News and Comment

Consultants and Conflicts: The Problems of Scientific Advisers Are Attracting Some Attention

The problem of scientists and conflicts of interest has been in the news again lately, mainly through the reporting of John Finney in the New York *Times*. Finney, who covers science and politics for the *Times*, has written reports in the past week or so on a retired Air Force general (Donald L. Putt) who was simultaneously chairman of the Air Force Scientific Advisory Board and president of a research firm which is supported by Air Force contracts; on a member of the President's Science Advisory Committee and adviser to the Defense Department on seismic research (Frank Press) who was simultaneously a technical director of another research firm which received contracts for seismic research; and on the contrast between the Atomic Energy Commission's and the Defense Department's interpretation of the conflict-of-interest laws. (The AEC does not permit members of its General Advisory Committee to serve as consultants to firms holding or seeking AEC research contracts—a policy which would, if applied by the Defense Department, have presumably prevented Press and Putt from holding their dual positions.)

Both cases are of the kind that are being studied by Representative Hébert's investigation subcommittee of the House Armed Services Committee, as part of a more general study of the Defense Department's scientific consultants, whether individuals, as in these cases, or nonprofit corporations such as RAND or the Institute for Defense Analysis. Hébert expects to be ready for public hearings this spring. A report on the Hébert study appeared here last month (*Science*, 1 December).

The general problem, so far as the individual cases are concerned, is that the government can hardly find scientific consultants, at a time when it is sponsoring most of the scientific research in the country, who do not have connections with universities or corporations that are receiving or are likely to receive government contracts based in some part on the advice the consultant is being asked to give. This is especially true in an area like seismic research, where substantially all the research that is going on is being done under government contracts, and what is true for seismic research is also true for most areas, aside from some basic research, in which the Defense Department is involved.

The general policy question is not whether some degree of conflict of interest should be allowed, since it is unavoidable, but where and how the line should be drawn. The general difficulty is that no government-wide guidelines have ever been laid down, with the result, among other things, that the sort of cases Finney has been reporting look worse than they would have if government officials could point to an explicit, publicly stated policy under which the degree of conflict of interest involved was judged to be acceptable.

Old Problems

Government officials have been aware of the problem for years, and aware, at least for some time, that it was quite likely to lead, sooner or later, to a possibly embarrassing congressional investigation. A review of the conflict-of-interest problem here a year and a half ago [*Science*, 20 May (1960)] spoke of the "growing concern . . . over this potentially explosive issue" and this by no means dates the beginning of serious concern over the possibility of unpleasant congressional investigation.

What seems to have prevented the Eisenhower and the Kennedy administrations from dealing explicitly with the problem is that it would be impossible to put into writing the standards the government is using for part-time scientific consultants without making a pretty clear case that the standards violate the conflict-of-interest laws passed by Congress.

The basic laws, most of them dating back to the last century, make no special provision for part-time consultants. Under these laws a consultant is a government employee and is prohibited from having a financial interest in dealings with the government. This is simply an impossible restriction, but it is nevertheless the law. As a result, it is fairly common for lawyers to decline government requests for their services on the grounds that they would be technically subject to criminal penalties if, while they were serving on, say, a committee in the Welfare Department, one of their law partners was handling a tax case. Nearly every large law firm in the country is always handling tax cases, and what the lawyers worry about is not that the law might be enforced but that their reputations, or the reputations of their law firms, might be damaged if a congressman or newspaper chose to make a fuss over the matter.

Congress has written partial exemptions to these basic laws into several dozen pieces of legislation, including two especially pertinent to scientists. The act setting up the Defense Department in 1947 and the Atomic Energy Act of 1954 both contain exemptions, but these still prohibit a man advising a government agency from giving assistance to anyone on a matter in which the agency is directly interested. The problem of both the Eisenhower and the Kennedy administrations therefore remained, even with the exemptions to the basic laws, for it still would be impossible to put in writing the informal standards the government has been using for scientific consultants without these regulations being in apparent conflict with the laws passed by Congress. The conflicts would be "apparent" rather than clear-cut mainly because no one has ever been prosecuted under these partial provisions, and there is therefore no firm interpretation of just what the laws mean. But when the Atomic Energy Commission, under pressure from the Joint Congressional Committee on Atomic Energy, asked the Justice Department for an interpretation, the AEC was hardly surprised to learn that the Justice Department regarded dual consultancies as "apparent" violations of the law.

The Defense Department, whose exemption provision is phrased in the

same way as the AEC's, avoided the problem by avoiding taking any official notice of the Justice Department's interpretation of the AEC provision, and by avoiding asking the Justice Department for an interpretation of its own provision. The Defense Department took its own view of interpretation, which made the Putt and Press, and many similar, cases acceptable so long as the consultants did not participate in the actual decision of awarding a contract, and so long as the department was kept fully informed, as it was, of any possible conflicts of interest that existed.

New Code

In general, what seems to have happened is that the government, rather than risk provoking a fuss by making explicit what it was doing, chose to let matters slip along, hoping that things would somehow work out all right.

This does not mean that there was no serious effort to protect the government in conflict-of-interest situations. The agencies tried to be careful about seeing that consultants kept their superiors informed on their conflict-of-interest problems and disqualified themselves from taking part in meetings where serious questions of conflicts seemed to be present, and in general to take what precautions seemed necessary in particular cases to protect the government's interests and individual consultant's reputation.

What was needed, though, was a new conflict-of-interest code that would, among other things, take account of the special position of the consultant. Although the need seems to have been evident for at least several years, nothing was done by the Eisenhower Administration until the summer of 1960. By that time the Bar Association of New York had completed a book-length study of the conflict-of-interest code, financed by the Ford Foundation, and a bill based on the Bar Association findings was introduced by Senator Javits and Congressman Lindsey, both members of the New York Bar. The Administration then supported the bill, but it was too late in the session for anything to happen.

Last year the new Administration conducted its own study, and the President sent a special message to Congress in May which urged passage of an Administration bill based largely on the Bar Association study. Both bills put part-time consultants in a special category and permit them to continue their outside activities except where clear conflicts of interest are present, as in the case of a man who sits in on a committee that is choosing a company that will receive a contract and, at the same time, serves as consultant to one of the companies being considered. It is not clear whether the new law will permit dual consultancies where decisions on a specific contract are not involved, as in the Press situation, but even if this sort of involvement is not generally allowable, the law would permit an exception to be made if the responsible officials decided that the exception would be in the national interest. Even with a new code, there will be criticism of the government's interpretations of the laws, of the regulations that will be laid down under the laws for specific agencies, and of specific decisions on exemptions. But under a new code, the issue will be the wisdom of the government's administration of the laws or the propriety of a particular consultant's behavior, not whether the consultants are being hired in apparent disregard of the law.

Last year the House passed a bill close to the Administration's proposal, and the Senate is expected to pass its version this session. The Hébert committee investigation may still prove embarrassing, but the imminence of the new law will soften its impact. On the other hand, if Hébert were to choose to have it so, the investigation could put the scientific consultants in an unhappy light, and since the situation now is no different from what it was 2 years ago, it is a matter mainly of plain luck that the investigation did not take place then, when the government was not even making an effort to provide a legal basis for the way it was handling the problems of scientists and conflicts of interest.

Road Ahead

The first problem that had to be faced in getting the new code through involved the quite contrary ideas of Congressman Celler of New York, the chairman of the House Judiciary Committee, who was also interested in revising the code, but in a direction quite different from what the Administration and the Bar Association had in mind. Celler was concerned with tightening the present laws, and not at all with loosening them to make it easier for the government to get the services of part-time consultants. So far as these consultants were concerned, Celler was worried about the man who might take on a part-time appointment with the intention not of making himself useful to his country but of getting a chance to make inside contacts to be exploited for his private profit. Celler's bill, therefore, contained no special provision for consultants. The Administration had to convince him that the government's need to recruit outside consultants on terms they could reasonably accept overbalanced the need for extremely strict laws to protect the government from the man who would misuse his position. Celler was generally convinced; the bill which he finally supported contained special provisions for consultants close to what the Administration wanted, and amounted to a nearly complete turnabout for Celler from his previous position.

Senate

It is possible that the Administration will run into a similar problem this year on the Senate side: there is not likely to be any serious opposition to the general principle that consultants must be handled on a different basis from regular government employees, but there may be pressure for more restrictive legislation than the Administration would like.

The Administration view is that there is so much variation in the role of particular consultants on particular committees in particular agencies that it would be very difficult to work with a law which tries to define too precisely just what consultants can or cannot do. Normal practice in such circumstances is for Congress to write a law in general terms and leave it to the executive branch to work out detailed rules and regulations, but there is wide room for differences over just how much leeway the executive branch should be allowed. In this connection, the Administration is anxious to get a bill through, if possible, before the Hébert committee holds its inquiry. Depending on how the inquiry is conducted, and whether it comes up with anything really scandalous, the mood of Congress could swing away from giving the executive branch as much leeway as it is seeking. In particular, there is the chance that the Senate committee could be unduly influenced, in writing a law applicable to all consultants, by a desire to prevent a particular abuse that happened to be in the headlines at the time the bill was being written.—H.M.