Screened by NARA (RD-F) 07-17-2018 FOIA #56806 (URTS 16304) DOCID: 70104986

FISKE REPORT – WALL ST. JOURNAL LAWSUIT

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Division for the Purpose of Appointing Independent Counsels

Ethics in Government Act of 1978, As Amended

In re: Madison Guaranty Savings & Loan Association	Division No. 94-1

APPENDIX OF NEWS ARTICLES CITED IN CONNECTION WITH DOW JONES & COMPANY, INC.'S MOTION FOR DISCLOSURE OF AND ACCESS TO REPORT OF FORMER INDEPENDENT COUNSEL ROBERT B. FISKE

Of Counsel:

Robert D. Sack
GIBSON, DUNN & CRUTCHER
200 Park Avenue
New York, NY 10166-0193
(212) 351-4000

Stuart D. Karle
DOW JONES & COMPANY, INC.
200 Liberty Street
New York, NY 10281
(212) 416-2164

Theodore J. Boutrous, Jr.
D.C. Bar No. 420440
GIBSON, DUNN & CRUTCHER
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
(202) 955-8500

Attorneys for Dow Jones & Company, Inc.

APPENDIX

TAB

O'Neil, *White House Took Clinton Files After a Top Aide Killed Himself*, N.Y. Times, Dec. 21, 1993, at A1 1

Ingersoll, *Madison Employees Say Executive Promised Reimbursement for Contributions to Clinton*, Wall. St. J., Jan. 31, 1994, at A14 2

Engelberg, *Grand Jury Is Reportedly Told of Shredding at Little Rock Firm*, N.Y. Times, Mar. 4, 1994, at A1 3

Engelberg, *Courier at Little Rock Firm Recalls Shredding After the Inquiry Began*, N.Y. Times, Mar. 9, 1994, at A1 4

LaFraniere, *Shredding Date Uncertain, Rose Firm Employees Say*, Wash. Post, Mar. 10, 1994, at A14 5

Pollock, *Fiske Gets Off to Fast Start in Whitewater Probe By Moving Forward Aggressively On All Fronts*, Wall St. J., Mar. 14, 1994, at A16 6

Pollock & Bacon, *Rose Law Firm to File Ethics Complaint In Arkansas About Hubbell's Expenses*, Wall St. J., Mar. 21, 1994, at A14 7

Pollock, *Special Counsel's Probe of Whitewater Includes Bond Dealer Linked To Clinton*, Wall St. J., Mar. 24, 1994, at A16 8

Pollock, *Hale's Past May Harm Credibility As Accuser in Whitewater Inquiry*, Wall St. J., Apr. 4, 1994, at B8 9

Pollock, *Two Who Shredded Documents at Rose Law Firm Resign, Wall St. J.*, Apr. 7, 1994, at B3 10

Novak & Ingersoll, *Fiske Focuses On Numerous Businesses of McDougal That Lent To Whitewater*, Wall St. J., Apr. 14, 1994, at A16 11

The Whitewater Affair: Excerpts from Hillary Clinton's News Session on Whitewater, N.Y. Times, Apr. 23, 1994, at 11 12

Schmidt & Babcock, *First Lady's Explanations Yield Little Information*, Wash. Post, Apr. 23, 1994, at A11 13

Wines, *The Whitewater Affair: White House; New Misstatements Admitted in Handling of Foster's Files*, N.Y. Times, Aug. 3, 1994, at A16 14

Pollock & Calmes, *Altman Apologizes for Not Being 'Forthcoming' On Whitewater, Puts Some Blame on Hanson*, Wall St. J., Aug. 3, 1994, at A12 15

Pollock, *Former Madison Aide Tells Prosecutor He Recalls Clinton Signature On Loan*, Wall St. J., Aug. 31, 1994, at A14 16

Pollock, *Starr Takes Over Whitewater Probe as Decisions Must Be Reached on Batch of Possible Indictments*, Wall St. J., Aug. 31, 1994, at A14 17

WL942990.014/1

FOIA #56806 (URTS 16304) DocId: 70104986 Page 4

213TH STORY of Level 1 printed in FULL format.

Copyright 1993 The New York Times Company
The New York Times

December 21, 1993, Tuesday, Late Edition - Final

SECTION: Section A; Page 1; Column 1; National Desk

LENGTH: 1131 words

HEADLINE: White House Took Clinton Files After a Top Aide Killed Himself

BYLINE: By JOHN O'NEIL, Special to The New York Times

DATELINE: WASHINGTON, Dec. 20

BODY:

The White House said tonight that personal financial files of President Clinton and his wife were **removed from the office** of Vincent W. **Foster** Jr. after his suicide before Federal investigators had a chance to examine them.

Mark D. Gearan, the White House director of communications, said the files that were removed included **documents** relating to the Clintons' personal tax returns and their investment in an unsuccessful real estate company, the **Whitewater** Development Corporation, which is a subject of the Federal investigation into a failed savings and loan in Arkansas.

At the direction of the White House counsel, Bernard W. Nussbaum, Mr. Gearan said, personal files of Mr. **Foster,** a deputy White House counsel who shot himself on July 20, were also removed without being shown to investigators.

Files Sent to Lawyers

Mr. Gearan's statement provided a solid link between Mr. **Foster,** a longtime personal friend of the Clintons who had handled many of their financial dealings, and **Whitewater,** about which details of the Federal investigation have become known in recent months. The disclosure raised as many questions as it answered -- notably, why the White House waited so long to acknowledge the existence and the removal of the **Whitewater** files.

A Justice Department spokesman said tonight that the Department had not yet been officially informed that the papers had been in Mr. **Foster's** possession. Investigators complained last week that the White House was being uncooperative in helping determine if the files even existed.

A senior White House official who would speak only if not identified said tonight that the Clintons would "cooperate fully" with a Justice Department investigation into the circumstances surrounding the death of Mr. **Foster.** But the official added that "we would reserve the right to invoke certain principles if appropriate."

"The President and the First Lady are entitled to the same privileges as other citizens when it comes to their personal records," he said. "Lawyer-client

privilege still exists."

Legally, several lawyers said, there is little doubt about the applicability of that privilege, although it would be difficult to withhold **documents** from a criminal investigation. And the politics of the situation could make such an assertion of privilege difficult.

The Clinton files were sent to the Clintons' personal lawyer in Washington, David Kendall, while the **Foster** files were sent to the **Fosters** lawyer, James Hamilton, Mr. Gearan said.

Whitewater Development was created in 1978 by James McDougal, who owned the failed Madison Guaranty Savings and Loan; his wife, Susan; Mr. Clinton and his wife, Hillary Rodham Clinton. The four had equal shares, but the Clintons have insisted that their role was passive and that Mr. McDougal made all the investment decisions.

The intent, Mr. McDougal has said, was to buy lots in the Ozarks and sell them for second homes. In interviews in 1992, Mr. McDougal asserted that he contributed a disproportionate share of the money to a venture in which both couples were to share profits equally.

In an interview tonight, Mr. Nussbaum concurred with Mr. Gearan's account of the division of the records in Mr. **Foster's** office.

"I acted like any lawyer worth his salt would act," Mr. Nussbaum said. "The Clintons' personal legal files went to their personal attorneys. The **Fosters'** personal files went to their personal attorneys, and the files for Vince's White House work stayed in the counsel's office."

'They May Get Them'

White House officials insisted last night that the President had the right to maintain control over his personal files and that investigators would have to direct their requests for that information to Mr. Kendall.

Mr. Kendall could not be reached for comment tonight.

"If investigators want any of those files, they just go to the people who have those files," one official said. "They may get them, if there is no privilege attached to those files."

The Justice Department spokesman declined to say tonight if the department would seek access to the files. Investigators are looking separately into the circumstances surrounding Mr. **Foster's** death and into the financial dealings of Mr. McDougal.

Ever since the initial sense of shock subsided at the White House over the death of Mr. **Foster,** Administration officials have insisted that everything relevant had been made known and that the suicide stemmed from a case of depression.

On Aug. 12, Mr. Gearan said President Clinton was satisfied with the way the investigation had been handled.

LEXIS·NEXIS LEXIS·NEXIS LEXIS·NEXIS
Services of Mead Data Central, Inc.

Nothing that has arisen since then has provided any suggestion of any other motive for Mr. **Foster's** suicide. But the handling of Mr. **Foster's documents** has kept a Justice Department inquiry alive and proved embarrassing for a number of White House officials, particularly Mr. **Foster's** boss, Mr. Nussbaum.

The first White House official said Mr. Nussbaum made the decisions about what files to provide investigators.

Acting under the assumption that the initial inquiry into Mr. **Foster's** suicide in a Virginia park was concerned primarily with the narrow range of facts about his death, Mr. Nussbaum set aside files that seemed to him to be irrelevant, the official said.

Among those papers Mr. Nussbaum set aside, Mr. Gearan said, were files pertaining to the filing of the tax returns by the Clintons and by **Whitewater and documents** about the disposition of the Clintons' interest in **Whitewater.** Mr. Geran's statement came after an article today in The Washington Times, which asserted that papers concerning **Whitewater had been removed** from Mr. **Foster's office** during two searches.

The Clintons assert that **Whitewater** was a money-losing corporation. A reconstruction released last year by the Clinton campaign stated that Mr. McDougal and his wife put up $92,000, and the Clintons $68,000. This **document,** released by the Clinton campaign in response to a 1992 report in The New York Times, acknowledged that the calculations were estimates and that some records were not available.

A Federal investigation into the failure of Madison Guaranty, Mr. McDougal's savings and loan, focused new attention on **Whitewater,** Mr. Clinton's share of which was sold back to Mr. Mcdougal at the end of 1992. Federal officials said investigators found evidence that Mr. McDougal was diverting money from Madison to several of his real estate ventures, including **Whitewater.** Bank records show that **Whitewater's** checking account was permitted frequent overdrafts, the Federal officials have said.

The Resolution Trust Corporation, the Government agency that disposes of failed savings and loans, asked the Justice Department to examine whether any transaction violated Federal banking laws.

LANGUAGE: ENGLISH

LOAD-DATE-MDC: December 21, 1993

LEXIS®·NEXIS® LEXIS®·NEXIS® LEXIS®·NEXIS®
Services of Mead Data Central, Inc.

Citation	Rank(R)	Database	Mode
1/31/94 WSJ A14	R 10 OF 15	WSJ	Page
1/31/94 Wall St. J. A14			
1994 WL-WSJ 307394			

The Wall Street Journal
Copyright (c) 1994, Dow Jones & Co., Inc.

Monday, January 31, 1994

Politics & Policy

Madison Employees Say Executive Promised Reimbursement for Contributions to **Clinton**

By Bruce Ingersoll
Staff Reporter of The Wall Street Journal

Corrections & Amplifications

TWO ARKANSAS STATE AGENCIES rented space in an office building and a renovated service station owned by **Madison** Guaranty Savings & Loan in 1985 for a total of $7,432 a month. An article Monday incorrectly reported that the rent on the service station alone totaled $7,432.

(WSJ Feb. 2, 1994)

LITTLE ROCK, Ark. -- Employees at a savings and loan owned by Bill **Clinton's** former business partner James McDougal had a secret incentive to make a political contribution in 1985 to Mr. **Clinton,** then governor of Arkansas. It wouldn't cost them a dime.

The employees contend in interviews that a **Madison** Guaranty Savings & Loan executive promised that they would be reimbursed for whatever they **contributed** at an April 1985 fund-raiser to help retire Mr. **Clinton's** 1984 **campaign** debt of $50,000.

H. Don Denton, a senior vice president, says he was reimbursed for a $500 contribution, but refuses to say whether he was repaid by Mr. McDougal or with **Madison** Guaranty funds. "It could be incriminating," Mr. Denton explains. If **Madison** funds were used, such reimbursement could be an illegal misuse of federally insured deposits; if Mr. McDougal's own money was used, it could be an evasion of political contribution limits under state election law.

There is no evidence that either Bill or Hillary Rodham **Clinton** knew of the alleged fund-raising gambit. But it promises to be yet another political embarrassment arising from their entanglement with Jim McDougal, the S&L executive who rode **Madison** Guaranty $50 million into the red while favoring politicians with loans and investment opportunities. Robert B. Fiske Jr., the newly appointed

Copr. (C) West 1994 No claim to orig. U.S. govt. works

special counsel, is setting up shop here in Little Rock, taking over the government's investigation of the **Clintons' Whitewater** Development Co. partnership with Mr. McDougal.

Federal investigators are trying to determine whether **Madison** Guaranty funds were illegally diverted into the **Whitewater** vacation-home development in northern Arkansas or into the campaign coffers of Mr. **Clinton** and other politicians. Of special interest are the funds raised at the cocktail party that Mr. McDougal hosted in his thrift's art deco lobby.

Among the 50 **Madison** employees, directors and borrowers in attendance was a senior executive who helped Mr. McDougal solicit contributions. The executive, who would speak only on the condition of anonymity, says he may have made a contribution himself -- he doesn't recall whether it was $500 or $1,000 -- with the understanding that he would be paid back.

Davis Fitzhugh, vice president of a **Madison** subsidiary, says he was approached by this executive, but declined to go along with the fund-raising stratagem. "I was left with the distinct impression that I would be reimbursed," says Mr. Fitzhugh. "It wasn't something I wanted to get involved in."

Meanwhile, another employee, Larry Kuca, who at the time was managing a **Madison** real-estate venture on **Campobello** Island off the Canadian coast, says he **contributed** $1,000 to Gov. **Clinton** at Mr. McDougal's request, but without a promise of repayment. Instead, he says, Mr. McDougal pointed out how much Mr. Kuca would be reaping in real-estate commissions.

These contributions, all personal checks, helped swell the total take from the fund-raiser to about $30,000. Federal investigators already are inquiring about $12,000 in cashier's checks issued by **Madison,** including some from Mr. McDougal's personal and corporate accounts. One check for $3,000 bore the name of Ken Peacock, son of a **Madison** director and a major borrower. At the time of the fund-raiser, Mr. Peacock was a 24-year-old college student. Last month, he denied making such a contribution. Investigators are also trying to trace the source of funds for a $3,000 cashier's check from Mr. McDougal.

Mr. **Clinton** used the **contributions** to help pay off the $50,000 loan that he had obtained from a bank in Cherry Valley, Ark., toward the close of the 1984 **campaign.** Federal investigators have subpoenaed records from the Cherry Valley bank as well as whatever records are still available from the 1984 campaign. Certain records, including the list of contributors from the fund-raiser, have been discarded or lost.

Copr. (C) West 1994 No claim to orig. U.S. govt. works

Mr. McDougal, who couldn't be reached for comment, has denied illegally funneling money into the campaign or the **Whitewater** venture. His attorney, Sam Heuer, says Mr. McDougal "didn't do anything wrong" and dismisses the notion of employee reimbursment for contributions as just "another smoke trail."

For Mr. McDougal, throwing a party for the governor was hardly extraordinary. By all accounts, Mr. McDougal, a failed politician himself, reveled in hobnobbing with elected officials. He also sought to ingratiate himself by doing financial favors, such as cutting the **Clintons** into the **Whitewater** real-estate deal in 1978 and putting Hillary **Clinton's** law firm on a $2,000-a-month retainer in April 1985, after the governor had complained about being financially strapped.

"McDougal bragged about what he could get done, about greasing the skids," says Mr. Fitzhugh.

And it appears that he did get things done, such as finding renters for office space at **Madison** Guaranty. The Arkansas Development Finance Authority, a **Clinton** brainchild, moved into the thrift's's maroon headquarters in 1985, when offices in a more convenient location, Little Rock's financial district, were going unrented at comparable rates. Another state agency leased a McDougal-renovated service station across the street from the S&L for $7,432 a month. Adding to Mr. McDougal's image as a man who could get things done was Mr. **Clinton's** March 1985 appointment of John Latham, **Madison** Guaranty's chief executive officer, to the Arkansas Savings and Loan Board.

In banking and political circles, before Mr. McDougal was ousted from **Madison** by federal regulators in mid-1986 and tried and acquitted of bank fraud charges in 1990, he was widely admired for his folksy charm and persuasiveness.

Mr. Kuca recalls how Mr. McDougal telephoned him on **Campobello** Island and talked him into **contributing** $1,000 to Gov. **Clinton.** "It wasn't 'give the money or else,"' he says. "It was actually very polite." At the time, Mr. Kuca was earning $100,000 a year in commissions plus a small salary selling oceanfront lots. "He pointed out how well things were going," Mr. Kuca says. "He didn't have to be crude about it."

On the other hand, the **Madison** executive who solicited contributions in Little Rock was decidedly more blunt, according to Don Denton, the thrift's senior vice president: "He said, 'I need a check for $500.' I made out my check to Bill **Clinton**. I was reimbursed for it."

---- INDEX REFERENCES ----

Copr. (C) West 1994 No claim to orig. U.S. govt. works

MARKET SECTOR: FINANCIAL (FIN)

INDUSTRY: REAL ESTATE INVESTMENTS; SAVINGS & LOANS, THRIFTS (REA SAL)

NEWS SUBJECT: LAW & LEGAL ISSUES; POLITICS; CORRECTED STORIES, RELEASES (LAW PLT CRX)

GOVERNMENT: CONGRESS; EXECUTIVE; JUSTICE DEPARTMENT; STATE GOVERNMENT (CNG EXE JUS STE)

REGION: ARKANSAS; NORTH AMERICA; UNITED STATES (AR NME US)

Word Count: 1010
1/31/94 WSJ A14
END OF DOCUMENT

Copr. (C) West 1994 No claim to orig. U.S. govt. works

3

LEVEL 1 - 125 OF 154 STORIES

Copyright 1994 The New York Times Company
The New York Times

March 4, 1994, Friday, Late Edition - Final

SECTION: Section A; Page 1; Column 1; National Desk

LENGTH: 1508 words

HEADLINE: Grand Jury Is Reportedly Told Of Shredding at Little Rock Firm

BYLINE: By STEPHEN ENGELBERG, Special to The New York Times

DATELINE: LITTLE ROCK, Ark., March 3

BODY:

An employee of the Rose Law Firm here has told a Federal grand jury that in late January he was ordered to destroy a box of documents from the files of Vincent W. Foster Jr., the White House lawyer whose suicide is under investigation by an independent counsel.

People familiar with the testimony of the employee, an in-house courier, said he had told the grand jury that he and a colleague had used a shredder in the firm's basement to destroy the papers. He testified that he had done so at the request of a clerk in the firm.

The firm's former partners include Hillary Rodham Clinton; Webster L. Hubbell, the Associate Attorney General; William H. Kennedy 3d, an associate White House counsel, and Mr. Foster, the deputy White House counsel who committed suicide in July. All left the firm to go to Washington last year.

The courier, a college student who is among several assigned to run messages and errands, told the grand jury on Feb. 16 that he did not know precisely what he had shredded but that he was certain the papers had come from Mr. Foster's files, those familiar with the account said. He testified that he had looked inside the box and saw that the papers were separated by binders marked with the initials "VWF," the firm's typical abbreviation for Mr. Foster. The box itself also bore Mr. Foster's initials, which no other employee at the Rose firm had.

In a brief statement, the Rose firm denied that any of Mr. Foster's documents had been shredded.

"No files of Vincent Foster's have been destroyed," the statement said. "In the process of a lawyer changing offices, a box of old files containing internal Rose firm materials, such as copies of notes of firm committee meetings, was destroyed earlier this year."

The firm's lawyers declined to answer specific questions.

What Rose Handled

Mr. Foster's files are potentially important to investigators. While he was

LEXIS·NEXIS LEXIS·NEXIS LEXIS·NEXIS
Services of Mead Data Central, Inc.

at the Rose firm, he worked on a wide array of legal matters for the Clintons, including the sale of the Clintons' share of the Whitewater Development Company, a real estate venture in the Ozark Mountains. At the time of his suicide, Mr. Foster was working on various personal matters for the Clintons, including tax filings and the creation of the family's blind trust.

Investigators have sought clues to the circumstances of Mr. Foster's death, as well as the Clintons' finances, in everything from Mr. Foster's internal memos and telephone logs to his personal diary and even some cryptic scribblings discovered among his White House papers.

The courier testified that he had seen no references to Whitewater in the papers he shredded.

The timing of the shredding is unclear. By the courier's account to the grand jury, he destroyed the papers about the time that Robert B. Fiske Jr., the independent counsel, was appointed on Jan. 20.

At the news conference called that day to announce his appointment, Mr. Fiske said he would investigate the circumstances of Mr. Foster's suicide and accusations that money had been improperly diverted from the Madison Guaranty Savings and Loan Association in Arkansas to Mr. Clinton's business interests or his 1984 gubernatorial campaign. The savings institution failed in 1989, and its assets and accounts were taken over by the Government.

Shortly after Mr. Fiske began his work, he issued a sweeping subpoena that, among other things, demanded all documents relating to Mr. Foster.

The date of that subpoena has not been disclosed publicly. If the shredding occurred after the firm was put on notice that Mr. Fiske wanted to review Mr. Foster's documents, such an action might have been improper, legal experts said.

Mr. Fiske's investigators are trying to determine when the shredding took place, what kinds of the documents were destroyed and whether any of them might have been relevant to the inquiry.

Republican Pressure

Mr. Fiske's appointment came after after weeks in which Congressional Republicans pressed for an investigation into Whitewater and into Mr. Foster's activities. The Republican demands followed reports that the White House counsel, Bernard W. Nussbaum, had removed records from Mr. Foster's office shortly after his death. Among the documents that were removed and sent to Clinton's personal lawyer, David Kendall, were records of Whitewater.

The Government's independent counsel, Mr. Fiske, said today that he could not comment on matters before the grand jury.

In complex inquiries, investigators conduct many interviews. But Mr. Fiske's decision to call the courier as one of the first witnesses indicates that the employee's account is being taken seriously.

The courier's lawyer, Dean Overstreet, said, "It's not something I can comment on because of the stage it's in."

LEXIS®·NEXIS® LEXIS®·NEXIS® LEXIS®·NEXIS®
Services of Mead Data Central, Inc.

What Law Says on Evidence

Many law firms, including Rose, say they routinely destroy documents for purposes of privacy and to save storage space. But legal experts said in interviews that the law prohibited people from intentionally impeding an investigation by destroying evidence they knew investigators wanted.

The firm has acknowledged that it received an order from Mr. Fiske in February demanding that it preserve all evidence. Mr. Fiske has never explained the reason for the order.

The courier was identified by people involved in the case as Jeremy Hedges, a college student who has worked part time at the Rose Law Firm for several years. He was said to have told the grand jury that he glanced at some of the documents as he fed them into the machine. By his account, he saw none that mentioned Whitewater Development.

Federal investigators have interviewed other Rose employees, including one who helped Mr. Hedges shred the box of Mr. Foster's documents, those familiar with the case said. That witness has not appeared before the grand jury.

Privacy of Clients

In interviews, lawyers and former employees of the Rose firm described how the firm set up a system for shredding documents in 1991, weeks after Mr. Clinton declared his Presidential candidacy.

The firm's managing partner, Ronald M. Clark, said last month that the firm had begun shredding out of concern that confidential information about would be compromised as reporters examined the firm's activities.

By Mr. Clark's account, each lawyer was given a separate garbage can to throw out material to be shredded. Other current and former employees said couriers picked up papers to be shredded daily from lawyers and their secretaries.

Questions about shredding arose on Feb. 9, when The Washington Times, quoting an unidentified Rose employee, reported that the firm had destroyed documents pertaining to Whitewater Development. The newspaper reported that the documents were shredded on Feb. 3.

The courier's testimony describes shredding that occurred in January and appears to be unrelated.

The law firm denied The Washington Times article, and there has been no independent confirmation of it. But the article prompted Mr. Fiske to announce that he would investigate any incidents of shredding. Soon afterward, agents from the Federal Bureau of Investigation began interviewing Rose employees.

Former employees said couriers were told of the firm's new policy on shredding in a meeting in the fall of 1991. By their accounts, their supervisor told them that the firm had caught reporters going through the trash behind the building. To safeguard the privacy of clients, the firm's senior partners decided that sensitive documents would be shredded daily, former employees quoted the supervisor as saying.

LEXIS®·NEXIS® LEXIS®·NEXIS® LEXIS®·NEXIS®
Services of Mead Data Central, Inc.

One former employee said in an interview that in the summer of 1992 he was twice sent to the Governor's mansion to deliver an envelope to Mrs. Clinton and to pick up a half-inch-thick sheaf of documents to be shredded. He said he was escorted by two Secret Service agents as he walked up a driveway and exchanged envelopes with Mrs. Clinton. The courier said he fed the material into the shredder without opening it.

Shredding After Election

Several former employees said in interviews that after the election the pace of shredding picked up. Christopher A. Cordero, a 22-year-old who worked as a courier until the summer of 1993, said he had collected and shredded several legal-sized boxes of documents from Mrs. Clinton's office at the law firm in late November or early December of 1992. He said he was shown the boxes by secretaries or file clerks.

Asked if she could shed any light on what the couriers said about shredding Mrs. Clinton's documents, Lisa Caputo, spokeswoman for the First Lady said, "I cannot say in stronger terms I know nothing about what you're talking about."

About that time, couriers were sent to the Rose firm's storage warehouse at a riverside complex near downtown Little Rock. Former employees said they collected at least eight full boxes of documents from the files of Mrs. Clinton, Mr. Kennedy, Mr. Hubbell and Mr. Foster. The former employees said they seldom looked at what they fed into the machine.

GRAPHIC: Photos: The Rose Law Firm has denied shredding any documents of Vincent W. Foster Jr., who committed suicide. (Arkansas Democrat-Gazette); Robert B. Fiske Jr., the independent counsel, leaving the Federal courthouse in Little Rock, Ark., on Tuesday. (Associated Press) (pg. A22)

LANGUAGE: ENGLISH

LOAD-DATE-MDC: March 4, 1994

LEXIS®·NEXIS® LEXIS®·NEXIS® LEXIS®·NEXIS®
Services of Mead Data Central, Inc.

4

LEVEL 1 - 106 OF 154 STORIES

Copyright 1994 The New York Times Company
The New York Times

March 9, 1994, Wednesday, Late Edition - Final

SECTION: Section A; Page 1; Column 4; National Desk

LENGTH: 1124 words

HEADLINE: Courier at Little Rock Firm Recalls Shredding After the Inquiry Began

BYLINE: By STEPHEN ENGELBERG, Special to The New York Times

DATELINE: WASHINGTON, March 8

BODY:

The law firm employee who testified before a Federal grand jury about destroying documents from the files of Vincent W. Foster Jr. now says he was told to shred the material after a special prosecutor had announced that he would look into the suicide of the White House aide.

Jeremy Hedges, a part-time courier at the Rose Law Firm in Little Rock, Ark., pinpointed the date in a telephone interview today. Mr. Hedges said that when he had fed the documents into the firm's shredder, he had already heard of the appointment of Robert B. Fiske Jr. as special counsel.

At the time of his appointment on Jan. 20, Mr. Fiske said that he would not only be investigating the Whitewater real estate venture, in which President Clinton and his wife were partners, but also looking into the circumstances of the suicide in July of Mr. Foster, a longtime friend of the Clintons who was a deputy White House counsel and who in private practice represented the Clintons in Whitewater and other personal matters.

Even before a subpoena is issued, the law prohibits people from intentionally impeding an investigation by destroying evidence they know investigators want.

What to Tell Investigators

The courier also said today that he and the other couriers employed by the Rose firm met with two of the firm's partners in February and that one partner challenged his recollection that he had shredded documents belonging to Mr. Foster and then cautioned him against relating "assumptions" to investigators.

Mr. Hedges said that although the partners had encouraged the couriers to cooperate fully with investigators, he felt that the sense of the meeting was "I should not tell them something they did not ask."

Ron Clark, a partner in the firm and its chief operating officer, said in a telephone interview today that the meeting's only goal was to insure complete cooperation with Mr. Fiske's inquiry. Mr. Clark, who presided over the meeting, said Jerry Jones, the partner who counseled against assumptions, "was trying to say: 'They'll be asking a lot of questions. Just tell them the facts.' "

LEXIS®·NEXIS® LEXIS®·NEXIS® LEXIS®·NEXIS®
Services of Mead Data Central, Inc.

The firm, whose former partners include Hillary Rodham Clinton, Associate Attorney General Webster L. Hubbell, and an assistant White House counsel, William H. Kennedy 3d, asserts that the documents Mr. Hedges shredded were an assortment of internal firm papers that did not come from Mr. Foster's files. Mr. Clark said that the firm had four witnesses, two lawyers and two clerks, who support this account. He declined to identify them but said they were prepared to testify.

Mr. Hedges said today that the explanation was "hard for me to believe." He said the box and all its file folders were marked "VWF," the firm's shorthand for Mr. Foster. He said that he had glanced at a handful of the documents and that some were letters on the firm's stationary that bore Mr. Foster's signature.

None of the documents he saw related to the Whitewater Development Company, Mr. Clinton's real estate investment, or James B. McDougal, Mr. Clinton's partner in Whitewater and the owner of the failed Arkansas savings and loan that is at the center of Mr. Fiske's inquiry, Mr. Hedges said.

After Mr. Foster's death, the removal of the files about Whitewater from his White House office led to much of the pressure on Mr. Clinton to ask for a special prosecutor.

Most large law firms routinely dispose of sensitive client files by shredding them. Mr. Clark said last week that the Rose firm set up a shredding system in 1991 in anticipation of greater scrutiny by reporters during Bill Clinton's Presidential campaign.

Questions about shredding at Rose first arose in February, when The Washington Times reported that an unidentified employee said the firm had destroyed large quantities of Whitewater documents. Shortly afterwards, Mr. Fiske served subpoenas on law firm employees and issued an order admonishing the firm against destroying any evidence in the case.

Couriers Called to Meeting

Mr. Hedges said the couriers were then called to a meeting with Mr. Clark and Mr. Jones.

He said Mr. Clark began by instructing everyone to tell what they knew to Mr. Fiske's investigators. At that point, Mr. Hedges said, he disclosed his intention to report the shredding of Mr. Foster's documents.

"I said," Mr. Hedges recounted, "I shredded some documents of Vincent Foster's three weeks ago."

Mr. Jones replied with skepticism. "He said: 'How do you know they were Foster's? Don't assume something you don't know.' "

Mr. Hedges insisted he was certain the documents came from Mr. Foster's files, but he said Mr. Jones then told the couriers: "Don't assume they had anything to do with Whitewater."

LEXIS®·NEXIS® LEXIS®·NEXIS® LEXIS®·NEXIS®
Services of Mead Data Central, Inc.

Mr. Hedges said today that he was convinced that the documents had once been part of Mr. Foster's files.

"The file folders were stacked up neatly and the tabs all said, 'VWF Correspondence,' 'VWF notes,' 'VWF pleadings.' It looked like every file box I've ever looked at in the firm," he said. In addition, he said, the box had the initials VWF on its side and he looked at several letters in the file that bore Mr. Foster's signature.

Mr. Clark said the letters might be explained by the fact that the box included files from the firm's recruiting efforts. Mr. Foster, he said, routinely sent letters to lawyers the firm was seeking to hire. He acknowledged, however, that the box of documents the firm says was shredded should not have had binders bearing the initials VWF. "I can't give you any fact that is going to resolve that," he said.

Mr. Hedges said he had fed documents into a shredding machine for 30 minutes before being relieved by another courier, who took another 30 minutes to finish the job.

Another Employee's Account

Clayton Lindsey, the courier who took over the shredding, said in a telephone interview today that he, too, clearly remembered the VWF markings on the binders. Mr. Lindsey said that when he placed documents into the machine, he generally keeps them in their jackets. The tabs, with identifying initials, are typically facing up.

"I saw the same stuff Jeremy did," Mr. Lindsey said. "I saw the initials on the side of the box and on some of the manila folders. It said VWF correspondence and like that. I didn't look into any of them."

Mr. Lindsey has been interviewed by the F.B.I. but has not testified to the grand jury.

In his Feb. 16 testimony before the grand jury, Mr. Hedges said only that the incident happened three weeks previously, or in the same week as Mr. Fiske's Jan. 20 appointment. But in the interview, Mr. Hedges said he had distinctly recalled hearing of Mr. Fiske's appointment when he was asked by a file clerk in the firm to carry out the shredding.

GRAPHIC: Photo: Jeremy Hedges, a courier at the Rose Law Firm in Little Rock, Ark., says he began shredding papers from the files of Vincent W. Foster Jr. after a special counsel said he would look into the Clinton aide's suicide. (Spencer Tirey for The New York Times) (pg. B7)

LANGUAGE: ENGLISH

LOAD-DATE-MDC: March 9, 1994

LEXIS®·NEXIS® LEXIS®·NEXIS® LEXIS®·NEXIS®
Services of Mead Data Central, Inc.

5

LEVEL 1 - 103 OF 154 STORIES

Copyright 1994 The Washington Post
The Washington Post

March 10, 1994, Thursday, Final Edition

SECTION: FIRST SECTION; PAGE A14

LENGTH: 869 words

HEADLINE: Shredding Date Uncertain, Rose Firm Employees Say

SERIES: Occasional

BYLINE: Sharon LaFraniere, Washington Post Staff Writer

DATELINE: LITTLE ROCK, Ark., March 9

BODY:

Two employees of the Rose Law Firm said today that in late January they shredded documents from the files of Vincent W. Foster Jr., a former Rose partner and deputy White House counsel who committed suicide in July. But they said they were not certain when they destroyed the papers or whether the documents dealt with anything of interest to special counsel Robert B. Fiske Jr.

Jeremy Hedges, 20, and his roommate, Clayton Lindsey, 19, have become small-time celebrities in the past two days after describing to the New York Times and ABC News how they shredded the contents of a box labeled with Foster's initials in the law firm's basement. Students at the University of Arkansas at Little Rock with part-time jobs as couriers for the Rose firm, they have been interviewed by Fiske's investigators, and Hedges has testified before a federal grand jury about the incident.

Hedges said in an interview today he believed the shredding took place after Fiske was appointed Jan. 20 to investigate the Whitewater real estate venture partly owned by President Clinton and his wife and the circumstances of Foster's suicide. "We're pretty sure he had been [appointed]. I mean, I knew his name and I couldn't think of any other reason I would know his name other than hearing it on the TV and the radio," Hedges said.

But he added, "It's very likely it could have been some of Vince's files that were completely unrelated to the investigation. I've said that from the beginning. I don't know what it was."

Ronald M. Clark, the firm's managing partner, did not respond to inquiries for comment today. In previous interviews, Rose lawyers have said the box involved contained old documents related to internal workings of the firm, including minutes of partnership meetings and financial statements. Clark said a clerk assembled the box while clearing out space for a lawyer moving from one office to another.

Fiske's interest in the incident is evident from the subpoenas he issued last month. According to Lindsey, who is scheduled to appear before the grand jury

Tuesday, at least two other Rose employees have testified besides Hedges: the office manager, Kathy Harris, and Ricki Stacy, the employee in charge of closed files.

Hedges said Rose law clerk Elise McShane called him to pick up a box of documents to be shredded sometime in late January. The outside of the box was labeled VWF, and it contained at least five or six files that were clearly Foster's, he said. Both Hedges and Lindsey, who took over the task after 30 minutes, said they remember files labeled "VWF correspondence," "VWF pleadings," "VWF notes."

Hedges said he glanced at several documents and saw Foster's signature but no mention of Whitewater or Madison Guaranty Savings & Loan, the failed thrift also being investigated by Fiske. Lindsey said he paid little attention to the documents.

On Feb. 9, the Washington Times, quoting an unnamed Rose employee, said the firm had shredded Whitewater documents that related to the Clintons, who were partners with James B. McDougal in the venture. Two days later, Clark met with the firm's six couriers to inform them that FBI agents would be interviewing them the next day, according to Hedges and Lindsey.

Hedges said, "Ron Clark said basically, to tell the FBI everything we knew. Don't hold back anything. Don't think we have to protect the firm, or anybody in the firm."

When Hedges said he had shredded some of Foster's files about three weeks earlier, Jerry Jones, a Rose partner who attended the meetings, responded skeptically, according to Hedges. He said Jones asked him, "Do you know for sure? . . . I don't want you to assume something you didn't know."

Hedges said that when he insisted the files were Foster's, Jones asked him if he knew what the documents pertained to, then advised him, "Don't assume they had anything to do with the investigation."

The Rose firm began routinely shredding documents -- a common practice at many firms -- during the 1992 presidential campaign. Rose officials said they wanted to keep confidential client information out of the hands of the news media.

Since last month, the firm has been assembling a roomful of documents to turn over to Fiske, who served the firm with an extensive subpoena. The special counsel's wide-ranging investigation includes events related to Foster's apparent suicide last summer. Foster, Hillary Rodham Clinton and Associate Attorney General Webster L. Hubbell were Rose partners before the 1992 election.

Fiske's office is looking into a wide array of entities and individuals with ties to Madison, including some also with ties to the Rose firm. Madison was a Rose client, and the law firm is known to have handled at least some minor legal work involving Whitewater.

Foster worked on personal financial matters for the Clintons. Shortly before his death, Foster had prepared three years of back tax returns for Whitewater Development Corp. and sent them to McDougal, the Clintons' partner in the real estate venture. Foster also had handled the December 1992 sale to McDougal of

LEXIS·NEXIS LEXIS·NEXIS LEXIS·NEXIS
Services of Mead Data Central, Inc.

the Clintons' interest in Whitewater.

Staff writer Susan Schmidt in Washington contributed to this report.
LANGUAGE: ENGLISH

LOAD-DATE-MDC: March 10, 1994

LEXIS®·NEXIS® LEXIS®·NEXIS® LEXIS®·NEXIS®
Services of Mead Data Central, Inc.

6

Citation | Rank(R) | Database | Mode
3/14/94 WSJ A16 | R 31 OF 58 | WSJ | Page
3/14/94 Wall St. J. A16
1994 WL-WSJ 301502

The Wall Street Journal
Copyright (c) 1994, Dow Jones & Co., Inc.

Monday, March 14, 1994

Politics & Policy

Fiske Gets Off to Fast Start in **Whitewater** Probe By Moving Forward Aggressively on All Fronts

By Ellen Joan Pollock
Staff Reporter of The Wall Street Journal

After only six weeks on the job, special counsel Robert Fiske has launched aggressive probes on all fronts of the tangled **Whitewater** controversy.

His opening salvo was a stern warning to the White House, Congress and Hillary Rodham Clinton's former law firm that he won't tolerate anything that impedes his investigation. In a show of prosecutorial muscle, Mr. Fiske came to Washington last week from his Little Rock, Ark., headquarters to urge lawmakers to delay hearings. He also questioned White House aides before a **grand jury** to see if there were improper contacts with Treasury officials about a criminal inquiry into a failed thrift once owned by a Clinton business partner.

The fulcrum of the investigation will soon shift again to Little Rock, where a small band of lawyers and FBI agents has been poring over records of Madison Guaranty Savings & Loan and preparing to question witnesses before a special **grand jury** set to convene on March 23.

So far, Mr. Fiske, a Republican, is getting good marks from veterans of other investigations, including Iran-Contra prosecutor Lawrence Walsh. But Thomas Puccio, who prosecuted the Abscam corruption cases, says it was a waste of time to subpoena White House officials to testify about how they learned of the impending Madison investigation because the Justice Department would have eventually told them about it anyway.

Mr. Fiske has a reputation for fierce independence and is staying clear of the web of social and professional connections that helped spawn the **Whitewater** controversy in the first place.

Shortly after his appointment in January, Mr. Fiske received a friendly note from Little Rock lawyer Alston Jennings Jr., who like Mr. Fiske is a former president of the prestigious American College

Copr. (C) West 1994 No claim to orig. U.S. govt. works

of Trial Lawyers. Mr. Jennings represents Seth Ward, a former Madison consultant and father-in-law of Associate Attorney General Webster Hubbell. But when Mr. Jennings followed up with a call, he got a polite brushoff from Mr. Fiske. "He obviously didn't want to be seen anywhere with me," Mr. Jennings said.

Mr. Fiske, a New York litigator on leave from the Wall Street law firm of Davis, Polk & Wardwell, is pursuing a number of different investigative threads at once.

The McDougals and the Clintons

The heart of the **Whitewater** controversy centers on the Clintons' business relationship with Arkansas businessman James McDougal, who owned Madison, and his ex-wife, Susan. The Clintons and McDougals were partners in **Whitewater** Development Co., a 230-acre real estate venture on Arkansas's White River, in which President Clinton and the first lady say they lost money. Unsorting the tangled business dealings between the Clintons and the McDougals is one of the central preoccupations of Mr. Fiske's squad of investigators in Little Rock.

Mr. McDougal, a highflying deal-maker with connections to prominent members of Little Rock's business and political communities, ran Madison as his own financial fiefdom. In 1985, Mr. Clinton asked him to host a fund-raiser to help retire a $50,000 campaign loan. At the fund-raiser, which then-Gov. Clinton didn't attend, Mr. McDougal raised $30,000. But there is evidence that some of the money may not have come from contributors but from Madison accounts.

The Fiske staff hopes that documents involving Madison, a Cherry Valley, Ark., bank that furnished the 1984 campaign loan, and the Clinton campaign, will shed light on that flow of money.

Mr. Fiske is expected to investigate allegations that Mr. McDougal "carried" the Clintons in the **Whitewater** venture, launched with $203,000 in loans. There is evidence that the McDougals shouldered more of the financial burden in the investment than the Clintons even though the two couples had an equal stake. Mr. Fiske will also question why Mr. McDougal and President Clinton have conflicting accounts of their investment. For example, the Clintons say they lost almost $69,000 in **Whitewater** but Mr. McDougal says they lost only about $9,000. The Clintons didn't claim any **Whitewater** loss on their tax returns. Cash also inexplicably moved between **Whitewater's** account and other accounts at Madison, which failed in 1989.

The investigators already have voluminous documents involving the McDougals' business interests. James Lyons, a Denver lawyer who

Copr. (C) West 1994 No claim to orig. U.S. govt. works

prepared a report on **Whitewater** for the Clinton presidential campaign, has also turned over documents.

Madison's Failure

Mr. Fiske is trying to discover whether the Clintons improperly used their influence to bolster Madison's sagging fortunes. In 1985, Madison hired Mrs. Clinton and the Rose Law Firm to help it get authorization for a stock offering. The Arkansas securities department, which had to approve the plan, was headed by Beverly Bassett Schaffer, a Clinton appointee.

Mr. Fiske recently subpoenaed the commission's records. Mrs. Schaffer, a lawyer now in private practice, has turned over her private calendars for that time, according to her husband. Mr. Fiske has subpoenaed files from the Rose Law Firm as well.

Also on Mr. Fiske's agenda is an examination of the web of Mr. McDougal's failed business and real-estate interests. Mr. McDougal had business relationships with many people prominent in business and in politics, including current Arkansas Gov. Jim Guy Tucker. Gov. Tucker received a **grand jury** subpoena before Mr. Fiske was appointed special counsel. Mr. McDougal has complained that allegations of mismanagement at his S&L are being recycled from a 1990 federal fraud trial in which he was acquitted.

The Rose Law Firm

The Rose firm, meanwhile, has become tangled in the **Whitewater** controversy on several levels. Mr. Fiske is expected to examine whether the firm had conflicts of interest when it represented the Resolution Trust Corp., after it took over Madison, in litigation against the thrift's auditor. A **grand jury** has subpoenaed documents involving Seth Ward, Mr. Hubbell's father-in-law, who sued Madison for commissions stemming from real-estate transactions.

Ronald Clark, Rose managing partner, says the firm is cooperating fully with Mr. Fiske. Several rooms at the firm are devoted to culling documents to ensure that client confidences are not divulged as documents are turned over. Mr. Clark also insists that any documents that may have been shredded have nothing to do with Mr. Fiske's inquiry.

David Hale

Later this month, Mr. Fiske will prosecute David Hale on charges of defrauding the Small Business Administration, which had licensed him to grant loans through his Capital Management Services. On the face of it, this case has nothing to do with **Whitewater.** But Mr. Hale, a former municipal judge, has alleged that Mr. Clinton, when

Copr. (C) West 1994 No claim to orig. U.S. govt. works

he was governor, pressured him into making a $300,000 loan to a firm owned by Mr. McDougal's wife, Susan. Some of that loan was allegedly diverted to **Whitewater.**

When Mr. Fiske replaced other federal prosecutors in the Hale case last month, Mr. Hale's co-defendants objected strenuously because they didn't want to be pulled into the **Whitewater** controversy. But Mr. Fiske's lawyers prevailed. The trial is set for March 28.

The Death of Vincent Foster

Mr. Fiske has assigned a deputy, Roderick Lankler, to take charge of the most sensitive corner of his investigation, a full-scale probe of the death of Vincent Foster.

The goal is to solve the mystery of why Mr. Foster killed himself and whether the **Whitewater** controversy contributed to his despondent mood. Even if a definitive answer can't be found, investigators hope to quash some of the zanier conspiracy theories. They don't believe speculation, rampant in the tabloid press, that Mr. Foster was murdered. Forensic experts and pathologists will examine documents already turned over by the U.S. Park Service, which investigated Mr. Foster's death, and Mr. Lankler is considering retaining a psychiatrist to evaluate Mr. Foster's mood before he died.

Under the supervision of Mr. Lankler, who once prosecuted homicide cases in the Manhattan District Attorney's office, investigators are also looking into allegations that White House officials may have impeded the park-police investigation. In the aftermath of the suicide, a file containing **Whitewater** documents was found in Mr. Foster's office and turned over by White House counsel Bernard Nussbaum to the Clintons' personal lawyer. The file has now been turned over to Mr. Fiske. According to White House accounts, Mr. Foster had the **Whitewater** file in his office because he was preparing delinquent tax returns for the partnership.

Unravelling **Whitewater**

To unravel the **Whitewater** controversy, special counsel Robert Fiske must answer the following questions:

-- Did the Clintons improperly use their influence to try to keep Madison Guaranty and **Whitewater** Development Co. afloat?
-- Did funds from Madison accounts end up in then-Gov. Clinton's campaign coffers?
-- Were Madison funds improperly diverted to **Whitewater?**
-- Did then-Gov. Clinton induce an associate to make an improper $300,000 federally sponsored loan to a **Whitewater** partner?

Copr. (C) West 1994 No claim to orig. U.S. govt. works

-- Did the **Whitewater** affair play a role in deputy White House counsel Vincent Foster's suicide, and did White House officials attempt to impede an investigation of his death?

-- Did Treasury officials improperly brief White House aides on an impending criminal investigation of Madison?

---- INDEX REFERENCES ----

MARKET SECTOR: FINANCIAL (FIN)

INDUSTRY: REAL ESTATE INVESTMENTS; SAVINGS & LOANS, THRIFTS (REA SAL)

NEWS SUBJECT: LAW & LEGAL ISSUES (LAW)

GOVERNMENT: CONGRESS; EXECUTIVE (CNG EXE)

REGION: ARKANSAS; NORTH AMERICA; UNITED STATES (AR NME US)

Word Count: 1472
3/14/94 WSJ A16
END OF DOCUMENT

Copr. (C) West 1994 No claim to orig. U.S. govt. works

7

Citation	Rank(R)	Database	Mode
3/21/94 WSJ A14	R 26 OF 58	WSJ	Page
3/21/94 Wall St. J. A14			
1994 WL-WSJ 300576			

The Wall Street Journal
Copyright (c) 1994, Dow Jones & Co., Inc.

Monday, March 21, 1994

Politics & Policy

Rose Law Firm to File Ethics Complaint In Arkansas About Hubbell's Expenses

By Ellen Joan Pollock and Kenneth H. Bacon
Staff Reporters of The Wall Street Journal

The Rose Law Firm has decided to file a complaint with Arkansas ethics authorities about undocumented expenses incurred by former Associate Attorney General Webster Hubbell.

According to a lawyer familiar with the Rose inquiry, the firm's partners agreed to send a letter to disciplinary officials of the Arkansas Supreme Court.

Mr. Hubbell failed to document roughly $100,000 in expenses, said a person at the Rose firm, and the firm is concerned that they were personal charges. Mr. Hubbell, who announced his resignation from the Justice Department last week, wrote checks on the firm's bank account to cover these expenses. Most of the checks were made out to credit card companies, said the lawyer familiar with the inquiry.

The ethics complaint focuses on expenses reimbursed to Mr. Hubbell by the Rose firm. The charges weren't passed on to clients, according to the lawyer, but they were incurred while doing client work. The lawyer said the Rose firm was concerned that Mr. Hubbell had violated an ethics rule barring misrepresentations by a lawyer and decided it had "an obligation to report" the possible breach.

John Nields, Mr. Hubbell's Washington lawyer, declined to comment. Ronald Clark, the law firm's managing partner, didn't return phone calls.

Rose partners have also been mired in a dispute with Mr. Hubbell about his handling of an unsuccessful lawsuit for P.O.M. Inc., an Arkansas company owned by his brother-in-law. The P.O.M. case isn't an issue in the ethics complaint.

The Rose firm is the target of investigations by **Whitewater** Special Counsel Robert Fiske and the Resolution Trust Corp., which is auditing the firm's bills. Mr. Hubbell was one of several Rose lawyers who did RTC work. Mr. Fiske isn't looking into questions involving Mr. Hubbell's expenses, but is likely to do so if asked by

Copr. (C) West 1994 No claim to orig. U.S. govt. works

the Justice Department, according to a person familiar with his operation.

On another front in the **Whitewater** case, Deputy Treasury Secretary Roger Altman told the Senate Banking Committee that his contacts with the White House over the **Whitewater** issue were more extensive than he had initially revealed.

In a March 11 letter to committee Chairman Donald Riegle (D., Mich.), Mr. Altman said he had talked briefly last month with Harold Ickes, President Clinton's deputy chief of staff, about recusing himself from dealing with any matters concerning Madison Guaranty Savings & Loan. Madison Guaranty is a failed Arkansas thrift that has been linked to Mr. Clinton's political campaigns and his investment in **Whitewater** Development Co., a land venture.

Mr. Altman is acting chairman of the RTC, which last year recommended a criminal investigation of Madison's 1989 failure. The referral mentioned Bill and Hillary Rodham Clinton as possible beneficiaries of allegedly illegal acts. The Clintons have denied any wrongdoing.

The March 11 letter, which was disclosed Friday by Sen. Alfonse D'Amato (R., N.Y.), marks the second time that Mr. Altman has written Mr. Riegle since his Feb. 24 testimony to report additional meetings between Treasury and White House officials. "This has been nothing less than a pattern of deception," Mr. D'Amato said of the letter.

Mr. Altman has told associates that he didn't mention the Ickes meeting during the hearing because he didn't consider the five-minute discussion substantive. "There was no discussion whatsoever of the case itself," Mr. Altman said in his letter.

News of a series of meetings has triggered concerns that the White House or the Treasury may have been trying to halt or stall the Madison investigation. As a result, Mr. Fiske has called all the Treasury and White House officials involved to testify before a federal **grand jury** in Washington. Mr. Altman has said he's confident that the **grand jury** will clear the Treasury and White House of suspicion that they attempted to manipulate the case.

Separately, Rep. James Leach (R., Iowa) has charged that officials in Washington may have "gagged" RTC officials in Kansas City, Mo., where the Madison investigation was taking place. Last week the RTC's spokesman dismissed the charge, which Mr. Leach hasn't backed up. "I don't know what Congressman Leach is talking about," Steve Katsanos said. "If he would bring any specific examples or concerns to our attention, we would be happy to respond."

Copr. (C) West 1994 No claim to orig. U.S. govt. works

Mr. Leach may try to substantiate this and possibly other allegations at a House Banking Committee hearing scheduled for Thursday. But the Chairman, Rep. Henry Gonzalez (D., Texas), is determined to prevent Madison from becoming an issue. Mr. Gonzalez has told witnesses to deal only with such questions as the progress the RTC is making in selling the assets of failed thrifts.

The Gonzalez stance could hurt Mr. Altman, however. The acting RTC chief has told associates that he's looking forward to the hearings to explain his White House meetings and brush away any appearance of impropriety.

On NBC News' "Meet the Press" yesterday, House Majority Leader Richard Gephardt (D., Mo.) said the House might be able to hold Madison-related hearings after Mr. Fiske completed the Washington portion of his inquiry. "I think we're going to be talking to the Republican leadership early in the week; we'll be talking with Mr. Leach," Rep. Gephardt said. "If there's a way to coordinate what they're doing, even in this RTC oversight hearing, with what Mr. Fiske is doing, that's what we ought to do."

---- INDEX REFERENCES ----

MARKET SECTOR: FINANCIAL (FIN)

INDUSTRY: REAL ESTATE INVESTMENTS; SAVINGS & LOANS, THRIFTS (REA SAL)

NEWS SUBJECT: LAW & LEGAL ISSUES (LAW)

GOVERNMENT: CONGRESS; EXECUTIVE; JUSTICE DEPARTMENT; RESOLUTION TRUST CORP.; TREASURY DEPARTMENT (CNG EXE JUS RTC TRE)

REGION: ARKANSAS; MISSOURI; NORTH AMERICA; UNITED STATES (AR MO NME US)

Word Count: 879
3/21/94 WSJ A14
END OF DOCUMENT

Copr. (C) West 1994 No claim to orig. U.S. govt. works

8

Citation	Rank(R)	Database	Mode
3/24/94 WSJ A16	R 1 OF 1	WSJ	Page
3/24/94 Wall St. J. A16			
1994 WL-WSJ 300160			

The Wall Street Journal
Copyright (c) 1994, Dow Jones & Co., Inc.

Thursday, March 24, 1994

Politics & Policy

Special Counsel's Probe of Whitewater Includes Bond Dealer Linked to Clinton

By Ellen Joan **Pollock**
Staff Reporter of The Wall Street Journal

Special Counsel Robert Fiske's investigation of the Whitewater matter has now extended to a highflying bond dealer with ties to President Clinton.

In a recent wave of subpoenas, Mr. Fiske sought documents about Mr. Lasater and his Lasater & Co., which had a piece of the Arkansas bond business while Mr. Clinton was governor. Mr. Clinton's relationship with Mr. Lasater was an issue in the 1992 presidential campaign. Mr. Lasater raised money for Mr. Clinton's 1984 gubernatorial campaign and gave a job to Roger Clinton, the president's brother.

As governor of Arkansas, Mr. Clinton lobbied the state legislature for a bond deal that benefited Mr. Lasater, while the bond dealer was under investigation for trafficking in cocaine. Mr. Lasater pleaded guilty to drug charges in 1986.

Mr. Fiske also is seeking documents involving former Associate Attorney General Webster Hubbell and White House aide Patsy Thomasson, who once worked for Mr. Lasater. P.O.M. Inc., a company owned by Mr. Hubbell's brother-in-law, is listed on Mr. Fiske's subpoenas as well.

Mr. Lasater couldn't be reached to comment, and it couldn't be determined whether he has received a subpoena from Mr. Fiske. The special counsel has issued more than 150 subpoenas since February. They list dozens of names and request "all documents and/or communications referring or relating" to the people listed. Mr. Fiske declined to comment.

Ms. Thomasson, whose name also appears on Fiske subpoenas, is director of the White House Office of Administration. She was formerly a senior executive of several of Mr. Lasater's companies and helped to run his business while he was jailed on the drug charges.

Copr. (C) West 1994 No claim to orig. U.S. govt. works

She was also one of three White House aides who went to Deputy Counsel Vince Foster's office after he committed suicide last July.

Phoenix Group Inc., an investors group once headed by Ms. Thomasson, is being investigated by the Securities and Exchange Commission in connection with possible insider trading in Arctic Alaska Fisheries Corp. stock in June 1992. Shortly afterward, Arkansas-based Tyson Foods Inc. announced an agreement to acquire the company. Phoenix Group was once called Lasater Inc. and was headed by Mr. Lasater.

Ms. Thomasson said last week that she neither traded in, nor executed an order for, the stock. She hasn't received a subpoena from Mr. Fiske, according to White House officials.

Mr. Hubbell, whose name also appears on subpoenas issued by Mr. Fiske, is linked to several aspects of the Whitewater controversy, including conflict-of-interest allegations involving a suit he handled for the Resolution Trust Corp. while a partner in the Rose Law Firm.

The Rose firm has been trying to determine whether Mr. Hubbell inflated expenses he billed to the firm, and recently referred the matter to state disciplinary authorities. The Little Rock firm has also been mired in a dispute with Mr. Hubbell over $1 million in expenses and unbilled time charges incurred during his unsuccessful handling of a lawsuit for P.O.M., which has become part of Mr. Fiske's inquiries. John Nields, Mr. Hubbell's Washington lawyer, and the president of P.O.M., Seth "Skeeter" Ward, the brother-in-law of Mr. Hubbell, didn't return phone calls.

The Whitewater affair is expected to dominate a news conference that President Clinton has scheduled for 7:30 p.m. EST tonight. The press conference is part of the administration's new strategy of being more open about the Whitewater controversy.

---- INDEX REFERENCES ----

MARKET SECTOR: FINANCIAL (FIN)

INDUSTRY: REAL ESTATE INVESTMENTS; SAVINGS & LOANS, THRIFTS (REA SAL)

NEWS SUBJECT: LAW & LEGAL ISSUES (LAW)

GOVERNMENT: EXECUTIVE (EXE)

REGION: ARKANSAS; NORTH AMERICA; UNITED STATES (AR NME US)

Word Count: 552
3/24/94 WSJ A16

Copr. (C) West 1994 No claim to orig. U.S. govt. works

9

Citation	Rank(R)	Database	Mode
4/4/94 WSJ B8	R 19 OF 58	WSJ	Page
4/4/94 Wall St. J. B8			
1994 WL-WSJ 298263			

The Wall Street Journal
Copyright (c) 1994, Dow Jones & Co., Inc.

Monday, April 4, 1994

Law

Legal Beat

Hale's Past May Harm Credibility As Accuser in **Whitewater** Inquiry
By Ellen Joan Pollock
Staff Reporter of The Wall Street Journal

LITTLE ROCK, Ark. -- Former municipal judge David Hale is the only player in the **Whitewater** affair to make a specific allegation of wrongdoing by President Clinton. But his credibility as a witness may prove slim.

Mr. Hale recently pleaded guilty to two financial-fraud charges, and his sentencing was postponed for at least 120 days to allow him to tell his story to special counsel Robert Fiske and a special **grand jury** looking into the **Whitewater** affair. Mr. Hale says the president pressured him to make a $300,000 government-sponsored loan to a firm owned by Susan McDougal, a **Whitewater** partner. Lawyers involved in the matter say that some of that money ended up in **Whitewater** Development Corp., in which the Clintons had a stake.

Whether Mr. Hale can convince a **grand jury** that his story is true will depend on whether Mr. Fiske comes up with solid corroborating evidence. Even Mr. Hale has admitted that he has no proof of President Clinton's pressure. And felons who promise information in exchange for the possibility of a lighter sentence are always suspect as witnesses.

"In desperation he has had to point fingers in other directions and create a commotion in order to buy himself a lighter sentence," says John Haley, a lawyer for Arkansas Gov. Jim Guy Tucker, who received loans from Mr. Hale. "Under the pressure that he's under, I don't think that anything he says is capable of belief."

Mr. Hale has a long history of dealings in which his trustworthiness has been questioned.

Even his former attorney, Rogers Cockrill, questions Mr. Hale's credibility. Mr. Cockrill, who worked on loan documentation for Mr. Hale in the late 1970s, says he quit representing him after becoming convinced he "couldn't rely on what he said at all times."

Copr. (C) West 1994 No claim to orig. U.S. govt. wor

Mr. Fiske himself is delving into other questionable deals by Mr. Hale. The special counsel recently subpoenaed documents for a convoluted real-estate transaction orchestrated by Mr. Hale in 1986.

The deal appears to have been meant to benefit Arkansas Gov. Tucker and former governor Frank White, who had reappointed Mr. Hale to his municipal judgeship in 1981. Mr. Tucker had guaranteed a friend's mortgage on a Little Rock house, according to Mr. Haley, the lawyer for Mr. Tucker. The friend defaulted and Mr. Hale eventually took title to the house and arranged for its sale so Mr. Tucker could recoup the $131,000 that he lost.

The house was then sold to a firm partly owned by municipal judge William Watt. Mr. Hale's firm loaned Mr. Watt's firm $10,000 to cover closing costs, according to Mr. Watt, who says Mr. Hale also directed that $2,000 left over be donated to Mr. White, who was waging an ultimately unsuccessful gubernatorial campaign against Mr. Clinton. Mr. White says he knew nothing about the donation, which was made under the names of two undisclosed individuals.

Mr. Hale is also under investigation by Arkansas's insurance department, which wants to know why $150,000 is missing from a failed insurance company he owned. The money was invested in the company last year, after regulators found it was insolvent. The cash apparently "went right back out," says commissioner Lee Douglass.

Mr. Hale pleaded guilty last month to defrauding the Small Business Administration out of $900,000 in financing for his firm, Capital Management Services, which was licensed to make loans to businesses owned by disadvantaged individuals. Mr. Fiske alleged that Mr. Hale funneled $800,000 in borrowed funds through CMS to make it appear that the firm was financially sound and eligible for additional SBA financing.

A recent General Accounting Office study found that Mr. Hale made loans to people of "questionable eligibility," including Ms. McDougal. In a separate 1990 audit, the SBA chastised Mr. Hale's firm for making a $137,500 loan to a firm owned by Harry Townsend, even though he did not appear to be disadvantaged. Mr. Townsend loaned Mr. Hale the money that allegedly was used to make it appear that CMS was healthy. Mr. Townsend has denied any wrongdoing.

The GAO report also found that 13 of the 57 firms that CMS financed were "secretly controlled" by Mr. Hale. For example, Mr. Hale apparently used a disadvantaged businessman as "a front" to borrow money for Retail Liquidators, a company he covertly owned, according to the GAO. He also loaned $350,000 to Little Rock Clothiers, a company in which he had "a hidden interest," according to the report.

Copr. (C) West 1994 No claim to orig. U.S. govt. work

Randy Coleman, Mr. Hale's attorney, says that he doesn't think all of the allegations in the GAO report are correct, but he says that his client has admitted to making loans to ineligible recipients. He notes that some defendants who plead guilty "turn out to be very good witnesses."

In the meantime, President Clinton and his associates not only deny pressuring Mr. Hale to make the loan to Ms. McDougal, they also deny that the president had any ties to the former judge. Says then-Gov. Clinton's chief of staff, Betsey Wright, "We never had anything to do with David Hale."

A Case of 'Forum Shopping'

One of Chicago's premier law firms is facing possible penalties for trying to steer a case on behalf of one of its clients -- the Catholic Archdiocese -- to a favored judge.

The law firm, Mayer, Brown & Platt, last week issued statements apologizing for the scheme. Today, the lawyers involved and a senior partner are scheduled to appear before the chief judge of Chicago's Chancery Court to explain what occurred. The judge will determine whether any sanctions are to be handed down.

Tyrone C. Fahner, the senior partner, said Mayer Brown has apologized to the Archdiocese of Chicago and to the opposing law firm in the case, Altheimer & Gray. "There's no excuse, there's no defending it," said Mr. Fahner. "It's absolutely wrong. It isn't how we practice law."

In March, Mayer Brown attorneys Michael J. Gill, a litigation partner, and Jonathan L. Marks, an associate, tried to circumvent the random selection of judges in a suit they were handling by filing five identical copies within 14 minutes. The archdiocese, which wasn't aware of the scheme, was contesting a $468,636 arbitration award won by a local construction company, George Allen Construction. Mayer Brown's actions were first reported by the Chicago Daily Law Bulletin.

When a lawsuit is filed in Chicago's courts, a computer randomly assigns it to a judge. That practice is intended to prevent "forum shopping," in which lawyers seek to have a case assigned to a friendly judge. In court papers, attorneys for the construction company contend that the only rationale for filing five copies of the same suit was "to receive a panel of judges from which to choose."

Copr. (C) West 1994 No claim to orig. U.S. govt. works

The day after the suits were filed, Mayer Brown issued summonses in only one of the five suits. "There can only be one conclusion drawn," lawyers for Altheimer & Gray contended in court papers. "The complaints were taken back to the office of the Catholic Bishop's attorneys after filing, the panel of judges reviewed, the favored judge selected and summonses on that complaint and only that complaint issued the next day."

Mr. Fahner blamed the maneuver on "inexplicable bad judgment" and overzealousness but said the law firm was awaiting the results of today's hearing before deciding whether to take any disciplinary action on its own. As sanctions, Altheimer & Gray is asking that the archdiocese's lawsuit be dismissed and that attorneys fees and costs be awarded, in addition to "such other monetary sanction as this court deems necessary."

Mr. Fahner said the law firm already has offered to pay Altheimer & Gray's costs.

Milo Geyelin contributed to this article.

---- INDEX REFERENCES ----

MARKET SECTOR: FINANCIAL (FIN)

INDUSTRY: REAL ESTATE INVESTMENTS; SAVINGS & LOANS, THRIFTS (REA SAL)

NEWS SUBJECT: LAW & LEGAL ISSUES; LAWSUITS (LAW LWS)

GOVERNMENT: CONGRESS; EXECUTIVE; SMALL BUSINESS ADMINISTRATION; STATE GOVERNMENT (CNG EXE SBA STE)

REGION: ARKANSAS; ILLINOIS; NORTH AMERICA; UNITED STATES (AR IL NME US)

Word Count: 1276
4/4/94 WSJ B8
END OF DOCUMENT

Copr. (C) West 1994 No claim to orig. U.S. govt. works

10

Citation	Rank(R)	Database	Mode
4/7/94 WSJ B3	R 17 OF 58	WSJ	Page
4/7/94 Wall St. J. B3			
1994 WL-WSJ 297693			

The Wall Street Journal
Copyright (c) 1994, Dow Jones & Co., Inc.

Thursday, April 7, 1994

Law

Two Who Shredded Documents at Rose Law Firm Resign

By Ellen Joan Pollock
Staff Reporter of The Wall Street Journal

The two couriers at the center of the controversy over document shredding at the Rose Law Firm have quit their jobs.

Robert Fiske, special counsel in the **Whitewater** case, has been investigating allegations that the two part-time couriers destroyed documents belonging to White House aide Vincent Foster, whose body was found in a Virginia park last year. Rose managing partner Ronald Clark and a lawyer for the two couriers said they left the firm of their own volition.

Mr. Clark and one of the couriers, Clayton Lindsey, testified about the shredding before a special **grand jury** in Little Rock, Ark., last week, according to people familiar with Mr. Fiske's investigation. Jeremy Hedges, the other courier, testified earlier before another **grand jury.**

Mr. Hedges has said that he and Mr. Lindsey destroyed documents in a box marked with Mr. Foster's initials. Mr. Foster handled some tax matters involving President Clinton's and Hillary Rodham Clinton's **Whitewater** Development Corp. investment. A file pertaining to the investment was found in Mr. Foster's office after his death. Prior to becoming deputy White House counsel, Mr. Foster was a partner at the Rose Law Firm. Mr. Clark has said that none of Mr. Foster's files were shredded.

Messrs. Hedges and Lindsey, who are students at the University of Arkansas at Little Rock, have been vague about the timing of the shredding, and their versions of events have varied in numerous interviews with reporters. In an interview yesterday, Mr. Lindsey said, "I don't have any idea" whether the materials he shredded were Foster files. "I just don't think the Rose Law Firm would do that," he added. Mr. Hedges couldn't be reached for comment.

Last month, Mr. Hedges said that he thought the shredding occurred after Mr. Fiske was appointed in late January, as he was aware of Mr. Fiske's name at the time. He has told at least one

Copr. (C) West 1994 No claim to orig. U.S. govt. works

person that the shredding took place after the Rose firm received a subpoena. "The FBI helped him place the date," said this person.

The law firm received a subpoena in January from a Justice Department lawyer investigating **Whitewater** prior to Mr. Fiske's appointment. A lawyer on Mr. Fiske's staff declined to comment.

Pat Aydelott, the couriers' lawyer, said Mr. Hedges was able to remember the date after he "related it to something he was doing at school." He said he thinks Mr. Fiske is "done with my boys and he's moving on up the ladder to see where the box came from and who compiled the box."

Meanwhile, David Kendall, the Clintons' lawyer, returned to James McDougal 2,000 pages of **Whitewater** documents. Mr. McDougal, who said he needed the documents to prepare his tax returns, was a partner of the Clintons in the ill-fated real-estate investment. The documents included bank records, escrow receipts and corporate tax returns.

In a letter to Mr. McDougal's attorney, Mr. Kendall noted that the Clintons got the records in late 1989 or early 1990, when their accountant sought to prepare corporate tax returns. He said the Clintons never possessed a complete set of corporate records for **Whitewater,** and he noted that the Clintons sold their share in the development to Mr. McDougal in 1992.

Separately, the Federal Deposit Insurance Corp. has asked about 100 law firms nationally whether they hired the Rose firm to work on any FDIC or Federal Savings & Loan Insurance Corp. matters as a subcontractor or local counsel. The FDIC asked the law firms to preserve all files and bills related to work performed by Rose.

Alan J. Whitney, an FDIC spokesman, said the letter was sent to law firms in the past week so that the agency could provide the information to New York Sen. Alfonse D'Amato and Iowa Rep. James Leach, who have called for congressional hearings into **Whitewater.** Mr. Clark, of the Rose firm, said he didn't know of the FDIC request.

Bruce Ingersoll in Washington contributed to this article.

---- INDEX REFERENCES ----

MARKET SECTOR: FINANCIAL (FIN)

INDUSTRY: REAL ESTATE INVESTMENTS; SAVINGS & LOANS, THRIFTS (REA SAL)

NEWS SUBJECT: LAW & LEGAL ISSUES (LAW)

Copr. (C) West 1994 No claim to orig. U.S. govt. works

GOVERNMENT: EXECUTIVE; FEDERAL DEPOSIT INSURANCE CORP.; JUSTICE DEPARTMENT (EXE FDC JUS)

REGION: ARKANSAS; NORTH AMERICA; UNITED STATES (AR NME US)

Word Count: 656
4/7/94 WSJ B3
END OF DOCUMENT

Copr. (C) West 1994 No claim to orig. U.S. govt. wor

11

Citation	Rank(R)	Database	Mode
4/14/94 WSJ A16	R 1 OF 1	WSJ	Page
4/14/94 Wall St. J. A16			
1994 WL-WSJ 296832			

The Wall Street Journal
Copyright (c) 1994, Dow Jones & Co., Inc.

Thursday, April 14, 1994

Politics & Policy

Fiske Focuses on Numerous Businesses Of McDougal That Lent to Whitewater

By Viveca Novak and Bruce **Ingersoll**
Staff Reporters of The Wall Street Journal

LITTLE ROCK, Ark. -- Special counsel Robert Fiske is investigating a raft of businesses under James McDougal's control that lent more than $113,000 to his Whitewater Development Corp. venture with Bill and Hillary Rodham Clinton.

Much of the money went to Whitewater during then-Gov. Clinton's 1984 campaign for re-election, according to an unreleased draft report on the company's tangled finances. More than $80,000 in loans were never repaid by Whitewater, an Arkansas vacation-home development that was 50%-owned by the Clintons.

Mr. Fiske is trying to determine whether funds from Madison Guaranty Savings & Loan, a thrift owned by Mr. McDougal until 1989, were funneled into Whitewater or into Clinton gubernatorial campaigns. He has issued subpoenas seeking information about numerous McDougal enterprises, including at least seven that lent money to Whitewater between 1979 and 1986. Many of those companies banked at Madison Guaranty.

Transfers totaling about $68,000 occurred during a 12-month span that ended May 31, 1985, when Mr. Clinton was seeking re-election and then trying to pay off a $50,000 personal loan used for his campaign. The figures come from a draft report that was prepared for the 1992 Clinton presidential campaign by Clinton friend and attorney James Lyons and an accounting firm Mr. Lyons hired.

Campaign officials decided against identifying any of the McDougal entities and giving details of any of the transactions in the final Lyons report. Instead, they used the final report -- released in March 1992 -- simply to buttress the Clintons' claims that Whitewater was a moneyloser and that they were merely passive investors.

White House Press Secretary Dee Dee Myers said yesterday that the presidential campaign was aware that McDougal-related companies passed money to Whitewater. But she said the campaign "didn't detail

Copr. (C) West 1994 No claim to orig. U.S. govt. works

it" in the final report because it was reporting on the Clintons' involvement, not Mr. McDougal's. She insisted that the campaign had no evidence that Madison Guaranty improperly diverted any money into Whitewater.

In an interview Tuesday, Mr. McDougal said the loans were used to cover Whitewater "operating expenses."

Mr. McDougal's attorney, Sam Heuer, described the transactions as "short-term loans" and rejected any suggestion that Madison Guaranty funds were improperly diverted through McDougal businesses into Whitewater or the 1984 campaign. "I have yet to see any factual data to back it up," he said in an interview yesterday. "I don't believe that to be true."

Investigators for the Resolution Trust Corp., the savings-and-loan cleanup agency, have uncovered indications of a possible "massive check-kite" scheme involving purported loans to numerous McDougal enterprises as well as Whitewater, according to an RTC document released recently by Rep. James Leach (R., Iowa).

The draft report shows large sums of money flowing from McDougal enterprises into Whitewater. A real-estate company called Flowerwood Farms Inc., for one, pumped in more than $40,000 in 1984-86. Meanwhile, Great Southern Land Co. lent Whitewater $35,000, only $11,000 of which has been repaid, the draft shows.

A partnership among Mr. McDougal, Clinton friend Stephen Smith and Jim Guy Tucker, the current governor of Arkansas, lent Whitewater $11,950 in the year ended May 31, 1985, only $1,000 of which has been repaid, according to the draft. John Haley, Mr. Tucker's attorney, said the governor doesn't know of any such loans.

Speaking about Whitewater yesterday, Mr. Clinton said he has done his best to answer questions on the issue. "Maybe you have total and complete recollection of every question that might. . . .be asked of you at any moment of things that happened to you 12, 13, 14 years ago," he told a questioner at a Washington gathering of the American Society of Newspaper Editors. "You think I should have shut the whole federal government down and done nothing but study these things for the last two months?"

Ellen Joan Pollock contributed to this article.

---- INDEX REFERENCES ----

MARKET SECTOR: FINANCIAL (FIN)

Copr. (C) West 1994 No claim to orig. U.S. govt. works

12

4TH STORY of Level 1 printed in FULL format.

Copyright 1994 The New York Times Company
The New York Times

April 23, 1994, Saturday, Late Edition - Final

SECTION: Section 1; Page 11; Column 1; National Desk

LENGTH: 7295 words

HEADLINE: THE WHITEWATER AFFAIR;
Excerpts From Hillary Clinton's News Session on Whitewater

BODY:

Following are excerpts from Hillary Rodham Clinton's news conference at the White House yesterday, as recorded by The New York Times:

Q. Since Whitewater's been in the news so much, I feel it's fair to ask you the same question I put to the President some time ago -- and you were, are, a co-partner: Do you know of any money that could have gone from Madison to the Whitewater project or to any of your husband's political campaigns?

A. Absolutely not. I do not.

Q. Actually on this same theme, with your commodities profits, you know, it is difficult for a layman and probably for a lot of experts to look at the amount of the investment and the size of the profit. I mean, is there any way you can explain how you --

A. Well, I can certainly tell you what happened. And I appreciate your asking me about it because I've tried to follow the accounting in the press about it and I want to explain as clearly as I can what occurred.

Back in 1978, in October, one of our best friends, Jim Blair, who had been a friend of my husband's and mine for some time, talked to me about what he thought was a great investment opportunity. He is someone who has been an investor ever since he was a teen-ager with usually very good results. And he had followed closely what had been happening in the cattle market. And I only knew a little bit about that, although living in Arkansas, particularly northwest Arkansas, as I did, I was familiar with a lot of ranchers and people who were in the cattle industry. And when Jim said, "I think there's going to be a great opportunity to make money" and explained why and asked me what I thought we could afford to invest, I told him a thousand dollars.

So I opened an account at his very strong recommendation and proceeded to trade over the next months, until July. You know, not all my trades made money. Some of them lost money. I talked to Mr. Blair very frequently. In fact, Jim would call me on a regular basis, and I would make a decision whether I would or would not trade. And then the trade would be placed. Often he placed it for me. And there was nothing wrong with that. He was on the spot. He was often in the offices of the broker.

I stopped trading in July of 1979. And I did stop trading in large measure

because I could not keep up with it. It takes a lot of nerve to be in the commodities trading, and I'd just found out I was pregnant. And so when he called again, I said, "You know, I just don't want to do this anymore." And I think he may have even called a few more times, saying: "You know, it's really still doing well. Trade again." And I didn't, and I'm glad I didn't because he and other friends of mine who were trading ended up losing money.

So it was a good investment offered by somebody who knew a lot who could provide a lot of good advice, and I was lucky and made the decision to stop when I did.

Q. Do you understand this -- if maybe your broker might have, because of your position or your husband's, might have given you some kind of unfavorable or, you know, favored advantage?

A. There's really no evidence of that. I didn't believe it at the time. As I said, you know, I made and lost money in that commodities account. It was my money. It was at risk. The account was in my name. I got the reports. We've released all of the documents we could find from that period from that account. So, no, I had no reason to believe that. And as Mr. Leo Melamed, the former head of the Chicago Mercantile Exchange, said when he looked at all of my trading records, there isn't any evidence that anybody gave me any favorable treatment. And even Mr. Blair, who ended up losing money, I think would find it very hard to argue that he got any favorable treatment. I just don't think there's any evidence there.

Q. Mrs. Clinton, you said you stopped trading in July of 1979. Could you talk about the second account that was opened?

A. Sure.

Q. There was a second account, with the Stephens Company, in which I think you invested $5,000. And at first the White House claimed you lost money on it, but later you put out documents showing you actually made $6,000 on it and didn't close it until a few months after Chelsea was born.

A. That's right. And I'm glad you asked that, because I really want to clarify it. I think there's been a lot of confusion. There were two accounts. The first account -- the one that I was just talking about -- was the Refco account. I traded in that from October '78 to July of '79, when I found out I was pregnant and I stopped trading. Now, I closed that account for good in October of '79, and I took some of the money that I had made and put it into an account at Stephens. And at that point, I made that a discretionary account. My Refco account was a nondiscretionary account, which meant that I had to approve and give the go-ahead for every trade. In the discretionary account at Stephens, my broker made most of the decisions. And I think he did a good job for me. He diversified the money that I gave him and put it into money markets and stocks and bonds, and $5,000 into some commodities.

Now, what happened then is -- in retrospect, as I've been able to reconstruct it now -- is that my broker made these decisions. He checked with me maybe a couple of times a month, but because it was discretionary he did not have to get my approval. And so money would be moved from one investment to another investment. And during the course of the time between October of '79 and

LEXIS®·NEXIS® LEXIS®·NEXIS® LEXIS®·NEXIS®
Services of Mead Data Central, Inc.

probably May of 1980, he had me in and out of three different commodity accounts in much smaller numbers than what I had been in charge of doing in my Refco account.

In February of 1980, my daughter was born, at the very end of the month. And I remember talking to my broker sometime after that and said, "You know, I just want to get out of commodities altogether. I don't ever want to have to worry about it." So he got me out of the positions that I had been in, so that by May I was no longer doing any kind of commodity trading in the Stephens account. Now, what happened, though, is that he took the money that I now know I made -- I really didn't think I'd made any money in commodities -- and he bought some stock, and he did some other things for me.

Now, in the fall of 1980, my husband lost his election. We moved. So by 1981, when I gathered all my documents together to give to my accountant, I had a year-end statement from Stephens which did not report anything about commodities. I had a year-end statement from the Peavey Brokerage Company which reported a loss, and I had no year-end statement from either Clayton or the company called ACLI. So I think what happened is we bundled all of the documents we had, because I took all of the reports that I had, gave them to the accountant, and I believe that in the absence of a year-end statement the accountant and my husband and I missed the fact that we had actually made some money in the ACLI account.

Q. Do you remember that profit?

A. No. I did not remember that profit. I did not. And in fact, as you said, when some people looking at the records for me began looking at it originally, they looked at the records and they thought I'd had a $5,000 loss. And they came to me and said, "We think you had a loss which you didn't report." And I said, you know, I just don't remember. I thought I basically got out with what I put in. And then they went back and relooked at it again with, you know, more accountants, and they came up with the gain. So it was hard to find, apparently.

Q. With regard to the Refco account, just how did the procedure go? Did Mr. Blair basically recommend to you the transactions which you either said yes or no to? Or was it based more on knowledge that you had gained -- as some of your staff have suggested -- from reading the papers, or whatever? What happened?

A. Well, Brit, it was primarily Jim's suggestion. But I also did try to educate myself. You know, I did try to read some things. He actually gave me a few documents to read. Because he had this theory that because of the economy in the early part of the 1970's, a lot of cattle herds had been liquidated, so that there was going to be a big opportunity to make money in the late 70's. And he gave me things to read about that. And I did occasionally read, you know, publications like The Journal and others and, you know, I tried to educate myself because I took the responsibility seriously. But I relied primarily on his advice, because he really spent an enormous amount of time studying the market and talking to many more people than I ever could have -- people who, you know, ran feedlots or bought beef for large supermarket chains. So he would talk to me, and he'd say: "Here's what I think is going on. What do you think?" Now, I did not make every trade he recommended. And certainly, by July -- when I began to, you know, get nervous about it -- I stopped taking his recommendations, because I just couldn't bear the risk anymore.

LEXIS®·NEXIS® LEXIS®·NEXIS® LEXIS®·NEXIS®
Services of Mead Data Central, Inc.

Q. Did it concern you at the time that because of his position with the company that he represented, that there was an ethical question raised by your accepting this level of assistance in a financial matter from him?

A. No, it did not. And the reason it didn't is that he and his wife are among our very best friends. My husband performed their marriage ceremony. I was the best person at the wedding. We are very close friends. And I found it a little bit surprising that anyone would suggest that, because in 1980, right during the time that this was all going on, when my husband ran for re-election, Tyson supported his opponent. So there's really no basis for suggesting it was anything other than what it was, which was a friend who made a suggestion -- and not just to me, but to a number of people -- which I think was, you know, very fortunate for me.

Q. You said that there was no preferential treatment in all of this. The records indicated that your account was short of money at various points. Were there margin calls? And did you meet any of those calls? And were you aware at any time that Refco was coordinating trades to drive prices up or down?

A. No, I was not aware of that, Andrea. I was told that after I stopped trading some months later. And I know there were lawsuits filed alleging that. I don't think any of that was ever proved, at least that I'm aware of. And when my position was under margin, I would either close out my position or use the equity that I had -- and I think Mr. Melamed said, based on his review of the records, there were a couple of occasions when I was under margin. Nobody ever called and asked me for anything. They just, I guess, took the money that I had in the account and closed out the position. But that was the responsibility of the broker. And from what I know, they were doing so many trades and there was so much volume going through that I was a relatively small customer. I mean, it was very big money for me and my family, but it was a very small account, and I don't think they paid any attention to my particular situation.

Q. Why do you think that they gave you this treatment with you being such a small customer? Don't you think that was preferential treatment --

A. No.

Q. -- based upon who you were and who your husband was?

A.No. I really don't believe that. I don't think there's any evidence of that. You know, from what I know about commodity trading and what I know about the cattle market during that period of time, they were just buying and selling on a huge basis, day in and day out. And I think that they may have not gotten around to the paperwork. They may have not thought it was worth it. They may have seen that I was a regular customer and that I covered my losses, that there was never an occasion when they really had to be concerned about it. I can't read their minds or speculate, but I had absolutely no reason to believe that I got any favorable treatment. And the fact that I closed the account out and took my money, whereas the people whom I knew were much bigger traders like Jim Blair and others -- they lost money -- and why would Jim Blair try to help me get favorable treatment that he couldn't get for himself? I mean, it doesn't make any sense to me at all.

Q. Mrs. Clinton, one of the things that has made all of this so

FOIA #56806 (URTS 16304) DocId: 70104986 Page 56

controversial is the shifting accounts of what happened. Because initially the White House explained that you were consulting Blair and many others and reading The Wall Street Journal, and then later had to correct that. And we found out that Mr. Blair was in fact most often placing your trades for you, phoning the trades in. Why was the account -- why did the account have to be corrected? Why was it not explained accurately the first time?

A. Well, Linda, I think it's because, you know, we're trying to reconstruct events of, you know, 15, 16, 17 years ago. There are a lot of people who are trying to help. But until relatively recently there wasn't any one person in charge of trying to get everything together and get the, you know, information as accurate as possible. I think the people in the White House did the best job they could. I think that we did the best job we could trying to remember things and oftentimes having to search to see whether we had any records. I mean, I don't know how many of you keep, you know, records from 1978 or '79, but, I mean, we went through a lot of effort to try to see whether we had anything so that we could answer questions and then make things available. Sometimes we'd find part of something. Sometimes we'd then find the rest of it. So I appreciate and understand the concern about, you know, why we would have to add information or go back and say, "Well, this needs to be corrected."

But the fundamental facts have not changed. I mean, the fundamental facts are, as I have said: I opened an account with my money. I made the trades. It was nondiscretionary. I took the risk. I was the one who made the decision to stop trading. And that I did rely on Jim Blair. I used some other advice as well, but he was my principal adviser in this.

Q. But that wasn't a question of documents, that particular fact, the fact that he was really driving the trading for you. I guess I wanted to re-ask that question again. Why -- that would be something you would remember or not remember without documentary support -- so, why was that fact not made clear? And were you essentially riding on his coattails when you traded?

A. No, I wasn't. I was riding on the money I invested. You know, I don't know how any of you make investment decisions, but I like to listen to people I know and trust who I think know what they're doing. And he was somebody who I very much thought knew what he was doing and was more than willing to share his information, not only with me but with many people: members of his family and other of his friends. And it was for all of us a decision to put ourselves basically at the mercy of the market. And as Jim Blair found out, he wasn't always right. He lost a lot of money. And I was lucky -- I didn't. But that was my decision.

Q. Mrs. Clinton, a number of your old friends in Little Rock -- Warren Stephens, who I guess is an old friend; Curt Bradbury, Bill Bowen, people like that -- had a meeting on March 31. And they decided that really Arkansas has taken a beating -- portrayed, in the words of one of them, as a moral and ethical backwater -- basically because people hear us saying, "It was done that way in Arkansas." How do you feel about what's happening down there and what's happening to those people who feel they're being hurt by events out of their control? And they feel that they're not really being -- the state is not really being -- defended by you and your husband. I wonder if you'd address that.

A. Well, I feel very bad about it, because I think Arkansas is a wonderful

FOIA #56806 (URTS 16304) DocId: 70104986 Page 57

place and filled with some of the best people I've ever been privileged to know or work with. And I do think that many of the charges have been very unfair and have really lacked any historic or realistic context. I don't think it's necessary to point fingers at any other state in the Union to say that, you know, every place there are people who have problems and there are people who cause problems. And I think that, you know, the state of Arkansas is a place that has, you know, just so much to be proud of. So I hope that we can get back to a more realistic assessment of what goes on there.

Q. May I follow?

A. Sure.

Q. They've said -- and specifically Bradbury and Mr. Stephens have said -- that to a certain extent they feel you've brought this on yourself, the two of you, because of campaign statements about a decade of greed and just things that they feel, in their words, make it look like hypocrisy: that you were into go-go trading. You were trying, as you said, an opportunity to make money, just as they were. And they felt like they had been condemned by you -- that people like that had been condemned by you during the campaign and that now you were being shown to be doing the things you spoke against.

A. Well, Curt and Warren have never said that to me, so I'll have to take your word for it. But I do think you raised an important question that I would like to talk about a little bit. You know, I was raised to believe that every person had an obligation to take care of themselves and their family. And that meant, you know, earning an income and saving and investing. I was raised by a father who had me reading the stock tables when I was a little girl, and I started doing that with my daughter when she was a little girl. I don't think you'll ever find anything that my husband or I said that in any way condemns the importance of making good investments and saving or that in any way undermines what is the heart and soul of the American economy, which is risk-taking and investing in the future.

What I think we were saying is that like anything else, that can be taken to excess. When companies are leveraged into debt, when loans are not repaid, when pension funds are raided -- you know, all of the things that marked the excess of the 1980's are things which we spoke out against.

I think it's a pretty long stretch to say that the decisions that we made to try to create some financial security for our family and make some investments come anywhere near there. I also think that, you know, my husband and I made different choices than to concentrate on making money during the 1980's. We obviously wanted enough financial security to send our daughter to college and put money away for our old age and help our parents when we could. But we were primarily interested in -- in his case -- in trying to provide opportunities for people in Arkansas and make a difference in their lives. And what I tried to do both to help him and to work on behalf of children or education reform was what was really important to us. So I think that is, you know, something that needs to be put again in a proper perspective.

Q. In the same vein, somewhat in the same vein, you were reported to have opposed a special prosecutor, at least in the beginning -- and some of the release of tax documents -- on the basis of privacy, that you felt you had a

LEXIS·NEXIS LEXIS·NEXIS LEXIS·NEXIS
Services of Mead Data Central, Inc.

right to privacy. Do you think that that helped to create any impression that you were trying to hide something?

A. Yes, I do. And I think that is probably one of the things that I regret most and one of the reasons why I wanted to do this, because I've had to really do a lot of thinking the last couple of months. You know, again, I was raised to really believe that what was important was what you thought about yourself and how you measured up to the standards you set for yourself. And I think if my father or mother said anything to me more than a million times, it was don't listen to what other people say, don't be guided by other people's opinions, you know, you have to live with yourself. And I think that's good advice. I mean, I'm glad I got it as a girl growing up, and I've passed it on to my daughter. But I do think that that advice and my belief in it, combined with my sense of privacy -- because I do feel like I've always been a fairly private person leading a public life -- led me to perhaps be less understanding than I needed to of both the press and the public's interest as well as a right to know things about my husband and me.

So you're right. I've always believed in a zone of privacy. And I told a friend the other day that I feel after resisting for a long time, I've been re-zoned. You know, and I now have a much better appreciation of what's expected, and not only what I have done -- because I am extremely comfortable and confident about everything that I have done -- but about my ability to communicate that clearly and to give the information that you all need.

Now, to your other question, about the special counsel. I was not the only one of my husband's advisers who questioned the idea of a special counsel. I think that those of us who did were concerned about the precedent that would be set by having such an appointment made when none of the existing standards that had always been in place had been met. There was no credible allegation -- you know all of the things that usually are required. So I was questioning of that. But the President made the decision that we needed to get on with the business he came to Washington to do and that this was an important step to take, and I respected that decision.

. . .

Q. Mrs. Clinton, do you know anything about Mr. Foster's death? Do you know what he wanted to tell the President that he didn't get to tell him?

A. You know, I don't know that he wanted to tell the President anything. That's the first I've heard of that. My memory is that the President actually talked to Vince Monday night, before he died, and when I talked with the President afterward he was stunned because the conversation was a very normal kind of a conversation. So I don't know.

Q. Well, I understood they made an appointment to talk not the next day but Wednesday, and that would have been the day after he died.

A. I don't know. I don't know.

LEXIS®·NEXIS® LEXIS®·NEXIS® LEXIS®·NEXIS®
Services of Mead Data Central, Inc.

Q. Mrs. Clinton, my question -- I'd like a follow-up too. The first one has to do with Susan MacDougal. She said that she brought the document of Whitewater over to you at the governor's mansion. Did you receive all the documents? And if so, what became of them?

A. I don't believe that we received all the documents in that way. Over the past several years, we have made a very deliberate effort to try to obtain documents. And every document that we have obtained has been turned over to special counsel, no matter where it came from.

Q. My follow-up has to do with the death of Mr. Foster, the way his office was sealed or the people who were in it. There's been a lot of criticism of the papers in Mr. Foster's office -- that some may have been removed.

A. Well, you know, I know there's been a lot of concern and criticism about that. I cannot speak to that in any detail. But I know that the special counsel is looking into the circumstances surrounding Mr. Foster's death, and I assume he will issue a report about that which I hope will put all these matters to rest once and for all.

Q. You said that -- just now -- that you'd decided that $1,000 was as much as you could risk. Can you tell us what your understanding was of how much you could be at risk with the little amount of money that you and your family had then? We were told earlier that $1,000 was what you were asked to put in. And second of all, can you give us some explanation -- given that a cattle contract at the time, just one contract, was $1,200 -- for the mystery of the $5,300 that was made really in the course of one day, or at least a few days, in the first trade?

A. No, I can't. I do not remember any of those details. I've given you every record that I have about that. The $1,000 was what I wanted to start with. And it was what I thought was a good beginning, a good investment for me. And once I had made the initial return that I did, I reinvested that. This was a roller coaster, and what I believed was that I was getting very good information and that I would end up making money. But there were a couple of days when I lost money. And I knew that I would be responsible for any losses that I suffered. But I did reinvest, and I covered the losses by closing positions. And then I eventually stopped trading.

Q. But when you first started with $1,000, did you believe you were putting at risk more than $1,000?

A. I believed that was certainly possible, yes.

Q. Then why did you take such a risky investment?

A. Because I didn't think it was that big a risk, because I thought that Jim and the people he was talking with knew what they were doing. And, you know, I've read a letter to the editor that somebody sent me from one of your newspapers, I think, which talked about a woman who invested $1,000 during the same time and made $750,000. Well, she had a stronger stomach than I did. I couldn't do that.

LEXIS·NEXIS LEXIS·NEXIS LEXIS·NEXIS
Services of Mead Data Central, Inc.

. . .

Q. The Whitewater development was set up, as you say, as a 50-50 partnership between the Clintons and the MacDougals, meaning that you were liable for 50 percent of the losses or 50 percent of the gains. And yet, by your own accounting, you lost half or even maybe a third of what the MacDougals lost. This is according to the Lyons report. Doesn't that discrepancy represent some sort of a gift or gratuity?

A. No. And let me say that, yes, the ownership of the corporation was 50-50. The liability on the underlying debt was 100 percent for each one of us. I mean, there was no gift in that. When my husband and I signed that mortgage, and when we re-signed guarantees, we assumed the whole responsibility. I mean, if Jim had gone into bankruptcy early on, if Susan had left, we would not have only 50 percent of the obligation; we would have 100 percent of the obligation.

Q. But why was it that the MacDougals lost so much more money than you did? I don't understand it.

A. I can't answer that. I mean, we gave whatever money we were requested to give by Jim MacDougal. I mean, he was the one who would say: "Here's what you owe on interest. Here's what your contribution should be." We did whatever he asked us. We saw no records. We saw no documents. He was someone that my husband had known a very long time. He was someone who had been in the real estate business with many people we knew, including Senator Fulbright, and we just assumed that whatever he needed he would ask for. And we didn't have any information to the contrary.

Q. It's just that given that you were jointly and separately liable for all the debt and that you and your husband are both lawyers, that you would be so passive about a fairly substantial investment.

A. Well, we were not real estate developers, and Jim had a track record. And I wasn't a cattle expert; I trusted Jim Blair, and it worked out for me. And I wasn't a real estate expert, and we lost money. Those things happen.

Q. Mrs. Clinton, just to get back to Linda's earlier question. One of the things that has been driving this is either the lack of explanations or the shifting explanations. And in terms of the way that your commodities trading was first described: that you did the trades, you relied on some advice from Mr. Blair. Later it was revealed that Mr. Blair placed most of the trades, if not all of them. Can you explain what happened? Did you have a new recollection? Why the shift?

A. Well, if you just listen to what you said: I did the trades. They were my trades. I was responsible for them.

But I did them on the advice of Jim Blair. And very often he placed them for me. I'm not in any way excusing any confusion that we have created. I think we have created it because I don't think that we gave enough time or focused enough. I have been traveling, and I'm more committed to health care than anything else I do. I probably did not spend enough time, get as precise. Different people heard different things that I said, or by the time it got

LEXIS·NEXIS LEXIS·NEXIS LEXIS·NEXIS
Services of Mead Data Central, Inc.

passed to the third or fourth person, or one member of the press would call somebody in the White House but somebody else would call another person. So I think that the confusion was our responsibility. We did not give you a focused place to come, and we did not spend the time necessary. There's not really a contradiction in what you said and what I said. But I can understand how somebody might assume that.

Q. Now that we're clearing up a lot of confusion, I'll ask you about one other thing that I've had problems with. During the campaign -- I think it was right after the primary debate between Jerry Brown and your husband -- you made a statement in, I think, a Chicago restaurant that you never did any regulatory work for Madison Guaranty. When the letter went to Beverly Bassett Schaffer about perhaps the legality of offering preferred stock, your name was at the bottom of that letter.

A. Right.

Q. Could you explain that?

A. Yes. I'm glad you asked that, because that's another thing that I feel has gotten confused in the telling. Let me just try to describe what happened there. When in 1985, I believe, -- maybe '86 -- there was an effort made on the part of various financial institutions around the country to increase their capital net worth, they began looking for ways to do that. There was a very bright young associate in our law firm who had a relationship with one of the officers at Madison, a young man whom he had known. They began talking.

And if you'll remember what happened when the S.& L.'s were deregulated, many states were left wholly unprepared: they did not have a regulatory system in place, they didn't even really have good laws. All of a sudden there was no Federal regulation to speak of, and so people were asking state governments whether things could be done.

Those two young men thought that it would be legal under Arkansas law for a savings and loan to issue preferred stock. But there was absolutely no law on that, and so they couldn't be sure. But they decided that what they wanted to do was to ask the person who regulated savings and loans whether it was legal -- not if Madison could do it; that was the second step. The first step was could you even do it in Arkansas, whether you were A, B or C, not just Madison.

When they talked about doing that, the young attorney in question needed a partner to serve as his backstop, and that was one of the rules we had in our firm. He knew that I knew Jim MacDougal. He also knew that Jim had been a client of our firm in the past. This was not a new representation.

So he came to me and asked me if I would talk with Jim to see whether or not Jim would let the lawyer and the officer go forward on this project. I did that, and I arranged that the firm would be paid a $2,000-a-month retainer. And that was ordinary and customary. That would be billed against, unlike retainers of some really big law firms that if you pay the retainer they keep it, no matter whether they do any work for you. This was really an advance against billing. That was arranged.

The young attorney, the young bank officer did all the work, and the letter

FOIA #56806 (URTS 16304) DocId: 70104986 Page 62

was sent. But because I was what we called the billing attorney -- in other words, I had to send the bill to get the payment made -- my name was put on the bottom of the letter. It was not an area that I practiced in, it was not an area that I really know anything, to speak of, about.

At that point, the regulatory authorities -- namely, Beverly Bassett Schaffer -- answered the legal question. And the legal question was: Yes, it is permissible under Arkansas law to issue this preferred stock. Then the question moved on to the second phase, in which I had no involvement that I have any memory of, or anyone that I've talked with. That was trying to determine whether Madison could go forward.

And I think that the Securities Commissioner acted absolutely appropriately. She answered the legal question: Yes, it is legal to do this. But as to Madison, she laid out conditions that had to be met for Madison to do it. And Madison could never meet those conditions, and so they never issued preferred stock. So the legal question was answered, but Madison got no benefit at all from the answer of that legal question.

Q. Can you clarify for us what documents were removed from Vince Foster's office after he died, and why they were there in the first place?

A. I can tell you what I know, which is I did not know Vince had any of the documents related to our personal business in his office until after his death. What I believe he was doing with them was serving as a coordinator among our private lawyers and accountants and certain government officials, like the Office of Government Ethics, with respect primarily to our blind trust. Because there were all these questions that had to be answered and he was kind of the, you know, the coordinator. The private lawyers would talk to him; the Office of Government Ethics people would talk to him. I think that's why he had any documents of a personal nature in his office at the time of his death.

Q. Why did your chief of staff, Maggie Williams -- why was she involved at all to remove these documents from his office within a day of his death?

A. I don't think that she did remove any documents. I think that what happened is that after Mr. Nussbaum reviewed the documents, and after he did so -- as I recall; I was not here, I was in Arkansas -- but I believe that was done in the presence of officials from the park police and maybe some other agencies. Then Mr. Nussbaum distributed the files according to whom he thought should have them. There were files related to ongoing work in the counsel's office that needed to be passed on to other lawyers, there were personal files of Vincent's that needed to go to his family, and there were these personal files of ours that went to our lawyers.

Q. Another question about this re-zoning of private and public lives: I'm wondering what kind of a toll, if any, this has taken on you, on your and the President's personal and political lives. And do you ever look in the mirror and wish that you'd just never got into this?

A. No, never. Never. I mean, some days are better than other days, but, you know, I think what has helped me in the last couple of weeks -- aside from some good friends who have talked with me and helped me get re-zoned, if you will -- is my belief that this is really a result of our inexperience in Washington, if you will; that I really did not fully understand everything that I wish now I

LEXIS·NEXIS LEXIS·NEXIS LEXIS·NEXIS
Services of Mead Data Central, Inc.

had known. You know, it's a learning experience, sometimes a difficult one but I think one that both the President and I are anxious to do because we think that the reason he was elected was to deal with the big issues that we want the country to deal with. And so it is a little disappointing if we in any way contribute to a diversion from that. That's something I don't want to have happen in the future, and I'm certainly going to try to be more sensitive to what you all need, and what we need to give you, and do it in a more efficient and effective way the first time.

Because, as I said earlier, I feel very confident about how this will all turn out. This is not a long-term problem or issue in any way. But I don't want anybody to have the wrong impressions of either of us, and I don't want anything to interfere with doing what the people of this country need done.

Q. Mr. Clinton has spoken of the politics of personal destruction. Who do you believe are main perpetrators of that?

A. I don't want to get into that. I don't think that that bears any real useful discussion. I think that what's important is for us -- not just the President and me but the entire Administration -- to keep focused on what really will stand the test of history and what we really are trying to do for the country. And I can't really help it if some people get up every day wanting to destroy instead of build, or wanting to undermine. That's something that I try not to think about or dwell on, and try to do what I'm expected to do, which for me is working on health care.

Q. When was your last conversation with Vince Foster, and what was your understanding of the state of his mind?

A. You know, I've thought about that so many times. I don't think I had any conversation with him for at least three weeks before he died because, you know, we left for Tokyo somewhere around the Fourth of July is my best memory. And for about a week before that, I was very preoccupied with getting ready for the trip and doing the things you have to do. So I don't have any memory of having talked to Vince, and I never talked to him during the time that I was gone. And like every one of our friends, you know, we relived everything that happened or didn't happen. The people who talked to him, the people who spent time with him, they question whether they said the right thing, whether they could have done something else. The fact that I didn't talk to him makes me wonder whether if I had called him I could have picked up a clue. I just don't have any way of knowing.

Q. It supposedly had been depression, or so we were told, for a considerable period of time. Were you ever aware of that?

A. No.

Q. Did you have any clue what was going on?

A. No. Neither did people who, you know, spent the weekend with him or saw him in the office that day. You know, one of the things that I've spent a lot of time doing in the last months is trying to educate myself about depression. And my good friend Tipper Gore has been a great help on that, as have the people she's worked with on mental health issues. And I just hope that we get over the

FOIA #56806 (URTS 16304) DocId: 70104986 Page 64

stigma that is still often attached to people admitting they need help or that they can't understand what's happening to them. I have no doubt now, in retrospect -- and many of my friends now can reconstruct conversations or things they saw in Vince in those last weeks, but they didn't know, they didn't understand. And he didn't either feel comfortable or know himself. So maybe out of all of this tragedy and the aftermath, all of the speculation, maybe once we put to rest once and for all the fact that he committed suicide and that it was a tragic loss of one of the best people we've ever known, maybe it can do something to help other people understand what depression can do to you.

Q. Mrs. Clinton, what was your personal reaction when you learned that Jay Stephens would be representing the R.T.C. in a case against Madison?

A.My personal reaction?

Q. About the fairness of that decision by the R.T.C. to hire him.

A. Well, I didn't understand it, you know. But I don't know Mr. Stephens, and I assume he will be a very fair and judicious lawyer. I guess that's what I would expect.

Q. You're not concerned about his being a Republican appointee and a U.S. Attorney appointed by President Bush?

A. Not if he abides by the code of professional ethics and does his job professionally, I'm not, and you all keep an eye on him.

Q. Mrs. Clinton, do you think, with the benefit of hindsight, that it was improper for you and your law firm to represent the Federal Government against a family friend, Dan Lassiter, and against accountants for Madison S.& L. without fully disclosing that you had been business partners with Mr. MacDougal?

A. Well, Ann, I don't know what was disclosed and what wasn't. Those were not my cases. Those were cases that came to the firm to other lawyers. I've been told that things were disclosed quite extensively. And certainly in Arkansas, most things are known. And the relationship with Mr. MacDougal, the fact that Mr. Lassiter made campaign contributions to my husband, was certainly well-known. In both of those instances, I don't think I had anything to do at all with the representation against Madison on behalf of the Federal Government. At least I have absolutely no memory of having done anything on that case.

With respect to the Lassiter case: I think out of that entire case I worked two hours, as a favor to one of the lawyers who was out of town who asked me to review a pleading. And I have specifically inquired whether there was any ethical conflict with respect to that and have been assured there was not. He was not a client that we had any obligation to. Thousands and thousands of people contributed to my husband. That is not considered disqualification. We were not personal friends or social friends. So I don't see any basis for saying that my work for him, as limited -- or against him -- as limited as it was, amounted to any kind of conflict.

Q. It's not just the press that has questions -- sometimes the American citizens who talk to your husband at town meetings and all. And one young woman in Charlotte asked him a question I'd like to pose to you. She said that in the recent news reports about the First Lady's cattle futures earnings, and with all

LEXIS·NEXIS LEXIS·NEXIS LEXIS·NEXIS
Services of Mead Data Central, Inc.

these Whitewater allegations, many of us Americans are having a hard time with your credibility. How can you earn our trust back? Is there a fundamental distrust of the Clintons in America?

A. Well I hope not. I mean, that would be something that I would regret very much. I do think that we are transition figures, if you will. We don't fit easily into a lot of our pre-existing categories. And let me speak just about myself. You know, I came to this role having worked my entire life. I mean, I started working in the summers when I was 13. I always worked. I worked through college. I worked through law school. That's what I did. And after I married, I continued to work. And after my daughter was born, with the exception of the four months I took off for maternity leave, I worked. Now, I took time off from work to do volunteer work, like I took long time off from my law firm work to work on education reform, or I would take time off to work on my husband's campaigns, or I would be in Washington on the Children's Defense Fund. I would certainly take a lot of time, but I was fundamentally working.

And I think that having been independent, having made decisions, it's a little difficult for us as a country maybe to make the transition of having a woman like many of the women in this room, sitting in this house. So I think that the standards -- and to some extent, the expectations and the demands -- have changed. And I'm trying to find my way through it and trying to figure out how best to be true to myself and how to fulfill my responsibilities to my husband and my daughter and the country. So I do think that there is some of that.

And then additionally, as I have said earlier, I think that my fundamental belief in privacy and my feeling that we were being asked things and demands were being placed on us that had never been demanded of prior inhabitants of this house -- unprecedented, in Arthur Schlesinger's words -- didn't make sense to me. I couldn't quite figure it out, and I resisted that. And I think I resisted it in ways that may have raised more questions than they answered. And I just don't think that was a very useful road for me to go down, and I'm trying now to better understand how to fit my personal needs and my own personal beliefs and what I want to do with this role for the country and the contribution I want to make into a broader context so that I can be as forthcoming and accessible as you need me to be.

GRAPHIC: Photos: Hillary Rodham Clinton gave the White House counsel Lloyd N. Cutler a kiss yesterday after her White House news conference. With her was her press secretary, Lisa Caputo. John D. Podesta, the White House staff secretary, left, also greeted the First Lady. (Paul Hosefros/The New York Times) (pg. 12); Hillary Rodham Clinton taking questions from reporters yesterday at a White House news conference at which she sought to offer an explanation of her financial dealings. (Reuters) (pg. 11)

LANGUAGE: ENGLISH

LOAD-DATE-MDC: April 23, 1994

LEXIS®·NEXIS® LEXIS®·NEXIS® LEXIS®·NEXIS®
Services of Mead Data Central, Inc.

FOIA #56806 (URTS 16304) DocId: 70104986 Page 66

13

53RD STORY of Level 1 printed in FULL format.

Copyright 1994 The Washington Post
The Washington Post

April 23, 1994, Saturday, Final Edition

SECTION: FIRST SECTION; PAGE A11

LENGTH: 1014 words

HEADLINE: First Lady's Explanations Yield Little Information

SERIES: Occasional

BYLINE: Sue Schmidt, Charles R. Babcock, Washington Post Staff Writers

BODY:

First Lady Hillary Rodham Clinton provided little new information about the Clinton's finances yesterday, sidestepping direct responses to some questions and saying she did not know the answer to others.

She said she did not know about the Whitewater **documents that were removed** from White House deputy counsel Vincent **Foster's office** after his suicide last July; said she could not explain how she was able to make a $ 5,300 profit in her first day as a trader in the volatile cattle futures market; and professed ignorance about how the unsuccessful Whitewater land venture was able to pay off its bank debts in the 1980s.

The White House has changed its explanations of the Clintons' finances repeatedly, she said, because "until relatively recently there wasn't any one person in charge of trying to get everything together and get, you know, information as accurate as possible."

Over recent weeks the White House has revised several times its explanation of Clinton's commodities trading in 1978 and 1979.

For the first time, Clinton gave her version of how she got into the commodities markets on the advice of friend James B. Blair, counsel to Arkansas' largest employer, Tyson Foods Inc. She discussed how, with his help, she turned a $ 1,000 investment into nearly $ 100,000 in 10 months. She said Blair told her " 'I think there's going to be a great opportunity to make money' " in the cattle market and urged her to open an account.

She said that living in northwest Arkansas at the time, she was "familiar with a lot of ranchers and people in the cattle industry." Clinton said, though, she relied primarily on Blair's advice on when and how to trade and that Blair frequently placed her trades because he was often in the broker's **offices.**

She said she did not believe she received favorable treatment from the broker, Refco, but said she could not find the records of her first trades, when the $ 1,000 grew to $ 6,300 in one day. Futures experts have said this would have been impossible because $ 1,000 would control only one contract and the most that could have been made on one contract on that day was $ 600.

LEXIS·NEXIS LEXIS·NEXIS LEXIS·NEXIS
Services of Mead Data Central, Inc.

No one from Refco ever called and asked her for more money, she said, as was required if prices changed and her contracts were valued at less than she had in her account. "Nobody ever called and asked me for anything, they just, I guess, took the money I had in the account and closed out the position," she said.

But, at least once in July 1979, prices had moved so far in the opposite direction she was betting that her account did not have enough money in it for the broker to close out her position.

Clinton said she has belatedly come to realize her desire for privacy is not paramount, and the public has a right to know certain information about her family's finances.

Recently, the White House released 1978 and 1979 tax returns that show $ 100,000 in profits from the commodities trading, records the Clintons have for years insisted were private. To rebut speculation that Hillary Clinton got a sweetheart deal from Blair and had no money of her own at stake, the White House released the trading records.

But to date, the White House has steadfastly refused to release any of the thousands of pages of Whitewater records in the Clintons' possession, first citing their right to privacy. More recently, White House officials have said they were asked by special counsel Robert B. Fiske Jr. not to release records publicly. Fiske's **office**, however, said that request has not been made.

Yesterday, Hillary Clinton was not asked why the Clintons have not publicly released copies of some of the thousands of pages of Whitewater records that they have turned over to Fiske under subpoena. She skirted a question about White House counsel Bernard Nussbaum's removal of a Whitewater file from **Foster's office** after his death, and why the **office** was not immediately sealed.

"I know there has been a lot of concern and criticism about that," said said, adding that she assumed Fiske's report on **Foster's** death will put questions to rest. She said he would have had Whitewater records because he was acting as a "coordinator" between the Clintons' personal lawyers and government ethics officers in creating their blind trust.

Clinton was asked what her aides told her about meetings last fall between White House officials and political appointees at the Treasury Department, who had learned the Clintons were being named by regulators in Justice Department criminal referrals on McDougal's failed savings and loan, Madison Guaranty Savings & Loan. She said she was told nothing and knows nothing about their recent grand jury testimony on the subject.

She also said she knows nothing about the key allegations in the criminal referrals -- that Madison funds may have been improperly diverted to her husband's 1985 gubernatorial campaign to repay a bank debt and to Whitewater's checking account.

Responding to a question about the fact that the McDougals, the Clintons' 50-50 partners in Whitewater, put more money in than they did and lost more money on it, Clinton stressed that she and her husband were "100 percent liable"

as were the McDougals on Whitewater's more than $ 200,000 of bank debt.

She denied the McDougal's disproportionate contribution constituted a gift, but had no explanation about why the McDougals lost more than the Clintons. "I can't answer that," she said. "I mean we gave whatever money we were requested to give by Jim McDougal. We saw no records. We saw no **documents.**

"He was someone that my husband had known a very long time. He was someone who had been in real estate business with many people we knew, including Senator [J.W.] Fulbright, and we just assumed that whatever he needed, he would ask for."

One questioner cited a government investigator's recent memo suggesting the Clintons should have known that McDougal was paying off Whitewater's bank debt because the venture was not bringing in enough money from land sales.

"Well, shoulda, coulda, woulda, we didn't," Clinton said.

LANGUAGE: ENGLISH

LOAD-DATE-MDC: April 22, 1994

LEXIS®·NEXIS® LEXIS®·NEXIS® LEXIS®·NEXIS®
Services of Mead Data Central, Inc.

14

Citation	Rank(R)	Database	Mode
8/3/94 WSJ A12 8/3/94 Wall St. J. A12 1994 WL-WSJ 337784	R 3 OF 4	WSJ	Page

The Wall Street Journal
Copyright (c) 1994, Dow Jones & Co., Inc.

Wednesday, August 3, 1994

Politics & Policy

Altman Apologizes for Not Being 'Forthcoming' On Whitewater, Puts Some Blame on Hanson

By Ellen Joan Pollock and Jackie Calmes
Staff Reporters of The Wall Street Journal

WASHINGTON -- Deputy Treasury Secretary Roger Altman, fighting to protect his reputation and his job, apologized to the Senate Banking Committee for not being "as forthcoming as I should have been."

Mr. Altman, under pressure from Republican lawmakers to resign, pinned some of the blame on Treasury General Counsel Jean Hanson and stoutly defended his briefing of White House officials about the Resolution Trust Corp.'s investigation of Madison Guaranty Savings & Loan, the Arkansas thrift at the heart of the Whitewater affair.

The hot topic at yesterday's hearings was whether Mr. Altman had told the truth when he testified about contacts between Treasury and White House officials Feb. 24. Questions about the veracity of Mr. Altman's prior testimony have become so central to these hearings that when he swore to tell the truth at the outset of his testimony yesterday, some audience members tittered.

Once the hearing began, both Democratic and Republican senators confronted Mr. Altman with discrepancies between his account of contacts between Treasury and White House officials and those of other witnesses. "In order to believe you, we have to disbelieve other people who have sworn under oath," said Sen. Robert Bennett (R., Utah). Sen. Phil Gramm (R., Texas) described Mr. Altman's account as "totally unbelieveable." Mr. Altman was unflappable and stuck to his version. "I did not lie to Congress," he said.

Mr. Altman even presented a videotape of the Feb. 24 hearing, showing himself conferring with Ms. Hanson, to prove that he had done his best to answer completely. The hearings at some points bogged down in hair-splitting, as Mr. Altman debated what constituted a "substantial contact," and whether he had "gracefully ducked" the senators' question at the earlier hearing, as Treasury aide Joshua Steiner suggested in his diary.

Mr. Altman conceded that "I may have heard or understood questions in

Copr. (C) West 1994 No claim to orig. U.S. govt. works

a way that was not intended by the senator asking questions" last February. But for the most part, he was on the offensive. He even challenged the senators to requestion White House aide Harold Ickes, who has testified that Mr. Altman told former White House Counsel Bernard Nussbaum and others that the RTC wouldn't be prepared to decide on whether to sue Madison by a statutory deadline. Mr. Altman suggested that Mr. Ickes would change his account.

Everything about Mr. Altman's appearance was orchestrated to give the appearance of confidence. Seated behind him, next to his wife, Jurate Kazickas, was B.A. Bentsen, the wife of Treasury Secretary Lloyd Bentsen, who is well-known to the senators who once served with her husband. And at the White House yesterday, a spokeswoman reiterated President Clinton's support for Mr. Altman and said he "hopes that he'll stay on."

Repeatedly, the senators went back to Mr. Altman's Feb. 24 testimony. Mr. Altman had said that he had one "substantive" contact, on Feb. 2, with White House officials, and that he only discussed statute-of-limitation issues. Sen. Gramm reminded Mr. Altman that when he was asked whether other meetings had taken place, he said no, excluding possible encounters in hallways. In fact, Mr. Altman, who was acting RTC chief at the time, had discussed the question of whether to recuse himself from Madison-related matters at the Feb. 2 meeting and again at a meeting with White House officials Feb. 3. He paged Ms. Hanson electronically to summon her to the second meeting.

"We now know that there were over 40 contacts that we have verified," Sen. Gramm admonished him. "We now know that you made four of those contacts you were involved in yourself. We now know that the sole subject matter was not the statute of limitation."

Defending himself, Mr. Altman said he didn't think he was being asked about recusal at the Feb. 24 meeting. "Recusal had nothing to do whatsoever with the RTC investigation of Madison," he insisted.

Sen. Alfonse D'Amato (R., N.Y.) snapped, "To suggest recusal has nothing to do with Madison and Whitewater is a figment of someone's imagination."

Mr. Altman also defended himself by insisting he had relied on Ms. Hanson, who endured about seven hours of hostile questioning from the committee Monday, to help him prepare his testimony and refresh his recollection as he answered senators' questions Feb. 24. When asked how White House officials had found out about criminal referrals involving Madison, Mr. Altman said they hadn't learned about it from the RTC. In fact, Ms. Hanson had discussed the referrals with White House aides at two meetings the previous fall.

To prove his point that he'd counted on Ms. Hanson for help in

Copr. (C) West 1994 No claim to orig. U.S. govt. works

answering, Mr. Altman said that after he was asked the question, "I turned to her and she confirmed my answer." He said that a videotape of his Feb. 24 testimony would prove his point. The tape showed Mr. Altman, after he said White House aides hadn't found out about the referrals from RTC officials, leaning back to confer with Ms. Hanson, who shook her head no. As the senators waited for the next video, one of them said into an open microphone, "He's going to try to lay it on her."

During the hearings, much has been made of Mr. Nussbaum's efforts to persuade Mr. Altman not to recuse himself from the Madison case. In his now infamous diary, Mr. Steiner said that although Treasury officials thought Mr. Altman should recuse himself, the White House staff told him that decision was "unacceptable." He marveled that at the Feb. 24 hearing, the subject of recusal "amazingly did not come up," and that Mr. Altman "gracefully ducked" the question about whether his staff has engaged in more than one discussion with the White House.

When Mr. Steiner testified yesterday morning, he tried to distance himself from his diary, saying that it was "never intended to be a precise narrative." But the senators tried to hold him to it as they complained that Mr. Altman hadn't been forthright on Feb. 24. "Make a distinction between 'ducking' and lying," Sen. Lauch Faircloth (R., N.C.) told Mr. Steiner.

Separately, the White House said there was a five-day delay between the time that a Whitewater-related file was removed from Vincent Foster's office after his death in July 1993 and handed over to the Clintons' personal attorney.

Margaret Williams, the chief of staff for Hillary Rodham Clinton, was handed the file by Mr. Nussbaum and it was stored in the White House residence for five days until it was given to the lawyer. Ms. Williams, officials said, checked with Mrs. Clinton before storing the documents in a locked closet.

Dee Dee Myers, the president's press secretary, yesterday called the episode "a mistake," and said White House spokesmen weren't aware of the delay when they told reporters that the documents were taken from Mr. Foster's office and given to the lawyer.

---- INDEX REFERENCES ----

MARKET SECTOR: FINANCIAL (FIN)

INDUSTRY: REAL ESTATE INVESTMENTS; SAVINGS & LOANS, THRIFTS (REA SAL)

NEWS SUBJECT: LAW & LEGAL ISSUES (LAW)

GOVERNMENT: CONGRESS; EXECUTIVE; RESOLUTION TRUST CORP.; TREASURY

Copr. (C) West 1994 No claim to orig. U.S. govt. works

15

21ST STORY of Level 1 printed in FULL format.

Copyright 1994 The New York Times Company
The New York Times

August 3, 1994, Wednesday, Late Edition - Final

SECTION: Section A; Page 16; Column 5; National Desk

LENGTH: 578 words

HEADLINE: THE **WHITEWATER** AFFAIR: WHITE HOUSE;
New Misstatements Admitted In Handling of **Foster's** Files

BYLINE: By MICHAEL WINES, Special to The New York Times

DATELINE: WASHINGTON, Aug. 2

BODY:

The White House said today that it had given a misleading account for months of how senior officials had disposed of files on President Clinton's **Whitewater** real estate investment that were found in the office of Vincent W. **Foster** Jr. after his suicide a year ago.

It was the third time since December that officials have acknowledged inaccurate or incomplete explanations of how they dealt with papers in Mr. **Foster's** office.

Under questioning by reporters, Mr. Clinton's spokeswoman, Dee Dee Myers, said today that Bernard W. Nussbaum, the former White House counsel who discovered **Whitewater** papers in Mr. **Foster's** office after his death, did not give the papers to the Clinton family's personal lawyer, as officials have said for a year.

Instead, Ms. Myers said, Mr. Nussbaum gave the files to Margaret Williams, the chief of staff to Hillary Rodham Clinton, who put them in a safe in the Clinton residence on the third floor of the White House. Five days later the papers were turned over to the Clintons' family lawyer.

'That Was a Mistake'

Ms. Williams was following the instructions of Mrs. Clinton, who was in Little Rock, Ark., at the time, the White House said. Mrs. Clinton's role in storing the papers was disclosed today in The Washington Post.

Ms. Myers said she had been unaware that the White House's past accounts of the handling of the files were inaccurate.

"I think in hindsight we should have been more clear about exactly what the chain of custody on those **documents** was, and I think that was a mistake," she said.

Ms. Williams was with Mr. Nussbaum, agents of the Federal Bureau of Investigation and members of the National Park Service Police when Mr.

LEXIS·NEXIS LEXIS·NEXIS LEXIS·NEXIS
Services of Mead Data Central, Inc.

Foster's office was searched soon after his death, but questions about her handling of his papers had not been directly answered until today.

The contents of the **Whitewater** papers in Mr. **Foster's** office have not been made public. The **Whitewater** special counsel, Robert B. Fiske Jr., is continuing to examine the White House's handling of those papers and the search of Mr. **Foster's** office.

Turning Over of Files

After Mr. **Foster's** death on July 20, 1993, the White House communications office said that assorted personal papers in his office had been transferred to the Clintons' lawyer. But in December, as the Justice Department opened an inquiry into ties between the **Whitewater** venture and the bankrupt Madison Guaranty Savings and Loan, officials disclosed that the papers given to the lawyer included **Whitewater**-related **documents.**

Days later, the White House said Mr. Clinton was voluntarily turning those papers and other **Whitewater** files over to Justice Department investigators. But not much later, officials conceded that the Justice Department had in fact issued a subpoena for the **documents.** They said Mr. Clinton had been unaware of the department's action when he ordered the papers handed over.

In April, at a White House news conference, Mrs. Clinton was asked why Ms. Williams was "among those who **removed these documents"** from Mr. **Foster's office.**

"I don't think that she did **remove** any **documents,**" Mrs. Clinton replied. "After Mr. Nussbaum reviewed the **documents,** and after he did so, as I recall -- I was not here, I was in Arkansas -- but I believe that that was done in the presence of officials from the Park Police and maybe some other agencies. Then Mr. Nussbaum distributed the files according to whom he thought should have them."

LANGUAGE: ENGLISH

LOAD-DATE-MDC: August 3, 1994

LEXIS·NEXIS LEXIS·NEXIS LEXIS·NEXIS
Services of Mead Data Central, Inc.

16

FOIA #56806 (URTS 16304) DocId: 70104986 Page 78

Citation	Rank(R)	Database	Mode
8/31/94 WSJ A14	R 1 OF 4	WSJ	Page
8/31/94 Wall St. J. A14			
1994 WL-WSJ 342583			

The Wall Street Journal
Copyright (c) 1994, Dow Jones & Co., Inc.

Wednesday, August 31, 1994

Politics & Policy

Former **Madison Aide** Tells Prosecutor He Recalls Clinton Signature on Loan

By Ellen Joan Pollock
Staff Reporter of The Wall Street Journal

LITTLE ROCK, Ark. -- Kenneth Starr, the new Whitewater prosecutor, has inherited plenty of unsolved mysteries from his predecessor. But few are as baffling as the suggestion that Hillary Rodham Clinton may have guaranteed a loan from Madison Guaranty Savings & Loan to Susan McDougal and her husband, Jim McDougal, the owner of the failed thrift.

If the loan guarantee's existence were proved, it might add credence to a potentially damaging allegation that President Clinton improperly pressured an Arkansas businessman into making a federally guaranteed loan to Mrs. McDougal. Mr. Clinton has denied the allegation, and the Clintons' lawyer says that Mrs. Clinton didn't guarantee a loan to the McDougals. More broadly, President and Mrs. Clinton have denied any wrongdoing in connection with their dealings with Madison or Whitewater Development Corp., a failed Arkansas land venture.

Don Denton, a former Madison senior vice president, has told members of the independent counsel's staff that he read through the McDougal loan file in 1986, and that when he looked on the reverse side of a loan document, he saw that it was guaranteed by Mrs. Clinton. Mr. Denton says he doesn't know if the loan documents still exist to support his eight-year-old memory.

Some of Mr. Denton's details are sketchy. For example, he recalls that the loan was for an amount between $100,000 and $300,000 and was made to a McDougal business interest, although he doesn't recall which one. He also admits that at the time he couldn't verify Mrs. Clinton's signature. David Kendall, the Clintons' lawyer, adamantly denies that such a loan ever took place.

But Mr. Denton says he remembers the guarantee by Mrs. Clinton, whose husband was then governor, because whoever documented the loan did not use the form usually used by Madison for guarantees. Also in the file, Mr. Denton recalls, was support material for a federally backed loan Mrs. McDougal received around the same time from David Hale, who has pleaded guilty to defrauding the Small Business Administration and is cooperating with the Whitewater prosecutor.

Copr. (C) West 1994 No claim to orig. U.S. govt. works

Mr. Hale claims that Mr. Clinton pressured him to make a $300,000 loan to Mrs. McDougal in 1986. Mr. Clinton has denied the charge. If Mr. Denton's memory is correct and Mrs. Clinton did guarantee a loan, it would seem plausible that President Clinton might want to make sure that Mrs. McDougal had enough funds to repay the loan guaranteed by his wife.

Rumors of a loan to Mrs. McDougal guaranteed by Mrs. Clinton have circulated in Little Rock for months, although Mr. McDougal remembers no such loan and Mrs. McDougal's lawyer won't comment. But investigators have spent many hours interviewing Mr. Denton about Madison deals.

Mr. Denton can't explain one puzzling aspect of his recollection. He remembers the signature "Hillary Rodham," but Mrs. Clinton added "Clinton" to her name in the early 1980s. That raises questions about whether the signature he remembers seeing is genuine.

Mr. Kendall puts it this way: "Any allegation that Mrs. Clinton guaranteed a loan in 1986 with the signature 'Hillary Rodham' has the unmistakable and clanging ring of falsity."

---- INDEX REFERENCES ----

MARKET SECTOR: FINANCIAL (FIN)

INDUSTRY: REAL ESTATE INVESTMENTS; SAVINGS & LOANS, THRIFTS (REA SAL)

NEWS SUBJECT: LAW & LEGAL ISSUES (LAW)

GOVERNMENT: EXECUTIVE; JUSTICE DEPARTMENT (EXE JUS)

REGION: ARKANSAS; NORTH AMERICA; UNITED STATES (AR NME US)

Word Count: 513
8/31/94 WSJ A14
END OF DOCUMENT

Copr. (C) West 1994 No claim to orig. U.S. govt. works

17

Citation	Rank(R)	Database	Mode
8/31/94 WSJ A14	R 2 OF 4	WSJ	Page
8/31/94 Wall St. J. A14			
1994 WL-WSJ 342586			

The Wall Street Journal
Copyright (c) 1994, Dow Jones & Co., Inc.

Wednesday, August 31, 1994

Politics & Policy

Starr Takes Over Whitewater **Probe** as Decisions Must Be Reached on Batch of Possible Indictments

By Ellen Joan Pollock
Staff Reporter of The Wall Street Journal

LITTLE ROCK, Ark. -- The political thunder clouds are only just beginning to disperse over the appointment of Kenneth Starr as special Whitewater prosecutor. But he already is facing decisions that are likely to send him back into the thick of controversy.

Mr. Starr has assumed control of the Whitewater investigation at a critical moment. Former independent counsel Robert Fiske was expected to decide next month which Whitewater characters, if any, should be charged.

Those decisions now fall to Mr. Starr, who spent last week absorbing the myriad details of the investigation and recruiting new lawyers with prosecutorial experience. If Mr. Starr seeks indictments, the first charges aren't likely to deal directly with the Whitewater real-estate investment by President Clinton and his wife, Hillary Rodham Clinton, nor with Mr. Clinton's campaign finances when he was governor of Arkansas. Indeed, many elements of the wide-ranging investigation centering largely on events before Mr. Clinton was elected president have nothing to do with Mr. and Mrs. Clinton. The president says he did nothing wrong and has repeatedly expressed confidence that the lengthy investigation will prove his innocence.

Nevertheless, if there are charges, they could target some of the Clintons' friends and political associates; the repercussions would be felt as strongly in Washington as they would be here in Arkansas. A decision against seeking indictments would suggest that evidence of wrongdoing is much weaker than some early government investigators -- and many of Mr. Clinton's political opponents -- contend.

On the list of possible targets are two well-known political figures, former associate attorney general Webster Hubbell and Arkansas Gov. Jim Guy Tucker.

Mr. Hubbell is being vigorously pursued by the independent counsel staff because he allegedly charged personal expenses to the Rose Law

Copr. (C) West 1994 No claim to orig. U.S. govt. works

Firm, where he was once a partner with Mrs. Clinton, according to people familiar with the investigation.

Gov. Tucker, who is likely to win an election this November (he was the lieutenant governor before Mr. Clinton became president), borrowed heavily from Madison Guaranty Savings & Loan and a company owned by David Hale that was only supposed to lend to disadvantaged businesses. Some of the loans are believed to have contributed to Madison's failure, and Gov. Tucker was named in a criminal referral from the Resolution Trust Corp. to the Justice Department. Madison's former owner, James McDougal, also has received intense scrutiny from investigators.

Mr. Hubbell was chosen for his top Justice post from the Clintons' circle of close Arkansas friends and any indictment of him would be a deep embarrassment for the White House. Although he resigned in March after his dispute with the Rose firm became public, he since has been invited back to the White House for social occasions.

Mr. Starr is in possession of records indicating that Mr. Hubbell allegedly billed the Rose firm for roughly $100,000 in expenses that he said were business-related but turned out to be personal, according to lawyers involved in the investigation. Mr. Hubbell, they say, used Rose firm checks to pay his credit-card bills. Possible felony charges against him could include mail fraud.

Mr. Starr's staff also has been trying to ascertain whether Mr. Hubbell billed the RTC for personal expenses. If he did, he could also be charged with making false statements to a federal agency. Mr. Hubbell represented the thrift agency in litigation. His attorney declined to comment.

At least two Rose Law Firm partners, including managing partner Ronald Clark, have spoken with the Whitewater prosecutors. Lawyers familiar with the investigation say Mr. Starr has substantial documentary evidence against Mr. Hubbell and that the investigation is likely to be wrapped up by late September.

Mr. Tucker, a Democrat, was never a close ally of Mr. Clinton's in Arkansas, but any legal problems for him would also present a sticky political situation. His opponent in November, Sheffield Nelson, has been one of President Clinton's most vocal critics on Whitewater. During Senate Banking Committee hearings earlier this month, Republicans worked hard to insinuate that the president was in a position to tip off Gov. Tucker to a pending investigation when they met in 1993, after Treasury Department officials told White House aides about the RTC's Madison probe. White House aides have said that President Clinton didn't know that Gov. Tucker was named in a criminal referral.

Copr. (C) West 1994 No claim to orig. U.S. govt. works

Some of Mr. Tucker's business deals resulted in serious losses to Madison and the governor could face charges if those losses can be attributed to malfeasance. Gov. Tucker's loans from Madison and Mr. Hale's firm are being aggressively scrutinized by the independent counsel's office. The RTC's criminal referral, which was transferred to Mr. Fiske, involved a $260,000 loan Gov. Tucker got from Madison to purchase a roughly 35-acre property for a shopping center near a trailer park being developed by Madison. The RTC alleged that about $130,000 was improperly diverted to pay off an unrelated loan the governor had guaranteed at another bank.

Gov. Tucker's lawyer, John Haley, says there was nothing improper about the diversion because Madison itself forwarded the money to the other bank. Gov. Tucker later sold the property to a company he partly owned. After Madison failed, Ikansa, a company set up and owned by Mr. Haley, acquired a $220,000 note for the remaining debt from the RTC on behalf of Gov. Tucker.

But the independent counsel office's interest in Gov. Tucker's business deals goes beyond the scope of that criminal referral. The team is also looking at a $1,050,000 loan from Madison to Castle Sewer & Water, a company partly owned by Gov. Tucker. Castle Sewer used the money to buy a sewer system from Madison, but the loan was written down by half, with the approval of federal regulators, after the company couldn't meet its loan payments.

As of 1987, Castle Sewer was owned by Gov. Tucker, R.D. Randolph, a businessman, and a firm owned by Mr. Hale, who has pleaded guilty to defrauding the Small Business Administration and is cooperating with the Whitewater prosecutor. Gov. Tucker transferred his share to Mr. Randolph. Madison's loans to Castle Sewer haven't been fully repaid, Mr. Haley said.

The investigators have subpoenaed thousands of pages of documents from Gov. Tucker and even from Mr. Haley, who complains that the government has been overzealous in demanding documents. The lawyer has turned over the records of Ikansa and recently was asked to turn over documents for Mikado Leasing, a company he set up that held shares in a cable-TV company the governor owned. The cable companies, which received loans from Mr. Hale, are also being scrutinized by investigators.

The political stakes are also high for Mr. Starr. He is standing firm despite calls for his resignation by those who say his appointment was sponsored by conservatives. But he may bend over backward to avoid the appearance of partisanship when he decides whom to indict. "It's going to be very difficult for him to make any close calls against the president," notes a lawyer familiar with Whitewater. "He'll have to satisfy a higher threshold of proof."

Copr. (C) West 1994 No claim to orig. U.S. govt. works

Mr. Starr, and Mr. Fiske, are mum on the direction of the investigation. How fast Mr. Starr can move will depend to some degree on whether he persuades Mr. Fiske's staff to stay on. Some are expected to leave this fall but are committed to staying until a transition is complete. That, says Starr staffer William Duffy, will minimize "whatever delay there is and I think in a number of situations will avoid a delay."

---- INDEX REFERENCES ----

MARKET SECTOR: FINANCIAL; INDUSTRIAL (FIN IDU)

INDUSTRY: GENERAL INDUSTRIAL & COMMERCIAL SERVICES; REAL ESTATE INVESTMENTS; SAVINGS & LOANS, THRIFTS; ALL INDUSTRIAL & COMMERCIAL SERVICES (ICS REA SAL SVC)

NEWS SUBJECT: LAW & LEGAL ISSUES (LAW)

GOVERNMENT: EXECUTIVE; RESOLUTION TRUST CORP.; STATE GOVERNMENT; TREASURY DEPARTMENT (EXE RTC STE TRE)

REGION: ARKANSAS; NORTH AMERICA; UNITED STATES (AR NME US)

Word Count: 1246
8/31/94 WSJ A14
END OF DOCUMENT

Copr. (C) West 1994 No claim to orig. U.S. govt. works

available after 3:45

Sam Dash

- Fiske filed report
- need to pull copy of it
  ⇓
  required by CFR   28 CFR 600.
  ↓ AG regulation
  ↓ mirrors statute

raises delicate separation of powers issues on Court

(*) Wall St. Journal is asking court to release report that has been filed

"notify ⇓ Starr if release"

KWS has sent nothing to Court

(1) filing a response - NO, except w/ following sentence

(2) beyond appropriate ambit - we are powerless to act in absence of statute passed by Congress

- North app// Poindexter
- Morrison v. Olsen

- Bob said that in North, the Court made interesting comments about

(*) special division in Jan. 1994 → statute

→ informative language

→ under statute

OLC under Reagan

record show

quickly went through it → clearly 6(e) material

→

(*) look at North, In re: Madison Guaranty
(*) pull CFR
(*) Morrison v. Olsen

(2) call Sam Dash
(3) sit down w/ KWS and go over report
(4) KWS call Fiske

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

GIBSON, DUNN & CRUTCHER
LAWYERS
1050 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036-5306
(202) 955-8500
TELEX: 892501 GIBTRASK WSH
FACSIMILE: (202) 467-0539

JAS. A. GIBSON, 1852-1922
W. E. DUNN, 1861-1925
ALBERT CRUTCHER, 1860-1931

LOS ANGELES
333 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071-3197

CENTURY CITY
2029 CENTURY PARK EAST
LOS ANGELES, CALIFORNIA 90067-3026

ORANGE COUNTY
4 PARK PLAZA
IRVINE, CALIFORNIA 92714-8557

SACRAMENTO
400 CAPITOL MALL
SACRAMENTO, CALIFORNIA 95814-4407

SAN DIEGO
750 B STREET
SAN DIEGO, CALIFORNIA 92101-4605

SAN FRANCISCO
ONE MONTGOMERY STREET, TELESIS TOWER
SAN FRANCISCO, CALIFORNIA 94104-4505

SEATTLE
999 THIRD AVENUE
SEATTLE, WASHINGTON 98104-7089

NEW YORK
200 PARK AVENUE
NEW YORK, NEW YORK 10166-0193

DALLAS
1717 MAIN STREET
DALLAS, TEXAS 75201-7390

DENVER
1801 CALIFORNIA STREET
DENVER, COLORADO 80202-2694

BRUSSELS
AVENUE LOUISE 66
B-1050 BRUSSELS, BELGIUM

PARIS
104 AVENUE RAYMOND POINCARÉ
75116 PARIS, FRANCE

LONDON
30/35 PALL MALL
LONDON SW1Y 5LP

HONG KONG
8 CONNAUGHT PLACE
HONG KONG

TOKYO
TORANOMON 3-CHOME ANNEX BLDG.
3-7-12 TORANOMON, MINATO-KU
TOKYO 105, JAPAN

AFFILIATED SAUDI ARABIA OFFICE
JARIR PLAZA, OLAYA STREET
P.O. BOX 15870
RIYADH 11454, SAUDI ARABIA

WRITER'S DIRECT DIAL NUMBER
(202) 955-8668

November 15, 1994

OUR FILE NUMBER
T 22170-00094

VIA HAND DELIVERY

Mr. Ron Garvin, Clerk
United States Court of Appeals
for the District of Columbia Circuit
333 Constitution Avenue, N.W.
Room 5409
Washington, D.C. 20001

Re: *In re Madison Guaranty Savings & Loan Association*, Div. No. 94-1

Dear Mr. Garvin:

I am enclosing herewith for filing an original and four copies of a redacted, public version of the motion that Dow Jones filed under seal yesterday with the Court. Dow Jones filed that motion under seal only because it referred to material that this Court had ordered to be sealed. The enclosed public version of the motion deletes all references to sealed material and it therefore bears the legend "Public Copy -- Sealed Material Deleted" on the first page. *See* D.C. Circuit Rule 47.1(d)(1).

Thank you for your assistance in this matter.

Very truly yours,

Theodore B. Olson

TBO/sdw
Enclosure

cc: Robert B. Fiske, Esq.
Kenneth W. Starr, Esq.

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Division for the Purpose of
Appointing Independent Counsels

Ethics in Government Act of 1978, As Amended

In re: Madison Guaranty Savings & Loan Association	Division No. 94-1 **(Public Copy -- Sealed Material Deleted)**

MOTION OF DOW JONES & COMPANY, INC.

PRELIMINARY STATEMENT

Dow Jones & Company, Inc., publisher of *The Wall Street Journal*, hereby moves this Court to reconsider its

[1]

1

[Footnote continued on next page]

Dow Jones' motion was based on information it had received that Mr. Fiske had filed a report with the Court concerning his investigation of the "Whitewater" controversy involving President and Mrs. Clinton and many of their highest ranking aides and advisers. The motion explained that the First Amendment and principles of common law concerning access to judicial proceedings and filings required the Court to lift its seal from the report immediately.

While Dow Jones believes that both Mr. Fiske and Kenneth W. Starr, the independent counsel appointed by this Court under 28 U.S.C. § 593 to investigate Whitewater, may have filed responses to Dow Jones' motion, neither Mr. Starr nor Mr. Fiske would confirm the fact of any such responsive pleadings to Dow Jones and any such responses that may have been communicated to the Court were not served on Dow Jones. *See* Declaration of Theodore J. Boutrous, Jr., ("Boutrous Decl."), ¶¶ 3-5, attached hereto as Appendix A.

[Footnote continued from previous page]

FOIA #56806 (URTS 16304) DocId: 70104986 Page 108

The Court should afford Dow Jones access to the Fiske report -- or to such portions of the Fiske report that may be unsealed without demonstrable, serious injury to the rights of individuals. As shown below, this Court unquestionably possesses the power to grant public access to the report. Even if the Court determines not to unseal the full report, the common-law and First Amendment rights of access to judicial records require the Court at least to confirm the existence of the report and, if it exists, to issue specific and detailed findings explaining why the report, or any portion thereof, must remain secret. And these same principles, as well as due process, require that all responses to Dow Jones' motion for access to the Fiske report be disclosed to Dow Jones immediately.

FOIA #56806 (URTS 16304) DocId: 70104986 Page 109

ARGUMENT

I

THIS COURT IS EMPOWERED TO GRANT PUBLIC ACCESS TO THE FISKE REPORT

This matter concerns a request by Dow Jones for access to a document that apparently has been filed with this Court that is of extraordinary public interest and importance. Mr. Fiske's Whitewater inquiry concerned allegations relating to the President, the First Lady and other high-ranking Executive Branch officials, and there is an obvious public interest in Mr. Fiske's conclusions and analysis of the facts surrounding the Whitewater controversy. It is possible that Mr. Fiske's report may include discussion of other issues, such as whether Mr. Fiske's investigation was, as Attorney General Reno said it would be, truly conducted independent from, and without interference by, other Justice Department or Executive Branch officials. It is also possible that Mr. Fiske may have included discussion, and perhaps criticism, of other aspects of the process which led to his appointment and then resulted in his termination when this Court appointed Mr. Starr under the Ethics in Government Act. Such speculation is both inevitable and antithetical to the public interest as long as this Court shields the report from access by the public.

FOIA #56806 (URTS 16304) DocId: 70104986 Page 110

The Court does not need permission from the Executive Branch, however, to keep the courthouse door open to the public.

Indeed, records of judicial proceedings and documents filed with courts are presumptively open to the public, and only a strong, affirmative showing in an adversarial proceeding would permit the Court to close off the public from access to its judiciary. This strong presumption is deeply rooted in both the common law and the First Amendment. *E.g., Press-Enterprise Co.* v. *Superior Court*, 464 U.S. 501, 510 (1984) (First Amendment establishes "presumption of openness" of judicial proceedings that can only be overcome by demonstration of "an overriding interest based on findings that closure is essential to preserve higher values"); *Globe Newspaper Co.* v. *Superior Court*, 457 U.S. 596, 606-07 (1982) (where Government "attempts to deny the right of access in order to prohibit disclosure of sensitive information, it must be shown that the denial is necessitated by a compelling governmental interest"); *Nixon* v. *Warner Communications, Inc.*, 435 U.S. 589, 597, 602 (1978) (recognizing that it "is clear that the courts of this country recognize a general right to inspect public records and documents including judicial records and documents," and that there is a "presumption . . . in favor of access to judicial records"); *The Washington Post* v. *Robinson*, 935 F.2d 282, 287 (D.C. Cir. 1991) (The First

FOIA #56806 (URTS 16304) DocId: 70104986 Page 111

Amendment "guarantees the press and the public a general right of access to court proceedings and court documents unless there are compelling reasons why it cannot be observed."); *Johnson* v. *Greater Southeast Community Hospital Corp.*, 951 F.2d 1268, 1277-78 (D.C. Cir. 1991) (common-law creates "strong presumption in favor of public access to judicial proceedings" and party seeking to seal records is obligated "to come forward with specific reasons why the record, or any part thereof, should remain under seal"); *Rushford* v. *New Yorker Magazine*, 846 F.2d 249, 253 (4th Cir. 1988) (common-law presumption of access can only be rebutted by proof that "countervailing interests heavily outweigh the public interests").

This Court therefore needs no affirmative grant of authority from the Executive or Legislative Branches to allow public access to judicial records and files. "'It has long been understood that '[c]ertain implied powers must necessarily result to our Courts of justice from the nature of their institution,' powers 'which cannot be dispensed with in a Court, because they are necessary to the exercise of all others.'" *Chambers* v. *NASCO, Inc.*, 501 U.S. 32, 43 (1991). One such "implied power" is the inherent authority of courts over their own files. "*Every* court has supervisory power over its own records and files . . . ." *Nixon*, 435 U.S. at 598 (emphasis added).

Neither of the other two Branches may exercise power over this Court's determinations regarding access to the Court's files. Unlike the act of appointing independent counsels, which involves the exercise of this Court's power under the

FOIA #56806 (URTS 16304) DocId: 70104986 Page 112

Appointments Clause of Article II of the Constitution, *see generally Morrison* v. *Olson*, 487 U.S. 654, 673-79 (1988), this Court's resolution of a motion seeking access to documents that have been filed with it is a case or controversy that requires the exercise of the Court's Article III "judicial Power." *See In re North*, 16 F.3d 1234, 1244 (D.C. Cir. 1994) (Special Division's decision whether to release final report of Independent Counsel is "a genuine case or controversy between the movants and the Independent Counsel," and therefore "constitute[s] a judicial proceeding"). No Branch is permitted "'to possess directly or indirectly, an overruling influence over the others in the administration of their respective powers." *Mistretta* v. *United States*, 488 U.S. 361, 409 (1989) (*quoting The Federalist* No. 48, at 332 (J. Cooke ed. 1961) (Madison)). Thus, it would raise serious separation-of-powers questions for this Court to cede its inherent judicial power over its own files to the Executive Branch. *Cf. Hayburn's Case*, 2 U.S. (2 Dall.) 408, 411 (1792) ("allowing revision and control" by the Executive Branch of the judgments of Article III courts would be "radically inconsistent with the independence of that judicial power which is vested in the courts").

The Justice Department regulation

28 C.F.R. § 600.1, *et seq.*, neither grants nor withdraws power from this Court. This Court was established for the sole purpose of appointing independent counsels pursuant to the Ethics in Government Act, *see* 28 U.S.C. § 49, and taking other specifically identified actions with respect to such

FOIA #56806 (URTS 16304) DocId: 70104986 Page 113

investigations. 28 U.S.C. § 593 (defining duties of the division of the court). Mr. Fiske was not appointed by this Court, has no responsibility to it, and has no authority to insist that the Court shield from the public any documents he may have lodged with it.

The Justice Department regulation is nothing more than an internal policy articulating criteria and guidelines for the Attorney General to invoke when vesting investigative responsibility in an Attorney General subordinate. While the regulation requires attorneys who conduct investigations pursuant to its terms to file reports with this Court, *id.*, § 600.2(b)(1)-(2), that does not confer jurisdiction on this Court to monitor, supervise or otherwise ensure the accountability of such prosecutors. In fact, the constitutional separation-of-powers doctrine precludes this Court from exercising any such powers. *See, e.g., Morrison*, 487 U.S. at 681 (interpreting independent counsel statute narrowly so as not to "give the Division the power to 'supervise' the independent counsel in the exercise of his or her investigative or prosecutorial authority"); *North*, 16 F.3d at 1239 ("the Supreme Court in *Morrison* carefully construed the [Ethics in Government] Act to place severe limitations on this Court's authority over the Independent Counsel in order to save the constitutionality of the Act"). In this case, of course, this Court does not have any authority over Mr. Fiske because he is, or was, purely a functionary of the Executive Branch and not an appointee of this Court.

FOIA #56806 (URTS 16304) DocId: 70104986 Page 114

The fact that the Justice Department regulation gives *Mr. Fiske* discretion to release his report to the public

is therefore irrelevant to the inquiry whether this Court can or should allow the public to have access to any report that Mr. Fiske has chosen to file with the Court. The Attorney General ordered him to do so for reasons known only to the Attorney General. But that requirement vests this Court with no special jurisdiction to receive, or withhold from the public, such reports. The reports thus must be treated by the Court like any other document lodged with it by an Executive Branch prosecutor (or anyone else), and the public is entitled to access to the report unless Mr. Fiske or Mr. Starr (whose role in this particular dispute is dubious at best) comes forth with affirmative and compelling justifications for keeping the report or any portion of it under seal.[2]

---

[2] Even if the Executive Branch had some power to grant or refrain from granting power to the federal courts to authorize the public to see documents filed in court, the reporting requirement at issue here involves no such restriction. In the statutory context, this Court has declared that the purpose of requiring an independent counsel to file a report is to "'insure the accountability of a special prosecutor.'" *In re Sealed Motion*, 880 F.2d 1367, 1370 (D.C. Cir. 1989) (quoting S. Rep. No. 95-170, 95th Cong., 1st Sess. 5, 70, March 16, 1977). The reporting requirement thus guarantees that, "in most cases, the court, the Congress, the Department of Justice and, ultimately, the public would have access to 'a detailed and official record of the activities of the special prosecutor [independent counsel] which may be reviewed at the appropriate time.'" *In re Sealed Motion*, 880 F.2d at 1370 (quoting S. Rep. 95-170, p. 70-71); *accord In re North*, 16 F.3d 1234, 1238 (D.C. Cir. 1994). Thus, the report is ultimately for the benefit of the public.

[Footnote continued on next page]

FOIA #56806 (URTS 16304) DocId: 70104986 Page 115

Accordingly, this Court possesses ample authority to grant the relief sought by Dow Jones in its motion seeking access to the Fiske report. The Court should therefore grant the public immediate access to the entire report, or at least to those portions of the report that may be disclosed without causing demonstrable, serious injury to the rights of individuals.

II

THE COURT MUST CONFIRM THE EXISTENCE OF THE REPORT AND ARTICULATE SPECIFIC, COMPELLING REASONS BEFORE DENYING PUBLIC ACCESS TO ANY PORTION OF THE REPORT

Even if the Court determines not to permit access to the full report, the Court must at least confirm that such a report has been filed and explain in detail why the Court believes it is necessary to deny access to any portion of the report. The Justice Department independent counsel regulation requires Mr. Fiske to prepare a report and file it with this

---

[Footnote continued from previous page]

Furthermore, as a matter of policy, Justice Department regulations provide: "Because of the vital public interest in open judicial proceedings, the Government has a general overriding affirmative duty to oppose closure. There is . . . a strong presumption against closing proceedings or portions thereof, and the Department of Justice foresees very few cases in which closure would be warranted." 28 C.F.R. § 50.9. This Justice Department policy favoring openness of judicial proceedings is binding on both Mr. Fiske and Mr. Starr. 28 C.F.R. § 600.2(f) ("An Independent Counsel shall, except where not possible, comply with the written or other established policies of the Department of Justice respecting enforcement of the criminal laws."); 28 U.S.C. § 594(f) (same).

FOIA #56806 (URTS 16304) DocId: 70104986 Page 116

Court, and the American people are entitled to know whether Mr. Fiske has complied with this mandate.

Both the common-law and First Amendment also require that the Court narrowly tailor restrictions on public access to the report, and issue specific findings to justify the sealing of any part of the report. Thus, for example, in *Press-Enterprise Co.*, the Supreme Court held that the "presumption of openness" of judicial proceeding can be overcome

> only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest. That interest is to be articulated along with findings specific enough that a reviewing court can determine whether the closure order was properly entered.

464 U.S. at 510. The D.C. Circuit has adopted similar requirements. *See Johnson*, 951 F.2d at 1277-78 (holding that courts must "articulate the precise reasons why" sealing of record is appropriate and ensure that "sealing order is . . . no broader than is necessary to protect those specific interests identified as in need of protection.").

The Court must therefore issue findings explaining the reasons justifying the denial of access to any portion of the report.

FOIA #56806 (URTS 16304) DocId: 70104986 Page 117

III

THE COURT SHOULD AFFORD DOW JONES ACCESS TO ALL RESPONSES TO ITS MOTION

Dow Jones received no response from either Mr. Fiske or Mr. Starr to its motion seeking access to the Fiske report. When counsel for Dow Jones requested service of their respective responses, each refused to comment on that topic, and would not even disclose whether they had filed a response. *See* Boutrous Decl., ¶¶ 3-5. The Court should immediately unseal and provide Dow Jones access to any responses filed by Messrs. Fiske and Starr, the Department of Justice, or any other person or entity.

Dow Jones is entitled to review, and reply to, any responses to its motion. The Federal Rules of Appellate Procedure explicitly require service of *all* papers "at or before the time of filing" on opposing parties to the proceedings, Fed. R. App. P. 25(b), and Justice Department policy generally requires the Government's arguments seeking to limit access to judicial proceedings be "made on the record." 28 C.F.R. § 50.9(c)(4). Moreover, traditional notions of fairness and due process preclude ex parte submissions to a court by a party to a judicial proceeding.

The Due Process Clause strictly limits the use of ex parte proceedings. *See, e.g., United States* v. *James Daniel Good Real Property*, 114 S. Ct. 492 (1993). And due process concerns are heightened where the Government seeks to restrict activity protected by the First Amendment. For example, the Supreme Court observed in *Speiser* v. *Randall*, 357 U.S. 513 (1958):

FOIA #56806 (URTS 16304) DocId: 70104986 Page 118

> [S]ince only considerations of greatest urgency can justify restrictions on speech, and since the validity of a restraint on speech in each case depends on careful analysis of the particular circumstances, the procedures by which the facts of the case are adjudicated are of special importance and the validity of the restraint may turn on the safeguards which they afford.

Id. at 521 (citations omitted).

The Supreme Court has therefore emphasized the particular importance of adversarial proceedings in cases where First Amendment rights are at stake. *See, e.g., Fort Wayne Books, Inc.* v. *Indiana*, 489 U.S. 46, 62-67 (1989) (where RICO violation could only be established "by rebutting the presumption that expressive materials are protected by the First Amendment" adversary proceeding required). Indeed, the requirement that this Court make specific findings of fact in order to keep the Fiske report under seal, *e.g.*, *Press-Enterprise Co.*, 464 U.S. at 510, presupposes that the Court would engage in some sort of adversarial process before adjudicating Dow Jones' common-law and First Amendment access claims.

"[F]airness can rarely be obtained by secret, one-sided determination of facts decisive of rights . . . . No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him *and an opportunity to meet it.*" *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 170 (1951) (Frankfurter, J., concurring), *quoted in James Daniel Good Real Property*, 114 S. Ct. at 502 (emphasis added). Perhaps Messrs. Fiske and Starr attempted to provide this Court with a balanced view of the need for keeping the Fiske report under seal, but they cannot and do

FOIA #56806 (URTS 16304) DocId: 70104986 Page 119

not represent the sole and final word on the interests of the public in this respect. "However impartial a prosecutor may mean to be, he is an advocate, accustomed to stating only one side of the case." *United States* v. *Napue*, 834 F.2d 1311, 1319 (7th Cir. 1987) (quoting *Haller* v. *Robbins*, 409 F.2d 857, 859 (1st Cir. 1969)). "The purpose of an adversary hearing is to ensure the requisite neutrality that must inform all governmental decisionmaking." *James Daniel Good Real Property*, 114 S. Ct. at 502.[3]

It would be highly anomalous and improper to deprive the public of its "precious," "fundamental common law right" to "inspect and copy judicial records," *In re Application of National Broadcasting Co.*, 653 F.2d 609, 613 (D.C. Cir. 1981), or its general First Amendment "right of access to court proceedings and court documents," *The Washington Post Co.* v. *Robinson*, 935 F.2d at 287, in an ex parte proceeding where the Government's arguments are presented to the Court in secret. "Public argument is the norm even, perhaps especially, when the case is about the right to suppress publication of information." *In re Krynicki*, 983 F.2d 74, 76 (7th Cir. 1992) (opinion of Easterbrook, J., on motion to seal appellate briefs). Allowing government officials to make their arguments for closure under seal -- and without even permitting the party seeking access to evaluate and respond

---

[3] Rule 3.5(b) of the D.C. Rules of Professional Conduct provides that "[a] lawyer shall not . . . communicate ex parte with [a judge] except as permitted by law." Dow Jones is aware of no "law" that authorizes litigants to respond ex parte to motions filed with this Court.

FOIA #56806 (URTS 16304) DocId: 70104986 Page 120

to those arguments -- would mock the constitutional and common-law rights of access, which generally serve the purpose of ensuring the integrity of, and public confidence in, the criminal justice system. *See, e.g., National Broadcasting*, 653 F.2d at 612; *Richmond Newspapers, Inc.* v. *Virginia*, 448 U.S. 555, 571-72 (1980) ("To work effectively, it is important that society's criminal process 'satisfy the appearance of justice,' and the appearance of justice can best be provided by allowing people to observe it.").

While Messrs. Starr and Fiske may argue -- indeed, they may have already argued -- that unsealing their responses to Dow Jones' motion for access will risk revealing information from the Fiske report that they contend must remain under seal, *see* 28 C.F.R. § 50.9(c)(4), that kind of sweeping argument -- which could be made in virtually every access case -- cannot override the traditional rules in favor of access and against ex parte adjudication. Nor can such an argument shield the *entire* response from Dow Jones. As Judge Easterbrook observed in *Krynicki*, courts routinely require public briefing and argument in cases involving highly sensitive and even classified information, although sometimes sealing certain portions of the record. Thus,

> [b]riefs in the *Pentagon Papers* case, *New York Times Co.* v. *United States*, 403 U.S. 713, 91 S. Ct. 2140, 29 L.Ed.2d 822 (1971), and the hydrogen bomb plans case, *United States* v. *Progressive, Inc.*, 467 F. Supp. 990, rehearing denied, 486 F. Supp. 5 (W.D. Wis.), appeal dismissed, 610 F.2d 819 (7th Cir. 1979), were available to the press, although sealed appendices discussed in detail the documents for which protection was sought. The Court denied a motion to close part of the oral

FOIA #56806 (URTS 16304) DocId: 70104986 Page 121

> argument in the *Pentagon Papers* case. 403 U.S. 944, 91 S. Ct. 2271, 29 L.Ed.2d 854 (1971). *See also In re United States*, 872 F.2d 472 (D.C. Cir. 1989) (public briefs and opinion in a national security case, although parts of the dissenting opinion were sealed to protect confidences).

983 F.2d at 76; *cf*. D.C. Circuit Rule 47.1(d) (establishing special procedures for filing and service of briefs that require parties to refer to material under seal and requiring the filing of two sets of briefs, including one public set that omits references to sealed material). Even in the rare instance where a court withholds the name of a litigant, that process "does not shield the facts and arguments of the case. The parties present public arguments leading to a public decision." *Krynicki*, 983 F.2d at 76.

In *Krynicki*, Judge Easterbrook rejected the United States' request to file its brief under seal, even though it might have been necessary to discuss grand jury material protected from disclosure under Fed. R. Crim. P. 6(e). Judge Easterbrook concluded, "[a]ny part of the record that must remain secret under Rule 6(e)(2) may be disclosed in sealed appendices to the briefs, but the briefs themselves, including all of the legal argument, belong in the public domain." *Id*. at 77.

CONCLUSION

The Court not only has the authority to release the report filed with it by Mr. Fiske, it has a powerful obligation to do so. It cannot allow itself to become a repository of

FOIA #56806 (URTS 16304) DocId: 70104986 Page 122

secret Executive Branch reports and a forum for concealed, one-sided government advocacy.

Dated: November 15, 1994

Respectfully submitted,

[signature]

Theodore B. Olson
D.C. Bar No. 367456
Theodore J. Boutrous, Jr.
D.C. Bar No. 420440
GIBSON, DUNN & CRUTCHER
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
(202) 955-8500

Attorneys for Dow Jones & Company, Inc.

Of Counsel:

Robert D. Sack
GIBSON, DUNN & CRUTCHER
200 Park Avenue
New York, NY 10166-0193
(212) 351-4000

Stuart D. Karle
DOW JONES & COMPANY, INC.
200 Liberty Street
New York, NY 10281
(212) 416-2164

WL943180.051/1+

FOIA #56806 (URTS 16304) DocId: 70104986 Page 123

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Division for the Purpose of
Appointing Independent Counsels

Ethics in Government Act of 1978, As Amended

In re: Madison Guaranty Savings & Loan Association	Division No. 94-1

DECLARATION OF THEODORE J. BOUTROUS, JR.

I, Theodore J. Boutrous, Jr., hereby declare and state as follows:

1. I am an attorney representing Dow Jones & Company, Inc., publisher of *The Wall Street Journal*, in this matter.

2. On October 25, 1994, Dow Jones filed a motion seeking disclosure of and access to a report that apparently has been filed with this Court by former Independent Counsel Robert B. Fiske. In its motion, Dow Jones requested that the Court consider this matter on an expedited basis. Dow Jones hand-served its motion on Independent Counsel Kenneth W. Starr and served Mr. Fiske by facsimile and overnight delivery.

3. Dow Jones never received a response to its motion from either Mr. Fiske or Mr. Starr. On November 2, 1994, I telephoned Brett Kavanaugh, a lawyer in Independent Counsel Starr's office, to ask for the courtesy of hand-service of a copy of any response that Mr. Starr might intend to file. Mr.

Kavanaugh stated that the Independent Counsel's answer to that inquiry would be "no comment." Mr. Kavanaugh also responded "no comment" when I asked whether the Independent Counsel had filed, or intended to file, a response to Dow Jones' motion.

4. On November 3, 1994, I had a similar conversation with Mr. Fiske. I asked him whether he planned to file a response to Dow Jones' motion and, if so, whether he would serve it on me by overnight delivery and facsimile. Mr. Fiske refused to comment on whether he would file a response or whether and how he would serve it on counsel for Dow Jones.

5. As noted above, no response to the Dow Jones motion was served on Dow Jones by either Mr. Fiske or Mr. Starr. Thus, any communications to the Court by them in response to Dow Jones' motion were not only ex parte, but the fact as well as the substance of such communication were secret.

I swear under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge, information and belief.

Dated: November 14, 1994

[signature]
Theodore J. Boutrous, Jr.

FOIA #56806 (URTS 16304) DocId: 70104986 Page 143

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion Of Dow Jones & Company, Inc. For Reconsideration Of The Court's November 3, 1994 Order Denying Access To The Report Of Former Independent Counsel Robert B. Fiske was served this 14th day of November, 1994, by hand delivery to Independent Counsel Kenneth W. Starr, Office of Independent Counsel, 1001 Pennsylvania Avenue, N.W., Suite 490 North, Washington, D.C. 20004, (202) 514-8688; and, by facsimile and overnight delivery to Robert B. Fiske, Esq., Davis, Polk & Wardwell, 450 Lexington Avenue, New York, NY 10017, (212) 450-4000.

Theodore J. Boutrous, Jr.

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

MEETINGS NOVEMBER 1, 1994
WILLIAM E. COLOMBELL & MIGUEL RODRIGUEZ

The following items are needed to assist MIGUEL RODRIGUEZ in his review of FOSTER death investigation:

1. List of all physical evidence obtained from the Park Police.
2. All FD-302s/lab reports regarding weapon used by FOSTER.
3. Wants to speak with lab Tech who lifted fingerprint from weapon. (on Hupp)
4. Pictures of vehicles in parking lot - is the DOODY car depicted.
5. Review 302s of officers at scene re how DOODY's car was parked.
6. Scaled map of park

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

Court Sealed

A

Office of the Independent Counsel

1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, D.C. 20004
(202) 514-8688
Fax (202) 514-8802

September 29, 1995

HAND DELIVERED

The Honorable Janet Reno
Attorney General of the United States
U.S. Department of Justice
10th and Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Re: Jurisdiction of Independent Counsel

Dear Attorney General Reno:

I hereby request that certain matters investigated by the Federal Deposit Insurance Corporation (the "FDIC") and the Resolution Trust Corporation (the "RTC") that are related to the jurisdiction granted to me by the Special Division of the United States Court of Appeals (the "Special Division") pursuant to 28 U.S.C. § 593 be referred to this Office by the Department of Justice pursuant to 28 U.S.C. § 594(e).

Section 594(e) of Title 28 authorizes the Independent Counsel to request you or the Special Division to refer "matters related to the independent counsel's prosecutorial jurisdiction." The Special Division's August 5, 1994 Order appointing me Independent Counsel grants jurisdiction and authority to investigate "whether any individuals or entities have committed a violation of any federal criminal law . . . relating in any way to James B. McDougal's, President William Jefferson Clinton's, or Mrs. Hillary Rodham Clinton's relationships with Madison Guaranty Savings & Loan Assn., Whitewater Development Corp., or Capital Management Services Inc." Paragraph 2 of the August 5 Order grants jurisdiction and authority to investigate "other allegations or evidence of violation of any federal criminal law . . . by any person or entity developed during the independent counsel's investigation referred to above and connected with and arising out of that investigation."

On July 10, 1995, the Acting Inspector General of the FDIC sent this Office a "Referral of Possible Criminal Violations" involving the Rose Law Firm ("Rose"). A copy of the FDIC's referral is attached hereto. Additionally, on July 28, 1995, the FDIC sent this Office a four volume "Report of Investigation" including exhibits, further detailing the results of their investigation. The FDIC referral outlines evidence of possible criminal violations by members of Rose. The violations

Exhibit A

include conflicts of interest by Rose in its representation of the RTC and FDIC and the failure of Rose to disclose relevant information to the FDIC, including Rose's prior representation of Madison Guaranty Savings and Loan ("MGSL"). As stated in the referral, the FDIC sent the referral to this Office because it had "been directed previously by the Justice Department to bring matters related to these violations to the attention of [the Office of the Independent Counsel]." FDIC Referral at 7.

On September 25, 1995, the Assistant Inspector General for Investigation of the RTC sent this Office a referral of possible criminal violations related to Rose's representation of the RTC. A copy of RTC's referral is attached hereto. The referral references a "Report of Investigation" dated August 18, 1995, which details the results of the RTC's investigation and the facts of the allegations as outlined in its referral.

Information related to the FDIC's referral and the RTC's September 25, 1995 referral is also found in RTC criminal referral 730CR0196 ("Referral 196") which was sent to the United States Attorney for the Eastern District of Arkansas on October 8, 1993 and subsequently forwarded to this Office. Hillary Rodham Clinton is noted in the referral as a "witness[] who might have information about the suspected violation." Referral 196 at 14. Referral 196 alleges, inter alia, that James McDougal and others conspired to misappropriate MGSL funds for the purpose of making illegal campaign contributions for the benefit of then-Governor Bill Clinton. In describing the facts of the alleged campaign violations, the referral details Hillary Rodham Clinton's business and professional relationship with McDougal and her representation of MGSL:

> During the April 1985 time frame in which these $12,000 in contributions were made, James B. McDougal and Bill Clinton, along with their wives, Susan H. McDougal and Hillary Rodham Clinton, were business partners in White Water Development, Inc., as previously noted. Also during April 1985, Hillary Clinton, a partner in the Rose Law Firm of Little Rock, was acting as counsel to Madison Guaranty Savings in their representations to the Arkansas Securities Department. Ms. Clinton was soliciting approval for the thrift to authorize and issue a class of preferred stock, which would provide badly needed capital for the thrift.... Other documentation and memoranda obtained from the MGS&L files indicate that this was not the only time that McDougal and/or MGS&L EVP John Latham requested Ms. Clinton's specific legal assistance in addressing sensitive thrift issues (see

attached exhibits), rather than utilizing John Selig of the Mitchell firm, who served as General Counsel to MGS&L.

Referral 196 at 8. In November 1993, the United States Attorney in Little Rock, Paula Casey, recused herself from Referral 196 and other criminal referrals relating to MGSL. All of the RTC referrals relating to MGSL, including Referral 196, were then turned over to the Department of Justice Criminal Division, Fraud Section. These referrals were later forwarded to regulatory Independent Counsel Robert B. Fiske, Jr. and then to this Office.

I have concluded that the matters described in the FDIC and RTC referrals are within the jurisdiction granted to this Office by the Special Division. Accordingly, I specifically request that the matters set forth in the FDIC and RTC referrals be referred to this Office pursuant to 28 U.S.C. § 594(e).

Respectfully yours,

Kenneth W. Starr
Independent Counsel

Enclosures

FDIC

Federal Deposit Insurance Corporation
Washington, D.C. 20429

Office of Inspector General

SENSITIVE INVESTIGATIVE INFORMATION
- FOR OFFICIAL USE ONLY -

July 10, 1995

Kenneth W. Starr
Independent Counsel
Office of the Independent Counsel
Two Financial Center, Suite 134
10825 Financial Center Parkway
Little Rock, Arkansas 72211

Re: Referral of Possible Criminal Violations

Dear Mr. Starr:

The Office of Inspector General (OIG) is investigating allegations related to the retention of the Rose Law Firm (Rose); Little Rock, Arkansas. These allegations relate to the firm's Federal Deposit Insurance Corporation (FDIC) and Federal Savings and Loan Insurance Corporation (FSLIC) contract work on behalf of the Madison Guaranty Savings and Loan Association (Madison), McCrory, Arkansas, Conservatorship and the First American Savings and Loan Association (First American), Oak Brook, Illinois, Conservatorship.

Specifically, we were requested to investigate allegations that Rose did not inform the FDIC that 1) in 1985 the firm had represented Madison before the Arkansas Securities Department; 2) a former Rose partner, Webster L. Hubbell, was the son-in-law of a Madison borrower and consultant who was in litigation with the Madison Conservatorship; and 3) another former Rose partner, Hillary Rodham Clinton, had assisted in litigation on behalf of the First American Conservatorship and that the owner of the defendant corporation in the First American litigation was a personal friend of Mrs. Clinton's family and a contributor to her husband's political campaign for Governor of Arkansas. We also were requested to examine a review conducted by the FDIC Legal Division into the circumstances surrounding the retention of Rose to perform legal work for the Madison Conservatorship. In addition, we completed a review of payments made to Rose by the FDIC for legal services.

Although our investigation found that Mrs. Clinton did bill the FSLIC two hours for work performed in the First American v. Lasater and Company lawsuit, we found no evidence of criminal violations by either her, or Rose, regarding this case. Our review of the FDIC Legal Division's review of the Rose retention also did not reveal evidence of

criminal violations by either Rose attorneys or FDIC officials. The following is a summary of the evidence from our investigation that has provided the OIG with reasonable grounds to believe that the Rose Law Firm, Webster L. Hubbell, or other current or former Rose employees, violated the following criminal statutes:

18 USC Section 4, Misprision of a felony
18 USC Section 287, False, Fictitious or fraudulent claims
18 USC Section 657, Lending, credit and insurance institutions
18 USC Section 1001, False statements generally
18 USC Section 1007, Federal Deposit Insurance Corporation transactions
18 USC Section 1341, Frauds and swindles
18 USC Section 1343, Fraud by wire, radio or television

SUMMARY OF EVIDENCE

No Evidence that the Rose Law Firm Informed the FDIC of its Prior Representation of Madison or of the Hubbell-Ward Relationship

Our investigation has revealed that Rose had represented Madison before the Arkansas Securities Department (ASD) in 1985, but did not inform the FDIC of its prior representation of Madison when hired to represent the Madison Conservatorship. Rose was hired by the FDIC in March 1989 to act as legal counsel for the Madison Conservatorship in a lawsuit brought by Madison against one of its former auditors, Frost & Company, P.A. (Frost). Mr. Hubbell was the Rose partner and principal Rose attorney assigned to the FDIC litigation.

At the time Rose agreed to perform legal work on behalf of the Madison Conservatorship, the FDIC attorney who hired Rose, April Breslaw, was not informed of the firm's prior representation of Madison before the ASD. In sworn testimony to the OIG, Ms. Breslaw stated that she did not become aware of the prior representation until 1993, after Rose had completed its legal work in 1991 for the Madison Conservatorship. In sworn testimony provided by Mr. Hubbell to the OIG, he stated that he conducted a conflict of interest check after Ms. Breslaw asked the firm to take over the Frost litigation. Mr. Hubbell said that after the conflicts check, he informed Ms. Breslaw that Rose did not have a conflict although they had done a small amount of work for Madison. Mr. Hubbell stated that this was a 15 second conversation with Ms. Breslaw and that he did not elaborate on what the earlier Madison work had entailed. He further said that he did not tell Ms. Breslaw that the earlier Madison work had been before the ASD because at the time of the telephone call he was not aware of this representation. Mr. Hubbell stated that he only became aware of the ASD representation after Rose had begun the Frost litigation.

Once Mr. Hubbell became aware of the representation before the ASD, he recalled discussing it with the other Rose attorneys who were assisting him with the Frost litigation. He does not recall discussing this matter with Ms. Breslaw although he said that he could have discussed it. Mr. Hubbell stated that he did not see the prior ASD representation as a significant issue because Rose was representing Madison then and they were representing the Madison Conservatorship in the Frost lawsuit.

Our investigation also revealed that Rose had represented Mr. Hubbell's father-in-law, Seth Ward, a Madison consultant and frequent borrower but did not inform Ms. Breslaw, and that Mr. Hubbell was involved in his father-in-law's lawsuit against the Madison Conservatorship but did not inform the FDIC. Mr. Hubbell stated to the OIG that he informed Ms. Breslaw during a brief telephone conversation that Rose did not have a conflict of interest and could litigate the Frost lawsuit. Mr. Hubbell said he told Ms. Breslaw during that conversation that his father-in-law was a Madison borrower and had a lawsuit against Madison. He further said that he did not think he informed Ms. Breslaw of his father-in-law's name. Additionally, Mr. Hubbell said that he did not put anything concerning his conflicts check in writing because Ms. Breslaw did not ask him to put it in writing.

According to Ms. Breslaw, almost three months after she had engaged Rose to litigate the Frost lawsuit, she learned of the family relationship in a June 8, 1989, letter to her from Paul Jeddeloh, FDIC Managing Attorney for the Madison Conservatorship who expressed concerns relating to Mr. Hubbell's apparent conflict. When Ms. Breslaw learned of this relationship, she contacted Mr. Hubbell who she recalls stated that his family relationship did not constitute a conflict; that Mr. Hubbell and Mr. Ward had different political affiliations and, in general, were not close; and that Mr. Hubbell was not representing Mr. Ward. Mr. Ward had already won a $353,000 judgment against Madison prior to Madison being placed into conservatorship in February 1989, and Madison was appealing this judgment at the time Madison went into conservatorship. After talking with Mr. Hubbell, Ms. Breslaw, without elevating the concerns within FDIC, determined that the relationship did not constitute a conflict of interest, and did not remove Rose as counsel for the lawsuit, but also required Mr. Hubbell to notify the Madison Conservatorship in writing that he had not and would not represent Mr. Ward. Mr. Hubbell, in a June 28, 1989, letter to David Paulson, FDIC Managing Agent for the Madison Conservatorship, stated that he had not, and would not in the future, represent Mr. Ward in any matter related to Madison. Our investigation revealed that Mr. Hubbell did in fact provide legal advice to Mr. Ward related to his litigation against the Madison Conservatorship and did not inform Ms. Breslaw of his business relationship or his financial dealings with Mr. Ward.

Mr. Hubbell stated to the OIG that he recalled Ms. Breslaw contacted him in June 1989 to inform him of concerns raised by some of the Madison Conservatorship employees. He said that the employees were concerned that he was litigating the Frost lawsuit because of his relationship to Mr. Ward and Mr. Ward's on-going lawsuit against Madison.

Mr. Hubbell said that he informed Ms. Breslaw that he was not representing Mr. Ward in that matter and that he would write a letter to the Madison Conservatorship stating that he was not representing Mr. Ward. Mr. Hubbell further stated that in January 1990, at the request of attorneys from the Wright, Lindsey & Jennings law firm, the firm that represented Mr. Ward in his lawsuit against Madison, he agreed to become involved in an agreement between the firm and his father-in-law. Wright, Lindsey & Jennings wanted Mr. Ward to sign an agreement stating that he would be responsible for any final judgment the Resolution Trust Corporation (RTC) may obtain regarding the appeal of Mr. Ward's lawsuit. Mr. Hubbell stated that he did not believe his involvement in this agreement was contrary to his June 1989 letter to Ms. Breslaw because he did not think of this as being involved in the lawsuit, rather, he saw this as a private agreement between Mr. Ward and Wright, Lindsey & Jennings. Mr. Hubbell acknowledged that he did not inform Ms. Breslaw of his involvement in this matter.

The OIG investigation revealed that Mr. Hubbell was part owner and a corporate official, of P.O.M., Incorporated (P.O.M.) a closely held company that was largely owned by Mr. Ward. Mr. Hubbell and his wife owned 5% of P.O.M. stock until October 1989, when they deeded their stock to Seth Ward, II. Mr. Hubbell was the Acting Secretary for P.O.M. from 1981 until 1987, and was considered P.O.M.'s corporate counsel from 1981 through 1992 when he left Rose to become the Associate Attorney General, of the Department of Justice. In addition, the Rose Law Firm, primarily represented by Mr. Hubbell, was retained as legal counsel for P.O.M. during Rose's litigation of the Frost lawsuit. Further, two Madison loans to Mr. Ward for $400,000 and $70,000, were included in the losses giving rise to the Frost litigation which was being handled by Mr. Hubbell for the Madison Conservatorship. Our investigation also revealed that Mr. Hubbell and Mr. Ward participated jointly in personal real estate transactions. Mr. Hubbell was in debt to Mr. Ward for approximately $100,000 during the time he was litigating the Frost lawsuit. Mr. Hubbell confirmed during his interview that none of this information was brought to the FDIC's attention by Rose or him at the time Rose was retained in March 1989. Mr. Hubbell also said that he did not believe he informed Ms. Breslaw that he had agreed to represent P.O.M. in a lawsuit, which was during the same time that he was litigating the Frost lawsuit.

Possible Conflict with Rose Client

Our investigation revealed a possible conflict of interest regarding Rose's representation of Pace Industries, Inc. (Pace) during a labor dispute. Jimmy D. Alford, the former Frost partner who was responsible for the oversight of the Madison audits that were the subject of the Madison Conservatorship's lawsuit against Frost, was a vice president and stockholder of Pace. Mr. Alford was personally named as a defendant in the Frost lawsuit and would have been personally liable if a judgment had been rendered in Madison's favor.

We learned that Pace hired Rose to represent them in a case that was filed before

the National Labor Relations Board. Rose was hired by Pace at approximately the same time as FDIC hired Rose for the Frost lawsuit. Mr. Alford joked with the Rose attorneys who were handling the Pace matter for him, Tim Boe and Jim Birch, that he was being sued by Rose regarding one issue, and represented by them on another. Mr. Hubbell stated to the OIG that he became aware of the Pace representation very late in the Frost case, and thought it was a possible conflict of interest. He said he discussed this issue with the attorneys who were assisting him, Gary Speed and Richard Donovan, but he did not inform Ms. Breslaw. Our investigation revealed that Messrs. Speed and Donovan were aware of the Pace representation one year prior to the settlement of the Frost lawsuit.

Investigation Revealed that Rose was Adverse to FSLIC While Representing the Madison Conservatorship

Our investigation determined that Rose was adverse to a FSLIC receivership, Universal Savings Association, F.A (Universal), Chickasha, Oklahoma, while Rose was representing the government. The Rose Law Firm was representing the defendant in a lawsuit filed by Universal while it was still an open institution. After Universal was placed into receivership, Rose continued to represent the defendant. Mr. Hubbell stated in his sworn testimony to the OIG that he did not inform Ms. Breslaw of this matter when she hired him for the Madison Conservatorship. Mr. Hubbell further stated that it was his understanding that the FDIC and FSLIC treated each receivership or conservatorship as a separate entity and that Rose only had to disclose representation that was adverse to the FDIC or FSLIC in their corporate capacities. However, both FDIC and FSLIC policies indicated that both agencies wanted to be informed of any adverse representation whether it was against the agency in its corporate, receivership or conservatorship capacity.

Rose Law Firm Made False Claims Against the FDIC

In conjunction with our investigation, we conducted a fee bill review of payments to Rose for legal services. The review covered $1,049,930 in payments to Rose related to the Madison Conservatorship and the failures of Corning Bank, Corning, Arkansas; Guaranty Savings and Loan Association, Harrison, Arkansas; and Bohemian Savings and Loan, St. Louis, Missouri. We found no indication of fraudulent billings related to the Guaranty or Bohemian matters.

Mr. Hubbell was the billing attorney on matters related to Madison and Corning Bank. As the billing attorney, Mr. Hubbell was responsible for ensuring that work was performed and billed in accordance with the governing agreements. Our review of Rose invoices found that fees and expenses were not billed in compliance with the terms and provisions of the governing agreements between the FDIC, FSLIC, or the RTC, and Rose.

Our audit staff reviewed all payments made to Rose by the FDIC or the RTC related to Madison and Corning. The audit staff traced all fees from invoices submitted to FDIC

to available supporting documentation including timesheets, prebills, audit trail reports, and Rose cash receipt reports. The audit staff also traced all expenses from invoices to available supporting documentation including original vendor invoices, canceled checks, prebills, and audit trail reports. Finally, the audit staff interviewed Mr. Hubbell and other Rose lawyers and staff related to the firm's billing practices.

As a result of our review, we have identified the following billings by Mr. Hubbell as false claims against the FDIC:

Corning	$29,331	38 entries on 8 different invoices from October 1988 to August 1990
Madison	$13,569	31 entries on 12 different invoices from May 1989 to March 1991
TOTAL	$42,900	

We consider these claims to be false claims because they are unsupported. The claims were made to the FDIC by Rose for charges by Mr. Hubbell relating to law firm checks signed by Mr. Hubbell made out to cash, his credit card company, or himself; travel expenses; and litigation expenses.

Corning payments to Rose were made from funds administered by the FDIC; Madison payments were made from funds administered by the FDIC and the RTC. Therefore, consideration should be given to any duplicate findings that may be reported to you by the RTC. Rose has recently reimbursed the FDIC $23,486.53 related to Mr. Hubbell's false claims, representing $8,121.09 for Madison, and $15,365.44 for Corning. However, the FDIC's acceptance of the firm's payment is not an acknowledgement by the FDIC of the amount or nature of Rose's liability for any claims, and is not a final resolution, settlement, satisfaction, or other disposition of any matter. The FDIC retains its rights to initiate legal actions as it deems appropriate.

In addition, our review also revealed that Mr. Hubbell billed the FDIC for eight depositions that he did not attend in the Madison litigation. We therefore questioned an additional $4,982 in charges. Our review also found that Rose billed the FDIC for two depositions that Gary Speed did not attend; we therefore questioned an additional $875 in fees. Mr. Hubbell's and the firm's false claims against the FDIC, therefore, totaled $48,757 from October 1988 to March 1991.

We interviewed former Rose attorney, Patricia Heritage Hays, who stated that she and others at Rose were aware that Mr. Hubbell was submitting false expenses to the firm related to his contract work for FDIC and RTC. She also stated that she was aware that Mr. Hubbell was fraudulently billing the RTC for hours that he did not work. Specifically,

Ms. Hays stated that she and Susan Murdoch, a Rose paralegal, became aware in the summer of 1992 that Mr. Hubbell was listing fraudulent expenses on RTC draft audit bills. They discovered that Mr. Hubbell would delete the expenses from the final bills, but would allocate other attorney's fees to cover the expenses. Ms. Hays said she informed Jim Birch, a partner in the firm, of the fraudulent expenses when she first learned of them in 1992. Mr. Birch allegedly told Ms. Hays that he discussed this issue with Richard Donovan, another Rose partner, and they had decided to do nothing about the fraudulent expense charges. Ms. Hays stated that she also discovered that Mr. Hubbell was billing the RTC for hours that he did not actually work. Ms. Hays said that she was the Rose attorney who was handling all of the RTC cases from 1992 forward, and that Mr. Hubbell was the billing partner for the matters. She said that she was the attorney who completed the work, but that Mr. Hubbell would also bill for fees when he had spent no time on the cases. Ms. Hays stated that she did not bring the fraudulent fee charges to anyone's attention at Rose because they had decided not to do anything about the fraudulent expense charges. Ms. Hays further said that she did not inform anyone at the RTC about the fraudulent bills.

In conclusion, it appears that Mr. Hubbell, and other Rose attorneys, did not provide to the FDIC relevant information about possible conflicts of interest the firm had regarding the Madison conservatorship. Even when Ms. Breslaw directly asked Mr. Hubbell about his relationship with his father-in-law, he neglected to inform her that he owed Mr. Ward approximately $100,000, and was the outside counsel for and had an ownership interest in P.O.M. Mr. Hubbell also did not inform Ms. Breslaw that one of the Frost partners they were suing also was the part-owner of a company that was a Rose client. Mr. Hubbell wrote to the Madison Conservatorship's managing agent and to Ms. Breslaw and stated he would not become involved with Mr. Ward's dispute with Madison; however, six months later he did provide legal counsel to Mr. Ward regarding the lawsuit. Mr. Hubbell did not inform Ms. Breslaw of this involvement. Other Rose attorneys knew that Mr. Hubbell was fraudulently billing expenses and fees relating to FDIC and RTC matters but did nothing to stop the billings. We have reasonable grounds to believe the above evidence indicates potential violations by the Rose Law Firm, and its employees, of various federal criminal statutes. These violations have resulted in injury to the FDIC and have adversely effected the integrity of the federal banking system. Consequently, we believe it would be in the best interests of the United States for your office to pursue aggressive prosecution of the Rose Law Firm and its employees who defrauded the FDIC.

Section 4(d) of the Inspector General Act requires me to report expeditiously to the Attorney General whenever there are reasonable grounds to believe there has been a violation of Federal criminal law. In the ordinary course of business, the potential criminal violations described herein would have been brought to the attention of the cognizant U.S. Attorney's Office, or the Justice Department. In this instance, we have been directed previously by the Justice Department to bring matters related to these violations to the attention of your office. Therefore, we are bringing these matters to your attention. However, in the event these violations fall outside your jurisdiction and your office declines

to petition the court for jurisdiction, we respectfully request that your office forward this letter to the Attorney General for referral to the appropriate prosecutor's office.

Throughout our investigation, we have kept your office informed of our results. As I am sure you are aware, we have been working closely with Associate Independent Counsel Amy St. Eve, and this letter formalizes our previous discussions and correspondence. Ms. St. Eve has advised us that we may disclose the results of our investigation to FDIC management and the Congress before your office responds to this referral. We expect to issue a final report around the end of July 1995. Should you or Ms. St. Eve have questions regarding this referral or need additional information, please contact Deputy Inspector General Carolyn R. Ryals on (202) 942-3615, or Deputy Counsel to the Inspector General Thomas Coogan on (202) 942-3622.

Sincerely,

James A. Renick
Acting Inspector General

OFFICE OF
INSPECTOR
GENERAL

RESOLUTION TRUST
CORPORATION

Office of Investigation

September 25, 1995

Mr. Kenneth Starr
Office of the Independent Counsel
Two Financial Center, Suite 134
10825 Financial Center Parkway
Little Rock, Arkansas 72211

Dear Mr. Starr:

We forwarded to your office a copy of our Report of Investigation concerning conflicts of interest and the Rose Law Firm by letter dated August 18, 1995. We are requesting that your office review the Report to determine whether there are potential criminal violations within your jurisdiction that may be of interest to your office.

We believe that certifications which were signed by Webster Hubbell, former partner of the Rose Law Firm, and submitted to the RTC to enable the Rose Law Firm to perform legal services may constitute false statements covered by 18 USC 1001. Specifically, when interviewed by RTC agents, Hubbell acknowledged certifications dated May 30, 1991, relating to conflicts of interest with First Federal Savings and Arkansas Federal Savings and Loan were signed by him and were incorrect. Further, he stated that an incorrect certification dated August 6, 1991, relating to Home Federal Savings and Loan was not signed by him, but he authorized his signature on the form. Hubbell also acknowledged that a certification dated August 6, 1991, which bears his signed name and relates to Independence Federal Savings and Loan was incorrect.

Our investigation relating to these institutions can be found in Part IV of our Report. If you believe that further work needs to be done, please let us know.

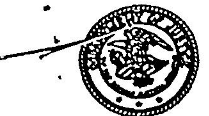
Thank you for reviewing this matter. If you have any questions, please contact me on (703) 908-7860 or Patrick I. Noble at (202) 416-2226.

Sincerely,

Clark W. Blight
Assistant Inspector General
for Investigation

1735 N. Lynn Street ■ Rosslyn, VA 22209

B



U. S. Department of Justice

Criminal Division

Office of the Assistant Attorney General | *Washington, D.C. 20530*

January 17, 1996

The Honorable Kenneth W. Starr
Independent Counsel
Office of Independent Counsel
1001 Pennsylvania Avenue, N.W.
Suite 490 North
Washington, D.C. 20004

Dear Judge Starr:

Thank you for your letter concerning jurisdiction to handle two referrals received by your office concerning the Rose Law Firm. It is our conclusion that these matters are encompassed by the language of your original grant of jurisdiction, and therefore can be properly handled by you. Please do not hesitate to contact me if I can be of any further assistance with respect to this or any other matter.

Sincerely,

John C. Keeney

John C. Keeney
Acting Assistant Attorney General

Exhibit B