Not only are its comments on the assigned counsel system well-taken, but its inclination in the direction of a publicly subsidized-privately administered defender office is probably correct. And it has a number of helpful comments to make about the structure and organization of a defender system. Regrettably, however, the book is so narrowly conceived and so sparse in its presentation of either data or discussion that it is unlikely to sway those who are not already persuaded. Equal Justice for the Accused is an outline for a discussion which should take place somewhere and which may well have taken place in the course of the Committee's deliberations, but which has not been shared with the readers of its report.

Abraham S. Goldstein*  


The problem of conflict of interest is a crucial factor in the recruitment of a number of critical groups of public servants in the United States today. It is raised in its most dramatic form when Senate confirmation of a Cabinet nomination is withheld until the nominee disposes of his allegedly conflicting corporate holdings, but it comes up also in respect to less spectacular appointments of lawyers, scientists, and others having little or no political significance. There is no question that the integrity of the public administration must be preserved. On the other hand, students of law and political science have for a long time doubted whether the essentially mechanistic approach of the existing federal conflict of interest statutes responds in any adequate way to the realities of contemporary economic organization or the requirements of the public service. The thesis of the New York City Bar Association's report is that effective legal control of conflict of interest, and the preservation of the integrity of the public service, can be achieved in a manner which is reconcilable with the facts both of economic life and the needs of the government.

There is a considerable body of legislation on the books dealing with conflict of interest. Indeed, the 1st Congress in 1789 passed a law forbidding the Secretary of the Treasury to invest in securities of the United States. In the main, however, conflict of interest legislation of general application is found in seven statutes, five of which stem from Civil War scandals. These scandals, it may be noted, were little more than the culmination of the sordid record of political immorality which had obtained throughout much of the first half of the nineteenth century. Three of these statutes impose restrictions on government employees or former employees in assisting the prosecution of claims, presumably by judicial action, against the United States. A fourth imposes restrictions on government employees assisting for pay in actions before ad-
ministrative agencies on any matter in which the government is interested. A fifth statute prohibits a government official from acting in behalf of the government in transactions with an entity in which he has a financial interest. A sixth forbids an official to receive compensation from private sources in connection with the performance of his official duties, and a seventh forbids an official to receive pay for assistance in obtaining a government contract. These are all criminal statutes, aimed primarily at officials and ex-officials of the executive branch. Members of Congress are expressly covered by only two, and judges by none. The statutes are not only subject to the general debility inherent in the application of criminal statutes in our jurisprudence, but the extensive development of the system of government contracts in recent years has substantially removed a great deal of activity in behalf of the government from the conflict of interest test. The Report describes many other artifices by which the requirements of the conflict of interest statutes may be met while the claims of public morality remain unsatisfied.

In addition to the criminal statutes a substantial number of general and departmental administrative regulations affect conflict of interest in one way and another. The Department of Justice, the Bureau of the Budget, and the Cabinet Secretariat have all been involved from time to time in the elaboration of general standards for the definition of conflict of interest. The departments and agencies, especially the regulatory agencies, have developed various rules and practices. One of the most frequently encountered rules is one declaring involvement in the trade or industry being regulated out of bounds for employees of the regulatory agency. Thus, employees of the Federal Communications Commission are forbidden to have any interest in the radio, television and wire communications industries, and employees of the Civil Aeronautics Board may have no connection with the civil aviation industry. These industry "quarantines" are feasible, of course, only when the area of activity covered is relatively small and integrally organized. The Federal Trade Commission, for example, has never found a formula for effectively heading off conflict of interests. Moreover, while it may be practicable to keep CAB employees out of the civil aviation industry, the Housing and Home Finance Agency can hardly demand that its employees have no connection with any aspect of the real estate business. The administrative regulations are enforced by various devices—by disqualification, which is a self-policing technique, by reviews of outside employment, by reporting of interests and activities, and by disciplinary proceedings and sanctions. There is great disparity in the level and adequacy of departmental and agency regulation, even within the terms of their own definitions of their conflict of interest problems.

Congress plays an important role in keeping conflict of interest issues aired, in part through its powers of confirmation, and more importantly through its powers of investigation. In the Senate, the Armed Services Committee is the only one that systematically investigates conflict of interest in all nominations
coming before it, and usually applies the divestment rule strictly. Other committees may or may not investigate conflict of interest, although the Finance Committee in the Humphrey confirmation and the Joint Atomic Energy Committee in the McCone confirmation made exceptionally thorough investigations of this factor in the appointments. In the use of its investigating powers, Congress has dealt with a number of significant cases involving conflict of interest in recent years—the Permanent Subcommittee on Investigations of the Senate Committee on Government Operations unearthed the Talbott and Cross cases and a Senate Judiciary Committee subcommittee dealt with the Dixon-Yates contract. In the House the Antitrust Subcommittee of the House Judiciary Committee brought to light the Strobel affair, the House Committee on Government Operations the Ross case, a House investigating subcommittee the Sherman Adams case, and the House Committee on Interstate and Foreign Commerce the Mack affair.

But the statutes which the Congress has enacted, the administrative regulations and practices which the departments and agencies have developed, and the standards applied in senatorial confirmation and in congressional investigation are all instructed and informed by a concept of differentiation between the public and private sectors of the economy. In fact, there has been a growing merger of public and private which in recent decades has all but obliterated the traditional dichotomy. As the Report points out:

Taking in over twenty per cent of the national income in taxes (including social security contributions), spending one-fifth of the national income, controlling (within limits) the money supply and interest rates, regulating foreign trade, setting the laws on patents, bankruptcy, and labor-management relations, and redistributing purchasing power through veterans’ payments, social security, and, indirectly, unemployment compensation, the federal government is today the most important single force in the general economy. The impact of its individual programs, particularly those of a promotional nature, is even more direct. Housing, road building, oil exploration and imports, shipping, farm production, communications, small business financing, atomic energy, medical and other scientific research, slum clearance, export trade, and the sprawling promotional concerns of the Department of the Interior make up only a partial list. These are the programs most apt to be carried out in a complex semigovernmental, semiprivate way through contracts, subsidies, guaranties, financing, grants, staff assistance, tax benefits, technical advice, and a thousand other devices for pooling resources and providing incentive through stick and carrot. To these must be added a rising defense budget, currently exceeding $40 billion a year, one-third to one-half of which goes directly for procurement. Government and the private sector of the economy have become merged beyond separation.

The impact of this merger of the public and private sectors has made itself felt in various quarters. First, it has enormously multiplied the contacts between the citizen and the government, and between private and public economic interests. The interpenetration is so ubiquitous that an approach to
conflict of interest based upon legally cognizable "claims" and "contracts" is unrealistic. Second, the extension of the range of direct government operations has necessitated the drawing of much government technical and administrative staff from private industry, and the expansion in the flow of communication and intelligence between public and private sectors. Third, the confluence of these factors has swept away much of the traditional underpinning of the distinction between public and private which is the foundation of the notion of conflict of interest. As the Report points out: "In a simpler world conforming to the Jeffersonian idyll, government would be small and closely restricted in its activities, and the line between private and public would be clear to all. But as the line between private and public blurs into a broad gray band, the possibility of joint or overlapping interests increases, the whole premise of conflicts regulation begins to be undermined, the problems become more subtle, and regulation grows more difficult."

The program proposed by the Committee is centered on eight major changes in present law and practice:

1. The consolidation and codification of conflict of interest laws, and the establishment of a uniform set of definitions and a consistent approach;

2. The broadening of the scope of conflict of interest laws to conform with the expanded range and changed nature of modern governmental activities;

3. The differentiation between regular and intermittent employment in the federal service, and accommodation to the modern use of intermittent employees;

4. The strengthening of restraints against conflict of interest, especially those in respect of gifts and the use of office to obtain something of value from persons doing business with the government;

5. The recognition of the legitimate private economic interests of government employees, and the enabling of employees to retain certain security-oriented economic interests, particularly continued benefits in outside pension plans;

6. The accentuation of administrative rather than judicial remedies in the adjudication of conflict of interest cases;

7. The creation of the framework for vigorous regulation and administration, with responsibility centered in the presidency;

8. The improvement of procedures for, and coordination of, conflict of interest inquiries in Senate confirmation proceedings.

The Committee points out that its recommendations will not "solve" the problems of conflict of interest in the federal service.

Like most real problems, this is one we must live with permanently, strive to mitigate and adjust to. Governmental ethical standards can only be seen as a part of the society's general moral atmosphere. This is especially true under the American system of continual interflow of men and information between government and the private segment of the society. We can, and must, expect a somewhat higher standard
of moral performance from government officials than from other citizens, but demands for super-standards for government personnel are out of touch with reality and on occasion demagogic.

Within this context, the contribution of the Association of the Bar of the City of New York to the preservation of ethical standards in the federal service deserves and undoubtedly will receive the careful and respectful consideration which the eminence of the Committee and the distinction of its staff fully merits.

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In these volumes the American Bar Foundation has given us something unique in the field of corporate law. Major credit should be given to James F. Spoerri, the Project Director, who is primarily responsible for the format, the research, and much of the draftmanship. Mr. Spoerri has had the co-operation and suggestions of the Committee on Corporate Laws of the American Bar Association to whom the drafts of various sections were sent for criticism, and particularly of a special subcommittee consisting of George C. Seward, Leonard D. Adkins, Whitney Campbell, Paul Carrington, and Ray Garrett. The value of the assistance of this committee cannot be overestimated.

The volumes are sturdily bound, the typography is unusually excellent and much of the simplicity and clarity of the Model Business Corporation Act has carried over into the annotations. Law Latin and Law French appear to have been eliminated so far as possible. The language of each annotation is simple, clear and unambiguous.

The third volume contains, in addition to an excellent index, the text of the Model Business Corporation Act with official forms for use under the act, a table of cases, and a master bibliography of works on corporate law.

The first two volumes comprise the annotations of the act. Each section (or subsection) is uniformly dealt with under the following headings: (1) Model Act Provision, (2) Statutory Provisions, (3) Cases, (4) Comment, (5) References, (6) Statutes.

Under the first heading the section or subsection of the Model Act is quoted without discussion.

The constitutional and statutory provisions of the fifty states, the District of Columbia and Puerto Rico are described under the second heading. The text