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## Final Report: Attorney General's Committee on Administrative Procedures

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# REVIEW OF GOVERNMENT PUBLICATIONS

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FINAL REPORT OF THE ATTORNEY GENERAL'S COMMITTEE ON ADMINISTRATIVE PROCEDURE. Washington: United States Government Printing Office. 1941. Pp. viii, 474. 50¢.

Special group agitation against the administrative practices of some federal agencies culminated in the Logan-Walter bill. To meet this threat to orderly administration, the Attorney General appointed a committee to study administrative procedure with a view to recommending such changes as seemed advisable. Under the able leadership of Professor Walter Gellhorn, the Committee made exhaustive studies of twenty-eight federal agencies and recommended some adjustment in federal administrative procedure. The recommendations were incorporated into a bill, introduced as S. 675. For the most part the enactment of the bill would have little effect upon the existing procedures employed by the Social Security Board.

The report of the Committee considered five basic problems in the administrative process. The first considered the dissemination of information concerning administrative organizations and procedures. The Social Security Board, even before the Committee's creation, was effectively informing and educating the public concerning their rights and privileges under the Act. Thus, such criticism as was directed at other agencies had no application to the Board.

The Committee also recommended that the "policies" of all agencies should be published in "precise and regularized form" so they might serve as guides for private action. This apparently innocuous suggestion seems fraught with trouble, for it implies that federal agencies operate with secret plan and design. To raise this suspicion without more substantial evidence of its existence seems to be an indefensible attack on federal agencies generally, and particularly on those who have had a long and satisfactory record of public conduct.

The second recommendation concerned itself with administrative rule-making. Although the Committee's proposal was far less drastic than the Logan-Walter bill, its suggestion that the agencies hold public hearings as a standard administrative practice in the formulation of legislative rules is unattractive. Again, this recommendation has little meaning for the Social Security Board other than its general harrassing effect on all agencies. Generally, as a means of giving information and encouraging public support of administrative rules, most agencies hold hearings prior to the promulgation of rules.

The Logan-Walter bill's stringent requirement of judicial review of legislative rule-making was strongly attacked by the Committee. It quite rightly took the position that "if an administrative agency is best qualified to weigh the facts and opinions that culminate in regulations, its conclusions should be final." Legislative procedure save for specific constitutional limitations has always been free from judicial inquiry and similar protection should be extended to administrative agencies when they engage in legislative functions.

The Committee's researches disclosed that the great bulk of administrative determinations resulted from informal procedures. Social

Security Board claims, particularly under the Old-Age and Survivor's Insurance Amendments, are of this character. Only a small percentage of claims ever reach the Appeals Council, and thus the Report's long discussion of formal adjudications effects only a small number of Social Security claims. Nevertheless, the recommendation has considerable significance for the orderly operation of the agency.

As now constituted, there is a separation of hearing and determining functions maintained by the Social Security Board through the Bureau of Old-Age and Survivor's Insurance and the office of the Appeals Council. The proposal of the Attorney General's committee would require that the hearings be conducted by "hearing commissioners" who would be appointed independently of the agency by a new Office of Federal Administrative Procedure.

The Committee apparently believes that independent appointment is necessary to preserve the separation of powers and to insure free determination by the hearing officer. Although the Social Security Board could adjust to this proposed procedure without serious disruption of its organization, little, if anything, would be gained. So far as the Board is concerned, there is no reason for the adoption of this Insurance Amendments, are of this character. Only a small percentage procedure has not jeopardized the rightful claims of persons appearing before the Bureau or the Appeals Council. It appears that the recommendation was made in an effort to dissipate the extremely vocal argument that administrative practice has made a single individual both prosecutor and judge with unfair and prejudicial results to private citizens. Experience does not verify this assertion.

The Committee's report concludes that the problem of judicial review of administrative determinations is not serious. The experience of the Social Security Board discloses that a negligible percentage of claimants demand judicial review. Thus the Committee's conclusion seems well supported both in theory and by experience. In other agencies the character of the litigation more readily lends itself to appeal to the courts, but basically judicial review has been a plaything for lawyers and law writers and not a reality for administration.

Three members of the Committee filed a minority report. While professing to accept the basic proposals of the majority, they, nevertheless proposed an act (S. 674) which more strictly separates the investigative and adjudicative functions in administrative hearings, urges a more extensive judicial review, and proposes a code of legislative standards of fair procedure. This code, although in the main directory, unnecessarily encumbers the administrative process. It is doubtful whether the added burden will in fact improve the quality or measure of justice which claimants will receive. If the minority views on procedure are adopted, claimants for benefits under the Old-Age and Survivorship probably would find themselves more harrassed than helped, more confused than convenienced, more burdened than benefited.

The proposals of the minority have been incorporated in Senate Bill 674. The bill apparently is an attempt to compromise the less strenuous procedures suggested by the majority's bill and the old

Logan-Walter bill. Certainly for this agency, and indeed for all federal agencies, it would be an unhappy consequence if the minority's bill should become law. It is a middle-of-the-road affair. If administration is to have a fair test, it should be tested either under the most stringent control of what seem to be inapplicable judicial procedures or under the simple and flexible methods which administration is developing.

Those who have read the articles and notes in this issue should be convinced that although the administrative procedures and rules are different, their certainty, their fairness, and their protective qualities are, in their own way, as firmly within the spirit and tradition of fair and predictable determinations as the rules and principles of the common law. Much of the talk and criticism leveled against the administrative process has been leveled by persons unfamiliar with the process, ignorant of the rules, and contemptuous of agency administration. Honest evaluation will disclose continuity and consistency in administrative determinations. There will be differences of opinion on interpretation and application of rules and statutes, but the critic that plumbs his own experience will find that he has not always agreed with the judgments of trial courts or the interpretations of appellate tribunals.

