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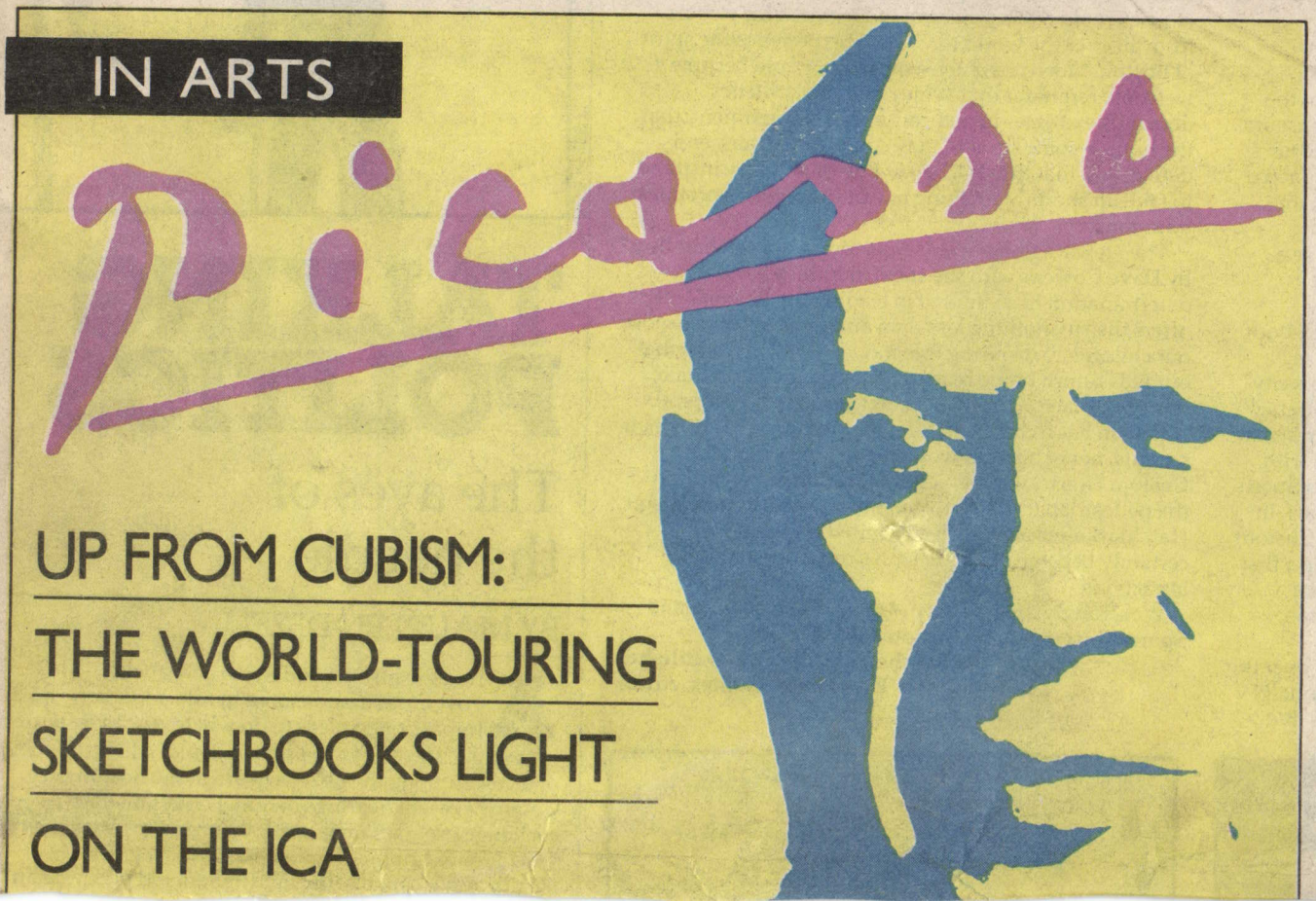
IN ARTS




UP FROM CUBISM:

THE WORLD-TOURING SKETCHBOOKS LIGHT ON THE ICA

# The criminal case against Meese

by Harvey Silverglate

On the basis of what Edwin Meese III already admitted or incontestably did while holding high office in the Reagan administration, the US attorney general could long ago have been indicted for accepting a series of financial favors from people for

*by David Bonetti*

# The marathon man

## Duke's free from the pack, racing for home

by Scot Lehigh

Dim the lights, turn on the teleprompter, and delegates take your seats. When you look at Mike Dukakis, you're looking at the man who is going to be the Democratic Party nominee for president. It's been a light-year from Belgian endive to the Big Apple, but in the 13½ months since his first, faltering tour of Iowa, Dukakis has progressed steadily through the many stages that mark the transition from long shot to best shot. And on Tuesday New York finally put the stamp of inevitability on his candidacy.

Throughout the many twists of this long campaign, Mike Dukakis has run his own race, a determinedly non-controversial one stressing competence, experience, and electability. In New York, more than anyplace else so far, that steady-as-she-goes, stay-above-the-fray tack paid off. There, the campaign trail changed from a marathon course to an obstacle course, and Dukakis, alone among the candidates, managed to chart a safe path through it.

Sticking to his aversion to negative campaigning against fellow Democrats, Dukakis won this contest with dignity, despite the fact that the New York primary was anything but a dignified contest. It was ugly, divisive, vicious, and brutal, rubbing raw old religious and racial wounds. New York has Ed Koch to thank for that. From the moment Koch let forth his first anti-Jackson screed, the race could be little else. Koch's remark that Jews would have to be "crazy" to vote for Jackson set the tenor for the campaign to come — and established a dynamic that helped Dukakis. Because the mayor's Jews-against-Jesse framework highlighted strategic considerations at the expense of almost all other issues, Koch also poisoned the well for the very man he later endorsed. Al Gore, Koch told New Yorkers, was the best candidate. But if this race was to be about stopping Jesse Jackson, Mike Dukakis was the only logical choice for nearly a quarter of the electorate. A vote for Gore, who was mired in a distant third, could only be construed as a vote for Jesse Jackson, who was a solid second.

Not that Al Gore ever had much of a chance in New York. From the very day he announced, Gore was a man in search of a message. Geography sufficed — though just barely — through Super

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whom he did official favors. Indeed, were Meese a less important public official, he probably would have already been indicted: New York Congressman Mario Biaggi, for one, has been convicted, and sentenced to prison, for doing less than Meese clearly has done.

And according to published reports, William Weld — the former US attorney in Boston who recently resigned as assistant attorney general in charge of the criminal division of the US Justice Department under Meese — has told friends and associates that if the decision were his, he would already have sought Meese's indictment. Weld is expected, if asked, to repeat those dramatic remarks before members of the Senate Judiciary Committee, which reportedly will subpoena him shortly to testify about the reasons he left the Justice Department.

* * *

Title 18 of the United States Code covers most federal crimes, and Chapter 11 of Title 18 covers "Bribery, Graft, and Conflicts of Interest." This chapter contains the statutes on which Meese stands in danger of being charged, the most important and serious of which outlaws bribery of federal public officials. The pertinent part reads as follows:

"Whoever, being a *public official* ... directly or indirectly, *corruptly* asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive *anything of value* for himself or for any other person or entity, *in return for* being influenced in his

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VOODOO ILLUSTRATION BY BOB PRIEST

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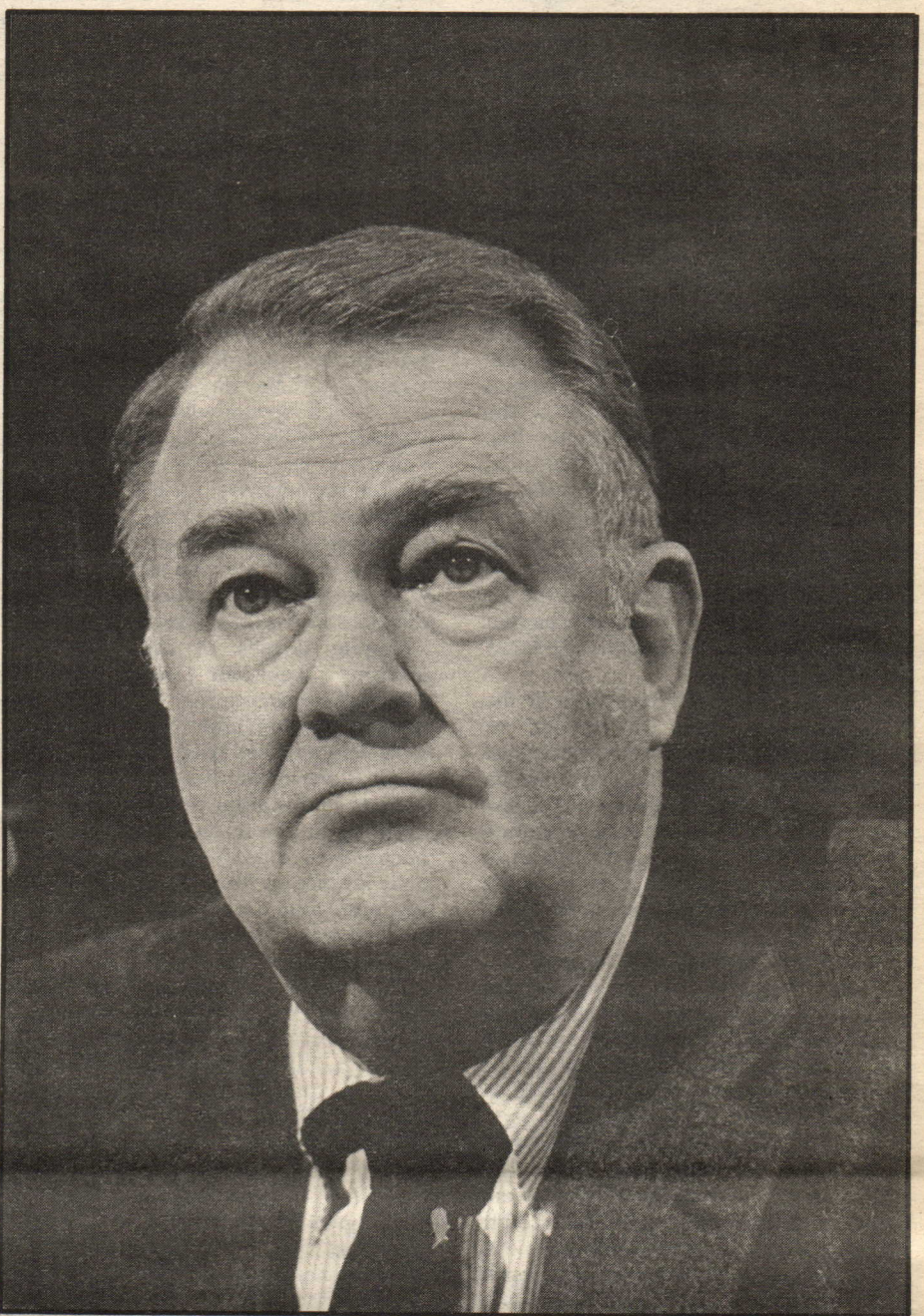
# The criminal case against Meese

by Harvey Silverglate



JOHN NORDELL

*Meese: a pattern of favors that should bring an indictment*

*Continued from page 1*

performance of any official act . . . shall be . . . imprisoned for not more than fifteen years . . . and may be disqualified from holding any office of honor, trust, or profit under the United States." (Emphasis added.)

In order to convict a defendant under the bribery statute, a jury must conclude beyond a reasonable doubt that the defendant acted *corruptly*. This usually means that the government has to prove not only that the defendant received something of value, and not only that he did something in his official capacity for the person who provided the thing of value, but also that the government official *knew* there was a connection between the two, in other words, that a bribe was given in exchange for an official act.

There is another section in the statute that describes conduct less serious but still a felony. It outlaws what in common legal parlance is known as receipt of a *gratuity*, as distinct from a bribe. It reads:

"Whoever, being a public official . . . directly or indirectly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself for or because of any official act performed or to be performed by him . . . shall be . . . imprisoned for not more than two years."

A gratuity is somewhat like a tip, spontaneously given in appreciation for a favor but without a prior arrangement of a quid pro quo. The difference between the bribery statute and the gratuity statute is, in practical terms, that a public official can be convicted of receipt of a gratuity *even if the prosecutor is unable to prove that he acted with a corrupt intent*. The gratuity statute, viewed from another perspective, simply criminalizes what previously might have been considered mere ethical infractions.

There is enough evidence to suggest that Ed Meese might readily be indicted and convicted of a gratuity violation. There is even a case to be made that he violated the bribery statute, though a really cautious prosecutor might hesitate to bring the more serious charge unless the evidence now on the public record, sufficient to prove a gratuity violation, were supplemented by additional evidence to show that Meese indeed knew of a connection between what he was getting from his cronies and what he was doing for them. Such evidence of this kind of knowledge — or corrupt intent — is, in most cases, supplied by some co-conspirator or partner in crime who, in exchange for lenient treatment for himself, turns state's evidence and testifies against his former comrade in crime.

At present, independent counsel James C. McKay does not seem intent upon putting pressure on any of Meese's pals — specifically W. Franklyn Chinn and E. Robert Wallach, who have been indicted on fraud and racketeering charges in connection with the Wedtech scandal by Manhattan US Attorney Rudolph Giuliani — to try to get them to testify about the attorney general's knowledge and intent. Most prosecutors would press in this direction. But McKay not only does not seem to be taking this route, he is not even trying to make the case for the less serious gratuity charge. McKay, an extremely cautious prosecutor, has thus far refused to bring an indictment in the absence of a "smoking gun."

It may be that any cautious prosecutor would not seek an indictment for any *single* matter in Meese's ample portfolio of transgressions. What McKay seems to be missing, however, is the *pattern* of abuse that the history of Meese's conduct in office demonstrates.

When Meese, in 1984, faced the Senate Judiciary Committee, which was examining Reagan's nomination of his old friend for the attorney general's position, he was questioned about his conduct while counselor to the president from 1981 to 1985. What *Newsweek* called "a disturb-

ing pattern of financial dealings" emerged. "Meese associates," reported the magazine, "seem to provide him with financial assistance under the most favorable conditions. . . . And later, many of these financial benefactors are appointed to posts in the Reagan administration." Such exchanges of favors, if done "corruptly" (that is, explicitly in exchange for one another), would violate the bribery statute, but even if done without clear corrupt intent could well violate the gratuity statute. Speaking broadly in his own defense during an interview published by *Newsweek* in April 1984, Meese said, "I think it's important to stress that at no time was there any connection between any financial transaction in which I was involved and anybody getting a job with the federal government."

But a clear pattern has emerged.

### The Thomas loan

Edwin Thomas was a Meese crony going way back to California conservative political circles. After the close of the Senate Judiciary hearing on Meese's nomination for attorney general, Meese, as a result of media questions, remembered and reported to the committee a $15,000 interest-free loan Thomas had made to Meese's wife, Ursula, that Meese had neglected to disclose as required by the Ethics in Government Act. Thomas was later appointed Meese's deputy in the White House and was then appointed regional director of the General Services Administration's San Francisco office. Thomas's wife similarly landed a plum federal job. Meese's sudden recollection caused the committee to reopen the hearings. Referral of the matter to independent counsel Jacob Stein soon followed.

### The McKean deal

John McKean, a tax accountant, had arranged for $60,000 worth of loans to be made to Meese in 1981. He agreed to defer $12,000 in loan interest, and at the very meeting at which the deferral was agreed upon, discussed with Meese a possible position on the Postal Board of Governors. He landed the job upon Meese's recommendation, but Meese has stated emphatically that "there was

McKean's mind between the two events. (Meese, it would appear, had studied the bribery and gratuity statutes sufficiently to know the importance of the presence or absence of such a "connection.")

### The Barrack bailout

In the summer of 1982, Meese wanted to sell his home in San Diego. The bank was threatening to foreclose on the mortgage, and the Meeses had also fallen behind on payments for their house in McLean, Virginia. Thomas J. Barrack, a California real-estate developer, helped arrange the sale, even to the extent of putting at least $70,000 of his own money into the purchase of the home in order to swing the deal. Shortly thereafter, he was appointed deputy undersecretary of the Interior. He denied to the Judiciary Committee that there was any connection between the house sale and the job he landed.

Yet when independent counsel Stein investigated, he found, according to his report, that Barrack had met with Meese at least three times between the sale of the house and the time of his federal job appointment. Stein declined to seek an indictment against Meese, though he pointedly refused to say that he had found no problems with Meese's conduct.

### The Bender lease

On April 14 the Associated Press reported that at the time that prominent real-estate developer Howard S. Bender was negotiating a deal that concluded with the Department of Justice signing a $50 million, 10-year renewal lease for space in his problem-plagued Washington office building, Bender had arranged for Meese's wife to land a three-year, $40,000-per-year job with the Multiple Sclerosis Society in Washington. In fact, the society's attorney, James Bierbower, told the *New York Times* earlier this year that the Bender Foundation grant of $120,000 to the society went for her salary. According to Bryan Barkley, an attorney on the society's board, it was "not normal" and a "little unusual" to earmark a grant for the salary of a specific person. (Bierbower later retreated, saying the contribution "was not made with the explicit stipulation that it constitute Mrs. Meese's salary.") A

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# Meese

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spokesman for the society admitted that from the day it learned of the Bender Foundation grant, "we were after Ursula Meese." The Bender family had made one prior effort to get Mrs. Meese a paid public-affairs job, that time at the Benders' rock-and-roll radio station, WWDC. She turned that down but accepted the Multiple Sclerosis Society position. Wallach's lawyer, George Walker, has stated that Wallach played a "peripheral" role in Mrs. Meese's landing the job at the society.

The Department of Justice's decision to sign the lucrative renewal lease was a 180-degree about-face from the government's earlier decision to vacate the space when the department's lease expired. That would have seriously lessened the building's value, but as it turned out, Bender sold the building a mere 13 days after the lease was signed for $22.6 million more than the purchase price, producing a profit of approximately 50 percent in just two years. Meese has denied any knowledge of the lease negotiations with Bender.

### Wedtech and the Iraqi pipeline

But all this pales in comparison to Meese's two most publicized and boldest deals — Wedtech and the Iraqi pipeline project. At the center of both episodes is one key figure — Meese friend and attorney E. Robert Wallach.

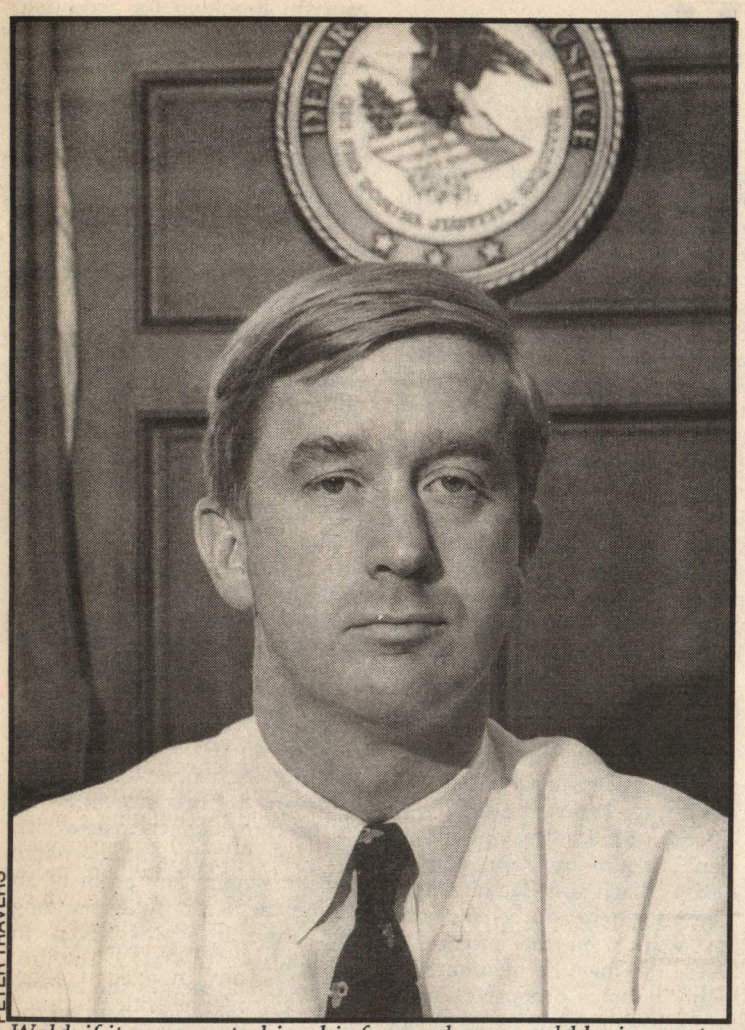
The Wedtech situation is fairly well known, though important aspects of it have received surprisingly little attention in the news media. Basically, Wedtech officials spread around a lot of money in their effort to land highly lucrative defense contracts

investment-counselor friend of his, W. Franklyn Chinn, were deeply involved in Wedtech's affairs — W[illegible]ch as a lawyer and Chinn as a [illegible]ltant and director for the firm. That involvement landed both of them in the middle of a federal indictment issued recently by Manhattan US Attorney Giuliani.

Ever since Meese had become counsel to the president, in 1981, Wallach had followed a practice of sending him a stream of memos on matters and projects in which Wallach had a pecuniary interest. Often Wallach would even direct copies of the memos to Meese's home, according to a knowledgeable source. During 1982 one of Meese's deputies at the White House wrote numerous memos and made phone calls to Meese's staff, and Meese made some calls of his own, purportedly seeking to make sure Wedtech received a "fair hearing" from the Pentagon in connection with defense contracts it was seeking. Wedtech scooped up one after another very lucrative contract, and Wallach made at least $1.4 million for his work, half in stock and half in cash. The Wedtech people reportedly wanted to do something nice for Meese, who had been so helpful to Wallach and to the company. They understood from Wallach, however, that the moment for such a favor was not propitious.

Then came Meese's nomination to the attorney general's post being vacated by William French Smith. Wallach approached Wedtech and said he was going to be representing Meese in connection with the upcoming confirmation hearings and might be tied up for as long as a year. Wallach asked for an advance of $300,000 as a fee from Wedtech and received it. He then went to work as legal counsel to Meese during 1984, and Meese was finally confirmed in 1985.

The situation became even more curious, however, when it came time for Wallach to be paid



PETER TRAVERS

*Weld: if it were up to him, his former boss would be in court.*

for his successful representation of Meese. Wallach was, after all, one of Meese's two principal lawyers, along with Leonard Garment of the Washington, DC, firm of Dickstein, Shapiro & Morin. Garment's bill came to $578,362, whereas Wallach's amounted to $142,563. Meese, taking advantage of a new provision of the law that allows those investigated and cleared by independent counsels to recoup their legal fees, applied to the US Court of Appeals for the District

liquid assets for placement into what was later described as a "limited blind partnership." The partnership's funds would be managed by Wallach's friend W. Franklyn Chinn, who, Wallach told Meese, had a great track record in investments. Meese may not have known much about Chinn, but according to a source, he did know that Chinn, like Wallach, had a connection to Wedtech.

Following Wallach's advice, in May 1985 Meese turned over

owed to the lawyers. The court, however, cut down by a third the amount awarded to Meese for his lawyers, for a total of $472,190. The cutting of the fee award raised questions as to whether the fees charged by Garment and Wallach had been excessive. (They charged $250 per hour, yet the Department of Justice previously and since has taken the position that lawyers who win civil-rights cases against the United States should be paid only $75 per hour out of the public's coffers. Meese apparently felt his own lawyers were worth more than lawyers who win mere civil-rights suits against the government.)

In January 1985 the *New York Times* reported that Garment and Wallach had billed Meese at their regular rates because — as they explained in a jointly issued statement — to have charged Meese a rate lower than their normal one "would have subjected Mr. Meese to the possible political criticism that he had accepted preferential treatment." What Wallach did not bother to mention, of course, is that were he to have substantially undercharged Meese, he might have run afoul of the anti-gratuity provisions of federal law, since Meese had done so many favors for him.

Ultimately, Wallach and Garment decided not to seek from Meese that portion of his legal bills not paid by the government and announced that they considered the court-awarded amount "full compensation" for their services.

One is tempted to ask why the forgiveness by Wallach of a portion of his fees does not constitute the giving of a gratuity and why Meese's acceptance of the reduction is not an illegal acceptance of that gratuity. However, before one tries to answer those questions, one should look a little ahead to the next Wallach-Meese scenario.

In 1985 Wallach talked Meese into turning over his portfolio of Meese a "limited blind partner" in an account consisting of pooled funds from a number of investors. The same month that Meese turned over his funds to Chinn, Meese reportedly helped Wallach by arranging for him to meet with National Security Adviser Robert C. McFarlane in the White House regarding the Iraqi pipeline project. The funds were managed by Chinn for two years, until the arrangement was terminated when word of the deal got out in April 1987.

By that time, however, Meese had made a very handsome profit of $39,845 on an investment of $55,000. When the "limited blind partnership" was investigated by independent counsel McKay and by the staff members of a Senate subcommittee looking into the accuracy of Meese's financial disclosures, some startling facts came to light that helped explain Chinn's superior investment results for Meese.

First of all, substantially more than $55,000 had been used to make trades for Meese's "blind" account. In fact, Senate investigators found in the pooled funds an additional $150,000 that at first they could not account for. Also, as it turned out, the profits from the pooled investments of all the limited partners were divided among the partners in a way that disproportionately allocated more profits to Meese than his mere $55,000 investment entitled him to. Thus, Meese had the benefit of a skewed but generous allocation of profits, as well as the benefit of having a portion of the $150,000 working on top of his own $55,000 investment to generate profits for him.

Where did the $150,000 come from? And what did the attorney general know and when did he know it? Meese claimed he had no idea where the $150,000 had come from. This was, after all, a "blind" investment. (Meese did, according to a reliable source, receive periodic statements from Chinn reporting on the account's

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