Lloyds of Clinton

Lloyd Cutler and Lloyd Bentsen's unseemly cooperation in suppressing investigations into the Washington phase of Whitewater is only one of many new facts emerging in the wake of this summer's hearings—all of them suggesting that we ain't seen nothing yet.

by David Brock

"I smell a rat here."
—Rep. Toby Roth (R-Wisc.)

Assuming that Hillary Clinton's fears about the independent counsel "poking into 20 years of public life in Arkansas" are not misplaced, the major revelations of the Whitewater scandal are yet to come. Nonetheless, White House claims that the so-called Washington phase of Whitewater has received a "clean bill of health" should not go unchallenged.

Time and again during this summer's House and Senate hearings, Clinton officials, led by White House counsel Lloyd Cutler, took the witness stand and said that no laws or ethical rules were broken in the White House–Treasury contacts on Whitewater. If nothing else was clear after the dust had settled, the Clintons' efforts to thwart the investigation have soiled the reputations of everyone whose help they have engaged. Cutler used to be regarded as a Zeus-like figure in Washington, but he has now been exposed as just another well-heeled hired gun.

The Two Lloyds

Acting, incongruously, as both advocate for and judge of his client, Cutler did not behave as if the Clintons were innocent. In violation of a House rule requiring that written testimony be submitted to the committee 48 hours prior to a witness's appearance, Cutler handed over his report on White House contacts 30 minutes before he was to begin testifying. This ensured that the questioning would be soft. During a break, the man who insisted that he was not a special pleader for the president, but rather was representing the institution of the presidency, was seen on the dais reserved for members and staff, whispering with administration point man

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Rep. Barney Frank, the Massachusetts Democrat. One upstart committee member admonished Cutler to return to the witness table.

Cutler posed as Mr. Openness, making a big point of Clinton's having waived executive privilege, yet behind the scenes he was achieving unprecedented control over the flow of information to Capitol Hill. Contrary to Cutler's suggestion, executive privilege is very rarely asserted. Rather than denying information to the Congress, prior White Houses have always negotiated with Congress to make even highly sensitive documents available to some select group of members or staff.

Cutler, however, simply withheld certain information by routinely redacting out portions of documents that he deemed "non-responsive." In civil litigation, if a document is deemed responsive in part, the entire document is held to be responsive. When documents are denied and motions to compel are brought, judges assess the merits of such claims in camera. Cutler achieved a kind of super-executive privilege through the back door, with no check or means of appeal. Whether recently dismissed independent counsel Robert Fiske operated with the same White House filter is not known.

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Before testifying, Cutler importuned treasury secretary Lloyd Bentsen—supposedly a subject of the ongoing investigation—to supply him with copies of interviews White House staff had given to the inspector general of the Treasury Department, which provided raw data for a separate Office of Government Ethics review. Bentsen had the Treasury official phoned at home on a Saturday night and ordered to fork over the material. This gave the White House lawyer time to iron out any bothersome inconsistencies in the testimony, and it violated Bentsen's own instruction to Treasury officials not to be in contact with the White House during the investigation. The two Lloyds also set up their two probes to run simultaneously with the congressional hearings, leaving the House and Senate committees competing with the White House and Treasury for access to witnesses. As a result, certain key witnesses were still being interviewed by committee lawyers as the hearings were proceeding.

More Sham

The House was outgunned by the Senate. The upper body, for example, had former Treasury counsel Jean Hanson in for twenty-six hours of depositions, while the House interviewed her for less than six hours. To make matters worse, banking committee chairman Henry Gonzalez had appropriated no funds for the investigation, nor had he hired a lawyer for the majority. And unlike their Senate counterparts, House members had difficulty developing a line of questioning because Gonzalez limited each member to five-minute intervals. Gonzalez and Frank defended the gavel-pounding with constant references to the five-minute rule, conveniently ignoring that the original concept of the rule was to ensure junior members the chance to get into the game. That is, the rule was conceived as a minimum, not a maximum, and certainly not as a way of frustrating the process.

How could it be that thirty House Democrats and eleven Senate Democrats could look at the same set of facts so differently? With the exception of Rep. Eric Fingerhut of Ohio, House Democrats treated the hearing with derision and a cavalier attitude bordering on contempt, while the Senate treated the matter with the utmost gravity and seriousness. The low point of the entire two weeks was of course achieved in the House, when Democratic Rep. Maxine Waters of California took up a line of questioning designed to show a panel of White House aides as God-fearing, hard-working, well-intended people. ("I understand you even attend church regularly?" Waters asked presidential counselor Mack McLarty.)

Bentsen's collusion with Cutler foreshadowed his thoroughly dishonorable conduct on the stand. Though Bentsen, former deputy secretary Roger Altman, Bentsen chief-of-staff Joshua Steiner, and Hanson provided conflicting accounts of their roles in the White House contacts, Bentsen was the only one of the four to escape grilling by both the committee and the inspector general. Two days after Bentsen, in an interview, denied knowledge of a February 2 meeting at the White House attended by Altman and Hanson, the IG received Bentsen's calendar log showing meetings with his two subordinates on February 1 and 3. Yet the IG didn't go back and ask Bentsen about these logged-in meetings. In the hearing, Bentsen flatly denied being briefed about the White House–Treasury contacts, despite testimony and memoranda from Altman, Hanson, and Steiner indicating that he had been.

The question of his own candor aside, however, as the head of an embattled organization, Bentsen had the duty to either forthrightly defend his subordinates before the committee, or concede that the criticism leveled against them was correct. Instead, the cowardly Bentsen was permitted by the Senate and a deferential press corps to step out of the line of fire and disassociate himself from the controversy.

The Ethics "Report"

Cutler, therefore, was left to brandish the Office of Government Ethics report issued on the eve of the hearings, but it generally escaped notice that the OGE report examined only the conduct of the Treasury Department officials, not of the White House staff. He merely lifted the OGE's

analysis of the behavior of implicated Treasury officials and grafted it onto the conduct of the White House staff that he was supposedly evaluating. Contrary to impressions, there was no independent review of the White House staff. (Nor was there consideration of White House ethics policies that set a standard above the OGE's. Those policies say that on investigative or regulatory matters, contacts must go through the White House counsel's office; at a minimum, White House aides George Stephanopoulos—who improperly brought the FBI into Travelgate—and Harold Ickes broke those rules. For more on Ickes, see sidebar on p. 27)

Close observers know that if there is a way of construing a set of facts so that there is no violation, OGE will unfailingly protect executive branch officials, unless their name is spelled Sununu. In fact, among the documents obtained by Senate investigators was a White House copy of a March 3 Bentsen statement to the press announcing the OGE review, the day before Fiske subpoenaed White House officials on the contacts. At the bottom someone scrawled, "Mack, Per Joel, 'This will cover us so we don't have to do anything further'—P." The notation appears to be a message to chief of staff Mack McLarty from deputy White House counsel Joel Klein. (McLarty had a personal secretary named Patsy.)

Once it was completed, Cutler deployed the report to great effect with the public, never tiring of pointing out that the head of OGE, Stephen Potts, is a Republican. He did not add that Potts also likes his job.

The most familiar ethics rule prohibits government employees from using their office for financial gain. Although it is obviously irrelevant to the Washington phase of Whitewater, both Cutler and the Treasury IG spent the bulk of their time explaining why that standard was not violated. The two relevant rules say a government official should not improperly use nonpublic information to further his own private interest or that of another, nor should an official act partially or give preferential treatment to any individual.

Let's take just one contact—the infamous September 29 meeting between Hanson and White House lawyers Bernard Nussbaum and Clifford Sloan—as an example of the OGE's approach. On the first standard, the OGE found that the criminal referrals were indeed "nonpublic," but it went on to argue that Hanson's disclosure served "an official interest" rather than a private one. On the question of whether the disclosure constituted preferential treatment for the president, the report concluded that it did not, noting, "There was an assumption here, arising from the unique nature of the Office of the President, that the contacts were made pursuant to a proper White House function."

The sticking point in the report is that all of the contacts involving the president are regarded on their face as "official," and if there are only "official" interests, there can be no violations. Yet distinctions between a president's official and private interests and actions are recognized all the time: Otherwise, the Justice Department would be representing Clinton in the independent counsel's inquiry on Whitewater and the Paula Jones case. Certainly Hanson had no official purpose in mind when she later attempted to get RTC general counsel Ellen Kulka to brief the Clintons' private attorney on the referrals.

Once one dislodges this false notion, the Hanson disclosures could be construed both as preferential treatment for Clinton and as use of nonpublic information to further his private interests. RTC vice president William Roelle testified that to his knowledge the RTC had never before provided insider notice of criminal referrals. The disclosures arguably put the president in a better position with respect to his personal liability or exposure in an investigation of events that occurred before he became president.

What if Hanson's contacts with the White House (which she says were either ordered by or known to the president's friend Altman) were intended not for the "proper White House function" of answering press calls—as the OGE report *assumes*—but to allow Clinton to alert others targeted in the referrals, talk to witnesses, shred documents, and the like? The report was designed so that this possibility could not even be explored. For example, Hanson and deputy chief of staff Harold Ickes met on February 2. The IG asked Ickes what information he received at the meeting, and what he immediately did with it. Ickes answered that he passed it on to Clinton, but since Ickes's conduct was not being evaluated, he wasn't asked for details of the conversation.

Nonetheless, in a later section of the report, the OGE managed to undermine its own key assumption. Of a September 30 phone call from Hanson to Sloan, the OGE said:

> Mr. Sloan's notes would suggest that information other than that contained in the press inquiry from Ms. Schmidt [of the *Washington Post*] may have been conveyed by Ms. Hanson. . . . Ms. Hanson's disclosure of information other than that relating to the President would seem to go beyond what was necessary to achieve her stated purpose of assisting the White House with its press function.

Hanson, for example, disclosed that Arkansas Gov. Jim Guy Tucker was named in the referrals, which the press was then unaware of.

A related bit of evidence was unearthed in an unsworn interview with House investigators. White House staff secretary John Podesta (who was not interviewed for the OGE report) revealed that he remembered that in a meeting with Nussbaum on March 1, Nussbaum said that he had briefed White House aide Bruce Lindsey on the referrals back in September, following the contact with Hanson, because Lindsey handled press calls on Arkansas matters. Yet Nussbaum failed to instruct Lindsey not to tell Clinton, suggesting an ulterior motive.

According to the Cutler chronology, Lindsey then asked the counsel's office whether it was legal for the White House to be getting the information Hanson was providing. Cutler testified that Hanson's information "was coming to her [Hanson] from the press," not through regulatory channels. But why would

White House Plumber

"This is not Watergate."
—Harold Ickes, Associated Press, March 11, 1994 (referring to the Whitewater scandal)

In making analogies to Watergate, White House deputy chief of staff Harold Ickes—whose broad portfolio includes not only Whitewater damage control but also 1994 campaign strategy and health care reform—appears to know what's he talking about.

Episodes in Ickes's pre-White House legal career have generated headlines and ethics questions in New York for years: his representation of union boss Anthony Amodeo, who allegedly had ties to organized crime; his dual role as David Dinkins's mayoral campaign lawyer and lawyer-lobbyist for companies seeking city contracts from the Dinkins administration; and his work for the city's Off-Track Betting Corp., plagued by allegations of political patronage; among other matters. (A White House appointment for Ickes was delayed a year while his ties to Amodeo's union were investigated. Ickes joined the staff in January.)

According to federal financial disclosure forms filed by Ickes in April, his colorful client list at the Long Island firm of Meyer, Suozzi, English & Klein included former *New York Times* executive editor Max Frankel, Commerce Secretary Ron Brown, *Penthouse*, the Children's Defense Fund, feminist author Letty Pogrebin, and Kgosie Matthews (the boyfriend of Senator Carol Moseley-Braun, who was accused of sexual harassment by Braun campaign workers). Ickes even represented POM Inc., the Arkansas parking-meter manufacturer owned by former associate attorney general Webster Hubbell's father-in-law Seth Ward. It was Hubbell's representation of POM on favorable terms that led the Rose Law Firm to investigate its former partner's billing practices. Hubbell resigned in the hubbub.

A lawyer, of course, can't be held responsible for his clients' crimes, let alone their ethics, associations, or personal peccadilloes. But Ickes, who has been very active politically over the years in New York, can be judged by his own personal conduct, quite apart from his legal advocacy. It is in this respect that a heretofore unknown incident from Ickes's past may be an illustration of how he came to be a leading member of the Whitewater White House 10, not to mention giving his new boss Leon Panetta ample reason to watch his back.

The year was 1970, and Harold Ickes, then 31, was the campaign manager for the Democratic ticket of Arthur Goldberg for governor and Basil Patterson for lieutenant governor. (Patterson and Ickes would later become partners at Meyer, Suozzi.) One early Saturday morning on September 18, a New York City policeman was patrolling his beat in a radio car when he spotted a man he remembers as unkempt and shabbily dressed, emerging from the Goldberg-Patterson campaign headquarters at 667 Fifth Avenue at 53rd Street in Manhattan.

The man was Harold Ickes, according to the officer, John Mackie. Now retired from the police department and living in Florida, Mackie has come forward with this vignette after all these years because, he notes, it relates to a man "whose motives have been questioned by the Justice Department in the Whitewater investigation."

As Mackie tells it, that evening in New York twenty-four years ago, Ickes was alone and the streets were empty at about 1:45 a.m. The description of events is contained in pages from Mackie's police department memorandum book entry summarizing the events, which he supplied.

Spotting the approaching patrol car, Ickes, who was carrying a large brown paper bag tucked under his arm, hurriedly crossed Fifth Avenue and scampered down West 53rd Street. Officer Mackie called for Ickes to stop, but the plea was ignored by Ickes, who only picked up his pace. The officer gave chase and eventually caught up to him. "When I caught up to subject, he refused to identify himself, was very evasive to questioning, and failed to give a reasonable account of his conduct," the memo book entry said.

At this point, Mackie took possession of the paper bag and emptied its contents: thirty-four different keys, numerous checkbooks and registers, a number of telephone and address books—all written in a different hand, as Mackie recalls it—plus a large, three-cell flashlight of the type that Mackie says is commonly used in the commission of burglaries.

When Mackie informed Ickes that he would have to be taken into the 17th Precinct station house for further investigation, Ickes "began to harass me by calling me a lousy f---ing cop." Mackie then forced Ickes into the back seat of his car and delivered him to the precinct detective squad.

During forty-five minutes of questioning to which Mackie was not privy, Ickes eventually identified himself as the campaign manager for Goldberg-Patterson and supplied the police with the name of another campaign official who could vouch for him. According to Mackie's memo book, she was Sarah Kovner at TR-7-3915. (Kovner still has the same telephone number; she did not return a call seeking comment, nor did Ickes.)

Apparently, Ickes had undertaken a surveillance operation against his own campaign. "Though my superiors probably had no recourse at the time but to release the man," Mackie says now, "I was convinced then and remain convinced today that Harold Ickes was engaged in some clandestine action that he would not want known, perhaps not even by Arthur Goldberg or Basil Patterson." He adds: "This incident occurred pre-Watergate, but had it occurred afterwards, there's no doubt that my superiors would have looked more closely at the matter, probably by conducting a follow-up investigation."

—DB

Lindsey have been concerned about the legality of getting a heads-up on information gleaned from press inquiries, which he had no intention of acting on? More plausibly, Lindsey may have wanted to know whether he legally could have nonpublic information coming from inside the RTC that was far more detailed than that which the press could have conveyed, and that reached well beyond a simple heads-up for dealing with press calls.

The clearest indication that the disclosures were not made pursuant to an "official function" is that the information was never actually used for any official purpose—neither to brief the press, nor, as Cutler testified, to keep the president from "embarrassing or compromising encounters" with those targeted in the probe. Neither Nussbaum nor Lindsey shielded the president from twice meeting with Tucker, a subject of the referrals, on October 6 and again on November 18. Clinton had been told by Lindsey of the referrals before the first meeting, but Lindsey denied telling Clinton that Tucker was named.

In the end, the report's conclusions are hedged to such an extent that they are virtually worthless. "On the basis of our review," the OGE said, "we believe that you might reasonably conclude that the conduct detailed in the report of officials presently employed by the Department of the Treasury did not violate the Standards of Ethical Conduct for Employees of the Executive Branch." The implication, of course, is that one might reasonably conclude that the conduct *did* violate the standards.

Fiske concluded emphatically that Whitewater played no role in Foster's suicide. Yet according to those who have seen it, the Fiske deposition of Bill and Hillary Clinton shows that he didn't ask the first couple if they had spoken to Foster about Whitewater before his death.

Fishy Fiske

A second component of the administration's defense was the deification of special counsel Robert Fiske, who had concluded that no laws were violated in the White House–Treasury contacts. As with the ethics report, that conclusion should be subject to closer scrutiny, because Congress and the Treasury inspector general were almost certainly able to develop a more complete picture of the contacts than Fiske did.

As congressional investigators deposed various witnesses in preparation for the hearings, they discovered that some witnesses had never been interviewed by Fiske, and some lines of inquiry had not been pursued in the interviews that Fiske did conduct. Among several witnesses deposed by the Senate, but not interviewed by Fiske, was Joan Logue-Kinder, Treasury's assistant secretary for public affairs. The Senate was able to uncover the fact that Logue-Kinder had called RTC public affairs director Steve Katsanos in October 1993 for information about reporters' inquiries on the Rose Law Firm's representation of Madison Guaranty. Logue-Kinder then instructed Katsanos to brief Hillary Clinton's press secretary, Lisa Caputo.

Fiske also failed to interview Ben Nye, who was Altman's special assistant after Steiner left his office to join Bentsen's staff. And Senate investigators, not Fiske, unmasked the sequence of contacts between the White House, including the president himself, and Eugene Ludwig, the comptroller of the currency. Clinton asked Ludwig for advice about Whitewater at the December 1993 Renaissance Weekend, and Ludwig secretly funneled copies of reporters' FOIA requests on Whitewater to Bruce Lindsey.

Senate investigators are quick to concede that the press of time meant that they, too, were unable to depose all of the potentially relevant witnesses. For example, they didn't depose John Bowman, a Treasury attorney who worked for Hanson and had extensive responsibilities for the RTC beginning in 1993 and ending with the appointment of Ellen Kulka as RTC general counsel in early 1994. Bowman was physically on site at the RTC during the entire period under investigation. He rebuffed Hanson during a January 1994 meeting when she asked RTC officials to provide her with copies of the Whitewater criminal referrals so that Altman could fend off Republican demands that the deadline for filing civil charges in the Madison case be extended by announcing that the case was closed.

The upshot is that new independent counsel Kenneth Starr will want to take a fresh look at the series of contacts—provided that the full court press by Clinton lawyer Robert Bennett questioning his independence does not intimidate Starr, who is said to be susceptible to liberal media pressure, into accepting Fiske's judgment.

What About George and Bruce?

Though the media focused heavily on Altman and Hanson, the two most promising areas of further probing on criminal obstruction of justice charges, according to congressional investigators familiar with the evidence, involve Bruce Lindsey and George Stephanopoulos. Belying the Cutler line that no wrongdoing occurred since the investigation was not in fact influenced, the statute proscribes not only a successful obstruction but also any *endeavor* to obstruct, provided there is corrupt motive.[1]

After learning of the referrals, Lindsey spoke by telephone on October 4 or 5 with Denver lawyer James Lyons, who had authored a false report for the Clinton campaign to deflect reporters' questions about Whitewater. In this conversation, Lindsey learned that reporters were asking questions about who had endorsed checks written on Madison Guaranty

[1] There is a technical legal question about whether the RTC's civil investigation constituted a "pending proceeding" under the criminal code. As a general matter, courts of appeals have broadly construed the term "proceeding" to include preliminary inquiries by agencies.

accounts to the Clinton gubernatorial campaign that were at issue in the referrals. As he was being questioned during the Senate hearing about this call, Lindsey flashed a satanic grin and referred to contemporaneous written notes of the conversation that he had failed to surrender in the Senate's document request; nor is it clear that Fiske had them. The Senate did not depose Lyons. Copies of FBI interviews with Lyons supplied to Congress indicate that Fiske did not question him about his contacts with Lindsey.

After an October 14 meeting with Treasury Department public affairs director Jack DeVore about the checks, Lindsey testified, he called the custodians of the campaign contribution records in Little Rock and requested copies of them. Two months later, when the *Washington Post* was finally able to break the story about the fishy checks, Susan Schmidt reported that "former Clinton campaign aides said they would not make their own records from the 1984 campaign available." Clinton aide Betsey Wright was quoted as saying she was "unable to locate" copies of post-election contribution reports required to be filed by state law. The originals had disappeared from the county clerk's office; Wright said she "probably forgot" to file them. Did someone in Arkansas take the checks and other evidence and deep-six them?

The problem for Stephanopoulos involves his discussions with Steiner and Altman about Jay Stephens, a Republican former prosecutor who was hired by the RTC in mid-February 1994 to pursue the civil case against Madison. Though he was able to portray these two contacts as his sole role in the controversy, largely unnoticed evidence was developed in the House that Stephanopoulos had

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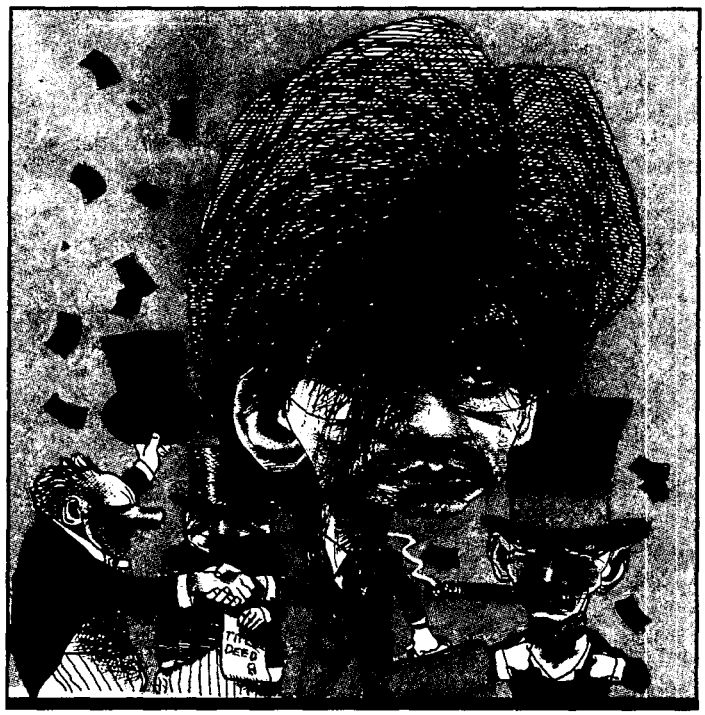
Matt Labash

Buy George

Is that what top people at NationsBank were thinking when they gave Clinton aide George Stephanopoulos an exceptional $668,000 loan?



In May, with the help of a $668,000 loan from NationsBanc Mortgage Corp. (a NationsBank subsidiary), George Stephanopoulos bought an $835,000 D.C. building containing a posh apartment above an eyewear retail store. Gossips, realtors, and all manner of investigative reporters immediately began asking: How could someone who pulls down a mere $125,000 a year—with a net worth between $30,000 and $100,000—afford such pricey real estate? "Stephanopoulos got a great deal," says one source in the banking world. "They waved it in front of him. The only thing he did wrong was he should've known NationsBanc wasn't giving him this deal because he was Joe Schmoe off the street. He was given this deal because of who he was."

A Jack Anderson column claimed Stephanopoulos had received a three-year adjustable-rate mortgage at a 6.375 percent interest rate (locked in until June 1, 1997)—a commercial loan carrying a rate dangerously close to NationsBanc's prime residential rate of 6.25 percent. (The industry rule of thumb is that commercial loans average about two points higher than the prime rate.)

Stephanopoulos's realtor, Giorgio Furioso, did nothing to quash suspicions. "George made out like a bandit," he told Anderson. "I'm not trying to toot my own horn here, but I did a terrific deal. . . . Nobody making $125,000 could qualify for the property without the commercial property [lease]. George would never have bought a $600,000 home. This is a way for him to buy something without raising eyebrows."

But on the day of the Anderson column, NationsBank issued a statement that the loan Furioso was bragging about hadn't been a commercial loan at all:

> The loan described by Jack Anderson as a commercial loan to George Stephanopoulos was, in fact, a residential mortgage loan. At the time the loan commitment was made, Mr. Anderson . . . could have walked into any NationsBanc Mortgage Company office in the D.C. area and received the same excellent rate and term for the same deal. That's why people come to us first for loans, no matter where they work.

Two weeks later, another Anderson column said Stephanopoulos and Furioso now claimed that it *was* a residential loan he had received. Stephanopoulos later pled ignorance: "I just told him [Anderson] to talk to Furioso, I actually didn't know what it was. I just knew it was a legitimate loan, which it is."

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