

Mr. Abe Fortas,
Yale Law School,
New Haven, Connecticut.

Dear Abe:

I wish you would look at the tables on trading and consider the way in which we can use in the report.

I am now working on that chapter in Part III dealing with trading activities of members and affiliated interests. I talked with Miss Kelby. The following limitations appear:

If a member of affiliated interest bought one security, that purchase would be included in the table. If a member or affiliated interest sold one security, such sale would likewise be included. That is to say, no regard to volume of purchases or volume of sales or volume of purchases and sales was made when the table was compiled. Do you think the matter of volume should be considered in compiling such table? In this connection, the following considerations may be important:

A member may be selling by reason of information or he may selling by reason of any one of a dozen other factors.

As indicated above, the table was not set up with a view to showing in and out transactions. If Hayden's purchases and sales in Cuba Cane are to be taken as typical of trading, these tables will not be accurate.

When we drafted the questionnaire we very foolishly failed to call for a breakdown of those purchases of the security made within the six months prior to the formation of the committee and those purchases made after the formation of the committee. Looking at such purchases from the point of view of the use of inside information by insiders, those purchases and sales made after formation of the committee have a different significance than those made before the formation of the committee. Miss Kelby states to me that it will not be possible in a substantial number of cases to make that breakdown in view of the fact that many of the returns merely state gross purchases and gross sales, the dates of those purchases and sales not being given.

I had originally planned to treat this subject of trading on the theme of the use of inside information. I am now about convinced, however, that I will have to place it on the broader plane of fiduciary obligation. We can talk these matters over when I see you this week-end.

Yours faithfully,

Douglas