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Responses

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I was sitting as a member of that court. This decision was based upon the possibility that I might have discussed the case with my colleagues. I felt that even though I might have no conscious recollection of discussing the particular matter, I might have done so, and that this could raise the appearance of impropriety.

I would like to share a personal experience regarding the notion of the appearance of impropriety. Shortly after I left the court, there was an indictment returned relating to the Teamster pension fund. My firm was retained to appear before Judge Prentice Marshall in that case on behalf of one of the defendants. I did not participate in the pension fund case. I felt that I just was not ready to appear before Judge Marshall. About six or nine months later, I received in the mail a form letter from Judge Marshall, informing me that I had been appointed to represent a plaintiff in a Title VII sex discrimination case. I called Judge Marshall and thanked him for the appointment, telling him that my firm certainly needed the business. And he let me know that this was his invitation to appear in his courtroom. I have since appeared in Judge Marshall's courtroom, and have appeared before several of the other judges with whom I had previously sat. I have never found it to be an impediment, as long as I keep in mind and try to live up to Justice Black's observation that "undivided allegiance and faithful devoted service to a client are the prized traditions of the American lawyer." If we lawyers conduct ourselves in accordance with those traditions, we will successfully resolve most of our ethical problems.

ETHICS OF SWITCHING SIDES - II

*Jill Wine-Banks**

Although it would be much more exciting if I picked apart something that Judge Crowley told you, I cannot do that because I agree with just about everything that he said. But perhaps I can make more real, particularly to students, some of the problems Judge Crowley discussed which lawyers are likely to encounter eventually. These problems may now seem rather esoteric, but they are serious and real problems in the private practice of law.

Because governments change, any rule concerning the revolving

* Solicitor General, State of Illinois; B.S. 1964, University of Illinois; J.D. 1968, Columbia University. Ms. Wine-Bank was formerly a Watergate Special Prosecutor and was a partner at Jenner & Block, Chicago, Illinois, at the time of this speech.

door⁴⁶ from government service to private practice has to be moderated to some extent. A complete ban against movement in and out of government is both unwise and unworkable. One way to avoid a total ban is to construct a Chinese wall. If you have not encountered this concept, you may not know what it is or how it comes up. The Chinese wall is the means by which a law firm segregates out a disqualified attorney so that he or she does not participate in any way in a particular case.⁴⁷ Whatever procedures are used to create a Chinese wall, the result must at least bar the disqualified lawyer from sharing in the fees if he or she is a partner. There must be no discussions or other sharing of information with the disqualified attorney by lawyers in the firm who are working on the case. The Chinese wall must be established before the conflict arises or is brought to the court's attention. If the wall is set up after the opponent makes a motion to disqualify, it is already too late because the firm can never prove that there was not some sharing of information or some contamination of the firm by the knowledge of the disqualified attorney.⁴⁸

Conflicts and the need to screen out one attorney in a firm come up in many, many ways. A situation that was not addressed by Judge Crowley is the husband-wife conflict.⁴⁹ One of the realities of today's practice is that with many couples both the husband and wife are attorneys, and their firms may be on opposite sides. I know this sounds like the movie "Adam's Rib," but it really does happen. For example, in my own firm one of my partners is married to the chief lawyer for AT&T. We represent MCI in the litigation against AT&T. In such a case, we obviously had to screen my partner from anything to do with the MCI/AT&T case or else we might have been disqualified from representing MCI. It has been held sufficient that my partner has been totally eliminated from any discussion or sharing in the profits from that case, through the creation of a Chinese wall and a complicated book-keeping system and restricted distribution of information about the case.

46. This term is used to describe the practice of lawyers moving back and forth between the government and private practice. See LaCovara, *Restricting the Private Law Practice of Former Government Lawyers*, 20 ARIZ. L. REV. 369, 369 (1978).

47. See generally Comment, *The Chinese Wall Defense to Law-Firm Disqualification*, 128 U. PA. L. REV. 677 (1980).

48. See Comment, *supra* note 47, at 713.

49. Rule 1.8(i) of the Model Rules provides that a husband and wife must not represent clients whose interests are "directly adverse" without first obtaining the consent of the respective clients after consultation.

Similar conflicts arise when a lawyer comes, as I did, from government.⁵⁰ This revolving door between government service and private practice happens often in Washington, D.C., where a lawyer frequently starts out in government, leaves for private practice, then goes back into a new administration, and then returns once again to private practice.

When I joined Jenner & Block, I came to Chicago from Washington, D.C., after serving as General Counsel of the Army. There is almost no firm in Chicago that does not represent someone in some capacity against the Army, or which is not involved in negotiations with the Army for government contracts. For this reason, I felt that I could not even talk to a law firm about potential employment until I had resigned my position, because were I to talk with them, I would compromise myself in the exercise of my governmental duties. Therefore, it was only after I resigned and moved to Chicago that I even talked to any firm about a partnership. Then, when I was interviewing, one of the largest clients of Jenner & Block was a corporation with significant government contracts. This caused a lot of discussion between me and Jenner & Block as to whether a Chinese wall would work for me. This discussion was complicated by the fact that at the time, the Second Circuit had recently decided a case called *Armstrong v. McAlpin*.⁵¹ The court had held that a Chinese wall was not adequate and that if someone came into a firm who was barred from a particular case because of a conflict, then the whole firm had to give up the case.⁵² This matter had to be resolved before I could be offered a partnership in a firm that might have to give up a significant client if the *Armstrong* case withstood further appeal. Fortunately, the case was reheard en banc and overturned, so the problem was eliminated.⁵³

Besides the ethical problems which may result when government attorneys go into private practice, there is also the need to comply with federal regulations in this area. As Judge Crowley stated, after an attorney leaves the government, it is illegal to appear within

50. For a general discussion of the issues involved in the switch from government service to the private sector, see LaCovara, *supra* note 41; Mundheim, *Rethinking the Revolving Door*, 14 CREIGHTON L. REV. 707 (1981); *Developments in the Law — Conflicts of Interest in the Legal Profession*, 94 HARV. L. REV. 1244, 1428-43 (1981).

51. 606 F.2d 28 (2d Cir. 1979).

52. *Id.* at 34.

53. *Armstrong v. McAlpin*, 625 F.2d 433 (2d Cir. 1980) (en banc), *vacated on other grounds*, 449 U.S. 1106 (1981). The en banc court agreed with the district court judge that the former government attorney had been sufficiently screened from his firm's participation in the case. 625 F.2d at 445.

one year before his or her former agency in connection with a matter which had been under his or her official responsibility.⁵⁴ The law also prohibits a former government attorney from being involved for two years in any case which was actually pending under his or her official responsibility within the year prior to his or her leaving the government.⁵⁵ In addition, a former government attorney is permanently barred from switching sides in any case in which he or she participated personally and substantially while in the government's employ.⁵⁶ This criminal prohibition relating to cases in which a former government employee was personally and substantially involved carries over to partners of that former government attorney.⁵⁷ These rules meant that I could not, in any capacity, make an argument to the Army or represent anyone before the Army. Furthermore, neither I nor any of my partners could be involved in cases which I had had substantial personal involvement. I was lucky, however, because the Pentagon actually consists of four separate agencies—the Department of Defense, the Army, the Navy and the Air Force. The fact that I could appear before three out of the four branches of that entity moderated the effects of that limitation for me.

I disagree with the section of the rules barring appearances before one's former agency. I think there is a way to make appropriate judgments, as Judge Crowley made judgments about whether he would handle cases in front of judges with whom he had previously sat on the bench. Just as Judge Crowley described making a decision about whether to appear in a particular case before a former colleague on a case by case basis, I believe that the decision regarding appearing before your former agency can be

54. 18 U.S.C. § 207(c) (1982).

55. 18 U.S.C. § 207(b), (c) (1982).

56. 18 U.S.C. § 207(a), (c) (1982).

57. 18 U.S.C. § 207(g) (1982).

MODEL CODE DR 5-105(D) provides that "[i]f a lawyer is required to decline employment or to withdraw from employment under a Disciplinary Rule, no partner, or associate, or any other lawyer affiliated with him or his firm, may accept or continue such employment." If read literally in conjunction with DR 9-101(B) of the Model Code, which precludes a lawyer from accepting private employment in any matter in which he or she had substantial responsibility while serving as a public employee, DR 5-105(D) would disqualify a former government attorney's entire law firm if he or she were barred by DR 9-101(B). However, the ABA has not applied a literal interpretation. See ABA COMM. ON ETHICS AND PROFESSIONAL RESPONSIBILITY, FORMAL OP. 342, at 10. The new Model Rules provide that if a lawyer is disqualified from a case because of personal and substantial involvement while he or she was a government employee, the lawyer's law firm will also be disqualified, unless the lawyer is screened from the case, he or she is not apportioned a part of the fee earned in the case, and written notice is promptly given to the appropriate government agency. MODEL RULES Rule 1.11.

made on the facts of a particular case by the individual involved. Under some circumstances it would have been inappropriate for me to go before someone in the Pentagon to make a request, but I do not think that a blanket prohibition is necessary. I believe that the judgment of whether it is appropriate or inappropriate to appear before one's former agency should be made more flexible.

Furthermore, I do not consider it inappropriate to be able to make a phone call to someone you know and to get an appointment simply because you know that person. Once you meet, it is not going to influence the outcome of the matter. I firmly believe that public servants act in the public interest, not on the basis of friendship. When I was General Counsel of the Army, someone would call and would be able to get an appointment to see me, rather than a staff person, because I knew them from some other context. I did not make a decision that helped or hurt them because I knew them. I made the decision that was appropriate to the case. I do not think it is wrong to use your knowledge of the people in an agency any more than it would be wrong for a lawyer to use knowledge gained during government employment of how an agency functions.

Another issue which arises quite frequently is the representation of two potentially conflicting parties. It happens if you represent co-defendants, and it occurs in civil litigation in a variety of ways. For example, it happened to me yesterday in a deposition in a case where I represent an accounting firm which split off from another firm and is suing its former firm. The former firm was deposing accounting clients that my client's new firm took with it. In addition to representing the new accounting firm, I also was representing a witness/client because he was being sued for allegedly owing money to the old firm, which my clients believed was owed to them because they had done the actual work. Before the deposition began, I was challenged as to my right to represent both sides, on the grounds that I might have a conflict in representing them.

You can resolve such a potential conflict in several ways, one of which is to get informed consent from both parties. You tell both parties about the potential conflict and the consequences, and then they can waive the conflict.⁵⁸ However, I think that you must decide in your own mind whether there is a potential conflict. If a

58. If there are potential conflicts between two clients in litigation, one lawyer may represent both clients if the lawyer reasonably believes that he or she can represent both clients adequately, and both clients consent to the representation after full disclosure. MODEL CODE DR 5-105(A)-(C).

conflict exists, I think that it is an inappropriate and unfortunate position for a lawyer to be in, even if there was a knowing waiver. One reason it is an inappropriate position is that it creates an appearance of impropriety, which, in my view, should be one of the overriding factors in making a judgment about disqualification due to conflicts.

A conflict may also arise when a law firm is retained as counsel against a former client of the firm. I recently had a firm disqualified because my client had had some estate planning done by the firm representing his opponent. My client's financial condition, which he had disclosed during the time this other firm had an attorney-client relationship with him, was a key fact in the current litigation.

The resolution of conflicts is very complicated because of the large size of law firms and the frequent movement by lawyers from one firm to another. Once again, that brings us back to the question of whether the Chinese wall concept cures these conflict situations. Not all courts have found the Chinese wall to be appropriate or effective,⁵⁹ but considering the nature of practice today, if we don't have Chinese walls there is going to be a serious impediment to the practice of law. Similarly, with the revolving door, we must keep in mind that the government will be very seriously affected if lawyers are unable to leave government service and freely pursue private practice.

ETHICS OF SWITCHING SIDES - III

*William Martin**

The state of the law and the practical problems involved in switching sides have been articulated very clearly by Judge Crowley and Ms. Jill Wine-Banks. I would like to suggest a new per-

59. See, e.g., *Westinghouse Elec. Corp. v. Kerr-McGee Corp.*, 580 F. 2d 1311, 1321 (7th Cir.) (in a concurrent representation case, the court found that a Chinese wall had not been constructed between the firm's Chicago-based attorneys working for Westinghouse, and its Washington, D.C.-based attorneys working for a trade association which included three oil companies being sued by Westinghouse in an antitrust action; the court indicated that it did "not recognize the wall theory as modifying the presumption that actual knowledge of one or more lawyers in a firm is imputed to each member of that firm"), *cert. denied*, 439 U.S. 955 (1978); *Fund of Funds, Ltd. v. Arthur Andersen & Co.*, 567 F.2d 225, 229 n.10 (2d Cir. 1977) (the court agreed with the trial court that a Chinese wall could not be built in a single law firm representing two adverse clients in the same lawsuit).

* Private Practice, Chicago, Illinois; B.S. 1958, J.D. 1961, Loyola University of Chicago.

spective on this subject. But first, I would like to describe the personal metamorphosis that I underwent in the practice of law.

All through my career here at Loyola Law School and after graduation, I had made up my mind that I wanted to be a criminal defense lawyer. I felt that being a prosecutor was really the equivalent of applying for membership in the Nazi Party. The only thing I wanted to do in the world was to be an assistant public defender. Unfortunately for me, that office, probably in the exercise of supreme wisdom, decided not to hire me. Illinois Supreme Court Justice Daniel Ward, then the State's Attorney of Cook County, had made the traditional campaign promise that the State's Attorney's Office would not hire on political grounds. He promised to select outstanding graduates, at least one from every law school in Illinois. I had been unable to find work for a considerable period of time, and then learned that Dean Hayes of Loyola received this letter of invitation from Dan Ward asking for Loyola's best graduates. I was not the best in my graduating class but I was the only one who responded to the invitation. Out of economic necessity, I had to jettison my concept that I was joining the Nazi Party and take the oath of allegiance as a Cook County Assistant State's Attorney. In a very short period of time, I discovered that the concept of justice for the underdog, which had dictated my entire college and law school career, had changed completely. Facing the task of becoming a prosecutor, I found that I quickly developed a real zeal for the job.

When I left the State's Attorney's Office after six and one-half years of experience to enter private practice, the current sensitivity about switching sides did not exist. I suspect that lawyers had not yet developed the concept of a motion to disqualify as a strategic device to hamper the opposition's case. State's attorneys frequently left to go into private practice. You obviously did not defend the same case you started to prosecute, but beyond that general restriction no rules existed. You left the building one day after your farewell party, and then you returned the following day with your first client. You then found out that all the good will you thought you had developed with the courtroom personnel, the police department, and your colleagues had quickly gone down the drain.

Perhaps it was again a result of economic necessity, but in my very first case as a defense lawyer I immediately shed all of the prosecutorial zeal I had developed. People asked me how I was able to make the adjustment from prosecution to defense work.

My response was that I had found little or no adjustment. My current client was a defendant, whereas my client last week happened to be the People of the State of Illinois. But since I was an advocate, I didn't have any problem adjusting to the switch in sides.

As I have grown older and perhaps spent too much time exclusively as a defense lawyer, I have reached a conclusion which leads to my new perspective on changing sides. I have concluded there is not enough switching of sides in our legal system. If, as a defense lawyer in 1984, I tried a case against the type of prosecutor that I had been in 1965, I would consider that prosecutor to be insufferably self-righteous, totally narrow-minded, and lacking in any sense of empathy or compassion. In some respects I would view the prosecutor as being unfit to handle the responsibility of prosecution. In all candor, even though I would look upon myself as being one of the fairer and better prosecutors, that narrow-minded description would still apply.

In our current practice, law school graduates go right to the State's Attorney's Office or to the Public Defender's Office and stay there for five or six years. I believe that this practice leads to a system in which those lawyers very quickly develop what can be described as either a prosecution mentality or a defense lawyer mentality. Our system allows prosecutors to develop in a very isolated environment where they do nothing but prosecute. Prosecutors thus become victims of the same kind of cynicism that is known to permeate law enforcement officers. Certainly I am not suggesting that the prosecutor or the law enforcement officer is a bad person. However, we all become victims of our experience. If you sit in your office every day and talk to the survivors of a near and dear relative who was brutally murdered, or to a rape victim, or to a homeowner who did not get his property back, you naturally develop a definite mind set. This attitude permeates your activity to such an extent that it is hard to see beyond the confines of this narrow tunnel. It may culminate in unfair recommendations for sentencing or in the adoption of the unfortunate philosophy that the ends justify the means.

I believe that we would have a better legal system if, in major cases, trial lawyers could represent the prosecution one day and the next week appear for the defense in another case.⁶⁰ My recommen-

60. Such a system would be very similar to the English legal system. The legal profession in England is divided into solicitors and barristers. Solicitors handle the preparatory stages of litigation, such as preparing evidence and interviewing witnesses. Solicitors

dation is admittedly a very utopian one. But the practice of retaining trial lawyers for the prosecution in one case and for the defense in another case would result in a highly capable trial bar being available to both the state and the defense. Young lawyers would be exposed to both prosecution and defense work and become more sensitive and effective advocates. Such a trial bar would have substantially more integrity than the bar which we have developed.⁶¹ I realize that I might be a little presumptuous in telling people that I want to restructure the entire legal system, so that we have a true criminal trial bar that is available to both sides. But today's discussion presents a wonderful opportunity for exploring new perspectives. I am convinced that our system of criminal justice would benefit enormously if it required lawyers practicing criminal law to switch sides regularly.

QUESTIONS AND ANSWERS*

QUESTION: It seems there has been a tremendous shift in the ability of recent law school and other professional graduates to be able to discern ethical issues from an ethical perspective, because of the decline of the arts in college education. Would you advise law school admission committees to include this as a factor in selecting candidates, in addition to grade point average and LSAT exams?

MR. MARTIN: It is difficult to make an accurate evaluation of how a law school applicant is going to turn out ethically in the practice of law. People who went through a very tough screening process at very well known law schools have been disbarred. My suggestion regarding trial lawyers doing both prosecution and defense work is based, in part, on my belief that a lawyer should not do only prosecution work for six years and then do defense work for the rest of

have the right to appear in the lower courts. They also engage in a variety of non-litigation matters. R. WALKER & M. WALKER, *THE ENGLISH LEGAL SYSTEM* 192 (2d ed. 1970). Barristers, on the other hand, are primarily advocates. They have an exclusive right of audience in the higher civil and criminal courts. D. KARLEN, *ANGLO-AMERICAN CRIMINAL JUSTICE* 31 (1967). A barrister does both prosecution and defense work. After prosecuting a case on behalf of the Crown one week, he might next represent a defendant. For a general discussion of the division between barristers and solicitors, see Q. JOHNSTONE & D. HOPSON, JR., *LAWYERS AND THEIR WORK: AN ANALYSIS OF THE LEGAL PROFESSION IN THE UNITED STATES AND ENGLAND* 357-98 (1970); D. KARLEN, *supra*, at 30-32; R. WALKER & M. WALKER, *supra*, at 191-210.

61. I do not think that the confidentiality issue would be problematic under this type of system.

* These questions and answers are merely representative of the stimulating discussion following the lectures. The complete transcript is available from Loyola University of Chicago School of Law.

his or her life, because he or she is ill-equipped those first six years. I do not know how you can solve that problem when you are selecting a law school candidate.

MS. WINE-BANKS: Although the idea of young lawyers doing both prosecution and defense work is an interesting one, some issues must be considered. For one thing, the zeal that young prosecutors have may well be a part of our legal system. A lawyer is an advocate, and should argue his or her heart out, for whichever side the lawyer represents. I am concerned that, particularly with young lawyers, this going back and forth will prevent their ever being able to develop that kind of one-sided zeal. I would like to relate a personal experience relating to this point.

During Watergate, the three trial lawyers were Jim Neal, Rick Ben-Veniste and myself. Jim had been in private practice as a defense attorney for many years just before Watergate. Earlier in his career, he had been a prosecutor. He had prosecuted Jimmy Hoffa, and then had gone into private practice. Rick and I had both come out of the Department of Justice directly to Watergate. We had many a fight with Jim where we said, "Jim, you're an old softy; what do you mean you're not going to indict this guy? Or, "What do you mean you see his side? That's ridiculous." Jim would just cluck his tongue and say, "Oh, you youngsters, you don't know what you're doing because you've never been on the other side." And I have to admit that as soon as I went into private practice after Watergate, I understood what he meant.

There is no question that you do not understand the other side, and that you do things that you would not do if you had been on the other side and understood that point of view. I think I am a better defense lawyer for having been a prosecutor, for some of the reasons which Bill Martin mentioned. Because I can see how I would have prosecuted the case, I can better defend the case. I also know the system and thus can be more effective in defending. I think that's good. And, at the same time, I also think that I would be a more effective prosecutor if I were to go back again, because of my experience defending and in seeing the other side.

I don't know, however, that I could have made a daily switch back and forth between defending and prosecuting, particularly when I was right out of law school. I think I could do it now because I have had enough experience on both sides to develop a firm grasp of the roles of both the prosecutor and the defense lawyer. I just wonder at what stage in life that becomes possible. Yet,

despite these reservations, I do think that Bill's idea has some merits and could work.

Jenner & Block sends some of its associates to the State's Attorney's Office to help them prosecute for short periods of time, and also to the Federal Defender's Office to defend. This gives the associates immediate trial experience, which you would not otherwise get in private practice, and it also familiarizes them with both sides.

MR. CROWLEY: I think Bill's idea of alternating every now and then between prosecution and defense work is a good one. If you only do one type of work constantly I think you can become jaded. That is why I really enjoy doing both civil and criminal work. Doing the civil work makes me a better criminal defense lawyer and vice versa.

QUESTION: What about a situation where an attorney invests in a client's business and later suspects that he was induced to invest as a result of fraud, or has a similar sort of complaint against a client? Does the lawyer have any right to protect his individual position?

MR. CROWLEY: Of course. Your question raises the issue of the manner in which lawyers should protect themselves. A lawyer can certainly wear different hats. He can be an investor as well as a lawyer.⁶² However, he should try to keep at arm's length from his clients on all levels, because it destroys the lawyer's objectivity if he becomes too close to them. Lawyers must conduct their affairs so as not to give rise to the appearance of impropriety.

A related issue which has been raised in many large law firms is whether an attorney should serve as a director of a corporation when he is also general counsel to that corporation. There may be a potential conflict in such a situation.

QUESTION: In a recent case a defendant's attorney resigned to become a prosecutor. The defendant then moved to disqualify the entire prosecutor's office. That case led the court to examine the appearance of impropriety standard. Do you believe that standard should be eliminated, as it has been under the new Model Rules,⁶³

62. See MODEL CODE DR 5-104(A) (a lawyer must not enter into a business transaction with a client unless the client consents after full disclosure); MODEL RULES Rule 1.8(a) (requiring that a business transaction between a lawyer and client be reasonable and fair to the client, and that the client consent in writing after full disclosure).

63. MODEL CODE Canon 9 states that "A Lawyer Should Avoid Even the Appearance of Professional Impropriety." Comment to Model Rule 1.11 of the Model Rules eliminates the appearance of impropriety standard in the area of vicarious disqualification.

and, if so, what are the implications?

MR. CROWLEY: The federal statute on disqualification of judges states that a judge must disqualify himself in any proceeding in which his impartiality might reasonably be questioned.⁶⁴ I think that the way in which either impartiality or the appearance of impropriety is determined is somewhat reminiscent of Justice Stewart's comments about obscenity, that he can not define it but he knows what it is when he sees it.⁶⁵ I do not think the term "appearance of impropriety" means different things to different people. I think that all of us in this room would agree on whether or not a given set of circumstances created an appearance of impropriety. I am comfortable with the term "appearance of impropriety" because of its all-inclusiveness.

MR. MARTIN: My firm does a small amount of disciplinary work. I am not aware of any cases in which a lawyer was disciplined solely on the basis that his conduct created the appearance of impropriety. The term is usually included as an alternative ground in a conflict of interest disciplinary case. My sense is that it has no independent life as a disciplinary rule.

QUESTION: Judge Crowley, would you apply the same standard in a motion to disqualify the defense counsel in a criminal case as you would in a civil case?

MR. CROWLEY: I think they are distinctly different standards, because in a criminal case there are sixth amendment considerations. An accused is entitled as a matter of right to the assistance of counsel. In my view, it would take a lot more to disqualify somebody in a criminal case than it would in a civil case.

An example relates to this point. In one case, I spent the better part of a day with three defendants, all sophisticated businessmen, who were being represented by a very sophisticated lawyer. I told them how this lawyer might not serve each of their interests effectively by representing all of them, because I was required to warn them about this potential conflict of interest. The defendants indicated that they understood, but that they all still wanted that lawyer. I allowed the lawyer to represent all of the defendants. I felt that they had made the correct decision.

QUESTION: So it would take more than the mere appearance of impropriety to disqualify a defense attorney?

64. 28 U.S.C. § 455(a) (1982).

65. *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

MR. CROWLEY: That is absolutely correct. Judges must tread lightly before they can disqualify counsel, because of a defendant's sixth amendment rights.

In a criminal case it is the government who is going to be making the motion to disqualify. Our society should not be in a situation in which the government chooses defense lawyers for accused persons.