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ADMINISTRATIVE PROCEDURE ACT

PROCEEDINGS IN THE HOUSE OF REPRESENTATIVES

MAY 24 AND 25, 1946

AND

PROCEEDINGS IN THE SENATE OF THE UNITED STATES

MARCH 12 AND MAY 27, 1946

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## ADMINISTRATIVE PROCEDURE

*March 12, 1946*

The Senate resumed the consideration of the bill (S. 7) to improve the administration of justice by prescribing fair administrative procedure.

Mr. McCARRAN. Mr. President, the unfinished business before the Senate is S. 7, the administrative procedure bill, which has been so long considered and studied by this body. In order that the Senate may have a preview of what it shall consider in connection with the bill, I send to the desk a very able article by Mr. Willis Smith, president of the American Bar Association, entitled "Drafting the Proposed Federal Administrative Procedure Act," and I ask that the clerk may read the article, because it is brief, and will lend emphasis to the explanation which I shall make of the bill immediately.

The PRESIDING OFFICER (Mr. TUNNELL in the chair). Without objection, the clerk will read as requested.

The Chief Clerk read as follows:

### DRAFTING THE PROPOSED FEDERAL ADMINISTRATIVE PROCEDURE ACT

(By Willis Smith<sup>1</sup>)

"How to assure public information, how to provide for rule making where no formal hearing is provided, how to assure fairness in adjudications, how to confer various incidental procedural rights, how to limit sanctions, how to state all the essentials of a right to judicial review, and how to make examiners independent—these were the main questions."

During the last 3 months of 1945 there took place a remarkable series of events in connection with the proposed statute regulating Federal administrative procedure and conferring powers of court review. On October 19, 1945, the Attorney General of the United States issued a strong statement in support of it. On the following November 19 the Committee on the Judiciary of the United States Senate unanimously and favorably reported it (S. 7, Rept. No. 752). On December 10 it was introduced in the House of Representatives as H. R. 4941 in the form reported by the Senate committee. On December 18 and 19, at the sixty-eighth annual meeting of the American Bar Association, Chairman Hatton W. Sumners, of the Committee on the Judiciary of the House of Representatives, made a favorable statement on it, Attorney General Tom C. Clark gave a full address on the subject, and resolutions in favor of it were adopted.

In these days, when so much legislation is done piecemeal and the demands of special interests hold the center of the stage, the legislative proposal which has met with such general acceptance is even more notable because it deals broadly with the problem of administration and is a measure for good government. It deals with procedure, not privileges, and provides a general method of assuring that government will operate according to law. A bill of that character in these days required a background of preparation to achieve such acceptance.

The proposed statute involves almost all administrative operations. It deals with the very important problem of the relation of courts to administrative

<sup>1</sup>The author is a member of the Raleigh (N. C.) bar and president of the American Bar Association.

agencies. It is obviously not such a statute as may easily be drawn and simply submitted to the usual legislative routine. The method of procedure adopted by the Senate Judiciary Committee, under the chairmanship of Senator Pat McCarran, of Nevada, recognized the nature of the task. That method is not only important for this bill but opens possibilities for the future.

#### LEGISLATIVE HISTORY

For more than 10 years Congress has considered proposals for general statutes respecting administrative law and procedure. Ten or more important bills have been introduced in Congress, and most of them have received widespread consideration.

In 1937 the President's Committee on Administrative Management recommended the complete separation of investigative-prosecuting functions and personnel from deciding functions and personnel in administrative agencies, but the significance of its report was lost in the turmoil of other issues. In 1938 the Senate Committee on the Judiciary held hearings on a proposal for the creation of an administrative court. In 1939 the Walter-Logan administrative procedure bill was favorably reported to the Senate. In 1940 it was passed by the Congress, but vetoed by the President in part on the ground that action should await the then imminent final report by a committee appointed in the executive branch. Early in 1941 that committee, popularly known as the Attorney General's Committee on Administrative Procedure, made its extensive report.

Growing out of the work of the Attorney General's Committee on Administrative Procedure, several bills were introduced in 1941. Senate hearings were held on these bills during April, May, June, and July of that year. All interested administrative agencies were heard at length and the proposals then pending involved the basic issues.

Further consideration was postponed for three war years. Bills were again introduced in June 1944 and reintroduced with revisions in 1945. The Committee on the Judiciary of the House of Representatives held hearings in June 1945, but it seemed clear that the real problems were detailed and technical. It had come to be widely accepted that such legislation should be functional in the sense that it should apply to kinds of operations rather than to forms of agencies. Accordingly, the proposed statute dealt primarily with the legislative and judicial functions of administrative agencies. Within each of those functions, however, it was necessary to define procedures and except subjects which were either not regulatory in character or were soundly committed to executive discretion.

#### TECHNICAL REVISIONS

Anticipating that this would be the situation, the chairmen of the Judiciary Committees of the Senate and House of Representatives had requested administrative agencies to submit their views and suggestions in writing. The Attorney General was requested to act as a liaison officer between the legislative committee and the several administrative agencies. Representatives of the staff of the Senate committee, with the aid of the representatives of the Attorney General and other interested parties, engaged in an extensive series of conferences at which points made were discussed and alternative proposals as to language were debated. Then, in May 1945, the Senate committee issued a committee print in which the text of S. 7 appeared in one column and a tentatively revised text in the parallel column.

The revised text so proposed was then again submitted to administrative agencies and other interested parties for their written or oral comments, which were analyzed by the committee's staff and a further committee print was issued in June 1945. In four parallel columns it set forth (1) the text of the bill as introduced, (2) the text of the tentatively revised bill previously published, (3) a general explanation of provisions with references to the report of the Attorney General's Committee on Administrative Procedure and other authorities, and (4) a summary of views and suggestions received.

About this time Tom C. Clark became Attorney General and added new representatives to the conference group. Senator McCarran, chairman of the Senate Committee on the Judiciary, asked that they screen and correlate any further agency views. After this had been done and representatives of private organizations had submitted their additional views, the bill as further revised was made a committee print under date of October 5, 1945.

This final draft was submitted to the Attorney General for his formal perusal. He not only reported that the proposal was not objectionable but recommended its enactment in a strong statement on October 19, 1945. A month later the Senate committee reported the measure. Its report of 31 pages plus appendix reflects the long and painstaking consideration given the bill. The process of that consideration was not only well adapted to the technical nature of the job at hand but it was truly democratic, for private as well as governmental representatives were given every opportunity to submit their views and suggestions.

#### PARTICIPATION OF LEGAL PROFESSION

The organized bar had the same opportunities for presentation of views and suggestions. Bar associations had adopted resolutions and had presented reports to the congressional committees. The American Bar Association's special committee on administrative law took an active part, culminating in a full day's meeting of the 13-man committee at Washington on October 2. The committee unanimously approved the final draft of the bill and certified its position to the chairmen of the congressional committees.

Contrary to the impression which some people seem to have, the proposed Administrative Procedure Act is not a compromise. The problem was not "how much" but "how." How to assure public information, how to provide for rule making where no formal hearing is provided, how to assure fairness in adjudications, how to confer various incidental procedural rights, how to limit sanctions, how to state all the essentials of a right to judicial review, and how to make examiners independent—these were the main questions.

There were two reasons why the legal profession could not engage in trading for advantage in the details. First, if the statute should prove unworkable, it might prejudice procedural legislation for all time. Secondly, onerous requirements, such as those respecting evidence, might aid one private interest in one case—that is, where prohibitory orders are issued—but would harm them in another—e. g., where a license is sought. Mainly, however, it was a simple matter of good citizenship and good statesmanship to seek the best and fairest provisions for each subject.

#### CONCLUSION

The draft of bill as reported by the Senate Committee on the Judiciary offers a means of securing and maintaining a government according to law. Its workability has been tested by the elaborate procedure discussed above. Its utility has been approved by the representatives of most of the legal professions. Its desirability is admitted by public officers of the highest rank. The necessity for it has been attested by the responsible Members of the National Legislature. If it is adopted, as it should speedily be, the result will be due to the background of study and care with which its terms have been drafted and tested.

**Mr. McCARRAN.** Mr. President, it has been said that the law is a jealous mistress. I regret exceedingly that I cannot have before me at this moment every Member of the Senate of the United States so that each might listen to the explanation of a bill which to my mind and to the mind of the bar of America is one of the most important measures that has been presented to the Congress of the United States in its history.

We have set up a fourth order in the tripartite plan of Government which was initiated by the founding fathers of our democracy. They set up the executive, the legislative, and the judicial branches; but since that time we have set up a fourth dimension, if I may so term it, which is now popularly known as administrative in nature. So we have the legislative, the executive, the judicial, and the administrative.

Perhaps there are reasons for that arrangement. We found that the legislative branch, although it might enact law, could not very well administer it. So the legislative branch enunciated the legal precepts and ordained that commissions or groups should be established by the executive branch with power to promulgate rules and regulations. These rules and regulations are the very things that impinge upon,

curb, or permit the citizen who is touched by the law, as every citizen of this democracy is.

The bill comes from the Committee on the Judiciary of the Senate of the United States, and I think it should be explained to every Member of the Senate, because the Committee on the Judiciary desires that there should be a full understanding of its provisions and purposes. The Committee on the Judiciary is the law committee of this body, and the law is the thing which makes democracy vital. This is not a Government of men. It is a Government of law; and this law is a thing which, every day from its enactment until the end of time so far as this Government is concerned, will touch every citizen of the Republic. So I proceed with a detailed explanation of a bill which should be listened to by every Member of the Senate.

Mr. President, Calendar No. 758, Senate bill 7, the purpose of which is to improve the administration of justice by prescribing fair administrative procedure, is a bill of rights for the hundreds of thousands of Americans whose affairs are controlled or regulated in one way or another by agencies of the Federal Government. It is designed to provide guaranties of due process in administrative procedure.

The demand for legislation of this type to settle and regulate the field of Federal administrative law and procedure has been widespread and consistent over a period of many years. Today there are no clearly recognized legal guides for either the public or the administrative officials of Government departments. The subject of administrative law and procedure is not expressly mentioned in the Constitution, and there is no recognizable body of such law, as there is for the courts in the Judicial Code.

Even the ordinary operations of administrative agencies are often difficult to know, and undoubtedly there have been litigants before Government agencies who have received less than justice because they were not fully advised of their rights or of the procedure necessary to protect them.

The Committee on the Judiciary has been convinced that there should be a simple and standardized plan of administrative procedure. This bill is intended to put such a plan into effect.

Proposals for general statutes respecting administrative law and procedure have been before the Congress in one form or another, and have been considered by the Congress over a period of more than 10 years. I call the attention of the Senate to the chart on page 2 of the Judiciary Committee's report on Calendar No. 758, Senate bill 7. This is Senate Report No. 752, which is on the desks of all Senators. This chart clearly shows the chronology of the main bills on this subject which have been introduced. Each of the bills shown on this chart has received wide public attention and long and serious consideration in the Congress. Problems of administrative law and procedure have been increased and aggravated by the continued growth of the Government, particularly in the executive branch. By the middle of the 1930's the situation had become so serious that the President then in office appointed a committee to make a comprehensive survey of administrative methods, overlapping functions, and diverse organizations, and to submit suggestions for improvement. While that committee was not primarily concerned with the more detailed questions of administrative law and procedure as the term is now understood,

the committee inevitably was brought face to face with the fundamental problem of the inconsistent union of prosecuting and deciding functions exercised by many executive agencies.

In 1937 the President's Committee on Administrative Management issued its report. I quote excerpts from that report:

The executive branch of the Government of the United States has \* \* \* grown up without plan or design \* \* \*. To look at it now, no one would ever recognize the structure which the founding fathers erected a century and a half ago. \* \* \* Commissions have been the result of legislative groping rather than the pursuit of a consistent policy. \* \* \* They are in reality miniature independent governments set up to deal with the railroad problem, the banking problem, or the radio problem. They constitute a headless "fourth branch" of the Government, a haphazard deposit of irresponsible agencies and uncoordinated powers. \* \* \* There is a conflict of principle involved in their make-up and functions. \* \* \* They are vested with duties of administration \* \* \* and at the same time they are given important judicial work. \* \* \* The evils resulting from this confusion of principles are insidious and far-reaching. \* \* \* Pressures and influences properly enough directed toward officers responsible for formulating and administering policy constitute an unwholesome atmosphere in which to adjudicate private rights. But the mixed duties of the commissions render escape from these subversive influences impossible. Furthermore, the same men are obliged to serve both as prosecutors and as judges. This not only undermines judicial fairness; it weakens public confidence in that fairness. Commission decisions affecting private rights and conduct lie under the suspicion of being rationalizations of the preliminary findings which the Commission, in the role of prosecutor, presented to itself.

Mr. President, I have been quoting from the report of the President's Committee on Administrative Management, issued in 1937. In transmitting that report to the Congress, President Roosevelt added a comment of his own, from which I also wish to quote. He said:

I have examined this report carefully and thoughtfully, and am convinced that it is a great document of permanent importance. \* \* \* The practice of creating independent regulatory commissions, who perform administrative work in addition to judicial work, threatens to develop a "fourth branch" of the Government for which there is no sanction in the Constitution.

Mr. President, those are the words of the late, beloved President of the United States, Franklin Delano Roosevelt.

The remedy proposed by that committee, back in 1937, was a very drastic one, namely, complete separation of investigative and prosecuting functions and personnel from deciding functions and personnel. That remedy had inherent administrative difficulties which, while not so great as the fault which it sought to remedy, were in themselves serious. The pending bill does not go as far as that 1937 recommendation.

A proposal for creation of an administrative court came before the Senate Judiciary Committee in 1938, and extensive hearings were held. In connection with those hearings, the Judiciary Committee issued a committee print elaborately analyzing the administrative powers conferred by statute. That was in the third session of the Seventy-fifth Congress. In the following year, 1939, the Walter-Logan administrative procedure bill was favorably reported to the Senate from the Committee on the Judiciary. That was during the Seventy-sixth Congress, first session, and the report I have mentioned was Senate Report 422 of that Congress, reporting on Senate bill 915 of that Congress. In the third session of the Seventy-sixth Congress, the Walter-Logan bill was reported to the House of Representatives with amend-

ments. The bill eventually was passed by the Congress, but was vetoed by the President in 1940, partly on the ground that action should await the final report of a committee which had been appointed 2 years earlier to study the entire situation.

The committee which the President had in mind was the so-called Attorney General's Committee, which had been appointed in December 1938. The background of that committee was a renewed suggestion from the Attorney General concerning the need for procedural reform in the wide and growing field of administrative law. The President had concurred in the Attorney General's recommendation for the appointment of a commission to make a thorough survey of existing practices and procedures, and to point the way to improvements, and had authorized the Attorney General to appoint a committee for that purpose. The committee was composed of Government officials, teachers, judges, and private practitioners.

The Attorney General's Committee made an interim report in January 1940. The staff of that committee prepared, and during 1940 and 1941 issued a series of studies of the procedures of the principal administrative agencies and bureaus in the Federal Government. Executive sessions of the committee were held over a long period, and representatives of Federal agencies were heard at such sessions. The committee also held lengthy public hearings. It then prepared and issued a final report which was exhaustive and voluminous. The Senate should be informed that the Judiciary Committee, in framing the bill which is now before the Senate, has had the benefit of the factual studies and analyses prepared by the Attorney General's Committee.

Several bills were introduced in 1941, as the outgrowth of the work of the Attorney General's Committee. Hearings on these bills were held during the spring and early summer of that year. The matter was postponed, however, because of the international situation then existing, and the apparent need for concentrating on matters of national defense and, soon afterward, of actual war. However, all interested administrative agencies were heard at length during the 1941 hearings, and the proposals then pending involved the same basic issues as does the present bill.

On the basis of the studies and hearings in connection with prior bills on the subject, and after several years of consultation with interested parties in and out of official positions, identical bills on this subject were introduced in June 1944, Senate bill 2030 of the Seventy-eighth Congress in the Senate, and House bill 5081 in the House. Introduction of these bills brought forth a large volume of further suggestions from every quarter. As a result, a revised and simplified bill was introduced at the opening of the present Congress, on January 6, 1945. This bill was Senate bill 7, introduced in the Senate by the chairman of the Judiciary Committee of the Senate; and an identical measure, House bill 1203, was introduced on January 8 in the House of Representatives by the chairman of the Judiciary Committee of that body.

A great deal of informal discussion with interested parties followed the introduction of these two bills. In the latter part of June 1945 the Judiciary Committee of the House held hearings on the House bill. Prior to those hearings the House Committee and the Senate



Committee on the Judiciary had requested administrative agencies to submit their views in writing. All submissions were carefully analyzed and, with the aid of representatives of the Attorney General and interested private organizations, in May 1945 there was issued a Senate committee print setting forth in parallel columns the bill as introduced and a tentatively revised text.

Once more interested parties in and out of Government were invited to submit, and did submit, comments orally or in writing on the revised text. These were analyzed by the staff of the Senate Committee on the Judiciary, and a further committee print was issued in June 1945. This committee print set forth, in four parallel columns, first, the text of the bill as introduced; second, the text of the tentatively revised bill previously published; third, a general explanation of provisions with reference to the report of the Attorney General's Committee on Administrative Procedure and other authorities; and, fourth, a summary of views and suggestions received.

After the preparation and publication of this committee print, the Attorney General again designated representatives to hold further discussions with interested agencies and to screen and further correlate agency views, some of which were submitted in writing and some orally. Private persons and representatives of private organizations also participated in the discussions at that time.

After completion of those discussions the committee drafted the bill in the form in which it has been reported and is now before the Senate. The Attorney General has reported favorably on this bill, and I call the attention of the Senate to the text of the Attorney General's report, which appears as Appendix B of the committee's report.

Mr. President, I have gone rather fully into the background of this bill and the various steps which were taken prior to its presentation to the Senate, because I wish every Member of this body to know and realize that not only the general subject, but every detailed provision of the bill, has had the most careful consideration possible. The bill has the approval of the Judiciary Committee of the Senate. It has the active support of the Attorney General. Not one agency in the executive branch of the Government is on record as opposing it. The American Bar Association has endorsed it wholeheartedly. The bill has, in short, the kind of virtually unanimous support which would be expected in the case of a bill which has received such very lengthy, and very full and meticulous consideration.

It has been the purpose of the Committee on the Judiciary, throughout the lengthy process of consideration which I have outlined, to make sure that no operation of the Government would be unduly restricted by the bill. The committee has also taken the position that the bill must reasonably protect private parties even at the risk of some incidental or possible inconvenience to, or change in, present administrative operations. The committee is convinced, however, that no administrative function is improperly affected by this bill.

Admittedly, this is a complicated bill, but it deals with a complicated subject. I wish to say—and I take no credit for it—that this bill represents one of the finest pieces of legislative draftsmanship in my experience. That is the natural result of the lengthy process of writing and rewriting, involving careful attention to every detail, and to every nicety of expression, which I have already outlined to the Senate.

Perhaps it might be well at this time to emphasize that this bill is a coherent whole; no section or paragraph of the bill is completely independent; all parts of it are closely interrelated. The bill must be read and considered as a whole, and in this case the whole is considerably more than the sum of its parts.

Mr. President, without attempting to minimize the many problems with which the committee dealt, I want to point out to the Senate the four principal problems which had to be solved. These were, first, to distinguish between different types of administrative operations; second, to frame general requirements applicable to each such type of operation; third, to set forth those requirements in clear and simple terms; fourth, to make sure that the bill was complete enough to cover the whole field.

As it has been reported to the Senate, the committee feels that it has avoided the mistake of attempting to oversimplify this measure. It has not hesitated, therefore, to state functional classifications and exceptions where those could be rested upon firm grounds. In so doing, the committee has followed the undeviating policy of dealing with types of functions as such and in no case dealing with administrative agencies by name. That point is important, and I will repeat it if I may. The committee has not deviated from the policy of dealing with types of functions as such, and the bill in no case deals with administrative agencies by name.

For example, certain war and defense functions are exempted under the bill, but there is no exemption of the War or Navy Departments in the performance of their other functions. Obviously it would be folly for the committee to presume to distinguish between "good" agencies and "bad" agencies, and there is no attempt in the bill to make such a distinction.

To cite another example, the legitimate needs of the Interstate Commerce Commission have been fully considered, but the Commission has not been placed in a favored position over other Government agencies by exemption from the bill. To state the matter another way, the committee feels that administrative operations should be treated as a whole, lest the neglect of some link should defeat the purposes of the bill. In this connection, I wish to call the attention of Senators to the chart on page 9 of the committee's report, which emphasizes the committee's approach by showing, in diagram form, how the principal sections of the bill are interrelated.

I think it will be well at this point to give the Senate a brief comparison between the pending bill and the Walter-Logan bill, and between it and the recommendations of the Attorney General's Committee.

The Walter-Logan bill, which was vetoed by the President, differed materially from the bill now before the Senate. The Walter-Logan bill, while distinguishing between regulations and adjudications, simply required administrative hearings for each, and provided special methods of judicial review. More particularly, in the matter of general regulations, the Walter-Logan bill failed to distinguish between the different classes of rules. It stated that rules should be issued within 1 year after the enactment of the statutory authority. It required a mandatory administrative review upon notice and hearing within a year, and set up a system of judicial review through

declaratory judgments by the Court of Appeals for the District of Columbia within a limited time after the adoption of any rule.

In the adjudication of particular cases, the Walter-Logan bill also provided for administrative hearings of any controversy before a board of any three employees of any agency. Decisions of such boards were to be made within 30 days, under the Walter-Logan bill, and were subject to the apparently summary approval or modification of the head of the agency or his deputy. On the other hand, independent commissions—with not less than three members sitting—were required to hold a further hearing after any hearing by an examiner. A special form of judicial review was provided for any administrative adjudication. A long list of exemptions of agencies, by name, was included in the Walter-Logan bill.

Now let me point out some of the essential respects in which the pending bill differs from the Walter-Logan bill. The bill now before the Senate differentiates the several types of rules. It requires no agency hearings in connection with either regulations or adjudications unless statutes already do so in particular cases, thereby preserving rights of individual trials *de novo*. Where statutory hearings are otherwise provided, this bill fills in some of the essential requirements; and it provides for a special class of semi-independent subordinate hearing officers.

The bill includes several types of incidental procedures. It confers numerous procedural rights. It limits administrative penalties. It contains more comprehensive provisions for judicial review for the redress of any legal wrong. And, since it is drawn entirely upon a functional basis, it contains no exemptions of agencies as such.

The pending bill is more complete than the solution favored by the majority of the Attorney General's Committee, but is, at the same time, shorter and more definite than the proposal of the minority of that committee. While it follows generally the views of good administrative practice as expressed by the whole of that committee, it differs in several important respects.

The bill provides that agencies may choose whether their examiners shall make the initial decision or merely recommend a decision, whereas the Attorney General's Committee made mandatory a decision by examiners.

The bill provides some general limitations upon administrative powers and sanctions, particularly in the rigorous field of licensing, while the Attorney General's Committee did not touch upon that subject.

This bill relies upon independence, salary security, and tenure during good behavior of examiners within the framework of the civil service, whereas the Attorney General's Committee favored short-term appointments approved by a special Office of Administrative Procedure.

If Senators desire to consult a more detailed comparison of the pending bill, with full reference to the report of the Attorney General's Committee, such a comparison is to be found in the third parallel column of the committee print issued by the Senate Judiciary Committee in June of 1945.

I cannot emphasize too strongly that the bill now before the Senate is not a specification of the details of administrative procedure.

Neither is it a codification of administrative law. It represents, instead, an outline of minimum basic essentials, framed out of long consideration and in the light of the comprehensive studies I have previously mentioned.

To state it simply, this bill is designed to afford parties affected by administrative powers a means of knowing what their rights are, and how they may be protected. At the same time, administrators are provided with a simple course to follow in making administrative determinations. The jurisdiction of the courts is clearly stated. The bill thus provides for public information, administrative operation, and judicial review.

The substance of what the bill does may be summarized under four headings:

First. It provides that agencies must issue as rules certain specified information as to their organization and procedure, and also make available other materials of administrative law.

Second. It states the essentials of the several forms of administrative proceedings and the limitations on administrative powers.

Third. It provides in more detail the requirements for administrative hearings and decisions in cases in which statutes require such hearings.

Fourth. It sets forth a simplified statement of judicial review designed to afford a remedy for every legal wrong.

The first of those four points is basic, because it requires agencies to take the initiative in informing the public. In stating the essentials of the different forms of administrative proceedings, the bill carefully distinguishes between the so-called legislative functions of administrative agencies—where they issue general regulations—and their judicial functions—in which they determine rights or liabilities in particular cases.

Quite different procedures are provided by the bill for the legislative and judicial functions of administrative agencies. In the rule making, that is, legislative, function the bill provides that, with certain exceptions, agencies must publish notice and at least permit interested parties to submit their views in writing for agency consideration before issuing general regulations. No hearings are required by the bill unless statutes already do so in a particular case. Similarly, in adjudications—that is, the judicial function—no agency hearings are required unless statutes already do so, but in the latter case the mode of hearing and decision is prescribed. Where existing statutes require that either general regulations—which the bill calls rules—or particularized adjudications—which the bill calls orders—shall be made after agency hearing, or opportunity for such hearing, then section 7 of the bill spells out the minimum requirements for such hearings; section 8 states how decisions shall be made thereafter, and section 11 provides for examiners to preside at hearings and make or participate in decisions.

While the administrative power and procedure provisions of sections 4, 5, 6, 7, 8, and 9 are law apart from court review, the provisions for judicial review provide parties with a method of enforcing their rights in a proper case. However, it is expressly provided that the judicial review provisions are not operative where statutes otherwise preclude judicial review, or where agency action is by law committed to agency discretion.

Five types of provisions compose this bill. They are:

First. Provisions which are largely formal, such as the sections setting forth the title, definitions, and rules of construction.

Second. Provisions which require agencies to publish or make available information on administrative law and procedure.

Third. Provisions for different kinds of procedures such as rule making, adjudications, and miscellaneous matters, as well as for limitations upon sanctions and powers.

Fourth. Provisions concerning the detail for hearings and decisions as well as for examiners.

Fifth. Provisions for judicial review.

I desire to emphasize the fifth type of provisions, namely, provisions for judicial review, because it is something in which the American public has been and is much concerned, harkening back, if we may, to the Constitution of the United States, which sets up the judicial branch of the Government for the redress of human wrongs and for the enforcement of human rights.

As I have already pointed out, the bill is so drafted that its several sections and subordinate provisions are closely knit. The substantive provisions of the bill should be read apart from the purely formal provisions and minor functional distinctions. The definitions in section 2 are important, but they do not indicate the scope of the bill, since the subsequent provisions make many functional distinctions and exceptions. The public information provisions of section 3 are of the broadest application because, while some functions and some operations may not lend themselves to formal procedure, all administrative operations should as a matter of policy be disclosed to the public except as secrecy may be obviously required or only internal agency "house-keeping" arrangements may be involved.

Sections 4 and 5 of the bill prescribe the basic requirements for the making of rules and the adjudication of particular cases. In each case, where other statutes require opportunity for an agency hearing, sections 7 and 8 set forth the minimum requirements for such hearings and the agency decisions thereafter, while section 11 provides for the appointment and tenure of examiners who may participate. Section 6 prescribes the rights of private parties in a number of miscellaneous respects which may be incidental to rule making, adjudication, or the exercise of any other agency authority. Section 9 limits sanctions, and section 10 provides for judicial review.

Again, I wish to call the attention of Senators to the chart on page 9 of the committee report on the bill.

Mr. President, an analysis of the bill, section by section, may prove helpful at this point. If Senators will refer to their copies of the bill, and follow me as I go along, I shall undertake to discuss each section of the bill in its proper order.

Section 1 refers to the title of the bill, and provides that the measure may be cited as the Administrative Procedure Act. Although this short title has been chosen for the sake of brevity, Senators will note, as I have previously pointed out, that the bill actually provides for both administrative procedure and judicial review.

Section 2 contains the definitions.

The word "agency" is defined by excluding legislative, judicial, and Territorial authorities, and by including any other "authority"

whether or not within, or subject to review by, another agency. The bill is not to be construed to repeal delegations of authority provided by law. Expressly exempted from the term "agency," except for the public information requirements of section 3, are: first, agencies composed of representatives of parties or of organizations of parties; and, second, defined war authorities including civilian authorities functioning under temporary or named statutes operative during "present hostilities."

The term "person" is defined to include specified forms of organization other than agencies.

The term "party" is defined to include anyone named, or admitted, or seeking, and entitled to be admitted, as party in any agency proceeding except that nothing in the subsection is to be construed to prevent an agency from admitting anyone as a party for limited purposes.

The term "rule" is defined as any agency statement of general applicability designed to implement, interpret, or prescribe law, policy, organization, procedure, or practice requirements.

The term "rule making" is defined to mean agency process for the formulation, amendment, or repeal of a rule, and includes any prescription for the future of rates, wages, financial structures, and so on.

The term "order" is defined to mean the final disposition of any matter, other than rule making but including licensing, whether or not affirmative, negative, or declaratory in form.

The term "adjudication" is defined as the agency process for the formulation of an order.

The term "license" is defined to include any form of required official permission, such as certificate, charter, and so on.

The term "licensing" is defined to include agency process respecting the grant, renewal, modification, denial, revocation, and so forth, of a license.

The term "sanction" is defined to include any agency prohibition, withholding of relief, penalty, seizure, assessment, requirement, restriction, and so on.

The term "relief" is defined to include any agency grant, recognition, or other beneficial action.

Mr. DONNELL. Mr. President, will the Senator yield?

The PRESIDING OFFICER (Mr. STEWART in the chair). Does the Senator from Nevada yield to the Senator from Missouri?

Mr. McCARRAN. I yield.

Mr. DONNELL. Will the Senator be kind enough to permit me to ask him a question in regard to one of the definitions in section 2? I am not clear as to the meaning of the language which reads as follows:

Except as to the requirements of section 3, there shall be excluded from the operation of this act (1) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them.

I should greatly appreciate it if the Senator would be kind enough to amplify somewhat his explanation of that provision.

Mr. McCARRAN. Section 2 (a) exempts from the operation of the act agencies composed of representatives of the parties, or of organizations of the parties, to the disputes determined by them—except for the requirements of section 3 relating to the publication of rules, orders,

and decisions. The effect of that language is to exclude, from all but section 3, such agencies as the National Railroad Adjustment Board. Other boards composed of such representatives, under the Railway Labor Act, or similar statutes, would be likewise exempt. It may also be noted that various functions of such agencies as the National Mediation Board and the Railroad Retirement Board are excluded from provisions of the act by the applicable language of later sections.

Mr. DONNELL. I thank the Senator for the explanation.

Mr. REED. Mr. President, will the Senator yield?

Mr. McCARRAN. I yield.

Mr. REED. I confess a lack of understanding of the bill. I have had considerable experience with some of the Government agencies, particularly the Interstate Commerce Commission. Over the years the Congress has laid down rules of procedure instructing the Interstate Commerce Commission as to how to act in certain cases in the matter of rate making, valuations, and orders. All that is prescribed by statute. Is there anything in this bill that would interfere with that procedure?

Mr. McCARRAN. There is nothing in this bill which would interfere with such procedure.

Mr. REED. I was a little uncertain, due, of course, to my lack of understanding of the bill and my lack of opportunity to give it the study which it requires.

Mr. McCARRAN. I wish to make it very clear to the Senator, because I appreciate the fact that he has had long experience in practice before the Interstate Commerce Commission, that there is nothing in this bill which would take away from the Interstate Commerce Commission anything in the way of functions.

Mr. REED. And it would not change its method and rule of doing business when the method and rule is founded on statutory authority?

Mr. McCARRAN. That is correct.

Mr. REED. I thank the Senator.

Mr. McCARRAN. Let me say to the Senator from Kansas that that has been one of the great problems we have had to work out in the long months of study which we have devoted to the bill. We did not wish to disrupt or change anything that was statutory; and yet we wanted to establish something which would prescribe and define the avenue by which the individual citizen could gain access to a public agency which would touch his private life, and we wished to find for him a way through the procedure.

Mr. REED. I wish to pay tribute to the Senator from Nevada for the great amount of hard work he has done, and the vast amount of ability and intelligence which he has brought to bear upon this effort, which I hope will be successful. In the light of the great expansion of governmental activities into the private lives of our citizens, some protection of the citizen against these agencies should be provided. It is long overdue. I extend to the Senator from Nevada my appreciation of the great amount of work he has done, and the great ability he has brought to this task.

Mr. McCARRAN. I am very grateful to the Senator from Kansas. I have one ambition in life, and that is that this bill, when enacted into law—as I hope it will—will become a monument to the Congress of the United States for its careful study, and a monument to the Committee

on the Judiciary of the Senate for the time, zeal, and diligence which that committee has put into the construction of the bill.

Mr. AUSTIN. Mr. President, will the Senator yield?

The PRESIDING OFFICER (Mr. STEWART in the chair). Does the Senator from Nevada yield to the Senator from Vermont?

Mr. McCARRAN. I yield.

Mr. AUSTIN. Before the Senator leaves section 2, I should like to inquire about a phrase which is new to me. I refer to the expression "legal wrong" which appears in section 10 (a) on page 34, line 16, and which is used for the purpose of describing a person who is entitled to review. My inquiry is for the purpose of having the RECORD show what the intention of the author of the bill is with respect to the combination of words "legal wrong." For a long time we have known just what the meaning of "legal injury" is. It seems to me that by the use of the word "wrong" a much broader category of individuals is admitted to review. I suppose that was the benign purpose of the author of the bill; but I should like to have it in the RECORD as a definition, in the course of his address, while he is still on the subject of definitions.

In Bouvier's Law Dictionary, volume 3, page 3500, appears a definition of "wrong":

In its broad sense, it includes every injury to another, independent of the motive causing the injury (*Union Pacific Railway Company v. Henry*, 36 Kans. 570, 14 Pac. 1).

There is more to the definition. Is it the intent of the author of the bill to have the words "legal wrong" comprehend the scope of the definition of "wrong" as it appears in Bouvier's Law Dictionary?

Mr. McCARRAN. I have not in mind the language to which the able Senator refers, but the language as I heard him read it is rather common language addressing itself to that subject. My conception of the term "legal wrong" is set forth in the committee report on page 26:

The phrase "legal wrong" means such a wrong as is specified in subsection (e) of this section. It means that something more than mere adverse personal effect must be shown—that is, that the adverse effect must be an illegal effect. The law so made relevant is not just constitutional law, but any and all applicable law.

Let me read further in connection with the construction which I place on the term:

Reviewing courts are required to decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of any agency action. They must (A) compel action unlawfully withheld or unreasonably delayed and (B) hold unlawful any action, findings, or conclusions found to be (1) arbitrary, (2) contrary to the Constitution, (3) contrary to statutes or short of statutory right, (4) without observance of procedure required by law, (5) unsupported by substantial evidence upon the administrative record where the agency is authorized by statute to hold hearings subject to sections 7 and 8, or (6) unwarranted by the facts so far as the latter are subject to trial de novo.

I have tried to anticipate the question which the able Senator has propounded to me. I am glad that he asked the question. I have tried to define the term, because I thought it might be well to have it defined in the RECORD.

Mr. AUSTIN. Mr. President, will the Senator further yield?



Mr. McCARRAN. I yield.

Mr. AUSTIN. I see the application of what the distinguished Senator has just stated to the following part of the clause in section 10 (a) namely, "or adversely affected or aggrieved by such action within the meaning of any relevant statute." That is another category of men and women who are entitled to review. But my question was limited to the category described as "any person suffering legal wrong because of any agency action." On this point I should like to read further from the definition of "wrong," because this is a new use of the word. If the author of the bill intends by the use of the term "legal wrong" what is here set forth, I should like to have it in the RECORD, because it would save a great deal of controversy. May I take the time of the Senator to read further from the definition of "wrong" in Bouvier's Law Dictionary?

Mr. McCARRAN. Yes; I should like to have the Senator read it.

Mr. AUSTIN. The definition is as follows:

Wrong. An injury; a tort; a violation of right.

In its broad sense, it includes every injury to another, independent of the motive causing the injury (*Union Pac. Ry. Co. v. Henry* (36 Kan. 570, 14 Pac. 1) ).

A wrong is an invasion of right to the damage of the party who suffers it. It consists in the injury done, and not commonly in the purpose or mental or physical capacity of the person or agent doing it. It may or may not have been done with bad motive; the question of motive is usually a question of aggravation only (*Williams v. Hays* (143 N. Y. 447, 38 N. E. 449, 26 L. R. A. 153, 42 Am. St. Rep. 743) ).

In its most usual sense, wrong signifies an injury committed to the person or property of another, or to his relative rights unconnected with contract; and these wrongs are committed with or without force. But in a more extended signification, wrong includes the violation of a contract; a failure by a man to perform his undertaking or promise is a wrong or injury to him to whom it was made (3 Bla. Com. 158).

A public wrong is an act which is injurious to the public generally, commonly known by the name of crime, misdemeanor, or offense; and it is punishable in various ways, such as indictments, summary proceedings and, upon conviction, by death, imprisonment, fine, etc.

Private wrongs, which are injuries to individuals, unaffecting the public; these are redressed by actions for damages, etc. See Remedies; Tort.

For a classification of wrongs, see Holland, Jurisprudence 270.

The combination of words used here is very significant. The adjective "legal" is a limiting adjective; and, as it has been applied in jurisprudence to "injury," it is defined as follows in Words and Phrases, fourth series, second volume, page 548:

"Legal injury" must be violation of some legal right and is distinct from "damage," which is harm, or loss, sustained by injury (*Combs v. Hargis Bank & Trust Co.* (27 S. W. (2d) 955, 956, 234 Ky. 202) ).

For the sake of the future of those practicing under this estimable bill, I think it would be well to have the RECORD show whether the distinguished author of the bill regards the category of persons entitled to review which is here described, that is, "any person suffering legal wrong" as any person who has suffered in the manner described in the quotation from Bouvier's Law Dictionary.

Mr. McCARRAN. Taking Bouvier and Words and Phrases combined, and taking the decisions of the courts of last resort, to whose language we have access, I should answer the Senator "yes." That is, I take into consideration all the definitions which apply to define that term, and I respectfully refer to the committee report, which

I read a moment ago. It means that something more than mere adverse personal effect must be shown; that is, that the adverse effect must be an illegal effect. So, to Bouvier, to Words and Phrases, and to the decisions to which the able Senator refers, I also add the expression contained in the committee report.

Mr. AUSTIN. I thank the Senator.

Mr. McCARRAN. Let me go a little further, because I am very grateful to the Senator for bringing up this question. We asked the Attorney General and the Department of Justice to comment on this bill. I now read to the Senate the Attorney General's comment:

Section 10 (a): Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review of such action. This reflects existing law. In *Alabama Power Co. v. Ickes* (302 U. S. 464), the Supreme Court stated the rule concerning persons entitled to judicial review. Other cases having an important bearing on this subject are: *Massachusetts v. Mellon* (262 U. S. 447), *The Chicago Junction Case* (264 U. S. 258), *Sprunt & Son v. United States* (281 U. S. 249), and *Perkins v. Lukens Steel Co.* (310 U. S. 113). An important decision interpreting the meaning of the terms "aggrieved" and "adversely affected" is *Federal Communications Commission v. Sanders Bros. Radio Station* (309 U. S. 470).

Mr. President, I have referred the Senator to that expression coming from the Attorney General, in connection with this bill, to indicate to him and to the Senate the meticulous study which we have tried to give to this bill, so that we may construe the terms in such a way that there may be no divergence of views when we get through.

I realize that the layman says this is an intricate bill. In a way it is, and yet in a way it simplifies itself in practice.

Mr. AUSTIN. Mr. President, will the Senator yield?

The PRESIDING OFFICER (Mr. TUNNELL in the chair). Does the Senator from Nevada yield to the Senator from Vermont?

Mr. McCARRAN. I yield.

Mr. AUSTIN. I wish to compliment the Senator upon his courage in launching out with a new phrase like this. Personally, I think it is an improvement in the law.

Mr. McCARRAN. I am very grateful to the Senator.

Mr. DONNELL. Mr. President, will the Senator yield for an inquiry?

Mr. McCARRAN. I yield.

Mr. DONNELL. I should like to ask the distinguished Senator a question. Section 10 of the bill recites in part that—

Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—

(a) Right of review: Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

It has occurred to me the contention might be made by someone in undertaking to analyze this measure that in any case in which discretion is committed to an agency, there can be no judicial review of action taken by the agency. The point to which I request the Senator to direct his attention is this: In a case in which a person interested asserts that, although the agency does have a discretion vested in it by law, nevertheless there has been abuse of that discretion, is there any intention on the part of the framers of this bill to preclude a person who claims abuse of discretion from the right to have judicial review of the action so taken by the agency?

Mr. McCARRAN. Mr. President, let me say, in answer to the able Senator that the thought uppermost in presenting this bill is that where an agency without authority or by caprice makes a decision, then it is subject to review.

But in answer to the first part of the Senator's question—namely, where a review is precluded by law—we do not interfere with the statute, anywhere in this bill. Substantive law, law enacted by statute by the Congress of the United States, granting a review or denying a review is not interfered with by this bill. We were not setting ourselves up to abrogate acts of Congress.

Mr. DONNELL. But the mere fact that a statute may vest discretion in an agency is not intended, by this bill, to preclude a party in interest from having a review in the event he claims there has been an abuse of that discretion. Is that correct?

Mr. McCARRAN. It must not be an arbitrary discretion. It must be a judicial discretion; it must be a discretion based on sound reasoning.

Mr. DONNELL. I thank the Senator.

Mr. AUSTIN. Mr. President, will the Senator yield to me once more?

Mr. McCARRAN. Yes; I yield.

Mr. AUSTIN. Is it not true that among the cases cited by the distinguished Senator were some in which no redress or no review was granted, solely because the statute did not provide for a review?

Mr. McCARRAN. That is correct.

Mr. AUSTIN. And is it not also true that, because of the situation in which we are at this moment, this bill is brought forward for the purpose of remedying that defect and providing a review to all persons who suffer a legal wrong or wrongs of the other categories mentioned?

Mr. McCARRAN. That is true; the Senator is entirely correct in his statement.

Mr. President, I now continue. I wish to say that I am exceedingly grateful for the interruptions; in fact, I do not consider them interruptions, but I consider them amplifications of the thought sought to be expressed by this proposed legislation.

Let me say to the Senators now present—and I think I can speak for the Committee on the Judiciary—that I do not believe a more important piece of legislation has been or will be presented to the Congress of the United States than the one which I am trying in my humble way to explain to the Senate today, because it deals with something which touches the most lowly as well as the most elevated and lofty citizen in the land. It touches every phase and form of human activity, and it deals with that which at the opening of my statement I described as the fourth dimension or fourth branch of our democracy. In other words, by the Constitution the executive, the legislative, and the judicial branches of our Government were set up; but now we have a fourth branch, the administrative form of our Government.

Mr. SMITH. Mr. President, will the Senator yield?

Mr. McCARRAN. I yield to the Senator from New Jersey.

Mr. SMITH. I should like to remark that I had the honor of being on the Judiciary Committee when this bill was first brought up; and it was because I felt so strongly what the distinguished Senator from Nevada has just said—namely, the vital importance of a measure of this kind—that I asked the privilege of having the committee postpone reporting the bill until I had had an opportunity as the Senator from

Nevada will recall, to send copies of the bill to friends of mine in the legal profession, both in the State of New Jersey and in the State of New York, and to ask for their judgment. I wish if I may to pay the Senator from Nevada the tribute of saying that, without exception, the distinguished jurists who examined this bill said that it was one of the finest measures they had ever seen, and they were wholeheartedly behind it and urged its passage as soon as possible. I may say that certain minor suggestions were made, as the Senator may recall, with reference to possible changes here and there, and that points arose such as those which have arisen here on the floor. But I cannot allow this occasion to pass without paying my tribute to the Senator from Nevada for the great job which he has done, and for the care which he has taken over a period of possibly 3 years to bring before this body one of the most important pieces of judicial legislation of which I can conceive. I wish to go on record as supporting this measure and as supporting the Senator from Nevada in his effort to secure its passage.

Mr. McCARRAN. Mr. President, I am very grateful to the Senator from New Jersey for what he has said. I may say that, because of the Senator's outstanding contributions to the principles of law, and the fine guidance which the chairman of the committee received at his hands, it was a great regret to the chairman of the Judiciary Committee to learn that it was not possible for the Senator from New Jersey to remain with the committee.

Mr. MORSE. Mr. President, will the Senator from Nevada yield to me?

Mr. McCARRAN. I yield.

Mr. MORSE. Mr. President, I wish to commend the Senator from Nevada for the great work which he has done in the preparation and presentation of this bill to the Senate. As one who has taught in the field of administrative law for many years, I may say that the bill supplies what has been to me a very obvious need in the administration of government by law, in that it recognizes the relationship between procedural rights and substantive rights as such rights relate to administrative law.

For many years I have spoken and written in support of the basic principles embodied in the pending bill. I particularly commend the Senator from Nevada for the recommendation contained in the bill of at least a rule of evidence stronger than the some-evidence rule. As I understand the bill in its present form, it recognizes and approves the substantial evidence rule. I believe that in the future, however, as the Congress deals with specific administrative law agencies and tribunals, we will have to recognize that in some particular instances we need an evidence rule even stronger than the substantial evidence rule. In many instances it seems to me that the weight-of-evidence rule should be the rule used to govern judicial reviews of the decisions of many administrative tribunals.

Mr. McCARRAN. Mr. President, I am very grateful to the Senator from Oregon for his observations, and for his knowledge of the law.

I wish now to proceed section by section with an explanation of the bill.

Mr. BARKLEY. Mr. President, before the Senator continues. I ask that he yield to me because he might wish to have in mind, in making his explanation, what I am about to say.

Several years ago there was before the Congress the Walter-Logan bill, which was an administrative law measure. I was not in favor of that measure. I opposed it as actively as I could. I felt that under the terms of the bill the agencies of the Government established by Congress would be woefully handicapped in carrying on their functions, because of interminable delay and long drawn out proceedings which might be involved, thereby resulting in nullifying acts of the legislative departments until such time as the acts would be of no value even if carried out. Congress passed the bill and President Roosevelt, as I recall, vetoed it.

The pending bill is a new effort to deal with the subject about which we all admit something should be done.

When the Senator explains the terms of the bill section by section will it be his purpose to show in what respect and in what way the Walter-Logan measure has been modified, or provisions of it have been eliminated, so as to remove some of the objections some of us had to that proposed legislation?

Mr. McCARRAN. A few days ago the able Senator from Kentucky evinced his attitude with reference to the Walter-Logan bill, and I knew of his attitude with reference to it. Therefore, I have now prepared a presentation of comparisons of provisions. I have done so by way of explanation, I may say in answer to the Senator. It would be impossible for me to compare the Walter-Logan bill provision by provision with the pending bill, for the mere reason that they are two entirely different bills. They relate to the same subject, but they approach it in entirely different ways. However, I believe that I can illustrate the difference in a few words.

The pending bill is designed to set forth minimum procedural essentials for various types of functions. It does not refer to agencies by name. It contains no exceptions. It is thus not aimed at any particular agency or agencies. The Walter-Logan bill, on the other hand, contained a great many exceptions of agencies and subjects. Section 7 (b) was thought to indicate either that it was aimed at particular agencies, or was so imperfectly conceived that it could not be applied across the board. The pending bill does, however, in section 2 (a), exempt war agencies, because they are presumably self-liquidating, and it was deemed unwise to attempt to cover them at this late date.

The definitions of the Walter-Logan bill were imperfect and confusing. Rules were so defined as to include "orders" and were limited to interpretations of terms of statutes. That bill, therefore, failed to distinguish between substantive, interpretative, and procedural rules. The pending bill exempts from its procedural requirements all interpretative, organizational, and procedural rules, because under present law interpretative rules, being merely adaptations of interpretations of statutes, are subject to a more ample degree of judicial review, and because the problem with respect to the other exempted types of rules is to facilitate their issuance rather than to supply procedures.

The pending bill, therefore, applies procedures only to the making of so-called substantive rules, that is, through administrative legislation under authority of Congress. Other definitions in the Walter-Logan bill are entirely different from those in the pending bill, but, in answer

to the Senator from Kentucky, I believe that nothing will be gained by examining those differences here.

Mr. BARKLEY. In other words, the Senator's bill is the result of a careful study of the whole subject made since the consideration by Congress of the Walter-Logan bill, and since the formal veto of that measure by the President, and the recommendation of former Attorney General Homer Cummings who, I believe, as one of the last things which he did before retiring, recommended legislation along this line without going into detail about it. Subsequently a committee was appointed, perhaps by the present Attorney General or one of his predecessors—

Mr. McCARRAN. A former Attorney General.

Mr. BARKLEY. A former Attorney General, all of which took place following the consideration of the previous legislation known as the Walter-Logan bill, or the Logan-Walter bill, I do not know which. However, in the main, the pending bill complies with the recommendations of the various investigations which have been made since consideration of the Walter-Logan bill with respect to legislation upon this subject.

Mr. McCARRAN. I would not use the word "complies." I would say that the bill takes into consideration those studies and is guided by them.

Mr. BARKLEY. I did not mean in my use of the word "complies" that the bill followed the recommendations word for word, but it does take into consideration the facts developed by the various investigations to which I have referred. The committee has been, of course, well informed as to the validity of any recommendations made upon the subject, but it does approach the subject from the standpoint of helpfulness in the administration of the law, rather than from the standpoint of undertaking to nullify what executive departments set up by Congress might be attempting to do.

Mr. McCARRAN. Positively, we nullify nothing.

Mr. BARKLEY. That was my objection to the former measure, as the Senator will recall.

Mr. McCARRAN. I do recall very well. I may say to the Senator from Kentucky that earlier in my discourse upon the pending bill I discussed the differentiations between the Walter-Logan bill and the Attorney General's Committee report, and so on.

Mr. BARKLEY. I was necessarily called from the Chamber and was not present.

Mr. McCARRAN. I realize that.

Mr. President, section 3 of the bill concerns provisions respecting public information and it should be noted that the bill exempts from the public information provisions of this section, first, matters requiring secrecy in the public interest, and second, matters relating solely to the internal management of an agency.

Subsection (a) of section 3 concerns rules. Under this subsection every agency is required to publish in the Federal Register its organization, its places of doing business with the public, its methods of rule making and adjudication, including the rules of practice relating thereto, and such substantive rules as it may frame for the guidance of the public. No person is in any manner to be required to resort to organization or procedure not so published.

Subsection (b) of section 3 concerns opinions and orders. Under this subsection agencies are required to publish or, pursuant to rule, to make available to public inspection all final opinions or orders in the adjudication of cases except those held confidential for good cause and not cited as precedents.

Subsection (c) of section 3 concerns public records, and provides that except as statutes may require otherwise, or information may be held confidential for good cause, matters of official record are to be made available to persons properly and directly concerned, in accordance with rules to be issued by the agency.

Section 4 concerns rule making. The introductory clause exempts from all of the requirements of section 4 any rule making, so far as there are involved military, naval, or foreign affairs functions, or matters relating to agency management or personnel, or to public property, loans, grants, benefits, or contracts.

Mr. President, I wish the Senate would give close consideration to what I am about to discuss, because it is all important.

Subsection (a) of section 4 concerns notice. It provides that general notice of proposed rule making must be published in the Federal Register and must include the time, place, and nature of the proceedings, a reference to the authority under which such proceedings are held, and the terms, substance, or issues involved. However, except where notice and hearing is required by some other statute, the subsection does not apply to rules other than those of substance, or where the agency for good cause finds, and incorporates the finding and reasons therefor in the published rule, that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.

Subsection (b) of section 4 concerns procedures. This subsection provides that after such notice as required by the preceding subsection, the agency must afford interested persons an opportunity to participate in the rule-making, at least to the extent of submitting written data, views, or argument. This subsection also provides that after consideration of such presentations, the agency must incorporate in any rules adopted a concise general statement of their basis and purpose. However, where other statutes require rules to be made after hearing, the requirements of sections 7 and 8, which relate to public hearings and decisions thereon, apply in place of the provisions of this subsection.

Subsection (c) of section 4 refers to effective dates. The required publication or service of any substantive rule must, under this provision, be made not less than 30 days prior to the effective date of such rule, except as otherwise provided by the agency for good cause found and published, or, in the case of rules recognizing exemption or relieving restriction, interpretative rules, and statements of policy.

Subsection (d) of section 4 concerns petitions, and provides that every agency shall accord any interested person the right to petition for the issuance, amendment, or repeal of a rule.

Section 5 of the bill concerns adjudications. The initial provision of this section makes it clear that subsequent provisions of the section apply only where the case is otherwise required by statute to be determined upon an agency hearing, except that, even in that case, the following classes of operations are expressly not affected: First, cases subject to trial de novo in court; second, selection or tenure of public officers other than examiners; third, decisions resting on inspections,

tests, or elections; fourth, military, naval, and foreign affairs functions; fifth, cases in which an agency is acting for a court; and, sixth, the certification of employee representatives.

Subsection (a) of section 5 refers to notice. Under this subsection, persons entitled to notice of an agency hearing are to be duly and timely informed of the time, place, and nature of the hearing, the legal authority and jurisdiction under which it is to be held, and the matters of fact and law asserted. Where private persons are the moving parties, respondents must give prompt notice of issues controverted in law or fact; and in other cases the agency may require responsive pleading. In fixing the times and places for hearings the agency must give due regard to the convenience and necessity of the parties.

Subsection (b) of section 5 concerns procedure. Under this subsection the agency is required first to afford parties an opportunity for the settlement or adjustment of issues, where time, the nature of the proceeding, and the public interest permit; and then requires that such opportunity for settlement or adjustment be followed, to the extent that issues are not so settled or adjusted, by hearing and decision under sections 7 and 8.

Subsection (c) of section 5 concerns the separation of functions. It provides that officers who preside at the taking of evidence must make the decision or recommended decision in the case. They may not consult with any person or party except openly and upon notice, save in the disposition of customary *ex parte* matters, and they may not be made subject to the supervision of prosecuting officers. Prosecuting officers may not participate in the decisions except as witnesses or counsel in public proceedings. However, the subsection is not to apply in determining applications for initial licenses or the past reasonableness of rates; nor does it apply to the top agency or members thereof.

Subsection (d) of section 5 provides that every agency is authorized, in its sound discretion, to issue declaratory orders with the same effect as other orders.

Section 6 concerns ancillary matters. The provisions of this section relating to incidental or miscellaneous rights, powers, and procedures do not override contrary provisions in any other part of the bill.

Subsection (a) of section 6 refers to appearance. It provides that any person compelled to appear in person before any agency or its representative is entitled to counsel. In other cases, every party may appear in person or by counsel. So far as the responsible conduct of public business permits, any interested person may appear before any agency or its responsible officers at any time for the presentation or adjustment of any matter. Agencies are to proceed with reasonable dispatch to conclude any matter so presented, with due regard for the convenience and necessity of the parties. Nothing in the subsection is to be taken as recognizing or denying the propriety of non-lawyers representing parties.

**Mr. AUSTIN.** Mr. President, before the Senator leaves that thought, I wish to ask a question. I notice on page 28 of the bill, line 7, in the section to which the Senator is referring, this language:

Nothing herein shall be construed either to grant or to deny to any person who is not a lawyer the right to appear for or represent others before any agency or in any agency proceeding.



Is it not a fact that somewhere in the bill the distinguished Senator has reserved the right to a nonprofessional—that is, a man who is not a lawyer—to appear, if the agency having jurisdiction permits it? That is, there is a discretion permitted, is there not? For example, take a case where a scientific expert would better represent before the Commission the interests involved than would a lawyer. The right to obtain that privilege is granted in the bill somewhere, is it not?

Mr. McCARRAN. The Senator is correct; and in connection with that I wish to read from the Attorney General's comment, as follows:

This subsection does not deal with, or in any way qualify, the present power of an agency to regulate practice at its bar. It expressly provides, moreover, that nothing in the act shall be construed either to grant or to deny the right of nonlawyers to appear before agencies in a representative capacity. Control over this matter remains in the respective agencies.

That is the Attorney General's observation.

Mr. AUSTIN. Mr. President, will the Senator yield to me further?

Mr. McCARRAN. Gladly.

Mr. AUSTIN. I wish to ask the Senator if the provision of the bill which I shall now read means to make permissible the appearance for a principal of any person the agency deems appropriate. I read:

Any person compelled to appear in person before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative.

Does the Senator construe that language as authorizing, for example, a principal to be represented by an accountant?

Mr. McCARRAN. The answer is emphatically "yes."

Mr. McKELLAR. Mr. President, will the Senator yield?

Mr. McCARRAN. I yield.

Mr. McKELLAR. The next sentence following the one which the distinguished Senator from Vermont has just read apparently provides for that. The language is:

Every party shall be accorded the right to appear in person or by or with counsel or other duly qualified representative in any agency proceeding.

That language seems to be broad enough to cover the whole matter.

Mr. AUSTIN. I hope it does, Mr. President.

Mr. McKELLAR. I hope so, too.

Mr. AUSTIN. I have doubt about it, however. The word "representative" having a special legal interpretation, I did not know but that it was limited to that. That is why I asked the question.

Mr. McCARRAN. I want to make very clear that my answer is in the affirmative both to the Senator from Vermont and to the Senator from Tennessee.

Mr. FERGUSON. Mr. President, will the Senator yield?

Mr. McKELLAR. I yield.

Mr. FERGUSON. Did the Senator say that the language guarantees the right of a person in all cases to appear by his counsel?

Mr. McCARRAN. Positively so.

Mr. FERGUSON. How would the Senator define the word "counsel"? Does that mean lawyer?

Mr. McCARRAN. He may be a lawyer or he may be a nonlawyer.

Mr. FERGUSON. He may be a nonlawyer. Then could the agency determine what particular person may be qualified to appear before it?

Mr. McCARRAN. Will the Senator repeat the question?

Mr. FERGUSON. Could the agency itself determine the qualifications of representatives of parties?

Mr. McCARRAN. It is left open so that the agency may determine the qualification of anyone who may appear in certain classes of cases. As, for instance, in an accusatory case, where one is accused of something, he may be required to appear by attorneys so as to defend him in his rights.

Mr. FERGUSON. Let us consider the Tax Board. Could the Board itself determine that certain individuals were qualified to appear and that other persons were not qualified to appear?

Mr. McCARRAN. The answer to that question is "No." The Board could not do so. The Board would have to accept lawyers or non-lawyers, as the case might be, because a tax expert may not be a lawyer.

Mr. FERGUSON. Let us take the patent bar.

Mr. McCARRAN. The same is true in that case. A certified public accountant, for instance, may not be a lawyer, but he could appear.

Mr. AUSTIN. Mr. President, the only point is that he would have to be permitted to appear.

Mr. McCARRAN. That is true. He would have to be permitted by the agency to appear. There is an explanatory statement in the committee report which I desire to read. It refers to subsection (a) of section 6, and is found on page 19 of the report :

The final sentence provides that the subsection shall not be taken to recognize or deny the right of nonlawyers to be admitted to practice before any agency, such as the practitioners before the Interstate Commerce Commission.

That has become quite an outstanding practice.

The use of the word "counsel" means lawyers. While the subsection does not deal with the matter expressly, the committee does not believe that agencies are justified in laying burdensome admission requirements upon members of the bar in good standing before the courts. The right of agencies to pass upon the qualifications of nonlawyers, however, is expressly recognized and preserved in the subsection.

Mr. FERGUSON. Mr. President, will the Senator yield?

Mr. McCARRAN. Yes.

Mr. FERGUSON. The last sentence read by the able Senator would indicate that if a member of the bar was in good standing before the bar he would have the right to appear. Only with respect to non-members of the bar could the agency make determination as to whether they have the qualifications to appear before it.

Mr. McCARRAN. That is correct.

Mr. McKELLAR. Mr. President, will the Senator again yield?

Mr. McCARRAN. I yield.

Mr. McKELLAR. May I ask the Senator a very general question, which will show that I have not examined the bill with care? Do I correctly understand that the principal purpose of the bill is to allow persons who are aggrieved as the result of acts of governmental agencies to appeal to the courts?

Mr. McCARRAN. Yes.

Mr. McKELLAR. That is the general underlying purpose of the bill?

Mr. McCARRAN. Yes. But let me add, that where a statute denies resort to the court the bill would not set aside such statute. If a statute denies the right of review, the bill does not interfere with the statute.

Mr. McKELLAR. The bill applies only to orders.

Mr. McCARRAN. The bill paves the avenue by which administrative procedure may be conducted in orderly fashion, and by which an individual aggrieved and believing he has a right to appear before an administrative body may find his way clearly defined to get before that body.

Mr. McKELLAR. If not otherwise prohibited by existing law.

Mr. McCARRAN. Yes.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. McCARRAN. I yield.

Mr. BARKLEY. The bill assumes then that when Congress has heretofore passed legislation providing that there shall be no access to a court, Congress had a particular reason for enactment of such legislation, and the bill's provisions would also apply to future legislation of similar kind.

Mr. McCARRAN. Yes. I shall now proceed with my statement.

Subsection (b) of section 6 concerns investigations. It provides that investigative process is not to be issued or enforced except as authorized by law. Persons compelled to submit data or evidence are entitled to retain, or, on payment of costs, to procure, copies of such data or evidence, except that in nonpublic proceedings a witness may for good cause be limited to inspection of the official transcript.

Subsection (c) of section 6 concerns subpoenas. It provides that where agencies are by law authorized to issue subpoenas, parties may secure them upon request and upon a statement or showing of general relevance and reasonable scope if the agency rules so require. Where a party contests a subpoena, the court is to inquire into the situation, and, so far as the subpoena is found in accordance with law, the court is to issue an order requiring the production of the evidence under penalty of contempt for failure then to do so.

Subsection (d) of section 6 requires that prompt notice shall be given of denials of requests in any agency proceeding, and that such notice shall be accompanied by a simple statement of grounds for such denial.

Section 7 concerns hearings and applies only where hearings are required by section 4 or 5.

Subsection (a) of section 7 provides that the hearings must be held either by the agency, a member or members of the board which comprises it, one or more examiners, or other officers specially provided for in other statutes or designated by other statutes. All presiding and deciding officers are to operate impartially. They may at any time withdraw if they deem themselves disqualified; and, upon the filing of a proper affidavit of personal bias or disqualification against them, the agency is required to determine the matter as a part of the record and decision in the case.

Subsection (b) of section 7 concerns hearing powers. It provides that presiding officers, subject to the rules of procedure adopted by the agency and within its powers, have authority as follows: First, to administer oaths; second, to issue such subpoenas as are authorized by law; third, to receive evidence and rule upon offers of proof; fourth,

to take depositions or cause depositions to be taken; fifth, to regulate the hearing; sixth, to hold conferences for the settlement or simplification of the issue; seventh, to dispose of procedural requests; eighth, to make decisions or recommended decisions under section 8 of the bill; and, ninth, to exercise other authority as provided by agency rule consistent with the remainder of the bill.

Subsection (c) of section 7 relates to evidence. It provides that except as statutes otherwise provide, the proponent of a rule or order has the burden of proof. While any evidence may be received, as a matter of policy agencies are required to provide for the exclusion of irrelevant and unduly repetitious evidence, and no sanction may be imposed, or rule or order issued, except as supported by relevant, reliable, and probative evidence. Any party may present his case or defense by oral or documentary evidence, may submit rebuttal evidence, and may conduct reasonable cross-examination. However, in the case of rule making or determining applications for initial licenses, the agency may adopt procedures for the submission of evidence in written form so far as the interest of any party will not be prejudiced thereby.

Mr. AUSTIN. Mr. President, at that point I wish the Senator from Nevada would yield for a question.

Mr. McCARRAN. I gladly yield to the Senator from Vermont.

Mr. AUSTIN. Did the committee intentionally choose the language "except as supported by relevant, reliable, and probative evidence" in order to avoid the rule of scintilla of proof? This phrase is very significant, as I see it. On review, for example, the case, in order to carry through as decided by the agency, would have to be supported by relevant, reliable, and probative evidence. That is, in my opinion, a very important forward step in judicial procedure, to say nothing about administrative procedure. For my part I am glad to see it in the bill.

Mr. McCARRAN. Let me say to the Senator from Vermont that in the preparation of this bill many obstacles were encountered. Some of us insisted that the testimony must be relevant, material, and competent, and that nothing else should be taken. However, representatives of agencies came before us and presented their views, saying that such a rule would curtail their operations, and that they ought to be given greater latitude. They said to us, "We are not lawyers. We are acting in a quasi-judicial capacity. We ought to be able to go outside and get hearsay testimony, if you please. We might be able to indulge in theory." So rather than curtail the agencies, we sought an intermediate ground which we thought would be protective of the rights of individuals, and at the same time would not handicap the agencies. So we said to them, "You may go outside and get what would be secondary evidence, or hearsay; you may perhaps even go into the realm of conjecture; but when you write your decision it must be based upon probative evidence and nothing else. If in the formation of your decision you consider other than probative evidence, your decision will be subject to being set aside by a court of review."

In other words, we did not wish to destroy the administrative agencies or prescribe the methods under which they have been operating. Some of us know that in committees of the Senate we very

frequently hear evidence which we know is hearsay. I doubt very much if any hearing is ever conducted in which, to some extent, hearsay is not admitted. But we believed, and we now believe, that reasonable men can sift the grain from the chaff. Then we laid down the rule that the administrative agencies must not make a finding which impinges upon an individual unless there is behind such finding probative evidence to sustain it. That is what we have worked out in this bill. I have given the explanation at some length in answer to the Senator from Vermont.

Mr. FERGUSON. Mr. President, will the Senator yield?

Mr. McCARRAN. I yield.

Mr. FERGUSON. Would the Senator, then, say that the judgment or decision of the agency must be based upon stronger proof than a scintilla of evidence?

Mr. McCARRAN. Very much stronger.

Mr. FERGUSON. The old rule which applied in the courts, particularly on certiorari, was that if there was any evidence to sustain the verdict or judgment, it should be sustained. The courts have many times so held. The Senator would say, would he not, that something more than "any evidence" is required to sustain such a decision?

Mr. McCARRAN. The answer is in the affirmative. We say that the evidence must be substantial probative evidence.

Mr. FERGUSON. So we are changing the rule which has been applied in the past that any evidence, or a scintilla of evidence, as it is sometimes defined, is sufficient to sustain a verdict or judgment.

Mr. McCARRAN. We tried as best we could to establish a guide for administrative groups so that they would apply the rule in such a way that there would be substantial probative evidence behind their findings, and so that they could say, "We are not afraid to have our findings reviewed by a court."

Mr. GEORGE. Mr. President, will the Senator yield?

Mr. McCARRAN. I yield.

Mr. GEORGE. The courts have many times held that if there is any evidence to sustain the finding of an administrative board under the statute, the courts have no power to intervene. If this bill should become a law would that rule, as heretofore construed by the courts, remain in effect?

Mr. McCARRAN. The courts have given various constructions. The courts, in reviewing an order, are governed by the provisions of section 10 (e), which states the substantial-evidence rule. In other words, in some instances the courts have held that there must be substantial evidence. We are saying that there must be probative evidence of a substantive nature, and that even though the commission or bureau may take hearsay evidence in its hearings, it must have some probative evidence to sustain its finding.

Mr. GEORGE. The point I wish to raise is that some of the acts of Congress, particularly those enacted in recent years, have led the courts to hold—and they so hold—that if there be any evidence to sustain the finding of a board or agency, the court has no power to interfere with it.

Mr. McCARRAN. I would put it in this way—

Mr. GEORGE. Would the enactment of this bill require some substantial or probative evidence to support such a finding?

Mr. McCARRAN. Yes.

Mr. GEORGE. Take the labor-relations cases. Senators are familiar with them. The circuit courts have frequently complained against what the Labor Relations Board did, but have said, "We are powerless to interfere with it." Would this bill change that rule, if the court were of the opinion that there was no probative evidence?

Mr. McCARRAN. Yes; it would change that rule.

Mr. GEORGE. I am pleased to hear it.

Mr. McCARRAN. I thank the Senator.

Subsection (d) of section 7 provides that the record of evidence taken and papers filed is exclusive for decision, and, upon payment of costs, is available to the parties. Where decision rests on official notice of a material fact not appearing in the evidence of record, any party may on timely request show the contrary.

Section 8 relates to decisions, and applies to cases in which a hearing is required to be conducted pursuant to section 7.

Subsection (a) of section 8 relates to action by subordinates. It provides that where the agency has not presided at the reception of the evidence, the presiding officer, or any other officer qualified to preside, in cases exempted from subsection (c) of section 5, must make the initial decision unless the agency, by general rule or in a particular case, undertakes to make the initial decision. If the presiding officer makes the initial decision, it becomes the decision of the agency in the absence of an appeal to the agency or review by the agency on its own motion. On such appeal or review, the agency has all the powers it would have had in making the initial decision. If the agency makes the initial decision without having presided at the taking of the evidence, whatever officer took the evidence must first make a recommended decision, except that, in rule making or determining applications for initial licenses, the agency may instead issue a tentative decision or any of its responsible officers may recommend a decision, or such immediate procedure may be wholly omitted in any case in which the agency finds on the record that the execution of its functions imperatively and unavoidably so requires.

Subsection (b) of section 8 concerns submittals and decisions. It provides that prior to each recommended or other decision or review, the parties must be given an opportunity to submit for the full consideration of deciding officers, first, proposed findings and conclusions, or exceptions to recommended decisions or other decisions being appealed or reviewed; and, second, supporting reasons for such findings, conclusions, or exceptions. All recommended or other decisions become a part of the record and must include findings and conclusions, as well as the basis therefor, upon all the material issues of fact, law, or discretion presented by the record, besides including the appropriate agency action or denial.

Section 9 concerns sanctions and powers, and relates to the exercise of any power or authority by an agency.

Unlike sections 7 and 8, section 9 applies in all relevant cases, regardless of whether the agency is required by statute to proceed upon hearing or in any special manner. Section 9 also applies to any power or authority that an agency may assume to exercise.

Subsection (a) of section 9 requires that no sanction may be imposed, or substantive rule or order issued, except within the jurisdiction delegated to the agency, and as authorized by law.

Subsection (b) of section 9 refers to licenses. Under this subsection, agencies are required, with due regard for the rights or privileges of all interested parties or persons adversely affected, to proceed with reasonable dispatch to conclude and decide proceedings on applications for licenses. Under this subsection, agencies are not to withdraw a license without first giving the licensee notice in writing and an opportunity to demonstrate or achieve compliance with all lawful requirements, except in cases of willfulness or those in which public health, interest, or safety requires otherwise. In businesses of a continuing nature, no license is to expire until timely applications for new licenses or renewals are determined by the agency.

Section 10 is the section which relates to judicial review. This section does not apply in any situation so far as there are involved matters with respect to which existing statutes preclude judicial review, or with respect to which agency action is by law committed to agency discretion.

Subsection (a) of section 10 provides that any person suffering legal wrong because of any agency action, or adversely affected within the meaning of any statute, is entitled to judicial review.

Subsection (b) of section 10 concerns the form and venue of action. It provides that the technical form of proceeding for judicial review is any special proceeding provided by statute, or, in the absence of inadequacy thereof, any relevant form of legal action, such as those for declaratory judgments or injunctions, in any court of competent jurisdiction. Furthermore, under this subsection, agency action is also made subject to judicial review in any civil or criminal proceeding for enforcement, except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.

Subsection (c) of section 10 concerns reviewable acts of agencies. This subsection provides that agency action made reviewable specially by statute, or final agency action for which there is no other adequate judicial remedy, is subject to judicial review. In addition, preliminary or procedural matters not directly subject to review are made reviewable upon the review of final actions. Except as statutes may expressly require otherwise, agency action is final regardless of whether there has been presented or determined any application for a declaratory order, for any form of reconsideration, or unless the agency otherwise requires by rule, for an appeal to superior agency authority.

Subsection (d) of section 10 concerns interim relief. It provides that pending judicial review, any agency may postpone the effective date of its action. Upon conditions, and as may be necessary to prevent irreparable injury, any reviewing court may postpone the effective date of any agency action, or preserve the status quo pending conclusion of review proceedings.

Subsection (e) of section 10 concerns the scope of review. Under this subsection, reviewing courts are required to decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of any agency action. Such courts are required to compel action shown to be unlawfully withheld or unreasonably delayed. They are required to hold unlawful any

action, findings, or conclusions found to be either arbitrary or contrary to the Constitution or contrary to statutes or short of statutory right or without observance of procedure required by law or unsupported by substantial evidence upon the administrative record, where the agency is authorized by statute to hold hearings subject to sections 7 and 8, or unwarranted by the facts insofar as the latter are subject to trial de novo. In making these determinations the court is to consider the whole record or such parts as the parties may cite, and due account must be taken of the rule of prejudicial error.

Section 11 relates to examiners. It provides that, subject to the civil-service and other laws not inconsistent with this bill, agencies are required to appoint such examiners as may be necessary for proceedings under sections 7 and 8. Such examiners are to be assigned to cases in rotation, insofar as practicable and are to perform no inconsistent duties. Under this section, examiners are removable only for good cause determined by the Civil Service Commission, after opportunity for hearing, and upon the record thereof. Examiners are to receive compensation prescribed by the Civil Service Commission independently of agency recommendations or ratings. One agency may, with the consent of another and upon selection by the Civil Service Commission, borrow examiners from another agency. The Civil Service Commission is given the necessary powers to operate under this section.

Section 12 relates to the construction and effect of the bill. It provides that nothing in the bill is to diminish constitutional rights or limit or repeal additional requirements of law. It provides that requirements of evidence and procedure are to apply equally to agencies and private persons, except as otherwise provided by law. The unconstitutionality of any portion or application of the bill is not to affect other portions or applications. Agencies are granted all authority necessary to comply with the bill. Subsequent legislation is not to modify the bill except as it may do so expressly. The bill would become law 3 months after its approval, except that sections 7 and 8 would take effect 6 months after approval, the requirements of section 11 would become effective a year after approval, and no requirement is mandatory as to any agency proceeding initiated prior to the effective date of such requirement.

That completes the synopsis of the bill.

Mr. President, as I have pointed out before, this bill is designed to operate as a whole, and its provisions are closely interrelated. At the same time, it should be pointed out that there are certain provisions which touch upon subjects long regarded as of the highest importance. On some of these subjects, such as the separation of examiners from the agencies they serve, there has been a wide divergence of views. The committee has, in such cases, taken the course which it believes will suffice, without being excessive. Amendatory or supplementary legislation can supply any deficiency which experience discloses in such cases. The committee believes that special note should be made of these situations:

The exemption of rule making and determining applications for licenses, from provisions of sections 5 (c), 7 (c), and 8 (a) may require change if, in practice, it develops that they are too broad. The committee believes it has followed sound discretion in selection of the language used, and it is the feeling of the committee that,



where cases present sharply contested issues of fact, agencies should not as a matter of good practice take advantage of the exemptions.

The committee has considered the possibility that the preservation in section 7 (a) of the "conduct of specified classes of proceedings in whole or part by or before boards or other officers specially provided for by or designated pursuant to statute" might prove to be a loophole for avoidance of the examiner system. If experience should prove this true in any real sense, corrective legislation would be or might be necessary. Therefore, the committee desires that Government agencies should be put on notice that the provision in question is not intended to permit agencies to avoid the use of examiners, but only to preserve special statutory types of hearing officers who contribute something more than examiners could contribute, and at the same time to assure the parties fair and impartial procedure.

The basic provision respecting evidence, in section 7 (c)—the provision requiring that any agency action must be supported by plainly "relevant, reliable, and probative evidence"—will require full compliance by agencies, and diligent enforcement by reviewing courts, and so forth. Should the language prove insufficient to fix and maintain the standards of proof, supplemental legislation will become necessary. That is another matter which, at the outset of legislation such as this must depend upon the spirit in which the agencies attempt to comply fully with the law. The committee anticipates nothing less than full compliance and adequate enforcement; and, with such compliance and enforcement, the committee believes that the language in question will be adequate.

Another extremely important matter is the substantial evidence rule contained in section 10 (e).

As a matter of language, "substantial evidence" would seem to be an adequate expression of law. The difficulty, if any, arises from the practice of agencies to rely upon—and, in some cases, the tendency of courts to tacitly approve—something less than adequate evidence; to rely upon suspicion, surmise, implications, or plainly incredible evidence. It will be the duty of the courts to determine, in the final analysis, and in the exercise of their independent judgment, whether on the whole the evidence in a given instance is sufficiently substantial to support a finding, conclusion, or other agency action as a matter of law. In the first instance, however, it will be the function of the agency to determine the sufficiency of the evidence upon which it acts; and the proper performance of its public duties will require the agency to undertake this inquiry in a careful and dispassionate manner. Should these objectives of the bill, as worded, fail to produce the desired result, supplemental legislation will be required.

Mr. AUSTIN. Mr. President, will the Senator yield at this point?

Mr. McCARRAN. I yield.

Mr. AUSTIN. In the event that there is no statutory method now in effect for review of a decision of an agency, does the distinguished author of the bill contemplate that by the language he has chosen he has given the right to the injured party or the complaining party to a review by such extraordinary remedies as injunction, prohibition, quo warranto, and so forth?

Mr. McCARRAN. My answer is in the affirmative. That is true.

Mr. AUSTIN. And does he contemplate that even where there is no statutory authority for certiorari, a party might bring certiorari against one of these agencies?

Mr. McCARRAN. Unless the basic statute prohibits it.

Mr. AUSTIN. I thank the Senator.

Mr. McCARRAN. Mr. President, what follows in my explanation is largely the expression of the opinion of the author of the bill. I have gone through the various sections of the bill section by section.

The matters which I have just mentioned do not include all the provisions of this bill which will require vigilant attention in order to assure their proper operation. Almost any provision of the bill, if wrongly interpreted, or minimized, may present occasion for supplemental legislation. On the other hand, should it appear at any time that the requirements result in some undue impairment of a particular administrative function, appropriate amendments or exceptions may be in order.

This bill enters a new legislative field. It attempts to provide a form and scope of protection long overdue. In the nature of things, we must anticipate that experience will indicate certain points at which the law should be strengthened or amended. But, Mr. President, it would be folly to contend that the protection which this bill seeks to give should be deferred until it is possible to come here and say: "This bill is perfect." Because, Mr. President, that day cannot come until we have had the experience of operation under such a law, and that experience alone will serve to point out what may be the actual deficiencies of the bill.

Except in a few respects, this is not a measure conferring administrative powers, but is one laying down definitions and stating limitations. These definitions and limitations must, to be sure, be interpreted and applied by agencies affected by them, in the first instance. But the enforcement of the bill by the independent judicial interpretation and application of its terms is a function which, in the final analysis, is clearly conferred upon the courts.

Therefore, it will be the duty of reviewing courts to prevent avoidance of the requirements of the bill by any manner or form of indirection, and to determine the meaning of the words and phrases used, insofar as they have not been defined in the bill itself. For example, in several provisions of the bill, the expression "good cause" is used. The cause so specified must be interpreted by the context of the provision in which it is found, and the purpose of the entire section and bill. The cause found must be real and demonstrable. If the agency is proceeding upon a statutory hearing and record the cause will appear there; otherwise, it must be such that the agency may show the facts and considerations warranting the finding in any proceeding in which the finding is challenged. The same would be true in the case of findings other than of good cause, required in the bill. As I have said, these findings must in the first instance be made by the agency concerned; but, in the final analysis, their propriety in law, and on the facts, must be sustainable upon inquiry by a reviewing court.

Nevertheless, Mr. President, it must be obvious that for most practical purposes the Congress and the people must look to the agencies themselves for fair administration of the laws and for compliance with this bill. Judicial review is of utmost importance, but it can be operative in relatively few cases because of the cost and general hazards of litigation. It is indispensable, since its mere existence generally precludes the arbitrary exercise of powers, or the assumption of powers not granted. Yet, in the vast majority of cases, the agency concerned

usually speaks the first and last word. For that reason, the agencies must make the first, primary, and most far-reaching effort to comply with the terms and the spirit of this bill.

The committee does not consider this bill as an indictment of administrative agencies or administrative processes. The committee takes no position one way or the other on those questions. By enacting this bill, the Congress—expressing the will of the people—will be laying down for the guidance of all branches of the Government, and all private interests in the country, a policy respecting the minimum requirements of fair administrative procedure.

Mr. President, I present this bill to the Senate of the United States in the firm belief that the Judiciary Committee of the Senate has accomplished something of great value to the people of the United States.

Mr. AUSTIN. Mr. President, I do not wish to weary the Senator by interruptions.

Mr. McCARRAN. Not at all; that is quite all right.

Mr. AUSTIN. But if he will permit one more question—

Mr. McCARRAN. Yes; indeed.

Mr. AUSTIN. What has been provided in the bill with respect to the separation of the powers of prosecution and judgment? In other words, how does the bill devise a plan by which the same man shall not be both prosecutor and judge?

Mr. McCARRAN. Section 11 of the bill provides very specific machinery for independent examiners. We have provided by what method they shall be selected and that they shall be independent, and we have further provided that they shall make the initial findings when they sit as examiners. That is the method which separates the prosecutor from the judicial officer, and so forth.

Mr. President, I now lay the bill before the Senate with the hope that it may be approved and passed.

Mr. FERGUSON obtained the floor.

Mr. JOHNSON of Colorado, Mr. President—

Mr. FERGUSON. Does the Senator from Colorado wish to have me yield to him?

Mr. JOHNSON of Colorado. I wish to place in the Record at this point a statement in regard to the bill.

Mr. FERGUSON. I yield.

Mr. JOHNSON of Colorado. I ask unanimous consent to have printed at this point in the Record a discussion of the proposed Administrative Procedure Act. The discussion or address is by Mr. Allen Moore, who is a prominent member of the Colorado bar.

There being no objection, the address was ordered to be printed in the Record, as follows:

[From the January 1945 issue of *Dicta*, official publication of the Denver and Colorado Bar Associations.]

#### THE PROPOSED ADMINISTRATIVE PROCEDURE ACT

(By Allen Moore)

The proposed Federal Administrative Procedure Act, sponsored by the American Bar Association and drafted by its special committee on administrative law, has been said to provide the most fertile ground for statesmanship in the field of the administration of justice since the Judiciary Act of 1789. This view seems not only to be a bit of overemphasis but it is quite in line with the approach of

the American Bar Association toward the growth of administrative law in the past 10 or 12 years, during which repeated efforts have been made to obtain legislation, such as the Walter-Logan bill, which, if enacted, might easily have thwarted a necessary and inevitable development of the administrative process.

The bill under consideration here is entitled "A bill to improve the administration of justice by prescribing fair administrative procedure," and was recently introduced in the Senate by Senator McCarran, of Nevada, and in the House by Congressman Sumners, of Texas.

The bill marks the culmination of more than 5 years of continuous study and drafting by the special committee on administrative law and by the association itself following the veto by the President of the Walter-Logan bill, the association's first effort to secure such legislation.

The bill is also said to mark the commencement of a new responsibility upon association members and lawyers generally to promote the enactment of the measure.

This paper is an attempt to evaluate the merits of the proposed act for the members of the Colorado Bar Association at this, its annual meeting, in order that they may be more fully advised and in a better position to make an intelligent determination when the association considers a resolution to approve the bill and urge its enactment, and thereby, as individual members, responding to President Henderson's appeal to "constitute yourself a committee of one to do what you can to aid in securing favorable consideration of the association's immediate objective—the improvement of the administration of justice through the adoption of a statutory framework of fair administrative procedure."

It is indeed a grave responsibility which confronts the bar associations and the lawyers of this country. We should make certain that the proposed act would actually improve the administration of justice and that it truly prescribes fair administrative procedure. We should be certain that the public interest and welfare will properly be protected; that the act will not impede the normal development of administrative law, and that it is not an effort to emasculate the growth of new instrumentalities designed to meet the will of the people in a rapidly expanding society in periods of stress and strain.

These points are raised because frequently in recent years advocates of this type of legislation have used, somewhat carelessly, clichés such as "administrative absolutism," "bureaucracy," "dictatorship," "the issue here is constitutional government versus bureaucratic dictatorship," "the new despotism," this "wonderland of bureaucracy," this "pattern for tyranny."

Now, what is this thing which has so frightened members of the Congress, bar associations, lawyers, the press and some of the general public? What is this thing which brings about such violent attacks? Are the very foundations of our Government being undermined? Are such fears well-founded? I think not. "Administrative law," "the administrative process," "administrative tribunals" do not appear so sinister if one understands something of the origins, developments, and characteristics of the administrative process and its proper evaluation in our scheme of government.

It therefore seems appropriate before giving a synopsis of the proposed Administrative Procedure Act to give something of the background of administrative law in this country, as well as to trace the steps leading to the introduction of the McCarran-Sumners bill.

James M. Landis in the Storrs Lectures given at Yale University in 1936, later published in book form as *The Administrative Process*, says in the introduction:

"The last century has witnessed the rise of a new instrument of government, the administrative tribunal. In its mature form it is difficult to find its parallels in our earlier political history; its development seems indigenous. The rapidity of its growth, the significance of its powers, and the implications of its being are such as to require notice of the extent to which this new 'administrative law' is weaving itself more and more into our governmental fabric.

"In terms of political theory, the administrative process springs from the inadequacy of a simple tripartite form of government to deal with modern problems. It represents a striving to adapt governmental technique that still divides under three rubrics to modern needs and, at the same time, to preserve those elements of responsibility and those conditions of balance that have distinguished Anglo-American government."

Landis here refers to the doctrine of separation of powers, an old political maxim, based upon the division of governmental powers in the federal and state constitutions into the legislative, executive, and judicial. This tripartite ideal

of government, and the checks and balances to be found in our constitutions have resulted in fineness of logic-chopping by our courts, to uphold the separation of powers, and for a tendency on their part to establish new categories of quasi-legislative and quasi-judicial powers when they find an executive agency infringing on the powers of either of the other branches of government.

Dean Landis then states:

"The insistence upon the compartmentalization of power along triadic lines gave way in the nineteenth century to the exigencies of governance. Without too much political theory but with a keen sense of the practicalities of the situation, agencies were created whose functions embraced the three aspects of government. Rule making, enforcement, and the disposition of competing claims made by contending parties were all intrusted to them. As the years passed, the process grew. These agencies, tribunals, and rule-making boards were for the sake of convenience distinguished from the existing governmental bureaucracies by terming them 'administrative.' The law the courts permitted them to make was named 'administrative law,' so that now the process in all its component parts can be appropriately termed the 'administrative process.'"

The term "administrative law" thus came into general use and the administrative process has resulted in a voluminous literature and the inclusion of courses in administrative law in most of the law schools.

Since the administrative process deals with the relationships of governmental agencies to persons it has necessarily been associated with the term "bureaucracy." From bureaucracy to autocracy to dictatorship is a simple transition in some people's thinking. The literature of the subject abounds with fulminations. It treats the administrative process as if it were an antonym of that supposedly immemorial and sacred right of every Englishman, and every American, the legal palladium of the rule of law. The process is denounced by worthy lawyers, legislators, bar associations, and politicians as heralding the death knell of ancient liberties and privileges. The independent administrative agencies of the Federal Government have been said to constitute "a headless fourth branch" of the Government, a haphazard deposit of irresponsible agencies and uncoordinated powers whose institution did "violence to the basic theory of the American Constitution that there should be three major branches of the Government, and only three."

Such glorification of the doctrine of the separation of powers obscures rather than clarifies thought. In spite of this chorus of abuse and tirade, the growth of the administrative process shows or will show little signs of being halted.

The administrative process in the Federal Government is not new. On the contrary it is as old as the Government itself, and its growth has been virtually as steady as that of the statutes at large. The growth has been pragmatic. Congress has passed laws and has resorted to the administrative device in the framing of the laws and in the practical effort to meet particular needs.

The 9 executive departments and the 18 or more independent agencies are examples of administrative agencies, but so also are the many subdivisions of departments termed "bureaus," "offices," "administrations," "services" and the like, which have a substantial measure of independence in the department's internal organization and in the conduct of their adjudicative or rule-making activities. At the time of the Attorney General's Committee report, there were 51 administrative agencies of the type which were deemed to be parts of the administrative process. The war has added to that number about 25 more, making a total of about 75 strictly administrative agencies. There are, of course, other agencies which do not have rule-making or adjudicatory powers.

Since the administrative process has developed in this fashion and without a definite plan, it invites comprehensive study with a view to coordination and improvement and not blind repeal or emasculating and unthinking legislation. It should be understood that the administrative process has deep roots in American history and it should be recognized that it embodies the practical judgments of successive Congresses and Presidents, and of the people. It is no socialistic, foreign ideology, plotted by the so-called palace guard for the purpose of substituting a government of men for a government by law. It should be and can be improved and developed into an ever-increasing instrumentality for efficient government in an increasingly complex society where government is certain to be charged with more and more functions, which in a simple, economic society of earlier days were either nonexistent or could easily enough be left to the ordinary legislative, executive, or judicial processes.

The American Bar Association has for many years been preparing itself for leadership in undertaking to effectuate more adequate legislative and judicial

guidance or control of the development of administrative law. Through its special committee on administrative law, first established in 1933 and continued annually to this time, it had made many studies and reports to the association.

In recent years the first substantial recommendation of the special committee on administrative law was the establishment of a Federal administrative court. That effort proved abortive. It was succeeded by the legislative proposal known generally as the Walter-Logan bill, which was sponsored by Congress and vetoed by the President. Shortly thereafter the Attorney General's Committee on Administrative Procedure made its final report, including legislative recommendations by both a majority and a minority of that committee.

The American Bar Association did not adopt either of those measures as its choice, nor did it continue its backing of the Walter-Logan bill; instead, it adopted a declaration of principles which it felt should be included in any adequate Federal legislation and declared that of the existing proposals that of the minority of the Attorney General's Committee more nearly met the principles so declared.

Thereafter a subcommittee of the Senate Judiciary Committee held extensive hearings on the proposals growing out of the Attorney General's Committee hearings, but suspended consideration in the summer of 1941 because of the imminence of war and the then declared national emergency. Accordingly, for the next year and a half the special committee on administrative law devoted its energies to the development of the conference on administrative law and other matter covered in its annual reports.

The House of Delegates of the Association, on August 26, 1943, adopted recommendations authorizing the special committee on administrative law (1) to draft a bill respecting the basic problems and requisites of fair administrative procedure, and (2) upon the approval of such a bill (a) to publicize it and take all necessary steps to secure its consideration and adoption, and (b) to make special recommendations to congressional committees with reference to legislative action in connection with specific administrative agencies or powers as may arise.

A first draft of such general Federal legislation accompanied the 1943 report of the committee. A second tentative draft was printed in 30 A. B. A. Journal 7, January 1944. A further amendment of this draft was presented to and approved by the House of Delegates February 28, 1944, and was printed in 30 A. B. A. Journal 226, April 1944, and as stated earlier was introduced in the Senate by Senator McCarran as S. 2030 and in the House by Mr. Sumners as H. R. 5081, Seventy-eighth Congress, second session.

With this perhaps overlong introduction and background material in mind, I shall now proceed to discuss the purposes, scope, and effect of the bill if enacted and to give an analysis or synopsis of its principal features with comments interspersed as to what I consider to be its good and bad points.

The McCarran-Sumners bill is designed primarily to secure publicity of administrative law and procedure, to require that administrative hearings and decisions shall be conducted in such manner as to preclude the secret reception of evidence or argument, to restate but not expand the right of and procedures for judicial review, and to foster the foregoing by requiring an intra-agency segregation of deciding and prosecuting functions and personnel. No attempt is made to require formal administrative hearings where the law under which the agency operates has not so required. No attempt is made to limit existing administrative authority. Agencies are simply confined to the scope of their authority.

The proposed act is said by its drafters to be designed to achieve four essential and simple purposes:

"(1) It requires administrative agencies to publish their organizations and procedures, and to make available to public inspection their orders and releases.

"(2) As to rule making, it requires that agencies publish notice and at least permit interested parties to submit views or data for consideration.

"(3) As to adjudication, it provides that, in the absence of agreement through informal methods, agencies must accord the parties notice, hearing, and decision before responsible officers, with provision for the segregation of deciding and prosecuting functions.

"(4) As to judicial review, it provides forms of review actions for the determination of all questions of law in all matters not expressly committed to executive discretion."

The short title of the act is given as the "Administrative Procedure Act."

Section 1 defines the terms "agency," "rule," "rule making," "adjudication," and "order." The bill is concerned primarily with administrative agencies; that is, the Congress, the courts, the governments of the possessions, the territories, and the District of Columbia are excluded, and to judicial review of their regulatory

actions. It applies to functions rather than enumerated agencies and deals comprehensively with:

(1) The issuance of "rules," by which is meant the written statement of any regulation, standard, policy, interpretation, procedure, requirement, or other writing issued or utilized by any agency, of general applicability and designed to implement, interpret, or state the law or policy administered by, or the organization and procedure of any agency; and "rule making" is the administrative procedure for the formulating of a rule, and

(2) the adjudication of particular cases, meaning the administrative procedure of any agency, and

(3) the issuance of orders by which is meant its disposition or judgment, whether or not affirmative, negative, or declaratory in form, in a particular issuance other than rule making and without distinction between licensing and other forms of administrative action or authority.

These terms include the three typical administrative functions which bear upon private rights and parties.

The bill is further limited in scope since war agencies and functions are excluded in toto, except as to the requirements in section 2 that they publish their procedures and make their orders available for public inspection (sec. 1) which in turn is not mandatory as to military, naval, or diplomatic functions (sec. 2).

No fault is found with respect to the definition section, since the terms "agency," "rule," "rule making," and "order" are essentially those included in the Federal Reports Act of 1942, the Federal Register Act, and the Federal Register Regulations, in which the essential language is "general applicability and legal effect." It is predicted, however, that many, if not most, old-line agencies, such as the Interstate Commerce Commission and the Federal Trade Commission, will be excluded from the scope of the act before final passage, and that its terms will be limited to the newer agencies as was done in the Walter-Logan bill.

Section 2 of the act is headed "Public information" and requires, except as to military, naval, or diplomatic functions of the United States requiring secrecy in the public interest, the publication concurrently of all rules concerning the organization of the agency, substantive regulations, statements of general policy and all procedures; the preservation and publication, or the making available to public inspection of all rulings on questions of law, and all opinions rendered or orders issued in the course of adjudications, and the filing of releases with the Division of the Federal Register. To these provisions are added certain substantive prohibitions regarding the issuance of publicity reflecting adversely upon any person, product, commodity, security, private activity, or enterprise otherwise than by issuance of the full texts of authorized public documents, impartial summaries of the positions of all parties to any controversy, or the issuance of legal notice of public proceedings within its jurisdiction. These obscure substantive provisions appears to have no proper place in a procedural act. In many instances pitiless publicity is a useful device. These last-mentioned provisions would be most difficult to administer. There is, of course, no objection to giving the public all possible information through publication, inspection, and filing.

Section 3 is an important section on rule making, one of the major functions of administrative agencies. The first subsection (a) on notice requires every agency to publish general notice of proposed rule making including (1) a statement of the time, place, and nature of any public rule-making procedures, (2) reference to the authority under which the rule is proposed, and (3) a description of the subject and issues involved. This requirement does not apply to cases in which the agency is authorized by law to issue rules without a hearing and notice is impracticable because of unavoidable lack of time or other emergency. The subsection applies only to substantive rules, and is not mandatory as to interpretive rules, general statements of policy, or rules of agency organization or administrative procedure.

The second subsection (b) provides procedures affording interested parties an adequate opportunity to participate in rule making through (1) submission of written data or views, (2) attendance at conferences or consultations, or (3) presentation of facts or argument at informal hearings. This subsection applies only to the type of rules for which notice is required by the first subsection. Where a law specifically requires that rules be issued only upon a formal hearing, separate procedures are set forth in sections 6 and 7. Public participation in the rule-making process does not appear to be necessary or desirable

to the extent provided in this subsection. It would prove costly, time consuming, and would impede the efficiency and effectiveness of the agency.

The third subsection (c) provides that every agency authorized to issue rules shall afford any interested person the right to petition for the issuance, amendment, or rescission of any rule. Few agencies have regular procedures whereby private parties may petition with respect to rules. Both the majority and the minority of the Attorney General's Committee proposed that such a provision be included in legislation.

Section 4 of the proposed act covers the subject of "adjudication" and provides that in every case of administrative adjudication in which the rights, duties, obligations, privileges, benefits, or other legal relations of any person are required to be determined only after opportunity for an administrative hearing (except to the extent that there is directly involved any matter subject to a subsequent trial of the law and facts de novo in any court notice shall be given [subsec. (a) ]).

The introductory double exception to the section removes from the operations of sections 4, 6, and 7 all administrative procedures in which the law concerned does not require rules or orders to be made upon a hearing and all matters subject to a subsequent trial de novo in any court.

Of the two introductory exceptions, that limiting the adjudication procedure to those cases in which statutes require a hearing is the more significant, because thereby are excluded the great mass of administrative routine as well as pensions, claims, and a variety of similar matters in which Congress has intentionally or traditionally refrained from requiring an administrative hearing.

The second exception rules out such matters as the tax function of the Bureau of Internal Revenue (which are triable de novo in The Tax Court), the administration of the custom laws (triable de novo in the customs courts), the work of the Patent Office (since judicial proceedings may be brought to try out the right to a patent), and subjects which might lead to claims determinable subsequently in the Court of Claims. The second exception also exempts administrative reparation orders assessing damages, such as are issued by the Interstate Commerce Commission and the Secretary of Agriculture, since such orders are subject to trial de novo in court upon attempted enforcement.

Subsection (a) of section 4 provides that the agency shall give due and adequate notice in writing specifying (1) the time, place, and nature of the proceedings, (2) the precise legal authority and jurisdiction, and (3) the matters of fact and law in issue. Adequate notice is certainly a prerequisite to a fair hearing. Room remains for considerable improvement in the notice practice of many agencies. A provision is included which provides that the statement of issues of fact in the words of the statutes shall not be compliance with the notice requirement.

Subsection (b) provides that in every case after the notice required by subsection (a) is given, the agency shall afford all interested parties the right and benefit of fair procedure for the settlement or adjudication of all relevant issues through (1) opportunity for informal submission and full consideration of facts, claims, arguments, offers of settlement, or proposals of adjustment, and (2) thereafter, to the extent that the parties are unable to determine any controversy by consent, formal hearing and decision in conformity with sections 6 and 7. Two lengthy provisions concerning cases resting upon physical inspection or test, permitting reinspection and retest and providing for summary action in certain cases, all included. Some agencies either neglect or preclude informal procedures, although now even courts through pretrial proceedings dispose of much of their business in that way. There is even more reason to do so in the administrative process, for "informal procedures constitute the great bulk of administrative adjudication and are truly the lifeblood of the administrative process." Insofar as possible, cases should be disposed of through conferences, agreements, or stipulations, hence the inclusion of such informal methods in the act, and their application to inspections and summary proceedings, will strengthen the administrative arm and serve well the interests of private parties.

Subsection (c) provides for declaratory rulings upon petition of any proper party in order to terminate a controversy or to remove uncertainty as to the validity or application of any administrative authority, rule or order with the same effect and subject to the same judicial review as in the case of other rules or orders of the agency. The administrative process has been slow to adopt declaratory judgment procedures, although courts, particularly State



courts, have long recognized the validity of such procedures. The Attorney General's Committee strongly recommended that declaratory rulings be made a part of the administrative process and subject to judicial review.

Section 5 of the bill concerns certain ancillary matters in connection with any administrative rule making, adjudication, investigation, or other proceeding or authority, such as appearance, the conduct of investigations, subpoenas and denials.

Subsection (a) of the section recognizes the right of parties to appear before administrative agencies, in person, or by counsel, and be accorded opportunities and facilities for the negotiation, information, adjustment, or formal or informal settlement of any case. A provision recognizes that, in the administrative process, the right to counsel shall be accorded as of right just recognized by the Bill of Rights in connection with judicial process, and as proposed by both majority and minority of the Attorney General's Committee. A second provision is designed to do what is possible to remedy delays in the administrative process, since "expedition in the disposition of cases is commonly a major objective of the administrative process." It relieves the private parties from consequences of unwarranted or avoidable administrative delay, provides that cases shall be promptly set and determined, and makes essential provisions for cases in which licenses are required by law but administrative agencies fail to act. In such cases the licenses are deemed granted after 60 days.

Subsection (b) relates to the conduct of investigations, stating that they shall be confined to the jurisdiction and purposes of the agency to which the authority is delegated.

Subsection (c) relating to subpoenas is designed (1) to assure that private parties as well as agencies shall have a right to such subpoenas, (2) limit the showing required of private parties so that they may not be required to disclose their entire case for the benefit of agency personnel, and (3) recognize that a private party may contest the validity of an administrative subpoena issued against him prior to incurring penalties for disobedience, since otherwise parties may in effect be deprived of all opportunity to contest the search or seizure involved. The haphazard and often unfair methods of issuance of administrative subpoenas were recognized in the final report of the Attorney General's Committee.

Subsection (d) provides that every agency shall give prompt notice of denials accompanied by the grounds for such denial and any further administrative procedures available.

No exception is taken to any of the ancillary matters included in section 5.

Sections 6 and 7 of the bill are of the greatest importance, since they provide the essential procedures thought to constitute a full and fair hearing and proper decisions or findings thereafter.

Section 6 on "Hearings" states that no administrative procedure shall satisfy the requirement of a full hearing unless (subsec. (a)) the case shall be heard (1) by the ultimate authority of the agency or (2) by one or more subordinate hearing officers designated by the agency from members of the board or body which comprises the highest authority therein, State representatives authorized by law to preside at the taking of evidence or examiners appointed subject to the civil service or other laws, at salaries ranging from \$3,000 to \$9,000. Numerous provisions are inserted respecting the functions of such presiding officers.

In subsection (b) presiding officers are given power to (1) administer oaths and affirmations, (2) issue subpoenas, (3) rule upon offers of proof and receive evidence, (4) take or cause depositions to be taken, (5) regulate the course of hearings and the conduct of the parties, (6) hold informal conferences, (7) dispose of motions, etc., and (8) make or participate in decisions in conformity with section 7.

Subsection (c) relates to evidence. The principles of relevancy, materiality, probative force, and substantiality as recognized in judicial proceedings of an equitable nature shall govern the proof, decision, and administrative or judicial review of all questions of fact. Thus it appears that no attempt is made to require the application of the so-called common law or jury trial rules of evidence in administrative hearings. This is proper. It is in line with basic principles of evidence followed among administrative agencies. This subsection contains other pertinent provisions regarding burden of proof, the rights of cross-examination and rebuttal, admission of written evidence, official notice, and a declaration that

no sanction, permission, or benefit shall be imposed or granted, or permission or benefit withheld except upon evidence which on the whole record is competent, credible, and substantial.

Subsection (d) enumerates the materials which shall constitute the record and provides that it shall be available to all parties.

Section 7 contains provisions relating to decisions for the initial submission of briefs, proposed findings and conclusions, and oral argument for consideration in preparing an initial decision, or where subordinate officers preside, an intermediate report, the details of such report or decision, provisions for administrative review, the consideration of cases, the findings and opinions and the service thereof upon all the parties.

The provisions of these two sections on fair hearings and findings or decisions should serve to meet most of the heated criticisms heretofore directed against administrative agencies in the conduct of hearings. Most well-run agencies have already provided for such procedures.

Section 8 relates to penalties and benefits. The first subsection (a) prohibits the imposition of extra-legal sanctions. Rules may not enlarge such authority [subsec. (b)], nor may orders do so [subsec. (c)]. Subsection (d) prohibits the imposition of burdens in issuing licenses except as provided by law, or the withdrawal of licenses except in cases of willfulness or stated cases of urgency, without warning notices giving an opportunity for the correction of conduct questioned by the agency.

Subsection (e) is designed to place limitations upon the retroactive operation of rules or orders whether such operation is designed as a penalty or for cause. These provisions seem proper and wise.

Section 9 treats of judicial review and constitutes the longest, most involved and most controversial features of the proposed act. Chapter VI of the final report of the Attorney General's Committee gives an extensive analysis of this important but technical subject from the viewpoint of the majority of the committee. It concludes that dissatisfaction with the existing standards as to the scope of judicial review derives largely from dissatisfaction with the fact-finding procedures employed by the administrative bodies, that is, whether or not such action inspires confidence, and assumes that if the notice, hearings, and finding procedures are adopted as recommended they will obviate the reasons for change in the area and scope of judicial review.

However, the minority of the committee, Messrs. McFarland, Stason, and Vanderbilt, was of the contrary opinion and thought that Congress should provide by the general legislation for both the availability and scope of judicial review. It, therefore includes in its proposed bill a quite elaborate section on judicial review. In successive drafts, and in the proposed act here under discussion, the judicial review section became increasingly elaborate and involved until it either means nothing at all or else its adoption would result in seriously crippling the administrative process and impose upon the courts a hopeless burden and thus substitute the judicial for the administrative process.

With this background, I shall attempt as briefly as possible to describe the contents of section 9 on judicial review.

There is an introductory limitation by which there is excluded any matter subject to a subsequent trial de novo or judicial review in any legislative court such as the Customs Court, the Court of Customs and Patent Appeals, the Tax Court, or the Court of Claims.

Subsection (a) provides that any party adversely affected by any administrative action, rule, or order within the purview of the act or otherwise presenting any issue of law shall be entitled to judicial review thereof in accordance with this section, and reviewing courts are given plenary power with respect thereto. I shall not attempt here to make crystal clear what "an issue of law" is as distinguished from "an issue of fact" or a mixed issue of law and fact. I suspect the courts will wrestle with that problem for a long, long time.

Subsection (b) states the types of available review proceedings that are statutory and nonstatutory and enumerates declaratory judgments as one such type. A further provision authorizes an action for review against the agency by its official title as well as the head officer or officers, or any of them.

Subsection (c) relates to courts and venue, and contains provisions as to the transfer of review proceedings, amendment thereof, and general provisions to assure that the rights of parties will not be defeated by complicated court and venue provisions of law defects pointed out by the Attorney General's Committee.

Subsection (d) on reviewable acts states that any rule shall be reviewable upon its judicial or administrative application or threatened application, and, whether

or not declaratory or negative in form or substance, except those matters expressly committed by law to absolute executive discretion. Only final actions, rules, or orders, or those for which there is no other adequate judicial remedy are reviewable; in other words, a recognition of the principle of the exhaustion of administrative remedies.

Subsection (e) deals with interim relief, such as stay orders, in elaborate fashion.

Subsection (f), on scope of review, is the heart of section 9. The drafting committee states this subsection does not attempt to expand the scope of judicial review, nor reduce it directly by implication. "Nor is it possible to specify all instances in which judicial review may operate. Subsection (f), therefore, seeks merely to restate the several categories of questions of law subject to judicial review."

The essential words are directly quoted:

"Upon such review, the court shall hold unlawful such act or set aside such application, rule, order, or any administrative finding or conclusion made, sanction or requirement imposed, or permission or benefit withheld to the extent that it finds them (1) arbitrary or capricious; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory authority, jurisdiction or limitations or short of statutory right, grant, privilege, or benefit; (4) made or issued without due observance of procedures required by law; (5) unsupported by competent, material, and substantial evidence, upon the whole record as reviewed by the court, in any case in which the action, rule, or order is required by statute to be taken, made or issued after administrative hearing; or (6) unwarranted by the facts to the extent that the facts in any case are subject to trial de novo by the reviewing court."

Every clause, phrase, and word of this quotation deserves extensive and intensive study to determine its true significance. What its effect would be in actual operation no one can say. As a whole, I am of the opinion that this subsection goes entirely too far, is dangerous, and would result in an impossible substitution of the judicial for the administrative process and thus deprive our jurisprudence of that process or else delay its proper and normal development. This subsection constitutes a bold and ambitious effort on the part of the critics of administrative law to kill it or nullify it before it has had an opportunity to prove its true worth. Similarly, conservative common law judges and lawyers have fought the development of equity and most every other judicial reform.

Subsection (g) provides that judgments of original courts of review shall be appealable in accordance with equity law and in the absence thereof, by the Supreme Court upon writs of certiorari.

Subsection (b) recognizes that all other provisions of law relating to judicial review shall remain in effect unless inconsistent with section 9, except where Congress has forbidden it or broadened it.

Section 10 relates to separations of functions so as to achieve an internal segregation of deciding and prosecuting personnel. The minority of the Attorney General's Committee thought that there should be a complete separation of functions; that is, that hearings should be held and decisions made by an administrative tribunal separate from the agency engaged in investigations and prosecutions or by a court. The majority of the committee thought this unnecessary and undesirable, holding that the problem is simply one of isolating those who engage in the adjudicative activity. This section follows quite closely the view of the majority rather than of the minority.

Section 11, the concluding section of the proposed act, includes the usual provisions respecting the construction and effect of the act and certain other technical matters.

The proposed administrative act represents one of three conflicting doctrines of public administration now struggling for domination of the Federal Government. Blachley and Oatman in Federal Regulatory Action and Control have called these three doctrines (1) the doctrine of executive management; (2) the doctrine of the judicial formula; (3) the revisionist doctrine.

The essential feature of the doctrine of executive management is the assertion that all administrative activities of the Federal Government (except those of a quasi-judicial nature) should be under the control of the Chief Executive.

Those who advocate the doctrine of the judicial formula would require the administrative process to act, insofar as possible, according to the judicial formula of notice and hearing followed by a decision, and would subject to judicial review practically every act which would even remotely affect personal and property rights.

The revisionist doctrine sees in the present Federal administrative system a fairly satisfactory adaptation of structure and relationship to function. At the same time it advocates improvement.

There are many objections to the first doctrine which need not be developed here.

The doctrine of the judicial formula of public administration is largely the product of the special committee of the American Bar Association, the activities of which have been mentioned herein. The chief criticism of the present system offered by it and the Association may be expressed in two words, "administrative absolutism." The proposals of the committee at various stages have been embodied in bills which have been mentioned and in the proposed administrative act just described and commented upon. In my opinion the doctrine of the judicial formula as embodied in the act is wrong in its fundamental objectives. Although some of the doubtful features from a constitutional standpoint and some of the most rash departures of earlier bills have been eliminated in the proposed act, yet its animating purpose, the desire to subject every possible disagreement between the individual and the administrative agency to complete control by the courts, is opposed to the inevitable, necessary, and useful evolution of administrative procedures and administrative and judicial controls that have been a notable feature of the Federal Government during more than a half century.

The theory is based on the moribund concept that law cannot prevail or justice be done except through the courts. It fails to accord to the administrative process the degree of power and finality which the courts themselves, applying the laws under the Constitution of the United States, have recognized as belonging to that process. It looks backward and tries to revive the very system of judicial regulation of business and industry which proved so impossible as to lead to the establishment of regulatory agencies. It destroys and is not constructive. It offers no real protection to the citizen but does menace effective administration. It rests upon dead theory instead of evolving reality. The doctrine of the judicial formula should be discarded and rejected. It appears that the "tendencies toward administrative absolutism," so feared by certain advocates of the proposed act and its predecessors, are largely nonexistent.

The revisionist doctrine, on the other hand, sees in the present system of Federal administration a vast complex of organizations performing a multitude of functions, employing a wide variety of methods and procedures, and subjected to numerous types of control, carried on within a constitutional framework, based on individual rights, adequately protected. The administrative process has developed step by step to meet everyday needs. Changes which are necessary should be made to improve it and should not be designed to destroy it. It was with this idea in mind that the Attorney General's Committee was appointed in 1939 and carried on its painstaking research for 2 years or more. Its final report is an imperative for one who would be fully informed of the issues involved here.

The majority of the committee recommended (1) the establishment of an Office of Administrative Procedure under a director with an advisory committee; (2) the publication of rules and other information, and certain safeguards with respect to rule making; (3) administrative adjudication through a system of independent intra-agency hearing commissioners such as is now in use in the OPA; and (4) the power to issue declaratory rulings. Specific recommendations were made concerning individual agencies, many of which recommendations have been adopted. It made no suggestions for judicial review. It summarily rejected the idea of the minority of the committee that it was feasible to draft a code of standards of fair administrative procedure, although such a code was included in the final report, and, as I have indicated, the proposed act is its present form.

Progress in the administrative process can be made (1) by maintaining the independence of regulatory agencies; (2) by further developing administrative rule making and adjudication; (3) by more exact differentiation of the various forms of administrative action; and (4) by simplifying administrative judicial procedure, and, where possible, by making it more uniform.

These things will leave the administrative system intact, will add to its strength and stability, and will broaden and develop it to meet the expanding needs of a living democratic society. The adoption of the proposed act would have quite the opposite effect.

Mr. FERGUSON. Mr. President, I wish to say a few words regarding this bill. I am of the opinion that it is worthy of passage by the Senate and should become the law.

This bill seeks to lay down rules and regulations for administrative agencies. During the course of the years there has been great growth of such agencies. Any lawyer who has practiced before them has found on numerous occasions that the officer charged with the responsibility of rendering a decision has acted in a way contrary to the ideas and ideals of the bar and of the ancient procedures by which we, as members of the bar, were able to get, as we believed, equal justice under law.

While I do not think anyone can say that this is such a bill as he himself would draft, or that in every instance it contains language such as he himself would employ, nevertheless I think it is a bill which is worthy of passage. It is a very good start. I know that when the bill came before the Judiciary Committee, of which I am a member, I sent copies of it to members of the bar, as did other members of the committee. We found probably a greater degree of satisfaction regarding this bill than has been evidenced in regard to the great mass of legislation which is passed by the Senate.

Recently I conferred about the bill with Dean Stason, of the University of Michigan Law School, who has taught administrative law. After a study of this bill he believes it to be a great step forward. I wholeheartedly agree with him. I think this bill lays down certain rules and regulations which will be beneficial to the people of America, and that before the bar of public opinion administrative decisions will be accepted with a greater degree of satisfaction than has prevailed in the past. In my opinion, there will be fewer complaints because of the activities of governmental agencies if they will attempt to live within the rules and regulations laid down by Congress. After all, the Congress is the policy-making body of the United States. In this measure we are simply laying down a policy; we are trying to provide rules and regulations which in our opinion will be for the benefit of the people of America and will result in a greater assurance of justice at the hands of administrative agencies. I hope the bill will be passed.

Mr. WILEY. Mr. President, I wish to join in the praise and compliments which have already been bestowed upon the Senator from Nevada, the distinguished chairman of the Judiciary Committee, and his staff. They have done a tremendous job in relation to this bill.

There is no question about the need which the bill is designed to fill and which has become apparent, I believe, to every lawyer who has transacted business before agencies and departments of the Government. In recent years, because of governmental bureaucratic controls, the need has also become very apparent to the laity. As a result, as the chairman has stated, a number of committees had investigated the subject and submitted reports.

Mr. President, I was particularly interested in the report on administrative management of the President's Committee which was made in 1937. That report, in part, is set forth in the report of the Committee on the Judiciary on the pending bill. I desire to read briefly from it. It very aptly brings to mind the tendency in republics to what might be called barnacle growth such as that found on the

hulls of ships. Unless we are alert, barnacle growth will endanger us, and the ship of state will become fouled, so to speak, and our institutions will become endangered. Here is the language to which I refer:

The executive branch of the Government of the United States has \* \* \* grown up without plan or design \* \* \*. To look at it now, no one would ever recognize the structure which the founding fathers erected a century and a half ago. \* \* \* Commissions have been the result of legislative groping rather than the pursuit of a consistent policy, \* \* \*. They are in reality miniature independent governments set up to deal with the railroad problem, the banking problem, or the radio problem. They constitute a headless "fourth branch" of the Government, a haphazard deposit of irresponsible agencies and uncoordinated powers.

I do not believe I have overemphasized the situation by my use of the term "barnacle growth":

There is a conflict of principle involved in their make-up and functions. \* \* \* They are vested with duties of administration \* \* \* and at the same time they are given important judicial work. \* \* \* The evils resulting from this confusion of principles are insidious and far reaching. \* \* \* Pressures and influences properly enough directed toward officers responsible for formulating and administering policy constitute an unwholesome atmosphere in which to adjudicate private rights. But the mixed duties of the commissions render escape from these subversive influences impossible. Furthermore, the same men are obliged to serve both as prosecutors and as judges. This not only undermines judicial fairness; it weakens public confidence in that fairness. Commission decisions affecting private rights and conduct lie under the suspicion of being rationalizations of the preliminary findings which the Commission, in the role of prosecutor, presented to itself.

Mr. President, that statement is from the report of the President's Committee in 1937. If there were ever definite language which set forth an undesirable situation and the necessity for providing a remedy, it is the language which I have read.

So again, Mr. President, I compliment the chairman of the committee for what he has accomplished. Even after this bill becomes law, it will not be the final answer. What we are saying to these agencies is, "Get busy, formulate your rules, prescribe the pattern, and make it uniform so that those who desire to practice before you will be fully informed as to what is necessary in connection with the practice." After we have done that, we will take another step next year and say, which we should say, that the practice in all these agencies should be uniform in order that they may not adopt their own rules and prescribe certain pleadings, or whatever they may be called, which may differ from each other. When we have, in due course, a uniform practice laid down and followed by uniform pleadings, we will have accomplished what I am sure was envisioned by those who drew this bill.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The committee amendment was to strike out all after the enacting clause and in lieu thereof to insert:

That this act may be cited as the "Administrative Procedure Act."

#### DEFINITIONS

SEC. 2. As used in this act—

(a) Agency: "Agency" means each authority (whether or not within or subject to review by another agency) of the Government of the United States other than Congress, the courts, or the governments of the possessions, Terri-

ories, or the District of Columbia. Nothing in this act shall be construed to repeal delegations of authority as provided by law. Except as to the requirements of section 3, there shall be excluded from the operation of this act (1) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them, (2) courts martial and military commissions, (3) military or naval authority exercised in the field in time of war or in occupied territory, or (4) functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947, and the functions conferred by the following statutes: Selective Training and Service Act of 1940; Contract Settlement Act of 1944; Surplus Property Act of 1944.

(b) Person and party: "Person" includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies. "Party" includes any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any agency proceeding; but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes.

(c) Rule and rule making: "Rule" means the whole or any part of any agency statement of general applicability designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of any agency. "Rule making" means agency process for the formulation, amendment, or repeal of a rule and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor, or of valuations, costs, or accounting, or practices bearing upon any of the foregoing.

(d) Order and adjudication: "Order" means the whole or any part of the final disposition (whether affirmative, negative, or declaratory in form) of any agency in any matter other than rule making but including licensing. "Adjudication" means agency process for the formulation of an order.

(e) License and licensing: "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, membership, statutory exemption, or other form of permission. "Licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license.

(f) Sanction and relief: "Sanction" includes the whole or part of any agency (1) prohibition, requirement, limitation, or other condition affecting the freedom of any person; (2) withholding of relief; (3) imposition of any form of penalty or fine; (4) destruction, taking, seizure, or withholding of property; (5) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees; (6) requirement, revocation, or suspension of a license; or (7) taking of other compulsory or restrictive action. "Relief" includes the whole or part of any agency (1) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy; (2) recognition of any claim, right, immunity, privilege, exemption, or exception; or (3) taking of any other action beneficial to any person.

(g) Agency proceeding and action: "Agency proceeding" means any agency process as defined in subsections (c), (d), and (e) of this section. For the purposes of section 10, "agency action" includes the whole or part of every agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.

#### PUBLIC INFORMATION

Sec. 3. Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of any agency--

(a) Rules: Every agency shall separately state and currently publish in the Federal Register (1) descriptions of its central and field organization; (2) the established places and methods whereby the public may secure information or make submittals or requests; (3) statements of the general course and method by which its rule making and adjudicating functions are channeled and determined, including the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations; and (4) substantive rules adopted as authorized by law and statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public. No person shall in any manner be required to resort to organization or procedure not so published.

(b) **Opinions and orders:** Every agency shall publish or, in accordance with published rule, make available to public inspection all final opinions or orders in the adjudication of cases except those required for good cause to be held confidential and not cited as precedents.

(c) **Public records:** Save as otherwise required by statute, matters of official record shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found.

#### RULE MAKING

**SEC. 4.** Except to the extent that there is involved (1) any military, naval, or foreign affairs function of the United States or (2) any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts—

(a) **Notice:** General notice of proposed rule making shall be published in the Federal Register and shall include (1) a statement of the time, place, and nature of public rule making proceedings; (2) reference to the authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved. Except where notice or hearing is required by statute, this subsection shall not apply to interpretative rules, general statements of policy, rules of agency organization, procedure, or practice, or in any situation in which the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(b) **Procedures:** After notice required by this section, the agency shall afford interested persons an opportunity to participate in the rule making through submission of written data, views, or argument with or without opportunity to present the same orally in any manner; and, after consideration of all relevant matter presented, the agency shall incorporate in any rules adopted a concise general statement of their basis and purpose. Where rules are required by law to be made upon the record after opportunity for or upon an agency hearing, the requirements of sections 7 and 8 shall apply in place of the provisions of this subsection.

(c) **Effective dates:** The required publication or service of any substantive rule (other than one granting or recognizing exemption or relieving restriction or interpretative rules and statements of policy) shall be made not less than 30 days prior to the effective date thereof except as otherwise provided by the agency upon good cause found and published with the rule.

(d) **Petitions:** Every agency shall accord any interested person the right to petition for the issuance, amendment, or repeal of a rule.

#### ADJUDICATION

**Sec. 5.** In every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved (1) any matter subject to a subsequent trial of the law and the facts de novo in any court; (2) the selection or tenure of an officer or employee of the United States other than examiners appointed pursuant to section 11; (3) proceedings in which decisions rest solely on inspections, tests, or elections; (4) the conduct of military, naval, or foreign affairs functions; (5) cases in which an agency is acting as an agent for a court; and (6) the certification of employee representatives—

(a) **Notice:** Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place, and nature thereof; (2) the legal authority and jurisdiction under which the hearing is to be held; and (3) the matters of fact and law asserted. In instances in which private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law and in other instances agencies may by rule require responsive pleading. In fixing the times and places for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(b) **Procedure:** The agency shall afford all interested parties opportunity for (1) the submission and consideration of facts, argument, offers of settlement, or proposals of adjustment where time, the nature of the proceeding, and the public interest permit and (2), to the extent that the parties are unable so to determine any controversy by consent, hearing, and decision upon notice and in conformity with sections 7 and 8.



(c) Separation of functions: The same officers who preside at the reception of evidence pursuant to section 7 shall make the recommended decision or initial decision required by section 8 except where such officers become unavailable to the agency. Save to the extent required for the disposition of ex parte matters as authorized by law, no such officer shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate; nor shall such officer be responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency. No officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency in any case shall, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 8 except as witness or counsel in public proceedings. This subsection shall not apply in determining applications for initial licenses or the past reasonableness of rates; nor shall it be applicable in any manner to the agency or any member or members of the body comprising the agency.

(d) Declaratory orders: The agency is authorized in its sound discretion, with like effect as in the case of other orders, to issue a declaratory order to terminate a controversy or remove uncertainty.

#### ANCILLARY MATTERS

SEC. 6. Except as otherwise provided in this act—

(a) Appearance: Any person compelled to appear in person before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. Every party shall be accorded the right to appear in person or by or with counsel or other duly qualified representative in any agency proceeding. So far as the responsible conduct of public business permits, any interested person may appear before any agency or its responsible officers or employees for the presentation, adjustment, or determination of any issue, request, or controversy in any proceeding or in connection with any agency function, including stop-order or other summary actions. Every agency shall proceed with reasonable dispatch to conclude any matter presented to it except that due regard shall be had for the convenience and necessity of the parties or their representatives. Nothing herein shall be construed either to grant or to deny to any person who is not a lawyer the right to appear for or represent others before any agency or in any agency proceeding.

(b) Investigations: No process, requirement of a report, inspection, or other investigative act or demand shall be issued, made, or enforced in any manner or for any purpose except as authorized by law. Every person compelled to submit data or evidence shall be entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

(c) Subpenas: Agency subpoenas authorized by law shall be issued to any party upon request and, as may be required by rules of procedure, upon a statement or showing of general relevance and reasonable scope of the evidence sought. Upon contest the court shall sustain any such subpoena or similar process or demand to the extent that it is found to be in accordance with law and, in any proceeding for enforcement, shall issue an order requiring the appearance of the witness or the production of the evidence or data under penalty of punishment for contempt in case of contumacious failure to do so.

(d) Denials: Prompt notice shall be given of the denial in whole or in part of any written application, petition, or other request of any interested person made in connection with any agency proceeding. Except in affirming a prior denial or where the denial is self-explanatory, such notice shall be accompanied by a simple statement of grounds.

#### HEARINGS

SEC. 7. In hearings which section 4 or 5 requires to be conducted pursuant to this section—

(a) Presiding officers: There shall preside at the taking of evidence (1) the agency, (2) one or more members of the body which comprises the agency, or (3) one or more examiners appointed as provided in this act; but nothing

in this act shall be deemed to supersede the conduct of specified classes of proceedings in whole or part by or before boards or other officers specially provided for by or designated pursuant to statute. The functions of all presiding officers and of officers participating in decisions in conformity with section 8 shall be conducted in an impartial manner. Any such officer may at any time withdraw if he deems himself disqualified; and, upon the filing in good faith of a timely and sufficient affidavit of personal bias or disqualification of any such officer, the agency shall determine the matter as a part of the record and decision in the case.

(b) Hearing powers: Officers presiding at hearings shall have authority, subject to the published rules of the agency and within its powers, to (1) administer oaths and affirmations, (2) issue subpoenas authorized by law, (3) rule upon offers of proof and receive relevant evidence, (4) take or cause depositions to be taken whenever the ends of justice would be served thereby, (5) regulate the course of the hearing, (6) hold conferences for the settlement or simplification of the issues by consent of the parties, (7) dispose of procedural requests or similar matters, (8) make decisions or recommend decisions in conformity with section 8, and (9) take any other action authorized by agency rule consistent with this act.

(c) Evidence: Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. Any evidence, oral or documentary, may be received, but every agency shall as a matter of policy provide for the exclusion of immaterial and unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except as supported by relevant, reliable, and probative evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses any agency may, where the interest of any party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(d) Record: The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision in accordance with section 8 and, upon payment of lawfully prescribed costs, shall be made available to the parties. Where any agency decision rests on official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an opportunity to show the contrary.

#### DECISIONS

SEC. 8. In cases in which a hearing is required to be conducted in conformity with section 7—

(a) Action by subordinates: In cases in which the agency has not presided at the reception of the evidence, the officer who presided (or, in cases not subject to subsection (c) of section 5, any other officer or officers qualified to preside at hearings pursuant to section 7) shall initially decide the case or the agency shall require (in specific cases or by general rule) the entire record to be certified to it for initial decision. Whenever such officers make the initial decision and in the absence of either an appeal to the agency or review upon motion of the agency within time provided by rule, such decision shall without further proceedings then become the decision of the agency. On appeal from or review of the initial decisions of such officers the agency shall, except as it may limit the issues upon notice or by rule, have all the powers which it would have in making the initial decision. Whenever the agency makes the initial decision without having presided at the reception of the evidence, such officers shall first recommend a decision except that in rule making or determining applications for initial licenses (1) in lieu thereof the agency may issue a tentative decision or any of its responsible officers may recommend a decision or (2) any such procedure may be omitted in any case in which the agency finds upon the record that due and timely execution of its function imperatively and unavoidably so requires.

(b) Submittals and decisions: Prior to each recommended, initial, or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions of subordinate officers or to tentative agency decisions, and (3) supporting reasons for

such exceptions or proposed findings or conclusions. All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the basis therefor, upon all the material issues of fact, law, or discretion presented; and (2) the appropriate rule, order, sanction, relief, or denial thereof.

#### SANCTIONS AND POWERS

SEC. 9. In the exercise of any power or authority—

(a) In general: No sanction shall be imposed or substantive rule or order be issued except within jurisdiction delegated to the agency and as authorized by law.

(b) Licenses: In any case in which application is made for a license required by law the agency with due regard to the rights or privileges of all the interested parties or adversely affected persons and with reasonable dispatch, shall set and complete any proceedings required to be conducted pursuant to sections 7 and 8 of this act or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, no withdrawal, suspension, revocation, or annulment of any license shall be lawful unless, prior to the institution of agency proceedings therefor, facts or conduct which may warrant such action shall have been called to the attention of the licensee by the agency in writing and the licensee shall have been accorded opportunity to demonstrate or achieve compliance with all lawful requirements. In any case in which the licensee has, in accordance with agency rules, made timely and sufficient application for a renewal or a new license, no license with reference to any activity of a continuing nature shall expire until such application shall have been finally determined by the agency.

#### JUDICIAL REVIEW

SEC. 10. Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—

(a) Right of review: Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

(b) Form and venue of action: The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or in the absence or inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. Agency action shall be subject to judicial review in civil or criminal proceedings for judicial enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.

(c) Reviewable acts: Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. Except as otherwise expressly required by statute, agency action shall be final whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency otherwise requires by rule) for an appeal to superior agency authority.

(d) Interim relief: Pending judicial review any agency is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, every reviewing court (including every court to which a case may be taken on appeal from or upon application for certiorari or other writ to a reviewing court) is authorized to issue all necessary and appropriate process to postpone the effective date of any agency action or to preserve status or rights pending conclusion of the review proceedings.

(e) Scope of review: So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, or otherwise not in accordance with law; (2) contrary to constitutional right, power,

privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by the parties, and due account shall be taken of the rule of prejudicial error.

#### EXAMINERS

SEC. 11. Subject to the civil-service and other laws to the extent not inconsistent with this act, there shall be appointed by and for each agency as many qualified and competent examiners as may be necessary for proceedings pursuant to sections 7 and 8, who shall be assigned to cases in rotation so far as practicable and shall perform no duties inconsistent with their duties and responsibilities as examiners. Examiners shall be removable by the agency in which they are employed only for good cause established and determined by the Civil Service Commission (hereinafter called the Commission) after opportunity for hearing and upon the record thereof. Examiners shall receive compensation prescribed by the Commission independently of agency recommendations or ratings and in accordance with the Classification Act of 1923, as amended, except that the provisions of paragraphs (2) and (3) of subsection (b) of section 7 of said act, as amended, and the provisions of section 9 of said act, as amended, shall not be applicable. Agencies occasionally or temporarily insufficiently staffed may utilize examiners selected by the Commission from and with the consent of other agencies. For the purposes of this section, the Commission is authorized to make investigations, require reports by agencies, issue reports, including an annual report to the Congress, promulgate rules, appoint such advisory committees as may be deemed necessary, recommend legislation, subpoena witnesses or records, and pay witness fees as established for the United States courts.

#### CONSTRUCTION AND EFFECT

SEC. 12. Nothing in this act shall be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. If any provision of this act or the application thereof is held invalid, the remainder of this act or other applications of such provision shall not be affected. Every agency is granted all authority necessary to comply with the requirements of this act through the issuance of rules or otherwise. No subsequent legislation shall be held to supersede or modify the provisions of this act except to the extent that such legislation shall do so expressly. This act shall take effect 3 months after its approval except that sections 7 and 8 shall take effect 6 months after such approval, the requirement of the selection of examiners pursuant to section 11 shall not become effective until 1 year after such approval, and no procedural requirement shall be mandatory as to any agency proceeding initiated prior to the effective date of such requirement.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is before the Senate and open to further amendment. If there be no further amendment to be offered, the question is on the engrossment and the third reading of the bill.

The bill (S. 7) was ordered to be engrossed for a third reading, read the third time, and passed.

—————  
*May 24, 1946*

Mr. SABATH. Mr. Speaker, I call up House Resolution 615 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

*Resolved*, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the act (S. 7) to improve the administration of justice by prescribing fair administrative procedure. That after general debate, which shall be confined to the act and continue not to exceed 2 hours, to be equally divided and controlled by the chairman and the ranking minority member of the Committee on the Judiciary, the act shall be read for amendment under the 5-minute rule. At the conclusion of the consideration of the act for amendment, the Committee shall rise and report the act to the House with such amendments as may have been adopted and the previous question shall be considered as ordered on the act and amendments thereto to final passage without intervening motion except one motion to recommit.

#### TO IMPROVE ADMINISTRATIVE PROCEDURE

Mr. SABATH. Mr. Speaker, later on I shall yield 30 minutes to the gentleman from Michigan [Mr. Michener].

Mr. Speaker, House Resolution 615 makes in order the consideration of Senate 7 as amended by the Committee on the Judiciary. The bill aims to improve the administration of justice by prescribing fair administrative procedure. The rule is an open rule, and provides for 2 hours of general debate.

Mr. Speaker, I hope this is only the beginning of legislation to improve the administration of justice and that it will bring about real justice to all those who are obliged to face our courts.

#### NOT THIS KIND OF JUSTICE

Speaking about justice, I am reminded of a story. A certain corporation lawyer, having been called to defend an action way out West, after surveying the situation engaged every lawyer in that county that he thought could be of service one way or the other. After the case was concluded the corporation lawyer wired home, "Pleased to report case has been concluded and justice prevailed." In about half an hour he received a wire, "In view of that result, give notice of appeal for a new trial." I hope that is not the kind of justice we are going to have in some of these courts as a result of the passage of this bill.

This bill, Mr. Speaker, is the fruit of 10 years of careful inquiry and consideration by the Committees on the Judiciary in both Houses of Congress, by the President's Committee on Administrative Management, by the Attorney General's Committee on Administrative Procedure, and by many public, quasi-public, and private groups, committees, and organizations representing the bar, business, and industry. Exhaustive hearings have been held, scores of witnesses heard, dozens of conferences and consultations had. Seldom, indeed, has any legislation reached the floor with so much careful thought behind it. High recognition is due the members and the chairmen of the respective committees, and in particular to the gentleman from Pennsylvania [Mr. Walter].

#### PRESENT BILL MEETS OBJECTIONS

The object of the bill is, as I have stated, to improve the administration of rules and regulations made by the agencies under grants of power from Congress, and to establish uniformity of practice so

that any citizen may have his day in court with a minimum of delay and expense.

Ever since I have been in the House, and for many years before that, there has been complaint from lawyers, from businessmen, from industry, and from plain citizens that they were lost in the maze of administrative agencies and regulations. There has been no argument as to the need for systematization and clarification; the only differences have been as to the methods to be followed, on how to achieve the desired end with the greatest equity to the public and the least disturbance to the complex growth of administrative functions. An earlier bill, the Logan-Walter bill, was vetoed by President Roosevelt because it was felt to be inadequate to the problems, and that it would have the effect of crippling administrative agencies and the courts.

#### PUBLICITY VALUABLE CONTRIBUTION

There is general agreement that the present bill has not only eliminated the objections previously made but has achieved a substantial contribution in its publicity requirements; and that it has arrived at an equitable and helpful differentiation of the legislative or rule-making powers and the quasi-judicial powers frequently lodged in the same agency.

What the bill does, in substance, may be summarized under four headings:

First. It provides that agencies must issue as rules certain specified information as to their organization and procedure, and also make available other materials of administrative law.

Second. It states the essentials of the several forms of administrative proceedings and the general limitations on administrative powers.

Third. It provides in more detail the requirements for administrative hearings and decisions in cases in which statutes require such hearings.

Fourth. It sets forth a simplified statement of judicial review designed to afford a remedy for every legal wrong.

#### COMMENDATION FOR INVESTIGATIVE SECTIONS

I should like to bespeak special commendation for the discussion of section 6 (B), dealing with administrative investigation, found on page 23 of the report of the House Committee on the Judiciary. Investigations, the committee says, must not be "fishing expeditions," and may not disturb or disrupt personal privacy, or unreasonably interfere with private occupation or enterprise. They should be so conducted as to interfere in the least degree compatible with adequate law enforcement.

I am told that this is only the beginning in trying to adjust many different viewpoints held by various judges in the different districts. I am hopeful that the Committee on the Judiciary within a short time will bring in a much broader bill that will guarantee real justice to all the people, and assure that justice will be done in all proceedings, that whether a man be poor or rich, equal justice will be meted out.

I do not wish to detain the House further, as this is a bill I know the Members are desirous of considering. I do not believe there will be much opposition to the rule or to the bill.

I now yield 30 minutes to the gentleman from Michigan [Mr. Michener].

(Mr. Sabath asked and was given permission to revise and extend his remarks.)

Mr. MICHENER. Mr. Speaker, this is an important bill. In my experience in Congress, no legislation has had more careful and more painstaking consideration on the part of the legislative branch of the Government, the agencies of the Government, the committees of Congress, the American Bar Association, business and other groups primarily affected. For more than 10 years, committees have been working. During all that time efforts have been made to reach a common ground where we could all agree and enact needed legislation. The measure we are about to consider, in my opinion, will not receive a negative vote in the Congress today. That is something—that is an accomplishment. It is the fruition of careful study, tolerance, nonpartisanship, and genuine cooperation. The only aim and purpose of this bill is to see that the rank and file of American people receive the justice which our system of jurisprudence attempts to guarantee to them. I am not going to go into the technicalities of the bill. It will be explained by members of the subcommittee of the Judiciary Committee, who have lived with this matter for 10 long years. I am sure they will be able to answer all questions. For my part, I doubt if many questions will be asked. When the first proposal was suggested to the Congress, I was opposed to it. One school of thought was entirely of one mind. Another school of thought was entirely of another mind. Possibly each school went too far in advocating just what it thought should be done. But after calm study, deliberation, and consideration, as well as tolerance, we are here today with something that the Committee on the Judiciary stands behind unanimously. It is not perfect. It is a pioneer effort. It can be amplified as circumstances warrant.

Mr. JOHNSON of California. Mr. Speaker, will the gentleman yield?

Mr. MICHENER. I yield.

Mr. JOHNSON of California. In the State of California, the courts and the bar have spent about 6 years studying this same problem. They finally passed a bill almost identical to the bill you are offering here today. It has received universal approbation both of the bench and bar as well as litigants.

Mr. MICHENER. I am sure after this bill becomes law, which I feel sure it will, the same condition will exist in the Federal Government.

Mr. PITTINGER. Mr. Speaker, will the gentleman yield for a comment since my distinguished colleague does not want to delay matters?

Mr. MICHENER. I yield to the gentleman.

Mr. PITTINGER. As I understand it, this is a successor to the old original Walter-Logan bill. Our distinguished colleague from Pennsylvania [Mr. Walter] and the late Senator Logan rendered a great public service when they introduced that legislation. It should have been passed years and years ago because it is in harmony with American ideas and American traditions of the right to go into court when you feel you have been wronged. I hope we pass it, and pass it soon.

Mr. MICHENER. The Walter-Logan bill passed the Congress, but was vetoed by the President because, he said, the subject needed more study. That study has been made. This type of bill cannot be writ-

ten on the floor. It is too technical. Neither can it be adequately explained in a short speech in this debate.

Mr. SCRIVNER. Mr. Speaker, will the gentleman yield?

Mr. MICHENER. I yield.

Mr. SCRIVNER. I wish to take this opportunity to commend the committee and the subcommittee, not only on the measure itself, but on the full and complete and explanatory report which they have prepared. This measure is a step in the right direction toward regulating the regulators. I trust the bill will receive a unanimous vote.

Mr. MICHENER. Mr. Speaker, reference has been made to the committee report. This report contains 56 pages, and it is complete. If it were not so long, I should include it in the Record, but I want the Record to show reference to the report, so that anybody in the future who wants to know what this bill means and why it is here will know where to go to get concise information. It is House Report No. 1980, Seventy-ninth Congress, second session.

Mr. Speaker, Dean E. Blythe Stason, of the law school of the University of Michigan, served on the Attorney General's Committee studying administrative procedure. He has also served on bar association committees making like investigation. Indeed, he is an expert on administrative procedure legislation and I have a great respect for his judgment in these matters. After reading this bill, Dean Stason wrote to me approving the bill in its present form. He said:

This measure has now been given very careful attention, not only by the Senate committee, but also by the appropriate committees of the American Bar Association, where it has been debated, revised, and rerevised, throughout the last half dozen years. I have studied the act very carefully indeed and in fact have participated in certain of the earlier drafts. I am convinced that the measure is now in first-class condition and is as good a measure as can be expected at this time in so highly controversial a field as that of administrative law. I hope that the bill becomes a law at an early date.

I understand that the other members of the former Attorney General's Committee agree with Dean Stason.

Mr. Speaker, I have no request for time on this side.

Mr. SABATHI. Mr. Speaker, I yield 5 minutes to the gentleman from Virginia [Mr. Smith].

Mr. SMITH of Virginia. Mr. Speaker, I am delighted to see this bill come to the floor in the form in which it is probably going to receive the approval of both the House and the Senate. This is a subject that should have been dealt with many years ago. It is more important now than ever before. It is becoming more important every day. There has grown up a great system of administrative procedure that has grown up without any regulation by Congress to the point where the average citizen who has a matter before any bureau in Washington must go through a maze of rules and regulations unknown to him and often unknown to the agency which deals with them.

I have given this subject much consideration. In fact, I introduced a bill which went farther than the present bill. I had hoped that certain features of it would go farther. I had hoped that we would have a more complete separation of the judicial and executive functions in this bill. I do think that the committee has gone a long way, and perhaps they are wise in not going any farther than they have gone.

I want to call the attention of the House particularly to the report on this bill, as has the distinguished gentleman from Michigan [Mr.



Michener]. It is one of the finest reports I ever read. It is clear, full, and complete. There are many details in setting up a code of administrative procedure. It is a great undertaking. I look upon this bill as merely the beginning of setting forth a code that will regulate and coordinate the procedure in all of these procedures before executive agencies.

This bill has this added advantage: Although one bill was vetoed by the President, although there has been much controversy over this whole subject, we have at last reached the point where the Committee on the Judiciary in the House of Representatives has agreed upon a bill, and I understand they have consulted with the Judiciary Committee of the Senate, and this bill has been submitted to them in its amended form and it is agreeable to the Senate. On the last page of the report you will find a complete endorsement by the Attorney General. So the Senate Judiciary Committee, the House Judiciary Committee, and the Attorney General all being in accord, I merely took the floor to express the hope that, notwithstanding some of us may have wanted some addition of details to this bill, we will all agree on this bill as it is written, and we will not place any amendments on the bill which may jeopardize its ultimate passage at this session of the Congress. It is a most important thing to do. I do hope the House will pass this bill as it is, so that we may finally make a fine start, as we are in this bill, upon legislation that has been so long needed and so long neglected.

The SPEAKER. The time of the gentleman from Virginia has expired.

Mr. SABATH. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

Mr. SUMNERS of Texas. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (S. 7) to improve the administration of justice by prescribing fair administrative procedure.

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill S. 7, with Mr. SMITH of Virginia in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

Mr. SUMNERS of Texas. Mr. Chairman, I yield 15 minutes to the gentlemen from Pennsylvania [Mr. Walter.]

#### I. THE PROBLEM

Mr. WALTER. Mr. Chairman, for a generation Americans have been brought face to face with new forms or methods of government, which we have come to call administrative law. It is administrative because it involves the exercise of legislative and judicial powers of government by officers who are neither legislators nor judges. It is law because what they do is binding upon the citizen exactly as statutes or judgments are binding.

The people of the country have been of different minds about this new phenomenon. Thirty years ago they were arguing about its validity under the constitutional system of the United States. Twenty-five years ago the argument had shifted to questions of how far the courts should be authorized to control administrative operations. Within the last 10 years the emphasis has swung to problems of administrative organization and administrative procedure.

The plain fact is that administrative government, or administrative justice, as it is sometimes called, has been with us a long time and is obviously here to stay. In the last 15 years it has grown by leaps and bounds. Thirty years ago a distinguished statesman, Elihu Root, put the problem in words which have not since been improved upon. He then said:

There is one special field of law development which has manifestly become inevitable. We are entering upon the creation of a body of administrative law quite different in its machinery, its remedies, and its necessary safeguards from the old methods of regulation by specific statutes enforced by the courts. As any community passes from simple to complex conditions the only way in which government can deal with the increased burdens thrown upon it is by the delegation of power to be exercised in detail by subordinate agents, subject to the control of general directions prescribed by superior authority. The necessities of our situation have already led to an extensive employment of that method. The Interstate Commerce Commission, the State public service commission, the Federal Trade Commission, the powers of the Federal Reserve Board, the health departments of the States, and many other supervisory offices and agencies are familiar illustrations. Before these agencies the old doctrine prohibiting the delegation of legislative power has virtually retired from the field and given up the fight. There will be no withdrawal from these experiments. We shall go on and we shall expand them, whether we approve theoretically or not, because such agencies furnish protection to rights and obstacles to wrong doing which under our new social and industrial conditions cannot be practically accomplished by the old and simple procedure of legislatures and courts as in the last generation. Yet the powers that are committed to these regulating agencies, and which they must have to do their work, carry with them great and dangerous opportunities of oppression and wrong. If we are to continue a government of limited powers these agencies of regulation must themselves be regulated. The limits of their power over the citizen must be fixed and determined. The rights of the citizen against them must be made plain. A system of administrative law must be developed, and that with us is still in its infancy, crude, and imperfect.

Similarly, 20 years ago, Charles Evans Hughes had this to say:

Legislators have little time to follow the trails of expert inquiry and so we turn the whole business over to a few with broad authority to make the actual rules which control our conduct. The exigency is inescapable but the guardians of liberty will ever be watchful lest they are rushed from legislative incapacity into official caprice. If we escape bureaucracy it will not be because of dissertations on delegations of legislative authority. We are a practical people and necessary delegations will not fail to find reasons to support them. It will be only because we never lose sight of the ultimate purpose of government, because we would rather take some risks than give too much leeway to officialism, because we refuse to establish or maintain power for its own sake, and because we have the assertiveness of the unbroken will of freemen who will insist that every public officer must constantly feel that he is a servant and not a master, the servant of an intelligent community which is content with thorough investigation and impartial findings and scientific applications, but is not servile and is able and quick to detect favoritism or arbitrariness. It will be for the reason that we are not willing to exchange our birthright for a mess of administrative potage, no better for being prepared by democratic cooks.

These are statements of great men, learned in the art of government and in the technique of the law. Their measured language, however, is merely the echo of history and common sense of English-speak-

ing peoples. On the eve of the American Revolution the great Pitt warned that "unlimited power corrupts the possessor." Our Declaration of Independence, which followed a few years later, charged that the British King had "sent hither swarms of officers to harass our people," sponsored "arbitrary government," sought to introduce "absolute rule into these Colonies," and proposed to alter "fundamentally the forms of our governments." Those were the words of Thomas Jefferson, used to describe the administrative tyranny of the time.

Other people in other walks of life have recognized and expressed the same ideas here and abroad. In 1901 the great historian who was also Bishop of London uttered these historic words:

Power tends to corrupt, and absolute power corrupts absolutely.

Even the poets have had their say, as in these words from the pen of Shelley:

Power, like a desolating pestilence,  
Pollutes whate'er it touches.

Today, in the backwash of the greatest war of history, we need not be reminded of the abuses which inevitably follow unlimited power.

## II. LEGISLATIVE HISTORY

The situation has not been ignored by the Congress of the United States. For 10 years it has been considering legislation. The difficulty has been the complexity of the subject, the disturbances of the times, and world-shaking events in the international sphere. In considering the legislative proposals presented since 1933, the Congress has held many hearings and its committees have issued many reports on the subject.

The executive branch also has been concerned. The late President Franklin D. Roosevelt initiated or approved two major investigations on the subject, both of which resulted in legislative recommendations of far-reaching consequence. Our great Attorney General, the Honorable Tom Clark, has participated in the drafting of the present bill, and he has repeatedly endorsed it.

The history of these activities is set forth at length at pages 7 to 16 of the report of the Committee on the Judiciary respecting the present bill. While various proposals have been made over the years, the continuous line of development leading to the present bill is there for all to read. In 1937, when transmitting to the Congress the report of his Committee on Administrative Management, President Roosevelt stated that the practice of creating administrative agencies, which perform administrative work in addition to judicial work, threatens to develop a "fourth branch" of the Government, for which there is no sanction in the Constitution. In 1938 the Senate and House Committees on the Judiciary investigated very thoroughly the proposal for the creation of an administrative court. In 1939 and 1940, Congress passed an administrative procedure bill which President Roosevelt vetoed because, as he stated in his message to this body, he desired to await the report of the Attorney General's Committee on Administrative Procedure, which had then been at work for over a year pursuant to instructions to make a thorough study and comprehensive recommendations.

In 1941 the Attorney General's Committee, after some 2 years of labor and issuance of numerous printed studies of the operations of important agencies of the Federal Government, issued its final report. Legislative hearings were held in April, May, June, and July of the same year on the legislative proposals growing out of the work of that Committee.

War intervened. It was not until 1944 that the Judiciary Committees of both Houses could again become active respecting this problem.

So much had been done in the prior years that it was perfectly obvious that the problem remaining was one of draftsmanship. In reaching the final form of the bill the executive branch and private interests of every kind were called into consultation over a period of a year or more as is set forth at pages 14 to 16 of the report of the committee respecting the present bill.

With the details of this very extended legislative history I shall do no more than refer the Members of the House to the Committee report. It is a comprehensive document. It sets forth all the official history of this bill and its predecessors.

### III. THE GENERAL STRUCTURE OF THE BILL

• Many people who approach the subject of general administrative law legislation either conceive the problem as one which is very simple, or as one which is so complex as to be impossible. Neither impression is correct.

Granted that Federal powers are going to be exercised, and that they are going to be exercised through administrative agencies, there is no simple panacea. To expand court review would not, for example, remedy the administrative situation at its source. To adopt some drastic system of independent hearing officers would not take care of the vast area of governmental activity where there are no hearings. To require hearings in all cases would add unnecessary burdens in the business of government and would at the same time deprive the citizen of the need for speed where quick action is desirable.

Nor on the other hand is administrative operation so complex in its fundamentals that it cannot be grasped by an intelligent mind and regulated by simple statute. It is true that the number of administrative agencies is great. The number of subjects with which they deal is even greater. The number of administrative powers almost passes beyond conception. But what administrative officers or agencies do falls into a few simple categories.

We are not here concerned so much with mere custodial or managerial tasks of administration. But we are concerned with administrative powers which are compulsory in their nature. We are mainly concerned with administrative processes, in other words, which are regulatory in their effect. Compulsory or regulatory administrative operations fall into three main groups:

First, there are the legislative functions of administrative agencies, where they issue general or particular regulations which in form or effect are like the statutes of the Congress. Among these are such regulations as those which state minimum wage requirements or agricultural marketing rules. Congress—if it had the time, the staff, and

the organization—might itself prescribe these things. Because Congress does not do so itself and yet desires that these things be done, the legislative power to do them has been conferred upon administrative officers or agencies.

The second kind of administrative operation is found in those familiar situations in which an officer or agency determines the particular case just as, in other fields of law, the courts determine cases. Examples of this type of administrative operation are the injunctive orders issued by the Federal Trade Commission. Other agencies are authorized to award damages, which are usually called reparations in the administrative field. What the agencies do in these cases is to determine, just as a court might determine, the liability of a party or the redress to which a party is entitled in a specific case on a specific state of facts and under stated law.

The third type of administrative compulsory power may be incidental to either legislative or judicial powers of administrative agencies, or it may be entirely independent of either. I refer to the compulsory action of administrative agencies when they issue subpoenas, require records or reports, or undertake mandatory inspections. These functions are investigative in nature. The investigation may be made in connection with their legislative or judicial functions, or it may be made for the purpose of submitting a report to Congress or to refer prosecutions to a grand jury. Whatever the purpose, the administrative arm is given power to require information to be submitted to it.

The present bill carefully distinguishes between these three basic types of administrative regulatory powers. Indeed, it goes further, and within these types of powers or operations it frequently makes differentiations and exceptions. For example, in connection with the legislative or rule-making function, the bill differentiates several kinds of rules, such as rules of procedure as distinguished from rules of substance. Also, in connection with the judicial function of administrative agencies, the bill differentiates between adjudications made in connection with foreign or military affairs as distinguished from those in the domestic or civil field.

But this bill does more than merely analyze the administrative process and lay down the forms of procedure for each. It really deals with three separate subjects: First, public information; second, administrative operation; and, third, judicial review.

The first operative section of the bill is basic and requires agencies to issue certain information which is essential to inform the public about the substance and the procedure of administrative law. It requires that agencies state their organizational set-ups, promulgate statements respecting their procedures, and make available as regulations the substantive and interpretative rules which they have framed for the guidance of the public.

Sections 4, 5, 6, 8, 9, and 11 deal with administrative operations. Section 4 relates to the legislative functions of administrative agencies and provides that where Congress has not required hearings, with some exceptions, the agency shall give notice of the making of proposed regulations and afford interested parties an opportunity for the informal submission and consideration of their views or requests. Section 5 deals with administrative adjudications of particular cases where Congress has required adjudications to be made upon a hearing.

Sections 7, 8, and 11 spell out the details of hearing and decision procedures in all cases in which, by other legislation, Congress has required an agency hearing. Section 9 states certain limitations upon the penalties or relief which agencies may impose or confer in any case. Section 6 deals with the investigative powers and other incidental matters of importance.

In the all-important field of judicial review, section 10 is a complete statement of the subject. It prescribes briefly when there may be judicial review and how far the courts may go in examining into a given case.

I shall discuss all these matters in greater detail next in taking up the bill section by section, subsection by subsection.

Before doing so, however, I should like to refer the Members of the House to the diagrammed synopsis of the bill which will be found at page 28 and 29 of the committee report. There, as nearly as possible within the limitations of the printed page, is presented a diagram sketch of the provisions and operation of the bill. I should also like to refer the House to Appendix A of the committee report, at pages 49 to 56, which indicates the changes made by the committee amendment in the bill as it passed the Senate. There is shown not only the changes made in the text of the bill, but footnotes explain the reason for each change. I think I may say with confidence that these changes have been acceptable to all who have labored in the drafting of this measure. The bill as it passed the Senate was a good bill, but the subject is one of such great importance and of such far-reaching effect that the committee has felt it wise to make numerous changes for purposes of clarification and in order to leave no doubt as to what is intended by the legislation.

#### IV. DETAILED PROVISIONS

In taking up the specific provisions of the bill as reported to the House, I will not attempt to restate all of the detail which appears in the committee report at pages 18 to 48. I shall try, however, to emphasize those things which are of paramount importance and at the same time state how the provisions of the bill as a whole are intended to operate.

#### DEFINITIONS, SECTION 2

In a bill of this kind the definition section is of great importance. The definitions in section 2 simplify the remaining provisions of the bill. They also make more precise the kinds of operations which are included in the terms used in the bill.

#### AGENCY, SECTION 2 (A)

The definition of agency in section 2 (a) of the bill is perfectly simple and consists of two elements: First, there are excluded legislative, judicial, and territorial authorities. Secondly, there is included any other authority regardless of its form or organization. In short, whoever has the authority to act with respect to the matters later defined is an agency.

However, except for the public information requirements of section 3, there are expressly exempt from the term "agency" all those composed of representatives of parties to the disputes decided by them. The reason for this exception is that agencies of that kind, such as the National Railroad Retirement Board and Railroad Adjustment Board, are a special class. On the other hand, the National Mediation Board, another agency established under the Railway Labor Act, and not an agency composed of representatives of the parties or of representatives of organizations of the parties to disputes determined by them, is an agency within this definition.

For obvious reasons there are also excepted defined war authorities functioning under temporary or named statutes. Purely military and naval functions should obviously be exempt. It simply was not wise to attempt to adapt the bill to the functioning of civilian defense authorities because of their temporary nature and because the Congress has separately legislated respecting them.

#### PERSON AND PARTY, SECTION 2 (B)

I think nothing need be said about the definition of "person" and "party" in section 2 (b), since it is obvious on its face.

#### RULE AND RULE MAKING, SECTION 2 (C)

The definition of "rule" and "rule making" in section 2 (c) is very important. It defines the legislative function of administrative agencies. Here I might say there is great confusion in the terms used in the field of administrative law. The word "regulations" is sometimes improperly used to embrace the decisions of particular cases. Also, regulations are often called something other than rules or regulations. Thus we find that regulations specifying prices or rates are more often than not called orders. Similarly, Treasury regulations are customarily called decisions. To the person who is not expert in the field of administrative law, the confusion of terminology is baffling. From time to time new terms are invented, such as the word "directive."

In this bill the accepted analytical terminology has been adopted. Accordingly we speak of rule or rule making whenever agencies are exercising legislative powers. We speak of orders and adjudications when they are doing things which courts otherwise do.

The definition of "rule" and "rule making" in section 2 (c) is of paramount importance. Upon that definition depends the application or nonapplication of later sections of the bill. The rule making requirements are simpler than the adjudication requirements of the bill.

"Rule" is defined as any agency statement of general or particular applicability and future effect designed to state the law, policy, organization, procedures, or practice requirements of any administrative agency. The definition follows that of the Federal Register Act, with some additional language for purposes of clarification and certainty. In rule making an agency is not telling someone what his rights or liabilities are for past conduct or present status under existing law. Instead, in rule making the agency is prescribing what the future law shall be so far as it is authorized so to act. Advisory interpretative rulings in particular cases, however, are not "rules" within this definition.

## ORDER AND ADJUDICATION, SECTION 2 (D)

“Order” and “adjudication” as defined in section 2 (d) cover the judicial function of administrative agencies. They embrace all of the decisions that agencies make in matters other than rule making. Two items in the definition should be noted. First, “licensing” is expressly included. Secondly, injunctive orders—such as those issued by the Federal Trade Commission—are also expressly included.

## LICENSE AND LICENSING, SECTION 2 (E)

The definition of “license” in section 2 (e) is included in order to embrace every form of operation where a private party is required to take the initiative in securing the official permission of a governmental agency.

## SANCTION AND RELIEF, SECTION 2 (F)

The definition of “sanction” or “relief” in section 2 (f) is included mainly for the purpose of simplifying the language of sections 9 and 10. As they show on their face, those terms are meant to be all embracing.

## AGENCY PROCEEDINGS AND AGENCY ACTION, SECTION 2 (G)

The final definition of “agency proceeding” and “agency action” in section 2 (g) is included in order to simplify the language of later provisions of the bill.

The important definitions in section 2 are the definitions of “agency,” “rule,” and “order.” Those are basic. The other definitions are included either for purposes of clarification or to simplify the remaining sections of the bill.

## PUBLIC INFORMATION, SECTION 3

As heretofore indicated, the public information requirements of section 3 are among the most important and useful provisions of the bill. Excepted are matters requiring secrecy in the public interest—such as certain operations of the Secret Service or FBI—and matters relating solely to the internal management of an agency.

## RULES REQUIRED TO BE PUBLISHED, SECTION 3 (A)

Apart from those exceptions, agencies are required by section 3 (a) to publish, first, their organization and delegations of final authority; second, a statement of their methods and rules of procedure regarding each of their functions; and, third, the substantive rules they are authorized to make and their interpretative rules or policies issued for the guidance of the public. Publication is not required as to rules addressed to and served upon named parties in accordance with law.

These requirements are enforced by the provision that no person shall in any manner be required to resort to organization or procedure not so published. This means among other things that the accepted rule respecting the exhaustion of administrative remedies would not apply where the agency has not published the required information respecting organization or procedures. However, the requirement



that agencies must separately state these several kinds of rules does not mean that agencies would be required to revise and republish all their existing rules but would simply have to issue organizational and procedural rules for future cases, and in the future such substantive rules as they may issue must be free of the frequent hodgepodge of organizational and procedural matter.

The effect of this subsection will be to require all agencies to issue at least two rules or sets of rules—one respecting their organization and the other respecting their procedures. In addition where they are authorized to issue substantive rules—such as price regulations—or where they issue statements of policy—as in the Communications Commission—or interpretative rules—as in the Bureau of Internal Revenue—they would issue a third body of materials. The effect will be that parties will understand the country-wide organization of administrative agencies and their methods of procedure, as well as have access to the regulations and general interpretations in matters of substance which the agency has framed for the guidance of the public.

In this connection I would like to call the attention of the House to the fact that the Attorney General's Committee on Administrative Procedure, which was appointed at the direction of the President of the United States and which functioned from 1939 to 1941, was emphatic and unanimous on this subject. It stated the situation thus:

Few Federal agencies issue comprehensive or usable statements of their own internal organization—their principal offices, officers, and agents, their divisions and subdivisions; or their duties, functions, authority, and places of business. \* \* \* Yet without such information, simply compiled and readily at hand, the individual is met at the threshold by the troublesome problem of discovering whom to see or where to go.

The Attorney General's Committee on Administrative Procedure unanimously agreed that "laymen and lawyers alike are baffled by a lack of published information to which they can turn when confronted with an administrative problem"—Final Report, page 25. The chairman of that Committee further explained this situation to a subcommittee of the Senate as follows:

The agency is one great obscure organization with which the citizen has to deal. It is absolutely amorphous \* \* \* No one seems to have specific authority \* \* \* That is what is baffling. (Hearings, Senate Judiciary Subcommittee, on S. 674, 675, and 918, pt. II, 77th Cong., 1st sess., p. 807.)

But the present situation is even more serious than when those statements were made. Every Member of Congress is well aware of the difficulty of finding one's way about in the maze of Federal agencies. That being so, the problem of the citizen west of the Potomac is a hundredfold more difficult.

#### OPINIONS AND ORDERS, SECTION 3 (B)

In the case of opinions and orders issued by agencies in the exercise of their judicial functions, section 3 (b) of the bill requires them either to be published or made available to public inspection except where held confidential for good cause. All rules must be either published or made available to public inspection, but, as heretofore stated, interpretative rulings in particular cases are not rules.

## PUBLIC RECORDS, SECTION 3 (C)

Section 3 (c) also requires agencies to make matters of official record available to inspection except as by rule it may require them to be held confidential for legal cause.

## RULE MAKING, SECTION 4

Section 4 deals with the very important subject of rule making. From it, however, are exempted: First, military, naval, or foreign affairs functions; and, second, matters relating to agency management or personnel or to public property, loans, grants, benefits, and contracts. The exemption of military and naval functions needs no explanation here. The exempted foreign affairs are those diplomatic functions of high importance which do not lend themselves to public procedures and with which the general public is ordinarily not directly concerned. The exemption of proprietary matters is included because in those cases the Government is in the position of an individual citizen and is concerned with its own property, funds, or contracts.

## NOTICE OF RULE MAKING, SECTION 4 (A)

There are two particularly important aspects of section 4 (a), which deal with the notice of rule making. In the first place, where notice is required, it should be complete and specific as the subsection indicates on its face. In the second place, except where notice and hearing are required by some other statute, the agency by this provision is authorized to dispense with notice where it finds for good cause that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. This latter is not an escape clause but one which, as the committee report explains, may be made operative only where facts and interests are such that notice and proceedings are impossible or manifestly unnecessary.

## PROCEDURES, SECTION 4 (B)

The second subsection of section 4 is designed to provide that, where other statutes do not require an agency hearing, the legislative functions in administrative agencies shall, so far as possible, be exercised only upon some form of public participation after notice. That is, an agency may permit parties to submit written statements, confer with industry advisory committees, hold open meetings, and the like. Whatever method is adopted, the agency must consider the data or argument so presented by interested people and incorporate a concise general statement of their basis and purpose in any rules it issues.

The effect of this provision will be to enable parties to express themselves in some informal manner prior to the issuance of rules and regulations, so that they will have been consulted before being faced with the accomplished fact of a regulation which they may not have anticipated or with reference to which they have not been consulted. This provision will make for good public relations on the part of administrative agencies. Wisely used and faithfully executed, as it must be, it should be of great aid to administrative agencies by affording them a simple statutory means of apprising the public of what they intend

to do and affording the interested public a nonburdensome method of presenting its side of the case. Day by day Congress takes account of the interests and desires of the people in framing legislation, and there is no reason why administrative agencies should not do so when they exercise legislative functions which the Congress has delegated to them.

#### EFFECTIVE DATE OF RULES, SECTION 4 (C)

Under section 4 (c) agencies are required, in addition to the foregoing, to defer the effective date of any substantive rule for not less than 30 days except as they may specifically provide otherwise for good cause or in the case of rules recognizing exemptions or relieving restrictions, and so forth. This section places the burden upon administrative agencies to justify in law and fact the issuance of any rule effective in less than 30 days. Rules may be made effective in a legally reasonable time less than 30 days because of the shown urgency of conditions coupled with demonstrated and unavoidable limitations of time. The section requires agencies to proceed with the convenience or necessity of the people affected as the primary consideration, so that an agency may not itself be dilatory and then issue a rule requiring compliance forthwith.

#### PETITIONS, SECTION 4 (D)

Section 4 (d) is of the greatest importance because it is designed to afford every properly interested person statutory authority to petition for the issuance, amendment, or repeal of a rule. No agency may receive such petitions in a merely pro forma manner. Every agency possessing rule-making authority will be required to set up procedures for the receipt, consideration, and disposition of these petitions. The right of petition is written into the Constitution itself. This subsection confirms that right where Congress has delegated legislative powers to administrative agencies. As in connection with the prior provisions of section 4, this subsection should be a most useful instrument of both improving the public relations of administrative agencies and protecting the public by affording interested persons a legal and regular means of securing the issuance, change, or rescission of a rule.

#### ADJUDICATION, SECTION 5

Section 5 relates to the judicial function of administrative agencies where they decide specific cases respecting compliance with existing law or redress under existing law. It applies, however, only where Congress by some other statute has prescribed that the agency shall act only upon a hearing and, even in that case, there are six exceptions. The requirements of section 5 are thus limited to cases in which statutes otherwise require a hearing because, where statutes do not require an agency hearing, the parties affected are entitled to try out the pertinent facts in court and hence there is no reason for prescribing informal administrative procedures beyond the requirements of section 6 which I will discuss presently. The right of trial de novo in judicial review in cases where agencies do not proceed upon a statutory hearing will also be discussed later in connection with section 10 (e).

As stated, even where statutes require an agency hearing, this section does not operate respecting, first, matters subject to trial de novo in court; second, the selection or tenure of public officers other than examiners; third, decisions resting solely on inspection, tests, or elections; fourth, military, naval, or foreign affairs functions; fifth, cases in which an agency is acting for a court; sixth, the certification of employee representatives. I think that little need be said about these exceptions. Where although the agency is required to hold a hearing the facts are nevertheless subject to retrial in court, it has seemed fairly obvious that the parties are adequately protected at the judicial stage of the proceedings so that there is no great reason to require additional formalities in the administrative process itself. I am not aware of any clear statutory provision that the selection or tenure of public officers is subject to a statutory agency hearing, but the exception has been included because the situation is a special one for Congress to decide by separate legislation. Where decisions rest solely on inspections, tests, or elections it is clear that the hearing and decision requirements applicable in other cases have no place. The exemption of military, naval, or foreign affairs functions is again obvious; moreover, it does not appear that statutes require hearings in such matters. I have heretofore commented on the meaning of the term "foreign affairs." Where an agency is acting for a court, and thereby its factual and legal basis of action is subject to judicial control in toto, there is no reason for insisting upon any particular form of administrative formality. Certification of employee representatives is exempted because the determinations in those cases so largely rest either upon an election or its availability.

#### NOTICES, SECTION 5 (A)

Subsection (a) of section 5—respecting notices in the exercise of the judicial function of administrative agencies—is designed mainly to assure that such notices are adequate, particularly in the matter of stating the particular issues of law or fact which parties must meet. In that connection I wish to call the attention of the House to the unanimous conclusion of the Attorney General's Committee on Administrative Procedure. It reads as follows—report, pages 62-63:

The individual immediately concerned should be apprised not only of the contemplated action with sufficient precision to permit his preparation to resist, but, before final action, he should be apprised of the evidence and contentions brought forward against him so that he may meet them. \* \* \*

A \* \* \* prerequisite to fair formal proceedings is that when formal action is begun, the parties should be fully apprised of the subject-matter and issues involved. Notice, in short, must be given; and it must fairly indicate what the respondent is to meet. \* \* \*

Room remains for considerable improvement in the notice practices of many agencies. \* \* \* Too frequently, this notice is inadequate. \* \* \* The applicant is put to his proof on such broad issues as public interest, convenience, and necessity. \* \* \* Agencies not infrequently set out their allegations in general form, perhaps in statutory terms thus failing fully to apprise the respondents and to permit them adequately to prepare their defenses.

#### ADJUDICATION PROCEDURE, SECTION 5 (B)

Subsection (b) of section 5 simply provides that, apart from notice, parties must be afforded opportunity for the settlement of cases in

whole or in part and, to the extent that issues are not so settled, by hearing and decision in compliance with the later provisions of the bill. There are of course cases where time, the nature of the proceeding, and the public interest do not permit settlements; but those situations have been taken care of on the face of the subsection. The settlement by consent provision is extremely important because agencies ought not engage in formal proceedings where the parties are perfectly willing to consent to judgments or adjust situations informally. Here again I should like to quote the statement from the unanimous report of the Attorney General's Committee on Administrative Procedure as follows—pages 35, 39, 40, 41:

It is of the utmost importance to understand the large part played by informal procedure in the administrative process. \* \* \*

In cases of (claims and license applications) formal proceedings in the first instance are undesirable from the point of view of the individual and the Government. \* \* \* Only after these applications have passed through the sieve of initial decision—which in most cases satisfactorily ends the matter—is it necessary or possible to have formal proceedings. \* \* \*

In most cases in which a person applies for some official permission, the agency, if satisfied that the permission is proper, grants it without any formal proceedings. Sometimes the public interest in a full record of the grounds of decision is thought so important by Congress that formal proceedings and a formal record are required by law. \* \* \* But there are other cases where formal proceedings are required either by the terms of the statute or by administrative interpretations in which, in the committee's opinion, something less would fully protect the public interest and make for more expeditious dispatch of business. \* \* \*

It often occurs that after an agency has investigated a complaint filed with it, the person or persons complained of and the agency may agree as to the principal evidentiary facts and may also agree that the acts complained of should not be repeated. A frequent obstacle to settlement by consent is the reluctance of persons to make an admission that they acted with an illegal or unethical intent or purpose. It is in this area that consent dispositions are employed, are highly desirable, and can be extended by some improvement in procedures.

#### SEPARATION OF FUNCTIONS, SECTION 5 (C)

Subsection (c) of section 5 deals with the well-known problem of separating, prosecuting, and deciding functions. It provides that the officer who takes the evidence must decide the case or recommend a decision unless he should become unavailable to the agency. Those officers may not hold *ex parte* private conferences. They may not be subject to the supervision of prosecuting officers, and prosecuting officers may not participate in decisions except as witnesses or counsel in public proceedings. However, the subsection does not apply in determining applications for initial licenses, because it is felt that the determination of such matters is much like rule making and hence the parties will be better served if the proposed decision—later required by section 8—reflects the views of the responsible officers in the agencies whether or not they have actually taken the evidence. It does not apply in cases concerning the validity or application of rates, facilities, or practices of public utilities or carriers because these types of cases are customarily consolidated with rule-making proceedings where the separation of functions is not required so that, unless excepted from this provision, either rule making would be restricted beyond the intent of the bill or consolidated proceedings would be impossible. Also, the subsection does not apply to the top agency or members thereof because from the very nature of administrative agen-

cies, in which ultimate authority is fixed in one place respecting both prosecution and decision, it is impossible to deprive heads of agencies of authority over the prosecutors for whom they are ultimately responsible.

Despite these exceptions, which have seemed necessary at least until more is known about the operation of an Administrative Procedure Act, this section is of great importance because it is an attempt to deal with one of the critical sectors of administrative operation. It does not provide for a complete separation of functions in the sense that hearing officers are entirely and physically separated from the agencies in which they operate. This bill adopts the "internal" separation of functions and in addition, as I will point out when I come to section 11, provides salary and tenure independence for examiners even though they may be selected by and attached to a particular agency. The problem is discussed at pages 55 to 57 of the final report of the Attorney General's Committee on Administrative Procedure. This bill follows generally the recommendations of that committee, although by a somewhat different route.

#### DECLARATORY ADJUDICATIONS, SECTION 5 (D)

The last subsection of section 5 authorizes agencies, in their sound discretion, to issue declaratory orders with the same effect as other orders. Since agencies exercise judicial functions, it has been deemed wise, for the benefit of the public and people subject to administrative adjudications, to confer upon them authority by this subsection to do the same things that courts do under the Declaratory Judgment Act. In other words, administrative agencies should at least be as free to act irrespective of the technical rules of case or controversy as courts are. Indeed, without this provision, in cases involving administrative powers, there is a blind spot in our law—for parties can neither secure a declaratory judgment from the courts nor a declaratory order from the administrative agency. Parties faced with a situation in which they desire a declaratory adjudication would under this provision be authorized to ask an agency to rule upon the situation; and the ruling of the agency would be subject to judicial review and all other requirements as in other cases. Administrative authority so to act has been widely urged. This provision, however, narrows the authority to those cases in which agencies act upon a statutory hearing and subject to the safeguards of sections 5, 6, 7, 8, 9, and 11 of this bill.

#### OTHER MATTERS, SECTION 6

Section 6, entitled "Ancillary Matters," brings together a number of incidental rights, powers, and procedures, including limitations on compulsory investigative powers. These provisions are important, although they do not necessarily relate in all cases to either public information, rule making, or adjudication as dealt with in the previous sections.

#### APPEARANCES OR REPRESENTATION, SECTION 6 (A)

Section 6 (a) deals with the right of parties to have the advice or representation of counsel or, to the extent that agencies lawfully permit it, representation by nonlawyers. The representation of counsel

contemplated by the bill means full representation as the term is understood in the courts of law. Counsel may thus receive notices, decisions, and awards. Agencies are not authorized in any manner to ignore or bypass legal representatives that parties have selected for themselves pursuant to this section. The section also confers a statutory right for any interested person to appear before any agency or its responsible officers at any time for the presentation or adjustment of any matter, and this is particularly important as—among other things—authorizing the settlement of cases in whole or part. It also requires agencies to proceed with reasonable dispatch.

#### INVESTIGATIONS, SECTION 6 (B)

The second subsection of section 6 limits any form of investigative process to authority conferred upon an agency by law. This limitation will require any agency to justify its process in case of a contest thereof by demonstrating that upon the law and the facts it is acting within its proper sphere of operations. The subsection also provides that those compelled to submit data or evidence shall either be entitled to copies thereof or, in cases in which the situation clearly demands that no copies be made, to inspect them in person or through counsel.

#### SUBPENAS, SECTION 6 (C)

Subsection (c) of section 6 provides that, where Congress has authorized agencies to issue subpoenas, private parties may secure them upon an equality with Government representatives and without any more than a general showing of relevance and reasonable scope of the information sought. Where administrative subpoenas are contested, the court is to inquire into the situation and issue an order of enforcement only so far as the subpoena is found to be in accordance with law. This is a definite statutory right and is applicable to subpoenas of every kind addressed to any person under authority of any law. The effect of the subsection is thus to do more than merely restate the existing constitutional safeguards which in some cases, such as those involving public contractors—see *Endicott Johnson Corp v. Perkins* (317, U. S. 501, 507, 509, 510 (1943)), have been held inapplicable. Also, the term “in accordance with law” does not mean that a subpoena is valid merely because issued with due formality. It means that the legal situation, including the necessary facts, demonstrates that the persons and subject matter to which the subpoena is directed are within the jurisdiction of the agency which has issued the subpoena.

#### DENIAL OF REQUESTS, SECTION 6 (D)

The final subsection of section 6 requires agencies to give prompt notice of the denial of any request made in any agency proceeding, and to accompany that notice with a simple statement of the procedural or other grounds for the action of the agency. Under this provision, if the ground is procedural, the agency would be required to state any available further or alternative remedies open to the party. If the ground is not procedural, the agency would be required to make a simple statement of the legal or factual basis of its action.

## HEARINGS, SECTION 7

It will be recalled that section 4—relating to rule making—and section 5—relating to the determination of particular cases—refer to situations in which Congress has by some other statute required an agency to act upon a hearing. Accordingly, sections 7 and 8, which I am about to discuss, state the requisites of statutory agency hearings and decisions.

## PRESIDING OFFICES, SECTION 7 (A)

The first subsection of section 7 requires an agency to hold hearings itself, or through a member or members of the board which comprises it, or by one or more examiners qualified as provided in section 11 of the bill, or through other officers specially provided for or designated pursuant to the authority contained in other statutes. Whoever presides must do so impartially. They may withdraw if they deem themselves disqualified or, if an affidavit of personal bias or disqualification is filed against them, the agency must determine the issue as a part of the record and decision in the case.

This provision authorizes agencies, if they do not wish to hear cases themselves, to delegate the hearing function to the named types of presiding officers. It does not mean, however, that agencies are authorized—whether pursuant to the express authority of other statutes or not—to avoid the examiner system—set up in this bill and hereafter discussed—by assigning general employees or attorneys to hear cases individually or as boards. In short, unless the agency or its members or some specially qualified statutory officer hears the case, an examiner qualified under section 11 of this bill must do so.

Of particular importance in this subsection is the requirement that any presiding officer must act impartially rather than as a prosecutor. These provisions mean that presiding officers will be required to conduct themselves in the manner in which people think they should—that is, as judges and not as the representatives of factions or special interests.

## HEARING POWERS, SECTION 7 (B)

Subsection (b) of section 7 lists the commonly accepted kinds of powers which it is generally conceded that officers who preside at hearings ought to have. These include administering oaths, issuing authorized subpoenas, receiving or excluding evidence, taking depositions, generally regulating the hearing, holding informal conferences with the parties for the settlement or simplification of issues, disposing of procedural requests such as those for adjournment, and the like. In exercising these powers, of course, presiding officers will be bound by relevant legal limitations.

## EVIDENCE, SECTION 7 (C)

Subsection (c) of section 7 is one of the more important provisions of the bill. In its final report the Attorney General's Committee on Administrative Procedure stated that—pages 70-71:

Although administrative agencies may be freed from observance of strict common-law rules of evidence for jury trials, it is erroneous to suppose that agencies do not, as a result, observe some rules of evidence. \* \* \* Abuses



in admitting remote hearsay and irrelevant or unreliable evidence there surely have been. \* \* \* That strict adherence to standards of relevance and probative value should be observed needs no underscoring. A diffuse record dissipates the energies of the parties and the deciding authorities and distracts attention from the issues. Careless admission of evidence for what it is worth—a practice not infrequent among trial examiners—swells the record beyond its necessary limits.

Section 7 (c) of this bill provides that the proponent of a rule or order has the burden of proof except as statutes otherwise provide. It authorizes agencies to receive any evidence, although as a matter of policy they are required to provide for the exclusion of irrelevant, immaterial, or unduly repetitious matter. Thus, the mere fact that such matter is in the record would not of itself be reversible error. The principal provision of the subsection provides that no sanction may be imposed or rule or order be issued except upon consideration of the whole record or such portions as any party may cite and as supported by and in accordance with reliable, probative, and substantial evidence. The parties are authorized to present documentary, oral, and rebuttal evidence and to conduct reasonable cross-examination. In rule making or determining applications for initial licenses agencies may adopt procedures for the submission of the evidence in written form, so far as the interest of any party will not be prejudiced thereby.

The requirement that agencies may act only upon relevant, probative, and substantial evidence means that the accepted standards of proof, as distinguished from the mere admissibility of evidence, are to govern in administrative proceedings as they do in courts of law and equity. The same provision contains two other limitations—first, that the agency must examine and consider the whole of the evidence relevant to any issue and, secondly, that it must decide in accordance with the evidence. Under these provisions the function of an administrative agency is clearly not to decide arbitrarily or to act contrary to the evidence or upon surmise or suspicion or untenable inference. Mere uncorroborated hearsay or rumor does not constitute substantial evidence—see *Edison Co. v. Labor Board* (305 U. S. 197, 230). Under this provision agencies are not authorized to decide in accordance with preconceived ideas or merely to sustain or vindicate prior administrative action, but they must enter upon a bona fide consideration of the record with a view to reaching a just decision upon the whole of it.

#### RECORD, SECTION 7 (D)

The final subsection of section 7 provides that the record of the evidence taken and the papers filed is exclusive for purposes of decision. It also provides that, where a decision rests in whole or part on official notice of a material fact not appearing in the record, any party must on timely request be given an adequate opportunity to show the true facts.

Both of these provisions are important. The exclusiveness of the record precludes deciding officers from basing their judgments as to the facts upon matters which are not in the record. The provision respecting official notice is essential in order to prevent miscarriages of justice through mistake or by unwarranted expansion of the idea of judicial notice.

## DECISIONS, SECTION 8

Section 8 applies only in cases in which other statutes require a hearing and in which section 7 applies as to the conduct of the hearing. Next to the matter of evidence, which I have discussed in connection with section 7 (c), the manner and method in which agencies arrive at decisions have been one of the most criticized parts of the field of administrative law. With respect to this problem the final report of the Attorney General's Committee on Administrative Procedure had the following to say—pages 44-46:

In most of the agencies the person who presides is an adviser with no real power to decide. \* \* \* He may simply be a monitor at the hearing with power to keep order and supervise the recording of testimony but little or none to make rulings or to play a real part in the final decision of the case. \* \* \* There should be general improvement in administrative procedure at this stage. \* \* \* The committee \* \* \* has been impressed with the fact that as the conduct of the hearing becomes divorced from responsibility for decision two undesirable consequences ensue. The hearing itself degenerates, and the decision becomes anonymous. \* \* \*

If the hearing officer is not to play an important part in the decision of the case, other persons must. The agency heads cannot read the voluminous records and winnow out the essence of them. Consequently this task must be delegated to subordinates. Competent as these anonymous reviewers or memorandum writers may be, their entrance makes for loss of confidence. Parties have a sound desire to make their arguments and present their evidence, not to a monitor, but to the officer who must in the first instance decide or recommend the decision. In many agencies attorneys rarely exercise the privilege of arguing to the hearing officer. They have no opportunity to argue to the record analysts and reviewers who have not heard the evidence but whose summaries may strongly affect the final result.

The provisions of section 8 are designed to make it certain that those who sign decisions or decision papers are actually the people responsible for them, that the evidence and the arguments of the private parties are fully and fairly considered, that the views of agency personnel are not unduly emphasized or secretly submitted, and that the official record alone is the basis of decision.

## DECISIONS BY SUBORDINATES, SECTION 8 (A)

Section 8 (a) requires that, in adjudication cases subject to section 5 (c), the officer or officers who presided at the taking of evidence must either decide the case or recommend a decision—the choice being left to the agency. Since section 5 (c) provides for the separation of functions only in certain cases of adjudications, this provision would not be operative in the excepted cases or in rule making. Its purpose is to make the hearing officer in the covered situations an important factor in the decision process. Where the officer or officers who presided at the hearing are not required to make or participate in the decision under this provision, some other officer or officers who are qualified to preside at hearings must do so. Where such officers make the decision, it becomes the final decision of the agency in the absence of an appeal to or review by the agency. If the agency itself makes the initial decision without having presided at the reception of the evidence, the officers who presided or who are qualified to preside must recommend a decision. Thus the recommended decision, which becomes a part of the record, bridges the gap between the hearing and deciding function in administrative cases. In rule making or deter-

mining applications for initial licenses, however, the subsection provides that the agency may issue a tentative decision, any of its responsible officers may recommend a decision, or such procedure may be wholly omitted where the execution of agency functions make it impossible.

#### SUBMITTALS AND DECISIONS, SECTION 8 (B)

The second subsection of section 8 is a statutory statement of the right of the parties to submit for the full consideration of the presiding officers, first, proposed findings and conclusions or, second, exceptions to recommended decisions or other decisions being appealed or reviewed administratively and, third, supporting reasons for such findings, conclusions, or exceptions. The record must show the official rulings of the agency upon each such finding, conclusion, or exception presented. These provisions assure all parties an opportunity to present their views of the law and the facts and be heard thereon prior to the decision of any case. So that the parties and the reviewing courts may be fully apprised, all recommended or other decisions must include first, findings and conclusions, as well as the reasons or basis therefor, upon all the issues of fact, law, or discretion presented by the record and, second, the appropriate agency action or denial.

The purpose and effect of these provisions are clear upon the face of the section. One matter should be emphasized. Section 8 (b) requires findings and conclusions to be stated upon all the material issues of fact which the parties may present. This means that, within the legal framework of the type of case involved, the number and the subjects of the findings and conclusion will be determined by the record and by the legal, factual, or discretion issues raised by the parties. The mere parroting of findings or conclusions in the words of statutes, however sufficient that may be as an ultimate conclusion, definitely would not satisfy in any manner the requirements of this section unless both the statute and the issue were very narrow indeed. Almost any case of consequence involves numerous and detailed issues of law, fact, and discretion. These must all be determined as a part of the decision. Only in that manner are the parties protected and assured that the case has been fully and completely considered and determined.

#### SANCTIONS AND POWERS, SECTION 9

Section 9, relating to agency sanctions and powers, applies in all cases, whether or not a statutory hearing is required. It does not dispense with hearings otherwise required, nor does it supply them if not so required. It deals with the large and troublesome problem of the remedies or redress which administrative agencies are entitled to undertake or grant.

#### GENERAL LIMITATIONS, SECTION 9 (A)

The first and principal provision of the section simply requires that no sanction shall be imposed or substantive rule or order be issued except within jurisdiction delegated to the agency and as authorized by law. This provision is framed on the necessary assumption that the detailed specification of powers must be left to other legislation relating to specific agencies. Its effect is to confine agen-

cies to the jurisdiction and powers so conferred. That means not only the legal but the factual jurisdiction of an agency, and the legal and factual appropriateness of any sanction or relief it may assume to impose or grant. The basic premise of the section, if I may repeat, is that agencies are not authorized to invent sanctions or relief or to attempt to apply or grant them beyond the limitations of authority within which they operate.

#### LICENSES, SECTION 9 (B)

Section 9 (b) deals with licensing. It requires agencies to determine promptly all applications for licenses, prohibits them from withdrawing a license without first giving the licensee notice and an opportunity to achieve compliance except in cases of obvious willfulness or emergency, and in businesses of a continuing nature precludes any license from expiring until timely applications for new licenses or renewals have been determined.

These special provisions are necessary because of the very severe consequences of the conferring of licensing authority upon administrative agencies. The burden is upon private parties to apply for licenses or renewals. If agencies are dilatory in either kind of application, parties are subjected to irreparable injuries unless safeguards are provided. The purpose of this section is to remove the threat of disastrous, arbitrary, and irremediable administrative action.

#### JUDICIAL REVIEW, SECTION 10

Section 10 is a comprehensive statement of the right, mechanics, and scope of judicial review. It requires an effective, just, and complete determination of every case and every relevant issue. It is a means of enforcing all forms of law and all types of legal limitations. Every form of statutory right or limitation would thus be subject to judicial review under the bill. It would not be limited to constitutional rights or limitations alone—see *Perkins v. Lukens Steel Co.* (310 U. S. 113).

Two general exceptions are made in the introductory clause of section 10. The first exempts all matters so far as statutes preclude judicial review. Congress has rarely done so. Legislative intent to forbid judicial review must be, if not specific and in terms, at least clear, convincing, and unmistakable under this bill. The mere fact that Congress has not expressly provided for judicial review would be completely immaterial—see *Stark v. Wickard* (321 U. S. 288 at p. 317).

The second general limitation on the section is that there are exempted matters to the extent that they are by law committed to the absolute discretion of administrative agencies. There have been much misunderstanding and confusion of terms respecting the discretion of agencies. They do not have authority in any case to act blindly or arbitrarily. They may not willfully act or refuse to act. Although like trial courts they may determine facts in the first instance and determine conflicting evidence, they cannot act in disregard of or contrary to the evidence or without evidence. They may not take affirmative or negative action without the factual basis required by the laws under which they are proceeding. Of course, they may not

proceed in disregard of the Constitution, statutes, or other limitations recognized by law.

#### RIGHT OF REVIEW, SECTION 10 (A)

The first subsection of section 10 provides that any person suffering legal wrong because of any agency action, or adversely affected within the meaning of any statute, is entitled to judicial review. Legal wrong means action or inaction in violation of the law or the facts. The categories of questions of legal wrong are set forth later as subsection (e) of section 10.

#### FORMS OF REVIEW ACTIONS, SECTION 10 (B)

Under this bill the technical form of proceeding for judicial review is, first, any special proceeding which Congress has provided or, in the absence or inadequacy thereof, any relevant form of action such as those for declaratory judgments or injunctions in any court of competent jurisdiction. In addition, any agency action is also subject to judicial review in any civil or criminal enforcement proceeding except to the extent that prior, adequate, and exclusive opportunity for such review is otherwise provided by law.

These provisions summarize the situation as it is now generally understood. The section does not disturb special proceedings which Congress has provided, nor does it disturb the venue arrangements under existing law. It does, however, constitute a statutory adoption of traditional forms of action in cases where Congress has made no contrary provision for judicial review.

#### REVIEWABLE ACTS, SECTION 10 (C)

In any proceeding for judicial review, the parties who seek it must specify what it is they wish reviewed and what it is they claim to be reviewable. Accordingly, section 10 (c) provides that specific acts which are either expressly made reviewable by legislation or for which there is no other adequate judicial remedy are subject to review under section 10 of this bill. Preliminary or procedural matters not so reviewable may be reviewed in connection with final actions. An act is final, whether or not there has been presented or determined an application for any form of reconsideration, unless statutes otherwise expressly require.

The provisions of this section are technical but involve no departure from the usual and well-understood rules of procedure in this field.

#### TEMPORARY RELIEF, SECTION 10 (D)

Of importance in the field of judicial review is the authority of courts to grant temporary relief pending final decision of the merits of a judicial-review action. Accordingly, section 10 (d) provides that any agency may itself postpone the effective date of its action pending judicial review, or, upon conditions and as may be necessary to prevent irreparable injury, reviewing courts may postpone the effective date of contested action or preserve the status quo pending conclusion of judicial-review proceedings.

The section is a definite statutory statement and extension of rights pending judicial review. It thus, so far as necessary, amends statutes

conferring exclusive authority upon administrative agencies to take or withhold action. Its operation will involve no radical departures from what has generally been regarded as an essential and inherent right of the courts; but, however that may be, this provision confers full authority to courts to protect the review process and purpose otherwise expressed in section 10.

#### SCOPE OF REVIEW, SECTION 10 (E)

The final subsection of section 10 states the extent or degree of review which courts are required to afford under this bill. I have already referred to the exemption of situations in which Congress has specifically withheld review or in which action has by law been committed to the absolute discretion of administrative agencies.

Subsection (e) of section 10 requires courts to determine independently all relevant questions of law, including the interpretation of constitutional or statutory provisions and the determination of the meaning or applicability of any agency action. They must compel action unlawfully withheld or unreasonably delayed. They must hold unlawful any action, findings, or conclusions which they find to be, first, arbitrary or an abuse of discretion; second, contrary to any provision of the Constitution; third, in violation of statutes or statutory rights; fourth, without observance of procedure required by law; fifth, unsupported by substantial evidence in any case reviewed upon the record of an agency hearing provided by statute; or, sixth, unwarranted by the facts so far as the latter are subject to trial de novo. In making these determinations the court is to consider the whole record or such parts as any party may cite and, where error has been fully cured prior to the effective date of agency action, the courts may apply the rule respecting nonprejudicial error.

The term "substantial evidence" as used in this bill means evidence which on the whole record as reviewed by the court and in the exercise of the independent judgment of the reviewing court is material to the issues, clearly substantial, and plainly sufficient to support a finding or conclusion affirmative or negative in form under the requirements of section 7 (c) heretofore discussed. Under this section the function of the courts is not merely to search the record to see whether it is barren of any evidence, or lacking any vestige of reliable and probative evidence, or supports the agency action by a scintilla or by mere hearsay, rumor, suspicion, speculation, and inference—cf. *Edison Co. v. Labor Board* (305 U. S. 197, 229-30). Under this bill it will not be sufficient for the Court to find, as the late Chief Justice Stone pointed out within the year, merely that there is some "tenuous support of evidence"—*Bridges v. Wixon* (326 U. S. at 178). Nor may the bill be construed as permitting courts to accept the judgments of agencies upon unbelievable or incredible evidence.

Where there is no statutory administrative hearing to which review is confined, the facts pertinent to any relevant question of law must of course be tried and determined de novo by the reviewing court.

Whether a court is proceeding upon an administrative or a judicial record, the requirement of review upon the whole record means that courts may not look only to the case presented by one of the parties but must decide upon all of the proofs submitted.

## EXAMINERS, SECTION 11

One of the most controversial proposals in the field of administrative law relates to the status and independence of examiners who hear cases where agencies themselves or members of boards cannot do so. I have heretofore referred to this problem in my discussion of section 8 respecting decisions. Both sections 7 and 8 authorize the use of examiners. Section 11, which I am about to discuss, provides for their selection, tenure, and compensation.

It is often proposed that examiners should be entirely independent of agencies, even to the extent of being separately appointed, housed, and supervised. At the other extreme there is a demand that examiners be selected from agency employees and function merely as clerks. In framing this bill we have rejected the latter view, as the Attorney General's Committee on Administrative Procedure throughout the greater part of its final report rejected it, and have made somewhat different provision for independence. Section 11 recognizes that agencies have a proper part to play in the selection of examiners in order to secure personnel of the requisite qualifications. However, once selected, under this bill the examiners are made independent in tenure and compensation by utilizing and strengthening the existing machinery of the Civil Service Commission.

Accordingly, section 11 requires agencies to appoint the necessary examiners under the civil service and other laws not inconsistent with the bill. But they are removable only for good cause determined by the Civil Service Commission after a hearing, upon the record thereof, and subject to judicial review. Moreover, their compensation is to be prescribed and adjusted only by the Civil Service Commission acting upon its independent judgment. The Commission is given the necessary powers to operate under this section, and it may authorize agencies to borrow examiners from one another.

If there be any criticism of the operation of the civil-service system, it is that the tenure security of civil-service personnel is exaggerated. However, it is precisely that full and complete tenure security which is widely sought for subordinate administrative hearing and deciding officers. Section 11 thus makes use of past experience and existing machinery for the purpose.

## CONSTRUCTION AND EFFECT, SECTION 12

The final section of the bill provides that nothing in it is to diminish constitutional or other legal rights, that requirements of evidence and procedure are to apply equally to agencies and private persons, that the unconstitutionality of any portion or application of the bill shall be subject to the usual saving provision, and that subsequent legislation is not to be deemed to modify the bill except as it may do so expressly.

The final sentence provides that the bill shall become law 3 months after its approval, except that sections 7 and 8 respecting statutory hearings and decisions shall not take effect until 6 months after its approval, the requirements of section 11 respecting the selection of examiners are not to become effective for a year, and no requirement of the bill is mandatory as to any agency proceeding initiated prior to the effective date of such requirement.

The staggered effective date provision has been thought necessary in order to give administrative agencies every opportunity to prepare fully.

#### V. CONCLUSION

This measure is the culmination of long and earnest consideration. It responds to a widespread, deep-seated, and insistent public demand for some attention to the problem of administrative justice and administrative operations. It has been drafted with the greatest of care and upon fulsome consideration of views from every side. It is not, of course, the final word, but it is a good beginning.

(Mr. Walter asked and was given permission to revise and extend his remarks.)

Mr. HANCOCK. Mr. Chairman, I yield myself 5 minutes.

Mr. Chairman, the two gentlemen who are best able to answer your questions and describe the bill are the gentleman from Pennsylvania [Mr. Walter], chairman of the subcommittee which has studied this bill for years and brings it to us today, and the ranking minority member on that committee, the gentleman from Iowa [Mr. Gwynne]. As far as I know, there is no opposition to the bill on this side of the aisle, although there are many of us who would like to have it stronger. Nevertheless, I think we are all prepared to go along with it because we feel it is the first important step in the direction of dividing investigatory, regulatory, administrative, and judicial functions in Government agencies.

I have long favored reform of administrative procedure, legislation which would protect individual citizens against the abuses of delegated power, legislation which would separate the functions of investigator, prosecutor, judge, jury, and executioner. This problem has received a considerable amount of study over the last 10 years. The members of the Judiciary Committees of the House and of the Senate have given it a great deal of time and attention and extensive hearings have been held. The bar associations of the country, the Department of Justice, and prominent lawyers everywhere have studied it and recommended remedial legislation since 1935. Many bills have been introduced to accomplish this purpose, and at least one was passed, the Walter-Logan bill, 6 or 7 years ago. It was vetoed by President Roosevelt on the ground that further study was required. This legislation has received further study and the bill before us is the result of it. No one claims it is a perfect bill. If weaknesses develop, as they may with experience, the Congress can pass legislation to correct those weaknesses. I hope the bill will be passed as presented by the Judiciary Committee. It has already been passed by the Senate and it has the endorsement of the Attorney General, which is assurance that it will be signed by the President.

Just let me say this, which has already been mentioned: I regard the report which accompanies this bill as the most complete and scholarly report that has ever accompanied any bill to come before us in my time. It is a valuable legal document, and I advise you to retain it in your files for future reference.

No one has been more active in seeking to correct injustices of administrative law and procedures than the able gentleman from Pennsylvania [Mr. Walter]. It now appears that his efforts of many years will culminate in success today, and I congratulate him.



Mr. Chairman, I yield 10 minutes to the gentleman from Iowa [Mr. Gwynne].

Mr. GWYNNE of Iowa. Mr. Chairman, I have often thought that private monopoly and Government bureaucracy cannot exist long in a country and have the country remain free. The purpose of this bill is to make a start at least along the road that we must travel to regulate the many bureaus and tribunals that are now operating in the executive branch of the Government.

Some of you who have been very much interested in this subject over the years may read this bill with a certain amount of disappointment. You will regret that the bill does not go further. I am frank to say that I have those same feelings myself. Nevertheless, I should like to point out to the membership that this bill has been passed by the Senate. If it is passed in the House with the amendments the House committee has recommended it will undoubtedly become the law. It will become the much needed start along the road I am so anxious to have us travel. I hope therefore we will pass this bill unanimously and without amendment.

Furthermore, as has been pointed out by the gentleman from Texas [Mr. Sumners], the chairman of the committee, we are legislating in a new field. I think it is the part of wisdom not to go as far perhaps as some of us would like, but to go carefully, note mistakes and profit by them.

All I intend to do, Mr. Chairman, is to make a rather brief statement of what is in the bill.

Mr. GRANGER. Mr. Chairman, will the gentleman yield?

Mr. GWYNNE of Iowa. I yield.

Mr. GRANGER. There are a number of us in Congress, of course, who are not lawyers. This bill, I suppose, is fully understood by those who are members of the legal profession. As I understood the purpose of the bill—I was somewhat confused by the gentleman's statement that it was to regulate bureaus—my impression was that it was simply a bill to make uniform rules promulgated by the bureaus and practice before the various boards and commissions of the country. Is not that generally what it is supposed to do?

Mr. GWYNNE of Iowa. No; I would not say that was all of it. It does not, as a matter of fact, make uniform practice before bureaus and tribunals. It requires these agencies of government in their practice to maintain certain minimum standards. It is an attempt to bring into the practice of these bureaus and tribunals those principles of due process that we understand and that have been enforced in the courts. If I may proceed for a few minutes I believe I will make these things clear as I go along. I really wish to touch the bill a little. I will yield later if I have time.

After a law has been passed by the Congress, before it applies to the individual citizen there are about three steps that must be taken. First, the bureau having charge of enforcement must write rules and regulations to amplify, interpret, or expand the statute that we passed; rule making, we call it. Second, there must be some procedure whereby the individual citizen who has some contact with the law can be brought before the bureau and his case adjudicated. You might refer to that as adjudication or hearing. Finally, there must be some procedure whereby the individual may appeal to the courts from the action taken by the bureau. This bill briefly touches all three.

In the matter of rule making the bill provides, for instance, this in substance: It requires the agency to give notice of its intention to make rules and regulations. It requires the agency to allow interested parties to appear and state their views and request that certain rules and regulations be adopted. That would be much like the hearings that we now have before our committees in the House. Incidentally, that practice is now being followed by certain agencies of the Government. Then it requires that these rules or regulations which have the effect of law must be published in the Federal Register and go into effect at some future date. That is stating it very briefly but that is the substance of what is required on the important subject of rule making.

Then we come to the question of adjudication. How is an individual who violates, or let us say who wishes some action under, these rules and regulations, how is his case to be disposed of? On that point I think there is some difference between the present bill and the Walter-Logan bill. This bill is not as definite in its requirements. It lays down certain minimum standards which must be observed by the bureau or tribunal.

The bill provides that the agency must give notice to the individual of the hearing, also of the time and place, much the same as notice is given now in civil suits. The person affected may appear by lawyer or by someone who is not a lawyer, if that practice is allowed in that particular agency. Hearings may be had before the agency sitting together or by any member or members of the agency or, finally, by hearing examiners, which is probably usually the case.

The trial proceeds much after the fashion of a hearing before industrial commissions or boards who have charge of the administration of the workmen's compensation in various States. The rules of evidence are not restricted to those matters of competency that we enforce in court; nevertheless, an attempt is made in the bill to require the presiding judge, so to speak, to confine the case at issue to relevant and probative testimony.

An important feature of the bill in this connection has to do with the appointment of examiners and there is a provision to keep the deciding functions separate and distinct from the prosecution part of it. Great complaint has been made that agencies send out people to prosecute the individual and, from the same office and subject to the same direction, they send out the hearing examiner who is to hear the case. This provides for separation of these functions and prohibits one from meddling with the other.

It also provides that these hearing examiners shall be appointed by the agency in accordance with civil-service rules. The salaries of the examiners are fixed by the Civil Service Commission and promotions and increases in salaries are also fixed by that Commission.

It is hoped to at least make a start, although I think it does not go as far as it should, in arriving eventually at a complete separation between the deciding functions and the prosecuting functions.

The only other and remaining feature I would like to mention has to do with appeals, then I shall be glad to yield. The great difficulty with our present set-up is that many of these agencies are not subject to court review and many of them even if we pass this bill will still not be subject to court review. This bill does not give a court review in any case where review is now precluded by statute. It simply

clarifies and expands in some particulars the authority of the court in reviewing cases in which court review is not precluded by law. In general, they can reverse or modify the judgment on these grounds:

First. If the finding is contrary to some provision of the Constitution;

Second. If the tribunal or agency has failed to follow the procedure provided by law;

Third. If the decision is arbitrary or capricious; and

Finally, and very important, if the finding of the agency is not supported by substantial evidence.

Mr. Chairman, a lot can be said about this bill, but I will not proceed any further because I want to yield.

The CHAIRMAN. The time of the gentleman from Iowa has expired.

Mr. HANCOCK. Mr. Chairman, I yield the gentleman three more minutes.

Mr. MURDOCK. Mr. Chairman, will the gentleman yield?

Mr. GWYNNE of Iowa. I yield to the gentleman from Arizona.

Mr. MURDOCK. I want to say to the gentleman that I have received numerous communications from bar associations and legal authorities in my State supporting this bill and calling on me to support it. Not being a lawyer, I am glad to have the gentleman's clear-cut statement. However, in addition to that what I would like to know is this: Has the machinery set-up been such as to cause delay in the working out of justice for the citizen in review procedure and that sort of thing?

Mr. GWYNNE of Iowa. Does the gentleman mean the present procedure?

Mr. MURDOCK. No; I am inquiring about the machinery set up in this bill.

Mr. GWYNNE of Iowa. Oh, I would say not. I would say it certainly should not cause delay. It should expedite proceedings, if anything.

Mr. VOORHIS of California. Mr. Chairman, will the gentleman yield?

Mr. GWYNNE of Iowa. I yield to the gentleman from California.

Mr. VOORHIS of California. On the matter of court review, I wanted to ask the gentleman whether the bill will or will not make a change in the situation which now pertains as to certain agencies where, if the position of that agency is supported by any degree of reasonable evidence, the court must not go beyond that decision? Does not the bill give the court somewhat broader powers from that point of view than it would have otherwise?

Mr. GWYNNE of Iowa. Right.

Mr. VOORHIS of California. Would the gentleman expand on that a little bit? I think it is very important.

Mr. GWYNNE of Iowa. I might say rather briefly that there are two conflicting theories that have often been expounded by the courts. One is that if the verdict of the jury or if the finding of the triers of fact is sustained by a scintilla of evidence, any evidence, no matter how lacking in probative force, the court must sustain it. The other is that the court need not sustain a finding unless it is supported by substantial evidence. The latter is the view adopted in this bill.

Mr. VOORHIS of California. That is a change from the practice that is now in effect in regard to some agencies, is it not?

Mr. GWYNNE of Iowa. That is correct.

Mr. SPRINGER. Mr. Chairman, will the gentleman yield?

Mr. GWYNNE of Iowa. I yield to the gentleman from Indiana.

Mr. SPRINGER. On the question which has just been raised by the gentleman from California, there have followed, in the procedure under the present rules, findings even where the evidence was not competent; where there was no evidence at all. The finding might be made without regard to whether or not that evidence was actually competent to get into the case; is that not correct?

Mr. GWYNNE of Iowa. That happens under the present set-up, yes, unfortunately.

Mr. VOORHIS of California. But it can happen under the bill?

Mr. GWYNNE of Iowa. This bill does not concern itself with competent evidence particularly, but it does give to the court the duty to set aside findings if not supported by substantial evidence.

The CHAIRMAN. The time of the gentleman from Iowa has expired.

Mr. HANCOCK. Mr. Chairman, I yield 10 minutes to the gentleman from Indiana [Mr. Springer].

Mr. SPRINGER. Mr. Chairman, as has been stated during this debate, this measure which is now pending before the House is a very important measure as it appeals to me. I might state that this bill, S. 7, was passed on March 12, 1946, by the Senate and it then came to the House and it has been given very careful consideration since that time.

May I say that the distinguished gentleman from Pennsylvania [Mr. Walter], together with the ranking minority Member, the gentleman from Iowa [Mr. Gwynne], have given much attention and have spent much time on this particular legislation. I wish to compliment each of those gentlemen for the fine service they have rendered to the country and to the people in the presentation of this measure. The Attorney General is in favor of this bill.

I want to refer to the report, page 15, and quote from a letter of the Attorney General. In the closing portion of the letter this is what he has to say on that subject:

The bill appears to offer a hopeful prospect of achieving reasonable uniformity and fairness in administrative procedures without at the same time interfering unduly with the efficient and economical operation of the Government. Insofar as possible, the bill recognizes the needs of individual agencies by appropriate exemption of certain of their functions.

After reviewing the committee print, therefore, I have concluded that this Department should recommend its enactment.

That is the statement of Attorney General Clark on this particular subject.

The gentleman from Iowa [Mr. Gwynne] has gone rather carefully over the provisions of the bill. I desire to call attention to only one, and that is the fourth provision, relating to the question of reviewable acts, the review of the proceedings by the judiciary, and the scope of the review. Under the present procedure, in many cases where there is any evidence, even a scintilla of evidence, decisions have been rendered and predicated on that character of evidence before the hearing tribunal.

Mr. HANCOCK. Even though contrary to the preponderance of the evidence.

Mr. SPRINGER. Yes, as the distinguished gentleman from New York says, that has been done in many cases even though it is contrary to the preponderance of the evidence introduced at the hearing.

May I say further on this particular point that in many instances the evidence upon which a decision has been predicated has not been competent evidence.

The bill pending before this committee, and which I hope will be passed without a dissenting vote, provides for judicial review in certain instances, and it takes up the scope of the review. It is to that particular feature that I desire to address the few comments I have to make upon this measure.

Page 39 of the bill provides that under this law the reviewing courts "shall compel agency action unlawfully withheld or unreasonably delayed."

In many of those cases there has been a withholding or a long delay, and that particular feature is intended to hasten action on the part of these agencies. I feel confident each Member will approve that provision in this bill.

The second provision, to which I now refer, provides "and hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

To my mind, that is a most potent statement and is a fair and equitable provision of the bill.

Mr. SCRIVNER. Mr. Chairman, will the gentleman yield?

Mr. SPRINGER. I am happy to yield to my friend from Kansas.

Mr. SCRIVNER. Does the gentleman feel that that would correct the evils that might exist where a regulation was contrary to the intent, spirit, or purpose of the act?

Mr. SPRINGER. I think, unquestionably, it would. The gentleman is precisely correct. That is the purpose and that is the intention of that provision which has been written into this bill. In those cases where these decisions are found to be arbitrary, where the decision is found to be capricious or an abuse of discretion or otherwise not in accordance with the law, the decision can be set aside. That is certainly fair, that is certainly equitable, and that is certainly based upon a sound philosophy.

The next provision under the scope of review to which I desire to call the attention of the Members is that any decision can be set aside which is contrary to constitutional right, power, privilege, or immunity. There is no one in the world who could object to a provision of that kind because that is based upon the sound philosophy of the law.

The following provision in the scope of review that I desire to call to the attention of the Members is that in cases "where the decision is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," such decision can be set aside. In other words, where the person who has been tried has had taken away from him the legal rights to which he is entitled; or the limitation to which he is entitled under the provisions of the law have been reduced, then that character of decision under the scope provided in this bill can be set aside.

Fourth. "Without observance of procedure required by law." That is a potent and powerful reason. Decisions thus can be set aside where there is no observance of the legal procedure on the part of the hearing administrator or agent. When that authority has been taken into his

hands and he has failed to observe the legal requirements and procedures, then such a decision, predicated upon that theory, can be set aside.

Fifth. "A decision which is unsupported by substantial evidence" can be set aside. I mentioned just a little while ago that many cases in which decisions have been rendered upon a mere scintilla of evidence, and not on the weight of the evidence, have been discovered. In many instances the decisions have been based upon evidence which is not competent. But under the provisions of this bill it is required that all such decisions shall be based upon and predicated upon substantial evidence. That is the only fair basis upon which decisions of this character should be made by either a court or any agency assuming the authority to hear and determine cases.

The sixth provision applies to decisions unwarranted by the facts to the extent that the facts are subject to a trial de novo by the reviewing court. It is my judgment that under the scope of review set forth in the pending bill it will give every person the opportunity and right to have a fair, just, and impartial trial in the judicial proceeding, and a complete review of the case which has been conducted against him. I hope this bill is passed without any objection. This worthwhile legislation has been too long delayed already, and it is my hope that it will be passed in the House, fully approved by the other body, and promptly signed by the President.

The CHAIRMAN. The time of the gentleman from Indiana has expired.

Mr. SUMNERS of Texas. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. Doyle].

(Mr. Doyle asked and was given permission to revise and extend his remarks.)

ADMINISTRATION OF JUSTICE IMPROVED AND PUBLIC RESULTINGLY BENEFITED BY DILIGENT CONTINUOUS WORK OF THE BUILDERS OF THE BILL,  
S. 7

Mr. DOYLE. Mr. Chairman, first I wish very cordially and sincerely to compliment the Judiciary Committee, as well as the distinguished chairman of the subcommittee of the Judiciary on this very appropriate and significant bill. It is refreshing to come here to the national level from my native State of California and find that some of the worthy objectives for which I had the pleasure of working for several years there, as member of the Long Beach, Calif., and American Bar Associations, and as a member of the board of bar delegates of that great State, now about to be passed unanimously, I hope, by this great national legislative body.

Just several months ago, when the distinguished and able lawyer, Harry J. McClean, immediate past president of the Los Angeles Bar Association, was here in Washington in conference on the very objectives of this bill, I had the pleasure of sitting at dinner with him and listening to his discussion and learning from him. He and I and my wife were schoolmates at Long Beach, Calif. So I naturally continue to have a great deal of confidence in his ability as well as his forthrightness in this matter of great importance. Besides, I know that for years he has searchingly labored to find a constructive plan such as this bill.

The report of the committee is so inclusive in its discussion of the subject matter and the diagram synopsis on pages 28 and 29 so clearly portray some of the most pertinent provisions, and the debate here today is so conclusively in favor of the bill that I hope there will be a unanimous vote for it.

For more than 10 years this legislation has had careful consideration and we have just heard the distinguished Member from Michigan, on the minority side, state in substance that he has never known, in his long service in this House, of a measure having had more painstaking or careful study. Once again we find that the report in this case shows the farseeing and rich vision of former President Franklin Delano Roosevelt. For the report, on page 7, thereof, specifically sets forth that he sent legislative recommendations to Congress many years ago in this very field.

I will not at this time take longer of the time of the House because members of the Judiciary Committee have done a very fine job of explaining this and I do compliment them on the work they have done.

Manifestly the vision of the needs of the objectives of this bill and the hard, continuous work over a term of almost a dozen years of the American Bar Association, the various State bar associations and the committees of Congress, and the departments of Government, should have the sincere appreciation at this time, of all of us, gentlemen.

The CHAIRMAN. The time of the gentleman from California [Mr. Doyle] has expired.

Mr. HANCOCK. Mr. Chairman, I yield 5 minutes to the gentleman from Iowa [Mr. Dolliver].

(Mr. Dolliver asked and was given permission to revise and extend his remarks.)

Mr. DOLLIVER. Mr. Chairman, during the period of time since the close of the First World War, there has been a tremendous expansion of the number of agencies, administrative bodies, and commissions of the United States Government. In fact, to those of us who were engaged in the practice of law during that period, it had come to the point where a great deal of our time was taken up in dealing with those various agencies of the Federal Government. They were spawned with great speed and without too much consideration, it seemed to the practicing lawyer, over this period of time, with a great variety of powers. Some of those powers directly affected the daily lives of every individual in the United States of America.

It necessarily followed, I suppose, since so many of them were created, that each of them would develop its own variety of procedure—that each of them would have its own method of doing business. Accordingly the problem that confronted the citizen who overstepped the bounds of the rules of some agency was to discover how to alleviate the situation. It was more complex because there were no uniform rules of procedure, and a person had to delve into the intricacies of each agency or each commission in order to find out what to do.

This bill is certainly a step in the right direction. It attempts to give some uniformity of procedure. It attempts to direct these

agencies and commissions and departments to use forms that can be understood which shall be uniform through all of them.

Not only does it promote uniformity but it codifies the procedures in a court review. This part of the bill has just been explained by my colleague, the gentleman from Indiana [Mr. Springer]. Because of the necessity of passing the bill, how great have been the abuses in some of the agencies concerned.

Personally, I think perhaps this bill does not go far enough in that direction. I believe I should welcome the opportunity to vote for a bill that would curtail the exclusions with respect to judicial review that are here contained.

Mr. WALTER. Mr. Chairman, will the gentleman yield?

Mr. DOLLIVER. I yield.

Mr. WALTER. I would like to call the gentleman's attention to the fact that there is no exclusion whatsoever. The decision of an agency created by statute that prohibits a review is the only one excluded. We are anticipating the possibility that some time or other such an agency will be erected.

Mr. DOLLIVER. I was referring to exactly the point that the gentleman has raised, that there are certain statutory exclusions now existing which are not covered by this bill. Perhaps there is just one such agency and I believe the gentleman and I understand which one that is. I still say I would welcome an opportunity to consider legislation which would include that excluded agency.

In connection with this bill I am very glad to present to the Congress a portion of a letter I have just received from Mr. Burt J. Thompson, of Forest City, Iowa, former president of the Iowa State Bar Association.

Mr. Thompson says in part:

This bill has been before the board of governors of the Iowa State Bar Association, and has received its approval. I think it is a fair statement also to say that it meets with the approval of the lawyers generally throughout the State of Iowa.

Mr. Thompson is a member of the special committee of the American Bar Association which has been studying this problem of administrative procedure for many, many years. I am glad to see that he is so fully in favor of the passage of this bill. While it does not, as I have just suggested, go as far perhaps as he and others may desire, nevertheless, it is a step in the right direction. We have great confidence that the bill will be passed.

The CHAIRMAN. The time of the gentleman from Iowa has expired.

Mr. SUMNERS of Texas. Mr. Chairman, I yield 5 minutes to the gentleman from Alabama [Mr. Hobbs].

Mr. HOBBS. Mr. Chairman—

Mr. KEEFE. Mr. Chairman, will the gentleman yield?

Mr. HOBBS. I shall be so delighted to yield to the distinguished gentleman from Wisconsin.

Mr. KEEFE. I merely wish to say to the distinguished gentleman who is about to address the House and to the other members of the committee that I regret that I am compelled to attend a very important meeting of a subcommittee of the Appropriations Committee and must be there this afternoon. I do want the Record to show at this point, however, that this matter contained in this bill is one



in which I have been interested ever since I first came to Congress in 1939.

I congratulate the author and the Judiciary Committee in finally bringing this bill to the House. I trust it will go back to the other body and result in final action in a field that is so very much needed in this country.

Mr. HOBBS. We thank the gentleman for that contribution, although for us who know him so well and his outstanding ability in the field of law it was entirely unnecessary. We know he has been profoundly interested all the time, is now, and that but for conflicting engagements he would be with us as we work out this piece of legislation on the anvil of public discussion on the floor of the House.

I simply wish to adopt what he has said. There is no need of reiteration, and that is what may be now fast approaching in this debate. There is no need to discuss or argue the merits of this piece of legislation. So I wish in the few minutes allotted to me merely to make a few long-overdue observations as to some credit that is too apt to be overlooked.

Mr. MURDOCK. Mr. Chairman, will the gentleman yield for a question before he goes into that?

Mr. HOBBS. I am delighted to yield to the distinguished gentleman from Arizona, always.

Mr. MURDOCK. I am not a lawyer, as the gentleman knows. I am just asking the gentleman whether the bill enacted into law will bring about a government of law rather than of men? Is that the ideal toward which this bill looks?

Mr. HOBBS. The gentleman has phrased it very aptly. It is the ideal toward which this legislation looks and moves. Whether or not it will be realized depends upon the construction which may be placed upon it by the trial and appellate courts of this land. We hope and pray that they will so construe this act as to emphasize its plain mandate and achieve that ideal.

Not only do I wish to compliment the distinguished gentleman from Pennsylvania, Hon. Francis Walter, who is the author of the report and who has done so much in the drafting of this act through the years he has worked, but I also wish to echo the congratulations that have been showered on the gentleman from Iowa, Hon. John Gwynne, and his associates on the subcommittee. Our late great President, Franklin D. Roosevelt, in 1939, acting in accordance with the recommendation of the Honorable Homer Cummings, Attorney General of the United States, recommended the appointment of a committee to study the problem this bill seeks to solve. I wish also to compliment each of the successors of Attorney General Cummings in that high office, and particularly speak with approval of the work of the present Attorney General, Hon. Tom C. Clark.

The CHAIRMAN. The time of the gentleman from Alabama has expired.

Mr. SUMNERS of Texas. Mr. Chairman, I yield the gentleman five additional minutes.

Mr. HOBBS. Mr. Chairman, I would be unworthy of the occasion, however, if I did not pay tribute to the work of the American Bar Association in this connection, particularly the leadership of that

body and its great special committee. We all know that Hon. Carl McFarland has been one of the outstanding leading spirits in the movement which is now resulting in the enactment of this bill. We should also gratefully praise the administration of the Honorable George Maurice Morris, who during the time he headed that organization, as his successors have done in emulation of his example since his day, made it possible for us to bring to you today the well-reasoned, carefully drawn bill which is so soon to become law.

Mr. HANCOCK. Mr. Chairman, will the gentleman yield?

Mr. HOBBS. I am always delighted to yield to the gentleman from New York.

Mr. HANCOCK. May I add the name of a former very active supporter of this measure, a former president of the American Bar Association, Arthur T. Vanderbilt.

Mr. HOBBS. Not only that, sir, but in line with the gentleman's usual quick thinking, he simply beat me to the punch. I am delighted to make acknowledgment not only to Hon. Arthur Vanderbilt but to a long line of other men who have aided in their high office.

Mr. Chairman, this is all I really care to say today. It seems to me that the Constitution of the United States, has divided the powers of our Government into three coordinate branches, the legislative, executive, and judicial. These have been swallowed up by some administrators and their staffs who apparently believed that they were omnipotent. These have exercised all of the powers of government, arrogating to themselves more power than ever belonged to any man, or group. This has made necessary the enactment of some such legislation as is now in process of passage.

We hope and pray that the plain meaning of this law will be so correctly interpreted as to effectuate its high purpose. Therefore we thank every Member of the House in advance for the unanimous support that this bill deserves and will receive.

(Mr. Hobbs asked and was given permission to revise and extend his remarks.)

Mr. HANCOCK. Mr. Chairman, I yield 5 minutes to the gentleman from Kentucky [Mr. Robsion].

Mr. ROBSION of Kentucky. Mr. Chairman, I arise in support of Senate bill 7 which proposes "to improve the administration of justice by prescribing fair administrative procedure." This bill passed the Senate some time ago, came to the House and was referred to the Committee on the Judiciary of the House which committee, after careful consideration, amended the Senate bill and which, in my opinion, improves the Senate bill in line with the purposes of the bill.

I am not a member of the subcommittee of the Judiciary Committee that held the hearings and considered this bill. I understand that the subcommittee approved it by unanimous vote. It then came to our full committee and as I recall there was no serious opposition to the bill in our full committee. Mr. Walter of Pennsylvania is the chairman and Mr. Gwynne of Iowa is the ranking Republican of that subcommittee. They have both made splendid speeches in explaining the provisions and purposes of this legislation. The time for general debate is more or less limited. I am sure that those who are not members of our Judiciary Committee will find the report on this bill most enlightening and I urge each one of you to read the report carefully.

This legislation is very necessary, and it is long overdue. It is not as comprehensive as it should be. It certainly is a step in the right direction, and as time goes on no doubt it will be perfected by appropriate amendments. Many of our leading jurists, statesmen, including former Chief Justice Hughes, many distinguished lawyers and judges, the American Bar Association, business people, and other citizens have strongly commended and urged legislation for the purposes set forth in this bill. Years ago we had only a small number of Federal bureaus, agencies, and commissions, and a comparatively small number of Federal offices; but as the country has grown and as its activities have become more diversified and complex it has been necessary for the Congress to pass laws delegating to various agencies their administration. Congress could not spell out in precise words the administrative powers and duties of these agencies. It could only do so in general terms, and it was up to these agencies to issue appropriate rules in carrying out their administrative duties within the purpose and intent of the Congress as expressed in the laws enacted by Congress. This type of legislation and the delegation of powers have increased from year to year so that it now involves many, many agencies and many, many officers. There is no doubt in my mind but what we have too many agencies and too many officers. The Federal officials now, outside of our armed forces, in this and foreign countries number approximately 3,000,000. In the last 10 or 15 years these Federal agencies and the number of officials have grown by leaps and bounds, and the naked fact is that we do have these agencies and officials administering hundreds of acts of Congress, and in so doing they have issued orders, directives, and rules exceeding the powers granted to them by the Congress. In other words, they have assumed the function of making laws. The power to legislate and make laws rests alone in the Congress and not within the powers of any officer of any one of these agencies.

These same officers of these agencies issue these orders, directives, and rules, and then they proceed to hail the citizens and business concerns before them for investigation, trial, and judgment, and in that way not only become the lawmakers but they interpret their own self-made laws and execute them. They are the lawmakers, prosecutors, juries, and judges of their own laws.

Mr. SPRINGER. Mr. Chairman, will the gentleman yield?

Mr. ROBSON of Kentucky. I yield to my friend from Indiana.

Mr. SPRINGER. Is it not a fact that every bar association throughout the country is deeply interested in this legislation because the lawyers do not know what procedure to follow and they do not know anything with respect to the law which is followed by these triers or administrators of the laws passed by Congress.

Mr. ROBSON of Kentucky. That is one of the things I was coming to. They change the rules of the game from day to day and without any notice to the American people who will be affected by the directives and rules. As I have stated, here is a group of men or individuals making and changing the laws and then executing them. Our Government is based upon the principle of three branches: Congress makes the laws, and the courts interpret them, and the executive branches execute them, but in many of these agencies we find all of these functions of the Government lodged in one person or one board, and then in many

cases those who are aggrieved of the actions of the administrator or board are denied an appeal to the courts. In some cases where there is an appeal the courts uphold the administrator's or board's action if there is any evidence sustaining the action of the board. It may be against the overwhelming weight of the evidence, and the rights of the parties may be ignored. This bill gives the aggrieved party the right to appeal to the courts, and the court may set aside or modify the decision of the administrator or board if they ignore the law, the Constitution, or substantial evidence. They cannot sustain a finding or decision of the administrator or board unless there is substantial evidence supported. The administrator or board cannot base their finding on the scintilla rule.

Mr. DONDERO. Mr. Chairman, will the gentleman yield?

Mr. ROBSION of Kentucky. I yield to my friend the gentleman from Michigan [Mr. Dondero].

Mr. DONDERO. Does this bill go far enough to include those who might seek their day in court under OPA regulations?

Mr. ROBSION of Kentucky. As I understand this bill, it does not give the right of appeal in cases where the Congress has expressly stated there can be no appeal; but unless the right of appeal is denied, I think an appeal could be taken as a matter of course where there was a proper showing that the constitutional rights of the aggrieved party had been invaded; that the act itself did not sustain the award or judgment and an appeal can be taken where Congress provided in the act that an appeal could be taken and the way and manner in which it could be made.

As I recall, some of the provisions in the OPA Act provide for an appeal under certain conditions and circumstances, but those appeals are limited to the provisions of the acts themselves.

Mr. BENNET of New York. Mr. Chairman, will the gentleman yield?

Mr. ROBSION of Kentucky. I yield to the gentleman from New York [Mr. Bennet].

Mr. BENNET of New York. Are not the war agencies excluded from this bill?

Mr. ROBSION of Kentucky. Some of the acts of Congress expressly exclude an appeal in some cases, and the bill before us excludes the Selective Service Act and a number of other acts.

Mr. HANCOCK. I yield the gentleman an additional 2 minutes.

The CHAIRMAN. The gentleman from Kentucky is recognized for two additional minutes.

Mr. ROBSION of Kentucky. Some of the most commendable features of this bill are:

First. It defines "agency," "person," "party," "rule," "rule making," "order" and "adjudication," "license" and "licensing," "sanction" and "relief."

Second. It provides that these orders, rules, and directives can only be adopted after reasonable notice, and, when once adopted, they must be published in the Federal Register. These records are open to the public, and they cannot be amended or changed without giving a hearing to interested parties.

Third. This bill recognizes the principles on which our three branches of government are based so that the prosecutor may not get up the evidence, prosecute the case, and, at the same time, decide the case.

Fourth. The interested parties must be given proper notice of the legal and factual issues, with due time to examine, consider, and prepare for them and the parties who are entitled to appear on their own behalf or by counsel—either an attorney at law or other person who has been admitted to appear before such board or agency.

Fifth. The agency is required to afford the parties an opportunity for settlement or adjustment of the issues involved where the nature of the proceeding and the public interest permit.

Sixth. All presiding officers and deciding officers are to operate impartially. Such officer may disqualify himself and a party to the proceeding may file proper affidavit to show that the presiding officer has personal bias or is otherwise disqualified. These officers may exclude irrelevant, immaterial, or unduly repetitious evidence.

These are only a few of the many provisions of this bill that lead us to believe that it will improve the administration of justice in administrative procedure of the various agencies and further protect the constitutional rights and the interest of the American people.

(Mr. Robsion of Kentucky asked and was given permission to revise and extend his remarks.)

Mr. SUMNERS of Texas. Mr. Chairman, I yield 5 minutes to the gentleman from Texas [Mr. Russell].

(Mr. Russell asked and was given permission to revise and extend his remarks.)

Mr. RUSSELL. Mr. Chairman, at the outset I must agree that this bill in its entirety will be a valuable asset to the people of America if it is passed. In the main, it seeks to give the courts a little more function with regard to administrative agencies' rulings, decrees, orders, and judgments. In that respect I am in full accord with the terms of the bill.

Being a member of the lawyers' profession, I have always looked upon the functions of our courts and the jurisprudence of our country in general with jealousy and zealousness. I have always been able to speak with pride of the jurisprudence of the American Government because of the fundamental principles underlying the rules by which the courts, both trial and appellate, are guided. Perhaps some of you do not know it, but as far as I know, without a single exception each general principle of the rules of evidence that have been adopted by the courts is based upon some Biblical quotation. Every rule is taken from the Bible, when you analyze it and run it back to its source. This fact alone should make the American people proud of American jurisprudence. There is one thing I am somewhat apprehensive about in regard to this bill. It is for that reason I take the floor for these few minutes. If you will turn with me to page 38 to subsection (c) of section 10, I want to read the first part of that paragraph to you. It is as follows:

Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review.

That is fine. That is excellent. That is what the American people have been clamoring for the last few years. The Congress has been clamoring for it too. The paragraph reads further:

Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action—

Now, that is fine. But here is the clause or phrase that I am afraid of:

Except as otherwise expressly required by statute—

I am afraid of that provision. I am not in a position, because I did not know the bill was up for consideration, and I happened into the Chamber and heard this discussion, to answer directly the way in which I think this would preserve the dictatorial powers of that agency or that authorization by law. The law, of course, is what the Congress makes. There are some laws which I am not able to point out to you right now which make it possible for an agency to pass upon a question presented to them on the basis of the slightest evidence, whether it be relevant or irrelevant, whether it be material or immaterial, and whether it be prejudicial or not prejudicial.

The CHAIRMAN. The time of the gentleman from Texas has expired.

Mr. SUMNERS of Texas. Mr. Chairman, I yield three additional minutes to the gentleman.

Mr. SPRINGER. Mr. Chairman, I yield one additional minute to the gentleman.

Mr. RUSSELL. When an agency has such an authorization, which under the authorization is the law, then this act is exempting that agency from a judicial review or a passing upon that evidence, regardless of the kind of evidence it may be.

Mr. WALTER. Mr. Chairman, will the gentleman yield?

Mr. RUSSELL. I am glad to yield to the gentleman.

Mr. WALTER. The gentleman is not seriously contending that an agency decision based upon a mere scintilla of evidence would hold up?

Mr. RUSSELL. If the law has made it such, it will hold up under this very phrase that I have just read. That is what I am afraid of.

Mr. WALTER. Well, the very measure now under consideration is designed to prevent that sort of thing, and will prevent it.

Mr. RUSSELL. But this is the thing I am afraid of, that is, giving life to that power which the measure is supposed to take away.

There is another bill pending in this House, a very controversial bill. Perhaps you heard of it this week on Calendar Wednesday, where a provision is embodied in that bill which I do not believe 25 Members—10 Members—Not 5 Members—if they understood the legal effect of that provision, would vote for the bill with that in it, because they would be cutting off their own noses and denying themselves a right which they hold near and dear. That same provision is embodied in that bill. If it becomes law, the law making that scintilla of evidence binding upon the court, then this bill will not take care of it. That is my only objection to this bill. I do not want to tie the hands of the courts, but throughout the years of American history there has developed the most beautiful, the most equitable, the most American jurisprudence known throughout the world, a system of jurisprudence under which each man can go into court where justice, and justice alone, will prevail.

I ask you to look into this question because I am fearful that by this provision you are giving life to that which you think you are destroying.

The CHAIRMAN. The time of the gentleman from Texas has again expired.

Mr. HANCOCK. Mr. Chairman, I yield 5 minutes to the gentleman from New York [Mr. Bennet].

(Mr. Bennet of New York asked and was given permission to revise and extend his remarks.)

Mr. BENNET of New York. Mr. Chairman, I had not expected to speak on this subject today. I have been practicing law for 25 years. I am certainly in sympathy with the provisions of this bill. Nevertheless, I wonder if it is fully understood by the Members of the House.

I want to make the frank admission that I read the bill three or four times and I have also read the report and I do not fully understand it yet. I just asked the gentleman from Kentucky [Mr. Robsion] a question, to which I did not get the proper answer, which indicates there may be some misunderstanding even on the part of well-informed Members. My question was, "Does this bill affect the war agencies?" The gentleman indicated he thought it did. It does not. The war agencies are expressly exempted from the provisions of this bill. It is against the war agencies that you hear most of the complaints and criticism. It is against the OPA and the CPA that you hear most of the criticism.

Mr. WALTER. Mr. Chairman, will the gentleman yield?

Mr. BENNET of New York. I yield.

Mr. WALTER. Those agencies are erected under orders and statutes that provide a special method of review of their decisions.

Mr. BENNET of New York. I am well aware of all that, but what I said, that they are not covered by this act, still remains true. Also, that most of the criticisms are against those agencies. That remains true.

Mr. GWYNNE of Iowa. Mr. Chairman, will the gentleman yield?

Mr. BENNET of New York. I yield.

Mr. GWYNNE of Iowa. That matter was discussed at some length in the committee. Of course, we hope we are writing permanent legislation, to be improved as the years go by. We also hope that these war agencies will soon be terminated.

Mr. BENNET of New York. I certainly join in that hope that they will soon be eliminated. I think the great majority of the American citizens feel the same way.

Mr. DONDERO. Mr. Chairman, will the gentleman yield?

Mr. BENNET of New York. I yield.

Mr. DONDERO. A moment ago I asked the gentleman from Kentucky [Mr. Robsion] whether or not this bill was broad enough to permit a person who got into difficulty with the OPA to have his day in court. I think the gentleman expressed doubt whether it did or not. What is the gentleman's opinion?

Mr. BENNET of New York. My opinion is that it has nothing to do with the OPA.

Mr. DONDERO. That is a war agency. It does not cover the OPA, as I understand it.

Mr. BENNET of New York. Under definitions, section 2, page 22, those agencies and functions which expire on the termination of present hostilities or within any fixed period thereafter, or before July 1, 1947, are not covered. That means war agencies.

Mr. KEFAUVER. Mr. Chairman, will the gentleman yield?

Mr. BENNET of New York. Gladly.

Mr. KEFAUVER. I think I should call the gentleman's attention to the fact that on page 22, line 3, it provides that it shall not apply to war agencies except as to the requirements of section 3. Of course, section 3 requires that their orders be made public. That is about as far as the committee thought it should go in making it applicable to the war agencies.

Mr. BENNET of New York. I am aware of that particular exception. I do not think it affects the general proposition that I am advancing.

I am not going to oppose this bill. I am trying to make it clear that I do not think it is fully understood by all the Members. Before they vote on it I thought perhaps they might like to have a little different approach to it. If I correctly understand this bill, and I shall be pleased to have the members of the committee tell me if I am wrong about it, it does not specifically provide where an appeal should be taken, for which reason I assume the appeal would have to be taken to the District Court of the United States. I am not an expert on these matters, but I think ordinarily bills of this nature have provided for appeals to the circuit court of appeals. If I am correct about that, that means it is going to be quite a long-drawn-out process of appeal in some of these cases.

Mr. WALTER. Mr. Chairman, will the gentleman yield?

Mr. BENNET of New York. I yield.

Mr. WALTER. The only instance where an appeal can be taken to the circuit court of appeals in the first instance is where there is a special statute providing that method of appeal. In all other instances the appeal must be direct to the United States district court.

Mr. BENNET of New York. That is what I said in substance in my statement. But statutes have been passed which permitted appeals directly to the circuit court of appeals in order to save time. There are any number of administrative agencies covered by this bill and anybody who believes himself injuriously affected by an order can appeal as I understand it to the district court. If he is not satisfied with the decision of the district court he can go on to the circuit court of appeals and then to the United States Supreme Court if they will grant him a writ of certiorari. I would like to have someone tell me whether I am correct or not in this statement that the Pure Food and Drug Administration could find that some article within its purview was deleterious to the public health and issue an order against its distribution. The manufacturer could then go to the district court appealing from that decision and obtain an injunction if the court saw fit to issue an injunction. Am I correct in that statement?

Mr. WALTER. The gentleman is entirely correct, but I cannot conceive of a court's granting an injunction to permit the further distribution of an article that was unfit for human consumption.

Mr. BENNET of New York. That may very well be; nevertheless as I read this bill it can be done. The same thing would be true with respect to the Securities and Exchange Commission issuing an order stating that a certain practice should not be indulged in. The aggrieved party could obtain an injunction and go ahead continuing the alleged improper practice.

The CHAIRMAN. The time of the gentleman from New York has expired.



(Mr. Bennet of New York asked and was given permission to revise and extend his remarks.)

Mr. SUMNERS of Texas. Mr. Chairman, I yield 5 minutes to the gentleman from Tennessee [Mr. Kefauver].

Mr. KEFAUVER. Mr. Chairman, first I want to join with the many Members who have spoken here in congratulating the chairman of the committee, the gentleman from Texas, Judge Sumners, and the chairman of the subcommittee, the gentleman from Pennsylvania [Mr. Walter], the ranking minority Members, the gentleman from New York [Mr. Hancock], the gentleman from Iowa [Mr. Gwynne], and others on the subcommittee who have worked so long and so intelligently on this problem. Our chairman, the gentleman from Texas, Judge Sumners, deserves special recognition for his good work. He has worked on the problems of administrative practices for many years. He filed H. R. 1203 and H. R. 4941, which are the companion measures to S. 7, which we have before us today. I suppose that in the files of the Judiciary Committee you will find more bills, more proposals, more complaints, and suggestions about administrative procedure than any other one subject. Certainly, during the 7 years I have been in Congress the matter of making provision to have a uniform system of procedure in the agencies of Government has been one of the vital ones before the Congress and the Nation. The committee is to be heartily congratulated on finally being able to get everybody together on at least a beginning of a settlement, a solution of this difficult problem.

In this complex day when Government is interested in so many things, it is, of course, necessary to have administrative agencies which must of necessity be able to make some rules and regulations and to act in quasi-judicial positions in certain instances. Congress cannot, by the very complexity of the situation, make all of the detailed rules and regulations. But in connection with the administration of the agencies, the lawyers of America, the businessmen, and interested people have for many years been perplexed in trying to find some way to get uniformity into the making and publication of regulations and in obtaining a review procedure. Some of the agencies for many years have resisted various administrative procedure bills that have been presented on the theory that the bills would unduly hamstring them in the operation of their departments.

On the other hand, some lawyers of America and many others wanted more drastic rules for the regulation of agencies than the Congress has been willing to impose. Finally the agencies have come to realize that some orderly administration must be worked out for them and they now join in the approval of this legislation.

Various bar associations and committees that have worked on this matter have likewise joined in recommending it.

I have noticed in the debate on the bill that various Members have felt that in some instances the bill went too far, in other instances it did not go far enough; some things should be done that are not done and some things should not be done that are done. This bill will not be entirely satisfactory to every one but it marks an excellent beginning. Only after years of practice, experience, and application can we come to see the places where it will need remedying and where it will need strengthening. I think it is going to be greatly in the

public interest to have uniform administration in the various agencies of the Government.

There is one matter I feel should be commented on, and that is that lawyers of the United States have always been met with various and different regulations for the practice before the various agencies. For the average lawyer representing his client in sections distant from Washington it is very difficult to know how to be admitted to practice before some of the agencies. Some admit anybody, some admit lawyers only, some admit laymen, and some require specific qualifications. I would like to see it worked out so that any member of the bar who is in good standing in the bar of his own State is at least *prima facie* eligible to practice law before these various agencies. This could be done while the bill is in conference. I have prepared an amendment which I have shown the chairman of the subcommittee and others which will make this needed improvement. I have had bills pending on the question for years. The gentleman from New York [Mr. Hancock], has a bill pending to this effect. The question is not complicated and I should like to see it settled satisfactorily in this measure. The chairman of the subcommittee [Mr. Walter] indicated he thought well of the proposal.

Mr. Chairman, I take this time mainly to express my thanks for the job that has been done and to say that this is a great day for the judiciary of the country, for the Government and the people in that we have made an excellent beginning in working out these rules and regulations for the various agencies. The committee, the agencies, the bar associations and all who have participated deserve our deep appreciation.

The CHAIRMAN. The time of the gentleman from Tennessee has expired.

Mr. HANCOCK. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. Johnson].

Mr. JOHNSON of California. Mr. Chairman, in 1943 when Hon. Earl Warren, the present Governor of California, took office this matter of administrative agencies and their rules and set-up was so acute and confused that he advocated passage of a law laying down the new and uniform rules and procedures that these agencies should observe. That law is almost the same as the pending bill. Therefore, for the information of the Members I would like to make a statement concerning the scope of the operation of the California law. If that experience is any criterion of what we may expect with the bill before us, I am confident everybody, when this law is enacted, will entirely approve of it. It will do a great measure of justice to litigants who appear before these types of boards and administrative agencies.

As I said, the State of California in 1943 passed a similar measure and it has met with wholehearted approval, not only of the agencies coming within the scope of the measure, but with other agencies, who now desire to be brought within its scope. A brief history of the background of the California Administrative Act follows:

Some time prior to the war the chaotic condition of the rules in effect in various administrative agencies in the State became common knowledge. Some agencies had printed their rules; some had mimeographed them; some had them typewritten; and some agencies had not published them in any form whatsoever, stating that they were

within the knowledge of the chairman or other executive officials of the agency. The legislature, taking cognizance of the situation, passed a bill requiring the agencies to file their rules with the secretary of state, and appointed a codification board composed of the secretary of state, the head of the department of finance, and the legislative counsel. The magnitude of the problem was disclosed upon the filing of the rules. It required several filing drawers to contain the existing rules of some of the agencies. Many of the agencies requested assistance in determining which rules were actually in effect at the time, and similar unfortunate situations were disclosed. A subsequent legislature provided \$70,000 to be used in editing, codifying, and printing the rules in effect in the various agencies, and order began to replace this chaotic condition.

Gov. Earl Warren realized that the situation was acute, and in an address to the members of the State bar of California called upon them to assist in the passage of an administrative procedure act, which would cure many of the defects in administrative agency procedure which were apparent. In certain agencies they acted as investigator, prosecutor, and judge; in others, matters were decided without regard to evidence; and in others, the attorney for the agency, in effect, decided the questions. Certain agencies admitted that when their counsel objected, his objections were invariably sustained, and when the opposition counsel objected, his objections were also overruled.

These agencies had a great deal to do with the life and business of the people of the State, and their effectiveness was being impaired by these procedures.

Following the Governor's speech, the Judicial Council of California, headed by the chief justice of the supreme court, and the administrative agencies' committee of the State bar of California commenced a study, which resulted in the presentation in the 1943 legislature of an administrative procedure act, which was passed and thereafter became law upon its signature by the Governor. It was similar in scope to the present measure under consideration. It concerned itself with the rules and orders issued by the agencies, with the method of investigation, the conduct of hearings, the findings, with the type of evidence which might be introduced, and the scope of judicial review of the agencies' decisions and orders.

Certain California agencies were not included within the jurisdiction of the act because they derived their existence and jurisdiction directly from the Constitution of California, and the legislature did not have authority to include their procedures under the Administrative Procedure Act. Among these agencies were the Industrial Accident Commission and the Railroad Commission of the State of California. Since the act has been in effect it has received the acclaim and sincere approval, not only of the bar of California, but of the people of the State, and the officials of the agencies involved. In addition to this, the chief officials of the constitutional agencies above alluded to, have approached the Governor of California and the State bar of the State to ask amendments to the Constitution of the State for the purpose of bringing these agencies under the procedure set up in the Administrative Procedure Act of California.

(Mr. Johnson of California asked and was given permission to revise and extend his remarks.)

Mr. HANCOCK. Mr. Chairman, I yield 5 minutes to the gentleman from Tennessee [Mr. Jennings].

Mr. JENNINGS. Mr. Chairman, this bill is a step in the right direction, but many more of the same tenor and effect need to be taken by Congress. This Government was primarily set up for three general purposes; first, to protect itself and its citizens against foreign aggression; second, to protect the law-abiding members of society against the fraud and violence of the lawless members of society; and, third, through the first 10 amendments, to protect its citizens against the encroachment on their liberties and the destruction of their lives and property rights by the Government itself.

It is one of the paradoxes, one of the tragedies of history, that men and women must sacrifice, fight, and die to establish a Government such as our fathers and mothers set up and then are compelled to fight their own Government to protect themselves against assaults on their liberty, lives, and property. This fact made necessary the adoption of the Bill of Rights embodied in the first 10 amendments to the Federal Constitution. They cover the citizen all over with the armor of the law. And no bureaucrat should be permitted to strip the citizen of his protection.

The Federal Government now touches almost every activity that arises in the lives of millions of people who make up the population of this country. The chief indoor sport of the Federal bureaucrat is to evolve out of his own inner consciousness, like a spider spins his web, countless confusing rules and regulations which may deprive a man of his property, his liberty, and bedevil the very life out of him.

Recently Westbrook Pegler dissected an interesting speech by a young lady who is an official in one of the bureaus here in Washington. I was interested in his article because I heard her make a speech not so long ago at a meeting of the Federal Bar Association in which she said that this bill was pending before the two Houses of Congress, and that the Federal bureaucrats and lawyers who served these bureaus and bureaucrats should be on their toes and should do their best to prevent the passage of this bill or any similar bill because she said that it would put the Federal bureaucrats and the lawyers whom they had on their pay rolls in a strait-jacket.

Well, I was interested in that frank confession and I became interested in fitting a restraining legal strait-jacket on these people who have been harassing the citizens of this country. As I have said, one of their principal indoor sports is to promulgate these rules and regulations.

Now, this bill does three things generally, you might say. It puts a legal restraint upon the power of these bureaus to promulgate rules and regulations and gives the citizen who may be affected by them the right to a hearing, to make suggestions, and to enter protest against the proposed rule, and then it gives the citizen the right to a hearing before these bureaus. It requires that the rules and regulations shall be made public, and as a last resort when the citizen has exhausted his remedy before some Federal bureau here in Washington, he has a right to go into court and undertake to protect himself.

I just want to read some of the things that this enterprising young woman had to say. Mr. Pegler said of her speech before a meeting of the Texas Bar Association:

Though cynical, Miss Rawalt was thoroughly honest and practical. The citizen occupied no place in her remarks. Her message was an exhortation to her fellow lawyers to get aware of the existence of government by bureaucracy and to grab off their share of the loot from a Nation bedeviled by confusing and harassing rules, regulations and interpretations, many of them improvised by New Deal bureaus operating as courts.

\* \* \* the extent to which the citizen has been elbowed out of court and into New Deal bureaus for his justice, constantly in need of lawyers to keep him out of jail, is thoroughly convincing. Miss Rawalt certainly would not exaggerate.

"Speaking of opportunity," the lady said, "are the lawyers of this country, men and women, going to take full advantage of their opportunities in administrative law? It is the most rapidly expanding area of law practice today. There are some 217 special courts, bureaus and commissions which today decide upon and administer various Federal laws directly affecting citizens and business firms in this country. This does not take into account similar State quasi-judicial bodies.

Administrative law, through the Federal Communications Commission, regulates the programs you hear on your radio and determines the use of the telephone and telegraph in our country today. Administrative law, through the Federal Trade Commission, determines various trade practices within the industries of this Nation. Administrative law through the OPA and other departments, regulates what food you may buy and what you may pay for it. Concurrent with the phenomenal growth in this field of law, there has been a sudden decrease in the number of lawyers.

Then this young woman told the Texas lawyers that they should "stake their claim in this promising professional gold mine now and avoid the costly process of ejection of others who have laid claims thereto." She urged them to familiarize themselves with the bureau where this administrative law is administered. She also called their attention to the fact that a certain provision which was expressed in 500 words in the original income-tax law now runs to 2,300 words.

Then she stressed the statement of Mr. Justice Frankfurter, who recently said in one of his opinions:

The notion that, because the words of a statute are plain, its meaning also is plain, is merely pernicious oversimplification.

In other words, words do not mean what they say and things are not as they appear to the naked eye and to ordinary human intelligence.

Mr. Chairman, for the reason I have stated and for many other reasons that might be stated, I hope this bill is enacted by this House as passed by the Senate. It will give a long-suffering public much-needed relief.

Mr. CURTIS. Mr. Chairman, will the gentleman yield?

Mr. JENNINGS. I yield to the gentleman from Nebraska.

Mr. CURTIS. I will say to the gentleman from Tennessee that I shall support this measure. I think the gentleman made one point that should be well remembered, that this is only a step in establishing a government of law in these days of bureaus. I hope the time will soon come when we can standardize the procedure before all these bureaus so that the lawyer who lives near the citizen can find out what the procedure is before these various bureaus.

Mr. JENNINGS. And may represent him in a court among his own people and in his own State. It was never contemplated or intended by the founders of this Republic that the power to legislate vested in Congress should be usurped by a bunch of appointive officers here in Washington who were never elected by any constituency and never could be.

Mr. SUMNERS of Texas. Mr. Chairman, I yield myself the remainder of the time.

Mr. Chairman, this is one of the most important items of legislation that has been reported by the Committee on the Judiciary since I have been a member of that committee, and one of the most important that has been considered by this House in a long time. I do not believe any item of legislation that I know of has received broader and more earnest, patriotic consideration by so many groups of our citizenship, as well as Government agencies themselves and individuals in different branches of the Government service.

The subcommittee of the Committee on the Judiciary which had first responsibility is Subcommittee No. 3, of which the gentleman from Pennsylvania [Mr. Walter] is the able chairman, and the gentleman from Tennessee [Mr. Kefauver], the gentleman from South Carolina [Mr. Bryson], the gentleman from Massachusetts [Mr. Lane], the gentleman from Iowa [Mr. Gwynne], the gentleman from Connecticut [Mr. Talbot], and the gentleman from Ohio [Mr. Lewis], members of that subcommittee, have done a fine job, as has the entire membership of the Judiciary Committee. There have been differences of opinion, but in the main they have been composed during the long consideration of the legislation.

An interesting historical fact about this bill is that the American Bar Association began to manifest interest in this type of legislation as far back as 1935. William L. Ransom was then its president. Through the intervening administration of Presidents Frederick H. Stinchfield, Arthur T. Vanderbilt, Frank J. Hogan, Charles A. Beardsley, Jacob M. Lashly, Walter P. Armstrong, George Maurice Morris, Joseph W. Henderson, David A. Simmons, and Willis Smith that interest has continued reaching out into all parts of the country, resulting in invaluable contributions toward this final result. In this connection I want to mention with especial appreciation the service of Mr. Carl McFarland, chairman of the special administrative law committee of the American Bar Association, and his associates on that committee, Messrs. Albert Ewing, Jr., Aaron L. Ford, Reuben Hall, Ralph M. Hoyt, Charles E. Lane, Harry J. McClean, W. James MacIntosh, Clarence A. Miller, Roland F. O'Bryen, George Rossman, Mayo A. Shattuck, Julius C. Smith, Sylvester C. Smith, Jr., and Burt J. Thompson. And to this list I want to add Mr. Ashley Sellers, who represented the Attorney General. This legislation has been examined by more different groups of people than any other I know of, and a remarkable unanimity of attitude has been worked out.

As far as I am concerned, I hope that much of this power that is being administered by the Federal Government through these agencies can be got rid of entirely and that some of the rest be sent back into the States. But after that is done there will remain, of course, necessary Federal powers in Federal agencies. This bill seeks to bring the exercise of these powers into the general pattern of democratic government. In framing this bill there has been caution not to incorporate provisions which would reduce the efficiency of these agencies which must be depended upon to render important public service. It is believed that has been done. In fact, this bill, it seems generally agreed, goes far in the right direction—as far as we can safely go, at least until we shall have got the guidance of experience.

The gentleman from Pennsylvania [Mr. Walter] and the members of his subcommittee have rendered a great public service. I hope the bill will be unanimously passed, and without amendment.

I very much hope and expect that this bill will be accepted by the House as it has been reported by the committee. There is every reason to believe that the modifications of the Senate bill which are incorporated in this bill will be satisfactory to the Senate; that there will be early action by that body; that the President will promptly approve; and this important, long-needed legislation will soon be on the statute books.

(Mr. Summers of Texas asked and was given permission to revise and extend his remarks.)

The CHAIRMAN. The Clerk will read.

The Clerk read, as follows:

*Be it enacted, etc.*, That this act may be cited as the "Administrative Procedure Act."

With the following committee amendment:

Strike out all after the enacting clause and insert:

"TITLE

"SECTION 1. This act may be cited as the 'Administrative Procedure Act.'

"DEFINITIONS

"SEC. 2. As used in this act—

"(a) Agency: 'Agency' means each authority (whether or not within or subject to review by another agency) of the Government of the United States other than Congress, the courts, or the governments of the possessions, Territories, or the District of Columbia. Nothing in this act shall be construed to repeal delegations of authority as provided by law. Except as to the requirements of section 3, there shall be excluded from the operation of this act (1) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them, (2) courts martial and military commissions, (3) military or naval authority exercised in the field in time of war or in occupied territory, or (4) functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947, and the functions conferred by the following statutes: Selective Training and Service Act of 1940; Contract Settlement Act of 1944; Surplus Property Act of 1944.

"(b) Person and party: 'Person' includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies. 'Party' includes any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any agency proceeding; but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes.

"(c) Rule and rule making: 'Rule' means the whole or any part of any agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of any agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing upon any of the foregoing. 'Rule making' means agency process for the formulation, amendment, or repeal of a rule.

"(d) Order and adjudication: 'Order' means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of any agency in any matter other than rule making but including licensing. 'Adjudication' means agency process for the formulation of an order.

"(e) License and licensing: 'License' includes the whole or part of any agency permit, certificate, approval, registration, charter, membership, statutory ex-

emption or other form of permission. 'Licensing' includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation amendment, modification or conditioning of a license.

"(f) Sanction and relief: 'Sanction' includes the whole or part of any agency (1) prohibition requirement, limitation, or other condition affecting the freedom of any person; (2) withholding of relief; (3) imposition of any form of penalty or fine; (4) destruction, taking, seizure, or withholding of property; (5) assessment of damages, reimbursement, restitution, compensation, costs, charges or fees; (6) requirement, revocation, or suspension of a license; or (7) taking of other compulsory or restrictive action. 'Relief' includes the whole or part of any agency (1) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy; (2) recognition of any claim, right, immunity, privilege, exemption, or exception; or (3) taking of any other action upon the application or petition of, and beneficial to, any person.

"(g) Agency proceeding and action: 'Agency proceeding' means any agency process as defined in subsections (c), (d), and (e) of this section. 'Agency action' includes the whole or part of every agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.

#### "PUBLIC INFORMATION

"SEC. 3. Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of an agency—

"(a) Rules: Every agency shall separately state and currently publish in the Federal Register (1) descriptions of its central and field organization delegations by the agency of final authority and the established places at which, and methods whereby, the public may secure information or make submittals or requests; (2) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations; and (3) substantive rules adopted as authorized by law and statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public, but not rules addressed to and served upon named persons in accordance with law. No person shall in any manner be required to resort to organization or procedure not so published.

"(b) Opinions and orders: Every agency shall publish or, in accordance with published rule, make available to public inspection all final opinions or orders in the adjudication of cases (except those required for good cause to be held confidential and not cited as precedents) and all rules.

"(c) Public records: Save as otherwise required by statute, matters of official record shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found.

#### "RULE MAKING

"SEC. 4. Except to the extent that there is involved (1) any military, naval, or foreign affairs function of the United States or (2) any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts—

"(a) Notice: General notice of proposed rule making shall be published in the Federal Register (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law) and shall include (1) a statement of the time, place, and nature of public rule-making proceedings; (2) reference to the authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved. Except where notice or hearing is required by statute, this subsection shall not apply to interpretative rules, general statements of policy, rules of agency organization, procedure, or practice, or in any situation in which the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

"(b) Procedures: After notice required by this section, the agency shall afford interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity to



present the same orally in any manner, and, after consideration of all relevant matter presented, the agency shall incorporate in any rules adopted a concise general statement of their basis and purpose. Where rules are required by statute to be made on the record after opportunity for an agency hearing, the requirements of sections 7 and 8 shall apply in place of the provisions of this subsection.

“(c) Effective dates: The required publication or service of any substantive rule (other than one granting or recognizing exemption or relieving restriction or interpretative rules and statements of policy) shall be made not less than 30 days prior to the effective date thereof except as otherwise provided by the agency upon good cause found and published with the rule.

“(d) Petitions: Every agency shall accord any interested person the right to petition for the issuance, amendment, or repeal of a rule.

#### “ADJUDICATION

“SEC. 5. In every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved (1) any matter subject to a subsequent trial of the law and the facts de novo in any court; (2) the selection or tenure of an officer or employee of the United States, other than examiners appointed pursuant to section 11; (3) proceeding in which decisions rest solely on inspections, tests, or elections; (4) the conduct of military, naval, or foreign affairs functions; (5) cases in which an agency is acting as an agent for a court; and (6) the certification of employee representatives—

“(a) Notice: Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place, and nature thereof; (2) the legal authority and jurisdiction under which the hearing is to be held; and (3) the matters of fact and law asserted. In instances in which private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the times and places for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

“(b) Procedure: The agency shall afford all interested parties opportunity for (1) the submission and consideration of facts, argument, offers of settlement, or proposals of adjustment where time, the nature of the proceeding, and the public interest permit, and (2) to the extent that the parties are unable so to determine any controversy by consent, hearing, and decision upon notice and in conformity with sections 7 and 8.

“(c) Separation of functions: The same officers who preside at the reception of evidence pursuant to section 7 shall make the recommended decision or initial decision required by section 8, except where such officers become unavailable to the agency. Save to the extent required for the disposition of ex parte matters as authorized by law, no such officer shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate; nor shall such officer be responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency. No officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency in any case shall, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 8, except as witness or counsel in public proceedings. This subsection shall not apply in determining applications for initial licenses or to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; nor shall it be applicable in any manner to the agency or any member or members of the body comprising the agency.

“(d) Declaratory orders: The agency is authorized in its sound discretion, with like effect as in the case of other orders, to issue a declaratory order to terminate a controversy or remove uncertainty.

#### “ANCILLARY MATTERS

“SEC. 6. Except as otherwise provided in this act—

“(a) Appearance: Any person compelled to appear in person before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other

qualified representative. Every party shall be accorded the right to appear in person or by or with counsel or other duly qualified representative in any agency proceeding. So far as the orderly conduct of public business permits, any interested person may appear before any agency or its responsible officers or employees for the presentation, adjustment, or determination of any issue, request, or controversy in any proceeding (interlocutory, summary, or otherwise) or in connection with any agency function. Every agency shall proceed with reasonable dispatch to conclude any matter presented to it, except that due regard shall be had for the convenience and necessity of the parties or their representatives. Nothing herein shall be construed either to grant or to deny to any person who is not a lawyer the right to appear for or represent others before any agency or in any agency proceeding.

"(b) Investigations: No process, requirement of a report, inspection, or other investigative act or demand shall be issued, made, or enforced in any manner or for any purpose except as authorized by law. Every person compelled to submit data or evidence shall be entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

"(c) Subpenas: Agency subpenas authorized by law shall be issued to any party upon request and, as may be required by rules of procedure, upon a statement or showing of general relevance and reasonable scope of the evidence sought. Upon contest the court shall sustain any such subpoena or similar process or demand to the extent that it is found to be in accordance with law and, in any proceeding for enforcement, shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of contumacious failure to comply.

"(d) Denials: Prompt notice shall be given of the denial in whole or in part of any written application, petition, or other request of any interested person made in connection with any agency proceeding. Except in affirming a prior denial or where the denial is self-explanatory, such notice shall be accompanied by a simple statement of procedural or other grounds.

#### "HEARINGS

"SEC. 7. In hearings which section 4 or 5 requires to be conducted pursuant to this section—

"(a) Presiding officers: There shall preside at the taking of evidence (1) the agency, (2) one or more members of the body which comprises the agency, or (3) one or more examiners appointed as provided in this act; but nothing in this act shall be deemed to supersede the conduct of specified classes of proceedings in whole or part by or before boards or other officers specially provided for by or designated pursuant to statute. The functions of all presiding officers and of officers participating in decisions in conformity with section 8 shall be conducted in an impartial manner. Any such officer may at any time withdraw if he deems himself disqualified; and, upon the filing in good faith of a timely and sufficient affidavit of personal bias or disqualification of any such officer, the agency shall determine the matter as a part of the record and decision in the case.

"(b) Hearing powers: Officers presiding at hearings shall have authority, subject to the published rules of the agency and within its powers, to (1) administer oaths and affirmations, (2) issue subpoenas authorized by law, (3) rule upon offers of proof and receive relevant evidence, (4) take or cause depositions to be taken whenever the ends of justice would be served thereby, (5) regulate the course of the hearing, (6) hold conferences for the settlement or simplification of the issues by consent of the parties, (7) dispose of procedural requests or similar matters, (8) make decisions or recommend decisions in conformity with section 8, and (9) take any other action authorized by agency rule consistent with this act.

"(c) Evidence: Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence.

Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses any agency may, where the interest of any party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

“(d) Record: The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision in accordance with section 8 and, upon payment of lawfully prescribed costs, shall be made available to the parties. Where any agency decision rests on official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an opportunity to show the contrary.

#### “DECISIONS

“SEC. 8. In cases in which a hearing is required to be conducted in conformity with section 7—

“(a) Action by subordinates: In cases in which the agency has not presided at the reception of the evidence, the officer who presided (or, in cases not subject to subsection (c) of section 5, any other officer or officers qualified to preside at hearings pursuant to section 7) shall initially decide the case or the agency shall require (in specific cases or by general rule) the entire record to be certified to it for initial decision. Whenever such officers make the initial decision and in the absence of either an appeal to the agency or review upon motion of the agency within time provided by rule, such decision shall without further proceedings then become the decision of the agency. On appeal from or review of the initial decisions of such officers the agency shall, except as it may limit the issues upon notice or by rule, have all the powers which it would have in making the initial decision. Whenever the agency makes the initial decision without having presided at the reception of the evidence, such officers shall first recommend a decision except that in rule making or determining applications for initial licenses (1) in lieu thereof the agency may issue a tentative decision or any of its responsible officers may recommend a decision or (2) any such procedure may be omitted in any case in which the agency finds upon the record that due and timely execution of its function imperatively and unavoidably so requires.

“(b) Submittals and decisions: Prior to each recommended, initial, or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions of subordinate officers or to tentative agency decisions, and (3) supporting reasons for such exceptions or proposed findings or conclusions. The record shall show the ruling upon each such finding, conclusion, or exception presented. All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof.

#### “SANCTIONS AND POWERS

“SEC. 9. In the exercise of any power or authority—

“(a) In general: No sanction shall be imposed or substantive rule or order be issued except within jurisdiction delegated to the agency and as authorized by law.

“(b) Licenses: In any case in which application is made for a license required by law the agency, with due regard to the rights or privileges of all the interested parties or adversely affected persons and with reasonable dispatch, shall set and complete any proceedings required to be conducted pursuant to sections 7 and 8 of this act or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, no withdrawal, suspension, revocation, or annulment of any license shall be lawful unless, prior to the institution of agency proceedings therefor, facts or conduct which may warrant such action shall have been called to the attention of the licensee by the agency in writing and the licensee shall have been accorded opportunity to demonstrate or achieve compliance with all

lawful requirements. In any case in which the licensee has, in accordance with agency rules, made timely and sufficient application for a renewal or a new license, no license with reference to any activity of a continuing nature shall expire until such application shall have been finally determined by the agency.

#### "JUDICIAL REVIEW

"Sec. 10. Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—

"(a) Right of review: Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

"(b) Form and venue of action: The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. Agency action shall be subject to judicial review in civil or criminal proceedings for judicial enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.

"(c) Reviewable acts: Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final shall be final for the purposes of this subsection whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency otherwise requires by rule and provides that the action meanwhile shall be inoperative) for an appeal to superior agency authority.

"(d) Interim relief: Pending judicial review any agency is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, every reviewing court (including every court to which a case may be taken on appeal from or upon application for certiorari or other writ to a reviewing court) is authorized to issue all necessary and appropriate process to postpone the effective date of any agency action or to preserve status or rights pending conclusion of the review proceedings.

"(e) Scope of review: So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency herein provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

#### "EXAMINERS

"Sec. 11. Subject to the civil-service and other laws to the extent not inconsistent with this act, there shall be appointed by and for each agency as many qualified and competent examiners as may be necessary for proceedings pursuant to sections 7 and 8, who shall be assigned to cases in rotation so far as practicable and shall perform no duties inconsistent with their duties and responsibilities as examiners. Examiners shall be removable by the agency in which they are employed only for good cause established and determined by the Civil Service Commission (hereinafter called the Commission) after opportunity for hearing and upon the record thereof. Examiners shall receive compensation prescribed by the Commission independently of agency recommendations or

ratings and in accordance with the Classification Act of 1923, as amended, except that the provisions of paragraphs (2) and (3) of subsection (b) of section 7 of said act, as amended, and the provisions of section 9 of said act, as amended, shall not be applicable. Agencies occasionally or temporarily insufficiently staffed may utilize examiners selected by the Commission from and with the consent of other agencies. For the purposes of this section, the Commission is authorized to make investigations, require reports by agencies, issue reports, including an annual report to the Congress, promulgate rules, appoint such advisory committees as may be deemed necessary, recommend legislation, subpoena witnesses or records, and pay witness fees as established for the United States courts.

"CONSTRUCTION AND EFFECT"

"SEC. 12. Nothing in this act shall be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. If any provision of this act or the application thereof is held invalid, the remainder of this act or other application of such provision shall not be affected. Every agency is granted all authority necessary to comply with the requirements of this act through the issuance of rules or otherwise. No subsequent legislation shall be held to supersede or modify the provisions of this act except to the extent that such legislation shall do so expressly. This act shall take effect 3 months after its approval except that sections 7 and 8 shall take effect 6 months after such approval, the requirement of the selection of examiners pursuant to section 11 shall not become effective until 1 year after such approval, and no procedural requirement shall be mandatory as to any agency proceeding initiated prior to the effective date of such requirement."

Mr. SUMNERS of Texas (during the reading of the amendment). Mr. Chairman, I ask unanimous consent that the further reading of the amendment may be dispensed with; that it be printed in the Record; and that any section of it may be subject to amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. KEFAUVER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Kefauver: On page 30, line 15, after the period, insert "any member of the bar who is in good standing and who has been admitted to the bar of the Supreme Court of the United States or of the highest court of the State of his or her residence shall be eligible to practice before any agency: *Provided, however.* That an agency shall for good cause be authorized by order to suspend or deny the right to practice before such agency."

Mr. KEFAUVER. Mr. Chairman, I discussed this amendment a few minutes ago. I think this is an important question which we ought to settle now. This bill has to go to conference and some changes will have to be made. I do not see how there can be very much objection to the inclusion of some provision relative to the establishment of a uniform system of practicing before the agencies. As the situation now exists, some agencies permit laymen to practice; some permit lawyers; some few agencies require a person to register and be introduced. I think in one or two agencies they require a person to take some kind of an examination before being admitted. In this country there is no reason in the practice before the agencies of the United States Government why a member of the bar who is in good standing and who has been admitted to the Supreme Court of the United States or to the highest court in his or her State of residence should not *prima facie* be eligible to practice before any agency of the Government.

Mr. GWYNNE of Iowa. Mr. Chairman, will the gentleman yield?

Mr. KEFAUVER. I yield.

Mr. GWYNNE of Iowa. Is that not provided for in section 6? The appearance is there provided for. Someone who is a lawyer and also someone who is not a lawyer.

Mr. KEFAUVER. I will say to the gentleman I have studied section 6 with that in mind. I think in the committee that we really intended to let the person choose his own lawyer to go with him before the agency and that every lawyer in good standing should be accepted. But we still do not say that that agency shall be required to accept him, if he is in good standing in the State of his residence or that he is entitled to practice. The agencies still might have artificial barriers or rules which would keep him from practicing. I think this should be included so that when the matter goes to conference it can be ironed out if my proposal is not entirely acceptable.

Mr. MAY. Mr. Chairman, will the gentleman yield?

Mr. KEFAUVER. I yield.

Mr. MAY. I believe that any man who holds a license to practice law in any State ought to be eligible to practice before these agencies. I am afraid the gentleman's amendment would limit it to those who are authorized to practice before the supreme court, or the court of final resort in the State in which he lives. There are many members of the bar who are admitted to practice in the State who have not been admitted to practice before the supreme court of their own State.

Mr. KEFAUVER. Of course, if they are entitled to practice before the Supreme Court of Kentucky, they would not have to be admitted to practice before the Supreme Court of the United States before they could practice before the agency. I do not think this is too much of a requirement to ask of these people, to say that they be admitted to practice in the highest court in their State. Of course, if the agency now admits laymen or licensed lawyers who have not been admitted to the Supreme Court of the United States or to their State supreme court to practice before the agency they would continue to do so. This amendment does not say that only certain lawyers shall be so entitled. It only provides for a class who shall have an absolute right to practice. If the agency allows others, they would not be excluded by this amendment.

Notice, also, the amendment gives the agency a right to suspend or deny the right if it has good reason for so doing such as misconduct or unethical methods.

Mr. HANCOCK. Mr. Chairman, will the gentleman yield?

Mr. KEFAUVER. I yield to the gentleman from New York, who has introduced legislation heretofore to cover this point.

Mr. HANCOCK. I did, in the Seventy-eighth and again in the Seventy-ninth Congress. I know it is controversial. I dislike to jeopardize this bill by putting on an amendment which I regard as controversial, which may possibly cause delay, and may defeat the bill. I have heard from a number of these agencies and departments downtown strongly opposed to my bill. Let us bring that out as a separate proposition. Let us have hearings on it and let us come to the House with that definition. Let us not muddy up the waters on this bill. We have got this bill in shape to be passed and approved by the President and to become law. I am very much opposed to the gentleman's amendment, although I proposed it myself as a separate bill.

Mr. KEFAUVER. I do not think there is anything so complicated about it that it cannot be worked out in conference. Perhaps this is not exactly the right language but there should not be difficulty in working out a satisfactory provision.

Mr. DONDERO. Mr. Chairman, will the gentleman yield?

Mr. KEFAUVER. I yield.

Mr. DONDERO. I was impressed with the gentleman's amendment, but I rose to ask this question: What happens in the case of an attorney admitted to the bar within the District of Columbia but who has no certificate either before the highest court of the State of his residence or of the United States Supreme Court?

Mr. KEFAUVER. Of course, members of the bar of the District of Columbia are usually members of the United States Supreme Court. If they are not they could still practice before the agencies if they can now.

Mr. DONDERO. They must be admitted here?

Mr. KEFAUVER. Yes.

The CHAIRMAN. The time of the gentleman from Tennessee has expired.

Mr. FORAND. Mr. Chairman, I ask unanimous consent that the gentleman may have 5 additional minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Rhode Island?

Mr. WALTER. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

Mr. WALTER. Mr. Chairman, I rise in opposition to the amendment.

It is indeed unfortunate that the gentleman from Tennessee (Mr. Kefauver) brings up this very important and complicated question at this late moment. After all, the committee having this measure under consideration for many months, considered all phases of this problem. As the distinguished gentleman from New York (Mr. Hancock), has said, what the gentleman from Tennessee (Mr. Kefauver), proposes is something that should be the subject matter of separate legislation.

I would like to call the attention of the House to the language with respect to eligibility:

Every member shall be accorded the right to appear in person or by or with counsel—

Now that is mandatory—

or other duly qualified representative in any agency proceeding.

It certainly seems to me that anyone duly qualified may under this language appear to practice before any agency; and I am afraid that if we set up the standards suggested by the gentleman from Tennessee that instead of making it necessary for an agency to permit anyone duly qualified to appear, we might exclude people who have for the purpose of particular litigation been retained.

Mr. MATTHEWS. Mr. Chairman, will the gentleman yield?

Mr. WALTER. I yield.

Mr. MATTHEWS. I am interested to know the gentleman's own definition of the word "counsel." It seems to me it might not be limited to legal counsel, or it might include legal counsel and something else.

Mr. WALTER. The gentleman has suggested one of the fields into which we might well stray. What the committee meant by that was a member of the bar.

Mr. MATTHEWS. The bill does not say so.

Mr. FORAND. Mr. Chairman, will the gentleman yield?

Mr. WALTER. I yield.

Mr. FORAND. Is it the intent of the committee that because a person is not a member of the bar he would not be permitted to appear before an agency?

Mr. WALTER. Of course not, and we say so in the bill. We have taken care of certified public accountants and other experts who have been practicing for years before particular agencies.

Mr. FORAND. In other words, they need not be lawyers.

Mr. WALTER. That is right.

Mr. SUMNERS of Texas. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, I very much hope we will not adopt this proposed amendment. It is now demonstrated that it is highly controversial.

This bill has been worked on for a very long time. Many, many groups of people have contributed and are tremendously interested in it, the whole country is and I know most of us on the committee hope we can vote this bill out without amendment and let it go back to the Senate where there is every reason to expect the final act of its congressional progress will be completed, the President will sign it, and it will be a part of the law of the land.

Mr. JENNINGS. Mr. Chairman, I rise in opposition to the pro forma amendment.

Mr. Chairman, with all due deference to my distinguished and learned friend from Tennessee, I am inclined to believe that his amendment is tantamount to throwing a monkey wrench into the machinery, putting sand in the bearings, and water in the gasoline. As I recall, when this measure was before the committee the gentleman did not suggest this amendment.

It reminds me of the old fellow with whom I was boarding once when I was teaching school who had been in the legislature, and he was so entranced with his experience in that body that I really believe that if he had been standing on the threshold of the new Jerusalem and were about to be ushered in and somebody had offered him another seat in the Tennessee Legislature he would have turned his back on paradise and gone back to the legislature.

Mr. KEFAUVER. Mr. Chairman, will the gentleman yield?

Mr. JENNINGS. No; not now; I am not in a yielding mood.

He once asked me this question, "If you were a member of the legislature and wanted to kill a bill, what would you do to kill it?"

"Well," I said, "I would make a speech against it; I would talk to my colleagues and suggest the reasons why it should be rejected and try to get them to help me kill it."

"Oh," he said, "you don't know how to kill a bill."

I asked, "Uncle John, what would you do?" He said, "Introduce an amendment to kill the constitutionality of the bill."

My friend here has used this method to stop the passage of this long-needed legislation by offering an amendment that will make it obnoxious and perhaps lead to its veto by the President.



Let us vote down the amendment offered by my good friend from Tennessee.

Mr. SABATH. Mr. Chairman, I move to strike out the last two words.

Mr. Chairman, the gentleman who just preceded me criticized the gentleman from Tennessee because he did not appear before the Judiciary Committee and offer his amendment.

Mr. KEFAUVER. Mr. Chairman, will the gentleman yield?

Mr. SABATH. I yield.

Mr. KEFAUVER. I tried to get my friend from Tennessee to yield to say that for many years along with the gentleman from New York, [Mr. Hancock], I have had bills pending on this very matter. I happen to be a member of the subcommittee and talked about this proposal with the chairman of the subcommittee. The gentleman from Tennessee not being a member of the committee, of course, would not know that, and I am sorry that he opposes the amendment.

Mr. SABATH. Mr. Chairman, I am not a member of the committee that reported this splendid bill which I believe should pass by unanimous vote. However, I have great respect for and confidence in the the gentleman from Tennessee. If he has not been before the Judiciary Committee and did not offer this amendment to that committee, it must be the only committee he did not appear before asking for legislation which he believes is in the interest of the people. He is a most active member, he possesses great intelligence and ability and deserves the appreciation of the Members of this House. I therefore regret that the gentleman who preceded me should criticize and make point of the fact that the gentleman from Tennessee was not present and did not offer the amendment. He appears before the Rules Committee very often, perhaps more often than any other member, and every time he comes before that committee he appears in the interest of legislation that is for the benefit of the masses, in the interest of good government, and in the interest of good administration.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Tennessee [Mr. Kefauver] to the committee amendment.

The amendment to the committee amendment was rejected.

Mr. WALTER. Mr. Chairman, on page 28 there is a typographical error. In line 3, after the word "the" the word "selfection" should be changed to "selection;" I ask unanimous consent that the correction be made.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. WALTER. Mr. Chairman, on page 34, line 5, the section should be (d), not (b). I ask unanimous consent that that correction be made.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The CHAIRMAN. The question is on the committee amendment.

The committee amendment was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the committee rose; and the Speaker having resumed the chair, Mr. Smith of Virginia, Chairman of the Committee of the

Whole House on the State of the Union, reported that that committee having had under consideration the bill (S. 7) to improve the administration of justice by prescribing fair administrative procedure, pursuant to House Resolution 615, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

The question is on the amendment.

The amendment was agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the bill.

The bill was passed.

A motion to reconsider was laid on the table.

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EXTENSION OF REMARKS OF HON. SAM HOBBS OF ALABAMA  
IN THE HOUSE OF REPRESENTATIVES

*Saturday, May 25, 1946*

Mr. HOBBS. Mr. Speaker, the leadership of the great chairman of the House Committee on the Judiciary, Hon. Hatton W. Sumners, has again been demonstrated in the history of the pending measure. He has worked with everyone of those who have been interested for the last 10 years. Several of the bills that have been precursors of the present one have been introduced by him. His sage advice and his encouraging example have been helpful throughout the long fight.

The letter from Attorney General Clark, of October 19, 1945, while referring specifically to one of Judge Sumners' bills, needs only one slight change to make it apply perfectly to the bill of the moment. That change is: the reference to section 3 (a) (4) should read 3 (a) (3), since the latest amendments of the House Committee.

With such change in mind the letter speaks as of today, and it is so helpful that I take pleasure in including it as the major part of these remarks:

OFFICE OF THE ATTORNEY GENERAL,  
*Washington, D. C., October 19, 1945.*

HON. HATTON SUMNERS,  
*Chairman, House Judiciary Committee, House of Representatives,  
Washington, D. C.*

MY DEAR MR. CHAIRMAN: You have asked me to comment on the substitute draft of H. R. 1203, a bill to improve the administration of justice by prescribing fair administrative procedure, in the form in which it appears in the revised committee print issued October 5, 1945, and referred to in your recent letter.

I appreciate the opportunity to comment on this proposed legislation.

For more than a decade there has been pending in the Congress legislation in one form or another designed to deal horizontally with the subject of administrative procedure, so as to overcome the confusion which inevitably has resulted from leaving to basic agency statutes the prescription of the procedures to be followed or, in many instances, the delegation of authority to

agencies to prescribe their own procedure. Previous attempts to enact general procedural legislation have been unsuccessful generally because they failed to recognize the significant and inherent differences between the tasks of courts and those of administrative agencies or because, in their zeal for simplicity and uniformity, they proposed too narrow and rigid a mold.

Nevertheless, the goal toward which these efforts have been directed is, in my opinion, worth while. Despite difficulties of draftsmanship, I believe that over-all procedural legislation is possible and desirable. The administrative process is now well developed. It has been subject in recent years to the most intensive and informed study—by various congressional committees, by the Attorney General's Committee on Administrative Procedure, by organizations such as the American Bar Association, and by many individual practitioners and legal scholars. We have in general—as we did not have until fairly recently—the materials and facts at hand. I think the time is ripe for some measure of control and prescription by legislation. I cannot agree that there is anything inherent in the subject of administrative procedures, however complex it may be, which defies workable codification.

Since the original introduction of H. R. 1203, I understand that opportunity has been afforded to public and private interests to study its provisions and to suggest amendments. The agencies of the Government primarily concerned have been consulted and their views considered. In particular, I am happy to note that your committee and the Senate Committee on the Judiciary, in an effort to reconcile the views of the interested parties, have consulted officers of this Department and experts in administrative law made available by this Department.

The revised committee print issued October 5, 1945, seems to me to achieve a considerable degree of reconciliation between the views expressed by the various Government agencies and the views of the proponents of the legislation. The bill in its present form requires administrative agencies to publish or make available to the public an increased measure of information concerning their organization, functions, and procedures. It gives to that portion of the public which is to be affected by administrative regulations an opportunity to express its views before the regulations become effective. It prescribes, in instances in which existing statutes afford opportunity for hearing in connection with the formulation and issuance of administrative rules and orders, the procedures which shall govern such hearings. It provides for the selection of hearing officers on a basis designed to obtain highly qualified and impartial personnel and to insure their security of tenure. It also restates the law governing judicial review of administrative action.

The bill appears to offer a hopeful prospect of achieving reasonable uniformity and fairness in administrative procedures without at the same time interfering unduly with the efficient and economical operation of the Government. Insofar as possible, the bill recognizes the needs of individual agencies by appropriate exemption of certain of their functions.

After reviewing the committee print, therefore, I have concluded that this Department should recommend its enactment.

My conclusion as to the workability of the proposed legislation rests on my belief that the provisions of the bill can and should be construed reasonably and in a sense which will fairly balance the requirements and interests of private persons and governmental agencies. I think it may be advisable for me to attach to this report an appendix discussing the principal provisions of the bill. This may serve to clarify some of the essential issues, and may assist the committee in evaluating the impact of the bill on public and private interests.

I am advised by the Acting Director of the Bureau of the Budget that while there would be no objection to the submission of this report, he questions the appropriateness of the inclusion of the words "independently of agency recommendations or ratings," appearing after the words "Examiners shall receive compensation prescribed by the [Civil Service] Commission" in section 11 of the bill, inasmuch as he deems it highly desirable that agency recommendations and ratings be fully considered by the Commission.

With kind personal regards.

Sincerely yours,

TOM CLARK,  
*Attorney General.*

APPENDIX TO ATTORNEY GENERAL'S STATEMENT REGARDING REVISED COMMITTEE PRINT  
OF OCTOBER 5, 1945

Section 2: The definitions given in section 2 are of very broad character. It is believed, however, that this scope of definition will not be found to have any unexpected or unfortunate consequences in particular cases, inasmuch as the operative sections of the act are themselves carefully limited.

"Courts" includes the Tax Court, Court of Customs and Patent Appeals, the Court of Claims, and similar courts. This act does not apply to their procedure nor affect the requirement of resort thereto.

In section 2 (a) the words "agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them" are intended to refer to the following, among others: National War Labor Board and the National Railroad Adjustment Board.

In section 2 (c) the phrase "the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances," etc., is not, of course, intended to be an exhaustive enumeration of the types of subject matter of rule making. Specification of these particular subjects is deemed desirable, however, because there is no unanimity of recognition that they are, in fact, rule making. The phrase "for the future" is designed to differentiate, for example, between the process of prescribing rates for the future and the process of determining the lawfulness of rates charged in the past. The latter, of course, is "adjudication" and not "rule making." (*Arizona Grocery Co. v. Atchison, Topeka, and Santa Fe Railway Co.* (284 U. S. 379).)

The definitions of "rule making" and "adjudication," set forth in subsections (c) and (d) of section 2, are especially significant. The basic scheme underlying this legislation is to classify all administrative proceedings into these two categories. The pattern is familiar to those who have examined the various proposals for administrative procedure legislation which have been introduced during the past few years; it appears also in the recommendations of the Attorney General's Committee on Administrative Procedure. Proceedings are classed as rule making under this act not merely because, like the legislative process, they result in regulations of general applicability but also because they involve subject matter demanding judgments based on technical knowledge and experience. As defined in subsection (c), for example, rule making includes not only the formulation of rules of general applicability, but also the formulation of agency action whether of general or particular applicability, relating to the types of subject matter enumerated in subsection (c). In many instances of adjudication, on the other hand, the accusatory element is strong, and individual compliance or behavior is challenged; in such cases, special procedural safeguards should be provided to insure fair judgments on the facts as they may properly appear of record. The statute carefully differentiates between these two basically different classes of proceedings so as to avoid, on the one hand, too cumbersome a procedure and to require, on the other hand, an adequate procedure.

Section 3: This section applies to all agencies covered by the act, including war agencies and war functions. The exception of any function of the United States requiring secrecy in the public interest is intended to cover (in addition to military, naval, and foreign affairs functions) the confidential operations of the Secret Service, the Federal Bureau of Investigation, United States attorneys, and other prosecuting agencies, as well as the confidential functions of any other agency.

Section 3 (a), by requiring publication of certain classes of information in the Federal Register, is not intended to repeal the Federal Register Act (44 U. S. C. 301, et seq.) but simply to require the publication of certain additional material.

Section 3 (a) (4) is intended to include (in addition to substantive rules) only such statements of general policy or interpretations as the agency believes may be formulated with a sufficient degree of definiteness and completeness to warrant their publication for the guidance of the public.

Section 3 (b) is designed to make available all final opinions or orders in the adjudication of cases. Even here material may be held confidential if the agency finds good cause. This confidential material, however, should not be cited as a precedent. If it is desired to rely upon the citation of confidential material, the agency should first make available some abstract of the confidential material in such form as will show the principles relied upon without revealing the confidential facts.

Section 3 (c) is not intended to open up Government files for general inspection. What is intended is that the agencies, to the degree of specificity practicable, shall classify its material in terms of whether or not it is confidential in character and shall set forth in published rules the information or type of material which is confidential and that which is not.

Section 4. The term "naval" in the first exception clause is intended to include the defense functions of the Coast Guard and the Bureau of Marine Inspection and Navigation.

Section 4 (b), in requiring the publication of a concise general statement of the basis and purpose of rules made without formal hearing, is not intended to require an elaborate analysis of rules or of the detailed considerations upon which they are based, but is designed to enable the public to obtain a general idea of the purpose of, and a statement of the basic justification for, the rules. The requirement would also serve much the same function as the whereas clauses which are now customarily found in the preambles of Executive orders.

Section 4 (c) : This subsection is not intended to hamper the agencies in cases in which there is good cause for putting a rule into effect immediately, or at some time earlier than 30 days. The section requires, however, that where an earlier effective date is desired the agency should make a finding of good cause therefore and publish its finding along with the rule.

Section 4 (d) simply permits any interested person to petition an agency for the issuance, amendment, or repeal of a rule. It requires the reception and consideration of petitions, but does not compel an agency to undertake any rule-making procedure merely because a petition is filed.

SEC. 5. Subject to the six exceptions set forth at the commencement of the section, section 5 applies to administrative adjudications "required by statute to be determined on the record after opportunity for an agency hearing." It is thus limited to cases in which the Congress has specifically required a certain type of hearing. The section has no application to rule making, as defined in section 2 (c). The section does apply, however, to licensing with the exception that section 5 (e), relating to the separation of functions, does not apply in determining applications for initial licenses, i. e., original licenses as contradistinguished from renewals or amendments of existing licenses.

If a case falls within one of the six exceptions listed at the opening of section 5, no provision of section 5 has any application to that case; such a case would be governed by the requirements of other existing statutes.

The first exception is intended to exempt, among other matters, certain types of reparation orders assessing damages, such as are issued by the Interstate Commerce Commission and the Secretary of Agriculture, since such orders are admissible only as prima facie evidence in court upon attempted enforcement proceedings or (at least in the case of reparation orders issued by the Secretary of Agriculture under the Perishable Agricultural Commodities Act) on the appeal of the losing party. Reparation orders involving in part an administrative determination of the reasonableness of rates in the past so far as they are not subject to trial de novo would be subject to the provisions of section 5 generally but they have been specifically exempted from the segregation provisions of section 5 (c). In the fourth exception the term "naval" is intended to include adjudicative defense functions of the Coast Guard and the Bureau of Marine Inspection and Navigation, where such functions pertain to national defense.

Section 5 (a) is intended to state minimum requirements for the giving of notice to persons who under existing law are entitled to notice of an agency hearing in a statutory adjudication. While in most types of proceedings all of the information required to be given in clauses (1), (2), and (3) may be included in the "notice of hearing" or other moving paper, in many instances the agency or other moving party may not be in position to set forth all of such information in the moving paper, or perhaps not even in advance of the hearing, especially the "matters of fact and law asserted." The first sentence of this subsection merely requires that the information specified should be given as soon as it can be set forth and, in any event, in a sufficiently timely manner as to afford those entitled to the information an adequate opportunity to meet it. The second sentence complements the first and requires agencies and other parties promptly to reply to moving papers of private persons or permits agencies to require responsive pleading in any proceedings.

Section 5 (c) applies only to the class of adjudicatory proceedings included within the scope of section 5, i. e., cases of adjudication required by statute to be determined after opportunity for an agency hearing, and then not falling within one of the six excepted situations listed at the opening of section 5. As explained

in the comments with respect to section 5 generally, this subsection does not apply either in proceedings to determine applications for initial licenses or in those to determine the reasonableness of rates in the past.

In the cases to which this subsection is applicable, if the informal procedures described in section 5 (b) (1) are not appropriate or have failed, a hearing is to be held as provided in sections 7 and 8. At such hearing the same officers who preside at the reception of evidence pursuant to section 7 shall make the recommended decision or initial decision "required by section 8" except where such officers become unavailable to the agency. The reference to section 8 is significant. Section 8 (a) provides that, in cases in which the agency has not presided at the reception of the evidence, the officer who presided (or, in cases not subject to subsec. (c) of sec. 5, an officer or officers qualified to preside at hearings pursuant to sec. 7) shall make the initial or recommended decision, as the case may be. It is plain, therefore, that in cases subject to section 5 (c) only the officer who presided at the hearing (unless he is unavailable for reasons beyond the agency's control) is eligible to make the initial or recommended decision, as the case may be.

This subsection further provides that in the adjudicatory hearings covered by it no presiding officer shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate (except to the extent required for the disposition of ex parte matters as authorized by law). The term "fact in issue" is used in its technical, litigious sense.

In most of the agencies which conduct adjudicative proceedings of the types subject to this subsection, the examiners are placed in organizational units apart from those to which the investigative or prosecuting personnel are assigned. Under this subsection such an arrangement will become operative in all such agencies. Further, in the adjudicatory cases covered by section 5 (c), no officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency in any case shall, in that or a factually related case, participate or advise in the decision, recommended decision or agency review pursuant to section 8 except as witness or counsel in public proceedings. However, section 5 (c) does not apply to the agency itself or, in the case of a multi-headed agency, any member thereof. It would not preclude, for example, a member of the Interstate Commerce Commission personally conducting or supervising an investigation and subsequently participating in the determination of the agency action arising out of such investigation.

Section 5 (c), applying as it does only to cases of adjudication (except determining applications for initial licenses or determining reasonableness of rates in the past) within the scope of section 5 generally, has no application whatever to rule making, as defined in section 2 (c). As explained in the comment on section 2 (c), rule making includes a wide variety of subject matters, and within the scope of those matters it is not limited to the formulation of rules of general applicability but includes also the formulation of agency action whether of general or particular application, for example, the reorganization of a particular company.

Section 5 (d): Within the scope of section 5 (i. e., in cases of adjudication required by statute to be determined on the record after opportunity for an agency hearing, subject to certain exceptions) the agency is authorized to issue a declaratory order to terminate a controversy or remove uncertainty. Where declaratory orders are found inappropriate to the subject matter, no agency is required to issue them.

Section 6: Subsection (a), in stating a right of appearance for the purpose of settling or informally determining the matter in controversy, would not obtain if the agency properly determines that the responsible conduct of public business does not permit. It may be necessary, for example, to set the matter down for public hearing without preliminary discussion because a statute or the subject matter or the special circumstances so require.

It is not intended by this provision to require the agency to give notice to all interested persons, unless such notice is otherwise required by law.

This subsection does not deal with, or in any way qualify, the present power of an agency to regulate practice at its bar. It expressly provides, moreover, that nothing in the act shall be construed either to grant or to deny the right of non-lawyers to appear before agencies in a representative capacity. Control over this matter remains in the respective agencies.

Section 6 (b): The first sentence states existing law. The second sentence is new.

Section 6 (c) : The first sentence entitles a party to a subpoena upon a statement or showing of general relevance and reasonable scope of the evidence sought. The second sentence is intended to state the existing law with respect to the judicial enforcement of subpoenas.

Section 6 (d) : The statement of grounds required herein will be very simple, as contrasted with the more elaborate findings which are customarily issued to support an order.

Section 7 : This section applies in those cases on statutory hearing which are required by sections 4 and 5 to be conducted pursuant to section 7. Subject to the numerous exceptions contained in sections 4 and 5, they are cases in which an order or rule is to be made upon the basis of the record in a statutory hearing.

Section 7 (a) : The subsection is not intended to disturb presently existing statutory provisions which explicitly provide for certain types of hearing officers. Among such are (1) joint hearings before officers of the Federal agencies and persons designated by one or more States, (2) where officers of more than one agency sit, (3) quota allotment cases under the Agricultural Adjustment Act of 1938, (4) Marine Casualty Investigation Boards, (5) registers of the General Land Office, (6) special boards set up to review the rights of disconnected servicemen (38 U. S. C. 693h) and the rights of veterans to special unemployment compensation (38 U. S. C. 69h), and (7) boards of employees authorized under the Interstate Commerce Act (49 U. S. C. 17 (2)).

Subject to this qualification, section 7 (a) requires that there shall preside at the taking of evidence one or more examiners appointed as provided in this act, unless the agency itself or one or more of its members presides. This provision is one of the most important provisions in the act. In many agencies of the Government this provision may mean the appointment of a substantial number of hearing officers having no other duties. The resulting expense to the Government may be increased, particularly in agencies where hearings are now conducted by employees of a subordinate status or by employees having duties in addition to presiding at hearings. On the other hand, it is contemplated that the Civil Service Commission, which is empowered under the provisions of section 11 to prescribe salaries for hearing officers, will establish various salary grades in accordance with the nature and importance of the duties performed, and will assign those in the lower grades to duties now performed by employees in the lower brackets. It may also be possible for the agencies to reorganize their staffs so as to permit the appointment of full-time hearing officers by reducing the number of employees engaged on other duties.

This subsection further provides for withdrawal or removal of examiners disqualified in a particular proceeding. Some of the agencies have voiced concern that this provision would permit undue delay in the conduct of their proceedings because of unnecessary hearings or other procedure to determine whether affidavits of bias are well founded. The provision does not require hearings in every instance but simply requires such procedure, formal or otherwise, as would be necessary to establish the merits of the allegations of bias. If it is manifest that the charge is groundless, there may be prompt disposition of the matter. On the other hand, if the affidavit appears to have substance, it should be inquired into. In any event, whatever procedure the agency deems appropriate must be made a part of the record in the proceeding in which the affidavit is filed.

Section 7 (b) : The agency may delegate to a hearing officer any of the enumerated powers with which it is vested. The enumeration of the powers of hearing officers is not intended to be exclusive.

Section 7 (c) : The first sentence states the customary rule that the proponent of a rule or order shall have the burden of proof. Statutory exceptions to the rule are preserved. Parties shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts. This is not intended to disturb the existing practice of submitting technical written reports, summaries, and analyses of material gathered in field surveys, and other devices appropriately adapted to the particular issues involved in specialized proceedings. Whether the agency must in such cases produce the maker of the report depends, as it does under the present law, on what is reasonable in all the circumstances.

It may be noted that agencies are empowered, in this subsection, to dispense with oral evidence only in the types of proceedings enumerated; that is, in instances in which normally it is not necessary to see and hear the witnesses in order properly to appraise the evidence. While there may be types of proceedings other than those enumerated in which the oral testimony of the witnesses is not

essential, in such instances the parties generally consent to submission of the evidence in written form so that the inability of the agency to compel submission of written evidence would not be burdensome.

The provision regarding evidence in written form does not limit the generality of the prevailing principle that any evidence may be received; that is, that the rules of evidence as such are not applicable in administrative proceedings, and that all types of pertinent evidentiary material may be considered. It is assumed, of course, that agencies will, in the words of the Attorney General's Committee on Administrative Procedure, rely only on such evidence (whether written or oral) as is relevant, reliable, and probative. This is meant as a guide, but the courts in reviewing an order are governed by the provisions of section 10 (e), which states the substantial evidence rule.

Section 7 (d): The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision, in the cases covered by section 7. This follows from the proposition that sections 7 and 8 deal only with cases where by statute the decision is to be based on the record of hearing. Further, section 7 is limited by the exceptions contained in the opening sentences of sections 4 and 5; accordingly, certain special classes of cases, such as those where decisions rest solely on inspections, tests, or elections, are not covered. The second sentence of the subsection enables the agency to take official notice of material facts which do not appear in the record, provided the taking of such notice is stated in the record or decision, but in such cases any party affected shall, on timely request, be afforded an opportunity to show the contrary.

Section 8: This section applies to all hearings held under section 7.

Section 8 (a): Under this subsection either the agency or a subordinate hearing officer may make the initial decision. As previously observed with respect to subsection (c) of section 5, in cases to which that subsection is applicable the same officer who personally presided over the hearing shall make such decision if it is to be made by a subordinate hearing officer. The agency may provide that in all cases the agency itself is to make the initial decision, or after the hearing it may remove a particular case from a subordinate hearing officer and thereupon make the initial decision. The initial decision of the hearing officer, in the absence of appeal to or review by the agency, is (or becomes) the decision of the agency. Upon review the agency may restrict its decision to questions of law, or to the question of whether the findings are supported by substantial evidence or the weight of evidence, as the nature of the case may be. On the other hand, it may make entirely new findings either upon the record or upon new evidence which it takes. It may remand the matter to the hearing officer for any appropriate further proceedings.

The intention underlying the last sentence of this subsection is to require the adoption of a procedure which will give the parties an opportunity to make their contentions to the agency before the issuance of a final agency decision. This sentence states as a general requirement that, whenever the agency makes the initial decision without having presided at the reception of the evidence, a recommended decision shall be filed by the officer who presided at the hearing (or, in cases not subject to section 5 (c), by any other officer qualified to preside at section 7 hearings). However, this procedure need not be followed in rule making or in determining applications for initial licenses—(1) if, in lieu of a recommended decision by such hearing officer, the agency issues a tentative decision; (2) if, in lieu of a recommended decision by such hearing officer, a recommended decision is submitted by any of the agency's responsible officers; or (3) if, in any event, the agency makes a record finding that "due and timely execution of its function imperatively and unavoidably so requires."

Subsection (c) of section 5, as explained in the comments on that subsection, does not apply to rule making. The broad scope of rule making is explained in the notes to subsection (c) of section 2.

The second exception permits, in proceedings to make rules and to determine applications for initial licenses, the continuation of the widespread agency practice of serving upon the parties, as a substitute for either an examiner's report or a tentative agency report, a report prepared by the staff of specialists and technicians normally engaged in that portion of the agency's operations to which the proceeding in question relates. The third exception permits, in lieu of any



sort of preliminary report, the agency to issue forthwith its final rule or its order granting or denying an initial license in the emergent instances indicated. The subsection, however, requires that an examiner issue either an initial or a recommended decision, as the case may be, in all cases subject to section 7 except rule making and determining applications for initial licenses. The act permits no deviation from this requirement, unless, of course, the parties waive such procedure.

Section 8 (b) : Prior to each recommended, initial, or tentative decision, parties shall have a timely opportunity to submit proposed findings and conclusions, and, prior to each decision upon agency review of either the decision of subordinate officers or of the agency's tentative decision, to submit exceptions to the initial, recommended, or tentative decision, as the case may be. Subject to the agency's rules, either the proposed findings or the exceptions may be oral in form where such mode of presentation is adequate.

Section 9: Subsection (a) is intended to declare the existing law. Subsection (b) is intended to codify the best existing law and practice. The second sentence of subsection (b) is not intended to apply to temporary licenses which may be issued pending the determination of applications for licenses.

Section 10: This section, in general, declares the existing law concerning judicial review. It provides for judicial review except insofar as statutes preclude it, or insofar as agency action is by law committed to agency discretion. A statute may in terms preclude judicial review or be interpreted as manifesting a congressional intention to preclude judicial review. Examples of such interpretation are: *Switchmen's Union of North America v. National Mediation Board* (320 U. S. 297) ; *American Federation of Labor v. National Labor Relations Board* (308 U. S. 401) ; *Bulte, Anaconda & Pacific Railway Co. v. United States* (290 U. S. 127). Many matters are committed partly or wholly to agency discretion. Thus, the courts have held that the refusal by the National Labor Relations Board to issue a complaint is an exercise of discretion unreviewable by the courts. *Jacobsen v. National Labor Relations Board* (120 F. (2d) 96 (C. C. A. 3d)) ; *Marine Engineers' Beneficial Assn. v. National Labor Relations Board*, decided April 8, 1943 (C. C. A. 2d), certiorari denied (320 U. S. 777). In this act, for example, the failure to grant a petition filed under section 4 (d) would be similarly unreviewable.

Section 10 (a) : Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review of such action. This reflects existing law. In *Alabama Power Co. v. Ickes* (302 U. S. 464), the Supreme Court stated the rule concerning persons entitled to judicial review. Other cases having an important bearing on this subject are *Massachusetts v. Mellon* (262 U. S. 447), *The Chicago Junction Case* (264 U. S. 258), *Sprunt & Son v. United States* (281 U. S. 249), and *Perkins v. Lukens Steel Co.* (310 U. S. 113). An important decision interpreting the meaning of the terms "aggrieved" and "adversely affected" is *Federal Communications Commission v. Sanders Bros. Radio Station* (309 U. S. 470).

Section 10 (b) : This subsection requires that, where a specific statutory method is provided for reviewing a given type of case in the courts, that procedure shall be used. If there is no such procedure, or if the procedure is inadequate (i. e., where under existing law a court would regard the special statutory procedure as inadequate and would grant another form of relief), then any applicable procedure, such as prohibitory or mandatory injunction, declaratory judgment, or habeas corpus, is available. The final sentence of the subsection indicates that the question of the validity of an agency action may arise in a court proceeding to enforce the agency action. The statutes presently provide various procedures for judicial enforcement of agency action, and nothing in this act is intended to disturb those procedures. In such a proceeding the defendant may contest the validity of the agency action unless a prior, adequate, and exclusive opportunity to contest or review validity has been provided by law.

Section 10 (c) : This subsection states (subject to the provisions of section 10 (a)) the acts which are reviewable under section 10. It is intended to state existing law. The last sentence makes it clear that the doctrine of exhaustion of administrative remedies with respect to finality of agency action is intended to be applicable only (1) where expressly required by statute (as, for example,

is provided in 49 U. S. C. 17 (9) or (2) where the agency's rules require that decisions by subordinate officers must be appealed to superior agency authority before the decision may be regarded as final for purposes of judicial review.

Section 10 (d) : The first sentence states existing law. The second sentence may be said to change existing law only to the extent that the language of the opinion in *Scripps Howard-Radio, Inc., v. Federal Communications Commission* (316 U. S. 4, 14), may be interpreted to deny to reviewing courts the power to permit an applicant for a renewal of a license to continue to operate as if the original license had not expired, pending conclusion of the judicial review proceedings. In any event, the court must find, of course, that granting of interim relief is necessary to prevent irreparable injury.

Section 10 (e) : This declares the existing law concerning the scope of judicial review. The power of the court to direct or compel agency action unlawfully withheld or unreasonably delayed is not intended to confer any nonjudicial functions or to narrow the principle of continuous administrative control enunciated by the Supreme Court in *Federal Communications Commission v. Pottsville Broadcasting Co.* (309 U. S. 134). Clause (5) is intended to embody the law as declared, for example, in *Consolidated Edison Co. v. National Labor Relations Board* (305 U. S. 197). There the Chief Justice said "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion (p. 229) \* \* \* assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force." (p. 230)

The last sentence of this section makes it clear that not every failure to observe the requirements of this statute or of the law is ipso facto fatal to the validity of an order. The statute adopts the rule now well established as a matter of common law in all jurisdictions that error is not fatal unless prejudicial.

SEC. 11. This section provides for the appointment, compensation, and tenure of examiners who will preside over hearings and render decisions pursuant to sections 7 and 8. The section provides that appointments shall be made "subject to the civil service and other laws to the extent not inconsistent with this act". Appointments are to be made by the respective employing agencies of personnel determined by the Civil Service Commission to be qualified and competent examiners. The examiners appointed are to serve only as examiners except that, in particular instances (especially where the volume of hearings under a given statute or in a given agency is not very great), examiners may be assigned additional duties which are not inconsistent with or which do not interfere with their duties as examiners. To insure equality of participation among examiners in the hearing and decision of cases, the agencies are required to use them in rotation so far as may be practicable.

Examiners are subject to removal only for good cause "established and determined" by the Commission. The Commission must afford the examiner a hearing, if requested, and must rest its decision solely upon the basis of the record of such hearing. It should be noted that the hearing and the decision are to be conducted and made pursuant to the provisions of sections 7 and 8.

Section 11 provides further that the Commission shall prescribe the compensation of examiners, in accordance with the compensation schedules provided in the Classification Act, except that the efficiency rating system set forth in that act shall not be applicable to examiners.

SEC. 12. The first sentence of section 12 is intended simply to indicate that the act will be interpreted as supplementing constitutional and legal requirements imposed by existing law.

The section further provides that "no subsequent legislation shall be held to supersede or modify the provisions of this act except to the extent that such legislation shall do so expressly". It is recognized that no congressional legislation can bind subsequent sessions of the Congress. The present act can be repealed in whole or in part at any time after its passage. However, the act is intended to express general standards of wide applicability. It is believed that the courts should as a rule of construction interpret the act as applicable on a broad basis, unless some subsequent act clearly provides to the contrary.

## QUESTIONS AND ANSWERS RE S. 7

EXTENSION OF REMARKS OF HON. SAM HOBBS OF ALABAMA  
IN THE HOUSE OF REPRESENTATIVES*Saturday, May 25, 1946*

Mr. HOBBS. Mr. Speaker, under leave to extend my remarks in the Record, I include the following memorandum of the Department of Justice:

## QUESTIONS AND ANSWERS RE S. 7

Section 3 (a) provides that there shall be publication in the Federal Register of the rules of the various agencies of the Government. The last sentence of section 3 (a) states: "No person shall in any manner be required to resort to organization or procedure not so published." But this does not mean that a person who has actual notice is not required to resort to agency organization or procedure if it has not been published in the Federal Register. If a person has actual notice of a rule, he is bound by it. The only purpose of the requirement for publication in the Federal Register is to make sure that persons may find the necessary rules as to organization and procedure if they seek them. It goes without saying that actual notice is the best of all notices. At most, the Federal Register gives constructive notice. See 44 U. S. C. Sec. 307.

Section 3 (a) requires that rules to be published in the Federal Register shall be separately stated in three categories. This does not require every agency to comb through all its rules and separate procedural aspects from substantive aspects of all of its rules. This provision has application only in futuro. As to rules which have been heretofore published by the agency, there is no requirement that they separately state them into the three categories required by section 3 (a). Such a task would be well-nigh impossible, since agencies have adopted rules for many years prior to this act and these rules in many cases have been codified into the Code of Federal Regulations. It is not intended that the Code of Federal Regulations be rewritten at this time.

Under section 6 (c) it is provided that "upon contest the court shall sustain any such subpoena or similar process or demand to the extent that is found it is in accordance with law." This provision is not intended to change the law as expounded in *Endicott Johnson v. Perkins* (317 U. S. 501, 1943), in which the Supreme Court held that subpoenas issued by an agency will be accorded due respect by the Court if they are within the agency's power and that there would be no independent inquiry as to whether the particular person subpoenaed comes within the coverage of the act enforced by the agency. The law as expounded in *Endicott Johnson v. Perkins* is still applicable. All that this section requires is that the court determine whether the subpoena issued comes within the general power of that agency. There need be no in limine inquiries as to whether the person subpoenaed is or is not covered by the act.

Section 10 as to judicial review does not, in my view, make any real changes in existing law. This section in general declares the existing law concerning judicial review. It is an attempt to restate in exact statutory language the doctrine of judicial review as expounded in various statutes and as interpreted by the Supreme Court. I know that some agencies are quite concerned about the phraseology used in section 10 for fear that it will change the existing doctrine of judicial review which has been settled for the particular agency concerned. I feel sure that should this section be given the interpretation which is intended, namely, that it is merely a restatement of existing law, there should be no difficulty for any agency. We may in a sense look at section 10 as an attempt by Congress to place into statutory language existing methods of review.

*May 27, 1946*

Mr. McCARRAN. Mr. President, will the Senator from California yield in order that the Chair may lay before the Senate a message from the House of Representatives with respect to Senate bill No. 7?

Mr. DOWNEY. Upon condition that I shall not lose the floor, I shall be very happy to yield.

The Presiding Officer laid before the Senate the amendment of the House of Representatives to the bill (S. 7) entitled "An act to improve the administration of justice by prescribing fair administrative procedure," which was to strike out all after the enacting clause and insert:

#### TITLE

SECTION 1. This act may be cited as the "Administrative Procedure Act."

#### DEFINITIONS

SEC. 2. As used in this act—

(a) Agency: "Agency" means each authority (whether or not within or subject to review by another agency) of the Government of the United States other than Congress, the courts, or the governments of the possessions, Territories, or the District of Columbia. Nothing in this act shall be construed to repeal delegations of authority as provided by law. Except as to the requirements of section 3, there shall be excluded from the operation of this act (1) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them, (2) courts martial and military commissions, (3) military or naval authority exercised in the field in time of war or in occupied territory, or (4) functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947, and the functions conferred by the following statutes: Selective Training and Service Act of 1940; Contract Settlement Act of 1944; Surplus Property Act of 1944.

(b) Person and party: "Person" includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies. "Party" includes any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any agency proceeding; but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes.

(c) Rule and rule making: "Rule" means the whole or any part of any agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of any agency, and includes the approval or prescription for the future of rates, wages, corporate or financial structures, or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing upon any of the foregoing. "Rule making" means agency process for the formulation, amendment, or repeal of a rule.

(d) Order and adjudication: "Order" means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of any agency in any matter other than rule making but including licensing. "Adjudication" means agency process for the formulation of an order.

(e) License and licensing: "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission. "Licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation amendment, modification, or conditioning of a license.

(f) Sanction and relief: "Sanction" includes the whole or part of any agency (1) prohibition, requirement, limitation, or other condition affecting the freedom of any person; (2) withholding of relief; (3) imposition of any form of penalty or fine; (4) destruction, taking, seizure, or withholding of property; (5) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees; (6) requirement, revocation, or suspension of a license; or (7) taking of other compulsory or restrictive action. "Relief" includes the whole

or part of any agency (1) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy; (2) recognition of any claim, right, immunity, privilege, exemption, or exception; or (3) taking of any other action upon the application or petition of, and beneficial to any person.

(g) Agency proceeding and action: "Agency proceeding" means any agency process as defined in subsections (c), (d), and (e) of this section. "Agency action" includes the whole or part of every agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.

#### PUBLIC INFORMATION

**SEC. 3.** Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of an agency—

(a) Rules: Every agency shall separately state and currently publish in the Federal Register (1) descriptions of its central and field organization including delegations by the agency of final authority and the established places at which, and methods whereby, the public may secure information or make submittals or requests; (2) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations; and (3) substantive rules adopted as authorized by law and statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public, but not rules addressed to and served upon named persons in accordance with law. No person shall in any manner be required to resort to organization or procedure not so published.

(b) Opinions and orders: Every agency shall publish or, in accordance with published rule, make available to public inspection all final opinions or orders in the adjudication of cases (except those required for good cause to be held confidential and not cited as precedents) and all rules.

(c) Public records: Save as otherwise required by statute, matters of official record shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found.

#### RULE MAKING

**SEC. 4.** Except to the extent that there is involved (1) any military, naval, or foreign affairs function of the United States or (2) any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts—

(a) Notice: General notice of proposed rule making shall be published in the Federal Register (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law) and shall include (1) a statement of the time, place, and nature of public rule making proceedings; (2) reference to the authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved. Except where notice or hearing is required by statute, this subsection shall not apply to interpretative rules, general statements of policy, rules of agency organization, procedure, or practice, or in any situation in which the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(b) Procedures: After notice required by this section, the agency shall afford interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity to present the same orally in any manner; and, after consideration of all relevant matter presented, the agency shall incorporate in any rules adopted a concise general statement of their basis and purpose. Where rules are required by statute to be made on the record after opportunity for an agency hearing, the requirements of sections 7 and 8 shall apply in place of the provisions of this subsection.

(c) Effective dates: The required publication or service of any substantive rule (other than one granting or recognizing exemption or relieving restriction or interpretative rules and statements of policy) shall be made not less than

30 days prior to the effective date thereof except as otherwise provided by the agency upon good cause found and published with the rule.

(d) Petitions: Every agency shall accord any interested person the right to petition for the issuance, amendment, or repeal of a rule.

#### ADJUDICATION

SEC. 5. In every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved (1) any matter subject to a subsequent trial of the law and the facts de novo in any court; (2) the selection or tenure of an officer or employee of the United States other than examiners appointed pursuant to section 11; (3) proceedings in which decisions rest solely on inspections, tests, or elections; (4) the conduct of military, naval, or foreign affairs functions; (5) cases in which an agency is acting as an agent for a court; and (6) the certification of employee representatives—

(a) Notice: Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place, and nature thereof; (2) the legal authority and jurisdiction under which the hearing is to be held; and (3) the matters of fact and law asserted. In instances in which private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the times and places for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(b) Procedure: The agency shall afford all interested parties opportunity for (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment where time, the nature of the proceeding, and the public interest permit, and (2) to the extent that the parties are unable so to determine any controversy by consent, hearing, and decision upon notice and in conformity with sections 7 and 8.

(c) Separation of functions: The same officers who preside at the reception of evidence pursuant to section 7 shall make the recommended decision or initial decision required by section 8 except where such officers become unavailable to the agency. Save to the extent required for the disposition of ex parte matters as authorized by law, no such officer shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate; nor shall such officer be responsible to or object to the supervision or direction of any officer, employe, or agent engaged in the performance of investigative or prosecuting functions for any agency. No officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency in any case shall, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 8 except as witness or counsel in public proceedings. This subsection shall not apply in determining applications for initial licenses or to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; nor shall it be applicable in any manner to the agency or any member or members of the body comprising the agency.

(d) Declaratory orders: The agency is authorized in its sound discretion, with like effect as in the case of other orders, to issue a declaratory order to terminate a controversy or remove uncertainty.

#### ANCILLARY MATTERS

SEC. 6. Except as otherwise provided in this act—

(a) Appearance: Any person compelled to appear in person before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. Every party shall be accorded the right to appear in person or by or with counsel or other duly qualified representative in any agency proceeding. So far as the orderly conduct of public business permits, any interested person may appear before any agency or its responsible officers or employees for the presentation, adjustment, or determination of any issue, request, or controversy in any proceeding (interlocutory, summary, or otherwise) or in connection with any agency function. Every agency shall proceed with reasonable dispatch to conclude any matter presented to it except that due regard shall be had for the convenience and necessity of the parties or their representatives.

Nothing herein shall be construed either to grant or to deny to any person who is not a lawyer the right to appear for or represent others before any agency or in any agency proceeding.

(b) Investigations: No process, requirement of a report, inspection, or other investigative act or demand shall be issued, made, or enforced in any manner or for any purpose except as authorized by law. Every person compelled to submit data or evidence shall be entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

(c) Subpenas: Agency subpoenas authorized by law shall be issued to any party upon request and, as may be required by rules of procedure, upon a statement or showing of general relevance and reasonable scope of the evidence sought. Upon contest the court shall sustain any such subpoena or similar process or demand to the extent that it is found to be in accordance with law and, in any proceeding for enforcement, shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of contumacious failure to comply.

(d) Denials: Prompt notice shall be given of the denial in whole or in part of any written application, petition, or other request of any interested person made in connection with any agency proceeding. Except in affirming a prior denial or where the denial is self-explanatory, such notice shall be accompanied by a simple statement of procedural or other grounds.

#### HEARINGS

SEC. 7. In hearings which section 4 or 5 requires to be conducted pursuant to this section—

(a) Presiding officers: There shall preside at the taking of evidence (1) the agency, (2) one or more members of the body which comprises the agency, or (3) one or more examiners appointed as provided in this act; but nothing in this act shall be deemed to supersede the conduct of specified classes of proceedings in whole or part by or before boards or other officers specially provided for by or designated pursuant to statute. The functions of all presiding officers and of officers participating in decisions in conformity with section 8 shall be conducted in an impartial manner. Any such officer may at any time withdraw if he deems himself disqualified; and, upon the filing in good faith of a timely and sufficient affidavit of personal bias or disqualification of any such officer, the agency shall determine the matter as a part of the record and decision in the case.

(b) Hearing powers: Officers presiding at hearings shall have authority, subject to the published rules of the agency and within its powers, to (1) administer oaths and affirmations, (2) issue subpoenas authorized by law, (3) rule upon offers of proof and receive relevant evidence, (4) take or cause depositions to be taken whenever the ends of justice would be served thereby, (5) regulate the course of the hearing, (6) hold conferences for the settlement or simplification of the issues by consent of the parties, (7) dispose of procedural requests or similar matters, (8) make decisions or recommend decisions in conformity with section 8, and (9) take any other action authorized by agency rule consistent with this act.

(c) Evidence: Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses any agency may, where the interest of any party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(d) Record: The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision in accordance with section 8 and, upon payment of lawfully prescribed

costs, shall be made available to the parties. Where any agency decision rests on official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an opportunity to show the contrary.

#### DECISIONS

SEC. 8. In cases in which a hearing is required to be conducted in conformity with section 7—

(a) Action by subordinates: In cases in which the agency has not presided at the reception of the evidence, the officer who presided (or, in cases not subject to subsection (c) of section 5, any other officer or officers qualified to preside at hearings pursuant to section 7) shall initially decide the case or the agency shall require (in specific cases or by general rule) the entire record to be certified to it for initial decision. Whenever such officers make the initial decision and in the absence of either an appeal to the agency or review upon motion of the agency within time provided by rule, such decision shall without further proceedings then become the decision of the agency. On appeal from or review of the initial decisions of such officers the agency shall, except as it may limit the issues upon notice or by rule, have all the powers which it would have in making the initial decision. Whenever the agency makes the initial decision without having presided at the reception of the evidence, such officers shall first recommend a decision except that in rule making or determining applications for initial licenses (1) in lieu thereof the agency may issue a tentative decision or any of its responsible officers may recommend a decision or (2) any such procedure may be omitted in any case in which the agency finds upon the record that due and timely execution of its function imperatively and unavoidably so requires.

(b) Submittals and decisions: Prior to each recommended, initial, or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions of subordinate officers or to tentative agency decisions, and (3) supporting reasons for such exceptions or proposed findings or conclusions. The record shall show the ruling upon each such finding, conclusion, or exception presented. All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof.

#### SANCTIONS AND POWERS

SEC. 9. In the exercise of any power or authority—

(a) In general: No sanction shall be imposed or substantive rule or order be issued except within jurisdiction delegated to the agency and as authorized by law.

(b) Licenses: In any case in which application is made for a license required by law the agency, with due regard to the rights or privileges of all the interested parties or adversely affected persons and with reasonable dispatch, shall set and complete any proceedings required to be conducted pursuant to sections 7 and 8 of this act or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, no withdrawal, suspension, revocation, or annulment of any license shall be lawful unless, prior to the institution of agency proceedings therefor, facts or conduct which may warrant such action shall have been called to the attention of the licensee by the agency in writing and the licensee shall have been accorded opportunity to demonstrate or achieve compliance with all lawful requirements. In any case in which the licensee has, in accordance with agency rules made timely and sufficient application for a renewal or a new license, no license with reference to any activity of a continuing nature shall expire until such application shall have been finally determined by the agency.

#### JUDICIAL REVIEW

SEC. 10. Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—

(a) Right of review: Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.



(b) **Form and venue of action:** The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. Agency action shall be subject to judicial review in civil or criminal proceedings for judicial enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.

(c) **Reviewable acts:** Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final shall be final for the purposes of this subsection whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration or (unless the agency otherwise requires by rule and provides that the action meanwhile shall be inoperative) for an appeal to superior agency authority.

(d) **Interim relief:** Pending judicial review any agency is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, every reviewing court (including every court to which a case may be taken on appeal from or upon application for certiorari or other writ to a reviewing court) is authorized to issue all necessary and appropriate process to postpone the effective date of any agency action or to preserve status or rights pending conclusion of the review proceedings.

(e) **Scope of review:** So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

#### EXAMINERS

SEC. 11. Subject to the civil-service and other laws to the extent not inconsistent with this act, there shall be appointed by and for each agency as many qualified and competent examiners as may be necessary for proceedings pursuant to sections 7 and 8, who shall be assigned to cases in rotation so far as practicable and shall perform no duties inconsistent with their duties and responsibilities as examiners. Examiners shall be removable by the agency in which they are employed only for good cause established and determined by the Civil Service Commission (hereinafter called the Commission) after opportunity for hearing and upon the record thereof. Examiners shall receive compensation prescribed by the Commission independently of agency recommendations or ratings and in accordance with the Classification Act of 1923, as amended, except that the provisions of paragraphs (2) and (3) of subsection (b) of section 7 of said act, as amended, and the provisions of section 9 of said act, as amended, shall not be applicable. Agencies occasionally or temporarily insufficiently staffed may utilize examiners selected by the Commission from and with the consent of other agencies. For the purposes of this section, the Commission is authorized to make investigations, require reports by agencies, issue reports, including an annual report to the Congress, promulgate rules, appoint such advisory committees as may be deemed necessary, recommend legislation, subpoena witnesses or records, and pay witness fees as established for the United States courts.

## CONSTRUCTION AND EFFECT

SEC. 12. Nothing in this act shall be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. If any provision of this act or the application thereof is held invalid, the remainder of this act or other applications of such provision shall not be affected. Every agency is granted all authority necessary to comply with the requirements of this act through the issuance of rules or otherwise. No subsequent legislation shall be held to supersede or modify the provisions of this act except to the extent that such legislation shall do so expressly. This act shall take effect 3 months after its approval except that sections 7 and 8 shall take effect 6 months after such approval, the requirements of the selection of examiners pursuant to section 11 shall not become effective until 1 year after such approval, and no procedural requirement shall be mandatory as to any agency proceeding initiated prior to the effective date of such requirement.

Mr. McCARRAN. Mr. President, some weeks ago the Senate passed Senate bill No. 7, which is known as the administrative procedure bill.

The Senator from Maine will recall that the bill passed the Senate, after a careful discussion, without a dissenting vote. Let me say that the bill has been under study and consideration for nearly 10 years. For about 2 years, while the present chairman of the Judiciary Committee and other members of that committee have had the matter in hand, a very careful and meticulous study has been made of the whole subject. The House did not in any substantial particular amend the Senate bill. The only thing which the House did was to clarify the bill in respect to a few of its provisions. I can best illustrate that by a brief statement from the Attorney General as to what the House did. Without quoting him at length, the Attorney General said that he approved the amendments which had been made by the House which were merely explanatory in nature.

For that reason, Mr. President, I move that the Senate concur in the House amendment.

Mr. WHITE. Mr. President, will the Senator yield for an inquiry?

Mr. McCARRAN. I yield.

Mr. WHITE. Were the House amendments submitted to the Judiciary Committee for its consideration, or only to individual members of the committee?

Mr. McCARRAN. Only to individual members, because we were unable to get a meeting of a quorum of the committee.

Mr. WHITE. Was there a unanimity of approval on the part of the committee members, so far as the Senator knows?

Mr. McCARRAN. So far as I personally know, yes.

Mr. REVERCOMB. Mr. President, will the Senator yield?

Mr. McCARRAN. I yield.

Mr. REVERCOMB. As a member of the subcommittee which dealt with the bill, I should be very happy if the Senator from Nevada, who is chairman of the Judiciary Committee, and who has so ably steered the legislation thus far, would tell us briefly what are the amendments.

Mr. McCARRAN. Does the Senator refer to these amendments?

Mr. REVERCOMB. Yes.

Mr. McCARRAN. I shall have to ask the Senator from California [Mr. Downey] to be patient with me while I go over the amendments. They are set forth in the report of the Committee on the Judiciary of the House of Representatives.

With reference to section 1, it is provided that the measure may be cited as the "Administrative Procedure Act."

In section 2, with reference to definitions, the report states, the definitions apply to the remainder of the bill.

With reference to section 2 (a), under the title "Agency," it is said, "The word 'agency' is defined by excluding legislative, judicial, and territorial authorities" and by including any other "authority" whether or not within or subject to review by another agency. The word "other" was inserted by the House of Representatives.

In connection with section 2 (b), the word "person" and the word "party" are dealt with in the report as follows: "Person" is defined to include specific forms of organizations other than agencies. "Party" is defined to include anyone named, or admitted, or seeking, and entitled to be admitted, as a party in any agency proceeding, and so forth.

With reference to section 2 (c) the report states:

"Rule" is defined as any agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law, policy, organization, procedure, or practice requirements and includes any prescription for the future of rates, wages, financial structure, and so forth. "Rule making" means agency process for the formulation, amendment, or repeal of the rule."

Does the Senator wish me to go through each amendment?

MR. REVERCOMB. Am I to understand that all the changes which have been made were changes merely in language and do not materially affect the intent of the act?

MR. McCARRAN. I assure the Senator that his statement is correct.

MR. REVERCOMB. Then I shall not ask for a further explanation.

THE PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Nevada.

(The motion was agreed to.)

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