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Stock Seen Problem For Powell

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NEW YORK, Oct. 30 — Members of an American Bar Association ethics committee expressed doubt today that Supreme Court nominee Lewis F. Powell Jr. can cure all potential conflict-of-interest problems by putting his estimated $1 million worth of stock holdings in a "blind trust."

The only alternative for Powell, the prosperous Richmond attorney who has been nominated to replace the late Justice Hugo L. Black, may be to sell at a sacrifice some stocks which would otherwise cause his disqualification in major cases, the ethics committee members said.

Powell, who faces a Senate confirmation hearing on Wednesday, is known to favor the blind trust idea as a way to conserve his assets without causing him to sit out key cases involving the financial welfare of companies in which he holds an interest. He has offered to take any other steps required by judicial ethics.

Opinions about Powell's financial problems were expressed privately here by members of a blue-ribbon ABA committee which is conducting a three-year study to revise the code of conduct for judtes which dates back to 1924.

The committee was formed in the wake of the 1969 resignation of Justice Abe Fortas amid questions about his outside income. It has published tentative new rules based partly on the controversy that led to Senate rejection of Clement F. Haynsworth Jr. as Fortas's successor.

Retired California Chief Justice Roger J. Traynor said the committee could re-examine the blind trust question in executive session after hearing judges and lawyers in public session today. Traynor is chairman of the committee, which includes Supreme Court Justice Potter Stewart and other prominent figures in the law.

U.S. Presidents and Cabinet members hav used various methods to insulate large business interests from their decision-making, but the pure blind trust — in which the public official is totally unaware of what an independent trustee is doing with his stock portfolio — is considered rare.

In any event, some ethics members said today between committee sessions, current federal law requires judges and justices to disqualify themselves in any case in which they have a "substantial interest." They noted that a judge could violate the law without knowing it but the law implies that a judge must make it his business to know what stock he owns.

Existing ethical canons require judges to abstain from investments in "enterprises which are apt to become involved in litigation in the court." The 1924 rules, carried forward in the proposed new code, require a new judge to retain such holdings no longer than necessary "to dispose of them without serious loss."

On Friday the Senate Judiciary Committee released a list of Powell's stockholdings in 30 corporations. The forced sale of some of these securities could produce large capital gains taxes because of great increases in the value of the stock over the years.

In tentative drafts the committee has proposed that any stock interest in a company, not merely the "substantial interest" stated in federal law, should automatically disqualify a judge from a case involving that company.

Although some witnesses have told the ABA the rule would be too strict, a committee majority has taken the position that the new rule would minimize side battles over a judge's income and in the long run would require less public disclosure by the judge of his private income.

Some committee members indicated that they had considered the blind trust method incompatible with federal law and thus beyond the committee's scope of investigation. One member said the committee could recommend that Congress, which also is studying the problem, change the law to allow for a blind trusteeship.