

Suzanne Garment

'Give Them the Papers'

To do otherwise invites more trouble.

"So pay the two dollars." That's the punch line in a long, classic joke about a guy who refuses to settle a parking ticket and ends up in front of a firing squad. There is an analogous piece of advice known by anyone who has observed the past 25 years of Washington scandals: Give them the papers.

You say they have no right to the papers? Give them the papers anyway. Is there embarrassing information in the documents? Just give them the papers, and quick.

The Clintonites are politically sophisticated folks. Yet to judge by their handling thus far of the Whitewater scandal, involving a business venture by the First Couple in partnership with failed savings and loan operator James McDougal, administration operatives were absent from class during this lesson. Indeed, their behavior has been so clumsy as to suggest that perhaps the lesson cannot be taught at all.

Our current experience in scandal documents begins, naturally, with Watergate. By the time President Richard Nixon had finished fighting the public battle to keep his Oval Office tapes secret, he had unintentionally made them a symbol powerful enough to destroy him.

True, some people take the opposite view of Nixon's failure, arguing that he, as president, could and should have destroyed the tapes altogether. That complicating option, though, was not open to Nixon's successors in scandal.

Environmental Protection Agency official Rita Lavelle got into big criminal trouble not for conflict-of-interest violations but for altering records of those contacts. When a criminal case, later dropped, removed NASA administrator James Beggs from his agency on the eve of the Challenger launch, the cause lay largely in information that his old company General Dynamics had withheld from government auditors. The independent counsel proved unable to convince a jury of Oliver North's larger crimes but succeeded when it came to destruction of documents.

The experience of recent decades teaches that, innocent or guilty, you will have a hard time keeping information out of the hands of investigators and, ultimately, the public. Moreover, if you fail, you will have bought yourself much more trouble than you were in to begin with.

That being the fairly clear case, how do we explain the Clinton administration and Whitewater?

By the end of the week, the national news media were almost unanimous in giving the White House two on a scale of 10 in its response to the scandal.

The cited mistakes were numerous: not meeting the charges head-on in the 1992 presidential campaign, removing documents from Vincent Foster's office after

removal, keeping the suicide investigation low-level and quiet, not fully cooperating with investigators, finally offering to turn over documents without revealing the existence of a Department of Justice subpoena for them, using the subpoena to avoid public disclosure, and saying the documents had been turned over when they had not.

White House spokespersons say nefarious motives are being ascribed to their innocent mistakes. When Clinton lawyers approached the Justice Department about delivering documents, they did not know about the preparation of the subpoena.

When presidential aide George Stephanopoulos said the papers had been given to investigators, he did not know about the delay.

These explanations are not implausible. Responding to a big political scandal with criminal implications is logistical hell. Records will be found incomplete. Documents will be (aha!) missing. Memories will be (AHA!) contradictory.

The criminal matter—the only part of the scandal, after all, that can put the target in the slammer—has its imperatives. Sometimes delay is necessary, to make sure that the evidence is well understood. But the political and public relations task has its own, usually contradictory, demands. What is happening to those documents, it will be asked, while they are being kept secret?

The higher up the official target, the more people will be involved as handlers; and the more damage controllers there are, the more damage there will be to control.

Thus no matter how many scandal examples we have before us, officials involved in scandals will usually produce enough screw-ups to create some forward scandal momentum of their own.

In the Whitewater case, the administration has now put together a Damage Control Team. So we can expect fewer of these technical mistakes. But it may not be so easy for the scandal commandos to deal with the deeper reasons for ineptitude.

A Washington Post writer asked one of the damage controllers last week whether Clinton should now simply acquiesce in Republican calls for an independent counsel to look into Whitewater. After all, he would probably get one in the end anyway.

That, the official reportedly said, is "a non-starter."

Why this determination to resist the inevitable? Perhaps both Clintons are fully, knowingly guilty as sin and grimly determined to buy time.

That is possible but not likely, at least in its extreme form. However, what about being guilty just a little bit? Or just one of them culpable? What about information in those documents that lets the public in on embarrassing things not related to the Whitewater case? Or facts that are relatively innocent but look so awful that they cannot be successfully explained?

These questions are difficult under any circumstances. When they arise in matters of sex or money, they tap perhaps the two largest modern reservoirs of guilt, confusion and panic. Again and again in recent scandals we see otherwise calculating, competent individuals lose their shrewd judgment and succumb to paralysis when they are dumped head-first into these pits. And the Whitewater case carries an even heavier burden, shadowed as it is by violent death.

All the damage controllers and crisis managers in the world cannot fully save a political figure from these anxieties and their consequences. We need not fear that politicians, learning from the past, will grow so skilled that they spoil the scandal season for us: when the nouns are ready, there will be plenty of nares frightened enough to provide a frantic chase.

The writer is a resident scholar at the American Enterprise Institute and author of "Scandal: The Culture of Mistrust in American Politics."

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An Ever-Growing Paper Trail

Clinton's Whitewater Records Go From Nothing to Volumes

By Howard Schneider and Charles R. Babcock
Washington Post Staff Writers

When the subject of Bill and Hillary Clinton's investment in Whitewater Development Corp. first came up during the 1992 Democratic primary campaign, they said the records were with their co-investors in the land venture, James and Susan McDougal.

No, said the McDougals, the records had been shipped to the Arkansas Governor's Mansion for safekeeping by the Clintons.

A few weeks later, Clinton aides had assembled enough documentation to prepare a "forensic accounting" of the venture and declare it a money-loser for the candidate and his wife.

Last July, a Whitewater file kept by White House deputy counsel Vincent Foster was removed by White House aides immediately after his suicide, and was only recently acknowledged.

MISSING, From A1

and loan owned by the McDougals. The thrift, Madison Guaranty Savings & Loan, failed in 1989 at a cost to taxpayers of \$47 million to \$60 million. Federal thrift investigators have found evidence that money from the savings and loan was diverted to Whitewater and other McDougal companies and listed the Clintons among the possible beneficiaries.

The Clintons have said they were passive investors in the venture and did nothing improper. They said the McDougals were in complete control of Whitewater's operations and recordkeeping.

The release of the Clintons' Whitewater records to the Justice Department is an effort to solve a political problem for the White House. But it is just one step for investigators, who are trying to understand the connections between Whitewater, Madison and other McDougal businesses that have a history of missing, incomplete and, at times, inaccurate records.

According to federal regulators and independent auditors who examined Madison, the books of McDougal's thrift were notoriously inaccurate. Accountants from Peat Marwick Main & Co. who looked at the thrift after McDougal had been removed in 1986 found that during his final years the "underlying documentation for cash disbursements... was often missing or incomplete, and entries recorded in direct violation of regulatory and generally accepted accounting principles."

Judging from the few publicly available land and loan documents, Whitewater exhibited some of the same deficiencies. Recorded land sales, for example, did not always match the true value of transactions to the company.

According to sources, thrift investigators have found checks from Whitewater to McDougal that were characterized as loan repayments, although there was no documentation for the original loans.

Now, what began as a seemingly incomplete archive has turned into a cornucopia of paper as the Clintons prepare to do something they have refused to do for the past 1½ years—assemble their Whitewater material in one place for an independent review. White House aides anticipate that they will send the Justice Department several boxes of material.

The release follows a Justice Department subpoena that the Clintons requested so the documents would be protected by grand jury secrecy rules. In fact, part of the reason the file has grown so voluminous is that the White House not only negotiated the terms of the subpoena with the Justice Department, but actually asked to have it broadened to include campaign documents and other records with no obvious connection to Whitewater.

The department wanted the records as part of its investigation into a failed Little Rock, Ark., savings

See MISSING, A9, Col. 5

Publicly, the Clintons have been reluctant to detail their involvement with McDougal or the Whitewater venture. They are a couple that kept meticulous track of the tax deductions they earned for donating undergarments to charity, but have so far failed to release any

The release of the Clintons' Whitewater records to the Justice Department is an effort to solve a political problem for the White House.

canceled checks, receipts or other records to document the \$68,900 they say they lost in Whitewater. They never claimed that loss on their federal income taxes.

In a two-hour meeting with Washington Post reporters and editors on Dec. 6, presidential adviser Bruce Lindsey said the White House did not want to release any Whitewater records to the news media because it would only raise more questions about the investment.

Others documents have been equally hard to pin down.

Arkansas state election officials said they no longer have records of old Clinton campaigns that might prove pertinent to the federal investigation, which is examining whether Madison funds were diverted to the 1984 Clinton campaign.

Chris Wade, a Realtor who helped set up Whitewater and market its lots, said he still had records from Whitewater real estate transactions. But he said he would only share the records in his possession if one of Clinton's advisers told him it was okay.

A New Opening in North Korea ✓

Encouraging signs emerged this week that the Clinton Administration's diplomacy is having the desired effect on North Korea. The North has agreed to allow the resumption of regular international inspections of all seven of its declared nuclear sites. And it has reportedly canceled the sale of its Rodong missile to Iran. That is a relief to Israel, which would be within range of such a missile.

True, North Korea has not yet agreed to admit inspectors to two suspected but undeclared nuclear sites. But this initial agreement, if carried out, will go a long way toward easing immediate fears about the North's nuclear program. And it has set the stage for a package deal that could put more lasting curbs on proliferation on the Korean Peninsula.

Critics demean the importance of the new agreement, saying that North Korea has just stalled since March, when it announced it was suspending its participation in the Nuclear Nonproliferation Treaty. But the North did nothing to divert more spent nuclear fuel into bomb-making in the interim. To remove such material, it would have had to shut down its reactors. It has not done so, according to U.S. intelligence.

An inspection can verify that, and much more. Inspectors will be on the scene when the fuel rods in one of North Korea's reactors are replaced in the coming months. Their presence would deter any

diversion of nuclear material for use in weapons.

Inspection of the reactor's core could also help determine whether or not such a diversion took place in 1989, before international inspections were instituted. The possibility of such diversion led some intelligence analysts to conclude that the North may have enough nuclear material for as many as two bombs.

Inspections that go beyond these regular visits will be a major subject for future high-level negotiations. Special inspections of the North's two suspected nuclear waste sites and other steps may be needed, for example, to ascertain how much nuclear material, if any, was diverted in 1989.

Those negotiations will take place once North Korea finishes working out the details of regular inspections with the International Atomic Energy Agency and reopens talks with South Korea on establishing a nuclear-free Korean Peninsula.

In preparation for those talks, President Clinton needs to prepare a package of incentives, including diplomatic recognition, military assurances and economic ties, to coax North Korea into opening up still more, in order to assure the world that it is not making nuclear arms.

Nuclear diplomacy is making real headway. It needs a package of incentives, and patience, to give it a chance to succeed.

The Shrinking Speaker ✓

Thomas P. (Tip) O'Neill Jr., dead at 81 this week, was a well-liked Massachusetts Democrat and competent Speaker of the House who memorably remarked, "All politics is local." Yet it is also true that the office of Speaker has shrunk in authority and prestige in part because so many House Democrats have pushed the O'Neill axiom to its logical conclusion. They care more about sentiment in their home districts, as in the NAFTA vote, than about the merits of the argument and the success or failure of a Democratic President.

Fidelity to party mattered far more a century ago, when *The Washington Post* expressed a common view about the Speaker: It was an office "no less consequential than the President." During the 1890's, Thomas Reed of Maine was the unquestioned ruler of the House, "ambitious as Lucifer," as a rival said, who clearly spoke for its Republican majorities. The era of the czars and bosses continued with Joseph Cannon of Illinois, Champ Clark of Missouri, Nicholas Longworth of Ohio and Sam Rayburn of Texas.

But after Rayburn's death in office in 1961, party loyalties have progressively slackened as

House elections have turned into sound-bite blitzes underwritten by special-interest campaign funds. Indeed Tip O'Neill's national reputation owed much to his own independence; he was part New Deal loyalist, part Bay State maverick. In 1967, faithful to the views of many Cambridge voters, he was among the few party leaders to break with Lyndon Johnson and oppose the Vietnam War. In the Nixon years, his dissent stood him in good stead among younger, anti-war House Democrats, who elected him chief whip.

Working with liberals, Mr. O'Neill fought successfully to strip away the autocratic powers long enjoyed by committee chairmen; he was elected Speaker by acclamation in January 1977. Yet in his decade at the dais Mr. O'Neill proved a fickle and lukewarm friend to Jimmy Carter, a Democrat, and an accommodating adversary to Ronald Reagan, a Republican.

True, compared with his successors, Jim Wright and Thomas Foley, Tip O'Neill may seem a titan. But for Bill Clinton, the O'Neill legacy is a weakened Speaker, and a House without a woodshed.

Special Prosecutors: Looking Back 15 Years

Clinton Isn't the First President to Balk at Having His Business Activities Probed

By Walter Pincus
Washington Post Staff Writer

President Clinton is not the first president to balk at having his business affairs investigated and ignore calls for appointment of a special prosecutor.

Almost 15 years ago, a federal grand jury investigation into then-Office of Management and Budget Director Bert Lance's operations of the National Bank of Georgia led to disclosure that President Jimmy Carter's family peanut business had received questionable loans.

It also turned up further allegations that some of the loan money may have been used in Carter's 1976 presidential campaign.

Public concern escalated when the trustee of the president's financial holdings refused to open the warehouse financial records to reporters.

After more than a month of damaging stories about the Carter peanut business and calls by Republicans for a special prosecutor, Attorney General Griffin Bell finally convinced the president that he had to do something.

Up to that point, Carter had balked at appointing anyone because there was no evidence he had anything to do with the mishandling of funds.

Although the law calling for appointment of special prosecutors was on the books, Bell opted for appointment of a prominent former U.S. attorney, Paul J. Curran, as "special counsel" with authority to investigate the matter independently but to bring criminal charges only with the approval of the Justice Department.

That solution brought on such an outcry that Curran was given full prosecutorial power four days later.

Seven months later, after an investigation in which the president was questioned under oath on four different occasions, Curran concluded there was no basis for criminal prosecution. But the 180-page report he made public cited numerous irregularities and was an embarrassment for the Carter family.

Bell did not appoint a special prosecutor even though the Ethics in Government Act had been approved one year earlier. That law and the independent counsel act that succeeded it called for an attorney general to seek appointment of an independent counsel in a situation where a preliminary Justice Department inquiry disclosed a potential violation of federal criminal law by a president, the attorney general or other specified high-ranking government officials.

Clinton's White House counselor, David R. Gergen, stressed that element of the law Friday in arguing that a special prosecutor is not required to investigate Clinton's involvement in the Whitewater Development Corp. and a failed Arkansas thrift, Madison Guaranty Savings & Loan. James McDougal, Madison's former owner and the Clintons' former partner in Whitewater, is under investigation by the Justice Department.

"What triggers the investigation by a special prosecutor," Gergen said on NBC's "Today" program, "is a specific allegation by a credible witness of potential violations of federal law. Now just tell me, who is the witness who's made an allegation? And what is the allegation?"

There are, of course, other triggering mechanisms for a special prosecutor under the independent counsel act and the reauthorization bill that passed the Senate last November but awaits action in the House when Congress returns later this month.

An attorney general, under the past and proposed Senate version of the law, can seek an independent counsel if he or she determines that an investigation into an alleged federal crime committed by someone other than the president or one of his top officials would result in a "personal, financial or political conflict of interest." That provision has been interpreted to focus on conflicts involving the attorney general.

If it were broadened to include the Clinton situation, that would mean any criminal investigation of friends or former business associates of a president or other top government officials could require appointment of a special prosecutor. The potential demand for special prosecutors under such an interpretation would be enormous.

Congress, through the House and Senate Judiciary committees, also has a means of proposing appointment of an independent counsel in a particular matter. Under the old law and the proposed new one, a majority of either the Democratic or Republican members of the Judiciary committees can vote to ask the attorney general to seek a special prosecutor. The attorney general is not required to do so, but must report back within

30 days on whether the request is being met.

In August 1992, Attorney General William P. Barr turned down a House Judiciary Committee request for an independent counsel to investigate allegations that Bush administration officials had been involved in U.S.-insured loans that may have bought arms for Iraq's military. Instead, in October 1992 Barr named a retired federal judge, Frederick B. Lacey, as special counsel in the matter. Lacey determined that no federal crime had been committed, a finding criticized by Democratic House members.

Of the dozen independent counsels appointed in the years since 1978 when they were first authorized by law, three are still operating.

Iran-contra independent counsel Lawrence E. Walsh after seven years no longer has investigative power but awaits public release of his controversial report. His \$36 million investigation ended with 10 convictions, two of which were overturned on appeal. In addition, President George Bush pardoned both former defense secretary Caspar W. Weinberger before his trial was to begin and a top former

CIA official who also had been indicted.

Joseph E. diGenova, appointed in December 1992 to investigate White House officials' alleged involvement in the pre-election search of Clinton's passport files, is completing his investigation and is expected to report shortly.

Arlin M. Adams, appointed in March 1990 to investigate allegations of a conspiracy to defraud the government involving former Housing and Urban Development secretary Samuel R. Pierce Jr., continues his inquiry in which eight individuals have been charged with crimes.

BC-USA-WHTEWATER

GORE BLAMES POLITICAL OPPORTUNISM ON WHITEWATER FUROR

NEW YORK, Jan 9 (Reuter) - Vice President Al Gore said Sunday that the furore surrounding the investigation of President Clinton's involvement in a failed Arkansas business venture was due to political opportunism and was not based on any evidence of wrongdoing.

"There has been no specific allegation of criminal wrongdoing. What there has been is a series of political attacks," Gore told the CBS News broadcast "Face the Nation."

Clinton is being investigated for a number of investments he made during the 1980s. He has agreed to release all his papers relating to the investments.

Congressional Republicans have charged that the White House is controlling the investigation and say Clinton is being given preferential treatment by the Justice Department. The Republicans have asked that a special prosecutor be named to look into the allegations.

"It seems to me that it's political," Gore said.

"The day that President Clinton was burying his mother in Arkansas the opposition was on the airways attacking ferociously even though they acknowledge there is no credible evidence of wrongdoing," Gore said.

The politically sensitive inquiry involves allegations a failed Arkansas bank, Madison Guaranty Savings and Loan, improperly diverted funds to help local politicians, including the 1984 re-election campaign of then-Arkansas Governor Clinton.

Hillary Rodham Clinton, formerly an attorney in Little Rock, Arkansas, represented the bank in the mid-1980s. The Clintons and the bank's owner were further linked as partners in a money-losing real estate venture called Whitewater Development Corp.

No one has publicly made specific charges of illegal behaviour on the part of the Democratic president, who is responding to a subpoena to hand over all his personal papers on Whitewater dealings to Justice Department investigators.

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1986 Audit Cites Arkansas S&L Problems That Are Now Focus of Probe

EDS: Also moving on national wire

By RICHARD KEIL= Associated Press Writer=

WASHINGTON (AP) Nine months after Hillary Rodham Clinton's law firm told state regulators a troubled Arkansas thrift was heading for improvement, federal regulators painted a starkly different picture warning that the institution was teetering near insolvency because of risky land ventures and accounting irregularities, documents show.

A confidential March 1986 audit by the Federal Home Loan Bank Board also warned that Madison Guaranty Savings and Loan funds appeared to have been improperly diverted to projects and associates of the thrift's owner, James McDougal.

Eight years later, that allegation is a key focus of a widening federal probe into the thrift's failure that has now embroiled President and Mrs. Clinton.

Investigators are trying to determine whether the S&L's funds were used in the mid-1980s to pay Clinton's political debts, and whether Madison deposits were diverted to other entities controlled by McDougal, including Whitewater Development Corp., a real estate partnership the Clintons formed with McDougal and his then-wife.

The Clintons have repeatedly said there was nothing improper in their business dealings. And in an interview Friday with The Associated Press, McDougal supported the first family's position, saying the Clintons "in no way benefited" from his activities.

McDougal also emphatically defended his business record, saying Madison's funds were never diverted.

The 1986 audit, obtained by the AP, never mentions the Clintons or Whitewater. But it portrays Madison as financially reckless, rife with conflicts and on the brink of collapse.

"The problems discussed in this report (conflicts of interest, high-risk land developments, poor asset quality, rapid growth, inadequate income and net worth, low liquidity, securities speculation, excessive compensation, and poor records and controls), constitute a significant threat to the continued existence of the Institution," the 78-page report stated.

The tone of the report contrasts with the more reserved, sometimes optimistic assessment the Rose Law Firm had given state regulators a few months earlier.

At the time, Mrs. Clinton, through her firm, had been placed on a \$2,000-a-month retainer by McDougal and was working to get the state to approve a novel stock issue plan to help recapitalize the thrift. Mrs. Clinton wrote a letter to convince state regulators the plan was legal.

Correspondence in the matter suggests Mrs. Clinton's role was limited, with most of the firm's work done by Rose associate Richard N. Massey.

The letters show the firm was aware in 1985 that Madison did not meet federally mandated cash reserve requirements.

But in a June 17, 1985, letter to state regulator Beverly Bassett, Massey suggested improvements were expected.

"The applicant anticipates that no deficiency will exist in the near future," Massey wrote a key assurance since the state required the cash reserve limit be met as a condition for use of the recapitalization plan.

Though approved, the plan was never implemented, because Madison never met those FHLBB requirements.

Other Rose firm correspondence painted Madison in an optimistic light, saying the recapitalization plan would end shortfalls, and arguing that different accounting methods would improve Madison's financial standing.

"Madison anticipates that the proposed activities can only aid in the improvement of its financial condition and services provided to its customers," Massey wrote on July 25, 1985.

No one answered the phone Sunday at Massey's office and there was no

listing for his home.

The Rose firm made no mention to the state of an earlier, 1984 FHLBB audit that warned risky land investments had greatly weakened the thrift.

"The viability of the institution is jeopardized through the institution's current investment and lending practices in real estate development projects," the 1984 audit stated.

The firm also relied on audits by the Frost accounting firm of Little Rock, which had pronounced Madison to be in relatively good financial shape. However, the FHLBB's 1986 report notes that Frost accountant James Alford, who signed the audit, had two loans with Madison, a situation regulators said could have jeopardized his impartiality.

The 1986 FHLBB report offered a grimmer assessment of Madison's prospects, detailing what it said were widespread abuses by the thrift and risky land deals "for which the economic justification is questionable."

The report also alleged McDougal was able to "divert substantial amounts of funds from the projects to himself and others, who are considered to be insiders (relatives of Mr. McDougal, employees, relatives of employees and friends)."

Examiners were unable to probe many additional business ventures, the report said, because of shoddy record-keeping for projects under McDougal's control. The audit also concluded that accounting irregularities were making the thrift's books look better than they really were.

"Correcting entries will adversely affect net worth and result in an insolvent position," it said in a stark assessment.

Despite its perilous position, Madison remained open. McDougal was ousted from his thrift leadership role that year, remaining as owner. The institution failed in 1989 at a cost of \$47 million to taxpayers.

In the interview, McDougal blamed the thrift's failure on his successors and regulators.

"It had a net worth of \$22 million the day I left in July 1986," McDougal insisted.

McDougal also addressed the critical federal audits, saying that the same regulators were approving his plans to improve the thrift.

The current investigation has grown out of "lies and misconceptions these irresponsible scribes are printing," McDougal said.

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Lloyd N. Cutler

Just When We Need It

Congress ought to renew the independent counsel law.

The Post's editorial "Yes to an Independent Counsel" [Jan. 5] urges Attorney General Janet Reno to appoint one now to take over the Justice Department's Madison Bank investigation, because no "Justice Department in any administration can conduct a credible investigation involving a president to whom it is ultimately responsible."

This, of course, is the problem for which the independent counsel statute was designed and passed in 1977. Unfortunately, the statute sunsets every five years. Although it was renewed in 1982 and 1987, the opposition of the Bush administration and the threat of a Republican filibuster blocked the 1992 renewal bill, so we have no independent counsel law today. President Clinton and the Democratic majorities in Congress support its renewal with a number of useful improvements, but the Republicans have continued to prevent its passage.

A statutory independent counsel is selected by a court at the attorney general's request. While Attorney General Reno could herself appoint a "special counsel" with most of the same powers, she is right in saying that anyone she picked would probably be attacked as partial to the incumbent administration. We have only to look at Frederick Lacey, the distinguished former federal judge appointed as special counsel by Attorney General William Barr to investigate the charges that high Bush administration officials had covered up their alleged efforts to help arm Saddam Hussein. William Safire of the New York Times, the most fervent and effective of the coverup accusers, disparaged Judge Lacey as a "friendly lawyer" brought in "as a delaying tactic" to act as "supposedly a special counsel."

In any event, the reason the attorney general is being asked to consider appointing a special counsel herself is that (temporarily, we hope) we have no independent counsel law in effect today. During this hiatus, it makes sense for her to be guided by the standards of the expired law. It calls on the attorney general to request a court-appointed independent counsel only when she determines, after her own preliminary inquiry, that she has information indicating that a "covered" person has violated a federal criminal law and that further investigation is warranted. "Covered" persons are the president, members of the Cabinet, the White House staff and certain other highly placed officials in the current or preceding administration.

I have read most of the newspaper and magazine accounts of the Madison/Whitewater matter, and I have found no information or allegation suggesting that the president (or Mrs. Clinton) may have violated

any federal criminal law. The Post editorial agrees "there has been no credible charge . . . that either the president or Mrs. Clinton did anything wrong."

Of course, whenever a former friend or business colleague of a president or other high official comes under criminal investigation, special care should be taken to ensure public confidence in the integrity of the inquiry. The attorney general and the president appear to have done just that.

Ms. Reno has assigned a career prosecutor who is a former U.S. attorney appointed by a Republican president and who joined the department under President Bush. He will be under the direct supervision of the assistant attorney general in charge of the Criminal Division, the deputy attorney general (a former head of the Criminal Division and Watergate prosecutor) and the attorney general, a career prosecutor who has established her independence and integrity to a greater extent than any predecessor since Nicholas Katzenbach and Edward Levi. The president and Mrs. Clinton have volunteered to turn over all of their documents to the Justice Department and have pledged to cooperate fully in the continuing Madison investigation.

These actions compare favorably with how Attorney General Barr handled the department's investigation of the Silverado Savings Bank in Denver. President Bush's son had been a director of the bank, but was not a "covered" person under the Independent Counsel law, which was then in effect. To ensure the integrity of the department's own investigation, Barr appointed an experienced incumbent U.S. attorney to head it, while retaining normal higher-echelon supervision.

Meanwhile, Congress ought to finish the job of renewing the independent counsel law. The Republicans should have a special incentive for doing so, since the law empowers a majority of the minority members of the judiciary committees to call upon the attorney general to invoke the law, and requires the attorney general either to do so or to report why she declines within 30 days.

There is always a possibility in the department's continuing bank investigation that something might turn up relating to the president or another high official that might call for moving the inquiry outside the department. If that day should come, it would be better for us all if the standards and the tested mechanism of the independent counsel law were back in place.

The writer, a Washington lawyer, was White House counsel in the Carter administration.

AM-McDougal-Whitewater, 640

Former Business Partner Said Friendship Was Getting Expensive
With AM-Clinton-Whitewater,

By JOEL WILLIAMS= Associated Press Writer=

LITTLE ROCK, Ark. (AP) A friend and former partner of President Clinton and Hillary Rodham Clinton in an Arkansas real estate venture says he long sought to buy out their share to take full advantage of tax losses.

Savings and loan owner James McDougal says he tried as early as 1986 to purchase the Clintons' share of the Whitewater Development Corp.

Clinton and his wife were 50-50 partners in the venture with McDougal and his wife at the time, Susan.

McDougal said he sought to purchase the Clintons' share of the investment because he and his wife had suffered a net loss of \$145,000, while the Clintons had lost far less.

At the time, McDougal said he was working on another land deal and wanted to be able to take advantage of the \$145,000 tax loss without sharing it with the Clintons.

McDougal said he and his wife "felt that we had had most of the loss."

McDougal said Clinton, then Arkansas governor, appeared willing to sell. But "when Bill went home, I think Hillary, or something, Hillary didn't agree," McDougal said, adding that he was surmising.

The new venture McDougal was eyeing involved some land he wanted to buy from International Paper and then sell for a profit.

He did not want to share the new land deal with the Clintons "because then we (the McDougals) would have been putting up even more money to buy an asset and sharing it."

McDougal has said that he originally entered into the partnership in 1978 with the Clintons because he wanted to help his friend make some money.

"Well, at that point, when the world has caved in on you, it becomes a matter of survival," said McDougal, who was suffering some serious health problems as well.

McDougal said he thought, from what Clinton told him, that the Clintons were going to sell their Whitewater shares to him.

But as his 60-day option to back out of the International Paper land deal was running out, McDougal said he still had not received the Clintons' Whitewater stock.

McDougal said he called Clinton to find out about it and kept getting evasive replies.

"Have you ever tried to get an answer out of Bill?" McDougal asked.

"It wasn't that he was saying 'I'm not sending you the stock,'" McDougal said. "It's just that it never showed up and then suddenly after 60 days we had bought the piece."

The Clintons finally agreed to sell their Whitewater shares to McDougal in December 1992, for \$1,000, after Clinton had been elected president.

An accounting firm hired by the Clinton presidential campaign reported that the Clintons lost at least \$68,900 in the Whitewater venture.

McDougal said he only recalled the Clintons investing \$9,000 in Whitewater, but stressed that he was relying strictly on memory.

Whitewater has become a focus of the federal investigation into McDougal's Madison Guaranty Savings and Loan. Under a negotiated subpoena last week began turning over the Clintons' Whitewater records.

Among things federal investigators are reportedly trying to determine is whether S&L funds were used during a fund-raiser to pay off Clinton gubernatorial campaign debts and whether Whitewater funds were used to pay off personal debts of the Clintons.

McDougal said no Whitewater funds were used for that purpose. He said it would have been impossible to divert S&L funds to pay off the campaign debts without them showing up on the books.

His relationship with Clinton dates back to 1968, when they were campaign volunteers for the re-election campaign of Sen. J. William Fulbright, D-Ark.

McDougal, six years older than Clinton, assigned Clinton to be Fulbright's driver.

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President's Lawyer Tried To Limit Justice Dept. Use of Whitewater Files

By Ann Devroy
Washington Post Staff Writer

President Clinton's private lawyer attempted to negotiate unusual limits on how the Justice Department could use files about Whitewater Development Corp. that the White House had agreed to turn over, officials said yesterday.

David Kendall, Clinton's lawyer, was rebuffed when he asked department officials to agree they would not share the material with the Office of Professional Responsibility, the unit of the Justice Department that is investigating the handling of the suicide last July of White House deputy counsel Vincent Foster.

Such an agreement would have been extraordinary, according to a former federal prosecutor, because the Justice Department is generally free to share subpoenaed grand jury material with any of its attorneys who have a legitimate need for it as part of an investigation into potential criminal conduct.

The details of the discussions between Kendall and the Justice Department were described yesterday by White House officials, who early this week had disclosed that files relating to the Clintons' partial ownership of Whitewater Development Corp. were being given to the Justice Department under a subpoena negotiated Dec. 23.

The White House had not disclosed the subpoena when it announced that day it would voluntarily deliver its files. On Wednesday, when the subpoena was disclosed, White House officials said that Kendall had sought the subpoena to protect the material from being given to news organizations, Congress or others. Releasing subpoenaed material is a criminal violation.

A senior administration official said yesterday that Kendall "did say to the Justice Department that he did not want these documents to go to OPR. He wanted them protected from that kind of dissemination." The official said that Kendall's position to Justice was "they should not be turned over to OPR" unless OPR went to court to seek its own access to the records. There was no indication why Kendall sought to deny OPR access to the documents.

A Justice Department spokesman would not comment on Kendall's request yesterday. But the former federal prosecutor with extensive Justice Department experience said that what Kendall was seeking "is never done. When the Department of Justice subpoenas materials, it subpoenas materials. Period. They share it" with any other part of the department authorized to conduct criminal prosecutions.

The White House had agreed to turn material over to the fraud unit of the Justice Department, which is investigating Whitewater and a failed Arkansas thrift, Madison Guaranty Savings & Loan, which was owned by James McDougal. McDougal and his wife Susan were partners in Whitewater with Bill and Hillary Clinton.

Among the material to be turned over is a Whitewater file found in Foster's office the day after his suicide. That file was sent by the White House counsel's office to Kendall as "personal business" of the Clintons when the White House was separating government files, personal files and personal effects to go to Foster's family. The White House made the determination of what material went into which category, and the existence of the Whitewater file emerged only last month.

White House senior adviser George Stephanopoulos said there was no sinister intent in Kendall's attempt to keep the documents from OPR. "We are going to do any-

thing we can to cooperate with any legitimate investigation but at the same time we are going to try to protect the integrity of the documents and make sure they are not abused," he said.

The White House yesterday held firm against the need for an outside investigation of Whitewater, but senior aides said the issue, which caused extensive internal debates, may have to be revisited.

Stephanopoulos and counselor David R. Gergen both said yesterday that the White House sees no need for either a special prosecutor appointed by Attorney General Janet Reno or by an independent counsel that would be appointed if the independent counsel law is reauthorized by Congress.

Republicans yesterday tried to keep up the political pressure on the White House, renewing allegations that the Justice Department probe of Madison and its connections with Whitewater Development was being manipulated by the White House and could not be thorough unless conducted outside the Justice Department.

Reno, in letters to Senate Minority Leader Robert J. Dole (R-Kan.) and Rep. Jim Leach (R-Iowa), repeated her position against appointing a special prosecutor. Both had made such a request.

The Justice Department investigation, Reno said, is being run by career professionals "in a fair, thorough and impartial manner, fully consistent with the dictates of professional law enforcement." She restated her position that appointing a special prosecutor on her own would not still the questions of impartiality, and would slow the investigation.

But sources in the legal community said yesterday that the administration has begun compiling what one called "very informal" lists of potential appointments should Reno change her mind. One source said, "Some calls have been made into the legal community among those who would have the stature to do this about whether they might be available." The source said it was unclear whether the calls were authorized by anyone at the Justice Department or simply an informal operation.

And a senior administration official said that the issue may have to be revisited if "the political landscape does not get any better." The White House is hoping that Clinton's nine-day overseas trip, including his summit in Moscow, will, as one aide put it, "replace Whitewater on the front page" and relieve the political pressure over the issue.

The top commandos in the administration's damage-control effort were out in force yesterday, led by Gergen, who appeared on television programs to say the Clintons had done nothing wrong, that the White House was being "as cooperative as possible to clear the air" and that attacking the president over the issue amid the personal tragedy over the death of his mother Thursday was "cannibalism."

"I just have to tell you," Gergen said on NBC's "Today" show, "that as the president goes home to bury his mother, to have the political opposition on the warpath, hammering away raising all sorts of questions about what has happened in this town. Where is the decency? There is a cannibalism that's loose in our society in which public figures, such as the Clintons, could try to come to this town to do something good for the country and then they get hammered away."

A senior official said that the White House had a series of debates over whether to call for a special prosecutor, and that the conclusion "for the time being" is that there are more negative potential repercussions.

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sions than positive. The three major reasons why such a move could hurt the president, the official said, was it would elevate the issue to a more serious level, would risk a "runaway prosecutor" and would ensure the issue would return in some form when the probe was completed.

On the positive side, sources said, calling for a special prosecutor would demonstrate Clinton's willingness to have a more independent probe, could effectively send the issue underground during the probe, and could give more credibility to a finding that there was no wrongdoing than would a similar finding from a regular Justice Department investigation.

Unless and until Congress passes the independent counsel law, which expired in December 1992, the only route to a special investigation is a Reno appointment. Democrats and Republicans have predicted quick passage of the law after Congress returns later this month.

Last March, the House Judiciary Committee opposed the bill when the panel endorsed it on a party-line vote. They have criticized the \$35 million investigation that Lawrence E. Walsh conducted into the Iran-contra affair.

"Thanks to Whitewater, the Republicans have become converts," said Rep. Barney Frank (D-Mass.), a cosponsor of the bill. "I'm impressed with the flexibility of Senator Dole at this stage of his career to do a complete reversal on it."

Last November, the Senate approved its version of independent counsel legislation, 76 to 21.

Republicans have pressed for a requirement that the Justice Department seek independent counsels to investigate allegations against members of Congress. Both the Senate and House Judiciary Committee scuttled what Frank termed "automatic coverage" of lawmakers.

Frank said that members of Congress were covered under the old law—and would be under the new one. More than a dozen times during the Reagan and Bush administrations, he said, Republican attorneys general declined to seek an independent counsel because federal prosecutors faced no ostensible conflict of interest in investigating lawmakers.

In a related matter, House Minority Leader Robert H. Michel (R-Ill.) urged Reno to ask Clinton "and any others under investigation [to] agree to waive the statute of limitations so that an investigation can be fully and properly conducted."

A Republican leadership aide said that a seven-year limit on some civil violations that could apply in the Madison case expires in March.

In Little Rock, Ark., prosecutor Donald Macay told U.S. District Court Judge Stephen M. Reasoner that he plans to formally ask that a separate grand jury be impaneled to consider the Madison investigation. Macay said that a second grand jury is needed because the court's regular grand jury does not have time to handle the case.

"It's a time problem, which is causing hardships for individual members of the grand jury," Macay said.

The term of grand jury currently impaneled runs out in May and grand jurors normally meet one Tuesday a month and additional days depending on the workload. Reasoner told him to file a formal request with the court.

Macay also told Reasoner that he will seek a superceding indictment in the coming weeks against David Hale, a former Little Rock municipal judge who is scheduled to stand trial March 28 for defrauding the Small Business Administration. Hale has publicly charged that Clinton was among those who pressured him to make an improper SBA loan to a company owned by Susan McDougal, one of Clinton's partners in Whitewater.

Staff writers Kenneth J. Cooper in Washington and Susan Schmidt in Little Rock contributed to this report.

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Independent Counsel Law Among First Issues Before Congress in '94

By LARRY MARGASAK= Associated Press Writer=

WASHINGTON (AP) Congress is expected to swiftly approve renewal of independent counsel investigations, reviving a law that could be used to probe President Clinton's Whitewater real estate venture.

"It should be one of the first things up" after the House returns to session Jan. 25, said Rep. Barney Frank, D-Mass., a key sponsor of the independent counsel law.

The House bill "should be able to pass pretty easily" and quickly be reconciled with the Senate version approved 76-21 last November.

Hardly a day passes lately without Republicans demanding an independent counsel investigation into Clinton's involvement in the Whitewater real estate venture in Arkansas and its links to a failed savings and loan.

Attorney General Janet Reno has resisted, pointing out that anyone chosen to conduct an independent probe immediately would have to report to her.

The revived law would have the counsel appointed by, and responsible to, a three-judge federal court.

As of now, career Justice Department attorneys have been investigating the failure of Madison Guaranty Savings & Loan, the Arkansas thrift that collapsed in 1989.

The probe includes allegations that Madison diverted depositors' money for improper purposes, including some to Whitewater, a real estate investment company formerly co-owned by Bill and Hillary Rodham Clinton, Madison owner James McDougal and his wife, Susan.

Despite the GOP demands, Republican senators were responsible for allowing the post-Watergate independent counsel law to expire in December 1992 after 15 years in force.

The Republicans were angry over independent counsel Lawrence Walsh's Iran-Contra investigation, then 6 years old, and its estimated cost of nearly \$40 million.

Rep. George Gekas of Pennsylvania, a key Republican backer, said he wants quick House passage but will attempt to offer amendments. One would increase the possibility of using an independent counsel to investigate members of Congress.

"I don't think my version of what I'd like to see is so vastly different that I couldn't support" the final language agreed to by both houses, Gekas said.

Independent counsel investigations are designed to prevent conflicts of interest that could occur when the Justice Department investigates top administration officials or even private citizens with personal, financial or political conflicts.

The House and Senate bills would renew the law for five years. Both would give the attorney general discretion to use the law to investigate lawmakers, and both would control runaway costs.

Gekas wants to include lawmakers in a category of 60 to 75 top federal officials who must be investigated by an independent counsel whenever the attorney general finds sufficient grounds for a criminal probe. For this category, it is presumed that an investigation by the Justice Department would be a conflict of interest.

Sponsors point out that federal prosecutors have not been shy about indicting members of Congress, and contend that there's no automatic conflict when a lawmaker is investigated by the Justice Department.

The House must decide whether to accept Senate language that would restrict the counsel's conclusions in a final report.

The Senate bill would not allow the counsel to conclude that someone broke the law if that person were not indicted.

The provision would have forced vast changes in Walsh's soon-to-be released Iran-Contra report.

The current independent counsel court, ruling Friday that the Walsh report

should be released to the public, described it as "rife with accusations of guilt of criminal conduct against persons never indicted or convicted."

Walsh continued his investigation after the law expired because any probes already under way were allowed to be completed.

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(wap) (ATTN: National editors)

Incomplete Whitewater Archive Turns Into Cornucopia of Documents (Washn)

By Howard Schneider and Charles R. Babcock= (c) 1994, The Washington Post=

WASHINGTON At first, Bill and Hillary Clinton said they had no records of the Whitewater Development Corp., because their co-investors had them all.

No, said James and Susan McDougal, the records of the land venture had been shipped to the governor's mansion for safekeeping by the Clintons.

Then, as the 1992 campaign progressed, some Whitewater records appeared as Clinton aides assembled just enough documentation to prepare a "forensic accounting" of the venture and declare it a money-loser for the candidate and his wife.

Last July, more Whitewater records, kept by White House deputy counsel Vincent Foster, were removed by White House aides immediately after his suicide, and were only recently acknowledged.

Now, what began as a seemingly incomplete archive has turned into a cornucopia of paper as the Clintons prepare to do something they have refused for the last 1 1/2 years: assemble their Whitewater material in one place for an independent review. White House aides anticipate that they will send the Justice Department several boxes of material.

The release follows a Justice Department subpoena that the Clintons requested so the documents would be protected by grand jury secrecy rules. In fact, part of the reason the file has grown so voluminous is that the White House not only negotiated the terms of the subpoena with Justice, but actually asked to have it broadened to include campaign documents and other records with no obvious connection to Whitewater.

The department wanted the records as part of its investigation into a failed Little Rock savings and loan owned by the McDougals. The thrift, Madison Guaranty Savings and Loan, failed in 1989 at a cost to taxpayers of between \$47 and \$60 million. Federal thrift investigators have found evidence that money from the savings and loan was diverted to Whitewater and other McDougal companies, and listed the Clintons among the possible beneficiaries.

The Clintons have said they were passive investors in the venture, and did nothing improper. They said the McDougals were in complete control of Whitewater's operations and recordkeeping.

The release of Clinton's Whitewater records to Justice is an effort to solve a political problem for the White House. But it is just one step for investigators who are trying to understand the connections between Whitewater, Madison, and other McDougal businesses that have a history of missing, incomplete, and at times inaccurate records.

According to federal regulators and independent auditors who examined Madison, the books of McDougal's thrift were notoriously inaccurate. Accountants from Peat Marwick & Main who looked at the thrift after McDougal had been removed in 1986 found that during his final years the "underlying documentation for cash disbursements ... was often missing or incomplete, and entries recorded in direct violation of regulatory and generally accepted accounting principles."

Judging from the few publicly available land and loan documents, Whitewater exhibited some of the same deficiencies. Recorded land sales, for example, did not always match the true value of transactions to the company.

According to sources, thrift investigators have found checks from Whitewater to McDougal that were characterized as loan repayments, although there was no documentation for the original loans.

Publicly, the Clintons have been reluctant to detail their involvement with McDougal or the Whitewater venture. They are a couple that kept meticulous track of the tax deductions they earned for donating undergarments to charity, but have so far failed to release any cancelled checks, receipts or other records to document the \$68,900 they say they lost in Whitewater.

In a two-hour meeting with Washington Post reporters and editors on Dec.

6, Presidential adviser Bruce Lindsey said the White House did not want to release any Whitewater records to the press because it would only raise more questions about the investment.

Others documents have been equally hard to pin down.

Arkansas state election officials said they no longer have records of old Clinton campaigns that might prove pertinent to the federal investigation, which is examining whether Madison funds were diverted to the Clinton campaign in 1985.

Chris Wade, a realtor who helped set up Whitewater and market its lots, said he still had records from Whitewater real estate transactions. But he said he would only share the records in his possession if one of Clinton's advisers told him it was okay.

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Administration Weighs Releasing Whitewater Files Publicly (Washn)

By Susan Page= (c) 1994, Newsday=

WASHINGTON A top presidential aide said Friday the White House made a mistake in keeping secret its request for a subpoena of President Clinton's business records in the Whitewater real-estate affair, and he said the administration was weighing whether to release the files publicly.

"We certainly haven't made any decision at the White House about the release of the documents ..." Clinton counselor David Gergen said Friday in an interview on CNN's "Inside Politics." "There is an argument to be made, obviously, for public release of the documents."

But in an illustration of the fierce debate raging within the White House over how to stem the controversy, senior Clinton advisers George Stephanopoulos and Bruce Lindsey in interviews with Newsday argued that the documents should not be released because they are private and could not answer the outstanding questions on Whitewater.

Meanwhile, Attorney General Janet Reno late Friday formally rejected requests from two Republican members of Congress that she name a special counsel to investigate the complicated tale involving Bill and Hillary Rodham Clinton, an Arkansas real-estate partnership they joined in 1978 and a failed savings and loan.

In letters to Senate Republican leader Bob Dole of Kansas and Iowa Rep. Jim Leach, Reno said such a counsel would not be seen as "truly independent" and she vowed that the ongoing investigation by career Justice Department prosecutors would be conducted in a "fair, thorough and impartial manner."

Earlier in the day, Dole had sent Reno a list of seven lawyers with such reputations "for integrity and competence" that they wouldn't be second-guessed if appointed. They included two former attorneys general in the Carter administration, Griffin Bell and Benjamin Civiletti, and A.B. Culvahouse, a counsel to former President Reagan.

But the White House was launching a vigorous counterattack on the motives of its critics in the Whitewater affair, with Gergen and political strategist Paul Begala decrying those who criticize Clinton while he was preparing for the funeral of his mother Saturday in Little Rock, Ark.

"Where is the decency that we once had?" Gergen demanded in a morning interview on NBC's "Today" show. "There is a cannibalism that's loose in our society in which public figures, such as the Clintons, could try to come to this town to do something good for the country and then they get hammered away even though they're trying to do the right thing."

His comments in the afternoon CNN interview were less defiant, however, and he conceded the White House had made a mistake in keeping secret its Dec. 23 request to federal prosecutors for a subpoena of Clinton's records.

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The subpoena was intended to help protect the files from disclosure through leaks or the Freedom of Information Act.

"In retrospect, I wish we had come forward at the time and said we are going to voluntarily turn them over and we are asking for a subpoena that covers all of these in order to prevent selective leaking," he said. "But we are where we are and, you know, I wish that we ... had done it differently."

Federal prosecutors are investigating whether depositors' funds in a failed Arkansas savings and loan called Madison Guaranty were illegally diverted, including to Whitewater Development Corp. and Clinton's 1984 gubernatorial campaign. The Clintons were partners in Whitewater with James McDougal, who also owned Madison.

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Ex-Partner of Clintons Defends Business Deals

By Joel Williams
Associated Press

LITTLE ROCK, Ark., Jan. 8—James McDougal—the reclusive, key figure in a Arkansas real estate partnership that has embroiled President Clinton and his wife in controversy—has emerged to defend emphatically his business dealings, saying they “in no way benefited” the first family.

In an interview Friday, McDougal, 53, supported the position of the president and Hillary Rodham Clinton that they did nothing wrong. But McDougal said he believes the Clintons may have lost far less on the Whitewater Development Corp. partnership with him than the \$68,900 the presidential campaign claimed in 1992.

“My records don’t reflect they did, although I don’t wish to get into an argument about that,” he said. Later he acknowledged that his “records” were his memory.

McDougal said he only could recall the Clintons investing about \$9,000. They sold their interest in Whitewater to McDougal in 1992, after Clinton was elected president, and reported a \$1,000 capital gain on the sale—the price McDougal paid for their shares.

Whitewater has become a focus of the federal investigation into McDougal’s Madison Guaranty Savings & Loan, and Republicans in Congress have called for an independent investigation. Under a negotiated subpoena, the White

House last week began turning over the Clinton’s Whitewater records to the Justice Department.

Among things federal investigators are reportedly trying to determine is whether S&L funds were used during a fund-raiser to pay off Clinton gubernatorial campaign debts and whether Whitewater funds were used to pay off the Clintons’ personal debts.

McDougal said no Whitewater funds were used for that purpose. He said it would have been impossible to divert S&L funds to pay off the campaign debts without them showing up on the books.

“The Clintons in no way benefited from my handling of Madison Guaranty,” McDougal said.

McDougal, who now lives on \$723-a-month in Social Security disability, said the allegations of mismanagement at his S&L are being recycled from a 1990 federal fraud trial in which McDougal was acquitted.

The current investigation has been undertaken, McDougal said, because Republicans “have misguts.” He alleged the indictment in 1990 was brought because of a 1982 congressional vote in northwestern Arkansas, which he lost to then-GOP incumbent Gov. Paul Hammel-Smith.

McDougal said that a subpoena from the FBI Justice Department to federal regulatory agencies had been requested.

He said he had a phone number that he had given to the House.

Washington Post January 8, 1994

NY Times January 8, 1994

Pass an Unaltered Counsel Law

Last week's White House machinations over suspicious Arkansas land and bank dealings, and the Justice Department's weak-kneed response, underscore the need for Congress to revive the Independent Counsel Act — quickly, and without hobbling amendments that would prohibit a full public report by the counsel.

But that could take months — at a time when speed is urgent. Even a few weeks' delay may harm the Arkansas investigation. As early as March, some suspicious activities involving a business partner of President and Mrs. Clinton's may be beyond the Government's reach under a five-year statute of limitations.

That only strengthens our conviction that Attorney General Janet Reno should exercise her authority to appoint a special prosecutor from outside her department immediately — to pursue the investigation until the Independent Counsel Act can be revived.

The act, which allows the Attorney General to obtain court appointment of an independent counsel when high Government officials are suspected of wrongdoing, lapsed in December 1992. But Congress now appears ready to revive it.

Unfortunately, the Senate minority leader, Bob Dole, one of many Republicans rightly demanding prompt appointment of an outside investigator, is also the source of an amendment that would weaken the pending legislation. He persuaded the Senate to remove the law's requirement for a full report by the independent counsel explaining the failure or the refusal to press criminal charges

That would disable the special counsel from performing one of the law's most important functions: not only to pursue the powerful without fear but to clear the innocent credibly and inform the public. When an investigation touches on a high public official — the President or a Cabinet officer, for example — the public needs more than the prosecutor's one-line announcement of no criminal charge.

Thus Senator Dole, who proclaims that his only interest is in clearing the air, has put an obstacle in the way of clearing the air. The House should reject his amendment and insist upon full reporting by the prosecutor.

Meanwhile, the frantic White House propaganda offensive, designed to control the political damage, shows why both the law and more courage by Attorney General Reno are needed to get this investigation beyond the control of the spin doctors. David Gergen, the Presidential strategist, goes on television to claim that Mr. Clinton is being totally cooperative with investigators and unjustly pilloried even as he attends his mother's funeral. But he only dramatizes the White House attempt to manage an investigation that needs to be beyond the reach of the President's people.

There is a way to end the hubbub. It is not, as Mr. Gergen suggests, for the Republicans and the press to forget their proper questions. The only proper conclusion remains for the White House to release its Whitewater documents and for Janet Reno to do her job.

White House on Attack In Furor Over Land Deal

By STEPHEN LABATON
Special to The New York Times

WASHINGTON, Jan. 7 — Seeking to quell a political fire, the White House today attacked Republican lawmakers who have challenged President Clinton's handling of a Justice Department investigation into his Arkansas land investments.

As part of the offensive, David R. Gergen, the White House counselor, sharply criticized the Republicans for seeking an independent prosecutor to examine the relationship between a failed business that was partly owned by the Clintons and an Arkansas savings and loan association that failed nearly five years ago.

"There is a cannibalism that's loose in our society in which public figures, such as the Clintons, could try to come to this town and do something good for the country and then they get hammered away even though they're trying to do the right thing," Mr. Gergen said on the NBC News "Today" program. "Yesterday, as the President goes home to bury his mother, to have the political opposition on the warpath, hammering away, raises all sorts of questions about what has happened in this town. Where is the decency we once had?"

Later, Mr. Gergen made the same points in an appearance on the CNN program "Inside Politics."

Complaint of 'Cannibalism'

But in an interview late in the day, Mr. Gergen emphasized that he was not singling out the Republicans when he spoke of cannibalism, but only "all of what's been going on."

Casting about for other ways to contain the political damage from the land-deal investigation, two senior White House officials said this evening that the President was considering making public some of the documents about the financial transactions that have been kept private.

"We're trying to get our side of the story out," said one senior official who

G.O.P.'s calls for an independent prosecutor are attacked.

insisted on not being identified. "A lot of discussions are under way about a wide range of options, including making some documents public."

Officials said that Mr. Gergen's comments were the product of a new damage-control team formed this week under Harold M. Ickes, the new deputy chief of staff, that has been assigned to contain any political fallout from the investigation, which meets twice a day at the White House, includes Mr. Gergen and George Stephanopoulos, a senior adviser to Mr. Clinton; Bruce Lindsey, also a senior adviser; Mark Gearan, the communications director; Paul Begala, a political adviser; and officials from the White House counsel's office.

Federal investigators are examining the Clintons' investment in the Whitewater Development Company of Arkansas and its relationship to an Arkansas savings association that was seized by Federal regulators in 1989. The savings association was headed by James McDougal, who was also the Clintons' business partner in Whitewater, a real estate development company.

Dole Seeks Inquiry

Mr. Gergen's comments came after Bob Dole, the Senate minority leader, again urged Attorney Janet Reno to appoint an independent counsel. Ms. Reno said on Thursday that anyone she named would be vulnerable to accusations that they were not truly independent because they would owe their jobs to her and the Justice Department.

But Mr. Dole, a Kansas Republican, named seven lawyers and former prosecutors who he said would be above that kind of reproach. On his list were two former Attorneys General, Griffin B. Bell and Benjamin R. Civiletti; two former United States attorneys, Michael Baylson and Anton R. Valukas; Robert S. Bennett, a former Federal prosecutor and lawyer for the Senate ethics committee; A. B. Culvahouse, former counsel to President Ronald Reagan; and Dan K. Webb, a former United States Attorney and deputy independent counsel in the Iran-contra investigation.

"If you appointed as special counsel a person with a reputation for integrity and competence, there will be no second-guessing of the special counsel's investigation," Mr. Dole wrote to Ms. Reno.

Through her spokesman, the Attorney General today reiterated her opposition to that approach.

News Accounts Disputed

The spokesman, Carl Stern, also disputed news accounts that Ms. Reno had decided to seek a court appointment of a special counsel once Congress passed a new independent counsel law. On Thursday, The New York Times and other news organizations reported that senior Justice Department officials said that Ms. Reno had decided to ask a court to appoint an independent prosecutor as soon as Congress approved a law renewing her ability to do so.

"The story is not correct," Mr. Stern said. "The Attorney General and her top aides have not already concluded that seeking an independent counsel is inevitable. We don't know what the law will look like or what facts might be known to us when the occasion arises."

Other officials at the Justice Department said today that Ms. Reno would be inclined to appoint a special prosecutor if the law was written in such a way that she did not need to provide evidence that the President might have engaged in wrongdoing. There is no indication that any evidence of wrongdoing by Mr. Clinton has been uncovered.

The officials said it would be easier for Ms. Reno to seek a counsel under a measure adopted by the Senate that would enable her to ask for a court-appointed prosecutor in "any matters" involving possible conflict of interest within the Justice Department, and without specific evidence that Mr. Clinton or anyone else had done something wrong.

Legislation in House

A bill moving through the House of Representatives would make it more difficult, though still possible, for Ms. Reno to seek appointment of an independent prosecutor, officials said. That measure is similar to the earlier independent counsel law, which expired in 1992. The old statute required a finding of "credible evidence" that a senior official had broken the law. It is not clear that such a threshold test could be met based on what has been uncovered, Administration officials said.

In suggesting on Thursday that she would like to have a broadly written law that gives her the option of seeking appointment of an independent counsel, Ms. Reno was careful to play to three audiences: the White House, Congress and the public.

White House officials were said to be angered that she had suggested that an independent counsel would be appropriate, and Mr. Gergen emphatically denied the news reports today that said Ms. Reno had already decided to seek one.

On the other hand, a senior Justice Department official said Ms. Reno was concerned about appearing to come out publicly too strongly for the appointment of an independent prosecutor because it would give Congress free rein to write a law that might actually make it more difficult for her to seek appointment of a counsel.

She also has struggled to respond to a growing chorus of editorials that have accused her of mishandling the investigation and have called for the immediate selection of an independent prosecutor.

The Justice Department's awkwardness in handling the Whitewater case may reflect the number of senior officials who have removed themselves from it because of their close political and personal ties to Mr. Clinton.

The No. 3 official at the department, Associate Attorney General Webster L. Hubbell, has removed himself from any decisions involving Mr. Clinton's investment in Whitewater and the investigation of the Madison Guaranty Savings and Loan Association. Mr. Hubbell, a close friend of the President, was a law partner of the President's wife, Hillary, in Little Rock, Ark., at a firm that had represented Madison.

Another official at the department, Gerald M. Stern, would normally be involved in the case because he supervises matters involving potential fraud at savings associations. But during his confirmation hearing last year, Mr. Stern said he would withdraw from considering any issues involving the Clintons because he was a significant fund-raiser during the Presidential campaign and was the co-chairman of the transition team after the election.

A third official at the Justice Department, Assistant Attorney General Sheila F. Anthony, has been detached from any involvement in the case because she is the sister of Vincent W. Foster Jr., the deputy White House counsel who committed suicide last July. The latest round of news reports about the Whitewater affair came about after it was disclosed that files about Whitewater were removed from Mr. Foster's office shortly after his death.

Ms. Anthony heads the Justice Department's office of legislative affairs, which handles all matters between the department and Congress, including requests for investigative documents from lawmakers and the adoption of the new independent counsel law.

The House Republican leader, Bob H. Michel of Illinois, urged Ms. Reno to ask the President to waive the statute of limitations on any potential violations "so that an investigation can be fully and properly conducted."

But Mr. Stern, the Justice Department

has no statute of limitations problem in the case because investigators have 10 years from the time an institution is seized to make a criminal case. Civil charges on the other hand generally cannot be made more than five years after an institution has collapsed, and some Republicans have asserted that prosecutors may be barred from bringing a civil lawsuit after March 2, which is the fifth anniversary of the seizure of Madison by Federal regulators.

President's Lawyer Tried To Limit Justice Dept. Use of Whitewater Files

By Ann Devroy
Washington Post Staff Writer

President Clinton's private lawyer attempted to negotiate unusual limits on how the Justice Department could use files about Whitewater Development Corp. that the White House had agreed to turn over, officials said yesterday.

David Kendall, Clinton's lawyer, was rebuffed when he asked department officials to agree they would not share the material with the Office of Professional Responsibility, the unit of the Justice Department that is investigating the handling of the suicide last July of White House deputy counsel Vincent Foster.

Such an agreement would have been extraordinary, according to a former federal prosecutor, because the Justice Department is generally free to share subpoenaed grand jury material with any of its attorneys who have a legitimate need for it as part of an investigation into potential criminal conduct.

The details of the discussions between Kendall and the Justice Department were described yesterday by White House officials, who early this week had disclosed that files relating to the Clintons' partial ownership of Whitewater Development Corp. were being given to the Justice Department under a subpoena negotiated Dec. 23.

The White House had not disclosed the subpoena when it announced that day it would voluntarily deliver its files. On Wednesday, when the subpoena was disclosed, White House officials said that Kendall had sought the subpoena to protect the material from being given to news organizations, Congress or others. Releasing subpoenaed material is a criminal violation.

A senior administration official said yesterday that Kendall "did say to the Justice Department that he did not want these documents to go to OPR. He wanted them protected from that kind of dissemination." The official said that Kendall's position to Justice was "they should not be turned over to OPR unless OPR went to court to seek its own access to the records. There was no indication why Kendall sought to deny OPR access to the documents."

A Justice Department spokesman would not comment on Kendall's request yesterday. But the former federal prosecutor with extensive Justice Department experience said that what Kendall was seeking "is never done. When the Department of Justice subpoenas materials, it subpoenas materials. Period. They can share it with any other part of the department authorized to conduct criminal prosecutions."

The White House had agreed to turn material over to the fraud unit of the Justice Department, which is investigating Whitewater and a failed Arkansas thrift, Madison Guaranty Savings & Loan, which was owned by James McDougal. McDougal and his wife Susan were partners in Whitewater with Bill and Hillary Clinton.

Among the material to be turned over is a Whitewater file found in Foster's office the day after his suicide. That file was sent by the White House counsel's office to Kendall as "personal business" of the Clintons when the White House was separating government files, personal files and personal effects to go to Foster's family. The White House made the determination of what material went into which category, and the existence of the Whitewater file emerged only last month.

White House senior adviser George Stephanopoulos said there was no sinister intent in Kendall's attempt to keep the documents from OPR. "We are going to do any-

thing we can to cooperate with any legitimate investigation but at the same time we are going to try to protect the integrity of the documents and make sure they are not abused," he said.

The White House yesterday held firm against the need for an outside investigation of Whitewater, but senior aides said the issue, which caused extensive internal debates, may have to be revisited.

Stephanopoulos and counselor David R. Gergen both said yesterday that the White House sees no need for either a special prosecutor appointed by Attorney General Janet Reno or by an independent counsel that would be appointed if the independent counsel law is reauthorized by Congress.

Republicans yesterday tried to keep up the political pressure on the White House, renewing allegations that the Clinton family profited from Whitewater and its connections with Whitewater Development was being manipulated by the White House and could not be thorough unless conducted outside the Justice Department.

Reno, in letters to Senate Minority Leader Robert J. Dole (R-Kan.) and Rep. Jim Leach (R-Iowa), repeated her position against appointing a special prosecutor. Both had made such a request.

The Justice Department investigation, Reno said, is being run by career professionals "in a fair, thorough and impartial manner, fully consistent with the dictates of professional law enforcement." She restated her position that appointing a special prosecutor on her own would not still the questions of impartiality, and would slow the investigation.

But sources in the legal community said yesterday that the administration has begun compiling what one called "very informal" lists of potential appointments should Reno change her mind. One source said "Some calls have been made into the legal community among those who would have the stature to do this about whether they might be available." The source said it was unclear whether the calls were authorized by anyone at the Justice Department or simply an informal operation.

And a senior administration official said that the issue may have to be revisited if "the political landscape does not get any better." The White House is hoping that Clinton's nine-day overseas trip, including his summit in Moscow, will, as one aide put it, "replace Whitewater on the front page" and relieve the political pressure over the issue.

The top commandos in the administration's damage-control effort were out in force yesterday, led by Gergen, who appeared on television programs to say the Clintons had done nothing wrong, that the White House was being "as cooperative as possible to clear the air" and that attacking the president over the issue amid the personal tragedy over the death of his mother Thursday was "cannibalism."

"I just have to tell you," Gergen said on NBC's "Today" show, "that as the president goes home to bury his mother, to have the political opposition on the warpath, hammering away raising all sorts of questions about what has happened in this town. Where is the decency? There is a cannibalism that's loose in our society in which public figures, such as the Clintons, could try to come to this town to do something good for the country and then they get hammered away."

A senior official said that the White House had a series of debates over whether to call for a special prosecutor, and that the conclusion "for the time being" is that there are more negative potential repercussions

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An Ever-Growing Paper Trail

Clintons' Whitewater Records Go From Nothing to Volumes

By Howard Schneider and Charles R. Babcock
Washington Post Staff Writers

When the subject of Bill and Hillary Clinton's investment in Whitewater Development Corp. first came up during the 1992 Democratic primary campaign, they said the records were with their co-investors in the land venture, James and Susan McDougal.

No, said the McDougals, the records had been shipped to the Arkansas Governor's Mansion for safekeeping by the Clintons.

A few weeks later, Clinton aides had assembled enough documentation to prepare a "forensic accounting" of the venture and declare it a money-loser for the candidate and his wife.

Last July, a Whitewater file kept by White House deputy counsel Vincent Foster was removed by White House aides immediately after his suicide, and was only recently acknowledged.

MISSING, From A1

and loan owned by the McDougals. The thrift, Madison Guaranty Savings & Loan, failed in 1989 at a cost to taxpayers of \$47 million to \$60 million. Federal thrift investigators have found evidence that money from the savings and loan was diverted to Whitewater and other McDougal companies and listed the Clintons among the possible beneficiaries.

The Clintons have said they were passive investors in the venture and did nothing improper. They said the McDougals were in complete control of Whitewater's operations and recordkeeping.

The release of the Clintons' Whitewater records to the Justice Department is an effort to solve a political problem for the White House. But it is just one step for investigators, who are trying to understand the connections between Whitewater, Madison and other McDougal businesses that have a history of missing, incomplete and, at times, inaccurate records.

According to federal regulators and independent auditors who examined Madison, the books of McDougal's thrift were notoriously inaccurate. Accountants from Peat Marwick Main & Co. who looked at the thrift after McDougal had been removed in 1986 found that during his final years the "underlying documentation for cash disbursements... was often missing or incomplete, and entries recorded in direct violation of regulatory and generally accepted accounting principles."

Judging from the few publicly available land and loan documents, Whitewater exhibited some of the same deficiencies. Recorded land sales, for example, did not always match the true value of transactions to the company.

According to sources, thrift investigators have found checks from Whitewater to McDougal that were characterized as loan repayments, although there was no documentation for the original loan.

Now, what began as a seemingly incomplete archive has turned into a cornucopia of paper as the Clintons prepare to do something they have refused to do for the past 1½ years—assemble their Whitewater material in one place for an independent review. White House aides anticipate that they will send the Justice Department several boxes of material.

The release follows a Justice Department subpoena that the Clintons requested so the documents would be protected by grand jury secrecy rules. In fact, part of the reason the file has grown so voluminous is that the White House not only negotiated the terms of the subpoena with the Justice Department, but actually asked to have it broadened to include campaign documents and other records with no obvious connection to Whitewater.

The department wanted the records as part of its investigation into a failed Little Rock, Ark., savings

See MISSING, A9, Col. 5

Publicly, the Clintons have been reluctant to detail their involvement with McDougal or the Whitewater venture. They are a couple that kept meticulous track of the tax deductions they earned for donating undergarments to charity, but have so far failed to release any

The release of the Clintons' Whitewater records to the Justice Department is an effort to solve a political problem for the White House.

canceled checks, receipts or other records to document the \$68,900 they say they lost in Whitewater. They never claimed that loss on their federal income taxes.

In a two-hour meeting with Washington Post reporters and editors on Dec. 6, presidential adviser Bruce Lindsey said the White House did not want to release any Whitewater records to the news media because it would only raise more questions about the investment.

Others documents have been equally hard to pin down.

Arkansas state election officials said they no longer have records of old Clinton campaigns that might prove pertinent to the federal investigation, which is examining whether Madison funds were diverted to the 1984 Clinton campaign.

Chris Wade, a Realtor who helped set up Whitewater and market its lots, said he still had records from Whitewater real estate transactions. But he said he would only share the records in his possession if one of Clinton's advisers told him to.

A Damage Control Mess

Attempts to Fix Disclosure Errors Bring More Mistakes

By Ann Devroy and Howard Schneider
Washington Post Staff Writers

With the start of the New Year, the White House launched a major internal effort to fight back against mounting criticism of the way it had handled the disclosure of President Clinton's Arkansas land investments. A high-powered damage control squad was appointed, under the direction of new deputy chief of staff Harold Ickes, and daily strategy sessions began.

But by midweek, the team's first foray into organized control had turned into a double stumble.

On Sunday, a senior presidential aide said publicly that all Clinton records relating to the Whitewater land development had been turned over voluntarily to the Justice Department, just as the White House had promised in an announcement last month. On Monday, a presidential spokesman said no documents had been turned over, and none would be for another two weeks.

On Wednesday, the White House issued a statement announcing that its pending relinquishment of the documents actually was in response to a Justice subpoena—but was still "voluntary" because the subpoena had been

See DAMAGE, A4, Col. 4

Clinton Damage Control Backfires

DAMAGE, From A1

requested by the president's lawyer.

In interviews yesterday, senior officials referred to "goofs" and "innocent mistakes" in the week's effort. "Everything we do looks sinister even when it's just innocent screw ups," lamented one official.

The decision to present a better-organized response to the Whitewater controversy came last month when "it became clear . . . this had turned into a television story from what it was—a story that was too hard for hardly anyone to understand," said one Democrat advising the White House.

The story first had emerged during last year's campaign, revolving around charges that funds were diverted to Clinton's benefit from a Little Rock savings and loan owned by his partner in the Whitewater Development Corp. But it was not until December that the complicated and, according to some, inconsequential allegations received wide circulation. Television began to pay attention when it was learned that White House officials had removed Whitewater files from the office of deputy counsel Vincent Foster immediately after Foster's suicide last summer.

The White House portrayed the removal of Clinton's personal papers as an innocent housekeeping step. But others saw it as an effort to conceal possibly pertinent information from federal investigators working on the savings and loan case.

White House Chief of Staff Thomas F. "Mac" McLarty designated Ickes to lead the new team, composed of Bruce Lindsey, Clinton's longtime Arkansas political aide, counselor David R. Gergen, senior adviser George Stephanopoulos, White House communications director Mark Gearan and outside political advisers such as Paul Begala and James Carville.

The team's first misstep came when Stephanopoulos announced on

"They seemed to be operating under a theory of 'what is the least . . . information we can get away with releasing?' and then doing it with this sleight-of-hand manner that looks worse than if they did nothing at all."

—Democratic official

ABC's "This Week With David Brinkley" Sunday morning that the Whitewater files had been turned over to the Justice Department.

Stephanopoulos has told associates that he had "assumed" that Clinton's decision to turn over the files, announced Dec. 23, had been carried out. Once the announcement was made, he said, he left on vacation for the holidays. It was only on Monday, after the Brinkley show, he said, that he was told the papers still were in the possession of Clinton's lawyer, David Kendall.

White House press secretary Dee Dee Myers was designated to "fix" that mistake, announcing on Monday that the files still were being catalogued and would not be relinquished for another two weeks.

Senior officials also insisted yesterday that neither they, nor the Clintons, had known until Wednesday that the documents had been

subpoenaed. Clinton's personal lawyers and the White House counselors who handled it, said one official, "thought it was a routine legally-mechanical part of turning over the files. When we asked later why in God's name they didn't tell us this subpoena thing was going on, they said, 'Why should we, it's just the routine thing in getting this done.'"

Several lower-level officials yesterday, echoing longstanding criticisms by other White House insiders, blamed the lawyer brought in to replace Foster, Joel Klein, and Klein's boss, White House Counsel Bernard Nussbaum, for failing to recognize the political implications of a subpoena—even one the White House maintains it asked for.

"That is getting fixed," one official said in reference to the counselor's office, but would not say how.

"We should have pro-actively announced the subpoena when we announced we were turning over the files" last month said one official. Once the more politically attuned White House aides learned of its existence Wednesday, this official and others said, Stephanopoulos pushed for immediate release of that fact.

While recognizing that the late acknowledgment "looked sinister, like we had something to hide," they decided to announce it anyway, for fear it would leak, causing even more problems. In addition, Clinton was leaving Saturday for a 10-day foreign visit, and issuing such information from Prague or Moscow was deemed, as one official put it, "too cute."

One Democrat with damage control experience was scornful of the White House operation. "They seemed to be operating under a theory of 'what is the least . . . information we can get away with releasing?' and then doing it with this sleight-of-hand manner that looks worse than if they did nothing at all."

George F. Will

Fangs of the Independent Counsel ✓

His enthusiasm having dethroned his judgment, Newt Gingrich, that highly carbonated congressman, has joined the Republican clamor for an independent counsel to investigate whether the Clintons did serious wrongs regarding the Whitewater land development in Arkansas.

Gingrich adopts the egalitarian cant normal when politicians express synthetic altruism: He says an independent counsel is needed lest adolescent miscreants in East L.A. think presidents are above the law. But in addition to being concerned about the civic sensibilities of wayward youths, Republicans are seeking vengeance, albeit tarted up with pieties about "the public's right to know."

Republicans think it is the Democrats' turn to experience the fangs of independent counsels. And in fact when President Clinton's man George Stephanopoulos says no independent counsel is needed because Whitewater "has been looked at by newspapers and is being looked at by the Justice Department," he speaks words that would be roundly ridiculed by Democrats in Congress, and by journalists, were he a Republican.

Congress created the independent counsel apparatus as a "Watergate reform" in 1978. It was accepted by President Carter against the advice of his

The law is unconstitutional and should not be revived.

attorney general, Griffin Bell, who rightly considered it unconstitutional.

It unleashed against the executive branch people performing the purely executive function of prosecution yet uncontrolled by the chief executive. This conflicts with the Constitution's creation of three and only three separate branches. Unaccountability has frequently bred irresponsibility, and when the independent counsel law expired last December, sensible Republicans and others said good riddance.

Republicans now calling for revival of the law are ignoring its constitutional dubiety and the damage it does to the civic culture. But the "Watergate" still serves as an argument for the law. That is absurd.

In the summer of 1973 Republican prosecutors mounted devastating cases against the Republican president and his vice president. When the U.S. attorney for Maryland found that Spiro Agnew had taken bribes as governor and that payments continued to him as vice president, a grand jury indicted Agnew. He plea-bargained and resigned.

He was allowed to bargain because Attorney General Eliot Richardson knew that Nixon was trapped by an

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investigation already far advanced before Archibald Cox became special prosecutor. The U.S. attorney for the District of Columbia, a Republican, already had most of the information that filled the 90 pages he soon gave to Cox, sketching the conspiracy.

Today some Republicans, making use of their time out of power to prove that they deserve to be there, try to put a patina of seriousness on their intellectual somersault regarding an independent counsel law. They say such a law is needed now that both political branches are controlled by the same party. But that condition existed often during the 189 years that Constitution processes functioned without the sort of law now called indispensable.

Supporters of an independent counsel apparatus say it is necessary to bolster confidence in government. However, enactment of such a law announces the premise that the highest levels of government are usually staffed by people without integrity. Another premise is that other relevant institutions, including Congress and the media, are impotent or corrupt.

Regarding Whitewater, yes, the Clintons have proven themselves to be less than forthcoming and even misleading. But this is not a news bulletin about the pair who promised a middle-class tax cut and authored the proposed health care reform that does not read as it is advertised. Besides, what conceivable misdeeds by the Clintons in Arkansas are important enough to justify reviving an independent counsel that violates the Constitution and short-circuits the political process?

Yes, Attorney General Janet Reno inspires no confidence: Her demand for the prompt resignation of all U.S. attorneys looked like an attempt to abort the investigation of Rep. Dan Rostenkowski, and her department reeks of Arkansas-style cronyism. Yes, she and the Arkansasans in the department should publicly recuse themselves from participation in any Whitewater investigation.

Yes, if Clinton were a Republican, Congress and the media would have caused the independent counsel law to be revived for an investigation of White House abuses regarding the travel office. And, yes, if

Republican, Congress would be investigating Whitewater. Congress's investigative powers, which produced the crucial Watergate breakthrough—the discovery of Nixon's taping system—are one reason an independent counsel apparatus is unnecessary.

If the Justice Department and Congress fail to function well regarding Whitewater, that will not be a constitutional crisis. On the contrary, for such political failures the Constitution provides regular occasions for condign punishments. They are called elections.

(ATTN: National editors) (Includes optional trims)

Aides Call Clinton's Concealment of Records a 'Huge Mistake' (Washn)

By John M. Broder= (c) 1994, Los Angeles Times=

WASHINGTON President Clinton's advisers have warned him that in using the legal process to keep secret his investment records during his years in Arkansas, he runs the risk of undercutting his claims of innocence in the tangled Whitewater real estate venture, officials inside and outside the White House said Thursday.

Advisers to the president concede that concealing the existence of a subpoena for records of the Clintons' real estate investment for two weeks was a "huge mistake" that damaged the Clintons politically.

The White House strategy, for now, is to try to mount a vigorous public defense while protecting all documents from release to Congressional investigators and the media.

First lady Hillary Rodham Clinton is particularly adamant about shielding family records from disclosure, according to knowledgeable sources, preferring to endure the temporary pain of the current outcry to what she deems an abhorrent invasion of privacy.

Some top White House aides argue that even though the Clintons may be justified on legal grounds in withholding the Whitewater papers, it is politically untenable for them in the current climate.

The case involves the Clintons' investment in Whitewater Development Corp., a project to develop vacation property in the Ozark Mountains of Arkansas. The Clintons were 50-50 partners with James B. McDougal, owner of the failed Madison Guaranty Savings & Loan.

Whitewater and Madison Guaranty are the subject of a Justice Department criminal investigation that seeks to learn whether thrift funds were illegally diverted to the real estate deal or to Clinton's Arkansas political campaigns.

One senior adviser to the president has warned that the Clintons will "keep bleeding" through continued questions about their financial affairs until they relent and share their personal records with Congress and the public.

Another top aide said Thursday that the Clintons were in a political vise, squeezed by demands for their papers and the desire to protect their privacy as well as the integrity of the ongoing criminal investigation of their former business partner, James B. McDougal.

"You're trying to balance in all of this the president's and first lady's rights," said the aide, who insisted he not be named. "Even if they are the president and the first lady, just because someone makes a charge, they don't have to turn over everything they own; that's a matter of principle. But we recognize that from a political point of view, we've made it look bigger than it is."

That is a lesson that countless politicians from former President Nixon to Oregon Sen. Bob Packwood have learned. Bill Clinton in particular, should know that a public figure, particularly a president, has virtually no private life and cannot dodge questions merely by asserting a theoretical right to privacy, officials said.

Other White House advisers insist at least publicly that the Clintons have done no wrong and that the calls for full disclosure of their private papers is nothing more than a Republican-driven witch hunt and should be resisted at all costs.

"We're voluntarily turning over more records than anyone has asked for," said White House political adviser Paul Begala. "This is like shadow boxing. There are no charges. There are no allegations. This whole thing just mystifies and frustrates me."

The Clinton strategy is one used by public officials in a number of cases in the past to shelter what they consider private aspects of their life. Even when successful, it can lead to grueling, drawn out battle involving significant political damage.

' It also demonstrates that the current standard of legitimate public curiosity about the nation's highest officials can collide with the sensibilities of those involved.

Right now, Packwood is fighting a legal battle to keep his diaries out of the hands of Senate ethics investigators looking into allegations of sexual harassment; years ago, Nixon fought to keep his presidential tapes and papers from being released, with the effort to conceal the documents one of the factors that led his downfall.

(Optional add end)

Leading Republicans Wednesday accused the Clintons of colluding with the Justice Department to conceal evidence of possible crimes and of stonewalling Congressional investigators.

"It's mind-boggling to think that the White House and the Justice Department would work together in a matter that might involve some criminal activity," Senate Minority Leader Bob Dole, R-Kan., said in one of a series of television interviews. "I don't know of any precedent for this."

A senior House Banking Committee staff member said it appeared the White House was using the grand jury subpoena as a means of limiting, not furthering, disclosure of relevant material.

"They're trying to set up a wall, to say they're not targets and they're cooperating to get the bad guys," the aide said. "They're just going to pour everything they can into the grand jury and then say any release would threaten a pending investigation."

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What Did He Know, and When Did He Know It?

When the White House sacked every sitting U.S. attorney last March, this space hyperbolically deplored "the most secretive and deeply political" administration "since Richard Nixon's." By now that looks understated.

Whitewater may not be Watergate, but the Clinton White House's skill in handling the real estate-S&L suspicions has certainly earned it the right to be called Nixonian. Its gift for inspiring suspicion in reporters, its mastery of the self-inflicted wound, and its talent for seeming uncooperative and slippery are all qualities worthy of the master himself.

Having worked as staffers on the House committee to impeach Mr. Nixon, Hillary Clinton and White House counsel Bernie Nussbaum may have absorbed more political lessons than they ever imagined. As John Le Carre once wrote about the CIA and KGB, maybe they fought a "looking-glass war." Let's examine how the Clintons have turned a seemingly small scandal into a potentially much bigger one involving the abuse of presidential power:

—*The non-denial denial.* This White House is adept at not giving a straight an-

Potomac Watch

By Paul A. Giot

swer. So Whitewater was just "old stories" that were "already investigated." Naturally, these dismissals (non-denials) only raised suspicions when reporters discovered new stories—e.g., that the lawyer retained by the Clintons to "investigate" Whitewater in 1992 had ignored large transactions.

—*The coverup.* When Vincent Foster, the Clintons' personal lawyer, shot himself in secluded Fort Marcy last summer, the White House response was to blame the press. A chorus line of commentary accused this newspaper, in particular.

But we've since learned that the troubled Mr. Foster had more on his mind than tart editorials. As the lawyer putting together the Clintons' presidential blind trust, he handled the First Couple's personal finances. Yet he was well behind the pace of any recent presidency in establishing that blind trust, which was finally and quietly filed a week after he died. What took so long?

On the day he died, Mr. Foster received a phone call from James Lyons, the lawyer he'd hired to file the Clintons' 1992 Whitewater "report." On the same day, too, a subpoena was issued to search the Little Rock offices of David Hale. A former judge appointed by Mr. Clinton, Mr. Hale has since been indicted and has accused Mr. Clinton of benefiting from a \$300,000 loan Mr. Hale made to a business partner of the Clintons.

Perhaps these are coincidences, but they raise doubts, especially because the White House has been so eager to blunt queries about Mr. Foster. The probe of his death was confined to the Park Police, who have no expertise in mysterious deaths. Their report also remains a secret, though the Justice Department promised to make it public.

And don't forget the early sacking of those U.S. attorneys: That meant Mr. Clinton could nominate Paula Casey, a former campaign worker of his, to the Little Rock U.S. attorney's post that would investigate Whitewater. She has since recused herself, but not before recommending to Washington that a criminal referral of the case to Justice by the Resolution Trust Corp. not be pursued.

—*A modified limited hangout.* Clinton spin-meisters know the Ziegleresque value of appearing to be forthcoming even while stonewalling. So a Dec. 23 decision to release Whitewater documents taken—in secret—from Mr. Foster's office was hailed by the likes of George Stephanopoulos as coming clean.

But now we learn that this disclosure was rigged by the White House so as to avoid having to make any documents public. By conspiring to have Justice issue a subpoena for the documents, the White House made sure nosy reporters can't obtain those documents under the Freedom of Information Act.

Bill Clinton has one advantage Richard Nixon never had—a Congress of his own party. House Banking Chairman Henry Gonzalez, who did yeoman work on the Keating Five, has suddenly lost interest in S&Ls. That's why even Iowa Republican Jim Leach, the least partisan member of Congress, has called for a "special counsel."

This is not, despite claims by Clinton partisans, the same thing as a Lawrence Walsh-type "independent counsel." Barney Frank (D., Mass.) wants to use Whitewater to revive that law, ramming it through the House without allowing a vote on whether it should cover Congress as well as the executive branch. But this could actually help a coverup, because a Whitewater-Walsh could keep documents under wraps for years.

As scholar Terry Eastland reminds me, Watergate and even Teapot Dome were investigated by "special prosecutors" without the runaway, hair-trigger Walsh-type statute. Whitewater could be as well, if the counsel were someone with the proven integrity of Manhattan D.A. Robert Morgenthau. Such a counsel would at least be subject to political constraints.

isn't, even better would be a congressional hearing, à la the Keating Five, so voters could decide for themselves. With an administration as Nixonian as this one, how else is it going to restore its credibility?



Richard Nixon

'A good strategy' by Clinton's lawyer

Subpoena shields Whitewater papers

By Nancy E. Roman
THE WASHINGTON TIMES

A1

Top defense lawyers say the Clintons' request of a subpoena to shield documents surrounding the Whitewater Development Corp. investigation is good legal strategy.

Some call it a subterfuge.

Martin Gideonse, a professor of criminal law at Harvard, said he would have done the same thing.

"If I was representing a client who was trying to be cooperative with the Department of Defense and I found that someone instantly filed a FOIA request, I, too, would ask for the protection of a subpoena," he said, acknowledging that the maneuver would be aimed at shielding the documents from public and press scrutiny.

"This is a unique bit of legal judo," said John Banzhaf, a George Wash-

ington University law professor. "It's certainly changing the whole purpose of a subpoena, which is to compel the protection of evidence — not to protect the defendant."

Critics, including Senate Minority Leader Bob Dole and Minority Whip Newt Gingrich of Georgia, charged yesterday that the subpoena requested by David Kendall, President Clinton's personal attorney, was an unethical attempt to cover up Whitewater documents that could contain evidence that would incriminate the president.

"It appears the White House is running the investigation and not the Justice Department," said Mr. Dole, Kansas Republican.

Republicans have been pressing for an independent counsel to review the Whitewater dealings and related

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financial transactions involving Arkansas' failed Madison Guaranty Savings and Loan Association. Attorney General Janet Reno said yesterday she had no plans to appoint one under current law, but might consider it if Congress passes new legislation.

A Justice Department probe under way in Little Rock, Ark., led to the issuance of the subpoena by a federal grand jury there.

Gerald B. Lefcourt, past president of the New York Criminal Bar, said Mr. Kendall's strategy in requesting the subpoena is commonplace.

"It happens all the time," he said. "It just means they are cooperating with the investigation, but they don't want everyone in the world to be involved with it."

Mr. Lefcourt said he frequently negotiates with a prosecutor about the breadth of a subpoena.

"I say, 'Why are you going to subpoena my records all the way back to 1980 when you are really interested in 1992?'" he said.

Senior White House adviser Bruce Lindsey announced on Wednesday that Mr. Kendall requested the protection of a subpoena on Dec. 23 — the same day that the

White House announced that it would voluntarily turn over legal documents relating to Whitewater.

The White House has not said what prompted the announcement, but it was made the same day that David Marston, a lawyer from Philadelphia, filed a Freedom of Information Act (FOIA) request for the documents.

Mr. Marston sought documents, including materials gathered during the presidential campaign and documents retrieved by White House officials from the office of Deputy White House Counsel Vincent W. Foster Jr. after his suicide July 20.

The subpoena shields the documents from public and press scrutiny by immunizing them against FOIA requests.

Charles Ruff, a Washington lawyer and former Watergate prosecutor, agreed with many other lawyers who say Mr. Kendall's tactics are not unusual.

"It would not be unusual, for example, for a lawyer or anyone to seek a subpoena to formalize the process of turning over documents," he said. "And it wouldn't be unusual to tell lawyers: 'Here's the universe of things that should be covered.' None of that strikes me as unusual."

Mr. Banzhaf said he is surprised that lawyers are so comfortable with

Mr. Kendall's strategy.

"It is very strange attitude to suggest that it is appropriate for a U.S. attorney to try to manipulate things so that documents which are very much a concern of and to the public are not available to the public," he said.

Mr. Banzhaf noted that in the past when vice presidential candidate Geraldine Ferraro's finances were questioned, or when then-congressional candidate Eleanor Holmes Norton's tax records were investigated, both candidates turned over their records voluntarily.

"If the president said he was willing to turn those things over voluntarily, why would he want to manipulate it so that it weren't available through FOIA?" he asked.

He said the entire discussion bolsters arguments for the appointment of an independent counsel.

"Very definitely this is a situation where there will always be questions as to whether the investigation is thorough unless there is a special prosecutor," he said.

"They have crafted the turnover of the documents ... so as to cloak the information in secrecy," Judd Best, a Washington lawyer who has represented former Vice President Spiro Agnew, told the Associated Press.

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Out of sight

"Good luck!" the Treasury Department press officer declared when we jokingly suggested that she simply put Lloyd Bentsen on the phone so we could ask him our question directly. "I've been working here for seven years and I've yet to see, let alone talk to, any of the Treasury secretaries. I only know who's here by the picture on the wall."

Return to sender

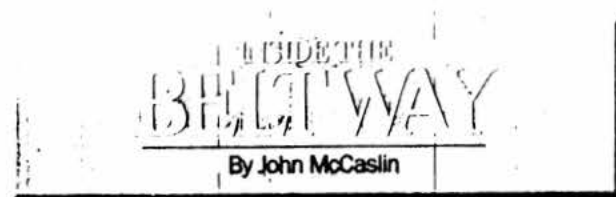
Be glad you don't work in the White House mail room, where we're told used underwear addressed to President Clinton is now arriving. Valerie Richardson, a reporter for The Washington Times based in Denver, says that with tax season almost upon us, residents of her city decided to help out Mr. Clinton with his deductions by sending him their shorts. The so-called Boxer Rebellion was launched last week by a local radio host.

So far hundreds of listeners have sent their underwear to the radio station, to be boxed up and sent to the White House. But many others, she confirmed, are sending their worn skivvies directly to Mr. Clinton himself.

Diversify or else

We've learned that a State Department employee has lodged a complaint after an official within the European and Canadian affairs division (known as "EUR" in Foggy Bottom parlance) advised him not to bid on two position openings "because they were reserved for minority officers."

That complaint to the American Foreign Service Association (AFSA) was paralleled by one from an AFSA representative at another post, who said an EUR official had called to ask him "whether an officer at that post was a member of



To some at Treasury, Lloyd Bentsen is just a pretty face in a frame.

an ethnic minority, explaining that the officer would not be a viable candidate for a forthcoming vacancy if he were not," according to a memo we obtained from the AFSA.

The AFSA, as a result, fired off a letter to EUR, asking whether the office was "reserving" certain positions for minorities, and "if so, on what authority [and] which positions are being reserved for minorities?"

An official of EUR responded in a memo that "it is not the Department's policy to 'reserve' positions for employees based solely on gender or ethnicity. It is the Depart-

ment's policy to improve gender and ethnic diversity not only within the Department and Foreign Service as a whole, but also within constituent elements of them."

Whitewater rapids

David Kendall of the Washington law firm Williams and Connolly has done a pretty good job of representing The Washington Post in its legal matters. We wonder, therefore, if it wasn't The Post's Katharine Graham who first planted Mr. Kendall's name in the ears of Bill and Hillary. As the Clintons' personal attorney, Mr. Kendall is busy trying to pull the first couple from the growing Whitewater undertow.

467-9800

Where is Lee Brown, President Clinton's drug czar? That's what Mr. Brown's colleagues and friends in the drug-fighting community would like to know.

In fact, the director of one well-known law enforcement group called yesterday to say he's tried for several weeks now to reach Mr. Brown, yet each time the White House switchboard connects him to the former New York City police commissioner's extension at the National Drug Control Policy office, he gets a recording.

"I can't reach him or anybody on his staff," said the official, who asked that he not be identified "because Lee and I have a long-standing relationship, plus I want him to give a speech to my officers. But this is the drug czar of the

United States — a Cabinet office. He sits at the Cabinet table and I can't reach him. ... And I'm not alone. My friends have had the same problem."

We called the White House yesterday, asked to speak to Mr. Brown and got the same recording. All of which reminds us of something Bill Bennett, President Bush's drug czar, told us in April when we asked him to grade Mr. Clinton and his drug policy office.

"Either an F or an 'incomplete,'" answered Mr. Bennett. "Actually, it's a course [Mr. Clinton] didn't sign up for. He has done nothing but gut the office."

Too small a staff

James A. Ross, the engineer editor of Privacy and Security 2001, a monthly guide of ways to cope in this high-tech world of ours, doesn't seem to be coping very well himself. Or so we gather from reading his current editorial on "liberal bias" in the news media.

Mr. Ross, whose background is in math and electronics, tells us the "trigger" initiating his editorial comment "was the total avoidance by National Public Radio news of the breaking stories about 1, Bill Clinton's womanizing; 2, Hillary's relations with Vince Foster; 3, the funny public money manipulations in Arkansas that benefited the Clintons; 4, the obstruction of justice by White House personnel who removed evidence from Vince Foster's office before those empowered to investigate his suicide were allowed entry; and 5, the lies told to the public about these activities by White House personnel."

"Because NPR totally ignored these stories," Mr. Ross continued, "I called and spoke with News Editor Bruce Drake. His explanation to me was that he did not have enough people to send out to fully research the story and he simply could not report what the other news media had reported."

TONY SNOW ✓

Every time controversy begins to stalk Bill Clinton, the darnedest thing happens. Documents that could establish his innocence vanish into the arms of private attorneys or turn into confetti. A partial checklist of missing papers illustrates the trend:

•The Vincent Foster Tragedy: After Vincent Foster committed suicide on July 20, White House Counsel Bernard Nussbaum cleaned out the deceased assistant's office. Mr. Nussbaum says he sent some files to Mr. Foster's family, some to the president's private lawyer and the rest to Park Service officials investigating the death.

Several questions: Why weren't the records kept at the White House, as required by federal law? What happened to Mr. Foster's personal diary? Where are the files detailing Mr. Foster's possibly illegal personal work for the first family?

•The First Lady's Health Care Task Force: Hillary Rodham Clinton's health care task force included at least 500 people, each of whom should have submitted financial disclosure forms.

A group of physicians has sued the White House, seeking access to those records. The plaintiffs want a membership list, background information — such as whether members were truly full-time employees of the federal government or just lobbyists smuggled in to help Mrs. Clinton — and copies of conflict-of-interest documents. So far, they have received nothing, despite a judge's order that the administration produce the information.

•The Madison Guaranty Savings and Loan: Then-Gov. Clinton asked friends to help him repay \$50,000 that he lent his 1984 gubernatorial campaign. James McDougal, who owned the Madison Guaranty Savings and Loan during the 1980s, responded by hosting a lavish fund-raiser that hauled in roughly \$35,000 — and may have broken the law.

Federal investigators suspect that \$15,000 or more may have been diverted from Mr. McDougal's thrift into Mr. Clinton's private bank account, but it's difficult to tell. Records of the McDougal-organized fund-raiser have disappeared from state and county offices.

So have documents that might clear the president of charges that he helped Mr. McDougal fend off federal regulators, who wanted to close Madison in 1985. The government

taxpayers of at least \$47 million.

Unfortunately, the Madison files at the Arkansas Securities Commission are shockingly thin. Investigators say the archives do not include such routine paperwork as office memoran-

Vaporous trail of records

dums, phone logs and correspondence — and no communications between then-Securities Commissioner Beverly Bassett and Gov. Clinton regarding Mr. McDougal's savings and loan.

Nor are there clear records of how Hillary Rodham Clinton managed to get a \$2,000-a-month retainer from the thrift.

•The White-water Development Corp.: There's another wrinkle to the Madison mess. The Clintons joined Mr. McDougal in a real estate venture known as the Whitewater Development Corp. They say they lost nearly \$70,000 in the deal, but their 1993 federal financial disclosure forms indicate that they realized a small capital gain.

They describe themselves as half-owners of Whitewater, despite the fact that they put up only about 43 percent of the capital. They claim they were "passive" investors, even though Mrs. Clinton demanded power of attorney over Whitewater as early as 1988 and the Clintons handled the partnership's tax work through 1992. The White House has put its Whitewater files under wraps by drafting a Justice Department subpoena for the Clintons' records. That unusual maneuver lets the administration control the release of information and make disclosure a crime.

All of this could have significant consequences nonetheless. The statute of limitations on civil law violations connected with Madison Guaranty will expire in March.

•Routine White House Operations: The White House regularly rejects congressional requests for such basic

information as the number of people on the president's staff, which White House employees have received security clearances and so on.

Investigators from the General Accounting Office have been denied permission to visit the Travel Office in order to learn how the White House improved the office's efficiency after brooming out the career civil servants who used to run it.

The GAO also has gotten the brushoff in its efforts to investigate matters involving White House integrity. These include the large number of noncompetitive contracts awarded by the administration (possibly to cronies) and the procurement of new systems for phone services and resume processing.

Democrats have tried to dismiss calls for investigations as mere partisanship, and Attorney General Janet Reno has adopted a "don't ask,



don't tell" approach to anything involving administration ethics. But the Clinton team deserves blame for inflaming suspicion. The president and his aides make even innocent transactions look shady by withholding information, changing stories and breaking promises to run an open shop.

At this point, only Stonewall Clinton can save himself from further innuendo. He should release all his records in the knowledge that the truth will set him free.

Tony Snow is a Washington-based editorial page columnist for the Detroit News and is nationally syndicated.

White House on Whitewater damage control

By Judy Keen
USA TODAY

The White House has gone to battle stations to try to extricate President Clinton from the muck of a controversy that's already achieved single-name status: Whitewater.

But as Clinton headed to his mother's funeral and Europe, questions about the decade-old Arkansas political and financial tangle only mounted.

Although, as senior Clinton adviser George Stephanopoulos said Thursday, "Nobody's produced any credible evidence showing the Clintons did anything wrong," the controversy is showing signs it's as persistent as the flu.

The administration will intensify its offensive:

► Vice President Gore and other administration officials will be on TV talk shows, starting today.

► Senior adviser Bruce Lindsey will skip Clinton's trip to manage the crisis.

Yet even the White House's efforts to defuse the issue seem to feed perceptions that there's a problem.

The White House on Thursday began turning over to the Justice Department five boxes of papers detailing the Clintons' investment in Whitewater Development Corp. The firm's links to a failed thrift are part of a federal probe.

Even that act, designed to quell some of the furor, didn't go smoothly:

► Earlier this week, Stephanopoulos



By Shayna Brenna, AP
GINGRICH: Collusion reports 'very disturbing'



By Tim Dillon, USA TODAY
RENO: Refuses to name a special counsel



By Gerald Schumann, Reuters
STEPHANPOULOS: 'No credible evidence'

said Justice had the documents.

► A day later, White House spokeswoman Dee Dee Myers said the papers would be sent in a couple weeks.

► Finally, the White House said it had worked with Justice to define a subpoena demanding the papers. That set off a new round of GOP charges of cover-up and calls for an independent probe.

"We're naive," said Lindsey. "We think that we're doing the right thing — by agreeing to turn over documents that were not required, to do it voluntarily — and yet every act that we take to try to be cooperative is turned back on us."

Senate Minority Leader Robert Dole, R-Kan., called it "mind-boggling" that the White House and Justice would col-

laborate "on a matter that might involve some criminal activity."

House Minority Whip Newt Gingrich, R-Ga., called it "very disturbing" for the White House and Justice to "apparently collude together."

Attorney General Janet Reno insisted Thursday her department's independence is intact and again refused to name a special counsel.

The White House this week assigned top aides, including Stephanopoulos and deputy chief of staff Harold Ickes, to Whitewater damage control.

The president and Hillary Rodham Clinton reportedly expressed dissatisfaction with aides' efforts to staunch the bleeding with simple, angry denials.

By Thursday, aides like Stephanopoulos were happy to fire back at critics. "The Republicans are playing politics with this," he said. "What we're frustrated by is the perception (of wrongdoing) is not based on facts."

Clinton aides plan to be more aggressive, but the saga is so complex it might be hard to alter some perceptions.

Among them: the involvement of the late Vincent Foster, a White House lawyer. Some of the documents turned over Thursday were files taken from his office after his suicide last July.

In a *New York Times* column Thursday headlined "Foster's Ghost," William Safire asked, "What are the Clintons hiding?" Several prominent newspapers have joined congressional Republicans' call for a special counsel.

"They just don't know what to do," says Marlin Fitzwater, who was President Bush's spokesman.

"They see problems at the end of every tunnel. They also see themselves losing control of the situation."

Rep. Jim Leach, R-Iowa, ranking Republican on the House banking committee, worries the White House is stalling until the civil statute of limitations expires March 2. "If there's nothing wrong," he asks, "why hide?"

"This is one of those matters that the White House can, with some embarrassment but relative ease, put behind them," Leach says.

"I am astonished that they haven't."

Whitewater whitewash

Reno should appoint a special prosecutor

In what hardly can be considered full disclosure, President Clinton's personal lawyer began yesterday to turn over to federal investigators selected documents pertaining to the first family's investment in a shadowy Arkansas real estate company.

But before the Clintons' lawyer, David E. Kendall, agreed to cooperate with the Justice Department probe, he requested a grand jury subpoena for the documents, so that the papers may be kept from public perusal. This artful maneuver only further raises suspicions that the Clintons must have something to hide.

From what is known so far about the first family's involvement with Whitewater Development Corp., there appears to have been no criminal wrongdoing on either of their parts. However, federal investigators believe some illegalities took place at the real estate firm.

The real figure in question is James McDougal, who was co-owner of Whitewater with his friends the Clintons. Federal investigators suspect McDougal may have diverted monies to Whitewater from the defunct Madison Guaranty Savings and Loan, an Arkansas thrift that he owned. McDougal also is suspected of illegally dipping into Madison Guaranty funds to raise \$50,000 for retirement of Clinton's 1984 campaign debt.

It is entirely possible the Clintons were absolutely clueless about McDougal's highly irregular business practices. But Republican lawmakers say they would

feel more sanguine about the president's role if Attorney General Janet Reno appointed a special prosecutor to sort things out.

Reno so far has resisted calls for a special prosecutor, attributing the demand to petty partisanship. She has left it to career prosecutors at the Justice Department to investigate the connection between McDougal and the Clintons.

But that will not suffice. To allay almost certain insinuations of a cover-up in the event Justice Department careerists find their boss' boss blameless in the Whitewater matter, Reno should appoint a special prosecutor.

The attorney general's objections to naming an outsider are specious. "If I appoint a special prosecutor," she says, "it's still my prosecutor. And there will still be questions about the person's independence."

That surely would not be the case, at least not if Reno were to appoint an outside prosecutor who boasts national standing. Such legal figures as Archibald Cox and Leon Jaworski commanded respect during the Watergate investigations, even though they were named by President Nixon's attorney general.

At this time, we have no reason not to take the president at his word when he says he and his wife "did nothing improper" in the Whitewater affair. However, until a special prosecutor corroborates the president's story, there will remain doubts in the minds of many Americans.

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Subpoena of Wh'tewater papers fails to quiet GOP

Republicans call for independent probe of Clintons

By Carl P. Leubsdorf
Washington Bureau of The Dallas Morning News

WASHINGTON — The White House's latest move to cooperate in the Whitewater investigation failed Thursday to quell Republican calls for an independent inquiry into President Clinton's possible involvement.

Top GOP leaders assailed the announcement that the White House would give Mr. Clinton's papers on the failed Arkansas land deal to the Justice Department under a subpoena that protects their privacy.

"In my view, the American people aren't going to buy that," Senate Republican Leader Bob Dole of Kansas said on NBC's Today show.

But Attorney General Janet Reno again Thursday rejected calls to appoint a special counsel in the case of Whitewater Development Corp.

Some analysts from both parties suggested that the political uproar over Whitewater will continue to grow until Mr. Clinton and his top aides make a full public disclosure of the deal. Please see SUBPOENA on Page 11A.

Continued from Page 1A.

the complex matter.

"Whatever it is, it's going to come out," said Douglas Bailey, a former Republican consultant who now publishes a daily computerized political report. "So they might as well get it over with."

Democratic consultant Ann Lewis agreed.

"It seems to me there is a rule in politics," she said. "Once a document becomes famous for being unavailable, it will inevitably become available. And the only real question is the timing."

She called White House handling of the matter "surprisingly maladroit" and asked, "Why hasn't the White House moved more quickly to end the suspense and get credit for being forthcoming?"

White House officials have repeatedly defended their handling of the issue as designed to protect the president's privacy. No charges have been directed at either Mr. Clinton or his wife, Hillary Rodham Clinton, in the case.

The naming of an independent counsel "would be the politically expedient thing to do," said a senior White House official, who asked not to be identified. "But there's a matter of principle here."

In a similar vein, another senior aide noted that, "If any unsubstantiated charge will call for a special counsel, this is a difficult precedent that's being established."

With the White House seemingly intent on trying to ride out the storm, Tom Mann, director of governmental studies at the nonpartisan Brookings Institution, said he doubted that the issue would ultimately pose much problem for Mr. Clinton.

"It depends on whether he did anything wrong and really wrong," Mr. Mann said. "To the extent that I can tell so far, I don't think it's a major matter."

But Professor George Edwards, director of the Center for Presidential Studies at Texas A&M University, said, "If they can show that he did do something dishonest, that's really deadly, because he doesn't have deep or committed support."

The latest round of political jockeying over the White House again today after the White House agreed to

expedite its Mr. Clinton's files to the Justice Department. Prosecutors are seeking to determine whether funds were diverted from the failed Madison Guaranty Savings and Loan to Whitewater or Mr. Clinton's 1994 gubernatorial campaign in Arkansas.

The White House only did so after arranging for a subpoena that had the effect of ensuring that any information provided to the investigators would be shielded from Congress and the public.

White House senior adviser Bruce Lindsey said Wednesday that the subpoena ensured the privacy of the documents and "the privacy of the process as provided for by federal law."

Top Republican congressional leaders assailed the arrangement.

"It's unprecedented to have the White House and the Justice Department working together on a subpoena," Mr. Dole said in his Today interview. "To me, it cries out for the appointment of a regulatory independent counsel."

House GOP Whip Newt Gingrich of Georgia, appearing on the same program, called it "very, very disturbing" for the White House to Justice Department "to apparently collude together to get a subpoena so the American people can't see the documents."

"There's something a little bit sick about that kind of approach, frankly," Mr. Gingrich said.

Mr. Dole and Mr. Gingrich agreed that the attorney general should name an independent counsel to review the case. In a separate appearance, the third-ranking House Republican, Rep. Dick Armey, R-Lewisville, agreed.

"It's hard for me to believe that these career investigators who work in the Justice Department are going to feel very safe and secure in investigating," Mr. Armey told reporters at a breakfast meeting.

"There needs to be a process of objective inquiry and discovery that I or any other citizen of this country can feel confident is a fully objective, professionally done job," he said.

Meanwhile, Ms. Reno again rejected GOP demands that, in the absence of legislation providing for a court-appointed counsel, that she act to name an independent investigator to remove the threat of political influence.

"If I appoint somebody, I'm going to get blamed for what that person

or doesn't do," she said, adding that, "In the current state of the law with respect to the Whitewater case, I'm going to be damned if I do and damned if I don't."

She noted that the case is being investigated by "career professional prosecutors who are experienced, who know what they're doing. To bring in a special prosecutor, she added, "is simply not in the best interest of the case ... and it could only produce disruption and delay."

She also said that if Congress passed the pending legislation to restore the provision for court appointment of an independent prosecutor, "there might be the possibility I might petition the court for the appointment of an independent counsel."

But the attorney general declined to say whether she would do so. She reiterated her support for the law, which has been opposed primarily by Republicans, including some who

want her to name an independent counsel for the Whitewater case.

On a day in which White House officials declined to discuss the issue on the record, one senior official said that "Republicans have gotten away with a strong level of hypocrisy" by calling for an independent counsel while opposing the law providing for judges to name one.

Democratic pollster Geoff Garin said, "If the Republicans are going to make a big deal about this, they will pay a price if it turns out this is just a lot of posturing on their part."

"Ultimately," he added, "the facts will decide whether there is a long-term problem."

"For the time being, there's no persuasive evidence that the president or the first lady did anything wrong. It's an annoyance and a distraction but not a serious challenge."

Staff writer Anna Marie Kilgus contributed to this report.

Friday, January 7, 1994

The Dallas Morning News 11 A

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(ATTN: National editors) (Includes optional trims)

Updates with Janet Reno seeking independent counsel to investigate;
corrects Wednesday to Thursday in 18th graf.

Clinton Aides See Risk in Shielding Land Deal Files (Washn)

By John M. Broder= (c) 1994, Los Angeles Times=

WASHINGTON Advisers to President Clinton have warned him that in using the legal process to keep secret investment records from his years in Arkansas, he runs the risk of damaging his credibility in the controversy over the tangled Whitewater real estate venture, officials inside and outside the White House said Thursday.

Some advisers to the president concede that failing to disclose the existence of a subpoena for records of the Clintons' real estate investment for two weeks was a "huge mistake" that damaged Clinton politically.

Further complications for the White House arose Thursday night when it was learned Attorney General Janet Reno has indicated in recent days that she would seek appointment of an independent counsel to investigate the Whitewater matter if Congress reinstitutes the law making possible such action.

At a news briefing Thursday, Reno underscored her refusal to name an outside prosecutor under Justice Department regulations to investigate Whitewater. She contended that she still would be responsible for the case if she selected the person, and that she would prefer to leave the case in the hands of the three career attorneys now handling it.

Under the independent counsel law, which expired in December 1992, the attorney general could ask a three-judge panel to select a counsel and chart his mission for cases involving high-level administration officials. The Senate has passed a bill reinstituting the law, and it is awaiting a vote by the full House.

At the White House, the strategy for now is to try to mount a vigorous public defense while protecting all documents from release to congressional investigators and the media.

First lady Hillary Rodham Clinton is particularly adamant about shielding family records from disclosure, according to knowledgeable sources. She prefers to endure the pain of the current outcry rather than allow what she deems an abhorrent invasion of privacy, they said.

Some top White House aides argue that even though the Clintons may be justified on legal grounds in withholding the papers, it is politically untenable for them in the current climate.

The case involves the Clintons' investment in Whitewater Development Corp., a project to develop vacation property in the Ozark Mountains of Arkansas. The Clintons were 50-50 partners with James B. McDougal, owner of the failed Madison Guaranty Savings & Loan.

Whitewater and Madison Guaranty are the subject of a Justice Department criminal investigation that seeks to learn whether S&L funds were illegally diverted to the real estate deal or to Clinton's Arkansas political campaign.

One senior adviser to the president has warned that the Clintons will "keep bleeding" through continued questions about their financial affairs until they share their personal records with Congress and the public.

Another top aide said Thursday that the Clintons were in a political vise squeezed by demands for their papers and a desire to protect their privacy as well as the integrity of the ongoing criminal investigation of McDougal, the former business partner.

"You're trying to balance in all of this the president's and first lady's rights," said the aide, who asked that he not be identified. "Even if they are the president and the first lady, just because someone makes a charge, they don't have to turn over everything they own; that's a matter of principle. But we recognize that from a political point of view, we've made look bigger than it is."

That is a lesson that countless politicians have learned, and Clinton in particular should know that a public figure, especially

a president, has virtually no private life and cannot dodge questions merely by asserting a right to privacy, officials said.

Other White House advisers insist that the Clintons have done no wrong and that the calls for full disclosure of their private papers are nothing more than a Republican-driven witch hunt that should be resisted at all costs.

"We're voluntarily turning over more records than anyone has asked for," White House political adviser Paul Begala said. "This is like shadow boxing. There are no charges. There are no allegations. This whole thing just mystifies and frustrates me."

The Clinton strategy is one used by public officials in a number of cases in the past to shelter what they consider private aspects of their lives. Even when successful, it can lead to drawn-out battles, sometimes with significant political damage.

(Optional add end)

Leading Republicans Thursday accused the Clintons of "colluding" with the Justice Department to conceal evidence of possible crimes and of stonewalling congressional investigators.

PICK UP 18th graf: "It's mind-boggling xxx."

**** filed by:LAWP(--) on 01/07/94 at 02:37EST ****

**** printed by:WHPR(162) on 01/07/94 at 03:35EST ****

Dole charges conspiracy in Whitewater land probe

By Jerry Seper

THE WASHINGTON TIMES

Senate Minority Leader Bob Dole yesterday accused the Justice Department of colluding with the White House in an effort to shield documents describing President Clinton's involvement in a failed Arkansas real estate venture now under federal investigation.

The Kansas Republican — who has called for a special prosecutor to investigate accusations of campaign fraud and loan manipulation involving Mr. Clinton and business partner James B. McDougal — described the issuance of a subpoena negotiated by Mr. Clinton's personal attorney as "almost unbelievable."

"It's fair to say the White House worked with Justice on a subpoena in an effort to protect the privacy of

the records," Mr. Dole said. "It's almost unbelievable the White House would work with Justice in a matter of this kind. I don't know of any precedent for this."

"It appears the White House is running the investigation and not the Justice Department," he said.

His comments came as the White House announced it had begun to hand over documents to federal investigators under the grand jury subpoena. The records show the involvement of Mr. Clinton and Hillary Rodham Clinton in a controversial northern Arkansas real estate venture known as Whitewater Development Corp.

The subpoena was issued secretly on Christmas Eve and was served that same day on the Clintons' personal attorney, David Kendall, who the White House had said was given

the Whitewater files retrieved from the office of White House Deputy Counsel Vincent W. Foster Jr. after his suicide in July.

The subpoena was formally requested by Mr. Kendall on Dec. 23 after meetings with Justice Department lawyers, although its existence was not acknowledged by the White House until Wednesday.

The subpoenaed documents include records concerning Whitewater and those pertaining to Arkansas' now-defunct Madison Guaranty Savings and Loan Association, owned by Mr. McDougal. It requires that all the documents be submitted by Jan. 18.

Ironically, negotiations for the subpoena were ongoing at a time Mrs. Clinton was saying publicly she saw no reason to release records showing the couple's business deal-

ings with Whitewater. "I think we've done what we should have done and don't feel the need to do any more than we've done," she told reporters on Dec. 22.

Mr. Clinton said on Dec. 23 he was willing to "cooperate" with federal investigators and voluntarily turn over the Whitewater documents, although he made no mention of the pending subpoena. "Of course we'll do what we can to cooperate," the president said during an Oval Office interview with reporters.

It remains uncertain what specific documents are included in several boxes to be turned over to investigators. During the 1992 presidential campaign, the Clintons said the Whitewater records had disappeared.

The subpoenaed documents, however, include those taken from Mr.

Foster's office during two searches following his July 20 suicide. Mr. Foster was also the Clintons' personal attorney at the time of his death.

One of the searches took place three hours after Mr. Foster's body was found in a Virginia park, despite orders by White House Chief of Staff Thomas F. "Mack" McLarty that the office be sealed.

Attorney General Janet Reno yesterday declined to name a special prosecutor.

"I'm going to be damned if I do and damned if I don't," she said during her weekly press briefing. "And if that's what's going to happen, then I want to try to do it in what is the best interest of the case so far as I can determine it."

But Miss Reno hinted that she might be open to the appointment of

an independent counsel if the law creating that position is passed by the House. The bill, which was approved Nov. 16 by the Senate, would allow Miss Reno to petition a three-judge federal panel to select a lawyer to investigate the case, independent of the Justice Department.

Investigators are looking into accusations that Mr. McDougal approved fraudulent loans of \$250,000 and diverted money to Mr. Clinton's 1984 gubernatorial campaign in Arkansas. The former S&L owner helped Mr. Clinton repay thousands of dollars in 1984 campaign debts.

Investigators also are trying to determine if Madison funds were illegally diverted to Whitewater, and if Mr. Clinton pressured the owner of a Small Business Administration lending agency for a \$300,000 loan for Mr. McDougal's wife, Susan.

Attorney Armada

A few days before the new year, the Clinton Justice Department filed a lawsuit against the city of Aurora, Ill., for what it called the police and fire departments' "pattern and practice" of discrimination against job applicants with disabilities, such as chronic back problems. Justice's civil rights lawyer called the suit a "venture into a new field of anti-discrimination law." Welcome to the next big chapter in the U.S. litigation explosion, now being unfolded by the Clinton presidency.

What's so wrong with mandating an end to bias in America? The way it will be done: Instead of concentrating on individual cases of demonstrable discrimination, as was the general federal policy of the 1980s, the Clintonites show every intention of using broad statistical measures. As with Aurora, these will substantiate a company's "patterns and practices," or, more speculatively, the "adverse impact" of its policies on actual or prospective employees, suppliers or customers—all with regard to protected classes of people. And those categories keep increasing.

Once the activist lawyers are turned loose, as they last were under Jimmy Carter (with less sweeping laws to work with), U.S. businesses can expect to be dragged into court or otherwise browbeaten into settlements that boost the stock of some groups at the expense of others. And we are talking about *groups*, because that is how remedies are applied when the more concrete but difficult standard of bias against individuals is discarded.

Bill Clinton's comptroller of the currency, Eugene Ludwig, is a leader in the new antibias wave. At other agencies, general counsels itching to break new ground are the vanguard of the legal assault. Moreover, there's a pent-up impatience in Washington's liberal community that will be eased only by the kind of broad-brush litigation that would satisfy those who think the U.S. is a pathologically biased society.

The signal-caller for this new game plan is none other than Webster Hubbell, the offensive coach at the Justice Department. The associate attorney general from Little Rock's Rose Law Firm recently told a luncheon of the Washington Council of Lawyers, a pro bono bastion, that help would be on the way soon. Most specif-

ically, the agenda for the new assistant attorney general for civil rights, once a replacement for Lani Guinier is finally found. And for the new top command at the Equal Employment Opportunity Commission "we will bring people in

who intend to be active." Sounds like the recruiters will be visiting the University of Wisconsin Law School.

The C-Span camera was on hand to record Hillary Clinton's former law partner also promising aggressive prosecution of the Disabilities Act; "the education period is over," he said, specifically citing dentists who avoid AIDS patients. There will be scrutiny of insurers who skirt high-risk areas, demolition of "glass ceilings" in the workplace and enforcement of "environmental equity" (meaning they'll discourage job-creating noxious plants in poor, minority areas, where land prices might invite them). Mr. Hubbell pronounced himself in favor of "broad-based remedies." All of which means lawyers on the left can start putting those new additions on their homes.

The civil rights division at Justice is a turn-key operation for whomever the Clintonites choose to run it. Its career staff was barely affected by the Reagan revolution, and it's disposed to find grounds for sweeping legal action. The situation is different at the Equal Employment Opportunity Commission, where Clarence Thomas led a genuine reformation toward an individual-rights model. It will take many months of diligent effort to implant the group victimization mentality back into that agency.

Indeed, the cases of Mr. Thomas and former Supreme Court nominee Robert Bork recall to mind what this impending Clinton counterrevolution is all about. Both were savaged by an alliance of legal-political interests whose agenda, putting aside the abortion issue, is a stream of class-based discrimination claims. It's payback time now, and the Clintons are trying to fill the seats of lawyerly power in their executive branch with the people who fought Messrs. Thomas and Bork.

We suspect many business people still regard these legal struggles as rather arcane or parochial stuff. The years just ahead are likely to teach them different. Companies and other institutions may find that their bottom line has a "balance due" that some legal mind has traced to unconscious discrimination.

Again, there is a big gap here between idealistic rhetoric and the way these strategies get played out. The rhetoric of fairness and diversity have superficial appeal to most people, but they get twisted in the bizarre course of the actual litigation over statistically derived complaints. In the end, the cause of Justice amounts to four words: See you in court.

Re: Counsel 'Possible'

Attorney General Softens Stance in Whitewater Case

By Michael Isikoff
Washington Post Staff Writer

A1

Attorney General Janet Reno said yesterday that "there might be the possibility" she would seek court appointment of an independent counsel to investigate President Clinton's involvement in the Whitewater Development Corp. if Congress approves legislation reauthorizing the independent counsel statute.

Responding to a barrage of new calls for her to use her existing powers to appoint an independent counsel, Reno told reporters at her weekly news conference that such a move

"simply doesn't make sense" right now given that Congress appears on the verge of reenacting the independent counsel statute.

The statute would give Reno the authority to seek appointment of an independent counsel from a three-judge federal panel in cases in which Reno has received credible allegations of a crime involving high-level federal officials. She also would have broad discretion to seek an independent investigation in matters that pose conflicts of interest for the Justice Department.

Reno has said repeatedly she saw no need for naming an independent counsel because

See WHITEWATER, A4, Col. 1

Reno: Independent Counsel Possible in S&L Investigation

WHITEWATER, From A1

such a person would still report to her and she would have ultimate responsibility for the case.

"In the current state of the law with respect to the Whitewater case, I'm going to be damned if I do and damned if I don't," she said. Moreover, with a three-person team of career prosecutors now conducting the investigation, Reno said bringing in an independent counsel now would only cause "disruption and delay."

The pressure for appointment of an independent counsel continued to build yesterday in the wake of new disclosures that a lawyer for Clinton had discussed the wording of a subpoena for Whitewater-related documents with a Justice Department lawyer late last month, shortly before a federal grand jury subpoena was served for the president's material on Dec. 24.

White House aides said they sought the subpoena to ensure that the material would not be leaked to the news media or members of Congress. Federal law forbids the unauthorized disclosure of material that is before a grand jury. Although Clinton could still publicly release the documents, the White House has said he will not do so.

The Justice Department is conducting an investigation into Madison Guaranty Savings & Loan, a failed Arkansas thrift that allegedly diverted tens of thousands of depositor money for improper purposes, among the alleged beneficiaries were Whitewater, an Ozarks real estate investment firm formerly half owned by the Clintons.

Although Reno declined repeatedly to commit herself to seeking an independent counsel, her comments were the first suggestion that she would use a new law—strongly supported by the Clinton administration—to launch an independent probe touching on the president.

As related by White House and Justice Department officials, the

president's lawyer, David Kendall from the firm of Williams & Connally, talked with G. Allen Carver Jr., deputy chief of the fraud section, about the wording of the subpoena on Dec. 23. When Carver told Kendall that a subpoena already had been drafted, Kendall then suggested that it be even broader—a move that had the effect of protecting more material from public disclosure.

The sketchy accounts of the talks—both Justice officials and Kendall declined to comment on them yesterday—prompted Republicans to charge that the department was being used to serve the president's political interests.

It is "very, very disturbing to have the White House going to the Justice Department to apparently collude together to get a subpoena so the American people can't see the documents," Rep. Newt Gingrich (R-Ga.), the House minority whip, said on NBC's "Today Show."

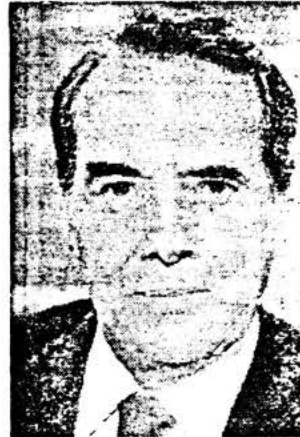
Senate Minority Leader Robert J. Dole (R-Kan.), appearing on the same program, said Reno has "let the White House take over the investigation, which is a big, big mistake on her part."

Dole, who has opposed reenactment of the independent counsel law, said the new development "cries out for the appointment of a regulatory independent counsel, which the attorney general... now has the authority to do."

G. Robert Blakey, a former federal prosecutor who teaches criminal law at Notre Dame law school, said yesterday that there was nothing unusual about Kendall asking for a subpoena for his client's protection once he knew the Justice Department would be interested in examining the documents.

But Blakey said the White House's handling of the matter made it imperative for Reno to quickly appoint an independent counsel. By failing to make a complete disclosure about Whitewater, "they are contributing to the continued cynicism of the country about their government."

The debate over the appointment



SEN. ROBERT J. DOLE
... Reno made "big, big mistake"

of an independent counsel has largely arisen because the independent counsel law, originally enacted as a post-Watergate reform in 1978, lapsed in late 1992 and Congress failed to reenact it.

Reno's comments about possibly using a new independent counsel law to initiate a Whitewater investigation were particularly significant because, according to congressional aides, it is not at all clear that she would be required to do so under the proposed provisions in the law.

Those provisions only require the attorney general to act when there is "specific" information from a "credible" source that one of about 50 high-level government officials has committed a federal crime.

Sen. Carl Levin (D-Mich.), the principal author of the bill that overwhelmingly passed the Senate in November, said this week that "from the public record that I've seen" he couldn't see how Reno would be required to act.

Without an allegation of specific misconduct from a "credible" source, aides to Levin said, Reno would not be compelled to do anything on Whitewater.

But another provision of the act, they said, would give Reno broad discretionary authority to seek an appointment in any case that "may result in a personal, financial or political conflict of interest." It was this provision that Reno, a Clinton appointee, appeared to be referring to in her comments yesterday.

Janet Reno's Shameful Delay

Attorney General Janet Reno seems hellbent on sacrificing her reputation to the White House's effort to contain the Whitewater Development flap. Not only has she continued to refuse, on insultingly specious grounds, to appoint an independent counsel. It now emerges that by so refusing, she has bought time for Justice Department and White House lawyers to cook up a deal to keep the Whitewater records under wraps. Moreover, those records are being handled so sloppily that when an independent counsel is finally — and inevitably — appointed, that official will have to spend vast energy to be sure no evidence has been destroyed.

Is no one at the White House reading the history of recent Presidential scandals? These clumsy efforts at suppression are feckless and self-defeating. This White House's attempts to maintain political control of the investigation into President and Mrs. Clinton's real estate dealings in Arkansas are swiftly draining away public trust in their integrity.

Ms. Reno insists she does not wear the White House collar, but her news conference yesterday undermined that claim. She holds out the possibility that she will seek a court-appointed independent prosecutor as soon as the House passes legislation authorizing such positions. But Ms. Reno does not have to wait. She already has the authority to appoint a special prosecutor from outside her department, and Congressional Republicans are right to insist that she do so. When the Independent

Counsel Act is revived — as it ought to be — then this special prosecutor can give way to a court-appointed prosecutor operating with even more independence.

The Justice Department's own namby-pamby inquiry has given the White House plenty of time to cover Mr. Clinton's tracks. Ms. Reno's department has called for documents including papers that the White House Counsel, Bernard Nussbaum, removed from the office of his deputy, Vincent Foster, after Mr. Foster's suicide last summer. Around Christmas, the White House said Mr. Clinton would turn over the documents voluntarily. But as late as Tuesday the White House said they were still being "catalogued."

Now it develops that the first boxes are just wending their way to Justice — protected by a Government subpoena. The subpoena, previously undisclosed, serves mainly to maintain their secrecy and give Mr. Clinton more than three weeks to "catalogue" and deliver the papers.

Yet the Attorney General finds nothing amiss. Her career bloodhounds are on the case. Yes, she has the legal power to appoint an outside counsel, but, she said yesterday, "that does not make that person independent. I mean, if I appoint somebody, I'm going to get blamed for what that person does or doesn't do."

How could matters be more mortifying for Justice than they are now?

Mr. Cuomo's Sobering Summons

Plenty of people have said that Gov. Mario Cuomo sounded like a Republican in his speech to the New York State Legislature on Wednesday. Many have also observed that the three main issues he addressed — the economy, welfare and crime — are uppermost in the minds of New York voters and thus an excellent formula for victory should he decide to run for a fourth term.

Yet far too little has been made of a more compelling point: As legislative programs go, the Governor's is eminently achievable. In that sense his address is a pointed challenge to the Legislature, especially the Republicans who have so often thwarted him — and to Mr. Cuomo, who has a habit of thwarting himself.

The Governor's speech contained few of his customary oratorical flourishes, and not much in the way of passion or his usual promises to the poor. His most important theme was that New York needed to create an "aggressively hospitable" climate for business. To that end he called for cutting the corporate tax surcharge, phasing out the hotel tax, giving tax breaks to developers and eliminating a bunch of "obnoxious" fees.

Whether he can do all that in the face of a \$1.5 billion budget deficit is doubtful; even so, Governor Cuomo is clearly aware that New York has lost 500,000 jobs in the last four years of his reign and that, recession aside, an inhospitable tax environment may have been partly to blame.

On welfare, Mr. Cuomo also emphasized jobs. He proposed that the state find work for welfare applicants before allowing them on the rolls. He would also cut benefits to families whose children are not attending schools and fingerprint welfare recipients as protection against fraud. He sounded a similarly tough note on crime, urging an overdue ban on assault weapons and harsher penalties for repeat offenders in violent crimes.

All three issues have long been part of the Republican domain. Politically, the G.O.P. cannot be pleased that Mr. Cuomo may have shrewdly positioned himself to outflank whoever runs against him; legislatively, however, it staggers the imagination to think that the Republicans who control the State Senate can, in good conscience, resist him. Indeed, his strongest opposition is likely to come from his fellow Democrats, who do not like the idea of fingerprinting welfare recipients, for example, and who can be expected to argue that cutting taxes will hurt programs for the poor.

Presumably as a call to arms, Mr. Cuomo quoted Shakespeare's "Coriolanus": "Action is eloquence." In the play, however, the line is a plea to Coriolanus from his mother to get off his high horse and go on bended knee to ask the Roman people for support. The quote actually works both ways: as a summons to action in the State Legislature, and as a reminder to himself that he must work harder than he has in the past to get his program through.

Insisting on Privacy, Clinton Seems to Accept the Punishment It May Bring

By DAVID E. ROSENBAUM
Special to The New York Times

WASHINGTON, Jan. 6 — President Clinton has apparently decided that he would rather bear the political consequences of being accused of hiding something about an Arkansas real estate venture than allow all of the facts to become public.

The President's advisers said as much on Wednesday. Their version of events is that they asked the Justice Department to subpoena documents relating to Mr. Clinton's investment in the Whitewater Development Corporation, so it would be less likely that the material would be disclosed publicly.

The White House explains this in terms of protecting the President's privacy. But like most politicians, Mr. Clinton regularly reveals intensely personal matters when it is in his political interest to do so.

In his 1992 Presidential campaign, for example, Mr. Clinton repeatedly told the story of how as a teen-ager he had demanded, in a face-to-face encounter, that his step-father stop beating his mother.

He and his wife, Hillary, have also given extensive interviews on how they met and details of their courtship.

So the determination to keep the Whitewater documents secret gives Mr. Clinton's critics free rein to speculate that they must include damaging

A failed business deal raises uncomfortable questions.

information. If Mr. Clinton has nothing to hide, the critics ask, why did he not make a clean breast of the situation from the beginning rather than let the news trickle out and continue to resist a full disclosure?

In an interview this morning on NBC's "Today" show, Representative Newt Gingrich of Georgia, the Republican whip, said, "To have the White House going to the Justice Department to apparently collude together to get a subpoena so the American people can't see the documents — there's something a little bit sick about that kind of approach."

Among the questions raised by the strategy of secrecy are these:

What do the documents show about the financial relationship between Mr. Clinton and his partner in the Whitewater investment, James McDougal?

Why did the President's lawyer and adviser, Vincent W. Foster Jr., keep a file about Whitewater in his White House office? Why was the file removed from his office after Mr. Foster's suicide in July and not shown to

Federal investigators? And why do White House officials continue to refuse to cooperate fully with those investigating the suicide?

What happened to Whitewater's business records?

What do the records show about the Clintons' tax liability?

Information made public so far shows that Whitewater Development was created in 1978 by Mr. McDougal, his wife, Susan, and Mr. and Mrs. Clinton. At the time, Mr. Clinton was Attorney General of Arkansas, and Mrs. Clinton was in a private law practice in Little Rock.

Clintons Tell of Loss

The goal was to buy lots in the Ozarks and sell them for second homes. The Clintons and McDougals had equal shares in the venture and were supposed to share profits equally, although the McDougals contributed significantly more money.

Like so many other real estate ventures in the 1980's grounded on borrowed money, Whitewater went broke. The Clintons maintain that they lost \$69,000.

Shortly after he went into business with the Clintons, Mr. McDougal bought the Madison Guaranty Savings and Loan Association, which was regulated by the Arkansas state government but protected by Federal deposit insurance. From 1982 until 1985, Madison's assets mushroomed from \$3 million to \$120 million. Then Madison went under, and it cost the Federal Government \$60 million to reimburse the depositors.

Investigations have uncovered evidence that Madison's money was used to help repay a \$50,000 personal debt Mr. Clinton incurred in his 1984 campaign for Governor. Mr. Clinton has denied he knew where the money came from. He has also denied suggestions that in return for this and other favors, he used his political influence to help keep Madison alive for years. The longer Madison stayed afloat, the more its bailout ended up costing the Federal Government.

Meantime, Whitewater Development continued to struggle. The corporation actually existed into the early 1990's, collecting mortgage payments from lot owners and paying down the principal and interest on a small number of remaining loans.

Admission on Papers

Mr. McDougal has suffered a mental breakdown and declared personal bankruptcy. He was tried and acquitted of bank fraud in 1990. In December 1992, after the Presidential election, he bought out the Clintons' interest in Whitewater.

Mr. Foster, the deputy White House counsel, was left to handle lingering legal issues involving Whitewater. For instance, the company, which showed no profit, owed no income tax. But the required tax returns for the years 1990

they needed to be completed and signed

Last July, Mr. Foster committed suicide. For months, the White House dodged questions about whether he had possessed documents involving Whitewater. Finally, on Dec. 20, officials acknowledged in response to news accounts that the White House counsel, Bernard W. Nussbaum, had removed a file on the matter from Mr. Foster's office immediately after his death and before Federal investigators had a chance to examine it.

Three days later, on Dec. 23, the White House announced that Mr. Clinton had directed that the file be turned over to the Justice Department. Mark Gearan, the White House communications director, said that day that the President was not aware of any subpoena. But now the White House says that Dec. 23 was the day David Kendall, the Clinton's personal lawyer, discussed the subpoena with the Justice Department.

At about the same time, law-enforcement officials investigating Mr. Foster's death told a reporter that their

The Clintons contend they are protecting their privacy.

inquiry was being hampered by a lack of cooperation from the White House. Mr. Clinton's aides say they have been fully cooperative.

Whether Mr. Foster's files contained Whitewater's business records is unclear.

Mr. McDougal says that at the Clintons' request, he sent all the business records to the Governor's mansion in Little Rock several years ago. The Clintons said last year that they had no such records and that Mr. McDougal, as Whitewater's president, was responsible for keeping the records.

Mr. McDougal has told associates that last June his lawyer received copies of Whitewater's tax returns from Mr. Foster for 1990 through 1992, but he said he never received business records he requested from Mr. Foster.

Documents justifying the Clintons' statement that they lost \$69,000 on the venture have never been made public. Because of the way Whitewater was structured, such a loss would not be deducted from their personal tax returns.

But the investment has caused the Clintons some tax problems. They now acknowledge that in 1984 and 1985, they improperly took personal tax deductions for interest payments of \$2,811 and \$2,322, when the payments were actually made by the company. The Clintons have never paid the back taxes, and under the law, since the discrepancy occurred more than three years ago, they are not liable for them.

Reno to Ask for Special Counsel In Clinton Land Deal, Aides Say

Independent Prosecutor Law Must Be Renewed

By NEIL A. LEWIS
Special to The New York Times

A1

WASHINGTON, Jan. 6 — Attorney General Janet Reno has decided to ask a court to appoint an independent prosecutor to investigate President and Mrs. Clinton's Arkansas land investments as soon as Congress enacts a law renewing her ability to do so, senior Justice Department officials said today.

Ms. Reno herself today came close to saying she would use the law to ask a panel of judges to appoint an independent counsel to investigate allegations surrounding the Clintons' investment in the Whitewater Development Company of Arkansas before Mr. Clinton became President.

In a prepared statement, Ms. Reno spoke both about the Whitewater investigation and the need to renew the law that would allow her to petition a court to name an independent investigator. Senior Justice Department officials said she and her top aides had already concluded that seeking an independent prosecutor would be unavoidable if the law was passed.

Decision Hangs on Wording

But Ms. Reno and her aides said she could not make a flat public promise to do so because the bill was still making its way through Congress and she did not know how the final law would read.

The decision to seek a court-appointed investigator insures that the Whitewater issue will move to a new level of scrutiny, thus adding impetus to calls in Congress to move quickly to renew the Watergate-era independent prosecutor law, which expired in 1992.

The old law permitted Federal judges to appoint independent prosecutors to investigate assertions of Government wrongdoing free of Justice Department oversight.

Knowledge of Subpoena at Issue

Ms. Reno spoke amid indications that the White House may have issued misleading statements about the circumstances under which it decided to turn over to the Justice Department files that had been removed from the office of Vincent W. Foster Jr., a White House lawyer, after he killed himself on July 20.

White House spokesmen said on Dec. 23 that Mr. Clinton had decided on his own to voluntarily turn over the documents to law enforcement officials. But some Administration officials said today that he did so only after learning that the Justice Department had informed his lawyer it was preparing to subpoena the papers as part of a criminal investigation into a failed savings and loan that was owned by the Clintons' partner in Whitewater.

The officials said that the President's personal lawyer, David Kendall, spoke with Justice Department lawyers that day about an impending subpoena.

Yet White House officials insisted today that neither President Clinton, Mr. Kendall or anyone else at the White House knew of the Justice Department

preparation of the subpoena before Dec. 23, when Mr. Clinton ordered the documents to be handed over.

"The President didn't know; his lawyer didn't know; the White House didn't know that there was anything prepared until after he made the decision," George Stephanopoulos, a senior adviser to Mr. Clinton, said today.

Mr. Stephanopoulos said he did not know when Mr. Clinton had learned that the subpoena was being prepared, and said he was not sure that the President ever did know.

A senior White House official who declined to be identified said that Mr. Clinton decided on the morning of Dec. 23 to give the Whitewater files to the Justice Department and had Deputy White House counsel Joel Klein convey that message to Mr. Kendall. Mr. Kendall and Mr. Klein then decided it was best to ask the Justice Department to request the documents under a subpoena in order to protect their confidentiality.

When Mr. Kendall called the Justice Department with his offer, the White House official said, he learned the Department was already preparing a subpoena for the papers.

The Senate already has passed a bill that would renew the independent counsel law, and the House is set to take final action on a different version in the next few weeks. President Clinton has repeatedly said he would sign such a bill into law. Republicans had opposed renewal of the old law because of the special prosecutor Lawrence K. Walsh's investigation of members of two Republican Administrations in the Iran-contra scandal. But with a Democrat in the White House, Republicans are now supporting the bill.

Ms. Reno also said she was unwilling to use a Justice Department regulation which would leave the selection of a special prosecutor to her because it would be wasteful for her to name someone if she would soon be asking a panel of judges to do so.

She said that if the law is renewed as expected, "and depending on the language of the statute and the evidence at the time, there might be the possibility for me to petition the court for the appointment of an independent counsel and the court might appoint even a third lawyer."

She had earlier said that even if she chose someone of impeccable reputa-

tion, that person would not be seen as independent and she would ultimately be held responsible. For that reason, she would leave the investigation in the hands of career prosecutors in the Justice Department for the time being.

Savings and Loan Seized

Mr. and Mrs. Clinton were partners in Whitewater with James B. McDougal and his wife, Susan who were longtime political supporters. Mr. McDougal also owned Madison Guaranty, an Arkansas savings and loan association which was seized by Federal regulators in 1989 at a cost of more than \$60 million in public money.

Investigators are exploring the possibility that while Mr. Clinton was governor of Arkansas, he saw to it that Madison's weak financial condition was not examined too closely in exchange for personal loans from the bank which also might have been used to keep Whitewater afloat.

Representative Jim Leach, an Iowa Republican who has been pressing Ms. Reno to quickly name an independent prosecutor under Department regulations, said today that waiting until the special counsel law is renewed would only help the President politically.

Mr. Leach, who is the ranking Republican on the House Banking Committee, said that Ms. Reno is correct that a prosecutor appointed by judges would be preferable to one named by her. But he said there is a strong need to act quickly because the statute of limitations will soon run out for some civil violations of the law governing the bailout of the savings and loan industry.

Under the 1989 law, he said, the Government cannot bring civil complaints for acts of willful misconduct more than five years after a savings and loan has been seized by the government.

Madison was placed under conservatorship in March, 1989 and thus, he said, the statute of limitations would run out on such offenses in March of this year.

A law renewing Ms. Reno's ability to petition a court for a special counsel would not be enacted until the end of February at the earliest, he said and, "It would be very difficult for someone to be named by the court to raise these concerns by the first week of March."

Criminal acts have a 10-year statute of limitations.

"Her approach is very defensive of the President," Mr. Leach said.

THE NEW YORK TIMES, FRIDAY, JANUARY 7, 1994

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Woman Linked to Clintons in Land Venture Faces California Charges

By Howard Schneider
Washington Post Staff Writer

A former partner of President Clinton in an Arkansas real estate venture has been charged in California with embezzling nearly \$200,000 from conductor Zubin Mehta and his wife, Nancy.

Susan McDougal pleaded not guilty last week in a Los Angeles court to forgery and grand theft charges stemming from her employment as the Mehtas' personal bookkeeper from 1989 until July 1992. McDougal was a part-owner of the Whitewater Development Corp. along with her ex-husband, James, and the Clintons.

A complaint filed by the Los Angeles district attorney and a separate civil action brought by the Mehtas allege that McDougal forged nearly 300 checks on the Mehtas' account to pay personal restaurant, hotel and other expenses. Following a brief arraignment, she was released on \$35,000 bond and allowed to return to her current home in Tennessee.

The charges are the latest twist in what has been a roller coaster ride for McDougal. During the early 1980s she was well-known

in Arkansas as James McDougal's savvy partner in the operation of his Madison Guaranty Savings & Loan, where she was a stockholder, board member and head of the thrift's once-extensive marketing operation.

This fall, however, a national warrant was issued for her arrest as authorities in Los Angeles sought her on the forgery charges. She eventually was located in Tennessee and appeared voluntarily in California for a Dec. 29 arraignment.

She also emerged in recent weeks as an important figure in the ongoing federal investigation of Madison—a probe that is looking in part at the flow of thrift funds to Whitewater, other businesses and Arkansas politicians, including then-Gov. Clinton in connection with his 1984 reelection campaign. Sources close to the investigation said Susan McDougal had authority to write checks on Whitewater's account, and that she therefore may hold key information about where the company's money came from and where it went. The Clintons have said they were only passive investors in Whitewater and lost nearly \$70,000. They sold their interest in the company back to James McDougal late last year.

Susan McDougal's marketing company also took out a \$300,000 small business loan in early 1986 that is being examined by federal investigators. The loan was made by

During the early 1980s, Susan McDougal was well-known in Arkansas as her husband's savvy partner in Madison Guaranty Savings & Loan.

Little Rock Municipal Judge David Hale, who owned a small finance company backed by the federal Small Business Administration to support disadvantaged entrepreneurs.

When he was charged with defrauding the SBA last summer in connection with an

unrelated transaction, Hale alleged that James McDougal and then-Gov. Clinton pressured him to make the loan to Susan McDougal. He said they told him the money was needed to take care of problem loans at Madison that federal regulators had begun questioning. Susan McDougal never repaid the loan. The McDougals later said that some of the money was used to buy land for Whitewater.

The White House has denied that Clinton ever discussed the loan with Hale. After granting two telephone interviews last fall, Susan McDougal, through her attorney and through friends, has refused further interview requests posed to her recently in writing.

Leonard Levine, a criminal attorney hired to defend McDougal against the California forgery and theft charges, said she is "trying to put her life back together" and concentrating on the upcoming criminal case. Levine said he is confident that a handwriting analysis and other evidence will prove the questioned checks were either written by Nancy Mehta herself, or with her permission.

"I think she would like to put all this be-

hind her," Levine said, while acknowledging that with federal investigators still delving into Madison's affairs "I guess that is not going to happen."

Although in interviews Susan McDougal claimed she had little direct knowledge of Madison's affairs, federal regulators concluded differently. From 1983 to 1986, Susan McDougal's marketing company collected \$1.5 million in fees to prepare print and broadcast advertisements, some of which featured McDougal herself promoting Madison real estate developments.

When Madison failed, Susan McDougal moved to California, divorced her husband and was eventually hired by the Mehtas, said their lawyer, G. Grant Gifford.

Gifford said she served as a "jack of all trades" for the family, shopping for groceries and managing several rental properties while the conductor and his wife were away from Los Angeles.

She was not, however, authorized to sign Nancy Mehta's name on checks, Gifford said. So when checks bearing Mehta's name turned up at the couple's bank while they were in Italy, Gifford said they became concerned.

Clinton Allegations Cause GOP Memory Loss

"We ought to have confidence in our nation's attorney general—confidence that she [Janet Reno] can conduct criminal investigations with independence and without the intrusion of politics."

— Sen. Robert Dole on the Senate floor, Nov. 18, 1993

"She's [Ms. Reno's] wasted a lot of time dragging her feet, and it's time she moved and appointed an independent counsel."

— Sen. Dole on "Meet the Press," Jan. 2, 1994

The year isn't even a week old and Bob Dole already is a candidate for the political hypocrisy award of 1994. What transpired in 45 days was that President Clinton and Ms. Clinton's relationship with a



Politics & People

By Albert R. Hunt

failed savings and loan in the 1980s began to dominate the headlines; Bob Dole, who blocked extending the independent counsel legislation in 1992 when a Republican was in the White House, smelled blood.

The political context is Washington returning from the holidays readying for a rough year while a couple potential scandals circle the first family. Some early conclusions from all this are:

• *The Clinton sex scandal is doing a well-deserved death, but the financial allegations may have legs.*

The public, to the surprise of cynics, has much less interest than the press in stories about Bill Clinton's alleged infidelities as governor of Arkansas. The story was seamy, if not specious, from the start. The essence, as most everyone knows by now, involved several former Arkansas state troopers, represented by a Clinton-hating Republican politico, telling how the former Arkansas governor used them to

facilitate sexual assignations.

Titillation aside, it seems obvious that a) the stories added little to the knowledge voters possessed during the 1992 election that Bill Clinton had a philandering past; b) the allegations, at the core true, were probably embellished to make a more marketable story; and c) the most serious charge—that the president may have tried to silence accusers with job offers—was flimsy at best.

By contrast, the S&L flap won't fade as easily. The central issue is: Did the now-defunct Madison Guaranty Savings & Loan illegally funnel political and personal funds to the Clintons in the 1980s? The head of Madison, James McDougal, and the Clintons were partners in a separate land development company, Whitewater Development Co., which also may have illicitly gotten money from a small business investment company run by David Hale, whom Gov. Clinton appointed a state judge. The plot thickened following the tragic suicide last July of Vince Foster, a White House counsel and the Clintons' former lawyer; within hours, presidential aides hastily spirited Whitewater files out of Mr. Foster's office.

The Clintons—the first lady once received a \$2,000-a-month retainer as Madison's attorney—deny any improprieties and say they actually lost almost \$69,000 from the Whitewater investment. Yet a report asserting this by a Clinton friend last year is flawed and there are key records missing. Meanwhile, Mr. Hale, under indictment himself, privately is trying to cut a deal claiming that he has some incriminating documents.

• *This is exactly the sort of case for which the independent counsel measure was intended.*

When interviewed, with promise of confidentiality, two top lawyers, both with criminal and financial expertise though not involved in this case, separately arrive

at the same deduction: The Clintons may have engaged in ethical transgressions, but the possibility of any criminal violation is far-fetched. The Clintons should have avoided any deals with Mr. McDougal, a well-known hustler in Arkansas political circles, but the first family has no history of seeking big bucks or cutting shady deals.

But this is why a truly independent counsel, to investigate serious allegations by very top executive branch, and sometimes congressional, figures, is necessary: to establish innocence as well as guilt. "The ap-

"The appearance of justice having been done is equally as important as justice having been done."

— Sen. William Cohen, on the need for independent counsel legislation.

pearance of justice having been done is equally as important as justice having been done," says Sen. William Cohen (R., Maine), a champion of independent counsel legislation. Conservative critics forget it was their hero, Ed Meese, who requested an independent counsel back in 1981 and was cleared of any criminal conduct.

Legislation extending the law is essential. A measure has passed the Senate, and the House expects it to do likewise by early February. An undeniable problem is that the statute of limitations on some of the Madison allegations expires in March, but even the current investigation—being conducted by a highly respected career official—is unlikely to wrap up in two months.

What Sen. Dole proposes is for Attorney General Reno, on her own, to appoint a so-called "independent" counsel. That person, of course, would report to her and Associate Attorney General Webster

Hubbell, whose father-in-law got a huge loan forgiveness from Madison. That's like setting up a blind trust that you can peek at. If a Justice Department-designated counsel issues a report exonerating the Clintons, one already can hear the Kansas Republican questioning the "independence" of the conclusion.

• *With Democrats running the executive branch for the first time in a dozen years, Republican views on executive privileges and perquisites are in a metamorphic free fall.*

Remember those days when Republicans passionately protested against any encroachment on executive authority? That started to end about 351 days ago—when Bill Clinton was sworn in.

A mainstay in the old argument was opposition to counsels truly independent of the executive branch. Now conservatives are calling for independent counsels to investigate allegations not only against the Clintons but separately against Commerce Secretary Ron Brown. Similarly, on foreign policy, remember those impassioned conservatives who protested against any efforts to tie the president's hands on Nicaragua or El Salvador or Beirut during the 1980s? Suddenly, for Bob Dole and others, the principles changed this year when it came to Somalia and a Democratic president.

"These Republicans don't even come up with an argument for changing their position," notes Rep. Barney Frank (D., Mass.). "They just figure the public doesn't have any memory."

In a variation on this separation-of-powers issue, here's one more prediction: If the GOP picks up 20 or 25 House seats this year and a half-dozen Senate seats—putting them within striking distance of congressional control—watch all the conservative clamor for term limits follow the same fate as worries about encroaching on executive authority with measures like independent counsels.

Clinton Lawyer Secured U.S. Subpoena To Prevent Release of Whitewater Files

By MICHAEL K. FRISBY

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON — President Clinton's personal lawyer had the Justice Department subpoena documents regarding the Whitewater Development Co., a move that probably prevents their release under the Freedom of Information Act.

White House adviser Bruce Lindsey said in a statement last night that the subpoena was sought "to assure the integrity of the documents and the privacy of the process as provided for by federal law."

The announcement was made the same day that David Marston, a Republican lawyer and former U.S. attorney in Philadelphia, filed a Freedom of Information Act request, seeking copies of the documents that the president had said he was turning over voluntarily to the Justice Department.

Mr. Marston was seeking the documents found in the office of White House Deputy Counsel Vincent Foster, after he committed suicide last July. In addition, Mr. Marston's FOIA request sought other documents regarding Whitewater and Madison Guaranty Savings & Loan Association, which is under investigation by federal authorities.

In his FOIA request, Mr. Marston argued that because the documents were to

be turned over voluntarily, the Justice Department couldn't "lawfully assert any exception to FOIA."

However, Mr. Lindsey's statement appears to rule out the possibility that the documents can be made public. Mr. Lindsey said that on Dec. 23, the day the president agreed to voluntarily turn over the documents, David Kendall, the president's attorney, requested the protection of a subpoena. The subpoena was issued the next day, administration officials said. The White House hadn't disclosed the existence of a subpoena until yesterday.

Mr. Lindsey said that the documents will be turned over to the Justice Department beginning today, and that the subpoena orders that they all be produced by Jan. 18. The White House has said that the delay in delivering the documents occurred because Mr. Kendall was categorizing the documents.

Mr. Marston, a partner in the law firm Buchanan Ingersoll, assailed the Clintons and their personal attorney for "political misuse" of the Justice Department. "The Justice Department can't be a repository for whatever inconvenient records some public official would like to put there so as to have an excuse for avoiding public scrutiny," he said in an interview.

The Clintons have been trying to quell the growing controversy over their Whitewater partnership with James McDougal and his former wife, Susan, since the July 20 suicide of Mr. Foster. Acting as the Clintons' personal attorney, Mr. Foster had handled the 1992 sale of their stake in the Arkansas vacation-home development to Mr. McDougal and had overseen the preparation of delinquent Whitewater tax returns.

Mr. McDougal, a longtime campaign fund-raiser and friend of Mr. Clinton's, owned Madison Guaranty until federal regulators took it over in 1989. A team of career Justice Department prosecutors is investigating, among other things, whether Madison Guaranty deposits were improperly funneled to Whitewater or Mr. Clinton's 1984 re-election campaign for governor of Arkansas.

Mr. McDougal denies any wrongdoing. "There's nothing to Whitewater," said Samuel Heuer, Mr. McDougal's attorney in Little Rock, Ark. "Jim is being castigated like a witch in the Salem [witch-trial] era."

Stocks Gain 14.92 Points To a Record

Bonds Slump on Rise In Factory Orders; The Dollar Advances

WEDNESDAY'S MARKETS

By STEVEN E. LEVINGSTON

Staff Reporter of THE WALL STREET JOURNAL

The Dow Jones Industrial Average overcame a plunge in bond prices to surge to a record. The dollar rose.

The industrial average jumped 14.92 points to 3798.82, edging past the previous record of 3794.33 set Dec. 29. Standard & Poor's 500-Stock Index gained 0.66 to 467.55, and the Nasdaq Composite Index rose 3.77 to 778.05.

Investors piled into economically sensitive stocks betting on still further strength in the economy. In the latest sign of the economy's vigor, the Commerce Department reported that new factory orders rose 1.4% in November to a record seasonally adjusted level.

The Dow Jones Transportation Average, often viewed as an indicator of future economic growth, soared 24.24 points to a record 1778.83. "That's a clear confirmation that the trend in the industrials is up and that we should get closer to 4000 on the Dow before this move is over," said Peter Canelo, chief investment strategist at NatWest Securities.

The stock market's surge in the face of slumping bond prices also showed investors' optimism about the economy, Mr. Canelo said. "We're in a period of such positive expectations for the economy and for earnings that stocks and bonds can move in opposite directions," he said.

Bond prices tumbled in what is shaping up as a volatile week of bond-market trading. After plunging more than a point, or over \$10 for each \$1,000 face amount, on Monday, the Treasury's benchmark 30-year issue soared nearly a point Tuesday only to sink $\frac{3}{4}$ point yesterday, pushing the yield up to 6.40%.

"This kind of trading suggests a pretty strong divide between the bond-market bulls and bears," said Edward Yardeni, chief economist at C.J. Lawrence.

While both bulls and bears recognize the economy is picking up strength, they differ on whether the acceleration will breed inflation. "Eventually, the debate will be resolved in favor of the bulls as the economy continues to grow but inflation stays low thanks to productivity-led growth," Mr. Yardeni argued.

He expects the bond market to remain volatile through the quarter as the yield on the Treasury's 30-year issue settles into a trading range of 6.2% to 6.5%.

World-wide, stock prices rose in dollar terms. The Dow Jones World Stock Index gained 0.26 to 111.74.

In major market action:

Stock prices climbed. Volume totaled 375.1 million shares on the New York Stock Exchange, where 1,196 issues rose and 999 fell.

Bond prices slumped. The Treasury's 10-year issue lost more than $\frac{5}{16}$ point, or over \$3.125 for each \$1,000 face amount, to yield 5.87%.

The dollar gained. In late New York trading, the currency was quoted at 1.7395 marks and 112.90 yen, compared with 1.7355 marks and 112.70 yen Tuesday.

On Arkansas Sex, Not Inhaling, And Whitewater

By ROBERT L. BARTLEY

When the Gennifer Flowers tapes hit the headlines during the 1992 campaign, our Albert Hunt wrote a column defending candidate Bill Clinton against her "sordid, sleazy story," and also laying out conditions that might make a candidate's sex life pertinent. For example, "One, if the candidate lies."

While most of us would instinctively agree, the exception is interesting. We don't care whether he did it, but we do care if he did and denies it. Why, precisely?

Well, we teach little children not to lie because it's wrong morally, but also because it often has serious practical consequences. If you tell one lie, you typically have to cover up by telling more. After a while you reach the completely implausible, and people stop believing you. And they don't believe you in the next pinch, even if then your story is true.

At the presidential level, we call this credibility. A leader who isn't believed is not likely to be effective; a president needs bonds of trust with the people. The shredding of these bonds, not some two-bit burglary, is why President Nixon had to leave office. Election as president gives you a birthright of credibility, but you can only go to the well so many times. And here is the real danger to President Clinton in the new sex allegations raised by state troopers in Arkansas. They erode credibility just when he needs all he can muster to deal with the financial questions we call the Whitewater issue.

Sexual issues are always problematical, of course. It is unseemly to gossip about the most private aspects of someone else's life, and there's no consensus on standards to apply to political leaders. While some would punish any infidelity, others scoff that rulers have always had concubines and even harems. Still others, starting here, would say that Dwight Eisenhower sleeping with his driver in the midst of World War II is one thing, while the wanton promiscuity the troopers allege in Arkansas is quite another.

These allegations were first detailed by David Brock in the *American Spectator*, and there was an initial attempt to impugn his scoop with the label "conservative," as if that were a dread disease. But the *Los Angeles Times* quickly confirmed the essence of the Brock report by publishing its own extensive investigation. The net is that two troopers told the same stories on the record to two publications, and were supported by two other troopers talking on a not-for-attribution basis. Among other things, they support Miss Flowers's original account. There are also her tapes, plus the *L.A. Times* study of official phone records supporting at least one part of the troopers' story.

Voters will have to make up their own minds on both truth and relevance. But with due respect for the problem of proving a negative, the presidential response has scarcely built confidence.

The White House branded the troopers' charges as "outrageous." But when a reporter asked, "So none of this ever happened?" the president suffered a fit of stammering. Mr. Brock makes the point that the original Gennifer Flowers denials also had a slippery quality. In confessing marijuana experiments, candidate Clinton protested that he didn't inhale. Are the present protests of the same ilk?

As the troopers' story spread, Betsey Wright, the sometime Clinton aide who popularized the phrase "bimbo eruption," decamped to Little Rock, along the way consulting her favorite private eye, San Francisco-based Jack Palladino. Soon stories began to appear about the troopers' warts. A sex harassment charge against one trooper turned out to have been dismissed. An insurance company litigator charged the two troopers lied in an insurance scam; it turns out they did get drunk and wreck a state car, but the litigation is about who should pay medical bills.

And Ms. Wright proudly displayed an affidavit from trooper Danny Ferguson saying, "President Clinton never offered or indicated a willingness to offer any trooper a job in exchange for silence or help in shaping their stories." Re-interviewed by the *L.A. Times*, Mr. Ferguson said, yes, the president called. Yes, they talked about what troopers were going to say about the sex charges. Yes, they talked about two different jobs. But the quid pro quo was never explicitly expressed. That is, he didn't inhale.

Getting into a spitting match with his own former security guards will surely deplete a president's reservoir of credibility. Worse, this amplifies all the doubts in the Whitewater case. Here the suspicion is that funds from a failing savings and loan were diverted into Whitewater Development, a real estate venture partly owned by the Clintons. Whatever else, the defensive themes sound familiar.

It's an "old story," we hear for example; is that a denial, or not? It was a "money-losing venture," as if it would be perfectly OK to float off your real estate investment loss on the taxpayer through deposit insurance so long as nothing new gets into your own pocket. The loss was never deducted for tax purposes, but was documented in an "accountant's report," though as the *Journal's* Bruce Ingersoll just demonstrated, the report ignores major transactions. The Clintons were "passive shareholders," though at one point Hillary requested a power of attorney over the whole business. The records from Vincent Foster's office will be released, though it turns out only to the Justice Department, and it further turns out, only after a delay for "inventory." And of course, "we've said enough."

The damage from the troopers is contained by a natural, in this libertine age even touching, reluctance to traffic in sexual gossip. But in both cases the excuses are sounding increasingly lame. Whitewater could become Bill Clinton's credibility sinkhole, simply because no one is inhibited in talking about dirty money.

Mr. Bartley is editor of the *Journal*.

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(ATTN: National editors) (Includes optional trims)

Clinton to Turn Over Whitewater Files as Subpoena Is Issued (Washn)

By John M. Broder and Ronald J. Ostrow= (c) 1994, Los Angeles Times=

WASHINGTON President Clinton's personal lawyer Thursday (will begin giving federal investigators records of the first family's Whitewater Development Corp. investment, after a grand jury subpoena was unexpectedly issued in the case, the White House announced Wednesday.

The subpoena, issued Dec. 24 and disclosed in a terse White House statement Wednesday night, directs that the documents be surrendered to the Justice Department by Jan. 18. The White House said it would comply.

Bruce R. Lindsey, senior adviser to President Clinton, said in the statement that the subpoena was issued at the request of the Clintons' lawyer, David E. Kendall, who sought the order "to assure the integrity of the documents and the privacy of the process."

Although the White House insisted that Clinton's attorney himself requested the subpoena, the court order still carries the full weight of legal compulsion attached to any criminal subpoena. The subpoena also has the effect of impeding access to the documents by Republicans in Congress who are trying to conduct an independent probe of the budding scandal, Republican sources in Congress charged Wednesday.

The development is another sign of the growing attention focusing on the president's controversial investment in Arkansas.

The Justice Department is investigating the Clintons' investment in an Ozark Mountain vacation property development known as Whitewater to determine whether funds were improperly diverted to it from Madison Guaranty Savings & Loan, a failed thrift run by the Clintons' partner in the Whitewater deal, James B. McDougal.

The five boxes of records to be delivered to the Justice Department include papers relating to Whitewater removed from the office of former deputy White House counsel Vincent Foster, who committed suicide July 20. The White House agreed two weeks ago to surrender the Foster papers, but until Wednesday had not said when it would do so.

With attention to the real estate deal growing, the way the matter is resolved could have a lasting effect on Clinton's presidency, his advisers and critics agree. What had appeared to be benign and small-scale financial dealings are now being cast in the terms of scandal with a grand jury subpoena, demands for a special prosecutor and calls for congressional hearings unless the White House can somehow provide persuasive answers to dozens of questions about the affair.

What is driving the Whitewater story forward are the numerous and troubling unanswered questions about the way the Clintons conducted their public and private business dealings. For example:

How much did the Clintons invest in the Whitewater real estate deal and how much did they gain or lose from the investment?

According to official accounts from the Clintons, they invested \$68,900 in Whitewater beginning in 1978 while McDougal and his wife, Susan, put up \$92,000. Despite the unequal shares, the partnership was structured as a 50-50 split. Why?

The Clintons claim that they were merely "passive investors" in Whitewater who gave McDougal "total control" over the operation. They say they have no records of their investment or any profit or loss from it. Why not?

The investment raises several additional questions:

Did the Clintons really put up their share of the partnership funds or were the funds a loan or gift from their partner McDougal and his wife, Susan? If it was the Clintons' money, where did they get it? If the Clintons did invest the money in Whitewater, where is the documentation?

If they lost all their money, as a report commissioned for the Clinton campaign claimed last year, why did they not claim a tax deduction for the

loss?

There are questions, too, about the relationship between Madison Guaranty and Whitewater that are hidden in the records of the two entities, some of which are now in the hands of the Justice Department and others of which have not yet been located.

McDougal said he delivered all the Whitewater records to the Arkansas governor's mansion in 1987, but the Clintons deny they ever received them. There are suggestions that some Whitewater land sales were sham transactions to hide campaign contributions to Clinton and that Madison Guaranty funds were diverted to Whitewater.

Investigators also want to know about the diversion of \$110,000 in proceeds from a Small Business Administration-backed loan to buy land for the Whitewater development.

Were the Clintons, through their investment, actively party to the looting of a federally insured thrift?

Madison Guaranty Savings & Loan, owned by their friend, political contributor and investment partner McDougal, grew from an institution with assets of \$6 million to a go-go \$107 million thrift in a three-year period in the early 1980s. Despite warning signs that the savings and loan was making questionable loans to insiders and numerous Clinton political cronies, authorities did not close the bank until four years later.

A state securities commissioner appointed by Clinton approved a plan to recapitalize Madison Guaranty, which at the time was represented by Hillary Clinton and her partners at a Little Rock law firm. The thrift finally was shuttered in 1989, at a cost to taxpayers of at least \$47.6 million.

Was Clinton aware of the thrift's problems and did the institution receive favorable regulatory treatment while he was governor? Who profited from the long delay in closing it? Where did the lost millions go?

Madison executives held a fund-raiser in early 1985 to help Clinton retire \$50,000 in debts from his 1984 gubernatorial campaign. Did the bank or its officers provide any other money for Clinton campaigns before or after 1985? Did the bank do any personal favors for the Clintons, aside from putting Hillary's law firm on a \$2,000-a-month retainer?

Have the Clintons dealt forthrightly with the questions about the matter? Have they or their allies in any way interfered with the inquiries into it?

Suspensions about suppression of evidence arose last month when it was disclosed that Whitewater-related files were secretly removed from the office of Foster and deposited with the Clintons' personal attorney two days after Foster's suicide. After initially resisting turning over the files to the Justice Department for its inquiries into McDougal's business dealings and the death of Foster, Clinton relented just before Christmas and agreed to yield the records.

(Optional Add End)

Was the initial investigation of Whitewater/Madison Guaranty delayed for political reasons and is the case being fairly investigated by the Clinton Justice Department?

Former Attorney General William P. Barr, who served under President Bush, said Wednesday he believed that in the fall of 1992 the U.S. attorneys office in Little Rock concealed from him the existence of a Resolution Trust Corp. referral to the Justice Department seeking a criminal probe of Madison Guaranty and Whitewater.

The delay could have aided then-candidate Clinton's campaign for the White House by deferring a criminal investigation in the final months of the 1992 campaign.

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Clinton to send records to grand jury

By Frank J. Murray
and Jerry Seper
THE WASHINGTON TIMES

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President Clinton will send two cartons of Whitewater Development Corp. documents to the Justice Department today in response to a federal grand jury subpoena the White House requested to keep the records private.

Despite the action, intended in part to still suspicions that voluntary delivery allows the Clintons to choose what to reveal, the White House angrily rejected a new wave of calls for an independent counsel to oversee a probe of the Clintons' involvement in the Arkansas real estate venture.

White House spokeswoman Dee Dee Myers called the absence of accusations against the president and first lady Hillary Rodham Clinton "the missing link" for appointing an outside counsel to investigate their financial ties to the owner of a savings and loan whose failure cost the government about \$50 million.

The subpoena was issued secretly on Christmas Eve and served the same day on David Kendall of the high-powered Williams & Connolly law firm, Miss Myers said yesterday. Mr. Kendall became the Clintons' personal attorney after White House Deputy Counsel Vincent W. Foster Jr. killed himself July 20.

"The documents to be delivered include those relating to Whitewater which were in Vincent Foster's office at the time of his death," presidential adviser and confidant Bruce Lindsey said last night.

An administration official confirmed late last night that the Whitewater records to be turned over include working papers prepared by accountants, federal income tax returns for Whitewater for 1980 through 1989, and federal income tax returns for the Clintons for 1978 through 1989.

The records also include papers showing notes payable to various financial institutions, copies of canceled Whitewater checks, copies of check registers and copies of Whitewater correspondence.

During the 1992 presidential campaign, when Whitewater surfaced as an issue, the Clintons said many Whitewater documents were missing. It was not clear yesterday what Whitewater documents remain missing.

Mr. Lindsey and two independent sources of The Washington Times said the subpoena was from the grand jury in Little Rock, Ark. The subpoena cloaks the records at least until the grand jury closes the case, with or without an indictment.

Miss Myers said Mrs. Clinton never received the full power of attorney to conduct all Whitewater's business, including its disposition, on which the Clintons say they lost \$68,900. But they did not claim any income tax deductions for that loss.

A Nov. 28, 1988, letter from Mrs. Clinton to Whitewater partners James B. and Susan McDougal seeking power of attorney contradicted the Clintons' claim that they were merely "passive shareholders" in Whitewater.

Mr. McDougal owned Arkansas' Madison Guaranty Savings and Loan Association, which had finan-

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cial transactions connected to Whitewater and Mr. Clinton's reelection campaigns. Career Justice Department prosecutors in Little Rock are investigating the transactions.

A law enforcement official in Little Rock who is familiar with the Justice Department probe said the Kendall request specifically called for the production of "documents relating to the Whitewater Development Corporation" and made no mention of other records, although the grand jury still could demand to see them.

The official, who asked not to be identified, said some investigators in the case are concerned that Mr. Kendall's subpoena request was aimed solely at limiting the president's exposure and sealing the records from public scrutiny — exactly what the Clintons say they intended.

"It protects the confidentiality of the process," Miss Myers said. There are strict federal penalties for breaking grand jury secrecy.

"Many people here are wondering just who's running this investigation," the Little Rock law enforcement official said. "This is much like the search of Vince Foster's office, when the FBI was ordered to stand by in a hallway. The subpoena ought to be for all documents the Clintons have relating to Whitewater, Madison Guaranty and James McDougal, including those taken from Foster's office — with federal prosecutors deciding what is relevant and what is not."

Areas that appear to be outside the subpoena, as well as outside the Clintons' Dec. 23 offer to surrender documents retrieved from Mr. Foster's office, include Mr. McDougal's assistance in repaying a \$50,000 personal campaign loan in 1985 and the role of Mrs. Clinton as an attorney for Madison seeking state regulatory relief while her husband was governor.

The decision to begin delivering records now — with more being sent in the next 10 days, Miss Myers said — represented another reversal in the White House stand but did not end its resistance to the appointment of an independent counsel to manage the probe.

"I'm not a lawyer, but in order to trigger a special prosecutor or spe-

"In order to trigger a special prosecutor or special counsel there has to be some allegation of wrongdoing."

— Press Secretary
Dee Dee Myers

cial counsel there has to be some allegation of wrongdoing. That appears to be the missing link," Miss Myers told reporters yesterday while showing increasing peevishness on the topic of Whitewater.

Mr. Kendall has refused to discuss the matter, even to confirm he was retained by the Clintons. A White House aide said Mr. Clinton personally pays Mr. Kendall's bills.

"I'm sure he is. We may be dumb, but we're not that dumb," the aide said.

White House officials have said they turned over to the Clintons' "personal attorney," identified as Mr. Kendall, the documents taken from Mr. Foster's office.

The McDougals and Clintons were partners in Whitewater, and Mr. McDougal reportedly used \$35,000 in Madison money to help the Clintons pay a \$50,000 personal loan from the 1984 gubernatorial campaign.

The Rose Law Firm — where Mrs. Clinton, Associate Attorney General Webster L. Hubbell and Mr. Foster were partners — represented Madison in state regulatory action and later handled federal action against the thrift.

Despite the involvement of several administration figures in the case, Miss Myers repeatedly dismissed calls from Republican congressional leaders and major newspapers for the appointment of an independent counsel.

"It is not up to us to do it," she said, showing exasperation that White House reporters would not be deflected by her denials of criminal activity when their questions dealt with such underlying issues as the president's ethics and judgment.

"But what's the charge? I mean, normally there would be. What's the charge?" Miss Myers said.

"It's a decision that entirely begins with the attorney general," the press secretary said, indicating that the president has left the decision to Attorney General Janet Reno.

After insisting there is no evidence of wrongdoing, Miss Myers seemed to contradict herself by saying, "I don't think anybody here has any idea what stuff is in the Madison files."

Three times during the exchange she erroneously insisted that the Clintons had voluntarily turned over all Whitewater records to Justice Department investigators.

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White House 'drowning' in Whitewater

By Ron Fournier
ASSOCIATED PRESS

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Whitewater. Whitewater everywhere. Try as it might, the White House can't seem to make President Clinton's troubled Arkansas land deal go away.

"We're drowning in it here, man," one frustrated aide said.

Despite a pre-holiday attempt to kill the controversy, the chorus for more disclosure and an indepen-

dent counsel was growing. Republicans have led the way, demanding more personal records on the Whitewater land venture and an independent investigation of a related savings and loan.

Then The Washington Times, the New York Times and The Washington Post welcomed Mr. Clinton back from vacation with editorials this week supporting an independent review.

Grilled again yesterday about

Mr. Clinton's involvement, Press Secretary Dee Dee Myers said six separate times that the president has not been accused of doing anything illegal.

"What's the charge? What's the charge?" she snapped.

Clinton aides were dumbfounded when three television networks ran stories on the topic Tuesday, despite the lack of a major devel-

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SCANDAL

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opment. Senior adviser Bruce Lindsey and other aides have taken time to dress down reporters for inaccuracies in their stories.

Of the 42 persons who called the White House to register opinions about the matter Tuesday, 38 wanted a special prosecutor to investigate.

"It's the eggplant that ate Chicago," says Suzanne Garment of the American Enterprise Institute, who wrote the book "Scandal: The Culture of Mistrust in American Politics." "It's an American political scandal — you can never tell how it grows."

Justice Department attorneys are investigating the failed Madison Guaranty Savings and Loan, headed by James B. McDougal, a former Clinton friend, business partner and political ally. Investigators are trying to determine whether depositors' funds were diverted to Mr. Clinton's 1984 gubernatorial campaign and to Whitewater Development Corp., a real estate venture once owned by the Clintons and McDougal.

Clinton aides have said the president and first lady Hillary Rodham Clinton never knew the source of the

campaign money and were inactive co-owners of what they say was a money-losing real estate deal.

But a lack of full public documentation — and the White House's reluctance to discuss the topic — have fueled the controversy.

The old campaign issue popped up again this year when the Resolution Trust Corp. asked the Justice Department to investigate several matters involving the thrift, which was shut down in 1989. The media focused on how the lines were blurred between Mr. Clinton's role as governor, Mrs. Clinton's job as a lawyer representing the thrift, her law firm's work for federal regulators later suing the thrift and the couple's relationship with Mr. McDougal.

"We did nothing improper," Mr. Clinton said.

The story gathered steam when The Washington Times reported that Whitewater files were removed from the office of Deputy White House Counsel Vincent W. Foster Jr., hours after he committed suicide last summer. Mr. Foster served as the Clintons' personal attorney in the Whitewater affair.

After initially saying the files were missing, Mr. Clinton on Dec. 23 said the files taken from Mr. Foster's office would be turned over to Justice Department officials.

New life was breathed into the

topic when the White House said Monday that it would take "a couple of weeks" to turn the documents over to the Justice Department. Mr. Clinton refuses to release them to the public.

Miss Garment said the White House has provided a textbook example of how to help turn a story into scandal.

"In the end, it depends on what's there, but so far it's developing in a rather classic manner: The suspicions are there. Various journalists start really digging into it," she said. "Connections get drawn closer together. The subjects of the allegations imprudently begin acting in a way that gives rise to accusations of a cover-up."

Even if the White House bowed further to pressure and supported an independent counsel, a law allowing a court to appoint the investigator lapsed in Congress at the hands of Republicans. That means Attorney General Janet Reno, a Clinton appointee, would choose the person who could extinguish or ignite the blaze.

"If I appoint a special prosecutor, it's still my prosecutor," Miss Reno says. "And there will still be questions about the person's independence."

Back Home, Senator Packwood Finds a Chilly Reception

Battling allegations of making unwanted sexual advances to women who worked with him and of obstructing an investigation of his diaries, Senator Bob Packwood was met by demonstrators in Eu-

gene, Ore., today on the fourth day of his first visit home since summer. He acknowledged yesterday making advances toward a campaign worker but said it was part of a "warm relationship."

White House Hopes to Avoid Leaks of Clinton File

By GWEN IFILL
Special to The New York Times

WASHINGTON, Jan. 5 — Seeking to insure that documents related to President Clinton's role in a failed Arkansas real estate development remain secret, the White House has requested that the Justice Department subpoena the papers and place them under Federal protection.

David Kendall, the Clintons' personal lawyer, advised the President to seek the subpoena after Mr. Clinton decided to turn over records on the transactions to the Justice Department on Dec. 23.

The White House acknowledged the existence of the subpoena tonight in a statement that announced that the bulk of the documents would be delivered to the Justice Department on Thursday.

The subpoena, served on Dec. 24, was requested to preserve the "privacy of the process" involving an investigation into the real estate concern, the Whitewater Development Corporation, the statement said.

The subpoena discourages the possi-

bility that details of the investigation would be leaked to reporters, said Bruce R. Lindsey, a senior adviser to Mr. Clinton who has been responding to questions on the real estate matter on the Clintons' behalf. It would also make it more difficult for Congress to obtain the records, which members have been seeking for their own investigation.

Penalties for Disclosure

"What it means is, if somebody were to leak them there would be penalties connected with that," Mr. Lindsey said. He added, "If I'm engaging in a criminal investigation, I don't want the investigation I have to be in the press."

The existence of the subpoena would not prevent the Clintons themselves from making disclosures about the documents or from making them public, a lawyer not involved in the case said tonight.

But it would serve as an added barrier to their unauthorized release by Justice Department lawyers, because such a step would become a violation of criminal procedures. The existence of

the subpoena could also make it more difficult for outsiders to obtain the documents under the Freedom of Information Act, the lawyer said.

Mr. and Mrs. Clinton were partners in the Whitewater development plan with James McDougal, a political supporter who owned Madison Guaranty, an Arkansas savings and loan. When the institution failed, a Federal investigation was begun into its banking and investment practices.

Denial of Wrongdoing

The Clintons have always maintained that they were involved in nothing improper in their investment in Whitewater. In fact, they say they lost \$69,000 on the plan to develop a retirement community in the Ozarks.

The Justice Department spokesman, Carl Stern, would not comment tonight about the subpoena or the delivery of the Clinton files. Mr. Kendall, the Clintons' lawyers, did not return a telephone message left at his Washington office.

Let New Corporation Control Air Traffic, U.S. Says

By MARTIN TOLCHIN
Special to The New York Times

WASHINGTON, Jan. 5 — In an effort to improve efficiency and reduce airline delays and confusion, the Clinton Administration plans to ask Congress to create a Government-owned corporation like Amtrak to operate the nation's air traffic control system, Administration officials said today.

Under the proposal, the Federal Aviation Administration, which now operates the air traffic control system, would continue to oversee safety standards and would promulgate and enforce regulation of controllers.

But the chairman of the House panel that oversees aviation, Representative James L. Oberstar of Minnesota, said such a move would compromise safety. He vowed to fight the plan and predicted that Congress would reject it.

Additional Proposals

The Administration will also seek to increase to 49 percent the amount of voting stock that a foreign carrier can own in a United States airline, provided the foreign carrier offers a reciprocal arrangement to airlines in this country. This proposal has strong Congressional support as a way to pump needed money into domestic carriers. At present, foreign carriers can own 49 percent of the stock of United States carriers but only 25 percent of their voting stock.

The Administration also plans to propose a change in the bankruptcy laws, which some airlines believe give ailing carriers a financial benefit over healthy ones. Airlines operating under protection of current bankruptcy laws have received numerous extensions of

time to emerge from bankruptcy and are able to pay a fraction of the costs they incur whereas healthy carriers have to pay 100 cents on the dollar.

Administration officials said disenchantment with the air traffic control system was a major factor in deciding to propose creation of a corporation to run the system.

"The air traffic control system is a problem," said Richard Mintz, a spokesman for Transportation Secretary Federico F. Peña. "We want it to work better and in a more businesslike manner. This is something we believe will make the system more responsive to technological change, allow the airlines to reap the benefits of more efficient management and allow passengers to benefit from less delays."

The F.A.A. has, for example, had severe problems installing a new generation of air traffic control technology called the Advanced Automation System. It is already three years behind schedule.

Reasons for Efficiency

Administration officials, who want to finance the new setup through a tax on airline tickets, believe that a corporation operating independently but owned by the Government would be more efficient because it would be freed of Government procurement rules, would be allowed to undertake expansions and other programs without competitive bidding and would not have to operate under Government hiring regulations.

The plan was hailed by the airline industry, which has lost \$11 billion in the last four years. "It will bring effi-

ciency to the operation," said Sam Landry, president of the Air Transport Association, which represents the major carriers. "The F.A.A. is burdened with cumbersome procurement rules, antiquated personnel rules and uncertain funding."

But Mr. Oberstar, the Democrat who heads the aviation subcommittee of the Public Works and Transportation Committee, expressed strong opposition.

"I think it is fraught with danger," he said, "because there are just too many opportunities for safety to be compromised. If financial benefit to the airlines is the principal driving force for this recommendation, it scares me because I can see the airlines saying that distances should be reduced between aircraft so they can pump more aircraft into the skies and into airports."

Mr. Landry said the financing mechanism had not been worked out.

Mr. Mintz, the airlines' representative, said the goal was to have the new setup financed by the airlines and removed from the Federal budget. By buying better equipment and not being bound by bureaucratic restraints, he said, the air traffic control system would be safer.

"We will never compromise safety," Mr. Mintz said.

More national news
is on pages D19 and D20.

bc-whitewater-post 1stldwritethru
changes throughout; new information
(wap) (ATTN: National editors)

White House to Comply In S&L Probe (Washn)

By Michael Isikoff and Ann Devroy= (c) 1994, The Washington Post=

WASHINGTON The White House said Wednesday that the Justice Department issued a previously undisclosed subpoena on Dec. 24 to President Clinton's lawyer for records relating to the Whitewater Development Corp. and that it will begin turning those documents over to federal prosecutors Thursday.

White House aides said that David Kendall, personal lawyer to the president and Hillary Rodham Clinton, first requested the subpoena in discussions with Justice Department lawyers on Dec. 23. That was the day the White House announced it was voluntarily turning over the records, some of which were discovered in deputy White House counsel Vincent Foster's office after his suicide last July 20.

White House aides said Wednesday that they sought the subpoena to protect "the integrity" and "privacy" of the documents. "The staff discussions of this," said one official, "were that we should ask for a subpoena because then it becomes a crime to leak them and maybe that would keep them from being leaked." News organizations as well as some GOP members of Congress have been looking into the Clintons' relationship with the Whitewater real estate development company.

But the White House did not publicly disclose the subpoena until Wednesday because, aides said, they did not consider it relevant. According to Wednesday's White House statement, the subpoena requires that all the documents must be turned over to the Justice Department by Jan. 18.

Federal law enforcement sources said Wednesday that when Kendall called the Justice Department Dec. 23 to seek a subpoena, officials informed him they had already begun drafting one. White House officials Wednesday confirmed that and said that Kendall then asked that the subpoena be broadened to cover more documents.

The draft subpoena, sources said Wednesday night, showed that the Justice Department lawyers had already decided to seek access to the documents for use in an ongoing criminal probe into a failed Arkansas savings and loan as well as a separate department investigation into the circumstances surrounding Foster's death.

White House aides said the grand jury subpoena, signed by a deputy clerk in the federal courthouse in Little Rock, Ark., also requests material on Madison Guaranty Savings & Loan. The now defunct Arkansas thrift is the primary focus of the department's investigation into allegations that depositor funds were improperly diverted and possibly benefited Whitewater, a real estate development firm jointly owned by the Clintons and Madison's owner, James McDougal, as well as Clinton's 1984 gubernatorial campaign.

The Clintons repeatedly have said that McDougal handled all of Whitewater's affairs and that they have no knowledge of any improper or criminal activity by him.

But they have resisted calls from the news media and Congress to publicly release their documents on the Whitewater venture, an investment they have described as a money loser.

White House aide Bruce Lindsey said Wednesday that Clinton directed Kendall to negotiate the matter with the Justice Department because "we wanted to be cooperative. ... The president is trying to be helpful to the criminal investigation" regarding Madison, he said.

But Lindsey said the White House would continue to resist any request that the documents be publicly disclosed, saying "these are their private records, they see no reason to publicly release them."

Wednesday's developments are the latest in a series of partial and sometimes contradictory White House statements about Whitewater that have created controversy and spurred calls by members of Congress and others for the appointment of an independent counsel in the case.

The existence of the documents related to Whitewater and Madison found in Foster's office and the fact that they had been removed by White House aides after his death was first disclosed in news accounts last month. That disclosure was followed by the Dec. 23 announcement that Clinton had directed their release to the Justice Department.

White House communications director Mark Gearan said that day that the Justice Department had not requested them. Gearan said Wednesday night that "neither the president or I" or other senior aides were aware of the pending subpoena when he made that statement.

On Sunday, White House senior adviser George Stephanopoulos said on ABC's "This Week With David Brinkley" that "the president has turned over all the documents to the Justice Department."

But on Monday, White House press secretary Dee Dee Myers acknowledged that was not the case. Instead, Myers said, the documents including campaign files and personal financial records in Arkansas were being "catalogued" and that no documents would be turned over for "a couple of weeks."

White House officials said they are turning over more than Justice initially wanted. They said the documents include the Foster files, bank statements about Whitewater's account at Madison, "three or more boxes" of campaign-related material. Also included is material compiled for a report on Whitewater prepared by James Lyons, a lawyer for the Clinton campaign, to respond to media inquiries about Whitewater after the Clintons' involvement in the company came to light during the 1992 presidential primaries.

Lindsey said the subpoena, a copy of which he declined to release, also covers records relating to Capital Management, a Small Business Administration-licensed investment firm run by David Hale that made a \$300,000 loan to Susan McDougal, who was then married to Madison owner and Whitewater partner James McDougal.

Lindsey said the Clintons have no such records. But the request involves another part of the Justice Department investigation that also potentially touches on the president. Hale, a former Arkansas municipal judge and owner of Capital Management was indicted on charges of defrauding the SBA. He has alleged that he was pressured by Clinton and James McDougal to make the loan to Susan McDougal as a means of shoring up Madison's books. James McDougal and Clinton have adamantly denied the accusation.

As a further sign of Justice Department action in the case, federal prosecutors also recently subpoenaed records on Madison from the Resolution Trust Corp., the federal agency disposing of the failed thrift and its assets, according to RTC officials. It was the RTC that first requested a department investigation into Madison in September 1992.

Earlier Wednesday, the White House had dismissed as groundless renewed calls from congressional Republicans and newspaper editors for the appointment of an independent counsel in the case. "There are no allegations that the Clintons have done anything wrong. ... There's no evidence to suggest they have done anything wrong. What's the charge?" spokeswoman Myers said.

-END-OF-AUTOBREAK(1)-
-AUTOBREAK(2)-FOLLOWS

**** filed by:LAWP(--) on 01/06/94 at 02:33EST ****
**** printed by:WHPR(JEL) on 01/06/94 at 09:46EST ****

PM-Clinton-Hubbell S&L, Bjt, 630

Hubbell's Relatives Got \$1.5 Million in Loans From Madison

By JOEL WILLIAMS= Associated Press Writer=

LITTLE ROCK, Ark. (AP) A longtime associate of President Clinton helped the federal government investigate the collapse of an Arkansas savings and loan, even though the associate's relatives took out \$1.5 million in loans from the institution, documents show.

Associate Attorney General Webster Hubbell was a law partner of Hillary Rodham Clinton in Little Rock when federal banking regulators awarded the Rose law firm a contract to sue an accounting firm in the failure of Madison Guaranty Savings and Loan in 1989.

Hubbell's firm settled the \$36 million lawsuit for \$1 million. The government alleged that the accounting firm had engaged in audit irregularities in connection with Madison's books.

The handling of the auditing aspect of Madison's collapse came several years after Seth Ward and Seth Ward II, Hubbell's father-in-law and brother-in-law, respectively, took out \$1.45 million in loans at Madison, according to mortgage deeds and other records on file in Pulaski County, Ark.

One loan, for \$1.15 million, was taken out by Seth Ward who was a Madison official for a mortgage in southern Pulaski County in October 1985. The records show the loan was repaid in February 1986, less than two months before Madison was audited by federal regulators. Seth Ward II borrowed \$300,000 from Madison for a mortgage on land in western Little Rock on Nov. 15, 1985.

In Washington, Justice Department spokesman Carl Stern said Wednesday night he was unfamiliar with the loans to the Wards and Stern added that Hubbell was out of town and unavailable for comment.

Because of past work Hubbell's law firm has done on behalf of Madison, Hubbell, the Justice Department's No. 3 official, has removed himself from a department probe into whether:

Funds were diverted from Madison to a real estate venture in which the Clintons were half-owners, Whitewater Development Co.

S&L money was used to help retire Clinton's 1984 campaign debts as governor.

Meanwhile, the Clinton administration announced that it would provide the Justice Department documents related to the first family's interest in Whitewater.

Madison, whose collapse cost taxpayers \$47 million, was run by James McDougal, a former fund-raiser and friend of Clinton. In addition, McDougal and his former wife, Susan, were co-investors in Whitewater.

The loans from Madison to Hubbell's relatives add a new dimension to the Rose firm's involvement with Madison.

Hubbell's law firm did work on behalf of the S&L winning approval from a state regulator appointed by Clinton for a unique recapitalization plan that was never implemented. It was in anticipation of the 1986 federal audit that the Rose firm won approval for the recapitalization.

Mrs. Clinton did legal work on the issue, with Madison putting her on a \$2,000-per-month retainer.

Federal investigators are trying to determine whether Hubbell, in qualifying to do the cleanup work in 1989, failed to tell the Federal Deposit Insurance Corp. that his Rose law firm had done work for the thrift before it failed.

Federal officials familiar with the case say that Hubbell informed them of his relationship to Seth Ward at the time Hubbell was seeking work from the FDIC. However, officials say Hubbell did not inform them of the Rose law firm's past work on Madison's behalf.

Federal conflict-of-interest rules generally bar lawyers from representing the government in S&L cases if they have done significant work for the institution or have close personal relationships with individuals with a financial stake.

Additional regulations forbid government workers and contractors from

entering into activities that bear even the appearance of a conflict.

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**** printed by:WHPR(JEL) on 01/06/94 at 09:45EST ****

THE ATLANTA CONSTITUTION		
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Appoint special counsel

Bob Dole is calling for a special counsel to investigate President Clinton's investment in a failed Arkansas land deal.

Nowt Gingrich also wants a special counsel. "If [the Clintons] are innocent," he says, "why don't they go ahead and agree to an independent counsel to clear their names?"

Dole and Gingrich are both Republicans —

highly partisan Republicans who smell trouble for a Democratic president. Their calls for a special counsel are simply a ploy for political advantage.

But so what? That's the way the system works. Those on the outside are supposed to poke and prod at the weaknesses of those on the inside, and right now Bill Clinton's weakness is the Whitewater Development Corp. It's going to be poked and prodded not merely by his opponents, but also by the media.

The president, however, is a politician every bit as wily as Dole and Gingrich. His best strategy at the moment, politically, is to give his opponents what they say they want. He should ask Attorney General Janet Reno to appoint a well-respected independent counsel to investigate the Whitewater deal.

Until now, the Whitewater investigation has been handled by career prosecutors in the Justice Department. There is not a shred of evidence to suggest that those prosecutors have been anything but diligent and professional in following where the truth leads them in this case.

The problem has been with the Clinton administration. Scandal is a beast that feeds on suspicion, and the Clinton White House, for

some reason, has been feeding the beast regularly.

The Clintons claimed last year to have lost money on the Whitewater deal, but that claim is not supported by their tax returns. White House Deputy Counsel Vance Foster was heavily involved in the Whitewater transactions, and after his suicide last May, Whitewater documents were inappropriately, and perhaps illegally, removed from his office.

Last week, the White House announced that the Clintons would immediately turn over all their Whitewater files to the Justice Department. Then it announced that files had been turned over.

Unfortunately, it turns out that the files have not been turned over at all but are being "cataloged" by the president's private attorney. It will be a couple of weeks before the files can be surrendered to Justice, the White House says.

Such a pattern of behavior can perhaps be explained by nothing more than incompetence and miscommunication. Perhaps...

On the other hand, it can also be explained in other, less innocent ways, and a lot of people are eager to do so. In fact, the president's refusal to seek a special counsel has become a club that his opponents are only too happy to use against him.

By agreeing to a special counsel, and by turning over all files and other information in his possession or control, Clinton can solve his immediate political troubles, whether he still has other Whitewater-related problems would be up to the special counsel to determine.

The Miami Herald

JOHN S. KNIGHT (1954-1987)

JAMES L. KNIGHT (1989-1992)

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Let the public see - now

C'mon, cut the shilly-shallying. President Clinton said two weeks ago that he would turn over files on his investment in Whitewater Development. The Arkansas vacation retreat is part of a criminal fraud investigation into a failed savings and loan association. He hasn't done so, and White House spokeswoman Dee Dee Myers, after considerable harping and hawing, says that the president's lawyer may need two more weeks "to catalog" the records.

Hub? A two week delay, atop a two week delay, seems dilatory at best.

The longer the president's loyalists hold on to those records, the more they invite suspicion that something more is afoot than merely making lists of what's being turned over to Justice Department prosecutors now handling the case. How often do federal prosecutors wait for someone to copy a file before turning it over as demanded, anyway? Not often.

Granted, Republicans are putting the pressure on. Oppositor parties do that: it's part of the political process. It's neither new nor odious. The potential odium exists in the reticence of the president's friends about turning over the promised records.

The Clintons already have said that their Whitewater investment was a \$69,000 loser, that it collapsed when their partner, James McDougal, who

THE CLINTONS' RECORDS

The delay in releasing details on their investment is fueling suspicions needlessly — and perhaps unfairly.

headed the Madison Guaranty Savings and Loan Association, went bust. The American public is somewhat inured to stories of how S&Ls courted politicians to escape regulators and make bad loans to good friends. Madison offers a new twist. In this case, prosecutors are trying to determine whether contributions from S&L operatives flowed not into Arkansas politicians' campaign coffers, but into those politicians' personal investment portfolios, including that of the Clintons. The Clintons opened his campaign records during the presidential race. It's their personal records that are now at issue.

There is, let it be noted, no evidence so far of wrongdoing by the Clintons. But when their longtime friend and deputy White House counsel, Vincent W. Foster Jr., killed himself last summer, their Whitewater records were removed from his office before investigators arrived. That raised suspicion.

The law allowing for appointing an independent prosecutor has expired, but the U.S. attorney general long has been empowered to name special counsels for politically sensitive investigations. If the Clintons are finally to quell suspicion, then Attorney General Janet Reno must appoint a special independent counsel to investigate, and the Clintons ought to turn over their Whitewater records — now!



Clinton

'Universal' or bust

Even in the throes of this week's killer Arctic blast, you could feel Washington's rhetorical temperature starting to rise. The public debate over whether health care plan provides true "universal access" is finally heating up. Several of the president's critics began pumping the balloons on the weekend chat shows.

Before the all-important details go up the flue, there's still time to cool this rhetoric with a few definitions. The president prudently insists that whatever plan is enacted must provide basic coverage for everyone. Many opposing plans offer "universal access" — making it easier and cheaper for everyone to join a plan — but not necessarily universal coverage. Under most opponents' systems, some Americans would still be unable to afford insurance, though it would be available to all.

The emphasis on everyone is important for more than philosophical reasons. Yes, it's good to have a policy that doesn't exclude low-income people. But it's also essential, for cost-cutting reasons, that levels of basic and optional care be defined for everyone.

That way, those who wish to have more comprehensive flexible or high-catch levels of coverage could be made

HEALTH REFORM FOR ALL

A plan that covers every American isn't just more equitable. It's an economic necessity.

to pay the full cost of their extra security. Costs for more expensive or experimental care could not be secreted away "off-shifted," as they frequently are now, into other parts of the labyrinthine health-care

system. (Stories of \$10 aspirin tablets and routine exams that run into the thousands of dollars typically have their roots in such shifting.)

The most attractive of the dissenters' plans still don't give the government the kind of cost-control leverage that Mr. Clinton rightly demands. He points out, with appropriate alarm, that the government's expenditures on health care are the fastest growing item in the federal budget. A health reform plan that only makes insurance more accessible is a good thing for those who become insured. But it does little to ease the budget hemorrhage that burdens every American, insured and uninsured alike.

Apart from universal coverage, the president has offered to be flexible about nearly every other element of his plan. He'll need that flexibility, both to improve the package and to win enough votes to pass it. But on the matter of universality, he's right to hold firm — not just for the nation's physical health, but for its fiscal health as well.

WASHINGTON AND THE WORLD

Justice Dept. to get papers from Clintons

By Judy Keen
USA TODAY

The White House, moving to bridge controversy over President Clinton's possible links to a failed Arkansas thrift, today begins giving related papers to the Justice Department.

The five boxes of documents were defined in a grand jury subpoena requested by the White House. They include those taken from the office of White House lawyer Vincent Foster after his suicide last July.

The White House sought the subpoena "to assure the integrity of the documents and the privacy of the process," said senior Clinton adviser Bruce Lindsey.

The subpoena effectively bars their public release. It sets a Jan. 18 deadline. Lindsey said most will be at the Justice Department sooner.

The department is investigating whether funds from the Madison Guaranty Savings and Loan were diverted to a real estate firm in which the president and Hillary Rodham Clinton had invested. They deny wrongdoing.

Press secretary Dee Dee Myers said Monday the papers, which Clinton said Dec. 23 he would hand over, would be sent in a couple weeks. But Clinton aides felt unrelenting media coverage and growing GOP clamor for a special prosecutor meant they had to move more swiftly.



BRAVING BULLETS, THE COLD: Bosnians try to sell their wares in an empty lot in Sarajevo.

By Enric F. Martí, Agence France-Presse

In Bosnia, talk of peace amid sounds of war

From wire reports

Bosnia-Herzegovina and Croatia agreed Wednesday to work toward ending the bloody civil war in central Bosnia as peace talks appeared to edge forward, but in Sarajevo shells rained down on the Bosnian capital.

At least four people were

killed and 32 wounded.

After two days in Vienna, political leaders from Croatia and Muslim-led Bosnia — both former Yugoslav republics — pledged "firm efforts" to stop the 20-month-old ethnic war, but stopped short of a cease-fire.

While Serb siege gunners kept up their pounding of Sa-

rajevo, a newly revitalized Muslim army launched a successful offensive against less impressive Croat forces in central Bosnia.

United States U.N. envoy Madeleine Albright warned that Croatia could face international sanctions if it doesn't halt military interference in Bosnia.

N. Korean deal comes as time was running out

By Marilyn Greene
USA TODAY

A U.S.-North Korean agreement Wednesday over nuclear inspections defuses a military threat and a diplomatic dilemma.

Time was running out on both monitoring equipment and nerves in the region.

While talks stalled for nearly a year since North Korea declared itself free of the Nuclear Nonproliferation Treaty prohibitions on nuclear expansion, timers and batteries on surveillance equipment ran down, threatening monitors that ensured no secret nuclear development was going on.

North Korea may be years away from ability to fire a nuclear missile, but the possibility made the world nervous.

North Korea sits squarely in the heart of Asia, pointed like a dagger at Japan. It shares a long border with China and is within firing distance from Russia. North and South Korean soldiers glare daily at one another across a demilitarized zone established in a conflict never officially ended.

Asian neighbors were increasingly nervous about possible nuclear buildup in an unpredictable regime. North Korean President Kim Il Sung is considered one of the world's most ruthless autocrats, bent on reunifying the Korean peninsula under his iron hand.

"He's a megalomaniac," says Ron Hatcett, director of St. Thomas University's Center for International Studies in Houston. "If he's going to see great things like reunifica-

tion, he may feel it's time for him to act."

A nuclear-armed North Korea would push South Korea and anti-military Japan into a defensive buildup, unleashing an arms race.

China, already a nuclear power and North Korea's only friend, is the key player in the diplomatic face-off.

Beijing has been behind the scenes encouraging negotiations and attempting to avoid a standoff or military confrontation.

If the impasse had continued, President Clinton was prepared to seek U.N. sanctions

against North Korea. China's assent, or at least an agreement not to veto the Security Council resolution, would be crucial. Also necessary: China's willingness to seal its borders and make the embargo effective.

Putting Beijing in such a position would have further strained already tense relations.

It's unclear what North Korea wants from the current negotiations. Among the possibilities:

► Suspension of U.S.-South Korean military exercises that rattle North Korea.

► Economic help; its experiment in communism has left it destitute.

► World acceptance of Kim's regime.

All of these are under consideration as officials ponder how to defuse the possibility of a nuclear holocaust.

But Secretary of State Warren Christopher has a strict bottom line: "Our goal is to see that they do not have nuclear weapons."

► More on Christopher, 1A, 10A, 15A



KIM IL SUNG: Bent on reunifying Korea

AP

Pressure Point

Clinton's legal moves in land deal criticized

By Susan Page
WASHINGTON BUREAU

Washington — Criticism of the White House intensified and pressure for an independent counsel mounted yesterday in the wake of reports about President Bill Clinton's legal maneuvering to limit leaks about a controversial Arkansas land deal.

Attorney General Janet Reno indicated that she was likely to recommend that a three-judge panel appoint an independent counsel if Congress reauthorizes the special prosecutor law that expired in December, 1992. The Senate passed the reauthorization in November, and the House could act as early as next month on its version.

But she again rejected Republican demands that she herself appoint an independent counsel now, arguing that no lawyer reporting to her would be seen as truly independent. "I'm going to be damned if I do and damned if I don't," she said.

Republicans threatened to demand a vote over a White House statement released late Wednesday that Clinton's personal lawyer, David Kendall, on Dec. 23 asked the Justice Department to subpoena documents that the president on that day promised to voluntarily turn over to federal investigators. The Washington Post reported that the Justice Department, at Kendall's request, broadened a subpoena that was already being drafted.

"It's mind-boggling to think that the White House and the Justice Department would work together in a matter that might involve some criminal activity," Senate Republican leader Bob Dole of Kansas said in one of a series of scorching television interviews that filled his day. "Certainly when you've got the White House and the Justice Department working together on a subpoena, there's a conflict of interest."

"This latest report is very, very disturbing to have the White House going to the Justice Department to apparently collude together to get a subpoena so the American people can't see the documents," House Republican Whip Newt Gingrich of Georgia said. "There's something a little bit sick about that kind of approach, frankly."

By having the documents subpoenaed, White House officials said prosecutors could face criminal charges if they leaked them to reporters or members of Congress. The move also protects the Clinton files from being released through Freedom of Information Act requests.

Far from quelling the controversy,

however, the subpoena has inflamed it — leaving the impression among some that the president and his wife, Hillary Rodham Clinton, may have something to hide in their tangled Whitewater Development Corp. partnership with James McDougal, a former friend and political ally in Little Rock. Federal investigators are examining whether McDougal might have misused funds at Madison Guaranty Savings & Loan Association, which he owned, possibly to benefit Whitewater or Clinton's 1984 gubernatorial campaign.

"We're not hiding anything," White House press secretary Dee Dee Myers told reporters. A senior White House official, speaking on condition of anonymity, argued that Clinton was

"standing on principle" — since he hasn't been accused of a crime — rather than doing the "politically expedient thing" and agreeing to an independent investigation.

But Samuel Dash, a Georgetown University law professor who served as chief counsel of the Senate Whitewater Committee, said Clinton risked damaging his presidency.

"There has been such a cloud placed over the presidency and the [Clinton] family," Dash said in an interview. "There's always a question of appearance, and the

public probably will never be satisfied if a career lawyer in the Justice Department eludes the president. They'll always think it was under political pressure or whitewash."

Reno, reading from two pages of handwritten notes at her weekly news briefing, said she had concluded that the best way to handle the controversy was to leave the investigation with "careful, professional prosecutors who are experienced and know what they're doing."

But she said "there might be the possibility" that she would recommend that an independent counsel be appointed if Congress reauthorizes the Whitewater-era law that established a judicial panel to supervise the counsel's work.

While Reno was speaking, a reporter noted that she presumably wouldn't have raised the possibility if she didn't think the case would be an appropriate one for that process.

"You're so logical," she replied to laughter.

Hence, widely seen as one of the most independent members of Clinton's cabinet, is herself coming under increasing criticism on the case. While

Please see CLINTON on Page 24



James McDougal

AP Wire Photo

Past Prosecutors

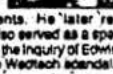
Arin Adams
Named in 1990 to investigate the HUD scandal, in which hundreds of millions of dollars in government rent subsidies to projects backed by GOP consultants. The investigation is ongoing.



James McKay
Named in 1988 to investigate a charge that a former assistant attorney general lied about environmental documents. He later resigned. McKay also served as a special prosecutor in the inquiry of Edwin Meese II and the Wedtech scandal.



Whitney Smith
Appointed in 1980 to investigate whether former White House aide Michael Deaver had broken any federal conflict-of-interest laws. Deaver later was convicted of three counts of perjury.



Jacob Stein
Appointed in 1984 to investigate Meese. He issued a report stating that no criminal conduct by Meese could be proved.



Lawrence Walsh
Appointed in 1986 to investigate the Iran-contra affair. Final report allegedly places blame on both Ronald Reagan and George Bush.

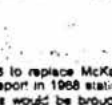


The federal special prosecutors who have been appointed since 1981.

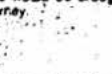
Frederick Lacey
Named in 1992 to investigate the Bush administration's handling of the 800,000 bank fraud case, which involved questionable loans to Iraq. Lacey reported that there was no evidence of mishandling.



Ainda Merritt
Named in 1988 to replace McKay. She issued a report in 1988 stating that no charges would be brought against the attorney.



Lois Silverman
Named in 1981 to investigate Labor Secretary Raymond Donovan. He found that there was insufficient evidence to prosecute Donovan.



A Q and A On the Whitewater Case

WASHINGTON BUREAU

Here's the broad picture of the Whitewater case that has enmeshed the Clintons, in question and answer form.

Q: Can you explain what this controversy over the Arkansas land deal and the Clintons is all about?

A: To start, it's complicated, and it's not been proved that the Clintons have done anything wrong. That's certainly what they maintain.

Q: What's the background?

A: In 1976, Bill and Hillary Clinton went into partnership with Little Rock

developer and insurance broker to build vacation homes in the Ozarks. They set up the Whitewater Development Corp. and bought the land for \$203,000. The project, the Clintons say, was a dud. By 1991, all the land had been sold off and the venture lost \$118,000.

Q: That's it?

A: No. McDougal bought Madison Guaranty, an Augusta, Ark., savings and loan, in the banking heyday of the early 1980s. The thrift quickly went out of control with questionable lending

practices. McDougal may have diverted Madison funds to the Whitewater project and perhaps into the 1984 gubernatorial campaign of Bill Clinton, federal investigators say. Missing records and shoddy bookkeeping make reconstruction of Madison's activities difficult, but federal banking examiners say the prior tag to taxpayers was \$47 million in \$50 million by the time they shut down the thrift in 1989.

Q: How were the Clintons involved in Madison Guaranty?

A: Hillary Clinton, working on a \$2,000-a-month retainer, represented the savings and loan as a private attorney before a state bank regulator. One of the big questions is whether either Clinton used their influence or authority in Arkansas to keep the bleeding thrift alive and McDougal, their Whitewater partner, in business.

Hillary Clinton's law firm later received more than \$400,000 from the Federal Deposit Insurance Corp. to sue Madison's accountants in behalf of taxpayers.

Please see CLINTON on Page 22

AP Wire Photo

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Essay

WILLIAM SAFIRE

Foster's Ghost

WASHINGTON

What terrible secret drove Vincent Foster, the Clintons' personal lawyer, to put a bullet through his head?

When that question was posed in this space last summer ("Was dread of further scandal a triggering cause of the apparent suicide?") Clinton aides blamed Foster's state of mind on the cruel, mean-spirited Washington press corps, with its focus on "travelgate." Questions about a lawyer with a guilty conscience were denounced as ghoulish, the product of a conspiratorial mindset.

We subsequently learned that there was indeed a scandal brewing that involved the Clintons, a go-go banker crony who financed their Whitewater real estate deal and an S.&L. failure, now under criminal investigation, that cost taxpayers \$60 million.

Vince Foster improperly kept the potentially damaging records of that deal in his White House office. Surely crossing his mind after the furor over the abuse of power in travel office patronage was the potential of far greater disgrace or prosecution in a money-and-influence scandal.

From the moment Foster's body was found, White House Counsel Bernard Nussbaum acted to keep those Whitewater files away from prying eyes. The investigation was confined to the Keystone-Kop Park Police; Clinton lawyers refused to let them or the F.B.I. see papers that might have revealed the suicide motive; and then — secretly — the files were spirited away from the White House to the President's personal lawyer.

When the existence of the hidden file came to light, the Clintons stonewalled. Hillary Rodham Clinton, attorney for the rotted-out S.&L. while her husband was responsible for its regulation, professed not to understand why anybody would be interested in a deal that lost them \$60,000. But curiously, the Clintons never took that loss, if it existed, off their income taxes; more strangely, they wrongly took other deductions, and the lawyer who worked with Hillary on these returns was Vincent Foster.

During the '92 campaign, to cover up the messy record, Foster arranged for a lawyer to hire a Denver accountant to whitewash Whitewater; the Patten, McCarthy report omitted the largest transaction undertaken by Clinton's partnership — a half-million-dollar land purchase from a paper company to which Governor Clinton granted tax breaks.

After the mean, insensitive press

raised a ruckus to produce the Whitewater files, President Clinton was forced to agree to "cooperate" with the investigation of the bank's taxpayer ripoff. He directed Foster's lawyer to turn the Whitewater files over to the Justice Department — a far cry from public disclosure.

But a curious lassitude overtook Clinton Justice. The files were not turned over forthwith; instead we were told they were being "catalogued," which the White House said would take "a couple of weeks." Only yesterday, as this and other denunciations were being written, did one box containing Foster's files, and four boxes of backup to the accountants'

What are the Clintons hiding?

whitewash, begin to get delivered.

Were the files so voluminous to require "cataloguing"? Can we be sure the documents did not get the treatment given the so-called suicide note, which appeared belatedly in 27 pieces, not one with a fingerprint, and with the signature space missing?

If I were Louis Freeh, the new F.B.I. Director chosen by Mr. Nussbaum and known as "Bernie's Good Deed," I would follow up by searching for a Foster safety deposit box or home strongbox, and would demand that Justice seek subpoenas to force the Clintons and their former law partners and accountants to produce all other relevant papers.

What could explain the Clintons' document shell game that has been going on since the discovery of Foster's body? Actions taken by lawyer-investor Hillary Clinton in 1988, when she requested power of attorney to "manage and conduct all matters related to Whitewater Development Corp." may soon come under the statute of limitations.

Special in-house counsel? Not unless it's Robert Morgenthau; better to use this pressure for House passage of the Independent Counsel Act.

No politician is so stupid as to try to hide something when there is nothing to hide. The Clintons' pattern of behavior in Whitewatergate is that of wheeler-dealers with something serious to hide. Let's hope it's only politically embarrassing. □

THE NEW YORK TIMES, THURSDAY, JANUARY 6, 1994

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Subpoena Issued For Clinton Files

White House to Comply in S&L Probe

AI

By Michael Isikoff and Ann Devroy
Washington Post Staff Writers

The White House said yesterday that the Justice Department issued a previously undisclosed subpoena on Dec. 24 to President Clinton's lawyer for records relating to the Whitewater Development Corp. and that it will begin turning those documents over to federal prosecutors today.

White House aides said that David Kendall, personal lawyer to the president and Hillary Rodham Clinton, first requested the subpoena in discussions with Justice Department lawyers on Dec. 23—the day the White House publicly announced it was voluntarily turning over the records, some of which were discovered in deputy White House counsel Vincent Foster's office after his suicide last July 20.

Aides said yesterday that they wanted the subpoena as a means of protecting "the integrity" and "privacy" of the documents. "The staff discussions of this," said one official, "were that we should ask for a subpoena because then it becomes a crime to leak them and maybe that would keep them from being leaked."

But federal law enforcement sources said yesterday that the Justice Department already had begun drafting a subpoena for the documents before the conversation with Kendall and had informed him of that.

Law enforcement officials had expressed an interest in seeing the documents for possible use in an ongoing criminal probe into a failed Arkansas savings and loan. The subpoena came during a period when the Clintons were resisting mounting calls from the news media and Con-

WHITewater, From A1.

gress to publicly release their documents on the Whitewater venture.

White House aides said the grand jury subpoena also requests material on Madison Guaranty Savings & Loan. The now defunct Arkansas thrift is the focus of a Justice Department investigation into allegations that depositor funds were improperly diverted and possible benefited Whitewater, a real estate development firm jointly owned by the Clintons and Madison's owner, James McDougal, as well as Clinton's 1984 gubernatorial campaign.

The Clintons repeatedly have said that McDougal handled all of Whitewater's affairs and that they have no knowledge of any improper or criminal activity by him.

White House aide Bruce Lindsey said yesterday that Clinton directed Kendall to negotiate the matter with the Justice Department because "we wanted to be cooperative

.... The president is trying to be helpful to the criminal investigation" regarding Madison.

But Lindsey said the White House would continue to resist any request that the documents be publicly disclosed, saying "these are their private records, they see no reason to publicly release them."

Yesterday's developments are the latest in a series of partial and sometimes contradictory White House statements about Whitewater that have created controversy and spurred calls by members of Congress and others for the appointment of an independent counsel in the case.

The existence of the documents related to Whitewater and Madison found in Foster's office—and the fact that they had been removed by White House aides after his death—was first disclosed in news accounts last month. That disclosure was followed by the Dec. 23 announcement that Clinton had directed their release to Justice. White House communications director Mark Gearan said that day that the Justice Department had not requested them.

On Sunday, White House aide George Stephanopoulos said on ABC's "This Week With David Brinkley" that "the president has turned over all the documents to the Justice Department."

But on Monday, White House press secretary Dee Dee Myers acknowledged that was not the case and that no documents had yet been turned over. Instead, Myers said, the documents—including campaign files and personal financial records in Arkansas—were being "catalogued" and that no documents would be turned over for "a couple of weeks."

Throughout this, White House aides never mentioned that the documents were being turned over under subpoena—an omission that Lindsey and other aides had no explanation for yesterday. According

to yesterday's White House statement, the subpoena stipulates that all the documents be turned over by Jan. 18.

Lindsey said the White House would not release a copy of the subpoena. But he said it is his understanding that it covers records relating to Whitewater and Madison as well as to Capital Management, a Small Business Administration-licensed investment firm run by David Hale that made a \$300,000 loan to Susan McDougal, who was then married to Madison owner and Whitewater partner James McDougal.

The documents on Hale and Capital Management relate to another part of the Justice Department investigation that also potentially touches on the president. Hale, a former Arkansas municipal judge who was indicted on charges of defrauding the SBA, has alleged that he was pressured by Clinton and James McDougal to make the loan to Susan McDougal as a means of shoring up Madison's books.

Although Hale's federally subsidized firm was authorized to lend money only to "socially and economically disadvantaged" firms, James McDougal subsequently said he \$110,000 of the funds to purchase property on behalf of Whitewater. But both he and Clinton have adamantly denied they ever requested Hale to make the loan to Susan McDougal.

As a further sign of Justice Department action in the case, federal prosecutors also recently subpoenaed records on Madison from the Resolution Trust Corp., the federal agency disposing of the failed thrift and its assets, according to RTC officials. It was the RTC that first requested a department investigation into Madison in September 1992.

Earlier yesterday, the White House had dismissed as groundless renewed calls from congressional Republicans and newspaper editors for the appointment of an independent counsel in the case. "There are no allegations that the Clintons have done anything wrong. . . . There's no evidence to suggest they have done anything wrong. What's the charge?" spokeswoman Myers said.

Bond Prices Roar Back; Stocks Gain

Report on Auto Sales
Sparks a Rebound;
Dollar Ends Mixed

**TUESDAY'S
MARKETS**

By STEVEN E. LEVINGSTON

Staff Reporter of THE WALL STREET JOURNAL
Bond prices roared back after steep declines Monday and propelled stock prices sharply higher. The dollar was mixed.

The Dow Jones Industrial Average jumped 27.30 points to 3783.90. Standard & Poor's 500-Stock Index rose 1.45 to 466.89, and the Nasdaq Composite Index surged 3.52 to 774.28.

The bond-price rebound was spurred by some weaker-than-expected economic news. U.S. auto sales in late December were slightly lower than many economists had forecast. Also, the Johnson Redbook Service, a private survey, said retail sales slipped in December from November.

Those economic reports suggested to some bond market investors that first-quarter growth may slow somewhat after a robust fourth quarter. Many bond investors were nervous about the strength of the economy and the possibility of higher short-term interest rates and rising inflation. Yesterday's sales reports quelled some of those fears, at least temporarily.

"The bond market is looking to hedge against the possibility that the first quarter won't be quite as strong as expected," said Donald Fine, chief market analyst with Chase Securities. "But the real issue is how much will the economy slow down and how will the Federal Reserve react."

Mr. Fine expects growth in the gross domestic product to slow to an annual rate of 2.5% to 3% in the first quarter from about 4.5% in the fourth quarter. With that kind of economic slowdown, Mr. Fine said he can't foresee the Fed raising short-term interest rates during the first quarter.

After starting slowly, the stock market followed the bond market's lead. The Dow industrials slipped in early trading but finished with a flurry of buying.

Hugh Johnson, chief investment officer at First Albany Corp., said stock investors put a positive spin on the weaker-than-expected economic news.

"It's not that the numbers are so weak as to suggest the economy is completely losing steam," he said. "The message of the market is simply that the economy is slowing from a fast pace to a more moderate, and that's good news."

World-wide, stock prices rose in dollar terms. The Dow Jones World Stock Index gained 0.58 to 111.48.

In major market action:

Stock prices climbed. Volume totaled 322.5 million shares on the New York Stock Exchange, where 1,204 issues rose and 918 fell.

Bond prices rallied. The Treasury's benchmark 30-year issue gained nearly one point, or almost \$10 for each \$1,000 face amount, to yield 6.34%.

The dollar was mixed. In late New York trading, the currency was quoted at 1.7355 marks and 112.70 yen, compared with 1.7435 marks and 112.61 yen Monday.

CAPITAL JOURNAL
By GERALD F. SEIB

Can Open Files Close the Book On Whitewater?

NOTHING ABOUT the controversy over President Clinton's connections to an Arkansas real-estate venture and a failed savings and loan is certain right now except this: The issue won't die until more information becomes public one way or another. And that suggests the White House might want to rethink its current approach.

At the moment, Clinton aides and attorneys are focused on turning the



president's files over to Justice Department investigators, and the White House is engaged in politically tinged jousting with Republicans over whether to appoint a special prosecutor. But in the long run, both the voters' and the president's interests might be better served if the White House simply found a way to release the Clintons' records publicly.

It's naive to think that such a step alone would end the controversy. But it might be a start down that road, and at a minimum would address head-on the suspicions that the White House is maneuvering to hide something.

The White House isn't convinced of that. Aides see themselves as caught in a classic Catch-22, in which whatever information they provide won't be comprehensive enough to answer everyone's questions, but will be sufficient to inspire dozens of new stories and launch new investigative fishing expeditions. The White House is fuming that it hasn't been given more credit for agreeing to turn the president's personal files over to the Justice Department before being formally asked, and therefore doubts that its critics would give it much credit for doing more now.

That's probably true. But given all the journalistic and prosecutorial digging that's going on right now, the issue is going to linger anyway. The bigger danger for the White House may well be that the public gets the sense that something is being hidden.

At this point, it's a safe bet that most voters have only a foggy notion what this tangled controversy is all about. In a nutshell, the issue is Bill and Hillary Clinton's investment in Whitewater Development Co., a real-estate development partnership with James McDougal, a longtime Arkansas acquaintance. Mr. McDougal also was the proprietor of Madison Guaranty Savings & Loan, the failure of which is being investigated by Justice Department attorneys.

THE WHITE HOUSE says that the Clintons lost their entire \$69,000 investment in Whitewater. And it's likely that the story would have ended there if not for the fact that Vincent Foster, the Clintons' personal attorney who handled their dealings with Whitewater, shot himself earlier this year. His death, and the fact that his office contained files on the Whitewater investment that were turned over to the Clintons' new personal attorney, have done as much as anything to rekindle interest in Whitewater.

For the Clintons, the most pertinent questions are whether and how they lost their investment, and whether funds from the failed savings and loan were improperly used either to sustain Whitewater or to pay off Clinton campaign debts.

The Clintons' personal records aren't sufficient to answer all those questions definitively. Only access to Whitewater's and Madison Guaranty's records would do that, and there is no sign the Clintons — or anybody else for that matter — have all the records of what seem to have been two loosely run enterprises. So, as White House aides point out, release of the Clintons' files wouldn't lay to rest all suspicions. And releasing fragmentary information might simply raise new questions, generate a new set of charges that information is being withheld and further fuel a journalistic and political feeding frenzy.

BUT THAT FEEDING FRENZY is under way anyway. About a dozen news organizations have filed requests under the Freedom of Information Act for copies of state files on Madison Guaranty. Little Rock is peppered with reporters chasing the story. Eventually the information in the Clintons' files seems likely to emerge one way or the other.

At this point, even Senate Republican leader Robert Dole says there is little evidence to suggest the Whitewater saga has the makings of a major scandal. Ironically, one reason the clouds have darkened is simply that the Clintons themselves made it appear last month that they would be unwilling to turn their files over to investigators. "If there was an error, it was the defensiveness of Clinton," says presidential historian William Leuchtenburg. "He has to understand that once he's in the White House, there is nothing private about (his) past or current financial dealings."

The White House knows it has to do something to put the controversy behind it. Under those conditions, letting the sun shine in seems both the right thing and the best thing for the president to do.

SS

LEVEL 1 - 10 OF 18 STORIES

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HEADLINE: Arkansas Probe Sensitive From Start;
Investigation of Collapsed S&L Affected by Links With the Clintons

SERIES: Occasional

BYLINE: Susan Schmidt, Michael Isikoff, Washington Post Staff Writers

BODY:

Last September, as officials of the Resolution Trust Corp. were preparing to ask the Justice Department to open a criminal investigation into a failed Arkansas savings and loan, they faced an unusually sensitive problem: Should they mention that the case involved President Clinton and his wife?

There was no conclusive evidence that the Clintons had done anything illegal. But RTC investigators had turned up evidence that depositor funds from the thrift, Madison Guaranty Savings & Loan, may have been diverted improperly to Clinton's 1984 gubernatorial campaign account and to Whitewater Development Co., a real estate venture jointly owned by the Clintons and James McDougal, Madison's owner.

Some RTC officials believed questions about the Clintons and their dealings with Madison had to be laid out in RTC's written request for further federal investigation. But others thought that would be a strategic error: A detailed description of activities involving the Clintons had been presented to the Justice Department in September 1992 and had been languishing for a year, prompting fears among RTC staff that the department was intent on scuttling the politically sensitive case.

The RTC finally did ask federal prosecutors in Little Rock, Ark., last fall to investigate nine suspected criminal matters arising out of Madison's 1989 failure, naming the Clintons, along with other Arkansas politicians who had dealings with McDougal.

Among other things, prosecutors were asked to examine whether Hillary Rodham Clinton's representation of the S&L before a state regulator appointed by her husband resulted in lenient treatment that allowed Madison to stay open long after it was on a clear path to insolvency.

Today, those issues are the focus of a Justice Department investigation that has become a growing headache for the Clinton White House. While the Clintons have repeatedly said they were aware of no wrongdoing at Madison, the White House, under heavy congressional and media criticism and possibly facing a subpoena, agreed late last month to turn over documents about Whitewater that were found in the office of deputy White House counsel Vincent Foster after his suicide on July 20.

The Washington Post, January 5, 1994

At the same time, the handling of the Madison and Whitewater issues by the RTC and the Justice Department has underscored the politically charged nature of the probe. Although the RTC has succeeded in sparking a federal inquiry, the matter of Madison S&L has frustrated some RTC officials who have said they worried about "packaging" the case and "selling" Justice on opening an investigation that should have begun much earlier.

Republicans, saying the situation is rife with conflicts of interest, have bombarded Attorney General Janet Reno in recent weeks with calls for the appointment of an independent counsel.

"As attorney general, you have been placed in an uncomfortable, if not untenable, position of being both the chief law enforcement official of the United States and the chief legal advisor to the president," Rep. Jim Leach (R-Iowa), ranking minority member of the House Banking Committee, told Reno in a letter calling for the naming of a special counsel.

Reno has resisted those calls, saying anybody she would appoint would ultimately report to her and would not be seen as truly independent. "I have directed the career prosecutors to pursue it [the Madison probe] in the most appropriate and vigorous manner possible," Reno said at a recent news conference.

The history of the Madison investigation, pieced together from interviews with Justice Department and RTC officials along with documents from the case, suggests that the involvement of the Clintons has repeatedly affected its progress, as investigators debated how to proceed in a probe that has such potentially large political consequences.

The inquiry began in 1989 as one of hundreds of investigations of failed savings and loans throughout the country that led to the creation of the Resolution Trust Corp. itself. The RTC charter was to close down the thrifts, to dispose of S&L assets and to try to recover through the courts federally insured funds that had been lost through poor management or possible criminality.

The transformation of a relatively routine RTC inquiry into a political hot potato began in March 1992 when news accounts detailed Clinton's longtime relationship with McDougal and their investment together in Whitewater. Those accounts suggested that McDougal had made the Clintons partners in a sweetheart real estate deal in return for lenient state treatment of Madison.

The RTC quickly sent a new team of investigators to Arkansas to aid in the Madison probe, looking at, among other things, the business relationships among McDougal and local politicians.

At the same time, investigators began to explore the role of Hillary Clinton and her law firm in representing the thrift during a 1985 encounter with state banking authorities.

The Rose law firm had represented Madison before the Arkansas securities commission when the thrift, judged critically short of capital by federal examiners, sought approval for a new stock plan to stay afloat. Hillary Clinton was one of two Rose lawyers in that effort, earning a combined \$ 2,000 monthly retainer for the firm. The plan was approved by Beverly Bassett Schaffer,

The Washington Post, January 5, 1994

Clinton's newly appointed state securities commissioner, whose law firm also had represented Madison. The plan was never implemented.

Another Rose partner, Clinton confidant Webster L. Hubbell -- now associate attorney general under Reno -- had his own ties to Madison through his father-in-law, Seth Ward. Ward was an executive with Madison's real estate subsidiary and had extensive financial dealings with the S&L.

But despite these potential conflicts, the Federal Deposit Insurance Corp. -- the federal agency that insures savings and loan deposits -- in 1989 hired the Rose firm to represent the government in a lawsuit against Madison's accounting firm. The suit, handled by Hubbell, contended that the accounting firm had failed to alert Madison's board to reckless lending and management practices that led to insolvency. It was settled for \$ 1 million in 1990.

How much the FDIC knew when it hired Rose about the relationships among Madison and the firm and its partners is unclear. Hubbell has contended that his dealings with Madison were fully disclosed. A series of internal FDIC memos at the time warned against hiring Hubbell due to conflicts involving his father-in-law, and FDIC and RTC lawyers have been conducting an inquiry in recent weeks into whether the potential conflicts were properly reported.

In addition to these efforts through civil suits to recover funds used to compensate Madison depositors, the RTC by fall 1992 had prepared a 21-page document targeting McDougal and his ex-wife Susan McDougal for criminal investigation by the federal prosecutor in Little Rock.

The referral named then-presidential nominee Clinton and his wife, as well as current Arkansas Gov. Jim Guy Tucker (D), as principals in "shell corporations" created by McDougal. It said that while there was insufficient evidence at that point to prove that the Clintons and Tucker knew about suspected check-kiting and account overdrafts authorized by McDougal, they had stood to benefit from such activities.

The referral was sent to Charles Banks, the Republican U.S. attorney in Little Rock, during the waning days of the Bush administration in the fall 1992. Banks already had been stung once in his dealings with McDougal, having failed to win a conviction of him in a 1990 bank fraud case and prompting critics to accuse Banks of mounting a politically motivated prosecution. Hoping to wash his hands of Madison and McDougal, Banks asked that he be recused from the case and that the referral go directly to the Justice Department in Washington, current and former federal officials familiar with the matter said.

In an "urgent report" memo to top Justice lawyers on Oct. 7, 1992, Banks's chief assistant, Mac Dotson, noted that the Clintons were named as potential witnesses in the referral. Dotson wrote that he believed, based on the facts outlined by the RTC, that further investigation "is warranted."

With less than a month to go before the presidential election, aides to then-Attorney General William P. Barr were concerned that any special interest shown in the case could backfire politically, sources said. An investigation involving Clinton was sure to look as though President George Bush were using the Justice Department for partisan purposes. That point was all the more forcefully made, the sources said, by those who noted the RTC had made no specific allegation of wrongdoing by the Clintons.

The Washington Post, January 5, 1994

In light of Banks's recusal, the case was assigned to career lawyers in the fraud section in the criminal division of the Justice Department, but senior Bush administration Justice officials ordered that it get no special treatment.

Many RTC referrals are never pursued, either because the Justice Department does not believe they will result in a prosecutable case or because of limited resources. A March 19, 1993, memo by criminal division attorneys working on the case concluded that the RTC referral did not "appear to warrant initiation of a criminal investigation" of Madison. But the memo, signed by John C. Keeney, then acting chief of the division, left the final decision to federal prosecutors in Little Rock. He "would not question a decision by the U.S. attorney to decline further action on the referral," Keeney wrote, according to sources familiar with the memo.

However, the results of the Justice review were not communicated to the RTC for months, sources said. In the meantime, the RTC renewed its own inquiry into Madison, sending a four-member team of agency investigators back to Arkansas in January 1993.

By September, having gathered much more information and still having received no official decision on the first referral, the RTC drafted a new request for the Justice Department. This expanded referral recommended investigation of nine separate matters of possible criminal behavior, adding details of new transactions and conflicts of interest, and naming a number of new players, sources said.

Those who believed that naming the Clintons in the first referral led to official inaction argued the president and his wife should not be named in the new, expanded request. Additional questions about whether bringing more bank fraud charges against McDougal would constitute double jeopardy helped spark a fierce debate among investigators and RTC professional liability attorneys in Kansas City, Mo., agency sources said.

RTC field officials took the unusual step of appealing to top RTC brass in Washington to make the final decision on whether to include the Clintons in the new referrals. But the Washington headquarters refused to intervene, ordering the field office to follow standard procedure.

The new referrals were sent in October to the new U.S. attorney in Little Rock, Paula Casey, a Clinton appointee and former campaign volunteer who was once a student of the president's at University of Arkansas law school. The requests also sought further investigation of current Democratic Gov. Tucker's dealings with Madison, as well as numerous other big borrowers and Madison officials -- many of them prominent in Arkansas political and civic circles.

On Oct. 27, with the stack of new criminal referrals sitting on her desk, Casey responded to six months of RTC inquiries about the fate of the first referral, then a year old. She told the RTC that she "concurred" with the Justice Department's decision to forgo an investigation due to "insufficient information."

Days later, in the wake of news reports about the new RTC referrals and questions about Casey's ties to Clinton and other senior Democrats in the case, Casey recused herself from further involvement. The Justice Department announced it was sending three career prosecutors to Little Rock to conduct the

The Washington Post, January 5, 1994

investigation.

GRAPHIC: PHOTO, REP. JIM LEACH

LANGUAGE: ENGLISH

LOAD-DATE-MDC: January 5, 1994

Arkansas Probe Sensitive From Start

Calls for Special Counsel Focus Again on S&L's Links With Clintons

By Susan Schmidt
and Michael Isikoff
Washington Post Staff Writers

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The referral named then-presidential nominee Clinton and his wife, as well as current Arkansas Gov. Jim Guy Tucker (D), as principals in "shell corporations" created by McDougal. It said that while there was insufficient evidence at that point to prove that the Clintons and Tucker knew about suspected check-kiting and account overdrafts authorized by McDougal, they had stood to benefit from such activities.

The referral was sent to Charles Banks, the Republican U.S. attorney in Little Rock, during the waning days of the Bush administration in the fall 1992. Banks already had been stung once in his dealings with McDougal, having failed to win a conviction of him in a 1990 bank fraud case and prompting critics to accuse Banks of mounting a politically motivated prosecution. Hoping to wash his hands of Madison and McDougal, Banks asked that he be recused from the case and that the referral go directly to the Justice Department in Washington, current and former federal officials familiar with the matter said.

In an "urgent report" memo to top Justice lawyers on Oct. 7, 1992, Banks's chief assistant, Mac Dotson, noted that the Clintons were named as potential witnesses in the referral. Dotson wrote that he believed, based on the facts outlined by the RTC, that further investigation "is warranted."

With less than a month to go before the presidential election, aides to then-Attorney General William P. Barr were concerned that any special interest shown in the case could backfire politically, sources said. An investigation involving Clinton was sure to look as though President George Bush were using the Justice Department for partisan purposes. That point was all the more forcefully made, the sources said, by those who noted the RTC had made no specific allegation of wrongdoing by the Clintons.

In light of Banks's recusal, the case was assigned to career lawyers in the fraud section in the criminal division of the Justice Department, but senior Bush administration Justice officials ordered that it get no special treatment.

Many RTC referrals are never pursued, either because the Justice Department does not believe they will result in a prosecutable case or because of limited resources. A March 19, 1993, memo by criminal division attorneys working on the case concluded that the RTC referral did not "appear to warrant initiation of a criminal investigation" of Madison. But the memo, signed by John C. Keeney, then acting chief of the division, left the final decision to federal prosecutors in Little Rock. He "would not question a decision by the U.S. attorney to decline further action on the referral," Keeney wrote, according to sources familiar with the memo.

However, the results of the Justice review were not communicated to the RTC for months, sources said. In the meantime, the RTC renewed its own inquiry into Madison, sending a four-member team of agency investigators back to Arkansas in January 1993.

By September, having gathered much more information and still having received no official decision on the first referral, the RTC drafted a new request for the Justice Department. This expanded referral recommended investigation of nine separate matters of possible criminal behavior, adding details of new transactions and conflicts



REP. JIM LEACH
... leads GOP calls for an independent counsel

of interest, and naming a number of new players, sources said.

Those who believed that naming the Clintons in the first referral led to official action argued the president and his wife should not be named in the new, expanded request. Additional questions about whether bringing more bank fraud charges against McDougal would constitute double jeopardy helped spark a fierce debate among investigators and RTC professional liability attorneys in Kansas City, Mo., agency sources said.

RTC field officials took the unusual step of appealing to top RTC brass in Washington to make the final decision on whether to include the Clintons in the new referrals. But the Washington headquarters refused to intervene, ordering the field office to follow standard procedure.

The new referrals were sent in October to the new U.S. attorney in Little Rock, Paula Casey, a Clinton appointee and former campaign volunteer who was once a student of the president's at University of Arkansas law school. The requests also sought further investigation of current Democratic Gov. Jim Guy Tucker's dealings with Madison, as well as numerous other big borrowers and Madison officials—many of them prominent in Arkansas political and civic circles.

On Oct. 27, with the stack of new criminal referrals sitting on her desk, Casey responded to six months of RTC inquiries about the fate of the first referral, then a year old. She told the RTC that she "concurred" with the Justice Department's decision to forgo an investigation due to "insufficient information."

Days later, in the wake of news reports about the new RTC referrals and questions about Casey's ties to Clinton and other senior Democrats in the case, Casey recused herself from further involvement. The Justice Department announced it was sending three career prosecutors to Little Rock to conduct the investigation.

bc-whitewater

(wap) (ATTN: National editors)

Whitewater Probe Was Sensitive From the Start (Washn)

By Susan Schmidt and Michael Isikoff= (c) 1994, The Washington Post=

WASHINGTON Last September, as officials of the Resolution Trust Corporation were preparing to ask the Justice Department to open a criminal investigation into a failed Arkansas savings and loan, they faced an unusually sensitive problem: Should they mention that the case involved President Clinton and his wife?

There was no conclusive evidence the Clintons had done anything illegal. But RTC investigators had turned up evidence that depositor funds from the thrift, Madison Guaranty Savings & Loan, may have been diverted improperly to Clinton's 1984 gubernatorial campaign account and to Whitewater Development Co., a real estate venture jointly owned by the Clintons and James McDougal, Madison's owner.

Some RTC officials believed questions about the Clintons and their dealings with Madison had to be laid out in RTC's written request for further federal investigation. But others thought that would be a strategic error: A detailed description of activities involving the Clintons had been presented to the Justice Department in September 1992 and had been languishing for a year, prompting fears among RTC staff that the department was intent on scuttling the politically sensitive case.

The RTC finally did ask federal prosecutors in Little Rock, Ark., last fall to investigate nine suspected criminal matters arising out of Madison's 1989 failure, naming the Clintons, along with other Arkansas politicians who had dealings with McDougal. Among other things, prosecutors were asked to examine whether Hillary Rodham Clinton's representation of the S&L before a state regulator appointed by her husband resulted in lenient treatment that allowed Madison to stay open long after it was on a clear path to insolvency.

Today, those issues are the focus of a Justice Department investigation that has become a growing headache for the Clinton White House. While the Clintons have repeatedly said they were aware of no wrongdoing at Madison, the White House, under heavy congressional and media criticism and possibly facing a subpoena, agreed late last month to turn over documents about Whitewater that were found in the office of deputy White House counsel Vincent Foster following his suicide on July 20.

At the same time, the handling of the Madison and Whitewater issues by the RTC and the Justice Department has underscored the politically charged nature of the probe. Although the RTC has succeeded in sparking a federal inquiry, the matter of Madison S&L has frustrated some RTC officials who have said they worried about "packaging" the case and "selling" Justice on opening an investigation that should have begun much earlier.

Republicans, saying the situation is rife with conflicts of interest, have bombarded Attorney General Janet Reno in recent weeks with calls for the appointment of an independent counsel.

"As attorney general, you have been placed in an uncomfortable, if not untenable, position of being both the chief law enforcement official of the United States and the chief legal advisor to the president," Rep. Jim Leach, R-Iowa, ranking minority member of the House Banking Committee, told Reno in a letter calling for the naming a special counsel.

Reno has resisted those calls, saying anybody she would appoint would ultimately report to her and would not be seen as truly independent. "I have directed the career prosecutors to pursue it (the Madison probe) in the most appropriate and vigorous manner possible," Reno said at a recent news conference.

The history of the Madison investigation, pieced together from interviews with Justice Department and RTC officials along with documents from the case, suggests that the involvement of the Clintons has repeatedly affected its progress, as investigators debated how to proceed in a probe that has such potentially large political consequences.

The inquiry began in 1989 as one of hundreds of investigations of failed savings and loans throughout the country that led to the creation of the Resolution Trust Corporation itself. The RTC charter was to close down the thrifts, to dispose of S&L assets and to try to recover through the courts federally insured funds that had been lost through poor management or possible criminality.

The transformation of a relatively routine RTC inquiry into a political hot potato began in March 1992 when news accounts detailed Clinton's longtime relationship with McDougal and their investment together in Whitewater. Those accounts suggested that McDougal had made the Clintons partners in a sweetheart real estate deal in return for lenient state treatment of Madison.

The RTC quickly sent a new team of investigators to Arkansas to aid in the Madison probe, looking at, among other things, the business relationships among McDougal and local politicians.

At the same time, investigators began to explore the role of Hillary Clinton and her law firm in representing the thrift during a 1985 encounter with federal banking authorities.

The Rose law firm had represented Madison before the Arkansas securities commission when the thrift, judged critically short of capital by federal examiners, sought approval for a new stock plan to stay afloat. Hillary Clinton was one of two Rose lawyers in that effort, earning a combined \$2,000 monthly retainer for the firm. The plan was approved by Beverly Bassett Schaffer, Clinton's newly appointed state securities commissioner, whose law firm also had represented Madison. The plan was never implemented.

Another Rose partner, Clinton confidant Webster L. Hubbell now associate attorney general under Reno had his own ties to Madison through his father-in-law, Seth Ward. Ward was an executive with Madison's real estate subsidiary and had extensive financial dealings with the S&L.

But despite these potential conflicts, the Federal Deposit Insurance Corp.-the federal agency that insures savings and loan deposits-in 1989 hired the Rose firm to represent the government in a lawsuit against Madison's accounting firm. The suit, handled by Hubbell, contended that the accounting firm had failed to alert Madison's board to reckless lending and management practices that led to insolvency. It was settled for \$1 million in 1990.

How much the FDIC knew when it hired Rose about the relationships among Madison and the firm and its partners is unclear. Hubbell has contended that his dealings with Madison were fully disclosed. A series of internal FDIC memos at the time warned against hiring Hubbell due to conflicts involving his father-in-law, and FDIC and RTC lawyers have been conducting an inquiry in recent weeks into whether the potential conflicts were properly reported.

In addition to these efforts through civil suits to recover funds used to compensate Madison depositors, the RTC by fall 1992 had prepared a 21-page document targeting McDougal and his ex-wife Susan McDougal for criminal investigation by the federal prosecutor in Little Rock.

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Battling Whitewater

ANNOUNCER: Live from Washington, Crossfire. On the left, Mike Kinsley. On the right, John Sununu. Tonight, Battling Whitewater. In the crossfire, former Attorney General William Barr, and Lloyd Cutler, former counsel to President Carter.

MIKE KINSLEY: Good evening. Welcome to Crossfire. Senate Republican leader Bob Dole wants an independent prosecutor to look into the so-called Whitewater affair.

Sen. ROBERT DOLE (R-KS), Minority Leader: *[NBC's "Meet the Press"]* For the President's sake and for the sake of the integrity of the attorney general's office, she should move. She's wasted a lot of time dragging her feet, and it's time she moved and appointed an independent counsel.

KINSLEY: Whitewater is shorthand for a complex tale of President Clinton's and Mrs. Clinton's financial dealings with the owner of a failed savings and loan bank in Arkansas. Hillary Clinton claims there is no mystery: "I am bewildered that a losing investment is still a topic of inquiry. I think what we said is adequate." But the Clintons waited until December to turn over Whitewater files from the office of Deputy Counsel Vincent Foster, who committed suicide in July. That's just one aspect of the saga that bothers skeptics. The nub of the accusations is that as governor, Mr. Clinton, in return for financial favors, may have delayed the closing of his partner's S&L, costing the taxpayers millions. Critics admit there is no hard evidence against the Clintons, but they say, why not an independent investigation? Attorney General Reno says that career prosecutors in her department are on the case, and Democrats note that it was Republicans who killed the independent prosecutor law two years ago, back when Republicans were still in the White House. John?

JOHN SUNUNU: Lloyd Cutler, the Whitewater files have produced some very bizarre behavior out of the White House. First Mark Gearan had to admit that he chose his words carefully to mislead the press when the files were taken out of Vince Foster's office. Secondly, Stephanopoulos and Eller [p?] on Sunday said the files were sent over. Now Dee Dee Myers has to admit that they weren't sent over, and now Janet Reno won't appoint an independent prosecutor 'cause she said it won't look independent. With that bizarre behavior as a background, why are you here opposing *The New York Times* and the *USA Today's* for an independent prosecutor?

LLOYD CUTLER, Former Counsel to President Carter: I've been in favor of an independent counsel statute from the very beginning, going back to the time it was first passed. I think you, John, in your administration have been against it. It's a fine irony that after you killed the independent counsel statute, while your administration held the White House. Now you think that we need an independent counsel statute or we ought to appoint an independent counsel—

SUNUNU: No, no. See, you're misrepresenting it, Lloyd.
Mr. CUTLER: —as soon as the other side holds the White House.

SUNUNU: We said it was redundant because the attorney general always had that regulation. We're asking the attorney general now to exercise the right that Republicans always said was there and didn't need a law.

Mr. CUTLER: John—

SUNUNU: That's how—

Mr. CUTLER: —the times when an independent counsel is called for under the statute or when an attorney general should do it on his or her own is when there is some evidence of a possible criminal violation by a high government official, such as the President. The law doesn't even come into effect if there is no evidence. There is evidence, apparently, about Mr. McDougal, and there is a Justice Department grand jury

KINSLEY: He's the partner—

SUNUNU: So your rigmarole about a statute a minute ago is really disingenuous—

Mr. CUTLER: You don't appoint an independent counsel just because someone is being investigated already by the criminal division and the President's name happens to come up in the inquiry.

SUNUNU: So you're really misrepresenting—

Mr. CUTLER: What suggestion is there that President—

SUNUNU: Lloyd—

Mr. CUTLER: Clinton or Mrs. Clinton violated any federal criminal law? Which is the business of the Department of the Justice.

KINSLEY: Let's start with that. There is no evidence, is there, that President or Mrs. Clinton violated any federal criminal law?

WILLIAM BARR, Former Attorney General: Well, there was hard evidence you wouldn't need an investigation, and that's not the—

Mr. CUTLER: What information is there?

Mr. BARR: I'm not—

KINSLEY: What evidence, hard or soft, is there?

Mr. BARR: The heart of the allegation is set forth by Jim Leach, who's been doing an investigation on this. Hardly—I can't think of someone who's more bipartisan on the Republican side than Jim Leach. Based on his investigation, he's written a story in *The Washington Post* where he lays out the heart of the allegation, and the heart of the allegation—

KINSLEY: He's got the allegation. Where's the evidence though?

Mr. BARR: Evidence is not the threshold. It's credible allegations of wrongdoing that require some investigation, and the heart of this issue—

Mr. CUTLER: Is the wrongdoing, a federal crime?

Mr. BARR: Well, the heart of this allegation—

Mr. CUTLER: —even if it happened.

Mr. BARR: The heart of the allegation is that there was a federally insured S&L that was pilfered inside, the way hundreds of were—hundreds of such institutions were—

KINSLEY: Right.

Mr. BARR: —across the country. I put away 4000 people

during two years for doing that. The pilfering of the institution, the allegations are here, that the Clintons were part of an inner circle that directly benefited from that and indeed that Clinton used his authority to keep this piggy bank open. Now, I'm not taking a position on whether these will ultimately prove to be meritorious, but I don't think Lloyd Cutler can sit here, and I would be shocked if the attorney general would say, that there is not a basis today for investigating and reviewing the business activities of the President and the First Lady.

KINSLEY: Look, no one is against investigating certainly Mr. McDougal, but even *The Wall Street Journal*, which is—the editorial page of *The Wall Street Journal*, which is Clinton's harshest critic probably, says there is no evidence, not no credible evidence, there is no evidence that Clinton in any way tried to influence the Arkansas regulators of this S&L.

SUNUNU: Lloyd, one of the best—

Mr. CUTLER: Even if he did, that would not violate federal law.

SUNUNU: Lloyd, the best time for a prosecutor to be named is when you're innocent. Why not deal with the perception of a problem by naming an investigator, clearing it up and moving on for the sake of the presidency?

Mr. CUTLER: John, if you did that every time there was an ordinary criminal investigation of Joe Blow or Mr. McDougal and the name of a high government official happened to come up, because the individual was a friend or a business associate, you would then appoint a special counsel.

SUNUNU: That was the practice for 12 years—

Mr. CUTLER: It was not the practice—

SUNUNU: People made that call. People were making that call constantly.

Mr. CUTLER: It was not the practice unless some high government official was being investigated for his possible violation of a federal, criminal law.

Mr. BARR: I think we're losing the view of the forest for the trees. I think everyone can agree with the premise that there are certain cases that are so sensitive and serious that they shouldn't be treated as business as usual, and whether you believe in the mechanism of a statutory independent counsel or something lesser, such as the attorney general bringing in a quasi independent person or even using a hand-picked SWAT team of the best people in the department, something extra has to be done to insure the public that there's not going to be political fixing in the case, that the case will be pursued vigorously, just as vigorously against anybody else, no one will be cut any slack.

Now, here's a case where, in order to develop it, and these cases are difficult, one has to blow through some roadblocks, maybe challenge privileges, maybe ask the President to come before a grand jury, maybe ask the First Lady to do it, maybe squeeze some of the President's best friends down in Arkansas. Asking low-level career prosecutors to do that, in my view runs the risk that we're not going to have a thorough investigation.

KINSLEY: But, Bill, isn't it ironic, to say the least, that,

as Lloyd was saying before, when Republicans were in power, you people opposed the special prosecutor, and not because, as John said, it was redundant—

SUNUNU: It was redundant.

Mr. BARR: The special prosecutor laws—

KINSLEY: You never—

SUNUNU: That's exactly the argument that was made that it was redundant.

KINSLEY: Just a second. When you opposed the appointment of special prosecutors, for example, for Iran-Contra, don't remember—

Mr. BARR: I was not there when—

KINSLEY: No, no, but when the Republicans did. You're our Republican tonight. I don't remember any Republican saying, "You know, the Attorney General Ed Meese will appoint an independent prosecutor who will be almost as independent." I don't recall them saying that at all. They said, "No, there is no need for it."

Mr. BARR: I have always said—

KINSLEY: Isn't it ironic, to say the least?

Mr. BARR: No, it's not ironic at all, Mike, and the independent counsel statute is irrelevant to our discussion.

KINSLEY: Why?

Mr. BARR: Because it's a type of mechanism for bringing in extra help, and I have always said, and I always acted as attorney general to bring in extra help. I appointed three judges in special situation. On the Silverado matter, which involved hypotheses and far less specific allegations than are being made now, I didn't let three relatively low-level people handle it. I brought in the Dallas Bank Task Force that had just put away 100 people, and I sent in an army of FBI agents, and no one has criticized that investigation, because I went for the best to assure that it would be done. In this case—

Mr. CUTLER: I agree with Bill that you should go for the best, but don't you think that's been done? This is in the hands of a career criminal division fellow, originally appointed by a Republican president, you told me outside, as a U.S. attorney and who then went into the career service. If it becomes—and the President, before the Justice Department asked to see his files, has offered to turn over his files.

Mr. BARR: No, I don't think—

Mr. CUTLER: If more needs to be done as we go along, more will be done, but before you appoint a so-called special counsel, which everyone will associate with the Ed Walshs and the other independent counsels appointed under the statute, don't you have to at least get to the point where you think you have a basis for investigating whether a high government official, here the President, or possibly even Mrs. Clinton, violated a federal criminal law, and I haven't heard anybody suggest that.

SUNUNU: The argument—

Mr. CUTLER: What you mention—

SUNUNU: It's been suggested that there were criminal matters to be investigating in the savings and loan—

Mr. CUTLER: Involving McDougal.

SUNUNU: Nobody asking that—

Mr. CUTLER: And that has happened.

SUNUNU: —anybody in particular be investigated. They're asking that the who, matter be investigated.

Mr. CUTLER: It is being investigated by career prosecutors.

Mr. BARR: Look, this case—

SUNUNU: RTC said that there was a possibility of criminal violations in the savings and loan matter.

KINSLEY: Bill Barr—

Mr. BARR: It's exactly like a case that came in your watch, the Paul Curran (sp?) matter. There was an allegation that Bert Lance, as the head of the National Bank of Georgia diverted— sent money— lent it to the Carters' business, the peanut—

KINSLEY: Right.

Mr. BARR: —for a warehouse. The statute was inapplicable. So there was no statute to rely upon. Griffin Bell appointed the Republican U.S. attorney— former Republican U.S. attorney—

KINSLEY: Sounds just like what Clinton— Janet Reno has done.

Mr. BARR: A Republican former U.S. attorney—

SUNUNU: The special investigator.

Mr. BARR: —who was not in the department at the time, who— the Southern District of New York, who was well known at the time, had a lot of stature, and he conducted a seven-month investigation. Now, I think Lloyd would have to agree with me that—

SUNUNU: And found nothing, and that's important.

Mr. BARR: I would think Lloyd would have to agree that the allegations that were made tying Clinton (sic) personally into that were far less specific than the allegations that are being set forth now.

Mr. CUTLER: Oh, no, they were much more specific. To begin with, Griffin Bell had a problem because he and his partner Charlie Curbo (sp?) in private life in the Keynes, Spalding (sp?) law firm were the personal counsel for former President Carter.

SUNUNU: Let's not debate the Carter one.

Mr. CUTLER: So he had a personal conflict of interest.

Mr. BARR: Was there evidence—

Mr. CUTLER: Second, the allegation was that the money loaned to the Carter warehouse before the election was really an illegal campaign contribution and that the proceeds had been used to finance—

SUNUNU: Lloyd, we've got to break here—

Mr. CUTLER: —the campaign. It had involved high government officials.

SUNUNU: We've got to break here. We'll be back, as we continue our investigation of the possibility of a special prosecutor.

REPORTER: Do you support the idea of naming of special prosecutor for the— to investigate the Whitewater affair?

Pres. BILL CLINTON: I have nothing to say about that. I've said that we've turned the records over. There's nothing else for me to say about that.

[Commercial break]

SUNUNU: Welcome back to Crossfire. The White House's Christmas wish was for the Whitewater savings and loan

story to go away, but it still lingers on. Republicans have been calling for a special prosecutor to investigate what really happened in the Arkansas S&L land investment deal, and pressure is mounting for answers. With us tonight to discuss it is Lloyd Cutler, who is former counselor to President Carter, and William Barr, former attorney general for President Bush.

KINSLEY: Bill Barr, let's return, if you don't mind, to this question of possible Republican double standards on this question of independent prosecutors. Now, the case against Lawrence Walsh, the Iran-Contra prosecutor, was that he was out of control, it went on for years, he wasted millions of taxpayer dollars, he brought unfair charges, and this is what happens when you have independent prosecutors. What's to stop that from happening if there's an independent prosecutor of the Whitewater case, if indeed that was what happened?

Mr. BARR: Well, if the attorney general appoints the prosecutor, then the attorney general could pull the plug on that prosecutor if there was sufficient abuse, but it would be a tremendous political difficulty—

KINSLEY: It's exactly right.

Mr. BARR: It would be a tremendous political difficulty to do that.

KINSLEY: That's the problem. That's the part— you can't have it both ways and say, on the one hand, it's just as independent as if there is a truly independent prosecutor, so you don't need the law, and on the other hand, there would be— can't be fired—

Mr. BARR: Mike, you're making the perfect the enemy of the good. Having low-level government people, and they're good lawyers, I'm sure. Technically they're good lawyers and they're dedicated people, but having them, expecting them to make decisions about whether to call in the First Lady, whether to challenge a privileged claim and so forth, that's unfair, and that's unrealistic, and we don't need—

KINSLEY: Are you—

Mr. BARR: We don't necessarily need the full-blown, statutory, perfect, in your view, independent counsel to improve the situation.

Mr. CUTLER: Or a special counsel for that matter. Look what happened when you appointed Judge Lacey, (sp?) a very fine Republican former judge, as your special counsel, rather than appoint a statutory independent counsel in order to look into the so-called Iraq-gate affair, whether Bush administration officials had done something criminal to cover up Iraq-gate, support for Iraq.

Mr. BARR: Some people made—

Mr. CUTLER: Judge Lacey, who is a fine man, and as far as I know wrote a fine report, was immediately criticized by Bill Safire as having been appointed as a friendly, supposedly, special counsel.

KINSLEY: But, Bill, would you—

SUNUNU: Lloyd—

Mr. CUTLER: And that's exactly what *The New York Times* said in its editorial.

KINSLEY: —swear that if this was a Republican administration and a Republican White House and a Republican first lady, and there was some talk about subpoenaing the

first lady on the facts that are now available that the Republicans wouldn't be screaming and yelling prosecutorial abuse?

SUNUNU: I wouldn't swear that the Democrats would be screaming and yelling for this kind of a prosecutor.

Mr. BARR: Look, it doesn't advance—

SUNUNU: You've seen it.

KINSLEY: They would.

SUNUNU: They would, wouldn't they?

KINSLEY: There's a double standard on both sides, but at least the Democrats are saying, appoint—have a law—

SUNUNU: Michael, your good friends *The New York Times* and *USA Today* in an editorial are asking for this.

Mr. CUTLER: And they would have a counsel appointed—

SUNUNU: Your good friends.

Mr. BARR: Talking about double standards and making the point that probably people on both sides, to one extent or another, have political motivations doesn't advance the ball. I think *The New York Times* editorial this morning was right on point. Let's put politics aside and let's view the merits of the case and ask what's right in this case, and what's right in this case is to provide some assurance that there's going to be a rigorous and fair investigation done, and if Janet Reno were to appoint a sitting U.S. attorney, for example Mike Chernoff [sp?] up in New Jersey, who's one of the best in the department and known to be, who they have kept on as a U.S. attorney, I'd go up to the Republicans and say, stop the hoot and the holler, the job will get done, and that's a sitting person.

SUNUNU: Lloyd, Bill Barr before the break—

Mr. CUTLER: Could I answer that?

SUNUNU: You can answer it in the answer.

Mr. CUTLER: All right.

SUNUNU: Bill Barr, before the break, gave an explanation of why you ought to appoint an independent counsel to show that there is nothing wrong. That parallels almost exactly Janet Reno's own testimony before the Senate a few months ago. Now she's reversed her field. What kind of pressure was put on Janet Reno, the attorney general, to change her—

Mr. CUTLER: John Sununu, if you think that pressure can be brought on Janet Reno, you'd better talk to the people who are now in your former chair in the White House.

SUNUNU: Well, then what made her change?

Mr. CUTLER: Janet Reno is, with all due respect to Bill, who I think was a very independent attorney general, Janet Reno is the first attorney general since Nick Katzenbach and Ed Levi, and that goes back, 25, 30 years at least, who has convinced the public of his or her total independence. Let's see if I can make some common ground here with Bill.

KINSLEY: Not too much. We don't like that here.

Mr. CUTLER: I agree that this case, because the President's and Mrs. Clinton's names have been mentioned, involves—should have some special handling. I think it is getting special handling. There is a grand jury. There is a criminal investigation of the RTC charges about Mr. McDougal. The person selected to run that is a Republican

career prosecutor, originally appointed U.S. attorney by Republican. There are people above him in the line at the Justice Department. If it's necessary to question either the Clintons or to see their documents, you know they're going to be made available.

SUNUNU: In that scenario—

Mr. CUTLER: And if at some point, and it certainly has happened up to now, there is some indication warranting further investigation that either of the Clintons has might have violated a federal criminal law, that might be the time to appoint the special counsel.

SUNUNU: How about if there's an indication of a possible violation of a state law?

Mr. CUTLER: A state law would not trigger—

SUNUNU: Because he's now a sitting president.

Mr. CUTLER: —not trigger the independent counsel statute and should not.

SUNUNU: It's not the statute we're talking about.

Mr. CUTLER: And it shouldn't trigger—

SUNUNU: We're talking about the right of the attorney general

KINSLEY: The attorney general can't investigate violations of state laws, John.

SUNUNU: The attorney general can name an independent investigator—

KINSLEY: I defer to the counsel for your side. Isn't that correct? The attorney general can't investigate violations of state law.

Mr. BARR: That's true, but here a violation of state law would probably also entail a violation of federal law.

KINSLEY: Well, that—go ahead. Well, that brings up point I wanted to ask you about, the merits of this case. This Madison savings and loans owned by this guy McDougal, their business partner, clearly was allowed to remain open way too long, and state regulators may have fallen down on the job, but surely federal regulators fell down on the job, too. The feds could have shut the place down, too, couldn't they?

Mr. BARR: The feds were trying to shut it down and were advising curtailment of its activities. That's my understanding, according to the newspapers—

Mr. CUTLER: The only thing I see—

Mr. BARR: And it was in the face of that, the federal determination that it was an unsound and unsafe institution that action was taken to keep it open, and I think that there are specific allegations about the role that the former governor played and—

KINSLEY: There are none that I know of.

Mr. CUTLER: There are none that I'm aware of.

Mr. BARR: There are people who say that he deliberately selected that particular regulator on the advice of McDougal.

KINSLEY: There is no—

Mr. BARR: I just went through 20 pages of specific allegations and newspapers. There's a lot of allegations—

KINSLEY: There's a lot of allegations, but there's no evidence. I could allege that you had something to do with it, you know.

SUNUNU: Lloyd—

Mr. CUTLER: *The Wall Street Journal* Bible of—

Mr. BARR: My documents haven't been requested by the Department of Justice on this case. Now, why is the department requesting to review all these documents? The bottom line—

Mr. CUTLER: They haven't as far as I know.

SUNUNU: Lloyd, do you want to predict whether we will get to an independent prosecutor?

Mr. CUTLER: I predict that the independent counsel statute will be repassed and that the Republicans, led by Bob Dole, will get it repassed so that they can invoke the provision that allows the Republicans on the House or Senate Judiciary Committee to ask for an independent counsel—

KINSLEY: OK.

Mr. CUTLER: —and put Janet Reno to the point where she must respond to that claim.

KINSLEY: Got to cut you off. Thanks, Lloyd Cutler. Thanks, William Barr. John and I will have a couple of seconds in just a moment.

(Commercial break)

SUNUNU: Mike, you don't need to pass law when one's not needed. Janet Reno has the authority to appoint this kind of an investigator. She ought to do it.

KINSLEY: John, the irony here is, if the Republicans hadn't been so stupid and arrogant two years ago as to kill that special prosecutor law. They themselves—

SUNUNU: Mike—

KINSLEY: Bob Dole himself—

SUNUNU: Even with a Democrat—

KINSLEY: —could invoke a special prosecutor. You guys thought there would never be a Democrat in the White House again.

SUNUNU: Mike, even with a Democrat in the White House, I think the law is a bad idea.

KINSLEY: Why is it a bad idea if it's redundant? You say it's—

SUNUNU: Because what it does is create situations in which people use it mischievously. The attorney general has the right to do this. She ought to do it.

KINSLEY: I agree she ought to do it, but an independent prosecutor would be truly independent with a law. From the left, I'm Mike Kinsley. Good night for Crossfire.

SUNUNU: From the right, I'm John Sununu. Join us again tomorrow night for another edition of Crossfire.

KINSLEY: *PrimeNews* is next. Here's Bernard Shaw to tell us what's coming up. Bernie?

BERNARD SHAW, PrimeNews: Thank you, Michael. Coming up at the top of the hour, much of the East Coast is being hit hard by snow. We'll give you the latest on flight delays and travel information. And a California woman suffering from leukemia says it came from a nuclear plant where she used to work. These stories and more just ahead on *PrimeNews*.

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CLINTON RIDES IT OUT

By Jack W. Germond and Jules Witcover

WASHINGTON Now that the dust has begun to settle, it appears that President Clinton is going to ride out the storm caused by those state troopers in Arkansas who claimed he used them to facilitate extramarital dalliances while he was governor.

Lacking any confirmation from the women allegedly involved or any further and persuasive particulars from the troopers, the story has faded off the front pages and remains alive only on a few talk shows. As was the case with the Gennifer Flowers episode early in the 1992 campaign, the voters seem to have decided the accusations are either insubstantial or irrelevant.

When the troopers first surfaced, Hillary Rodham Clinton complained bitterly about such allegations being made during the Christmas season. In fact, however, the timing seems to have been fortuitous for Clinton. Because he has been on vacation, the president has been somewhat insulated from the daily badgering of the White House press corps. And because of the holidays, most Americans have been far more concerned with their own lives than with another round of bickering over Clinton's sex life.

And now the president is about to take off on a trip to Europe and Russia on which the issues will be quite different from anything dealing with his personal life.

The White House strategy in dealing with the charges has been both clever and remarkably effective. The accusations were denied heatedly by both Hillary Clinton and Bruce Lindsey, the personal adviser closest to the president. Then Clinton himself took the position that the questions all had been answered and avoided dealing with specifics

except to deny that he had offered troopers federal jobs in exchange for their silence, the one charge that might have involved violation of law on his part.

Meanwhile, lacking any fresh nourishment, the story began to fade, particularly after it became clear that the troopers were working with a Little Rock lawyer, Cliff Jackson, whose longstanding personal enmity toward his onetime friend Clinton has been well established. The result was that many of the most salacious details never were passed on by most of the press, which has become increasingly sensitive to complaints that it sets its standards on what it will print or broadcast using the lowest common denominator.

The White House also has been helped by the reluctance of the Republicans to try to exploit the personal charges. They, too, have learned the lesson of the 1992 campaign that is, that voters are far more concerned with such issues as the future of their jobs and health care than personal peccadilloes of their leaders.

The same reluctance does not apply, however, to the questions about the Whitewater real estate deal in which the Clintons were involved with a friend who ran a savings and loan that later went belly up and cost the taxpayers some \$60 million. And in this case the questions are legitimate enough by any standard so that the press is not likely to be afflicted with the ambivalence evident in its handling of the troopers' charges.

One question is whether state regulators were too lax in overseeing the savings and loan and, as a result, too late to head off the collapse and consequent public cost. Another is whether the company was involved in helping finance a Clinton campaign for re-election. And another, perhaps the central issue, is whether Whitewater was a sweetheart deal for the Clintons, who to the contrary have reported the failure of the real estate venture cost them \$60,000.

None of this suggests, however, that Clinton has totally escaped political damage from the state troopers' charges about his personal life. It is

apparent, for example, that some voters haven't entirely swallowed the denials. As both a candidate and president, Clinton has always had something of a credibility problem, and this case is not going to make it any easier for him to resolve doubts in the electorate that may have formed with his handling of the issue of his draft history while running in 1992 or as a result of his abandoned campaign promises once in office.

It also would be naive to believe that his Republican challengers in 1996 won't be using the "family values" issue as a way of recalling the controversies over the president's personal life. At the very least, his critics on the Far Right have fresh ammunition they won't be hesitant to use.

But, for the moment at least, Clinton seems to have dodged another political bullet.

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Denver man tied to Clinton land-deal probe

LYONS: At a glance



James M. Lyons, an attorney with the Denver firm Rolihgerger, Appel, Power & Johnson, is a longtime friend of Bill and Hillary Clinton. A 46-

year-old specialist in banking and business litigation, he was appointed in October to represent the Clinton administration on the International Fund for Ireland. Its purpose is to find ways to end sectarian violence in Northern Ireland. He lives in Cherry Hills Village.

Congressional Republicans say attorney whitewashed president's involvement

By John Brinkley

Rocky Mountain News Washington Bureau

WASHINGTON — Congressional Republicans are accusing Denver lawyer James Lyons, a friend of President Clinton's, of overseeing a whitewash of Clinton's role in a controversial real estate deal while governor of Arkansas.

At the request of Clinton and first lady Hillary Rodham Clinton,

Lyons in March 1992 retained a Denver accounting firm to examine the Clintons' role in the venture.

The firm, Patton, McCarthy and Associates, produced a 2½-page report that absolved the Clintons of any improprieties without addressing most of the major questions about their involvement in the real estate partnership.

Rep. Jim Leach, R-Iowa, the senior Republican on the House Banking Committee, has been quoted as calling the report "ridiculous."

His spokesman said Tuesday that committee Republicans would examine Lyons' actions on behalf

of the president as part of a broad investigation of the real estate deal and the failure of an Arkansas savings and loan.

"We're seeking documents, interviewing people, trying to get a good picture of all the aspects of a failure of a thrift that lost more than 40% of its assets," said the spokesman, Joe Plnder.

He was referring to Madison Guaranty Savings and Loan, whose failure cost taxpayers a reported \$50 million.

Madison president James McDougal, McDougal's wife, and the Clintons formed a real estate partnership called Whitewater Development Co. Whitewater made a

number of suspect real estate deals, which are not mentioned in the report that Lyons commissioned.

House Republicans are also investigating whether McDougal's thrift improperly transferred money to Whitewater or to Clinton's 1984 gubernatorial campaign.

The accounting firm, now named Patten, McGee and Associates, declined to discuss the report. It referred questions to Lyons. Phone calls to Lyons' office and home were not returned.

A Banking Committee staffer said the committee's Democratic majority was not interested in pursuing the Whitewater case.

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IN OUR OPINION

CLINTON QUESTIONS

Financial matters merit attention of special counsel

The Clinton administration has so mishandled the controversy over the first family's investment and banking transactions in Arkansas that only a special counsel would seem capable of cleaning up the mess credibly.

It is at least incongruous, though, that many of the same people — mostly Republicans — who now clamor the loudest for such an outside investigation assailed the independent-counsel law when it was applied to Reagan and Bush administration scandals, and helped finally to kill it in 1992.

Troubling questions do demand to be addressed publicly about James McDougal, who was a partner with President Bill Clinton and Hillary Rodham Clinton in the money-losing Whitewater resort development when Mr. Clinton was governor of Arkansas, and who operated the now-failed Madison Guaranty Savings & Loan.

Critics suggest that lax state regulation kept Madison open when it should have been closed, benefiting thrift executives but costing taxpayers as much as \$60 million in bailout expenses. They allege that Mr. McDougal was more than a friend of Bill — that he made improper loans and campaign contributions to Gov. Clinton, and shifted thrift funds into Whitewater. They accuse Mrs. Clinton of understating her role in the real estate venture.

The White House's response to these questions — that no laws were broken and that the criticism is politically motivated — sounds all too familiar, and not particularly

reassuring. The Clintons initially resisted making public their business and tax records related to the Whitewater project.

Aides removed Whitewater files from the office of Deputy White House Counsel Vincent Foster after he killed himself last July, but the White House has yet to turn over all of those documents, and other potentially relevant items, to the Justice Department. Attorney General Janet Reno has resisted naming a special prosecutor, keeping these matters in her department, even though one of her top assistants was involved in the Madison case.

All this suggests that the Clinton administration is in no better position to investigate Mr. McDougal's tangled affairs than the Reagan White House was to examine the Iran-contra scandal, or the Nixon administration Watergate, in a way that would inspire public confidence — although we don't know enough about the former matters to equate them with the latter ones.

The prompt appointment by Ms. Reno of a special counsel — one with enough integrity and stature to dispel doubts about his or her genuine independence — could help defuse the questions. It would be in keeping with the administration's commitment to government openness.

And if the president's critics in Congress are sincere in their stated desire for the same kind of candor in the executive branch, they'll make reauthorization of the independent-counsel law one of their first orders of business this year.

GUN DEALERS

Higher license fees would be another life-saving step

The passage of the Brady Bill last year was a good first step toward stronger federal handgun control. A Clinton administration proposal to increase the federal licensing fee for gun dealers would be an even better second step.

One of the best ways to keep guns out of the hands of criminals is to reduce the number of dealers willing to put them there. It now costs only \$30 to get a federal firearms license. The background check performed on most applicants is inadequate, and there is equally scant follow-up. In 1990, the federal Bureau of Alcohol, Tobacco and Firearms approved a federal firearms license for two dogs.

The bureau estimates that 89 percent of all gun dealers work out of their homes. In Michigan, 15 inspectors are responsible for policing 13,632 gun dealers. Nationwide, only one federal agent is available to check on the activities of every 1,000 licensees.

The number of gun dealers has grown from fewer than 150,000 in 1975 to more than 250,000 today.

Some other disheartening statistics: In Detroit last year, more than 270 children aged 16 and younger were victims of gunfire; 24 of them died. Every day in the United States, 14 children aged 19 and younger are killed in gun accidents, suicides and homicides.

In response to rising public anger at this violence, Clinton administration officials propose raising the license fee for gun dealers to as much as \$600. Not only would this cut down on the number of licensees, it also could provide money to pay for more agents to monitor dealers more closely.

The National Rifle Association will scream loud and long about what an injustice such a proposal would create. Americans more concerned, though, with the screams of dying children.

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Special counsel is needed

The political world truly has turned on its head when Washington Republicans are clamoring for the appointment of an independent counsel while Democrats strain to explain why one is unnecessary. For those not blinded by partisanship, though, the controversy over President Clinton's Arkansas banking and real estate deals requires the scrutiny of an independent counsel for the same reason Watergate and the Iran-Contra scandal did: The integrity of the presidency demands that no administration, Republican or Democratic, be placed in the position of investigating itself.

Unlike Watergate and Iran-Contra, the allegations surrounding President Clinton's Arkansas activities do not touch on fundamental constitutional issues. However, the allegations do place the administration under a cloud that cannot be lifted without a full, independent inquiry.

The controversy centers on President and Mrs. Clinton's tangled relationship with James McDougal, an Arkansas savings and loan executive who also was the Clintons' partner in a real estate investment company. McDougal's Madison Guaranty Savings and Loan bailed Clinton out of a \$50,000 debt, money Clinton had borrowed from another bank and transferred to his gubernatorial campaign. The Clintons and many of their political associates profited in other ways from their ties to McDougal.

Madison Guaranty eventually went belly-up, resulting in a \$60-million federal bailout. Critics say then-Gov. Clinton and the former Madison Guaranty lawyer whom he appointed as the state's top banking regulator were, at best, lax in their oversight of McDougal's many dubious enterprises. Jim Leach of Iowa, the respected ranking Republican on the House Banking Committee, goes further. He says Madison Guaranty served as "a private piggy bank for insiders and the Arkansas political es-

tablishment" — including the Clintons.

If this were simply a rehash of stories dating back to the president's days in Arkansas, it might not warrant an outside investigation. There has been no documented charge that Clinton committed any crime related to his dealings with McDougal, and the original accusations don't bear on his conduct since becoming president.

However, one important element of the story does lead directly to the center of the Clinton White House. Administration officials acknowledged last month that White House aides removed files related to the Clinton-McDougal partnership from the office of deputy White House counsel Vincent Foster in the hours after he committed suicide. The president belatedly promised to turn those files over to Justice Department investigators, but their suspicious removal makes this case both more serious and more current.

Attorney General Janet Reno, whose department is investigating the case, argues against appointing a special counsel unless Congress revives the Independent Counsel Act that expired in 1992. Her position has merit in a technical sense; a special counsel chosen by Reno would not have the same autonomy as a congressionally mandated, court-appointed independent counsel.

However, that is not the choice currently facing Reno. Surely she understands that a respected special counsel of her own choosing would inspire more public confidence than the ongoing in-house investigation possibly can. This case does not affect only the president's credibility. Reno's independence and the integrity of her Justice Department also are being put to the test. She should place herself and Justice at arm's length from this investigation. And if the president has nothing to hide, he will encourage her to do so.

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Expanding the Alliance

THE NEW ELEMENT in a yearlong "whither NATO?" debate is the sharpened sense of potential peril emanating from Russia's turn toward an aggressive, extreme nationalism. The turn is evident in the travails of President Yeltsin and his reforms, in the greater weight of the military and in the rise of the chauvinistic Vladimir Zhirinovskiy. These developments have had a special impact in the formerly Soviet-controlled and now independent market democracies of Poland, Hungary and the Czech and Slovak republics. Their fear is not so much of invasion or direct intimidation in the old style as of pressure, political and atmospheric, in the new. Imagining that they might again come under a sphere of influence directed from Moscow, they have redoubled their reach for the institutional company and patronage of the West. They want to enter NATO.

Until now the United States has discouraged any thought of extending alliance membership and security guarantees to the east. Instead, Washington has offered a gauzier "Partnership for Peace" that would deepen consultation and fashion links of training, logistics and so on. Part of the American hesitation arises from a reluctance to take on new security duties at a time of shrinking budgets and public support. A larger part springs from a judgment that expanding NATO would provoke Russia's national-

ists and dispirit its reformers. Friends call this a "Russia-first" policy that recognizes the American stake in assisting a country of permanent strategic heft. Critics see it as a "Russia-only" policy that aggravates the very tensions it was meant to ease.

It is in fact essential to serve the American interest in bringing along Russia. But it is no less necessary to advance the American interest in consolidating democracy in a slice of Europe that is not burdened by Russia's 1,000 years of difficult history and that is eager and demonstrably ready to join the West. Of course care—continued care—must be taken to broaden economic, political and even defense cooperation with Moscow to match Russia's centrality in American strategy. But at the NATO summit (Mr. Clinton's first) opening Monday in Brussels, the president needs to flesh out his partnership offer with assurances that states meeting agreed standards of democratic competence and military fitness can expect NATO membership in a specified time.

People are likely to look back on this moment as one in which the United States had the opportunity to break through to a legitimate new post-Cold War mission in Europe. It would be a large mistake to subordinate the extension of democracy to an overly solicitous reading of the Moscow scene.

Yes to an Independent Counsel

THE ADMINISTRATION has taken the position that there's no need to name an independent counsel in the Madison Guaranty Savings & Loan case. It argues that the investigation is safely in the hands of career Justice Department attorneys, that the president and Mrs. Clinton are cooperating fully even though not directly involved and that the attorney general has no current power to appoint a fully independent counsel anyway.

We think that's wrong—that, murky though most aspects of this case still are, it represents precisely the kind of case in which an independent counsel ought to be appointed. We say that even though—and this should be stressed—there has been no credible charge in this case that either the president or Mrs. Clinton did anything wrong. Nevertheless, it is in the public interest—and in the president's as well—to put the inquiry in independent hands.

Madison is the Arkansas S&L whose failure cost the federal government an estimated \$47 million and whose owner, James McDougal, was a longtime political and business associate of then-Gov. and Mrs. Clinton. Mr. McDougal, his wife at the time and the Clintons were partners in a vacation real estate venture called Whitewater Development Corp. Critics suggest in retrospect that Madison was loosely regulated by state officials while Mr. Clinton was governor. At the same time, federal S&L investigators have suggested that Madison funds may have been improperly diverted to Whitewater and that the Clintons could have been among the beneficiaries of the diversions, though there is no indication that they were aware of any such transactions. Mr. McDougal also helped Mr. Clinton retire a \$50,000 campaign debt in the mid-1980s, and questions have

been raised as to whether some Madison funds were used for that.

The Clintons say they did nothing wrong in connection with either Madison or Whitewater. They describe themselves in the Whitewater instances as passive investors who ended up losing some \$69,000, though they have never claimed such a loss on their tax returns. They claim as well to have been entirely forthcoming in the affair—but then it turns out that White House spokesmen were not entirely forthcoming with regard to a Whitewater file in the office of the late White House deputy counsel Vincent Foster. The file and other papers are now going to be made available to the Justice Department investigators—but still not made public.

There are other loose ends with regard to the Madison affair. It's a complicated business that neither can nor ought to be dismissed. It's true what the White House says—that the Republicans now banging their spoons and calling for an independent investigation spent the 12 preceding years, when they controlled the executive branch, denouncing such investigations as encroachments on executive prerogative and a breach of the separation of powers. It's true and it doesn't matter.

Nor is it protection enough to say that the investigation is in the hands of career attorneys. To whom do they report? Who clears and vouches for their work? Two presidential appointees in the normal chain of prosecutorial command have already had to recuse themselves. There is no way even under the best of circumstances, which don't exist here, that a Justice Department in any administration can conduct a credible investigation involving a president to whom it is ultimately responsible. That's what's at issue in this matter—and why an independent figure should be named.

Turning Over the Files

But Clinton documents to stay private under subpoena

By Susan Page

WASHINGTON BUREAU

Washington — President Bill Clinton's personal lawyer will begin turning over documents about the controversial Whitewater land deal to the Justice Department today, the White House announced yesterday, but only after the government served a subpoena demanding them.

The legal maneuver was requested by Clinton lawyer David Kendall to prevent the public or the courts from getting access to the files about Clinton's Arkansas business dealings by using the Freedom of Information Act or other means. White House sources said, "It's a legal technicality that basically protects the integrity and the privacy of the documents," one official said.

But some officials expressed discomfort about the nature of a president who seems to be increasingly involved in a federal investigation that already has brought down a Republican that Attorney General John Danforth named an independent counsel. Yesterday's White House announcement was made after 6 p.m. and only by a written statement, traditional ways to minimize news coverage.

An earlier White House briefing yesterday did nothing to clear up the impression that the president and his wife are going along with the inquiries into their business affairs with great reluctance and under duress. "There's no evidence to suggest they've done anything wrong," White House Press Secretary Dee Dee Myers snapped. "What's the charge?"

She said it was "up to the attorney general" whether to name an independent counsel. A Justice Department spokesman reiterated that Reno had no plans to do so. The law allowing for court appointment of special prosecutors has lapsed.

The White House statement said Kendall had renounced the subpoena on Dec. 23, the day Clinton announced he would voluntarily turn his papers over to the Justice Department in an effort to stem a growing political controversy. The subpoena was issued by a grand jury on Christmas Eve, Myers said.

"Mr. Kendall, in order to assure the integrity of the documents and the privacy of the process as provided for by federal law, requested the production of a subpoena," the statement said. "Pursuant to Mr. Kendall's request, a subpoena was served to produce the documents in question by January 18, 1994. All documents will be delivered by that date."

The papers — about five boxes worth — include some that were removed from the office of deputy White House counsel Vincent Foster two days after his suicide in July. They relate to the involvement by Clinton and first lady Hillary Rodham Clinton, in an Arkansas real estate venture that was connected to a failed savings and loan.

The Clintons have denied any wrongdoing, but missing documents and inconsistencies in their testimony have fueled speculation.

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Army Corps moves boulders at Moriches Inlet before the storm

Sign of the Times: New Inlet Forming Along Shoreline

By John McDonald

STAFF WRITER

The recently completed \$3-million project to fill in Little Pike's Inlet held up well during this week's nor'easter, but early signs that a new inlet may be forming were evident just west of where the repair work ended.

Two houses were lost in the west of where Pike's Inlet used to be, and the shoreline has receded up to 30 feet there, endangering another 20 oceanfront homes, Southampton Town officials said.

The winter storms are battering the barrier beach and causing erosion damage in two ways, said Aram Turzhuman, a coastal geologist who has been monitoring the Southampton beach. In addition to threatening the houses, the storm-powered ocean waves also have caused ocean water to wash over the barrier beach into Moriches Bay. Repeated washovers form gulches, low points that eventually turn into breaches and potentially into new inlets.

"Our main concern is with channelization observed at the site of the old Suffolk County water pump building" on the western boundary of the repair project in Westhampton, said William Doley, chief

of coastal erosion management for the state Department of Environmental Conservation. He said the agency is being monitored and, if necessary, sand will be added to prevent future storms from repeating formation of a new inlet.

Ten miles east, on the western side of Shinnecock Inlet — 550 tons of boulders were moved in 24 hours to reinforce the beach. The emergency effort, which started Monday, was credited with preventing a commercial fishing cooperative, several marinas and restaurants from being cut off from the mainland.

While beach erosion continues to threaten areas along Fire Island, Islip's Moses Park and Gilgo Beach, the earliest damage in recent years occurred last winter on Fire Island, when a small breach caused by the December, 1992, nor'easter widened to a half-mile wide and destroyed about 100 houses. The Army Corps of Engineers commissioned a repair job that included an 1,800-foot-long steel wall that was buried under 14 cubic yards of sand.

Rep. George Hochstetler (D-Corona) said he plans to use the Dune Road area tomorrow to gather information

Please see EROSION on Page 115

Leak Blamed for Lost Mars Probe

By Earl Lane

WASHINGTON BUREAU

Washington — The lost Mars Observer spacecraft, one of NASA's major embarrassments, probably suffered a leak, according to a new investigation.

Such a rupture could have sent propellant spraying from the spacecraft — one meter from a low sprinkler — causing it to spin uncontrollably, the report said. But Timothy Gaffey, chairman of the independent investigating board, said the finding was uncertain because the panel did not have any hard evidence from the lost spacecraft to examine. The panel of six engineers had data on the status of the spacecraft and its systems, the board had to rely on

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its best judgment on factors that could have caused loss of the spacecraft.

"The board, in fact, found no smoking gun," said Coffey, who is director of research at the Naval Research Laboratory in Washington.

While the panel was unable to give a precise reason for the technical failure of the spacecraft, it did identify some "systemic weaknesses" in management of the \$300-million program.

It noted that the spacecraft originally was envisioned as a low-risk, first-of-a-series of deep space

probes that would use systems already proven in Earth-orbiting satellites. Instead, budget restraints and other changes turned the Mars Observer into a one-of-a-kind spacecraft, some of whose equipment was not tested as thoroughly as they should have been.

Coffey said there was not enough flexibility on the part of NASA and Martin Marietta Astronautics, the spacecraft's manufacturer, in adapting to the changing circumstances. But the board said "no direct linkage" can be made between the management flaws and the mishap.

In its technical analysis, the panel looked at 61

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OBITUARIES

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Frieda Nordahl, 83, of Floral Park, Active in Community

By Tony Schaeffer
STAFF WRITER

Frieda Nordahl, 83, of Floral Park, active in financial and community organizations, died of a heart attack Saturday at her home.

Mrs. Nordahl had lived in Floral Park since 1945 after coming up in Manhattan and Brooklyn. At age 78 she graduated from Adelphi University in Garden City, with degrees in humanities and financial planning. Earlier, she had studied chemistry at Adelphi.

Mrs. Nordahl also had an extensive musical background, having studied piano for 17 years and voice for 15 years at The Juillard School in Manhattan. She had sung in the choir at the Protestant Church in Garden City for 27 years and also had performed at the Episcopal Cathedral of the Immaculate Conception. As a child she had many ornary competitions.

Mrs. Nordahl's organizational affiliations included being treasurer of the Long Island Society of International Certified Financial Planners and of the North Shore Chapter, American Association of University Women, and membership on the International Board of Standards and Practices for Certified Financial

Planners.

Mrs. Nordahl was a past president and life member of the Floral Park Women's Club and a member of the Presbytery Club of the Women's Club Federation of Long Island. She belonged to the Hillcrest Civic Association, Nassau County Federation of Republican Women and the state Republican Party.

Mrs. Nordahl was the widow of Howard W. Nordahl, former superintendent of the Sewanaka Central High School District. They had been

married 82 years when he died in 1959.

"This really was a very unique woman," Mrs. Nordahl's daughter, Beverly Austin Knapp of Shelburne, Vt., said yesterday. "She was a wit. She had a mind that was so sharp. At Adelphi she got straight A's. She did her own investing. And this woman at almost 84 looked about 60." She added that it was difficult to get Mrs. Nordahl away from Floral Park for visits to her and Mrs. Nordahl's other daughter, Karen Tiffany of

Norwich, Wis., because of the many close friendships at home she enjoyed. "She loved her friends and refused to move," Knapp said.

In addition to her daughter, Mrs. Nordahl is survived by a brother, Frank Loewner of Dayton Beach, Fla.; six grandchildren; and two great-grandchildren.

A service was scheduled for 11 a.m. today at the United Methodist Church of Floral Park, with burial in Nassau Knolls Cemetery, Port Washington.

Linda Johnson, 23, Killed by Car After Fight

Funeral services will be held tomorrow for Linda Johnson, who died Saturday from injuries she suffered on New Year's Eve, when she was run over by a car in Freeport following a traffic dispute.

Ms. Johnson, 23, grew up in Freeport, graduated with honors from Freeport High School in 1988 and went on to earn an associate's degree in business administration from the State College of Technology at Farmingdale. She then joined the Navy and, at the time of her death, was on

leave from the naval base in El Centro, Calif.

According to police, Ms. Johnson was a passenger in a car driven by her sister, Sandra, when the two had a near collision with a car driven by Natalie Harris of Freeport. When both vehicles pulled up at a traffic light, Johnson got out and got into a heated argument with Harris — who, police said, drove off with Johnson clinging to her car. Johnson was dragged 75 to 100 feet, then suffered critical injuries when she fell beneath

the car.

A police investigation is continuing. Ms. Johnson's survivors include her mother, Catherine, of Hempstead; her father, Eugene, of Hempstead; and two brothers and sisters.

A wake will be held tonight from 7 to 9 at the John H. Moore Funeral Home, 150 Nassau Rd., Roseton. Funeral services will be tomorrow at 10 a.m. at the Little Zion Church of Christ, 312 Grand Ave., Freeport. Burial will be at Calverton National Cemetery.

Dr. Robert Hochstim, 67, Radiology Director

Funeral services were to be held today for Dr. Robert J. Hochstim, director of the radiology department at South Nassau Communities Hospital, who died in his sleep Monday. He was 67.

Dr. Hochstim, a longtime Rockville Centre resident, first joined the Ochsner hospital in 1960 as an assistant radiologist and subsequently spent the next three decades there. After being named to head the hospital's school of radiologic technology in 1980, he served as coordinator and chief of radiology from 1970 to 1980 and then became director of the radiology department in 1980.

An advocate of modern medical equipment, such as the CAT scanner and linear accelerator, Dr. Hochstim also was a planner for its acquisition. He was described by colleagues as "the guiding light" in the development and modernization of the hospital's diagnostic and therapeutic radiological section.

Dr. Hochstim served in the Navy in World War II. After graduating from Union College in Schenectady and Albany Medical College, he received a captain's commission in the Air Force and was

stationed at the hospital at Maxwell Air Force Base in Montgomery, Ala., from 1951 to 1953.

In 1971 Dr. Hochstim was named president of the Long Island Radiological Society. Recently he had served as a member of the executive committee. He also was a member of the Radiological Society of North America, the American Heart Association's Council on Cardiovascular Radiology, and the American Institute of Ultrasound Medicine. He was a fellow in the American College of Radiology and the Nassau Academy of Medicine.

He is survived by his wife of 35 years, Kathie; his daughter, Nina Carley of Stony Brook, Conn.; and a granddaughter.

Funeral services were to take place at 1 p.m. today at Clayton & Fortelli Funeral Home, 90 Lincoln Ave., Rockville Centre, burial at Holy Rosal Cemetery in Westbury.

In lieu of flowers, the family has requested donations be made in Dr. Hochstim's memory to South Nassau Communities Hospital, 2445 Oceanade Rd., Oceanside, N.Y. 11572.

WORLD/NATION

Bobbi Abu Kareh, 57, the PLO's representative to Saudi Arabia, died of a blood clot in the brain Tuesday in Riyadh. Mr. Abu Kareh was elected in 1989 to the 18-man ruling body of Pals, the Palestine Liberation Organization's mainstream guerrilla movement.

Arthur Breffum, 85, a director, producer and TV and film writer, died Friday in Los Angeles. Mr. Breffum directed and wrote the 1953 film "The Queen of Hearts," directed the 1967 TV movie "Riot on Sunset Strip" and produced the nature series "Wildlife in Crisis." He became a talent agent in the 1970s.

Frank Belknap Long, 90, an author whose specialty was science fiction, died Sunday in New York. His books included "The Hounds of Tindalos," "The Horror from the Hills," "John Constantine, Space Detective," "More is My Destination," and "It Was the Day of the Robot." Mr. Long was an editor at Fantasy Science Fiction, Short Stories and Mike Shayne's Mystery Magazine. A longtime friend of author H.P. Lovecraft, Mr. Long produced a biography, "Howard Phillips Lovecraft: Dreamer on the Night Side," in 1976. He also wrote several public novels in the 1960s.

Shoreline Damage

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tion for his campaign to see a long-term solution to the erosion problem. "I was there 10 days ago so I'll be able to see

What is happening now is what is expected," said Gary Vegetante, president of the property owners association in the area damaged by the erosion of Little Pike's Inlet. The homeowners are suing the federal, state and county governments, charging that the over-accumulated grain field, a series of stone jetties constructed in the 1920s and '30s, functioned erosion damage to their homes. The barrier beach, Vegetante added, was the project to fill in Little Pike's

Inlet further funnelled erosion to the section where the remaining homes are located. "It is like they aimed the barrel of the gun between our eyes," he said.

Daley said of Vegetante's description, "It is a fairly ludicrous claim that it was intentional. I wish we knew that much. That we were able to direct the erosion." Daley said that a long-term solution to the erosion problem must be undertaken, starting with the modification of the existing groin in the Westhampton area of Dune Road.

On the Shinnecock Inlet side, he said, the boulders placed this week probably will be removed because they are scheduled to be used in construction of a jetty designed to protect the inlet. He added that more than 400,000 cubic yards of sand was dumped onto the beach west of the inlet last year, but most of it already has been washed away. "We expected there would be some washed away but we have no idea why so much of it disappeared," he said.

Southampton Supervisor Fred Thiele said, "Every year I'm in the position of asking for short-term solutions. What I want is for the state and federal governments to focus on long-

term solutions." He said the Westhampton groin field needs to be modified and that a regular program of beach nourishment is needed for Shinnecock.

Delivery of Clinton Files Set

ENGLISH from Page 7

Justice have raised persistent questions about their investment in the Whitewater Development Corp.

The Clintons were partners with James McDougal, who owned the Little Rock-based Madison Guaranty Savings & Loan Association. It failed in 1989 at a cost to taxpayers of \$47 million. Justice Department prosecutors are investigating whether McDougal misused Madison depositions' funds to benefit his business investments, including Whitewater, and Bill Clinton's 1984 gubernatorial campaign.

Meanwhile, House Republicans began negotiations with the Republican

Trust Corp., the federal agency charged with cleaning up the savings and loan crisis, for records relating to the thrift.

Clinton said the agency had been asked to provide reports on Madison from independent bank examiners and minutes from board meetings of the thrift, and an agency official confirmed that some records would be turned over, perhaps next week.

The congressional investigators also are seeking records of money-lending transactions or accounts of those who had outstanding loans when the thrift failed. Clinton was said, as well as a report on the thrift's troubles prepared in the 1980s by a Memphis law firm.

PHOTO BY AP/WIDEWORLD; JAMES H. HARRIS

Clin on set to give up land files today

By John Aloysius Farrell
GLOBE STAFF

WASHINGTON — President Clinton is scheduled to deliver documents on his Arkansas land deal to the U.S. Justice Department today, after his lawyer sought a federal subpoena to ensure that they will be kept secret.

According to a brief statement issued by Bruce R. Lindsey, a senior adviser to the president, all Clinton's records on the Whitewater Development Corp. will be delivered to the Justice Department by Jan. 15.

Clinton volunteered the papers on Dec. 23, but a White House announcement on Tuesday that the delivery date might be delayed for a few weeks as aides search for records sparked Republican charges of foot-dragging and a possible cover-up.

Lindsey announced yesterday that David E. Kendall, a lawyer with Williams & Connolly, will begin deliveries today. The boxes of documents to be forwarded, Lindsey said, include files kept by Vincent Foster, the White House lawyer who committed suicide in July.

Kendall asked the Justice Department for "the protection of a subpoena," Lindsey said, "in order to assure the integrity of the documents and the

privacy of the process as provided for by federal law."

Clinton's investment in the Ozarks land deal has caused the administration considerable political pain in recent weeks. His partner in the land deal, James McDougal, a onetime friend, aide and fund-raiser, was chairman of an Arkansas savings and loan that collapsed during Clinton's tenure as governor of Arkansas, costing the taxpayers as much as \$60 million.

McDougal was prosecuted and acquitted of fraud in the savings and loan case, but federal investigators continue to scrutinize his actions as head of Madison Guaranty, trying to determine — among other things — if he performed illegal favors for Arkansas politicians to get favorable treatment from that state's banking regulators.

The issue first arose during the 1992 presidential campaign. Clinton and his wife, Hillary Rodham Clinton, say they lost money on the Whitewater deal.

The Justice Department has not asked Clinton for records or an explanation of his involvement in Whitewater.

Earlier in the day, presidential aides once again rejected the notion that a special prosecutor is needed in the case.

From Boston Globe Page 9

Scientists reported upbeat about Hubble results

By David L. Chandler
GLOBE STAFF

Hubble space telescope scientists are "jumping up and down" with excitement as the refurbished telescope begins to deliver its first improved pictures, a NASA spokesman said yesterday.

As scientists have performed the tedious tasks of activating, adjusting and testing the new instruments installed by astronauts last month on the space shuttle Endeavour, everything has gone smoothly and everything appears to be working perfectly, scientists say.

"We're smiling a lot," said John Trauger, a scientist at the Space Telescope Science Institute who works on Hubble's main camera, which has produced the first of the greatly improved pictures.

Although all the scientists involved said they would not discuss details until next week, F. Duccio Macchetto, an astronomer at the institute, said yesterday that adjusting the telescope's focus and taking its first new pictures has progressed "even beyond our optimistic expectations."

The new pictures will be released one week from today, NASA officials said yesterday. The images are expected to show that the telescope has been fixed and is now producing the highly detailed images of astronomical objects that it was originally expected to deliver before its optical flaw.

The \$2 billion Hubble, designed to produce pictures sharper than those made by any other telescope ever built, was launched in April 1990, but within weeks scientists found that it had been manufactured incorrectly and could not be focused.

The telescope's problems followed a series of setbacks for the National Aeronautics and Space Administration that included an attempt by

Congress to cut off funding for the space station and the loss of the Mars Observer probe in August. Some said that the Endeavour mission was crucial not just for the future of the Hubble but for NASA's credibility.

Last month, in the most ambitious space mission since the Apollo moon landings, a team of seven astronauts replaced a dozen parts on the bus-size telescope to repair its flaws.

They installed new solar-power panels, new gyroscopes to control the telescope's position, a new camera, and an instrument carrying a set of tiny mirrors to correct the telescope's vision.

Sharply focused pictures have been taken by the orbiting telescope's main camera, the Wide Field/Planetary Camera 2, which was the first of the refurbished instruments to be turned on and focused.

And the telescope's second camera, called the Faint Object Camera, has been brought into focus and will be used over the next week to take pictures that the scientists hope will be among those to be released next Thursday, said Ray Villard, spokesman for the Space Telescope Science Institute.

One scientist close to the project who asked not to be named said he has known for the last week that NASA scientists "must be getting very good data, based on the kinds of tests they were scheduling and on the amug faces on certain officials" as he passed them in the hall.

The first of the new pictures, expected to include images of the Orion nebula and of a spiral galaxy called M100, will probably be released at the NASA Goddard Space Flight Center, which controls the telescope.

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THE REGISTER'S EDITORIALS

They deserve answers

Subjects of Iowa iodine experiments
might want to know what was done.

Concerns for the unknown consequences of a long-ago medical test caused at least two dozen callers to contact the University of Iowa Tuesday and a few more Wednesday. The calls followed The Register's publication of a report of a 1962 experiment involving nuclear medicine. Twenty-five newborn infants at the University of Iowa Hospitals were injected with a radioactive isotope of iodine (I-131).

U of I officials have no reason to believe either that the injections were dangerous or that the parents did not give fully informed consent. But they don't have the records of the experiment, which was conducted at the behest and expense of the old U.S. Atomic Energy Commission.

Concern about what may have been involved is understandable, particularly in the wake of recent revelations about the use of Americans, from soldiers to prisoners, as human guinea pigs in radiation experiments.

Radiation's role in medical diagnostic procedures and treatment is well established, and I-131 is commonly used to treat hyperactivity caused by an overactive thyroid. The thyroid gland, located in the neck, needs iodine to function (it regulates metabolism) — which is why iodine is added to most table salt. Radioactive I-131 in sufficient quantity can kill thyroid tissue and thus lessen hyperactivity. Most of the isotope is excreted with

urine. Some hangs around until it simply decays. I-131 has a half-life of eight days, meaning half of its radioactive potency has been expended in that time. It takes longer than eight more days to completely void the second half.

Dr. David Bushnell, radiologist with the U of I Hospitals and Clinics and chief of nuclear medicine at the Iowa City Veterans Hospital, said a commonly used radioactive isotope is Technetium 99, injected for diagnostic purposes because of the clear image it provides to a monitoring camera. Technetium can outline a gall bladder infection, blood clot in the lung, skeletal cancer, etc. Its half life is only six hours, which helps minimize radiation danger.

Any time you use radiation, Bushnell said, there's a risk, however slight. The technetium risk, for instance, is probably about one in 1 million — the same as smoking a single cigarette, perhaps. But it's nevertheless a risk of which the public has a right to be aware, and extensive precautions are taken to see that experimental medicine is thoroughly explained to those taking part, U of I doctors said. Those precautions have tightened since 1962.

Somewhere in the musty files of the U.S. Nuclear Regulatory Commission, according to the AEC, should be records listing names and relevant clinical information. Those involved in the 1962 experiments, and the university, deserve prompt answers.

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'NOTHING DRAMATIC' UNCOVERED

Leach reports investigation of Whitewater

By JANE NORMAN

OF THE REGISTER'S WASHINGTON BUREAU

Washington, D.C. — Republicans on the House Banking Committee are pushing ahead with their investigation of a failed Arkansas savings and loan with ties to President Clinton, the top Republican on the panel said in an interview Wednesday.

Rep. Jim Leach of Iowa said that three minority staff members from the committee recently traveled to Arkansas and to Kansas City, Mo., to examine regulatory records related to Madison Guaranty Savings and Loan, a Little Rock thrift that failed in 1989.

"Nothing dramatic" was uncovered by the minority staff, said Leach, "but we're not making any reports at this time."

"Reserving Our Options"

Banking Committee Chairman Henry Gonzalez in December ended a bipartisan committee inquiry into Madison, over the protests of Leach. But Leach said Gonzalez authorized the travel to Arkansas and Missouri for the minority staff members, a step Republicans would be unable to take on their own without the chairman's approval.

Leach said that "in all probability" a full report on the investigation eventually would be issued by the minority. However, he added, "That could change — if the full committee takes it up, it might shift the dimension. We're reserving our options."

In addition, as material is gathered that "might be of interest to the Justice Department," it will be forwarded to investigators there making a separate inquiry, Leach said.

Investigators at the department have been studying allegations that funds were diverted from Madison into a real estate venture called Whitewater Development, in which the

LEACH'S OUTLINE

Also under review is whether funds were diverted from Madison to a Clinton gubernatorial campaign committee, and whether the ailing thrift received favorable treatment from Clinton while he was governor.

Calling for Disclosure

As for the congressional investigation, without the approval of Gonzalez it was thought that House Republicans would have difficulties finding out much about Madison. Leach, who sent letters in December

to a number of agencies requesting information, said staff members have been able to make some progress.

But it is limited. For example, Roger Altman, the head of the Resolution Trust Corp., which disposes of failed S&Ls, wrote a letter back to Leach offering his cooperation. However, Leach said Altman then added that he could not transfer to Republicans any material that is transferred to the Justice Department.

"The Justice Department is being used in a way it's never been used before," Leach said. "Material the president has sent to the Justice Department is not being made public. And the Justice Department is obligated to keep it from the public."

The president should make full public disclosure of information about the S&L and the real estate development, Leach said. "If there's nothing wrong, there's no reason not to," Leach said.

Leach has been the chief Republican calling for a special counsel to be appointed by the Justice Department to investigate possible wrongdoing.

White House officials and Attorney General Janet Reno have rejected that request, saying such a counsel would still be under Reno's control.

But Leach said he believes the Justice Department and White House officials "sooner rather than later" will change their position and name a special counsel.



Jim Leach
Wants full disclosure

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The Whitewater conversion

George Stephanopoulos surfaced on ABC's "This Week with David Brinkley" yesterday to denounce the hypocrisy of Republicans calling for the appointment of an independent counsel to look into the Whitewater Development affair. "I think this is a remarkable conversion on the part of Congressman [Newt] Gingrich and other Republicans," he said. "As you know, they've been fighting the independent counsel law for many years. Now that they sense that there might be some perceived political advantage to going after this, they're all for it all of a sudden."

It's nice to see that Mr. Stephanopoulos' tenure in the Oval Office bunker hasn't affected his blithe indifference to truth in the art of partisan propagandizing. In point of fact, Mr. Gingrich has not been fighting the now-lapsed independent counsel statute. Two years ago, he was calling for the appointment of an independent counsel to look into the House post office affair, and he has frequently expressed support for a broadened law that will include members of Congress. On the very same ABC program, just before Mr. Stephanopoulos came on, Mr. Gingrich speculated on the possibility that the president was not innocent of wrongdoing in the Whitewater affair and said that if that is so, "then every Democrat in the House and Senate has an obligation to help us pass an independent counsel bill and to force the appointment of an independent counsel." Mr. Gingrich's position is quite consistent.

That said, Mr. Gingrich's position is also wrong, for the same separation-of-powers reasons that have long led this page to oppose an independent counsel law. The executive branch, accountable to an elected president, is in charge of enforcing the law; despite the Supreme Court's ruling to the con-

trary, an independent counsel is accountable to no one.

The Republican who had it right yesterday was Senate Minority Leader Robert Dole, who has indeed voted against the independent counsel law in the past. He urged Attorney General Janet Reno to use the authority she possesses, even in the absence of a law, to appoint an independent investigator in the Whitewater case. "We've had independent counsel before — Archibald Cox, [Leon] Jaworski, Phil Curran in the Carter administration, and in each case, I think they performed very well, and I think it's up to Janet Reno now to step back [and] appoint an independent counsel." The appointment of a highly credible outsider, someone with a well-deserved reputation for integrity, would allay concerns about any possibility of political manipulation of the investigation without raising separation-of-powers worries. Mr. Stephanopoulos' determined obtuseness notwithstanding, supporting such an appointment is perfectly consistent with opposing an "independent counsel" law.

The hypocrisy that is truly stunning belongs to those who have been arguing since Watergate that the executive branch cannot be trusted to police itself. Where are they now? They constitute a majority in both chambers of Congress. Why haven't they passed a new independent counsel law (a law that would attract significant if not majority Republican support, especially if Congress did not exempt itself from its provisions)?

There is no independent counsel law because the Democratic leadership in Congress, in the context of a Democratic White House, feels no sense of urgency about one. This, as Mr. Stephanopoulos might say, is a "remarkable conversion."

Expensive state legislators

The current issue of *Governing* magazine bemoans the fact that pay scales for state legislators have generally not kept up with inflation over the past 20 years — a position that is not surprising from a publication whose main audience is state government officials. A majority of states have failed to raise lawmakers' salaries and some have been downright chintzy. *Governing* reserves its most pronounced rolling-of-the-eyes for New Hampshire, which still, as it did in 1973, pays state legislators only \$100 a year. That isn't even beer and pretzel money.

The magazine warns that there will be problems if more money for state lawmakers isn't forthcoming. The magazine is wrong.

It is not accidental that New Hampshire does not have a state income tax (though this may change: the state's Supreme Court ruled recently that New Hampshire will have to come up with an income tax or some other sort of broad-based tax to fund education in poor school districts). People can't make a career out of a job that pays \$100 a year, and so New Hampshire retains one of the few true citizen legislatures in the country. Professional politicians take it as a tenet of faith that government should grow. Citizens, who have to pay for that growth, often think otherwise. And if you don't think that government should grow, you don't see any need for hefty new taxes.

Compare the citizen legislature of New Hampshire with the full-time outfit in Pennsylvania. The full-time politicians there make \$47,000 a year. But that's just for starters. There is also — at least until last April — the 602 "senators" who are paid \$100 a year for covering "expenses."

In April of last year, members of the Pennsylvania House tried to raise their pay (as though making twice the average salary in the state with base pay alone weren't enough). It was a political non-starter, however, in those economically sluggish times. So having heard the people, the lawmakers went behind closed doors and quietly finagled themselves a boost in the daily expense account, up to \$110.

This is the stuff of which term limits movements are made. The idea behind limiting terms is that it provides for government by citizens, not by professional politicians. It is often argued by those who favor hefty paychecks for politicians that paying solid

salaries is the only way to ensure that all segments of society are represented. If legislators have to donate their time, goes the argument, then only the rich will run for office. One of the many flaws in this reasoning is the notion that a full-time politician will represent the interests of the social strata from which he comes. Once politicians become professionals, they become part of a highly exclusive elite. When Pennsylvania legislators sneaked themselves a boost in their per diem accounts, were they representing their constituents or themselves?

The other effect of full-time professionalized politics — as has been documented by Alan Ehrenhalt in his book, "The United States of Ambition," and by Harvard government professor Morris Fiorina — has been to hobble the field of potential Republican candidates. The small businessmen, once the typical Republican candidate for state and local office, has found public service increasingly difficult. When legislatures were part-time affairs, small businessmen could carve out the time to serve without jeopardizing the health of their companies. But few of these Rotarian-types can leave their businesses unattended for years at a time.

This is a structural threat to the Republican Party, one that strangles the pipeline of good candidates. The sort of small business owners who once worked up to being national Republican candidates now don't run for local office and so never get their feet in the door of politics. Republican Party Chairman Haley Barber says he recognizes this problem, but he hasn't come up with a strategy yet for making local politics more open to the average citizen.

If *Governing* magazine is right, however, the Republicans may be getting a break over the next several years. Many state legislatures, frustrated with their inability to get a fed-up electorate to give them bigger paychecks, may retaliate by working fewer days. *Governing* sees this as some sort of punishment meted out to voters, but it is the best thing they could hope for. If legislatures revert to part-time entities, once again people with real jobs could hope to get involved in state politics.

Term limits have helped to achieve this, but increasingly it looks like tight-fisted voters, tired of ever-higher taxes, are going to starve state legislatures out. And get better representation for it.

Questions on land deal, S&L still dog Clintons

Financial issues from '70s and '80s may spell trouble

By John Hanchette

If the names Madison Guaranty and Whitewater Development, after weeks of hearing them drummed incessantly through newscasts, still seem only vaguely familiar, this story is for you.

The story, going back a decade, involves possible big trouble in 1994 for Bill and Hillary Rodham Clinton. The plot line so far:

James and Susan McDougal were big buddies of the Clintons in 1978 when Bill Clinton was Arkansas attorney general and running for governor. The two men had been close since the 1960s, when they were aides to Arkansas Sen. J. William Fulbright.

McDougal got the Clintons in for a 50% share on a sure thing land development in the Ozarks. Their investment vehicle, Whitewater Development Corp., paid \$203,000 for a 230-acre parcel on the scenic White River, dividing it into 44 home sites.

Clinton gave McDougal an administration job, but McDougal hankered for bigger things. He bought an S&L in Augusta, and by 1982 was devoting full time to it.

In the 1980s newly deregulated savings and loans were wild with growth. McDougal drove a Bentley. His wife advertised on TV, in hot pants on a horse. Within three years, McDougal multiplied Madison's initial \$3 million in assets 40 times.

That furious expansion attracted federal regulators, who noted in 1984 Madison was in "jeopardy" from "unsafe and unsound lending practices." Those practices included huge loans — \$17 million — to Madison's officers and directors, their relatives and friends, and other bank insiders.

One was Seth Ward, father-in-law of Webb Hubbell, a Clinton confidant and now associate attorney general. Ward, a Madison director, borrowed more than \$600,000 and defaulted on \$587,793 of it.

Another was current governor Jim Guy Tucker. He owed Madison about \$1 million, but negotiated that down by 50%.

By spring 1985, Madison Guaranty was in deep fiscal trouble. That didn't stop McDougal from holding a fund-raiser for Clinton in the thrif's Little Rock office.

The bash helped retire a \$50,000 personal loan the governor had taken with another institution to help finance his 1984 re-election. McDougal says Clinton asked for the help.

The party raised about \$35,000, but most of the records have disappeared. What few documents remain have convinced federal investigators that at least some of the money may have been diverted from Madison.

Officials are suspicious because many "donations" were in the form of Madison cashier's checks — usually written in the name of



an individual on his account. At least one of those individuals has told federal investigators he never wrote such a check.

If true — that the bank gave money in the name of a depositor without that person's knowledge — that would be improper diversion of depositor funds, a felony.

The new state securities regulator, Beverly Bassett (now Beverly Schaffer), appointed by Clinton, had represented Madison Guaranty as a private attorney. In that role, federal regulators now say, she knew how badly Madison violated regulations.

McDougal planned to raise new money by the sale of preferred stock, something new for an Arkansas savings and loan. Federal regulators thought it wouldn't work. It was Bassett's decision.

Madison was represented in part before Bassett by Little Rock lawyer Hillary Clinton, on retainer by McDougal at \$2,000 a month. McDougal says he hired Hillary because Bill Clinton begged him to. The White House denies that. Bassett, in a "Dear Hillary" letter, approved the stock sale. But it never came off.

Federal banking examiners, in 1986, found Madison Guaranty nearing insolvency. Millions of dollars, they reported, had been diverted by McDougal to family and friends. Missing records

made it hard to tell how much, or to whom, funds were given.

In Little Rock, Bassett imposed no special sanctions or regulations on Madison.

Madison's end

But federal officials shut down Madison in 1989, removing McDougal, at a cost to taxpayers of at least \$47 million and perhaps \$60 million. Records are still incomplete.

McDougal, acquitted of bank fraud, is bankrupt and divorced. He claims Madison failed because of overzealous regulators.

In his 1992 campaign, Clinton faced a recounting of the Whitewater mess by *The New York Times*. Campaign strategists called in Denver lawyer James Lyons, an old Clinton buddy, now used as an "expert" on savings and loan ethics in federal trials.

Lyons stressed two things — the Clintons lost \$69,000 in Whitewater and were only "passive" investors, making no decisions in the venture. That was widely accepted.

But Whitewater's books were a mess, its tax returns late, its corporate bank account — at Madison — replete with overdrawn and intermingled funds, and its records of lot sales incomplete and contradictory.

Whitewater's principal records disappeared. McDougal said Hillary Clinton asked that they be sent to the governor's mansion. The White House says they can't be found.

The Whitewater ghost

But Whitewater got back into the news: First, the federal Resolution Trust Corp., saddled with peddling off assets of failed thrifts, came across the Whitewater mess in trying to clean Madison's books.

The RTC sent the Justice Department a "criminal referral," meaning staff thought crimes may have been committed. The Clintons were among those listed as "possible beneficiaries" of McDougal's largesse.



FOSTER

Second, deputy White House counsel Vincent Foster died in an apparent suicide in July. One of his assignments: clear up Clinton tax matters regarding Whitewater.

He refiled tax forms after it was shown the partnership failed to file corporate returns for three years

when the Clintons were half-owners. He also handled the sale of their piece of Whitewater to McDougal.

Third, David Hale, a supporter appointed by Clinton as a state municipal claims judge, was indicted on charges of defrauding the Small Business Administration.

Hale had an investment company.



McDOUGAL: Clinton friend was acquitted of bank fraud.

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made SBA loans to the "socially or economically disadvantaged." One loan was a \$300,000 advance to Whitewater partner Susan McDougal. Hale, seeking a plea bargain, claimed Bill Clinton had urged the loan. The White House says Clinton does not remember the conversation.

Another matter of federal interest is the paying of more than \$400,000 to Hillary Clinton's law firm from Federal Deposit Insurance Corp. coffers so the firm could sue Madison's accountants on behalf of taxpayers. In seeking the business, the firm submitted a letter saying it didn't represent S&Ls.

The FDIC sued for \$60 million. In negotiating a deal for taxpayers, Webb Hubbell — with a father-in-law owing almost \$600,000 — let the accountants settle for \$1 million. Hubbell says he has recused himself from the Justice Department's continuing probe.

The figures surrounding all these transactions have spurred intense interest. In the 1980s, Hillary Clinton borrowed \$30,000 to build a model home on a Whitewater lot. Because it was built for the partnership, the corporation paid off the loan.

But the Clintons — in 1984 and 1985 — deducted more than \$5,000 on their income taxes for the interest paid on the loan, even though they weren't paying it off. The Clintons admitted the mistake. Foster submitted new tax returns; the Clintons paid no penalty.

Lyons reported Whitewater, by mid-1991, had sold all its land, but lost \$118,000 overall as a corporate venture.

Revised tax returns Foster supervised con-

tradict that. They show the Clintons never claimed losses on Whitewater. Indeed, the Clintons reported a \$1,000 capital gain in 1992 on selling their Whitewater share.

The Foster-supervised returns show Whitewater had \$69,000 either in deferred profits or land left to sell. Lyons said lot owners still owe Whitewater about \$56,000 in installment payments. The Foster-prepared tax returns say that figure is closer to \$90,000. The realty agent who first managed Whitewater says it didn't lose money.

Two *Washington Times* stories helped keep the issue alive:

► One featured a letter showing Hillary Clinton had asked McDougal for full power of attorney over Whitewater, allowing her to run the partnership with her signature. The White House won't say whether she got it.

► The other detailed how — after Foster's death but before his office was sealed — files relating to the Clintons and Whitewater were removed by White House counsel Bernard Nussbaum.

While admitting records had been moved, reversing a July stance, the White House press office said a new lawyer had them. Hillary Clinton said she and her husband "don't feel the need to do any more than we've done." But two days before Christmas, the White House said the Foster files would be turned over to the Justice Department.

John Hanchette writes for *Gannett News Service*.

Many maybes under scrutiny

Here are some issues being raised in congressional and Justice Department probes of the Clintons' relationship with Whitewater Development Corp. and Madison Guaranty Savings and Loan:

► The Clintons may have been involved in taking out fraudulent loans and receiving illegal campaign contributions.

► Bill Clinton, as Arkansas governor, may have used political clout to protect a dying thrift so it could be bled for funds for cronies and business partners.

► U.S. taxpayers may have had to pick up the huge tab by refurbishing a depleted federal deposit insurance fund.

► President Clinton, as the *Wall Street Journal* phrases it, may have done for his friend James McDougal "what five senators did for Lincoln Savings and Loan and Charlie Keating."

► Hillary Clinton may have arranged sweetheart regulatory oversight through her law firm.

► She may have played a prominent role in some inner-circle fiscal maneuvering that went beyond common advocacy. She may have aggressively sought to extend the life of a dying financial institution, to the detriment of taxpayers and accrual of personal benefit.

► The White House may have tried a cover-up, removing key files from the office of the president's deceased lawyer.

— John Hanchette

GOP presses for independent counsel

By Judy Keen
USA TODAY

Congressional Republicans demanded Sunday that an independent counsel be appointed to investigate President Clinton's role in an Arkansas land deal and savings and loan.

Senate Minority Leader Robert Dole said Attorney General Janet Reno should "stop dragging her feet" and name a counsel "for the president's own good."

On ABC's *This Week With David Brinkley*, House Republican Whip Newt Gingrich of Georgia said: "There is no question we need an independent counsel."

But Clinton aide George Stephanopoulos termed GOP calls for an independent counsel political opportunism. "There is no need at this time for an independent counsel," he said.

At issue: Clinton's role in the Whitewater real estate deal and whether he improperly used his influence while Arkansas gover-

nor to keep a savings and loan solvent.

Without a probe, "This story's not going to go away," Dole, of Kansas, said on NBC's *Meet the Press*.

The Clintons have dismissed their involvement with the land deal as a bad investment that ended in a \$69,000 loss.

"I am bewildered that a losing investment which for us was significant... is still a topic of inquiry," Hillary Rodham Clinton said Dec. 21.

But the more Clinton resists an independent investigation, Gingrich said, "the more, frankly, people are going to suspect there is a reason they don't want an independent counsel." There are "too many implications, frankly, of breaking the law."

Reno has said career prosecutors should handle the case of Madison Guaranty Savings and Loan Association, the failed thrift owned by Clinton friend James McDougal.

Already the subject of a federal probe: whether Madison funds were illegally diverted to Whitewater Development Corp.,

a real estate venture owned by the Clintons and McDougal, and whether any Madison money was inappropriately routed to Clinton's 1984 gubernatorial campaign.

Stephanopoulos said the issue was examined during the 1992 presidential campaign and Clinton has now turned over to the Justice Department all relevant documents. "No laws were broken," he said.

Rep. Jim Leach of Iowa, ranking Republican on the House Banking Committee, said Saturday: "I think that the president faces some civil remedies that could be quite serious." He also said Clinton could potentially face criminal charges.

A 1992 Republican filibuster prevented Congress from renewing a law providing for independent prosecutors, but Dole said he thinks Reno has the authority.

GOP Attorney General William Barr named an independent counsel in December 1992 to investigate whether Bush administration officials covered up a search of Clinton's passport files.

Independent Counsel Urged in Arkansas Probe

GOP Leaders' Call Rebuffed by White House Aide Stephanopoulos as Politically Inspired

By Helen Dewar
Washington Post Staff Writer

Senate Minority Leader Robert J. Dole (R-Kan.) and House Minority Whip Newt Gingrich (R-Ga.) yesterday urged Attorney General Janet Reno to appoint an independent counsel to investigate any involvement by President Clinton with a failed Arkansas savings and loan firm and a real estate venture in the state.

White House adviser George Stephanopoulos said there was "no need at this time for an independent counsel" and accused the Republicans of exploiting the issue for political reasons.

Federal authorities are looking into possible wrongdoing involving Madison Guaranty Savings & Loan, owned by Clinton friend James McDougal, and Whitewater Development Corp., owned jointly by McDougal, his then-wife Susan, and Clinton and his wife, Hillary Rodham Clinton, while Clinton was governor of Arkansas.

Questions include whether funds from the now-defunct thrift were diverted to Whitewater or to Clinton's 1984 gubernatorial campaign.

Appearing on NBC's "Meet the Press," Dole accused Reno of "dragging her feet" on appointment of an independent counsel and said "it's

high time that she did what she knows she should do."

Dole said he thought Madison Guaranty and Whitewater could be a "pretty serious issue" for Clinton but added that he believed the president would be cleared of any wrongdoing.

Dole, angry at a lengthy probe of the Iran-contra affair during the Reagan administration, has led a GOP effort on Capitol Hill to block reinstatement of the post-Watergate law providing for court appointment of independent counsel to investigate wrongdoing by high-level government officials.

Without the law, Dole said yesterday, Reno could use her authority as

attorney general to appoint an outside counsel to handle the case, which is currently being investigated by career government employees.

When a similar proposal was made by Rep. Jim Leach (R-Iowa), ranking minority member of the House Banking Committee, Justice Department spokesman Carl Stern said anyone Reno appointed would be under her supervision and influence, rather than serving independently by court appointment, as the law intended.

Unlike Dole, Reno supports restoration of the independent counsel law, which was approved late last year by the Senate and is slated for consideration this year by the House.

Gingrich, appearing on ABC's "This Week With David Brinkley," said he believed "there is no question that we need an independent counsel" on the Madison-Whitewater issue.

"If they're innocent, why don't they [the Clintons] go ahead and agree to an independent counsel to clear their name?" Gingrich asked. "I think the longer the Clintons avoid doing that, the more, frankly, people are going to suspect that there's a reason they don't want an independent counsel."

Dole, who previously had called for investigations by congressional committees, accused Democratic leaders of ducking the issue. "The Democrats aren't going to touch this," he said. "If it were a Republican, on the other hand, we'd have five or six hearings going on right now."

But Stephanopoulos, who appeared on the ABC program, said

was the Republicans who were playing politics. "They've been fighting the independent counsel law for many years," he said. "Now that they sense that there might be some perceived political advantage to going after this, they're all for it all of a sudden."

Stephanopoulos said the case was examined during the presidential campaign and Clinton has given all relevant documents to the Justice Department. "No laws were broken," he said. "The Justice Department investigation will show that."

Last evening, as Clinton arrived in Washington from vacationing in Arkansas and South Carolina, White House spokesman Jeff Eller said turning the files over to the Justice Department was "an appropriate course of action."

"There's no basis for civil or criminal charges," Eller said.

Dixy Lee Ray, Former Governor, U.S. Atomic Energy Chief, Dies

By Peggy Andersen
Associated Press

SEATTLE, Jan. 2—Dixy Lee Ray, former chairwoman of the Atomic Energy Commission and Washington state governor, died today at her home on Fox Island. She was 79.

Ray had suffered from a severe bronchial condition for several months, said KIRO-TV commentator Lou Guzzo, a longtime friend.

An outspoken supporter of the nuclear industry, she was head of the Atomic Energy Commission from 1973 until 1975. She was governor of Washington from 1977 to 1981.

She | her latest commen-

tary on nuclear issues Thursday, when she dismissed media reports about past federal radiation experiments as alarmist. She also took Energy Secretary Hazel R. O'Leary to task for "blaming all of her predecessors for things she says are terrible."

"Everybody is exposed to radiation. . . . A little bit more or a little bit less is of no consequence," Ray said in a telephone interview with the Associated Press.

She also had no patience with environmentalists she considered too strident. She and Guzzo, who was Ray's policy adviser when she was governor, wrote two books on the subject, "Trashing the Planet" in 1990 and "Environmental Overkill" in 1993.

After President Nixon appointed Ray, a Democrat, to the AEC, she set tongues wagging in the nation's capital by living in a motor home and taking her dogs to work.

When the AEC was phased out, she was named assistant secretary of state, overseeing the Bureau of Oceans, International Environment and Scientific Affairs.

Ray returned to Washington state in 1975, complaining that then-Secretary of State Henry A. Kissinger had given her the cold shoulder.

Her straightforward political style frequently ruffled feathers. When she succeeded Gov. Daniel Evans, a Republican, and dismissed virtually his entire administration,

she played down the outcry that followed.

"No one owns a job," Ray said. "From now on, we'll send them a Kleenex at the time they're fired if they're going to be a crybaby."

She battled with reporters throughout her term, complaining that they were "bitten with the bug of cynicism" and unfair to her.

But her candor was considered refreshing by many, and her fiscally conservative approach to government had supporters. A Boeing Co. lobbyist called her "the best friend business ever had."

A short, chunky woman with cropped hair and tailored clothes, Ray was born Sept. 3, 1914, in Tacoma. Christened Margaret, she was called Dick as a child—short

for "that little Dickens." She named herself after a favorite region and a Civil War general.

Ray, one of five girls, showed her mettle early. At 12, she became the youngest girl to climb Mount Rainier, Washington's highest peak.

Fifty years later, at 62, she was sworn in as the state's first female governor—the only one so far.

"I guess I'm a late bloomer," she quipped.

She graduated from Mills College and received a doctorate in zoology from Stanford University.

Before entering public life, Ray was an associate professor of zoology at the University of Washington for 27 years and director of the Pacific Science Center for nine years. She never married.



DIXY LEE RAY
... supporter of nuclear industry

1973 PHOTO

GOP Leaders Seek Counsel to Probe Clinton Investment

By JOHN HARWOOD

Staff Reporter of THE WALL STREET JOURNAL
WASHINGTON—Republican leaders in Congress turned up the political heat on President Clinton by calling for an independent counsel to investigate possible links between the president and a failed Arkansas savings and loan.

In separate television interviews, Senate Minority Leader Robert Dole and House GOP Whip Newt Gingrich called for Attorney General Janet Reno to appoint an outside counsel to examine the investment by the president and Hillary Rodham Clinton in Whitewater Development Corp. with James McDougal, the owner of now-defunct Madison Guaranty Savings & Loan.

"There are dozens of questions that need to be answered," Mr. Dole asserted on NBC News's "Meet the Press," accusing Ms. Reno of "dragging her feet" on the matter. "For the president's sake and for the sake of the integrity of the attorney general's office, she should move," the Kansas Republican said.

Mr. Gingrich, interviewed on ABC News's "This Week with David Brinkley," said there were "too many implications . . . of breaking the law" for the attorney general not to act. "If [the Clintons] are innocent, why don't they go ahead and agree to an independent counsel to clear their name?" the Georgia Republican asked.

The White House immediately rejected the GOP demands. "There's no need at this time for an independent counsel," senior presidential adviser George Stephanopoulos said on the ABC program. He predicted that a current Justice Department investigation will show that "no laws were broken," and accused Republicans of seeking political advantage. A Justice Department spokeswoman reiterated Ms. Reno's previous assertions that the department's investigation is sufficient.

Mr. Clinton's investment with Mr. McDougal in Whitewater, an Ozark Mountain real-estate project on which the president says he lost about \$70,000, was the subject of controversy during the 1992 presidential campaign. But official interest has intensified since the disclosure that documents pertaining to Whitewater were removed from the office of Vincent Foster, the former deputy White House counsel and Clinton family lawyer, shortly after Mr. Foster's suicide in July.

The president has volunteered to turn over the Whitewater files to the Justice Department, which is looking at the investment as part of a broader civil and criminal investigation into Madison Guaranty. Ms. Reno says the investigation is being handled by career department prosecutors, and that her appointment of an outside counsel would increase the perception of political interference, not diminish it.

Rep. Jim Leach (R., Iowa) and some other Republicans have previously called for an independent counsel, suggesting the Justice Department might be used to shield Mr. Clinton from accountability. But the statements by GOP leaders on the issue suggest that, as Mr. Gingrich put it, "Whitewater Development is not going to go away" as a political, if not legal, distraction. Fueling Republican rhetoric is the fact that the Democratic chairmen of the House and Senate Banking committees have declined to hold hearings.

"The Democrats aren't going to touch this," Mr. Dole said. "That's why we need the attorney general to act. . . . The president probably will be cleared and this will not be an issue, but let's go ahead and get it done."

Russia Bans Foreign-Cash Payments In Effort to Bolster Ruble and Image

By CLAUDIA ROSETT

Staff Reporter of THE WALL STREET JOURNAL

MOSCOW — Adding to the hurdles of Russia's heavily regulated marketplace, the government here kicked off the new year with a ban on dollar banknotes and other foreign cash as a means of payment inside the country.

The government's declared aim is to stabilize the ruble and restore its pride of place in Russian commerce. Dollars, marks and other hard currencies have increasingly come into use here since 1991 as a hedge against the shrinking ruble—which over the past year has dropped to about 1,250 to the dollar, from 415.

For some Russians, the new all-ruble rule brings a boost to sagging national spirits. At a Moscow shop selling imported

the prospect of higher sales taxes would prompt consumers to pocket any extra take-home pay rather than spend it.

The proponents' argument: Deficit-spending is a mistake, because Japan needs to scrimp and save for its graying future. Key leaders support this reasoning. That helps explain why, during Japan's worst slump in four decades, Mr. Hosokawa and his colleagues are devoting more energy to preparing the public for higher sales taxes than to talking up an impending income-tax cut.

Similarly, the government has been cool to the idea of using public money to spur real-estate transactions. A plunge in land values has caused a virtual freeze in sectors of the commercial-property market and has stuck banks with a heap of property-related bad debts. The debt mess has led banks to trim lending and has chilled confidence in the financial system. But the public, argue policy makers, won't stand for bailing out fat-cat bankers.

In recent days, however, politicians appear to have begun considering broader measures. These ideas could well come to nothing. But the large number of proposals suggests that the intensity of the slump is causing some leaders to challenge Japan's fiscal sacred cows.

Local reports last week said that the tax-reform package might contain a provision for delaying a sales-tax increase beyond March 1995 (the most commonly mentioned starting date) if the economy hasn't recovered by then. Short-term bonds would be issued to cover a revenue shortfall.

There has also been a spurt of suggestions to inject government money into the property market. Under one scenario, the government would join with private lenders to set up an agency that would buy real estate that is held as collateral on the lenders' bad loans. The agency would be funded partly by a government investment fund.

A party in the ruling coalition, Shinseitō, proposes creating an entity that would buy bad loans from small financial institutions, using funds lent by the Bank of Japan. Other ideas include having local governments buy land and build public housing in major cities, as well as a variety of tax breaks on the sale of commercial property.

groceries, for example, Assistant Manager Lena Semyonova said Sunday, "If we live in Russia, the Russian currency should be the one in circulation."

And back in October, when Russia's Central Bank first announced the post-new-year ban on foreign cash payments, Central Bank Deputy Chairman Dmitry Tulin argued that "this measure is a very logical step in the strengthening of our national currency and in removing foreign currency from our country."

Cost of Pride

But western economists say this pride carries a cost. The dollar's popularity in Russia is not a cause of the ruble's decline, but a result of Russia's appetite for some form of reliable money. And the ruble's strength depends chiefly on whether the government can bring down the double-digit monthly inflation that has afflicted post-Soviet Russia and made foreign cash a vital hedge for many ordinary Russians. Forcing these people to use rubles won't help them thrive.

Banning dollar cash payments is more likely to increase prices than to stabilize anything, largely because it requires more accounting work and greater risk. Stores selling imported goods in Russia, many of which previously asked for cash payments in dollars, must now start paying bank commissions to convert their ruble-ized income into the dollars needed to buy goods abroad.

At the World Bank's Moscow Office, Chief Economist Charles Blitzer describes the new rule as a windfall for banks dealing in foreign exchange. Though it's too soon to measure price increases in Russia's hard-currency shops, many of which were closed this weekend due to the New Year's holiday, Mr. Blitzer estimates that the extra charges for currency conversion will generally come to about 6%.

Added Transaction Costs

A number of shops around Moscow have opened foreign-exchange windows near the cash registers, for customer convenience in complying with the ruble rule. But this convenience means added transaction costs both for buyers and sellers. "Bankers will be the ones who will gain by this," says a Russian employee at one former dollar shop here. For ordinary people, this employee adds, "The living standard will fall."

Also, to operate under the foreign cash-payment ban, both buyers and sellers will need to hold larger ruble balances. In a country already fraught with ferocious political fights and a wavering agenda for economic reform, this further exposes business to the risk of a falling ruble.

Under the new rule, Russia's Central Bank will continue to allow hard-currency payments by credit card. And Russians will be allowed to hold cash dollars, even if they aren't supposed to use them in shops. The government further watered down the rule last month with a handful of amendments that mainly let people pay foreign cash rather than rubles to the Russian government—for special purposes such as paying fines, customs levies and income taxes.

The skeleton that won't stay dead

By Wesley Pruden
THE WASHINGTON TIMES

"Whitewater" is the skeleton that just won't stay still in President Clinton's closet.

The White House notes, correctly, that neither the president nor the first lady is a target of a federal investigation into suspicious deeds done in Mr. Clinton's Arkansas past.

But there are perils aplenty, political if not legal, for Bill Clinton. Whitewater has everything a Washington scandal is to grow "legs" to take it a long way: lots of cash, tangled personal relationships, vanishing bank deposits, clandestine meetings, even a dead man.

Washington's politicians, law-

SCANDAL

From page A1

yers, columnists, commentators and investigative reporters — as well as U.S. investigators — are taking their first close look at what promises to become, over the next few weeks, a genuine four-alarm fire of a scandal.

Congressional and Justice Department investigators are examining several suspicions, so far not proved, that:

- Bill and Hillary Clinton may have received fraudulent loans in a savings and loan that failed after they went partners with its president in an Ozarks real estate venture called Whitewater Development Corp.

- In return, Mr. Clinton, as governor of Arkansas, may have used his office, which supervised state banking regulators, to keep the S&L in business even after federal regulators said it was insolvent and incapable of protecting the deposits of its thousands of depositors in Arkansas and other states.

- Hillary Rodham Clinton, as a partner in Little Rock's powerful Rose Law Firm, may have used her unique access to the governor to arrange for the state banking regulators to keep the S&L in business.

- The White House may have attempted to evade the pertinent questions, removing key files about the transactions from the office of Vincent W. Foster Jr., the deputy White House counsel who was also the Clintons' personal lawyer, within hours after he killed himself last July.

- Fear that the scheme was about to unravel, exposing his clients Bill and Hillary Clinton to civil or even criminal felony charges, may have contributed to Mr. Foster's decision to take his life.

The bare bones of what is known is troubling enough for the president.

Bill Clinton and James B. McDougal first became friends during the Vietnam War years when they were aides to J. William Fulbright, the junior senator from Arkansas. Some

years later, when they returned home, Mr. Clinton went into politics and Mr. McDougal went into business. Hillary Clinton and Susan McDougal became friends, and the two couples became close.

When Mr. Clinton was first elected governor in 1978, he gave Mr. McDougal a top financial job in his administration. But Mr. McDougal wanted bigger things, and, during a land boom in the Ozarks in the late 1970s — mountain counties that had been losing population for decades were suddenly awash in affluent retirees from Detroit, Chicago, Cleve-

land and other northern cities — Mr. McDougal cut the Clintons in as equal partners in a vacation development on the scenic White River. They paid \$203,000 for 230 acres of prime waterfront property and divided it into 42 home sites.

When the savings and loans were deregulated in the '80s, Mr. McDougal bought a tiny S&L in Augusta, Ark., a cotton crossroads hamlet just up the way from Dixie, Des Arc and Cotton Plant, and moved it to Little Rock. He threw a spectacular party at its opening in the renovated quarters of an old laundry on South Main Street — a nice irony, given the questions to come — and sped around town in a Bentley. Susan McDougal, decked out in hot pants to show off a showgirl's legs, astride a white stallion — appeared in the television commercials for the newly relocated Madison Guaranty Savings and Loan Association.

Madison's original assets of \$3 million grew to \$120 million. Federal bank regulators took notice. By 1984 they were alarmed that Madison's solvency was in "jeopardy" because of "unsafe and unsound practices." These practices included the granting of \$17 million in loans to the S&L's officers, directors, relatives and friends. One insider was Seth Ward, a top official of Madison and the father-in-law of Webster L. Hubbell, a partner with Mrs. Clinton at the Rose Law Firm who would become the associate attorney general of the United States and the No. 3 — some say the real No. 1 — at Janet Reno's Justice Department.

The father-in-law borrowed \$600,000 and defaulted on \$587,000 of it. Another bad loan was made to Jim Guy Tucker, the lieutenant governor who became governor when Mr. Clinton came to Washington. He borrowed \$1 million and paid back half of it.

The following year, 1985, when enormous loans to a Canadian land-development scheme were going seriously and dangerously wrong, McDougal threw a lavish fundraiser for Gov. Clinton at Madison's quarters, raising about \$35,000 — most of the records have disappeared — to pay off a \$50,000 loan the governor had taken out at another bank, owned by a man who later became a top official in the Clinton gubernatorial administration.

Federal investigators, reports

Gannett News Service, believe that some of that \$35,000 may have come from Madison deposits, not individual contributors drawn to the lavish party.

Gannett reports that investigators "are suspicious because many of the 'donations' were in the form of Madison cashier's checks usually written in the name of an individual on his account." At least one of these persons has told investigators he never wrote such a check. If that is true, such a diversion would be a felony.

After that fund-raiser, federal investigators told Mr. McDougal to find new capital or close the S&L.

Gov. Clinton had just appointed a new state securities commissioner, Beverly Bassett. She had previously represented Madison as a private lawyer. She and the governor were said to be good friends.

Miss Bassett later married Archie Schaffer, an executive of Tyson Foods Inc., of Springdale, Ark., the nation's largest processor of chickens and a major contributor to Mr. Clinton's political career. Mrs. Clinton sat on the Tyson board of directors until she came to Washington. The ex-commissioner is the sister of Woody Bassett, another Clinton contributor and one of the governor's 1984 re-election campaign managers.

Mr. McDougal wanted to raise capital for his failing S&L by selling preferred stock, unprecedented in Arkansas as a way of raising money for a savings and loan. Federal regulators frowned at the idea, but the decision was Beverly Bassett's to make. Madison's lawyer was Mrs. Clinton, on a retainer of \$2,000 a month. Mr. McDougal said he hired the governor's wife because the governor insisted. The White House says that's not so.

In any event, the governor's friend the securities regulator said it was OK. Federal regulators applied additional pressure to void the scheme before any shares were sold.

By 1986, federal regulators say, Madison was close to insolvency, with millions of dollars missing, much of it diverted to friends and relatives of Mr. McDougal. They said it was difficult to determine how much, and where all of it had gone, because most of the records are missing, too. The tab to taxpayers eventually passed \$50 million.

Mr. McDougal was indicted for bank fraud in 1989 and acquitted the

following year. He is divorced from the sexy lady on the white stallion and says he's broke.

Questions about Whitewater and Madison were first asked during the 1992 presidential campaign, when the intricate details were set out in a long account in the New York Times. The Clinton campaign asked a Denver lawyer, an old Clinton friend named James M. Lyons, to look into it and make a report. He concluded that the Clintons were "passive shareholders" in Whitewater and lost their savings in it.

When the reporters covering the campaign showed no interest in Clinton scandals, the story faded. Interest was revived two months ago when The Washington Times found a letter from Hillary Rodham Clinton to James McDougal, dated Nov. 28, 1988, demanding that she be given power of attorney to conduct all of Whitewater's business, contradicting the Clintons' claim that they were merely "passive" partners.

Mr. McDougal and his former wife say they delivered the Whitewater records to Mrs. Clinton at the Arkansas governor's mansion. The Clintons have said the records disappeared.

In any event, the records are presumably lost, although there is speculation in Arkansas that these may be among the documents taken from Mr. Foster's office by two Clinton political aides within hours after Mr. Foster shot himself.

The casual tangling of politics and business in Arkansas, where everybody who's anybody is connected to everybody, often confounds outsiders. Mr. Clinton has insisted throughout that he did nothing wrong. "We did nothing improper and I have nothing to say about it," he told reporters several weeks ago. "Old story."

And so it is: Once again, the former governor is at the center of accusations of cronyism in Arkansas, where, because the state is small and the power is concentrated, cronies are the only people available to do business with.

"It's natural and usually harmless in a state like this," says Jerry Russell, a political consultant in Little Rock. "But you sometimes can blind yourself to the fact that one of your friends is doing other things outside your purview that could discredit you."

Another scarred veteran of the Arkansas political wars puts it another way: "I think Bill and Hillary expected to do business up there the way we've always done business down here. I don't know who's going to be the most surprised when this is thoroughly ventilated — Bill and Hillary, or the rest of the United States."

GOP tells Reno to name counsel for Whitewater

By Joyce Price
THE WASHINGTON TIMES

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Senate Minority Leader Bob Dole and other top congressional Republicans demanded yesterday that Attorney General Janet Reno name an independent counsel to investigate President and Mrs. Clinton's involvement with a failed Arkansas savings and loan.

"I think for the president's sake and for the sake of the integrity of the attorney general's office, she should move," Mr. Dole said on NBC-TV's "Meet the Press."

"She's wasted a lot of time dragging her feet, and it's time she moved and appointed an independent counsel."

The Republican leaders say it's premature to speculate about the possibility of Mr. Clinton's impeachment but agreed that an independent investigation of the S&L and the related Whitewater Development Corp. is needed to determine whether financial improprieties occurred.

The Republicans find themselves in the position of calling for passage of a new independent counsel statute if necessary to make such an investigation possible. Republicans have opposed the independent counsel statute, which expired in De-

cember 1992 when Congress did not renew it, arguing that it has been a means of harassing Republican presidents.

"Whitewater Development is not going to go away," House Republican Whip Newt Gingrich of Georgia said on ABC-TV's "This Week." "There are too many questions and there are too many implications, frankly, of breaking the law. There is no question we need an independent counsel on Whitewater."

The White House responded quickly to the Republican demands with a statement through spokesman Jeff Eller.

"There is no basis for criminal or civil charges," Mr. Eller said. "The president has voluntarily turned over the Whitewater files to the Department of Justice, and we believe that is an appropriate course of action."

The comments by Mr. Dole and Mr. Gingrich came a day after Rep. Jim Leach of Iowa, the House Banking Committee's ranking Republican, said Mr. Clinton could face "serious" civil penalties and, perhaps, even "criminal charges" for his involvement with Whitewater, an Ozarks real estate venture, and the

failed Madison Guaranty Savings and Loan Association of Little Rock.

Mr. Leach, in an interview on CNN's "Evans & Novak," said in a response to a question that discussion of impeachment is "inappropriate" at this time, a view shared by the Republican leaders yesterday.

"Congressman Jim Leach has it exactly right. We ought to focus on the civil side, but the country deserves to know the full facts about what happened in Arkansas and whether or not, in fact, the law was broken," Mr. Gingrich said.

At issue is whether Mr. Clinton, as governor, used his influence to keep the ailing savings and loan association afloat when federal regulators said the bank was no longer able to protect its depositors' accounts. Madison was owned by James B. McDougal while the McDougal and Clinton families were partners in Whitewater, whose finances were intermingled with those of its principals.

Mr. McDougal is the focus of a federal investigation into allegations that he manipulated fraudulent loans through Madison and also that he authorized illegal payments to several powerful Arkansas politicians, including Gov. Clinton.

Mr. McDougal, who was indicted in 1989 on fraud charges in connection with Madison but acquitted the following year, has denied any

Republicans have opposed the independent counsel statute, which expired in December 1992, arguing that it has been a means of harassing Republican presidents.

wrongdoing.

In his remarks yesterday, Mr. Dole, who also has called for a Senate investigation of the Whitewater scandal, said he believes the president should provide the financial files he turned over to Miss Reno to the Senate and House banking committees as well.

Republicans have expressed doubts that Miss Reno, who was appointed by the president and is by law the president's attorney, can be independent when examining allegations that concern Mr. Clinton. She said there's no need for a special counsel, as the White House has not intervened in the probe, being conducted by Justice Department lawyers.

White House senior adviser George Stephanopoulos, who also appeared on "This Week," accused Republicans of political opportunism in calling for an independent

counsel. He noted that several of the legislators seeking such an appointment had voted against extension of the special prosecutor statute.

"The president has turned over the documents to the Justice Department. It was exhaustively looked into during last year's campaign," Mr. Stephanopoulos said. "The president was part of a real estate deal many years ago where he lost a lot of money. Those are the facts. The laws were broken."

"The Justice Department investigation will show that. But there is no need at this time for an independent counsel."

Mr. Dole said he believes the president "probably will be cleared" of wrongdoing but nevertheless sees an independent inquiry "because there's federally insured money in the savings and loan."

"Whether or not these funds were used for politics, whether or not the

loans were repaid, his relationship to Mr. McDougal — there are dozens of questions that need to be answered, and I think it's in the president's interest," Mr. Dole said.

Mr. Gingrich put it this way: "By any standard affecting Carter or Reagan or Bush, the Whitewater Development Corporation mess would get an independent counsel, by any standard, and I think the longer the Clintons avoid doing that, the more people are going to suspect that there's a reason they don't want an independent counsel."

If Miss Reno declines to appoint an independent counsel for such an inquiry, Congress should enact legislation re-establishing the office of independent counsel to force such a probe, Mr. Gingrich said.

Mr. Dole said such legislation is not necessary, as Miss Reno already "has the authority to appoint" an independent counsel.

He also complained that Congress seems unwilling to conduct any hearings about the Whitewater allegations.

"The Democrats aren't going to have any hearings. ... The Democrats aren't going to touch this," Mr. Dole said. "If it were a Republican, we'd have five or six hearings going on right now."

● Ronald A. Taylor, with the president in Hilton Head Island, S.C., contributed to this report.