M. S. Eccles

TASK FORCE REPORT ON

Regulatory Commissions

[***Appendix N***]

PREPARED FOR

THE COMMISSION ON ORGANIZATION
OF THE EXECUTIVE BRANCH
OF THE GOVERNMENT

January 1949

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Committee on Independent Regulatory Commissions

A REPORT WITH RECOMMENDATIONS

PREPARED FOR

THE COMMISSION ON ORGANIZATION OF THE

EXECUTIVE BRANCH OF THE GOVERNMENT

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Letter of Transmittal

WASHINGTON, D. C.,
January 13, 1949.

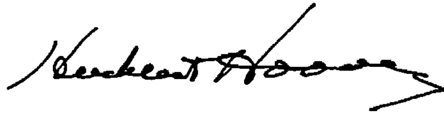
DEAR SIRS: In accordance with Public Law 162, approved July 7, 1947, the Commission on Organization of the Executive Branch of the Government has undertaken an examination into the operation and organization of the executive functions and activities. In this examination it has had the assistance of various task forces which have made studies of particular segments of Government. Herewith, it submits to the Congress a study, prepared for the Commission's consideration on the independent regulatory commissions of the Government.

The study of each task force naturally is made from its own particular angle. The Commission, working out a pattern for the Executive Branch as a whole, has not accepted all the recommendations of the task forces. Furthermore, the Commission, in its own series of reports, has not discussed all the recommendations of an administrative nature although they may be of importance to the officials concerned.

The Commission's own report in this particular field is submitted to the Congress separately.

The Commission wishes to express its appreciation to Robert R. Bowie and Owen D. Young, to Harold Leventhal and various staff members who prepared this task force study.

Faithfully,



Chairman.

The Honorable
The President of the Senate.

The Honorable
The Speaker of The House of Representatives.

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SUMMARY LETTER

December 1, 1948.

COMMISSION ON ORGANIZATION OF THE
EXECUTIVE BRANCH OF THE GOVERNMENT,
Washington, D. C.

DEAR SIRS: In accordance with your request, we have made an investigation of the independent regulatory commissions of the Federal Government, and submit herewith our report containing our conclusions and recommendations. We are also submitting as supplements to our report, separate staff reports on each of nine commissions studied.

These staff reports were prepared by members of a small staff, according to a common outline, to provide a basis for our report. Each staff report was submitted for criticism to the commission, and to a limited number of qualified individuals such as former commissioners, attorneys, and others representing the regulated industry, and other experts in the field.

In preparing our own report, we have had the benefit of the staff reports, of the comments and criticisms on it, and of discussions with others. The staff reports have also been revised by their authors in the light of these comments. We believe that they are especially useful studies of the organization and operations of these agencies.

The staff reports were prepared by Messrs. George L. Bach, James M. Burns, Carl F. Farbach, Walter Galenson, William Golub, C. Herman Pritchett, Edward C. Sweeney, Ernest W. Williams, and Miss Irene Till. The project was under the direction of Mr. Bowie, who was assisted by Mr. Harold Leventhal in planning the project and in the supervision of its execution. We are deeply indebted to the members of the staff for their hearty cooperation in carrying through the project.

Our report is divided into two parts: Part I (ch. I–V) contains our general conclusions and recommendations. Part II contains a discussion of each of the nine commissions separately (ch. VI–XIV).

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Summary of General Conclusions and Recommendations

Our general conclusions and recommendations may be briefly summarized as follows:

1. The independent regulatory commission is a useful and desirable agency where constant adaptation to changing conditions and delegation of wide discretion in administration are essential to effective regulation.

The independent commission provides a means for insulating regulation from partisan influence or favoritism, for obtaining deliberation, expertness and continuity of attention, and for combining adaptability of regulation with consistency of policy so far as practical.

2. The independence of these commissions does not create such problems of coordination with the rest of the Government as should prevent their use for tasks calling for their special advantages.

The staff reports reveal that conflict and inadequate coordination between the commissions and other agencies is limited in extent and generally avoided by cooperation.

3. The independent regulatory commissions should not be entrusted with executive or operating functions except to the extent essential to their regulatory work.

In order to improve their regulatory work, the commissions should be as free as possible from executive or operating functions not intimately connected with regulation.

4. The chairman of each commission should be designated by the President and should serve as chairman at his pleasure.

This will facilitate communication between the President and the commission on matters of mutual concern and assist in coordination with the rest of the Government, without impairing the independence of the commissions. It will also promote more effective internal administration of the commissions.

5. The best qualified men available should be appointed to these commissions and their staffs, and to enable them to serve, the salaries of commissioners and of the top staff members should be increased substantially.

The quality of the members is the most vital single factor in the successful operation of these commissions. The President should select the appointees to these commissions on the basis of merit and ability. The excessive turn-over of members and staff, which now results in part at least from the inadequate salaries, impairs the functioning of the commissions.

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6. To improve administration of the commissions, a permanent Office of Administrative Procedure should be created in the Executive Office of the President to study and report on the organization and operation of the administrative agencies.

Such an office would call attention to deficiencies and propose corrective measures but should have no authority to order changes.

7. The chairman should be designated by statute as the administrative head of each commission and should be primarily responsible for its administrative work and for supervision of its staff.

One of the most common and serious defects in the commissions has been poor administration. To free the members from administrative detail and to assure better staff supervision, these duties should be assigned to the chairman, who should carry them out through an executive officer reporting to him. This would not impair the substantive authority of the other commissioners.

8. The commissions should devote more attention to developing standards and objectives and to planning the regulatory program.

The failure to define their standards and objectives clearly or to anticipate problems and plan for their solution has impaired the effectiveness of a number of the commissions.

9. In order to free their time for more basic work the commissions should delegate routine, preliminary, and less important work to members of the staff under general supervision. Such delegation should be expressly authorized by statute.

The members of many commissions are too preoccupied with minor matters to be able to devote the necessary time and thought to the more basic issues of regulation. Less important work should be delegated to the staff in order to free the time of the members for more basic matters.

10. In order to expedite and improve staff work, the staff should be so organized as to define and center responsibility for the completing of specific tasks.

Generally, this can be achieved best by grouping the staff experts according to tasks to be performed rather than according to professional skill.

11. To expedite operations, the commissions should extend the use of informal procedures and shorten and simplify formal proceedings.

Many commissions have not gone as far as feasible in exploring methods for making their proceedings more expeditious and efficient.

12. The statutes should be amended (*a*) to allow a member whose term has expired to continue in office until his successor is appointed, and (*b*) to impose the usual restrictions on removal of members of the

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Federal Power Commission, Federal Communications Commission, and Securities and Exchange Commission.

The first provision avoids a hiatus between expiration of a term of a member and the appointment of a successor. The second provision would make these statutes consistent with the statutes governing the other six regulatory commissions.

These recommendations and the reasons for them are explained in part I of our report. Our specific recommendations with respect to each of the independent commissions in part II of our report (ch. VI–XIV) are too extensive to permit their summary in this letter.

In transmitting our report we wish to express our appreciation for the cooperation extended to us by the staff of your commission.

Very truly yours,

ROBERT R. BOWIE.
OWEN D. YOUNG.

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Part One

GENERAL RECOMMENDATIONS

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Chapter I

INTRODUCTION

A. Scope of the Report

AGENCIES STUDIED

Our committee was asked to study and report on the independent regulatory commissions. Accordingly our investigation has been confined to those agencies in the Federal Government which meet three criteria:

1. Which are headed by a board or commission;
2. Which are not within an executive department or under the direct control of the President;
3. Which are engaged in the regulation of some form of private activity.

We have therefore excluded from our study commissions engaged primarily in regulating internal operations of the Government (such as the Civil Service Commission); boards engaged mainly in operating or administrative activities (such as the Tennessee Valley Authority); and regulatory agencies headed by a single administrator (such as the Food and Drug Administration) or within a department (such as the Fair Labor Standards Administration). Although the Atomic Energy Commission has certain regulatory powers and is an independent commission, it has been excluded partly because so large a part of its work is operational, and partly because so many of its problems appear to be unique.

Applying these standards, nine agencies come within the area of study. In the order of their creation these are as follows:

Interstate Commerce Commission.
Federal Reserve Board.
Federal Trade Commission.
Federal Power Commission.
Securities and Exchange Commission.
Federal Communications Commission.
National Labor Relations Board.
United States Maritime Commission.
Civil Aeronautics Board.

ASPECTS INVESTIGATED

With respect to each commission and to the group as a whole our study has been concentrated on three main issues:

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1. Are independent commissions a necessary and desirable type of agency and for what kinds of tasks are they best fitted?

2. Have the independent commissions caused difficulties in the coordination of Government policy and the activities of other Government agencies? If so, how can this be mitigated?

3. Have the commissions been organized and administered efficiently? How can they be made to operate more effectively?

Aspects Excluded From Study

As agreed when this study was undertaken, no attempt has been made to investigate the activities of such commissions in the following respects:

Need for Regulation Assumed

The desirability of some form of public regulation in the areas assigned to these agencies has not been examined. Since Congress has decided that such regulation is required, our inquiry has been directed only to considering the kind of agency and the methods appropriate for the execution of such regulation.

Soundness of Regulations Not Examined

Likewise no attempt has been made to pass judgment on the specific policies or regulations adopted by the various commissions under their statutory authority. In considering the performance of each commission as a whole, it has been necessary to take into account its success in handling its regulatory task and in framing workable policies for that purpose, but in doing this no effort has been made to judge either the wisdom or soundness of particular policies.

Some have suggested that certain of these agencies are exceeding their powers and have urged us to examine how far this is actually true. Most of the complaints to this effect turned on controversial interpretations of ambiguous statutory provisions. In such cases it is, of course, possible that the agency is construing its authority more broadly than the courts will sustain. But where the issues are arguable, no useful purpose would be served by our attempting to pass judgment on questions of this sort. To do so with respect to any single issue would require a thorough legal investigation and a hearing of both sides. This kind of question can best be left to the courts where the matter can be fully presented and the arguments heard, or to the Congress which can clarify the statute if the activity of the agency appears to exceed what is desirable.

Fairness of Procedures Not Studied.

Our aim has been to avoid duplication of other recent studies in this area. In 1939–40 the Attorney General's Committee on Adminis-

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trative Procedure made a thorough and comprehensive investigation and report as to practices and procedures of the administrative agencies of the Federal Government. The issues considered by that study and report were discussed at length over a period of years both in and out of Congress. This resulted finally in the passage of the Administrative Procedure Act which was approved in June 1946 and became effective by stages after 3, 6, and 12 months.

This statute and the work which preceded it dealt primarily with insuring fair procedures in administrative agencies. Among other provisions, it prescribes procedures for rule making, hearings, and decisions, and regulates the status of examiners, internal separation of functions, and judicial review. The statute has been in effect too short a time and the experience under it is too limited to justify reopening the questions it deals with or attempting at this stage to evaluate its effect.

Accordingly we have not attempted to review the work of these agencies from the point of view of fairness or due process. Instead our study has been directed to the effectiveness of independent commissions as agencies for carrying on Federal regulatory activities. This raises such questions as:

When are independent commissions needed?

What should be their relation to other branches of Government?

How can they be organized to operate most effectively?

B. Method of Preparing the Report

The status of the independent regulatory commission has been a subject of dispute for many years. Thus the Report of the President's Committee on Administrative Management in 1937 severely criticized such agencies as a headless fourth branch and made far-reaching proposals for their modification. These views were in turn sharply attacked. Much of this controversy appears to have been carried on largely on theoretical grounds. Although directed to different issues, the monographs of the Attorney General's Committee on the various agencies were a notable exception.

Staff Reports

Following the example of that committee, our method has been to have prepared a detailed report on the experience of each of the nine commissions in the areas under study. These reports were based on examinations of the records of the agency, statutes, and regulations, and other materials; and on interviews with the commissioners and

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staff, with former members, and with private persons representing the regulated industry or otherwise familiar with the work of the agency.

To facilitate comparisons among the agencies, these reports follow a common outline so far as applicable. Each is divided into four parts and appendices, as follows:

I: Describes the statutory duties, organization, general procedures, and work load of the agency.

II: Discusses the methods of the commission and the staff in policy formation and internal administration.

III: Describes the relations of the commission with the President, other executive agencies, Congress and the regulated industry or public.

IV: Contains the conclusions and recommendations of the staff member preparing the report for changes in organization or procedures.

Appendices: Contain supplemental data, especially descriptions of the actual handling of three to five matters by the commission to illustrate its methods more concretely.

Comments on Staff Reports

Each of these reports was submitted for comment to the agency involved, and to a limited number of qualified individuals familiar with its operations. These comments were considered by the staff members in revising their reports.

Our conclusions stated in this report are based on these staff reports, on the comments from the agencies and individuals, and on discussions with others. The staff reports, revised in the light of the comments, contain recommendations not adopted in this report, because they seemed less important or less clear, or for other reasons. In omitting them, it is not our intention to disapprove of these proposals unless they are inconsistent with those set forth herein. They merit careful consideration by the agencies.

Structure of the Report

This report falls into two parts. The first part, consisting of five chapters, states our general conclusions and recommendations regarding the independent regulatory commission as a type of Government agency. The second part consists of nine chapters which take up each of the commissions separately and state our specific recommendations regarding each one. The chapter on each commission avoids repetition of the discussion in part I as far as possible and should be read in the light of the general recommendations in the first part of the report.

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Chapter II

THE NATURE OF THE INDEPENDENT REGULATORY COMMISSION

The use of the independent commissions, their place in the Government structure, and their organization and administration are considered in subsequent chapters in the light of special characteristics of these agencies. As a basis for this discussion, this chapter sketches briefly (1) the development of the commissions; (2) the general nature of their work; and (3) the legal basis and limits of their independence.

A. Development of the Commissions

In the Federal Government the independent regulatory commission has a history of over 60 years. During that period this type of agency has developed to meet new needs for regulating various industries or types of activity.

The Interstate Commerce Commission, the first of these Federal agencies, was created in 1887 with limited powers to regulate railroad rates and service. After an early period of frustration, the Commission became firmly established, and Congress expanded its powers and assigned to it new areas for regulation, such as pipe lines (1906), motor carriers (1935), and water carriers (1940). Its procedures, organization, and prestige have greatly influenced the later development of the independent commissions.

Under President Wilson, the independent commission was used in several fields. In 1913 the Federal Reserve Board was established to control money and credit and supervise member banks. In the next year the Federal Trade Commission was created with responsibility for restraining unfair methods of competition and enforcing the Clayton Act passed at the same time. Two years later the United States Shipping Board was set up to develop the merchant marine; after various changes, this agency was succeeded by the present Maritime Commission created in 1936.

In the late 1920's two more independent commissions were established to regulate hydroelectric power projects and radio, respectively. The Federal Power Commission, first set up in 1920 as an interdepartment

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committee, was converted into an independent commission in 1930 on the recommendation of President Hoover. Originally authorized primarily to license private power projects on streams under Federal control, its authority was extended in 1935 to the regulation of interstate transmission of electric energy, and in 1938 to the regulation of interstate gas pipe lines. The Federal Radio Commission, initially created in 1927, became the Federal Communications Commission in 1934 and was made responsible for the regulation of radio, telephone, and telegraph.

Under President Roosevelt three other new commissions were established in addition to the Maritime Commission and the Federal Communications Commission. In 1934 the new Securities and Exchange Commission took over from the Federal Trade Commission the administration of the Securities Act of 1933 (regulating disclosure of information regarding new security issues) and was also assigned the Securities and Exchange Act of 1934 (regulating stock exchanges and dealers); in 1935 the Public Utility Holding Company Act was placed under its supervision. Thereafter, its duties were extended by the Bankruptcy Act (corporate reorganization), Trust Indenture Act (1939), Investment Company Act (1940), and Investment Advisers Act (1940).

In 1935 the National Labor Relations Act created an independent Board to administer the provisions of the act. Finally in 1938, the Civil Aeronautics Act established the independent Civil Aeronautics Authority to regulate air transportation and air commerce.

Even this short summary reveals the important fact that the independent commissions reflect a substantial period of experience and development. Their use has not been limited to any one period. Beginning in 1887, every decade has seen the creation of new commissions or the extension of existing commissions into new fields. So steady an evolution, under such varied political auspices, indicates that these agencies respond to a real need. The nature of the need and the success of the commissions in meeting it will be considered in the next chapter.

B. Work of the Commissions

This report outlines the activities of each of the commissions under three headings, (1) the areas of regulation, (2) the general character of their main functions, and (3) the relation of staff and commission.

Areas of Regulation

At first glance the nine commissions appear to engage in a heterogenous series of activities, and in fact their duties do cover a wide

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range. For purposes of discussion, however, they may be divided into general types according to their areas of regulation. On this basis they fall into four groups:

1. Three commissions regulate carriers: Interstate Commerce Commission (rail, motor, and water carriers and pipe lines); UnitedStates Maritime Commission (ocean carriers); Civil Aeronautics Board (air carriers).

2. Two regulate other utilities: Federal Power Commission (electrical and gas utilities); Federal Communications Commission (telephone, telegraph, and radio).

3. Two regulate finance and credit: Securities and Exchange Commission (security exchanges and security issues generally, and holding companies); Federal Reserve Board (money and credit, and member banks).

4. Two regulate practices in special fields affecting industry generally: Federal Trade Commission (unfair trade practices), National Labor Relations Board (unfair labor practices and collective bargaining).

General Character of Functions

The main functions of each commission are briefly summarized in part II of this report. In this section the purpose is not to repeat this material, but to highlight the kind of authority exercised by the commissions.

Defining Standards of Conduct

The point to be emphasized is that the bulk of commission activity is establishing standards and rules to govern conduct for the future. The commissions are engaged far less in prosecuting wrongdoers to punish them for past offenses, than in prescribing and defining the future privileges and duties of the persons subject to regulation. In large measure this involves making and applying policies to carry out the objectives and standards of the statute.

In part, this is done by making formal rules or regulations, often after extensive investigations and hearings; in part, duties and privileges are fixed by decisions in specific cases, after hearing; and in part, by informal conferences, opinions, and rulings. Of course, most of the commissions also do some policing and enforcement to require compliance with their regulations, but that is not a major activity compared with defining the duties and standards. A brief review of the commissions will illuminate this point.

Regulating Utilities

This fact about the work of the commissions clearly appears in the regulation of carriers and other utilities (Interstate Commerce Com-

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mission, Civil Aeronautics Board, Maritime Commission, Federal Power Commission, and Federal Communications Commission). With certain exceptions, they engage mainly in regulating—

1. Rates, by fixing maxima or minima, and by forbidding discrimination or preferences;

2. Service, by prescribing the standards to be met by the regulated company;

3. Entry, by granting or refusing certificates, licenses, or permits required by a carrier, utility, or other person in order to furnish or extend service;

4. Finances, by granting or refusing approval for new securities, acquisitions, mergers, and similar actions, and by prescribing accounting standards and methods;

5. Safety, by prescribing regulations regarding equipment, personnel, procedures, and other matters affecting the safety of operations.

Moreover charges, service, competition, finances, and safety are all closely related. The policies and standards as to any one will affect one or more of the other areas. Basically, therefore, each commission is engaged in establishing a coherent framework of policies, standards, and conditions within which the industry carries on its operations.

Regulating Finance and Credit

While their authority and duties are different, the Federal Reserve and Securities and Exchange Commission also illustrate this same fact. In its control of credit and money, the Federal Reserve is clearly establishing the conditions for the future; and on a small scale, the same is largely true of its supervision of member banks, although it may rarely have to enforce its regulations or statutes. The Securities and Exchange Commission has more enforcement duties but is still engaged mainly in defining the standards of disclosure, rules of conduct for the securities markets, and the structure and finances of holding companies; formal proceedings to apply sanctions are only a minor part of its job.

Regulating Unfair Practices

The Federal Trade Commission and National Labor Relations Board appear at first to be exceptions. In part this is due to the fact that their typical proceeding is brought by a complaint against an individual or concern for unfair practices. But the appearance is somewhat misleading. The Federal Trade Commission was created primarily to clarify and develop the standards to govern business conduct respecting competition. Under the major statutes, the Federal Trade Commission has power only to order the person to cease

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and desist from specific conduct for the future. In other words, the order defines the standards for future conduct, although cast in a form similar to a prosecution and based on evidence of past activity.

While the Labor Board does impose sanctions as to past conduct in some cases, an important part of its work is also to prescribe the duties of the parties and to establish the guides for collective bargaining.

Significance

In short, each of the commissions is largely engaged in making policies and defining standards of conduct within the framework of the statute. In great part, this is carried on through quasi-judicial procedures, but it involves more than adjudications of a court. In making decisions or regulations defining a standard of conduct, prescribing a duty, or granting a privilege, the commission must act in the light of the conditions in the industry and the statutory objectives.

This fact has important bearing on the need for staff, on the organization of the commission, and on its method of operation and administration.

Role of the Commission Staff

In order to carry out its many duties, each commission inevitably needs a substantial staff of experts and assistants.

Size

The size of the staff varies among the commissions. The following list shows the employees for each one on July 1, 1948, and the appropriation for fiscal year 1949:

Commission	*Employment on July 1, 1948*	*Appropriations for fiscal 1949*
U. S. Maritime Commission	[1] 2, 970	[2] $10, 600, 000
Interstate Commerce Commission	2, 301	10, 859, 000
Federal Communications Commission	1, 380	6, 350, 000
National Labor Relations Board	1, 369	9, 400, 000
Securities and Exchange Commission	1, 149	5, 826, 000
Federal Power Commission	822	4, 050, 000
Civil Aeronautics Board	621	3, 450, 000
Federal Trade Commission	579	3, 448, 000
Federal Reserve Board	520	[3] 3, 350, 000

[1] Total employment 6,816; figure shown is average administrative force during fiscal 1948, and excludes operating program personnel.

[2] Administrative appropriations only, excluding operating programs.

[3] Calendar 1948; not appropriated funds.

Functions

The staff includes the men who make the investigations; who receive data and make statistical reports; who prepare legal, economic, engineering, or other technical analyses; who recommend programs and actions to the commisson; and who carry out and apply the commission's determinations.

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In large measure, the expertness of the commissions resides mainly in the staff rather than the commissioners. In the Federal Power Commission, for example, no commissioner is a hydroelectric engineer; these experts are on the staff. Even commissioners who have relevant professional training, such as in accounting or law, can seldom achieve the same detailed expertness as the most specialized members of the staff, who have devoted more time and energy to a narrower group of problems.

Relation to Commission

But wise regulation calls for more than detailed expert knowledge and specialized experience. Someone must appraise this general and specific information from the experts and exercise sound judgment, within the statutory objectives. This should be the primary contribution of the commissioners, with the help of the staff

Thus, the commission and staff are engaged in a collaborative effort to administer the statute. To make that collaboration as fruitful and efficient as possible requires sound organization and division of labor within the agency. This inevitably means that one important task of of the commission is administrative: the management of the staff and of the work of the agency as a whole.

In chapter V, we consider some of the ways in which this administrative task can be better handled.

C. Basis and Extent of Independence

Since the distinctive feature of these agencies is their independence, it is desirable to examine briefly the statutory provisions on which it rests. It is also essential to recognize that while the commissions are insulated from direct partisan influence in the ways hereafter described, their independence is not unlimited. In various respects mentioned below, they are subject to influence or direction by the executive, the Congress, and the judiciary.

Composition of Commissions

Number of Members

While all of the agencies have several members, they vary as to the total number. Six of the commissions are composed of five members each. The Federal Reserve Board and Federal Communications Commission have 7 members, and the Interstate Commerce Commission has 11.

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Appointments

The President nominates the members of all these commissions for confirmation by the Senate. Thus, he ultimately determines their membership within limits fixed by the power of the Senate to reject nominees.

This right of the Senate is an important source of power. On occasion it has been used to influence the substantive policies of a commission through refusal to confirm. And undoubtedly the necessity to obtain confirmation restricts the President's range of choice in submitting nominees. The views of the nominee must at least not be offensive to any substantial group in the Senate.

Terms

On 3 commissions, the members serve for 5-year terms; on 2, the terms are 6 years; on 3 others, the terms are 7 years; and the Federal Reserve Board members have 14-year terms. Typically, therefore, the President has an opportunity to name one member of each commission each year, and a majority of members within a 4-year term of office, except for the Federal Reserve Board. Thus any basic conflict between the President and any commission can last only a limited time. Only two of the statutes allow a member, whose term has expired, to continue to serve until a successor is appointed.

Qualifications

For seven commissions, the statutes require that not more than a majority of the members be from the same political party. The appointments to the National Labor Relations Board and the Federal Reserve Board are not subject to this restriction.

The members must have no other employment, and usually must have no financial interest in the regulated industry while a member; and, in the case of the Maritime Commission, an appointee must not have had such an interest for 3 years before appointment. The Federal Reserve Act also forbids more than one member from any Federal Reserve District and requires fair representation among financial, industrial, agricultural, and commercial interests and geographical areas.

Appointment of Chairman

The commissions vary widely as to the method of selection and term of the chairman. For five of the commissions the President has express authority to designate the chairman either annually or at pleasure, or in one case for a 4-year term. For three other commissions the act provides for selection by the members, and for one (Securities and Exchange Commission), where the act makes no provision for a chairman, by custom he is selected by the members.

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Where selected by the members, the chairman may rotate annually (Interstate Commerce Commission and Federal Trade Commission), or may ordinarily serve for the remainder of his term (Federal Power Commission) and (Securities and Exchange Commission). When the office does not rotate, the members often take account of informal suggestions from the President in selecting their chairman.

Removal of Members

The statutory restriction on the President's power to remove the members is usually thought of as the distinguishing mark of the independent commission. By statute, the members of six commissions can be removed by the President only for neglect of duty or malfeasance in office, or for these causes or inefficiency, or simply for cause, and for no other reason.

However, three of the statutes do not contain this provision: The Federal Power Act (1930), the Securities Exchange Act (1934), and the Federal Communications Act (1934). It is significant that these were the acts passed in the interval between the *Myer's* decision in 1925, when the Supreme Court stated that Congress lacked power to impose restrictions on removal by the President, and the *Humphrey's* case in 1935, which held that such restrictions could be imposed with respect to members of the independent commissions.

It is fair to say that these three commissions were and are nevertheless treated as independent. Whatever their actual legal status, the members of several of them appear to consider themselves not subject to removal without cause, and it is reasonable to assume that any attempt to remove members arbitrarily would stir up serious controversy.

Compensation

The members of most of the commissions receive $10,000 annually, but members of several receive slightly more, and the members of the Federal Reserve Board receive $15,000. In a few commissions the chairman receives a small additional amount.

Specific Limitations on Independence

Authority of President

Under certain statutes, the President has express powers over specified activities of some of the independent commissions. Thus under the Civil Aeronautics Act, the President has explicit authority to approve the action of the Board in granting, modifying, or refusing certificates or permits for overseas or foreign air transportation by domestic or foreign carriers.

Under the Merchant Marine Act, the approval of the President is required for construction of vessels by the Commission.

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Under the Federal Communications Act, the President has power to take over the control of communication facilities in wartime.

Under the Securities Exchange Act, the approval of the President is necessary for an order suspending trading on exchanges.

In all these cases the President has final authority and the independence of the commissions is set aside.

Judicial Review

The independence of the commissions is also limited by statutory provisions for judicial review. Under this authority, the courts control the actions of the commissions in three principal respects:

1. The courts will review the proceedings of the commissions to assure that they have been conducted in accordance with procedures required by the statute and by due process of law. Thus, where a hearing is required, the court can make sure that interested parties have a fair opportunity to present their evidence and arguments.

2. The courts can also review the activities and orders of the commissions to make sure that they are not exceeding the powers conferred by the legislation. Thus the court can keep the commissions within the statutory bounds prescribed by Congress.

3. Where action of a commission depends on a factual record, the courts can review a decision or order to determine whether it was supported by substantial evidence in the record. Where substantial evidence does exist, the action of the commission will be sustained even though the court might itself have made a different finding.

In these ways judicial review is a safeguard against actions which are arbitrary or capricious, or which do not conform to statutory standards or authority, or which are not in accordance with fair procedure or substantial evidence. This is an important check on the conduct of the commissions.

Indirect Limitations on Independence

Budget and Appropriations

An important executive control is the review of the budget before submission to Congress. Under the Budget and Accounting Act of 1921, the Bureau of the Budget supervises the preparation of the President's budget and has control over the amount which any agency, including the independent commissions, can request from Congress (sec. 207). Of course, Congress retains ultimate power to increase or reduce the appropriation request, but this executive supervision is an important tool in the hands of the President.

The necessity of obtaining an annual appropriation is also a lever for congressional influence. The appropriation hearing gives some opportunity for the congressional committee to examine the program

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of the agency, but in practice this examination is likely to be superficial and to deal mainly with complaints from constituents about recent actions of the agency. Even so, the necessity of appearing and justifying its actions undoubtedly does exert some check on the commission at least in a negative way.

Legislation and Investigation

Through its power to amend the statute, the Congress retains ultimate control over its administration and over the agency charged with carrying it out. In the final analysis, Congress can abolish the agency if sufficiently dissatisfied with its operations or performance. This, however, is a blunt instrument and not likely to be resorted to except under extreme circumstances. Somewhat more practical is an amendment to specific provisions of the act. But where the main objection of Congress is to the emphasis in administration, amendment may be an inadequate tool to correct the situation.

The power of Congress to investigate may sometimes be more effective. A full-dress investigation is carried out by a committee of Congress only at infrequent intervals, but is always a potential threat. Moreover, as congressional committees have developed more adequate staffs, they tend to keep informed more regularly of the work of the commissions under the charge of their committees.

Management Studies

Under the Budget and Accounting Act (secs. 209 and 213), the Bureau of the Budget has express statutory authority at the direction of the President to make detailed studies of the independent commissions (among other agencies) in the interest of greater economy and efficiency. Such studies are to enable the President to determine and report to Congress what changes are desirable in (1) their existing organization, activities, and methods of business; (2) their appropriations; (3) the assignment of activities; and (4) the regrouping of services. For this purpose a commission must furnish the Budget data on request and allow access to its records.

In practice the Bureau has exercised this authority only on invitation of the independent commissions and has treated such studies as confidential.

Council on Economic Advisers

Under the Employment Act of 1946, the Council of Economic Advisers is directed to appraise the various programs and activities of the Federal Government to determine whether they are contributing to the policy of that act and to submit recommendations to the President (sec. 4 (c) (3)).

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In carrying out this section, the council has followed the view that the independent commissions are within the scope of its review. So far the council has taken only limited action under the provision, but it provides the means for critical analysis of the relation of the activities and programs of the various agencies, including those of the independent commissions.

This summary of the legal position of the commissions has emphasized both the basis of their independence and its limitations. The next chapter considers the practical benefits and disadvantages of the commissions resulting from their characteristics and makes recommendations regarding their use.

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Chapter III

USE OF THE INDEPENDENT REGULATORY COMMISSION

In view of the strong criticisms made in the 1937 Report of the President's Committee on Administrative Management, we have considered the needs for independent regulatory commissions and their advantages, and have investigated whether their disadvantages outweigh any benefits they may offer. In particular, as outlined below, we sought to find whether the independence of these agencies has caused serious failures in coordination between them and the executive branch.

Finding.—On the basis of the actual experience revealed in the staff reports, we have concluded that the independent commission is a useful type of agency for regulation under certain conditions and should be continued for such specialized tasks.

This chapter sets forth our reasons for these conclusions.

A. Nature of the Regulatory Tasks

The most basic fact about the independent regulatory commissions is the similarity of the situations with which they were designed to deal. The differences among the fields assigned to each agency are obvious, but the underlying likeness in the character of their problems is even more striking.

In each case, Congress was convinced that the industry or activity required Federal regulation to correct existing or threatened abuses. Congress could specify generally the kinds of regulation to be imposed, but its ability to legislate detailed rules was limited. For example, with respect to carriers or utilities it could direct the regulation of rates, service, entry into the field, financial structures, and the relations between competing carriers. In varying degrees it has so directed with respect to railroads, motor carriers, air carriers, water carriers, pipe lines, telephone and telegraph service, gas pipe lines, and electrical utilities.

Or, in another field, Congress could determine to prohibit methods of competition which are not socially desirable or activities of employers or employees which impede collective bargaining.

Or Congress could decide that securities issues should be regulated to insure full disclosure of information for investors, or that securities

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exchanges should be supervised to insure a fair market free from improper practices. Again, Congress can decide that credit and money should be controlled in the public interest.

Congress can prescribe broad standards to carry out these purposes. Thus it can direct that rates be fair and just; that service be reasonable; that carriers or utilities should be allowed to enter the business only when it will serve public convenience and necessity; and that the entrant must be fit, willing, and able to perform the service. It can forbid unfair methods or practices and may be able to specify some of the activities forbidden.

But in these fields Congress can seldom prescribe detailed rules which are self-enforcing. What is a fair rate depends on many circumstances; and these circumstances may change as time passes and economic conditions or the technology of the industry change. The same is true of reasonable service. Similarly, whether a carrier or utility should be allowed to serve a particular route or area depends on many factors which will vary as the industry evolves, the need for such service grows or declines, and so forth.

Thus effective regulation does not permit a rigid and detailed statute.

In the first place, Congress cannot possibly devote the time and effort which would be required to develop an intelligent scheme of detailed rules at the time the statute is adopted. To do so would require expertness which members of legislature could hardly achieve along with the discharge of their other duties.

In the second place, even if time and skill were available, the solution of many of these problems of regulation can be worked out only by trial and error, and thus could not be embodied in a definitive statute unless Congress were prepared to devote continuous attention to adapting and applying the statute in the light of experience.

In the third place, the conditions of the industry and the economic context in which it operates are constantly changing in some degree. In some fields, such as air carriers or communications, the rate of development is so rapid as to be staggering. In others, such as railroads, conditions change more slowly but still change as new and competing services develop.

The upshot is that Congress must delegate wide latitude to some agency in order to keep regulation in such areas sufficiently flexible and adapted to the varying conditions and methods.

B. Advantages of Independent Commissions

The delegation of discretionary power to regulate private business activities creates certain basic problems in ensuring that regulation is administered fairly and so as not to impede operations unduly.

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The independent commission finds its justification in meeting these problems.

IMPARTIALITY OF REGULATION

The wide latitude inherent in effective regulation opens the door to favoritism and unfairness in administration. The regulated interests are powerful and often politically influential. The privileges which the regulatory agencies can grant or withhold are often of great value, and regulation will obviously have a tremendous impact on the profits, service, and finances of the industry involved.

This combination of wide discretion on the part of officials, and strong motives for influencing the officials on the part of the regulated industry, involve serious risks of corruption and unfairness. If the agency is subject to partisan or political influence or control, this will not only defeat the public purposes of regulation and unfairly benefit the influential, but will also tend to impair public confidence in the democratic process and the effectiveness of governmental action generally. Thus, in the interest of fairness to the individuals concerned, of the attainment of the public objectives, and of the maintenance of the integrity of government, there is a vital necessity for assuring that such regulatory agencies are insulated from partisan influence or control to the maximum extent feasible.

The independent commission was designed to meet this need. The number of members and their security of tenure are intended to assure freedom from partisan control or favoritism. The group is able to resist outside influence more effectively than an individual and each member is free from a threat of removal as a source of pressure. Moreover, since the activities of the commission may be more subject to public scrutiny than would be a single bureau in a large department, there is greater opportunity for exposure of pressures or improper actions. Finally, while provisions for hearings and similar safeguards against arbitrary actions are not peculiar to commissions, they may be more effective when combined with group action.

So far as our staff reports and the comments of others have revealed. the independent commissions have largely achieved freedom from direct partisan influence in the administration of their statutes. With few exceptions, the actions of the commissions appear to be above suspicion of favoritism or partiality. Our examination does not indicate any significant effort on the part of the President to interfere with the specific decisions of any of these agencies. In some instances, the President appears to have interested himself in the general policies of some of the agencies and to have had some influence on them. The propriety of such influence will be discussed in the next chapter of the report.

Many members of Congress, however, appear to feel free to concern themselves, on behalf of their constituents, with the handling of

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specific cases. The staff reports indicate that all of these agencies receive such inquiries regarding matters pending before them. Many of these take the form of requests for expediting decisions or obtaining prompt action by the commissions. As far as appears, such requests do not seem to have improperly influenced the action of most of the commissions. Doubtless, many of these inquiries are casual or routine without any threat of pressure, but others imply or suggest more active interest. In any event, such activity creates an unhealthy atmosphere for the commissions to carry on their work in, and tends to impair their reputation for nonpartisan and impartial administration.

Group Policy Making and Decissions

A distinctive attribute of commission action is that it requires concurrence by a majority of members of equal standing after full discussion and deliberation. At its best, each decision reflects the combined judgment of the group after critical analysis of the relevant facts and divergent views. This provides both a barrier to arbitrary or capricious action and a source of decisions based on different points of view and experience.

This process had definite advantages where the problems are complex, where the relative weight of various factors affecting policy is not clear, and where the range of choice is wide. A single official can consult his staff but does not have to convince others to make his views or conclusions prevail. The member of the commission must expose his reasons and judgments to the critical scrutiny of his fellow members and must persuade them to his point of view. He must analyze and understand the views of his colleagues if only to refute them.

Experience indicates that these advantages have been in large measure achieved by the commissions. The several members often bring to light aspects missed by the staff or their colleagues. Each brings to bear a different background and experience, and sometimes a specialized knowledge. Deliberation has certainly reduced the likelihood of capricious decision, and promoted objectivity.

But group action has its disadvantages as well. Undoubtedly decisions are more time consuming, especially as the number of members increases. The necessity for considering various approaches and points of view and attempting to resolve them into a group decision inevitably takes substantial time.

One consequence may be slowness by the commission in reaching individual decisions or difficulty in disposing of a large volume of cases. The Labor Board presents such a situation largely because the heavy work load is larger than can be handled by such methods. The Interstate Commerce Commission has also been criticized for the length of time it takes after cases are submitted for decision. But in most agencies this is not a pressing problem.

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The cost of group action appears more clearly in the areas of neglect or omission. As will be discussed later, the commissions tend to concentrate too exclusively on decision of the day-to-day cases without fitting them into a framework of more basic issues of program, standards, and planning.

Because the deliberative process is time consuming, it seems clear that it should be used only where its special advantages are necessary.

Yet, as will appear from later discussion, the commissions have generally failed to restrict its use to such areas, and have tended to handle as a group many matters which can be dealt with more expeditiously and efficiently by an individual. This is expecially true of administrative matters and routine actions. As a result, too little time has frequently been available for thorough discussion and deliberation of the more fundamental issues for which group judgment is uniquely useful. Our recommendations later in this report attempt to deal with this problem.

Finding.—Despite the cost of the method of consultation and deliberation, we are convinced that it is a valuable process for arriving at wise policies and decisions in areas allowing so wide a choice. It is one of the major contributions of the commission form to sound regulation.

Familiarity or Expertness

The purpose of regulation should be to correct or prevent abuses without impeding the effective operation of the industry or imposing unnecessary expense or waste. This can be done only if regulation is framed with knowledge of the conditions of the industry. Otherwise, the rules will either fail to achieve their purposes or needlessly interfere with private management.

As has been said, the regulated industry is frequently complex or highly technical. Its problems can be understood only on the basis of constant study and analysis of the developments in the industry. Thus the regulating agency must be able to give continuous attention to the area of regulation in order to achieve this essential familiarity or expertness.

The commission form is designed to assure expertness or at least familiarity with the problems of the regulated field both through the members of the commission and through the staff. Devoting their full time to the particular industry or activity, the staff and members become fully familiar with the technical aspects of the industry and its basic problems through their day-to-day contacts.

Staff

There can be no doubt that the main source of expertness in a commission must lie in its staff. The work of most of these agencies requires the collaboration of many technical skills, such as engineering,

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accounting, and law. At most, a commissioner can be expected to be proficient in only one of these disciplines and many do not have such training at all. As a whole, the commission must rely for expert help and advice on its staff technicians.

In this respect, the commission does not differ essentially from an ordinary executive agency. It may be that the bipartisan and specialized work of the commission tends to make it easier to obtain and keep the necessary experts, but there is no clear evidence that this is so. The staff reports did not attempt to judge in any systematic or thorough way the qualifications of the staffs of the commissions. Nevertheless, they tend to indicate that, with certain exceptions, the staffs of the commissions are generally well qualified and conscientious in carrying out their duties.

But inflation has made it increasingly difficult to attract and retain qualified men for top positions. Since salaries for such jobs have not been adjusted to offset rising prices, they are far less attractive than in the past and can scarcely complete with comparable private positions. Taken as a whole, however, the staffs of most agencies do appear to be familiar with the problems of the industry and qualified to handle them.

Commissioners

The situation with respect to members of the commissions is different. There is probably no need for the members to be true experts in the area of regulation. They should have sufficient familiarity with it to understand the problems and the policy issues and to make full use of the technical experts on the staff. Their main contribution should be wise and intelligent judgment which does not necessarily require expertness beyond the intelligent familiarity just described.

The commission form offers two advantages in this respect. The fixed terms of reasonable duration, and the tradition of reappointment mean that an appointee has sufficient time to learn about the industry during his service on the commission even if his knowledge is limited when he takes office. Secondly, the other members, who will normally have served for some time, are available to assist him in becoming familiar and to give him the benefit of their experience and knowledge. Furthermore, their presence to carry on the work gives him a reasonable period to become acclimated to the policies and problems before having to carry his full load. All these are important advantages deriving from the independent commission form.

But to achieve them, the new appointees must either be familiar with the industry when they take office or remain on the commission a sufficient time to acquire such familiarity. This has not always been true. Too often, the appointments to the commissions have been made for other reasons than fitness to perform the duties of the office. This alone might be less serious if the turn-over of commission-

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ers were not so heavy. But with the present scale of salaries for the commissions, it has become harder and harder to attract men of caliber and capacity for the arduous work required or to retain them on the commission for substantial periods once they have been appointed.

Turn-over of Commissioners

For many of the commissions, the result has been an excessive turn-over of members. For example, in its 12 years, the Maritime Commission has lost 13 members, after an average service of under 4 years; the incumbents have all been appointed since the war and average less than 2 years in office.

The Securities and Exchange Commission is similar. Since its creation in 1934, 16 commissioners have left the Commission. Of these, one died in office, and 15 resigned before the end of their terms, after serving an average of 3 years. The incumbents average about 2 years in office.

In the Civil Aeronautics Board's 10 years, eight members have left the Board, one after serving 10 years, the others after an average of 3 years' service. Three of the five incumbents have held office under a year.

In 14 years, the Communications Commission has lost 17 members, of whom 1 served 11 years and another 9 years. The remaining 15 averaged about 3½ years. Of the 7 incumbents, 1 has been a member for 14 years, but the other 6 are new, with an average service of about 1 year.

In sharp contrast is the Interstate Commerce Commission. Despite its larger size, since 1930 it has lost only nine members, after an average service of 13 years. Its incumbents average almost 13 years in office. In the same period, the Federal Trade Commission lost seven members, after an average tenure of about 6 years; and the incumbents have been in office an average of 13 years.

With rapid turn-over, many members do not remain long enough to master the problems of regulation and to perform their duties well, and new appointees are deprived of the opportunity of learning from experienced members with long service. With low salaries, men of ability tend to move on, leaving the less qualified in office. Of course, some men are willing to make the financial sacrifice in order to engage in public service, but inadequate compensation restricts too narrowly the possible range of selection.

Continuity of Policy

So long as the regulated industry remains in private hands, one other objective is essential. Despite public regulations, the private managers remain responsible for operation of the industry. They must take the initiative in introducing new and improved methods and in expand-

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ing the operations of their companies to meet the future demands for service. In order to enable private industry to plan ahead, the regulatory agency must seek to achieve as much stability in policy and methods as is consistent with continuously adapting regulations to meet changing conditions. So far as feasible, managers should be able to rely on uniformity and continuity of underlying policy.

In the independent commission, this objective is sought largely through the number and tenure of the members of the commission. The long terms expiring at staggered intervals, and the restraints on removal of members are designed to assure that the composition of the commission changes slowly despite changes in administration. Thus, as has been said, the older members and the staff are available to educate the new appointees in the problems of the industry and the policies of the commission. Moreover there is less likelihood of sudden change in policy since decisions are made by group consultive action.

The staff reports indicate that, in practice, the commissions have fallen short of this ideal. Some of the commissions at least appear not to have attained as clear a definition of policy and as much continuity as is desirable. Inevitably there are differences of opinion about how far this can be achieved where the industry or other conditions are in a state of rapid change. Thus, technological change in the fields of radio and air transportation has been so rapid as to make the task of regulation extremely complex and genuine continuity of policy very difficult to achieve.

One of the main difficulties again appears to be the rapid turn-over in membership already discussed. Another is the heavy burden of day-to-day work in these developing areas, which tends to prevent the commissions from working out a regulatory program and coherent policy for carrying it out. This situation is especially notable in the field of communications, but it also exists in varying degrees in some of the other commissions. In part, the solution is for the commission to delegate more of its work to individual members and staff in order to free itself to deal with the more basic issues. Only in that way will it obtain the time required for doing the necessary thinking and planning.

Later in the report we make various proposals with respect to the administration of these agencies in order to achieve this objective.

C. Coordination With Activities of Other Agencies

Nature of the Problem

One of the objections most frequently asserted against the independent commission is that its freedom from direct responsibility to the President prevents effective discharge of his duties and impairs

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coordination of the activities and policies of these agencies with those of other parts of the executive branch. Frequently, this criticism appears to be based mainly on theoretical or doctrinal grounds and not on actual failures of coordination or conflicts among agencies.

The brief review in the preceding chapter of the limitations on the independence of these commissions indicates that the notion that they operate in complete isolation from the remainder of the Government is unreal; in fact the extent of independence is a matter of degree. The members of the commissions are clearly not under the direction of the President as members of his Cabinet are considered to be, but they are subject to the powers of the President and Congress over appointments and other matters already discussed, and to the influence of public opinion.

One of the major purposes of our staff studies was to discover, so far as possible, whether lack of coordination is a serious problem in the practical operation of the Government. Each of the staff reports reveals how the varied pressures or influences on the independent commissions have tended to keep them operating within the framework of general policy and objectives prevailing at the particular time, and to prevent most of the theoretical difficulties implicit in independence aside from these practical constraints.

Obviously it is not possible to summarize this material in this report. We can only mention a few highlights from those studies and state our conclusions based on the underlying staff reports.

Varying Need for Coordination

In considering the problem of coordination in practical terms, it is essential to analyze the extent to which the policies and activities of the commissions impinge on those of other agencies of the executive branch to a significant degree. Direct conflicts will arise only to the extent that other agencies are dealing with related matters affected by the commissions. The staff report on each agency explored this question and analyzed how far its work did impinge on activities of the executive branch and other commissions and how far effective coordination had been achieved where needed.

As would be expected, it was found that a large part of the work of most of the commissions is not closely related to that of the rest of the Government and requires no active coordination to avoid conflicts.

Thus the regulation of new security issues and of security exchanges by the Securities and Exchange Commission can be carried on largely by itself.

Much of the work of the Interstate Commerce Commission does not directly involve other parts of the Government in ordinary times, although transportation rates affect the rest of the economy, and may be of special importance in a depression or inflationary period.

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Again, in much of its regulation of telegraph, telephone, and radio licensing, the Federal Communications Commission does not impinge on the province of other agencies, but there are exceptions—the allocation of frequencies involves their use by other Government agencies, and foreign relations become directly involved in international allocations and regulation.

Part of the work of the Federal Power Commission does not directly affect other Government activities, but other parts of it do, such as that dealing with water-power projects and electrical utilities.

In general, the National Labor Relations Board can decide its day-to-day cases quite separately, though obviously some of its work bears on labor policy in other areas.

The work of some commissions is tied in to that of the executive branch more intimately or to a wider extent, but in most cases, effective methods of achieving coordination seem to have been worked out in practice. For example, the Civil Aeronautics Board must take account of the work of the Civil Aeronautics Administration, the needs of the Military Services and the Post Office, and foreign relations (in the regulation of international air transport). In practice, the Board actively cooperates with the other interested departments and agencies both directly and through the Air Coordinating Committee, and in other ways. The comments from qualified critics indicate that these methods have been effective in obtaining the necessary coordination. In general, the Board has also cooperated with the Civil Aeronautics Administration in the Commerce Department but some problems remain which are considered later.

Areas of Deficient Coordination

In some areas, more serious problems do exist. For example, the relations between the Federal Reserve Board and the Treasury in regard to debt and credit policy present difficulties. The Maritime Commission, which so directly affects foreign commerce and defense needs, has created some problems at least since the war. And the partly parallel jurisdiction of the Federal Trade Commission and the Department of Justice requires careful attention. Other commissions present similar issues of narrrower scope or less importance.

These problems are discussed and recommendations submitted in the chapters of this report dealing with the respective agencies. The general question of the relation between these agencies and the President is considered in the next chapter.

Finding.—The point to be emphasized here is that the study of the separate agencies forces the conclusion that lack of coordination is not an insuperable obstacle with respect to the independent commission. As has already been stated, some problems do exist and should be dealt with. But on the whole, coordination is needed in more limited

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areas than might be supposed a priori, and has been achieved in most of the major fields through interdepartmental committees or more informal techniques.

D. Summary Conclusion on the Use of Independent Commissions

The preceding discussion sets forth our reasons for concluding that the independent commission has an essential place for certain types of governmental regulation. On the basis of experience, it appears to have definite advantages: Where regulation requires constant adaptation to changing economic and industry conditions, and wide discretion must be delegated to the administrative agency, the independent commission provides a means for insulating administration from partisan influence or favoritism and obtaining the benefits of continuity of attention and consultative judgments.

In reaching this conclusion we do not suggest that the advantages of this type of agency have been fully realized under all conditions or in all cases. Like other institutions, this one has had its ups and downs. The performance of some of the commissions is far better than that of the others. And, as discussed later, the administration of a number of the commissions has left much to be desired. But to a large degree these agencies do seem to have achieved many of the advantages which led to their creation.

We have also concluded that the independence of these commissions does not create insoluble problems of coordination with the rest of the Government which should prevent their use for tasks calling for their special advantages. On this question, the actual experience is far more convincing than theory.

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Chapter IV

RELATIONS WITH THE PRESIDENT AND CONGRESS

In chapter II, we have briefly reviewed the more important legal and practical ties between the commissions and the President and Congress. This chapter contains various proposals for clarifying and improving these relations in order to facilitate coordination and the better functioning of the commissions.

A. Executive and Operating Functions

RECOMMENDATION

In our judgment, the independent regulatory commissions should ordinarily be confined to regulatory activities and should not be entrusted with essentially executive and operating tasks except for compelling reasons.

In one sense, the strictly regulatory work involves some executive activity, such as the administration of the necessary expert staff, the making of studies and investigations and initiation of proceedings and the like. But these functions are essential to the effective performance of the regulatory work and should be retained by the commissions. What we mean by executive and operating activities are those like laying out and managing an airway or airport system, or constructing and operating merchant vessels. Such activities should not be given to the regulatory commissions in the absence of very special circumstances.

To avoid misunderstanding, we emphasize that our examination has been limited to the regulatory commissions; we have not made any study of primarily operating commissions such as the Atomic Energy Commission and the Tennessee Valley Authority, both of which combine a governing board with an executive official to manage the operations of the agency. Consequently we do not intend to imply any judgment on such an organization for those purposes.

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Reasons for Recommendation

Our recommendation is based on both experience and principle:

1. The common experience is that groups are better fitted for judgment and decision than for the execution of large-scale operations.

The very qualities which make these agencies valuable for regulation, especially group deliberation and discussion, make them unsuited for executive and operating activities. The work of day-to-day regulation and decision and the related supervision of staff fully occupies most of the commissions and overtaxes the capacity of some of them. Indeed, as pointed out in the next chapter, a major objective should be to free the members as far as possible of the administrative work and staff supervision essential for performing the regulatory tasks. To impose further operating duties on the commission seems to us unwise unless unavoidable.

2. Ordinarily, we believe, such operating functions should be placed in the regular departments where they may be carried out under direct executive supervision and responsibility. This is more consistent with the structure of our Government and with the position of the President as Chief Executive.

The fact that the operating functions are somewhat related to the regulatory does not seem to us a sufficient ground for deviating from this principle unless the relation is so intimate as to make their separation impracticable or to cause serious conflicts of jurisdiction.

For these reasons, our discussion of the Maritime Commission recommends a segregation of its essentially operating activities, such as shipbuilding and training programs, and their transfer to an executive department. Likewise, certain routine administrative functions of the Interstate Commerce Commission, such as safety inspection, might similarly be shifted to a department. On the same principle, the Civil Aeronautics Administration, once partly under the Civil Aeronautics Board, but now in the Department of Commerce, should be left in an executive department and not be moved back to the Board.

In general, it is recommended that in the future, where the independent commission is used for regulation requiring its special advantages, it should not be given operating duties if this can be avoided. Adherence to this principle will tend to assure better performance of the regulatory functions.

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B. Appointment of Chairman

We recommend that the chairman of each commission should be designated from among the members by the President and should serve as chairman at his pleasure. This proposal is closely related to our recommendation, discussed in the next chapter, that the chairman should be recognized as the administrative head of the agency.

The designation of the chairman by the President is not a novel proposal. Under existing law, the President names the chairman of five of the nine commissions, one to serve for 4 years, one for 1 year, and the other three apparently at pleasure. While the other four commissions select their own chairmen, the members of two of them have frequently chosen a member informally suggested by the President (Securities and Exchange Commission and Federal Power Commission).

Our recommendation is merely that the practice of selection by the President be made the general rule by statute, and that the chairman serve as such at the pleasure of the President in all cases, although protected against removal as a member.

Improved Channel of Communication

Designation by the President provides an acceptable channel of communication between the commission and the President, without impairing the proper independence of the commission.

The previous chapter has stated our conviction that the commission should be independent and free from partisan influence in the decisions affecting individual rights and in the ordinary administration of the statute. The experience of the commissions where the President has either directly or informally named the chairman indicates that this power does not interfere with such independence. The investigations of our staff have not revealed that the President has sought to interfere in, or influence the determination of, particular controversies or matters handled by such commissions. On the basis of this evidence, we discount the objection that such designation would impair their essential independence, although we would give it great weight if it appeared well taken.

But where there is need for coordination between the independent commission and other agencies, the President is properly interested in its being achieved. In a few instances, where the need is crucial, Congress has given the President authority to override a commission, but if applied widely, this would destroy their independence. Furthermore, experience indicates that the necessary coordination can be attained without giving the President such power, if convenient means are available for communication between the President and the commissions on such matters.

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In order to facilitate such communication, it appears desirable that each commission be headed by the member most acceptable to the President. This will enable the President to obtain a sympathetic hearing for broader considerations of national policy which he feels the commission should take into account. It will still lie with the commission as a whole to decide what weight should be given to such views, but in our opinion there should be available means for transmitting them in the most direct manner.

This arrangement has advantages for the commission as well. Over the long-pull, it must function as a part of the Government as a whole. For one thing, it can accomplish its duties only with proper appropriations and that may require sympathetic help from the Chief Executive with respect to its budget. In other fields, where activities of an executive agency interfere with attainment of the regulatory objectives, it may be to the advantage of the commission to have access to the President to assure that its point of view is fully understood by him.

Perhaps more important, such a relation may give the members some voice in new appointments to a commission. The incumbent members are likely to desire men of ability and character and to be able to judge the fitness of potential nominees. In the past, where the chairman has enjoyed the confidence of the President, it has not been unusual for him to consult the chairman for suggestions or comments. Even if this does not ensure the naming of those best qualified, it may often give the chairman the chance to prevent the appointment of ill-fitted members. Ordinarily, the President would be unlikely to nominate a new member over the active protest of a chairman designated by himself.

Improving Administration

The second important advantage of Presidential designation is that it assists in achieving the objective of improving the internal administration of the commissions.

The next chapter analyzes some of the serious administrative shortcomings of these agencies and proposes that the chairman be made expressly responsible for administration. As explained there, our recommendation is not intended to deprive the other members of fully equal participation in the making of policies and substantive decisions of the agency. It is only designed to center the administration in one member, responsible to the commission, to relieve the other members of these duties, and to assure effective supervision essential for expeditious handling of cases and orderly dispatch of business.

Our staff reports indicate that the absence of such supervision today accounts in large measure for the delays and backlogs now too common. They also clearly show that the members will seldom voluntarily delegate to the chairman or any other official, for a substantial

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period, the necessary authority to perform these essential duties. On the contrary, where the members select the chairman, he is ordinarily little more than a presiding officer without any real administrative role. This is the case in the Interstate Commerce Commission and the Federal Trade Commission, where the office rotates annually. It is also true in the Federal Power Commission where the chairman serves out his term as chairman. In the Securities and Exchange Commission, the chairman was clearly the administrative head in the early years, when the members usually followed Presidential wishes in selecting him, but more recently there has apparently been some decline in his position.

Even when the President names the chairman, he is not always accepted as the administrative head of the agency. But generally speaking, he does occupy a stronger position in this respect and is usually able to take more responsibility, especially if it is clear that he enjoys Presidential support. Furthermore, the examples of outstanding administration within the commissions are uniformly found among those where the President has formally or informally named the chairman. In other words, such designation may not be a guarantee of effective administration but, on the whole, it seems to be the best means of promoting it, especially in conjunction with the other measures recommended in the next chapter.

C. Appointment and Tenure of Members

Increased Emphasis on Competence

In any survey of the independent commission, one fact stands out clearly: The most important requirement for effective performance is ability and integrity in the members and top staff. If they are competent, the problems discussed in this report can be handled without great difficulty. If they are not, then changes in organization and methods cannot produce sound results. This does not mean that good procedures and methods are not important, but only that qualified men to operate them are even more vital.

There is no easy way to obtain able men, but there are certain prerequisites. One is the desire on the part of the Chief Executive and the Senate to appoint the best qualified men available and the recognition that these positions are too important to provide comfortable berths for faithful party members or lame ducks. As has been suggested, closer relations between the President and the chairman of the commission may help to eliminate the ill-equipped appointee and sometimes to encourage the naming of well-qualified men either from the staff or from outside.

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Increased Compensation

A second requisite is increased salaries. Higher compensation will not necessarily assure able members, but the present salary scale makes it extremely difficult to attract or retain them. At present price levels, the salary of the average commissioner has lost very roughly almost half of the value it had when originally fixed, and in estimated purchasing power is equivalent today to $5,000 or $6,000 as of that time. And this takes no account of improvements in living standards since the offices were created.

The results of the present salary levels are excessively rapid turnover and difficulty in obtaining competent new members. These same factors apply to the top staff members, who are as essential to the effective work of the agency as the members themselves. Consequently, the continuity and expertness which come from longer tenure and which are major advantages of the commission form tend to be lost.

Doubtless, Government salaries can never compete with those of industry for the best talent. But many able men are willing to forego considerable financial benefits in order to engage in public service, if they can at least be assured of sufficient income to live comfortably and to educate their children. Reasonable salary scales can make it possible for such men to serve in Government without unfair financial sacrifices.

We strongly recommend therefore that the salary scale for members and top staff be sharply increased in order to make the field of choice for appointees as wide as possible, and to retain capable men once appointed.

Recommendations on Tenure

Restrictions on Removal

In our discussion of the independence of the commissions in chapter II, we called attention to the fact that the statutes creating three of them (Federal Power Commission, Security and Exchange Commission, Federal Communications Commission) do not protect the members against arbitrary removal. Apparently the explanation is that these statutes were passed when the power of Congress to impose restrictions on removal was in doubt.

To assure the members of these commissions the same security of tenure applicable to the other commissions, we recommend that the statutes be amended to allow removal only for inefficiency, neglect of duty, or malfeasance in office.

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Provisions for Hold-over

Under several of the statutes, a member, whose term has expired, continues in office until his successor is appointed. This is a desirable provisions to maintain the commission at full strength in cases of delay in appointing the new member.

We therefore recommend that such a provision be made applicable to all the commissions either by general statute or by separate amendments.

D. Office of Administrative Procedure

Need for Continuous Review

The next chapter discusses many of the deficiencies in the internal organization and administration of the commissions and recommends measures to correct them.

Our investigation has convinced us, however, that more is required than an overhaul of the commissions at infrequent intervals. What is needed is continuous analysis of their organization and operations in order to promote more efficient administration.

This has led us to the conclusion that a special office should be established and maintained to study and report on the operations and organizations of these administrative regulatory agencies. Their problems are sufficiently different from those of the regular executive agencies to require separate examination, and the problems of the various regulatory agencies are similar enough to make their experience helpful to each other.

A similar conclusion was reached by the Attorney General's Committee on Administrative Procedure in its 1941 report, which recommended the creation of a separate Office of Administrative Procedure, headed by an administrator under a three-man board. This office would have studied procedures and methods of administrative agencies. This proposal has not been adopted.

Our proposal is that such an office should analyze organization, procedure, and methods. Staffed by a few qualified experts, it should undertake to study each agency regularly and prepare an annual report (*a*) reviewing its organization, operations, work load and delays, methods and procedures, supervision of staff, and similar matters, (*b*) comparing the methods and performance of similar agencies, and (*c*) recommending any needed changes.

The President should not have authority to order any such changes in organization or methods of operation. In the first instance, he could refer the reports to the chairman for the consideration of the

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agency. He should also transmit reports annually to Congress on the operations of these agencies, with recommendations for any changes he considers necessary to correct deficiencies.

AGENCY TO CONDUCT REVIEW

This objective could be attained under existing provision of law. As pointed out in chapter II, the Bureau of the Budget now has authority by statute to investigate the organization and operations of the independent commissions as well as other agencies and to submit reports to the President which he may transmit to Congress. But in practice such studies have been made only on invitation of the commissions and have been treated as confidential reports.

In our opinion, the proposed program is likely to be more effective if administered by a separate Office of Administrative Procedure in the Executive Office of the President. The tasks to be performed are partly similar to those now assigned to the Management Division of the Bureau of the Budget, but they also call for different emphasis and treatment and for a very few specially qualified experts to do the work.

Accordingly, we recommend the creation of an Office of Administrative Procedure, headed by a Director appointed by the President. Aiding him should be an advisory committee of three to five members: Two might be Government officials, such as the Director of the Bureau of the Budget, and the Director of the Administrative Office of the Federal Courts, and two or three might be private experts appointed by the President and serving on a part-time basis.

As an alternative, we recommend that the Bureau of the Budget establish a small separate unit to perform the same functions under its existing statutory authority. In our opinion, however, this is a less desirable method. Experience has shown that this work is likely to receive only limited attention in competition with the necessary budget review and the management studies of the larger executive agencies. Furthermore, as already stated, this work calls for a somewhat different approach and emphasis. Finally, in its relations with the agencies, the Bureau of the Budget is liable to the suspicion that its budget review powers may be used coercively to enforce its view. Indeed, the fear of this charge may explain the hesitancy to use its statutory authority more extensively in the past.

Whether the study is conducted by a new office or by the Bureau of the Budget, the proposed program does not increase the power of the President over these agencies or impair their independence. Existing statutes recognize the responsibility of the President to investigate and report to Congress. The regular use of this authority is more likely to improve administration than spasmodic investigations by Congress. If defects remain uncorrected, such reports will enable

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Congress to conduct investigations in a more orderly and effective manner and to take remedial action.

More important still, by directing the attention of the commissions to this phase of their activities, this program may encourage them to improve their own administration and to correct inadequacies as they arise.

E. Relations With Congress

Relations With Committees

The ultimate power of Congress over these commissions, and its ability to call them to account through legislature hearings, appropriation hearings, and special investigations has been pointed out in chapter II. It hardly need be said that this power, wisely exercised, can be most beneficial in maintaining the standards and improving the operations of the agencies.

Under the Legislative Reorganization Act of 1946, Congress has sought to put the exercise of this authority on a more regular basis. Each standing committee of both the House and Senate is charged with continuous watchfulness over the execution of laws within its jurisdiction in order to assist the Congress in appraising the administration of the laws and in developing such amendments or related legislation as it may deem necessary. For this purpose, each committee now has an expert staff.

This development provides the means for improving the relations between the commissions and the Congress to the advantage of both. The committee and its staff perform a vital function by insisting on full information about the activities and policies of the agencies. Such investigation is undoubtedly a salutary check on any tendency to abuse or improper exercise of the powers delegated to these commissions.

At the same time, it gives the commission a channel for bringing before the committee, directly and through its staff, a better picture of its operations in a more orderly way. This can be a protection against unjustified attacks based on misunderstanding.

There is always the temptation in this system for members of the staff or of the committee to intrude into the actual administration of the statute and to attempt to influence specific policies or decisions of the commission through informal suggestion. Any such development would appear inconsistent with the traditional separation of powers and would tend toward less responsibility instead of more.

Relations With Individual Members

We have already called attention to the practice by some members of Congress of submitting to the commissions inquiries and requests

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for action in pending cases on behalf of constituents. While this practice may not have affected the decision of cases, it tends to impair the reputation of the agencies for nonpartisan impartiality. At the same time, complaints from constituents are a useful check on the administration of these commissions, for which Congress has an important responsibility.

The reorganization of Congress provides a means for using such complaints constructively without the impropriety implicit in direct approach to the commissions by the individual member of Congress. If the members adopted the practice of referring all such complaints and inquiries regarding a commission to the appropriate standing committee charged with its oversight, the committee could use them for investigation. The volume and character of such material would be a rough index of the performance and weaknesses of the commission. At the same time, this method would shield both the Congressman and the commission from the suspicion of influence inherent in direct approaches for constituents.

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Chapter V

INTERNAL ORGANIZATION AND ADMINISTRATION

It has already been pointed out that a commission, as a regulatory agency, consists not merely of its five or seven members, but of the staff of several hundred experts and assistants as well (ch. II). Enabling this group to work together effectively in carrying on the regulatory tasks poses important problems of organization and supervision.

Frequently, as the staff reports show, this administrative job is slighted or neglected by the commissions. As a result, the members are often overburdened in trying to keep up with their work load, with too little time to think about the more basic issues in the regulatory program, and the performance of the agency suffers in delay, confusion, and other ways.

In improving the administration of the commissions, the main objectives should be to assure (1) that the more important problems receive primary attention and are not neglected for the less vital; (2) that the commissioners and the staff devote their time and attention to the work for which each is best qualified; and (3) that the work is efficiently organized to produce sound and expeditious results.

No panacea can be prescribed for achieving these objectives, but various steps taken together should improve the present administration in certain of these agencies. As basic measures, we recommend (1) more attention to planning the regulatory program, (2) delegation to the chairman of responsibility for administration, (3) organizing the staff to centralize responsibility and facilitate delegation and supervision, and (4) improving procedures.

This chapter discusses these recommendations and our reasons for them.

A. Developing Objectives and Standards

In chapter II, it was emphasized that the basic task of most of the commissions is to establish standards of conduct as the legal framework for the regulated industry or activity. To discharge this responsibility most effectively, the commission should be constantly

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engaged in seeking to define its standards; in reviewing the regulatory program as a whole; and in anticipating emerging problems and planning for their solution. Yet, the staff studies indicate that these are areas where many commissions are notably weak.

Deficiencies in Standards and Planning

Defining of Standards

The task assigned to most of the commissions, as has already been pointed out, usually defies hard-and-fast rules to cover all situations. That is one reason for creating a commission to handle the job of regulation. Faced with this fact, a commission must often deal at first with each individual matter, on the basis of its specific facts. Case-by-case trial and error may be the only way to isolate the novel problems and the significant considerations.

But this method is extremely costly in time and effort. Without accepted standards, the commission must analyze and evaluate relevant factors afresh for each new case; the staff and the industry are handicapped in presenting helpful data, arguments, or analysis; and the agency often appears to act in an unfair or arbitrary manner. All these factors argue for the establishment of standards of action as rapidly as possible.

Giving full weight to the inherent difficulty of the task and to the limitations on specific criteria, it still appears that many of the commissions have not gone as far as is feasible and desirable in laying down standards or in adhering to their announced standards. In granting new route cases, for instance, the Civil Aeronautics Board provides little real help in understanding its governing principles; its opinions suggest that the Board has failed to face squarely the need for an underlying program.

Until recently the Federal Trade Commission has not published opinions explaining the reasons or principles on which its decisions have been based. The opinions of the Interstate Commerce Commission have been criticized as unduly long, badly organized, and not designed to make clear their reasoning.

The Federal Communications Commission appears to depart freely from its published standards in the issuance of broadcast licenses.

In our opinion, the commissions should make a more strenuous effort to clarify and establish governing criteria. This would not only be useful in assuring more equal treatment, but would materially relieve the commissions in the handling of their work load. If the staffs understand the governing principles, they can analyze the cases and present them more helpfully to the commissions than when each case is treated as an original problem. The same is true of the parties and their counsel. In the commissions' own deliberations, the exist-

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ence of agreed guides focuses discussion and speeds disposition of the cases. Finally, such criteria facilitate delegation where otherwise desirable.

Planning the Regulatory Program

But standards for specific situations should not be established in isolation; they should be part of a general program of regulation. Under many of the acts, the commissions are charged with achieving or promoting long-range objectives such as an adequate system of air transportation, or surface transportation, or adequate radio service.

To carry out this responsibility, the commission must relate its different regulatory activities to this broader framework and allocate its available resources in the way best calculated to attain the basic objectives. Moreover, since the regulated industry or conditions affecting it are often changing rapidly, the commission should be continuously reexamining its program in order to modify it promptly in the light of new situations; it must be alert to detect emerging problems before they become too pressing. Only in that way can the regulation be kept abreast of the industry.

Here again the record of a number of commissions shows weaknesses. The time of the members of some is so occupied in disposing of the daily case load that they have little chance to consider the program of the agency as a whole or to decide where its time and resources can be expended to the best advantage. As a result, the agency tends to devote its efforts and attention to the immediate questions at the expense of many basic issues or problems.

For instance, until recently, the Federal Trade Commission had for years allocated its energies on the hit-or-miss basis of complaints with relatively little attempt to assess the significance of the particular proceeding in the light of its limited resources and the over-all objectives of the statutes. Now it has begun to plan its program to use its resources more effectively.

Again, broad planning has been singularly neglected by the Interstate Commerce Commission. Whenever an over-all review of the transportation system has been required, outside agencies have had to be named, such as the Federal Coordinator, the Committee of Three, the Committee of Six, and the Board of Investigation and Research.

The Civil Aeronautics Board and Federal Communications Commission seem to present other examples of inadequate planning, although they have attempted it in some areas. Thus, during the war, the Civil Aeronautics Board, foreseeing the tremendous expansion of international air transportation, developed a tentative route pattern before the large-scale granting of routes began. This was in sharp contrast to its handling of the domestic route pattern which

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has proceeded largely on an ad hoc basis. Similarly, the Federal Communications Commission developed a plan for FM stations before granting large numbers of licenses, in contrast to its methods for AM licenses.

Causes and Methods of Correction

These shortcomings seem to be due to a variety of causes, some of which should be removed or mitigated by other recommendations in this report.

Commission Inertia

To some extent these weaknesses are doubtless inherent in the commission form and procedures. A majority can agree much more easily on a specific issue requiring action at once than on general principles or a program for the future. Moreover, since authority and responsibility are diffused in the commission, inertia is greater and initiative is less. In getting the benefits of pooled judgment, one also pools the caution of the members.

Furthermore, the reliance on judicial types of procedure may reinforce this tendency. The tradition of the courts to await the presentation of matters to them tends to carry over to the commission despite its more affirmative responsibilities under the statute.

Turn-over of Members

In recent years, the excessive turn-over in members has aggravated the situation in several ways. Lacking background or experience, the new members proceed cautiously and require more time for consultation and decision until they master the problems. They are forced to concentrate largely on the current decisions and are less qualified to develop standards based on knowledge and familiarity. Long tenure is not a sure cure for these weaknesses: Some of the commissions on which members have served for long periods suffer severely from these defects. But longer tenure would removed one of the obstacles to correcting these shortcomings. Thus the steps already suggested to reduce turn-over would also help to mitigate these weaknesses.

Member Work Load

One potent cause for the failure to give more attention to developing standards and program is the absorption of the time of members by other activities.

The drain on members' time can be substantially reduced by relieving them of administrative details as suggested in the next sections of this chapter. In addition, more extensive definition of standards should shorten the time required for current cases and permit greater delegation to the staff of routine matters, as recommended below.

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Planning Staff

To counteract the neglect of these responsibilities, we recommend that each commission should have a small staff unit devoting its attention to the planning and research necessary to develop the program of the agency and provide the basis for allocation of its resources. Such a staff unit cannot take the place of thought and attention on these matters by the commissioners, but it could facilitate such consideration by continuous study and preparation of materials.

With better administration and delegations to the staff, the members should have the time to devote to these aspects of the work of the commission. Finally, if the staff is organized to centralize responsibility for specific parts of the regulatory program, the bureau chiefs may be more likely to press for the solution of basic issues than where responsibility is dispersed.

B. Internal Administration

Many of the commissions suffer badly from inefficiency and delay in handling their work. These defects appear to flow mainly from failure to delegate functions and to supervise the staff effectively.

Deficiencies in Administration

Failure to Delegate

In the process of regulation, every commission must carry on a large number of activities which are essential but do not involve major issues or policy questions. These include:

1. Administrative matters, such as minor personnel appointments or promotions, or leaves of absence;

2. Routine actions such as handling letters and replies, or sending a staff member to an outside meeting; and

3. Preliminary steps in regulation, such as extending the time for filing a document, or authorizing an investigation, or issuance of a complaint in an ordinary case raising no new principle.

Typically these questions do not require the deliberation or judgment of a group. Yet, some of the commissions regularly consider matters of some or all these types at their meetings. Since such items divert time from matters of greater consequence, they should clearly be handled without formal reference to the commissioners. They should be delegated in order to free the members for their more important duties.

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The failure to delegate seems to result partly from habit and inertia, partly from uncertainty as to how far the commission can delegate its authority to one member of the staff, partly from the desire of members to retain their prerogatives, and partly from an awareness that the system of supervision is weak.

Inadequate Supervision of Staff

The inadequacy of staff supervision is itself often a cause of delay and inefficiency in the operation of the commissions. It is very difficult for five or more commissioners to direct the work of the bureaus, or for the bureau chief to report to five or more masters. Each commissioner cannot review the work of each bureau so as to assure that the bureau chief is applying the commission's policies without frustrating or overextending them, and that the bureau has a workable plan for handling the entire work load with reasonable dispatch.

As a consequence, many commissions tend to forego any systematic supervision of the several bureaus and divisions. The contacts between the commissioners and the bureaus mainly concern individual cases and matters being presented to the commission. At such times the attention is on the substantive advice of the bureau chief and staff and the rulings and views of the commission. In administration, the commission is likely to rely on outside complaints regarding the activities and program of the bureaus, or delays in their operations.

As a basis for supervision this has serious defects. Complaints are most likely to be made by individual applicants about delay in processing specific cases. If their complaints expedite action by the bureaus on their cases, they may receive more advantageous treatment than earlier applications. The process also leads to increasing attempts by individuals, directly or through Congressmen, to obtain prompt disposition and further complicates the administrative problem for the commission.

In addition, the resulting selection of cases may be quite different from that which the commission would have made after a general view of the situation: Matters pressed by individuals tend to be favored at the expense of those initiated by the commission itself, which may be more important for achieving the objectives of the statute.

Use of Supervising Commissioners

One device developed to cope with this problem is the supervising commissioner. In the Federal Power Commission, for example, new cases are assigned as docketed to the commissioners in rotation. The commissioner then has some administrative responsibility for assuring that his cases proceed with dispatch, and for acting as supervisor of the staff for that case. In important cases, this device may have some advantages as a means of focusing the staff on basic issues, but as an administrative method for the large run of cases it is unsatisfactory.

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Insofar as it causes the commissioner to concern himself continuously with the handling of routine cases, it diverts his attention from more important matters. And for the staff, this device has two serious disadvantages: (1) Each bureau chief is under direction by several commissioners, each concerned with his particular cases, but without an over-all view of the work of the bureaus; and (2) each case may proceed more or less quickly depending on the views and vigor of its supervising commissioner.

Use of Reporting Commissioners

Another method used by some commissions in attempting to provide better administration is to assign each bureau to one commissioner for general supervision. The Interstate Commerce Commission has used this method for many years. Compared with the supervising commissioner assigned to each case, this has the advantage that the bureau is not under separate direction from all the commissioners, and that the one assigned can assist the bureau head to work out orderly methods for handling its work load. Moreover, where the commission has a wide range of regulatory duties this will assure that at least one commissioner is familiar with each aspect of its work.

But the scheme has serious limitations, as indicated by the experience of the Securities and Exchange Commission. After trying the method for a period, that Commission abandoned it as a failure. Inevitably the individual commissioner tends to become engrossed in the routine work of the bureau at the expense of more important matters before him at the commission level. He may also become a protagonist for his bureau and lose his broader perspective. At the same time the commissioner is not likely to be able to supervise the bureau actively enough, especially in its administration, its timetables and progress, to correct administrative deficiencies. Where the bureaus are organized primarily on a professional basis, any one commissioner also suffers some of the same limitations as the bureau head as far as responsibility for results and coordination are concerned.

Thus this method does not seem satisfactory as the primary method of supervision of the work of the staff.

Commission Delay

The commission itself may sometimes be a source of delay in the disposition of matters. This problem is more acute in some agencies than others. The Interstate Commerce Commission, for example, has taken over a year to decide a number of cases after submission to the commission itself. The National Labor Relations Board has a formidable backlog of cases on its docket awaiting presentation, though the Board does not seem to take an excessive time in deciding cases after they are reached.

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Some delay in arriving at a decision after presentation is a corollary of the fact that the commission has several members; that all have a right to be heard; and that their differences require exploration, harmonizing if possible, and if not, the preparation of dissents. The very strength of the commission in assuring deliberation opens possibilities of delay.

But the experience of some commissions shows that delay in reaching decisions, whether the decision records a compromise, or reflects a dissent, is by no means inevitable. Undue or extreme delay by the commission is likely to reflect weaknesses in the work of the staff or in the work methods of the several commissioners.

Basis of Recommendations

Basically, all these weaknesses point to the fact that many commissions have failed to appreciate the need for orderly administration or to adopt methods adequate to achieve it.

The difficulty of devising and maintaining effective methods within the framework of the commission form should not be minimized. The evidence is overwhelming that the commission as a whole cannot properly supervise the bureaus or the work of the agency. Delegation to individuals either on the commission or the staff is essential. But the forces tending to prevent such delegation, as already discussed, must be fully recognized.

Yet a number of the commissions have been well administered at various periods. In arriving at our recommendations we have taken full account of these examples of successful administration as well as of the weaknesses already described. For that reason we are confident that our proposals are entirely consistent with the full realization of the advantages of such commissions, and indeed should substantially assist in obtaining those advantages more completely in practice.

Delegation of Administration to the Chairman

In order to prevent the absorption of all the commissioners in administrative details at the expense of the substantive work, the chairman should be specifically designated as the person responsible for administration within the commission.

Duties

In practice his duties in this respect should include:

1. Supervision of the various bureaus and divisions from the administrative point of view, such as their work load, backlog, progress, and programs.

2. Direction of the administrative divisions of the commission—those dealing with the budget; personnel; management analysis; and office and miscellaneous services.

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3. Analysis of the administration and procedures of the commission for proposing changes to improve administrative efficiency and to provide more systematic supervision.

Relation to Commission

On routine supervision and appointments, the chairman should merely report periodically to the commission. But the chairman's primary responsibility for administration should not supplant the ultimate authority of the entire commission on matters which are of major significance to the agency. For example, the commission should approve appointments of bureau or division chiefs, or major reorganizations of the staff. On such matters, the chairman should have the responsibility for taking the initiative in spotting and analyzing the problems, developing data, and submitting proposals to the commission.

One objection sometimes made to strengthening the office of chairman in this way is that it will reduce the status of the other members and make it more difficult to attract good men. This objection seems to us unsound and refuted by experience. Actually this proposal does not derogate from the importance or equality of the other commissioners. Each member will have undiminished authority on all substantive policies and decisions and on basic administrative matters. In fact their participation in substantive action will be facilitated by freedom from partial and shared responsibility for administrative details.

Able and intelligent men will recognize that a committee is not well fitted for administration and that centering that responsibility in the chairman does not derogate from the standing or authority of the other members. Indeed, competent men are more likely to be willing to serve where a commission is well run under an able chairman than where it is badly managed and no one has the necessary authority to correct the situation.

Executive Officer

The chairman should not himself conduct the administrative supervision of the bureaus and divisions or the management analysis. That should be entrusted to an executive officer, who in turn may need a staff. But the executive officer should not report to the five or seven members on administrative problems; he should report to one, the chairman.

This executive officer should relieve the chairman of the routine administration, but should work under his active direction. In his relations with the staff, his authority should rest on the fact that he speaks for the chairman. Under the chairman, he should directly manage the staff units engaged in administrative functions such as budgeting, personnel, and management analysis. He might well be

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given a position as Chief of an Office of Administration, but it is essential to his proper functioning that he report directly to the chairman only and not to the commission as a whole. The commission should look to the chairman and hold him responsible for the direction of the executive officer and the supervision of his performance.

The executive officer would not be concerned with the policy decisions of the commission. The staff bureaus would still remain responsible to the whole commission for advice and recommendations on policy questions. Indeed a major purpose in centralizing the administrative supervision is to enable the staff and commission to work together more effectively on the substantive matters.

Statutory Authority

The acceptance by the members of the administrative role of the chairman is essential to its success. Our studies indicate that chairmen who have sought to perform the role outlined above have often met resistance from the members. Apparently such conflicts have stemmed from the belief that the chairman was usurping authority, and from the failure to distinguish the policy or substantive functions from the administrative management of the agency. Where this attitude develops, it creates suspicion and ill will which seriously impedes the work of the commission.

On the other hand, where the members accept the principle of the chairman as administrative head, his leadership does not irk or irritate, but enables the group to operate more effectively on the substantive problems.

This problem will be partly met by our recommendation that the chairman be designated by the President. Our hope is that the selection will be based largely on capacity for leadership and administrative ability. In any case, experience seems to show that the added prestige derived from such designation makes it easier for the chairman to assume the lead in administration without arousing friction or ill feeling among the other members.

As a further measure, we recommend that the responsibility and authority of the chairman for administration should be expressly recognized and defined by statute. If that is done, no claim or feeling of usurpation can arise.

Rejection of General Manager

In arriving at our recommendation that the chairman be in charge of administration, we have considered and rejected another method sometimes proposed for centralizing responsibility for staff supervision. That is the suggestion that the commission appoint a general manager reporting to the commission as a whole.

Our reasons for discarding this proposal are primarily two:

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1. The general manager would have five or more masters; they might tend to pull in opposing directions and give different instructions. He would almost inevitably become involved in playing one off against another.

2. This device may tend to insulate the commission from its staff by introducing another layer of indefinite authority. The very fact that the general manager's position is likely to be uncertain and insecure may promote jockeying and efforts to build up his standing. Consequently, he is likely to create resentment among both staff and members.

Where an agency has heavy operating and executive responsibilities, this arrangement may be necessary and desirable, but we think it fails to meet the peculiar problems of the regulatory commission. For such agencies, all the useful functions of a general manager can be better handled, without his serious drawbacks, by an executive officer under the chairman.

Delegation to the Staff

The recognition of the chairman as administrative head of the commission will facilitate the delegation of administrative duties to the staff under his direction.

In addition, we recommend that each commission explore more fully the possibility of further delegations to its staff of authority to handle routine and preliminary matters which should not require the specific attention of the commission as a whole. The fact that more effective methods of supervision would be available through the chairman's office and through better organization of the staff should make it easier to achieve such desirable delegations.

To the extent that requirements of law are considered to compel commission handling of matters which should be delegated, it is recommended that the commissions be expressly authorized by statute to make delegations to members and staff officials to act for the commission on routine, procedural, or other matters where the commission considers it appropriate. Under this explicit authority the commission should be less hesitant to delegate authority with respect to such matters.

Delegation to Commissioners

Number of Commissioners

Where a commission is slow or behind in its work, one suggestion often made is to increase the number of members. In general, however, a larger number of commissioners is likely to reduce the volume of work the commission can handle so long as it acts as a unit. If three members are enough to assure that different points of view will be

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considered, then five, seven, or nine members tend to extend the length of discussion and conference without improving the product. Even so, five men might be needed instead of three to provide a minimum of reserves to cover vacations, illness, or special assignments of importance.

So long as the commission acts as a whole, therefore, experience indicates that more members are likely to cut down its output.

Use of Panels

This may not be true, however, if the nature of the work makes it possible to divide it among panels or divisions of the commission. In the National Labor Relations Board, for example, panels of three have been useful in increasing the total output of decisions in the large volume of cases which do not raise novel issues. In the Interstate Commerce Commission, the divisions (panels) represent a long-term assignment and a specialization by type of case; their decisions dispose of many cases without appeal to the full commission. In the Federal Communications Commission, however, panels were tried but were abandoned. Apparently members were unwilling to specialize and too many matters required action by the whole commission.

Thus panels may be of value in meeting particular administrative situations. But, where a large part of the work must still go to the commission as a whole, then an increase in size to allow panels may be self-defeating—the savings by the panels may be more than offset by the longer time required for action en banc. Moreover, panels may tend to make the commissioners primarily specialists, unaware of the general problems and program of the commission, and out of touch with subjects outside their specialties. If this occurs, this device destroys the advantages of the full commission as a deliberative body.

Sponsoring or Reporting Commissioners

The use of the supervising commissioner who is assigned to follow a specific case through the staff and commission has been discussed above. We believe that this is essentially a makeshift device to compensate for the dispersion of responsibility among the staff bureaus, that it is not effective, and that it tends to divert commissioners into administrative detail. Accordingly we do not favor its use.

Somewhat different is the reporting commissioner who is assigned by some commissions to oversee a bureau. On the evidence, we are convinced that the reporting commissioner is not an adequate substitute for centralized responsibility in the chairman for administration. It cannot provide an over-all view of the agency's work or systematic attention essential to efficient supervision. But if the chairman is recognized as primarily responsible for administration, the reporting commissioner may provide a useful link between the bureau head and the commission on policy matters.

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As indicated earlier, the device has some weaknesses even for this purpose; but these might be less serious if the administrative duties were eliminated. On the other hand, there would be serious risk of friction between the chairman and the reporting commissioner unless their respective roles are clearly understood. The contrasting experience of the Interstate Commerce Commission and the Securities and Exchange Commission suggests that the method is less useful where better methods of supervision and administration are more highly developed.

C. Organization of Staff

Intimately related to the preceding discussion is the problem of how to organize the staff of the commission so as to make the best use of its various experts and to facilitate supervision and coordination.

Professional Organization

Some commissions have divided their experts into bureaus according to professional skill. For example, the Federal Communications Commission staff is organized, basically, into engineering, law, and accounting bureaus. Essentially the same organization, with some modifications, is found in the Federal Power Commission. Since many of the problems, and especially the most important ones, require the commission to obtain the assistance of all three bureaus, all three may then have partial responsibility in the same matter. Each will analyze it from the point of view of its own professional specialty.

Disadvantages

This tends to impede coordination, even though the bureaus recognize the need for cooperation. At best there are mechanical obstacles to assuring that the bureaus will keep each other fully informed, take their respective positions into account, and make every effort to reach agreed solutions. The inevitable differences in professional approach tend to be overemphasized.

This type of organization is also likely to cause delays in operations. This may occur in transmitting matters from one bureau to another, in arranging conferences, in adjusting the respective work loads, in clearing with the respective bureau chiefs.

Even more serious is the absence of centralized responsibility for each type of activity of the commission. No one bureau chief is charged with analyzing and reviewing the various problems, obtaining the relevant information, and transmitting a recommendation to the commission for its consideration. No one bureau chief can be held responsible for the delays in the completion of cases.

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Advantages

On the other hand this type of organization assures the commission of receiving the benefit of the views of each type of specialist without the possibility of suppression of dissent or differences between the various professional groups.

A professional organization is olso said to assist in recruiting qualified staff members. It has been asserted that professional experts prefer to work under and be supervised by men of their own discipline and are more likely to undertake a career in such an organization. However, there seems to be no evidence that the staffs of agencies organized on a functional basis are inferior to those organized by profession.

FUNCTIONAL ORGANIZATION

Another form of organization adopted in some of the commissions is to group the staff experts according to the major functions of the commission. Thus one bureau will be made responsible for a certain task (such as regulation of security exchanges, or registration of securities), and will be assigned the various types of experts necessary to do its work. The Securities and Exchange Commission is an example of an agency which has organized its staff primarily in this fashion, and apparently with marked success in administration.

Advantages

The administrative advantages of this type of organization are substantial. One bureau head is responsible for the segment of the regulatory program, and can plan the work and schedule the work load to achieve the best use of the personnel available. He can be held to account by the commission for any delays or other breakdowns in operations. He can minimize clashes between the various experts and assist in avoiding unnecessary conflicts. The experts themselves may tend to become less parochial in outlook and learn to work together more effectively.

Thus this type of organization tends to overcome many of the most serious weaknesses of the professional type of organization.

Disadvantages

This form of organization is subject to its own dangers, however. The major one is the risk that the bureau chief will isolate the commission from its experts. He may consider the suggestions of the different professional groups, make a choice among suggestions, and preclude further discussion and presentation of differences to the commission. And if the bureaus are also organized internally on a functional basis the same suppression of dissent may occur in the subordinate divisions.

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In an independent regulatory commission, this seems to be an unsound method of operation. One of the purposes of such a commission is to take into account different points of view in order to reach a balanced judgment. If the experts on the staff, who are most conversant with the problems, have differences of view, it is advantageous for the commissioners to consider the conflicting viewpoints, and ventilate the underlying policy issues, in reaching their own conclusions.

In the professional type of organization, the bureau heads inevitably present their differences of view to the commissioners, when they cannot be reconciled by agreement. In a functional organization, the bureau or division head may settle differences among his subordinates by fiat, without agreement.

This difficulty can be avoided, however. In the Securities and Exchange Commission, for example, where differences of opinion have not been resolved by agreement within the staff, the matters are presented to the commission by the director, or assistant director. Other staff members who have taken a substantial part in the case attend, and may present their views, though contrary to the division director's. Their attendance may be on the motion of the director or at their own request.

Conclusions on Staff Organization

The ideal organization of staff would combine as far as possible two competing objectives: (1) Coordination of staff views and centralized responsibility, and (2) assurance that the commission receives the full benefit of staff differences of view.

Neither the professional nor the functional form will necessarily achieve these objectives fully or always. In its pure form, each tends to promote one of these objectives at the expense of the other. But our conclusion is that the functional structure is better suited, on balance, for the needs of these commissions. The fact that it helps to overcome the weaknesses in administration and supervision, so common in these agencies, is most persuasive in its favor. The commission will be able to look to one bureau head to handle each segment of its task, in disposing of the day-to-day work, in helping to develop standards, in planning the regulatory program, and in anticipating new problems. These are tremendous advantages.

In addition, we think that the advantages of professional organization can be largely attained within this framework.

1. The commission itself can cultivate a climate in the agency which will foster free exchange of views and differences of opinion on an objective basis. The experience of the Securities and Exchange Commission shows that this can be done within functional bureaus.

2. Furthermore, the desirable professional spirit among the staff can be nurtured by other means than professional bureaus. The

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commission can designate a chief counsel, chief engineer, and chief accountant as its advisors and make them responsible for the general standards in the agency with respect to their specialities. In addition to advising on major issues within their fields, they can have a voice in the selection and promotion of staff members in the same profession. They should not interfere in any way with the assignment or scheduling of work within the bureaus, but would maintain the standards and the esprit of the staff experts. Moreover, a similar method can be followed in organizing the staff of the larger bureaus.

We do not, of course, assert that organization primarily by professional skills is inadequate or unwise in all cases; the situation of each agency must necessarily be carefully considered in detail. This has been done in the staff reports and their comments and recommendations on this problem are commended to each agency for its consideration.

D. Improving Procedures

The staff reports indicate that the commissions should make more vigorous and continuous efforts to improve their procedures for handling cases in the interest of expedition and efficiency.

Without attempting to be exhaustive, we suggest that many of the commissions could profit by examining further the use of such methods as the following:

Informal Procedures

For many kinds of regulation the formal quasi-judicial hearing is an expensive or clumsy device for obtaining necessary information and the fruitful exchange of views.

Some of the commissions use informal methods to settle certain kinds of controversies or issues more simply and cheaply than by hearing. For example, the Interstate Commerce Commission has a Bureau of Informal Cases to settle disputes between shippers and carriers, although it relies almost entirely on correspondence. Our study suggests that the Commission take more active steps to encourage such settlements.

For some situations, a conference technique would appear to be well-suited and still preserve all necessary safeguards. For example, one informed writer, discussing the procedures of the Interstate Commerce Commission in railroad reorganizations, has observed that the conference around a table would have been far more useful and productive than the judicialized procedure actually followed.

Some of the commissions have used this method in certain areas. Thus in recent mail-rate proceedings, the Civil Aeronautics Board has

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relied heavily on this technique in threshing out the data and arriving at tentative conclusions. In effect, the Securities and Exchange Commission follows this method in much of its work, such as security registration.

Many commissions do not seem to have sufficiently explored the possibility of using this deviation from the judicial proceeding. We recommend that they do so more extensively.

Expediting Formal Hearings

Pretrial Conferences

Where a formal hearing is necessary, a conference before it begins can often isolate the disputed issues, simplify methods of submitting evidence, and speed up the actual hearing. In recent years the courts have shown commendable initiative in experimenting with these procedures and have clearly established their value. Some of the commissions have also tried such methods but more could be done in this direction.

Shortened Hearings

The hearings by some of the commissions have been sharply criticized as unduly lengthy and drawn-out. The record tends to be loaded with repetitive and cumulative evidence; with long statements of counsel and witnesses which are primarily argumentative; and useless cross-examination.

The solution depends on greater insistence by the examiner on keeping the proceedings within bounds. But the commissions could encourage such action by closer attention and perhaps by prescribing rules of practice to govern evidence in recurring types of cases. Shorter records would save the time of counsel and the examiner in the hearing and of others who must read the record in later proceedings. In addition to the saving in time and expense, they might assist the examiners in the preparation of more helpful analyses in their reports.

These reforms cannot be introduced merely by a stroke of the pen or an order. They call for continuous thought and experiment in devising and perfecting new ways for doing the daily tasks better. Our hope is that such efforts will be encouraged by centralizing responsibility for administration in the chairman.

In addition, the Office of Administrative Procedure which we recommend in chapter IV, should stimulate such improvements as one of its major functions. By studying the results obtained where such methods are tried, it could encourage the use of successful techniques by other commissions in appropriate situations. And by comparisons among the agencies, it could find the reasons for failures where they occur.

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Part Two

SPECIFIC RECOMMENDATIONS ON INDIVIDUAL COMMISSIONS

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Chapter VI

UNITED STATES MARITIME COMMISSION

The administration of the promotion of the merchant marine has gone through several phases. In 1916 the United States Shipping Board was set up as an independent agency, combining regulatory and judicial duties with extensive operating functions. During much of its life it was beset with administrative confusion and mismanagement. The President and Congress were often at odds with the Board, especially in respect to the handling of its Emergency Fleet Corporation, which administered many of the Board's operations.

In 1933, partly as a result of this situation, partly as a result of the mail scandals, the Shipping Board was transferred to the Commerce Department as the Shipping Board Bureau. Yet this move was not entirely successful. There is evidence that the Shipping Board Bureau was never really integrated into the departmental organization and program, and that its administration was not of a high order.

In 1936, Congress established the Maritime Commission, giving it a mandate to foster a merchant marine capable of carrying a substantial part of the country's water-borne export and import foreign commerce on safe and efficient vessels owned, operated, and constructed by citizens of the United States, manned with trained personnel, and designed to serve as military auxiliary in time of emergency.

A. Composition and Functions of Commission

The Commission has five members, appointed on a staggered basis for terms of 6 years each. Not more than three of the members may be members of the same political party, and no person may be appointed who, within 3 years prior to his appointment, has been engaged in or has had a financial interest in any business associated with ships or shipping. The President designates one member to act as Chairman of the Commission, and the members may elect a Vice Chairman from their own number.

As of July 1, 1948, the Maritime Commission had 6,816 employees, of whom 1,309 might be classified as executive, supervisory, or pro-

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fessional. Most of these were employed in operating activities, chiefly the ship lay-up and personnel training programs. The cost of the agency during the fiscal year of 1949 is estimated at $22,303,000.

Functions

The United States Maritime Commission has a wide range of responsibilities. In many respects it is a business—a very big business. It also has important promotional, regulatory, and investigatory functions. Most of its activities are related directly or indirectly to problems of national security and foreign commerce.

More specifically, the Commission's functions are as follows:

Operating

The Commission's biggest job is that of managing physical properties, mainly ships. It operates ships, charters them, repairs them, designs them, builds them, buys them, sells them, lays them up, delivers them, and so on. It conducts training programs for licensed and unlicensed personnel. In emergencies it may terminate charters on its vessels, and may requisition others. It holds many ships in reserve, in readiness for defense needs. Until March 1, 1949, the Commission is responsible for certain ocean services to and from Alaska, and until that date is authorized to charter certain war-built merchant vessels to United States citizens.

Promotional

The Commission administers the subsidy program designed to enable American shipbuilders and shipping companies to compete with those of foreign nations.

The subsidies are of two types:

1. Construction subsidies, under which the Commission pays for the construction of vessels in United States shipyards and sells them to applicants for an amount equal to the estimated cost of constructing the vessels in a foreign shipyard.

2. Operating-differential subsidies, under which the Commission pays operators of ocean services the amounts by which certain items of expense exceed those of foreign competitors; these subsidies may not be paid for coastwise or intercoastal vessel operations.

Furthermore, the Commission acquires obsolete vessels in exchange for credit on the purchase of new vessels; it administers construction reserve funds for American shipowners; and it administers a Federal ship mortgage insurance fund.

Regulatory

The Commission receives and determines complaints of shippers, passengers, and others alleging discrimination by ocean carriers or

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persons in forwarding or furnishing of wharfage, dock, warehouse, and other terminal facilities. The Commission approves, disapproves, or modifies agreements entered into between shipping companies respecting cooperative working agreements. It regulates the sales to aliens and the transfer to foreign registry of vessels owned wholly or partly by United States citizens. By its contracts for operating subsidies, it prescribes labor standards.

Investigatory

The Commission investigates and determines ocean service, routes, and lines from our ports to other nations, and decides what means must be taken to establish an adequate and well-balanced merchant fleet in the light of both military and economic considerations. It investigates employment and wage conditions in ocean shipping and sets minimum-manning scales, minimum-wage scales, and reasonable working conditions for subsidized operators.

B. Performance of Present Organization

INTERNAL ADMINISTRATION

Since the Maritime Commission got under way in 1937, it has experienced varied forms of administrative control and policy making. The first two Chairmen, Joseph P. Kennedy (1937–38) and Emory S. Land (1938–46), were energetic Administrators with wide experience, and they enjoyed strong backing from President Roosevelt. While important matters were decided by majority vote of the Commission, it was clear that the Chairmen exercised extensive authority and leadership. They could turn to the White House for support when problems of internal management or of external relationships arose.

During most of this period of 1937–46, administrative operations of the Commission were in charge of an executive director under the direction of the chairman. During the war, the ship-operating functions were transferred to the War Shipping Administration, created in 1942 by Executive order, but were returned to the Commission after the war.

Early in 1946, administration of the Commission changed sharply. All the Commissioners who had served during the war had left the Commission and been replaced by new members. The new Commissioners strongly asserted their equal authority and the influence of the Chairman declined. Thus the Commission has not had strong leadership during the past 3 years. The position of the executive director was abolished, and no equivalent position was established until August 1948, so that there has not been central administrative control.

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This lack of leadership has had important consequences. In terms of the activities of the Commission proper, it has shown itself in delays and friction. In terms of the agency as a whole, the lack of leadership and related weaknesses have led to delays, confusion, planlessness, defective control, faulty organization, and inadequate staffing. There has been a good deal of working at cross purposes, of friction between Commission and staff, of divisions within the Commission proper and, to a lesser extent, within the staff and lower units.

Relations With Executive Branch

The external relations of the Maritime Commission also have followed a similar pattern. In the last 3 years, the Commission has not been so amenable to Presidential influence as during the previous 9. On certain matters the Commission must receive the assent of the President before proceeding, as in ship construction, and there has always been close communication between the Maritime Commission and the White House. Nevertheless, by and large, the Commission has had a keen sense of its independence from Executive control. For his part, the President has rarely attempted to influence Commission policy. The Commission has worked closely with the Budget Bureau on budgetary matters, and to a somewhat less extent on policy questions. During the last 3 years the President's appointments do not seem to have been made with a view to influencing Commission policies.

Coordination with other agencies in the executive branch has varied with the agency. Since the war, there has been a measure of friction between the Maritime Commission and the State Department, partly because of the different perspective taken toward foreign relations by the two agencies, partly because there has been some duplication of effort. On the other hand, relations with the defense agencies have been generally harmonious. In general, interdepartmental coordination has been effected through the Maritime Commission's liaison officer, and through interdepartmental committees. These devices have been effective in exploring differences and agreements and in carrying out agreed-upon policies, rather than in establishing harmony in the first place.

Relations with Congress

The Maritime Commission's relations with Congress have likewise deteriorated during the past 3 years. This was due in part to the change in party control in Congress, in part to serious accounting deficiencies in the Commission, in part to the absence of close personal relationships between Commissioners and Members of Congress such as those that had existence during the Roosevelt administrations. Congress seems to have found difficulty in obtaining information on the activities of the Commission or in trying to supervise or direct

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its activities. There have been many differences between the Commission and the General Accounting Office. In view of this situation the Senate Committee on Expenditures in the Executive Departments, through its staff, has been making an extensive study of the operations of the Commission.

Recent Reorganization

Finally, in August 1948, the Commission drastically reorganized its internal structure. A variety of bureaus and divisions was consolidated into seven bureaus, the chiefs of which reported to a new general manager, who was granted extensive administrative control. A planning agency was established for administration, and a number of other important reforms was instituted. Many of these reforms were similar to proposals then in preparation by the staff members of our committee and the Senate committee and may have been prompted by their investigations and suggestions.

This change seems clearly a desirable step in the interest of better administration of the work of the Commission. Even so, the question remains whether this will provide a permanent solution or whether more fundamental changes are required.

C. Recommended Transfer of Operating Functions

The basic question, in regard both to the Commission's internal management and its external relationships, is how far the commission form of control is desirable for the administration of maritime affairs in the United States.

Basis of Recommendations

The commission form has had certain obvious advantages. It has permitted extensive deliberation by members, holding different viewpoints and possessing different backgrounds. Overlapping terms have enabled new Commissioners to be broken in gradually, except on the complete turn-over at the end of the war. The commission form has made the agency less susceptible to partisan pressures. These attributes are highly desirable especially in the regulatory and subsidy activities of the Commission.

The commission form has had disadvantages too. While the Commission has worked harmoniously with the President, Congress, and other administrative agencies on many matters, it has in recent years come into conflict with the executive and legislative branches on important questions of foreign and domestic policy. Part of the difficulty here has been caused by the fact that some Commissioners

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have been close to Congress, or to factions or blocs within Congress, and others to the President, or to other agencies.

The commission form has also had serious disadvantages in the administration of the varied activities of the Maritime Commission. During its first decade, its tasks seem to have been well managed; but this success must be attributed partly to the unusually able and vigorous chairmen, partly to the recognition of the members of the necessity for leadership, and partly to the attitudes induced by the war. Even so, it was found desirable to create the War Shipping Administration to relieve the Commission of part of its operating duties. Since the war, the Commission has been so preoccupied with administrative detail as to impede much of its work. The reorganization of August 1948 may remedy the situation; yet success will depend almost entirely on the ability or willingness of the Commission to retain from interfering with the general manager's proper functions.

The experience with the Shipping Board and the recent difficulties of the Maritime Commission indicate that more basic measures are required. The commission form does not appear to be the most efficient and effective kind of agency for handling the heavy operating and administrative responsibilities of the Maritime Commission. These activities do not call for the special advantages of the commission form to a sufficient degree to justify removing them from the regular executive departments. Many of these operating functions affect intimately those of other agencies, and have an important relation to the President's duties, especially his conduct of foreign relations and his control of a defense or war program.

These activities are, of course, closely related to the regulatory and subsidy functions which do seem to call for Commission handling, but their administration can be separated without serious complications.

Recommended Functions of Administrator

Accordingly the wise course seems to be to shift the administrative and operating functions of the present Maritime Commission to an Administrator, responsible to the President, and to leave the regulatory and promotional functions in the hands of the Commission. Obviously, the President could not be expected to exercise direct supervision over the Maritime Administrator, because of his many other responsibilities. The most suitable course of action would be to place the Maritime Administration in a Department of Transportation, if established, or in the alternative, in the Commerce Department.

The Administrator should take over from the Maritime Commission its operating and administrative functions as follows:

1. The construction and reconditioning of vessels (with the approval of the President, as at present).

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2. The training program for licensed and unlicensed personnel.

3. The lay-up and preservation program for vessels in the national defense reserve fleet.

4. The termination of charters and requisitioning of vessels in time of emergency.

5. The provision of ocean services to and from Alaska (until March 1, 1949).

6. The sale and chartering of war-built vessels to United States citizens (until March 1, 1949).

7. The administration of construction reserve funds (jointly with the Treasury Department).

8. The administration of the Federal ship mortgage insurance fund.

9. The investigation of ocean services, routes and lines from United States ports to foreign nations, and of what additions and replacements to the American merchant marine are necessary to achieve the objectives of the Maritime Act of 1936.

RECOMMENDED FUNCTIONS OF MARITIME COMMISSION

The advantages of the Commission form, however, should be retained for those functions which should be conducted independently of direct Presidential, party, or congressional control and which call for judgment and consultation.

The Maritime Commission should therefore exercise functions as follows:

1. Determination and administration of construction subsidies (in cooperation with the Navy Department).

2. Determination and awarding of operating-differential subsidies.

3. Acquisition of obsolete vessels in exchange for credit on the purchase of new vessels.

4. Fixing, in contracts for operating subsidies, of minimum-manning scales, minimum-wage scales, and reasonable working conditions for officers and men employed on vessels receiving such subsidies.

5. Receipt and determination of complaints of shippers, passengers, and others alleging unreasonableness or discrimination.

6. Approval, disapproval, or modification of agreements entered into between common carriers by water respecting cooperative working arrangements.

7. Regulation of sales to aliens and the transfer to foreign registry of vessels owned wholly or partly by citizens of the United States and documented under United States law (in cooperation with the State Department).

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Need for Separate Commission

In its Report on Transportation, the Brookings Institution has recommended that most of the functions of the Maritime Commission be transferred to the proposed Department of Transportation and that the remaining functions (primarily regulatory) be transferred to the Interstate Commerce Commission. Thus the Maritime Commission would be abolished.

We disagree with this proposal.

While we have also recommended the transfer to the executive branch of the operating functions of the Maritime Commission, our conclusion is that the Commission should be retained to perform the regulatory and subsidy functions. As already indicated, our view is that the awarding of subsidies involves the same needs for deliberation and group judgment, impartiality, and continuity which typically call for the independent commission.

If these regulatory and subsidy activities are to be handled by a commission, then the Maritime Commission should be retained to administer them. This work would not be closely related to the present regulation of the Interstate Commerce Commission, and the problems are sufficiently different and difficult to justify a commission devoting its attention to them alone.

1. The Interstate Commerce Commission now regulates only domestic carriers and is concerned mainly with rates and intercarrier competition. With respect to ocean shipping, such regulation is of very limited importance; the main task is the promotion of an adequate merchant marine for defense and foreign commerce primarily through subsidies for construction and operation. The two types of activities are obviously very different.

2. Since the domestic and ocean carriers do not compete, there is very little need for coordination of this subsidy work with the regulation of domestic carriers by the Interstate Commerce Commission. On the other hand, the agency administering subsidies must cooperate closely with the Administrator, the defense departments, and the State Department. In view of the long tradition of the Interstate Commerce Commission against collaboration with executive agencies, it is believed that a separate commission is more likely to meet this need.

3 In view of the vital importance of the merchant marine, it seems desirable to have a commission devoting its attention entirely to this problem. If this task were added to the many other duties of the Interstate Commerce Commission, the Commission could allot only very limited time and thought to this part of its work.

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Accordingly our recommendation is that the Maritime Commission should be retained to perform the regulatory and subsidy functions remaining after transfer of the operating activities as set forth above.

D. Composition of Maritime Commission

Number of Members

In view of the reduction of functions already recommended, it is believed that the members of the Maritime Commission could well be reduced from five, the present number, to three, with terms of 6 years as at present. The smaller number should facilitate cooperation with the agencies in the executive branch without sacrifice of the advantages of group judgment and deliberation, impartiality, and insulation from political pressure. In addition, this reduction might increase the prestige of each member and tend to improve the quality of the membership.

Qualifications

The act of 1936 contains an unusual provision forbidding the appointment to the Commission of any person who has been employed by, or interested in, any carrier or related business within 3 years before appointment. This provision obviously disqualifies most people who are familiar with the shipping industry or its problems, except perhaps Navy personnel. It has been strongly criticized.

A member or employee of the Commission should certainly not have conflicting interests during his service with the Commission, but it does not seem necessary to impose the additional 3-year restriction in order to prevent bias. Where a particular nominee appears to be so closely allied with some part of the industry as to make his appointment unwise or undesirable, that can be handled more appropriately through refusal of the Senate to confirm.

It is therefore recommended that this special restriction be eliminated.

Compensation

In accordance with our general recommendation, the salaries for members of the Maritime Commission and their top staff should be substantially increased in order to attract and hold men of the necessary competence and experience.

Hold-over

The Maritime Act of 1936 does not provide that a Commissioner whose term has expired shall continue to serve until a successor is

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appointed. To enable the Commission to continue at full strength pending new appointments, it is recommended that such a provision be added to the act.

E. Organization of Commission

Appointment of Chairman

By statute, the chairman is now appointed by the President and that method of appointment should be continued in accordance with our general recommendation.

Role of Chairman

The experience of the Maritime Commission during the last 3 years, as compared with the earlier period, shows the importance of centering the internal administration in the chairman. While the recommended transfer of functions to an Administrator will substantially reduce the size of the staff and the burden of administration, the Commission will still need the help of a smaller staff in performing its remaining duties. The supervision of this staff should be under the chairman, in conformity with our general recommendations.

Staff Organization

With the smaller staff and the removal of operating functions, the Office of General Manager, created in the reorganization of August 1948, would no longer seem necessary and might well be converted into that of an executive assistant to the chairman, handling administration under his direction.

In view of the recency of the reorganization of August 1948, and the far-reaching reforms then made, as well as the major change in the scope of the Commission's work which would result from our previous proposals, no recommendations are submitted with respect to staff organization except to refer to our earlier general discussion of this problem.

F. Industry Advisory Committee

A final question concerns the relations between the maritime agency and the shipping and allied industries. The Commission must work closely with the industry, and the industry has had an immense stake in the policies and operations of the agency. Yet, within the industry divisions of opinion and interest are very wide—between subsidized and non-subsidized operators, between large and small operators, and so on.

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The Commission now obtains the views of the industry informally. But some of the many different elements in the industry appear to feel that their views are not receiving proper representation in the Commission's councils. In view of the nature of the Commission's work and of the industry, a more formal channel for exchange of opinions might be useful on both sides.

Accordingly, it is suggested that an Industry Advisory Committee, fairly representing the major divisions of maritime industry and labor, be established to advise the Commission and the Administrator with respect to matters under their respective control.

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Chapter VII

CIVIL AERONAUTICS BOARD

The Civil Aeronautics Board, originally known as the Civil Aeronautics Authority, was created by the Civil Aeronautics Act of 1938. Until the 1938 act, civil aviation had been under three agencies of Government:

The Bureau of Air Commerce of the Department of Commerce had charge of safety regulation and the operating of airways under the Air Commerce Act of 1926.

The Post Office Department handled route planning and awarded contracts for the carriage of air mail.

The Interstate Commerce Commission had powers over mail rates under the air-mail acts of 1934 and 1935.

The 1938 act concentrated in the Civil Aeronautics Authority all Federal regulatory and promotional activities for civil aviation. Originally, the Authority was composed of (1) an independent commission of five members appointed by the President for 6 years with staggered terms, removable only for cause; (2) an Administrator appointed by the President and responsible for the construction and operation of the civil airways, and administration of the Board's regulations; and (3) an independent Air Safety Board charged with investigating air accidents. The Administrator and the Air Safety Board had their own staffs, but were directed by statute to cooperate with the Board in the administration of the act.

By Reorganization Plans III and IV, effective June 30, 1940, the President abolished the Air Safety Board and transferred its functions to the Civil Aeronautics Board, and placed the Administrator in the Department of Commerce. The Board itself was attached to the Department of Commerce for administrative housekeeping purposes but otherwise remained independent.

A. Functions of Civil Aeronautics Board and Administration

The policy of the act is to foster aviation and an air transportation system adapted to the present and future needs of foreign and domes-

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tic commerce, the postal service, and national defense, and to promote safety, and sound economic conditions in the industry, with competition to the extent necessary to achieve these purposes.

Functions of Civil Aeronautics Board

Certificates for Domestic Air Carriers

A domestic air carrier must obtain a certificate from the Board in order to engage in domestic or foreign air transportation as a common carrier. Carriers operating 39,267 miles of domestic trunk routes before the act were entitled to certificates under a grandfather clause. All applicants for new routes must prove public convenience and necessity for the service and their fitness, willingness, and ability as an operator. In 10 years, the Board has expanded domestic trunk routes to 115,342 miles.

The Board has power to condition, amend, or suspend certificates when required by the public interest; to revoke certificates for deliberate violations of the act; to authorize suspensions of service, and abandonment of a route or part thereof. It may exempt carriers from economic regulation, with minor exceptions, when enforcement would be an undue burden on the carrier and not in the public interest.

Foreign Air Carrier Permits

Foreign air carriers may not engage in air transportation to or from the United States unless they hold a permit issued by the Board upon a showing of public interest. The Board must act consistently with the international obligations of the United States.

Final orders of the Board with respect to both foreign and domestic air carriers for operations in overseas or foreign air transportation are subject to approval by the President. Since his power has been held to be plenary, the Board is actually only an advisor in these cases.

Passenger and Property Rates and Tariffs

Carriers must charge just and reasonable rates, file public tariffs, provide safe and adequate service, and show no undue preference or prejudice. The Board may prescribe lawful rates except for foreign air transportation.

Determination of Mail Rates

The mail-rate provision of the act is the chief instrument for assisting air carriers financially. In fixing rates for the carriage of mail by aircraft, the Board is directed to consider the need of each air carrier for sufficient revenues from mail and other sources to enable such air carrier under honest, economical, and efficient management, to maintain and continue the development of air transportation as required for commerce, the postal service, and national defense. To administer

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this provision the Board prescribes a uniform system of accounts and requires periodic operating, traffic, financial, and other reports.

Mergers, Interlocking Relations, and Carrier Agreements

Consolidations, mergers, and other acquisitions are under the direct control of the Board, as are interlocking relationships between air carriers and other common carriers and aeronautical enterprises. Likewise, pooling and other contracts between air carriers, or between them and other carriers, must be filed with the Board for approval.

Safety Regulations

The Board now has three responsibilities in the field of safety:

1. Promulgation of standards and regulations for aircraft, airmen and aircraft operations in order to promote safety of flight.

2. Suspension and revocation of certificates for violations of regulations.

3. Investigation of aircraft accidents to determine their probable cause so as to prevent recurrence.

By an act approved July 1, 1948 (Public Law 872), the Board may delegate to the Administrator authority to prescribe safety regulations and to investigate and report on aircraft accidents. No delegation has been made.

FUNCTIONS OF THE CIVIL AERONAUTICS ADMINISTRATION

The Civil Aeronautics Administration is an administrative agency in the Department of Commerce and has a large field staff. It has three major functions:

1. The administration and enforcement of the safety standards and regulations promulgated by the Civil Aeronautics Board in the Civil Air Regulations.

2. The development and operation of an extensive system of Federal airways within the United States.

3. The administration of the Federal Airport Act of 1946 for the construction of a Nation-wide system of civil airports by Federal aid to State and municipal governments.

In addition, the Civil Aeronautics Administration conducts research projects designed to benefit civil aviation in general.

B. Status of the Board

With respect to the Civil Aeronautics Board two questions are basic: (1) Should an independent commission exercise these functions; and (2) should a single commission regulate all forms of transportation?

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Need for an Independent Commission

In our opinion, the need for an independent commission to regulate air carriers, either separately or with other carriers, is clear from the description of the functions to be performed. In view of the evolving technical, economic and defense aspects of aviation, Congress itself could establish only the basic regulatory policies of promotion and limited competition, and must entrust to a specialized agency broad discretion in the issuance of certificates for route service, the regulation of rates and mail compensation, the control of discrimination and mergers, and other powers, all directly affecting the economic interests of the carriers, their patrons, and the communities served.

The administration of such duties demands, of course, the very qualities that an independent commission is said to possess: impartiality, deliberation, expertness, and continuity of policy. The need for these characteristics in an agency rendering policy decisions during a dynamic period of growth is patent.

In its first decade, however, the Board has realized these advantages only in part. Its performance has suffered from various weaknesses of policy and administration, many of which spring from special factors:

1. The tendency of applicants to resort to pressures to try to influence Board decisions has somewhat lowered its prestige.

2. While many members of the Board and staff have been able men of high caliber, this has not been universally the case.

3. The tremendous expansion in work load following the war seriously aggravated the administrative problem of the Board.

4. Delays in obtaining budget increases and in recruiting competent personnel when authorized have added to the difficulties.

On the positive side, a major objection usually made to this type of agency—failure to coordinate with other Government activities—has not materialized in practice to any serious extent in the case of the Civil Aeronautics Board.

Most of these deficiencies appear capable of correction and alleviation by measures hereafter recommended. In any event, the experience with the Board does not indicate that any other type of agency would have done a better job under all the circumstances. Indeed, political pressures would certainly have been at least as great on an executive agency, and the experience with the international route cases, where the President has the final decision gives no basis for assuming that an executive agency would have resisted them as effectively. To the extent that the difficulties are traceable to weak appointments of the Board members, the Chief Executive must bear the primary responsibility—there is no reason to suppose that appointments to an executive agency would have been of any higher caliber.

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In conclusion, in view of the nature of the major functions under the act, it is recommended that an independent agency should be maintained to perform them. Furthermore, attaching the agency to a department "for housekeeping" appears to serve no useful purpose.

Need for Separate Agency for Aviation Regulation

The question remains whether it is advisable to retain the Civil Aeronautics Board as a separate agency for aviation or whether a single independent commission should handle the regulation of all forms of transportation. In other words, should the regulation of air transportation be transferred to the Interstate Commerce Commission or its successor?

After careful consideration we have concluded that this course would be inadvisable in the present stage of aviation development.

Our reasons for recommending that the Civil Aeronautics Board should be continued as a separate independent commission for regulating aviation transportation, at least until it reaches a more mature stage of development, are as follows:

Policy of Promotion

The proposal for a single regulatory agency is premised on the principle that all forms of transportation should be treated uniformly. But the policy of the Civil Aeronautics Act contemplates the promotion, by Government subsidy, of a network of air routes to meet the present and future needs of commerce, the postal service, and national defense, more rapidly than it could develop without such support. Historically, Congress has adopted a similar policy toward each new form of transportation during its early period of growth.

So long as this promotional policy is pursued, it seems desirable to have it administered by an agency not charged with the regulation of other forms of transportation.

Dynamic Character of Air Transportation

Air transportation is still evolving at an incredible pace. Economically, it is still groping to find its proper role in passenger and cargo service and rates. Technically—new aircraft designs, new power plants, new navigation devices all foretell revolutionary changes in the industry: Even the adoption of long-range four-engine transports since the war has required revamping of the domestic route pattern designed for shorter-range aircraft.

Financially, air transportation is still unstable; with present costs, almost no carriers could operate their present routes and schedules without Government subsidy in some form.

These problems of a growing industry are unlike those of more stable forms of transportation and call for different treatment.

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Coordination with Executive Agencies

The relation of air transportation to national defense, and of foreign air transportation to foreign policy calls for close collaboration between the regulatory agency, the Department of State, and the National Military Establishment. In large measure the Civil Aeronautics Board has succeeded admirably in cooperating with both these executive agencies. In addition, the regulatory agency must cooperate actively with the Civil Aeronautics Administration in the Department of Commerce, especially in the field of safety regulation. Since Federal regulation extends to private, as well as commercial, aircraft and pilots, the program of regulation is an extensive one.

Whether the Interstate Commerce Commission or any unified agency would be equally successful in such coordination is far from clear. During its long history, the Interstate Commerce Commission has been noted for its isolation from contact with the executive branch. With this tradition, it is doubtful whether the Interstate Commerce Commission would be able to adapt its procedures and attitude to the very different conditions applicable to air transportation. An agency concentrating on aviation regulation seems more likely to be aware of the need for coordination in these fields and to be more effective in achieving it.

These considerations have convinced us that it would not be wise at this time to combine the regulation of air transportation in the same agency charged with regulating major surface carriers. To do so would deprive this field of regulation of the specialized treatment it seems to require during this formative period of rapid development. When air transportation has reached greater stability and maturity, the question should be reexamined in the light of the new conditions. They would tend to remove some of the basis for our present conclusion and might justify consolidation of regulation.

C. Payment of Operating Subsidy

Present Procedure

Under the Civil Aeronautics Act, the Board determines the rates to be paid to air carriers for transporting air mail, which take into account the need of the carriers for revenues. The Post Office Department pays the carriers and seeks the appropriation from Congress to cover the entire air-mail expenditure including any undisclosed subsidy. The Board does not justify the amount it authorizes before either the Bureau of the Budget or the Appropriations Committees of Congress.

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The air-mail compensation paid to the 16 trunk domestic air carriers in recent years has been substantial. Adjusted through June 1948, the amounts paid were:

1945	$33, 207, 676
1946	20, 830, 103
1947	24, 448, 328
1948 (estimated)	50, 000, 000

These amounts do not include payments for mail service over international routes or to feeder-line carriers, both of which involve a large element of subsidy.

Under the present methods, the mail rates combine both compensation for service and subsidy elements without separation, so that it is not now possible to specify the amount of subsidy. Consequently, when the Post Office requests an appropriation for air-mail service, the congressional committee is presented with a lump sum needed for carrying air mail for an entire year, or a deficiency period, and neither the Post Office nor the Board has been in a position to tell the committee how much of this was for subsidy. As a result it is practically impossible for Congress to review annually the amount of the subsidy, over and above the value of the postal service rendered.

On the other hand, segregating the subsidy may make the air lines less attractive for investment. The investor wants to be able to rely, with some assurance, on the carrier receiving a subsidy based on the economy, efficiency, and honesty of its operation. In practice, the air lines may now act on that basis. If separately appropriated, the amount of subsidy in the aggregate and for individual operators might be subject to more direct political influences and be a less solid base for long-term investment.

Separation of Operating Subsidy Recommended

The present method of concealing the amount of subsidy in the payment for carrying mail by aircraft appears to us unsound and should be abandoned. In view of the amounts involved and the continuing dependence of the carriers on Government support, it appears that Congress should be regularly informed regarding the amount of subsidy. Moreover, the failure to segregate the subsidy appears to have allowed the Board, the Post Office, and the air lines to devote too little attention to costs. If the air lines had been more cost-conscious in the postwar period, their financial condition today might be stronger. With its subsidy in the open, each air line should tend to be more concerned with its comparative costs, the Board should be aided in appraising the efficiency and economy of management.

We therefore recommend that the act be amended so that the subsidy will be administered by the following method for the future:

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1. The mail rates should no longer include any need or subsidy element but should be based on the service rendered. They should reflect a fair allocation of costs between mail, passenger, and freight services. Doubtless the allocation will start as an approximation, but should lead to better techniques of cost analysis.

2. The subsidy should be separately fixed by the Board and should be appropriated to the Board for that purpose. This will mean the Congress will be fully informed as to the amount and basis for the subsidy and that the Board will be required to explain and defend its requested amounts.

The air lines may fear that this method would make the annual subsidy a political issue and jeopardize their investment. We see no reason to assume that Congress will not appropriate the sums necessary to carry out the declared policy of the act. If, in practice, greater certainty is found essential for longer periods, it will then be possible to devise safeguards such as contracts to pay minimum operating subsidies over a specified number of years.

D. Relations Between Civil Aeronautics Board and Civil Aeronautics Administration

Position of Civil Aeronautics Administration in Government Structure

In our general discussion, it has been suggested that independent regulatory commissions should ordinarily not be assigned extensive executive duties involving large field staffs or operating programs. In the civil-aviation field, this segregation of executive from regulatory functions was largely accomplished by Reorganization Plans III and IV, effective June 30, 1940.

The Administrator of Civil Aeronautics now operates as a part of the Department of Commerce. His duties are primarily administrative, involving the expenditure of large sums for physical facilities, such as airways and airports. In addition, he enforces safety regulations in the field by inspection and regulation of aircraft, air carriers, airmen, and the like. In safety regulation and accident investigation, the Board and the Administrator both have responsibilities, as discussed hereafter.

The precise place of the Civil Aeronautics Administration in the Government should not greatly affect its operations or its relations with the Board. If a new Department of Transportation is created, the Civil Aeronautics Administration could well be included as a

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separate Bureau. This would permit greater coordination in the planning of promotional programs in the transportation field, and for that reason seems desirable.

Planning of Air Route System

The manner in which the Civil Aeronautics Board has developed the domestic air route pattern has been criticized from many sides. Although some of this ciriticism is not disinterested, the opinions of the Board in individual route cases do not reveal a consistent set of principles. The Board's case-by-case judicial procedure, without basic planning, leaves much to be desired as a method for directing the growth of a Nation-wide route pattern. Despite this, we have already recommended that the Board should continue to handle route certificates in order to assure impartiality in determining the public interest and choosing between applicants.

A Department of Transportation, however, could aid the regulatory agency in better planning of air routes. To assist the Board in certifying new services, a Secretary of Transportation could make broad studies and analyses as to the needs for various routes and their relation to a national system. He should not attempt to formulate a detailed route pattern; any such effort would be unwise and might lead to conflict between the independent agency and the executive branch. But the Secretary might take the initiative in making a detailed economic analysis of the present route system and in appraising the separate carrier systems to determine uneconomic units and route segments. Such studies might assist the Board in determining the proper number of trunk-line carriers, the extent of competition, the economics of feeder-line service, the optimum size of air-line systems, classification of services, frequencies of schedules, and the principles to govern one-carrier, single-plane and skip-stop service.

The studies and standards developed by the Department should not be binding upon the Board. However, the Secretary should be authorized to present his views in individual route proceedings before the Board (as the Post Office Department is presently authorized to do but seldom does), and the studies should be made part of the Board's record.

Promulgation of Safety Regulations

The Board now promulgates the Civil Air Regulations, and the Administrator implements them by administration and enforcement. These regulations are voluminous and technical and include safety standards of all kinds. They are designed to insure safety for aircraft, airmen, and air navigation.

In practice, the Civil Aeronautics Board, the rule-making agency, is dependent upon the Civil Aeronautics Administration for much of its technical advice and competency. The present relation invites

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clashes and misunderstandings in interpretations. As a result, the recent aviation commissions appointed by the President and the Congress agreed upon the desirability of centralizing responsibility for both the making and administration of aviation safety regulations in one or the other of the agencies. The technical nature of safety regulations, the need for daily intimacy with chaning industry techniques, and facility for prompt amendment suggest that the Civil Aeronautics Administration should be given the primary responsibility.

Yet safety regulations in aviation are closely related to the economic well-being of air carriers. Flight restrictions or added weight directly affect aircraft utilization and pay load. Thus safety or operating regulations often involve balancing conflicting interests. One solution is to provide that when the industry and the Civil Aeronautics Administration cannot agree upon proposed safety or operating regulations, appeal may be taken to the Civil Aeronautics Board to decide the dispute as a disinterested expert body.

Accordingly it is recommended that the primary responsibility for preparing and promulgating civil-air regulations should be vested in the Civil Aeronautics Administration, but that on appeal by an aggrieved party, the Civil Aeronautics Board should be authorized in its discretion to determine after public hearing whether a safety regulation or standard proposed by the Civil Aeronautics Administration should be issued.

Responsibility for Enforcement of Civil Air Regulations

In this field there is an unsatisfactory division of responsibility between Civil Aeronautics Board and the Civil Aeronautics Administration. The administrator is the primary enforcing agency with power to reprimand violators, to compromise civil penalties, or to deny applications for renewal of certificates of competency. The Board is vested with power to suspend or revoke violators' certificates of competency. In these proceedings before a Civil Aeronautics Board hearing examiner, Civil Aeronautics Administration attorneys act as the prosecutors.

In practice, the most serious objection raised to this arrangement is the failure to provide a disinterested tribunal to impose the monetary civil penalty now prosecuted and levied by the Civil Aeronautics Administration. Further, the local character of enforcement with respect to noncommercial pilots and local operators is not adequately recognized.

To meet these objections, the Civil Aeronautics Administration has proposed (*a*) that Civil Aeronautics Board hearing examiners be designated commissioners of the United States district courts and authorized to try violators and to impose a reprimand or civil penalty up to $1,000, or to revoke certificates of competency; and (*b*) that

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State law-enforcement officers be authorized to file and prosecute complaints arising out of violations within their State of the Federal air traffic rules, unless the alleged violator is operating an aircraft under the terms of an air carrier operating certificate.

While we have not examined the technical problems involved in this proposal, we recommend that it should be given careful consideration by the aviation agencies and the Department of Justice.

Responsibility for Aircraft Accident Investigation

While the Civil Aeronautics Board has the statutory duty of investigating and determining the probable causes of all aircraft accidents, the Civil Aeronautics Administration investigates a large number of accidents to determine whether there have been specific violations of regulations requiring enforcement action. While these two purposes are distinct, the apparent duplication has caused some friction between the two agencies.

In deciding on causes of aircraft disasters, the Government agency should be as free as possible from operational responsibilities that may be related to accidents. By this test, the Civil Aeronautics Administration is disqualified because of its certification and inspection duties, and its operation of airways and traffic facilities. Furthermore, since the Board has heretofore promulgated safety regulations, its impartiality in judging the cause of accidents has also been questioned, especially where the accident may be due to its own regulations. The transfer of the primary responsibility for issuing safety regulations to the Civil Aeronautics Administration goes far to remove this objection, without creating a separate investigatory agency.

Accordingly, it is recommended that the Civil Aeronautics Board retain the duty of investigating aircraft accidents to determine their probable cause. Where the nature of the accident justifies, the Civil Aeronautics Board should continue to hold public hearings before an examiner. Accident investigation is an integral part of determining the cause, especially in major air-line accidents where the cause is not apparent without careful investigation and analysis of all details of the wreckage and operating procedures.

E. Internal Administration

Composition and Compensation

The Board is now composed of five members serving for terms of 6 years, and removable for cause. This number is considered suitable for the needs of the agency, considering occasional incapacity and the necessity for members to attend international aviation meetings from time to time. As a minor matter, the act should be amended

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to provide that, upon expiration of his term, a member continues to serve until his successor is appointed, in order to maintain the full membership in the interim.

Far more important is the compensation of members. In order to encourage the best qualified men possible to accept membership, the salary should be substantially increased in conformity with our general recommendation.

Centralized Administrative Responsibility

One weakness common among the commissions is particularly serious in the Civil Aeronautics Board—lack of efficient centralized administration and supervision of the staff. Our general discussion has emphasized that an agency headed by five members tends to be more preoccupied with the adjudication of cases presented to it than with the organization and direction of its staff work. This is true of the Civil Aeronautics Board. The Board has adopted no adequate methods to facilitate presentation and correction of deficiencies in staff organization and procedures.

In the Civil Aeronautics Board, the Chairman is appointed annually by the President and is accepted as the channel for communication with the Chief Executive. This has provided the Board with desirable Executive contact and facilitated coordination, but has not impaired the independent exercise of its policy functions. The Chairman, however, does not have adequate authority to handle the administration of the Board's work; he is wholly dependent upon the voluntary support of other members.

The position of the Chairman should be strengthened so that he can insure that the Board functions efficiently and keeps abreast of its work load. To accomplish this, the Chairman should be placed in full charge of the supervision of the staff in conformity with our general recommendation. The Chairman should be recognized as the primary channel of communication between Board members and the staff for instruction as to work assignments, priorities, and schedules. He should be assisted by a specially qualified staff officer, an executive officer or director, who would report exclusively to the Chairman. It would be the responsibility of the Chairman to see that his directions to the staff reflect the decisions of a majority of the Board.

Other Recommendations

Our general discussion and recommendations regarding delegation of functions, staff organization, and improving procedures is largely applicable to the Civil Aeronautics Board. It is sufficient to refer to that part of the report without repeating that discussion here.

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Chapter VIII

INTERSTATE COMMERCE COMMISSION

The Commission is the oldest of the independent regulatory commissions. Established by the act of 1887, it has set the pattern for much of the subsequent development of other similar bodies. Its reputation for impartiality, independence, and expertness in its decisions, and for full procedural safeguards for interested parties have undoubtedly contributed to the standing of the independent commission.

A. Functions and Organization

FUNCTIONS

As a result of successive extensions of its authority, the Commission now regulates railroads and related carriers, common and contract motor carriers, certain domestic water carriers, pipe lines, and freight forwarders. Broadly, its main functions are as follows:

Rates

The Commission has extensive powers to fix rates for the various classes of carriers, to prevent undue discriminations in rates, to prescribe joint rates and their division between the interested carriers. Carriers must publish and file their rates.

Service

The Commission may require carriers to provide reasonable service, including through routes (with certain exceptions), and adequate equipment and facilities.

Entry

All types of carriers (unless exempt) are required to obtain from the Commission permits or certificates of convenience and necessity in order to engage in transportation.

Finance and Accounts

The Commission has control over consolidations, mergers, and similar relations among rail and motor carriers; over issuance of

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securities by them; and over reorganizations of rail carriers. It also prescribes the accounting systems and records to be kept by carriers, and may require reports and information.

Safety

The Commission regulates safety standards and devices for rail and motor carriers.

Most of the important powers vested in the Commission have been delegated as broad grants of discretion. Thus rates shall be reasonable and not unduly discriminatory, but it is left to the Commission and the courts to give content to these terms. This they have done and still do largely by the decision of individual issues as they arise in the cases; and the process has built up over 300 volumes of printed decisions and numerous other cases not fully reported in print.

Organization

The Commission is composed of 11 members, of whom not more than 6 may be of the same party. Members serve for terms of 7 years or until a successor is appointed, and may be removed only for inefficiency, neglect of duty, or malfeasance in office. The Chairman is elected annually by the members, each member serving for 1 year in rotation.

The Commission operates largely by divisions. Its 11 members are divided into 5 divisions, each ordinarily composed of 3 members, for decision of most classes of cases coming before it. Each division deals with certain types of cases. Only general investigations begun on the Commission's own motion are ordinarily decided by the full Commission in the first instance, and in such cases the full Commission seldom hears testimony, though it may hear oral argument. Under the shortened procedure many cases are assigned to individual Commissioners for handling where the parties consent. The great bulk of the hearing work, research, and initial report writing is done by examiners. Divisions will seldom hear testimony except when a case is reopened, but will commonly hear argument. Numerous disputes are handled informally under a variety of procedures.

B. Status and Composition of Commission

Independence

Most carriers, shippers, and students of transportation appear to agree that the independent status of the Commission should be maintained. That independence is quite real and has a definite and important effect upon the development of transportation policy. Major rate controversies have severe political repercussions; sectional

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and group interests are deeply involved in such proceedings. In the hands either of the legislature or the Executive, their solution would tend to become trials of political strength.

The present law seeks their solution by essentially judicial process before an expert body, by methods designed to reflect the transportation conditions as nearly as possible. Its basis is not the use of rate regulation for various possible political or economic purposes, but rather to focus primarily on the relevant transportation conditions, including costs. Nevertheless, discretion is left to the Commission to dampen the shock of change and to recognize competitive factors on the side of the shippers as well as on the side of carriers.

Independence of the legislature and of the Executive Branch have been marked throughout the Commission's history. On rare occasions specific controversies have attracted congressional attention and have affected the exercise of the appointing power. But these have been most exceptional. Indeed, the traditional isolation of the Commission has led to the criticism that it ignores too completely general economic conditions and basic Government policy in other fields. On behalf of the Commission, the reply is that it takes account of such factors to the extent permitted by the act and governing decisions within the present scheme of regulation.

Clearly this issue comes ultimately to a matter of degree. Without attempting to decide that question, we think that the reasons for maintaining the independence of the Commission for its basic regulatory task far outweigh any existing or likely conflicts between the Commission's regulatory policy and policy formed elsewhere in the Government in peacetime. Where, as in war or other serious emergency, however, certain actions or policies must be rapidly coordinated, the limitations of the statute and procedure stand in the way. Thus, the creation of the Office of Defense Transportation was essential for the administration of emergency wartime transport controls.

Even in peacetime, it may be that the Commission should attempt to keep itself better informed of the larger economic context of which its regulatory work is inevitably a part in order to give it such weight as is proper under the statutory rule of rate-making governing its actions. We believe that the appointment of the Chairman by the President, as hereafter recommended, would facilitate this desirable awareness without impairing the independence of the Commission.

Appointments and Compensation

To attain the benefits of the Commission form, the quality of Commissioners is vital. Integrity is a first consideration; large capacity for work is important. Because of the technical nature and great complexity of the task, broad experience in the field is, as a rule, advantageous.

Actually, appointments have been of mixed quality. Not a few

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have been political, but many of these appointees have nevertheless made good Commissioners. At times appointees from the minority party have appeared to be better qualified since the President was less subject to partisan obligations and pressures. The tradition of reappointment is strong. The Commission has always had a nucleus of very able members, but appointees have only rarely been the best men available.

This fact is disturbing. No useful purpose would be served by prescribing more specific qualifications by statute. It can only be hoped that the importance of these appointments will, however, be more clearly recognized. One definite aid in securing able men would be a substantial increase in salary in conformity with our general recommendation.

Size of Commission

Judging by our studies, there is reason to believe that with 11 members, the size of the Commission impedes expeditious handling of matters requiring full Commission action. Of course, to the extent that final action is taken by divisions, this handicap is avoided. Still it seems likely that a smaller Commission, such as one of 7 members, would facilitate superior conference work, fuller exchange of views by the members, and more expeditious action. Such a reduction may not be feasible, however, unless the burden on Commissioners can be reduced by the greater use of informal procedures, relief from administrative details, and other improved methods.

Accordingly, we do not recommend such a reduction until these measures have been made effective, but we strongly urge that the possibility be fully explored, especially in the light of the administrative improvements recommended in this report.

C. Organization of Commission

Organizationally, the Commission has employed several devices which tend to disperse administrative responsibility. It has a rotating Chairman who serves for only 1 year. Its 15 bureaus are administered by the individual Commissioners, each serving as reporting Commissioner for one or more bureaus. Its Bureau of Administration, headed by the Secretary, is largely a service organization. Although the Secretary is gradually relieving the Commission of much administrative detail, a good deal is still handled by Division 1 of the Commission, and some matters, including organizational changes and the appointment of bureau chiefs, are decided by the full Commission in conference. As a result, there is little centralized administrative leadership.

Certain shortcomings in the operation of the Commission seem to

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be traceable, at least in part, to this condition. Among these are: (1) The inadequate coordination of policies between different bureaus of the Commission handling related problems, discussed later in this section; (2) the overburdening of the Commissioners, especially with administrative details; (3) the delay in disposing of many matters, considered in section D of this chapter; and (4) the inadequacy of the planning and research programs of the Commission, considered in section E of this chapter.

Accordingly, in this section, the major administrative devices are analyzed and recommendations submitted for their improvement.

CHAIRMANSHIP

As has been said, the chairmanship rotates annually. This system has certain important values. It helps to educate newer Commissioners in the work of the agency as a whole, it eliminates competition for the chairmanship, and it avoids division of the Commission into supporters and opponents of the Chairman. These are real advantages.

But, in our opinion, the disadvantages outweigh these benefits. In a year, the Chairman can just begin to understand the demands of the position, and then he is superseded by another member who is very likely to be a novice. As a result, the Chairman can never be much more than a presiding officer. In addition, many Commissioners, even though qualified as members, are not well fitted for administrative work or leadership. Consequently, the vital part of the agency's task that is performed by Commissioners themselves is at present little directed or stimulated by formal leadership.

For the reasons already summarized, it appears that the Commission needs firmer leadership, not only of internal administration but for external relations as well.

In our opinion, this need can be met only by making the Chairman the administrative head of the agency, without, of course, changing the equal status of the members in the making of policy or substantive decisions. As explained in our general discussion, we think that the most effective way to achieve this objective is to have the Chairman appointed by the President. This will contribute to the stature of the position and facilitate the centering of administration under him.

We do not believe that this would impair or undermine the independence of the Commission. Decisions would still be made by the Commission as a whole, and the Chairman's tenure as a member would still be secure and not subject to Presidential termination.

Of course, the Chairman should not personally handle the administrative details, but should delegate much of this work to the Bureau of Administration whose Chief should develop into an executive officer reporting to the Chairman. Furthermore, the Commission should still pass on the most basic matters of administration such as appoint-

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ments of bureau heads and any extensive revision of the staff organization. But the Chairman should be responsible for regular administration, and for insuring that the work of the Commission is handled efficiently and with dispatch and that sources of delay are discovered and corrected.

Organization of Bureaus

Present Weaknesses

Since the Motor Carrier Act of 1935, the staff has been organized on two theories: Some bureaus correspond to types of carrier and other bureaus to types of functions or activities. For instance, motor-transport regulation is handled by the Bureau of Motor Carriers while the Bureau of Water Carriers and Freight Forwarders administers the regulation of those types of carrier. On the other hand, railroad regulation is carried on by functional bureaus.

As a result, separate bureaus deal with rail cases, motor carrier cases, and water carrier and forwarder cases in certain matters, and such cases also go to separate divisions of the Commission. This separation among bureaus and divisions creates some conflicts of policy and impedes the handling of cases involving intercarrier competition. Thus, there is some lack of coordination in the lines of decision by the several divisions where related provisions of the act are being administered.

Proposed Consolidation

The bureaus should be reorganized to foster the coordination of policy within the Commission and facilitate the development of a more adequate policy for the control of intercarrier competition. In recent years, the Commission has taken some steps in this direction by transferring functions from the carrier type bureaus to functional bureaus, such as the Bureaus of Finance and Accounts.

To complete this shift, our staff recommends the elimination of the Bureaus of Motor Carriers and of Water Carriers and Freight Forwarders, and transfer of their functions to the several existing bureaus dealing with various phases of the regulatory task. For example, all certificate and finance work might be consolidated in the Bureau of Finance. In each type of transportation, entry and abandonments are related to developments in the other types, and the standards are not so different as to prevent the exchange of employees as work load fluctuates.

Our staff also suggests a new bureau of rate and service cases to bring together the present Bureaus of Formal and Informal Cases and Section of Complaints from the Bureau of Motor Carriers. This would have the additional advantage of improving the work now handled by the Bureau of Informal Cases. Close relationship with the Bureau of Formal Cases would facilitate the screening of cases

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to find those amenable to informal settlement, increase the incentive to try informal methods, and permit the most efficient use of examiners. Our staff also suggests that the Bureaus of Enforcement and Inquiry be combined.

Proposed Transfer of Functions

If a department of transportation is established, it is suggested that the Bureaus of Locomotive Inspection, Safety, and Service, and the safety functions under the Bureau of Motor Carriers should be transferred to that department. While these tasks are not wholly unrelated to other regulatory work of the Commission, they are of a type suitable for the executive agency. In addition, they would provide the foundation for the wartime or emergency tasks of such a department. This transfer would not, however, substantially reduce the burden of the Commissioners, since most of this work is administrative and performed by the staff.

Resulting Organization

These transfers and consolidations of bureaus would reduce the total number of bureaus from the present 15 to 9, including the Bureau of Administration. This should make the administrative task within the Commission more manageable. Even more important, it would promote consistency in applying the statutory standards.

Along with these changes should go the upgrading of the positions of bureau heads and section chiefs to raise their stature and compensation.

To further the coordination of various classes of cases, it would also seem desirable to reduce the divisions of the Commission from five to four dealing respectively with rates; finance, accounts, and valuation; certificates and permits; and administration and enforcement.

Reporting Commissioners

The system of having reporting commissioners to supervise the administration of the individual bureaus has some obvious disadvantages, especially where the different bureaus are dealing with closely related problems as at present. The system appears to have some advantages, however, as to the substance of their work. With such a wide range of Commission responsibilities involving so many types of carriers, some specialization among Commissioners is probably necessary and inevitable. This method does tend to keep the Commissioner informed about the problems in the assigned bureau and gives the bureau a Commissioner to whom to turn for guidance.

If the proposals already made for improving administration are adopted, the system of reporting Commissioners should not involve the Commissioner in administrative detail. On balance, its benefits and the tradition of the Commission appear to justify its continuance.

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D. Procedural Expedition

Extent and Causes of Delay

Commission procedure is to a high degree formal, closely approaching the procedure of the courts. In many cases, however, where the parties consent, shortened and modified procedures are used, but these methods are more effective in reducing the burden on the staff and Commissioners and the expense to the parties than in cutting the time between complaint and decision. In addition, many cases are handled informally by the Bureau of Informal Cases and by other bureaus as well.

The progress of the average case is slow: Ordinary complaint cases often take from 1 to 2 years, and larger investigations much longer periods. On the other hand, certain classes of cases which especially require expedition are handled much more quickly. Rail carriers are critical of the slowness in the handling of general rate level cases, and inland water carriers feel regulatory delays to be a serious barrier to the advantageous development of their business. In the average case parties themselves cause much of the delay by requests for postponements and insistence to the utmost on procedural rights. There is, however, significant delay within the agency itself both at the staff and Commission levels.

Recommendations on Procedures.

No single measure is likely to speed the flow of the average case, but a number of steps taken together may improve its handling.

Informal Settlement

It is suggested that every possible effort be made to strengthen informal procedures to keep cases off the formal dockets and to settle as many of the formal cases as possible. Much is already being done. Formal complaints, however, require more screening to determine those that may be amenable to informal conference or other procedures under Commission auspices. The Bureau of Informal Cases needs strengthening both in the number and grades of its employees to enable staff members to make active efforts to settle the more difficult informal complaints in lieu of mere correspondence. We have already suggested that combining the Bureaus of Formal and Informal Cases would promote this same objective.

Examiners

Handling of the formal dockets will be speeded and improved in quality if the grade of examiners is raised both for hearing purposes and for research and report writing. This would help to secure and retain the best personnel in these positions. Staff time could be saved and efficiency enhanced by shortening examiners' itineraries so

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as to permit them to begin report writing sooner while details of cases are still fresh in mind. The advantages would no doubt outweigh the increased travel and reporting expense.

Delegation

For the purpose of reducing the burden upon Commissioners, revision of section 17 of the act would be desirable to permit initial decision by boards of employees and individual Commissioners on the same basis as by divisions of the Commission. The present provisions minimize the possibility of securing decisions acceptable to the parties since all that is necessary to place a case before a division is to take exception to the report. Boards of employees are at present little used for initial decision, but the vital and successful work of the fourth section and suspension boards suggest the possibilities.

Formal Proceedings

In the formal proceeding itself, more progress can no doubt be made in substituting verified statements for oral testimony, in closer control of cross-examination and argument, and in curtailing cumulative testimony. Further relief for Commissioners may be attainable by using examiners to hear testimony even in the larger cases, although it may be desirable in some instances for Commissioners themselves to take testimony. It is worth exploring also whether the requirements of hearing may not be eliminated from the statute for certain classes of cases.

E. Research and Policy Analysis

Research

Although the independence of the Commission should be highly favorable for the conduct of impartial research, the Commission has done only limited work of this sort. Moreover, it has shown reluctance to tackle serious transportation problems, and on its own initiative to proffer advice to the Congress and the Executive. Where the need has been felt, Congress has found it necessary to direct that studies be made, and has often entrusted them to specially created temporary bodies, such as the Federal Coordinator and the Board of Investigation and Research, apparently due to a lack of confidence in the energy with which the Commission would undertake such work.

In recent years, the Commission has begun to provide itself with vital new research tools: Intensive cost work and waybill studies have been undertaken for the purpose of securing a wide range of information concerning traffic flow, rate applications, and numerous types of unit costs. These should be especially significant in the regulation of intercarrier competition. The increase of research work would be rewarding.

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Also useful would be the study by its research staff of the Commission's own decisions, of its policy formation, of their direction, and of its implications. Moreover, alternatives lying within the lawful discretion of the Commission could be explored. In short, capable research staff could help to meet the need felt by many Commissioners for a better opportunity to analyze in broader terms how regulation is developing. And they could promote desirable coordination by calling attention to the relations between decisions in the several areas of regulatory activity.

F. Relation to Brookings Recommendations

The Brookings Report on Transportation proposes the abolition of the Maritime Commission and the Civil Aeronautics Board and the transfer of their regulatory functions to the Interstate Commerce Commission. In our discussions of those two commissions, we have stated our reasons for disagreeing with this proposal and have recommended that the Maritime Commission and Civil Aeronautics Board be continued as separate agencies.

Accordingly, the recommendations outlined above for the Interstate Commerce Commission do not contemplate such a transfer and would require some modification if it should be adopted. By comparison with the present volume of the Interstate Commerce Commission's work, the regulatory load of both these agencies taken together is not large, although a larger portion of it might require attention of the Commission itself in view of the nature of the problems involved. Such added duties could probably be handled without enlarging the Commission beyond its present size, but reduction in size would hardly be feasible .

The objective of moving further toward a functional organization and the reduction in the number of bureaus and divisions suggested above, would clearly have to be postponed for some time. It would probably be necessary to establish a new bureau for air regulation and to enlarge the Bureau of Water Carriers and Freight Forwarders. Separate recognition of these types of transportation likewise would probably make necessary the continuance of a separate Bureau of Motor Carriers. It also seems quite likely that the consolidation of regulatory powers proposed by the Brookings report could be obtained only if some changes were made in the composition of the Commission itself at the same time. But it would be highly undesirable to give specific representation to types of carriers on the Commission, even though some Commissioners might necessarily come to specialize to some degree in the types added to the Commission's control.

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Chapter IX

FEDERAL COMMUNICATIONS COMMISSION

The Federal Communications Commission was established by the Communications Act of 1934. The act centralized under the Commission, and expanded, the regulatory powers over wire and radio communications which previously had been scattered among several Government agencies, including the Federal Radio Commission and the Interstate Commerce Commission. Subsequent amendments of the act have further enlarged the scope of the Commission's functions.

A. Functions and Organization

FUNCTIONS

The seven major functions of the Commission are as follows:

Telephone and Telegraph

In the regulation of telephone and telegraph common carriers, the powers and duties of the Commission conform to the traditional pattern of utility regulation except that the issuance of securities by common carriers is not subject to its control. Its powers include authority to fix reasonable rates, prescribe standards of service; establish accounting and reporting requirements; control expansion or abandonment of service, and mergers; and make investigations and inspections. In addition, the Commission licenses the use of radio frequencies by common carriers in connection with their radiotelephone and radiotelegraph services.

Allocation of Radio Frequencies

The Commission allocates radio frequencies among the various classes of radio service, other than governmental. Its task is to provide each radio service with frequencies commensurate with its needs with due regard to the needs of the other services. Since the President has statutory authority to assign frequencies to Government users, the division of the radio spectrum between Government and non-Government users is dependent upon agreement between the Commission and the President, through the Interdepartment Radio Advisory Committee.

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Licensing of Broadcast Stations

In acting upon applications for licenses for radio broadcast stations, the Commission must determine whether a grant would be consistent with the public convenience, interest, or necessity. In addition, its grants must be made in a manner which will provide service throughout the United States. Such licenses are limited to periods of 3 years, subject to renewal, and may be transferred only with the consent of the Commission.

The Commission has extensive powers to regulate the technical aspects of station construction and operation, but has no authority of censorship.

Special Radio Services

The Commission also licenses radio services other than broadcast and common carrier services. Its task is to foster the development and most efficient use of radio for the promotion of safety of life and property; for the operation of business activities; and for similar purposes.

Radio Operators

The Commission licenses radio operators, prescribes their qualifications, and may suspend licenses for specified causes.

Inspection and Monitoring

The Commission inspects radio station installations, particularly on ships, to ascertain whether they comply with statutory or Commission requirements. It also monitors the radio spectrum to assure proper engineering operation by licensed stations and to uncover unlicensed operations.

Treaty Work

The Commission administers international wire communication treaties or conventions to which the United States is a party. In connection with the negotiation of international communication treaties, the Commission participates in developing United States policies.

ORGANIZATION

The Commission is composed of seven members appointed by the President, with the advice and consent of the Senate, for staggered 7-year terms, with annual salaries of $10,000. The Chairman of the Commission is designated by the President. The Commission's staff, which numbers approximately 1,400, is divided basically along professional lines. The principal operating units are the Bureaus of Engineering, Accounting, and Law.

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B. Deficiencies in the Commission's Operations

Our staff found serious weaknesses in the performance of the Commission.

Work Load of Commissioners

Although the Commission has made substantial delegations of authority to its staff, the Commissioners have been burdened with a tremendous volume of matters which have required their attention and decision. Commission meetings have consumed so much of the Commissioners' time that they have been unable to prepare for the meetings or to devote sufficient thought to the many important policy questions which require determination.

The excessive amount of time required for Commission meetings has been a product of a number of factors. After the end of the war, the Commission was smothered with an avalanche of applications, particularly for broadcast licenses, which has occasioned an unprecedented work load. During this same period, there has been a rapid turn-over in the membership of the Commission so that it has been necessary for relatively inexperienced Commissioners to cope with this abnormal volume of business.

With minor exceptions, there has been no division of work at the Commission level. This situation has obtained even with respect to problems of administrative management. The Chairman has nominally been responsible for administration but, in practice, the full Commission has retained authority for the making of administrative decisions.

In addition, the Commission has failed to determine or clarify certain basic policies which would both permit greater delegations to the staff and simplify the Commission's consideration of many cases. Finally, the discussions at Commission meetings have frequently been unduly extended particularly when more than five Commissioners were present.

Inadequate Program Planning

The outstanding attribute of the Commission today is its lack of a comprehensive regulatory program. The Commission has been primarily concerned with applications for broadcast station licenses. As a result, its responsibilities with respect to the regulation of the telephone and telegraph industries have received secondary attention. The other radio services are being developed and exploited with a minimum of Commission guidance.

Even in the broadcast field, which receives the vast preponderance of Commission attention, there has been a deficiency of needed plan-

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ning and policy making. From time to time, the Commission has formulated policies intended to govern the grant or denial of applications for broadcast licenses. In the actual processing of these applications, however, the Commission has repeatedly departed from these stated policies, without any definitive revision of them, although revisions were clearly called for. In other words, Commission decisions have been marked by an absence of the basis policy determinations which presumably should have served to govern the decisions being made.

The Commission has thus been found to have failed both to define its primary objectives and to make many policy determinations required for efficient and expeditious administration. To be sure, it has demonstrated its ability successfully to engage in planning activities with respect to specific projects. It has not succeeded, however, in applying this talent to its full complement of regulatory responsibilities.

Whatever its historical causes, the present situation seems to arise primarily from the Commission's inability to find the time in which to determine its regulatory objectives and to formulate the policies required for the handling of its day-to-day business. Moreover, as long as the Commission attempts to cope with its work load without making these policy determinations, it promises to continue to be short of the time so sorely needed for basic planning and policy-making activities.

DEFECTS IN STAFF ORGANIZATION

A serious impediment to the Commission's realization of its full potentialities as a regulatory agency has been its inability adequately to tap the resources of its staff. The professional organization of its staff is marked by a diffusion of responsibility with respect to the Commission's operations.

By its very nature, the professional organization has failed to charge any single staff official with the responsibility for the direction of staff activities relating to any of the Commission's functions. The successful performance of the professional organization is dependent upon coordination among the heads of the professional bureaus. In fact, however, they have not developed adequate techniques for coordination. The Commission itself, in the supervision of its administrative operations, has done little to rectify this situation. The resulting diffusion of responsibility has been particularly noticeable in the planning and programing of regulatory activities, where the staff work has proceeded virtually without direction or initiative.

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C. Status and Composition of Commission

USE OF INDEPENDENT COMMISSION

For the reasons set forth in our general recommendations, we believe that the independent commission is the appropriate agency for regulation in this field. From the earlier description, it is apparent that the regulation of communications necessarily involves the exercise of broad policy making and adjudicative powers by the Commission. While some of its functions are relatively routine in character, much of the Commission's task requires the continuous formation and reappraisal of policies in an industry marked by rapid technological advances.

In those areas where the Commission's activities are also a matter of concern to other Government agencies, there appears to be no serious problem of coordination. Through the use of interdepartmental committees and other methods, the Commission and other executive agencies have been able to develop a consistent pattern of national communications policies. To a considerable extent, the effective coordination of communications policies has been dependent upon the ability of the Chairman of the Commission to have ready access to the President. The past and present Chairmen, who have been designated by the President, have encountered no difficulties on this score.

In our opinion the serious shortcomings of the Commission in its internal operations can be corrected by adoption of measures such as recommended below.

D. Improving Administration and Operations

PLANNING

We recommend that the Commission undertake immediately an emergency short-range planning program. The Commission is now confronted with an impasse. It cannot plan a regulatory program because the pressure of its business does not afford the required time. But that pressure cannot be relieved unless the Commission defines its regulatory program, formulates the policies needed for its achievement, and organizes its resources so as to dispose of its business in the most efficient and expeditious manner.

The emergency short-range planning program, which should be supervised by the Chairman, should be directed to defining the immediate problems in communications regulation of greatest import and the manner in which those problems should be handled. It will determine those policy issues which require immediate resolution

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and the extent to which further delegations of authority to the staff may be made. It should be recognized that this program is proposed as a temporary expedient designed to break the log jam which now confronts the Commission. Its purpose is to relieve the Commissioners of their burdensome work load which prevents them from devoting their energies to the basic and far-reaching problems of communications regulation.

Long-range planning activities should be conducted on a continuous basis under the leadership of the Chairman. A permanent planning committee consisting of key members of the staff should be established to assist the Commission in this work.

Internal Administration

Responsibility for the administration of the Commission's activities should be specifically vested in the Chairman, as recommended in our general discussion (ch. V). In the performance of this work, the Chairman should call freely upon the Bureau of Administration, a staff unit concerned with administrative matters. The full Commission should divorce itself from administrative problems except for policy questions of basic moment such as major organization changes and appointments of top staff personnel.

Staff Organization

We recommend that the staff be organized on a functional basis. In place of the present professional units, there should be a series of bureaus corresponding to the major areas of responsibility of the Commission. A functional organization should achieve greater dispatch in the discharge of the Commission's work load, affect economies in operation, and facilitate staff assistance and initiative in the planning and programming of activities.

Size of Commission

We do not believe that any change should be made in the present number of seven Commissioners. The Commission presents special reasons for having more than five. Only rarely are Commission meetings attended by its full membership. As a rule, one or more Commissioners are absent either because of illness, vacation, attendance at international conferences, or other reasons. The heavy program of treaty work during the next few years points to a continuation of this situation. Under the circumstances, it is probable that seven Commissioners will be required in order to have as many as five regularly available for meetings.

Use of Panels

In order to take care of the heavy work load, some have suggested that the Commissioners be divided into panels with mutually exclusive

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areas of authority. For example, three panels might be assigned broadcast licenses, special radio licenses, and common carrier regulation, respectively.

In our general discussion (ch. V), we have considered the use of panels and pointed out their value and disadvantages. There is serious risk that the Commissioners would develop parochial points of view which would affect their approach to problems requiring action by the full Commission. Moreover, if panels should require a larger Commission in order to staff them, that would be most undesirable. On the other hand, if the panels were able to dispose of a large part of the work of the Commission without appeals to the whole body, they would relieve the members of much of the present pressure of work load and leave time for planning and broader issues.

The balancing of these factors can be best done by the Commission. Thus, the use of panels should be left to its discretion but their use should not be required by statute.

The Commission might find it advisable to postpone the adoption of panels until the other recommendations have been given an adequate trial. These may well alleviate the present work load sufficiently to enable all the Commissioners to act on matters which require attention at the Commission level. Further delegation to Commissioners and the staff may leave the Commission with a manageable work load.

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Chapter X

FEDERAL POWER COMMISSION

The Federal Power Commission was established by the Federal Water Power Act of 1920 as a means of centralizing control of power development in the Nation's waterways. Responsibility for power projects have been divided among the War Department (whose permission was required for structures impairing navigation), the Interior Department (which had authority to grant and revoke permits through public lands), and the Agriculture Department (which controlled the national forests). Due to conflicts between the departments, and fears of private capital concerning the revocability of permits at will, hydroelectric development was stifled.

The 1920 statute established a Water Power Commission, an ex officio body composed of the Secretaries of War, Interior, and Agriculture, to centralize functions previously performed in the three departments. The Commission's experience from 1920 to 1930 was unsatisfactory, in part because of the inadequacy of staff, and in part because the three Secretaries were too busy with departmental affairs to give much attention to the Commission. They met twice a month for the purpose of taking official action, but could do little more than rubber stamp the action of the executive secretary. President Hoover, referring to the drain on the Cabinet members, recommended the establishment of a full-time independent power commission. Such a law was passed in 1930.

Under the 1930 law, the Commission consists of five members appointed for 5-year staggered terms. The Commission elects its own Chairman, who acts as such until the expiration of his term. No more than three of the Commissioners may be members of the same political party.

A. Functions of Federal Power Commission

The duties of the Power Commission are derived mainly from the Power Act of 1920, the Power Act of 1935, and the Natural Gas Act of 1938.

Licensed Projects

The 1920 act authorized the Federal Power Commission to grant licenses for private power projects on navigable waters or other streams

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subject to Federal jurisdiction. The license is to be granted only upon a showing that the project is adapted to a comprehensive plan for developing the waterway for use of water power, development of navigation and interstate commerce, recreation, and other beneficial uses.

Each license is for a period not exceeding 50 years; thereafter the Government can purchase the project by payment of the net investment, not to exceed the fair value of the project. The Commission determines the net investment made by the licensee; prescribes the accounts kept by the licensee; and has authority to fix just and reasonable rates and control security issues, where a State commission does not do so.

Interstate Electric Utilities

Under the Federal Power Act of 1935, the Commission has jurisdiction over all public utilities engaged in wholesaling or transmission of electric energy in interstate commerce. The Commission is authorized to fix just and reasonable rates and to prescribe the keeping of uniform accounts. Its approval is required for any disposition or merger of facilities or purchase or sale of securities. It is also authorized to encourage voluntary interconnection of power facilities, and to disapprove, and in some cases to require, such interconnection.

Government Power Projects

The Federal Government's own power projects, constructed and operated by various Federal agencies, are multiple-purpose projects, involving typically the purposes of flood control or irrigation or both as well as power production. The recommendation of the Federal Power Commission as to power development facilities is required, under the flood-control statutes, for the projects constructed by the Army. Generally all Federal projects are subject to the Power Commission's accounting regulations. The Commission must also approve the rate schedules and amendments for Bonneville, Fort Peck, and the flood-control projects constructed by the Army. It has express authority to allocate the cost of facilities among power purposes and other purposes at Bonneville and Fort Peck, and claims similar authority at the flood-control projects.

Natural Gas Companies

Under the Natural Gas Act of 1938, amended in 1942, natural-gas companies, engaging in the sale of natural gas in interstate commerce, must obtain certificates of convenience and necessity from the Commission. The Commission is authorized to fix reasonable rates and schedules, and to prescribe a uniform system of accounts.

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B. Status and Organization

Independence

For the reasons stated in the general recommendations, the Federal Power Commission should be retained as an independent regulatory commission with respect to most of its present functions. Most of its work requires wide perspective and consultative judgment, filling in the broad standards stated by Congress, using staff experts, and determining matters of great significance to the companies involved, such as whether the issuance of a hydroelectric license or natural gas pipe-line certificate is in the public interest; or whether rates and practices are reasonable and nondiscriminatory. Certain power planning functions now performed by the Federal Power Commission are in a different category and are discussed separately below.

Tenure and Compensation

To protect the members' security of tenure, we recommend that the act be amended to provide that the President may remove only for cause, as do most of the statutes creating such agencies. To maintain the Commission at full strength pending appointments on expiration of the term, we recommend the act provide for continuance in office until a new appointee is named.

Finally, in conformity with our general recommendations, we urge that the salary of the Commissioners and the principal staff members be substantially increased.

Chairman

The Chairman is now elected by the members, but serves for the remainder of his term. For the reasons stated in our general discussion we recommend that the President appoint the Chairman from among the members.

Our general recommendation with respect to the administrative responsibilities of the chairman of the independent regulatory commissions is considered to apply with full vigor to the Federal Power Commission. By statute the Chairman of this Commission is denominated the principal executive officer of the Commission. But in practice, due partly to the strong collective tradition of this agency, and partly to the faulty organization of the Chairman's office, he has not exercised this role in any real sense. It is our specific recommendation that the so-called Bureau of Administration be organized, be placed under the supervision of a chief experienced in Government administration, and that the Chairman of the Commission be held responsible for the proper functioning of this Bureau.

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Staff Organization

The Federal Power Commission is organized, in considerable part, along professional lines. The organization was criticized by a Bureau of the Budget survey made in 1940. Our staff finds that, on this Commission, the disadvantages of this type of organization are partly offset by the small size of the Commission, but does suggest the possibility of speeding up administrative action by including within the principal operating divisions all the professional skills, including legal, necessary to the processing of normal regulatory actions. Our staff also suggests certain advantages in the establishment of a separate gas bureau. These suggestions are in conformity with our general conclusions on staff organization in chapter V.

Supervising Commissioners

The lack of centralized responsibility inherent in the professional type of organization has led to the adoption of a supervising commissioner system. Cases when docketed are assigned to acommissioners to coordinate the work of the several bureaus and assure reasonable despatch in performance. For the reasons stated in chapter V, we recommend that the supervising commissioner be discarded as a general technique of administration. In order to avoid delays, the Chairman should develop effective administrative reporting to highlight the causes of delay and to assist in the most productive allocation of the agency's resources.

If the supervising commissioner device is retained, its use should not be automatic but should be dependent upon a determination by the Chairman that the matter is of sufficient importance to warrant the designation of a supervising commissioner. In that event the supervising commissioner should serve as a point of contact not only for the different bureaus of the staff, but also for the interested private companies during the significant administrative and procedural steps prior to the formal hearing and determination. Accordingly any such designation of a supervising commissioner should be made public.

C. Recommendations Concerning Power Planning Functions

River basin development is now carried on by several Federal agencies: Corps of Engineers, Tennessee Valley Authority, and three units in the Interior Department, linked loosely by the Bureau of Power (Bureau of Reclamation, Bonneville Power Administration, Southwestern Power Administration).

The Federal Power Commission now performs various functions for these river development agencies. In particular, it makes river basin

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and power market surveys, and makes recommendations to the Corps of Engineers concerning power facilities at proposed flood-control projects.

Under Proposed Unified Water Development Service

The Committee on Natural Resources has proposed the formation of a Department of Natural Resources with a unified Water Development Service, having major responsibility for planning of river basin development, and the conduct of river basin and power market surveys. This would require certain changes in the functions of the Power Commission.

Transfer of Federal Power Commission Surveys to New Service

In the first place, it is clear that the river basin and power market surveys conducted by the Power Commission are factual engineering and statistical surveys, for which the technical staff is almost entirely responsible, and are not the type of activity which requires handling by an independent commission. To the extent that these surveys are now conducted for the benefit of power marketing agencies, they should be transferred to the new Water Development Service.

Integration of Federal Power Commission Licensing With Planning by New Service.

Similarly, the general power planning functions for river basin development represent an executive type of activity not requiring the consultation of the members of an independent commission. The 1920 act entrusted to the Water Power Commission the consideration of whether proposed private licenses would be best adapted to comprehensive plans for river basin development. But the relative importance of private projects in river basin development has declined markedly in the period since then which has witnessed an expansion in federally owned projects, and the agency or agencies responsible for those projects should be primarily responsible for the broad development of the Federal rivers. Moreover, in 1920, the power planning function was assigned to a commission which consisted of the heads of three executive departments. Only by the 1930 reorganization was the ex officio commission changed into a full-time independent commission.

But it is appropriate that the licensing function be retained in the Federal Power Commission. This involves a determination of the fitness of the private applicant, upon occasion a choice between competing private applicants, a determination of net investment for purposes of the recapture price, and to some extent a decision as to reasonable rates and charges. These functions are appropriately entrusted to an independent regulatory commission; they are related to other functions of the Federal Power Commission as the general

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regulatory agency for the private power industry, to the extent that it is subject to Federal jurisdiction; and they might well be challenged in the hands of a Federal water development agency.

However, the Federal Power Commission's grant of a private license should be conditioned upon a certification by the Water Development Service that the proposed license will promote the best development of the resources of the stream. That would take into account the primary power planning responsibility of that Service, and would be analogous to the present law which requires approval of the Secretary of the Army for any license affecting the navigability of streams.

Consultation of Federal Power Commission by New Service

With the reduction in its activities, the Federal Power Commission would need fewer hydroelectric engineers than at present. Yet some of those engineers would remain to administer the remaining licensing functions. Moreover, the Federal Power Commission will continue its regulation of interstate electric utilities and will remain as a source of information concerning developments in the electric utility industry generally, including such matters as equipment and costs, etc. Accordingly we recommend that the Federal Power Commission should be consulted by the new Service, on the basis of informal working relationships, concerning recommendations for power facilities at new projects.

Assuming No Unified Water Development Service

If a new unified Water Development Service is not established the Power Commission must continue to consider applications for private licenses upon the basis of whether they are adapted to comprehensive river basin plans. In this connection, the Commission has developed a staff, and a store of information, including river basin and power market surveys, which are valuable in the consideration of proposed Federal projects. In 1938, Congress required the Corps of Engineers to secure the recommendations of the Commission in the installation of power facilities in flood-control projects. Sound working relationships have been developed between the two agencies and their staffs.

The relationships between the Bureau of Reclamation and the Federal Power Commission are not so close or satisfactory, although they have been improving due in large part to the work of the Federal Inter-Agency River Basin Committee. However, Reclamation Bureau reports on proposed projects tend to be too far crystallized at the time of presentation to the Inter-Agency Committee to permit effective consultation by the Federal Power Commission.

We recommend that the Bureau of Reclamation be required to secure the recommendations of the Federal Power Commission concerning proposed power facilities in the same manner as now obtains with respect to the Corps of Engineers. In other words, the field

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staffs of the two agencies should consult with each other at an informal stage before the field staff recommends a detailed project to the Washington office of the Bureau of Reclamation.

Since the Bureau of Reclamation has more power specialists than the Corps of Engineers, this type of consultation is not as imperative, yet the disinterested advice of a nonoperating agency should be exceedingly worth while.

ASSISTANCE TO SCREENING AGENCY

At present, in reviewing proposed Federal power projects, the Bureau of the Budget obtains critical assistance from the Federal Power Commission and its staff. The report of the Committee on Natural Resources recommends the establishment of a review and coordinating board in the Executive Office of the President, which would assure the coordination of other interested departments in proposed projects of the Water Development Service, and would also provide budgetary review. The report on revolving funds recommends an intermediate screening board to study proposals for power and reclamation projects, review budget requests, and promulgate rules for the preparation of, and review of, allocations of costs, annul reports of operations, and repayment reports.

We recommend that the Federal Power Commission be consulted by whatever review or screening agency is established. The Commission should comment on the power aspects and especially on the proposed allocation of costs and repayment schedules. The projects should be required, as now, to use the Federal Power Commission's system of accounts. The Federal Power Commission's knowledge of the accounting requirements, plus its experience with private utilities, should render the comments of this objective nonoperating Commission of great value to the reviewing agency.

D. Regulation of Federal Power Projects

In some instances the Federal Power Commission is required to approved the rates and rate amendments at Federal projects (Bonneville; Fort Peck; projects constructed by the Army). In other instances there is no such requirement (Tennessee Valley Authority, Bureau of Reclamation projects).

A uniform policy would seem appropriate. We recommend that the statutes be revised to remove any requirement of rate approval by the Federal Power Commission. There is a distinction between regulation of private and public enterprises. The private utility holds a monopoly position on the basis of valuable privileges granted by the public and is normally operating for purposes of profit. The regulatory

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commission exercises its authority to prevent unfair rates and profits. The officials of a public project have other and varied governmental purposes and are accountable directly for their management of the project.

Although the Federal Power Commission experts may provide greater objectivity in so far as they are not engaged in actual operation of the project, it still seems wiser not to divide the responsibility for managing the project between the Commission and the operating agency. If Congress receives adequate information as to the operations, it can call the officials to account for any failure to adhere to the prescribed standards.

With respect to Federal projects, the role of the Federal Power Commission should be one of consultation and appraisal, not regulation and control. The most effective use which can be made of the Federal Power Commission is to secure from it an annual report upon the financial results of Federal power operations. This appraisal might take the form of an annual comparative analysis covering the different projects and providing a sound factual basis for judgment as to administrative efficiency of their operations. Indeed the Federal Power Commission now claims that its published financial and operating reports on electric utilities generally provide a comparative basis for investment judgment as to the performance of private management of the various utilities.

In order to permit such comparative reports to be made, the various Federal power agencies should be required to use the Power Commission's uniform system of accounts.

E. Relations with the Securities and Exchange Commission

In our discussion of the Securities and Exchange Commission we call attention to the fact that the Commission and Federal Power Commission both exercise functions with respect to the securities and property transactions of certain utilities included in holding company systems. That discussion sufficiently analyzes the nature of the problem and the desirability of review of the present distribution of functions upon completion by the Securities and Exchange Commission of the holding company integration program.

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Chapter XI

FEDERAL RESERVE BOARD

A. Present Functions and Organization

Functions

The major responsibilities of the Federal Reserve System today are as follows:

Monetary Policy

Formation and execution of monetary policy in order to regulate the volume of money (bank deposits and currency) and its interest cost, largely through controlling the volume of excess reserves of the commercial banks;

Bank Supervision

Participation with other Federal and State authorities in supervising the country's commercial banks; and

Specific Services

Provision of numerous important but more or less routine services for banks, the Government, and the public such as clearance of checks, serving as fiscal agency for the Treasury, holding of member bank reserves, provision of currency for hand-to-hand circulation, and furnishing economic and statistical data.

Organization

In discharging these responsibilities, the Federal Reserve System is divided into (1) the Board of Governors of the Federal Reserve System, (2) the 12 Federal Reserve banks, and (3) the Federal Open Market Committee.

Board of Governors

The Board of Governors consists of seven members, appointed for 14-year terms by the President with the consent of the Senate. It is the policy-making and supervisory head of the System, except for the one vital case of open market operations, discussed below. It is almost entirely a deliberative, policy-making body; virtually all operations are carried on by the 12 Federal Reserve banks. Unlike most of the other independent regulatory commissions, the Board has

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no substantial number of individual cases to adjudicate, such as rate cases before the Interstate Commerce Commission or unfair competition cases before the Federal Trade Commission. Instead, its policy-making duties consist largely of continuous surveillance of monetary, fiscal, price, production, employment, and other trends that govern the level of incomė, employment, and prices in the modern free enterprise system.

Federal Reserve Banks

The 12 Federal Reserve banks are the operating arms of the System. Each has a board of 9 directors, 3 of whom are appointed by the Board of Governors and 6 by the member (commercial) banks who own the Reserve banks' stock. All national banks are member banks, and State banks may join if they wish. The present 6,900 members represent only about half the Nation's banks, but about 85 percent of all bank assets and deposits because most nonmembers are very small banks.

The directors of each Reserve bank elect the bank's president, but this selection is subject to approval of the Board of Governors as are all salaries and other expenses of the various Reserve banks. While the Reserve banks are owned by the members, they act in effect as public bodies as clearly intended by Congress, and are subject to the policy decisions of the Board of Governors and Federal Open Market Committee.

As a practical matter, considerable latitude is available to the Reserve banks in supervising member banks, though they are bound closely by basic credit policy decisions of the Board of Governors and Open Market Committee.

Open Market Committee

The Federal Open Market Committee is composed of the seven members of the Board of Governors and five additional members elected annually by the Reserve bank presidents from among themselves. This committee governs the Reserve banks in their purchase and sales of Government securities, which have now become the foremost device of monetary control, reflecting the hugh volume of Government debt now outstanding.

When the System was established in 1914, few foresaw that open market operations would become an important means of controlling the volume of credit extended by the banking system and of financing Treasury borrowing. When open market operations were begun by the 12 individual Reserve banks, the need for coordinated policy became obvious. First the 12 banks formed an informal open market committee. Then in 1933 and 1935, coordinated open market policy making was formalized in a statutory Open Market Committee and a

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balance of power was shifted to the Board of Governors, in a move toward placing open market policy making on a par with all other Federal Reserve policy making.

Effectiveness of Present Organization

In many respects, the present Federal Reserve organization works very well. The System performs its important and varied service functions with apparent efficiency and dispatch. Beyond doubt, the existence of the Federal Reserve mechanism has served to mitigate the intensity of business and financial fluctuations in the economy, and to expedite the orderly, efficient handling of depression and war period Government finance. On the other hand, continuing historical change has outmoded certain aspects of the Federal Reserve structure and has brought to light weaknesses which were not yet apparent when the act was last thoroughly reexamined in 1935.

Duly recognizing the many excellencies of the Federal Reserve System, both internally and in its relations with other parts of the Government, it is the task of this report to single out those aspects of Federal Reserve organization and practice that appear to call for reconsideration and possible change.

B. Coordination Between Monetary Policy and Fiscal Policy

The most fundamental responsibility of the Federal Reserve is so to control the volume and cost of money as to help mitigate depressions and inflationary booms. This function is not being adequately carried out. Treasury fiscal policy has largely dominated Federal Reserve monetary policy decisions under the present arrangements.

Relation Between Monetary and Fiscal Policy

In our economy today, control of the money supply (monetary, or credit, policy) cannot be realistically viewed apart from Government fiscal and debt policy. The impact of the Federal budget on the level of production, prices, and employment is now widely recognized. Federal Reserve monetary policy is now seen as probably subsidiary in importance to the Federal budget in mitigating general economic instability; certainly it is of no more than correlative importance.

Moreover, the huge volume of Government debt outstanding means that Federal Reserve assistance to the Treasury will long be essential to efficient handling of the debt. Given the present Federal Reserve price-support policies on outstanding Government securities, decisions on the interest rate structure paid on Treasury offerings are in effect

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the crucial decisions governing monetary policy. They determine, for practical purposes, the decisions which the Reserve authorities can make as to the use of their traditional credit policy instruments.

Requisites for Effective Cooperation

Over all, it is obvious that effective Government economic policy requires close cooperation between the monetary and fiscal authorities. It is equally clear that the Government (the Executive and Congress) will not, and should not, tolerate obstructionist action by the central bank against Government policies. A truly independent central bank, free to control the Nation's money supply counter to the wishes of the President and Congress, is unrealistic in the modern world. But a major problem remains: How to obtain the most reasoned, balanced, joint monetary-fiscal policy for the Government.

Today the Federal Reserve is by law completely independent of the Treasury and only indirectly responsible to the President through his appointments of Federal Reserve Board members and designation of the Chairman. Yet, as a practical matter, on virtually every major issue where Federal Reserve-Treasury differences have arisen, the Federal Reserve has gone along with the Treasury—for example, in the handling of wartime and postwar Government financing. The reason is that the Federal Reserve officials, as responsible Government servants, would never be willing to flatly disrupt or destroy the Government's fiscal policy on important matters. Ultimately, the central banks must go along, whatever its formal legal status; and ultimately it is the Chief Executive, who, within the limits imposed by Congress, establishes the Government's monetary-fiscal policy. The Secretary of the Treasury almost invariably is an intimate adviser of the President. By his very semi-isolated legal status, the Chairman of the Federal Reserve Board almost certainly will not be.

In practice, therefore, there exists no serious problem of lack of coordination between monetary and fiscal policy. The two are coordinated, but almost invariably in a policy advocated by the Treasury, subject to varying degrees of Federal Reserve influence. This experience suggests that means must be found to give a more equal voice to the central bank in the process of Government policy formation.

Coordination Between Monetary Policy and Lending Policy

No formal or informal mechanism exists to assure coordination between Federal Reserve monetary policy and the policies of the many Government lending agencies. Important conflicts have often developed. The continued large-scale extension of cheap housing credit during the postwar period in spite of strong inflationary pres-

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sures and Federal Reserve protests is a recent case in point. Better cross-information and coordination in the formation of the Government monetary and lending policies is necessary.

Recommendations for Coordinating Policy

More effective coordination of Federal monetary-fiscal-lending policy is essential. What is needed is a small group of top financial officials in the President's official family who will jointly (*a*) consider all basic questions of Federal financial policy, (*b*) agree on consistent agency policies wherever possible, and (*c*) point up major disputed issues for decision by the President.

The officials involved should be the Secretary of the Treasury, Director of the Bureau of the Budget, Chairman of the Federal Reserve Board, and, assuming a simplification of the Federal lending agency structure, one representative of the lending agencies. Coordinated balanced Federal financial policy making would demand that the group operate at least loosely as a unit and that the four officials involved speak with roughly equal status in policy discussions.

Domination by the Secretary of the Treasury, as is now prevalent in monetary-fiscal policy, would continue the age-old Treasury bias in favor of too-easy money in inflation periods, against effective monetary restriction. The danger of domination by this attitude, reflecting the Treasury's necessary preoccupation with the needs of current fiscal operations, is greatly strengthened by the huge volume of public debt now outstanding.

In such a council, the central bank would be the one agency outside the operational requirements of day-to-day fiscal policy and free from the borrower pressures felt by lending agencies. Its role, from a position of relative objectivity, would ordinarily be to argue the case for restrictive action in inflationary periods, to support expansionary measures in depression. If the central bank is to play an effective role in Government policy formation, it must have a position which gives it an effective voice in the President's inner councils. The central bank must act through the Government—through influence on the Government's economic policies from within, not through obstruction and objection from outside. Experience has shown clearly the unreality of the assumption that control over a nation's money supply can effectively be outside the Government in times of crisis or conflict.

Recommendation.

We recommend, therefore, that steps be taken to establish a formal or informal national monetary council, of the sort indicated, by statutory direction that the four financial agencies consult regularly in order better to coordinate Federal monetary fiscal-lending policy.

Such a council might consist of the four officials indicated above,

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subject to augmentation at the wish of the President or of the council itself, when dealing with particular issues (such as by adding the Chairman of the Securities and Exchange Commitsion when dealing with inflation control problems). The present National Advisory Council (on international financial affairs) might be consolidated with such a national monetary council. Two of the members are common to both, and the other present members of the National Advisory Council could be added when international financial problems arose.

Any such council should be specifically responsible to the President, with freedom left to the President to choose a chairman for the group and to vary its specific use and operations as he sees fit.

Unless such a council operated as the key group of the President's official family on matters within its purview, it would serve little useful purpose. Excessive rigidity would merely lead to bypassing the prescribed arrangements; no amount of statutory prescription can force the President so to use an advisory council if he chooses to disregard it. Moreover, such a council should not have the power of directive over the participating agencies; this would only create a new superagency, where all that can actually be useful is a relatively informal, flexible, coordinating, and advisory group to serve as the President's right hand on financial matters. A national monetary council is only one suggestion for attaining the end needed; other detailed mechanics may achieve the purpose equally well or better.

In accordance with the reasoning already advanced, it is desirable to assure that the Chairman of the Federal Reserve Board be a more intimate member of the President's official family. The Chairman is now appointed by the President but for a 4-year term. It is recommended that the provision for a term be eliminated and that he specifically serve, as Chairman, at the will of the President. The council device suggested above, in which the Board Chairman would sit as a basic member, coequal in rank with the Secretary of the Treasury and any other Cabinet rank officials, would also serve the same purpose.

C. Internal Responsibility for Federal Reserve Policy Formation

Present Relation of Board and Open Market Committee

At present, authority over basic Federal Reserve credit instruments is divided between the Board and the Open Market Committee. The committee controls open-market operations and the Board handles the other credit controls, such as the rediscount rate and reserve requirements. But by general agreement, it is impossible to consider the use of one major credit policy instrument (such as open-market

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operations) without simultaneously considering the alternative or supplementary use of others (changes in reserve requirements, rediscount rate changes, etc.). Conflicting policy decisions by the two bodies would be unthinkable.

The present divided authority between the Board and the committee is therefore awkward and unwise. To provide an effective basis for policy making, authority and responsibility for all instruments of credit policy need to be transferred to one body or the other.

Such policy-making calls for a compact body of small size. Experience with the 12-man Open Market Committee shows this clearly: This body is too large for this purpose, especially as all 12 Reserve bank presidents, rather than only the 5 formally elected members of the committee participate actively in its discussions. Since open-market operations must be determined in close consultation with the Treasury, it has been impossible in practice for the entire committee to do more than arrive at general policy directives, entrusting the more detailed policy making to a 5-man executive committee, which in turn is now generally represented by only two men (the Chairman of the Board and the president of the New York Reserve Bank) in negotiations with the Treasury.

Recommended Consolidation in Federal Reserve Board

To correct the present divided policy responsibility between the Board of Governors and the Open Market Committee, we recommend that all Federal Reserve policy-making powers be consolidated in a new, smaller board of governors. At the same time, we recommend that Congress require that the Board consult the 12 Reserve bank presidents periodically on matters of System policy, and specifically before taking any major credit policy actions.

This change would centralize credit policy-making responsibility, as is necessary for its effective exercise. It would place the responsibility in a specifically public body, appointed by the President with the consent of the Senate, as is essential for so vital a function as control over the Nation's money supply. It would assure, at the same time, full Board consultation on all credit policy actions with the Reserve bank presidents who reflect the various regions of the country and the interests and problems of the bankers with whom they are in daily contact.

The opposite solution sometimes advanced, that all policy powers be vested in the present Open Market Committee instead of in the Board, is considered unsatisfactory for several reasons. It would require maintenance of a large, unwieldy policy-making body. It would leave no functions for the publicly appointed Board of Governors, which would then have no reason for continued existence as such. It would vest power over reserve requirements and other matters

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directly bearing on commercial bankers in a body of which nearly half the members would be elected by the bankers being supervised. And it would place one of the Government's most vital powers—control of the money supply—in a semiprivate body.

D. Composition of Board

Disadvantages of Present Composition

Our staff considers that the seven-man Board of Governors has been too large for maximum efficiency, without appreciable gain in the quality of deliberative procedures and policy decisions. In practice, it appears that a few of the Board members (notably the Chairman) have taken leadership and the others have contributed relatively little to policy formation. Instead, they have devoted a substantial portion of their time to administrative matters that might better be delegated to staff members and Reserve bank officials.

This situation may be due partly to the persons involved over the past decade, but it must almost inevitably be true of any seven-man board because of the nature of Federal Reserve-Treasury relations. Most vital monetary-fiscal issues (for example, the structure of interest rates to be maintained on Government securities) are complex and detailed. They are determined essentially in negotiation between one or two top Treasury officials and Federal Reserve representatives. On such matters a seven-man board cannot negotiate effectively with the Secretary of the Treasury. Inevitably one or a very few Board members must be entrusted with Board leadership in handling such matters, which are now the core of monetary policy making. Moreover, the Chairman must represent the Board in vital discussions with other major single-headed Government agencies.

Recommendations on Composition of Board

In order to increase the efficiency of the Board of Governors and to attract top-quality men to the Board, we recommend the following:

Size of Board

The Board should be reduced in size to three members, each term to run for 6 years, with reappointments permitted. The smaller Board is in keeping with the practical realities of Federal Reserve relations vis-à-vis the Treasury and other Government agencies, and would provide a more efficient mechanism for internal policy making. It would increase the attractiveness of Board appointments to outstanding men. It would lead to greater delegation of administrative duties to staff members and Reserve bank officials, thus improving Federal Reserve administrative procedure. Yet, in combination with

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the requirement of full consultation with the Reserve bank presidents, it would protect adequately the deliberative quality of Board policy making.

Such a Board would provide less formal independence than do the present seven members with 14-year terms, but it would help give the Federal Reserve an increased voice in Government policy making, while preserving its freedom from narrowly partisan politics.

Compensation

Top quality men are the key to top quality Federal Reserve performance and increased influence, whatever formal arrangements may be established. As elsewhere in the Government, means must be found to attract top quality men if sound, aggressive monetary policy is to be achieved. Reduction in the size of the Board has been suggested as one means. Another is to increase substantially the salaries for Board members and top staff in accordance with our general recommendation.

Qualifications

The present geographical requirement of only one Board member from any one Federal Reserve district should be revised in the light of the recommendation for a smaller board merely to require that due regard be given to reasonable geographical representation. We see no reason for continuing the present requirement that due regard be given to fair representation of the financial, agricultural, industrial, and commercial interests * * * of the country. There is no room for factionalism on the Board of Governors.

E. Bank Supervision

Present Dispersion of Authority

The Nation's commercial banks are supervised by three Federal agencies (the Comptroller of the Currency, the Federal Reserve, and the Federal Deposit Insurance Corporation) and 48 State supervisory authorities. All nationally chartered banks are supervised by the Comptroller; all Federal Reserve member banks by the Federal Reserve; all insured banks by the Federal Deposit Insurance Corporation; and all State chartered banks by the appropriate State authority. In addition the Reconstruction Finance Corporation retains supervisory authority over a few banks where it still holds preferred stock or capital notes. Thus all national banks are subject to supervision by at least the Comptroller, the Federal Reserve, and the Federal Deposit Insurance Corporation. All State member banks are subject to supervision by the Federal Reserve, the Federal Deposit

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Insurance Corporation, and the appropriate State authority. And even nonmember insured banks are supervised by both the Federal Deposit Insurance Corporation and the State authorities.

Consequences of Present Dispersion

As a practical matter, this crazy quilt of overlapping jurisdiction and responsibility works reasonably well in a noncrisis period, such as has prevailed in banking for the past decade. Cooperative arrangements among supervisory authorities to share examination reports have eliminated the most glaring inefficiencies of duplication. Difficulties and friction arise primarily because of varying supervisory standards between the various agencies, a situation on which some commercial banks attempt to capitalize by playing the supervisors off against one another. Perhaps most important, banks are free to escape Federal Reserve requirements on reserves by giving up Federal Reserve membership though they may retain Federal Deposit Insurance Corporation insurance. But, over all, the inefficiencies are much less than would be expected from the confused formal supervisory arrangements.

What will be the results of the present overlapping supervisory responsibilities in case another banking crisis arises is much less certain. Certainly potentialities of confusion and conflicting policies exist in the present set-up. While the need for elimination of overlapping Federal supervisory responsibilities in normal times is not great, a stronger case can be made if a danger of future banking crisis like that of 1929–33 is recognized.

Recommendations Regarding Bank Supervision

Overlapping responsibilities among the Federal bank supervisory agencies should be eliminated. (The division of authority between Federal and State authorities is outside the scope of this report, which is concerned only with the executive branch of the Federal Government.) The need for remedial action here, however, is much less than in the monetary policy area covered by the preceding recommendations, both because bank supervision itself is of relatively less importance and because the present supervisory system works tolerably well. While the need for immediate action, therefore, is not as urgent as in the preceding fields, we nevertheless make the following recommendations:

Unified Supervision

We recommend that consideration be given to the possibility of combining all Federal bank supervisory activities in one agency. This would eliminate interagency friction and permit some savings through consolidated operations both in Washington and the field.

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It would do away with competition among supervisors for banks to supervise. It would even the application of supervisory standards. And most important, it would provide a unified supervisory policy in the event of another banking crisis.

While a reasonable case can be made for any one of the present three agencies as the center of such a consolidation, we suggest the Federal Reserve as the most promising locus for the following reasons. Most important, it is essential to avoid examination policies which will intensify deflations or inflations, and the Federal Reserve is best suited to insure this because of its basic preoccupation with stabilization policies. The 12 regional Federal Reserve banks provide a natural framework for supervisory activities. On the other hand, use of either of the other agencies would require a second major Federal banking agency alongside the Federal Reserve.

If supervision is centered in the Federal Reserve, the Federal Deposit Insurance Corporation could continue as a separate insurance corporation as at present. The function of liquidating closed banks could either be transferred with supervision, or it could be retained in the Federal Deposit Insurance Corporation.

Transfer of Personnel

Wherever such a supervisory consolidation is centered, we recommend that it draw its personnel from all three existing agencies, and that the consolidation be jointly supervised by representatives of the three agencies, in order that top and operating staff of each be given due regard in the new organization. Such a consolidation should draw the top quality personnel from each agency.

Federal Deposit Insurance Corporation Board

Whatever the allocation of supervisory responsibility, we recommend that the Federal Deposit Insurance Corporation Board of Directors be altered to include the Chairman or Vice Chairman of the Federal Reserve Board. This would recognize the intimate relationship between Federal Reserve credit policy and the liquidity of the entire banking system, which is basic to the prevention of such mass bank failures as occurred during the early 1930's and is thus basic to the solvency of the Federal Deposit Insurance Corporation insurance fund. This arrangement would leave the Chairman of the Federal Deposit Insurance Corporation Board as the single operating head of the Corporation, which would be in keeping with its operations. In case no change is made in supervisory responsibilities, the Federal Deposit Insurance Corporation-Federal Reserve-Comptroller membership on the Federal Deposit Insurance Corporation Board would also provide a common ground for continuous discussion of joint supervisory problems and for coordinated policy formation.

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Reserve Requirements

We recommend that all insured banks be made subject to the reserve requirement applicable to Federal Reserve member banks. This would improve the effectiveness of Federal Reserve control over the size and cost of the Nation's money supply, and would eliminate the restraint now felt by the Federal Reserve Board against reserve requirement increases that might lead banks to withdraw from membership to obtain laxer State reserve requirements. This step would not infringe on the present dual banking system or the right of the States to charter and supervise banks. It would only change the requirements for Federal deposit insurance to include the reserve requirements applicable to member banks.

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Chapter XII

FEDERAL TRADE COMMISSION

The Federal Trade Commission, composed of five members, with 7-year staggered terms, was established in 1914. Its duties are derived mainly from the Federal Trade Commission Act and the Clayton Act (1914), which were designed to supplement and strengthen the Sherman Act of 1890.

The impetus for the Trade Commission and Clayton Acts was supplied largely by the Supreme Court's 1911 decision in the *Standard Oil* case (221 U. S. 1), interpreting the Sherman Act, which prohibited combinations in restraint of trade and monopolizing, with enforcement by criminal and civil proceedings in the courts. Announcing the rule of reason, the Court held that the Sherman Act outlaws only unreasonable restraints of trade. Support for a Trade Commission came from two divergent groups, which joined mainly in dissatisfaction with judicial enforcement of the antitrust laws.

Businessmen wanted greater certainty as to the lines of legitimate conduct and more specific standards, through an authoritative commission. Others, interested in a more vigorous and effective enforcement of the antitrust laws, desired to limit the broad powers of the courts under the rule of reason. They felt that human inventiveness in devising new unfair practices required a commission of trained experts, of quasi-judicial character, with continuity of policy, and capacity to establish a body of administrative law.

Thus the Commission, while intended to be one of the strongest of the Federal administrative agencies, differs from many of them in purpose. It represents not a departure from reliance on free competition, but an effort to maintain effective competitive conditions by preventing the development of monopolistic and restrictive practices. By continuous, expert attention, it was expected to adapt and apply the general terms of the statutes to current business practices, to make their enforcement more effective, and to build up a body of precedents to govern business conduct.

Measured by these high hopes, the Commission's record is disappointing. The reasons have been various. The Commission has been hampered by inadequate funds, hostile court rulings, mediocre appointments. Its operations, programs, and administrative methods have often been inadequate, and its procedures cumbersome. It has largely become absorbed in petty matters rather than basic problems.

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Despite this record, the conception of the Commission seems to us a sound one for this field. The developments in industry in recent decades have only reenforced the need seen in 1914 for an administrative agency devoted to a vigorous program to maintain effective competitive conditions and to eliminate and correct restrictive practices. But if the Commission is to perform the significant functions intended by Congress a number of basic changes will have to be made in its organization and program. Fortunately, the Commission itself has become aware of the need for reform and has taken some measures in this direction. However, these are only first steps and many basic ones remain.

This chapter outlines our reasons for these conclusions and recommends some of the reforms necessary to strengthen and revitalize the Commission.

A. Functions and Activities of Commission

Both the Federal Trade Commission Act and Clayton Act were intended to prevent practices leading to monopoly or competitive restriction before their objective was attained. The Clayton Act outlawed specific practices where they might tend substantially to lessen competition. The Trade Commission Act forbade unfair methods of competition leaving it to the Commission to make the term specific. Under these acts the Commission had two main weapons: (1) The power of investigation, and (2) the power to issue cease-and-desist orders against violations.

Statutory Functions

The primary duties of the Commission under these and other statutes are as follows:

Unfair Competition

Section 5 of the Federal Trade Commission Act makes unlawful unfair methods of competition and unfair or deceptive acts or practices. Under this section, the Commission has developed its major work. In general, this has taken two lines: (1) Attack upon a number of relatively minor offenses such as false and misleading advertising, and (2) a series of cases involving basic restraints of trade such as are involved in the Cement Institute case.

Stock Acquisitions

Section 7 of the Clayton Act had great potential importance. It sought to prevent the development of monopoly by forbidding acquisitions of stock of competing enterprises. In interpreting the pro-

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vision, however, the Supreme Court narrowed its application so far as to deprive it of practical usefulness. As a result, the Commission's work on enforcement of this section has virtually ceased.

Price Discrimination

Section 2 of the Clayton Act, amended in 1936 by the Robinson-Patman Act, is designed to maintain equality of competition by eliminating price discriminations. In actual practice the enforcement of this section has been woven into the antimonopoly work of the Commission. The Commission has brought a number of cases combining in one action charges under both section 2 of the Clayton Act and section 5 of the Federal Trade Commission Act.

Investigations

Section 6 of the Federal Trade Commission Act gives the Commission wide investigatory powers over the business economy. Its purpose was twofold: (1) To provide general information on corporate practices and relationships as a guide to legislation and public opinion, and (2) upon direction of the President or either House of Congress to report the facts on violation of the antitrust laws by any specific corporation, and turn on the spotlight of publicity.

Enforcement

The Commission's orders under the Clayton Act are not final. In the event of violation, the Commission may apply to a circuit court of appeals for enforcement, and only a violation continued after this court ruling subjects the company to a penalty (for contempt of court). The same provisions applied to the Commission's orders under the Federal Trade Commission Act until a 1938 amendment made those orders final if not brought to court by the company within 60 days, and prescribed a $5,000 civil penalty for each violation.

Under the Trade Commission Act, the Commission was also expected to assist in the enforcement of the Sherman Act by investigating the compliance of defendants with decrees, by assisting the courts in the formulation of equity decrees, and by recommendations to the Attorney General for readjusting the business of corporations to conform to the antitrust laws. In practice almost none of these powers has been used.

Other Duties

The Commission has other duties under a miscellany of acts. Section 3 of the Clayton Act prohibits tying or exclusive dealing contracts which have monopolistic tendencies; section 8 prohibits interlocking directorships which have the same effect. The Commission also administers the Export Trade Act, which exempts export trade associations from the Sherman Act provided that their activities

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have no restraining influence upon domestic trade, and the Wool Products Labeling Act, which requires labeling of wool products for the protection of the trade and the public.

Past Work of the Commission

Over the years, the Commission has engaged mainly in activities contributing little toward accomplishing the primary congressional objective of assuring widespread effective competition.

Cease and Desist Proceedings

In the past this has been particularly true of its proceedings for orders to cease and desist. Approximately 70 percent of the cases have involved false and misleading advertising and deceptive practices. The remaining 30 percent have been concerned with price discriminations and anticompetitive practices, yet the bulk of even these cases has been minor in importance, involving small corporations of little consequence to the national economy.

In part, this condition was due to numerous adverse court rulings in the Commission's first two decades. These cast doubt upon the Commission's power to find unfair methods of competition in acts not illegal at common law, rejected the Commission's views as to the effect of various provisions of the Clayton Act, and virtually nullified section 7, which forbade acquisition of stock of competing enterprises.

After 1934, the Federal Trade Commission was lost in a backwash. For several years the Government veered away from an antitrust policy. In the late 1930's the Department of Justice began a militant enforcement of the antitrust laws, which has continued, subject to wartime postponements. But in the Federal Trade Commission the members were reappointed, and its dockets were preoccupied with false and misleading advertising cases, save for an assault upon basing point pricing systems.

Conciliatory Settlement: Trade Practice Conference

The Commission has developed conciliatory procedures, short of formal trials, for false and misleading advertising cases. These may be handled without a hearing by formal stipulation, negotiated after issuance of a complaint and filed as a public record. The most minor matters are handled by letter; if the company ceases its practices, the matter is ended.

Where a particular practice seems widespread, the Commission may attempt to clear it up on an industry-wide basis through a trade practice conference. Subsequently, rules of fair-trade practices are promulgated for the industry; signatures are received from companies desiring to adhere to the rules; and an attempt is made, with the cooperation of an industry committee, to keep the industry in line with the established rules. However, since there is no statutory

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basis for this procedure, violations must be proceeded against under section 5 of the Federal Trade Commission Act.

Investigations

Of all its activities, the Commission's investigations have probably had the most substantial impact and enduring value. Its general investigations, more than 100 in number, have in several instances resulted in the passage of major legislation—notably the Packers and Stockyards Act, the Securities Act of 1933, the Stock Exchange Act of 1934, and the Public Utility Holding Company Act of 1935.

However, the Commission's investigatory powers were first limited in the 1920's by a Supreme Court decision restricting its use of subpoenas, and were later curtailed by limitations on appropriations, and on investigations upon resolution of either House. Since 1935 investigations at legislative request have required the concurrent resolution of both Houses and specific appropriation of funds to finance the cost of investigation.

New Program of the Commission

Within the past year, the Commission has taken some steps to revitalize the agency and its program. To this end a planning council has been set up, composed of the top staff heads of the agency, to furnish direction and order for a new program, and to supply a better balance in the work of the agency by placing increased emphasis upon its antimonopoly work.

In addition, the Commission has placed increased emphasis upon handling the bulk of its minor cases through its conciliatory procedures. This has the advantage of economy in the disposal of a multitude of picayune violations; it should result in speeding these cases through to final solution; and it should appeal to businessmen anxious to correct trade practices with a minimum of legal procedure and publicity.

The Commission also contemplates a considerable expansion in economic investigations by the agency. In part this increased work will be geared into the operating branches of the Commission.

B. Maintenance of an Independent Commission

We have carefully considered whether the Federal Trade Commission should be continued as an independent regulatory commission, and especially whether its functions in the broad antimonopoly field should be transferred to the Department of Justice. Our conclusion, as already indicated, is that the Commission should be maintained in order to implement the policy of the antitrust laws.

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By long tradition, this country is committed to the maintenance of the system of competitive enterprise and widespread opportunities for independent businesses. This policy has its roots both in the democratic political tradition of equality of opportunity, and in the belief that economic progress, efficiency, and social stability are promoted by the spur of competition. The antitrust laws are the instrument for achieving this long-range policy. They are based on the recognition that to maintain effective competition requires vigilance in preventing and correcting restrictive or monopolistic practices.

In part this can be achieved through court actions by the Department of Justice under the Sherman Act. But the Antitrust Division has been essentially a prosecuting agency; its interest has been primarily that of bringing violators into court to secure a conviction or judgment. In this field, particularly in the last 10 years, it has been singularly successful and has performed useful public service.

Another kind of job in the antitrust field is for the administrative agency. There is need for an economic staff systematically surveying our economy; probing for industrial and economic practices which threaten the elimination of competitive conditions; identifying restrictive tendencies before they become too solidly entrenched; analyzing the basic disorders found and formulating methods for their practical correction. Such a procedure gives the policy of the statutes continuous vitality in terms of current conditions. It also places stress on the basic purpose of the legislation—the practical correction of trade practices to bring them in conformity with the public interest. These are the basic purposes of the Federal Trade Commission Act.

These tasks are peculiarly suited to an independent agency. The single forum provides a continuity in approach to the problems and method of handling. The bipartisan commission is relatively immune to the political winds which blow through the executive departments; the Antitrust Division, by contrast, has had to clear some specific cases and general programs with the President. With a permanent economic staff, the Commission has the opportunity for an orderly development of program. The staff can focus more upon economic disorders and their remedies, than on winning cases as is the tendency in a department necessarily dominated by lawyers. If properly organized, an independent agency is superior to the executive departments and the courts in providing continuity in following up decrees, surveying compliance, and evaluating the remedies.

In addition, the Federal Trade Commission can and should constitute a reservoir of information on the structure of the economy and of specific industries. This information should be available to the antitrust agencies and to other Government agencies, such as those concerned with defense. By its reports to Congress and the public, the Commission should keep them abreast of changes in the structure of the economy and aware of needed legislative action.

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Judged by these standards, the Federal Trade Commission has fallen far short. As the years have progressed, the Commission has become immersed in a multitude of petty problems; it has not probed into new areas of anticompetitive practices; it has become increasingly bogged down with cumbersome procedures and inordinate delays in disposition of cases. Its economic work—instead of being the backbone of its activities—has been allowed to dwindle almost to none. The Commission has largely become a passive judicial agency, waiting for cases to come up on the docket, under routinized procedures, without active responsibility for achieving the statutory objectives.

This does not mean, however, that the original conception of Congress should now be abandoned. On the contrary, the need for an administrative agency is greater in 1949 than in 1914: Our industrial organization is more complex, larger concerns have grown in size and importance, trade practices in many industries form an intricate network of controls. The Commission should be rejuvenated, with a refocusing of its functions and program, and a reorganizing of its operations and procedures.

While the Commission itself is aware of this necessity and has taken some measures in this direction, these steps have not gone far enough to achieve the results that are needed. The remainder of this chapter will be devoted to those changes which we consider essential for the efficient performance of its functions.

C. The Commission Proper

Appointments

The Commissioners themselves are the key to the success of the Commission.

With notable exceptions, appointments to the Federal Trade Commission have been made with too little interest in the skills and experience pertinent to the problems of competition and monopoly, and too much attention to service to political party. In recent years Presidents have tended to rename incumbents. In two instances, the age provisions of the retirement laws have been waived by special action of the President.

The present time offers a unique opportunity to correct this situation. There are now two vacancies on the Commission, and a third will occur in late 1949. The entire complexion of the Commission can thus be changed through the appointive power of the President. It is urgently recommended that, in these appointments, the greatest care be exercised by the Chief Executive to select members who will strengthen and revitalize the Commission. We also suggest that serious consideration be given to the appointment of a top-rank

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economist, with realistic understanding of the intricacies of practice and, if possible, experience in Government regulation of business. In the past, the Commissioners have been drawn almost exclusively from the ranks of lawyers.

Salaries

Salaries of Federal Trade Commissioners, which have remained at $10,000 since 1914, should be increased in accordance with our general recommendation. This is essential to obtain qualified appointees for these demanding and difficult tasks.

Chairman

The statute provides that the Chairman shall be selected by the members. In practice the chairmanship rotates annually. The Chairman has hardly mastered the basic functions of the chairmanship before his tenure as Chairman ends. He can make no real effort to supervise the administration of the agency.

As a result, control of administration is in the hands of the Commission as a whole, since the Bureau of Administration, headed by a secretary and executive officer, lacks administrative authority. The approval of the entire Commission is required for appointments to even junior professional positions, and until recently of clerks and stenographers as well. The Commissioners consider administrative details such as the routing of ordinary correspondence, the organization of work in the stenographers pool, minor personnel problems, manifold details in the handling of legal documents. This inevitably diverts the Commissioners from consideration of substantial questions.

Our general conclusions concerning the office of Chairman apply with full vigor to the Federal Trade Commission. The Chairman should be designated by the President, for reasons further developed below. He should be responsible for execution of the administrative routine; he will delegate these tasks to the Chief of the Bureau of Administration, who should report directly to the Chairman. The Chairman should also provide administrative leadership in recommendations to the Commission on substantial questions of administration, such as budgeting, programing, and the like. The Planning Council, consisting of 12 heads of important divisions and bureaus, which was recently established to make recommendations for a correlated work program and budgetary allocation, can scarcely be looked to for continuing administrative leadership.

Commission Case Actions

A number of minor recommendations may serve to improve the functioning of the Commission.

1. At the Commission meetings, much of the time of the Commissioners is spent upon minutiae of questions raised in particular cases—

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postponements in hearings, delays for filing briefs. Such matters should be delegated to the Chairman or to a single Commissioner.

2. Commission meetings are consumed with the reading of long memoranda from the staff. These should be circulated in advance of meeting.

3. No one is presently responsible for keeping informed of the status of the dockets of the Commissioners. Several antimonopoly cases have been pending with the Commission for more than 2 years, and deceptive practice cases have sometimes been held up for months by particular Commissioners. The Chairman should have general responsibility for taking all action appropriate to avoid delays at the commission level.

D. The Staff of the Commission

Personnel Administration

The Commission's first task is to find qualified top personnel to replace a number of men now approaching retirement. In the past the Commission has assiduously applied a policy of promotion from within. That policy has enabled the Commission to retain some men of real competence. But in other cases, limited ability, plus sheer longevity, has won positions of importance, sometimes without regard to training and experience: Too often men have been promoted from clerical posts to professional status because of their long tenure. Under this policy a number of really able men on the staff have been blocked. Future appointments and promotions should discount mere seniority and instead should emphasize ability and experience.

The Commission also needs (1) reclassification of professional positions upon a sounder basis, rewarding professional competence without requiring supervisory responsibilities; (2) an increase in clerical salaries to the level of other agencies; (3) clearance of deadwood. Here the Commission must work with the Civil Service Commission.

Coordination and Reorganization

Since different bureaus of the Commission are responsible for different stages of its cases and are relatively autonomous, this creates problems of coordination between bureaus on both general programs and particular matters. Again the Planning Council has taken first steps but more needs to be done.

A prime example relates to the investigation and trial of cases. Responsibility for gathering data on violations is in the Bureau of Legal Investigation; responsibility for trial is with the Bureau of Litigation. One bureau collects a miscellany of facts, often unrelated

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to any particular theory of the case, and turns the data over to the trial lawyers to be fitted into a case that will stand up in the courts. In nonroutine cases, and particularly in antimonopoly cases, there should be a close knitting of the investigation and trial aspects. In gathering evidence the investigators should work with the trial lawyers; two or three should continue as investigators during the trial, assisting the attorney and collecting new evidence as it may be needed.

The Commission should also consider a more thorough-going reorganization. For example, the bureaus might be organized to separate the antimonopoly work from deceptive practices work. A separation of the two types of cases in different bureaus might (*a*) for antimonopoly cases, link more closely the investigations and trials and facilitate the integration of the services of economists at both stages; and (*b*) for false and misleading advertising cases, link together responsibility for investigations, trials, stipulations and trade practice conferences (now in four separate bureaus). Without recommending any specific plan, we urge the Commission to consider thoroughly its organization problem.

Economic Research

The economic work of the Commission should be greatly expanded if the Commission is to approximate its proper role in the maintenance of competition. The Commission should develop a program for economic research and present that program, together with requests for increased budget, as a revival of a major segment of the Commission's responsibilities which has been unduly slighted in recent years.

E. Methods of Operation

The cure of several of the present shortcomings of the Commission will require a substantial change in the Commission's basic approach to its regulatory function.

Selection of Cases

In the selection of cases for its formal dockets, the Commission has long been guilty of prosecuting trivial and technical offenses and of failing to confine these dockets to cases of public importance. This situation will partly be remedied by the greater emphasis of the Planning Council and the Commission on antimonopoly cases, and on conciliatory procedures for minor matters. An expanded economic staff will aid in the selection of cases by identifying trouble spots for intensive Commission cases.

In the past outside complaints have been the main source of Com-

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mission cases, and have proved inadequate for such a role. Many outside complaints are concerned with petty offenses. Yet outside complaints are a valuable contact with the public; they can bring in fresh ideas and sometimes do bring important abuses to the Commission's attention. The Commission should survey the basis for rejection and selection of complaints and develop standards for selection of outside complaints for follow-up.

Conciliatory Procedures

The stipulation technique is still a relatively cumbersome procedure. Weeks and frequently months intervene between the beginning of negotiations on a stipulation and its final formal issuance. We recommend development of a more expeditious method for handling minor issues. A likely device would be the citation procedure now used in several agencies. The violator is called in for informal discussions, and the situation is corrected without the issuance of formal complaint; if the violation is repeated after warning, the more formal administrative procedures of the agency are then called into play.

In the stipulation of false and misleading advertising cases, Federal Trade Commission practice now calls for admission of the facts alleged in the complaint as well as acquiescence in the order. Due to the possibility that these admissions may be used in damage suits by private parties, company attorneys haggle over and resist these admissions as much as possible. The effective relief desired by the Commission could apparently be obtained by securing agreement as to the terms of the order without requiring admissions of the facts alleged. This would follow the practice in consent decrees.

Investigations and Trials

The Commission has practically discontinued the use of subpenas for investigatory purposes ever since its restriction by the Supreme Court in 1923. It relies on voluntary access to files of companies and testimony of injured competitors, which frequently results in cumulation of witnesses and itinerant hearings. In view of recent Supreme Court decisions liberalizing the use of subpenas, the Commission might well reexamine its present practice.

Disclosure of Standards

Opinions

A most serious deficiency of the Commission is its failure to write an opinion which sets forth the contentions and issues involved in the case and the policies, standards, or rules being applied by the Commission, which refers to the precedents if the case is one in a series, and if the case represents an attack upon a new problem provides a full elucidation of the Commission's reasoning. Until recently the Com-

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mission did not make public any of the opinions written by its members. Because of a current division in policy, opinions were made public in perhaps a dozen cases during the past year.

If the Federal Trade Commission is to fulfill its function of exploring and developing a field of law, such opinions are a necessity. Previous recommendations in favor of such opinions, notably in 1925 by Mr. Henderson and in 1940 by the Attorney General's Committee on Administrative Procedure, have gone largely unheeded. We recommend that the Commission establish the policy of writing opinions in all cases, and that if necessary, the statute be amended to require such opinions.

Statements of Principles

In addition to opinions in the future, a statement of the body of law already developed by the Commission in the field of competitive practices would also be useful. For this purpose, the Commission might enlist the aid of outside experts in this field to prepare a summary which the Commission might approve as a prima facie statement of Commission doctrine, subject to modification or clarification by the Commission in future opinions.

Complaints and Orders

The Commission's complaints, findings, and cease-and-desist orders are stated in terms of legalistic conclusions which make it difficult to ascertain what practices were objected to and ordered discontinued. Again, this deficiency was noted by Henderson in 1925 and has not been remedied. There is no reason why these documents should not clearly state the facts and the practices to be discontinued.

Compliance

The Commission has recently recognized the importance of securing compliance with its decrees by the establishment of a compliance division. This section, now small, is increasing in size.

Compliance cases in court are now the responsibility of the United States attorneys. We recommend that the Department of Justice and the Commission work out an informal arrangement permitting Commission attorneys to take the major responsibility in these cases. The staffs of the United States attorneys cannot be expected to provide the special background and considerable time necessary for compliance litigation in the antitrust field.

We also recommend amendment of the law so that future Commission cease and desist orders under the Clayton Act will become final, like its orders under the Federal Trade Commission Act, as amended in 1938, if not appealed within 60 days. No good reason appears to justify the present difference under the two acts.

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Presentation of its Program

The Commission must inform not only the businessmen and their lawyers but also Congress and the public. The annual reports have been dull, and the real life of the agency has been lost in a maze of statistics which fail to explain its work. The same has generally been true of testimony before congressional committees—with certain exceptions such as the testimony on section 7 of the Clayton Act. The Commission's public releases have, until recently, consisted largely of the decisions themselves, and as legal documents have had little appeal for any save the trade journals.

The Commission's approach in these matters has largely been due to its stress on its judicial character. But the Commission also has responsibilities for furtherance of the policy and mandate of the statutes. In a field of such public interest, the Commission has a duty to be truly informative concerning its own standards and policies.

F. Relations With Other Agencies

President and Executive Office

In view of the general public interest in the maintenance of competitive conditions, it is not only proper but desirable that the President and the Commission should advise with each other on general questions, trends, and policies in the antitrust field. And the statute expressly provides that the President may direct the Commission to conduct investigations.

In fact, during World War I, the Commission played a major role investigating for the President costs, prices, and profits in the war industries. Thereafter it slipped out of the center of things, especially after Congress restricted its economic investigations. As the Commission sank into a rut of picayune problems, there was increasing Presidential indifference to the agency and its appointments.

Presidential designation of the chairman, as already recommended, will assist in establishing closer relationships with the White House, and in stimulating Presidential interest in and understanding of the Commission's role in the maintenance of a competitive system. Consultation on general policy, and channeling of information both ways, should prove valuable to both the Chief Executive and the Commission.

The Council of Economic Advisers is the staff agency in the Executive Office with greatest interest in the Federal Trade Commission's activities, particularly the obtaining of economic intelligence and the formulation of Government programs in the economic framework.

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Contacts have already been established between the Commission and the Council, especially on the working staff level.

In addition, the President should consider assigning antitrust problems and programs as one of the fields for a Presidential assistant. The assistant could aid in coordination: He could spot the antitrust implications in the work of other departments and agencies, such as the procurement and lending agencies, and endeavor, by appropriate liaison, discussion and compromise, to bring their programs into greater harmony with antitrust policy.

Inter-Agency Committee

It is recommended that an inter-agency committee be established, to serve as an instrument for giving practical effect to antitrust policy throughout the Government. It should include all important agencies, whose work impinges on the maintenance of competition. Care would have to be taken to assure that this committee would not interfere with programs of antitrust enforcement.

This committee should be organized by the President, who should designate the chairman. Unless the President assigns the field of antitrust to an assistant, either a member of the Council of Economic Advisers or the Chairman of the Federal Trade Commission would seem the most appropriate committee chairman.

Relations With Anti-Trust Division

Our recommendations contemplate continuance of two agencies in the antitrust field. In the past, these agencies have tended to be complementary; as one went into temporary eclipse, the other kept alive the Government's antitrust policy. Since the area of industrial coverage is country-wide, and the budgets of both agencies small, there has been little real overlapping between the two agencies, except for a few conflicts in specific situations.

But the two agencies should cooperate closely, both to maximize the usefulness of their total budgets, and to prevent even occasional conflicts.

We recommend establishment of a joint policy committee of the two agencies to consider their programs and promote more effective cooperative relationships. It may not be feasible to divide types of cases between the agencies along general lines, but a joint committee could take practical account of which cases could be better handled by one agency than another. Some specialization has already developed within the two agencies.

The staff of the Federal Trade Commission might be utilized to good effect by the Department, for example, in providing economic assistance in formulating appropriate court decrees, and for investigation of the way in which the decrees are being carried out as provided by

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the Federal Trade Commission Act. Working relationships should also extend to interchange of data and information and should be stimulated between working staff of both agencies.

Relations With Food and Drug Administration

A conflict in jurisdiction now exists between the Federal Trade Commission and the Food and Drug Administration. The Administration has statutory responsibility in the field of labeling of food, drugs, and cosmetics. The Commission has similar powers over false and misleading advertising. Efforts have been made to minimize conflict: The Administration has conducted investigations for the Commission; and the Commission has withdrawn from the field of labeling.

But the divided jurisdiction has created difficulties. Stipulations on advertising accepted by the Federal Trade Commission have precluded proceedings by the Food and Drug Administration against similar labels. Testimony given before the Federal Trade Commission has led to constitutional immunity in court proceedings brought by the Food and Drug Administration.

At present, most of the responsibility in the food, drugs, and cosmetics industries is held by the Food and Drug Administration, which has a substantial staff, research laboratories, and field agents. A small fraction of the work is lodged in the Federal Trade Commission, which has no research facilities, no field staff, and only three technical specialists. Since the technical problems are dominant in the investigation of false advertising, it is recommended that the area of false and misleading advertising of foods, drugs, and cosmetics should be transferred to the Food and Drug Administration.

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Chapter XIII

NATIONAL LABOR RELATIONS BOARD

The present National Labor Relations Board was created by the Labor Management Relations Act of 1947, and began to operate as recently as August 22, 1947. Its predecessor of the same name, established by the National Labor Relations Act of 1935 (popularly called the Wagner Act), differed from the present agency both in structure and functions.

Under the Wagner Act, the Board was a unified organization, with three Board members at the head and the General Counsel, as well as other operating officials, subordinate to them. The Board was vested with the statutory authority to prevent designated unfair labor practices by employers and to determine employee representation for the purpose of collective bargaining.

The present National Labor Relations Board, on the other hand, is a bifurcated agency. The General Counsel, whose duties are defined by statute, operates independently of the five member Board and supervises the field staff of the agency. Moreover, the functions of the new National Labor Relations Board have been expanded to include the prevention of various pratices by labor unions. Thus, while the present Board inherited the name, the functions (in modified form) and some of the staff of the original National Labor Relations Board, it is essentially a new organization.

A. Functions of National Labor Relations Board

As a basis for considering the structure of the agency, it is essential to understand clearly its various functions and the respective roles of the Board and the General Counsel in performing them. The major duties may be classified as follows:

Specific Unfair Practices

The duties of the Board with respect to unfair labor practices under sections 8 (a) (2), (3) and (4) of the act may be considered primarily judicial in character. The statute is fairly definite, and the Board's role consists largely in applying the statutory standards to specific factual situations. Thus, where discharge of an employee is alleged

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to be discriminatory (sec. 8 (a) (3)), the Board determines whether the allegation is justified, and upon an affirmative finding, orders the employee reinstated.

In such cases, the General Counsel's role is similar to that of a prosecutor. Upon the filing of a complaint, it is his duty to prosecute if he considers that the alleged action constitutes a violation of the law. He or his subordinates present the case first before a trial examiner, then before the Board, and if need be, before a Federal court.

Unfair Union Practices

With respect to certain provisions added by the amended act, the procedure is the same, but the Board must fill in the content of general terms. For example, the act forbids unions to restrain or coerce employees as to their right to organize or refrain from doing so. Here the Board must decide whether specific practices constitute the forbidden restraint or coercion.

Duty To Bargain

In enforcing the duty of employers and labor unions to bargain collectively under certain conditions, the Board exercises more of a regulatory power (secs. 8 (a) (5) and 8 (b) (3)). While the act defines collective bargaining, the Board is faced with the task of determining the scope of the bargaining requirement, and to some extent the content of collective agreements. Thus, the Board may have to decide whether an employer must bargain as to a pension plan, or a trade union must bargain as to union working rules. In such cases, the Board is called upon to establish standards for the guidance of the parties.

Here also the role of the General Counsel is different because of the greater generality of the act. The statute vests in him final discretion as to issuance of the necessary complaints. If the General Counsel refuses to issue a complaint on the ground that the employer or trade union is within its legal rights in refusing to bargain, the complainant has no appeal to the Board or the courts. Thus the General Counsel possesses a species of rule-making power: His interpretation of the particular section may very well be conclusive.

Bargaining Agents

In supervising the selection of employee bargaining representatives, much of the Board's work entails only the application of definite statutory language, but some of it involves wider discretion in fixing the standard to be applied. The Board must decide, for example, whether the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof. The statute provides some negative guides, but little of an affirmative nature, obliging the Board to delve deeply into such factors as past

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industrial practices, the type of industry involved, trade union structure, and other economic details in order to establish criteria for uni determination.

The general counsel's responsibilities in representation cases are largely of an administrative character. The regional offices that process the papers initially, conduct elections, and sometimes issue certificates to duly designated bargaining agents, are under his exclusive direction and supervision. It is his duty to carry out Board policy in this category of disputes. Obviously, this work has little in common with prosecution; the general counsel is in this respect an administrative agent of the Board.

Jurisdictional Disputes

The jurisdictional dispute provisions of the act, sections 8 (b) (4) (d) and 10 (k), entail still another type of function. By directing the Board to hear and determine interunion disputes over the allocation of work, Congress clothed it with rule-making power in one of the most intricate areas of industrial relations. For example, the Board might be called upon to determine whether pipe is to be laid by members of the plumbers' union or the laborers' union. Nothing in the statute offers even the slightest guidance in a problem of this kind, which has hitherto been within the domain of private arbitration.

Initiation Fees

Section 8 (b) (5) of the act enjoins the Board to prohibit the levying of excessive or discriminatory union initiation fees where the union shop exists, after taking into account among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wage currently paid to the employees affected. Here the Board must inquire into the internal operations of trade unions, and establish standards on the basis of its findings.

The general counsel again may refuse to press a charge that excessive initiation fees have been levied, and thus make an authoritative interpretation of the statute.

B. Relation of Structure to Substance

Any attempt to assess the organization of the National Labor Relations Board is complicated by several major difficulties. The most obvious is the limited experience under the new legislation. Thus far, the work of the Board and general counsel has been largely exploratory and the structure and methods have not yet hardened into final forms.

Far more basic, however, is wide divergence of opinion about

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underlying policy as to labor relations. It proved nearly impossible to get interested parties to discuss organization or administration separately from substantive questions about the present act. Almost invariably, proposals for improving administration were viewed through the glass of their policy implications and judged accordingly.

This is entirely natural and indeed inevitable. In the long run, stability of administration can be achieved only by reconciling the divergent views of management, labor, and the public as to the appropriate role of Government in industrial relations. It will be the task of responsible representatives of the interested parties and the public to work for the achievement of a common ground in the period ahead. Once this is attained, organizational problems should prove more amenable to solution.

Accordingly, we have concluded that specific recommendations as to structure would have very limited value at this time, while the substantive issues remain unsettled. However, it will be useful, we believe, to call attention to certain problems of organization and administration revealed by our inquiry. In our opinion these must be taken into account and dealt with in any revision of the statute.

C. Procedural Delay

Among the administrative shortcomings revealed by our staff report, none seemed to us more serious than the procedural delay that presently characterizes National Labor Relations Board operation.

Importance and Extent of Delay

The Federal Government has entered the field of industrial relations to the extent of policing the economic weapons used by employers and trade-unions, and of providing machinery whereby workers may designate their bargaining representatives in an orderly fashion. Having assumed this role, it is incumbent upon the Government to assure that its machinery does not impede satisfactory industrial relations through procrastination and delay. If collective bargaining is hindered by the failure or inability of the administrative agency to act promptly, then the Government mechanism is obviously deficient.

At present, a lapse of from 1½ to 2 years must be expected between the filing of a complaint and final Board decision in unfair labor practice cases. This means, for example, that it may be 2 years before a worker who claims that he was discriminatorily discharged can secure an adjudication of his rights; or that an employer may be obliged to wait a similar period before his charge that a union has refused to bargain with him is heard.

Almost 6 months are required to process contested representation

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cases, from filing of petition to final Board decision. Thus, an employer and a trade-union who are genuinely anxious to reach agreement may be delayed for this period if a rival union contests the bargaining agency.

Causes of Delay

The National Labor Relations Board is aware of the problem, and is making herculean efforts to speed its decisional processes. While the passage of time may ease the problem, as the Board work becomes more routine, no real improvement can be anticipated on this account in the near future. Procedural delay and its attendant disadvantages are likely to persist during the next few years, given continuance of the present allocation of functions.

The chief bottleneck is the Board, rather than the General Counsel or any of his operational divisions. But this is not due to inefficiency or dilatoriness of the members of the Board. On the contrary, they work exceedingly hard, and now use panels of three to speed the handling of the case load. The volume of their output compares favorably with that of any other regulatory agency.

The fault lies in the system itself. A larger volume of work is generated than can be disposed of by the Board in a reasonable manner. It is estimated that merely in order to remain current, without making provision for amortization of the large backlog of cases that exists, the Board must render approximately 25 unfair labor practice decisions and 94 representation decisions per month in contested cases. In addition there are stipulated cases, which require some Board attention: Union shop election matters; questions of general policy; and administrative responsibilities.

This work load must be viewed against the background of the Board's obligations. As yet there have been few substantive interpretations of the Labor-Management Relations Act, although many questions have been raised. The Board must have time to deliberate in deciding these questions, which may be of crucial importance for the future of American labor relations.

Possible Methods of Correction

Our staff makes the following proposals toward a solution of the procedural delay problem:

1. Decisions rendered by trial examiners at the conclusion of unfair labor practice trials should become final orders of the Board, unless within a specified period they are certified to the Board for review, either by the issuing trial examiner or by a panel of the Board.

2. Regional directors should be authorized to order prehearing elections, and to direct the holding of posthearing elections after ruling upon disputed issues in representation cases. Appeal to the

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Board from such rulings would be permitted only with the consent of the regional director or upon the Board's own motion.

The rationale of this scheme lies in the possible diminution of the Board's work load through its control of the case intake. Presumably, on routine matters the decision of the trial examiner and regional director would be final. Only novel and significant issues would be presented to the Board itself.

These proposals were submitted for comment to a number of individuals conversant with the operations of the National Labor Relations Board. In general, they were agreed upon the necessity of an immediate attack upon the problem and some favored a trial of the proposals. Others stated various objections to them, but the alternative schemes suggested also have drawbacks of their own.

It was commonly suggested, for example, that an increase in the membership of the Board to 7, 9, or 11 would permit expansion of the panel system and thus lead to increased output. This fails to take into account the serious risk that a larger Board would probably require more time to decide the important cases in which full Board action proved necessary. Another proposal was for final decision of cases by single Board members where the effect is to affirm the trial examiner; reversal would presumably require submission to the full Board.

In our opinion, the proposals of our staff merit serious consideration, despite some disadvantages. In any event, we are convinced that some experimentation with them or alternative devices is preferable to accepting the indefinite continuation of procedual delay.

D. The General Counsel

Another problem that has caused us considerable concern is the position of the General Counsel. As indicated above, he is a prosecutor, an administrator, a policy maker. The incumbent, Mr. Robert Denham, has noted that his powers "are broad and absolute and his authority final to an outstanding degree seldom accorded a single officer in a peacetime agency."[1]

The existence of such an office, independent both of the Federal departmental structure and of the Board, marks a departure from previous administrative practice. If permitted to set a pattern for future Government organization, it may lead to a diffusion of responsibility.

Such an official is in a peculiarly exposed position. In view of the wide powers of the office, it is inevitably subject to heavy pressure

[1] Remarks of Robert N. Denham before the labor relations section of the American Bar Association, Cleveland, September 23, 1947.

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from all sides, and lacks the protection of either a multiheaded agency or an executive department in resisting such pressures. Experience during the first year indicates a tendency to develop close working relations with the joint congressional committee established by the act. To the extent that this has involved advice and suggestions with respect to interpretation of the act and its application to specific situations, the practice seems doubtful and likely to blur the desirable separation between the legislature and administration.

But the administrative position of the General Counsel is also anomalous. Thus the field offices under his supervision are engaged partly in representation work which is the direct responsibility of the Board, and partly in investigating, issuing, and prosecuting complaints, on which the General Counsel has final authority. Under the act, the Board has the authority to appoint the regional directors and other employees. In part, as has been seen, the work of the General Counsel is essentially prosecution of violations of specific offenses under the act. But insofar as his actions establish policy, they are of the kind frequently assigned to an independent commission.

The unusual position of the General Counsel has given rise to several internal administrative problems. One is significant enough to be noted here: In unfair labor practice cases, regional directors issue complaints, though only with the approval of the General Counsel in some types of cases. The finality of refusal to issue a complaint has led to demands for an appeal; and it has been further urged that an appeal to the same unit in the counsel's office whose advice was followed in the original refusal is illusory, and that the appeal should be to an independent body. This problem high lights the nature of the authority the General Counsel is exercising.

Our conclusion is that the present position of the General Counsel is an unstable one. Various proposals have been made for integrating the position more securely into the Government structure. Some have suggested assigning him to the Department of Labor or of Justice, but each has serious draw-backs as the preceding discussion of his functions should indicate.

Our staff recommends the creation, by executive order, of a council of labor under the chairmanship of the Secretary of Labor, and including the General Counsel and other Federal officials concerned with labor problems. The function of the Council would be to coordinate Federal labor policy and to advise the President on appropriate action. This represents a compromise between the present independent status of the General Counsel and his subordination to a department head.

Others have strongly urged that the office should again be placed under the Board. To this the objection is made that the prosecuting functions should be separate from the hearing of complaints. But as has already been indicated, only in part are his present duties genuinely

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prosecution; some parts are administrative and parts are a species of rule or policy making. It may be that the administrative and policy-making functions could be subordinated more clearly to the Board's control while still maintaining an adequate separation of the truly prosecuting activities.

E. Filing Requirements

There is one noncontroversial matter in which it should be possible to effect a saving both to the Government and to party litigants with little difficulty. The statute now requires that the data specified in sections 9 (f) and (g), pertaining to union organization and finances, must be filed with the Labor Department, while the non-Communist affidavits required by section 9 (h) must be filed directly with the National Labor Relations Board. There appears to be no sound reason for not processing the information in one agency. Whether that agency be the Department of Labor or the National Labor Relations Board seems less important than that the consolidation be effectuated.

F. Conclusions

The Labor-Management Relations Act recognized that only through continuing scrutiny of the act in operation could its defects be eliminated and the basic purpose of promoting harmonious industrial relations be prompted. The act established a Joint Committee on Labor-Management Relations with its object the study of the administration and operation of existing Federal laws relating to labor relations.

We recommend that any review of the act take account of the factors to which the preceding discussion directs attention. We would especially emphasize the following:

1. No stable administrative structure will be feasible unless the framework of policy is basically acceptable to labor, management, and the public.

2. In devising the administrative structure, the character of the functions being performed should be carefully analyzed to avoid some of the present complexity.

3. A primary objective should be to reduce sharply the procedural delay inherent in the present structure and methods of operation.

4. The Office of General Counsel should not be left independent of both the Board and the executive departments but should be integrated more closely into one or the other according to the functions to be performed.

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Chapter XIV

SECURITIES AND EXCHANGE COMMISSION

The Securities and Exchange Commission, created in 1934, is composed of five members, appointed for staggered terms of 5 years. Not more than three members may belong to the same political party. The act makes no provision for a Chairman.

The Commission was first assigned the administration of the Securities Act of 1933 (transferred from Federal Trade Commission) and the Securities Exchange Act of 1934. Thereafter its functions were expanded by the Public Utility Holding Company Act (1935), the Trust Indenture Act (1939), the Investment Company Act (1940), the Investment Advisors Act (1940), and chapter X of the Bankruptcy Act.

A. Functions of the Commission

The main duties of the Commission may be briefly summarized as follows:

Registration of Securities

Before a security is publicly offered by mail or in interstate commerce, there must be filed with the Commission and become effective a registration statement disclosing material information relative to the security. The registration becomes effective 20 days from the filing of the last amendment unless the Commission (1) suspends the statement by issuing a refusal or stop order or (2) shortens the waiting period by granting acceleration.

Refusal or stop orders are seldom used except for wilful inaccuracy. Instead, after the staff examines the statement, the Commission, by letter, notifies the registrant of deficiencies, giving him opportunity to amend; and amendments are filed in almost all cases. Usually, after all questions are settled, the registrant files a final amendment stating the offering price and underwriting expenses, and the Commission may permit sales the next day under its authority to accelerate. Thus this power is most important in minimizing the risks of market fluctuation.

Debt securities offered to the public must not only satisfy these disclosure requirements but must also comply with the Trust Inden-

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ture Act, which has provisions as to the independence, and the powers and duties, of the trustee. Under the Securities Exchange Act, registration is also required for securities listed on an exchange.

Regulation of Exchanges, Over-the-Counter Markets, and Investment Advisers

To prevent unfair practices and to protect investors, the Securities Exchange Act requires exchanges to register with the Commission. Securities and Exchange Commission approval is required for their rules, especially as to disciplining of members, but enforcement is left almost entirely to the exchanges (as by suspension or expulsion of members).

The over-the-counter markets are regulated through registration of the National Association of Securities Dealers, Inc., as a broker-dealer association (to which all brokers and dealers are in effect required to belong). The Commission reviews the association's rules and system of disciplinary proceedings, such as suspensions and expulsions. Brokers and dealers are also required to register directly with the Commission, which may suspend or revoke registration for violations.

Investment advisers are required to register with the Commission, which may deny or revoke registration for offenses connected with the purchase or sale of securities or with the conduct of the business of investment adviser.

Regulation of Public Utility Holding Companies

Public utility holding companies are required to register with the Commission under the Holding Company Act. Under certain of its provisions, the Commission requires that the operations of each holding company system be limited to a single integrated system having a corporate structure which is not unduly complicated and which does not unfairly distribute voting power among the security holders.

The Commission is also charged with continuing regulation of registered holding companies and their subsidiaries. The Commission supervises their accounting practices, and must approve their action in issuing or retiring their own securities; acquiring securities or utility assets; paying dividends; soliciting proxies; or making intercompany loans and other transactions, such as service, sales, and construction contracts.

Regulation of Investment Companies

Investment companies must register with the Commission and comply with detailed provisions of the Investment Company Act designed to assure honest and unbiased management, and protection of security holders against dangers of control or abuses by insiders.

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Reports on Reorganization Plans

The Commission may participate in proceedings for reorganization of corporations under chapter X of the Bankruptcy Act. If the assets of the estate exceed $3,000,000, the bankruptcy court must submit any plan of reorganization to the Commission for examination and report, and if the assets are below that amount the court may do so. The report of the Commission to the court is, however, only advisory.

B. Status and Organization of Commission

Independence

These statutes are appropriately administered by an independent commission. Inevitably the statutory standards are broad and require the exercise of sound judgment in the light of informed knowledge of the securities industry and markets in order to achieve the statutory objectives without undue or improper fettering of the regulated industry. In view of the sensitive nature of the security markets and exchanges, and the tremendous values involved, continuity of policy and impartiality are essential in the administration of the major statutes.

In practice, the Securities and Exchange Commission seems to have realized these advantages to a high degree. It has combined knowledge of the field, judgment and reasonable consistency of policy with freedom from partisan political pressures. The Commission on the whole has been notably well administered. Even its critics concede that its staff is able and conscientious, and that the Commission generally conducts its work with dispatch and expedition where speed is most essential.

There are of course some weaknesses to which attention will be drawn, but in evaluating them, one should keep in mind the basic fact that the Commission is an outstanding example of the independent commission at its best.

Tenure and Compensation of Members

To maintain the caliber of the Commission and its staff, it is essential to increase substantially the salary scale for members and top staff officials, especially in view of the opportunities available for such men in private business and the disturbing effects for the industry as well as the Commission arising from excessive turn-over of such personnel.

For the reasons stated in our general discussion, the statute should be amended to provide for removal of Commissioners only for cause,

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and for continuance in office of members, upon expiration of term, until a successor is appointed.

CHAIRMAN

Although the statute makes no provision for a chairman, he is now elected by the members, but in practice, until 1945, the President in effect designated the Chairman. Thus the Chairman served as a channel between the President and the Commission and vice versa. Apparently, this contributed in large measure to the standing of the Commission and to the quality of appointments to it. Yet the relation does not appear to have impaired the desirable independence of the Commission or the equal status of individual members in the substantive and policy-making work of the agency.

In view of the experience of the Commission and for the other reasons stated in our general discussion, we recommend that the statute be amended to provide for designation of the Chairman by the President.

Our general recommendation that the Chairman be given administrative responsibility and leadership is likewise applicable to the Commission.

C. Integration of Statutory Requirements

Our attention has been directed to the desirability of integrating some of the provisions of the various statutes administered by the Commission in order to simplify compliance with them. These pioneering acts were adopted in sequence as new aspects or areas of regulation developed. The earlier statutes obviously could not anticipate the later ones and the more important later acts were adopted before extensive experience was available under the earlier ones. As a result, there is some duplication in requirements under the statutes.

The requirements as to filing of information concerning securities seem to furnish an example: (*a*) New securities offered to the public must be registered under the Securities Act of 1933 by means of a comprehensive registration statement. (*b*) Under the Securities Exchange Act, securities to be listed on the exchanges must also be registered, and the information with respect to them must be kept current through annual and other reports. (*c*) If the securities being offered, and registered for that purpose under the Securities Act, are securities of registered holding companies or their subsidiaries, then under the Holding Company Act a declaration covering the securities must be filed with the Commission and permitted to become effective.

In order to lessen the burden of complying with these various acts, the Commission has authorized the use (for example) of a Securities

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Act prospectus as the substance of an application for registration under the Exchange Act. But the duplication of filings and of information already on file with the Commission still seems to be burdensome. On the other hand, simpler regulatory methods should not be achieved at the expense of adequate protection of investors.

In view of the complexity of the problems, Congress can hardly work out such a revision or codification without the combined help of the Commission and the industry. Only an agreed revision seems likely to achieve the desired objectives and to present the matter to Congress in a form capable of effective handling.

We therefore recommend that the Commission and the industry collaborate on an effort to integrate the requirements under the several statutes and to simplify the methods of regulation so far as is consistent with the maintenance of adequate protection to the investing public.

D. Administration by the Commission

In general, as has been said, the Commission has adopted and followed sound methods in administering the statutes. This is reflected in its development of standards, its delegations to the staff to promote expedition, its consultation with the staff at all levels, and its handling of major investigations and planning.

Despite its excellent record, there are some deficiencies to which it is necessary to call attention.

Supervision of Staff Rulings

In delegating authority to its staff, the Commission has an obligation, of course, to insure that the staff does not extend or curtail the policies of the Commission. Members of the industry complain that this has not always been fully accomplished. For example, it has been claimed that the staff has insisted on more onerous requirements for disclosure than the Commission would demand.

The Commission has shown an awareness of the problem and has sought to meet it largely by its willingness to hear appeals in all cases where disagreement with the staff is not clearly frivolous, and to hear the appeals promptly. However, there are many cases where time limitations, or other factors, preclude resort to the Commission, so that the staff is able to exercise considerable power.

Moreover, under the appeals procedure, the division director and his assistants first appear before the Commission and present the problem, their own views, and their version of the registrant's arguments; and only then, assuming the Commission wishes to hear the registrant, is the registrant permitted to enter the meeting and present his arguments. After his withdrawal the Commissioners discuss the

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matter further with the staff, then make their determination. Although the counsel for the registrant knows the position of the staff from the prior discussions with them, he often feels he is shooting in the dark before the Commission under this procedure. We believe that the appeals can be conducted with dispatch, and without undue administrative burden, and yet in such manner as to increase industry acceptance of the Commission's actions.

We recommend that the Commission revise the appeals procedure so that counsel for the registrant attends the initial staff presentation and will then be able to respond to it before the Commission makes up its mind. That should not preclude subsequent discussion by the Commission with the staff. And where the division director, before appeal, satisfies the Commission that it is frivolous, the Commission may, of course, continue to disallow appeal.

In addition, we recommend that the Commission institute an appropriate spot-check procedure for assuring, even where there have been no appeals, that the staff's action conforms to the Commission's policies.

Publication of Policies

The Commission gives adequate publicity to regulations, contested cases, and individual determinations of widespread interest. But the views of the Commission on many day-to-day problems are hidden away in deficiency letters, individual interpretations, memoranda of private conferences. Many of these are compiled for internal use as precedents to guide the staff in its actions, either in a volume explaining the Securities Act and its administration, or in Memoranda of Administrative Practice, containing current rulings. While some of these rulings are published as press releases, the vast majority are not available to the public.

Two examples will illustrate such unpublished rulings. One such policy prescribes that an oil company's registration statement may state oil reserves in terms of numbers of barrels but not in terms of dollar value, in view of the problem of price fluctuations. Another example arises where a sale of stock by an officer or director will be within the Securities Act and certain regulations under the Exchange Act if he is in control of the company. Regulation C defines control as the possession of direct or indirect power to direct management and policies, by virtue of voting securities, contracts or otherwise. In a large number of letters the Commission has stated that it will not recognize an exemption for an officer or director based on absence of control unless he establishes that he is not a member of the controlling group, by supplying rebutting circumstances such as the fact that he represents minority interests, or has disagreed or broken with the other directors.

We recommend that the Commission give greater publicity to such

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rulings, and particularly to the basic underlying principles, as they become fixed. Such publicity would guide those affected by the rulings, and enable them to keep abreast of the Commission's policies and course of thought. By subjecting these rulings to scrutiny, it might also aid the Commission in reaching a desirable result. This does not mean that the Commission should publish every ruling or every answer to a question based upon a particular set of facts, or views which are still regarded within the Commission as tentative. However, the Commission should arrange for the publication of those administrative positions which are relatively settled and general in character.

Use of Discretionary Powers

It has been objected that the Commission in some cases has used its discretionary authority to accelerate the effective date of registration statements as a means to induce registrants to conform to policies which are beyond its statutory responsibility.

Under the act, acceleration may be granted by the Commission, having due regard to the adequacy of the information available to the public, the facility with which it may be understood, and the public interest and the protection of investors. In many releases, the Commission has stated that the basic purpose of the Securities Act is disclosure, and that the Commission has no interest in the substance of the transaction provided that disclosure is adequate and accurate. But in administering the provision for acceleration, the Commission has adopted a different policy.

For example, where a controlling person makes a secondary offering and the company bears more of the expenses of registration than is justified by benefits to it from the distribution, the Commission will not grant acceleration even though the facts are fully disclosed in the registration statement. The Commission has also denied acceleration to the securities of a company which indemnifies its directors against liabilities incurred under the Securities Act even though the registration statement discloses both that arrangement and the Commission's view that it is contrary to public policy and invalid. However, if the company's agreement includes a commitment to submit the question to the courts before payment of an indemnity, acceleration will be granted by the Commission.

In general we have declined to consider charges that a commission has acted in excess of its powers. Such complaints usually involve construction of ambiguous provisions of statutes which can be contested by judicial review. But here judicial review is no real remedy due to the time element, and the question seems one of basic principle. In effect, relying on the general language, the Commission is using this important authority to achieve purposes which have not been de-

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clared by Congress and are not within the general statutory objective of full disclosure.

Under the circumstances, we believe that the Commission should present the issue to the appropriate legislative committees of Congress in order to facilitate a review of the course adopted by the Commission and legislative action to clarify the authority under this provision.

E. Relations with Other Agencies

In general, there is little overlapping of functions and indeed few points of actual contact between the Securities and Exchange Commission and other agencies. Accordingly, coordination of policies has not been a material problem. Two exceptions merit discussion.

Federal Power Commission

The Federal Power Commission has jurisdiction over companies engaged in the interstate transmission and sale at wholesale of electric energy. Its jurisdiction extends to approval of sales of property, issuance of securities, acquisition of securities of other public utilities, and interlocking directorates; it also controls their accounting practices and requires periodic and special reports. The Holding Company Act gives the Securities and Exchange Commission comparable jurisdiction with respect to the holding companies and subsidiaries in electric-utility holding-company systems. There is some but much less duplication of authority in the case of gas companies.

Section 318 of the Federal Power Act eliminates outright conflict between the agencies by providing that in case any person is subject to a requirement of both statutes, the requirements of the Holding Company Act shall govern. Nevertheless problems of coordination have arisen. Thus, in a single transaction, the Securities and Exchange Commission has had jurisdiction of one aspect (approval of the sale by A) while the Power Commission had jurisdiction over another aspect (the purchase by B). In other cases problems of coordination have arisen while the Securities and Exchange Commission was considering whether it had jurisdiction in the first place, or should exempt the company from its jurisdiction.

The two agencies have established informal relationships which have avoided direct conflict. Yet it seems desirable to eliminate this overlap if possible. However, under the Holding Company Act, the Securities and Exchange Commission is engaged mainly on the integration and corporate simplification functions which lie outside the areas paralleled by the Power Commission. That work is self-liquidating, and will be completed at some foreseeable time in the future (whether 3 years, 5 years, or a longer period).

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Upon substantial completion of the integration and corporate simplification program under section 11, the remaining powers and functions of the Securities and Exchange Commission under the Holding Company Act will then largely overlap and parallel these functions of the Federal Power Commission. At that time, the functions of both agencies in this field should be reexamined, integrated and placed in a single agency. The manner of such combination of functions should not be settled now, but should be left for determination in the light of the circumstances existing when the rearrangement is made.

FEDERAL RESERVE BOARD

Section 7 of the Securities Exchange Act authorizes the Federal Reserve Board, for the purpose of preventing the excessive use of credit for the purchase or carrying of securities, to prescribe regulations limiting the amount of credit permissible on any listed security.

Under an existing division of functions the Board prescribes these margin regulations and the Securities and Exchange Commission enforces them (as to brokers and dealers). The Commission and the Board have also consulted from time to time with respect to the regulations and amendments, particularly as to the amount of margin.

When the act was passed in 1934, the primary purpose of section 7 was to prevent the diversion of too much of the limited available credit to the securities markets. Since then the importance of the control of speculative excesses has increased materially, while the problem of stemming diversion of available credit has become of lesser importance.

In view of this change, we recommend that power to determine margin requirements be vested in the Securities and Exchange Commission. Its familiarity with the markets and constant surveillance of market influences place the Commission in a good position to consider whether undesirable market operations and activities may be curtailed or controlled by use of the margin limitations. However, it must be recognized that the needs of the general credit structure may at times be of dominant importance. Consequently, the Federal Reserve Board should have the power to veto a change proposedbythe Commission, or to require a change to be made, where the Board makes a formal determination that the proposed or existing margin standards would materially prejudice the general credit structure of the country. Of course the Board and Commission should each be required to consult with the other before proposing any change in the margin regulations.

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