Excerpt from InterAgency Journal 16-2
©2026 - Simons Center

Disclaimer: The articles published in the IAJ represent the opinions of the authors and do not reflect the official views of any United States government agency, the Department of War, the Department of the Army, the U.S. Army Command and General Staff College, the Command and General Staff College Foundation and Alumni Association, the Simons Center, or any other non-government, private, public or international organization.

The Law of Undivided Loyalty:

Credit Mobilier and the Evolution of Federal Conflict of Interest Law

by G. David Crocker

> ***The simplest sort of conflict of interest arises when one man purports to act for both sides in a transaction between himself and another… [This] puts himself in a position of self-dealing which is likely to prejudice the other party, and which is certain to arouse criticism.***
>
> ***– Bayless Manning, Federal Conflict of Interest Law, 1964***

The Credit Mobilier scandal remains one of the clearest historical illustrations of divided loyalty and self-dealing for American public servants, exposing the dangers of public officials participating in matters in which they hold a financial interest. The Credit Mobilier scandal is not simply anecdotal; it is a vivid case study in the evolution of conflict-of-interest laws. The scandal helps explain why federal ethics law now seeks to prevent conflicts before they occur. Post Credit Mobilier statutes aimed at punishing corruption addressed only certain forms of self-interested governmental action and did so narrowly. Reforms enacted in 1962 established preventative measures to prevent self-dealing before it occurred. These reforms, culminating in 18 U.S.C. § 208's criminal prohibition against financial conflicts of interest among Executive Branch employees, more broadly restricted official *participation* in government matters affecting an official's financial interests.

Although Credit Mobilier principally involved legislators, the modern criminal conflict

G. David Crocker is an attorney at U.S. Army Cyber Command (ARCYBER), specializing in ethics. He received his commission from the U.S. Army in 2014 and is currently a major in the U.S. Army Reserve Judge Advocate General's Corps. He deployed to the U.S. Central Command area of operations in 2017, and in 2020 transferred to the Army's civil affairs branch. After completing the civil affairs qualification course, he served as the commander of Headquarters and Headquarters Company, 360th Civil Affairs Brigade (Airborne), and recently transferred back to the Judge Advocate General Corps. In his civilian career, Crocker previously worked for South Carolina's Office of the Attorney General and Department of Revenue, worked in a private practice, and worked for Wells Fargo Bank before becoming an attorney at ARCYBER. Crocker graduated from Western Michigan University in 2012, earning both a law degree and a master's degree in business administration. He and his wife have six children and a dog, Waffles.

framework is largely focused on Executive Branch employees. The concern is the same in both settings: whether a public official may be trusted to act solely in the public interest when his own financial position, or that of closely connected persons or entities, stands to benefit from official action. Current conflict-of-interest law answers that question by both condemning proven corruption after the fact, and by barring participation where divided loyalty is likely present.[1]

The concern is the same in both settings: whether a public official may be trusted to act solely in the public interest when his own financial position, or that of closely connected persons or entities, stands to benefit...

The Credit Mobilier of America

Prior to the 1872 exposure of the Credit Mobilier scandal, unethical conduct within government was hardly unknown. However, it was rarely treated as criminal because no statutes prevented such actions. For example, on April 30, 1862, Secretary of War Simon Cameron, who approved fraudulent contracts for goods and services related to outfitting the United States (U.S.) Army in the early days of the Civil War, received only a censure from Congress.[2] While public censure was an institutional rebuke akin to political ostracization, criminal convictions for self-dealing were almost non-existent. In "Ways and Means: Lincoln and His Cabinet and the Financing of the Civil War," Lowenstein notes, "In the 1860s, it was not uncommon for representatives to tailor legislation affecting personal investments."[3,4]

Why were the 1860s such a hotbed of self-dealing within the U.S. government? Fevered, emergency actions required to raise and equip the Union Army led to legislative myopia during which opportunities for corruption easily took hold. Many such emergency actions were products of the Thirty-Seventh Congress, spanning from 1861 to 1863, itself almost exclusively preoccupied with hastening legislation relative to national survival. As a result of the Civil War, the Thirty-Seventh Congress set aside the caution and fiscal restraint incident to previous legislative sessions.

> The Thirty-Seventh Congress, today scarcely remembered…broke from the 'governing least' philosophy of Jefferson and legislated in the spirit of the 'more perfect union' advanced by Lincoln. It abandoned laissez-faire and interposed a visible hand in the hope that, also in Lincoln's words, 'every man [might] have the chance.' Congress…enabl[ed] legislation for a transcontinental railroad… They legislated boldly, and to the edge of perceived constitutional license. A San Francisco newspaper approvingly declared, 'Constitutions are made for peace. We are at war.'"[5]

During the Thirty-Seventh Congress, national projects that were merely proposals or concepts prior to the Civil War became realities. Although plans for a transcontinental railroad already existed, President Abraham Lincoln believed that the railroad had become necessary for national security. Lincoln signed The Pacific Railway Act of 1862 on July 1 of that year. The Act simultaneously authorized the Central Pacific Railroad to begin constructing eastward from Sacramento and created the Union Pacific Railroad, which would build toward the west from the Nebraska/Iowa border, meeting somewhere in the middle. To incentivize speedy completion, the U.S. government offered generous land grants and tiered payments based on the difficulty of construction over various terrain: $16,000 per mile for plains, $32,000

per mile for foothills, and $48,000 per mile for mountains. Now part of a national emergency and underwritten by the U.S. government, constructing the transcontinental railroad attracted many willing and able to exploit the situation for their personal gain, some of whom were elected representatives. Lowenstein claims, "…the prospect of government grants was a tempting vehicle for corruption."[6] Of this period, Robert Mitchell states:

> While many Americans heralded the unifying potential of a transcontinental railroad, lower motives also animated members of Congress. [Stephen] Douglas, who represented Illinois in the Senate and supported routes that would favor Chicago, made large purchases of real estate in Chicago and along Lake Superior in anticipation of at least one continent-spanning railroad starting from the Great Lakes region. In the scramble to win designation as the transcontinental route, a Kansas railroad passed out more than $4 million in stock to members of Congress, their relatives and friends, and reporters. Boodle may not have been the only tool of persuasion by the Kansans. The word "blackmail" appears occasionally in company records, although it is unclear if the railroad was recording its attempts to pressure individuals or threats of extortion it had received. Whatever methods were used, observers recognized that legislators were not considering railroad issues solely on the basis of merit. Cynics coined the phrase "railroad congressmen" to signify lawmakers who were susceptible to financial incentives to protect the interests of the industry.[7]

Thomas Durant, the vice president of newly created Union Pacific Railroad, utilized lobbyists, cash, and railroad stock to sway members of Congress into actions favorable to Union Pacific.[8] Durant purchased a defunct speculation business in 1864, rebranding with a name believed to bring it credibility and prestige: The Credit Mobilier of America.[9,10] The officers of Union Pacific also served as officers of Credit Mobilier. "In a word, the Credit Mobilier and the Union Pacific Railroad Company were one and the same."[11] As Union Pacific's vice president, Durant required Union Pacific to hire Credit Mobilier to complete much of its construction on the railroad, which Credit Mobilier did at greatly inflated costs. Credit Mobilier submitted these inflated invoices to Union Pacific, which submitted to the U.S. government, which paid without question. The deliberately inflated—

Credit Mobilier submitted these inflated invoices to Union Pacific, which submitted to the U.S. government, which paid without question.

in other words, fraudulent—invoices resulted in enormous profits for the officers of Credit Mobilier, who continued this practice for several years. Union Pacific's portion of the railroad was estimated to cost $50 million; Credit Mobilier ultimately charged $94 million, the excess $44 million going to officers of Credit Mobilier and Union Pacific.[12]

Another actor in the scandal was Massachusetts Congressman Oakes Ames. Ames made his fortune manufacturing shovels, earning the nickname the "King of Spades."[13] An influential member of Congress, Ames was assigned to the Pacific Railroad Committee and eventually helped Thomas Durant hatch the Credit Mobilier scheme, becoming one of its largest shareholders. Within the halls of Congress, Ames offered Credit Mobilier stock to legislators in return for favorable actions toward Union Pacific, enriching his position in Credit Mobilier. Ames typically offered legislators stock at a greatly reduced price, sometimes

giving the stock for free. Of this quid pro quo, Ames later stated, "We want more friends in this Congress" and admitted, "We wanted capital and influence."[14,15]

Ames was not alone in the self-dealing; Union Pacific's chief engineer was also a member of Congress.[16] Multiple members of Congress had taken advantage of the reduced-price Credit Mobilier stock, including Senators, the Secretary of the Treasury, and two House Speakers, one of whom was serving as Vice President when the story broke.[17] Future president James Garfield was also implicated in the scandal.[18,19]

The scandal revealed how public trust is undermined when the same individuals influencing governmental decisions also stand to profit from the outcomes of those decisions.

Ultimately, the public became aware of the scheme; it began to unravel when Ames gave stock to a businessman named Henry McComb, who felt slighted when Ames declined to give him more. Upset at the slight rather than the nature of the scandal, of which he was aware due to his overt involvement, McComb filed a lawsuit against Ames and Credit Mobilier, claiming entitlement to more shares and profits. As the lawsuit played out, McComb produced several incriminating letters from Ames as well as a list of elected officials who had purchased Credit Mobilier stock. Inadvertently, the story made its way to *The New York Sun*, a prominent newspaper at the time, which broke the story on Wednesday, September 4, 1872, and included portions of Ames' incriminating letters.

The story made up the entirety of *The New York Sun*'s front page. Ensuring Ames was at the center of the expose', the headline read, "The King of Frauds. – How the Credit Mobilier Bought its Way Through Congress. – Colossal Bribery. – Congressmen who Have Robbed the People, and who now Support the National Robber." and "Princely Gifts to the Chairman of Committees in Congress."[20] The article resulted in public outrage. Congressional hearings led to official censure and ruined reputations. Openly displayed was the classic evil that conflict-of-interest laws now target: Official participation in government-related matters while holding private financial interests in the same enterprise.

The Evolution of Executive Branch Conflict of Interest Laws

Credit Mobilier was more than simply a dramatic instance of Gilded Age wrongdoing. The scandal revealed how public trust is undermined when the same individuals influencing governmental decisions also stand to profit from the outcomes of those decisions. Although Credit Mobilier did not produce a direct statutory connection to modern Executive Branch conflict-of-interest law, its relevance lies in the recurring governance problem it exposed: officials may be unable—or may appear unable—to exercise impartial judgment when they have a financial stake in the outcome of official action.

After Credit Mobilier but prior to 1962, federal conflict statutes were intended to curb government officials' *transacting* business on behalf of the U.S. with any business entity in which they had a financial interest. In other words, punishing self-dealing after it occurred. This prohibition applied heavily to the contracting and procurement context and essentially held a narrow focus on business dealings with a nexus to private interests, only. 18 U.S.C. §434 was one of the pre-1962 criminal conflict statutes. [21] While lacking when compared against current conflict statutes, §434 was an attempt to codify prohibitions against self-dealing. Its citation and accompanying explanation in United States v. Mississippi Valley Generating Co., 364 U.S. 520 (1960), explains § 34's underlying principles:

The moral principle upon which the statute is based has its foundation in the Biblical admonition that no man may serve two masters, Matt. 6:24, a maxim which is especially pertinent if one of the masters happens to be economic self-interest. Consonant with this salutary moral purpose, Congress has drafted a statute which speaks in very comprehensive terms. Section 434 is not limited in its application to those in the highest echelons of government service, or to those government agents who have only a direct financial interest in the business entities with which they negotiate on class of business transactions. Nor is the statute's scope restricted by numerous provisos and exceptions, as is true of many penal statutes. Instead, it applies, without exception, to "whoever" is "directly or indirectly interested in the pecuniary profits or contracts" of a business entity with which he transacts any business "as an officer or agent of the United States."

It is also significant, we think, that the statute does not specify as elements of the crime that there be actual corruption or that there be any actual loss suffered by the Government as a result of the defendant's conflict of interest. This omission indicates that the statute establishes an objective standard of conduct, and that, whenever a government agent fails to act in accordance with that standard, he is guilty of violating the statute, regardless of whether there is positive corruption. The statute is thus directed not only at dishonor, but also at conduct that tempts dishonor. This broad proscription embodies a recognition of the fact that an impairment of impartial judgment can occur in even the most well-meaning men when their personal economic interests are affected by the business they transact on behalf of the Government. To this extent, therefore, the statute is more concerned with what might have happened in a given situation than with what actually happened. It attempts to prevent honest government agents from succumbing to temptation by making it illegal for them to enter into relationships which are fraught with temptation.

Focused solely on the culmination of self-dealing, §434 lacked any preventative methods. While no legislative history for amending §434 survive, what is certain is that Public Law 87-849 overhauled the pre-1962 conflict-of-interest statutes, enacting §434's replacement, 18 U.S.C. §208. Public Law 87-849 was, "found to reflect a deliberate effort to impose a more limited ban and to narrow the circumstances in which the ban is to operate" and as a result created a more preventive approach to Executive Branch financial conflicts of interest.[22] The movement from §434 to §208 shifted prohibited behaviors from certain, narrow conflicted *transactions* to a more robust efforts to prevent conflicted *participation* in governmental decision-making.[23] The 1962 reforms introduced methods aimed at preventing conflicts altogether, such as representation bans, post-employment restrictions, financial conflict rules, and salary-supplementation limits. The shift to preventative methods served as a recognition that corruption and conflicted decision-making can arise from advice, negotiations, prospective employment, and even permissible outside employment, before any transaction could be finalized.

The statute is thus directed not only at dishonor, but also at conduct that tempts dishonor.

As a result, §208 is the principal criminal statute prohibiting official acts by Executive Branch employees in matters that affect their financial interests and is aptly titled, Acts Affecting a Personal Financial Interest.[24]

Under §208, an Executive Branch employee generally may not participate personally and substantially in a particular government matter when it would have a direct and predictable effect on the employee's own financial interest. As such, conflicts are identifiable as such and can be prevented. Section 208 is triggered not by any general suspicion of bias, but by participation in a "particular matter." The statute links criminal liability to a sufficiently focused and identifiable official action, such as a contract, claim, application, controversy, or other discrete matter by an Executive Branch employee. The participation must be "personal and substantial," which distinguishes meaningful official involvement from remote or incidental connection.

[18 U.S.C.,] Section 208 also marks a significant expansion over §434 by identifying imputed interests – interests that extend beyond the employee's personal holdings to include those of a spouse or children, among others.

Section 208 also marks a significant expansion over §434 by identifying imputed interests – interests that extend beyond the employee's personal holdings to include those of a spouse or children, among others. Including imputed interests reflects a realistic understanding of how divided loyalty often operates in practice. Financial self-interest is not always confined to assets held or formally held by the employee, alone. Family relationships, prospective employment arrangements, and other matters affecting personal finances may create incentives capable of compromising impartial judgment. By including those relationships within the statute's scope, Congress treated conflict prohibitions not simply as an individual matter, but identification of circumstances outside an employee's official responsibilities that may threaten objectivity.

Section 208 further opens the aperture for preventative methods, expanding the entities for which a conflict may exist. Whereas §434 focused on the transaction of business as the basis of a conflict, §208 is contemplative of a range of activities other than business entities. Manning states,

> Under Section 208, it is not important whether the transaction involves a business entity or concerns some form of nonprofit entity. As the Senate Judiciary Committee commented: A great number of universities, foundations, nonprofit research entities, and other similar organizations today are engaged in work for the Government. Conflicts of interest may arise in relation to them just as in the case of ordinary business for profit.[25]

Acknowledging that some prohibitions could be triggered after an employee receives a new position or responsibilities, §208 allows for preemptive relief. Depending on the circumstances, an employee may need to recuse, seek ethics advice, or request a statutory waiver. If an Executive Branch employee has an interest in, outside employment with, or a spouse working for an affected company, or is seeking a job with an affected organization, the employee **may** need to recuse themselves regarding any official matter that would directly and predictably affect their interest. An agency's Ethics Official is the primary point of contact to review and opine on such matters.

Application of 18 U.S.C. §208

A cautionary tale for Executive Branch employees is that of retired four-star U.S. Navy Admiral Robert P. Burke. In a recent landmark public corruption case, Burke was convicted of multiple federal felonies, including a violation

of 18 U.S.C. §208(a).[26] Burke previously had a distinguished career as a submariner and ultimately rose to the position of Vice Chief of Naval Operations.

The criminal charges stemmed from an illicit scheme orchestrated between 2020 and 2022 while Burke was actively overseeing U.S. naval operations in Europe and Africa. During this time, Burke met with the co-CEOs of a private company, Next Jump, Inc., to reestablish a business relationship with the Navy. In exchange for steering Navy contracts to Next Jump, Burke was promised post-retirement employment with the company. In December 2021, while still on active duty, Burke officially ordered his staff to award a contract to Next Jump. This direct official action, taken while actively negotiating future employment, constituted a violation of 18 U.S.C. §208(a), strictly prohibiting Federal employees from participating in governmental matters in which they have a personal financial interest. Burke subsequently accepted employment at the firm in October 2022, while actively concealing employment negotiations from Navy ethics officials.

On May 19, 2025, Burke was found guilty of performing official acts affecting personal financial interest, among other crimes. Speaking of the conviction, Special Agent in Charge of the Department of Defense Office of the Inspector General's Defense Criminal Investigative Service (DCIS) stated,

> Integrity — not cash — is the currency of public service. Admiral Burke rose to the pinnacle of the U.S. Navy, entrusted with leadership and honor. But instead of leading by example, he cashed in that trust — turning four stars into dollar signs and trading duty for a corporate payday…Today's sentence sends a clear message: if you sell your honor and trade your influence, you'll pay the price — in prison time.

Burke was sentenced to seventy two months. The conviction and subsequent sentencing of Admiral Burke underscore the consequences of violating Federal conflict-of-interest statutes. As of the time of publication, Burke is the highest-ranking member of the U.S. military to be convicted of a crime.

Conclusion

Credit Mobilier illustrates why preventive measures matter regarding financial conflicts of interest for Executive Branch employees. The scandal did not become notorious merely because prominent individuals profited, it was because it revealed how easily public duty can be compromised when officials hold financial interests in matters they are positioned to influence. Such is the basis of 18 U.S.C. §208. Public trust requires enforceable boundaries between official responsibility and private gain. Where those boundaries fail, impartial governance becomes difficult to guarantee and greatly undermines public trust. The evolution from the ad hoc censures of the Gilded Age to the robust, proactive aspects of 18 U.S.C. §208 reflects an important point: Preventing the appearance of impropriety, and clearly defining the conditions for conflicts, is as crucial as punishing actual corruption. Modern enforcement actions, such as the conviction of Admiral Burke, serve to remind Executive Branch employees that the principles of undivided loyalty and public trust are core aspects of public service. ***IAJ***

Notes

1 5 C.F.R. § 2635.101(a), (c) (2026), "Basic Obligation of Public Service," Code of Federal Regulations, title 5, § 2635.101, https://ecfr.io/Title-5/Section-2635.101. 5 CFR 2635.101 is entitled, "Basic Obligation of Public Service" and para (a) states: Public service is a public trust. Each employee has a responsibility to the United States government and its citizens to place loyalty to the Constitution, laws, and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the federal government, each employee must respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations. Immediately following the general principles of ethical conduct for Executive Branch employees, para (c) notes the existence of conflict-of-interest statutes, stating they prohibit certain conduct.

2 "U.S. House CENSURES FORMER Secretary of War Simon Cameron for His Lax Fiscal Dealings While in Office," *House Divided: The Civil War Research Engine at Dickinson College*, https://hd.housedivided.dickinson.edu/node/32740.

3 Roger Lowenstein, *Ways and Means: Lincoln and His Cabinet and the Financing of the Civil War* (New York: Penguin Press, 2022), 88.

4 History, Art & Archives, U.S. House of Representatives, "List of Individuals Expelled, Censured, or Reprimanded in the U.S. House of Representatives," accessed November 9, 2026, https://history.house.gov/Institution/Discipline/Expulsion-Censure-Reprimand/

5 Lowenstein, *Ways and Means*, 108.

6 *Ibid*., 227.

7 Robert B. Mitchell, *Congress and the King of Frauds: Corruption and the Credit Mobilier Scandal at the Dawn of the Gilded Age* (Edinborough Press, 2017), 12.

8 *Ibid*., 13.

9 *Ibid*., 9; "How is it pronounced? People can adopt the method that suits their fancy, since, according to the Washington correspondent of a Boston newspaper, 'Credit Mobilier' is variously pronounced in Congressional circles." Ames favored "Credit Mob-il-ay," while other variations included, "Credit Mo-beel-yia," "Credit Mo-bil-air," Credit Mo-billi-a," "Credit Mo-bi-leer," and "Credit Mo-bill-ee." *The Elevator*, San Francisco, May 10, 1873.

10 It seems the name was chosen to add prestige, being copied from the Credit Mobilier of France, a famous bank. HISTORY.com Editors, "Crédit Mobilier," History, April 26, 2010, last modified May 27, 2025, https://www.history.com/articles/credit-mobilier.

11 Jay Boyd Crawford, *The Credit Mobilier of America: Its Origin and History* (Boston: C.W. Calkins & Co., 1880), 11.

12 Using non-Bureau of Labor Statistics historical CPI series, $44 million in 1866 is roughly $871 million to $954 million in 2025/2026 dollars, depending on which historical series used.

13 Mitchell, *Congress and the King of Frauds,* 14.

14 *Ibid*., 10.

15 *Ibid*., 3.

16 *Ibid*., 31.

17 *Ibid*., 51.

18 *Ibid*., 21.

19 Numerous scandals plagued both terms of President Ulysses Grant's administration with Credit Mobilier affecting many members of Grant's party. The scandal emerged during Grant's first term as President, adding to public concern about corruption within his administration and party. Amidst the fallout from the Credit Mobilier scandal and others, Harper's Weekly, another prominent publication of the day, captured the political strife marring the Grant administration with a political cartoon. The illustration, by Thomas Nast, comedically conveyed the precarious situation Grant and his party faced considering so many scandals, of which Credit Mobilier was one. The illustration featured Grant's Republicans as a large elephant, lumbering toward a cliff. This "did leave the Republican party with a lasting symbol – the elephant."

20 "The King of Frauds: How the Credit Mobilier Bought Its Way Through Congress," *The Sun* (New York, NY), September 4, 1872, Library of Congress, *Chronicling America*, https://www.loc.gov/resource/sn83030272/1872-09-04/ed-1/?sp=1.

21 18 U.S.C.§ 434 reads in full as: "Whoever, being an officer, agent or member of, or directly or indirectly interested in the pecuniary profits or contracts of any corporation, joint-stock company, or association, or of any firm or partnership, or other business entity, is employed or acts as an officer or agent of the United States for the **transaction of business** with such business entity, shall be fined not more than $2,000 or imprisoned not more than two years, or both."

22 Bayless Manning, *Federal Conflict of Interest Law* (Cambridge, MA: Harvard University Press, 1964), 204, quoted in Samuel A. Alito, Jr., "Scope of the Term 'Particular Matter' Under 18 U.S.C. 208," Office of Legal Counsel Memorandum, January 12, 1987, 1n5, https://www.justice.gov/olc/page/file/1009471/dl.

23 Mary Lou Soller and Brian A. Hill, "Financial Conflicts of Interest: The Impact on Contractors and Federal Employees," *The Procurement Lawyer* 40, no. 3 (Spring 2005).

24 U.S. Office of Government Ethics, "18 U.S.C. §208: Acts Affecting a Personal Financial Interest," September 13, 1994, https://www.oge.gov/web/oge.nsf/Resources/18+U.S.C.+%C2%A7+208:+Acts+affecting+a+personal+financial+interest.

25 Manning, *Federal Conflict of Interest Law*, 120.

26 U.S. Department of Justice, U.S. Attorney's Office for the District of Columbia. "Retired U.S. Navy Admiral Sentenced to Six Years in Bribery Scheme," press release, September 16, 2025. https://www.justice.gov/usao-dc/pr/retired-us-navy-admiral-sentenced-six-years-bribery-scheme.