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THE DAILY WASHINGTON

Law Reporter

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U.S. Court of Appeals for the D.C. Circuit

CRIMINAL LAW & PROCEDURE

FINANCIAL DISCLOSURE

Omissions in financial disclosure statements filed under Ethics in Government Act are subject to criminal penalties of 18 U.S.C. §1001.

UNITED STATES v. HANSEN. U.S.App. D.C. No. 84-5377. August 30, 1985. *Affirmed* per Scalia, J. (Ginsburg and McGowan, JJ. concur). *Nathan Lewin* with *Stephen L. Braga* and *Frank A.S. Campbell* for appellant. *Eric H. Weingarten* with *James M. Cole* for appellee. United States Senator *Orrin G. Hatch* was on the brief for himself and other members of the United States Congress as *amici curiae*, urging reversal. *Allan A. Ryan, Jr.*, for the Institute for Government and Politics, Free Congress Foundation and Lawrence A. Withers, *amici curiae*, urging reversal. Trial Court—Joyce Green, J.

SCALIA, J.: Appellant, former Representative George V. Hansen, appeals from his conviction for making false statements in matters within the jurisdiction of a department or agency of the United States in violation of 18 U.S.C. §1001 (1982), based on omissions in financial disclosure statements he filed under the Ethics in Government Act of 1978, Pub.L. No. 95-521, 92 Stat. 1824 (codified as amended in scattered sections of Titles 2, 5, 18, 26, and 28 U.S.C. (1982)) ("EIGA"). The primary issues on appeal are whether violations of the EIGA are subject to the criminal penalties of 18 U.S.C. §1001, whether the omissions from Hansen's forms were material, and whether Hansen's trial started within the time limits established by the Speedy Trial Act, 18 U.S.C. §§3161-74 (1982).

I

Title I of the EIGA, 2 U.S.C. §§701-09, requires Members of Congress to file annual financial disclosure reports detailing, with certain exceptions, their income, gifts, assets, financial obligations, and business transactions. Hansen was indicted on four counts for failing to disclose, respectively, a $50,000 bank loan to his wife, cosigned by Nelson Bunker Hunt, on his form for 1978, an $87,475 silver commodities profit on his form for 1979, a $61,503.42 loan from Nelson Bunker Hunt on his form for 1980, and $135,000 in loans from private individuals on his form for 1981. He was not indicted, however, under any provision of the EIGA, but rather under 18 U.S.C. §1001, which forbids the willful filing of false statements in any matter within the jurisdiction of a department or agency of the United States.

Before trial, Hansen moved to dismiss the indictment on grounds that §1001 was not applicable to EIGA violations, that he was singled out for prosecution in violation of the fifth amendment to the Constitution, and that the filing of financial disclosure reports under the EIGA constituted "legislative activity" protected by the Speech and Debate Clause of the Constitution, U.S. Const. art. 1, §6, cl. 1. The District Court denied the motion. *United States v. Hansen*, 566 F.Supp. 162 (D.D.C. 1983). This court affirmed the order of the District Court with respect to the Speech and Debate Clause issue and found that the other two issues did not involve an appealable "final decision" under 28 U.S.C. §1291. *United States v. Hansen*, No. 83-1689 (D.C. Cir. Aug. 1, 1983) (unpublished Order), *cert. denied*, 104 S.Ct. 709 (1984).

At trial, Hansen relied principally on an advice-of-counsel defense, contending that two of his attorneys had advised him that the transactions in question were not reportable. The jury rejected this defense and found the accused guilty on all four counts. Hansen appeals under 28 U.S.C. §1291. He and *amici* urge reversal on numerous grounds, only three of which warrant discussion beyond that contained in the District Court's opinions and rulings.

II

The most significant issue presented is whether 18 U.S.C. §1001 has any application to EIGA violations. The language of the statute reads, in relevant part, as follows:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully . . . makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Section 1001 is a statute of general applicability, designed to protect a "myriad [of] governmental activities." *United States v. Rodgers*, 104 S.Ct. 1942, 1946 (1984). Its "sweeping . . . language," *id.*, clearly embraces the omissions on Hansen's EIGA forms. The House Committee with which the forms were filed is a "department" for purposes of §1001, since that term "was meant to describe the executive, legislative and judicial branches of the Government." *United States v. Bramblett*, 348 U.S. 503, 509 (1955). *See United States v. Diggs*, 613 F.2d 988, 999 (D.C. Cir. 1979), *cert. denied*, 446 U.S. 982 (1980) (false statements submitted to House of Representatives Office of Finance covered by §1001). The subject of the forms is also a "matter within the jurisdiction" of that department, since the Supreme Court has held that phrase "should not be given a narrow or technical meaning," *Bryson v. United States*, 396 U.S. 64, 70 (1969), but applies whenever there is " 'statutory basis for an agency's request for information,' " *United States v. Rodgers*, 104 S.Ct. at 1947 (quoting *Bryson*, 396 U.S. at 71). The "request" here is made by the statute itself, which requires the forms to be filed with the Clerk of the House for transmission to the Committee, 2 U.S.C. §§703, 705. The fact that the Committee can take no dispositive action with regard to matters disclosed on the forms, but can only investigate and make recommendations to the full House, *see* House Rule X, cl. 4(e)(1)(B), is inconsequential, since the term "jurisdiction" embraces the authority to conduct an official inquiry, *see United States v. Rodgers*, 104 S.Ct. at 1947 & n.2.

(Cont'd. on p. 2209 - Disclosure)

D.C. Court of Appeals

CRIMINAL LAW & PROCEDURE

MOTIVE—ENHANCEMENT

Evidence that defendant was carrying large sum of money when arrested for carrying pistol without license was properly admitted to show motive; court properly sentenced joining penalty enhancement provision of D.C. Code §22-3204 and habitual offender provision of §22-104(a).

BIGELOW v. UNITED STATES. D.C.App. No. 85-267. September 4, 1985. *Affirmed* per Belson, J. (Newman and Rogers, JJ. concur). *Thomas K. Clancy*, appointed by the court, for appellant. *Bradley L. Kelly* with *Joseph E. diGenova, Michael W. Farrell, Judith Hetherton* and *Alan L. Strasser* for appellee. Trial Court—Walton, J.

BELSON, J.: On appeal from his conviction of carrying a pistol without a license, D.C. Code §22-3204 (1981), appellant assigns two errors: (1) the admission of evidence that appellant was carrying a considerable sum of cash when arrested; and (2) the application of the enhanced sentencing provision of D.C. Code §22-104a (1981). Finding no error, we affirm.

• • •

Appellant asserts error in the admission of evidence that he was carrying in his pockets $1024 in cash when arrested. The purpose of introducing the evidence was to show that appellant had a motive for possessing the gun, viz. the desire to protect himself while carrying such a large sum of money. Appellant maintains that the evidence gave rise to an inference that he had committed other crimes, such as drug dealing. He contends it should have been excluded because it was irrelevant and unfairly prejudicial. We disagree.

The general rule in this jurisdiction, oft-stated and well-settled, is that evidence of other criminal acts which are independent of the crime charged is inadmissible where it tends to prove a criminal disposition on the part of the accused. *Jones v. United States*, 477 A.2d 231, 237 (D.C. 1984); *Campbell v. United States*, 450 A.2d 428, 430 (D.C. 1982). Such evidence may be admissible, however, if relevant to (1) motive, (2) intent, (3) absence of mistake or accident, (4) a common scheme or plan, or (5) identity. *Drew v. United States*, 118 U.S.App.D.C. 11, 16, 331 F.2d 85, 90 (1964); *accord*, *Jones* 477 A.2d at 237; *Wheeler v. United States*, 470 A.2d 761, 769 (D.C. 1983). The proscription against admissibility of evidence of prior criminal acts extends to acts that have not been formally adjudicated as crimes, *Wheeler*, 470 A.2d at 769; *Miles v. United States*, 374 A.2d 278, 282 (D.C. 1977).

(Cont'd. on p. 2208 - Enhancement)

TABLE OF CASES

Even if we were to assume that the evidence of appellant's possession of the cash constituted evidence of other crimes, we conclude it was properly admitted. The evidence was introduced to show appellant's motive for possessing a gun. Evidence of other crimes that is relevant to motive is admissible under *Drew*. 118 U.S.App.D.C. at 16, 331 F.2d at 90. *See Calaway v. United States*, 408 A.2d 1220, 1226-27 (D.C. 1979); *Crisafi v. United States*, 383 A.2d 1, 5 (D.C.), *cert. denied* 439 U.S. 931 (1978); *Chambers v. United States*, 383 A.2d 343, 345 (D.C. 1978). Such evidence may not be admitted, however, unless it is directed to "a genuine and material issue in the case" and is probative of that issue. *Campbell*, 450 A.2d at 430 (citing *Willcher v. United States*, 408 A.2d 67, 75 (D.C. 1979)); *Miles*, 374 A.2d at 282; *see Light v. United States*, 360 A.2d 479, 480 (D.C. 1976). "Whether an issue has been raised for purposes of receiving other crimes evidence depends upon both the elements of the offense charged and the defense presented." *Willcher*, 408 A.2d at 75 (citations omitted); *see Crisafi*, 383 A.2d at 5 (holding other crimes evidence admissible to show motive where motive was put in issue by defense at trial).

In the instant case, appellant had attempted to show, through the testimony of Michael Myrick, that one of the other two occupants of appellant's car might have had the gun. Defense counsel underscored this point in closing argument. Thus, evidence of appellant's motive for having the gun was relevant to prove that appellant, and not the other persons in his car, possessed the pistol. Appellant's possession of a large sum of cash suggests he had a good reason to possess a gun: to protect himself and his money. We agree with the trial court's determination that the evidence was relevant and material.

Of course, other crimes evidence relevant to a *Drew* exception must be excluded if its prejudicial effect outweighs its probative value. *Jones*, 477 A.2d at 237; *Campbell*, 450 A.2d at 430; *see Willcher*, 408 A.2d at 77. The balancing process is committed to the discretion of the trial court and this court may reverse only if that discretion has been abused. *Jones*, 477 A.2d at 237; *Campbell*, 450 A.2d at 430; *Willcher*, 408 A.2d at 77. Our review of the record reveals that the trial court considered the factors relevant to the determination of whether the probative value of the evidence outweighs its prejudicial effect. We are satisfied that the court properly exercised its discretion in admitting the evidence.

III

Appellant next challenges his sentence on the ground that the trial judge erred by sentencing him to a term of imprisonment of 10 to 30 years for carrying a pistol without a license, pursuant to the penalty enhancement provisions of D.C. Code §22-104a and 22-3204 (1981). Appellant relies on rules of statutory construction and lenity in contending that, because he was convicted of carrying a pistol without a license under §22-3204, he was properly subject only to the enhancement provisions of that section—which prescribes a maximum sentence of 10 years—and not subject as well to the habitual offender enhancement provisions of §22-104a. We disagree.

Pursuant to the procedures of D.C. Code §23-111 (1981), the government filed before trial an information setting forth appellant's prior convictions: assault with intent to kill while armed and assault with a dangerous weapon, both on November 13, 1974; conspiracy to escape, on December 18, 1973; and felonious possession of a prohibited weapon, on November 30, 1972. Appellant admitted to these convictions before trial relied upon appellant's 1974 assault with intent to kill conviction in ruling that appellant's instant conviction of carrying a pistol without a license was a felony under §22-3204. The court relied on appellant's 1972 weapons conviction and his 1973 conspiracy to escape conviction in sentencing appellant to a term of imprisonment of 10 to 30 years as a third time felon under §22-104a.

This court has pronounced that joint application of the habitual offender enhancement provisions of §22-104(a) and the enhancement provisions of other specific felony statutes "is not precluded by the rules of statutory construction or the rule of lenity where the policies underlying the enhanced penalty provisions are different and where the enhancement provisions do not have the same precondition to applicability." *Lagon v. United States*, 442 A.2d 166, 169 (D.C. 1982). Both conditions for joint application are satisfied in the case at bar.

First, the policies underlying the enhancement provisions of §22-104a and §22-3204 are different. As to the former, "the habitual offender statute provides sentence enhancement for offenders whose prior record of two prior felony convictions indicate[s] that they will not be deterred or rehabilitated within the terms of an ordinary sentence." *Lagon*, 442 A.2d at 168 (citing H.R. REP. NO. 907, 91st Cong., 2d Sess. 65-66, 228, *reprinted in* 1970 D.C. Code LEGIS. & AD. NEWS 460-61, 559). With respect to §22-3204, by contrast, [t]he legislative debates and reports concerning [the District of Columbia Law Enforcement Act of 1953, PUB.L. NO. 83-85, 67 Stat. 90 (1953), of which §22-3204 was enacted as a part, PUB.L. NO. 83-85 §204(c), 67 Stat. 94] clearly indicate that Congress was seeking by that legislation, among other things, to enforce drastically its ban against carrying dangerous and prohibited weapons within the District of Columbia." *Martin v. United States*, 283 A.2d 448, 450 (D.C. 1971). In other words, §22-104a provides for enhanced penalties in order to reduce recidivism of repeat offenders, a distinctly different purpose from §22-3204, the enhancement provisions of which are designed to keep dangerous weapons out of the hands of persons previously convicted of a felony or of a misdemeanor weapons offense.

Second, the enhancement provisions may be jointly applied under *Lagon* because they do not have "the same precondition to applicability." The enhancement provision of §22-3204 becomes applicable when a defendant convicted of carrying a concealed weapon has either at least one prior misdemeanor weapons conviction or a prior felony conviction. By contrast, §22-104a is triggered whenever a defendant convicted of any felony offense is shown to have two prior and separate felony convictions. Accordingly, appellant's sentence under the joint provisions of §22-3204 and 22-104a was entirely proper.

We note as well how anamolous it would be if—as would obtain under appellant's construction of the Code—a defendant convicted of a third felony, but one not involving a weapon, could be exposed to life imprisonment, while a defendant convicted under §22-3204, even if previously convicted of numerous prior felonies, could be exposed at most to 10 years in prison. "Such a result would subvert the legislative intent embodied in §22-104a to punish recidivists more severely." *Lagon*, 442 A.2d at 169.

Affirmed.

DISCLOSURE

(Cont'd. from p. 2205)

In light of the plain applicability of §1001, Hansen misperceives the issue before us when he urges, to quote the caption of the first section of argument in his principal brief, that "Congress prescribed only a civil remedy and did not authorize criminal punishment for the submission of a false EIGA statement." Brief for Appellant at 27. It was not necessary for the Congress that enacted the EIGA to authorize criminal punishment, for that authorization had been conferred by an earlier Congress, and remained on the statute books. The precise issue is whether the Congress that enacted the EIGA *precluded* the criminal sanctions that would otherwise attach.

In approaching that issue, we give appellant the benefit of the doubt on a preliminary epistemological point: We will assume (without deciding) that an erroneous congressional belief, expressed in the statute or evident in its legislative history, that §1001 did not by its terms apply, would be fully equivalent to an explicit decision to preclude its application, so that the result would be an inadvertent *pro tanto* repeal of §1001 rather than the enactment of an obligation inadvertently subject to criminal penalties. On the other hand, we have no choice but to make appellant's task more difficult on another preliminary point: It is a venerable rule, frequently reaffirmed by the Supreme Court, that " 'repeals by implication are not favored,' " *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 189 (1978), * * * and will not be found unless an intent to repeal is " 'clear and manifest.' " *United States v. Borden Co.*, 308 U.S. 188, 198 (1939) * * *.] It will not do to give this principle of statutory interpretation mere lip service and vacillating practical application. A steady adherence to it is important, primarily to facilitate not the task of judging but the task of legislating. It is one of the fundamental ground rules under which laws are framed. Without it, determining the effect of a bill upon the body of preexisting law would be inordinately difficult, and the legislative process would become distorted by a sort of blind gamesmanship, in which Members of Congress vote for or against a particular measure according to their varying estimations of whether its implications will be held to suspend the effects of an earlier law that they favor or oppose.

Hansen argues that the presumption against implied repeal is inapplicable to this case, since no repeal is involved. He reasons that since there was no obligation for Members of Congress to make financial disclosure before adoption of the EIGA in 1978, there was no preexisting criminal liability to repeal. We cannot accept this resourceful characterization of the issue, which would render statutes such as §1001 the most feeble of enactments, virtually requiring for their application to new obligations (as appellant's brief at times urges) an affirmative intent, in the legislation creating the new obligations, that they should apply. The fallacy in appellant's analysis is that it takes the presumption against implied repeal to be a rule based exclusively upon assumed substantive inertia rather than—what in our view it is—a rule based primarily upon assumed legislative practice. The major rationale of the presumption, in modern terms at least, is not that Congress is unlikely to change the law—so that in the present case, where there was no preexisting criminal liability for this particular filing, the presumption would be inapplicable; but rather, that Congress "legislate[s] with knowledge of former related statutes," *Continental Insurance Co. v. Simpson,* 8 F.2d 439, 442 (4th Cir. 1925), and will expressly designate the provisions whose application it wishes to suspend, rather than leave that consequence to the uncertainties of implication compounded by the vagaries of judicial construction. The application of that rationale to the present case is clear: The terms of §1001 cover falsification of EIGA financial disclosure forms; if Congress wished to exclude that coverage it would normally have said so; we will not readily conclude that it did so by implication.

With these principles in mind, then, we proceed to consider whether the EIGA repeals the application of §1001 to its disclosure provisions. It does not do so expressly—even though it does take pain to exclude application of "any *State or local law* with respect to financial disclosure by reason of holding the office of Member or candidacy for Federal office." 2 U.S.C. §708 (emphasis added). (We note in passing that, if repeal was in fact intended, this absence of express exclusion is even more strange than it would normally be since, as we shall discuss in more detail below, the threatened application of §1001 was explicitly brought to the attention of a House committee that reported one version of the bill both by the Department of Justice and by the Clerk of the House, and to the attention of the full House, in floor debate, by two of its Members.) We look then, for some indication of implicit repeal strong enough to overcome the contrary presumption. * * *

* * *

The District Court reached "[t]he inescapable conclusion . . . that Congress simply did not intend to render section 1001 inapplicable to the intentional falsification of EIGA financial disclosure reports." 566 F.Supp. at 168-69. *Accord, United States v. Claiborne,* No. CR-R-83-57-WEH (D. Nev. unpublished transcript of Mar. 13, 1984 proceedings). We need not go that far. It suffices that there is not remotely—neither in the textual indications we have considered, nor in the various episodes of legislative history, nor in all of them combined—a *clear and manifest* indication of an intent to repeal.

* * *

III

Hansen contends that even if §1001 applies to his EIGA filings, he has not violated that statute because the omissions from his forms were not "material." * * * Hansen argues that his omissions could not have been material because no federal agency or department "was conducting any inquiry or investigation, or making any [illegible] affected in the slightest if Congressman Hansen had, in 1979, 1980, 1981 and 1982 put on his EIGA forms the debts and transactions which the indictment alleges he should have reported." Brief for Appellant at 53. This argument misunderstands the nature of the materiality requirement: A lie influencing the possibility that an investigation might commence stands in no better posture under §1001 than a lie distorting an investigation already in progress. *See United States v. McIntosh,* 655 F.2d 80, 83 (5th Cir. 1981), *cert. denied,* 455 U.S. 948 (1982) (false statement material because "disclosure of the truth could have provoked the agency to action"). And it is beyond doubt that information contained on (or omitted from) EIGA forms could in some cases influence the possibility of an authorized investigation by a federal department. * * *

* * * The materiality requirement that we have found implicit in that provision excludes a matter unrelated to the subject of the agency's or department's responsibility—for example, misrepresenting the occupation of a corporate director where that is irrelevant to the determination at hand, *see, e.g., United States v. Talkington,* 589 F.2d 415, 417 (9th Cir. 1978). But where, as here, the falsification pertains specifically to the area the department is charged to investigate (a filing Member's financial transactions), and tends to conceal in any degree—even beyond the point where further concealment might be thought superfluous—material that would prompt or affect an investigation, we will look no further. Application of §1001 does not require judges to function as amateur sleuths, inquiring whether information specifically requested and unquestionably relevant to the department's or agency's charge would really be enough to alert a reasonably clever investigator that wrongdoing was afoot. Here the falsifications related to financial transactions within the Committee's charge, and tended to conceal information that would have prompted investigation or action; no more is needed.

* * *

IV

Hansen alleges that his trial did not commence within the time limits of the Speedy Trial Act, 18 U.S.C. §§3161-74 (1982). The seventy-day time period specified in the Act was due to expire on February 24, 1984. On January 26, Hansen agreed to a trial date of March 19, 1984, thereby waiving his right to have the trial start sooner. The trial did not commence until March 20.

Virtually all of the time from January 26 to March 19, however, was excludable for purposes of the Speedy Trial Act's seventy-day time calculation. The Act provides in 18 U.S.C. §3161(h)(1)(F) that periods of delay "resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion" may be excluded from the seventy-day period. During almost the entire period from January 26 to March 19, numerous pretrial motions filed by the government and Hansen were under consideration by the court. Likewise during this period, the Clerk of the House of Representatives filed a motion to quash a subpoena in the case, which the court considered for several weeks. Hansen asserts that delays arising from such motions had already been envisioned in the court's fixing, and the defendant's acceptance, of the March 19 date, so that the date had to be regarded as subject to no further extensions permitted by the Speedy Trial Act. Although the trial judge's order setting the trial date of March 19 did state that the extension would "allow the filing or revival of anticipated motions which might well require substantial resources [illegible] 83-00075, slip op. at 2 (D.D.C. Jan. 27, 1984), it seems to us most unlikely that the experienced trial judge here meant to imply that the extension was final and absolute. That would have displayed a foolhardy confidence in her ability precisely to calculate the time needed to dispose of yet-unforeseen pretrial matters—such as the defendant's last-minute motion for change of venue because of prejudicial publicity, which induced the trial court to require a sequested jury, arrangements for which caused delay of the trial from March 19 to March 20. Assuming, however, that that was what the extension to March 19 meant, the consequence of the failure to comply with it would simply be retraction of the defendant's waiver of speedy trial rights that was the *quid pro quo.* The District Court would have no authority to create a mini-Speedy Trial Act by judicial fiat, binding itself to dismissing the prosecution in advance of the time the Speedy Trial Act would allow, and even against its own judgment of what justice required. At most, then, Hansen reacquired his previously waived Speedy Trial Act rights on March 20. Since those rights would still not have entitled him to dismissal, because of the tolling of the seventy-day period described above, commencement of the trial on March 20 was lawful.

* * * * *

We have carefully considered all of Hansen's other arguments and find them to be without merit, substantially for the reasons given by the District Court in its rulings and opinions below. We affirm the conviction on all counts.

So ordered.

LEGAL NOTICES

FIRST INSERTION

BRISSETT, Marguerite K. Deceased

Superior Court of the District of Columbia
Probate Division
Administration No. 2154-85
Marguerite K. Brissett, deceased
Notice of Appointment, Notice to Creditors
and Notice to Unknown Heirs

Helen K. Neher, whose address is 2001 TreeTop Lane, Apt. 24, Silver Spring, Maryland 20904, was appointed Personal Representative of the estate of Marguerite K. Brissett, who died on August 16, 1985, without a Will. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment shall be filed with the Register of Wills, D.C., 500 Indiana Avenue, N.W., Washington, D.C. 20001, on or before May 1, 1986. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or to the Register of Wills with a copy to the undersigned, on or before May 1, 1986, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. HELEN K. NEHER. First Published: Oct. 31, 1985. TRUE TEST COPY. Henry L. Rucker Register of Wills. (Seal) Oct. 31, Nov. 7, 14.

CARROLL Elsie E. Deceased

Superior Court of the District of Columbia
Probate Division
Administration No. 2093-85
Elsie E. Carroll, deceased
Henry H. Brylawski, *Attorney*
[illegible]6 Pennsylvania Avenue, S.E.
Washington, D.C. 20003
Notice of Appointment, Notice to Creditors
and Notice to Unknown Heirs

Dorothy B. Wallace, Lou Henry Minor and Rosalie Minor whose addresses are [illegible] High Street, [illegible] PA [illegible], 2605 Sherman Ave., N.W., Washington, [illegible] 20001 and 2605 Sherman Ave., N.W., Washington, D.C., respectively, were appointed Personal Representatives of the estate of Elsie E. Carroll [illegible]

this file

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Subject: Interpretation of the "financial interest" requirement at 11 U.S.C. 288 as applied to a spouse trustee

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Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
[illegible] Holland		ORIGINATOR	86/01/07		C	86/01/07
CUAT C4		Referral Note:				
CUAT 14		I	86/01/08		C	86/01/08
CUAT C2		Referral Note:				
CUAT 18		I	86/01/08		C	86/01/08
CUAT 21		Referral Note:				
CUAT 23		I	86/01/08		C	86/01/08
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F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
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S - For Signature
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1162

U.S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

JAN 6 1986

Memorandum for Fred F. Fielding
Counsel to the President

Re: Interpretation of the "financial interest" requirement of 18 U.S.C. 208 as applied to a spouse trustee

Larry Garrett of your Office has requested our views on the meaning of a statement contained in an unsigned 1967 memorandum of this Office relating to the scope of the term "financial interest" in 18 U.S.C. 208. In the course of advising that a spouse's remainder interest in a trust constituted a disqualifying financial interest under section 208, the 1967 memorandum stated that "[n]o doubt the bare interest of an individual as trustee -- that is, his interest as trustee not accompanied by any personal beneficial interest -- would also be deemed a financial interest under section 208." Mr. Garrett has asked whether this statement should be interpreted to require an official's disqualification from any matter affecting a trust of which his spouse is a trustee, even if the spouse has no personal beneficial interest in the trust.

As we understand the facts giving rise to Mr. Garrett's inquiry, a prospective appointee to the Federal Trade Commission and his wife both serve as trustees of a charitable family trust. Neither has any beneficial interest in the trust or its assets, and neither receives any fee for serving as trustee. Because the financial interest of the trust is likely to be implicated in numerous matters coming before him as an FTC Commissioner, the prospective appointee has decided to resign as trustee.[1] The question has arisen, because of the statement in the 1967 memorandum, whether the prospective appointee's wife, solely by virtue of her status as a trustee of the family trust, has a "financial interest" that would be imputed to the appointee under section 208 and thus disqualify him from involvement in any matter affecting the trust. For the reasons that follow, we do not believe that she would.

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[1] We assume that the prospective appointee has determined that he should resign as trustee rather than recuse himself on a case-by-case basis because of the likely frequency with which matters affecting the financial interest of the trust will come before him as an FTC Commissioner.

Section 208(a) disqualifies an officer or employee of the Executive Branch or any independent agency from participating in a particular matter

> in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as an officer, director, trustee, partner or employee . . . has a financial interest.

Under the terms of the statute, an official is disqualified from participating in any matter in which he or his spouse has a "financial interest." He is also disqualified from participating in any matter affecting the financial interest of any organization which he serves as a trustee, simply by virtue of his office and without regard to any identifiable personal financial interest he might or might not have in the matter. This "ex officio" bar applies by its terms only to the official himself, and not to his spouse, minor children, or partners.

Thus, the quoted language of the statute recognizes and gives effect to two distinct types of disqualifying "financial interest" -- personal and organizational. A personal financial interest requiring disqualification is one held either by the official himself or by his spouse, his minor children, or his partners. An organizational financial interest requiring disqualification is one held by an organization in which the official himself serves as an officer, director, trustee, partner, or employee. The personal financial interests of a spouse are imputed to the official under section 208, while the financial interests of an organization served by the spouse are not.

We thus think it clear, contrary to the implication of the quoted statement in this Office's 1967 memorandum, that Congress did not intend a personal "financial interest" in an organization to arise solely from one's status as trustee of the organization. Indeed, a contrary conclusion would render entirely redundant the express language of section 208 that bars an official's participation in matters affecting the financial interest of an organization in which the official serves as a trustee. Accordingly, the statement in this Office's 1967 memorandum should be read to refer simply to the organization-related basis of disqualification applicable to the official alone. It should not be read to mean that a spouse's position as a trustee of an organization in and of itself gives rise to a

disqualifying personal financial interest that must be imputed to the official himself.[2]

In sum, we conclude that a government official is not required to disqualify himself from participating in a matter affecting the financial interest of a trust of which his spouse is a trustee so long as the spouse derives no personal "financial interest" from that trust. We emphasize that our comments in this memorandum are confined to the narrow legal issue raised by Mr. Garrett concerning section 208. We offer no views regarding other possible ethical considerations that might be raised in this context under relevant agency regulations.

Charles J. Cooper
Assistant Attorney General
Office of Legal Counsel

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[2] We do not mean to suggest that there are no conceivable circumstances in which a spouse's status as a trustee of an organization could in fact give rise to a personal financial interest, thus triggering the disqualification requirement of section 208. For example, an official's participation in some particular matter could have a direct and predictable impact on the spouse's personal liability as a fiduciary of an organization. In this event, the spouse would have a personal financial interest in the matter, and the official would be required to disqualify himself from participating in it. We do not believe, however, that the mere possibility that the spouse-trustee might be subject to suit for breach of fiduciary duty as a consequence of some action taken by the official would necessarily require the official's disqualification in all matters affecting the financial interest of the trust. See, e.g., Memorandum from William H. Rehnquist, Office of Legal Counsel, to John W. Dean, Counsel to the President, December 10, 1970 (possibility that coal producers trade association could gain or lose income depending upon Federal Power Commission decisions "is too tenuous and speculative to be regarded as a 'financial interest' of the type prohibited by section 208"). While we have found no judicial decisions directly on point, we think it unlikely that a court would find a disqualifying "financial interest" under section 208 where the spouse-trustee's liability for breach of fiduciary duty is not direct and predictable. Cf. United States v. Mississippi Valley Generating Co., 364 U.S. 520, 557 (1961)(predecessor of section 208 violated where there was a "substantial possibility" that the employee's company would benefit as a result of his participation in certain governmental matters).

THE WHITE HOUSE
WASHINGTON

ethics file

Date 2.21.86

Suspense Date _____

MEMORANDUM FOR: John

FROM: **DIANNA G. HOLLAND**

ACTION

_____ Approved

_____ Please handle/review

__X__ For your information

_____ For your recommendation

_____ For the files

_____ Please see me

_____ Please prepare response for _____ signature

_____ As we discussed

_____ Return to me for filing

COMMENT

_____

_____

_____

_____

United States Government
MEMORANDUM

Office of Government Ethics

Subject: Digest of Selected Letters of OGE - 1985

FEB 7 1986

From: David H. Martin
Director

To: Designated Agency Ethics Officials and Other Interested Persons

Enclosed for your information is a copy of a digest of selected letters issued by the Office of Government Ethics during the calendar year 1985. This digest builds upon those issued for calendar years 1979-1984. As you will note, the quick statutory index that is attached covers the total seven year period.

Complete copies of these letters, with identifying information deleted, are maintained in OGE's library and are available to be reviewed there.* These are indexed by statute, regulation and subject. If you wish to obtain a copy of an individual letter opinion, please call the Office or stop by.

*Library Location:

1717 H Street, NW
Room 436
Washington, DC

Mailing Address:

P.O. Box 14108
Washington, DC 20044

Enclosure

DIGEST OF SELECTED OGE LETTERS

1985

OFFICE OF GOVERNMENT ETHICS

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79x6

85 x 1
01/07/85

OGE advised an employee that 18 U.S.C. 205 would prohibit him either with or without pay from prosecuting a claim for or acting as an agent or an attorney for a veteran before the Board of Veterans Appeals. The fourth paragraph of section 205 does provide an exception that allows an employee to represent another employee who is the subject of disciplinary, loyalty or other personnel administration proceedings in connection with those proceedings. This exception, however, would not under any interpretation, reach the entitlement portion of a proceeding that is very often a part of a veteran's appeal. To bifurcate a proceeding into one portion involving entitlements and another portion involving discharge character and duty status, arguably personnel administration matters, would involve a classification by subject matter which would not be possible or practical.

85 x 2
01/07/85

OGE advised an employee that certain of the general standards of conduct, specifically his agency's versions of 5 C.F.R. 735.203 and 735.206 which address outside employment and the misuse of information, would apply to two agents of an agency's Inspector General's office who had entered into contracts with a magazine, giving the magazine exclusive production rights to the story of their participation in an agency investigation into racketeering in a specific city. The agents had been asked to grant an official interview with the magazine and the contracts had resulted from that interview. While OGE did not opine on the agency's ability to limit the agents' private rights (e.g. the right to assign movie and television rights to their life stories, the right to assign the use of their names, or the right to waive legal claims for invasion of privacy), it did state that the agency could consider an adverse action against each employee if the agency found that the agents had violated the standards of conduct by entering into these contracts. (The matter had first been referred to the Department of Justice who had declined prosecution.)

85 x 3
03/08/85

OGE advised an employee that, consistent with prior Department of Justice opinions, 18 U.S.C. 203 and 205 did not prohibit the employee from preparing, with or without a fee, income tax returns for others because simply signing as the preparer was not the kind of representation proscribed by those statutes. OGE pointed out that the employee/preparer could not, however, represent the taxpayer to the IRS in any subsequent audit. He could only answer factual questions such as which taxpayer records he used to prepare the return, and could not argue any theories or positions as to why he

used one figure rather than another. If an employee conducted his tax preparation activity through a business entity such as a partnership, the employee would be prohibited by section 203 from sharing in any fees generated by his associates in representing clients before the government, typically the IRS. Finally, OGE reminded the employee that preparing returns for others fell within agency standards of conduct restrictions on outside employment and other activity and that the employee's agency could, through these standards, limit or restrict this activity. The employee was reminded to confirm and follow any outside employment approval procedures instituted by his agency.

85 x 4
04/02/85

OGE advised a DAEO that his agency could not write an exception to the agency's version of the model standards of conduct relating to gifts or outside employment or other activity, 5 C.F.R. 735.202 and 735.203, nor to the restrictions of 18 U.S.C. 209, to permit acceptance of items of appreciation by agency employees for giving speeches in their official capacities to private organizations. OGE pointed out that such items were offered simply because of official duties and thus would run afoul of both standards of conduct. Further, if the items were considered compensation for purposes of 18 U.S.C. 209, as they might well be, no agency has the authority to make an exception to that statute.

85 x 5
05/09/85

OGE advised a DAEO that, in essence, there were no restrictions under 18 U.S.C. 207(c), the one year no contact bar, for former senior employees of the CAB once it ceased to exist as an agency. Since certain functions of the CAB and some of its personnel were integrated into the existing structure of the Department of Transportation, the concern was that former senior CAB officials might have some personal suasion with other former CAB, now DOT, employees on those matters. However, the restrictive language of subsection (c) refers explicitly to representations before, or to, the department or agency in which the former employee served. In this case, that was the CAB and not the DOT, and there is no portion of DOT which could be considered the CAB for purposes of subsection (c).

85 x 6
05/16/85

OGE advised a former employee that even though a claim had remained dormant in the office over which he had official responsibility for a number of years, including his last year of government service, and even though his office had considered the claim withdrawn, he was prohibited by 18 U.S.C. 207(b)(i) for a period of two years from termination of his official responsiblity for the matter from representing the claimant in a reopening of the original claim. The claimant had decided to reopen the original claim

before his right was barred by the statute of limitations. The Office determined that since no ultimate resolution of the original filing had been reached and the matter was still capable of being pursued, it was, for purposes of section 207(b)(i) "actually pending" in the department. Further, his offical job description encompassed supervision of all such claims filed in the office he headed and therefore the matter was under his official responsibility.

85 x 7
05/20/85

OGE advised a DAEO that two GM-15's within his agency and several public health officers whose pay grades as "member[s] of a uniformed service" were below 0-7 should nonetheless be required to file public financial disclosure reports pursuant to title II of the Ethics in Government Act. The agency's authority to hire scientific and administrative personnel, such as the GM-15's, at a grade level up to GS-18 had been restricted by the Civil Service Reform Act. The agency stated that even so, the duties of these individuals and the PHS officers were comparable to those of persons paid at GS-16 or SES levels or 0-7's and above. OGE has authority under section 201(f)(3) to determine that other positions of equal classification to those specifically covered under the sections should file public reports and has taken the position that it is the level of the employee's responsibility not the pay he or she receives, that is determinative. Since the agency argued these individuals filled such high level positions, we approved their request that these employees file.

85 x 8
05/20/85

OGE advised an Inspector General that OGE would not amend the exemption in 5 C.F.R. 734.603(c) which allows Special Agents of the Federal Bureau of Investigation who are conducting criminal conflict of interest investigations access to public financial disclosure reports without filing a public request, to include agents of the Inspectors General. The legislative history of the provisions in the Act requiring publicly available applications for review of reports did not discuss any exception to this requirement for law enforcement personnel. Although the Department of Justice and the FBI requested a broad exception, the Office ultimately allowed the narrow exception for non-public access only for their investigations on violations of 18 U.S.C. 202-209. Such exemption was granted to the FBI as the investigative arm of the prosecutors of any such violations. Further, no office of an Inspector General could provide OGE with documentation that this requirement had significantly hampered an investigation; therefore, OGE felt the present narrow exception for the FBI, one rarely used, was sufficient.

85 x 9
07/12/85

OGE advised the head of an agency of the considerations this Office felt were involved in determining whether the use of a government-owned vehicle for transportation to social or quasi-social events was a misuse of government property. Because the statute specifically addressing the use of a government vehicle used the standard of "official purpose," the letter discussed the criteria OGE felt to be involved. Further, because this question stemmed from the use of a government vehicle and driver to attend certain receptions, dinners and other socially-oriented events, the Office pointed out that the agency had no exception to its gift restrictions in the standards of conduct to cover food and entertainment accepted by an employee at these events. The exception in 5 C.F.R. 202(b)(2), substantially repeated in the agency's regulations, was not applicable to these events. Without an appropriate exception, if the host for the event were a prohibited source under the agency's equivalent of 5 C.F.R. 735.202, then acceptance of such items would be prohibited. The letter required the agency to develop some guidance in the area and referred them to another agency's regulations as a model.

85 x 10
07/15/85

OGE advised a DAEO that the restrictions of 18 U.S.C. 208 would apply to an employee working on one phase of a contract, whose spouse was employed at the same facility by the contractor. Given the nature of the duties the spouse performed for the contractor, OGE determined she had a financial interest in the contract and thus the employee was prohibited from acting on the contract unless issued a waiver. In this instance, OGE did not make a recommendation to the agency regarding the advisability of issuing a waiver because the agency was in a much better position than this Office to evaluate the nature of the procurement activities involved. The agency was cautioned, however, not to focus on the reputation for personal integrity of the employee or his spouse when determining whether to issue the waiver. OGE felt that would be counterproductive in the agency's attempt to eliminate the appearance of impropriety involved.

85 x 11
08/23/85

OGE advised an agency ethics official that the implementation of proposed severance arrangements of a prospective advice and consent nominee would be precluded by 18 U.S.C. 209(a). The nominee intended to resign his position as chairman of the board of a closely-held corporation in which he was the major shareholder but stay on the board in an uncompensated basis with an agreement to return upon completion of government service. The corporation proposed to adopt a severance plan which would pay the individual and other employees leaving in the future an amount to be determined by the board by factoring in length of service, degree of responsibility for the corporation, and overall contribution to the success of the corporation. The maximum amount would not exceed 150% of the individual's present salary. In this individual's case, it would be paid

in two installments over a two-year period. In reviewing these factors, OGE determined that given the individual's continuing ties to the corporation, his intent to return and the lack of a pre-existing severance plan for the corporation, the arrangement resembled a leave of absence rather than any normal severance arrangement and that the payments appeared to be a supplementation of his government salary during this leave. Under those circumstances, OGE did not think the payments were appropriate.

85 x 12
08/29/85

OGE advised a Member of Congress who requested an opinion on behalf of a constituent, that an employee of an agency who owned his own business, would be prohibited by 18 U.S.C. 205 from representing his own company in seeking a contract from his agency or any other federal agency. Further, 18 U.S.C. 203 would prohibit him from receiving any compensation for his own or someone else's representations to any federal agency. In addition, section 3-601 of the Federal Acquisition Regulations prohibits contracts between the government and government employees or businesses owned or substantially controlled by government employees, except where the needs of the government cannot otherwise be supplied. Finally, the employee must check his agency's version of the regulations at 5 C.F.R 735.203 regarding outside employment and other activities to see if they require him to get approval to conduct his business.

85 x 13
09/17/85

This is an agency-wide memorandum from OGE concerning the acceptance of commercial discounts by executive branch employees. The memorandum covers applicable criminal statutes and other related statutes, the standards of conduct, and the public disclosure requirements of the Ethics in Government Act.

85 x 14
09/23/85

OGE advised a DAEO that, while it appeared an employee should recuse himself from participating in a matter in which his brother's law firm represents a company having a substantial stake in the outcome of the matter, the ultimate decision lay with the agency. Although the recusal requirement of 18 U.S.C. 208 would not be triggered inasamuch as it does not cover the financial interests of a sibling, the standards of conduct, most particularly those based on 5 C.F.R. 735.201a, would apply. OGE recommended that the agency, in making its final decision, consider the criteria used in determining the disqualification of federal judges, 28 U.S.C. 455 (a) and (b), also discussed in 83 x 18, because the employee's duties were closely associated with an adjudicatory function.

85 x 15
09/25/85

OGE advised an ethics official that a former employee who had, before retiring, personally approved a detailed concept of a departmental museum, including the establishment of a private foundation to raise funds for the museum and related activities, would be prohibited by 18 U.S.C. 207(a) from representing the foundation to the government on matters involving the establishment of the foundation or its working relationship with the museum. The Office determined that the concept of a departmental museum was a particular matter; coupled with the detailed idea of creating a support mechanism--the foundation, it became a "particular matter involving a specific party." Given the former employee's personal and substantial participation, the restrictions of section 207(a) applied.

85 x 16
09/30/85

OGE advised a private organization that it could not sponsor an official government awards program because neither of the two agencies jointly responsible for the program had statutory authority to accept private gifts to defray official expenses. The organization could host a separate banquet honoring the recipients of the awards because, as a 26 U.S.C. 501(c)(3) organization, it could under 5 U.S.C. 4111, offer such an honor to each employee. Each employee's agency would have to make the determination under 5 C.F.R. 410.705 whether its employee may attend the private banquet.

85 x 17
10/23/85

OGE advised an employee that it felt her Department had correctly concluded that her husband's financial interests in a program managed by her employing agency within the Department created an appearance of a conflict of interest on her part. Further, OGE pointed out to the employee that her husband's interests were voided by the Department on the basis of a specific statutory prohibition against employees holding directly or indirectly such interests, and not simply because the interests created an appearance of conflict. Simply because other employees held similar interests did not mean she was being treated unfairly. The statute prohibited acquisition after employment; it did not require employees to divest themselves of interests acquired prior to employment nor would there be the same degree of appearance of conflict for those employees who did not hold the same type of position with the agency as she.

85 x 18
10/28/85

This is an agency-wide memorandum from OGE concerning the participation for compensation by executive branch employees in privately-sponsored seminars or conferences. The memorandum covers applicable criminal statutes and other related statues and the standards of conduct, and the public disclosure requirements of the Ethics in Government Act.

85 x 19
12/12/85

OGE advised a private attorney that this Office could not say that 18 U.S.C. 209 would not apply to the donors to, and the employee/recipient of, monies from a private defense fund established to pay the legal expenses the employee incurred for representations in a grievance process in which he is engaged with his agency. For purposes of applying section 209, determining whether these payments were "compensation for services as an employee of the United States" was crucial. Such a determination must be made based on the totality of the circumstances, keeping in mind that the benefits would be paid for services required because of a controversy arising directly from the performance of official duties. Further, OGE noted that persons involved in setting up the fund on the employee's behalf, if also employees, must be mindful of the restrictions of 5 U.S.C. 7351 if soliciting contributions for the fund from people they supervise, and the standards of conduct, if soliciting from outside sources.

this file

3. Chart on Contribution Limits

Contributions from	To Candidate or His/Her Authorized Committee	To National Party Committee[1] Per Calendar Year[2]	To Any Other Committee Per Calendar Year	Total Contributions Per Calendar Year
Individual	$1,000 Per Election[3]	$20,000	$5,000	$25,000
Multicandidate Committee[4]	$5,000 Per Election	$15,000	$5,000	No Limit
Party Committee	$1,000 or $5,000[5] Per Election	No Limit	$5,000	No Limit
Republican or Democratic Senatorial Campaign Committee,[6] or the National Party Committee, or a Combination of Both	$17,500 to Senate candidate per calendar year in which candidate seeks election	Not Applicable	Not Applicable	Not Applicable
Any Other Committee or Group[7]	$1,000 Per Election	$20,000	$5,000	No Limit

[1] *For purposes of this limit, each of the following is considered a national party committee: a party's national committee, the Senate Campaign committees and the National Congressional committees, provided they are not authorized by any candidate.*

[2] *Calendar year extends from January 1 through December 31. Individual contributions made or earmarked to influence a specific election of a clearly identified candidate are counted as if made during the year in which the election is held.*

[3] *Each of the following elections is considered a separate election: primary election, general election, run-off election, special election, and party caucus or convention which has authority to select the nominee.*

[4] *A multicandidate committee is any committee with more than 50 contributors which has been registered for at least 6 months and, with the exception of State party committees, has made contributions to 5 or more Federal candidates. A candidate committee should check with the FEC to determine whether a contributing committee has qualified as a multicandidate committee.*

[5] *Limit depends on whether or not party committee is a multicandidate committee.*

[6] *Republican and Democratic Senatorial Campaign committees are subject to all other limits applicable to a multicandidate committee.*

[7] *Group includes an organization, partnership or group of persons.*

(4) "honoraria" has the meaning given such term in the Federal Election Campaign Act of 1971.

(5) "value" means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual;

(6) "personal hospitality of any individual" means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his family or on property or facilities owned by that individual or his family;

(7) "dependent child" means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who—

(A) is unmarried and under age 21 and is living in the household of such reporting individual; or

(B) is a dependent of such reporting individual within the meaning of section 152 of the Internal Revenue Code of 1954;

(8) "reimbursement" means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—

(A) provided by the United States Government;

(B) required to be reported by the reporting individual under section 7342 of title 5, United States Code; or

(C) required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434);

(9) "Secretary concerned" has the meaning set forth in section 101(8) of title 10, United States Code, and, in addition, means—

(A) the Secretary of Commerce, with respect to matters concerning the National Oceanic and Atmospheric Administration; and

(B) the Secretary of Health, Education, and Welfare, with respect to matters concerning the Public Health Service;

(10) "designated agency official" means an officer or employee who is designated to administer the provisions of this title within an agency; and

(11) "executive branch" includes each Executive agency (as defined in section 105 of title 5, United States Code) and any other entity or administrative unit in the executive branch unless such agency, entity, or unit is specifically included in the coverage of title I or III of this Act.

OUTSIDE EARNED INCOME

SEC. 210. Except where the employee's agency or department shall have more restrictive limitations on outside earned income, all employees covered by this title—

(1) who are compensated at a pay grade in the General Schedule of grade GS–16 or above and who occupy nonjudicial full-time positions, appointments to which are required to be made by the President by and with the advice and consent of the Senate, or

(2) who are employees of the White House Office and are compensated at rates equivalent to level II of the Executive Schedule under section 5313 of title 5, United States Code,

may not have in any calendar year outside earned income attributable to such calendar year which is in excess of 15 percent of their salary.

NOTICE OF ACTIONS TAKEN TO COMPLY WITH ETHICS AGREEMENTS

SEC. 211. (a) In any case in which an individual agrees with that individual's designated agency official, the Office of Government Ethics, or a Senate confirmation committee to take any action to comply with this Act or any other law or regulation governing conflicts of interest of, or establishing standards of conduct applicable with respect to, officers or employees of the Government, that individual shall notify in writing the designated agency official, the Office of Government Ethics, or the appropriate committee of the Senate, as the case may be, of any action taken by the individual pursuant to that agreement. Such notification shall be made not later than the date specified in the agreement by which action by the individual must be taken, or not later than three months after the date of the agreement, if no date for action is so specified.

(b) If an agreement described in subsection (a) requires that the individual recuse himself or herself from particular categories of agency or other official action, the individual shall reduce to writing those subjects regarding which the recusal agreement will apply and the process by which it will be determined whether the individual must recuse himself or herself in a specific instance. An individual shall be considered to have complied with the requirements of subsection (a) with respect to such recusal agreement if such individual files a copy of the document setting forth the information described in the preceding sentence with such individual's designated agency official, the Office of Government Ethics, or the appropriate committee of the Senate, as the case may be, within the time prescribed in the last sentence of subsection (a).

EFFECTIVE DATE

SEC. 212. The provisions made by this title shall take effect on January 1, 1979, and the reports filed under section 201(d) on May 15, 1979, shall include information for calendar year 1978.

TITLE III—JUDICIAL PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

PERSONS REQUIRED TO FILE

SEC. 301. (a) Within thirty days of assuming the position of a judicial employee, an individual shall file a report containing the information described in section 302(b).

(b) Within five days of the transmittal by the President to the Senate of the nomination of an individual to be a judicial officer, such individual shall file a report containing the information described in

THE WHITE HOUSE

WASHINGTON

March 7, 1986

MEMORANDUM FOR MARK SULLIVAN
ASSOCIATE DIRECTOR
OFFICE OF PRESIDENTIAL PERSONNEL

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Outside Earned Income Limitation

Section 210 of the Ethics in Government Act of 1978, 5 U.S.C. App. IV, § 210, provides that full-time, non-judicial PAS appointees paid at the GS-16 level or above may not have outside earned income in any calendar year in excess of 15 percent of their salary. Public Law 98-150 amended this provision in 1983 to extend coverage to White House employees compensated at rates equivalent to Level II of the Executive Schedule.

I have attached a copy of Section 210.