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ADDRESS

of

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before

the

CHICAGO CONVENTION OF NATIONAL LAWYERS GUILD

42135

Chicago, Illinois
Saturday Afternoon, February 11, 1939.

It gives me very great pleasure to be here. Partly I am pleased with the honor of being invited to join in the proceedings of so illustrious a group of lawyers, who are working so effectively to revive the social conscience of their profession, and to bring the organized bar of the country into touch with modern life. But I am also pleased for a more specific reason--and that is, that your Committee has been kind enough to permit me to take up and comment upon the so-called "Administrative Law Bill" proposed by the House of Delegates of the American Bar Association and recently introduced into the Senate as S.915. My pleasure in this is particularly pointed by the recent newspaper report of an interview granted by Colonel O. R. McGuire, chairman of the American Bar Association's administrative law committee, in which Colonel McGuire is quoted as having said that the Guild was unable to induce "any responsible official of the government" to attack this bill at its recent administrative law conference in Washington. I do not know how far Colonel McGuire will concede me responsibility; but at least I am a government official, and I certainly propose to do my best to remedy the deficiency so far as this conference in Chicago is concerned. To prevent any possibility of misunderstanding of just what I, as a government official,--whether responsible or irresponsible--think about this bill, I want to get one thing clear at the beginning: I propose to attack the bill. I think it is an extremely dangerous bill. In part I think it is incomprehensible. So far as it can be understood, a good deal of it is unworkable. And so far as it would work at all, it not only would quite effectively paralyze the work of administrative agencies, but would do irremediable damage to the long-suffering public whom it is the professed aim of the bill to protect. It is a radical bill, in the worst sense of the word.

In saying this, I do not want in any way to be taken as attacking the integrity or the social good will of the framers and proponents of this bill. I believe the bill to have been prepared in a sincere and patriotic effort to cope with some of the more vexing problems which have arisen out of the rapid modern development of the administrative process. But legislation takes more than sincerity and patriotism; it takes understanding, intelligent analysis, and a sensitive awareness to the social and economic life with which it is to deal. This bill is an attempt to regulate the works of a wrist-watch by using a mattock.

Even at its present stage of infancy, this bill has a rather lurid history. In its first incarnation it contained the amazing requirement that within one year from enactment--or within one year from the enactment of any new statute conferring new powers--every agency of the government should "for the purpose of filling in the details of the statute," after notice and hearing, issue general regulations and rules "to implement" every statute under which such agency operates that affects "the rights of persons or property." This was a simple provision, readable, easy to understand. What it meant was clear: that by legislative enactment, all administrators, all agencies of the government, should be perfectly endowed with immediate good sense, wisdom, and infallibility. Away with time-consuming efforts to understand the intricacies of modern business and finance. This nonsense of thought, analysis, research, of painstaking consultation with experts and of conscientious reexamination of first principles in the light of experience, is nothing but a dangerous importation from red Russia. It must be sent back where it came from as quickly as possible.

This was a perfect law. It solved all problems.

Unfortunately, this bill ran into reverses. Insensitive people complained that all progress could not be condensed into a year. Administrators, and even bureaucrats, selfishly protested that it was unfair to deprive them of the same chance to think about their own decisions, and to correct their own errors, that lawyers and legislators usually reserve to themselves. The bill was attacked with rather heavy artillery, and it retreated to cover. It even lost its birth certificate, and had some difficulty in explaining how it ever came to be born. It disappeared into the limbo of recommitment.

What we are dealing with now is a new, shiny, stream-lined bill. I don't know whether it is the child, the reincarnation, or the ghost of the old bill. But at least it has a family resemblance to the old bill. It may be inheritance, or it may be environment, but the bill still sticks to the safe, conservative idea that administrative rule-making should be a process so far as possible divorced from thought. The theory seems to be that rule-making is a bad thing, and that it should be gotten over with as quickly as possible.

To look at it seriously for a moment, what the bill says is that:

"Rules under all statutes hereafter enacted, shall be issued as herein provided within ninety days after the date same become law subject to the adoption thereafter of further rules or amendment of rules, or rescission of rules from time to time as provided in this Act."

I am not at all sure I was right when I said that the new bill, in this particular respect, bore a family resemblance to the old one. The old one came out clearly and said: "Administrative agencies, think quick, and get your rules down in writing right away, or forever after hold your peace." This was a little silly, but at least you could understand what it was driving at. But what does this one say? It says: "Administrative agencies, think quick, and get your rules down in writing in ninety days, or else, if you prefer, get them down in writing whenever you feel that you have enough grasp of the subject matter so that you can really write an intelligent rule that will meet the problem that it is supposed to be dealing with." In the name of all that is clear and sensible and straightforward in legislative draftsmanship, what is this provision supposed to mean? It is an improvement over the one-year freezing that the first draft called for, but--unless it has a catch in it that I have been completely unable to detect--that is only because it has no meaning at all. The best reason I can think up for it is that it is designed to persuade the reader that the old one-year provision has not been junked altogether. If so, it is the kind of thing which couldn't be put into a prospectus filed with the Securities and Exchange Commission without being pretty promptly subjected to stop order proceedings.

Now, so far I have been talking mostly about what the bill doesn't do. The most important thing, however, is what it does do. It has, in its present form, three main purposes:

- (1) To provide for notice and public hearing and other safeguards against procedural improvidence in the adoption of administrative rules, regulations and orders.
- (2) To provide for immediate judicial review of the validity of administrative rules and regulations.
- (3) To provide for a more pervasive form of judicial review of the validity of administrative orders and findings of fact.

These purposes may perhaps be found synthesized in Colonel McGuire's statement:

"Our people are very definitely not going to trust administrative officials and tribunals with the power and jurisdiction to determine whether their acts are in accordance with the statutes and the constitution or whether they have dealt in good faith with the citizen. That is a function of the courts and we intend to see that the courts are given the jurisdiction to discharge that function."

If I may be permitted the sacrilege of analyzing a general principle, I should like to take the main provisions of the bill separately, and find out just how they operate in the world of facts.

Let me take first the provisions of Section 1, which is entitled "Implementing Administrative Rules". This is the section devoted to the first of the main purposes of the bill -- that of providing self-regulatory safeguards against procedural improvidence in the adoption of administrative rules and regulations. The first of these safeguards is the requirement of "publication of notice and public hearing" before the adoption, amendment or modification of any rule except those relating to hearing procedure.

I suppose that the theory behind this requirement of notice and public hearing is that the public should have a chance to take a crack at a proposed rule before it is adopted, or a chance to express its affection for an established rule before it is repealed. I concur heartily in this theory. It is a theory dictated not only by fairness, but by administrative common sense. An agency which persisted in adopting rules and regulations of general public effect without taking advantage of the advice and experience of the informed members of the public that the rules are to effect wouldn't last very long. It and its rules would be swept away in a wave of popular indignation. None of us are in favor of Star Chamber proceedings.

But this bill, in this respect as in so many others, senses the problem without seeing it. It recognizes that an administrator who assumed to regulate the business and affairs of others without adequately informing himself

on that business and those affairs would be a bad administrator. And it tries to make him a good one by the simple expedient of requiring public notice and hearing.

I am not trying to say that public hearings on proposed regulations are necessarily unsound or unwise. Obviously, under some circumstances they can be very valuable in providing a forum for the airing of divergent views as to aims and policy. But I am saying that a bill cast around the principle of public hearings on proposed administrative regulations is something less than the keystone of modern liberty which its authors appear to think it.

Administrative rule-making power has grown up with the growing complexities and variations of modern civilization. It is delegated by legislatures to experts, or people who are supposed to be experts. Any legislation regarding it must start from the premise that administrators are experts - otherwise the honest thing to do would be to abolish the administrators, or replace them. These experts are given the duty of implementing, of filling in the details of, statutes in areas where the limitations of legislative procedure preclude adequate flexibility, or where the problems involve expert knowledge of a character which legislators have neither the time nor the desire to acquire. An intelligent and responsible expert who is given this job of implementing a complex statute, of making it work, will, at least to the limit of his own intelligence, study and consult, observe and digest, the views of everyone he thinks can throw light of any value on his problem. If he doesn't, he will soon stop being an administrator. But whether he does or doesn't, the point I want to make is that by requiring him to hold public hearings before he can make a decision of any kind, you aren't making him any wiser, better, or more honest. You are just putting a gaudy suit of clothes on him and pretending that that is what makes him breathe and think and live.

Maybe this sounds like nothing more than flippant denunciation. But seriously, the preparation of administrative rules and regulations is a problem for experts. In the case of the Securities and Exchange Commission, every regulation of substantial importance evolves from observation, research, and consultation with outside experts, and in many instances from analysis of thousands of answers to questionnaires. Major regulations, even after this process of selective drafting has been completed, are submitted for critical comment to informed and representative groups throughout the country, and often enough revised, modified, or even abandoned in response to such criticism. After such a process, the addition of a public hearing would be merely perfunctory, or else a tedious, endless duplication of prior effort. And if such care had not been used, if the Commission were so blind to its responsibilities as to draft rules without prior study and expert analysis, the public hearing would be no public protection, but a dishonest gesture.

And then think of the delay. Important regulatory measures should doubtless be taken slowly and carefully, and a standard cooling period may be a wise thing. But this requirement applies not merely to new rules, but to the amendment and repeal of old ones. Even the best administrator may make mistakes, or may find that experience demonstrates the need for a prompt change of front in order to avoid unforeseen public hardship.

This bill requires that an administrator hold a public hearing before correcting his own patent errors.

And finally, you will note that the bill has no requirement that the administrator be bound, or even guided, by the preponderance of testimony taken at the hearing. In this at least it is sound; it does not try to delegate the job of expert rule-making to a jury of wayfarers, to a majority vote of those who by chance may have been attracted to the hearing. It recognizes, perhaps, that the testimony at such a hearing may well be one-sided and based on special interest - that organized groups well able to take care of themselves and unneedful of administrative protection will in all likelihood be the only ones able to afford the luxury of an advocate of their interests. Even well-informed and expert testimony may be disregarded, for prominent and intelligent men may be found on each side of almost every question of modern industrial, social and economic life. But in recognizing this, why could not the framers of the bill recognize more - that as a method for acquiring the knowledge and understanding necessary to the bulk of modern administrative rule-making, the public hearing - the field day for legal orators anxious to make an impression upon valuable clients - is about the most cumbersome and unreliable device that could have been selected.

If neither the ability and integrity of administrators, nor the pressure of public resentment, will protect the public against arbitrary or unfair administrative action, it is futile to seek refuge in the device of advisory public hearings.

That is enough for the public hearing aspect of Section 1 of the bill. But before I leave that section I might mention briefly another curious aspect of it - the provision that rules "shall be published in the Federal Register within ten days (Sundays and national holidays excluded) after the date of their approval by the head of the agency or the independent agency concerned, and shall not become effective until such publication . . ." Why must they be published within ten days after adoption, when they don't become effective until publication anyway? The only effect I can see to this provision is to make it possible to have a rule thrown out by the court if a person could prove that the rule was approved more than ten days before publication, even though the delay had been nobody's business but the agency's. Maybe the bill meant to say that the rule should not become effective until ten days after publication, but it doesn't say that. It goes on to provide for exceptions in cases of public emergency - which must be "stated in the rule approved by the President". As a matter of fact, there is nothing to prevent any rule being published the same day it is approved and thereby become effective without warning - a practice that would raise strenuous objections from the framers of the bill themselves if they stopped to think about it. The S.E.C., and I think most commissions and agencies, use their best efforts to have a new rule released for publication a reasonable time before it is to become effective. Nothing like that is required by this bill. Incidentally, publication in the Federal Register is already required by the Federal Register Act before general regulations may be binding upon people without actual notice of them.

This is just a question of draftsmanship. But a more serious danger to efficient administration is presented by the provision of Section 1 that "any person affected by an administrative rule in force on the date of the approval of this Act" may petition the head of the agency and compel him to hold a public hearing to determine whether the rule should be kept, changed, or thrown away. I will leave it to you to determine, if you can, who is and who is not "affected by" a rule. I will also leave it to you to judge whether this provision would not be the opening gun for a crack-pots' field day. And yet this measure is entitled "A bill to provide for a more expeditious settlement of disputes with the United States, and for other purposes."

Leaving Section 1 for a moment, let us look at Section 3. This section provides for intra-agency boards to be created by the heads of Departments and "independent establishments" (as distinguished from "boards, commissions, authorities and other organizations" - which are denominated "independent agencies"). These intra-agency boards are each to be composed of three employees of the Department or establishment, one of whom must be a lawyer, to act as chairman. The function of such boards is to hear any kind of case brought by any person who is aggrieved by a "decision, act or failure to act" by any officer or employee of the Department or establishment. They then make findings of fact and a decision or order, all of which are subject to review by the head of the Department or establishment or his appointee. A similar procedure is provided for "independent agencies" (meaning commissions like the S.E.C.), except that a trial examiner is used instead of a board, and a hearing on review must be given, upon demand, before the Commission or any three of its members.

The great dilemma arising out of this section becomes apparent when you try to figure out just what kinds of cases are within the jurisdiction of such a board, or a trial examiner, as the case may be. Let's look at the phraseology in more detail. The intra-agency boards, under Section 3(b) take cases brought by "any person ... aggrieved by a decision, act or failure to act (which shall include any regulatory order) by any officer or employee of any agency . . ." The trial examiner, under Section 3(e), hears cases where "any matter arises out of the activities of any independent agency".

Can it be that if the Secretary of War issues a regulatory order in peacetime, his order is taken up for consideration before three employees of the War Department (in effect an appeal in reverse gear), by a person aggrieved, and from there back to the Secretary of War for final disposition? Does this section really mean that this procedure must be followed in any case of an act or failure to act, by any officer or any of the thousands of employees of any Department or agency affected by the bill? That is its literal meaning. Dean Landis has pointed out that this procedure could probably be called into operation by any person dismissed from such an establishment as the Civilian Conservation Corps. I would add the WPA, the Securities and Exchange Commission, and any other establishment or department, board or commission not expressly exempt under Section 6(b). Certainly this seems to follow from Section 6(b) itself, which carefully provides that the Act shall not apply in

any cases where the aggrieved party "has failed to receive appointment or employment by any agency or independent agency". Fortunately we can turn down incompetent job-hunters with impunity, but if we fire a man for drunkenness, it means all the trimmings, setting the boards and trial examiners and heads of agencies to work, public hearings, and even an appeal to the Court of Appeals for the District of Columbia under Section 4.

I decline to speculate on the innumerable other types of grievances that would set this machinery in motion. As to this I can only leave you with the staggering realization that this procedure by the terms of the bill itself applies to any act or omission to act by any employee of any Department, and any "matter" which "arises" out of the activities of any independent agency.

Now let us take another provision - Section 2, which provides for a review of administrative rules by the Court of Appeals for the District of Columbia. This review is to be secured by filing a petition within thirty days after adoption of the rules, that is, in the ordinary case, before any attempt to enforce them would have been made. This review apparently can be had by anyone at all; the bill does not even limit it to persons affected by the rule.

Surely all right-thinking lawyers and administrators will be snocked by this section, not at its reactionary character but at its radicalism - because it involves an insupportable departure from the established framework of our Government. Surely we cannot forget the insistence of official representatives of the American Bar Association and of the members of the committee which drafted this very bill that the doctrine of separation of powers is inherent in the American system of government. We must remember the statement of the committee in its report that it is "our conviction that both practically and constitutionally the Legislative, Executive, and Judicial branches of our government have certain duties to perform and that none of these branches may assume, or be given, the duties and powers of the others so long as our present Constitution survives". The American Bar Association is not alone in recognizing the wisdom of this principle. The courts themselves have been particularly astute in limiting their sphere of activity to subjects generally recognized as *judicial*, i.e., the application of existing law to specific situation, rather than the formulation of general law.

Is it not then a rather strange reversal of form for the House of Delegates of the American Bar Association to come out so strongly for a system whereby the exercise of legislative power is vested in the courts? That the point did not escape them is clear from the report on the bill, which describes the subject-matter of this section as "the exercise of quasi-legislative authority", and the jurisdiction conferred upon the court as "in reality a part of the legislative process in determining the validity of the exercise of quasi-legislative power and for the purpose of expediting the exercise of that power". Is it fair to assume that if the Association had followed the democratic process of submitting this bill to its membership at large before sponsoring it, so grave a dereliction from the Association's own cherished tenets would have been resoundingly challenged and rejected?

But the real vice in this section, as I see it, does not lie in terminology. Let us concede that the doctrine of separation of powers can be made so flexible that even this startling provision can be fitted into it. We are still left with the practical consequence of this provision in the field of administrative procedure. Look at the way it works, in a concrete - although hypothetical - case.

Section 9(a)(6) of the Securities Exchange Act provides in effect that pegging, fixing and stabilizing of listed securities shall be unlawful if effected in contravention of such rules as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors. This section has troubled the Commission ever since the Act was adopted - a matter of over four years; for anyone who knows anything about market problems knows how extremely difficult it is to draw a clear line between a stabilizing operation and a plain fraudulent manipulation. Countless drafts of rules have been prepared, submitted to the trade, criticized, modified, and put away in the ice-box. Fortunately we have not been operating under the proposed one-year statute of the American Bar Association; we have not been compelled to put out our rules in a half-baked fashion just in the interest of speed. We have been allowed to protect the public by holding off from adopting rules until we could find sound and workable ones, which would be understandable and perhaps even acceptable to the trade.

We haven't yet found the right kind of rules, but we have been accumulating knowledge and experience, and some time we may find just what we want. Suppose we do, and we adopt these rules. Just how will this statute operate on them?

The day after we have adopted them someone who doesn't know anything about market problems, and who has nothing but a desire to get his name into the papers, can walk into the Court of Appeals with a petition calling on the court to decide whether the rules are validly adopted, and whether they are in conflict with the Constitution of the United States or with the Securities Exchange Act. A copy of the petition is served on the Attorney General, and he, rather than the Commission, will "conduct the defense of the rules". No concrete case will be presented to the court; it will be asked, and required to determine, the abstract question: are these rules, no matter how they may be applied, unconstitutional or outside the Commission's authority under the Securities Exchange Act? If the court so decides, it issues a declaratory judgment forever wiping the rules off the books.

It is difficult to know just where to begin in criticizing such a statutory provision, but we might start with the problems facing the Court of Appeals.

Surely the framers of this bill cannot be ignorant of the wise reluctance the courts have shown to determine abstract questions, and particularly constitutional questions, in the absence of controversy

between directly affected parties. The very limitation of the judicial power in the Constitution to "cases" and "controversies" represents a recognition of the innate limitations of the judicial process. It ought to be obvious to any lawyer that the materials for proper constitutional decision can be forged only in the heat of actual controversy, between interests truly in conflict. Mr. Justice Hughes has said it himself, in his book on the Supreme Court: "These [constitutional] questions have been decided after full argument in contested cases and it is only in the light afforded by a real contest that opinions on questions of the highest importance can safely be rendered." But this amazing bill would permit anyone to present an abstract question of constitutionality to the Court of Appeals for the District of Columbia; it would vest the defense of the rule in an office of the federal government which had had no part in the painful process of self-education which led to the adoption of the rule; and it would call upon the Court of Appeals to assume a wisdom and an understanding of technical problems which the Supreme Court has continuously been unwilling to assume for itself.

I recognize that the Court of Appeals for the District of Columbia is in a somewhat different position from the other courts of the United States, and that there may be no constitutional objection to vesting it with such an astounding function. But whether the Court of Appeals can take a case like this or not, one thing is clear: its decision will not be subject to review by the Supreme Court. Not only does the bill make no provision for such review; the Supreme Court would have no constitutional power to entertain an appeal (*Federal Radio Commission v. General Electric Co.*, 281 U.S. 464 (1930)). And though, if the Court of Appeals decides in favor of the rule, it may nevertheless be subsequently attacked in other courts and found invalid in actual controversies, a decision by the Court of Appeals against the validity of the rule is final, and binding forever. After such a decision there is no rule any more.

What this bill does is to vest in an inferior court of the United States an absolute right to determine the constitutionality of statutes of Congress, without review by the Supreme Court or any other court of the United States. And as if this were not bad enough, it calls upon the court to make such momentous decisions under circumstances which the courts have for years held to be completely inappropriate to the decision of constitutional questions. I intend no disrespect for the Court of Appeals - indeed I think I am complimenting it - when I say that I am sure its members, for whom I have the highest regard, must shudder at the prospect of this extension of their jurisdiction.

It is true that the members of the Court of Appeals might have their fears (if they have any) laid at rest by reading that portion of the Report on this bill which justifies Section 2 by explaining that it probably won't be used very much. In the language of the Report: "...it is not to be expected that such jurisdiction will be invoked except in limited instances. The fact that the jurisdiction is there will be sufficient for most purposes."

Really, this statement throws a great deal of light on the motives of the framers of the bill, but as an excuse for the proposal of bad legislation it is just about the poorest I have ever heard.

Review of decisions - as distinguished from rules - of administrative agencies is provided by Section 4. We already have that pretty universally, and recognize its wisdom; but there are two main objections to this section as it now stands, aside from the fact that it is unnecessary. One objection is that, as in the case of the proposed judicial review of rules, it puts the Attorney General under the duty of entering appearance in each case, which naturally places a heavy and unnecessary burden of responsibility on his office. Efficient and well-equipped as that office is, and I have the greatest respect for it, I don't think this move is a wise one. In cases of great importance to the Government the Attorney General is now entitled to appear, but there are many cases where that is unnecessary and where the legal staff of the administrative agency is even better qualified to conduct the proceeding. Its knowledge of the issues and facts may have been absorbed over a course of months, and the training of the staff may have qualified it specially through years of experience in dealing with related problems. Under such circumstances, which certainly are not abnormal, I think it can be said without disrespect that the intervention of the Attorney General would cause a wasteful duplication of effort.

My other objection to Section 4 relates to the breadth of the power which it gives to the Circuit Courts of Appeals to review findings of fact. The section provides that a decision or order shall be set aside not only if it appears that the findings of fact are not supported by "substantial evidence", or that the decision or order is unconstitutional or *ultra vires*, or that due process was denied; it goes further and provides that the decision or order shall be set aside if it is made to appear "that the findings of fact are clearly erroneous". Now, what does this provision add? The court already has the power to review facts to see whether the findings are supported by "substantial evidence", but even if they are so supported, under this bill the court can apparently find that they are nevertheless "clearly erroneous". If this provision adds anything, it can only mean carte blanche for any Circuit Court to remake the findings of fact even against a preponderance of the evidence, - to pass on the credibility of witnesses without having heard them - to draw deductions as to matters which in many cases would require expert knowledge and special training to understand. Lawyers when they reach the bench are still lawyers, but instead of acquiring technical training in a special field, they are normally called upon to spread into many diversified fields. It is partly because of this lack of special training found in the trial courts that some administrative agencies are given quasi-judicial powers. The finding of facts in technical spheres, by trained experts in those spheres, is the primary function of such agencies. The application of the law to those facts when they are founded on substantial evidence, is the proper function of the appellate courts.

The final section of the bill has two parts. Section 6(a) provides that these new remedies shall not preclude the use of any existing modes of attack on the work of administrative bodies. All shall exist side-by-side. Section 6(b) excepts certain governmental functions from the application of the bill. This section should be read carefully in the light of the title of the bill: A bill "to provide for the more expeditious settlement of disputes with the United States and for other purposes." In some ways, this is the most revealing section of the whole bill.

If the promoters of this bill seriously feel that it affords the best possible means of checking on administrative error, how can they conscientiously provide in Section 6(a) that the remedies afforded by the bill shall be only alternatives to such existing remedies as may be provided by law? Administrative agencies have already suffered seriously in their efforts to face and solve the problems of industry and business and the investing and consuming public in our complex modern civilization. They have been subjected to constant attacks upon the constitutionality of their very existence, and upon the validity of action taken under their charters from Congress. Sincere cooperative attempts on the part of organized groups of lawyers to find efficient methods of protecting private rights in their conflict with public authority, and to substitute those methods for the haphazard, multifarious, and often barratrous guerrilla warfare to which administrative agencies are now subjected, would be welcomed by every administrative official that I know anything about. But what are we to think of a bill which, under the cloak of providing "a more expeditious settlement of disputes with the United States", proposes merely to add to all existing devices for delay new methods of litigation which will consume more of the time and effort of administrative agencies than all of the existing remedies put together?

And finally, I should like to direct your careful attention to the peculiar system of exclusion and inclusion which has led to the exemptions provided in Section 6(b), and to the reasons given for them in the annotation kindly furnished by the Committee. Bear in mind that a uniform system of settling conflicts with administrative agencies purports to be the aim of the measure. Yet we find that the Interstate Commerce Commission and the administration of the Longshoremen's and Harbor Worker's laws are exempted because they "have a special established procedure for administrative action and judicial appeal or review". Has the Committee really taken the pains to examine into the established procedures for administrative action by other agencies, or into the judicial review statutes of most of the more recent administrative commissions? Next, we find that "Indian land matters have been excluded due to requests on behalf of some members of the Oklahoma bar", and that "in deference to the suggestions of those most interested" these controversies have been excepted. Too, the important subjects of internal revenue, customs, patents, trade-mark and copyright matters have been excluded - and in accordance with a very profound and inspiring reason: this exclusion was "in keeping with an agreement reached at Kansas City and again at Cleveland" with certain committees of the Bar Association. The lending functions of administrative agencies and certain activities of the Department of Agriculture have been exempted because the Committee thinks it "quite obvious in the present development of administrative law" that the bill should not be made applicable to them.

Conceding that this is obvious, I personally am willing to suggest that from *this* bill it is equally obvious that all other Federal administrative functions should be exempted. The ground given for the exemption of the Federal Reserve Board, the Comptroller of the Currency, and the F.D.I.C. is that the General Counsels of these bodies objected to the applicability of the act to them. I suppose that if I may speak for the general counsels of other administrative agencies as well as for myself, I am sure that we would all have objected most strenuously at Kansas City not merely to the application of the bill to our particular agency but to the bill itself - even if applied to agencies unrepresented by their general counsels.

In thus drawing attention to the exemption provisions of the bill, I am not complaining that certain administrative agencies had the good fortune to be exempted from the proposed operation of this measure. Naturally, the fewer the agencies the measure covers, the less harm it will do. But the earlier version of this bill, when presented to the Association at Kansas City, was recommitted. The bill in its present form has never been passed upon by the Association as a whole. I suggest that if it were submitted again at any convention, there would be other and further claims for exemptions by other groups of lawyers and other general counsels. These claims of course would constitute excellent grounds for exempting many other agencies - and perhaps - at least we may hope - ultimately *all* agencies.

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