

Special Report

The White House or the jailhouse for Bill Frist?

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October 1, 2005—It's one thing to lie in politics. It's another to be caught in a lie. Bill Frist has been caught in a lie. His political future is over. The immediate question is, can he survive as majority leader?

The Tennessee Republican claims he wasn't privy to any inside information leading up to the sale of his stock in Hospital Corporation of America (HCA), the country's largest for-profit hospital chain founded by Frist's father, Thomas, and brother, Thomas, Jr., weeks before the company reported lower than expected earnings July 13 that sent the stock south.

Now the Securities and Exchange Commission is investigating the matter, a spokesman for the senator said last week, to determine if Frist broke any laws.

Frist's press secretary told the Washington Post last week that Frist decided to sell his stock to eliminate any appearance of a conflict-of-interest due to his work in the Senate in shaping the nation's healthcare policies. So, the senator's spokesman said, Frist drafted a letter to Northern Trust and Equitable Trust in Nashville on June 13 advising them to sell all of his stock in HCA, as well as his wife and children's investments in the company.

Still, the improprieties have been in the making for quite some time. According to an Associated Press report Saturday, Frist "received regular updates of transfers of assets to his blind trusts and sales of assets. He also was able to initiate a stock sale of a hospital chain founded by his family with perfect timing. Shortly after the sale this summer, the stock price dived."

In fact, Frist had attempted to have it both ways since he created his so-called blind trust in the 1990s: being intimately involved with his investments that directly conflict with his political work as a senator and then claiming that he's totally unaware of his personal financial investments—and stock sales—because it's in a blind trust.

The corporate media, quick to accept Frist's statements that he's been in the dark about his HCA holdings, were complicit in allowing the obvious conflict of having a senator who makes national decisions on healthcare that directly benefit the senator's fortunes and that of his family, fall off the radar screen.

Indeed, in Jan. 26, 2003, in an article, titled "Frist's Health Care Votes Reflect Roots," Frist told the Post that he "no longer knows how much the (HCA) stock is worth."

But letters sent to Frist by Kirk Scobey, Jr., his trustee, and documents filed with the Senate contradict Frist's statement.

Frist knew that Scobey transferred three additional blocks of HCA stock—worth \$750,000—to his trust in 2001 and 2002, which came from Frist's parents' estate. Public filings show that Scobey sold as much as \$8 million of Frist's HCA stock between 1994 and 2000, and a bulk of which was sold between 2001 and 2002.

“Interestingly, Frist knew of these sales, or at least had access to information that these sales took place,” reported the [Nashville Scene](#), in an investigative story in July 2003 into Frist’s so-called blind trust. “How? The income from these sales of HCA stock was reported on Frist’s annual financial disclosure statements that he filed with the Secretary of the Senate.”

“Given the annual reporting of capital gains, it’s kind of a crock for Frist to say he doesn’t know what he owns because it’s in a blind trust,” Charlie Gofen, a portfolio manager at Gofen and Glossberg, a Chicago-based investment-counseling firm, told the paper at the time.

Frist’s office provided the Scene with supporting documents into the senator’s blind trust. The paper hired an eight-member, bipartisan, unpaid panel of experts in trusts from around the country to analyze it and what the panel discovered was that Frist’s “blind” trust isn’t really blind at all.”

“Frist’s ownership of HCA stock isn’t considered a conflict of interest according to Senate rules,” the paper reported. “But then, according to those rules, almost nothing qualifies as a conflict of interest.”

Frist created his blind trust in accordance with the rules of the Ethics in Government Act. That law states that a “qualified blind trust” must meet certain requirements:

- The trustee, who is the individual charged with managing the assets of the trust, must be independent.
- There can be no restrictions on disposing of the trust’s assets.
- Communication between the trustee and the politician must be limited.
- And the trust must be approved by the Senate’s Ethics Committee.

In 1995, with his holdings in HCA and the senator’s increasing role in shaping the nation’s healthcare policies coming under intense scrutiny, Frist first put his assets into a blind trust. Five years later, in December 2000, Frist put his assets into a newer blind trust, prompting the Nashville Scene to ask “Why the new trust?”

“At the time he created his first trust, Frist’s portfolio included so-called ‘non-public securities,’” the paper reported. “More than likely, these were private partnerships and the like. Federal laws say such securities cannot be put into a so-called ‘qualified blind trust’—the type of high-end trust that Frist now has. Once these securities were sold the ‘more stringent’ form of trust was created as soon as practical.”

Experts interviewed by the paper said what was likely the key selling point for Frist when he created the new trust in December 2000 was that he was given the opportunity to look at his specific financial holdings, including HCA.

“Whenever one blind trust is discarded in favor of a newer one, panelists say the blind trust ceases to be blind during the changeover period,” the paper reported.

But what was virtually unknown, is that Frist was able to figure out the value of his financial holdings in the blind trust in a much simpler way that would give him a window into the value of his HCA stock, the main source of his wealth. Each year, the senator files his annual financial disclosure statement with the Office of the Secretary of the Senate and is required to disclose the amount of income generated from his blind trust. Considering that 89 percent of his assets are tied up in HCA stock, the senator would have a good indication of how well his stock had performed.

When Frist named Scobey as the administrator of his blind trust, he was choosing a well-connected family friend.

James C. Gooch, a trust and estates attorney who has worked at the prestigious Nashville law firm Bass Berry & Sims, the same firm where Frist's brother-in-law H. Lee Barfield is a partner, drafted Frist's trust, which, among other things, states that the trust is "concentrated in the stock of HCA"; and Scobey, president of Equitable Trust, an institution Frist has done business with for years, was chosen as the trustee.

"Scobey's boss at Equitable is William H. Cammack, the firm's chairman. In fact, Gooch, Cammack and Scobey are all solid members of genteel West Nashville culture, the same culture that produced and nurtured Bill Frist," the Nashville Scene reported.

Scobey, according to documents filed with the Secretary of the Senate, doesn't charge Frist a substantial fee to manage the trust. Furthermore, Equitable waived its \$5,000 annual fee it usually charges individuals to manage similar assets, as well as cut its management fee for trusts as big as Frist's from .3 of 1 percent to .22 of 1 percent.

But wait, there's more. Back in September of 2002, a business partially owned and funded by Frist was embroiled in a lawsuit that claimed that the company's founder, along with Frist's business agent, sold a laundromat to a Bellevue, Tenn., couple at an inflated price.

Jon and Lynn Hargis of Bellevue, Tenn., didn't accuse the senator of wrongdoing in their lawsuit against Campus Concepts Inc., a company that Frist holds a 49 percent stake in. But the couple said Frist's close friend and business partner, David E. Harvey, the president of Campus Concepts, had told them that the laundromat had grossed \$10,000 more a month than it was actually bringing in. The Hargises said Harvey provided them with tax returns to back up his claims and the couple then agreed to purchase the laundromat for \$460,000.

The Hargises discovered a few months later that the income figures Harvey provided were grossly inflated and that he lied in papers he filed with the Tennessee Department of Revenue. Frist has been an investor in Campus Concepts since 1991.

At the time the lawsuit was filed, a spokeswoman for Frist told The Tennessean, a Nashville newspaper, that the senator wasn't involved in the "day-to-day operations" of Campus Concepts and that his share and investment in the business was placed into a blind trust.

"However, financial disclosure documents signed by Frist, a Tennessee Republican from Nashville, and filed with the Senate starting the year after he took office show he listed Campus Concepts as one of his assets, valued at \$50,000-\$100,000," the paper reported. "His most recent disclosure for [2001] lists as an asset an unsecured note from [the laundromat] valued at \$100,000-\$250,000. Asked how Frist could provide such information if he had no knowledge of the assets in his blind trust, Frist's spokeswoman would not elaborate."

It remains to be seen whether someone inside Hospital Corporation of America (HCA) tipped off Frist earlier this year that the for-profit hospital chain founded by his father, Thomas, and brother, Thomas, Jr., expected to forecast lower second quarter earnings on July 13, just a couple of weeks after Frist sold his stock, due to, among other things, an increase in uninsured hospital admissions at HCA facilities. Or perhaps Frist is just a savvy investor and the timing of his stock sales is coincidental.

It does seem that happenstance has been good to Senator Frist and HCA. Not long after he was chosen as majority leader, the Department of Justice abruptly ended a 10-year probe into how HCA defrauded the federal government's Medicare and Medicaid programs. The Justice Department, which surely had been pursuing federal criminal charges against HCA executives, (including Frist's brother, Thomas, Jr., HCA's former chief executive and current board member) agreed to a \$631 million settlement. In total, HCA paid \$1.7 billion in fines to keep at least one Frist out of jail, making it the largest fraud settlement in U.S. history.

In February, just a few months before Frist claims he instructed the administrator of his blind trust to unload his shares of HCA, company insiders were dumping shares by the truckload, prompting shareholders to raise questions on message boards and during HCA investor conference calls whether HCA executives—and possibly Frist—knew something that the public didn't know.

A number of HCA executives seemed to be aware that the increase in treating uninsured patients would have a negative impact on the company's earnings. That would explain the massive sell off of HCA stock that started Feb. 2, when HCA chairman Jack Bovender sold 500,000 shares (despite the fact that HCA stock was near a 52-week high) earning roughly \$9 million.

Bovender dumped his shares a day after a government official testified that the health care industry's biggest problem was an increasing number of bad debts from the uninsured that would no doubt worsen during the course of the year.

Mike Leavitt, secretary of the U.S. Department of Health and Human Services, said the Medicaid program was on shaky ground and there was a desperate need to control spending on the government's health care coverage for the poor, according to a May 6 story on HCA in TheStreet.com.

In April, Congress passed a budget that cut Medicaid by \$10 billion over five years for the first time since 1997, which is incidentally the same year that "Congress passed the Balanced Budget Act that reduced hospital payments and sent the industry into a tailspin," TheStreet.com reported. That's a major financial blow to hospitals such as the ones controlled by HCA and is what likely prompted the huge selloff by HCA executives.

Shortly after Bovender sold his shares several other insiders, including Treasurer David Anderson and Chief Investment Officer Noel Williams and three vice presidents sold their stock, too, clearing tens of millions of dollars. In fact, between January and June, HCA insiders sold shares worth \$112 million, 879,000 shares between March and April alone, netting the execs \$45 million.

Insider sales increased in the beginning of March when HCA said it planned to sell 10 of its hospitals that were located in poor states that were dealing with Medicaid troubles. On April 22, HCA President Richard Bracken sold \$4.13 million of company stock followed by Milton Johnson, the company's chief financial officer, who sold twice that amount.

Speaking of the pending hospital sales, a footnote in HCA's past proxy statements researched for this story has revealed something few HCA investors seem to be aware of: the cozy and questionable business relationship between the hospital chain and a company operated by the son-in-law of HCA's former chairman, Thomas Frist, Senator Frist's father.

A company owned by the elder Frist's son-in-law, Charles Elcan, bought 116 medical office buildings from HCA in December 2000 for \$250 million, which the hospital chain disclosed in a 2001 SEC filing, the website footnoted.org said in an April 22 posting. In a filing HCA made with the SEC last year when the company, known as MedCap was sold for \$575 million, HCA disclosed for the first time that Elcan only put up a small fraction of the initial \$250 million back in December 2000.

"This year, HCA has provided even more details, though it's a somewhat convoluted path involving a swap transaction that involves quite a bit of alphabet soup," said footnoted.org. "What it appears to boil down to is that HCA had to ante up even more money than it previously disclosed to essentially help the son-in-law out of a jam, even though it was unusually generous when it sold the office buildings to Elcan back in December 2000, since that investment more than doubled in less than three years. HCA has chosen to let details of the deal trickle out gradually over the past few years which certainly leave one with the impression that they're trying to hide something."

Jason Leopold has written about corporate malfeasance for The Wall Street Journal, The Financial Times, The Nation, The San Francisco Chronicle, and numerous other national and international publications. He is the author of the explosive memoir, "News Junkie," to be released in the spring of 2006 by Process/Feral House Books. Visit Leopold's website at www.jasonleopold.com for updates.

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