Book Reviews

Conflict of Interest and Federal Service. Special Committee on the Federal Conflict of Interest Laws of the Association of the Bar of the City of New York. Harvard University Press, Cambridge, Mass., 1960. xvi + 336 pp. $5.50.

Two years of research by a distinguished committee of the Association of the Bar of the City of New York have resulted in a lucid explanation of the present conflict-of-interest laws; a penetrating evaluation of their effectiveness in operation; and a recommended program for improvement and clarification of the law in the light of modern conditions. A well-written book, the Bar Association study dramatically highlights the fact that our government is using archaic tools to deal with ethical problems—that these tools not only fail to achieve their purpose but, in addition, have pernicious side effects.

Before we examine this book in detail, it may be useful to briefly identify and isolate the problem it treats. The conflict-of-interest laws constitute a body of seven statutes, six of them criminal, designed to prevent venality, or the appearance thereof, in the decision-making processes of the federal government. Their purpose is to prevent situations of conflicting interest from arising, the interests in conflict being, on the one hand, the interest of the public in maintaining integrity in government and, on the other, the interest of the government official in his personal economic affairs.

At the outset, the authors present an analysis of the seven statutes in question. Their description is clear and concise, and should be easily followed by both lawyer and nonlawyer alike.

In one group are treated the four 19th-century statutes. Briefly, one statute forbids a government employee to assist, or act as the agent or attorney for, another in the prosecution of a claim against the United States (18 USC 283). A second forbids the government employee to render services to a private party in relation to any matter in which the United States is a party or is directly or indirectly interested (18 USC 281). A third generally prohibits bribery in connection with procurement of government contracts (18 USC 216). The final 19th-century law prohibits the government employee from acting for the government in a transaction with any business entity of which he is an officer or in which he has a pecuniary interest (18 USC 434).

In a second group are the two post-employment statutes. The first is apparently hortatory since it contains no sanction (5 USC 99). The second is, however, of greater concern, for it carries a criminal penalty if, during a period of two years after he leaves government service, a former employee acts as attorney or agent for the prosecution of a claim against the United States, provided that claim involves subject matter with which the former employee was directly connected while he was in government service (18 USC 284).

A final and perhaps the most troublesome of the conflict-of-interest laws forbids an employee to receive any salary in connection with his services as such officer or employee from any nongovernmental source (18 USC 1914).

The incisive analysis which accompanies each statute demonstrates the multitude of difficulties engendered by inartful wording and the fact that the laws provide solutions to problems of the 19th rather than the 20th century.

As the authors point out, the vague terminology in the statutes leads them to cut a wider swath than is either necessary or desirable: For example, what constitutes "transaction of business?" What is meant by "prosecuting a claim" or when is a person being paid "in connection with" services rendered to the government? This latter restriction, in particular, with its "buckshot" approach to conflicts of interest, is plainly ridiculous in an era of heavy governmental reliance on the services of part-time consultants and advisers. Can we expect successful scientists, professionals, and businessmen to give up vital economic benefits in order to work three or four days a month for the government? The answer is obvious, and where the Congress has not provided exemptions to this law, administrators have been forced to wink an eye and pass on to more pressing problems.

In contrast, by virtue of their narrow focus on 19th-century problems, the statutory restraints frequently fail to cover important areas of "substantive risk." For example, it is a paradox to speak only of "prosecuting claims" in an era when the government is a dispenser of television licenses, construction permits, certificates of convenience and necessity, and a multitude of other economic advantages. Similarly, it is incongruous to talk only of a transaction with a "business entity" when nonprofit educational institutions frequently have a greater stake in government contracts than their profit-seeking cousins in the market place.

The authors could undoubtedly list their indictment *ad infinitum* but the gravaman of their complaint is that our existing restraints are crude, obsolescent tools, unable to cope effectively with modern problems.

From a lawyer's standpoint, rendering advice on this body of law is a nightmarish endeavor. The authors accurately point out that "these statutes generate an array of legal devices considered to legitimately avoid the statutes." One may argue that no difficulty exists so long as lawyers can engage successfully in these mental gymnastics, but a serious moral problem arises when we place reliance on such efforts. There is no doubt, as the authors point out, that: "When this happens, the law is made to appear ludicrous, legal administration is undermined, the underlying policy of the law is subverted, and the conscientious carry the heaviest burden."

While this consideration alone may be sufficient to raise a hue and cry for a revamping of the conflicts statutes, the study carefully points out the additional unwholesome effect which the statutes have on recruitment, particularly recruitment of political executives and intermittent employees. But, in the special chapter devoted to problems of the scientist, all the critical factors involved in evaluating the con-

flict-of-interest laws come into sharpest focus.

The authors call attention to the fact that the federal government today pays for approximately one-half of all scientific research, engineering, and development in the United States and that scientific inquiry is the product of a joint venture between the public and private sectors of the economy. Scientific inquiry thus typifies the mixed economy in action, and it is precisely at this juncture that the lines between public and private interest become blurred.

The book records, with impact, the changed status of America's scientists. In the last decade, many scientists have become men of property with strong business or institutional ties to the private sector of the economy. At the same time, their government's need for intermittent advisory and consultative services has grown greater as the country finds itself challenged by an adversary that uses technological advancement as a Pied Piper's flute to lead the uncommitted and backward peoples of the world.

It is thus commonplace for the scientist who works as an intermittent government employee to have some substantial and personal economic interest residing with either a business firm or a university. The present system of restraints is simply unsuited to the problems faced by the men of science whose necessary posture is astride the public and private sectors of our economy. In one sense, coverage under the present system is too narrow; in another, it is dangerously broad.

There are many areas of substantive risk unreached by our present law because of its orientation toward representative services in the "prosecution of claims." The law is, in addition, virtually blind to the economic and prestige interests of our educational institutions. There is no question that substantial benefits can accrue to a university by having its key personnel sit on government boards which influence the direction of research and the placement of contracts.

On the other hand, as the authors note, "rigorous application of even the existing conflict of interest statutes could severely cripple governmental recruitment in a most critical area—scientific development." The authors are not alarmist in this warning, and I do not intend to be alarmist in echoing that conclusion, but it must be said that their observation rings true. Conscientious administrators operating under the requirements of this neolithic apparatus have been forced at times to do without the services of fine scientific talent. This problem will become severe in the future as the scientist becomes an increasingly significant figure in the public arena.

The scientist's case is but illustrative. Similar problems are faced by the lawyer or the businessman called upon to devote his talents to the government on a temporary or part-time basis. If we are to proceed under a system of law that fails to consider the growth of big government with its consuming need for professional and technical talent; the extensive development of a mixed economy; and the major increase in the use of consultants, intermittent employees, and contractor personnel; then we must be prepared for some decrease in the efficiency of governmental operation. Although Congress, in exercising its legislative and investigative powers, and administrative agencies, in promulgating regulations and codes of ethics, have done helpful, if uneven, work in handling conflicts problems, there remains an undeniable need for a sweeping revision of the law.

This study calls for a new approach to conflict-of-interest problems—a plan which "neither sacrifices integrity for opportunism nor drowns practical staffing needs in moralism." The authors have given us such a plan in the form of a well-considered program and implementing statute.

The new program suggested by the Association of the Bar of the City of New York is an integrated and comprehensive system of restraints applicable to employees of the executive branch. It combines that which is useful in our present body of law with a series of original proposals designed to balance the two principal policy considerations at stake—the preservation of integrity in government and the assurance that our country obtains the personnel it needs to progress and, indeed, to survive in the modern world.

Perhaps the most startling innovation in this new program is its resort to the administrative process rather than to the criminal law. The agencies of government would be responsible not only for enforcing the new program, but for amplifying it through the adoption of detailed administrative regulations. While the proposed statute sets forth six basic restraints on employee conduct, it will be for the agencies and the administration to spell out these restraints in greater detail, tailoring their regulations to their own particular needs. Here the authors have taken a cue from Aristotle: "It is impossible that all things should be precisely set down in writing; for enactments must be universal, but actions must be concerned with particulars. . . ." This observation is particularly applicable where the law seeks to deal with subtle ethical problems, for in no single embodiment of law can the multitude of conflict-of-interest problems be dealt with effectively. Flexibility is required, and all the tools to achieve that flexibility are found in the modern admistrative process.

Although there is basic reliance on this administrative process, the authors have included a civil as well as a criminal penalty for flagrant violations. However, in the ordinary case, the agency will wield the more direct and practical sanctions of suspension, dismissal, or reversal of improperly influenced decisions. This intelligent proposal places authority where the responsibility is, or should have been.

Two other basic concepts are of interest. First, the program draws a vital and long-needed distinction between "regular" and "intermittent" employees of the federal government. The intermittent employee is subjected to fewer restrictions on conflicting interests: For example, there is no prohibition on his receipt of outside compensation. In addition, while a regular employee may not assist private parties for pay in transactions involving the government, the intermittent employee would be free to do so unless the transaction is, or had been, within two years, under his official responsibility or was a transaction in which he substantially and personally participated on behalf of the government.

A second important feature of the new program is the concept of government action. As defined in the statute, it reaches beyond the traditional "claim" or "contract," the integrity of which is so jealously and shortsightedly guarded by the present law. This new concept will cover transactions such as urban development loans, merger clearances, television franchises, and the multitude of privileges which can be dispensed by the modern executive branch.

After outlining these basic innovations in conflict-of-interest laws, the authors set out six basic rules of conduct for executive branch employees.

First, a government employee must

disqualify himself from participating in any transaction in the consequences of which he has a substantial economic interest. It is expected that the President, through regulations, will define "substantial economic interest." It should be noted also that disqualification may be required if the economic interest in question is held by the employee's wife, child, or firm. This rule thus recognizes qualitative and quantitative differences in economic interests. It also provides for exemptions to be made by the President in situations where an exemption is in the national interest.

A second restraint prohibits a regular employee from assisting others for pay in transactions involving the government. As noted earlier, this restraint is somewhat relaxed for the intermittent employee.

The authors further propose that regular employees will not be permitted to have their pay supplemented by "anything of economic value" from a nongovernmental source in consideration of services rendered to the government. This restraint would not be applicable to intermittent employees or those serving without compensation. It also excludes from the ambit of its coverage certain private security-oriented interests, such as industrial pension and retirement plans.

In two other sections, the authors delineate rules of conduct with respect to gifts and the abuse of government office. While the section on gifts adds little certainty to present law, the section devoted to abuse of office is new and of special interest. This latter provision forbids a government employee to use his office in such a manner as to induce a person doing business with, or subject to regulation by, the employee's agency to provide the government employee with "anything of economic value." This section thus effectively deals with bribery and the problem of blatantly improper gifts.

In the area of postemployment restrictions, we find another interesting change. Once having played a direct and integral part in a given transaction as a government employee, the individual, upon leaving government service, is thereafter permanently barred from assisting any other person in connection with that transaction. If the degree of contact amounts only to "official responsibility," the bar is for a period of two years. Thus, for situations of actual conflict, the authors properly suggest an indefinite bar, but for situations of potential conflict, they propose only a "cooling-off" period of two years. This section would be applicable equally to both regular and intermittent employees.

After a brief review of these new suggested restraints, it is apparent that they provide no panacea and that not all the vagary in the present law has been eliminated. But it should be remembered that the drafters anticipate that the President and his administration will fill in and amplify these proposals.

Unquestionably, the most significant aspect of this proposed program is its reliance on administrative procedures. In reality, the administrative agencies have always been responsible for regulating conflicts of interest, but now it is proposed that responsibility should be complemented by authority exercisable in accordance with clear, modern guidelines. To those who fear laxity in the administrative process, it can only be said that experience has proved the criminal law to be ineffective as an instrument for dealing with conflict-of-interest problems. A time for experimentation has arrived, and if that experiment takes the form suggested by this forthright and well-considered study by the Association of the Bar of the City of New York, I feel confident of its success.

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Clinical Chemical Pathology. C. H. Gray. Edward Arnold, London; Williams and Wilkins, Baltimore, Md., ed. 2, 1959. iii + 160 pp. Illus. $3.75.

The second edition of this short text preserves well the first edition's excellent presentation of the chemical aspects of disease. The chapters on the function of the liver have been modified to include the newly developed function tests, while the chapter on the chemical pathology of the alimentary tract has been much reduced in length. A new chapter on fats has been added, and the chapter on biochemical tests in endocrine disease has been rewritten to include recent advances. The discussion of salt and water deficiency is excellent.

While this book offers much to the medical student, it appears to be an essential companion for laboratory technicians; by using it, the latter will obtain an appreciation of the value and the limitations of biochemical analyses.

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Quantum Chemistry. Methods and applications. R. Daudel, R. Lefebvre, and C. Moser. Interscience, New York, 1959. xiii + 572 pp. Illus. $14.50.

The appearance of this book fills a gap in the basic literature relating to the application of quantum mechanics to chemical problems. During the past 30 years, research in two areas related to this field has been extensive and varied: in the semiempirical quantum mechanical treatment of molecular properties and in the development of detailed and elaborate methods for obtaining more accurate wave functions for quantum mechanical methods used in studying molecules. Indeed, the literature is so vast that it discourages all but the most ambitious beginner who wishes to specialize in the field, and it presents a confusing mass of detail to the nonspecialist who wishes to use the results of these studies to understand his own problems. This volume provides an excellent summary of the situation to date and at the same time gives enough details concerning the various methods and their application to enable the interested chemist to use them in studying his problems.

Quantum Chemistry is divided into two parts. Part 1 proceeds from a relatively simple, nonmathematical presentation of the concepts of quantum mechanics to the development of the quite simple principles that are needed to understand the very numerous approximate methods developed for the study of bond lengths and angles, excitation energies and transition probabilities, reaction mechanisms and rates, and so forth. Each of these problems is then discussed in separate chapters, with copious examples for illustration. This part of the book is very easily read, and the discussions are sufficiently detailed to provide any interested chemist with the tools for a clearer understanding of the relationships between molecular structure and experimental results in either equilibrium or rate studies.

In Part 2 the authors delve much more deeply into quantum theory and discuss in detail the higher order approximations which are necessary once the useful limits of the simpler approximations are reached. This part of the book will be particularly useful to advanced graduate students who are planning to specialize in quantum chemical theory, and it will also be useful to the nonspecialist for checking his efforts