

When Jean Lewis began to plumb the depths of Madison Guaranty Savings and Loan in the summer of 1992, she found it teeming with possible crime. But her now-famous attempts to make it a federal case disappeared into bureaucratic murk.

So what happened? A story of political leaking and back-stabbing is now emerging, and new evidence suggests that it wasn't just a routine breakdown. White House crisis managers left fingerprints all over a Justice Department too willing to play politics. Federal law enforcers have felt interference from elected officials long before Whitewater, but the corruption has advanced apace. Lewis, a federal savings and loan investigator, was the latest of a series of dedicated workers in the field to become its victim.

In the course of doing her job, she and her colleagues filed a report that could have caused the Clintons tremendous embarrassment if it were ever acted on. It now appears that the Clintons and their friend Webster Hubbell worked to discredit the report almost from the first days of the administration. *The American Spectator* has documents showing intense activity by Clinton damage controllers as soon as the report, a criminal referral, reached the Washington bureaucracy. It was buried in the bowels of the Justice Department, in a still obscure sequence of events that is drawing the attention of the Independent Counsel. When it was finally unearthed, almost entirely because of Lewis's stubborn persis-

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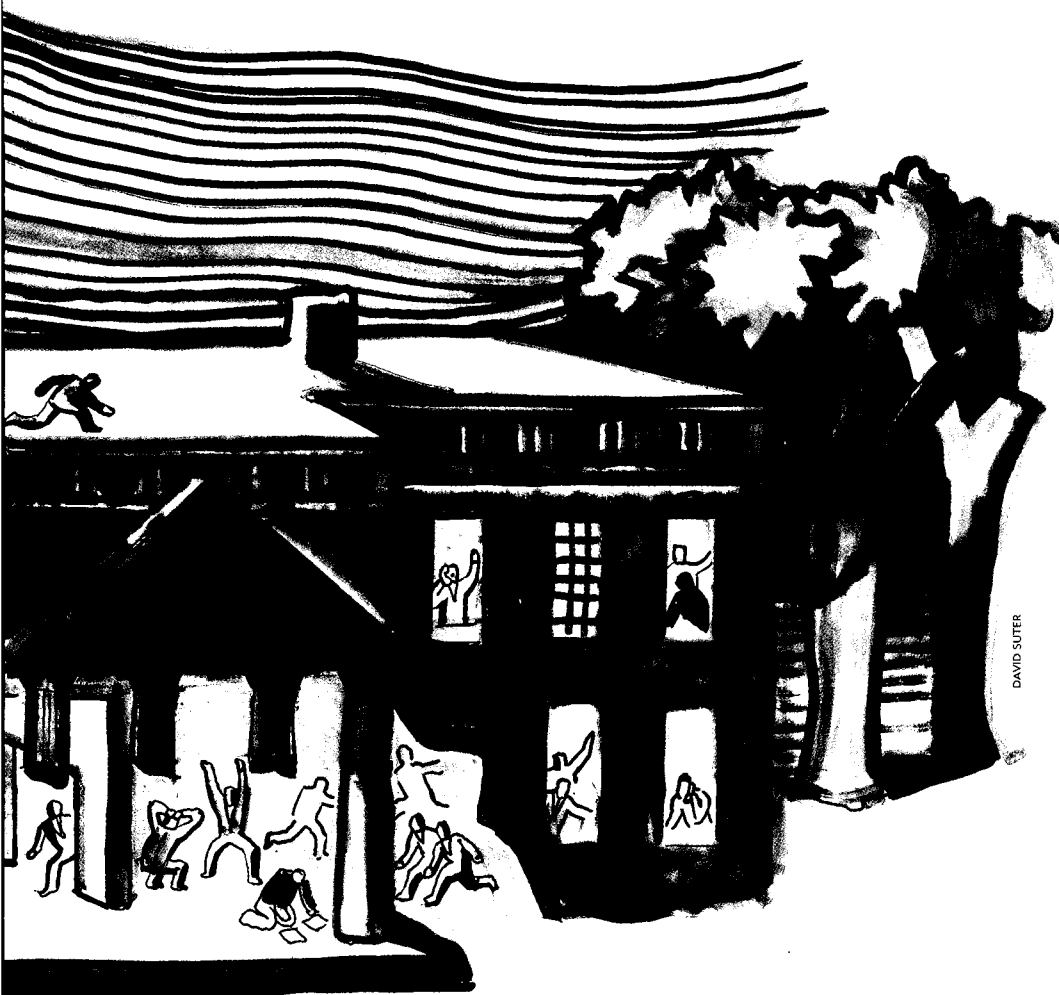
FILLING IN

A political storm broke in 1994 after revelations that the White House had been tipped off about criminal referrals that named the Clintons in the investigation

tence, the only people punished were Lewis herself and her supervisors, who found themselves suspended from their jobs for two weeks and vilified in the press. The picture that emerges of bureaucratic intrigue and high-level manipulation is one of the most revealing of the Whitewater affair.

I. The Criminal Referral

Jean Lewis was a criminal investigator in the Kansas City office of the Resolution Trust Corporation, the temporary agency



THE BLANKS

of a failed S&L. But they've known they were targets since the '92 campaign. Here's how the story was kept quiet. **BY REBECCA BORDERS AND JAMES RING ADAMS**

charged with cleaning up the savings-and-loan failures from the 1980's. The RTC had no power to prosecute law-breaking on its own. It could only alert the Federal Bureau of Investigation and the local U.S. Attorney. So on September 2, 1992, Lewis filed criminal referral number C0004.

The full text of the referral is still a secret, but enough has come out in congressional hearings to show that it made detailed and specific charges and named political heavyweights. An internal Justice Department review quoted charges of "unau-

thorized loans, check kiting, possible forgery (or at the very least, extensive use of unauthorized signatures), potential misappropriation of funds, possible illicit campaign contributions, diversion of loan proceeds, and potential bank fraud."

"Among other things," Lewis told the House Banking Committee last August, "the referral provided specific check numbers, dates, account names, account balances, particular use of funds and the names of individuals and entities involved in various check kiting schemes." The referral also named those who stood to benefit (although without accusing them of crimes); they were Stephen Smith, Jim Guy Tucker, then-Governor Bill Clinton, and Mrs. Clinton.

Smith, a political science professor at the University of Arkansas and former chief aide to Governor Clinton, has pleaded guilty to charges derived from the referral. Tucker, currently governor of Arkansas, has been indicted twice and goes to trial this March. But it's a good bet they had less to do with the strange career of this referral than did its mention of the Clintons. Although they were named only as witnesses (and beneficiaries), the mere fact they were keeping indictable company made the referral the hottest of hot potatoes.

The document was reviewed and signed by Lewis's two senior supervisors in Kansas City. "It was not done lightly at all," she said. Sometime in that first week in September, it landed on the more unwelcoming desk of U.S. Attorney Charles Banks in Little Rock. Banks, a Republican, was bucking for a federal judgeship. There was no way his already precarious nomination could pass a Democratically controlled Senate if he seemed to be the source of politically damaging leaks about the Clintons in the last months of a close election. His first reaction was to shunt the case aside. He told

the Senate Whitewater Committee that he didn't review the referral until the second week of September, and that he never bothered to look at the 300 exhibits that came with it.

Another copy went to Steven Irons, a special agent in charge of financial fraud cases at the FBI's Little Rock office. Irons did review the exhibits. He (or a colleague) had already notified Washington, in an "airtel" dated August 26, that a referral was in the works that mentioned presidential candidate Clinton. The Financial Institutions Fraud unit at the FBI's Washington headquarters began asking about the case in early October. But for some reason, Irons did not send a formal response back to the RTC investigators in Kansas City.

In his testimony before the Whitewater Committee, Irons said that in early September he began to field telephone calls from Jean Lewis, whose tenacity is now legendary. He produced a message slip dated September 9, showing how sharp her tone had become: "Have I turned into a local pariah just because I wrote one referral with high-profile names or do you plan on calling me back before Christmas, Steven?????" He went to Banks, who told him to refer her to the U.S. Attorney's office. Assistant U.S. Attorney Floyd Mac Dodson told the committee, "Between the first week in September and the November election, she called me nearly every other week."

Senate Democrats tried to portray Lewis's persistence as a politically inspired attempt to force action before the election. Hoping to show her unseemly haste, Sen. Paul Sarbanes suggested that the usual response time to a referral was 90 days.

"No," replied Agent Irons. "About a week."

The unusual circumstance, instead, was the extreme reluctance of U.S. Attorney Banks to take up the case. After FBI headquarters directed the Little Rock office to start a limited investigation and report back by October 16, Banks wrote to Don Pettus, the special agent in charge at Little Rock, "Neither I personally nor this office will participate in any phase of such an investigation before the election." He accused the RTC of "an intentional or unintentional attempt to intervene into the political process of the upcoming presidential election."

Banks misread the motives of the Kansas City office. Both of Lewis's supervisors were registered Democrats and they stuck by their case in spite of the election. But no one faults him for cooling the case until after November 3. Whitewater Committee chairman Alfonse D'Amato told Banks that he "did absolutely the right thing" in refusing to start up a grand jury in October. But that's no excuse for an attempt to put the probe in a permanent freeze.

On October 16, FBI Little Rock teletyped Washington that there was still no investigation. Whoever wrote the memo said that the U.S. Attorney had "conducted an extensive review of the referral and all of the approximately 300 exhibits." The U.S. Attorney, continued the memo, "concurs there is absolutely no factual basis to suggest criminal activity on the part of any of the individuals listed as witnesses in the referral." This statement is simply false, since, as Banks testified, he had never



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looked at the exhibits. But it set the tone for the next six months.

Why didn't Banks take up the case after the election? He told the Whitewater Committee that he didn't want to appear to be "punishing" Clinton for scotching his chance at a judgeship. There might have been a case against the McDougals, he said, in reference to the key figures at Madison Guaranty, but he had already lost a bank fraud case against Jim McDougal in 1990, and didn't want to seem vindictive. By late December, Lewis testified, she still had no word on the status of the referral.

II. Crisis Management

Toward the end of January, the Kansas City RTC bothered Banks for the last time. What should it do about questions from the press? Lewis asked. Clinton had just been inaugurated and Banks was resigning,

so he decided to leave the referral squarely in Washington's lap. On January 27 he wrote to Donna Henneman in the Executive Office for U.S. Attorneys, the branch at "main Justice" that interacted with these regional satrapies. "Any decision of investigation, indictment, prosecution or declination," he wrote, would henceforth be "the responsibility of the Department of Justice." This letter was logged into Henneman's Office of Legal Counsel at 3:35 p.m. on February 1.


Clinton's old friend Webster Hubbell had already gone over to Justice and moved into the big office next to the vacant Attorney General's suite. As a wandering "ambassador without portfolio" to the Justice Department, Hubbell was originally scheduled for an undefined job at Justice because he did not want to go through a Senate confirmation hearing. But when Clinton's first nominee for the top Justice job, Zoe Baird, was forced to withdraw due to a nanny tax problem, Hubbell was left in charge of the store.

If the letter tracking procedure at Justice was working properly, Henneman would have immediately noticed the political hot potato from Banks and passed it along to the Executive Secretariat system. "It would have to be sheer incompetence if he didn't see it," a former Hubbell aide in the Clinton Justice Department said about the tracking system. "At that time, with no attorney general and no deputy attorney general, it would almost certainly go across Webb's desk."

Needless to say, something bizarre had happened to Cooo4, known ever since as the "lost referral." Sources close to the investigation say that Independent Counsel Kenneth Starr has evidence that Banks's January 27 letter along with the referral, was purposefully diverted from reaching its proper destination.

Almost nine months after the Kansas City RTC sent the first criminal referral to the U.S. Attorney in Little Rock, Lewis called the Justice Department to find out what had happened. As she later told the House Banking Committee, "My initial contact at the Justice Department recalled the referral had been submitted as a special report for the attention of [Bush] Attorney General William Barr. Further efforts tracked the referral through seven different offices at the Justice Department's

BUMPERS TO BUMPERS TRAFFIC

 Everything involving the Clintons that happened in the Little Rock U.S. attorney's office may well have been known in Washington almost immediately. Judging from newly released documents, the White House inner circle could and did call on a trusted contact.

Because Vince Foster died the same day—July 20, 1993—that the FBI in Little Rock obtained a search warrant for David Hale's Capital-Management Services, Inc. office, a pivotal event in breaking the Whitewater scandal, investigators have long wondered if Foster was tipped off about the warrant by someone in the U.S. attorney's office. Presumably his state of mind would have been affected. They also wonder if anyone in that office tipped him off about a second wave of RTC criminal referrals being prepared that summer naming the Clintons.

Who might the contact be? Brent Bumpers is the son of U.S. Senator Dale Bumpers, Democrat of Arkansas, and works as deputy U.S. attorney in the eastern district. The Bumpers family treats this office almost as a fief. The current U. S. attorney, Paula Casey, previously worked as legislative aide to Senator Bumpers and testified that they had spoken several times about getting her the appointment. According to Justice Department sources, the junior Bumpers is the chief suspect for leaks from the U.S. attorney's office. He has been deposed by the Whitewater Committee and the Independent Counsel.

"I gave a telephone deposition to the special prosecutor back six months ago," Bumpers said in a telephone interview. "It lasted five minutes. It was very brief. They asked questions about that—I had no idea about that until it was written in the paper."

The investigators are following up on notes taken by Bruce Lindsey during a September 20, 1993 phone conversation with Jim Blair, sometime Whitewater lawyer for the Clintons and general counsel for Tyson Foods. These notes, recently released by the Senate Whitewater Committee, mention Bumpers. "[McDougal lawyer Sam] Heuer asked Brent Bumpers—ask whether indictment against Hale, not McDougal," Lindsey wrote.

A later Lindsey note mentions another assistant U.S. attorney in Little Rock, Fletcher Jackson, who was prosecuting Hale's case. Lindsey wrote, "Fletcher Jackson...in charge of case [arrow] immunity leaked?" Where did this leak come from?

"I'm gonna speculate on what happened," Bumpers said. "Fletcher Jackson was handling the Hale indictment. Sam knew Fletcher was about to indict David Hale. Maybe Sam called me...Fletcher told Sam no, he didn't expect to get McDougal indicted until the following March or April. When talking to defense attorneys sometimes it's fine to tell 'em things—sometimes it's not. Sam Heuer

was calling Fletcher regularly. Sam called me to make sure Fletcher was being straight with him. I never had any involvement in any of those matters. You're talking to the wrong person."

Bumpers keeps his day job at the U.S. attorney's office in spite of a successful second career as a Little Rock businessman. It is thought that he wants to build up a nest egg and follow his father into politics. Bumpers started Brent and Sam's Cookies, a gourmet chocolate chip cookie company that markets its products throughout the U.S. He also owns a franchise for Backyard Burgers, a thriving drive-through fast-food restaurant in Little Rock.

Bumpers is also related to Beverly Bassett Schaffer, the former Clinton-appointed head of the Arkansas Securities Commission. Schaffer apparently coordinated her public defense of the first lady with the 1992 Clinton campaign and later with the White House. According to documents obtained by the Senate Whitewater Committee, Bill Clinton wrote on the margin of a *New York Times* editorial about Madison, "This is important to be on top of. Bassett did a good job in camp. on this—can she now?" He then gave the editorial with his comments to then-chief of staff Mack McLarty and Bruce Lindsey, who was Mrs. Schaffer's former law partner (and a former top aide to Senator Bumpers).

Schaffer is married to Archie Schaffer, the spokesman for Tyson's Foods and a colleague of Jim Blair. Eight days after Clinton scribbled his note on the *Times* editorial, Beverly and Archie Schaffer, Lindsey, and the president attended a University of Arkansas basketball game in Fayetteville, where they sat in the Tyson Foods skybox. In his January 16, 1996 testimony before the Senate Whitewater committee, Lindsey acknowledged that he had asked Archie Schaffer at the game if Beverly would continue to corroborate Hillary's story. But Beverly had been stung in the press, and Archie told Lindsey that she was nervous about making a commitment.

Soon after, Schaffer lost patience with the White House. "This, in part, is the price I'm paying because Bill Clinton is a friend of mine," she told the *Minneapolis Star Tribune* in January 1994. "Because he is president of the United States, he is open season. And all of us are, too. I'm angry, very angry...but I don't know who to be angry at. I don't understand why there's not any response coming out of the White House." In a later interview with the *Los Angeles Times*, Schaffer said, "I don't know why [Hillary] hasn't been more open. The people of Arkansas are bearing the brunt of this."

The second wave of RTC referrals also named Mrs. Schaffer, but Brent Bumpers denied tipping off his relative or anyone else. "She wasn't a target or anything," he said.

—RB

Criminal Division in late June 1993, and was returned to the Executive Office for U.S. Attorneys for review."

Seven different offices had examined the criminal referral naming the president and first lady as witnesses in a criminal referral, and no one told Webb Hubbell? Hard to believe for a department that at times, according to another former high ranking Justice official, leaks gossip like a sieve. (The Arkansas crowd probably had another source. See sidebar, page 31.)

The American Spectator has obtained Hubbell's telephone logs and other calendars and documents suggesting that crisis management of the criminal referral began almost immediately. Hillary Clinton may have been involved from the start. She called Hubbell at 2:32 p.m. on February 1, the day Hubbell could have easily learned of the referral. That evening he had dinner with her in the White House residence.

The following day, Tuesday, February 2, a crisis team seemed to go hyperactive. Whitewater gatekeeper, Denver lawyer James Lyons, called throughout the day, leaving four messages for Hubbell. Lyons was the author of the Whitewater audit in early 1992 that kept the press quiet about the deal for the rest of the campaign.

Another caller that day was Harold Ickes, who would later become White House deputy chief of staff. Ickes spoke to Hubbell from his New York law firm. Another intriguing pair also came on the scene that day. Clinton personal attorney Bob Barnett and Mrs. Clinton's chief of staff, Margaret Williams, paid a visit to an area of the White House's third floor residence used by assistant Carolyn Huber.

On Wednesday, February 3, U.S. Trade Representative Mickey Kantor called the Justice Department with an urgent need to talk with Hubbell. Kantor "would like to interrupt for 10 seconds" the message read. As the chairman of the 1992 Clinton/Gore campaign, Kantor was also a damage controller.

Webb Hubbell's wife, Suzanna, had remained in Little Rock to handle the moving while Webb went to Washington to start work at Justice. She had planned a trip to Washington to visit her husband for the weekend of February 5, 1993. On Thursday, February 4, Suzanna Hubbell called Webb at his office and left a message: "...Has 2 packages w/her from Mr. Kennedy."

William Kennedy, a colleague of Hubbell, Foster, and Mrs. Clinton at the Rose Law Firm, had also stayed in Little Rock for a few months before joining the administration as associate White House counsel. As managing partner of the Rose firm, Kennedy would have had easy access to Mrs. Clinton's billing records for Madison Guaranty. He has admitted to the Senate Whitewater committee that he kept notes and files of the "research" he had conducted into Madison and Whitewater during the campaign when he worked along with Hubbell, Foster, and Hillary in assembling the billing records to answer press questions.

Did William Kennedy clean out the Rose firm's Madison and Whitewater records and send the documents to Hubbell just three days after Hubbell had the opportunity to learn of the crim-



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inal referrals? Well, Kennedy says no. In a telephone interview from his office at the Rose Law Firm, which he has rejoined as a partner, he said, "You're not going to like this answer, but what that was is two packages of cheese dip from a local restaurant."¹

Two other figures also show up that week. New York lawyer Susan Thomases, a long-time close associate of the first lady, had personally orchestrated the Whitewater and Madison activities of Hubbell, Foster, and Kennedy during the campaign. On Friday, February 5, she called Hubbell at the Justice Department. Bruce Lindsey, Bill Clinton's point man on Whitewater and now a deputy White House counsel, also spent a great deal of time that week in private meetings with Clinton. Lindsey himself is no stranger to the McDougals and Madison Guaranty; they were clients of his Little Rock law firm, Wright, Lindsey and Jennings, during the mid-1980's.

A phone message on February 4 gives a window into the point of all this activity. Vincent Foster and Hubbell talked several times each day, but the back of this slip carries a peculiar notation: "Wayne Rich — Exec. office." At the time, Wayne Rich was the deputy director of the Executive Office of U.S. Attorneys in the Justice Department and the man Banks would contact about procedural questions. Did Foster tell Hubbell to contact Rich about the referral? "Why go through the Executive Office if they could get to Rich?" the source close to the Starr investigation said. Rich, now an assistant U.S. attorney for the eastern district of Tennessee, did not respond to phone messages.

III. Damage Control Gets Underway

Whatever happened in this series of meetings—and presumably the Independent Counsel will someday give us an answer—a tangible example of damage control followed almost immediately. The referral went over to Gerald McDowell, who was then chief of the Criminal Fraud Section. McDowell assigned it to a young trial attorney named Mark J. MacDougall for review. According to a remarkable memo that MacDougall produced on February 23, just a few days later, he reviewed the allegations in referral Cooo4, as well as Charles Banks's letters to Donna Henneman. (He was not given the 300 exhibits, nor does it appear that he asked for them.) The referral, he said, may have shown "a breach of fiduciary duty, abuse of power, and self-dealing." But it failed to prove that anyone had acted "willfully," instead of by "mistake or accident."

"The absence of facts establishing criminal intent on the part of the McDougals," he concluded, "argues persuasively against the initiation of a criminal investigation."

¹ Reached at her office at the Department of Interior, where she currently works as a Clinton appointee, Mrs. Hubbell said, apropos the cheese dip: "That sounds entirely absolutely reasonable. This was before I came up here and I frequently—not frequently but I should say occasionally—would send food stuff to my husband who missed things like Browning's cheese dip. I think at one point I probably sent him up a pizza from U.S. Pizza."

"Finally," he added, "no facts can be identified to support the designation of President Bill Clinton, Hillary Rodham Clinton or Governor Jim Guy Tucker as material witnesses."

As was very likely its ultimate purpose, this memo surfaced in the House Banking Committee hearings last July, and House Democrats used it in their attempt to discredit Lewis. But it drew a withering rebuttal from the committee's majority staff.

"To the extent that the analysis 'demonstrates' anything," said a Banking Committee memo, "it demonstrates this Administration's haste to deep-six the first referral. The memorandum, which was produced no more than two days after the author received the assignment, amply demonstrates through misquotes, misstatements, misanalysis, and lack of analysis that its conclusions are worthless."

Among other problems, said the Banking Committee memo, Mark MacDougall had misrepresented the purpose of a referral. The bank and thrift supervisors were supposed to notify Justice as soon as they suspected a crime so that Justice might develop the facts *toward evaluation of a criminal prosecution* (emphasis in original). In other words, the referral wasn't meant to prove a case; it was supposed to tell the FBI or the U.S. Attorney where to start looking.

MacDougall's memo wasn't entirely worthless, however. It showed conclusively that when the referral went to Washington, it had landed on the desk of Fraud Section Chief Gerald McDowell. And when MacDougall finished his assignment on February 23, both the referral and his memo went back to McDowell. We still don't know precisely what happened to Cooo4 during the next six months, until heavy prodding by Lewis finally brought it back to light. But the trail starts with McDowell, his number two man George Allen Carver, and their boss, Criminal Division chief John J. Keeney. These master bureaucrats must have recognized that MacDougall's analysis was far too weak to justify killing the referral, and they certainly weren't about to take responsibility for such a controversial deed. So, it seems fair to guess, they launched the hapless document on an odyssey across seven desks that kept it from its rightful destination.

IV. Criminal Fraud Comes Through

Few corners of the federal government would make a more fascinating study than the Criminal Fraud Section of the Justice Department and its presiding genius, the 45-year veteran John Keeney. The most senior career lawyer in Justice, assistant attorney general Keeney joined the department in 1951 in the internal security division of the organized crime section. In 1973, he became the chief professional in the Criminal Division, deciding among other things which cases to prosecute and which to drop. Not since J. Edgar Hoover has one man in Washington known where more political bodies are buried, and been in a position to help bury them.

Keeney was on top of Jean Lewis's referral right from the beginning. His phone log for September 9, 1992, shows a call



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from Charles Banks. In his Senate deposition, Banks denied ever talking to Keeney about the Whitewater case, but he suggested that his deputy Mac Dodson might have made the contact.

Gerald McDowell, who launched the Washington review of the referral, followed in Keeney's footsteps as prosecutor in the organized crime section before becoming chief of the Fraud Section. Along the way, he also headed the Public Integrity Section, which handles political corruption cases at the federal, state, and local level. George Allen Carver, then number two at Criminal Fraud, served as his faithful aide. When McDowell moved to chief of the Asset Forfeiture and Money Laundering Section, charged with fighting drug money infiltration of the financial system, Carver went along as his deputy.

The Senate Whitewater Committee found the trio of Keeney, McDowell, and Carver important enough to hear as a separate panel last December 6. The questioning focused primarily on a series of meetings in October 1993, in which they strongly urged Paula Casey, the former law student of Bill Clinton and newly appointed U.S. attorney, to recuse herself from the Madison Guaranty case. When Casey did remove herself a month later, the three selected a fellow Fraud Section lawyer, Donald MacKay, as the first Whitewater Special Prosecutor.

Democratic counsel Richard Ben-Veniste was also fascinated by the Fraud Section's cool reception to Lewis's handiwork; grinning widely, he quoted McDowell's deposition statement that "the referral came in half baked" and "the case looked junky." When the referral reemerged in the fall of 1993, this section sent it back to the U.S. attorney's office in Little Rock, attaching the MacDougall analysis. "When we sent the memorandum, which was to my signature, under my name," said Keeney, "we indicated that it was a discretionary call by the United States Attorney and we wouldn't be upset if it was decided to decline it."

Paula Casey used this packet as the basis for her famous October 27 letter to Jean Lewis, supposedly giving Cooo4 the final brush-off. "The matter was concluded before I began working in this office," she wrote, "and I was unaware that you had not been told until I was contacted by the office of legal counsel. After receiving the call from legal counsel, I reviewed the referral, and I concur with the opinion of the department attorneys that there is insufficient information in the referral to sustain many of the allegations made by the investigators or to warrant the initiation of a criminal investigation."

Two weeks later, Casey finally recused herself from the case.

Her letter was not precisely true. In spite of the MacDougall memo, no one in the Justice Department had closed the file. The issue had been artfully dodged by its bureaucratic round-robin. But by this time, it didn't matter. The Kansas City office had gone back to the boxes of Madison papers and produced nine more detailed criminal referrals. White House damage control moved to a cruder and more visible level. The press picked up the story. And the Whitewater scandal was in full swing. ❧



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