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Introduction to the Symposium

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INTRODUCTION TO THE SYMPOSIUM

Corporate acquisitions of a conglomerate nature, during the preceding decade, have served, perhaps unjustifiably, as a catalyst for change and remain a harbinger of more change. Because the impact of conglomerate corporations has been dynamic, and the reaction to their proliferation and growth has been myriad, the editors determined that an issue devoted principally to conglomeration might be both timely and useful.

Undeniably, one law review issue cannot exhaust all facets of conglomeration. Rather, it is our intention to present a cross section of the problems and indicate the manner in which change has been implemented or is pending. There has been a flurry of proposals surrounding conglomeration, some of which have already resulted in legislation and regulations. In many instances, however, the abuses sought to be curbed have been merely those tactics employed by the more traditional corporate forms.

It would seem that if the Justice Department seeks to challenge conglomeration then it must somehow distinguish the "bigness" of a conglomerate from the "bigness" of a less diversification-oriented corporation. Yet such a distinction would be not only artificial, but judicial approval thereof would seemingly work a subterfuge of existing antitrust legislation since the expressed fears and analyses of conglomeration are primarily quantitative whereas the thrust of the legislation is qualitative.

To date, the Justice Department has filed five separate actions to prevent a conglomerate takeover, the most publicized of which involved the Ling-Temco-Vought acquisition of Jones and Laughlin. Recently, a consent decree was entered. We have, however, presented the complaint, answer and consent decree not only because of their general interest, but also, because they embody a practical introduction to the symposium. Contained in the complaint and answer are numerous theories of attack and rebuttal. And the consent decree represents a pragmatic solution reached by the parties.

Mr. Blackford looks at antitrust policy in terms of what it ought to be rather than what it actually is. He feels, for instance, that if a merger is economically "good" for the country, then the government should not challenge such a merger. This would necessarily require some modification of existing legislation.

Mr. Adler's article delves into the recent complaints filed by the Justice Department and concerns itself with the policies of the past and present administrations regarding application of the existing anti-trust laws.

Professor Thomas, in his article on private treble damage actions, presents an excellent history of antitrust legislation and enforcement to date. He espouses the view that the private treble damage action is the best source of restraint on conglomerate growth and that juristic and governmental economic policy enforcement represents a danger to our free enterprise concepts.

It is argued by Professor Lemke that Section 5 of the Federal Trade Commission Act is a valuable tool for the government and should be used more extensively, especially where Section 7 of the Clayton Act cannot be employed because of technical or jurisdictional deficiencies.

The student Comments all represent reactions to the spectre of conglomeration. The genesis of conglomerate growth has been the ability to facilely use tax laws and accounting techniques. Fear of abuse in this area has led to proposals by the Internal Revenue Service, the Securities and Exchange Commission and the Accounting Principles Board with the ultimate result being increased regulation.

When target companies resist takeover they will resort to diverse means to thwart the potential acquirer. One comment investigates the various defensive techniques available and explores the self-serving methods of entrenched management and the manner in which government regulations help to protect and perpetuate incumbent management even though the avowed purpose of the regulations is to protect the potential investor.

Often overlooked, when considering the conglomerate, is its effect on organized labor. The basic legislation governing labor's relationship with business antedates conglomerate existence as we know it today. This problem is analyzed as a part of the symposium.