI ENQUIRER



OFFICE OF THE GOVERNOR

MEMORANDUM

TO: Governor's Office - Volunteer Services, Room 205  
 Pat Wyatt, Dianne Langley, Robert Hendrickson, Jewell Phillips, and  
 Tammy Staton

FROM: Bill Clinton

RE: Attached Article

DATE: June 1, 1979

I would appreciate your reading this. I think it's quite perceptive, though I don't agree with everything in it.

I am inclined to think the weaknesses in our operation are substantially different from those pointed to by Fallows, but I want to guard against them too.

Specifically, I hope all of you always know your ideas are welcome and encouraged, regardless of whether they fall into the category of your day-to-day area of responsibility.

Please check off and send on. Return to Barbara Kerns when last person in your area has read the article.

BC:faav

the explanation concerns the nature of the organization he runs.

By choosing stability, harmony, and order as his internal goals, by offering few rewards for ingenuity and few penalties for dullness or failure, Jimmy Carter created an administration in which (so it seemed to me) people were more concerned with holding their jobs than with using them. Those on the upper level were not by nature determined to dig into the machinery of government; those lower down in the system were discouraged from doing so by Carter's organizational style. The result was to evade many of the issues Carter had been elected to deal with, to switch on the automatic pilot and forget that the new crew had been chosen because of the need to change course.

**B**efore I came to the White House, I had read all the histories and novels about the presidency and talked to many old hands. I considered myself ready for almost anything except what I found. I had expected a hotly competitive atmosphere, in which the possibilities would be great but so would the perils. I found something more like the feudal system, its hierarchy constant, its inner rises and falls few, its members arrayed according to the medieval principle of the Great Chain of Being. Every member of the cosmos had its place on the Chain, from God and angels, through kings, noblemen, and serfs, down to animals, plants, and stones; and so it was in the Administration. Powell, Jordan, and Rafshoon need never act petty or defensive, for their positions were impregnable. No more than a serf would usurp a nobleman would a newcomer or outsider threaten their standing in Carter's eyes. This was a world of less brutality and viciousness than one that allowed more competition; it was also a stagnant world.

Those closest to Carter served him without stint, but their service did not include the pursuit of any goals independent of ones that had already occurred to Carter. I despaired of Zbigniew Brzezinski's hair-trigger judgment,<sup>1</sup> and was relieved that Carter kept it firmly in check, but I came to respect Brzezinski as the one among Carter's senior associates who tried every day to test the limits of his job and come up with new ideas. Brzezinski's domestic counterpart, Stuart Eizenstat, was from the opposite—and for this administration, more typical—mold. He was pleasant, less high-strung and vain than Brzezinski; everyone liked Stu. But as Eizenstat himself admitted, he was a skilled version of

an unimaginative breed. He would give you a lucid diagnosis of the four options placed before him, but would be the last man to suggest that some unlisted fifth option might be the necessary answer.

I witnessed none of the private influence that Rosalynn Carter undoubtedly exercised, but in the summer of 1977, soon after her trip to Latin America, I caught one semi-public glimpse. About a hundred and fifty staff members were invited to the family theater to hear her report on the trip. She had proven in the campaign to be an accomplished stump speaker, but here she had the air of a child at her first piano recital, anxious to please the parents who listened proudly as she performed. From the nervous glances she threw her husband, and the softball questions planted with State Department representatives in the crowd, I suspected that, like others close to Carter, she was interested in this subject mainly because the President seemed to be, and that the real purpose of her efforts was to prove her competence, rather than to carry out a long-considered goal.

The group known as the Georgians—Jordan, Powell, Rafshoon, Moore, and honorary members such as Tim Kraft and Evan Dobbelle—was united less by geography than by a preference for a laid-back, Mr. Cool style. Not long after the Inauguration, *Rolling Stone* ran a full-page portrait of Jody Powell and Hamilton Jordan in a pose reminiscent of Paul Newman and Robert Redford in *Butch Cassidy and the Sundance Kid*. There was a little self-conscious joking when the issue came out, a few nervous wisecracks about what the Old Man would say, but the two of them were pleased as punch. The photo captured their fantasies more glamorously than they could have dared to hope.

A few months later, Hamilton Jordan had a similar picture mounted in the anteroom to his office, a rough draft for *Time's* cover story on him and Powell, portraying them as Tom Sawyer and Huckleberry Finn before the whitewashed fence. The allusion was different but the spirit was the same, cool guys getting the job done without trying too hard or taking it all too seriously.

Being cool did not mean being lazy; indeed, one of Powell's favorite accusations, when calling junior staff members in his first-sergeant role, was that everyone else was a lazy son of a bitch who didn't know the meaning of work. Hamilton Jordan essentially lived in his office, even on weekends, when it became a headquarters for watching the Sunday talk shows and arranging tennis games. But the jags of work, inter-

<sup>1</sup>The *Washington Monthly* recently quoted, from David Detzer's book *Brink*, this telegram from Brzezinski to Arthur Schlesinger at the height of the Cuban missile crisis: "As a result of this article, the Soviet Union will be forced to exploit Soviet uncertainty." FOIA # none (URTS 16370)

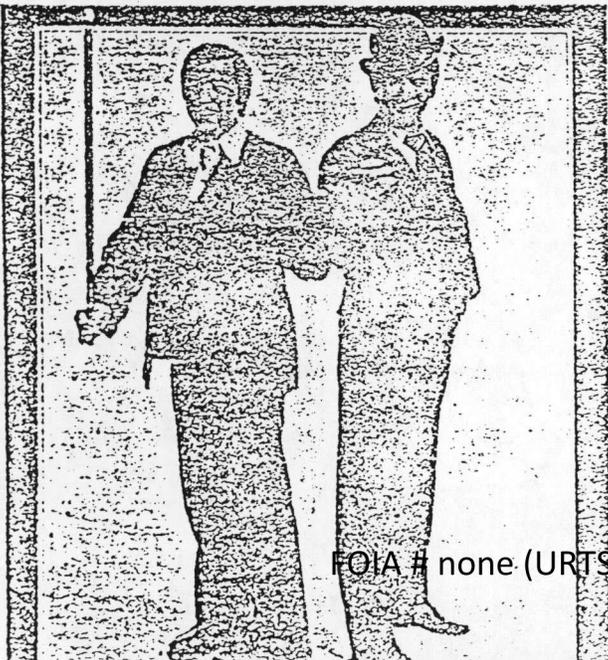
James Fallows, chief White House speechwriter for President Carter's first two years in office, is Washington editor of this article appeared in the May issue of this magazine. DocId:70105746 Page 31

Legislation and administration  
were interesting to the extent  
that they affected the prospects  
for the next election.

dispersed with jags of release, were undertaken with the spirit of enlisted men on maneuvers. They followed their orders, proved they were good soldiers by carrying fully loaded packs, but would have felt ridiculous and compromised to admit that any of it really mattered, or that there was something they cared about more deeply than the next weekend's liberty on the town.

The one subject that did engage their passions was the one in which they had all proven expert: politics in the horse-race sense, winning elections. This made legislation and administration marginally interesting, but only to the extent that they affected the prospects for the next election. Flying back on Air Force One from a series of political appearances shortly before I left, I heard one of the Georgians say to several others, "You know, there really ought to be a place for people like us between the elections, someplace we could rest up and get ready for the next one." This reminded me all too clearly of the conversation I had had two days before with one of the more highly respected members of the White House press corps. I heard his lament about the tedium of the White House beat; there was only one solution he saw, and that was for the fun and excitement of the 1980 campaign to begin.

**T**hose at the next level down in the White House had, if anything, the opposite obsession. They had spent their years dwelling on subjects such as welfare reform and the Panama Canal; often they could talk of nothing else. Many of them came to the White House with a desire to act on the theories



FOIA # none (URTS 16370) DocId: 70105746 Page 32

Most of them, however, did not.

Carter didn't mistreat these troops so much as he ignored them. The first sign of his indifference was the style of their selection, for it was as if he had ordered up six dozen mixed elitists and inquired into the matter no further. Below the level of his own Georgian intimates, the Administration was full of those who had been hanging around Washington, Cambridge, and New York in law firms, Senate staffs, and think tanks, people who expected to end up in government no matter which Democrat came to power. Some of them were talented, others were not; but almost none of them represented Carter's deliberate choice as opposed to the wholesale importation of a predictable governing class. After hearing Carter's campaign attacks on the arrogance of the Washington elites, I had been misled into thinking that he would find other talented people to bring in with him. In the end, it was easier to swallow the embarrassment and accept the usual faces than to look hard for promising alternatives.

On the job, this casually selected group was treated in ways that made the least, rather than the most, of their talents. To begin with, the second-level troops were denied the usual blandishments that politicians use to build a base of loyalty and managers rely on to inspire efficiency on their staffs. Carter soon found out that he could not treat congressmen like robots; after the first few domestic trips on Air Force One, during which he holed himself up in his cabin and studied his briefing books, he learned to spend his time instead chatting with the congressmen who accompanied him, since the main reason for their coming was to be able to remark, "I was talking with the President the other day, and he said . . ."

He saw no reason to apply the same lesson to his staff. Carter hated meetings with a lot of people in the room; they were disorderly; they made it hard to get things done, they made it impossible to prevent leaks. When a large meeting on tax reform or the budget had been arranged, he would enter the Cabinet room, glance at the extra bodies in chairs along the wall, and say to no one in particular, "I didn't know this was going to be such a big meeting." Eizenstat, Brzezinski, and the other main figures would get the hint and signal to their underlings to get out. Staff men who had been working on a project for months, who were always asked by their friends and relatives what the President was really like and had to reply that they had never actually met him, were thus denied the little glimmer of recognition and glory that they would have sent

Good performance was not really the question; the goal was orderly performance.

them back to their tasks with renewed energy.

Once Carter planned a series of "tours" of the White House, designed to combat this problem by reviewing the troops and building morale. He got as far as Jody Powell's press office, fifteen yards from his own; no more was ever heard of the plan.

These were petty irritants, which would have been recognized as such were it not for a more fundamental complaint: the growing sense that a good job would not be applauded nor a bad one punished, perhaps because the difference between them was not recognized. At the top of the organization, it was clear that no standard of excellence affected Carter's loyalty to his intimates. It is perhaps unfair to single out Frank Moore, since dealing with a truculent Congress was uniquely difficult, but his errors were the most flagrant, and the most flagrantly ignored. Several months after the Inauguration, Congress passed a punitive amendment which would destroy the discharge-review program Carter had authorized for Vietnam veterans. Carter had announced the program during his first week in office, balancing it with his amnesty for Vietnam draft evaders. Even those who supported the amendment assumed that Carter would defend his plan by vetoing any bill to which the amendment was attached. When Carter went ahead and signed the bill, I wondered aloud how it could have happened. The reluctantly given explanation was that Tip O'Neill had asked Moore whether the President would accept the amendment, and Moore, in apparent ignorance of its importance, had said yes. Then, faced with the choice of embarrassing Moore or abandoning his program, Carter opted to save Moore's skin.

Lower down in the organization, the first handwritten note expressing Carter's displeasure sent an icicle of fear through the heart; the second and all further ones were ignored, since everyone knew that nothing harsher lay ahead, and that good performance was not really the question. The goal was *orderly* performance, according to the principles of team play. The worst tongue-lashings I received were not for bad speeches, of which there were too many, but for those that were disorderly in their preparation, or consumed too much of Carter's time. Nothing drove Carter wilder than a briefing that waffled or a conversation that did not come quickly to its point. The virtues of an organization man—preserving order, preventing errors—were those Carter prized; and if an attempt to produce more imaginative policies, broader sources of information, even better speech drafts, would violate these principles of order, it was not likely to prevail.

After a talk with a friend who had studied, at great length and personal cost, the government's failings

during Vietnam, I passed on to Hamilton Jordan his recommendations

about diversifying the President's foreign policy information. The President should set aside a regular chunk of time, my friend said, perhaps half an hour every two weeks, to talk with a foreign service officer just back from the field. Neither Vance nor Brzezinski should be present at these sessions, to ensure that the impressions Carter received were not subtly shaped by his advisers' predetermined molds. "He'll never do it," Jordan replied when I had finished my presentation, and he was right. Carter would consider it out of order, a waste of time.

**D**uring the most crucial domestic policy decisions of his first two years, the inflation strategy developed at the end of 1978, Carter grew impatient with the briefings and decision meetings that Eizenstat, Robert Strauss, Secretary Blumenthal of the Treasury, and Secretary Marshall of Labor had arranged. This wasn't a decision meeting at all, he said at one critical session; instead of presenting him with options, the advisers were suggesting that there was no good option to choose. Robert Strauss volunteered that perhaps he was to blame for the irritation the President was expressing, since he had thought it important for the President to hear firsthand his advisers' frustrations, to take part in their conversations and understand the pessimism and confusion so many of them felt. Carter did not pick up the point; he said curtly that the advisers should agree on a decision memo, indicate the choices he must make, and send it in to him. Then he left the room.

Strauss would think twice before taking that kind of risk again, as would anyone else in the Administration before doing more than the plainly stated requirements of his job. Franklin Roosevelt planted Raymond Moley in the State Department and Rexford Guy Tugwell in Agriculture, yet he pressed them and others constantly for their best ideas. Tugwell's modern equivalent at Agriculture would be told to mind his own business if he discussed a subject broader than the support price for wheat. People may say kind and true words about Jimmy Carter's character, but no one will ever say of him what these men said of Robert Kennedy (quoted in Arthur Schlesinger's biography): "'One of the hallmarks of the Kennedys,' said William Orrick, 'was that they expected you to do everything.' . . . Said Louis Oberdorfer, 'He had that quality of leadership that made us all play above our heads.' . . . He had the quality, said Nicholas Katzenbach, 'of bringing out the very best in everyone who worked for him.'" They

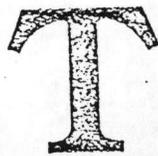
## The Passionless Presidency II

were talking about the ability to make things seem larger than life; this administration makes them seem smaller.

I should confess the possibility of bias on this point, as on much else. I was eager to join the Administration not simply because I respected Jimmy Carter (as I do) and enjoyed writing speeches (as I once did), but because I thought it would be an opportunity to be tested to the limit, to participate, to serve. Physically, it was harder work than I have ever done before; a few months after leaving, I ran into a friend from the speechwriting department and instantly recognized the harried, slightly hysterical, aged-around-the-eyes look I had worn for two years. But intellectually and spiritually, it was far less demanding than it should have been, because nothing more was asked or expected of me than to fill my place on the organization chart. After a few months of sending memos to the President, Powell, Jordan, and Eizenstat on subjects unrelated to my stated functions—on the volunteer army, the tricks of monitoring bureaucratic performance, different gestures Carter might make—I learned to stop. It was not that my superiors disagreed with me, for I received little argument (except from Eizenstat) one way or another, but rather that I was out of my place. My job was to write speeches and edit memos, and to that job I quietly returned. The mistake was in failing to see that this was a bureaucratic organization, in the sense Max Weber defined: interchangeable people performing strictly limited tasks. Everyone was safe within the confines of his organization box; few were welcomed outside.

Run like a bureaucracy, the White House took on the spirit of a bureaucracy, drained of zeal, obsessed with form, full of people attracted by the side-dressings of the work rather than the work itself. The pay was good, the travel fun; friends and family thought you were a success. One year into the Administration, Jeff Greenfield wrote an article for *New York* magazine entitled "All the President's Sad Young Men." It said that working in this White House had become a kind of tax-supported fellowship for ambitious young people; they did not much enjoy what they were doing, but they knew that it would look good on their résumés.

Most of the ones I knew had come with enthusiasm and still envied their colleagues who had real work to do—the labor experts during a coal strike, the political operators who steered the Panama Canal treaty through the Senate. When those bursts of work were over, no consolation remained except the paychecks and respectability. I asked one of my friends, a lawyer whose own crash legislative program had just come to a successful end, why he stayed on. "Make me an offer," he replied.



his retreat into bureaucracy may not have been surprising, but I could not help thinking it was wrong. I assumed that Jimmy Carter had been elected not just to hold office but to use it, and not only to use it himself (as with his foreign efforts and his first-year burst of domestic legislation) but to inspire thousands of others to use their energies, wit, and positions as well. Carter's intentions are admirable, but the group around him slumbers, and the government, which he promised so earnestly to reform, operates as it always has. The taxes come in, the payrolls are met, millions of human beings pass through the cycles of their working lives; and all of these activities are governed, not by the standards a new administration said it would bring to Washington, but by the timeless inner logic of bureaucratic life, which follows roughly four patterns of behavior and thought.

The first is the government's version of the law of gravity, that *bad news never flows up*. The only times I saw anyone struggle to warn his superior of impending trouble—a fraudulent program, a mistake in judgment, excess employees whose work did not need to be done—were on those rare occasions when the superior was sure to find out anyway. I manfully confessed to Jody Powell about one of my errors twelve hours before he would have read about it in the *Washington Post*; but when a far more damaging story was published out of town, I simply kept quiet, hoping that Powell and Carter would never hear about it, and certain that they would never look deeply enough into my operation to discover the inefficiencies and weakness I knew were there. When this is multiplied over dozens of departments and hundreds of thousands of employees, the result is a vast conspiracy of self-protection, benign in origin but devastating in effect. It makes the norm for government performance bad performance, since the only errors noticed are those flagrant enough to emerge as scandal in the press.

Businessmen in competitive industries know they cannot survive without finding out what is going on at the delivery level; that is why Robert Townsend of Avis used to go incognito to his company's local offices and try to rent a car. Congressmen, facing the constant test of the ballot box, must also make sure that their constituent-service departments are doing the job. There is no such market test within the rest of the government, unless one is imposed from the top, by leaders who know that efficiency, like liberty, is won only at the price of eternal vigilance, and who are willing to think each day about new ways to overcome the information blocks.

The second is the *mobility*, which makes everyone in the government busy and few truly productive. Newcomers to government, having heard

The White House took on the  
spirit of a bureaucracy, drained  
of zeal, obsessed with form.

tales of its sloth, are often surprised to see so little plain idleness around

them. Up and down the long corridors, people are usually doing something—answering letters, writing memos, holding meetings, carrying out their assigned tasks. At the upper levels of each agency, this work goes on at a feverish rate; there are always briefings to prepare for, crash deadlines to be met. In agencies such as the American Battle Monument Commission, where there is little real work to be done, this activity is a harmless masquerade; but in places such as the White House, it is something worse. There it is a way to deflect people from the jobs that truly need doing, an opiate that keeps them from thinking independently about how to use their time.

When a new Pope enters the Vatican, he finds himself buried beneath ceremonial functions—audiences, trips, encyclicals to prepare. Thus overburdened, he will never have time to tamper with the system the Vatican bureaucracy has set up. Within the government, the same process is self-inflicted: people are so tempted to deal with the chores that cross their desks each day that they rarely have time to ask themselves about the permanent problems of government they originally came to address. My first months in the White House were the most draining, because then, while writing an article for the President which would appear in the Insurance Institute magazine, I was vain enough to wonder whether this was the most productive investment of my time. Soon I stopped worrying, for I learned that if I did no more than carry out the tasks that showed up in my in-box, I would be busy, but rarely with such urgent duties that I could not set them aside for a game of tennis when Hamilton Jordan called.

The higher one goes in the government, the more intense the pressure of the in-box becomes. Midge Costanza spent most of her time at the White House responding to speaking invitations; certain Cabinet secretaries may spend weeks or even months with only the slightest attention paid to the real business of their departments, because of the urgent round of conventions to address, interviews to grant, and outside lobbying groups to receive. The President, like the Pope, is potentially the greatest prisoner of the in-box. He is in constant demand for speeches and meetings; petitioners are pre-scheduled into most of the hours of his day; there is always the allure of foreign affairs and the threat of foreign crisis. To his credit, Jimmy Carter tried hard to escape this prison, leaving great blocks of time open for reflection. But, having perfected himself, he was content; he did not insist that others follow his example.

Nor was the press likely to prod him, for reporters

are more fully trapped by in-box thinking than the people they cover. The

White House press corps prides itself on its independence, but it enjoys liberty within a narrow range. Its members may render harsh judgment on the Administration's welfare bill, but they will discuss welfare only when the Administration is making a proposal. The government cannot determine the tone of their reports, but it can choose the subject; listen to Jody Powell's news briefing each morning and, barring scandal, you have heard the lead story on the TV news that night. With such a torrent of material flowing into their in-boxes—legislative messages, trips to foreign countries, backgrounders on new budgetary plans—the reporters are spared the necessity of ever stopping to think about what parts of the government are not being covered, or of examining the day-by-day realities of governmental life that determine how our taxes are spent and our problems solved or ignored.

The third is the *capital city phenomenon*. Named after the reporters, foreign service officers, and CIA operatives who congregated in the cosmopolitan centers of foreign countries rather than trekking into the bush, it signifies the way that comfortable surroundings, and the desire to keep them comfortable, can distort the actions and attitudes of those in power. For the Foreign Service in Vietnam, it meant dealing with the French-speaking people of the capital, not with the peasants who spoke Vietnamese. For the CIA in Iran, it meant working among the Western-educated elite of Tehran, not the masses who spoke Farsi and hated the shah.

For journalists, it means working from briefings and backgrounders; for columnists, taking a great man to lunch and composing a column from his leavings. For academics, it means working from printed sources rather than dealing with people in the field. For writers, it means a preference for book reviews rather than reporting.

And in the government, it means dealing with only those issues that present themselves to you in a convenient way, and imagining that the problems you see in the capital city are those of the world at large. The world of our capital is a special one; for those who circulate between the government and the law firms and think tanks that serve as its farm teams, society is composed of people who rarely make more than \$70,000 or \$80,000 but never make less than \$25,000. All of them went to college, and most to the same few colleges. Such threats as layoffs and business failure are less real to them than the danger of missing out on Washington's real estate boom. Jimmy Carter constantly reminded people of the different world he had seen, but he was one of the few.

## The Passionless Presidency II

In his recent book, *The View from Sunset Boulevard*, Ben Stein describes the colony of television writers who, living in Hollywood, imagine it to be the world, and write their narrow view large across every television screen. Those in Washington joke about its artificiality and detachment from the world "beyond the Beltway," but behave as if only those problems that can be reduced to a decision memo, a discussion with an agency official, or a reporter's lunch are worth serious attention. Fighting poverty means a briefing from a \$30,000-a-year official at HEW. World hunger means a lunch at the Brookings Institution or World-watch to see a new report unveiled. Manual labor is as abstract as Islam; so are those parts of the government that, far from the planning sessions in Washington, actually deliver services. The one unit of government discussed with visceral emotion is the District of Columbia's; it is the one whose inefficiencies and corruption touch people in Washington, as the sins of the Small Business Administration do not.

Most participants are sincere, but nearly all are wedded to a style of operation and a standard of living rather than to an insight into real human problems. If a delegation of blacks or city governments can afford a Washington lobbying office, their complaints may be acknowledged. If not, they barely exist.

The fourth is *careerism*. Writers of pulp novels portray Washington as a conspiracy, not understanding that it is really a collection of individuals in silent pursuit of their own ends. When trying to explain events within the bureaucracy, I looked first, not to ideology or the effect of special interests, but rather to the career interests of each of the participants. Some of them hoped for a long and happy life within the civil service; they would never openly resist a policy, but might silently inter one that promised to be inconvenient. Others had come to Washington with the President and knew their reputations would be made or broken along with his; they were fierce in their loyalty to his every wish. Some had already decided that their interests lay outside the government, and began playing to a different audience. Since I realized early on

that I would return to journalism, I was more concerned, when talking with a reporter, that he consider me trustworthy and honest than that Jody Powell consider me a loyal propagator of the company line. Some see their aims enhanced by putting distance between themselves and a policy that might prove unpopular. There is only one State Department, and those who hope to work in foreign policy must arrange their lives so as to be eligible for appointment there again and again. They look for their model not to Walt Rostow, who went down with his policy, but to their leader, Cyrus Vance, who was legendary for "leaving no footprints" during the Vietnam War.

Such forces are the constants of bureaucratic life, indeed of all humanity. And while a few career incentives may be compatible with doing a good job, most of them are not. From a careerist point of view, it is often just as good to cover up a problem as to solve it. These forces will reduce a government to self-service and self-promotion, as they largely have, unless a leader sophisticated enough to understand them learns how to harness them to his own ends, by linking glory more closely to the jobs that need to be done.

So far, Jimmy Carter has shown little sophistication in coping with this or other aspects of the bureaucratic pathology. That is disappointing to those who supposed, as I did, that he came to office aware of the dangers he was most likely to face. The only thought more sobering is that, considering the competition, Jimmy Carter is still the best hope for someday bringing the government under control. A President Connally or Reagan or Kennedy or Brown taking office in 1981 might be more inspiring than Carter, but none of them would be more likely to recognize the bureaucratic pitfalls than a re-elected President Carter with four years of painful education behind him; nor would they offer the stability of character that is Jimmy Carter's greatest strength. That is why I have placed bets with my friends that Carter will be re-elected, and why I am prepared to vote for him again. His on-the-job training has been costly for all of us; soon it will be time for him to pay us back. □

## BEARS

by Robley Wilson, Jr.

North Country children  
teach you how to know  
the black from the grizzly:  
Climb a tree. The black  
will come up to get you;  
the grizzly, who can't  
climb, will shake you down  
"like a plum." It is

WITHDRAWAL NOTICE

RG: 449 Independent Counsels

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FROM: Kavanaugh

TO: Ewing

SUBJECT: "Draft Foster-related questions for interview of First Lady..."

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SUBJECT: "Slight variations from HRC"

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# The Washington Post

DATE: 8-9-95

PAGE: A1

## 'Witness Says Probe Was Blocked

*Whitewater Examiner Says 'Concerted Effort' Thwarted Her*

By Kevin Merida and Susan Schmidt

Washington Post Staff Writers

The federal investigator whose work helped launch the independent counsel's ongoing Whitewater probe told a House committee yesterday that there was "a concerted effort to obstruct, hamper and manipulate" her findings at high levels of the federal government.

Testifying on Capitol Hill for the first time, L. Jean Lewis gave a detailed description of how an investigation of Madison Guaranty Savings & Loan that began in March 1992 was thwarted by Resolution Trust Corp. and Justice Department officials after Bill Clinton was elected president. The Clintons were named as potential witnesses in criminal referrals that Lewis prepared, meaning that she suspected they may have had information about some of the alleged

criminal activity. Those allegations included "rampant bank fraud," an "elaborate check-kiting scheme" and other potential criminal abuses found at Madison, she said.

Lewis, an investigator in the Kansas City office of the RTC, the federal agency charged with disposing of failed S&Ls, completed the first of two days of testimony as the Republicans' star witness in the week-long Whitewater hearings being held by the House Banking and Financial Services Committee. She was joined by her two supervisors in the Kansas City office, L. Richard Iorio and Lee Ausen. But they were passive witnesses whose appearances seemed mainly designed to add credibility to Lewis, to whom lawmakers directed most of their questions.

Lewis's appearance added to the already

tense partisan atmosphere of the proceedings. Democrats challenged her testimony with memos or statements from federal officials who didn't share her opinion about the merits of her evidence. In a strategy that was often more subtle than overt, they also tried to suggest that she was working in concert with partisan Republicans and was not a detached investigator.

In last summer's Whitewater hearings, which focused on contacts between the White House and Treasury Department about the progress of the Whitewater investigation, House Democrats implied that the absent Lewis was a conservative zealot.

Yesterday Lewis, under questioning from Rep. John J. LaFalce (D-

N.Y.), disclosed that she was being represented by the Landmark Legal Foundation, a conservative public-interest law firm. LaFalce's questioning was a continuation of the Democrats' strategy to establish links between Lewis and conservative partisans who want to keep Whitewater alive.

Lewis supported one of the Republicans' central themes in their pursuit of Whitewater—that taxpayer-insured deposits at Madison were siphoned off through companies controlled by James B. McDougal, the former owner of the failed thrift and onetime business partner of Bill and Hillary Rodham Clinton. One of the principal companies involved in these allegedly illegal transactions was the Whitewater Development Corp. that McDougal co-owned with the Clintons

to develop vacation homes in the Ozarks. The Clintons have said they were passive investors and left the financial details of their investment to McDougal and his then-wife, Susan.

But when Lewis was asked by Rep. Peter T. King (R-N.Y.) if she believed the Clintons should have known about McDougal's transactions as partners in Whitewater, she replied, "Yes, it would have made sense for them to have knowledge that somebody was making their mortgage payments."

Republicans are trying to establish that Clinton and McDougal had a quid pro quo arrangement in which Clinton as Arkansas' governor encouraged state officials to treat his friend specially and McDougal helped the governor with personal and campaign finances. The Clintons have denied any such arrangement. Because of the political sensitivity of her probe, Lewis told the committee, she suffered "personally and professionally," including unauthorized searches of her office and being placed on administrative leave for two weeks in August 1994.

Yesterday's session marked the second day of partisan skirmishing as Democrats continued to push their theme that the hearings were unfairly stacked with witnesses who share the Republicans' point of view. Invoking a House rule that allows for 70105-746 Page 39 named or designated to respond to

their accusers, Democrats made a motion at the outset to postpone yesterday's session on the grounds that Lewis was about to "impugn the integrity" of RTC officials and others who were not invited to the hearings.

Republicans defeated the motion. Committee Chairman Jim Leach (R-Iowa) said he was prepared to call witnesses the Democrats sought at a hearing he would convene after the August recess.

The debate over this motion, how-

ever, led to shouting and name-calling as Democrats and Republicans traded charges and countercharges. Rep. Toby Roth (R-Wis.) said "the other side wants to gag these witnesses" because "their testimony is damaging," and he threatened to use the same House rules to have Hillary Rodham Clinton called if Democrats continued with their tactics.

Rep. Barney Frank (D-Mass.) said Republicans were employing "McCarthyite" tactics, which he said follow a pattern of "make the accusation and do not allow fair time for rebuttal."

The office of Whitewater independent counsel Kenneth W. Starr yesterday strongly disputed damaging claims Democrats made repeatedly during the hearings about the three investigators. Several Democrats said the RTC had offered to loan the investigators to Starr for use in his investigation, but the offer was declined. Democrats, citing a deposition provided by RTC attorney Andrew Tomback, said Tomback had told them deputy independent counsel Mark Tuohy said he had "no trust" in the three.

Tuohy last night called the statement attributed to him "categorically untrue." He said his office was looking into the investigators' claims that their probe was obstructed and "hiring witnesses was entirely inappropriate."

To date, the independent counsel has obtained a dozen indictments or guilty pleas from Madison-connected figures, and four of them were named as suspects or witnesses in Lewis's referrals, including current Arkansas Gov. Jim Guy Tucker.

Lewis recounted how she was asked by her RTC superiors to investigate Madison after a March 1992 story appeared in the New York Times describing the Whitewater investment and its ties to Madison.

Lewis said she investigated, found rampant fraud and check-kiting at the S&L, and in September, sent off 300 exhibits to the U.S. attorney in Little Rock, Charles Banks, recommending a criminal investigation.

Lewis didn't know it then, but Banks, a Republican, told the Justice Department he did not think there was a prosecutable case.

Lewis and her colleagues, in fact, heard nothing about the status of the referral until May 1993, when she inquired and learned it had been sent to the Justice Department in Washington months earlier. By then, it was on its way back to Little Rock, where in October 1993, it was turned down for further investigation by new U.S. Attorney Paula Casey, a Clinton supporter. Casey said she was "concurring" with the opinion of Justice criminal division attorneys in Washington.

Continuing their probe, Lewis and other RTC investigators had sent Casey by that time a separate set of nine new instances of possible criminal activity at Madison, recommending criminal investigation.

But before the RTC sent out the new referrals to Casey, Lewis said they were subjected to an unprecedented "legal review" by the RTC's civil division lawyers, said Lewis. Then the RTC acting general counsel, Glion Curtis, was apprised of the contents, and he informed then-Treasury General Counsel Jean Hansen, who, previous congressional testimony has established, took the information to the White House.

(Hansen and her boss, Deputy Treasury Secretary Roger C. Altman, were forced out of their jobs last year over improper discussions they had with the White House about the Madison case.)

After the news reports that RTC referrals named the Clintons as wit-

nesses, Casey recused herself. Attorney General Janet Reno then named Donald Mackay as special prosecutor.

The three investigators recounted in the hearings how they were kept away from the Madison investigation and prohibited from having direct conversations about it. They cited interference from RTC investigations chief James Dudine, professional liability section head Thomas Hines and the Kansas City PLS chief, Julie Yanda.

In February 1994, Lewis said, RTC professional liability attorney April Breslaw told her that top agency officials in Washington would like to be able to say that Whitewater did not cause losses to the insured deposit base at Madison. Lewis recorded that conversation, and it is expected to be replayed during this week's hearings.

Lewis said she took her concerns to Leach last spring. Her allegations have been disputed by Breslaw, Dudine and other agency officials.

After last summer's hearings, the RTC placed the Lewis, Iorio and Aussen on administrative leave without explanation. They were escorted out of the building and told to stay off RTC property. The agency reinstated them after bipartisan demands from Senate Banking Committee leaders.

Carl Stern, a Justice spokesman, said the referrals had "gone through many hands" to determine whether an investigation should be opened. "The fact that it went through many hands is the result of activity, not inactivity," he said. "To suggest that it was ignored or discarded is to stand truth on its head."

## Fostergate

By James R. Norman

Two weeks before his death on July 20, 1993, White House Deputy Counsel Vincent W. Foster went into a deep funk. The official reason given by Independent Counsel Robert Fiske Jr. was suicide driven by depression over, among other things, some newspaper editorials. But Vince Foster had a much bigger and darker reason to be seriously bummed out. He had just learned he was under investigation for espionage.

Outrageous? To say the least. But a lengthy investigation by Forbes has located over a dozen sources with connections to the intelligence community who confirm a shocking story of money laundering and espionage connected to the highest levels of the White House. Without grants of immunity, the sources risk going to prison for violation of the national Security Act: Virtually all have demanded anonymity.

According to a veteran Central Intelligence Agency operative close to the Foster investigation, Foster's first indication of trouble came when he inquired about his numbered bank account at Banca Della Svizzera Italiana in Chiasso, Switz. -- and found the account empty. Foster was shocked to learn from the bank that someone using his secret authorization code had withdrawn all \$2.73 million he had stashed there and had moved it to, of all places, the U.S. Treasury.

Then, according to credit card records reviewed by a private investigator who has talked to Forbes, Foster cancelled the two-day round-trip TWA and SwissAir plane tickets to Geneva he had purchased on his American Express card

through the White House travel office on July 1. Discretely he began asking what was afoot, says the CIA source, confirming that someone in the White House tipped him off. It was bad news: The CIA had Foster under serious investigation for leaking high level secrets to the State of Israel.

For months, a small cadre of CIA computer hackers known as the Fifth Column, armed with a crazy supercomputer, had been monitoring Foster's Swiss account. They had located it by tracking money flows from various Israeli government accounts after finding Foster's name while secretly snooping through the electronic files of Israel's Mossad. Then by snooping through the bank's files, they gathered all the information needed to withdraw the money.

Foster was just one of the first of scores of high level U.S. political figures to thus have their secret account looted of illicit funds, according to both this veteran CIA source and a separate source in another intelligence agency. Over the past two years, they say, more than \$2 billion has been swept out of offshore bank accounts belonging to figures connected to the U.S. government -- with nary a peep from the victims or their banks. The claim that Foster and other U.S. figures have offshore accounts has been confirmed by a separate high-ranking CIA source and another in the Dept. of Justice.

Various sources -- some of them controversial -- have contributed other pieces to this puzzle. Whatever their motivations, these sources have proven remarkably consistent. Their stories jibe well with known facts and offer a most plausible

explanation for Foster's mysterious depression. It would also explain Washington's determined effort to dismiss the Foster affair, as a tragic, but simple suicide.

Vince Foster a spy? Actually, it is much worse than that, if the CIA's suspicions are confirmed by the ongoing foreign counterintelligence probe. He would have been an invaluable double agent with potential access to not only high level political information, but also to sensitive code, encryption and data transmission secrets -- the stuff by which modern war is won or lost. That is because for many years, according to nine separate current and former U.S. law enforcement or intelligence officials, Foster had been a behind-the-scenes manager of a key support company in one of the biggest, most secretive spy efforts on record: the silent surveillance of banking transactions both here and abroad.

This bank snooping effort began in earnest soon after Ronald Reagan became president in 1981. Its primary aim was to track the money behind international terrorist groups and soon came to be dubbed "Follow the money," according to the originator of the program, Norman A. B\*\*\*\*\*. Now a private Washington consultant on international banking, B\*\*\*\*\* was an economist and Reagan advisor on the National Security Council. It was B\*\*\*\*\*'s idea to begin using powerful new computer and electronic eavesdropping technologies then emerging to let the intelligence community monitor the previously confidential flow of bank wire transfers. This was no small task, more than \$1 trillion a day moves through New York alone.

B\*\*\*\*\*, himself constrained by the National Security Act, claims he doesn't know exactly how the data was collected. But he confirms that within a few years the National Security Agency - the signals intelligence arm of the government - had begun vacuuming up mountains of data by listening in on bank wire traffic. It became a joint effort of several Western governments with the Israelis playing a leading role, since they were the main target of terrorism.

Other intelligence experts say the flow of bits and bytes was captured by various means, from simply tapping phone lines to implanting customized chips in bank computers to store up and periodically burst-transmit data to a passing van -- or low-flying "sig-int" or signals intelligence satellite. Another part of the problem was to get the world's banks to standardize their data so that it could be easily analyzed. And that brings us to PROMIS, a powerful tracking software developed by the U.S. Government and then privately enhanced by a little company called Inslaw Inc.

PROMIS stands for Prosecutor's Management Information Systems and was designed to manage legal cases. In 1982, just as Bl\*\*'s follow-the-money effort was gaining steam, the Reagan Justice Dept. eagerly snapped up Inslaw's newest version of PROMIS. But the government refused to pay the \$6 million owed for it, claiming part of the contract was not fulfilled. Inslaw, forced into Chapter 11 reorganization and nearly driven to quick liquidation by the government and its former partner AT&T, hotly denied that claim. Ultimately, a bankruptcy judge ruled the govern-

ment stole the PROMIS software code by "trickery, fraud and deceit."

Why PROMIS? Because it was so adaptable. Besides tracking legal cases, it could be easily customized to track anything from computer chip design to complex monetary transactions. It was especially useful for tracking criminals -- or just plain political dissidents. Inslaw claims the software was eventually illegally sold to as many as 50 countries for use by their police, military or intelligence agencies, including such bloody regimes as Guatemala, South Africa and Iraq (before the 1990 invasion of Kuwait). Profits on these sales, Inslaw claims, went mainly into the private pockets of Republican political cronies in the 1980s, including Reagan confidant Earl Brian, former partner of UPI and FNN.

Among the biggest profiteers on PROMIS, according to the 1992 book by former Israeli anti-terrorism staffer Ari Ben Menasche, was former British publisher Robert Maxwell. On behalf of the Israelis, Maxwell aggressively marketed a doctored version of PROMIS equipped with one or more "back doors" to allow an outsider to tap into the user's data base without leaving an audit trail. In fact, it may have been such rigged programs that allowed noted Israeli spy Jonathan Pollard, from his computer terminal at the Office of Naval Intelligence in Washington, to download vast amounts of top secret U.S. nuclear weapons and code data in the mid-1980s.

According to a heavily redacted New Mexico FBI counter-intelligence report, Maxwell was

apparently allowed to sell two copies of PROMIS back to the U.S. weapons tabs at Sandia and Los Alamos, for what Inslaw claims was a hugely inflated price of \$37 million. That would have allowed Pollard, if he was using the rigged program, to obtain U.S. missile targeting data long before Israel had its own satellite capability, thus making it a real nuclear threat to the Soviet Union. Pollard was convicted of espionage and sentenced in 1986 to life imprisonment. U. S. officials have vehemently opposed efforts to gain his early release.

Maxwell, according to Ben Menasche and other sources, was also selling pirated versions of PROMIS to major world banks for use in their wire transfer rooms to track the blizzard of numbers, authorization codes and confirmations required on each wire transaction. Don't expect any banks to admit running PROMIS: They know it was pilfered. But they readily took it, both because it was the best tracking software available at the time, and because the U.S. government was tacitly leaning on them to go along with the surveillance effort -- or face regulatory reprisals or prosecution on money laundering charges. With the widespread adoption of PROMIS, the data became standardized and much easier to analyze by the NSA.

It took some effort to install and support PROMIS in the banking industry. That's where Vince Foster came in. Forbes' sources say that since at least the late 1970s, Foster had been a silent, behind-the-scenes overseer on behalf of the NSA for a small Little Rock, Ark., bank data processing company. Its name was Systematics

Inc., launched in 1967 and funded and controlled for most of its life by Arkansas billionaire Jackson Stephens, a 1946 Naval Academy graduate. Foster was one of Stephen's trusted dealmakers at the Rose Law Firm, where he was partner with Hillary Rodham Clinton, Webster Hubbell and William Kennedy (whose father was a Systematics director). Hubbell, also played an overseer role at Systematics for the NSA for some years according to intelligence sources.

Systematics has had close ties to the NSA and CIA ever since its founding, sources say, as a money-shuffler for covert operations. It is no secret that there were billions of dollars moving around in "black" accounts -- from buying and selling arms to the Contras, Iran, Iraq, Angola and other countries to paying CIA operatives and laundering money from clandestine CIA drug dealing. Having taken over the complete computer rooms in scores of small U.S banks as an "out-source" supplier of data processing, Systematics was in a unique position to manage that covert money flow- Sources say the money was moved at the end of every day disguised as a routine bank-to-bank balancing transaction, out of view of bank regulators and even the banks themselves. In short, it became cyber-money.

One man who uncovered the link between Systematics, Foster and covert money movements for arms and drugs was Bob B#####, who was an undercover Customs investigator in the 1980s. "We found Systematics was often a conduit for the funds" in arms and drug transactions, says B#####, now living in Texas. "They were the money-changers." His story is corroborated by a

former CIA employee who says it was well known within the agency in the late 1970s that Foster was involved with Systematics in covert money-management.

Another source is Michael Riconosciuto, former research director of the covert arms operation at California's tiny Cabazon Indian Reservation in the early 1980s. Riconosciuto claims his crew of computer programmers helped customize PROMIS there for banking and other use. He's now serving 30 years in a South Carolina federal prison ostensibly on drug charges. Though maybe not a credible source on his own, his story fits well with other sources.

Systematics' money-laundering role for the intelligence community might help explain why Jackson Stephens tried to take over Washington-based Financial General Bankshares in 1978 on behalf of Arab backers of the Bank of Credit and Commerce International. BCCI's links to global corruption and intelligence operations has been well documented, though many mysteries remain.

According to a lawsuit filed by the Securities and Exchange Commission, Stephens insisted on having then-tiny Systematics brought in to take over all the bank's data processing. Representing Systematics in that 1978 SEC case: Hillary Rodham Clinton and Webster Hubbell. Stephens was blocked in that takeover. But FGB, later renamed First American, ultimately fell under the domination of BCCI through Robert Altman and former Defense Sec. Clark Clifford. According to a technician who worked at First American in Atlanta, Systematics became a key computer contractor there anyway.

In the 1980s, Systematics' business boomed. When it first sold stock to the public in 1983, revenues were \$64 million. That had risen to \$230 million by the time Stephens arranged Systematics' sale to Alltel Corp., a telephone holding company which then moved its headquarters to Little Rock. Last year Systematics sales hit \$861 million -- a third of Alltel's total. Stephens now owns more than 8% of Alltel and wields significant influence over the company.

When Bill Clinton was elected president in 1992, bringing Foster, Hubbell and Kennedy to the White House staff, Systematics' foreign bank business flourished. It began to announce a flood of data processing deals with major banks in Moscow, Macao, Singapore, Malaysia, Pakistan, Trinidad and elsewhere. According to veteran bank software vendors, and computer intelligence specialist Wayne Madsen, co-author of a book about the NSA called The Puzzle Palace, it is inconceivable that any U.S. company could land such sensitive work without the intimate participation of the NSA. Domestic business took off as well, with giants like Citibank and Nations Bank signing big data processing deals.

Working alongside Systematics in this spooky world of bank computer spying appears to be a cluster of other curious, loosely-affiliated companies. For instance, there is Boston Systematics, headed by former CIA officer Harry C. Wechsler, which controls two Israeli companies that also use the name Systematics. Wechsler denies any connection to the Arkansas company (now renamed Alltel Information Services) and claims to know nothing of PROMIS. Odd, then,

that Inslaw claims it got two inquiries in 1987 from Wechslees Israeli company seeking marketing data on PROMIS.

Many of the intelligence sources who provided information for this story insist that Boston Systematics and the Arkansas company are, in fact, related some way. And, based on his own sources in the Justice Dept., Inslaw founder William A. Hamilton says he believes Boston Systematics was also closely linked with both Maxwell and Rafi Eitan, the former head of Israel's antiterrorism effort. Hamilton says Eitan, using a false name, showed up at Inslaw's Washington D.C. office one day in 1983 for a private demonstration of PROMIS.

Another curious company is Arkansas Systems, founded in 1974 by Systematics employee and former U.S. Army "analyst" John Chamberlain. Located just down the road from Systematics, Arkansas Systems specializes in computer systems for foreign wire transfer centers and central banks. Among its clients: Russia and China, according to Arkansas Systems president James K. Hendren, a physicist formerly involved with the Safeguard anti-missile system. Arkansas Systems was one of the first companies to receive funding from the Arkansas Development Finance Authority, an agency created by then Gov. Bill Clinton that is now coming under congressional scrutiny.

What does Alltel have to say about all this? "I've never heard anything so asinine in all my life," steams Joe T. Ford, Alltel's chairman and the father of Jack Stephens' chief administrative aide.

John Steuri, a former IBM executive who is

chief executive of Alltel Information Services, says he had never heard of Boston Systematics before this inquiry. He declares that Systematics does almost no work for the government, scoffs at the idea his company is tied to the NSA and says Foster has never had any connection to Systematics. As for the fact he sold half his 700,000 Alltel shares in February at \$34, just before it began skidding to under \$24, he says that was merely to pay for the exercise of options.

Why is it, then, that Hamilton claims sources in two separate intelligence agencies say documents relating to Systematics were among those taken from Foster's office immediately after Foster's death? Indeed, a private Investigator close to the continuing "Whitewater" probe by Independent Counsel Kenneth W. Starr says he has learned that Hubbell has delivered those documents -- including papers related to Systematics -- to Starr as part of his deal to stay out of prison. Hubbell pleaded guilty last December to two felony counts related to over-billing at the Rose Law Firm.

If Foster knew the U.S. was spying on foreign banks, why would he let himself be caught red-handed with a Swiss bank account? The answer may be that the Israeli transactions were, in fact, well concealed, according to the veteran CIA source. And Foster would have known that, unless a prober knew exactly what to look for, finding his payoffs in the torrent of routine transfer data would be a hopeless task. Besides that, greed could explain a lot: if not Fosters then for whomever else he might have been playing

bagman. The CIA source says Foster was not the only one in the White House under suspicion for peddling state secrets.

All of which helps explain Foster's odd behavior before his death. He was a tough, smart trial attorney at the peak of power in Washington. Only 48 years old, he was in excellent health. Suddenly, according to the Fiske report, he couldn't sleep. He complained of heart palpitations and high blood pressure. His sister arranged for him to see a Washington psychiatrist, who later told the FBI he had been instructed not to take notes because Foster's depression was "directly related to highly sensitive and confidential matters" tied to his "top secret" government work.

Foster never saw a doctor. Instead, about a week before he died, he hired a lawyer: high-powered D.C. criminal attorney and political fix-it man James Hamilton. Foster's wife claims his reason was the White House Travel Office controversy, which was expected to lead to congressional hearings.

On the weekend of July 17 and 18, Foster drove with his wife to the Eastern Shore of Maryland to relax. By "coincidence," according to the Fiske report, so did Hubbell. They met at the posh estate of Michael Cardozo, head of Clinton's legal defense fund and son-in-law of prominent Democratic fundraiser Nathan Landau. Hubbell later claimed the weekend was a laid back gathering of tennis and poolside chit-chat.

But according to sources connected to the CIA, Justice Dept. and the Defense Intelligence Agency, the meeting was under surveillance. The

agenda? Heavy duty damage control. Foster was grilled. To whom else could the Swiss money be traced? How could the scandal be contained?

Foster's wife admitted he returned to Washington even more depressed. On Monday night, he turned an invitation by the President to drop by the White House to supposedly watch a movie. On Tuesday, Foster left his office at the White House about 1 p.m. and said he'd be back later. At 5:45 p.m. his body was found, neatly laid out in Ft. Marcy Park, a bullet wound to his mouth. Suicide, the Fiske report promptly declared, echoed by a cursory Senate inquiry.

Still, nagging questions remain. Why was there no blood on the ground and bone fragments or brain tissue? Why were there rug fibers all over his clothes? Why no dust on his shoes despite the long dirt path from his car to the body?

The answer seems painfully clear, a coverup of immense proportions for reasons "national security." And don't expect Whitewater prober Kenneth Starr to spill any beans. He was in-house counsel to Reagan Attorney General William French Smith at the time the Inslaw PROMIS software was expropriated for intelligence use. Later, as Solicitor General, he recused himself from an Inslaw-related matter without explanation. It seems likely Starr would have been personally involved in launching this covert bank spy effort, which Washington is still so nervous to keep secret.

All in the family, you might say.

# The vicuna lacuna

Sen. Al D'Amato's impersonation of a statesman made my head hurt. And hanging on the words of Howell Heflin was not my idea of how to spend a steamy Friday afternoon.

But accountability of government is a pillar of our democracy. So I went to hearings all last week, and watched congressional panels on Whitewater, Waco and the Good Ol' Boys Roundup, the racist ATF picnic.

The props were unforgettable. Grown men fought for the attention of cameras with a dead man's briefcase. Senators pored over the Roundup invitation, featuring a Redneck Chili Cook-Off judged by "former Rednecks of the Year."

Congressional hearings are useful, I suppose, although the country still seems pretty confused about what Ronald Reagan knew about Iran-Contra, and what happened between Anita Hill and Clarence Thomas.

Plus, this is not the Roman Senate. The oratory runs more to Sen. Joe Biden vaporizing that the Good Ol' Boys Roundup hurt "the soul of this country" and "the soul of law enforcement" and "the heart and soul" of law enforcement.

But anyway, let's review what we've learned so far:

—David Koresh was a pervert.

—Janet Reno was so green on the job that she was rolled by the FBI in Waco and by the White House in Whitewater.

—Bernard Nussbaum was such a gifted obstructionist that he could make even an innocent person look guilty.

—The Republicans have a weakness for conspiracy theories.

—The Clinton administration would rather climb a tree to tell a lie than stand on the ground and tell the truth.

—The Bureau of Alcohol, Tobacco and Firearms should be abolished before the Council of Economic Advisers.



—Good ol' boys are sometimes racists and heavy drinkers.

—The bottom of a briefcase is in the eye of the beholder.

You may feel you knew all that already. But this is a Congress more intent on sound bites than civics.

Sen. Arlen Specter said he will convene a panel on the 1992 FBI raid on the white separatist Randy Weaver in Ruby Ridge, Idaho. Sen. Barbara Boxer, a Democrat, wants open hearings on Sen. Bob Packwood. That way, we could finally prove, beyond any shadow of a doubt, once and for all, absolutely, that Packwood is not the master of his desires.

Neither is Sen. Edward Kennedy, says Sen. Mitch McConnell. The Republican Ethics Committee chairman has threatened to hold hearings on Chappaquiddick, the accident that occurred many years ago in Massachusetts, before disco. McConnell also would retaliate with a hearing on another Democrat, Sen. Tom Daschle, on whether he improperly intervened to help an air-charter company owned by a friend.

McConnell's threats of revenge hearings are preposterous and tasteless, and perfectly in keeping with the spirit of the 104th Congress.

Think about it. Why shouldn't the Capitol complete its descent into partisan madness and get around to all those scandals that got away? The nation's past is riddled with mysteries. Let the hearings commence.

We could start with that cherry tree. The anti-environmentalism of the Father of His Country is a disgrace. And we could find the

smoking teapot of the Harding administration. We like Ike, but isn't there a piece of unfinished business about Sherman Adams and that coat? What is vicuna, anyway? And where did it go?

Then Congress could try to get to the bottom of current troubling questions:

—Does Sen. Strom Thurmond know that his hair is the color of Tang?

—Why does Sen. Robert Byrd insist on holding up Senate business with all those references to Brutus and Tacitus? (Call him Tedi.)

—Did Jesse Jackson teach Bill Clinton to say "Mend it, but don't end it"?

Oh, and there's that new Senate resolution Byrd got passed saying reporters should have to join legislators in disclosing the sources and amounts of their outside income. Can hearings be far behind? (Who will cover them?)

First, they'll ask Diane Sawyer questions about her sex life. Then they'll want to know why Larry King never asks follow-up questions. Next they'll try to figure out how bored David Brinkley really is. And then they'll come after me.

Enough. I'm losing perspective.

◆  
*Maureen Dowd, a former writer for the Washington Star and Time magazine, has been with the New York Times since 1983 and was a finalist for a Pulitzer Prize in national reporting in 1992.*

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## LETTERS

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### It's belt-tightening time

Let's not shed too many tears for the Hubbells, with the money they have made and the money Webb Hubbell made over-billing clients. They should have saved enough to send their children to school. Just send them to public school like the rest of us poor people.

My husband and I sent our son to college on less than \$18,000 a year. Arkansas State University is a great school and certainly does not cost as much as those private schools. They also don't have to live in an affluent Washington neighborhood or shop at Victoria's Secret. Wal-Mart is a great place to shop.

I also don't think he should have prison of choice. One other thing: What could Suzy Hubbell be doing that would pay over \$60,000 a year? That is what is wrong with our government.

**MARY ROCHELLE  
Benton**

# The New York Times

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## Justice and Treasury Officials Hindered Whitewater Inquiry, Investigator Says

By NEIL A. LEWIS

WASHINGTON, Aug. 8 — An investigator who the Republicans hope will put an appealing human face on the complicated and numbers-riddled issue of Whitewater told a House panel today that officials in the Justice and Treasury Departments, as well as in the Resolution Trust Corporation, sought to block her as she pursued the case.

L. Jean Lewis, a 41-year-old Federal banking investigator from Kansas City, gave her first public account of her experiences in testimony today before the House Banking Committee. Ms. Lewis said that she encountered resistance at all turns as she looked into the dealings of a failed Arkansas savings and loan association. The savings and loan association, Madison Guaranty, was owned by James B. McDougal, Bill and Hillary Clinton's partner in the Whitewater real estate development.

While Ms. Lewis was testifying before the House committee, one of Mrs. Clinton's closest friends, Susan P. Thomases, appeared before the Senate Whitewater committee. Ms. Thomases, a lawyer from New York with unlimited access within the White House, denied Republican charges that she acted as intermediary for Mrs. Clinton in arranging to keep investigators from seeing the files of Vincent W. Foster Jr., the deputy White House counsel, after his death.

During Ms. Thomases' testimony, Republicans on the Senate panel revealed that the files in Mr. Foster's office included a copy of what they said was a misleading financial statement signed by Mrs. Clinton.

The Republicans said the financial statement failed to disclose more than \$15,000 in outstanding Whitewater loans taken out by the Clintons. The Clintons' lawyer today disputed the contention that the document was misleading.

The financial statement was used for a 1990 bank loan to the Clintons that is now under investigation by the Whitewater independent counsel. But after the hearing, the Clintons' personal lawyer, David E. Kendall, said that the financial statement was not misleading, because a line on the form noting \$50,000 in liabilities included the Whitewater loans, even though it was not identified as such.

On the House side of the Capitol,

Ms. Lewis's statement was delivered before a committee riven deeply along partisan lines because looming over the hearing is the issue of the integrity of the President and his wife. Republicans bathed Ms. Lewis in repeated praise, depicting her as admirably tenacious in working to expose what Representative Spencer Bachus of Alabama called the "rascality" of people in Arkansas connected with Madison Guaranty.

Ms. Lewis declared, "I believe there was a concerted effort to obstruct, hamper and manipulate the results of our investigation of Madison."

Some details of her story had been disclosed last year by Representative Jim Leach, the Iowa Republican who is now the chairman of the Banking Committee. But Ms. Lewis offered new details today of her experience and leveled serious obstruction charges against officials of her own agency, the Resolution Trust Corporation, which was set up to monitor and oversee the troubled saving and loan industry.

Democrats responded with a fusillade of challenges to her account and to her credibility.

Representative Paul E. Kanjorski, Democrat of Pennsylvania, suggested that Ms. Lewis was obsessed with Madison Guaranty, spending almost all of her time on that issue to the exclusion of more important bank failures.

Representative John J. LaFalce, a Democrat from upstate New York, questioned Ms. Lewis closely over the fact that she is represented by the Landmark Legal Foundation, a staunchly conservative legal group in Kansas City. "I find that very interesting," he said in a slow and deliberate manner.

Ms. Lewis delivered her opening statement over a 45-minute period in which the usually feuding committee listened quietly. She said she had found substantial evidence of mismanagement at Madison as well as evidence that some of the thrift's funds were illegally diverted to both Mr. Clinton's campaign for governor and the Whitewater real estate venture in the mid-1980's.

The referrals, — the technical term for Ms. Lewis's reports — eventually helped lead to the appointment of independent counsel, Kenneth W. Starr, who is investigating Madison and Whitewater.

Justice Department officials said today that Ms. Lewis's charges reflected her incomplete perspective.

Carl Stern, the Department spokesman, said documents show that Ms. Lewis's initial information that there was possible criminal activity at Madison was not ignored, but rather the subject of deliberation at various levels of the department.

On Feb. 23, 1993, a few months after the first referral was made to the United States Attorney's office in

Little Rock, Ark., a Justice Department lawyer in Washington wrote a memo saying the case was without merit. The documents also suggest that the Justice Department failed to inform Ms. Lewis of the decision because of a series of inadvertent errors, leaving her to believe mistakenly that no action had been taken.

At the Senate hearing, Ms. Thomases, known in the White House as an aggressive and outspoken member of the Clinton inner circle, testified today in subdued tones and minimized her role in the events that followed Mr. Foster's suicide on July 20, 1993.

Republicans produced telephone records showing that she had made a flurry of calls to senior White House staff members after Mr. Foster's death.

But Ms. Thomases said that she had played no role in the handling of the papers and that most of her discussions with Mrs. Clinton and senior White House aides in the days

*'A concerted effort to obstruct, hamper and manipulate.'*

following the death of Mr. Foster, who was also a longtime friend of the Clintons, were to console each other and to share grief.

Ms. Thomases said that her first discussion with Mrs. Clinton came when the First Lady called to tell her of the death.

*cont'd.*

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"She never had any conversations with me about any documents or about Mr. Foster's office," Mrs. Thomases said of Mrs. Clinton. "We talked about friends, we talked about religion, we talked about many things. Had we talked about documents, I would have remembered it."

But Mrs. Thomases' account today was in conflict with those given by two other White House officials involved: Bernard W. Nussbaum, who was White House counsel at the time, and Stephen R. Neuwirth, one of his assistants.

Mr. Nussbaum, who is scheduled to testify before the Senate panel Wednesday, has said in a deposition that Ms. Thomases called him after Mr. Foster's death to inquire about the procedure for permitting investigators to go through the files in the deputy counsel's office. He said he was told by Ms. Thomases that some people were concerned about giving investigators complete access to the files. Mr. Nussbaum ultimately decided to block the investigators from going through the files, a decision that rankled prosecutors at the Justice Department.

Ms. Thomases said that it was Mr. Nussbaum who first mentioned the procedure for handling Mr. Foster's papers.

"He said not to worry," Ms. Thomases recalled. "That he had a plan. That he was going to take care of them. He had a clear sense how he was going to handle it. That he was going to protect all of the President's papers. I said, 'Sounds good to me.'"

Under persistent and hostile questioning by Republicans, Ms. Thomases said that she never raised any questions about the way the White House was handling the investigation.

"I had no concern about unfettered access," Ms. Thomases said. "I never heard that phrase, 'unfettered access,' until these hearings started."

# Office searcher says she left 'empty-handed'

Thomasson, Watkins deny wrongdoing after Foster's death

BY TERRY LEMONS

Democrat-Gazette Washington Bureau

WASHINGTON — Senate Republicans unleashed a series of questions Tuesday at David Watkins and Patsy Thomasson, but the White House aides insisted they did nothing improper after Vincent Foster's suicide.

- D'Amato rejects call to have first lady testify 10A
- Gingrich "not convinced" Vincent Foster committed suicide 10A

During a turbulent day of testimony, the two Arkansans told the Senate Special Whitewater Committee that they did not try to remove sensitive documents from Foster's West Wing office or to impede the police investigation into his July 20, 1993, death.

Watkins ordered Thomasson to search the deputy White House counsel's office that night for a  
See **WHITEWATER**, Page 10A



Associated Press

**PREPARING TO TESTIFY** — White House communications director Mark Gearan (from left), former White House aide Sylvia Mathews and former White House aide David

Watkins are sworn in on Capitol Hill on Tuesday before the Senate Whitewater committee. Watkins was chastised for ordering a White House search of Vincent Foster's office.

# Whitewater

• Continued from Page 1A

sultide note.

"We ... left the office empty-handed," Thomasson said during the Senate's fourth day of Whitewater hearings.

For nearly six hours Tuesday, the committee's attention focused on Thomasson and Watkins, two longtime allies of President Clinton.

Watkins, a Hope native and a former Little Rock businessman, served as Clinton's administration assistant until last year, when he resigned under pressure for using a presidential helicopter on a golf outing. He supervised Thomasson, a Ripon, Ark., native who has held several White House posts.

Skeptical Republicans repeatedly challenged the two about their actions on the night of Foster's death.

Watkins said he did not recall U.S. Park Police asking him to seal Foster's office. That testimony placed him at odds with Sgt. Cheryl Braun.

"If she said it, I didn't hear it," Watkins said. "If I'd heard it, I would've taken action."

Sen. Christopher Bond, R-Mo., asked Watkins if Braun was "fabricating" assertions that she asked him to lock the office. Watkins disputed Bond's characterization.

"There did not seem to be a lot of interest from the Park Police in the office," Watkins explained.

Watkins faced repeated questions about the timing of the search of Foster's office, which contained Whitewater files and other documents belonging to President Clinton and Hillary Rodham Clinton. For more than four hours, Republicans also grilled Watkins about sending Thomasson to search Foster's office.

"I'm disturbed you didn't tell ... Park Police you sent Ms. Thomasson to search for the note," Sen. Orrin Hatch, R-Utah,

said.

"It never occurred to me," Watkins responded.

Watkins said Thomasson was the logical person to send to Foster's office.

Republicans didn't agree, noting Thomasson had not then cleared her FBI security check. Thomasson eventually gained her permanent clearance in March 1994.

Over numerous Democratic objections, Sen. Lauch Faircloth, R-N.C., repeatedly asked Thomasson if the security delay stemmed from her work for Little Rock businessman Dan Lasater, who pleaded guilty in 1986 to conspiracy to distribute cocaine. Thomasson said the delay was caused by paperwork, not connections to Lasater.

Faircloth suggested that Thomasson inappropriately "rifled through" sensitive documents in Foster's office.

Thomasson responded by noting there were no "top-secret documents" visible in Foster's office. She said she did not tamper with or remove documents from the office.

She said she sat at his desk and glanced at Foster's desk drawers in her hunt for a suicide note.

Thomasson also said she looked in the top of Foster's briefcase but saw nothing but a stack of papers. Six days later, a White House lawyer found the torn-up note at the bottom of the briefcase.

Thomasson was joined in Foster's office by former White House Counsel Bernard Nussbaum and Margaret Williams, Hillary Clinton's chief of staff.

Secret Service agent Henry O'Neill is expected to testify today that he saw Williams take documents out of Foster's office. Williams is to testify that she removed nothing, an account that White House aides said is backed up by a polygraph test.

Testimony revealed that Attorney General Janet Reno was concerned that it took six days for White House officials to find a shredded note from the respondent Foster. Reno was

"worried" that the note found in Foster's briefcase surfaced four days after White House aides and law enforcement officials reviewed papers in Foster's office, White House communications director Mark Gearan testified.

Nussbaum, who will appear in the next few weeks, has been targeted during these hearings for his handling of the Foster case. Law enforcement officials contend Nussbaum kept them from reviewing papers and other items, particularly at a meeting two days after Foster's death.

Nussbaum's actions annoyed top Justice Department officials. Gearan testified Tuesday that Reno's assistant, Philip Heymann, said the attorney general was unhappy it took several days to locate Foster's note.

The note was found six days after Foster's death and four days after Nussbaum's meeting with investigators. Police contend they would have found the note sooner.

Sen. Paul Simon, D-Ill., said the confusion over the Foster investigation amounted to a "turf battle" between the White House, the Justice Department, Park Police and other federal officials.

"There was a question. Who takes charge?" Simon said. "The lines were not clear."

Sen. Barbara Boxer, D-Calif., added that there was no evidence Watkins or other Clinton administration officials engaged in a "conspiracy" to block the Foster investigation.

In a related development, Democrats and Republicans resolved their differences over whited-out portions of Whitewater documents belonging to the Clintons.

Republicans objected last week to the exclusions. After negotiations with Clinton personal attorney David Kendall, committee staff members were allowed to review the documents in their entirety.

Committee officials said the review showed the excluded part of the documents did not deal with Whitewater issues.

Cont.

### Sampling of hearings



Patsy Thomasson

*A sampling of what was said at the Senate Whitewater hearing:*

■ On whether former presidential aide David Watkins neglected a U.S. Park Police request to seal Vincent Foster's office:

**SEN. LAUCH FAIRCLOTH:** Mr. Watkins, Cheryl Braun of the Park Police has testified she clearly remembers directing you to seal Mr. Foster's office shortly before her departure from the Foster home the evening of July the 20th. Do you recall her asking you to seal Mr. Foster's office?

**WATKINS:** Senator ... I do not recall her making such a request.

■ On why Patsy Thomasson, not law enforcement officials, was sent to search the office:

**WATKINS:** Senator, I asked her to look for a note, very — we were concerned and inquiring about the why, and was there possibly a note on his office — at his office. I also knew that the Park Police had been in touch with the Secret Service for some five hours prior to making that request, and they did not — I'm not

slamming the Park Police at all, but they had not shown a lot of interest, to me at least, in the office or — of Vince Foster's. And I assume that if this had been of great concern with them they would have contacted the Secret Service, whom they had been in touch with.

■ On what Thomasson found:

**REPUBLICAN COUNSEL RICHARD BEN-VENISTE:** And did she indicate anything else that she had seen at the counsel's office?

**WATKINS:** Well, she reported to me that she ran into Maggie Williams and Bernie Nussbaum there, and they were grief-stricken and they all sat on the sofa and cried.

■ On what happened to the trash in Foster's office:

**TREASURY CHIEF OF STAFF SYLVIA MATTHEWS:** I put everything back in the plastic bag with one exception, and that was a creamer that still had cream, so I threw that away and put everything back in the bag.



Sen. Lauch Faircloth

# Maybe Foster killed himself, Gingrich says

BY KATHERINE Q. SEELYE  
New York Times News Service

WASHINGTON — Speaker Newt Gingrich said Tuesday that he was not convinced that Deputy White House Counsel Vincent Foster killed himself two years ago.

"I don't know for sure that it was a suicide," Gingrich told reporters who asked his opinion at a breakfast meeting Tuesday morning.

"I'm not convinced he didn't; I'm just not convinced he did," Gingrich said. "I think that there is substantial ground to wonder about the entire way this case has been handled from the opening minutes of its discovery, and it verges on the bizarre."

The suggestion that Foster was murdered has gained currency among some conservative commentators. The issue of Foster's death has been part of the Whitewater hearings, as he was handling Whitewater-related matters for President and Hillary Rodham Clinton when his body was found in a park overlooking the Potomac River in 1993.

But Sen. Alfonse M. D'Amato, R-N.Y., who is chairman of the hearings, said last week that he was not questioning federal investigators' conclusion that Foster killed himself.

Tuesday, after Gingrich's remarks created a stir, his office called the White House to explain that the speaker had not been paying close attention to the hearings.

"It was a commentary more on the degree to which the speaker has been following the current hearings," said Michael D. McCurry, the White House press secretary. "I don't think he's had time to watch all the evidence gathered that allows him to say sufficiently one way or another that he's convinced of certain aspects of the matter that is under inquiry in the Congress."

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7/26/95

# The Washington Times

DATE: 8-11-95

PAGE: A-1

## Nussbaum contradicted again

### Battle shapes up on phone records

By Jerry Seper  
THE WASHINGTON TIMES

A second key Justice Department lawyer yesterday contradicted former White House Counsel Bernard W. Nussbaum's testimony to the special Senate Whitewater committee that he did not renege on an agreement to let federal investigators review records in Vincent W. Foster Jr.'s office after his death.

Testifying on the 13th and final day of the first phase of Whitewater hearings before the committee, David Margolis, a 30-year Jus-

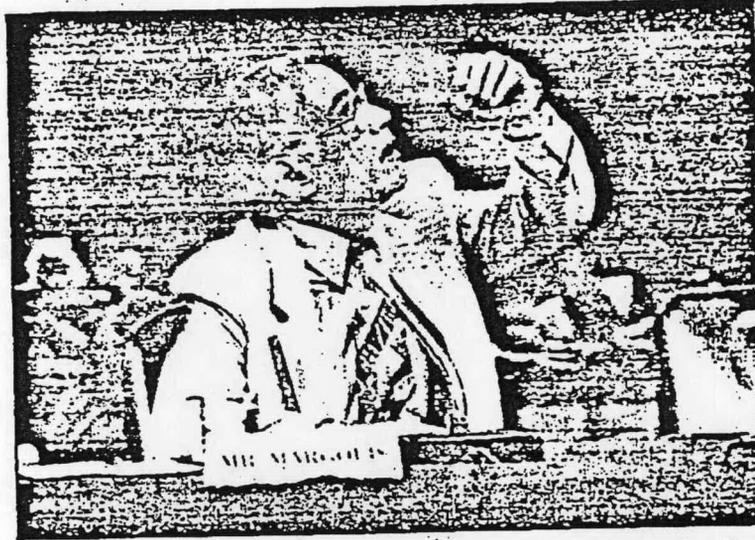


Photo by Peter A. Harris/The Washington Times

**Counsel warned:** Witness David Margolis tells senators how he told Bernard W. Nussbaum in July 1993 he was making "a big mistake."

### Hubbell testifies

A House panel hears conflicting testimony from former Associate Attorney General Webster L. Hubbell and inspectors general from the FDIC and Resolution Trust Corp. **A10**

tice Department veteran and former strike-force chief, backed up the previous testimony of other Justice officials and the FBI — directly contradicting Mr. Nussbaum's vehement denials that a deal had been struck.

"I believed then and I believe now that we finalized an agreement," said Mr. Margolis, who recently underwent quadruple-bypass surgery and was released by his doctor only this week to testify. "We both agreed to it."

Mr. Margolis, the hearing's last witness, said he told Mr. Nussbaum he was making "a big mistake."

Meanwhile, negotiations continued over a potential subpoena by committee Chairman Alfonse M. D'Amato, New York Republican, for the telephone records of first lady Hillary Rodham Clinton's mother, Dorothy Rodham; Susan Thomases, a longtime Clinton confidante and New York lawyer; and Margaret A. Williams, Mrs. Clinton's chief of staff.

Citing what he said was "contradicting testimony" about notifications made on Mr. Foster's death and the timing of calls to the White House before the document review, Mr. D'Amato said the records were needed to "get more clarity of what actually happened."

Attorneys for Mrs. Rodham, Mrs. Thomases and Ms. Williams said in separate letters to the committee that they would "voluntarily" seek the phone records and submit them to the panel. The committee wants a record of calls between July 20 and July 22, 1993, and on July 26, 1993.

The first lady was at her mother's home in Little Rock at the time of Mr. Foster's July 20, 1993, death, which has been ruled a suicide.

Republicans believe Mrs. Thomases, who handled questions concerning the Whitewater project and its ties to Madison Guaranty Savings and Loan Association when the issue surfaced during the 1992 presidential campaign, made calls to Mr. Nussbaum to direct his activities in the Foster document review.

Ms. Williams, whose testimony has been challenged as contradictory, was involved in searching Mr. Foster's office the night of his death. Uniformed Secret Service Officer Henry P. O'Neill has told the committee he saw Ms. Williams take papers out of the White House counsel's suite that night.

Mrs. Thomases has denied that she tried to influence the review. Ms. Williams also has denied any wrongdoing.

Mr. D'Amato said the panel also will keep pressing the White House to allow the FBI to examine the data in the computer of Mr. Foster's executive assistant, Deborah L. Gorham. Mrs. Gorham told the committee an index she prepared for Mr. Foster's files was missing the day after his death.

Mr. Margolis' comments, backing up those last week of his former boss, Deputy Attorney General Philip B. Heymann, came at the conclusion of a contentious hearing in which Mr. Nussbaum clashed with Republicans who believe he manipulated the review process to conceal documents from investigators.

During one particularly heated exchange, Sen. Richard C. Shelby, Alabama Republican, charged that Mr. Nussbaum controlled the review of documents in Mr. Foster's office on July 22, 1993, to illegally prevent investigators from looking at records as part of their probe of the death.

"What troubles me is why, Mr. Nussbaum, did you — a lawyer of experience, Watergate experience, a competent trial lawyer — consciously, I believe, perhaps willfully, contaminate this whole investigation?" Mr. Shelby said. "The Justice Department never had a chance to do a thorough or a complete investigation. The papers have disappeared. You know it. We know it."

"No papers have disappeared," shot back Mr. Nussbaum, who was grilled by committee members for two days. "Every paper was preserved. No paper disappeared."

"Oh, no, no, no — that's in dispute," Mr. Shelby answered. "You obviously had a lot to hide, as Mr. Heymann asked you. Did you have a lot to hide?"

"I didn't hide anything — I didn't succeed in hiding anything. I had

Cont'd

nothing to hide. Every document was preserved. Nothing was destroyed," an angry Mr. Nussbaum responded.

Mr. Nussbaum, his hands in tight fists on the edge of the witness table, said he acted properly and was "proud of my conduct."

"You're proud of your conduct? You'll probably be the only person in America to be proud of your conduct," Mr. Shelby said.

Mr. Margolis, an associate deputy attorney general, also questioned — as have others — Mr. Nussbaum's failure to find 27 pieces of a sheet of yellow paper found in Mr. Foster's briefcase six days after his death. He said he found it hard to believe the note, which White House officials said they were frantic to find to explain the Foster death, was missed.

"If I had been looking for a note and had not found those scraps of paper, I would have gone to the attorney general and submitted my resignation," Mr. Margolis said. "I would have been humiliated."

During his examination of Mr. Margolis, Majority Counsel Michael Chertoff, a former U.S. attorney in New Jersey, asked if the veteran prosecutor was concerned that no fingerprints were found on the note. Mr. Margolis said it concerned him, but that it was not an unusual occurrence.

But for the first time Mr. Chertoff described in detail what some Republicans have suggested privately: There may have been more than one page. He asked if there were two pages and they were folded and torn, could that account for the lack of fingerprints.

Mr. Margolis said it was possible, but declined to elaborate.

The handwritten note, listing a number of concerns by Mr. Foster,

was found by accident on July 26, 1993, and turned over to authorities 30 hours later.

Several witnesses have testified that Mr. Nussbaum was in a position to see the note when he conducted the document review.

Michael Spafford, an attorney for the Foster family, also said he "clearly heard" Mr. Nussbaum's associate counsel, Clifford Sloan, tell his boss there were paper

scraps in the briefcase after law enforcement officials — including Mr. Margolis — had left the document review. Mr. Spafford said Mr. Nussbaum responded that he would take care of them "later."

Mr. Nussbaum, who resigned in April 1994 over his role in contacts between the Treasury Department and the White House over the government probe of Madison, said he did not recall the event, adding

that "memory is playing tricks on some of us." Mr. Sloan also could not recall the conversation during an earlier committee appearance.

Mr. Heymann told the committee he struck a deal with Mr. Nussbaum to allow his deputies, Mr. Margolis and Roger C. Adams, to review documents with the White House counsel to determine their relevance to the Foster probe. He called the agreement "reasonable, fair and credible."

# The Washington Post

DATE: 8/10/95PAGE: A14

## Nussbaum Defends His Handling of Search of Foster's Office

By Sharon LaFraniere  
and Susan Schmidt  
Washington Post Staff Writers

Former White House counsel Bernard Nussbaum tried yesterday to reverse the perception of him as heavy-handed and inept in his handling of a search of Vincent W. Foster Jr.'s office, saying, "On the big calls, I was right."

Nussbaum, who resigned last year amid another Whitewater-related controversy, said he bent over backward to accommodate law enforcement officials who wanted to search his deputy's office after Foster's body was found in a park on July 20, 1993. But Nussbaum said he had to restrict them somewhat in order to protect confidential documents in Foster's files.

His only mistake, Nussbaum told the special Senate Whitewater committee, was that he failed to notice yellow scraps of paper in the bottom of Foster's briefcase when he looked inside it two days after Foster's death. Not until the following week were the scraps discovered, pieced together into a note and turned over to law enforcement officials as evidence that Foster committed suicide.

"There is nobody in the world, Senator, who wanted to discover a note more than me," said Nussbaum, a New York attorney. He said Foster's wife had called him early on the morning after Foster's death, trying to figure out why her husband killed himself. The note meant "now Lisa could have some of the answers," Nussbaum said.

Nussbaum is the last scheduled witness and the only obvious target of the committee's month-long inquiry into how the White House handled documents in Foster's office and a law enforcement investigation of his death.

Witnesses described Nussbaum slamming doors, interrogating secretaries and infuriating Justice Department officials and U.S. Park Po-

lice officers who were trying to determine if Foster committed suicide. Former deputy attorney general Philip B. Heymann testified that Nussbaum undermined the credibility of the law enforcement inquiry by reneging on an agreement on how the search of Foster's office would be conducted.

In presenting his version of events, Nussbaum was in turn sarcastic, charming, self-demeaning and self-aggrandizing. Known as an aggressive litigator, he did not hesitate to interrupt the senators to drive home his points. The senators mostly let him have his say, knowing they have a chance to render judgment when he resumes his testimony today.

Republicans on the committee clearly hope to link Hillary Rodham Clinton to Nussbaum's decision to limit law enforcement access to Foster's papers and to another aide's decision to transfer the first family's personal financial files to the Clintons' personal quarters. The Republicans have intimated that the Clintons were worried about the discovery of some secret in Foster's files, possibly involving their Whitewater real estate transactions.

But the committee has not definitively established that Hillary Clinton was even interested in what Foster's office held. Even Heymann, the most damaging witness, has said that Nussbaum may have managed "to throw substantial suspicion over no wrongdoing."

Republicans are clearly frustrated by the contradictions in testimony by White House aides and advisers, and even some Democrats seem puzzled by why the accounts of certain events don't match up.

Nussbaum did not help them yesterday. His recollection of several key conversations differed from that of other witnesses, including Susan Thomases, a close friend of the Clintons, and Margaret Williams, the first lady's chief of staff.

Nussbaum left the White House and returned to a private law firm in March 1994 after he was criticized for attending a briefing about a criminal referral that touched on the First Family's Whitewater real estate investment.

It is only because of misimpressions about Whitewater, he said yesterday, that the Senate hearing is underway. "Whitewater had absolutely nothing to do with how documents were handled in the White House following Vince Foster's death," he insisted.

In deciding on search procedures, Nussbaum said he "chose a middle ground" between the Justice Department's position and that of other White House officials. He described Foster's documents to Justice Department attorneys but did not allow them to review them until he determined whether they were protected. Eventually, he said, investigators saw every document that interested them.

Among White House staff who considered the issue, "I was the one who had the greatest political savvy and public relations sense," Nussbaum said. "I made the right judgments."

A number of senators have noted that Patsy Thomasson, a White House aide who lacked any security clearance, had more access to Foster's office than Nussbaum gave the Justice Department attorneys, who had high-level clearances. But Nussbaum said Thomasson did not review files, she only quickly surveyed the office for a suicide note.

Although he said he knew Heymann disagreed with him on the search procedures, Nussbaum said he does not recall Heymann telling him that he was making "a terrible mistake" or asking him whether he was "hiding something," as Heymann testified last week.

Nussbaum's testimony also differed from that of Thomases, a private New York attorney who functions as an informal White House adviser. In a phone conversation two days after Foster's death, Nussbaum said, Thomases raised the issue of the search, saying "people were concerned" about how much access law enforcement officials would be given.

Thomases testified Tuesday that Nussbaum brought up the topic of the search, not her, and she only listened, expressing no concerns.

Sen. Alfonse M. D'Amato (R-N.Y.), who chairs the panel, said he finds the difference in the accounts "very troubling."

Both Nussbaum and Thomases agree Thomases did not invoke Hillary Clinton's name. Hillary Clinton "doesn't need a messenger," Nussbaum said.

Nonetheless, Nussbaum has said, he assumed that the first lady, as a good lawyer, would have concerns, and he might have told a subordinate that Thomases voiced them.

Nussbaum's testimony is also at odds with that of Williams. He testified that he told Williams to check with the Clintons about where to put a Whitewater file and other personal financial documents that were in Foster's office.

But Williams testified that Nussbaum told her to give the files to the Clintons' private attorneys at William & Connolly. She said she only stored the records in a closet in the Clintons' personal quarters because she was tired.

"Every step of what she said she did differs from your recollection," Sen. John F. Kerry (D-Mass.) told Nussbaum.

Two other White House aides have suggested that Williams put the files in the first family's quarters because Hillary Clinton wanted them there, possibly to review them. The White House, at the committee's request, is providing more phone records in an attempt to resolve some of the discrepancies in testimony.

Staff researcher Benjamin S. Abramson contributed to this report.

# The New York Times

DATE: 8-10-95

PAGE: 8-7

## Nussbaum Appears Before Whitewater Panel and Defends Handling of Foster's Files

By STEPHEN LABATON

WASHINGTON, Aug. 9 — Facing a barrage of criticism and hostile questions, Bernard W. Nussbaum, the former White House counsel, told the Senate Whitewater committee today that he had been duty-bound to prevent investigators from going through the files of his deputy, Vincent W. Foster Jr., after Mr. Foster's suicide two years ago.

"Looking back, despite the hue and cry, despite the media frenzy, despite this hearing, if I had it to do over again, facing the same circumstances, I would do it essentially the same way," Mr. Nussbaum said. "It may sound arrogant, but I tell you, on the big calls — and I had to make a lot of big calls — I was right. I made the right calls."

But as in last summer's Congressional Whitewater hearings, where Mr. Nussbaum asserted that he had done nothing wrong in discussing a Whitewater-related investigation with Treasury officials, few senators came to his defense.

While Mr. Nussbaum was appearing before the Senate committee, the House Banking Committee continued to hear testimony about the failure of an Arkansas savings and loan company run by President Clinton's business partner in the Whitewater real estate venture.

But most of the news today was made in the Senate hearing. Appearing combative and often cutting short the senators who for weeks had been critical of him, Mr. Nussbaum asserted that neither Hillary Rodham Clinton — whom he met 21 years ago when they were on the staff of the House Judiciary Committee, then investigating Watergate — nor the President had played any role in the decision to block Justice Department lawyers from seeing the files in Mr. Foster's office.

Mr. Nussbaum, who resigned from the White House staff in April 1994 after he was accused of several missteps in the Whitewater case, said that contrary to the account of a Secret Service officer, no files were spirited away from Mr. Foster's office on the night of his death.

The witness also declared that he had had an ethical obligation to keep the Foster files from investigators until he could review them and decide whether they included any confidences of his client, President Clinton, and White House aides.

And he said his failure to discover

scraps of paper in the bottom of Mr. Foster's briefcase on the day he reviewed the files — July 22, 1993, two days after the Foster suicide — had simply been an innocent oversight. When those scraps were found four days later and pieced together, they made a note in which Mr. Foster had expressed his deep disillusionment with Washington.

"For all the conspiracy theorists around the world," Mr. Nussbaum said, "I did not plant that note in the briefcase."

Republican senators have spent the last four weeks building a Congressional record of testimony that contradicts important and unimportant parts of Mr. Nussbaum's account. Today they pelted him with hostile questions.

In particular, they seized on discrepancies between Mr. Nussbaum's account on the one hand and, on the other, those provided by former Deputy Attorney General Philip B. Heymann and Margaret A. Williams and Susan P. Thomases, White House advisers.

Mr. Heymann, who first met Mr. Nussbaum when they were on the Harvard Law Review more than 30 years ago, has testified that he believes that Mr. Nussbaum's decision to keep investigators from reviewing the files on July 22 compromised the integrity of the inquiry into the Foster suicide. Mr. Heymann has told the Senate panel he was so upset that at one point on that day he asked Mr. Nussbaum, point-blank, whether he was trying to hide something.

Typical of the Republican attack today was an exchange between Mr. Nussbaum and Senator Richard C. Shelby of Alabama. After getting Mr. Nussbaum to acknowledge that he had a "good long memory," Mr. Shelby asked him to recall a telephone conversation in which Mr. Heymann says he complained that Mr. Nussbaum was ruining the investigation and "misusing" the Justice Department.

"With respect to that call, my memory is vague and uncertain," Mr. Nussbaum said. "I have no memory of that conversation."

Mr. Nussbaum then added that Mr. Heymann had never accused him of misusing the Justice Department and that he simply had no recollection of the conversation. He was hiding something from the investigators.

After Mr. Shelby asserted that Mr.

Nussbaum had tried to use the Justice Department lawyers as "window dressing," to make it appear that an independent investigation into the Foster suicide had been undertaken, Mr. Nussbaum replied: "They weren't window dressing. They were participating, Senator."

"That's your selective memory," Mr. Shelby replied.

"No, sir," Mr. Nussbaum shot back. "That's my accurate memory."

At the House Banking Committee hearings, the star witness today was not a person but a tape recording secretly made by L. Jean Lewis, an investigator for the Resolution Trust Corporation, the agency established to oversee troubled thrift institutions.

Ms. Lewis testified on Tuesday that she was thwarted at every turn when she tried to press a criminal investigation of Madison Guaranty, the Arkansas savings and loan that was owned by James B. McDougal, the Clintons' partner in the Whitewater real estate venture.

Ms. Lewis returned as a witness today, but much of the focus was on the tape recording, which she made in her Kansas City office on Feb. 2, 1994, in a meeting with April Breslaw, a lawyer from the R.T.C.'s Washington office who had come to discuss the relationship between Madison and Whitewater.

On the recording, Ms. Breslaw says, "I think, if they can say it honestly, the head people, Jack Ryan and Ellen Kulka, would like to be able to say that Whitewater did not cause a loss to Madison." Mr. Ryan was at the time the head of the R.T.C., and Ms. Kulka was the agency's general counsel.

Ms. Breslaw has accepted an invitation to appear before the House committee on Thursday.

# THE WALL STREET JOURNAL

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## Nussbaum Defends Actions Following Foster's Suicide

By ELLEN JOAN POLLOCK  
AND VIVECA NOVAK

Staff Reporters of THE WALL STREET JOURNAL

WASHINGTON — Former White House Counsel Bernard Nussbaum, who has been attacked by senators and witnesses alike during almost four weeks of hearings, told a special Whitewater committee that he doesn't regret decisions he made following his deputy's 1993 suicide.

Mr. Nussbaum, who limited investigators' access to White House deputy counsel Vincent Foster's office after Mr. Foster's death, said that "every document sought by law-enforcement authorities [was eventually] turned over by the White House and by the president."

"It has been suggested . . . that the reason I transferred personal files to the first family after Vince's death was because I, or others, had some deep concern with the Whitewater matter," Mr. Nussbaum said. "This is false."

Nevertheless, as he began at least two days of testimony, Mr. Nussbaum was repeatedly challenged about discrepancies between his own and prior witnesses' testimony about the search of Mr. Foster's office and the removal of the Clintons' personal papers, including a Whitewater file.

"The American people will never know what was in there," said Sen. Richard Shelby (R., Ala.), as the questioning escalated into an argument. "I know this, senator," Mr. Nussbaum said moments later, adding, "Every document that was in that office was preserved."

Even Democrat Paul Sarbanes of Maryland said that the "consequence" of Mr. Nussbaum's handling of Mr. Foster's papers was "piling suspicion over matters that would have had a perfectly simple explanation."

Republicans have been suggesting that close associates of Hillary Rodham Clinton were discreetly pressing to keep law-enforcement officials from examining papers in Mr. Foster's office. Yesterday, Republican senators asked Mr. Nussbaum why his testimony differed from that of Susan Thomases, a friend of the Clintons, and Maggie Williams, Mrs. Clinton's chief of staff. He had talked with both in the days after Mr. Foster's death. Chairman Alfonse D'Amato (R., N.Y.) ordered that phone records for Ms. Thomases, Ms. Williams and Mrs. Clinton's mother, whom he had previously subpoenaed.

DATE: 8-10-95PAGE: 4-19

# Nussbaum: Foster's office search legal

By William M. Welch  
USA TODAY

Combative in the face of Senate skeptics, former White House counsel Bernard Nussbaum maintained Wednesday he acted properly in restricting access to presidential files after the 1993 suicide of his top deputy, Vincent Foster.

Testifying before the Senate's Whitewater hearings, Nussbaum said he followed the strictest legal ethics in protecting the executive privileges of the president and the privacy of Foster's family and the president's. And he said he did not obstruct investigators seeking clues to Foster's death.

The Senate committee has been examining whether papers relating to the president and Hillary Rodham Clinton's Whitewater land investment, before they came to Washington, were concealed from investigators so as not to embarrass the first family.

House Whitewater hearings focus on the failure of Madison Guaranty Savings and Loan, an Arkansas thrift controlled by a Clinton business partner, and on whether funds from Madison benefited the Clintons.

Nussbaum is at the center of the White House response to the death of Foster, who was handling private, as well as public, matters for the Clintons.

Nussbaum's statement and answers put him in conflict with Deputy Attorney General Philip Heyman, and another lawyer, Susan Thomases, a confidante of Hillary Clinton's.

Nussbaum said Whitewater was far from his mind as he acted to safeguard files in Foster's office after his July 20, 1993, death.

"It has been suggested that the reason I transferred personal files to the first family after Vince's death was because I or others had some deep concern with the Whitewater matter. This is false," Nussbaum said. "Whitewater had absolutely nothing to do with how documents were handled in the White House."

Nussbaum disputed Heyman's testimony that they had

agreed Justice Department officials could search Foster's office for a suicide note, evidence of extortion or other insights into his death.

Nussbaum said he considered, but rejected, that option and instead screened Foster's files personally before permitting access by investigators.

He called his course appropriate and said investigators ultimately saw anything they wanted to see.

That a torn-up note expressing depressed feelings was not discovered for four days did not materially affect the investigation, Nussbaum said.

He disputed suggestions that Hillary Clinton, directly or through Thomases, prompted him to restrict the search.

Nussbaum said Thomases had called him, citing her concerns about the process. Only a day earlier, Thomases testified Nussbaum raised the subject with her.

Sen. Alfonse D'Amato, R-

## Implications are unclear in audio-taped evidence

In House Whitewater hearings Wednesday, Republicans played an audio tape aimed at showing that the federal investigator who prompted the Whitewater probe was pressured to back off her conclusions.

The tape was made covertly by Resolution Trust Corp. investigator L. Jean Lewis. She had recommended criminal prosecutions stemming from the failure of Madison Guaranty Savings & Loan. It was owned by James McDougal, Whitewater partner with President Clinton and wife Hillary before they came to Washington.

In a taped Feb. 2, 1994, conversation with Resolution Trust attorney April Breslaw, Breslaw said their bosses in Washington "would like to be able to say Whitewater did not cause a loss to Madison." But twice on the tape, Breslaw also said Resolution officials simply wanted answers.

In her reports, Lewis asserted Whitewater transactions had caused a loss to Madison. At the demand of committee Democrats, the committee invited Breslaw to testify today.

N.Y., the committee chairman, called the discrepancy with Thomases "very troubling." He said he would subpoena records of calls Thomases had with Hillary Clinton and her aide Margaret Williams.

Sen. Richard Shelby, R-Ala., accused Nussbaum of "selective memory." He faulted Nussbaum's limits on the search of Foster's office: "They did it your way and the American people will never really know what was in there."

# The Washington Times

DATE: 8-10-95

PAGE: A-1

# Nussbaum rejects others' testimony

## Former Clinton counsel, senators clash over his contradiction of prior witnesses

By Jerry Seper  
THE WASHINGTON TIMES

Embattled but unrepentant former White House Counsel Bernard W. Nussbaum yesterday disputed the sworn testimony of several Senate special Whitewater committee witnesses over his activities just after the death of his deputy, Vincent W. Foster Jr.

The feisty New York lawyer, who clashed bitterly with committee Republicans over challenges to his credibility and claims of a "selective memory," denied testimony by former Deputy Attorney General Philip Heymann that he had agreed to allow Justice Department lawyers to review documents in Mr. Foster's office after the deputy counsel's death July 20, 1993.

He also disputed testimony by several White House colleagues on when he entered Mr. Foster's office the night of the death, how long he stayed, who locked the door, whether he saw scraps of paper in Mr. Foster's briefcase and whether he was told by White House confidante Susan Thomases that first lady Hillary Rodham Clinton was concerned about "unfettered access" to Mr. Foster's papers.

Mr. Nussbaum, who resigned in April 1994 over his role in contacts between the Treasury Department and the White House over a government probe of an Arkansas thrift with ties to President and Mrs. Clinton, insisted that "nothing improper" occurred in the White House's handling of the Foster papers.

"I do not look back with regret at the way we in the White House counsel's office conducted ourselves in those tragic days following his death, with the way we handled the documents in Vince's office," Mr. Nussbaum said. "This exercise in political hindsight and

chronological inaccuracy is unfair."

Committee Chairman Alfonse M. D'Amato, New York Republican, said the panel plans to subpoena Mrs. Thomases' telephone records and those of the "Rodham residence" in Little Rock. Mrs. Clinton was at her mother's home in Little Rock the night of Mr. Foster's death, which authorities have ruled a suicide.

Mr. D'Amato said the panel also has asked the White House to allow the FBI to examine the data in the computer of Mr. Foster's executive assistant, Deborah L. Gorham. Mrs. Gorham has told the committee an index she prepared for Mr. Foster's files turned up missing the day after his death.

Mr. Nussbaum's testimony directly disputed that of Mr. Heymann, a veteran federal prosecutor and Harvard Law School professor who told the panel last week that Mr. Nussbaum unexpectedly reneged on what Mr. Heymann thought was an agreement to allow two of his top deputies — both veteran Justice Department lawyers with top security clearances — to look at records in the Foster office.

Acknowledging his anger at the time, Mr. Heymann said that in a telephone call July 22, 1993, he asked Mr. Nussbaum if he was "hiding something." He testified that he received no explanation of why the arrangement on the documents had been ignored.

Mr. Heymann told the committee he struck a deal with Mr. Nussbaum to allow Roger C. Adams and David Margolis to review documents with the White House counsel to determine their relevance to the Foster probe. He called the agreement "reasonable, fair and credible."

When the two lawyers arrived at the White House a day later, Mr. Heymann said, Mr. Nussbaum reneged, telling them that he alone would look at the documents. Mr. Heymann said he felt the department had been "misused."

"If the Justice Department offi-

### WHITEWATER HEARINGS

#### This week's House banking committee witnesses:

- James Renick, inspector general, Federal Deposit Insurance Corp.
- John Adair, RTC inspector general
- April Breslaw, RTC lawyer

#### Today's special Senate Whitewater committee witnesses:

- Webster L. Hubbell, former associate attorney general
- Bernard Nussbaum, former White House counsel and partner in the Wachtell, Lipton, Rosen & Katz law firm

The Washington Times

cial believe that we had reached an agreement after our July 21 meeting, then a misunderstanding and miscommunication occurred," Mr. Nussbaum said. "But I do not believe ... that we reached any agreement on July 21, or that we in any way misused the Department of Justice."

During a heated exchange, Sen. Richard C. Shelby, Alabama Republican, accused Mr. Nussbaum of using the Justice Department lawyers as "window dressing" and said the former White House counsel had "selective memory."

Mr. Shelby noted that Messrs. Heymann, Margolis and Adams including Park Police investigators who looked into Mr.

cont

Foster's death, testified under oath that there was an agreement to review the records.

"It's incomprehensible to me, and I'm sure to some of my colleagues, but more important to the American people, that your memory seems to be vague, indefinite and uncertain, yet these people — bright, experienced, no one questions their integrity or their motives — they have a clear understanding that they had an agreement as to how you would search the office," Mr. Shelby said.

"You, Mr. Nussbaum, were in charge and stayed in charge," he said. "Why is your memory so vague and uncertain?"

Mr. Nussbaum shot back: "My memory is not vague. It's quite definite and not at all uncertain."

Mr. Shelby questioned how Mr. Nussbaum could not recall getting an angry telephone call from Mr. Heymann at night after the Foster document review and being asked if he was hiding something.

"Someone as important in the United States as the deputy attorney general, you're the White House counsel, the White House is in a crisis-management stage, obviously, because of this, and you tell Mr. Heymann you're going to call him back, but you don't remember to call him back?" he said. "Or if you do remember, you don't call him back anyway, do you?"

Mr. Nussbaum said that if he had made a commitment to call Mr. Heymann back after the review, "I would have called him back."

Some Democrats on the committee also challenged Mr. Nussbaum's activities, including Sen. Paul S. Sarbanes of Maryland, ranking minority member, who said the counsel's actions lacked the basic judgment that might have protected the White House from future criticism.

Committee Republicans have said they believe Mrs. Thomases or the first lady herself tried to influence Mr. Nussbaum to keep federal investigators from the Foster documents — including those involving the Whitewater real-estate venture in Arkansas.

Mr. Nussbaum said yesterday there was no reason for blocking access to any Whitewater records in July 1993 because the northern Arkansas real-estate partnership was of no concern to White House officials.

But by July 1993 the Resolution Trust Corp. had submitted to the Justice Department a criminal referral in a probe of Madison Guaranty Savings and Loan Association, owned by James B. McDougal, a Clinton partner in Whitewater Development Corp. The referral identified Whitewater and Madison as potential targets and the Clintons as beneficiaries of a check-kiting scheme.

Nine more criminal referrals in the case eventually were submitted.

# The Washington Post

DATE: 8-10-95

PAGE: A-1

## 'Whitewater Tape Played

### RTC Chiefs Wanted Land Venture Absolved

By Kevin Merida  
Washington Post Staff Writer

Like the pivotal scene in a courtroom drama, it was the most striking moment of this week's House Whitewater hearings: A 25-minute audiotape was played yesterday in which a government attorney reviewing the investigation of a failed Arkansas thrift hinted at the probe's political sensitivity among her superiors in Washington.

"I think if they can say it honestly, the head people . . . would like to be able to say Whitewater did not cause a loss to Madison [Guaranty Savings & Loan]," said April Breslaw, an attorney with the Resolution Trust Corp.,

the federal agency charged with disposing of failed S&Ls.

Breslaw's comments were recorded without her knowledge at a meeting on Feb. 2, 1994, in the Kansas City office of L. Jean Lewis, the RTC investigator whose criminal referrals helped launch the independent counsel's Whitewater inquiry.

Though some of the remarks on the tape have been debated before, playing it added an element of intrigue to the already contentious House Banking and Financial Services Committee proceedings. The tape is crucial to the allegation made by Republicans and their star witness, Lewis, that federal officials tried to obstruct and manipulate the findings of her

criminal investigation after President Clinton was elected because it was a political "hot potato."

The tape is the most tangible evidence Republicans have presented thus far to support their charge, but Democrats vigorously challenged how Breslaw's remarks have been interpreted. Rep. Henry B. Gonzalez (D-Tex.) contended that the recording merely showed that Breslaw was "apprehensive," not "intimidating."

Breslaw and other RTC officials also have disputed the tape's characterization. After angry pleas from Democrats, Committee Chairman Jim Leach (R-Iowa) has invited Bres-

law to testify today. She testified last year when the committee was controlled by Democrats.

The tape—a 23-page transcript accompanied its playing—is not entirely audible. But it does capture the essence of a wide-ranging discussion between the two RTC employees that is open to interpretation. On several occasions, Breslaw questions how strong Lewis's case is against Madison-connected figures, but she agrees in many instances with Lewis's conclusions.

Lewis, however, apparently was getting frustrated during portions of the conversation. "If you want me to sit here and give you unequivocal answers to whether or not Whitewater caused a loss [to Madison], I can't do it. All I can tell you is that . . . what I found in the referrals and the allegations that I have made that, yes, I believe that Whitewater caused Madison a loss."

At another point, Lewis says she is sure RTC officials in Washington would like to have a "politically correct response" to report on the Madison investigation, but that she didn't plan to offer one. "No, no, no. And I agree with that," said Breslaw. As to how the conversation was recorded in the first place, Lewis said she owned a malfunctioning micro-cassette tape recorder that happened to be on during the meeting. Though she didn't intentionally record, she testified, she did not stop the machine when she noticed it was running because she didn't like the way the conversation was heading.

At the heart of the Whitewater probe is whether Bill and Hillary Rodham Clinton illegally benefited from the diversion of federally infused funds from Madison, which was owned by their one-time business partner, James B. McDougal. In her two days of testimony, Lewis described an elaborate scheme in which McDougal allegedly shifted taxpayer-supported deposits from Madison to other companies he controlled and commingled funds be-

tween various entities. Checks were frequently written on accounts that contained insufficient funds, and McDougal was in the habit of approving overdrafts, Lewis has al-

leged.

Because the Clintons were co-owners with McDougal and his then-wife, Susan, in Whitewater Development Corp.—one of the companies in question—they were named as potential witnesses in the criminal referrals, meaning they could have had knowledge of the criminal activity alleged. Over a six-month period, Lewis has alleged, Whitewater wrote checks totaling \$70,000, \$60,000 of which were drawn on insufficient funds.

The Clintons have described themselves as passive investors with limited knowledge of the venture.

But on the tape played yesterday Lewis tried to lead Breslaw to the

conclusion that the Clintons and other McDougal partners, including Arkansas Gov. Jim Guy Tucker, should have logically known something was amiss. She walked Breslaw through several facts: The Clintons were putting little of their own money into Whitewater, yet there were monthly mortgage

payments to meet. Meanwhile, their partner's S&L was in "deep, serious trouble," as evidenced by a Federal Home Loan Bank exam in 1985.

Lewis suggested she found it hard to believe that these business partners would just walk away and not be suspicious. "These people have an eye for detail," she said. "We are dealing with lawyers here. We are dealing with people like Jim Guy Tucker and Hillary Clinton. . . . They have more sense than that. You don't turn a blind eye to your business investments. And if you are not putting money in, you have to wonder where the money is coming from that's making your real estate payments."

Tucker has since been indicted as a result of the independent counsel's probe, and several others named as suspects or witnesses in Lewis's criminal referrals have been either indicted or have pleaded guilty.

Democrats tried to show that Lewis's concerns about obstruction did not extend to officials who served under President Bush. They cited communiques that show the FBI's Little Rock division was not interested in pursuing the Madison probe in 1992 and that U.S. Attorney Charles Banks reviewed Lewis's findings that year and did not find a prosecutable case. Rep. Maxine Waters (D-Calif.) pressed

Cont'd

Lewis to name officials at the Justice Department and elsewhere in the Clinton administration who were responsible for thwarting her. "I cannot give you specific names, I can give you circumstances," she said.

Democrats seemed intent not only on attacking Lewis's motives as partisan but in trying to absolve the Clintons of blame for McDougal's financial practices. "Perhaps you were looking at some demons that may not have been there," said Rep. Joseph P. Kennedy II (D-Mass.), pressing Lewis on whether there was evidence that the Clintons knew they would benefit from the scheme she outlined.

After initially saying she attributed a benefit to Whitewater as a benefit to its partners, Lewis ultimately stated: "It is not my job to determine who knew what and when. That's the job of the U.S. attorney."

Republicans continued to rally to Lewis's defense, repeatedly likening her to a heroic public servant who blew the whistle. Now, she was being attacked by "the Arkansas political elite and their allies" who were trying "to muzzle and gag" her, said Rep. Gerald "Jerry" Weller (R-Ill.).

# The Washington Times

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## RTC official on spot after panel hears prober pressured

By Laurie Kellman  
THE WASHINGTON TIMES

The House banking committee yesterday heard a recording of a conversation in which a Resolution Trust Corp. lawyer pressured an RTC investigator to change her conclusions in a probe of an Arkansas thrift to keep Clinton administration officials "off the hook."

L. Jean Lewis secretly recorded her conversation with RTC official April Breslaw in February 1994, months after Mrs. Lewis forwarded the findings of her probe of Madison Guaranty Savings and Loan Association to the Justice Department for prosecution.

Mrs. Lewis ended two days of House testimony yesterday.

On the recording, Ms. Breslaw says "certain people" would be "happier" if Mrs. Lewis would say Madison's failure was not caused in part by unsecured loans to Whitewater Development Corp., an Arkansas real estate venture in which Bill and Hillary Clinton were partners with Madison's owner, James B. McDougal, and his wife, Susan.

Mrs. Lewis refused to change her conclusions.

Two of the "head people" mentioned by Ms. Breslaw were identified as former RTC Deputy Chief Executive Officer Jack Ryan and General Counsel Ellen Kulka.

"I think, if they can say it honestly, the head people, Jack Ryan

and Ellen Kulka, would like to be able to say Whitewater did not cause a loss to Madison," Ms. Breslaw says on the tape of the Feb. 2, 1994, conversation.

"But there are answers they would be happier about, you know, because it would get them, you know, off the hook, you know, and that would be it about Whitewater," says Ms. Breslaw, who is expected to testify today.

The 25-minute tape, played in public in its entirety yesterday for the first time, was a highlight of three days of House hearings into the financial labyrinth involving Madison, Whitewater and more than a dozen other ventures.

The committee wants to know if funds from Madison, which failed in 1989 at a cost to taxpayers of \$50 million, were illegally routed to Whitewater Development Corp.

Mr. McDougal is suspected of diverting money from Madison to several prominent Arkansas politicians, including Mr. Clinton, and of illegally using Madison funds for the Whitewater project.

The Whitewater hearings, conducted as a political simulcast this week in both GOP-controlled chambers of Congress, carry enormous risk for the White House as lawmakers discuss the possibility that administration officials tried to cover up check kiting and illegal loans made by the Clintons' business partner for their benefit.

President and Mrs. Clinton have denied any wrongdoing and said they were "passive" investors in Whitewater.

Today the panel will call Ms. Breslaw to respond to Mrs. Lewis' testimony and three administration

officials to discuss possible conflict-of-interest charges against Mrs. Clinton, a former partner of the Rose Law Firm, which represented Madison and later the RTC in a case involving the failed S&L.

Rep. Toby Roth, Wisconsin Republican, asked committee Chairman Jim Leach, Iowa Republican, in a letter to request that Mrs. Clinton appear as a witness before the panel, committee aides said.

Yesterday the panel focused on why Mrs. Lewis' requests for criminal prosecution, called referrals, were ignored by the Justice Department for up to 14 months after she submitted them. The usual response time is 90 days. During the delay, Mr. Clinton took office.

Mrs. Lewis testified she found "rampant bank fraud, including check kiting," and she submitted the first of 10 criminal referrals in September 1992 to the FBI and the U.S. attorney in Little Rock.

The referrals named the Clintons as principals in "shell corporations" created by Mr. McDougal and said the Clintons stood to benefit from a suspected check-kiting scheme and account overdrafts authorized by Mr. McDougal.

After "losing" the referrals, the Justice Department turned down her request in November 1993, Mrs. Lewis testified. The reason given was "insufficient evidence."

Billed by Republicans as a make-or-break witness, Mrs. Lewis testified that "there was a concerted effort to obstruct, hamper and manipulate the results of our investigation" by people in the RTC, the Treasury Department and the Justice Department.

But after repeated requests yesterday from Rep. Maxine Waters, California Democrat, to name those who sought to obstruct the probe, Mrs. Lewis said she could not.

"If I knew who it had been, [the referrals] wouldn't have been lost," she said. "I would have called and asked for it."

On the tape, Ms. Breslaw and Mrs. Lewis discuss the Clintons, the 1992 election and the suspected check kiting.

In one exchange, Mrs. Lewis tells Ms. Breslaw the referrals she submitted were rejected "under what I would believe to be extremely questionable circumstances."

"I don't know what to say. That was after the election," Ms. Breslaw says.

When a Lewis-authored memo recounting the exchange first came to light, Ms. Breslaw "categorically denied" the conversation and the comments attributed to her. "I regarded the conversation as a cursory and unimportant chat at the end of a long day," she said.

Later, when she learned it had been recorded, Ms. Breslaw said: "I have no recollection of saying that anyone hoped for a particular outcome for the civil investigation."

Her appearance today comes after Mrs. Lewis put the suspected wrongdoing in perspective for the public, Republicans said.

"She furthered the case because she presented a strong statement that she felt that she had been obstructed in her work to get to the bottom of what happened with the failure of Whitewater," said David Runkel, GOP spokesman for the committee. "She made a very strong case that Whitewater Development Corp. contributed to losses at the bank."

Democrats have charged that Mrs. Lewis is paranoid, partisan and seeking revenge, and that Republicans have tilted the witness panels in favor of Clinton accusers.

# The Washington Times

DATE: 8-10-95

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## Hubbell got call on RTC in '93

### Documents reveal Madison inquiry

ASSOCIATED PRESS

A federal regulator called Associate Attorney General Webster Hubbell in September 1993 to inform him that a reporter was asking questions about legal work he did for a savings and loan at the center of the Whitewater investigation, documents disclosed yesterday.

The call from Resolution Trust Corp. lawyer April Breslaw marks the first known time that Hubbell, a close confidant of President Clinton and Hillary Rodham Clinton, had contact with the S&L cleanup agency on an issue related to the Whitewater inquiry.

Both Hubbell and Ms. Breslaw are expected to be questioned about the call today when they appear at the House banking committee's Whitewater hearings.

In a recent deposition, obtained by the Associated Press, Ms. Breslaw described her call to Hubbell as "relatively short" and insisted she did not divulge any information about her agency's ongoing investigation into Whitewater.

Hubbell, who resigned from his Justice Department job last year, began serving a prison sentence this week after pleading guilty to charges brought by the Whitewater prosecutor that he bilked his former law firm and clients.

Congressional investigators are interested in Ms. Breslaw's call because it occurred the same week the White House was informed about the existence of a confidential criminal probe into the failed Madison Guaranty Savings and Loan, which was owned by the Clintons' partner in the Whitewater land investment.

Among other things, that probe found evidence suggesting widespread wrongdoing in the mid-1980s at Madison, including the diversion of S&L funds to the Whitewater land venture and Mr. Clinton's gubernatorial campaign.

The White House acknowledged learning of the existence of the probe on Sept. 29, 1993, from a Treasury Department lawyer.

Phone messages obtained from Hubbell's office show Ms. Breslaw left two phone messages at his Justice Department office on Sept. 28 and 29. Ms. Breslaw has told the committee Hubbell returned a call within a "few days."

In her deposition, Ms. Breslaw said she tried to reach Hubbell after a Washington Post reporter called inquiring about a potential conflict in his past legal work.

The Rose Law Firm, where both Hubbell and Mrs. Clinton worked, had represented Madison before its failure. Later, after Madison failed, Rose was hired by the government to do cleanup work on the thrift.

Ms. Breslaw was the government lawyer who oversaw that 1989 contract. The government recently concluded that Rose had an improper conflict of interest and failed to disclose it prior to getting the federal contract.

Ms. Breslaw said she was unaware of Rose's earlier Madison work until the reporter brought it up, so she at first called the firm to see if it was true. When she didn't get a satisfactory answer, she said she phoned Hubbell.

"My question to Hubbell was, 'What's this about?'" Ms. Breslaw said in her deposition, dated June 6 of this year. "To the best of my recollection, he told me that in 1989... he had not known that others in the Rose firm had represented Madison before it failed."

Mrs. Clinton was one of the Rose lawyers who did that earlier work.

Jackson R. Sharman III, the GOP counsel on the banking committee, then asked: "Did you avert to any criminal matters at all?"

"No," Ms. Breslaw responded.

At the time of the Hubbell conversation, nine new criminal referrals concerning Madison had just been sent from RTC's Kansas City office to Washington headquarters.

A message slip indicates that White House lawyer William Kennedy, another former Rose partner, returned a call to Hubbell on Sept. 29, 1993 — less than three hours after Ms. Breslaw's second phone message to Hubbell.

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# The Washington Post

DATE: 8-10-95

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## 'THEY'RE LOOKING FOR WHAT THEY CAN SAY'

**R**esolution Trust Corp. investigator L. Jean Lewis has claimed that after she uncovered evidence of possible criminal conduct at Madison Guaranty Savings & Loan, her superiors at the RTC and Justice Department interfered with the probe and pressured her to play down the significance of Whitewater Development Corp. in the S&L's activities. This excerpted conversation that Lewis secretly taped was introduced at a hearing yesterday before

the House Committee on Banking and Financial Services. The first voice is that of April Breslaw, an RTC attorney, the second that of Lewis. In this portion of the February 1994 conversation, Breslaw tells Lewis that the head RTC officials are wondering whether they can say Whitewater did not cause losses to Madison. Lewis attempts to explain what her probe has found and how Whitewater allegedly fit into a large check-kiting scheme

**Breslaw:** . . . They're looking for what they can say, and I do believe they want to say something honest, but I don't believe at all, and I don't want to suggest at all, that they want us to move to certain conclusions. I really don't get that feeling.  
But there are answers they would be happier about, you know, because it would get them, you know, off the hook, you know, and that would be it about Whitewater. So that is why we keep getting asked the same things.

**Lewis:** As far as what would make them happier with a response, they would like to come back, I am sure, with a politically correct response, but the bottom line it seems to me is I don't know what they are going to be able to do, and I am not going to do anything to facilitate that.

**Breslaw:** No, no, no. And I agree with that.

**Lewis:** And I'll tell you why I say that. Here is my logic in making that comment.

The loan payments that came out of the Whitewater account are kited funds. And I say "kited" because all these other little companies consistently make deposits into the Whitewater accounts, whenever they really needed to make some kind of mortgage or real estate payment.

The funds that came into Madison out of these other little accounts don't exist. The other accounts were writing checks on funds they did not have.

### ► THE PARTICIPANTS

**April Breslaw,** staff attorney with the Resolution Trust Corp. in Washington:



**L. Jean Lewis,** Resolution Trust Corp. investigator looking into Madison Guaranty Savings & Loan:



*there are answers they would be happier about, you know, because it would get them, you know, off the hook.*

*The loan payments that came out of the Whitewater account are kited funds.*

**Breslaw:** Right.

**Lewis:** There was absolutely a kite. There is no doubt about that.

If you are in a real estate partnership with somebody and you have got 200-some-odd-thousand dollars in outstanding mortgages and bank notes that you have got to pay, and you are not making the monthly payments on them, and you are assuming your business partner is, and if you are not putting any money into this that can be documented anywhere—and I say this from the standpoint of all of these people collectively, Steve Smith, Jim Guy Tucker, and Bill and Hillary Clinton, you have to assume your business partner is making the payments for you, and if he is making the payments for you, that is to

your benefit if you are a partner in that corporation.

**Breslaw:** Yeah.

**Lewis:** And if you know his financial circumstances, you know his savings and loan is in trouble and insolvent, and you have been in business with him for a long time, as many of these people have been—

**Breslaw:** Well, I don't know the insolvent thing. I mean, that is—I can't accept—it's difficult at what point you want to say that.

**Lewis:** Okay, you have to look, I am basing that on the Federal Home Loan Bank exam. And according to—that the S&L is

in serious, deep, serious trouble in 1985 cannot be disputed.

**Breslaw:** That is true and I guess I can't accept that necessarily Bill Clinton had the federal exam, which is confidential—and I mean—

**Lewis:** Oh, no. I am—oh, no. I am not concluding that at all. I am just saying that if your business partner is making loan payments to your benefit—the you have got to question, excuse me, if those loan payments are being made, then you are assuming that your business partner is making them. And you know you are not putting money into it.

What is he doing, taking it out of his pocket? Because if it is your business venture, you have got to know what kind of cash flow is coming in and out of that business.

You can't tell me you are just walking away from it blind. And these are businesspeople. These people have an eye for detail. We are dealing with lawyers here. We are dealing with people like Jim Guy Tucker and Hillary Clinton. They are attorneys. They have more sense than that. You don't turn a blind eye to your business investments.

And if you are not putting money in, you have to wonder where the money is coming from that's making your real estate payments.

**Breslaw:** That is a fair point. That is a fair point.

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# The Washington Times

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## 'Extensive' inquiry described

### FEDERAL NEWS SERVICE

Excerpts from yesterday's House hearing on the Whitewater affair.

**Rep. Tobby Roth, Wisconsin Republican:** I was interested when we started these hearings — the Wall Street Journal had an article about [convicted cocaine dealer and Clinton gubernatorial campaign supporter] Dan Lasater. And as I was going through the information and through the papers, I found in the Dow Jones News that [as] part of your investigation at Madison Guaranty you looked into allegations of drug money — laundering of drug money — is that correct?

**Richard Iorio, investigator for the Resolution Trust Corp. (RTC):** Sort of correct.

**Mr. Roth:** Can you elaborate a little bit for me?

**Mr. Iorio:** As part of that investigation concerning civil fraud, some information was come upon that pertained to Mr. Lasater. We did not pursue that with any great degree because of its sensitivity. We turned it over to the independent counsel's office in Little Rock.

**Mr. Roth:** What was the upshot of that? What happened?

**Mr. Iorio:** The independent counsel has all the information that we developed, and to the best of my knowledge they are or are not pursuing it, based on what their interests are. I really don't know where they are with it.

**Mr. Roth:** As an FBI agent, maybe you can enlighten me somewhat — would it make any difference what the investigation found, being that, as I understand it, Mr. Lasater has already been pardoned by [then-Arkansas Gov. Bill] Clinton — isn't that correct?

**Mr. Iorio:** I don't know who pardoned him. It might not make a

difference if it was similar information — what he was tried on before — if it was new information and a statute of limitations had not run it would be separate offenses.

**Mr. Roth:** I see, thank you. Ms. Lewis, 10 criminal referrals that you found, and your colleagues drafted. After you and your fellow investigators determined there was sufficient grounds to move ahead — existed for recommending criminal referrals, did you simply draft them and sign them and send them off to the FBI on your own? Or how did you proceed on that?

**L. Jean Lewis, RTC investigator:** No, sir, we went through a rather extensive, four-month investigative process that involved four investigators, including myself. We went through an initial draft process, in which Mr. Iorio and [RTC investigator Lee] Ausen were in the loop. Once they were completed, and everyone concurred with the contents and subject matter, each of the investigators signed those that they had written. They were then given to Mr. Ausen and Mr. Iorio for their signatures. . . .

**Mr. Roth:** Let me ask you, do you have any doubts today about the accuracy of the criminal referrals on the role of Whitewater and the involvement of Bill and Hillary Clinton in the collapse of the Madison Guaranty? Do you have any doubts at all? Would you do it all over again?

**Mrs. Lewis:** Mr. Roth, if I had it to do again, I would do the same way simply based on the documentation and evidence that

was available to us. I believe we had absolutely the right, saying, with the resources that were available to us. We produced the results; we forwarded it to the appropriate authorities, and it's up them to judge now. . . .

**Rep. Joseph P. Kennedy II, Massachusetts Democrat:** Ms. Lewis, I would like to ask you a couple questions — three or four questions. . . . So, the first question is do you have any evidence to suggest that the Clintons knew about the Whitewater benefiting as a result of this check [kiting]? . . . Just a yes or no, if you don't mind, because I've got three or four I'd like to go through.

**Mrs. Lewis:** I wish I could, Mr. Kennedy, but it's not a yes-or-no question.

**Mr. Kennedy:** OK. Well, what's your answer then?

**Mrs. Lewis:** The benefit that attributed was a benefit to Whitewater. And in my estimation, a benefit to Whitewater is a benefit to its partners.

**Mr. Kennedy:** Well, sure. I know that. The question is whether or not the partners of Whitewater knew, or whether this was just again a scam that was being run by [Madison owner and Whitewater partner James] McDougal for the benefit of a whole range of his different companies that in fact the primary investors in the Whitewater

would just never even know about it?

**Mrs. Lewis:** Mr. Kennedy, it is not my job to be the final judge and jury on that. . . .

**Rep. J.C. Watts, Oklahoma Republican:** Ms. Lewis, let me ask you, did there come a time when you were removed from your duties as lead criminal investigator for Madison Guaranty?

**Mrs. Lewis:** Yes, sir.

**Mr. Watts:** When was that?

**Mrs. Lewis:** It was Nov. 9th, 1993. . . .

**Mr. Watts:** Can you summarize your understanding of the reason behind your removal from the Madison investigation?

**Mrs. Lewis:** Mr. Watts, I was never given a reason why I was removed from that investigation. . . . I was doing my job. I was removed. I was never told why.

**Mr. Watts:** OK. Mr. Iorio informed you that you'd been removed. And did this come as a surprise to you?

**Mrs. Lewis:** I would say it came as more of a shock. . . .

**Mr. Watts:** Mr. Iorio, you were involved in the decision-making aspect of this event. . . . I understand [RTC official Julie] Yanda made the request. Why did you cede to her request?

**Mr. Iorio:** It was a management decision. She came to me and said that she wanted Jean off of this particular case, that there was conflicts between Jean and the attorneys. . . .

**Mr. Watts:** So am I correct in saying that this was a management decision and you in no way agreed with the basis of Ms. Yanda's request?

**Mr. Iorio:** I didn't. From my standpoint, I thought that Jean had done a very acceptable job as an investigator and that her work product was good. . . .

# The Washington Times

DATE: 8-10-95PAGE: A-6

## Tape records RTC pressure

*Resolution Trust Corp. lawyer April Breslaw discusses Whitewater and 10 criminal referrals with RTC lead investigator L. Jean Lewis in a February 1994 conversation:*

**Lewis:** In criminal [matters], we have to go straight to the U.S. Attorney's Office and recommend to them what we think they need to do based on the investigation.

If we had that power, I could have answered a hell of a lot more questions. But we don't. We refer it to the appropriate authority and the appropriate authority declined that referral under what I would believe to be extremely questionable circumstances.

**Breslaw:** Yeah, I don't know. I don't know what to say. That was after the [1992] election. The first time.

**Lewis:** The first referral?

**Breslaw:** Yes.

**Lewis:** Was declined in November of last year after it had been submitted in September of '92.

**Breslaw:** Oh, it was submitted in September of '92 and it was declined in November of '93.

**Lewis:** But again, under that criteria, it's real hard to take Whitewater as one piece of the pie out of the pie.

**Breslaw:** That's true. I think that is a very clear point — that is a very clear point.

Well, you know, as I say — I feel self-conscious asking that, because in some ways it is kind of a silly question. But it's the kind of thing they're [RTC superiors]

looking for, what they can say, and I do believe they want to say something honest, but I don't believe at all, and I don't want to suggest at all that they want us to move to certain conclusions. I really don't get that feeling.

But there are answers they would be happier about, you know, because it would get them, you know, off the hook, you know, and that would be it about Whitewater. So that is why we keep getting asked the same things.

**Lewis:** I think I understand what you are saying is, and I'll tell you what my perspective is on it. I will produce whatever answers are available.

**Breslaw:** That is right, yes.

**Lewis:** And follow them up. . . . As far as what would make them happier with a response, they would like to come back, I am sure, with a politically correct response, but the bottom line it seems to me is I don't know what they are going to be able to do, and I am not going to do anything to facilitate that.

**Breslaw:** No, no, no. And I agree with that.

**Lewis:** And I'll tell you why I say that. Here is my logic in making that comment. The loan payments that came out of the Whitewater account are kited funds. And I say "kited" because all these other little companies consistently make deposits into the Whitewater accounts, whenever they really needed to make some kind of mortgage or real estate payment.

The funds that came into Madison out of these other little accounts don't exist. The other accounts were writing checks on funds they did not have.

**Breslaw:** Right.

**Lewis:** There was absolutely a kite. There is no doubt about it. If you are in a real-estate partnership with somebody and you have got 200-some-odd-thousand dollars in outstanding mortgages and bank notes that you have got to pay, and you are not making the monthly payments on them, and you are assuming your business partner is, and if you are not putting any money into this that can be documented anywhere — and I say this from the standpoint of all these people collectively — Steve Smith, Jim Guy Tucker, and Bill and Hillary Clinton — you have to assume your business partner is making the payments for you, and if he is making the payments for you, that is to your benefit if you are a partner in that corporation. . . .

You can't tell me that you are just walking away from it blind. And these are business people. These people have an eye for detail. We are dealing with lawyers here. We are dealing with people like Jim Guy Tucker and Hillary Clinton. They are attorneys. They have more sense than that. You don't turn a blind eye to your business investments.

And if you are not putting money in, you have to wonder where the money is coming from that's making your real-estate payments.

# The Washington Times

DATE: 8-10-95

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## Nussbaum denies wrongdoing

FEDERAL NEWS SERVICE

Excerpts from the special Senate Whitewater committee's hearing yesterday.

**Bernard Nussbaum, former White House counsel:** This committee is looking into the following question: Did improper conduct occur regarding the way in which White House officials handled documents in Mr. [White House deputy counsel Vincent W.] Foster's office following his death? I have an answer to that question, Mr. Chairman. It is a categorical no. . . .

I did not nor to my knowledge did anyone else in the White House destroy, mishandle, or misappropriate any document in Vincent Foster's office. . . .

When I was told that Vince had committed suicide, I was stunned and deeply depressed. I immediately went to the White House. . . . As I walked to my office, it occurred to me that perhaps Vince left a note telling us why he had taken his life. I decided to go to his office, which was next to mine, to see if there was a suicide note. When I reached the White House counsel's suite at around 10:45 p.m. I found the door open. Patsy Thomasson and Maggie Williams, two White House staff members, were in Vince's office.

. . . Patsy told me she was looking for a suicide note. Patsy and I checked the surfaces in Vince's office. We opened a drawer or two looking for a note. No one, no one looked through Vince's files. . . . We did not find a note. . . . The three of us then left the office. Nothing was removed by any of us. We were there no more than 10 minutes. . . .

Midday, members of the Park Police contacted me. They asked to review the contents of Mr. Foster's office to see if there was a suicide note, an extortion note, or some other, similar document. . . .

I thought there might be multiple requests for information, so I called . . . Philip Heymann, the deputy attorney general and asked if the Justice Department would agree to coordinate the investigations of Foster's death.

He said the department would do so.

In the late afternoon I met with representatives of the Park Police, the Department of Justice and others. We agreed . . . after some discussion that a search of Vince's office would take place the next day . . .

This is what we did on July 22nd. I entered Mr. Foster's office, together with the law enforcement officials. . . .

The agents were with me at all times during the search in Vince's office. As the agents watched, I personally pulled out each of the files in that office. I briefly reviewed the files. As I was doing so, I gave the agents a general description of the documents, and I checked to see if there was a suicide note or an extortion note or other similar document in those files. . . . But the agents did not sit as cigar-store dummies as I conducted the search. I also accepted requests from the agents to read for themselves any document I was describing. . . . They did ask

to see and read certain documents. I set those documents aside. Subsequently, after we reviewed them, every document the agents asked for was, within a matter of days, given to the law enforcement officials. . . .

During the office search on July 22nd, I saw a number of files that concerned personal matters of the Clintons. . . . I said, "These were Clinton personal files . . . these involve investments, taxes, other financial matters and the like." Included was a file on the Clintons' Whitewater real estate investment. . . . I believed the Clinton personal files belonged in the hands of the first family or their personal lawyers. . . . The Clinton personal files were sent to the White House residence on the evening of July 22nd. . . .

**Sen. Orrin Hatch, Utah Republican:** Now, you also recall meeting with Justice attorneys David Margolis and Roger Adams. . . .

**Mr. Nussbaum:** Yes. . . .

**Mr. Hatch:** And one of the things that you were discussing concerning some of the documents . . . in Mr. Foster's office — that they might be privileged.

**Mr. Nussbaum:** Oh, yes. . . .

**Mr. Hatch:** You agreed with the Justice Department attorneys that you would review the documents together. Right?

**Mr. Nussbaum:** No. . . .

**Mr. Hatch:** Now, Mr. Margolis and Mr. Adams, they stated here that they thought there was an agreement that the Justice lawyers would review at least the title page and the first page of each document and then make a determination with respect to privilege. . . .

**Mr. Nussbaum:** . . . I never agreed to it. . . .

**Mr. Hatch:** Mr. Nussbaum, Roger Adams' notes of the meeting state that you reached an agreement, Mr. Neuwirth objected to the agreement but you overruled him. Now, your testimony here today is that he's mistaken, that that just didn't happen?

**Mr. Nussbaum:** He has a different memory than, I, yes, sir. . . . I think he's mistaken, yes.

**Mr. Hatch:** Did you talk to Ms. [New York lawyer Susan] Thomases on July 22nd?

**Mr. Nussbaum:** Yes. . . .

**Mr. Hatch:** OK. When you spoke with her that day . . . you told this committee that . . . she said that she was concerned that, "law enforcement people," would have, "unfettered access to the documents," in Foster's office. . . . Do you remember that?

**Mr. Nussbaum:** No. I don't. . . .

**Mr. Hatch:** . . . You say that Ms. Thomases called you and said that she had heard about the discussions with Justice. She said that you brought it up and that she did not really have an opinion about the search arrangements.

**Mr. Nussbaum:** You're right, there is a difference in recollection. . . .

**Mr. Hatch:** Well the point is, did you tell her or did she tell you about these concerns? . . .

**Mr. Nussbaum:** . . . My memory is that she initiated . . . a discussion about whether or not there was a concern about a procedure. . . .

**Sen. Richard C. Shelby, Alabama Republican:** But your idea of coordinate [in terms of the Foster investigation] was not Mr. Heymann's idea of coordinate.

...  
Mr. Nussbaum: No, I think our idea of coordinate was the same; our idea of how to conduct a search in the office is not the same, Senator Shelby.

Mr. Shelby: Was your idea for you to conduct the search and they to be window dressing?

Mr. Nussbaum: No, that was not my idea. ...

Mr. Shelby: Isn't that what happened, though?

Mr. Nussbaum: No, that's not what happened, senator. ... The fact is, senator, they weren't window dressing, they were participating, senator. ... As I was describing documents we were talking and they would say: Mr. Nussbaum, even though we're looking for a suicide note we'd like to see that document or we'd like to see this document ... I'd say fine, here, I'll put it in a pile and I'll take a look at it later. ... That's what we were doing, senator. That's participation. That's not sitting like a cigar-store Indian. That's not being frozen —

Mr. Shelby: But that's not what really happened though, was it?

Mr. Nussbaum: Oh, that is — that's exactly what happened, senator, and I was there and I know it. ...

# THE WALL STREET JOURNAL

DATE: 8-10-95

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## Hard Evidence From a Federal Investigator

*Evidence presented on Tuesday to the House committee investigating Whitewater by Resolution Trust Corp. (RTC) investigator Jean Lewis:*

The first Madison criminal referral (or report), which was assigned the number C0004, was supported by substantial detail and extensive exhibits. It was completed on Aug. 31, 1992, and submitted to the FBI and U.S. Attorney by Kansas City RTC senior management in the investigation unit on Sept. 2, 1992, in full compliance with RTC procedures and guidelines.

Among other things, the referral provided specific check numbers, dates, account names, account balances, particular uses of funds, and the names of individuals and entities involved in various check kiting schemes. The referral also stated that among those who stood to benefit from this activity were Stephen Smith, Jim Guy Tucker, then-Gov. Bill Clinton and Mrs. Clinton inasmuch as "[t]he overdrafts and 'loan' transactions, or alleged check 'swapping' and kiting, between the combined companies' accounts ensured that loan payments and other corporate obligations were met, thus clearly benefiting the principals of each entity."

Very specific information was provided in this first referral. For instance, it states, in part, the following:

"... Each instance in which Whitewater's actions resulted in an overdraft, no service charge or fees were assessed, with the exception of two in 1985, both of which were refunded. The two largest checks written by Whitewater during this time frame, check #137 for \$25,000, payable to Ozarks Realty Co., and check #138 for \$30,000, payable to James Mc-

Dougal (alleged 'loan repayment')—although the records show no indication of any loan from McDougal to Whitewater) were both force paid as there were insufficient funds in the account to cover either check. When the \$25,000 check paid, placing the [negative] balance at \$24,470.90, the overdraft was covered by a check from Flowerwood Farms for \$24,455.90 (the amount of the overdraft, less the \$15 service charge which was later refunded). The Flowerwood funds came from the proceeds of a \$135,000 cashiers check drawn on Stephens Security Bank, Stephens, Ark. The \$30,000 check written from Whitewater to James McDougal was written when Whitewater had a balance of \$270.13. When the check was force paid, the balance went to [a negative] \$29,744.87, where it remained for two weeks until a \$30,000 check from Madison Financial Corp. (subsidiary of MGS&L) was deposited into Whitewater's account. There was no explanation given as to why Madison Financial would have given (or even 'loaned') Whitewater Development \$30,000."

I would also point out to the Committee that the \$135,000 Stephens Security Bank Loan was paid off with funds from the \$300,000 Capital Management loan to the McDougals' Master Marketing Co. In 1986. . . .

Between May 1993 and August 1993, the Madison criminal investigative team reviewed and researched several transactions involving insider abuse, self-dealing, money laundering, embezzlement, diversion of loan proceeds, payments of excessive commissions, misappropriation of funds, land flips, inflated appraisals, falsification of loan records and board min-

utes, chronic overdraft status of various subsidiaries, joint ventures and real estate investments, regulatory violations of investments in subsidiaries, wire fraud, and illegal campaign contributions. . . .

Again, these referrals provided significant detail. For instance, Criminal Referral No. 730CR0196 states, in part, the following:

"Prior to funding \$38,940 of the \$50,000 loan proceeds to Quapaw Title Co. on April 5, 1985, Peacock allegedly diverted \$6,000 from the proceeds to purchase two cashier's checks on April 4, 1985; check numbers Q2497 and Q2498, drawn on MGS&L account #7001312. Each check was in the amount of \$3,000, each was purchased in the name of either a Peacock relative or business associate, and each was payable to Bill Clinton, individually rather than the Bill Clinton Political Committee. These two checks were subsequently deposited to the Bill Clinton Political Committee account (#81-313) at the Bank of Cherry Valley, Cherry Valley, Ark.

"On the same day, Flowerwood Farms Inc., an entity owned and operated by James B. and Susan H. McDougal, issued check #000192 to Madison Guaranty for \$3,000; this referral re-incorporates the allegation contained in previously submitted RTC criminal referral #C0004, that these funds were used to procure MGS&L cashier's check #Q2496 for \$3,000, purchased in the name of former Sen. J.W. Fulbright and payable to the Bill Clinton Campaign Fund. According to information obtained from an interview with James. B. McDougal, conducted by former Special Investigative Counsel Jeff Gerrish of the Memphis law firm Borod & Huggins, hired by the MGS&L board of di-

rectors in late 1986 to investigate the McDougal's activities at the thrift, McDougal admitted that he had been 'signing documents' for Sen. Fulbright 'for 20 years,' lending a strong degree of probability that the cashier's check in question was in fact purchased by McDougal and obtained in conjunction with the two checks from Peacock, as evidenced by the sequential order of the checks (#Q2496, 2497, 2498 and 2499). It should be noted that the signature on the Flowerwood Farms check is allegedly that of Susan McDougal. However, it bears no resemblance to Ms. McDougal's signature as it appears on numerous other MGS&L documents.

"In addition, check #688 for \$3,000 payable to the Bill Clinton Campaign Fund was issued from James B. McDougal's personal account on April 4, 1985, signed by Susan McDougal, which appears to be her actual signature. As previously referenced in RTC criminal referral #C0004, this check was written on the McDougals' account when the balance was at a negative \$7,897.73; the check was force paid, allegedly on McDougal's authority, subsequently overdrawing the account to [a negative] \$10,897.73. Both the check from McDougal's personal account and cashier's check #Q2496 were deposited into the same Bill Clinton Political Committee account at the Bank of Cherry Valley. . . ."

Thus far, of those identified as suspects and witnesses in these RTC referrals, the independent counsel's investigation has resulted in guilty pleas from Chris Wade, Stephen Smith, Larry Kuca, and the indictment of Gov. Jim Guy Tucker.

The Committee should note that these nine referrals, submitted to U.S. Attorney Paula Casey on Oct. 8, 1993, were in her possession and available for her review when she rejected Referral No. C0004 on Oct. 27, 1993.

# THE WALL STREET JOURNAL

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## ✓ The Lewis Testimony

Former Resolution Trust Corp. investigator Jean Lewis is the latest small fry in the federal government to come forward with testimony regarding the political mores of the Clinton Administration. Ms. Lewis's experience amid the mighty oaks of official Washington has been similar to other small fry who've talked about Whitewater or the wandering Foster files. They discover that they have to win at a special Beltway board game called "No Big Deal" in which the squares are marked Nothing New, Not Proved, Just Numbers, Political Bias and so on til the player staggers into oblivion.

Ms. Lewis, from Kansas City, spent a day delivering testimony to the House Banking Committee about the 10 criminal referrals she filed to the Justice Department, mostly about the money running through and around people involved with Madison Guaranty S&L and the Whitewater real estate development. Ms. Lewis encountered her biggest hurdle when she landed on the Not Proved square. It was pointed out that the Bush-appointed federal attorney in Little Rock didn't think that her case was prosecutable and that a career lawyer at the Justice Department thought the referrals' factual support was weak.

As a popular sportscaster used to say, let's go to the videotape. Let's look at Jean Lewis's work product. Obviously some in the Justice Department professed to believe the material extracted alongside didn't add up to anything worth pursuing. But as it happens, Independent Counsel Kenneth Starr has had the referrals for months, and has been pursuing them. The indictments and guilty pleas to date show that Ms. Lewis's referrals are sticking.

Testifying Tuesday about her work, Ms. Lewis stated, "Between May 1993 and August 1993, the Madison criminal investigative team researched several transactions involving inside abuse, self-dealing, money laundering, embezzlement, diversion of loan proceeds, payments of excessive commissions, misappropriation of funds, land flips, inflated appraisals, falsification of loan records . . . and illegal campaign contributions." She added that these "referrals identified multiple

suspects, including the Bill Clinton Political Committee Fund, James and Susan McDougal, Jim Guy Tucker, Chris Wade and several former Madison officers and borrowers." Elsewhere, Ms. Lewis identified Clinton aide Stephen Smith and Larry Kuca, a business partner of Jim McDougal.

In March Chris Wade, an Arkansas real estate agent, pleaded guilty on a charge unrelated to Whitewater but committed to cooperating with Mr. Starr's office in that investigation. In June, Mr. Starr's office issued an indictment of Arkansas Gov. Jim Guy Tucker, involving allegations of false statements to obtain a federally backed \$300,000 loan from David Hale's Capital Management Services and a bogus bankruptcy. Stephen Smith pleaded guilty to misusing a federal small-business loan. Last month, Larry Kuca also pleaded guilty to conspiring to fraudulently obtain such a loan.

While the conventional wisdom insists that nobody following this affair can ever get past the Just Numbers square, it looks to us as if this lady from the Kansas City RTC office knew very well how to follow the tangled money trail of a financial fraud. Somehow the committee's Democrats didn't want to debate Ms. Lewis about the innards of the Little Rock fraud establishment. So instead we got Rep. John LaFalce trying to discredit her by noting her lawyers are from the conservative Landmark Legal Foundation (apparently the Nan Aron Alliance for Justice combine didn't offer to help her find an attorney).

There was a time when Democrats welcomed whistleblowers into their midst. Now they try to banish them. Democrats during the hearing routinely charged that the Independent Counsel's office had "no trust" in Ms. Lewis and two RTC colleagues who appeared with her. Mr. Starr's office thereupon got out a statement that the assertions were "categorically untrue" and that in fact Mr. Starr's office was investigating their obstruction charges.

This suggests that the Starr investigation isn't over yet. Indeed it looks to us as if the Independent Counsel is still working his way through Jean Lewis's list.

# NEW YORK POST

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## Bernard Nussbaum's 'clients'

The congressional Whitewater hearings are hitting their dramatic stride this week as Clinton cronies and other witnesses are paraded before Senate and House committees.

We'll have more to say about these developments. But first a word about an issue that might otherwise be lost in the rush of events.

It concerns the office in which Bernard Nussbaum and the late Vincent Foster worked: Nussbaum was the White House counsel; Foster was his deputy. In Senate testimony yesterday, and earlier in a New York Times Op-Ed piece, Nussbaum discussed his legal and ethical obligations to his "clients" — the President and Mrs. Clinton.

Even Clinton supporters admit that Nussbaum, at the very least, created an atmosphere of impropriety by refusing to let federal agents search Vincent Foster's White House office following the latter's mysterious death.

Nussbaum, however, remains unapologetic: "It was my ethical duty as a law-

yer and as White House counsel to protect a client's information and confidences, and not to disclose them without a prior review by me," he testified yesterday.

Missing here is any acknowledgment of a question we consider important: Why was Foster, a federal employee, acting as Bill and Hillary Clinton's personal lawyer at taxpayer expense?

Nussbaum paints himself as a stickler for legal propriety. How is it that he failed to recognize the conflict inherent in Foster's dual role?

Nussbaum insists that to allow an unrestricted search of Foster's files would "acquiesce in the suggestion that [the White House] lawyers needed a watchdog. . . . This is a prescription for weakness and paralysis."

So far as we can tell, however, everything that has come out to date suggests that the White House legal staff very much needed an outside watchdog.

# The Washington Times

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## Who lost Madison's millions?

At the House Banking Committee's Whitewater hearings, Democrats have understandably made something of an effort to deflect responsibility for the costly failure of Madison Guaranty Savings & Loan away from the Arkansas regulatory department. After all, then-Gov. Bill Clinton appointed the agency's director, Beverly Bassett Schaffer, who previously worked for a law firm that represented Madison. And Arkansas' first lady, Hillary Rodham Clinton, lobbied her to approve a pie-in-the-sky recapitalization plan for Madison, delaying and substantially worsening Madison's eventual bankruptcy, which has already cost taxpayers an estimated \$60 million. Coincidentally — of course — both Clintons were business partners with Madison's owner in the ill-fated Whitewater development project, whose checking account at Madison was the object of a seemingly infinite amount of financial chicanery.

Leading the Democratic revisionist offensive, Massachusetts Rep. Barney Frank demanded to know why the feds waited until 1989 to close Madison after their examination in early 1986 confirmed that Madison was insolvent beyond redemption. Ms. Schaffer herself recommended closing Madison's doors in a December 1987 letter, proving, in Mr. Frank's mind at least, that she and the state of Arkansas weren't culpable in the matter. Notwithstanding the fact that 30 of Arkansas' 33 state-chartered savings and loans failed (the highest ratio in the nation) and despite the fact that Arkansas ranked ninth in the nation in thrift bankruptcy costs (the state ranks 33rd in population and much lower in economic output); Democratic committee members time and again tried to pin the blame for Madison's plight on — how did we know this was coming? — Ronald Reagan.

Unfortunately, in his search for people to blame, Mr. Frank is looking at the wrong period. In terms of costs to the taxpayer, the delay from 1986 to 1989 was inconsequential. The feds stopped the hemorrhaging of red ink when they removed James McDougal from Madison in July 1986. If it is culpability Mr. Frank seeks, he might want to take a look at Hillary Clinton's role in running interference for Mr. McDougal with state regulators while Mr. McDougal systematically violated lending restrictions the feds had unilaterally imposed in 1984. In his own bait-and-switch campaign, Mr. Frank feigns being appalled at the feds' seeming irresolution from 1986 to 1989 in order to deflect attention from

the first lady's active complicity from early 1985 to July 1986.

After its examination of Madison's position as of the quarter ending Dec. 31, 1983, the Federal Home Loan Bank Board (FHLBB) concluded that "the viability of the institution is jeopardized." The feds issued "supervisory agreements" requiring Madison to raise additional capital and to discontinue its unsound lending practices involving insider-dealing, speculative land deals and excessive management commissions. From early 1984 to July 1986, Mr. McDougal in fact rapidly accelerated all three unsafe practices, federal cease-and-desist instructions notwithstanding.

Meanwhile, in April 1985, with Mrs. Clinton serving as the billing partner, Mr. McDougal hired the Rose Law Firm with a \$2,000-per-month retainer to obtain Ms. Schaffer's approval of a novel \$3 million preferred-stock scheme to raise capital in order to satisfy federal requirements. In a "Dear Hillary" letter, Ms. Schaffer quickly approved the now-you-see-it, now-you-don't recapitalization scheme, which, to nobody's surprise, was never implemented. (In another of those amazin' Arkansas coincidences, April 1985 also found Mr. McDougal hosting a fundraiser in Madison's lobby yielding \$30,000 to retire most of a \$50,000 personal debt the Clintons incurred during the previous year's campaign.)

With Mrs. Clinton's stock plan having satisfied the feds and Ms. Schaffer, Mr. McDougal's assault on the taxpayer became relentless. For the quarter ending Dec. 31, 1983, Madison's mortgage loans totalled \$8.5 million. By June 30, 1985 they had reached \$47.6 million. In 1985's third and fourth quarters, Madison's mortgage loans increased by \$16.6 million and \$15.4 million respectively. This six-month, \$32 million mortgage-portfolio increase, which immediately followed Ms. Schaffer's approval of Mrs. Clinton's stock plan, was nearly four times the size of Madison's entire mortgage portfolio as of Dec. 31, 1983, when the feds first detected insolvency. Despite federally imposed lending restrictions, mortgage loans increased 836 percent in 1984-85. With mortgages representing the bulk of a thrift's assets, the 1986 FHLBB report also revealed that Madison's asset growth in 1984 and 1985 far outpaced the growth of assets of comparable institutions. Even by Arkansas standards, it seems Mr. McDougal was in a class by himself.

Here is where Mr. Frank should look. If he is truly interested in detecting culpability, he ought to remove his partisan blinders and follow the money.

# The Washington Times

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## Jean Lewis' co-counsel

Democrats on the House Whitewater Committee, confronted by the powerful personality of RTC investigator Jean Lewis — and by the powerful evidence she brought with her before the committee — took a highly original tack: The first chance he got, Democratic Rep. John J. LaFalce of New York grilled Mrs. Lewis about — the Landmark Legal Foundation, the conservative legal foundation that represents her along with (and at the request of) her regular attorney. To wit:

Rep. LaFalce: And who is your counsel?

Ms. Lewis: I'm represented today by Mr. Mike Forshy of Butler and Binion and by the Landmark Legal Foundation.

Rep. LaFalce: Oh, the Landmark Legal Foundation. Well, that's interesting. When did you begin an association with the Landmark Legal Foundation?

When Mrs. Lewis politely suggested that her relationship with her attorneys was none of the committee's business, and Republican members suggested that attorney-client privilege might apply, Mr. LaFalce went on to opine, "First of all, the Landmark Legal Foundation is a foundation. It is a corporate entity. And I do not think that, even in a criminal court of law, that any privilege would apply to it." This was a fairly blatant attempt to intimidate the witness. It's absurd beyond belief to suggest that if you engage a non-profit as your counsel, your discussions are not privileged.

Democratic committee staff have been dishing dirt on Mrs. Lewis and Landmark for a while now. They haven't had many takers in the press. The only question was which committee Democrat would be low enough to attack a witness' by smearing her counsel. The answer is Mr. LaFalce.

# THE SUN

BALTIMORE, MARYLAND

DATE: 8/10/95  
PAGE: 16A

## THEO LIPPMAN JR.

**R**EP. BARNEY FRANK accused mild, befuddled House Banking Committee Chairman Jim Leach of being a "McCarthyite" for his handling of the Whitewater hearings.

My Merriam Webster's defines *McCarthyite* as a practitioner of *McCarthyism*, "a mid-20th century political attitude characterized chiefly by opposition to elements held to be subversive and by the use of tactics involving personal attacks on individuals by means of widely publicized indiscriminate allegations esp. on the basis of unsubstantiated charges."

"McCarthyism" is of recent vintage. The dictionary traces it to 1950. It comes from Wisconsin Sen. Joseph R. McCarthy. He used Senate hearings in the late 1940s and early 1950s to expose Communists in the U.S. government. Some of his accusations were true, but most weren't. He was, as the dictionary definition suggests, a master at making an outrageous charge in a forum where he knew it would make news,

then moving on to another outrage before his first victims could respond or the press could assess the truth of those charges.

That is hardly happening in the House Whitewater hearings. (Though, of course, some Republicans on the committee are clearly more interested in smearing than in fact finding. For example, Rep. Spenser Bachus of Alabama praised a witness for exposing the "rascality" of Arkansans. *Rascality* is an ancient word defined as "the character or actions of a rascal." *Rascal* is defined as "a mean, unprincipled or dishonest person.")

Joe McCarthy finally met his match. Ironically, his downfall came in a televised Senate committee hearing in which he became the accused. He tried to obfuscate those hearings by shouting "point of order!" to interrupt — or prevent — the logical unfolding of the case against him. In that sense the McCarthyite of the Whitewater hearings has been Barney Frank. In defense of President and Mrs. Clinton,

the targets of the Whitewater hearings, he had employed the "point of order!" tactic so often that a viewer watching on C-SPAN said on that network's call-in show that Frank was acting so much "like a child that he ought to be spanked — though he'd probably like that."

The real surprise of this Whitewater August is Sen. Alfonse D'Amato, the New York Republican who is chairman of the Senate Banking Committee holding its own hearings. Long known for his volatility and irresponsibility, he has emerged as the model of fairness in his chairmanship. (As, interestingly, Sen. Paul Sarbanes, who would have been chairman today but for his party's collapse last November, once predicted that he would.)

I'm as interested in finding and exposing wrongdoing as the next guy, but I have to question Congress' sense of proportion. The House and Senate Banking committees have 66 members between them. Eleven percent of the entire Congress is now tied up in this rascal hunt.

# The New York Times

DATE: 8/10/95  
PAGE: A19



## Liberties

MAUREEN DOWD

### The 2 Mrs. Clintons

WASHINGTON  
To read Hillary Rodham Clinton's new column, you would think everything was peachy keen.

She writes about the letters she gets asking about Socks' feeding schedule. She writes about jumping behind the wheel of a car in Little Rock to freshen her driving skills. She writes about "anxious mom" phenomenon — mothers calling home to make sure children have arrived safely from school.

"Whatever minor inconveniences my situation presents, I wouldn't trade it for the world," she said in her first column. "I could never have imagined the range of activities that are part of my life today, such as defending public television, planning state dinners and visiting the C.I.A. with the President."

Mrs. Clinton used the driving anecdote to illustrate "the odd duality of my role as First Lady." But she could have used a more vivid example:

Here you are at the White House, churning out bright copy about being a helpmeet, while just up the road the Republicans are using the Whitewater hearings to drag out all the dark, horrible things that have happened since you came to this town

### Who on earth is the First Lady?

without pity. One close friend dead. Another put in jail this week. A third, forced to resign for doing what he thought you wanted, defending himself once more against accusations that he blocked a police investigation for political reasons. Your legal fief and policy role shattered. And your best girlfriend and brass-knuckles enforcer having to get a makeover and act like Dr. Joyce Brothers.

Now there's a duality Picasso would appreciate. Like the artist's "Girl Before a Mirror," Mrs. Clinton's reflection is cubed and surreal. She has a talent for taking on the aspects of those she once scorned: Richard Nixon, Ronald Reagan and the women who bake cookies.

Mrs. Clinton and Bernard Nussbaum became friends when they worked as Democratic lawyers for the House Judiciary Committee that voted to recommend the impeachment

of President Nixon. They helped define the lessons of Watergate: Executive privilege and Federal agencies cannot be manipulated to protect a President's political and personal interests. Once you achieve ultimate power, you cannot be trusted to investigate yourself.

How mind-boggling, then, that Mr. Nussbaum should rely on Nixon to defend his outrageous behavior in holding police at bay after Mr. Foster's death. When he considered asserting executive privilege to keep the Justice Department out of Mr. Foster's files, he used as precedent the 1974 Supreme Court case of *United States v. Nixon*.

Mrs. Clinton set the tone of resisting Whitewater disclosures, conveying the attitude: Why should we waste time on personal accountability when we could be changing the world? As Roger Altman summed it up in his diary, "HRC doesn't want [the independent counsel] poking into 20 years of public life in Arkansas." She also agrees with the Nixon credo reiterated by the strategist Paul Begala: "The press is the enemy."

Although the Clintons ran against Reaganite greed, the House Whitewater hearing produced a letter showing that Mrs. Clinton was quite comfortable with the master-of-the-universe ethic of the 80's. She wrote to James McDougal in 1981: "If Reaganomics works at all, Whitewater could become the Western Hemisphere's mecca." (As if!)

As with Presidents Nixon and Reagan, the landscape is littered with aides taking the fall. As Joe Klein wrote of the Clintons in Newsweek: "They are the Tom and Daisy Buchanan of the Baby Boom Political Elite. ... They smashed up lives and didn't notice. ... How could the First Lady allow her chief of staff to spend \$140,000 on legal fees? Why hasn't she come forward and said ... 'I'll testify.'"

One of the smartest, strongest, most complicated women in Washington history is retreating behind a white-glove femininity, just as she did when she explained last year how she made a killing in cattle futures by relying on the kindness of a big, strong man. "I trusted Jim Blair and it worked out for me," she said.

Even she cannot make sense out of the Picasso puzzle: "Sometimes," she wrote in a column, "it is hard even for me to recognize the Hillary Clinton that other people see." □

E-Mail

7-20-93 Yanda to Breslaw

• New set of References being worked on...

9-29-93 Tel Call Breslaw - WLH

{ EMail 9-29-93  
Aren Katsanos...  
Zing...

WITHDRAWAL NOTICE

RG: 449 Independent Counsels

Starr/Ray FRC box 2293

NND PROJECT NUMBER: 37918

FOIA CASE NUMBER: 25720

WITHDRAWAL DATE: 03/18/2010

BOX: 00019 FOLDER: 0 TAB: 3 DOC ID: 31313568

COPIES: 1 PAGES: 1

ACCESS RESTRICTED

The item identified below has been withdrawn from this file:

FOLDER TITLE: Loose papers in Ewing FRC box 2293 #6

DOCUMENT DATE: DOCUMENT TYPE: Handwritten Notes

FROM:

TO:

SUBJECT: "Knowlton Tr."

This document has been withdrawn for the following reason(s):

**FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure, Grand J**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ACCURACY IN MEDIA, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 99CV3448 (ESH)
	)	
OFFICE OF INDEPENDENT COUNSEL,	)	
	)	
Defendant.	)	
	)	

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PLAINTIFF'S MEMORANDUM IN  
REPLY TO DEFENDANT'S RESPONSES TO:

- I. MOTIONS FOR PARTIAL SUMMARY JUDGMENT ON
  - (1) EXISTENCE OF COMPELLING EVIDENCE OF DEFENDANT'S ENGAGING IN ILLEGAL ACTIVITY; &
  - (2) INADEQUACY OF PARTIAL VAUGHN INDEX
- II. FOR IN CAMERA INSPECTION OF REDACTIONS

COMES NOW plaintiff, Accuracy in Media, Inc., by counsel, and respectfully submits this reply to defendant's responses to plaintiff's (1) motions for partial summary judgment, and (2) for in camera inspection.

**Background**

In a transparent endeavor to taint the Court's view of this action by its wrongful portrayal of undersigned counsel, defendant avers that "[t]his litigation is merely one of numerous cases brought by counsel John H. Clarke on behalf of his two clients -- Accuracy in Media, Inc., and Patrick Knowlton..." The truth is that the undersigned has never before had the pleasure of representing Accuracy in Media. Defendant should check its facts before personally

Foster file

attacking counsel, by name. Nor has the undersigned (or plaintiff) ever averred in any litigation that "most of the federal government" is involved in a "massive conspiracy to conceal the... murder."<sup>1</sup>

In plaintiff's view, personal attacks on counsel is a badly chosen theme, and plaintiff looks forward to defendant's arguments of the merits of this case -- as opposed to further patent efforts to portray this suit as a manifestation of litigious conspiracy theorists.

Defendant also asserts that "Accuracy in Media is objecting to every redaction that the government made" (Def. Resp., p. 11). This too is false.<sup>2</sup>

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<sup>1</sup> Cf. Defendant's Response ("Def. Resp."), p. 1-2:

This litigation is merely one of numerous cases brought by counsel John H. Clarke on behalf of his two clients -- Accuracy in Media, Inc., and Patrick Knowlton -- against the Office of the Independent Counsel as well as other federal agencies and individuals in a campaign to expose what they imagine to be a massive conspiracy encompassing, apparently, most of the federal government to conceal the supposed murder of Deputy Counsel to the President Vincent W. Foster, Jr.

<sup>2</sup> See Exhibit 10(2) in plaintiff's April 12, summary judgment motions: Request 174: "'redact information - b(7)(C)'" [Reply: satisfactory]; Request 185 (same); Request 201 (same); Request 213 (same); Request 214 (same); Request 217 (same); Request 232 (same); Request 235 (same); Request 236 (same); Request 247 (same); Request 252 (same); & Request 270 (same).

SUMMARY OF PLAINTIFF'S BRIEFS:

- April 12, 2000, partial summary judgment motions:
  - (1) U.S.C. § 552(b)(7)(C) - law enforcement - privacy versus **compelling evidence of illegal activity**;
    - compelling evidence of illegal government activity ordered attached to defendant's Report on the Death of Vincent W. Foster, Jr.
    - compelling evidence of illegal government activity in every aspect of defendant's probe unsealed by the United States Court of Appeals on September 14, 1999
    - evidence of bad faith & illegality with regard to this FOIA action
    - previously redacted information concealed evidence of cover-up
    - any right to privacy is overcome by the public interest served by disclosure
    - failure to disclose identity of interviewing FBI agents
  - (2) 5 U.S.C. § 552(b)(7)(A) - law enforcement - records **release interferes with enforcement proceedings**
  - (3) 5 U.S.C. § 552(b)(7)(D) - law enforcement records & disclosure of **confidential information or source**
  - (4) **Inadequate production & Vaughn index**;
    - no exemptions cited on the documents released
    - "Whiting out" exemptions rather than blacking out
    - failure to segregate
- April 12, 2000, equitable relief:
  - (5) For order to **revise index & for in camera** inspection of contested privacy redactions
- April 24, 2000, memorandum of law:
  - (6) 5 U.S.C. § 552(b)(3) - exempted by other statutes - **grand jury information**
    - loss of protective character by defendant's release of grand jury materials

- mere fact that materials may have been presented to the grand jury not exempt them from disclosure
- reasons for grand jury secrecy are moot
- materials would not elucidate matters occurring before the grand jury

(7) 5 U.S.C. § 552(b)(5) - **privileged agency memoranda - (i) deliberative process & (ii) attorney work product**

- inapplicable where the agency adopts the document in a final disposition available under the FOIA
- lost by incorporation by reference in defendant's Final Report
- defendant waived any common law privileges
- inapplicable to factual documents, including witness statements

MATTERS NOT RIPE FOR ADJUDICATION:

In response to plaintiff's motion for partial summary judgment on the inadequacy of defendant's partial Vaughn index, defendant responded that its list of documents produced with corresponding exemptions claimed -- accompanying its production -- was not intended to serve as a Vaughn index, but rather was a "spread sheet."<sup>3</sup> Plaintiff understands defendant's representations on this issue to be an assertion that its Vaughn index will be substantively different from its "spread sheet." Accordingly, because defendant's Vaughn index is not yet due, plaintiff defers

<sup>3</sup> Def. Resp., p. 12:

[T]he government has not yet provided a Vaughn index; to date it has only provided with the partial production a cover letter and an accompanying spread sheet setting out the exemptions that apply...

to defendant's representation and agrees that plaintiff's motion for summary judgment on this issue is not ripe.

Additionally, defendant agreed to cite its exemptions on the documents themselves,<sup>4</sup> in response to plaintiff's motion on this issue.<sup>5</sup>

(Defendant also responded that the matters in plaintiff's memorandum of law are not ripe. This is true.<sup>6</sup>)

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<sup>4</sup> Def. Resp. at 13: "The government agrees to write the exemption number relied upon next to each section that is redacted."

<sup>5</sup> See plaintiff's April 12, summary judgment motions, at 35:

The court [in Murphy v. Federal Bureau of Investigation, 490 F.Supp. 1138, 1144 (D.C. Cir. 1980)] held that, because "[t]here is no question concerning which exemption applies to each withheld portion of the agency records" (id.), the government's Vaughn itemization was sufficient. Because defendant's Vaughn itemization the case at bar is devoid of any correlation of which exemption applies to which withheld portion of the records produced, it is clearly deficient.

<sup>6</sup> See plaintiff's unopposed motion for leave to file memorandum of law, at 2:

Defendant has not yet claimed exemptions based on (1) grand jury information, (2) the deliberative process privilege, nor (3) the attorney work product privilege. Nevertheless, plaintiff files its memorandum at this juncture because defendant's Report on the matter makes these assertions. Thus, their legitimacy will be ripe for adjudication after defendant's July 7 production. The attached memorandum is filed two-and-a-half months before defendant's four-month due date. Memorializing the record of plaintiff's position at this early date facilitates a full and fair adjudication of the issues, and may result in greater initial production by defendant, thereby ultimately conserving the resources of the Court and of the parties.

MEMORANDUM IN REPLY

Thus, the matters currently before the Court are:

- (1) Whether there exists in the record in this case compelling evidence that defendant is engaged in illegal activity -- and whether plaintiff is collaterally estopped from raising this issue;
- (2) Whether defendant's method of productions are deficient by (i) improperly failing to segregate disclosable portions of the documents it is otherwise justified in withholding; & (ii) "whiting out" its redactions rather than "blacking" them out;
- (3) Whether defendant properly asserted exemption 5 U.S.C. § 552(b)(7)(A) -- law enforcement records the release of which could reasonably be expected to interfere with enforcement proceedings; and
- (4) Whether defendant properly withholds portions of the FBI's report of its interview with Dale Kyle under 5 U.S.C. § 552(b)(7)(D) -- nondisclosure of confidential law enforcement information.

**I. The record in this case includes compelling evidence that defendant is engaged in illegal activity and plaintiff is not collaterally estopped from raising this issue**

Of the 78 documents in which defendant claimed FOIA exemptions, 75 include nondisclosures based on the exemption of the personal privacy of others.<sup>7</sup>

Relying on plaintiff's failure to meet its burden to show that the National Park Service was engaged in illegal

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<sup>7</sup> Cf. Def. Resp. at 7-8:

"In this litigation, the OIC also has withheld under exemption 7(C) some documents that Accuracy in Media requested."

activity in Accuracy in Media, Inc. v. National Park Service, 194 F.3d 120 (D.C. Cir. 1999), defendant argues that the court's holding in that case precludes plaintiff from litigating whether defendant herein is engaged in illegal activity. But, whether the National Park Service is engaged in illegal activity is not, of course, an issue that plaintiff seeks to litigate in this case.

The court in Accuracy in Media, Inc. (id.), relying on SafeCard Services, Inc. v. SEC, 926 F.2d 1197 (D.C. Cir. 1991), clearly stated that the issue was whether the agency withholding the documents was engaged in illegal activity.

To show that the invasion of privacy was not "unwarranted," AIM must show "compelling evidence that **the agency denying the FOIA request** is engaged in illegal activity, and access to the [photos] is necessary in order to confirm or refute that evidence." SafeCard, 926 F.2d at 1205-06. AIM's theory is that known contradictions in the published materials are adequate evidence of government foul play, and that, because those contradictions relate to the nature of the bullet wounds, the photos would likely shed critical light.

Accuracy in Media, Inc. at 124, emphasis supplied.

As the issue of whether defendant is engaged in illegal activity has never before been litigated, defendant's reliance on Yamaha Corp. of America v. United States, 961 F.2d 245 (D.C. Cir. 1992), which outlined the requirements for the application of collateral estoppel, is

misplaced. As the court in Yamaha noted, the initial inquiry in a collateral estoppel analysis is whether the same issue has been litigated. "First, the **same issue** now being raised must have been contested by the parties and submitted for judicial determination in the prior case..." (emphasis supplied) Id. at 254.

Thus, defendant's argument that plaintiff is collaterally estopped from litigating the issue of defendant's engaging in illegal activity is fatally flawed.

Additionally, plaintiff could not have presented the evidence now before this Court to the court in its 1997 litigation with the National Park Service, as that evidence of defendant's engaging in illegal activity was adduced by comparing defendant's representations of the evidence in its Report on the matter (released in October of 1997) to the underlying 10,000-page investigative record. That review took 18 months to complete, the final product was filed in the Special Division of our Court of

Appeals in June 1999, and unsealed by that court in September 1999.<sup>8</sup>

Plaintiff levels serious charges against defendant. Plaintiff does not do so lightly, and would not have done so without sufficient evidence in support of these allegations. The evidence in support these charges, consisting of 184 exhibits, is unassailable, having been drawn from that portion of the federal investigative record in the case that is publicly available.

As plaintiff noted in his motion for summary judgment on this issue, plaintiff does not contend that the court in Accuracy in Media, Inc. v. National Park Service, 194 F.3d 120 (D.C. Cir. 1999) incorrectly analyzed the evidence before it.

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<sup>8</sup> Cf. Accuracy in Media, Inc. v. National Park Service, 194 F.3d 120 (D.C. Cir. 1999):

AIM's theory is that **known contradictions** in the published materials are adequate evidence of government foul play, and that, because those contradictions relate to the nature of the bullet wounds, the photos would likely shed critical light.

(at 124, emphasis supplied)

See also Yamaha Corp. of America v. United States, 961 F.2d 245, 255 (D.C. Cir. 1992):

"Preclusion cannot be avoided simply by offering evidence in the second proceeding that **could have been admitted**, but was not, in the first."

(at 255, emphasis supplied)

When multiple agencies and personnel converge on a complex scene and offer their hurried assessments of details, some variation among all the reports is hardly so shocking as to suggest illegality or deliberate falsification.  
Id. at 124.

In that case, the court had before it "three statements about Foster's wounds that differ from the conclusion reached... namely" (1) the account of paramedic Richard Arthur;<sup>9</sup> (2) the report of the only doctor who had seen the body at the park and had reported the existence of a neck wound on the second page of his report<sup>10</sup> -- the first page of that report appeared to have been altered; and (3) an FBI memorandum which reported the absence of an exit wound.<sup>11</sup>

The court excused these anomalies, holding that "some variation among all the reports" did not show illegality.

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<sup>9</sup> Accuracy in Media v. National Park Service, 194 F.3d at 124:

"First, a paramedic who was at the scene, reported the wound as an entrance wound at the neck."

<sup>10</sup> Id.:

Second, a Dr. Donald Haut, of the Fairfax county medical examiner's office, examined Foster at Ft. Marcy Park and filed a report that described Foster's wounds on one page as 'perforating gunshot wound mouth-head' and on the next as "mouth to neck."

<sup>11</sup> Id.:

"Finally, an FBI memo states there was no exit wound at all."

An analysis similar to the one the court undertook in Accuracy in Media, Inc. (id.) would necessitate proffering dozens of plausible excuses for the plethora of evidence of illegal activity now before this Court.<sup>12</sup> Because that

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<sup>12</sup> See plaintiff's April 12, summary judgment motions, at 14-18 (footnotes omitted):

The filing proves illegal conduct primarily by quoting defendant's representations of the evidence, and comparing these representations to excerpts from the publicly available federal investigative record...

The filing proves that the defendant concealed the existence of a bullet hole in Mr. Foster's neck (Exhibits 1 & 2 at 155-160), concealed that blood had drained from it (id. at 196-202), concealed the absence of the official wounds (id. at 161-176), as well as the fact that the blood's quantity was insufficient to support the conclusion that the official wounds in fact existed. Id. at 230-244. Polaroid photographs of the actual wounds vanished. (Id. at 128-145). The 35-mm film produced usable photographs, contrary to the official version. Id. at 146-151. Among its more significant evidence is that defendant concealed evidence of obstruction of justice during the course of the autopsy. Id. at 177-195.

The filing proves defendant's culpability in hiding that the gun recovered from Mr. Foster's hand was not the same as the first gun in his hand at the park (id. at 257-272), and it was not the same gun the FBI showed to the widow to identify. Id. at 275-278. In any event, it would have been impossible for Mr. Foster to have fired that weapon (id. at 245-252), and he owned neither it nor its ammunition. Id. at 273-284. And gunpowder issues are irreconcilable. Id. at 253-256.

Crime scene tampering was not just with the gun. Body tampering at the park included actions designed to conceal the existence of the neck wound. Id. at 203-214. Defendant's excuse for the changing appearance of the blood at the park provides another example of its concealing the true state of the body when authorities arrived at the park. Id. at 214-230. All

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told, the filing proves crime scene tampering, by whom, and exposes the defendant's efforts to hide it.

The defendant concealed when Mr. Foster left the White House compound on the day he died (id. at 53-56), the absence of his car (id. at 285-286 & 336-338) and its keys (id. at 339-357) at the park, as well as the existence of unidentified persons in the park. Id. at 368-370.

Defendant hides the time of death (id. at 193, 287-291), when and by whom the body was first discovered (id. at 60-72), when the authorities arrived at the scene (id. at 73-114), as well as the notification of the FBI (id. at 119-121), police, firefighters (id. at 122-126), and White House personnel. Id. at 126-127.

Changing accounts of forensic facts also reveals illegal government activity, including whether there was blood on the gun and eyeglasses (id. at 358-359), or dirt on the shoes (id. at 362-364), as well as the changing analyses of both hair and carpet fibers recovered from the body. Id. at 364-366. The filing addresses the absence of the bullet in the park (id. at 359-360), the absence of fingerprints on the gun, suicide note, car or its contents (id. at 371-372), as well the existence of other forensic anomalies. Id. at 361-362, 367-368, 373. And, the filing shows the evidence of state of mind is contradictory and unsuitable to serve as the basis for the defendant's psychological autopsy. Id. at 394-415.

[T]he filing details much of the 42 U.S.C. § 1985(2) violation that he [Knowlton] suffered, which began the day the defendant served him the secret grand jury subpoena. Id. at 292-335.

The filing shows that the initial investigation was a joint Park Police/FBI probe (id. at 417-426) and that Congress never investigated the death (id. at 432-435) -- the FBI is almost the only entity that has investigated the case, three times in all. Id. at 416-435.

In sum, the evidence submitted June 23, 1999, is clear and convincing proof of the existence of a six-year-old FBI cover-up, and that the defendant's Report on the matter is the most recent layer of this present day conspiracy.

would be impossible, defendant does not attempt it, but instead argues that litigation of the issue is precluded by collateral estoppel. It is not.

As the court in Accuracy in Media, Inc. noted, "some variation among all the reports" does not constitute compelling evidence of illegality. But here, there is not a single conclusion in defendant's 114-page Report on the matter that is not contradicted by that portion of the underlying investigative record that is in the public domain -- not one. Plaintiff is hard-pressed to imagine how much more compelling the evidence of the existence of defendant's engaging in illegal could possibly be.

Additionally, there are at least three documents that defendant produced that are different from the corresponding documents that plaintiff submitted to defendant. Defendant "does not have an explanation for the differences," speculating that the discrepancies "may" be because the documents were scanned,<sup>13</sup> or the versions

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<sup>13</sup> Def. Resp., p. 18-19:

Many of the documents that Accuracy in Media has requested were imaged and then stored electronically. When these documents are retrieved and printed, they may not mirror exactly the type face and pagination of the originals. But they are in all other respects copies of the originals. This difference may account for some difference in pagination between the copies produced to Accuracy in Media and the copies Accuracy in Media obtained from elsewhere.

produced to Congress "may" have been "draft" FBI interview reports while the corresponding versions produced in this case were "final" versions.<sup>14</sup> Absent from defendant's alternative speculations is the possibility that the FBI improperly edited its interview reports. In any event, defendant has no intention of learning why there are variations in these typed FBI interview reports, simply declaring that it is unconcerned because the "wording differences are minor and not substantive," and an inquiry would require defendant to "launch[] an investigation." (Nor does defendant explain why its productions have no OIC Bates-stamp numbers -- indicating that the FBI, and not defendant, may have produced the documents.<sup>15</sup>)

In an attempt to overcome plaintiff's proffer demonstrating defendant's engaging in illegal activity by demonstrating -- with the government's own evidence -- that

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<sup>14</sup> Def. Resp., p. 19:

It may be that there were draft and final versions of some interview reports.

<sup>15</sup> See plaintiff's motion for partial summary judgment, April 12, 2000, p. 20:

[T]he OIC bates-stamp number is displayed on all of plaintiff's requests. Yet, that number appears on only one document that defendant produced, Response No. 259. Because the documents were likely catalogued by Bates-stamp upon defendant's receipt of them, it would appear that the FBI, and not defendant, is responding to the requests.

there is not even one conclusion in defendant's 114-page Report on the death that can withstand scrutiny, defendant focuses on a few of plaintiff's observations regarding the evidence of defendant's version of the discovery of the body by Dale Kyle.<sup>16</sup> Defendant's analyses -- viewing a few of plaintiff's observations in isolation from the others -- is a hollow exercise. A proper analysis of the veracity of defendant's version of Kyle's discovery of the body, viewed cumulatively, is attached hereto as Exhibit 1.

Moreover, a proper critique of plaintiff's proffer would include, at a minimum, the seven points of evidence of illegal activity ordered attached, over defendant's objections, to its Report on the Death of Vincent Foster.

In sum, there is no genuine issue as to the existence of compelling evidence that defendant engaged in illegal

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<sup>16</sup> Def. Resp., p. 10, n. 4:

Two examples Plaintiff cites as evidence of the massive cover-up demonstrate how fantastic Plaintiff's theory is. First, one witness described a vehicle as having two rear doors and blue and red lettering, rather than as having black lettering and one rear door; and there was confusion among witnesses as to whether the van had Maryland or Virginia plates. Motion at 23 & n.25. Second, an agent described a witness as having black hair, slightly greying, and weighing an estimated 170 pounds, while another witness described him as weighing 210-215 pounds with light brown hair. Motion at 24 & n.26. As the court of appeals correctly understood, these sorts of inconsistencies are only to be expected.

activity -- by covering up of the facts and circumstances of the July 20, 1993 death of deputy White House Counsel Vincent W. Foster in its July, 1997 Report on the Death of Vincent W. Foster, Jr. Plaintiff has submitted overwhelming evidence to the Court on this issue. Defendant offers none.

Instead, defendant asks that the Court to ignore the overwhelming evidence of illegal activity filed herein, indignantly proclaiming that the allegation of defendant's engaging in illegal activity in this matter is a "fantastic claim."<sup>17</sup> That is simply not good enough. To defeat summary judgment, the non-moving party cannot respond with mere allegations or denials.<sup>18</sup> Instead, the non-moving party must show that a genuine issue of material fact

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<sup>17</sup> Def. Resp., p. 3:

That is, the members of this Office and the other law enforcement personnel are obstructing justice and are -- at a minimum -- accessories after the fact to the murder. Plaintiff Accuracy in Media shares Mr. Knowlton's beliefs. This Office emphatically rejects these fantastic claims.

<sup>18</sup> See Fed.R.Civ.P. 56(e):

When a motion for summary judgment is made and supported by this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment if appropriate, shall be entered against the adverse party.

remains to be resolved. Defendant has wholly failed to meet its burden of production on this issue.

**II. Defendant's redactions are deficient as (i) improperly failing to segregate disclosable portions of withheld documents; & (ii) "whiting out" redactions rather than "blacking" out prevents plaintiff from discovering what portions of documents are being withheld**

**A. Failure to segregate**

Plaintiff posits that defendant failed to separate and disclose portions of the documents it withholds, and used Requests 162 through 169 as an example of this failure, as defendant responded to these requests by simply asserting, "withhold entire page - b7A; b7C."

Defendant responded that it cannot "indicate which portions of the documents are withheld under which exemption when no part of the document is being released."<sup>19</sup> This response is clearly deficient -- to meet its burden justifying nondisclosure, defendant must assert the exemption with sufficient particularity to allow adjudication of the exemptions asserted. That would

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<sup>19</sup> Def. Resp., p. 13:

Accuracy in Media also complains that the government has not segregated by exemption the portions of documents responsive to requests number 162 to 169. Motion at 38. Those documents were withheld in their entirety, and we do not see how we can indicate which portions of the documents are withheld under which exemption when no part of the document is being released.

include, at a minimum, identifying the documents it withholds.

Defendant's response underscores the need for an in camera review of its redactions, after it responds in accordance with the law.

**B. Failure to "black out" redactions**

In response to plaintiff's request that defendant "black out" rather than "white out" its redactions -- to facilitate apprising plaintiff of what portion of the document is being withheld -- defendant responded that it places "opaque material"<sup>20</sup> over the redactions before making the photocopy it provides plaintiff. The "opaque material" that defendant uses is white paper. Defendant need only use colored paper to avoid confusion. Yet, defendant inexplicably refuses, thereby wrongfully denying plaintiff the opportunity to learn what portions of documents are being withheld.

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<sup>20</sup> Def. Resp., p. 13:

Therefore to redact portions of the original, we place opaque material over the portions of the original to be redacted and then make the copy.

**III. Law enforcement records and interference with enforcement proceedings -- exemption 5 U.S.C. § 552 (b) (7) (A)**

Defendant claimed that its non-disclosure is justified based on interference with its enforcement proceedings<sup>21</sup> twenty-three times, once on that ground alone and twenty-two times with claims of non-disclosure based on a privacy exemption.

Defendant's response to plaintiff's objections to these nondisclosures is simply to assert that it has "several investigations still pending."<sup>22</sup> Because the exemption affords protection to records or information in

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<sup>21</sup> 5 U.S.C. § 552 (b) (7) (A):

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of law enforcement records or information

(A) could reasonably be expected to interfere with enforcement proceedings...

<sup>22</sup> Def. Resp., p. 16:

Accuracy in Media also asserts that the government has improperly invoked exemption 7(A), 5 U.S.C. § 552 (b) (7) (A), which protects information the disclosure of which could interfere with enforcement proceedings. Accuracy in Media asserts this is inappropriate because the investigation into Mr. Foster's death is closed. Motion at 44. That may be true, but that does not mean that all other investigations are also closed. It is public knowledge that this Office still has several investigations pending.

order to prevent harm to the government's case in court,  
the government must demonstrate that:

- (1) The materials relate to a pending or prospective law enforcement proceeding; and
- (2) Release of the materials would harm enforcement efforts because defendant actually intends to use information in an enforcement matter.

Defendant's perfunctory blanket statement that its twenty-three nondisclosures are justified because it has "several investigations still pending" is insufficient for defendant to meet its burden of showing that the exemption is properly asserted, as briefed.<sup>23</sup>

**IV. Withholding portions of the FBI's report of its interview with Dale Kyle as confidential law enforcement information under 5 U.S.C. § 552(b) (7) (D)**

In response to plaintiff's request that defendant release the redacted portion of the reports of FBI Agents Monroe and Columbell's April 14, 1994 (Request 175) and April 15, 1994 (Request 181) interviews of Dale Kyle (who the FBI claims discovered Mr. Foster's body), defendant claims that the FBI promised Kyle that this information

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<sup>23</sup> See plaintiff's motion for partial summary judgment, April 12, 2000, at 44-46.

would remain secret.<sup>24</sup> The record in this case is replete with references to Kyle's requesting anonymity.

But nowhere do any records refer to any request that Kyle's information -- upon which the FBI repeatedly purportedly relies -- be kept secret. Moreover, inasmuch as Kyle's information formed the basis for a section in regulatory Independent Counsel Fiske's Report on Mr. Foster's death, as well as defendant's Report on the matter, defendant's claim that other information that Kyle provided to authorities need be kept secret warrants close scrutiny.

Defendant's assertion that Kyle provided information only "upon the promise that the government would keep it confidential" also underscores the need for an in camera review in this case. (The FBI's Report of its interview

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<sup>24</sup> Def. Resp., p. 16:

Plaintiff also claims that exemption 7(D), which protects information supplied by a confidential informant, was not appropriately raised because the identity of the informant is now known. That may be true, but exemption 7(D) protects the information supplied by the confidential informant as well as the informant's identity: The section protects "the identity of a confidential source . . . [and] information furnished by a confidential source." 5 U.S.C. § 552(b)(7)(D). At the time the information was provided, it was given upon the promise that the government would keep it confidential. Exemption 7(D) permits the government to honor that promise, and that is not changed simply because the identity of the informant has been made known by the media.

with Kyle is one of three documents submitted with plaintiff's motions of which there appears to be more than one version.)

### CONCLUSION

Although defendant has responded to only 106 of plaintiff's 710 requests (on the eve of the scheduled status hearing), its conduct to date strongly indicates that it is wrongfully withholding evidence contradicting its official conclusion, underscoring the need for an in camera review of its nondisclosures.

For example, its reason, such as it is, for its failure to "black out" its redactions is that it places "opaque material" over the portions of documents it withholds before making the photocopy it provides plaintiff. The "opaque material" that defendant uses is obviously white paper, and defendant need only use colored paper to avoid confusion. Yet, defendant inexplicably refuses.

Similarly, defendant fails to segregate and release those portions of documents not subject to nondisclosure by a FOIA exemption. Although plaintiff is at an obvious disadvantage in discovering such nondisclosures, Requests 162 through 169 provides a glaring example. Notwithstanding plaintiff's motion, defendant's response to those eight

requests is unchanged: "withhold entire page - b7A; b7C."

It still fails to identify these withheld documents.

Moreover, the burden is on defendant to show that its exemptions are properly asserted. It has to date failed to meet that burden in, inter alia, its twenty-three claims of exemption based on interference with law enforcement proceedings -- by its failure to proffer any information as to how the materials relate to a pending or prospective law enforcement proceeding or how release of the materials would harm enforcement efforts. Similarly, defendant's withholding of portions of the FBI's Reports of its interview with Dale Kyle, based on its assertion that the FBI promised to keep it confidential, lacks credibility, and also works in favor of this Court's in camera inspection.

But defendant's primary method of withholding the sought after evidence -- apparently of defendant's wrongdoing -- is by relying on the FOIA exemption designed to protect the unwarranted invasion of the personal privacy of others. In following this course of action, defendant seeks to defensively use collateral estoppel as a bar to litigating the issue of whether it is engaging in illegal activity. This defendant cannot do because this issue has never before been litigated. Nor could the evidence in

support thereof have been presented to any court before defendant chose to release its Report on the matter -- at the conclusion of its three-year probe into what it touts as a simple suicide, on the eve of the fourth anniversary of the death.

At least 10 of the previously withheld documents that defendant released on March 6, 2000, contain evidence contradicting defendant's official conclusion. (See plaintiff's April 12, 2000 partial summary judgment motion at 21-24.) This of course raises the inference that the FBI withheld this evidence for no other reason than that it contradicts its repeated official conclusion.

Defendant chose to employ the services of the FBI to conduct its probe, the investigative arm of the Department of Justice -- the very agency that defendant is designed to be independent from -- and an agency that had twice before concluded that the death was a simple suicide and that there was no cover-up. In following this course of action, defendant has undermined the very purposes for its existence, as observed in the court-ordered appendix to its Report on the matter, filed as Exhibit 1 to plaintiff's

motions for summary judgment.<sup>25</sup> Given this circumstance, it is a foregone conclusion that defendant would not expose the cover-up, but rather would allow the FBI to perpetuate it.

**WHEREFORE**, plaintiff, Accuracy in Media, Inc., respectfully moves (1) for in camera inspection of defendant's contested non-disclosures, and (2) for partial summary judgment on the grounds that there is no genuine

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<sup>25</sup> Appendix to defendant's Report on the Death of Vincent W. Foster, Jr., p. 4-7 (footnotes omitted):

**Investigations by U.S. Park Police & regulatory Office of Independent Counsel ("OIC") Robert Fiske.** The investigation under the auspices of regulatory OIC under Mr. Fiske was little more than an FBI investigation. Publicly-available official federal government records demonstrate that throughout the 16 day U.S. Park Police investigation into the case, FBI participation was significant. Therefore, prior to Mr. Starr's appointment to head the statutory OIC in August of 1994, the only substantive investigations into the case, with the sole exception of the U.S. Park Police investigation (conducted with FBI participation), were conducted by the FBI. The publicly-available federal government record upon which the Fiske Report is based is replete with evidence that the FBI concealed the true facts surrounding Mr. Foster's death...

**The OIC's investigation.** The fundamental purposes of our Ethics in Government Act are (1) to ensure that justice has been done and (2) to preserve and promote public confidence in the integrity of the federal government by maintaining the appearance that justice has been done. In light of (1) the FBI's statutory mandate to exercise primary jurisdiction in July of 1993 in the event of foul play, (2) two prior FBI findings of no criminal activity, and (3) evidence of a cover-up by the FBI already in the public domain, the OIC's use of the FBI in this matter undermines both purposes of the Act...

issue of material fact, entitling plaintiff to entry of judgment in its favor as a matter of law on the following issues:

- (1) The existence of compelling evidence that defendant is engaged in illegal activity;
- (2) Defendant's method of production is deficient in that it (i) improperly fails to segregate portions of the documents it withholds & (ii) "whites out" its redactions rather than "blackening" them out;
- (3) Defendant improperly asserted exemption 5 U.S.C. § 552(b)(7)(A) -- law enforcement records the release of which could reasonably be expected to interfere with enforcement proceedings -- by failing to assert the exemption with sufficient particularity to allow adjudication of the exemption;
- (4) Defendant improperly withholds under 5 U.S.C. § 552(b)(7)(D) -- disclosure of confidential law enforcement information -- portions of the FBI's report of its interview with Dale Kyle.

Respectfully submitted,

  
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John H. Clarke  
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(202) 332-3030

**CERTIFICATE OF SERVICE**

I hereby certify and affirm that on May 25, 2000, a copy of the foregoing was mailed, proper postage prepaid, to:

Michael A. Humphreys, Esquire  
Assistant United States Attorney  
Judiciary Center  
Suite 10-409  
555 4th Street, NW  
Washington, DC 20001

  
\_\_\_\_\_  
John H. Clarke

REPORT OF THE [REGULATORY] INDEPENDENT COUNSEL IN RE VINCENT W. FOSTER, JR. Washington, DC, June 30, 1994, p. 31:

*In order to test the veracity of the information provided by CW, this Office performed a detailed analysis of that information... These details include specific information about... the park maintenance workers, and the short conversation held with them.*

One version

Another version / Contradiction

<p>Kyle saw no gun, no "signs of a gunshot on his shirt or clothes" and figured that Mr. Foster had been "hit in the head." <u>Exhibit 51</u>. Deposition of Dale Kyle by Congressmen Burton, Mica and Rohrabacher, July 28, 1994.</p>	<p>"[Stough] stated that the driver of this white van specifically asked him if he would call the Park Police, further informing Mr. [Stough] that he had seen a body at Fort Marcy Park and that it looked like this man had been shot and that he looked dead." <u>Exhibit 60</u>, Report of FBI interview of Charles Stough, March 30, 1994; <u>Exhibit 61</u>, Handwritten notes of FBI Interview with Charles Stough, March 30, 1994 (same).</p>
<p>"[H]e had an urge to relieve himself and realized that the first pull off area where he could have some degree of privacy was Fort Marcy Park." <u>Exhibit 55</u>, Report of FBI interview with Dale Kyle, April 14, 1994.</p>	<p>He backed into a parking space, took off his shirt and walked to the furthest end of the fort, around 750 feet, whereupon he urinated.</p>
<p>After discovery of body, drove to the Turkey Run maintenance facility "to go to the nearest phone." <u>Exhibit 51</u>, Deposition of Dale Kyle by Congressmen Burton, Mica and Rohrabacher, July 28, 1994.</p>	<p>Not the nearest phone</p>
<p>Kyle did not call authorities himself (or come forward for eight months) because he didn't "want to end up like that guy" he found. <u>Exhibit 56</u>, Report of interview of Dale Kyle by G. Gordon Liddy, March 22, 1994.</p>	<p>Kyle never explained why he feared he would "end up like that guy" simply by virtue of his having discovered the body.</p>



<p>"[F]rom approximately eight feet above and twenty-five feet laterally in distance" through closed car windows, Kyle "observed a suit coat which matched..." the trousers he had seen on Mr. Foster, a briefcase, "a four-pack of wine cooler with two gone" with light pink labels "exactly like the bottle" he had seen beside the body. <u>Exhibit 56</u>, Report of Interview of Dale, by G. Gordon Liddy, March 22, 1994; <u>Exhibit 51</u>, Deposition of Dale Kyle by Congressmen Burton, Mica and Rohrabacher, July 28, 1994.</p>	<p>Impossible.</p>
<p>Park maintenance worker Stough was "confident he would recognize" Dale Kyle. <u>Exhibit 60</u>, Report of FBI interview of Charles Stough, March 30, 1994.</p>	<p>Months later, nine days before the Fiske Report was issued, the FBI asked Stough to identify Kyle, whereupon Stough told the FBI it "possibly could be him" but could not "state positively." <u>Exhibit 61</u>, FBI handwritten notes of interview of Charles Stough, June 21, 1994; <u>Exhibit 68</u>, Handwritten notes of FBI Interview with Charles Stough, June 21, 1994 (same).</p>
<p>"probably could identify" the driver of the van if he saw him again. <u>Exhibit 62</u>, Report of FBI interview of Francis Swann, March 30, 1994.</p>	<p>No such request to identify Kyle ever made.</p>
<p>Kyle first saw the two park workers "leaning against the tailgate." <u>Exhibit 56</u>, Interview of Dale by G. Gordon Liddy, March 22, 1994.</p>	<p>Stough's version is that "a white van entered the parking area and the occupant of the van engaged him in conversation while he, [Stough] was walking from [Swann's] vehicle to his own vehicle." <u>Exhibit 60</u>, Report of FBI interview of Charles Stough, March 30. "[Stough was] crossing the parking lot." <u>Exhibit 61</u>, Handwritten notes of FBI Report of interview of Charles Stough, March 30, 1994.</p> <p>Swann's version is that Kyle's "van pulled up to where he and [Stough] were sitting." <u>Exhibit 62</u>, Report of FBI interview of Francis Swann, March 30, 1994.</p>

<p>"He [Stough] stated there were no other individuals in the parking area the evening of July 20, 1993 who would be in a position to provide a further description of this van or the occupant." <u>Exhibit 60</u>, Report of FBI interview of Charles Stough, March 30, 1994.</p>	<p>Swann's version is that "a few park rangers" were at Turkey Run, and that neither he nor Stough told the rangers about the dead body. <u>Exhibit 62</u>, Report of FBI interview of Francis Swann, March 30, 1994.</p>
<p>Stough "thought he [Dale] stepped out of the van," and estimated he was 5'7" to 5'8" tall. <u>Exhibit 61</u>, Handwritten notes of FBI interview of Charles Stough March 30, 1994.</p>	<p>"Approximately 5'9"-5'10" (difficult to estimate because the driver [Dale] never got out of the van)." <u>Exhibit 62</u>, Report of FBI interview of Francis Swann, March 30, 1994.</p>
<p>"I [Kyle] was looking at them, drove by, still didn't see any phones, looked both ways and never saw them, backed up turned around, started back out and was going to ask them to use the phone... the phones sat back behind the tree." <u>Exhibit 51</u>, Deposition of Dale Kyle by Congressmen Burton, Mica and Rohrabacher, July 28, 1994.</p>	<p>The view of the telephones is not obstructed. They would have been hard to miss. <u>See</u> photographs of telephones, p. 69.</p>
<p>"I asked him for a phone. He stated that, you know, 'Why?' And I says, we, it's an emergency, I need to use the phone. Can you get me to a phone? 'Yes, but why?' And he says - I think he said it the third time." <u>Exhibit 51</u>, Deposition of Dale Kyle by Congressmen Burton, Mica and Rohrabacher, July 28, 1994.</p>	<p>"[Stough] advised that he did not ask any questions of the occupant of the white van which immediately departed the parking lot after furnishing this notification to himself and Mr. [Swann]." <u>Exhibit 60</u>, Report of FBI interview of Charles Stough, March 30, 1994:</p>
<p>"[T]he white male came over... the black male remained by the pickup truck... the white male responded to the effect that he would call authorities... [T]he black male did not come over to his van nor was he a part of any conversation." <u>Exhibit 55</u>, Report of FBI interview with Dale, April 14, 1994.</p>	<p>"After receiving this information from the occupant of the white van, [Stough] called [Swann] over and believes that the occupant of the white van repeated the same information to [Swann]." <u>Exhibit 60</u>, Report of FBI interview of Charles Stough, March 30, 1994</p>
<p>"[I]n the Turkey Run Maintenance parking area... both proceeded to consume two or three beers apiece." <u>Exhibit 60</u>, Report of FBI interview of Charles Stough, March 30, 1994.</p>	<p>It is unlikely that Swann and Stough would have been drinking beer in their uniforms at Turkey Run maintenance facility, in view of co-workers, Park Rangers, and supervisors.</p>

<p>M. McAlary, <i>Aide's Suicide is Confirmed by Heads-up Cops</i>, <u>N.Y. Daily News</u>, March 14, 1994: "The Park Police Report has only been reviewed once by the <u>Daily News</u>... The body was discovered by a park maintenance worker who had slipped into the area for a quiet midday drink. He reported finding the body, but then made up a story about having seen a white van. He has since recanted the white van story, admitting it was created to cover up his own behavior.</p> <p>See also J. Seper, <i>Foster death still a puzzle</i>, <u>Wash. Times</u>, July 19, 1994: "The man told the FBI and Mr. Liddy that he notified National Park Service personnel of the discovery [of the body] and then left the park."</p>	<p>That information is not in the Police Report. The first record that the park employees had been drinking appeared in the Reports of their FBI interviews, conducted March 30, 1994, sixteen days after the March 14, 1994 <u>New York Daily News</u> reported it.</p>
<p>* "Vehicle: ... blue and red lettering..." <u>Exhibit 60</u>, Report of FBI interview of Charles Stough, March 30, 1994.</p>	<p>"...black lettering on the side." <u>Defendant's Response 174</u>, Report of FBI interview of Dale Kyle, April 14, 1994.</p>
<p>* "The vehicle had two doors in the rear..." <u>Exhibit 60</u>, Report of FBI interview of Charles Stough, March 30, 1994.</p>	<p>"one rear door..." <u>Defendant's Response 174</u>, Report of FBI interview of Dale Kyle, April 14, 1994.</p>
<p>* "He had Virginia tags on there." <u>Exhibit 63</u>, Transcript of call to Park Police, July 20, 1993 at 6:03 p.m.</p>	<p>"Maryland license tags..." <u>Defendant's Response 174</u>, Report of FBI interview of Dale Kyle, April 14, 1994.</p>
<p>* "Occupant: Weight/Body: 210-215 lbs... Hair: light brown hair" <u>Exhibit 60</u>, Report of FBI interview of Charles Stough, March 30, 1994.</p>	<p>"Weight: 170 lbs... Hair: Black in color, slightly graying at the temple... his weight... estimated... 10-15 pounds heavier... on July 20, 1993." <u>Defendant's Response 174</u>, Report of FBI interview of Dale Kyle, April 14, 1994.</p>
<p>"...look like about a 78 or 79 or something like that. <u>Exhibit 63</u>, Transcript of call to Park Police, July 20, 1993 at 6:03 p.m.</p>	<p>"1988 white Chevrolet van." <u>Defendant's Response 174</u>, Report of FBI interview of Dale Kyle, April 14, 1994.</p>
<p>"No windows" <u>Exhibit 60</u>, Report of FBI interview of Charles Stough, March 30, 1994.</p>	<p>"One rear door with dual windows." <u>Defendant's Response 174</u>, Report of FBI interview of Dale Kyle, April 14, 1994.</p>

- \* Referred to by defendant in its May 15, 2000 Response to plaintiff's summary judgment motions, n. 4, p. 9: "[T]hese sorts of inconsistencies are only to be expected."

