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SERIES I: Subject File

The Trials of a Top-Level Appointee

By STUART TAYLOR Jr.

Special to The New York Times

WASHINGTON, June 15 — First comes the good news. The White House is on the phone. The President wants you to come to Washington as an assistant secretary of a Cabinet department. Power, prestige and public service beckon.

Then the bad news.

For starters, there are forms to fill out asking about every place you have ever lived and worked, how much you earn, your financial holdings, your spouse's financial holdings, whether you have been arrested or dismissed from a job or been a Communist, a homosexual, a drunk or a drug addict.

Then there is the rummaging around in the closets of your past in search of skeletons — the F.B.I. interviewing your friends, enemies and neighbors, the Internal Revenue Service looking over your tax returns, the reporters poking around.

Most painful of all, for those who have made or are making lots of money, there are the worries about conflicts of interests and the financial sacrifices — the stock divestitures, blind trusts, sharp drop in salary and, finally, public probing at the Senate confirmation hearing.

Changes Under Consideration

Such is the gantlet that hundreds of private citizens must run when they accept high-level political appointments in Washington. Recruiters for the Reagan Administration are complaining about it more than most of their predecessors did. In fact, the Administration is quietly considering new legislation to change some of the procedures on financial disclosure.

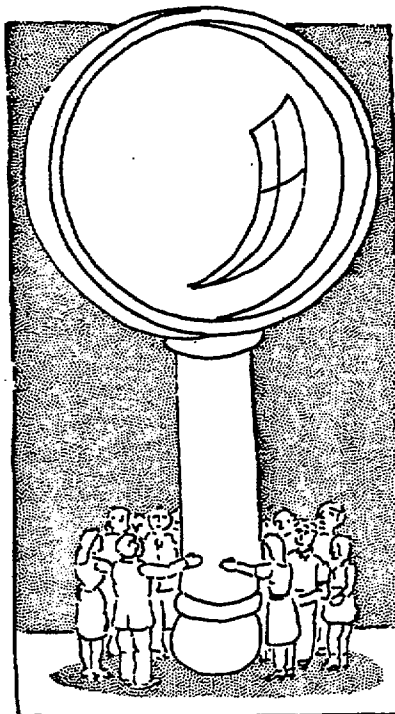
Defenders of the procedures say the Administration is making financial disclosure a scapegoat for a range of other problems that inhibit recruitment, from resistance to moving to Washington to a perception that Government service is fraught with political whim and represents a step down. Some of the problems are self-inflicted, the defenders of the system contend.

According to E. Pendleton James, who used to run the White House personnel office and who still does some recruiting for President Reagan, the financial disclosure requirement recently cost the Administration "a dynamic young entrepreneur type who wanted very much to be in the Administration." He said the White House "desperately wanted" the man to fill the No. 2 job in a Cabinet department.

"It's horrendous, it's mind boggling, it's intimidating, and it inhibits attracting good people to Government," said Mr. James, who returned to the private executive search business in New York after leaving Washington.

A 32-Page Disclosure Statement

He recalled that the recent prospect had told him, "Pen, my financial disclosure document runs 32 pages. I don't think I've ever done anything



Drawings by Charles Waller

dishonest in my life or made any shady deals, but the more I think about it, I don't want every staff member and member of the media going through my 32 pages line by line."

Financial disclosure is just one of a number of pitfalls that prospective appointees need to handle with care. Fred F. Fielding, counsel to President Reagan, wrote in a recent article entitled "What To Do When the White House Calls" for Directors & Boards magazine. "With bad luck, or bad judgment," he warned, "the exciting prospect of public service can become one of the most frustrating episodes of one's life."

Elaborating later, Mr. Fielding said that any Presidential nominee who enters the confirmation process without having been candid with the White House about potentially embarrassing problems runs the risk of causing a news nightmare. On the other hand, he added, some appointees are haunted by exaggerated fears that they will be pilloried for a "childhood indiscretion" or that "their children will be exposed to kidnapping" if they

disclose how much money they have.

While having to disclose an embarrassment of riches seems to be the major concern of many, one Reagan appointee confessed privately the other day to harboring a different worry. "It was deeply embarrassing to me," he said, "to have to disclose how little money I'd earned over the course of a lifetime."

'Revolving Door' Problems

Many of the hazards and burdens of coming to Washington to serve the President are probably immutable. Congress has never been inclined to pay Cabinet secretaries as much as corporate moguls. The press considers looking closely at political appointees to be part of its job. And avoiding conflicts of interest will be a knotty problem as long as there is a "revolving door" in which some people move back and forth between Government and parts of the private sector that deal frequently with it.

The Ethics in Government Act of 1978 is the law that requires public financial disclosure and created some, but by no means all, of the other hoops that Presidential appointees must jump through. Mr. James calls the law "a study in overkill" enacted amid "post-Watergate hysteria" about Government ethics. He says the Administration may try to amend it in late 1984, preferably after the general election.

But Ann McBride, vice president for program operations of Common Cause, the public affairs lobby, charges that the Administration plans to "gut" the law. "The Reagan Administration had been riddled with ethical insensitivity and scandal since it got there and has been using the ethics act as a public whipping boy," she said. "All the evidence shows that the ethics act does not hurt recruitment."

John W. Macy, who was chairman of the Civil Service Commission from 1961 to 1969 and doubled, as he puts it, as "Lyndon Johnson's talent scout," said that his recent work on a study of Presidential appointments indicated that part of the problem is of the White House's own making.

"The continuing attack on the Government itself by the last two Presidents has made it a far less attractive place to be than it was before," he said. "If they are talking in a derogatory way about the bureaucracy, who wants to join it and be a part of it?"

THE WHITE HOUSE
WASHINGTON

John Roberts
conflict

September 9, 1983

MEMORANDUM FOR ALL STAFF ATTORNEYS
Office of the Counsel to the President

FROM: FRED F. FIELDING
Counsel to the President

SUBJECT: Scope of 18 U.S.C. § 219

As we discussed at a recent staff meeting, the Department of Justice has responded to our inquiry concerning the scope of 18 U.S.C. § 219, which makes it a felony for an individual to act simultaneously as a U.S. Government employee and as an agent required to register under the Foreign Agents Registration Act of 1983, as amended, except when the head of the employing agency certifies that employment of the agent as a Special Government Employee is necessary in the national interest. The Department has concluded that a member of a firm that is registered under FARA but who is not either an individual registrant or directly involved in activities in furtherance of the interest of the foreign principal is not subject to the certification requirement of Section 219.

This issue is important in reviewing Personal Data Statements (question 15). If a prospective appointee states that he is a member of a firm that is registered, it must be determined whether the individual has filed a "short-form," individual registration statement and whether the individual is directly involved in activities in furtherance of the interests of the foreign principal. If the answer to either one of these questions is "yes," then the prospective appointee must either terminate his registration and cease his actions on behalf of the foreign principal or withdraw from consideration as a Presidential appointee.

SEP 13 1983

United States of America
Office of
Government Ethics

file: conflicts
Office of Personnel Management
Washington, D.C. 20415

M E M O R A N D U M

JUL 26 1983

SUBJECT: United States v. Hansen, Criminal No. 83-00075 (D.D.C. June, 1983).

FROM: David R. Scott
Chief Counsel

David R. Scott

TO: Designated Agency Ethics Officials

On April 7, 1983, a federal grand jury in the District of Columbia indicted George Vernon Hansen, a United States Congressman from the second district of Idaho, on four counts of making false statements to the House of Representatives in violation of 18 U.S.C. §1001. The alleged false statements were contained in the Congressman's financial disclosure reports filed under the Ethics in Government Act, 2 U.S.C. § 701 et seq. [the Act], for calendar years 1978, 1979, 1980, and 1981.

Defendant Hansen filed a motion to dismiss the indictment, contending that the financial disclosure requirements of the Act are not subject to criminal sanctions under 18 U.S.C. §1001 because Congress intended that they be enforced only by civil measures; that the Speech or Debate Clause of the Constitution protects him from any prosecution concerning his financial disclosure reports; and that he is a victim of selective prosecution. A hearing was held on June 3, 1983, before District Court Judge Joyce Hens Green. On June 13, 1983, the Court issued a memorandum opinion denying the motion, holding, among other things, that 18 U.S.C. §1001 is applicable to falsification of financial disclosure reports filed under the Ethics in Government Act. United States v. Hansen, Criminal No. 83-00075 (D.D.C. June 13, 1983).

The trial which had been scheduled for June 20th was postponed, and the matter was certified for interlocutory review pursuant to 28 U.S.C. 1292(b). The case is currently pending in the Court of Appeals for the District of Columbia Circuit.

conflict

THE WHITE HOUSE
WASHINGTON

September 4, 1984

MEMORANDUM FOR RICHARD A. HAUSER
DAVID B. WALLER
PETER J. RUSTHOVEN
SHERRIE M. COOKSEY
JOHN G. ROBERTS ✓
WENDELL L. WILLKIE

FROM: H. LAWRENCE GARRETT, III 
SUBJECT: Center of Auto Safety, et al. v.
Federal Trade Commission, et al.

The attached is forwarded for your information.

Attachment

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR AUTO SAFETY, et al.,

Plaintiffs,

v.

FEDERAL TRADE COMMISSION, et al.,

Defendants.

Civil Action No. 84-0056

FILED

APR 25 1984

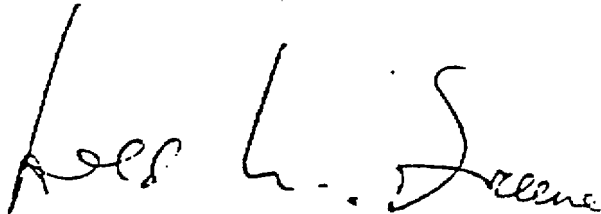
ORDER

JAMES F. DAVEY, Clerk

Upon consideration of the cross motions for summary judgment, the memoranda in support thereof, in opposition thereto, and in reply, and the entire record herein, it is this 25th day of April, 1984,

ORDERED That plaintiffs' motion for summary judgment be and it is hereby denied, and defendants' motion for summary judgment be and it is hereby granted, and it is further

ORDERED That this action be and it is hereby dismissed.



Harold H. Greene
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR AUTO SAFETY, et al.,

Plaintiffs,

v.

FEDERAL TRADE COMMISSION, et al.,

Defendants.

Civil Action No. 84-0056

FILED

APR 25 1984

JAMES E. DAVEY, Clerk

MEMORANDUM

In this action, plaintiffs^{1/} request the Court to declare improper the participation of James Miller, III, Chairman of the Federal Trade Commission, in the so-called GM defects case.^{2/} In that proceeding, the Commission, by a 3-2 vote, approved a consent decree which provided for arbitration conducted by the Better Business Bureau in lieu of the direct reimbursement relief which had apparently been standard in other proceedings of this

^{1/} The Center for Auto Safety is a consumer organization some of whose members have purchased defective General Motors automobiles. There are also three individual plaintiffs. Defendants are the Federal Trade Commission and its five commissioners.

^{2/} In the Matter of General Motors Corporation, Federal Trade Commission Docket No. 9145. The case involves complaints about possible transmission and engine defects in some 4 million General Motors automobiles manufactured between 1975 and 1980. Since his appointment to the FTC, Miller participated also in two other cases involving General Motors: the GM/Toyota joint venture (FTC File No. 821-0159) and the GM fleet discount case (FTC Docket No. 9114).

type. If Miller had recused himself, at 2-2 tie would have resulted and, under the Commission's procedures, the consent decree would not have been approved.

The request for recusal arises out of Chairman Miller's relationship with Economic Impact Analysts (EIA), an economic consulting firm whose largest client was General Motors. In addition to asking that Miller be ordered recused, plaintiffs also request that the GM defects case be remanded to the Commission for de novo consideration without Miller's participation. Presently pending before the Court are cross motions for summary judgment.

I

It is useful initially to state what is not involved here. Plaintiffs do not argue that Chairman Miller is disqualified on account of a present or actual conflict of interest. See 18 U.S.C. §§ 207, 208. Their sole claim is that Miller's participation in the GM defects case gave the appearance of a conflict of interest, and it is on this basis that they request that he in effect be ordered to recuse himself, retroactively, from that case.^{3/} It is settled law, not disputed by either party, that

^{3/} Miller's participation is said to have created an appearance of a conflict in contravention of the standards established (1) by general principles of administrative law; (2) by FTC regulations codified in 16 C.F.R. § 5.10; and (3) by principles stemming from 18 U.S.C. § 208, the federal conflicts statute. The general thrust of these contentions is considered in the text below. However, it must be observed that these standards are themselves in some doubt as sources of authority for this contro- (Continued)

the appropriate legal standard to be applied in a case such as this is abuse of discretion. See Chitimacha Tribe of Louisiana v. Harry L. Laws Co., 690 F.2d 1157, 1166 (5th Cir. 1982); Blizzard v. Frechette, 601 F.2d 1217, 1221 (1st Cir. 1979). It is also clear, however, that, as plaintiffs put it, that "there is little precedent or guidance concerning what [appearance of conflict] means or how it is to be applied."^{4/}

Factually, plaintiffs' claim consists of two principal elements. One of these revolves around the relationships among Miller, EIA, and General Motors; the second relies on a number of precedents involving high-level executive officials who, it is said, recused themselves in circumstances similar to those presented here.

II

The crux of plaintiffs' case against Miller may be summarized as follows.^{5/} Prior to his appointment as Chairman of the

versy. For example, regulations such as section 5.10 have been held not to establish a test to be applied by the courts for the invalidation of agency decisions. CACI, Inc.-Federal v. United States, 719 F.2d 1567 (Fed. Cir. 1983). As for section 208 of the Criminal Code, it has no application at all because Miller has no present interest in General Motors.

^{4/} Plaintiffs' Memorandum at 12. In that sense, this case may be viewed as one of first impression. Plaintiffs' Memorandum at 2.

^{5/} Plaintiffs also rely on such other matters as Miller's favorable references to GM, his relationship with several GM officials, and his testimony before the U.S. Senate during his confirmation hearings. Whether viewed singly or in the aggregate, they do not substantially advance plaintiffs' claim.

Federal Trade Commission, Miller was chairman of EIA. During the period of his association with that consulting organization, the firm did a substantial amount of work for General Motors; indeed, GM was EIA's largest client, and in the two years preceding the Miller appointment to the FTC, EIA billed General Motors for over \$75,000 in consulting fees. Miller received some of these funds during his service as Chairman of the FTC. Further, although EIA is now dormant, it continues to exist, and Miller has not excluded the possibility that he will return to it after his term with the FTC expires.

While these facts, as well as those surrounding the collateral charges summarized in note 5 supra, appear at first blush to lend substantial support to plaintiffs' position, they are less persuasive when viewed in their appropriate context.

First. Miller recused himself from all decisions involving General Motors for a period of two years following the date EIA received its last payment from General Motors. His participation in the GM defects case must be viewed, therefore, in light of the passage of an appreciable period of time following the severance of his relationship with EIA and indirectly from General Motors. Unless Miller were to be regarded as being tainted by those relationships on a permanent basis, the two-year hiatus would appear to be, absent other factors, a reasonable prophylactic measure.

Second. EIA did receive substantial amounts from General Motors for consulting services. However, even so, these fees

constituted only between 12 and 25 percent of Miller's income, for during the periods in question he also held a full time, salaried position with the American Enterprise Institute, and his salary from that position provided the bulk of his income.^{6/}

Third. Monies did continue to come to Miller from EIA during 1981 and 1982 while he was already working for the FTC. However, all of these monies represented income which EIA itself had received prior to Miller's entry into government service, and they were paid out to Miller during these two years only on a deferred income basis. Even with respect to these funds, only a small amount can be traced to EIA income from General Motors.^{7/}

Fourth. Plaintiffs point out that the consent decree which was approved with Miller's vote was favorable to General Motors. The Court rejects this fact as a basis for disqualification or recusal. The decree was negotiated and recommended to the Commission by its career staff without any participation by Miller.^{8/} Beyond that, however, public policy dictates great caution regarding the attribution of weight for disqualification or recusal purposes to the final outcome of a case. Reliance

^{6/} Contrary to plaintiffs' intimations, therefore, Miller cannot be equated with an official or employee of GM.

^{7/} Moreover, as noted, during the 1981-82 period, while he was receiving this EIA income, Miller was recusing himself from all GM controversies coming before the Commission.

^{8/} Defendants contend, and plaintiffs do not dispute, that Miller had no contact with the staff concerning this case before the staff recommendation was made to the Commission. See 16 C.F.R. § 4.7.

upon such considerations is to invite challenges to officials based not upon true conflicts of interest but upon their philosophical or ideological leanings^{9/} or, worse, upon the result that would be brought about by the removal of a particular official from the consideration of a particular controversy.^{10/}

Fifth. Potentially the most serious problem is Miller's refusal to rule out a return EIA. As indicated infra, several officials have recused themselves from controversies arising during their government service when the entities involved in these controversies -- usually law firms -- were organizations to which they intended to return. However, one fact is present here which takes the present situation out of this norm: EIA is not an organization having a continuous life; it is at present not even a going concern. It is dormant, and it is dormant precisely because EIA is Miller.^{11/} Thus, when Miller states that he may return to EIA, he is only saying that he will go back to being in

^{9/} Those familiar with the personalities at the Federal Trade Commission might well agree with Commissioner Michael Pertchuk who has stated that

I don't have the slightest doubt that [Miller's] decision will be driven solely by his economic philosophy, and his views of the law, not by his lingering fondness or appreciation for General Motors.

Attachment D to defendants' Statement of Points and Authorities.

^{10/} It is interesting to note in this connection that plaintiffs did not file this lawsuit until well after the proceedings were concluded and Miller had cast his vote.

^{11/} EIA is a Subchapter S corporation; Miller and his wife are the sole stockholders.

essence a sole practitioner consultant. To require him to pledge that he will not return to EIA, therefore, as a condition of sitting on GM cases during his FTC service, is the equivalent of requiring him to pledge that he will not return to consulting work.^{12/} Neither the recusal precedents nor the principles underlying the recusal rules require such draconian relief.

In sum, the specific incidents upon which plaintiffs rely are not nearly as menacing as they might appear when viewed outside their appropriate context.

III

Plaintiffs contend next that Miller's failure to recuse himself departs significantly from the standards applied by other high officials in similar situations, and that, in the words of the usual recusal test, this departure from accepted standards would lead a reasonable person with the knowledge of all the facts to conclude that his impartiality might reasonably be questioned. United States v. Haldeman, 559 F.2d 31, 132-33 n.247 (D.C. Cir. 1976); C.J. Trotter v. Int'l. Longshoreman's Union,

^{12/} The situation with respect to Miller's return to EIA does not differ substantively from his establishment, following his government service, of a new consulting firm named, say, "Miller Impact Analysts." Indeed, it may be that the slight future advantage to Miller from the existence of the EIA corporate shell would be outweighed by the attraction of clients through use of the now prominent Miller name in this hypothetical new consulting firm.

Local 13, 704 F.2d 1141, 1144 (9th Cir. 1983); Potashnik v. Port City Construction Co., 609 F.2d 1101, 1111 (5th Cir. 1980).^{13/}

In support of this contention, plaintiffs cite the recusal policies of sixteen high-level officials which, they claim, suggest that these individuals would not have participated in the GM defects case had they been in Miller's position. But here again plaintiffs' broad brushstrokes reveal imperfections when subjected to closer examination.

A number of the officials on whose actions plaintiffs rely^{14/} promised only to recuse themselves from controversies directly involving their former companies; they made no reference whatever to controversies involving clients of these companies. These precedents thus stand only for the proposition that Miller should not have sat on cases involving EIA -- and no claim is made that he did -- they do not suggest that he should have recused himself from a case involving EIA's client General Motors.

The cases involving seven of the other officials likewise presented fact patterns quite different from those presented

^{13/} If officials could be forced to disqualification or recusal on the basis of a lesser standard, not only could decisionmaking be disrupted by frequent challenges but it might be difficult for the government to employ policymakers who had the requisite knowledge of the particular subject matter.

^{14/} Secretary of State George P. Shultz; Secretary of Labor Raymond J. Donovan; Secretary of the Treasury Donald T. Regan; former Secretary of the Treasury W. Michael Blumenthal; and Assistant EPA Administrator Rita Lavelle.

here.^{15/} With respect to some of these cases, the difference with the instant proceeding is immediately apparent; with respect to the remainder that difference lies in the fact that here the former employer (EIS) is not at all representing a party (GM) before the particular agency (FTC), let alone in the very controversy at issue (the GM defects case). Because the facts are different, none of these precedents is controlling.

The precedents involving the remaining four officials^{16/} in

^{15/} Thus, William Ruckelshaus, Administrator of the Environmental Protection Agency, pledged to recuse himself from cases involving a company in which he had a continuing financial interest. Attorney General William French Smith stated that he would not participate in cases in which a party was represented by his former law firm with respect to a matter "for which [he] had principal or substantial responsibility." Elizabeth H. Dole, Secretary of the Department of Transportation, said that she would recuse herself from matters with a direct effect on her home State of Kansas, and Secretary of Agriculture John R. Block similarly stated he would recuse himself from matters affecting counties in which he formerly owned land. Former Secretary of Health and Human Services Joseph A. Califano indicated that he would recuse himself from matters where his former firm represented a party before HHS on matters involving a party to which that firm gave HHS advice. And two members of the Securities and Exchange Commission (Bevis Longstreth and Barbara A. Thomas) asserted that they would recuse themselves in matters in which their former firms were representing a party.

^{16/} A fifth official, Daniel C. Schwartz, Assistant to the Director of the FTC's Bureau of Competition, recused himself, among other things, from participation in any matter involving any of six clients for whom he had done the most work while in private practice. Were Miller required to follow that example, he would have had to recuse himself from the GM defects case. However, although the Office of the present General Counsel has taken a less restrictive view than the equivalent officials in the preceding Administration, neither would have mandated the Schwartz recusal.

the two most recent Administrations^{17/} are considerably more relevant. Former Attorneys General Griffin B. Bell and Benjamin R. Civiletti, former Assistant Attorney General John H. Shenefield, and former Deputy Attorney General Edward C. Schmults all promised to recuse themselves from cases involving clients of their former law firms, and there is thus a factual parallel to the claim that Miller should have recused himself because of his relationship to EIA's client General Motors. Nevertheless, the Court has concluded that Chairman Miller's failure to do so does not call for an order of this Court requiring his recusal based on these precedents, for the following reasons.

First. The known precedents do not invariably point in the same direction. Thus, although one Department of Justice official during the Reagan Administration -- Schmults -- disqualified himself in these factual circumstances, another -- Assistant Attorney General William Baxter^{18/} -- did not.

Second. The precedents all involve Justice Department officials. In an executive agency, another official is always available in case of disqualification or recusal of the agency head to whom full authority may be delegated, just as one judge can be substituted for another in case of disqualification or recusal.

^{17/} Both sides have focused their attention on these Administrations, in recognition of the fact that the post-Watergate period ethical and legal standards have become stricter than they were prior to that time.

^{18/} Baxter participated in the government's antitrust suit against IBM although he had previously done consulting work for that company in a private antitrust action.

That is not so in a regulatory commission. If one member of such a commission is disqualified or recused, he cannot, under the law, be replaced (see 16 C.F.R. § 4.14(c)), and the body may thus be left, as in this case, unable to make an effective decision by virtue of an even split.^{19/} For that reason, there may remain here, unlike in the judicial area, vestiges of a "duty to sit."^{20/} Although this factor should not be given decisive weight by any means,^{21/} it is a consideration which distinguishes this case from the Department of Justice precedents.

Third. As indicated supra, here, unlike in most cases, there is no ongoing firm to which Miller might be returning, for EIA is merely a shell. One principal reason for concern where an official participates in a case in which the clients of his former firm have a stake is that, by ruling in a particular way, he might be thought to be enriching that firm, his once and

^{19/} As related supra, in that eventuality the particular motion -- whatever it may be -- fails for want of a majority.

^{20/} Before 18 U.S.C. § 455 was amended in 1975, a judge was deemed to have a "duty to sit" if a close question about his participation was raised. See Edwards v. United States, 334 F.2d 360, 362 n.2 (5th Cir. 1964). See also, United States v. Will, 449 U.S. 200, 210-17 (1980).

^{21/} There are policy considerations pointing in the opposite direction, among them particularly the reputé of some of the regulatory commissions for political and other influence. On this basis, commission members might be well advised to adopt a strict recusal policy. It may be noted that, while there are differences between the disqualification standards applicable to regulatory adjudications and rulemaking (see Association of National Advertisers, Inc. v. FTC, 627 F.2d 1151, 1154 (D.C. Cir. 1979); Strauss, Disqualification of Decisional Officials in Rule-making, 80 Colum. L. Rev. 990 (1980)) these differences do not affect the result in this case.

future employer. Since EIA is Miller, and since EIA effectively does not now exist, the problem here is not of the same magnitude as it might be in other circumstances.

IV

The Court does not endorse^{22/} -- it is not called upon to endorse -- Chairman Miller's refusal to recuse himself as being the proper ethical decision.^{23/} Absent an abuse of discretion, the decision with regard to recusal is that of the official who is directly involved. That is entirely appropriate because, however much the law has shifted in recent years toward a more objective standard,^{24/} there remain, of necessity, elements of subjectivity. Individuals differ in the degree to which they might be influenced by various kinds of economic or social relationships as well as in the degree to which they feel they might

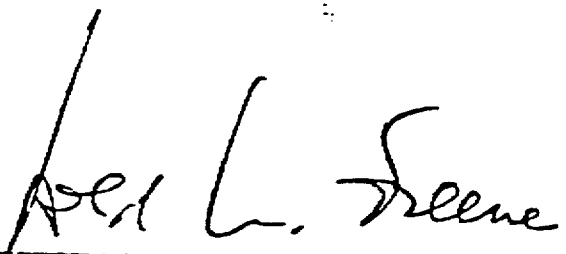
^{22/} After all, a number of other high officials have come to conclusions quite different from Miller's on facts which are in some respects similar to those involved here, and their decisions could be regarded by some as the more prudent ones. See Potashnik v. Port City Construction Co., *supra*, 609 F.2d at 1112; American Cyanamid Co. v. FTC, 363 F.2d 757, 767 (6th Cir. 1966).

^{23/} Except in case of a violation of a precise standard or an abuse of discretion, it is not decisive what a particular court might do were it faced with the issue facing Miller or what other officials had done in similar circumstances. A widespread disqualification or recusal practice might, of course, provide guidance with respect to a violation of the "reasonable person" standard. But that point has not been reached on the basis of the relatively few examples cited by plaintiffs which are reasonably close on the facts to those involved here.

^{24/} See United States v. Cowden, 545 F.2d 257, 265 (1st Cir. 1976).

be influenced by such contacts. Except to the extent that disqualification is mandated by law or by a delineated ethical standard, these are subtle matters which for that reason are governed, at least initially, by individual subjective considerations. That being so, it is appropriate that discretion should be vested in the first instance in the individual whose recusal is at issue, and that his decision should be overturned by a court only for an abuse of that discretion.^{25/}

The Court's choice thus is not between an endorsement of the conduct in question, on the one hand, and an order disqualifying Miller retroactively from the GM defects case, on the other. All the Court is called upon to do is to determine whether by refusing to recuse himself, Chairman Miller abused the discretion vested in him. For the reasons discussed above, that question must be answered in the negative. Judgment will accordingly be entered for the defendants.


Harold H. Greene
United States District Judge

Dated: April 25, 1984

^{25/} Plaintiffs' reference (Memorandum at 35) to Justice Stewart's famous concurrence in Jacobellis v. Ohio, 378 U.S. 184, 197 (1964), where he stated with respect to obscenity that "I know it when I see it," underscores this conclusion. The Court would not be justified in vacating the FTC decision in the GS defects case merely because of what it might "see" on the appearance of a conflict differs from that Chairman Miller saw.

United States Government

MEMORANDUM

conflict file

**Office of
Government Ethics**

JUL 15 1985

Subject: Recent Conflict of Interest Prosecutions

From: David H. Martin
Director

David H. Martin

To: Designated Agency Ethics Officials

In February of 1984, and again in September, OGE sent to all the DAEOs reports summarizing recent conflict of interest prosecutions around the country. In our continuing effort to keep you informed of such cases, we have prepared a third report, covering cases decided in 1984 as well as earlier cases that did not appear in either of our previous reports.

In the interest of fairness, we have omitted the names and other identifying information from our report. If you find the facts of any of the cases relevant to a matter of concern to you and would like further information about it, please do not hesitate to contact this Office.

Attachment

1. The defendant was charged with a violation of 18 U.S.C. §208(a) for negotiating or having an arrangement concerning prospective employment with persons who had financial interests in contracts which were before him in his capacity as a United States Army employee. At the time of the negotiation for employment, the company had at least one million dollars' worth of contracts with the U.S. Army Missile Command where the defendant worked. He was indicted on June 8, 1984, and pled guilty at the arraignment.

The defendant received a two-year suspended sentence after being placed on probation for three years and paying a \$4,000 fine. He has not appealed the conviction.

2. The defendant was an Employee Compensation Officer at the Anniston Army Depot. In 1979, the widow of a Treasury Agent filed for widow's benefits under the Federal Employee's Compensation Act. The defendant contracted with the widow and her attorney to assist in making and processing the claim. When the widow's attorney asked the defendant whether this arrangement would create a conflict of interest, he indicated that it would not, although he admitted that he was the Compensation Officer.

The defendant was indicted for violating 18 U.S.C. §205. Pursuant to plea negotiations, he entered a plea of guilty to violating 18 U.S.C. §1003, fraudulently and knowingly endeavoring to convey a share of the public stocks of the United States of a value less than \$100 to another. The indictment was dismissed, but he was fined \$1000 and placed on probation for one year.

3. The defendant was an engineering technician at Fort Rucker, Alabama. He was responsible for determining the amount and type of work to be done under a building maintenance contract between the Army and a certain government contractor. In 1981, he entered an agreement with the contractor under which he would provide certain materials used in the contract which he supervised. During a six-month period, a corporation established by the defendant and owned by his wife received approximately \$90,000 for materials furnished to the contractor and used in work recommended and approved by the defendant.

On May 31, 1983, the defendant was indicted for violating 18 U.S.C. §208(a). After entering a plea of guilty, he was fined \$10,000 and ordered to serve six months in prison, with 18 months of probation. There was no appeal.

4. In this companion case to the preceding case, the corporation and one of its officers were charged on February 15, 1984, with two violations of 18 U.S.C. §203(b). One charge related to the agreement between the engineering technician and the defendants, which was the subject of the previous case. The other charge concerned a separate agreement, unknown at the time the technician was charged, whereby the defendants paid him \$15,000 in cash for assisting in the preparation of claims submitted pursuant to the Army's contract with the corporation.

The charges against the corporation's officer were dismissed upon the corporation's plea of guilty to the count relating to the \$15,000 agreement. The other count was dismissed, and the corporation was fined \$10,000. There was no appeal.

In April of 1984, during testing procedures pursuant to the contract, the defendant was present while a government employee was overseeing the testing conducted by the U.S. Testing Company. The defendant asked the government employee to scratch in the dirt the amount he would have to pay in order to get the employee to cause the subsoil compaction test to pass inspection. The employee, acting undercover, drew "200" in the dirt. Approximately one hour later, the defendant gave the government employee \$200 in \$20 bills.

The defendant was indicted on one count of conspiracy to offer a bribe and two counts of offering a bribe, in violation of 18 U.S.C. §§371 and 201(b)(3). On August 7, 1984, the defendant pled guilty to a violation of 18 U.S.C. §209. Upon having his sentence suspended, he was given two years' probation under special conditions and ordered to pay a fine of \$5,000 within one year.

8. During an IRS audit in 1981, the defendant offered the tax auditor \$400 to fix the audit of his 1978 through 1980 tax returns. The defendant subsequently paid \$300 to have the audit fixed and a "No Charge" report issued.

The defendant entered a plea of guilty to an information charging a violation of 18 U.S.C. §209(a). On October 1, 1982, the defendant was placed on three years' probation.

9. The defendant was a contracting officer with the United States Army. In August of 1983, he was charged with conspiracy and with a conflict of interest under 18 U.S.C. §208. The indictment alleged that he had entered into a secret prospective employment contract with a government contractor performing a laundry service contract for which the defendant was the contracting officer. After the parties had entered into the prospective employment agreement, the laundry service contract came up for competitive rebidding. The corporation and its owner were charged with bribery of the defendant.

In April of 1984, the defendant pleaded guilty to a conflict of interest and testified at the trial of the corporation and its owner, who were convicted of bribery. The defendant received three years' probation and was assessed a \$5,000 fine. The U.S. Attorney found 18 U.S.C. §208 a convenient vehicle to use in this case because it did not require the government to prove that the contracting officer did anything in exchange for the employment contract.

10. The defendant, a civilian employee of the Department of Defense, was indicted under 18 U.S.C. §203(a), for the illegal receipt of compensation. A defense contractor was indicted for illegally paying compensation to the employee while he was a government employee and while he was reviewing the contractor's work. The compensation consisted of payment of the employee's expenses, valued at \$400, for attending a three-day conference.

The defendant pleaded guilty to accepting a supplementation of salary under 18 U.S.C. §209(a), pursuant to a plea agreement. He was sentenced to one year of probation, ordered to pay a \$500 fine, and directed to contribute 300 hours of charitable work.

The salesman, who cooperated with the government, received a one-year probationary term and was fined \$500. The accountant was placed on probation for one year and fined \$5,000.

15. The defendants were charged with bribery under 18 U.S.C. §201(f) and (g), and conspiracy under 18 U.S.C. §371. The defendants had assisted an underwriter in the Small Business Administration's Surety Bond Program, in return for the underwriter's influence in getting a surety company to write bonds for two Cleveland excavating contractors in 1973 and 1974. Both the underwriter and the contractors were acquitted in a 1977 trial when the trial judge ruled that the intercepted conversations of the defendants, which discussed the bribery in detail, should be suppressed because of the FBI's surreptitious entry into the defendant's place of business to place the microphones. That issue went to the United States Supreme Court and was decided in the Government's favor.

The intercepted conversations indicated that the underwriter had agreed to assist two Cleveland excavating contractors in obtaining surety bonds. He sought the assistance of a friend, one of the defendants, in order to collect the \$18,000 which the Cleveland contractors had promised him in return. The friend enlisted the aid of the second defendant, who then contacted a pair of Teamster officials in the Cleveland area. They asked the Teamsters to use union pressure to collect the \$18,000. The bribe was to be paid off on December 14, 1973, and, although the FBI missed the payoff, over \$18,000 in cash was removed from the bank accounts of the contractors on that date.

On March 12, 1981, the defendants were sentenced to three years in the custody of the Attorney General for aiding and abetting the bribery of a federal official in violation of 18 U.S.C. §§201(f) and (g), and for conspiracy in violation of 18 U.S.C. §371.

16. The defendant was employed by the widow of a man who died owning a substantial amount of real estate. The widow agreed to pay \$20,000 to IRS employees charged with evaluating the properties for estate tax purposes, in return for their certification of lower evaluations in order to reduce the estate taxes. The defendant assisted the widow by making one \$5,000 payment to a supervisor in the IRS evaluation section.

On February 27, 1979, the defendant pleaded guilty to an information charging one count of violating 18 U.S.C. §209(a). On May 25, 1979, he was sentenced to a fine of \$5,000.

17. The defendant offered to procure some clothing and/or alterations for an IRS Revenue Agent who was investigating the defendant's non-payment of withholding taxes.

After pleading guilty to a one count information charging a violation of 18 U.S.C. §209(a), the defendant was sentenced on November 30, 1984, to one year of probation, with the special condition that he cooperate with the IRS in resolving the tax matter.

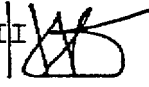
18. An elderly woman stated that she sought assistance from the Social Security Administration sometime in the summer of 1983. The defendant, a GS-9 Claims Representative at the Social Security Administration, handled her claim for benefits.

THE WHITE HOUSE

WASHINGTON

September 18, 1984

MEMORANDUM FOR RICHARD A. HAUSER
DAVID B. WALLER
PETER J. RUSTHOVEN
SHERRIE M. COOKSEY
JOHN G. ROBERTS ✓
WENDELL L. WILLKIE

FROM: H. LAWRENCE GARRETT, III 
SUBJECT: Recent Conflict of Interest Prosecutions

The attached is forwarded for your information. Number 16 was the subject of a recent piece on "60 Minutes."

Attachment

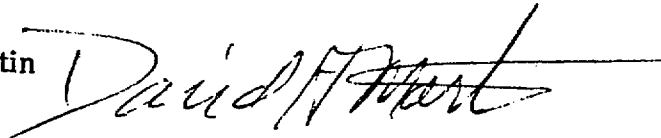
United States Government
MEMORANDUM

**Office of
Government Ethics**

Subject: Recent Conflict of Interest Prosecutions

SEP 4 1984

From: David H. Martin
Director



To: Designated Agency Ethics Officials

In February of this year, you should have received OGE's first report summarizing recent conflict of interest prosecutions around the country. In the cover memorandum accompanying that report, we indicated that it was our intention to make a continuing effort to stay abreast of such cases. Accordingly, attached is our second report of recent conflict of interest prosecutions, covering the one year period ended March 31, 1984.

As was done last time, names and other identifying information have been omitted in the interest of fairness. If the facts of any of the cases on the list are particularly relevant to a matter of concern to you and you desire further information, please feel free to contact this Office.

Attachment

1. A retired Internal Revenue Service agent was engaged in private practice as a tax return preparer. Investigation by the Inspection Division of the IRS disclosed that shortly after leaving government service in 1980, he represented a number of clients whom he had audited as a revenue agent on matters involved in those prior audits.

The matter was referred to the U.S. Attorney's Office, and a federal grand jury investigation was initiated. In September 1983, the grand jury returned a three-count indictment alleging violations of 18 U.S.C. § 207(a). In December 1983, the decision was made to supersede the indictment to correct the first count. The superseding grand jury was not the original grand jury which indicted the case. After hearing the evidence, including the testimony of the defendant, who appeared voluntarily, the grand jury refused to return a superseding indictment. Unwilling to proceed to trial without the first count, the government dismissed the case and closed its file.

(The Office of Government Ethics has requested the Designated Agency Ethics Official at the IRS to look into the possibility of employing administrative sanctions, under 18 U.S.C. § 207(j), in this case.)

2. A taxpayer who owed approximately \$6,500 in back employee payroll taxes offered an IRS agent a bribe to delay collection or otherwise to make it easier for him to pay. The IRS agent reported the bribe offer and subsequently went under cover and accepted a \$500 bribe from the taxpayer.

Pursuant to a plea agreement, the taxpayer was charged with one count of violating 18 U.S.C. § 209(a). He pleaded guilty and was sentenced to five years probation.

3. In April 1983, the defendant in this case was found guilty by a federal jury of having illegally paid cash to a government inspector on more than 20 occasions. The illegal payments were made to the government inspector in connection with his official duties at a meat processing and slaughtering house.

The defendant, who was the president and chief operating officer of the slaughtering house, began making the payments in April 1979, to a Doctor of Veterinary Medicine, who at the time was assigned by the United States Department of Agriculture as the full time inspector at the plant under the Meat and Poultry Inspection Program. The program, which operates to ensure the cleanliness and safety of slaughtering operations, requires the presence of a certified inspector at the plant at all times during slaughtering operations. The inspector is present not only to ensure that the plant is maintained in a clean condition but also to ensure that the animals being slaughtered are healthy and free from disease or other conditions which could affect human health.

The defendant was found guilty of making twenty-three separate payments to the inspector over a period of more than nine months. The inspector reported the defendant's illegal offer and cooperated with the investigation from the outset. The payments were made on a bi-weekly basis and ranged from approximately \$150 to \$400 on each occasion, reaching a total of over \$5,000.00.

The defendant was given a suspended sentence and fined as a result of this conviction.

4. In May 1984, the defendant in this case pleaded guilty to an information charging her with one count of violating 18 U.S.C. § 209, in that she gave three bottles of cologne to an Internal Revenue Service Officer conducting an investigation into the tax obligations of her business. She was sentenced in July 1984 to four months incarceration; execution of sentence was suspended and defendant was placed on probation for a period of three years. A special condition of her probation was that she cooperate fully with the Probation Department in financial disclosure and tax payments that may be required.

In each of the following cases, the defendants paid Immigration and Naturalization Agents to ignore violations of the immigration laws occurring on the premises of massage parlors. The defendants gave the agents payments ranging between \$100.00 and \$200.00.

5. A one-count misdemeanor information for violation of 18 U.S.C. § 209 was filed against one defendant in March 1983, but a nolle prosequi was subsequently filed.

6. A five-count indictment for violations of 18 U.S.C. §§ 201(b) and 201(f) and 1324 was filed against another defendant in March 1983. He pleaded guilty that month to all counts. He was sentenced in June 1983 to two years probation and fined \$5,000, which was to be paid within ten days.

7. A one-count information for violation of 18 U.S.C. § 209 was filed against another defendant in March 1983. He pleaded guilty in June 1983 and is awaiting sentence.

8. A one-count information for violation of 18 U.S.C. § 209 was filed against another defendant in March 1983. He pleaded guilty and was sentenced in September 1983 to three years probation and fined \$1,000. A special condition of his probation was that he be restricted from working in massage parlors.

9. A three-count misdemeanor information for violation of 18 U.S.C. § 209 was filed against another defendant in March 1983. He pleaded guilty in May 1983 to Count 3. He was sentenced in July 1983, as follows: imposition of sentence suspended, probation for six months on Count 3. Counts 1 and 2 were dismissed on motion of the government.

10. A three-count misdemeanor information for violation of 18 U.S.C. § 209 was filed against another defendant in April 1983. In June 1983, she pleaded guilty to Count 3. She was sentenced in July 1983 to ten days in jail and one year probation. Counts 1 and 2 were dismissed on motion of the government.

11. A three-count indictment for violation of 18 U.S.C. § 209 was filed against this defendant in June 1983. He pleaded guilty to all three counts and was sentenced in August 1983 as follows: imposition of sentence suspended, probation for a one year period, and a fine of \$1,000.00.

12. The defendant in this case was a procurement agent at the Defense Electronic Supply Center (DESC) from April 1966 to October 1982, when he retired. As such, he was responsible for bid solicitation and price determination for a selected series of electronic items. In 1976, a company was formed for the purpose of representing the interests at DESC of certain electronics companies. That company was actually a company created by the defendant, his wife, and his sister-in-law. During the years 1978 and 1979, the defendant participated in recommending awards to electronics companies represented by his company. In 1978 and 1979, the defendant and his wife benefited to the extent of approximately \$35,000.

In early 1980, the defendant's company also did business under another name. This second entity was created by the defendant, his wife, and his sister-in-law to sell solenoids to the government. From May to October 1980, the defendant was the buyer involved in 52 contracts awarded to that entity. In 1980, the defendant and his wife received benefits from their company amounting to approximately \$37,000.

Specifically, in May 1980, the defendant, while a Department of Defense employee, participated in the award of a contract to his company for \$6,068.16 worth of supplies furnished to the United States, knowing that he had a financial interest in the award of the contract to that company. Again, in June 1980, the defendant, while a Department of Defense employee, participated in the award of a contract to his company for \$9,996.69 worth of supplies furnished to the United States, knowing that he had a financial interest in the award of the contract to that company.

The defendant entered a guilty plea to a two-count information charging him with violations of 18 U.S.C. § 208(a). He was sentenced in U.S. District Court to two years imprisonment on each count, to run consecutively, and a fine of \$5,000 on each count. All but the first six months of the sentence was suspended.

13. This case was investigated by the Internal Revenue Service. The defendant contacted an IRS employee and offered to pay the employee approximately \$1,000 to follow his wife, also a federal employee, while she was in the federal office building. The defendant believed that his wife was dating someone in the building and wanted information on what she was doing and whom she was seeing.

He was charged with a violation of 18 U.S.C. § 209(a), tried by a jury, and acquitted.

14. The defendant in this case was charged in a criminal information filed with the United States Magistrate which alleged that in September 1983 she did unlawfully aid, abet, counsel, or induce an officer of the executive branch of the government, specifically a Federal Protective Service officer, to receive a contribution to her salary, specifically a payment of \$50, as compensation coming from a source other than the government of the United States. The defendant was a twenty-two year old woman employed as an office cleaner. She had a previous conviction for shoplifting and had been released on bond on other occasions. According to the United States Attorney, the defendant was charged with attempting to bribe a Federal Protective Service officer to release her from some charge.

The defendant went to trial in October 1983, before the United States Magistrate, and was found not guilty.

15. This case arose out of the attempt of the defendant to bribe two park police officers when they stopped him for drunk driving. Not only was the defendant intoxicated, but he did not have a driver's license and was an illegal alien. He was indicted on two-counts of violating 18 U.S.C. § 202(b)(3), offering a bribe to a public official.

The defendant ultimately pleaded guilty to a misdemeanor, a novel combination of 18 U.S.C. § 2(a) and 18 U.S.C. § 209(a). Paraphrasing the criminal information to which the defendant pleaded guilty, he admitted his guilt to counseling a park police officer to receive a contribution to his salary, as compensation for his services as a park police officer, from a source other than the government. In short, the verb "counsels", as in

counseling the commission of an offense, was taken from 18 U.S.C. § 2, and was combined with the substance of the offense in 18 U.S.C. § 209. The United States Attorney felt this approach was an appropriate response to the particular facts of this case where a full felony charge against the defendant was not warranted.

As a consequence, the defendant was sentenced to a year in prison and a fine of \$500. The sentence of imprisonment was suspended and the defendant was placed on supervised probation for a period of two years.

16. For public relations purposes, in April 1979, the United States Navy agreed to assist a film production and distribution company in filming a movie featuring the capabilities of a Navy carrier and its F-14 aircraft in the World War II time period. The defendant was commander of a squadron of F-14 aircraft, which was used to fly scenes for the movie. The defendant had responsibility to account for all hours flown by the squadron in support of the movie to insure accurate billing of the movie company. The movie was to be made at no cost to the government.

Before the filming began, an agreement for the U.S. Navy's participation in the film was reached. The Navy established a rate of \$4,000.00 per hour for use of the F-14 aircraft. The producer of the film became upset about the high rate. Upon agreement, the production company established a \$250,000.00 escrow fund against which the Navy could charge the costs it incurred in making the movie. All Navy units involved in the film were directed to keep precise records of cost incurred. The defendant, as squadron commander, was directed and required to charge all hours flown in support of the movie to the movie company.

The U.S. Navy also made an agreement with the producer respecting how Navy personnel would be reimbursed for individual participation in the movie. The agreement was that no Navy people would be paid for any work they did on the motion picture while they were performing their official function. The production company agreed that it would make contributions to the health and welfare funds of the squad and the carrier. All unused property which was purchased through the Navy invoicing system to make the movie was to be left to the Navy. There were no agreements to contract with specific military individuals for various services. The executive in charge of production did not authorize payments of any money to individuals in the squadron.

In accordance with Navy regulations and standards of conduct, all gifts and contributions to the Navy from the movie company were required to be channeled through and approved by the Secretary of the Navy.

At a cost of \$4,000.00 per hour for F-14 aircraft, the production company estimated that it would require approximately 30 hours of F-14 aircraft flying time to complete the flying scenes. The defendant indicated on official records that his squadron had flown 32.5 hours (\$130,000.00) for the production of the movie. However, the defendant could have charged the production company for at least 150 hours of flying time (\$600,000.00) for the movie. In November 1980, the defendant told the FBI that he knew what the producer's budget was for flying time, and if he charged for much more than 30 hours of flying, the movie would probably go over budget and might not be completed. Defendant said he had flown approximately 150 hours in support of the movie. However, in June 1979, the defendant reported to his superior all but 32.5 hours as training. This was contrary to Navy instructions for participation in the movie.

On completion of filming in one location, the production company balked at paying certain administrative costs of the Navy's participation. The defendant telegraphed the producer and indicated that he should pay the administrative costs because the defendant was afraid that if there were an official inquiry, there would be a lot of questions asked about the number of hours flown by the squadron for the movie. Defendant further indicated that, at the least, the producer would, perhaps, have to pay for an additional 100 to 120 flight hours which would put the movie over budget.

In late July 1979, when the production company had completed a segment of filming, the defendant submitted to the producer a bogus invoice for set materials in the amount of \$5,563.48 on stationery from a company defendant operated. The producer was one of several people authorized to approve for payment bills submitted to the movie company. The producer directed that the \$5,563.48 bill be paid immediately and hand delivered to the defendant's home address. The art director for the production company examined the invoice and indicated that no set was built with the materials on the invoice while he was art director, which was during the filming in the same location. The check to pay the \$5,563.48 bill was drawn on a local bank account of the production company and the defendant deposited the check into the joint checking account that he held with his wife.

In November 1982, the defendant told the FBI that he had not purchased any of the materials on the \$5,563.48 invoice. Prior to the movie, panels had been purchased for the ready room and put up. The defendant said he saw an opportunity to recoup some of the money he had put into ready rooms over several years. He further said he had the check addressed to his company, as opposed to himself, because he was afraid that it would appear that it was a bribe from the producer.

In the Spring of 1978, the defendant and another military officer had established an informal partnership to sell coffee tables which were made from hatch covers. The defendant originated the name of the company, had stationery and business cards printed, and established a checking account for the company. The other officer was responsible for supplying the hatch covers.

The defendant used the Navy supply system imprest fund to purchase several of his tables. By submitting appropriate documents which described the items to be purchased, the cost, and location of the items to the supply officer, the defendant could quickly obtain funds to purchase any item under \$150. After the documents were submitted and processed, the defendant was issued cash from the imprest fund to purchase the desired items.

In June 1979, the defendant signed and submitted a requisition to a supply officer at a naval air station for a nautical block lamp priced at \$135.00. This nautical lamp was listed as available at defendant's company, and the requisition was to the attention of the other officer's wife. However, the other officer's wife was not selling nautical lamps. The defendant had told her no one was at his house and she would be getting a call to verify the price of a lamp. The defendant wanted her to verify that the lamp was selling for \$135.00. She verified to a lady who called that the lamp was selling for \$195.00.

In July 1979, the defendant again signed and submitted a requisition through the imprest fund for one table which was listed as available at his company. The table was priced at \$145.00 and was purchased. The next day, the defendant purchased a second table for \$145.00 using the same requisition procedures. It was also listed as available at his company.

The defendant placed some of the hatch cover tables at a gift shop to be sold on commission. The owner of the shop received one-third of the selling price of each table and the defendant received two-thirds of the selling price of each table. These tables were delivered by people in the defendant's squadron.

The defendant never told the supply officer that he was purchasing his own tables. He initially told the FBI he did not make a profit from the tables, but later admitted he made a profit, which he sometimes used to buy things for the squadron. He admitted that he knew it was a conflict of interest to buy his tables, but he felt his tables were the best tables for the Navy.

On the basis of the foregoing, in January 1983, a federal grand jury indicted the defendant on a seventeen-count indictment which included a single count of bribery in violation of 18 U.S.C. § 201(c)(1). The same grand jury also indicted the defendant in a second indictment on seven counts of financial conflict of interest in violation of 18 U.S.C. § 208(a).

In April 1983, the jury found the defendant guilty of only a lesser-included offense to the bribery charge, that is receipt of an illegal gratuity in violation of 18 U.S.C. § 201(g), and guilty of three counts of financial conflict of interest in violation of 18 U.S.C. § 208(a).

In May 1983, the Court sentenced the defendant on the illegal gratuity conviction to one-year in prison which was suspended, a \$5,000 fine, and probation for a period of three years. The defendant received the same sentence on the conflict of interest convictions with the probation to run concurrently.

In March 1984, the case was argued before a United States Court of Appeals. An opinion has not been issued. The defendant is still serving on active duty.

17. The defendant, a county supervisor for the Farmers Home Administration, enriched himself through the purchase of a parcel of real estate. A Farmers Home borrower was experiencing financial troubles and the defendant offered the borrower a solution in which an additional loan was granted, but a portion of the securing property was released from the government's mortgage and purchased by the defendant through a straw man. The defendant went to considerable effort to handle and to approve all documents personally and to conceal the transaction by utilizing several successive bank accounts. The crime was discovered at the time of an unannounced audit of the county files.

The defendant was indicted in February 1983 for a violation of 18 U.S.C. § 208(a), and for conspiracy, in violation of 18 U.S.C. § 371. On the date set for a jury trial, the defendant entered a plea of guilty to the Section 208(a) violation and in December 1983 was sentenced to imprisonment for one year and one day, subject to release in the discretion of the Parole Commission.

17. The defendants in this case were a city Postmaster and his brother-in-law, a rural letter carrier. For at least five years preceding July 1982, the defendants received compensation for delivering a weekly advertising supplement while employed and receiving compensation as employees of the United States Postal Service. In essence, the defendants received income for services performed on government time and together with other government duties.

In May 1983, the defendants were charged by information with one count of receiving supplemental compensation in violation of 18 U.S.C. § 209(a). The information was filed together with an agreement in which they agreed to plead guilty.

Pursuant to the plea agreement, the defendants pleaded guilty in June 1983. The Postmaster was given three years probation and restitution of \$4,791.94; the letter carrier was given two years probation and restitution in the same amount. The restitution represented postage lost to the Postal Service and was calculated based upon the estimated bulk postage due (by weight) on the advertising circulars during the final three years of the offense.