REOGANIZATION PLANS 1 AND 2 OF 1961

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH CONGRESS

FIRST SESSION

ON

THE PRESIDENT'S REORGANIZATION PLANS 1 AND 2 WITH RESPECT TO THE SECURITIES AND EXCHANGE COMMISSION AND THE FEDERAL COMMUNICATIONS COMMISSION

MAY 11, 16, AND 17, 1961

(EXECUTIVE HEARINGS—RELEASED JUNE 15, 1961)

Printed for the use of the
Committee on Interstate and Foreign Commerce

U.S. GOVERNMENT PRINTING OFFICE
73531 WASHINGTON : 1961

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REORGANIZATION PLANS 1 AND 2 OF 1961

THURSDAY, MAY 11, 1961

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON REGULATORY AGENCIES
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to call at 2 p.m., in room 1334, New House Office Building, Hon. Oren Harris (chairman of the full committee) presiding.

Present: Oren Harris, Mr. Flynt, Mr. Moss, Mr. Rogers of Florida, Mr. Bennett, Mr. Springer, Mr. Younger, Mr. Thomson.

Also present: Charles P. Howze, Jr., chief counsel of subcommittee; George W. Perry, associate counsel of subcommittee; Herman C. Beasley, subcommittee clerk; Rex Sparger, staff assistant of subcommittee; Kurt Borchardt, legal counsel, House Committee on Interstate and Foreign Commerce; Allan H. Perley, legislative counsel of House of Representatives; James A. Lanigan, associate general counsel of the Committee on Government Operations; Elmer W. Henderson, counsel to the Subcommittee on Executive and Legislative reorganization; FCC Chairman Newton N. Minow; and FCC Commissioners Rosel H. Hyde, Robert T. Bartley, T. A. M. Craven, Frederick W. Ford and John S. Cross.

The CHAIRMAN. Let the committee come to order.

I think we can proceed at this time.

The Special Subcommittee on Regulatory Agencies has met this afternoon for the consideration of Reorganization Plans 1 and 2 submitted recently by the President, proposing to reorganize certain functions within the Federal Communications Commission and the Securities and Exchange Commission.

For the record on the subject, I think it would be advisable at this point to include in the record the special message of the President of April 13, 1961. If there is no objection, this will be included at the outset in the record.

(The material referred to is as follows:)

[H. Doc. 135, 87th Cong., 1st sess.]

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES RELATIVE TO THE REGULATORY AGENCIES OF OUR GOVERNMENT

To the Congress of the United States:

I. INTRODUCTION

The discharge by the regulatory agencies of this Government of the responsibilities that the Congress has placed upon them must be a constant and continuing concern of both the Congress and the President. The responsibilities with which they have been entrusted permeate every sphere and almost every

activity of our national life. Whether it be transportation, communications, the development of our natural resources, the handling of labor-management relationships, the elimination of unfair trade practices, or the flow of capital investment—to take only a few examples—these agencies and their performance have a profound effect upon the direction and pace of our economic growth. If it is in the public interest to maintain an industry, it is clearly not in the public interest by the impact of regulatory authority to destroy its otherwise viable way of life. Furthermore, the industries subject to their jurisdiction are intertwined with our national defense to such a degree that the health of these industries can well be regarded as an index of both our strength and our power to survive. Thus the capacity of these regulatory agencies to meet their responsibilities, and the efficiency with which they dispatch their business, becomes a subject of tremendous significance to the entire Nation.

A. The responsibilities of the Congress.—Both the Congress and the President have a continuing duty to be watchful with respect to the activities of the regulatory agencies. The Congress must see that the statutes under which the agencies are organized and under which they operate adequately set forth the goals that the Congress seeks to achieve. These statutes should neither place responsibilities upon agencies beyond the practical limits of administrative action, nor couch their objectives in such indecisive terms as to leave vast areas open for the free play of agency discretion. The Congress also has the final responsibility to determine from time to time the extent of the influence that these agencies should exert, whether their authority should be withdrawn from or curtailed in one field or extended to and expanded in another. In addition, the Congress has a rightful concern with both the organization of the regulatory agencies and the fairness and efficiency with which they dispatch their business. Finally, inasmuch as the funds for their operations must be appropriated by the Congress, an intimate knowledge of their operations must be acquired if this function is to be discharged intelligently.

Invaluable hearings and investigations have been carried on by the Congress over the years, particularly in recent years, illuminating weaknesses in administration and the intrusion of practices that have undercut those standards of fairness and impartiality that the Nation rightly expects its Government to maintain. Congressional oversight is thus a spur to the formulation and enactment of necessary remedial measures.

B. The responsibilities of the President.—The President also has his responsibilities with respect to the operation of these agencies. In addition to a constitutional duty to see that the laws are faithfully executed, and other inherent Executive powers, it is his duty to staff the regulatory agencies, granted to him, with men and women competent to handle the responsibilities vested in them and dedicated to the goals set forth in the legislation they are appointed to implement. The President, moreover, is charged in many instances by the Congress with the specific responsibility of removing agency members for misfeasance, inefficiency, or the neglect of duty. Coupled with this is the discretionary exercise of his duty to reward faithful public service by the reappointment of agency members, which requires him to form opinions as to the capability of his or his predecessor's appointees to handle the affairs that the Congress has entrusted to them. In short, the President's responsibilities require him to know and evaluate how efficiently these agencies dispatch their business, including any lack of prompt decision of the thousands of cases which they are called upon to decide, any failure to evolve policy in areas where they have been charged by the Congress to do so, or any other difficulties that militate against the performance of their statutory duties.

This does not mean that either the President or the Congress should intrude or seek to intervene in those matters which by law these agencies have to decide on the basis of open and recorded evidence, where they, like the judiciary, must determine independently what conclusion will best serve the public interest as that interest may be defined by law. Intervention, if it be deemed desirable by the Executive or the Congress in any such matter, must be as a party or an intervenor in the particular proceeding; and such intervention should be accorded no special preference or influence.

C. The need for improvement.—I have long felt that too little attention has been given to the overall operation of these agencies by the President, and that too little cooperation between the Congress and the President has characterized the discharge—each in their respective roles—of their appropriate responsibilities with regard to the operation of these agencies. This cannot continue. For it is now clear that some advance in the methods by which the regulatory agencies

dispatch their business is essential if they are to become, as Congress originally intended, effective aids to the growth of our private enterprise system.

For these agencies are not merely regulatory; they are designed to further the expansion of certain facets of our economy, as well as the basic tenets that underlie our system of private enterprise. Delays in the disposition of agency business, and the failure to evolve, other than by a slow case-by-case method, policies essential for our national growth seriously handicap their effectiveness in meeting this function.

In certain areas, where large subsidies are involved, such as shipping and aviation, this promotional function is apparent. But it also underlies their regulatory activities. In the banning of unfair labor practices or the designation of employee representatives, the National Labor Relations Board seeks to uphold the right of collective bargaining—a right upon which we, as a nation, base our hopes for peaceful and satisfactory labor-management relationships. In the banning of practices that characterized our security markets in the 1920's, the Securities and Exchange Commission is more than merely regulatory; it seeks, by its emphasis upon fair dealing, to achieve a saner and sounder outflow of savings into investment. In the banning of monopolistic and unfair trade practices, the Federal Trade Commission seeks to defend those fair trade practices which are necessary for the promotion of our system of private competitive enterprise.

D. The caliber of appointed personnel.—No amount of reorganization or new procedures can be effective without, or substitute for, high quality personnel in charge of these agencies. No other single step can accomplish as much. In the past 3 months I have had the opportunity to bring to many of these agencies men whom I believe are both competent to handle their complex affairs and dedicated to their statutory aims. The Senate of the United States has cooperated in this effort. I shall continue to pursue that policy as the occasion demands, drawing from within and without the Government men of competence and imagination, who are anxious to further the ideals and goals that the Congress has formulated.

E. *Coordination of regulatory action.*—Before turning to a more specific catalog of our administrative ills and suggestive remedial devices to cure them, there is one particular problem in this area that demands the attention of both the Congress and the President—namely, the lack of coordination of regulatory practices. This stems from the fact that the origin of most of our agencies arose out of the practices or the needs of a particular industry. The monopolistic position held by the railroads at the turn of the century brought the Interstate Commerce Commission into being and successively armed it with growing powers. The limitations of the radio spectrum and of our airspace called for the creation of the Federal Communications Commission, the Civil Aeronautics Board, and the Federal Aviation Agency. The necessities of maintaining an American-flag merchant marine for the national defense and the promotion of commerce form the basis for the existence of the Federal Maritime Board.

This history has in many instances resulted in a compartmentalization of regulatory activities—the tendency of each agency to consider only a single industry, or even a single part of an industry. This is wrong. The emphasis must now in the national interest be placed upon the health and the practices of a series of industries, rightfully competitive but which—from a national standpoint—must be viewed as a whole. The problem of mass metropolitan transportation is not merely that of the railroads, but of highways and buses, of housing, and even of helicopters. The Transportation Act of 1940 sought, so far as surface transportation was concerned, to describe as a goal a national policy that would give each method of transporttion its appropriate role in our economy. It is disturbing, however, to note that, for example, our common carrier inland waterway traffic, our Great Lakes traffic, our intercoastal and coastal traffic have been withering away, at a pace far more rapid than appears desirable in the light of the low-cost nature of this method of transportation and its potential role in the event of war. Of course, no method of transportation should outlive its useful life; but the absence of a firm and comprehensive policy as to what role, if any, existing methods should play in our national economy actually is a policy in itself. It is a policy, as a Senate subcommittee only recently observed, of unrestrained and destructive competition guided by private interests rather than that of the public as a whole.

In broad areas where the interdependence of industries is apparent, and where we have assumed regulatory functions over all or a portion of them,

new and careful articulation of our regulatory efforts is essential. For the pattern now is increasingly one of fragmentation of treatment rather than articulation. Economic effort encouraged by one agency may find discouraging treatment by another. Iron curtains are drawn between agencies operating in the same general area. Their concern is only with the particular segment of the industry over which they have been given jurisdiction, rather than its interrelation to the whole. Indeed, a lack of cooperative effort often characterizes divisional efforts within a single agency. To correct these regulatory imbalances calls for the shaping of attainable goals and the cessation within agencies and among agencies of jurisdictional strife. Both the Congress and the President can and should play a part in this effort.

I have already initiated programs in the field of aviation to frame the goals we should set for ourselves for this decade. The attainment of these goals will involve careful, detailed, and foresighted coordination on a large scale within the Government and several of its agencies. Similarly, a coordinated effort is underway to provide a better method for the allocation among governmental and nongovernmental users of the radio spectrum, and to improve the regulation over the method of their use. In the field of surface transportation, efforts are being made to work out positions that the administration as a whole should take toward the many remedial measures that have been and are being suggested with respect to its ills. The results of all these efforts will naturally be put before the Congress with such recommendations as they may contain.

II. SHARPENING OF AGENCY RESPONSIBILITY

A. The responsibility of the chairman.—But all this is not enough. It is essential, first of all, for both the Congress and the President to fix responsibility for the overall operation of an agency on an individual rather than on a group or a committee where responsibility can too easily be dissipated. A movement, now demonstrably valuable, was initiated in this respect by a series of reorganization plans proposed by President Truman in 1950. These plans sought to focalize responsibility within the agencies themselves by giving broad managerial powers to the chairman of each agency and in turn holding that chairman responsible, but not with respect to his tenure as a member of that agency, but with respect to those managerial powers that attach to his authority as chairman. Nothing in these plans impinged upon the ability of the members of the agencies to act independently with respect to controversies that might be before them for decision, or to participate freely and independently in the shaping of policies that the agency as a whole might seek to pursue. They did, however, pinpoint for the industries subject to their jurisdiction, for the President, and for the Congress and the Nation the managerial competence displayed by the agency under the guidance and leadership of its chairman.

These reorganization plans of the 1950's did not succeed in covering all the agencies. Too little authority, moreover, was granted to most agency chairmen. I urge that the chairman's role be more clearly defined and his responsibility fixed in every agency. Each chairman should be charged with the authority to staff the agency, subject, of course, to civil service requirements, and, in the important posts, to the advice and consent of his colleagues. Each chairman should be made responsible, subject to statutory requirements, for the form of his agency's organization, so as to enable it effectively to dispatch the business before it. It should be his business to review its budget estimates and subsequently to distribute appropriated funds according to major programs and purposes. In the performance of these managerial duties the chairman should be responsible to the President and serve as chairman at his pleasure, as is explicitly provided with regard to several of the major agencies.

This centralization of responsibility for the managerial functions of the agency will significantly further their ability to deal with the business before them, and better enable both the President and the Congress to reach more informed judgments with respect to the effectiveness with which an agency pursues its designated programs, and the most wise and efficient use of its personnel. As a first step I shall shortly send to the Congress a series of recommendations which will carry out this concept.

B. Responsibility for agency decisions.—One internal administrative device, capable of being immediately adopted by every regulatory agency and already adopted by four important agencies, three since the beginning of this year, needs still wider adoption. This is the practice of assigning to individual agency members the responsibility of being individually responsible for the formulation

of the rationale underlying important agency decisions, its quality, and its release to the public under the individual member's name. The practice of rendering anonymous decisions, which has hitherto generally prevailed, has served as a means of escaping precision and responsibility. When the actual source of the opinion is unknown save only that it is issued in the name of the agency, it not only impairs its value as a precedent, but also makes for that very dissipation of responsibility that we are trying to reduce in our administrative action.

Fortunately, from the beginning of American law, our judges assumed an individual responsibility for uttering the bases which underlay their decisions. This practice has made not only for conscientiousness in undergoing the travail of decision, but has invited examination of each proffered brick that would seek a place in the structure of our law. The adoption of this practice by the regulatory agencies would, in my opinion, tend to develop the law that they administer, as well as be a continual challenge to each agency member to make his contribution to the advancement of administrative justice. I am requesting a wider adoption of this practice.

III. THE REDUCTION OF EXCESSIVE DELAYS AND WORKLOADS

A. Allocation of agency activities.—The reduction of existing delays in our regulatory agencies requires the elimination of needless work at their top levels. Because so many of them were established in a day of a less complex economy, many matters that could and should in large measure be resolved at a lower level required decision by the agency members themselves. Even where, by the force of circumstance, many of these matters are now actually determined at the lower level they still must bear the imprimatur of the agency members. Consequently, unnecessary and unimportant details occupy far too much of the time and energy of agency members, and prevent full and expeditious consideration of the more important issues.

The remedy is a far wider range of delegations to smaller panels of agency members, or to agency employee boards, and to give their decisions and those of the hearing examiners a considerable degree of finality, conserving the full agency membership for issues of true moment. Such delegation would not be an abnegation of responsibility if the agency retained a discretionary right of review of all such decisions, exercisable either upon its own initiative or upon the petition of a party demonstrating to the agency that the matter in issue is of such substantial importance that it calls for determination at the highest agency level. (Nothing in such a procedural change would, of course, disturb the existing rights of a party to seek judicial review of administrative action.)

A similar procedure—the petition for certiorari—succeeded in clearing up the overburdened docket of the Supreme Court of the United States when it was evolved by the Congress in the Judiciary Act of 1925. Some progress in this direction has already been made by the Interstate Commerce Commission in the past 2 months, which has delgated to intra-agency boards some 18,000 matters which otherwise would have required the attention of a Commissioner, a panel of that Commission, or the Commission as a whole. But more progress in this agency and other agencies can be made if such a program is supported by concrete measures. I shall shortly submit a series of such measures to the Congress.

B. *The Federal Power Commission.*—One situation, however, is not amenable to this general treatment. This is the condition that exists in the Federal Power Commission. In that Commission some 4,000 rate increases by independent natural gas producers and pipelines are pending and are still unresolved. Under the existing law, these rate increases are suspended but nevertheless go into effect within 6 months after their filing, subject to the provision that such sums as are collected in excess of the rate ultimately found to be reasonable are to be refunded to the consumer. This incredible backlog of cases, consisting frequently of rate increases piled upon rate increases, involves hundreds of millions of dollars deemed ultimately refundable to the consumer. Indeed the annual amount of rate increases so suspended is over $500 million. The total amount of rates collected pursuant to such increases is well over $1 billion.

This situation is paralleled by another just as serious. Under existing procedures and methods for processing applications for pipeline construction, some 193 applications, proposing construction of 5,761 miles of pipeline at a total estimated cost of some $850 million were pending before the Federal Power Commission as of the end of February 1961. It is not to be assumed that all these ap-

plications would be granted; but it can safely be assumed that more prompt handling of these matters would release hundreds of millions of dollars for construction, giving substantial employment throughout the country and making firm commitments out of orders for materials that are now merely contingent—orders that in turn would provide jobs for men and women in mills, factories, and foundries.

(1) Exemptions: The cause and cure of this administrative log-jam—directly responsible for the exclusion of millions of dollars of construction funds from our economy and potentially responsible for an inordinate rise in the price of natural gas—go far beyond the organization and procedures of the FPC. I urge the Congress to enact new legislation reducing the agency's workload in the natural gas area in two ways:

The Commission should be authorized to exempt from rate regulation up to 100 percent of the small individual producers of natural gas (under 2 billion cubic feet per year) whose sales in interstate commerce to pipelines account for but 10 percent of the total. The price which the small producers can charge must of necessity be generally in line with those of the larger producers, and thus they cannot individually affect the general level of prices to the consumer. Such a step must be followed up in the Commission by a vigorous handling of all rate cases in the remaining area of jurisdiction, involving hardly more than 270 producers but affecting some 90 percent of our natural gas production.

With respect to the processing of pipeline construction permits, the Commission should be authorized to exempt from all or part of its procedures up to 100 percent of those applications by interstate pipeline companies which seek merely to enlarge, extend, or replace existing facilities for the benefit of existing customers only, whenever it is assured that its action will not impair the preservation of reserves necessary to supply those consumers, or permit the indiscriminate invasion of one supplier's territory by another.

The formulation of these standards will require creative imagination; but the alternative is to defend bureaucracy for bureaucracy's sake.

(2) Additional members: I also urge, because of the crucial situation in the Federal Power Commission, the increase of that Commission by the addition of two members. Normally, increasing the members of an agency adds little to its efficiency and may instead only handicap its function. But the situation in the Federal Power Commission is unique. That Commission possesses on the one hand jurisdiction over electric power projects and, on the other, under a wholly separate statute—the Natural Gas Act—jurisdiction over the production and transmission for sale in interstate commerce of natural gas. The techniques necessary for the handling of problems in the fields of electric power and natural gas are different. An understanding of one industry does not guarantee a background for dealing with the other. And the chaos and delay now characterizing the gas regulation field may soon increase in the electric power area, where in the coming years the problems surrounding the future of hydroelectric generation will call for reappraisal and hence for added attention.

With the addition of two more members and the clear discretion to allocate or delegate decisionmaking to smaller panels as previously mentioned, the Commission's flexibility would be greatly increased. For example, the Chairman could establish three panels of two other members and himself, two working with gas an done with electricity or, one panel of three members could work in one area, while another panel of three covered the other, freeing the Chairman for administrative matters. Provision should also be made for the handling of the lesser matters coming before the Commission by single commissioners, hearing examiners, and employee boards, subject always to the right of the Commission as a whole in its discretion to review any decision.

C. Protection of consumers.—In its hearings the Senate Subcommittee on Administrative Practice and Procedure has called attention to the inadequacy of consumer protection in those cases where a requested rate increase goes into effect subject to its subsequent approval by the regulatory agency, with a return to the consumer of any amounts later determined to be in excess. Where these requests are overstated the consumer is required to furnish to the utility the very capital on which he is also required to provide the return, the utility's credit standing is damaged by such a large contingent liability, and the actual return to each individual ultimate consumer is often impractical, if not impossible, of achievement.

I, therefore, strongly endorse the subcommittee's informal recommendation to give increased authority to the Federal Power Commission and to any other regulatory agency where this is a major problem, to make sure that any excess rate

which is ultimately disallowed will be returned to the consumer—particularly the power to require the deposit of any such collections in escrow until the rate is finally approved.

IV. THE IMPROVEMENT OF ADMINISTRATIVE PROCEDURES

A. An administrative conference.—This Nation has had 15 years of experience under the Administrative Procedure Act of 1946. That act sought to achieve standards of due process and fairness in the handling of controversies before the regulatory agencies both with respect to adjudication and the issuance of regulations. That aim naturally should be maintained and refined. A large amount of work pointed toward objectives of this nature has been undertaken by the legal profession and by various commissions, as well as by committees of the Congress.

The process of modernizing and reforming administrative procedures is not an easy one. It requires both research and understanding. Moreover, it must be a continuing process, critical of its own achievements and striving always for improvement. Judicialization—the method of determining the content of a controversy by processes akin to those followed by the judiciary—may well be the answer in many cases. But new procedures for the analysis of facts, based upon more informal methods and mobilizing the techniques of other disciplines, can be the answer in other cases, provided always that the fundamentals of due process of law are maintained. There can be no single set of conclusive and abiding formulas appropriate for the effective dispatch of all the diverse and ever-changing issues that these agencies are called upon to resolve.

It is for this reason that I have today issued an Executive order calling at the earliest practicable date an Administrative Conference of the United States, to be organized and headed by an illustrious jurist and a distinguished council of lawyers and other experts from the administrative agencies of this Government, the bar, and university faculties. This council will consider the questions I have discussed, along with the desirability of making this conference, if it proves itself, a continuing body for the resolution of these varied and changing procedural problems.

Meanwhile its organization can under the Executive order be largely modeled upon the Judicial Conference of the United States created in 1922, which has been effective in unifying the judicial system of the United States and modernizing its procedures. Like that Conference, it should bring together the leading members of our regulatory agencies, outstanding practitioners, scholars, and other experts. It can meet under the leadership of its chairman and council, and consider and propose changes in administrative procedure and organization that will make our regulatory processes more effective. It will be provided through the Department of Justice with a secretariat, enabling it to become a day-by-day forum for concern with our many administrative problems.

The results of such an Administrative Conference will not be immediate, but properly pursued they can be enduring. As the Judicial Conference did for the courts, it can bring a sense of unity to our administrative agencies and a desirable degree of uniformity in their procedures. The interchange of ideas and techniques that can ensue from working together on problems that upon analysis may prove to be common ones, the exchanges of experience, and the recognition of advances achieved as well as solutions found impractical, can give new life and new efficiency to the work of our administrative agencies.

B. *Hearing examiners.*—None of the regulatory agencies can be completely efficient and effective unless they are staffed by capable hearing examiners. The hearing examiner can relieve the agency of protracted adjudicatory processes, speed the disposition of the cases, and serve as a valuable aid in the decisional process. The importance of his position should be recognized by adequate provisions for responsibility and compensation.

The standards for appointments, compensation, promotion and removal of hearing examiners are set forth in section 11 of the Administrative Procedure Act of 1946. But the application of those standards has been a continuing source of controversy. The examining procedures permit broad discretion without sufficient assurances of high qualifications. The determination of the proper grade and pay levels has been burdensome, involving almost continuing review of individual positions since 1946. The promotion process is inexact and has led to a concentration of almost all the positions in grade GS–15, the highest regular grade in the classification. At the same time, further promotion has become virtually impossible.

In order to improve the stature and quality of hearing examiners I recommend the following:

1. Section 11 of the Administrative Procedure Act should be amended to remove the requirement that hearing examiners receive compensation in accordance with the Classification Act. Instead they should receive salaries equivalent to that prescribed for grade GS–16 or a grade GS–14. The higher salary would apply to examiners in the major regulatory agencies, whose decisions have a broad economic impact on the national welfare.

2. In order to recognize the administrative management responsibility of the chief hearing examiner in each agency I recommend that he receive $500 per annum additional compensation.

3. The Civil Service Commission should review and raise its current examining standards and practices for hearing examiners. The increased responsibilities recommended in other sections of this message will require the most qualified people for these key positions.

It is my hope that raising the selection standards and increasing the compensation of the hearing examiners will improve both their stature and their general level of competence.

CONCLUSION

The preservation of a balanced competitive economy is never an easy task. But it should not be made more difficult by administrative delays which place unnecessary obstacles in the path of natural growth or by administrative incompetence that has a like effect.

These reasons alone justify the President and the Congress in having a continuous concern with the operations of our regulatory agencies. The cure for a particular ill may lie in legislation; it may, on the other hand, lie in administration. But given a lack of watchfulness on the part of both the President and the Congress, maladministration or ill-conceived policies can endure and multiply to the consequent detriment of our economic and social welfare. It is our task to cooperate in achieving those legislative and administrative steps necessary to enable these agencies to fulfill more effectively their roles of promoting and protecting the national interest.

JOHN F. KENNEDY.

THE WHITE HOUSE, *April 13, 1961.*

The CHAIRMAN. Also, the statement of the President to the Congress transmitting recommendations on Reorganization Plan No. 1 and a copy of the proposed reorganization plan will be included in the record at this point.

(The material referred to is as follows:)

MESSAGE TO THE CONGRESS ON REORGANIZATION IN THE SECURITIES AND EXCHANGE COMMISSION

THE WHITE HOUSE, *April 27, 1961.*

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 1 of 1961, prepared in accordance with the Reorganization Act of 1949, as amended, and providing for reorganization in the Securities and Exchange Commission.

This Reorganization Plan No. 1 of 1961 follows upon my message of April 13, 1961, to the Congress of the United States. It is believed that the taking effect of the reorganizations included in this plan will provide for greater efficiency in the dispatch of the business of the Securities and Exchange Commission.

The plan provides for greater flexibility in the handling of the business before the Commission, permitting its disposition at different levels so as better to promote its efficient dispatch. Thus matters both of an adjudicatory and regulatory nature may, depending upon their importance and their complexity, be finally consummated by divisions of the Commission, individual Commissioners, hearing examiners, and, subject to the provisions of section 7(a) of the Administrative Procedure Act of 1946 (60 Stat. 241), by other employees. This will relieve the Commissioners from the necessity of dealing with many matters of lesser importance and thus conserve their time for the consideration of major matters of policy and planning. There is, however, reserved to the Commission as a whole the right to review any such decision, report or certification either upon its own

initiative or upon the petition of a party or intervenor demonstrating to the satisfaction of the Commission the desirability of having the matter reviewed at the top level.

Provision is also made, in order to maintain the fundamental bipartisan concept explicit in the basic statute creating the Commission, for mandatory review of any such decision, report, or certification upon the vote of a majority of the Commissioners less one member.

Inasmuch as the assignment of delegated functions in particular cases and with reference to particular problems to divisions of the Commission, to Commissioners, to hearing examiners, to employees and boards of employees must require continuous and flexible handling, depending both upon the amount and nature of the business, that function is placed in the Chairman by section 2 of the plan.

By providing sound organizational arrangements, the taking effect of the reorganizations included in the accompanying reorganization plan will make possible more economical and expeditious administration of the affected functions. It is, however, impracticable to itemize at this time the reductions of expenditures which it is probable will be brought about by such taking effect.

After investigation, I have found and hereby declare that each reorganization included in the reorganization plan transmitted herewith is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949, as amended.

I recommended that the Congress allow the reorganization plan to become effective.

JOHN F. KENNEDY.

REORGANIZATION PLAN NO. 1 OF 1961

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, April 27, 1961, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949, as amended

SECURITIES AND EXCHANGE COMMISSION

SECTION 1. *Authority to delegate.*—(a) In addition to its existing authority, the Securities and Exchange Commission, hereinafter referred to as the "Commission," shall have the authority to delegate, by published order or rule, any of its functions to a division of the Commission, an individual Commissioner, a hearing examiner, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter: *Provided, however,* That nothing herein contained shall be deemed to supersede the provisions of section 7(a) of the Administrative Procedure Act (60 Stat. 241), as amended.

(b) With respect to the delegation of any of its functions, as provided in subsection (a) of this section, the Commission shall retain a discretionary right to review the action of any such division of the Commission, individual Commissioner, hearing examiner, employee or employee board, upon its own initiative or upon petition of a party to or an intervenor in such action, within such time and in such manner as the Commission shall by rule prescribe: *Provided, however,* That the vote of a majority of the Commission less one member thereof, shall be sufficient to bring any such action before the Commission for review.

(c) Should the right to exercise such discretionary review be declined, or should no such review be sought within the time stated in the rules promulgated by the Commission, then the action of any such division of the Commission, individual Commissioner, hearing examiner, employee or employee board, shall, for all purposes, including appeal or review thereof, be deemed to be the action of the Commission.

SEC. 2. *Transfer of functions to the Chairman.*—In addition to the functions transferred by the provisions of Reorganization Plan Numbered 10 of 1950 (64 Stat. 1265), there are hereby transferred from the Commission to the Chairman of the Commission the functions of the Commission with respect to the assignment of Commission personnel, including Commissioners, to perform such functions as may have been delegated by the Commission to Commission personnel, including Commissioners, pursuant to section 1 of this reorganization plan.

The CHAIRMAN. Also, the statement of the President of April 27, transmitting proposed Reorganization Plan No. 2, affecting the Federal Communications Commission, and plan No. 2.

(The material referred to is as follows:)

SPECIAL MESSAGE ON REORGANIZATION IN THE FEDERAL COMMUNICATIONS COMMISSION

THE WHITE HOUSE, *April 27, 1961.*

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 2 of 1961, prepared in accordance with the Reorganization Act of 1949, as amended, and providing for reorganization in the Federal Communications Commission.

This Reorganization Plan No. 2 of 1961 follows upon my message of April 13, 1961, to the Congress of the United States. It is believed that the taking effect of the reorganizations included in this plan will provide for greater efficiency in the dispatch of the business of the Federal Communications Commission.

The plan provides for greater flexibility in the handling of the business before the Commission, permitting its disposition at different levels so as better to promote its efficient dispatch. Thus matters both of an adjudicatory and regulatory nature may, depending upon their importance and their complexity, be finally consummated by divisions of the Commission, individual Commissioners, hearing examiners, and, subject to the provisions of section 7(a) of the Administrative Procedure Act of 1946 (60 Stat. 241), by other employees. This will relieve the Commissioners from the necessity of dealing with many matters of lesser importance and thus conserve their time for the consideration of major matters of policy and planning. There is, however, reserved to the Commission as a whole the right to review any such decision, report or certification either upon its own initiative or upon the petition of a party or intervenor demonstrating to the satisfaction of the Commission the desirability of having the matter reviewed at the top level.

Provision is also made, in order to maintain the fundamental bipartisan concept explicit in the basic statute creating the Commission, for mandatory review of any such decision report or certification upon the vote of a majority of the Commissioners less one member. In order to substitute this principle of discretionary review for the principle of mandatory review pursuant to exceptions that may be taken by a party, functions of the Commission calling for the hearing of oral arguments on such exceptions under subsection (b) of section 409 of the Communications Act of 1934 (66 Stat. 721), as amended, are abolished.

Inasmuch as the assignment of delegated functions in particular cases and with reference to particular problems to divisions of the Commission, to Commissioners, to hearing examiners, to employees and boards of employees must require continuous and flexible handling, depending both upon the amount and nature of the business, that function is placed in the Chairman by section 2 of the plan.

Section 3 of the plan also abolishes the "review staff" together with the functions established by section 5(c) of the Communications Act of 1934 (66 Stat. 712), as amended. These functions can be better performed by the Commissioners themselves, with such assistance as they may desire from persons they deem appropriately qualified.

By providing sound organizational arrangements, the taking effect of the reorganizations included in the accompanying reorganization plan will make possible more economical and expeditious administration of the affected functions. It is, however, impracticable to itemize at this time the reductions of expenditures which it is probable will be brought about by such taking effect.

After investigation, I have found and hereby declare that each reorganization included in the reorganization plan transmitted herewith is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949, as amended.

I recommend that the Congress allow the reorganization plan to become effective.

JOHN F. KENNEDY.

REORGANIZATION PLAN NO. 2 OF 1961

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, April 27, 1961, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949, as amended

FEDERAL COMMUNICATIONS COMMISSION

SECTION 1. *Authority to delegate.*—(a) In addition to its existing authority, the Federal Communications Commission, hereinafter referred to as the "Commission," shall have the authority to delegate, by published order or rule, any of its functions to a division of the Commission, an individual Commissioner, a hearing examiner, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter: *Provided, however*, That nothing herein contained shall be deemed to supersede the provisions of section 7(a) of the Administrative Procedure Act (60 Stat. 241), as amended; *And provided further*, That in accordance with the provisions of subsection (b) of this section the functions of the Commission with respect to the filing of exceptions to decisions of hearing examiners and the function of hearing oral arguments on such exceptions before the entry of any final decision, order or requirement as set forth in subsection (b) of section 409 of the Communications Act of 1934, as amended (66 Stat. 721), are hereby abolished.

(b) With respect to the delegation of any of its functions, as provided in subsection (a) of this section, the Commission shall retain a discretionary right to review the action of any such division of the Commission, individual Commissioner, hearing examiner, employee or employee board, upon its own initiative or upon petition of a party to or an intervenor in such action, within such time and in such manner as the Commission shall by rule prescribe: *Provided, however*, That the vote of a majority of the Commission less one member thereof shall be sufficient to bring any such action before the Commission for review.

(c) Should the right to exercise such discretionary review be declined, or should no such review be sought within the time stated in the rules promulgated by the Commission, then the action of any such division of the Commission, individual Commissioner, hearing examiner, employee or employee board, shall, for all purposes, including appeal or review thereof, be deemed to be the action of the Commission.

SEC. 2. *Transfer of functions to the Chairman.*—There are herby transferred from the Commission to the Chairman of the Commission the functions of the Commission with respect to the assignment of Commission personnel, including Commissioners, to perform such functions as may have been delegated by the Commission to Commission personnel, including Commissioners, pursuant to section 1 of this reorganization plan.

SEC. 3. *Review staff.*—The review staff, created by section 5(c) of the Communications Act of 1934, as amended (66 Stat. 712), together with its functions, is hereby abolished. The employees of such staff may be assigned as the Commission may designate.

The CHAIRMAN. This is an executive session. We felt it would be advisable to have an executive session in order that we could go into these proposals thoroughly, analyze them, see just what they would do, propose to do, develop a record as to how they would operate and what restrictions or limitations, if any, there would be in connection with the proposals involved.

I have asked the Special Assistant to the President, Dean Landis, to come out this afternoon in that he has worked on these and similar problems and is familiar with them, in order to describe and explain proposals from the viewpoint of those who draft them and their intention as to just what they propose to do.

I feel that this is the most appropriate way in which to establish legislative history as well as to develop, or assist you gentlemen, in developing what changes are to be made, if any, in the organization of the Commissions involved, the functions with reference to the Commissions and to determine to what extent, if any, basic law is being amended by this proposal and just how it would act in its entirety.

We feel that by holding an executive session everybody can speak his own mind and be able to discuss the matter fully and completely.

In my judgment there are a lot of things that need to be cleared up. I do not know whether there have been any exaggerations about the proposals and what they plan to do or not. I do not know if any of the fears that some people have expressed are justified.

We do know that, in view of the work of this committee, there is some internal reorganization that can be effectuated within these agencies that would assist them in expediting their work and their service to the public.

So that is the purpose of this meeting this afternoon.

As is well known, these proposed reorganization plans were referred to the Committee on Government Operations. We have invited the chairman of that committee—and incidentally he advised me that he would be here, and two members of the staff. I believe Mr. Dawson is engaged on the floor of the House at this time, during the discussion of a bill of his committee.

We do have two members of the staff of Government Operations with us and I think probably we should let the record show that.

Will you gentlemen identify yourselves for the record? I do not know your positions.

Mr. HENDERSON. Thank you. I am Elmer W. Henderson, counsel to the Subcommittee on Executive and Legislative Reorganization of the Committee on Government Operations.

Mr. LANIGAN. I am James A. Lanigan, associate general counsel of the Committee on Government Operations.

The CHAIRMAN. I understand that a rejection resolution has been introduced, is that right?

Mr. HENDERSON. Yes.

Mr. SPRINGER. Who introduced it?

Mr. HENDERSON. Mr. Hoffman of Michigan.

The CHAIRMAN. A rejection resolution has been introduced on the plan and obviously the Committee on Government Operations will have to take some action within the next 10 days.

Dean Landis, we appreciate your taking the time to come to the committee this afternoon for the purpose of discussing and explaining these plans. I think we will limit it to these two plans this afternoon.

I might say the members of the Federal Communications Commission are with us by invitation.

I extended an invitation to the Chairman and such members of the Commission as desired to be present for this meeting. I believe they are all here.

Mr. MINOW. Mr. Chairman, Commissioner Lee is ill. Otherwise he would be here.

The CHAIRMAN. We are sorry to hear that he is ill.

I also want to say that the Chairman and members of the Securities and Exchange Commission were extended an invitation to be here this afternoon. The Chairman advised me of a prior commitment

that he had outside of the city of Washington. I do have a letter from him which will be included in the record, in which he states the position of the Commission.

(The material referred to is as follows:)

SECURITIES AND EXCHANGE COMMISSION,
Washington, D.C., May 9, 1961.

Hon. OREN HARRIS,
House of Representatives,
Washington, D.C.

DEAR MR. HARRIS: In accordance with our telephone conversation, and in answer to your letter of May 8, I am sending you a copy of my letter to Senator McClellan with respect to Reorganization Plan No. 1 of 1961.

As I indicated to you I am planning to be away all day Thursday. If this letter does not adequately cover the matters to be considered at the executive session on that date, I shall be glad to appear at another time or come and see you in your office.

Faithfully yours,

WILLIAM L. CARY, *Chairman.*

MAY 9, 1961.

Hon. JOHN L. MCCLELLAN,
Chairman, Committee on Government Operations,
U.S. Senate, Washington, D.C.

DEAR SENATOR MCCLELLAN: I have your letter of May 3 inquiring whether we have any comments or recommendations relative to Reorganization Plan No. 1 of 1961, providing for reorganization of the Securities and Exchange Commission.

I have discussed this with my fellow Commissioners at our meeting today and can report that they have no objections to it. Indeed, we all regard it as offering an opportunity to delegate certain matters which at the present time have to be passed on by the Commission itself. Furthermore, there are matters coming from the field offices in which decisions have to pass through more hands than their importance would warrant.

The only significant comment or criticism I have heard focuses upon the question whether or not the Commission's power of rulemaking (i.e. promulgating rules of general applicability) may be delegated. My conclusion is that legally under Reorganization Plan No. 1 it may be. However, my fellow Commissioners and I uniformly agree that the question is moot: even if empowered to do so, no member of the Commission wishes or intends to permit any delegation of general rulemaking either to a panel of Commissioners or to any subordinates.

If I can be of any further assistance I hope you will let me know.

Faithfully yours,

WILLIAM L. CARY, *Chairman.*

The CHAIRMAN. Dean Landis, thank you very much for your appearance here for this purpose, because as you well know from discussions that we have had, and others, there is a great deal of interest in these proposals and I think this is one way of trying to find out just what the proposals do in order to get the record straight.

Mr. LANDIS. Mr. Chairman——

The CHAIRMAN. I might say you have been before this committee a good many times and we always welcome you.

STATEMENT OF HON. JAMES M. LANDIS

Mr. LANDIS. Thank you, Mr. Chairman.

I was going to say that I originally appeared before this committee 28 years ago and I have appeared several times since and it is always a pleasure to deal with this committee or any of its subcommittees.

I would like to open my remarks by speaking generally of a situation with regard to the regulatory agencies in the Federal Government.

I don't want to talk in terms of blameworthiness or anything of that nature. I simply want to talk in terms of the situation as it exists.

Broadly speaking, our administrative agencies, our regulatory agencies, have been criticized for the existence of delay in the disposition of the business that comes before them.

That delay exists. There is no question about it. If you take agency after agency, you will find the existence of that fact of delay.

Another aspect of the criticism that is coordinate with the question of delay is the absence of policy determination on the part of many of the regulatory agencies.

I think that an example of the situation would show that the reasons for this are in large measure due to the volume of business that is required to be decided at the top level of these Commissions, in other words, by the agency heads.

That business is not, shall I say, all free and equal. Some of it is important. Some of it is not important. But decision is necessary, even in the minor cases, and the rapidity of decision is important from the standpoint of the general economy of this country.

I think, unfortunately, many things are held up simply by the press of business and are failed to be decided.

It is toward these two things that these reorganization plans, plans 1 and 2, are directed, an effort to relieve the top levels of the agencies from the consideration of business that can be dispatched and should be dispatched at a lower level.

Essentially, the plans contain two basic ideas. The first is to permit delegation of duties by the top level to the, shall I say, the staff or working level and, yet, to maintain a control over that business so that policy determinations of any significance are still made as they should be made by the agency heads.

The delegation of these duties is most important in the adjudicatory field. It is the adjudicatory rather than the regulatory field which consumes the time of the agency heads, and provisions we made in these plans for delegating the adjudicatory function to employees, staff members, hearing examiners, and the like.

However, these plans do not affect at all the decision of the Congress in section 7 of the Administrative Procedure Act to the effect that certain adjudicatory matters should be handled by hearing examiners. Specific provision is made in these plans that no action which permits delegation should destroy the system of administrative adjudication that has been built up over the past 20 or 30 years of having contested cases normally handled by hearing examiners.

True, where that provision is not in effect, delegation can be to boards of employees or to other individuals on the Commission staff.

But I want to point out that there is nothing there which destroys the concept of the hearing examiners. In fact, I think these plans increase the responsibility of the hearing examiners and will tend to develop a corps of individuals scattered throughout the Government of hearing examiners of high caliber and responsibility to dispatch business promptly.

These plans look forward to the ability of an agency to delegate certain functions to hearing examiners with a degree of finality.

However, it is provided that either the agency or a petitioner or an intervenor in a proceeding before a hearing examiner can petition the agency for review of the decision of the hearing examiner.

The agency may or may not grant the petition for review. I would assume that the agency would set forth certain standards of the kind of cases that it feels should be reviewed either by a panel of the agency or by the agency en banc. Standards of that nature, for example, many are set forth in rule 38 of the rules of the Supreme Court of the United States where a similar procedure is applied; namely, the petition for certiorari, which requests the Court to review a decision of the lower court, be it the court of appeals or be it a State supreme court, but in order for that request to be granted, grounds set forth in rule 38 should be asserted.

Section 5 of that rule reads as follows:

> A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where these are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons which will be considered.
>
> (a) Where a State court has decided a Federal question of substance not theretofore determined by this Court, or has decided it in a way probably not in accord with applicable decisions of this Court.
>
> (b) Where a circuit court of appeals has rendered a decision in conflict with the decision of another circuit court of appeals on the same matter; or has decided an important question of local law in a way probably in conflict with applicable local decisions; or has decided an important question of Federal law which has not been, but should be, settled by this Court; or has decided a Federal question in a way probably in conflict with applicable decisions of this Court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.
>
> (c) Where the U.S. Court of Appeals for the District of Columbia has decided a question of general importance, or a question of substance relating to the construction of application of the Constitution, or a treaty or statute, of the United States, which has not been, but should be settled by this Court, or where that court has not given proper effect to an applicable decision of this Court.

I assume that the agencies would adopt a similar rule of that nature. Moreover, it is provided in all these plans in order to be sure that the basic bipartisan character of these agencies is maintained, that the majority cannot overrule the minority and deprive a petitioner or anyone of the opportunity to be heard by the agency en banc.

In other words, if you have an agency composed of five individuals, in which only three of them can belong to one party, presumably the majority party at the time, under their statutes.

But a minority of two can always insist that any case shall be heard by the Commission en banc.

I think that preserves the bipartisan nature that is inherent in the statutes setting up these agencies.

That general device, it seems to me, would enable these agencies to deal with the really terrific logjams that confront them at the present time by guarding their time, safeguarding their time for important decisions which they are supposed to make and should make.

This idea, of course, is nothing new. It is borrowed, actually, from the Judiciary Act of 1924, which was passed by the Congress to help clean up the docket of the Supreme Court of the United States.

Prior to the passage of the Judiciary Act, review could be had of most any court decision by a right of appeal to the Supreme Court of

the United States, and at that time, it was behind in its dockets some 4 or 5 years.

It was the suggestion, I think, primarily of Chief Justice Taft, at the time that the type of review which now exists; namely, review on the basis of certiorari, should be adopted. It has been adopted, and, of course, as one knows now, the Supreme Court is abreast of its docket and it came abreast of its docket within a very short time after the passage of that act.

There is nothing particularly novel about these plans, except that it does do exactly that.

One other feature of these plans—and it is a second important feature of them—is that it provides a mechanism to deploy the human resources of the agency or the Commission to deal with business where it is thickest. Some mechanism has got to be invented to determine who will sit on a panel, what individual member of a Commission will be assigned a certain group of cases and who will be assigned another group of cases, and that mechanism should be flexible. You should be able to deploy those human resources conveniently and quickly where the need itself appears.

These plans, therefore, put that responsibility of deployment in the hands of the Chairman of the Commission.

In all these Commissions, the two Commissions, at least that we are talking about, the Securities and Exchange Commission and the Federal Communications Commission, the managerial responsibility is already resident in the Chairman of the Commission, and this is a problem of management. That and only that.

Now, it has been asserted that perhaps that power can be abused. Of course, as we know, any power can be abused. But, inherent in these plans are two safeguards against that abuse.

The first is that the power of delegation can only be exercised by the approval of the entire Commission. It is inconceivable to me that a Commission as a whole would permit an abuse of this kind of deployment power. If it existed, the delegations themselves would in all probability be withdrawn.

A second safeguard, however, also exists, and that is the safeguard of the minority having the power, in short, to reverse the delegation and to force decision on any particular matter up to the Commission en banc.

Those two safeguards seem to me thoroughly capable of dealing with any potentiality of abuse that might attach to some strong-minded and strong-willed chairman who doesn't have too much regard for anything else, rather than his own opinions.

My experience indicates one of the great things that a chairman should be able to do, just as a chief justice of the court, is to try and command, as well as he can, generally a majority of his colleagues. Failing that, he is not likely to be able to even handle the managerial functions that attach to his position adequately and if he abuses those things he is likely no longer to command a majority of his colleagues.

So, there again, is sort of an implicit safeguard against any abuse that may arise.

Now, the two plans that you have before you at this moment differ in certain minor particulars.

The minor particulars are essential because the basic acts, particularly the Communications Act of 1934, has in it certain provisions which might work against this theory of delegation.

The particular provision in plan No. 2 dealing with the Federal Communications Commission is the abolition of the function of the Commission itself in being required to handle exceptions on appeal. Instead of exceptions on appeal, what is substituted is a function of the Commission—well, it is not substituted because that is within the power of the Commission to substitute—a provision whereby a discretionary review instead of a mandatory review is granted.

The other minor difference between these two plans also concerns the Communications Commission.

A section of the Communications Act, section 5(c), I believe it is—yes—provided—it was an amendment that came in in 1952— provided for a group of individuals known as a review staff. It is really a rather curious section.

This review staff, I think was supposed to be a sort of opinion writing section for the Commission, but strangely enough, in that amendment which took place in 1952, it was provided that this review staff should not make any recommendations to the Commission itself, should merely summarize records that came before the Commission or carry out decisions of the Commission.

In other words, if they came in and the Commission said we have decided to conclude that A should acquire this particular license, rather, than B and C, they would be entitled to write the opinion in behalf of A. But they are not entitled to give any kind of recommendation to the Commission itself.

The abolition of that staff would not mean the abolition of that function of assisting the Commissioners in articulating the basis for their decisions which they must do under the Communications Act anyway.

However, it would free the Commission to create a staff of that nature which would also be able to advise them before the fact as well as after the fact. In other words, you would have a man who works over the record and comes to some conclusions in the light of the record and the brief. Those conclusions, of course, need not be accepted by a Commissioner, but it is helpful to be able to get ideas from persons who are closely associated with that particular function and to get the benefit of their wisdom as well as their ability simply to compile factual data.

No such provision, to my knowledge, exists with regard to any other regulatory agency.

Going back over the history of it, I found myself somewhat at a loss as to just why it was passed in this particular form. The Federal Communications Commission at that time, with the exception of one member, opposed it unanimously. I don't think that the experience of the Commission would indicate that this institution formed as it is under section 5(c), is as valuable an institution as could be formed without the restrictions imposed upon it under section 5(c).

In those minor particulars, plan No. 2 differs from plan No. 1.

The Securities and Exchange Act, which sets up the Securities and Exchange Commission, has no particular procedures in it which would

require change as a result of the passage of a reorganization plan of this type.

I would like to say one other thing, too, because the question has come up in discussions, and that is the application of these plans to the Administrative Procedure Act, particularly section 8(b) of that act.

Section 8(b) of the Administrative Procedure Act provides that the parties to any proceeding shall be afforded a reasonable opportunity to submit proposed findings and conclusions, exceptions, etc.

Now, that is applicable under the Administrative Procedure Act to each recommended initial or tentative decision or decision upon agency review of the decision of subordinate offices.

Section 8(b) is applicable to initial decisions, tentative decisions, and decisions upon agency review of the subordinate decision.

Decision on a petition for discretionary review, since it will not be a review and disposition on the merits of the case below, is not covered by section 8(b).

However, if a petition for discretionary review is granted, then section 8(b) comes into full play and full force.

There is, as I said before, no suggestion or effort to amend any provision of the Administrative Procedure Act of 1946. It is my belief that these plans fall completely within the bounds of administrative authority granted under the Administrative Procedure Act.

I might say, Mr. Chairman, that in both these cases, these plans have been approved as to legality and as to the form by the Attorney General.

I think that sets forth the purpose of these plans.

I might add one thing: They are not an attempt to try and straitjacket the agencies or to take away from the agencies the kinds of discretion and authority that they ought to have over their procedure.

What these plans are trying to do is to authorize the agencies to create a procedure more adaptable and suitable to the business as it exists today. In both cases these agencies were created some 25 years ago. In 25 years the impact of the business on the agency has changed quite a bit and so much so that a greater degree of flexibility should be given these agencies to permit them, as I am sure they want to do, to dispatch their business effectively, efficiently, and with reasonable speed.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Dean, for your explanations.

Mr. Flynt.

Mr. FLYNT. Thank you, Mr. Chairman.

Dean Landis, I would like to address my first question to section 2, which would authorize the Chairman to assign Commission personnel, including but not limited to Commissioners, to perform any of the functions under which Commission orders or rules may be delegated.

Would that make it possible for a Chairman who found himself in a minority of one on the Board to assign a given function to a staff member to do something that he knows the Commission would not otherwise do?

Mr. LANDIS. If there had been a previous authority to delegate that function to, we'll say, a director of the division, the delegation has to be by the Commission as a whole.

If then he assigns it to an individual who comes within the description of the personnel that is set forth in that resolution of delegation, he could do so. However, as I say, the brakes are on him because certainly if that were the case or if that were even believed to be true by two members of the Commission, they could insist that the Commission as a whole review that action and that that action should not take effect until it was reviewed by the Commission as a whole.

Mr. FLYNT. Would it require two or would it require three?

Mr. LANDIS. Two, in the case of a five-man Commission.

Three in the case of a seven-man Commission.

Mr. FLYNT. Do you feel that the adoption of Reorganization Plan 1 or 2 or both of them would be one step further toward creating a one-man Commission, a one-man director?

Mr. LANDIS. I don't believe that to be true because I think it would increase the stature of the Commissioners themselves since they will be taking a great deal more individual responsibility, subject, of course, to the supervision of their colleagues, generally speaking.

I don't believe it will lead to a one-man Commission. In fact, it might create a better five-man Commission.

Mr. FLYNT. Would it increase the stature of each Commissioner or would it increase immeasurably the stature of the chairman?

Mr. LANDIS. No, I think it would increase the stature of each Commissioner. I don't see that it would increase the stature of the chairman particularly. Certainly, the only thing that he acquires as a result of this is a responsibility for this deployment process that I was speaking of, and I can not conceive that that process would increase his stature. Surely, in exercising that, he would consider the predilections of his colleagues both with reference to their competence, with reference to their other duties, and try to deploy them as effectively as he could, consistent with their own desires.

That deployment process is a common process in many courts where the chief justice does so. In fact, it is done in some of our courts of appeal in the various circuits where the senior circuit judge undertakes the deployment of the judges.

However, it is done by delegation there, rather than by statutory authority.

However, in some of the State courts, the chief justice is authorized to do that business of deployment of his colleagues.

Mr. FLYNT. Mr. Chairman, I will have some further questions but I will defer at this time to give others a chance.

The CHAIRMAN. Mr. Bennett.

Mr. BENNETT. Dean Landis, one of the things that concerns some of us on this committee is whether the reorganization plan as applied to the Federal Communications Commission, specifically, in taking away the right of an individual to an appeal or to a review of his case by the full Commission would not be beyond the authority of the President under the Reorganization Act.

Would you comment on that?

Mr. LANDIS. Yes, I would be glad to.

Under the Reorganization Act, three types of powers can be employed by the President: The power to delegate certain duties; power to transfer those duties from one outfit to another, or from one level to another level; and also the power to abolish certain functions.

The CHAIRMAN. I didn't hear that.

Mr. LANDIS. The power to abolish certain functions.

They have been employed fairly extensively in the past in numerous reorganization plans which have come before you.

Now, if you have a function of the Commission to take an appeal from a hearing examiner, the abolition of that function comes within the scope of the powers granted under the Reorganization Act.

There are numerous cases in which functions of this type have been abolished.

For your information, I might——

Mr. BENNETT. Are you referring specifically to some authority that the President has to abolish a function which, in turn, abolishes a right which a private person has under existing law to an appeal or review by the full Commission?

Now, it is true that the Reorganization Act says he can change the function. Is it your opinion that it goes so far as to mean that in abolishing a function of the Commission he can abolish the rights of an individual citizen?

Mr. LANDIS. I think so, because certainly under the Reorganization Act you could abolish the entire Federal Communications Commission.

The CHAIRMAN. Say that again.

Mr. LANDIS. You could abolish the entire Federal Communications Commission under the Reorganization Act.

Of course, nobody would quite go that far, obviously. But the power so far as the power is granted under the reorganization act is there. It has been utilized, for example, to abolish the old U.S. Shipping Board, completely.

Mr. BENNETT. I doubt that very many Members of Congress understand that the reorganization authority goes that far. I am not saying that you are incorrect in your conclusions, but I think Congress might take another look at what they are doing.

Mr. LANDIS. Well, you always have control over it, you know, as to how far those powers are exercised.

Mr. BENNETT. Well, getting back to my question——

The CHAIRMAN. Gentlemen, you might check me at this point.

As I recall correctly, the President abolished what was called the Civil Aeronautics Authority, the first one, back in the days when Dean Landis was somewhat engaged in that activity, I believe, or along about that time anyway, and established the Civil Aeronautics Administration.

I also believe, if I remember correctly, another President abolished the Reconstruction Finance Corporation completely, if my memory serves me—yes, someone said liquidated it. And if I remember correctly, something happened to the old Home Loan Board. I am not sure whether it was abolished or whether it was reorganized or just what happened to it, I am not sure. But I do know that the action taken—and I have just been reminded by a member of the staff that the old Bituminous Coal Board was abolished by a reorganization plan.

So, I think you have a number of precedents.

As Mr. Flynt said, I think, the authority is there.

Mr. LANDIS. Well, I think the entire Department of Health, Education, and Welfare was created under a reorganization plan, not by a regular statute.

Mr. BENNETT. There are no present plans, however, I take it, to exercise that authority in the case of any of the regulatory agencies.

Mr. LANDIS. That authority has been exercised with regard to numerous of the regulatory agencies already.

The CHAIRMAN. I don't think you understood the question, Dean.

Mr. LANDIS. I am afraid I didn't.

The CHAIRMAN. Mr. Bennett, you might restate the question.

Mr. BENNETT. My question was that I take it there is no intention on the part of the President to exercise his authority, if he has it, to abolish any of these regulatory agencies?

Mr. LANDIS. Not that I know of.

I don't think we could afford to do that from the Government's standpoint. These agencies are terribly important in their functioning. Their effective functioning is frightfully important, I think, to all of us.

Mr. BENNETT. Getting back to my question, can you cite any precedent for the President's right under the reorganization act, in abolishing a function of an agency to abolish at the same time a statutory right that a private person had, as would be the case here?

Mr. LANDIS. I can come very close to it: Let me give you these cases.

Plan No. 5 of 1952, in section 2(b), 66 Statutes at Large, 826, abolished the functions of the Office of People's Council in the District of Columbia, an office which was set up by statute by the act of December 15, 1926.

Plan No. 1 of 1947 in section 102 of that plan, 61 Statutes at Large, 951, abolished the function of the President with respect to approving determinations of the Secretary of Agriculture in connection with agricultural marketing orders under the Agricultural Marketing Act of 1937.

Therefore, the President's approval was not necessary.

In other words, there was a right to go to the President for his approval or disapproval of these marketing orders. That approval was abolished and the chain of appeal, if you might speak of it in those terms, stopped at the level of the Secretary of Agriculture, and no longer went up to the level of the President.

Mr. BENNETT. Is there any right of an individual citizen involved there?

Mr. LANDIS. I believe so, because an individual citizen who is displeased by a marketing arrangement, by a marketing order, tentatively issued by the Secretary of Agriculture could then present his case to the President of the United States, somewhat similar to the situation that exists under the Civil Aeronautics Act today where Presidential approval of orders or recommendations of the Civil Aeronautics Board is required in the case of international rules.

Now that reviewing authority of the President was abolished by that plan in that case, and the reviewing authority existed by virtue of statute and nevertheless the plan was not disapproved by the Congress and went into effect.

There is another case—I would be glad to give the statutory citation.

Mr. BENNETT. You haven't any cases where the courts have considered this specific question, have you?

The case that you mentioned is not one that was considered by the courts.

Mr. LANDIS. No, no.

Mr. BENNETT. Do you have any cases that support your point of view that have been decided by the court?

Mr. LANDIS. Strangely enough there are substantially no court decisions on the reorganization act and its powers. I don't know why. The lawyers haven't been particularly litigious about the reorganization act. There are some minor renditions that are of little value in this field. In the broad field there is very little in the way of court decisions on the reorganization act and I would also say this, strangely enough, that scholarship in the field of administrative law has largely neglected the reorganization act and the powers that the President can exercise with reference to the transfer, delegation of functions, and the like.

Mr. BENNETT. It seems to me that taking away the right of an individual to appeal, to have his case reviewed by a full Commission as distinguished from a review or a panel or something of that nature, is taking away from him a substantial right. I just can't see that the reorganization act was intended to have the President go that far.

Mr. LANDIS. Can I make this observation, that this is not taking away the right of an individual to appeal to the Commission. That still exists, but the Commission doesn't necessarily have to handle the appeal.

Mr. BENNETT. That is right. It takes it away as a matter of right and makes it a discretionary matter with the Commission.

Mr. LANDIS. That is true.

Mr. BENNETT. Which are two entirely different things.

Mr. LANDIS. That is true.

Mr. BENNETT. Now, was this particular matter, this particular phase of the reorganization plan discussed with anybody, with Commission members, for example, or with the Commission, before it was promulgated?

Mr. LANDIS. Was it——

Mr. BENNETT. Was it discussed with the members of the Federal Communications Commission?

Mr. LANDIS. It was discussed—yes, it was discussed with the Federal Communications Commission. A draft of the plan was sent to the Chairman and I understand that the Chairman consulted with members of the Commission with regard to it. That has been the practice in all these cases. Naturally, you want to get their ideas.

I think in the case of the Federal Communications Commission, there were perhaps seven opinions, rather than one. I think there is general unanimity on the desirability of what I would call the delegation feature of these plans. The lack of unanimity exists perhaps with regard to the deployment responsibility of the Chairman.

Mr. BENNETT. Well, Dean Landis, are you the author of these plans?

Mr. LANDIS. I wouldn't exactly want to claim that. I worked on them.

Mr. BENNETT. The reason I asked that is because I am wondering how it was decided and why it was decided to pick these two areas to deal with in respect to the Federal Communications Commission and ignore many other things which I think probably are recognized as areas that might also be dealt with, not particularly in a reorganization plan, but for Congress itself to deal with.

Mr. LANDIS. Well, these are the two most immediate areas in the field of administrative practice that seemed to need attention, and it isn't that these two Commissions are particularly picked out.

Plans similar to these have been sent up to the Congress already with regard to the Civil Aeronautics Board and with regard to the Federal Trade Commission.

Similar plans are in preparation with regard to other agencies.

Mr. SPRINGER. What other agencies?

Mr. LANDIS. But they have not been as yet finalized.

Mr. SPRINGER. What other agencies?

Mr. LANDIS. Other agencies? Generally speaking, I would say the National Labor Relations Board, the——

Mr. SPRINGER. Federal Power Commission?

Mr. LANDIS. Federal Power Commission.

Incidentally, that Commission has transmitted a memorandum already to, I believe it is this committee—I am not certain—approving the general principle of what I would call the delegation concept of these plans.

Then the Interstate Commerce Commission, which has done a very effective job of delegation already, so far as it feels it is permitted to do that by statute.

The Interstate Commerce Commission has wiped off some 16,000 items.

Mr. SPRINGER. 16,000 what?

Mr. LANDIS. 16,000 items on its docket that otherwise would have demanded the attention of a Commission or a panel of the Commission or the Commission in full.

They have realized that there is too much detail coming to the level of the Commission.

The CHAIRMAN. Dean, off the record.

(Discussion off the record.)

The CHAIRMAN. The committee will come to order. I am very sorry for the interruption. You may proceed without further interruptions now.

Mr. Bennett, you were questioning Dean Landis. You may proceed.

Mr. BENNETT. Section 5(a) of the Reorganization Act, under subsection (4)—Do you have the act?

Mr. LANDIS. Yes; I have it.

Mr. BENNETT. It states that no reorganization plan shall provide for and no reorganization under this act shall have the effect of authorizing any agency to exercise any function which is not expressly authorized by law at the time the plan is submitted to Congress.

Is it not true that, in effect, as to the Federal Communications Commission, this plan authorizes the agency to exercise three separate functions that are not authorized under the present law: One, namely, to delegate its adjudicatory functions; two, to give the Chairman the

right to delegate the Commission's power to others; and, three, to exercise a discretionary right in the matter of review?

Mr. LANDIS. I do not think so because those powers are already possessed by the agency. Initial decisions are now being made by the hearing examiners and that is expressely required by the Administrative Procedure Act.

Mr. BENNETT. Is it not true, Dean, that the existing law does not give a hearing examiner adjudicatory authority?

Mr. LANDIS. That is true, that the existing law does not give him that.

Mr. BENNETT. But this reorganization plan would, or could?

Mr. LANDIS. This plan simply provides that the hearing examiner's decision can be made final by the Commission, by denying a review with reference to that matter.

Mr. BENNETT. That is a function that cannot be delegated at the present time; is not that right?

Mr. LANDIS. I do not believe so. In the light of section 409(b) of the Communications Act, there seems to be a right to take exceptions to hearing examiner's report and get oral argument on those exceptions before the Commission as a whole. But if you abolish that, you are not creating a new function.

Mr. BENNETT. If a hearing examiner does not have authority to make a final decision under existing law, then this plan changes his function or his authority and gives him that right under certain circumstances, is that not true?

Mr. LANDIS. No; I do not think that is true.

He has the authority now to make a decision.

Mr. BENNETT. Does he have the right to make a final decision if somebody appeals?

Mr. LANDIS. He does not even have the right to make a final decision unless the petition for review is denied by the Commission, in which case his decision becomes final.

Mr. BENNETT. Yes; but under present law his decision does not become final in any case where one of the litigants appeals.

Mr. LANDIS. That is true.

Mr. BENNETT. In other words, the test of whether his decision is final depends upon a right that the litigant has to take an appeal for review by the entire Commission.

Mr. LANDIS. Yes.

Mr. BENNETT. That right is being destroyed by this reorganization plan. If a trial examiner makes a decision, that decision would be final unless the Commission exercises a new function, a discretionary function, which is not under present law, of granting by form of certiorari the right of review. Is not that true?

Mr. LANDIS. I would look at it this way; namely, that under the existing law the litigant can take exceptions to the trial examiner's report and is entitled to be heard on those exceptions before the Commission as a whole and the Commission must deal with those exceptions, either sustaining them, modifying them, or denying them.

Mr. BENNETT. You are speaking about present law now?

Mr. LANDIS. That is the present law.

Mr. BENNETT. Yes.

Mr. LANDIS. Under this plan, a different procedure could be put into existence. This plan itself does not put it into existence. It enables the Commission to put a different plan into existence, which does not abolish the right of the litigant to request review by the Commission.

Mr. BENNETT. Let me interrupt you right there. By doing what you just said, the Commission is exercising a new function; is it not?

Mr. LANDIS. I would not say it is exercising a new function. It is exercising only part of the function which it possesses under the act as it stands now.

Mr. BENNETT. Under the act as it stands now, any litigant can file exceptions to a hearing examiner's decision, can he not?

Mr. LANDIS. That is right.

Mr. BENNETT. Under the reorganization plan, he may not have that right.

Mr. LANDIS. He has the right to petition.

Mr. BENNETT. Yes; but he may not have that right; is not that true?

Mr. LANDIS. He does not have that. That is abolished, or can be abolished by Commission action.

Mr. BENNETT. Did you finish your answer? I guess I interrupted you.

Mr. LANDIS. I said that under this plan here, the Commission could act so as to abolish the mandatory right of appeal, but I cannot see that that imposes a new function upon the trial examiner because the trial examiner is doing exactly what he was doing before.

Mr. BENNETT. I will get away from that, because that gets into some refined technicalities that at least divert me from the point I am trying to make, which is this: that the exercise of a new function is the discretionary authority by the Commission as to whether or not they will review a decision of the trial examiner.

Mr. LANDIS. I did not say that is exercising a new function. It is exercising a function that——

Mr. BENNETT. They cannot deny it today; could they?

Mr. LANDIS. No; they can not deny it.

Mr. BENNETT. When this plan goes into effect, they could deny the right?

Mr. LANDIS. They could.

Mr. BENNETT. That changes the function, does it not, Dean?

Mr. LANDIS. The function is abolished.

Mr. BENNETT. That is right.

Mr. LANDIS. The function of the Commission to hear in a mandatory way an appeal from a hearing examiner is abolished, but a lesser function, one that is within that large function, is preserved: namely, the right of discretionary review.

Mr. BENNETT. Is it not true that if this plan goes into effect they will be exercising a function in respect to review that they cannot exercise now?

Mr. LANDIS. Well, you were substituting, you were shaving down the right of review because in exercising this function of determining whether to review a case, that, of course, is a part of the general, overall function of reviewing a case. Now, I cannot see that that is the exercise of a new function on the part of the Commission.

Mr. BENNETT. I think that is splitting hairs, Dean. It seems clear to me that there is a considerably wide variance in whether a Commission is required by statute to hear an appeal or whether they may hear the appeal within their discretion.

To my mind, there is as much difference between that as there is between the poles; yet you contend, as a matter of fact, this does not change or give them any different type of function.

Mr. LANDIS. That is my contention. It seems to me that they are doing just about the same thing, but they are not doing the full thing that they might exercise if they were reviewing the case on the merits.

Mr. BENNETT. What about the delegation of the authority by the Chairman? Is not that something new and different than exists under present law?

Mr. LANDIS. No, because if you look at the Communications Act, the authority of the Chairman—statutory authority—is very broad.

Mr. BENNETT. Under existing law, can the Chairman delegate authority to anybody to make a final decision?

Mr. LANDIS. The Chairman cannot do that, no.

Mr. BENNETT. But he could under this reorganization plan?

Mr. LANDIS. No, he could not, because there is always an opportunity to seek review of that.

Mr. BENNETT. If the Commission so decides.

Mr. LANDIS. Yes, or if a minority of the Commission decides.

Mr. BENNETT. Well, what is the difference? How does this proposed authority for the Chairman to delegate authority to other people differ under the reorganization plan from present law? I do not think you have made that clear.

Mr. LANDIS. I would like to make this clear, that the Chairman does not do any delegation. It is the Commission that delegates.

Mr. BENNETT. The Commission delegates to the Chairman?

Mr. LANDIS. The Commission, we will say, will establish a panel, say, "We will have three panels of two commissioners each." Now that is done by the Commission as a whole. All the Chairman has the power to do is to assign various commissioners to these panels that have been set up by Commission authority.

Mr. BENNETT. I want to quote from a staff report here to the members of the committee on this matter because I want to get it clear in the record, at least. I agree with what is said here, but in order that it can be clearly in the record so I can get a clear-cut answer from you, I would like to know whether you will agree or disagree with this statement:

Legal argument can be made that the foregoing limitation—that is the limitation under the reorganization act about functioning—is violated by these plans in at least three respects, namely, one, a delegation of an adjudicatory function by rule or order—we discussed that—and this one, two, delegation to the Chairman of the Commission's power to delegate such function.

Is that an accurate statement?

Mr. LANDIS. I do not think that is accurate.

Mr. BENNETT. You do not think so?

Mr. LANDIS. No, I do not think that is accurate because these plans do not authorize the Commission to delegate to the Chairman powers

that only the Commission can delegate itself. I do not think they authorize that.

Mr. BENNETT. You say that is incorrect?

Mr. LANDIS. I think that is.

Mr. BENNETT. What about number three: legal argument can be made that this exercise of functions under the reorganization act has been violated with respect to the FCC's power of discretionary review of adjudicatory matters?

Is that correct?

Mr. LANDIS. Could you repeat that last sentence?

Mr. BENNETT. You may read it.

Mr. LANDIS. Well, of course, legal argument can be made for almost any position, as you know. The making of a legal argument does not necessarily mean that it is a good one, and——

Mr. BENNETT. In this case, you say it is a bad one?

Mr. LANDIS. I do not see that you can argue that this is creating a new function to authorize the FCC to limit its review powers so that they become discretionary rather than mandatory. They have the mandatory power now. They are obliged to exercise it, and you are abolishing the mandatory phase of it, leaving a review power there on a discretionary basis.

Mr. BENNETT. Dean, let me read the reorganization plan itself. You refer to that. Refer to section 2.

I will read it for the record. It says:

> Transfer of functions to the Chairman. There is hereby transferred from the Commission to Chairman of the Commission the functions of the Commission with respect to the assignment of Commission personnel, including Commissioners, to perform such functions as may have been delegated by the Commission to the Commission personnel, including Commissioners, pursuant to section 1 of this reorganization plan.

Now, the last part of that is a little bit of gobbledygook, but the first part of it, it seems to me, is pretty clear, that is, that there is hereby transferred from the Commission to the Chairman of the Commission the functions of the Commission with respect to the assignment of Commission personnel.

Does that change the present law or does it not?

Mr. LANDIS. I do not know whether it changes the present law or not. It changes the present practice.

Mr. BENNETT. It changes the present functions of the Chairman, does it not?

Mr. LANDIS. Whether or not under the law this assignment of Commission personnel rests in the Commission or in the Chairman, I think is a very doubtful question because under the Communications Act the Chairman is specifically given the authority to coordinate and organize the work of the Commission in such manner as to promote prompt and efficient disposition of all matters within the jurisdiction of the Commission.

Now, I think a legal argument can be made that really section 2 is not necessary, but in order to be clear on that question, section 2 is a desirable thing.

Mr. BENNETT. I am not questioning the necessity. I am questioning what it does. Does it, or does it not, give the Chairman of the Commission some functions to perform that he does not now have the authority to perform?

Mr. LANDIS. Well, he participates in——

Mr. BENNETT. You can answer that "Yes" or "No," can you not?

Mr. LANDIS. No. He participates in the performance of that function now under the existing law. He certainly participates.

Now, what is done is to transfer the functions of the other four Commissioners to him.

Mr. BENNETT. That is right.

Mr. LANDIS. So that he is exercising the function of the other Commissioners to assign personnel, but as I read——

Mr. BENNETT. That is right, and that is a change in the present law and that is a violation of the language of the reorganization act which I read to you a few minutes ago.

Mr. LANDIS. Well, I do not think so, Mr. Bennett, because this section says, authorizing any agency to exercise any function, which is not expressly authorized by law at the time the plan is transmitted to the Congress.

That is, any agency. In other words, you could not transfer the power of the Federal Communications Commission to assign their personnel to we will say, the Chairman of the Securities and Exchange Commission. But this is not a transfer to another agency. This is a transfer within the agency itself. I cannot see that as the creation of a new function.

Mr. YOUNGER. Will the gentleman yield on that point?

Mr. BENNETT. Yes.

Mr. YOUNGER. You make the very strong point that there is nothing in this reorganization act that is different from the present law, is that true?

Mr. LANDIS. I would not say that.

Mr. YOUNGER. Well, now, wait a minute. You have made a strong plea, Dean, that there is no change being made in the reorganization act from the present law. Now, is there or is there not?

Mr. LANDIS. I said that with reference to section 2. We were discussing section 2.

Mr. YOUNGER. All right, any part of it.

Mr. LANDIS. I said with reference to section 2, it is questionable under the Communications Act——

Mr. YOUNGER. Well, is there any change in the reorganization act——

Mr. LANDIS. There is certainly a change in the practice of the Commission.

Mr. YOUNGER. That is different from the present law and the practices that could be under the present law?

Mr. LANDIS. The present law does not specifically say that the assignment of Commission personnel to various tasks is the function of the Chairman. It does not specifically say that, and probably there was no need to say that under the Communications Act inasmuch there was not——

Mr. YOUNGER. Well, in your opinion, Dean, could the Chairman perform that function under the existing law?

Mr. LANDIS. Not under the existing law.

Mr. YOUNGER. Then there is a change?

Mr. LANDIS. Because there is no——

Mr. YOUNGER. I yield back to Mr. Bennett.

Mr. BENNETT. Go ahead.

Mr. LANDIS. Because there is no division of the Commission in panels at the present time. Therefore, there would be no need to assign Commission personnel to these panels, since they don't exist. Now, you are creating, you are giving that authority to the Commission to create these panels. Therefore, there must be some authority to deploy people to sit on these panels.

Mr. BENNETT. Dean, I want to say with all due respect, and I say this with respect, that I recognize your great legal ability and the many contributions that you have made to the teaching of law, and so forth, but I want also to say frankly that it seems to me you are just plain splitting hairs here and getting us away from the meaning and effect of what is being done in this reorganization plan.

Mr. LANDIS. I hope I have not done that, Mr. Bennett. I have tried to make clear what is capable of being done under this reorganization plan. You will note it does not force anything to be done, but it gives authority to do certain things, and, as I say, with regard to the assignment of Commission personnel, it makes clear that that responsibility becomes the Chairman's, rather then where it might otherwise lie in the Commission itself.

I know, for example, the practice of the Interstate Commerce Commission which has panels, they call them divisions. There the assignment of Commission personnel to those divisions is done by Commission minute. It happens that there is nothing particularly in the statute that says it shall be done by Commission minute or by the Chairman. But that is the practice there, and I would imagine that that practice would continue unless you had this section 2 in existence.

Mr. BENNETT. Would it not be better, where there is a question of doubt as to the President's authority to change existing law to come in here with recommendations and let this committee report a bill and let the Senate committee report a bill to approve a repeal of these sections if it is advisable and wise to do it, rather than to have by reorganization plan a nullification of the act which the reorganization law itself does not contemplate?

Mr. LANDIS. I would not say that the law does not contemplate it. I think the law contemplates exactly this kind of thing, and so far as the theory of the reorganization act is concerned, it permits the President to make suggestion to the Congress in the form of a plan, but, nevertheless, the Congress is the final arbiter with regard to whether that plan shall become law or otherwise.

Mr. BENNETT. That is right, of course, Dean. This thing can be argued up and down, but this is even worse than what we criticize in the cloture rule because in the cloture rule, members of the committee can at least offer amendments in the committee before it is reported by the committee. But, here, not even a committee or any branch of the Congress can offer an amendment or a change to this plan. They either have to accept it in its entirety or reject it. It seems to me that that is a mighty poor way for us to have to legislate in an important area like this.

Our committee has spent nearly 4 years studying the Federal Communications Commission, the many possible defects in the law itself and possible changes. We have recommended legislative changes.

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Bills have been introduced to implement those changes. We would have a hearing. We would at least go through the formality of letting people come in here publicly and say whether they approved or disapproved of this bill. We cannot do that with this kind of an arrangement. We either have to take this recommendation which is based not upon the hearing but just upon somebody's idea of what is a good thing to do; in this case, yourself, I guess. So we accept that or reject it in its entirety. I think that is a mighty poor way of doing business.

That is all.

The CHAIRMAN. Mr. Moss.

Mr. Moss. Not at the moment.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. Dean Landis, may I say that your position, I think, here is not very clear.

When were you appointed by the President?

Mr. LANDIS. It was sometime, in just before the end of January. I do not recall the exact date. January of this year.

Mr. SPRINGER. And what was your title?

Mr. LANDIS. Special assistant.

Mr. SPRINGER. To the President?

Mr. LANDIS. Yes.

Mr. SPRINGER. And what were to be your duties as special assistant to the President?

Mr. LANDIS. My duties were to examine, generally speaking, the field of regulatory agencies and see what suggestions I could make either to them, to the President, or to the Congress, if desirable, as to what improvements could be made with regard primarily to their practice and procedure.

Mr. SPRINGER. You were the President's representative, is that true?

Mr. LANDIS. I am.

Mr. SPRINGER. You are?

Mr. LANDIS. Well, I suppose I represent the administration in behalf of this plan.

Mr. SPRINGER. You represent the executive department?

Mr. LANDIS. That is right.

Mr. SPRINGER. Soon after your appointment, did you talk with members of the Commission?

Mr. LANDIS. Did I talk with them?

Mr. SPRINGER. Did you talk with members of the Commission?

Dean Landis, subsequent to your appointment, did you talk with members of the Commission?

Mr. LANDIS. I talked at great length with the new Chairman of the Commission. I have had correspondence with another member of the Commission, and he, in turn, I think, has talked with other members of the Commission.

Mr. SPRINGER. You have had personal contact with two of the members of the Commission?

Mr. LANDIS. If you call letterwriting personal contact, yes.

Mr. SPRINGER. All right.

Have you had any contact with any other members of the Commission other than that one member and the Chairman?

Mr. LANDIS. No. Not personally.

Mr. SPRINGER. Now, with this one member, you had only correspondence?

Mr. LANDIS. That is right.

Mr. SPRINGER. No telephone conversations?

Mr. LANDIS. I don't believe so.

Mr. SPRINGER. No personal conversations?

Mr. LANDIS. Except socially; yes, I saw him.

Mr. SPRINGER. Now, right after that, did you have contacts with the Chairman of the Commission?

Mr. LANDIS. I have had contact with the Chairman of the Commission constantly. I can't recall exactly the times, and so on.

Mr. SPRINGER. Without regard to naming the individual dates, would you tell me approximately how many times you have had contact with the Chairman of the Commission?

Mr. LANDIS. I would say at least a half a dozen times.

Mr. SPRINGER. At least a half a dozen times?

Mr. LANDIS. At least a half a dozen.

Mr. SPRINGER. Were those at the White House?

Mr. LANDIS. No.

Mr. SPRINGER. None of them?

Mr. LANDIS. Some of them in my office.

Mr. SPRINGER. Where is your office?

Mr. LANDIS. In the old State Department Building.

Mr. SPRINGER. The old State Department?

Mr. LANDIS. Yes.

Mr. SPRINGER. Down at the Executive end of the avenue?

Mr. LANDIS. That is right.

Mr. SPRINGER. Did you have any contacts with him in his office, over at the Commission?

Mr. LANDIS. No; I don't believe I did.

Mr. SPRINGER. What were the nature of these conversations?

Mr. LANDIS. General discussion about plans and what can be done to help in the dispatch of the business of the Commission.

Mr. SPRINGER. Subsequent and during those conversations, did you also talk with the President?

Mr. LANDIS. That I cannot tell you. I must decline to answer.

Mr. SPRINGER. I didn't say what was said. I said, "Did you?"

Mr. LANDIS. I must decline to answer it, if I may.

Mr. SPRINGER. I take it the inference is that you did talk to him?

Mr. LANDIS. I must decline to draw any inference.

Mr. SPRINGER. Mr. Chairman, I ask for a response to my question.

The CHAIRMAN. Well, of course, Dean Landis has testified that he represented the administration and as special assistant to the President that he is here testifying in behalf of the executive branch of the Government.

No, I think the rule, as the gentleman recognizes, is that anyone who is representing the President, as he has indicated, in this manner, when called upon to divulge any conversation he had with the President without clearance from the President——

Mr. SPRINGER. I didn't ask for that.

The CHAIRMAN. The Chair is giving a response to what the gentleman asked for.

Mr. SPRINGER. He hasn't given response to my question.

The CHAIRMAN. The gentleman has declined to give a response to the question.

Mr. SPRINGER. I haven't asked for any confidential statement of the President himself. I haven't asked that at all.

The CHAIRMAN. Well, the Chair would have to rule that if the gentleman does not want to testify as to whether or not he had a conversation with the President, I think that is within his prerogative.

Mr. SPRINGER. Will the record show that I take exception to the ruling of the chairman?

The CHAIRMAN. Very well.

Mr. SPRINGER. Dean Landis, do you know whether or not Mr. Minow was at the White House conversing either with the President or any of his assistants?

Mr. LANDIS. I don't happen to know.

Mr. SPRINGER. You have formerly been a member of the CAB and the Securities and Exchange Commission?

Mr. LANDIS. That is right.

Mr. SPRINGER. From your understanding of these regulatory agencies, from whom do they take their authority?

Mr. LANDIS. I would say from the Congress.

Mr. SPRINGER. Is there any question about that?

Mr. LANDIS. No; I have no question along that score.

Mr. SPRINGER. Do you feel that it is the duty of the Commission to look to the President or to the Congress for the solution of their problems?

Mr. LANDIS. Well, I would say this, Mr. Springer, that the prime duty of the Commission is, first, to look to the law and see what its responsibilties are under the statutes. If they feel that the law is unclear or that they need some strengthening, they again look to the Congress. They don't look to the President for a change in the law. They look to the Congress for a change in the substantive law.

Mr. SPRINGER. Actually, the powers which we have given them by statute were powers that originally belonged to the Congress and were subject to the jurisdiction of this committee. Is that correct?

Mr. LANDIS. That is correct.

Mr. SPRINGER. The review suggestion which you are in substance making, Dean Landis, in this reorganization plan, is practically the same that the Supreme Court would have to review by certiorari or otherwise an appeal by an appellant to the Supreme Court.

Mr. LANDIS. Very much the same. There is one substantial difference, namely, the Supreme Court cannot review the decision we will say of a U.S. court of appeals if it wants to unless there is a petition that has been filed by one of the litigants. Here the Commission can reach down any time it chooses, whether or not the liitigant wants it to, and review any action on its own initiative. There is that substantial difference. Otherwise, I think——

Mr. SPRINGER. Do you ever remember an instance where you as a member of the Commission reached down for a bill of exception to what was filed and took a case up for review?

Mr. LANDIS. I can't remember an instance of that type because it never would have occurred during the time that I was on these Commissions, because no such system of review existed.

Mr. SPRINGER. Is the Commission a quasi-judicial body?

Mr. LANDIS. Yes, sir; in many respects, not in all respects, quasi-legislative in other respects.

Mr. SPRINGER. Putting those two together, that is about 100 percent what it is. It is a quasi-body?

Mr. LANDIS. Yes.

Mr. SPRINGER. Do you think in a quasi-judicial or quasi-legislative body that the power of an appellant should be cut off from review by the full Commission?

Mr. LANDIS. I think it should.

Mr. SPRINGER. You think it what?

Mr. LANDIS. It should in the discretion of the Commission.

Mr. SPRINGER. It should be cut off? Did I hear you correctly?

Mr. LANDIS. The power of appeal, you said?

Mr. SPRINGER. Yes.

Mr. LANDIS. I think it should, just as in many courts you can't go above the nisi prius judge. You have no right of appeal in many instances.

Mr. SPRINGER. Would you name in the State court of Illinois an instance where there is not an appeal?

Mr. LANDIS. I wouldn't be familiar with Illinois.

Mr. SPRINGER. Let's take Massachusetts.

Mr. LANDIS. Oh, yes. In many of these smaller cases, cases where the jurisdictional amount isn't high enough, you get one crack at it, and that is all.

Mr. SPRINGER. Those are instances where they are below $25 though, aren't they?

Mr. LANDIS. I think it goes a little higher than that.

Mr. SPRINGER. But are you comparing the rights which an appellant has in a Commission of this sort as the same type as the right of a person who has $25 to $50 involved?

Mr. LANDIS. In many instances, that is true, particularly with the Federal Communication Commission. In many instances where there are fines of $100 or $10 and those things have to be heard by the full Commission——

Mr. SPRINGER. Do you believe that is what the Commission has in mind in this language that is set out in this Reorganization Act?

Mr. LANDIS. I couldn't tell you what the Commission had in mind, but I would say that the language looks toward such a differentiation of important from unimportant cases.

Mr. SPRINGER. Then why wasn't that set out in the act? Why were not the things which the Commission did not intend to delegate, the matters such as an appeal of an appellant, we will say, between several of them over a case involving a television station or a radio station, why were not those instances set out over which he does have an absolute right of appeal before the Commission for full review by the Commission? Why were those not set out?

Mr. LANDIS. Because I think Mr. Springer, that decision can best be made by the Commission and it can be not only made in the first instance, but reviewed again and again in the light of the experience of the Commission, and I think that is a better way to reach the right standard here than to try to write it in advance.

Mr. SPRINGER. Is it your though, Dean Landis, that only insignificant things are the things on which the Commission is going to abrogate its authority?

Mr LANDIS. I should hope so, only the minor things.

Mr. SPRINGER. Have you had any assurance from the Commission or from the Chairman of the Commisison that that is what he has in mind?

Mr. LANDIS. I assumed that is what he had in mind.

Mr. SPRINGER. Have you ever asked him that?

Mr. LANDIS. Yes, I am sure I asked him about the minor things that clutter up the desk of the Commission. I had a chance to look at the agenda that comes before the Commission and have seen the mass of stuff that comes there which seems to me unnecessary to reach that high level for disposition.

Mr. SPRINGER. Dean Landis, under sections 1 and 2, do you visualize that it would be possible or not possible for the Commission to delegate to the Chairman for, in turn, delegating to whomever he wanted to, all of the powers which the Commission now has?

Mr. LANDIS. No. I do not see that that is possible.

Mr. SPRINGER. What makes you think it is impossible?

Mr. LANDIS Let us see. Theoretically, it might be done.

Mr. SPRINGER. May I just ask you theoretically——

Mr. LANDIS. I would like to correct my earlier remark. I am saying, as a matter of theory, that under a reorganization plan of this nature it would in theory be possible for the Commission to delegate its functions to the Chairman.

Mr. SPRINGER. Just a moment.

Mr. LANDIS. But they must be performed by the Chairman now.

Mr. SPRINGER. Just a moment. Would you read that answer back please?

(The answer referred to was read by the reporter.)

Mr. SPRINGER. Now, this question: if the Commission so saw fit, it would be possible, in effect, to make this a one-man Commission?

Mr. LANDIS. I do not think so.

Mr. SPRINGER. Go ahead.

Mr. LANDIS. Because, as I said before, these functions would have to be performed by the Chairman and it would be humanly impossible for him to do it, and I said what I had in mind when I made that answer was the sections of the Administrative Procedure Act that provides that adjudicatory matters must be handled by a member of the Commission, commissioners or a hearing examiner. Those functions that might be delegated to the Chairman to perform personally could not be redelegated by him to a hearing examiner. This plan does not authorize that kind of thing.

Mr. SPRINGER. It does not authorize him to delegate powers which are in turn delegated to him?

Mr. LANDIS. No, it does not authorize him to do that, under those functions, you see, must be performed by Commission members, the Chairman, or hearing examiners. You could not delegate the handling of an adjudiciatory matter to a person who was not the hearing examiner because the Administrative Procedure Act prevents you from doing it.

Mr. SPRINGER. However, they may delegate to him all of the power that they have if they so wish under these sections.

Mr. LANDIS. Yes.

Mr. SPRINGER. I am just asking you if that is possible under this language?

Mr. LANDIS. Theoretically it is possible.

Mr. SPRINGER. All right.

You say he cannot, in turn, take that power and delegate it to other people?

Mr. LANDIS. No, I do not think he can.

Mr. SPRINGER. Dean Landis, I wish I could agree with you. I do not think I am as good a lawyer as you are, but I have sat on the bench and adjudicated some problems, and if this language is true in response to your answer, the question which I put, I am going to be very, very surprised.

Mr. LANDIS. Could I refer you to a case in the Supreme Court of the United States on that? That is the *Cudahy Packing Co.* case. I do not have the citation at my fingertips, but I will be glad to supply it, and that deals with the problem of subdelegation or redelegation of a delegated authority, and the Supreme Court is pretty careful on that kind of thing.

Mr. SPRINGER. I would like to have that if you would care to supply it for me.

Mr. LANDIS. I would be glad to.

Mr. SPRINGER. Because this is undoubtedly going to arise in the Congress, this very question, of what is being done with the authority that it can possibly be delegated to the Chairman.

(The case referred to is as follows:)

Cudahy Packing Co. of Louisiana, v. *Holland*, 315 U.S. 357, 62 S. Ct.; 651, 86 L. Ed. 895 (1942).

Mr. SPRINGER. Are you familiar with the first draft of the reorganization plan?

Mr. LANDIS. The first draft of this plan?

Mr. SPRINGER. Yes.

Mr. LANDIS. Yes, sir.

Mr. SPRINGER. What did it contain other than this?

Mr. LANDIS. It contained provisions that perhaps spelled out more clearly the powers of the Chairman than they are spelled out in section 5 of the Communications Act.

Mr. SPRINGER. What other powers did that original plan give that this plan does not have?

Mr. LANDIS. Primarily a power on the part of the Chairman to deal with the allocation of funds for the different activities of the Commission.

In other words, he could allocate funds as between different activities of the Commission.

Mr. SPRINGER. Did you say funds only?

Mr. LANDIS. That was primarily the additional thing that was spelled out.

Mr. SPRINGER. He did not have any additional powers under that original plan?

Mr. LANDIS. There may have been some other kind of power, but, generally speaking, apart from this power, which was the important one, it would be like section 5 of the Communications Act.

Mr. SPRINGER. You could say principally the only power that he was not given under the original plan had primarily to do only with allocation of finance?

Mr. LANDIS. That is right.

Mr. SPRINGER. It was my understanding, Dean, and if you will clarify this, please, that the plan as presently presented is only about one-twelfth of the plan originally presented. Is that about right?

Mr. LANDIS. I would say one-third or one-quarter, not one-twelfth. There were a great many powers spelled out for the Chairman. I think if you will take a look at the recent release of the Interstate Commerce Commission in which they spell out the powers of the Chairman of that Commission, the first draft followed that very closely.

Mr. SPRINGER. Now did that draft also apply to the Federal Communications Commission?

Mr. LANDIS. I do not know whether it was in the first draft of the Federal Communications Commission plan or not. I know it was in the plan No. 1, the first draft.

Mr. SPRINGER. May I ask you this: Did you come down to discuss it with the chairman of this committee?

Mr. LANDIS. I do not know whether I discussed this specific plan. I certainly have tried to get the benefit of his ideas, and I am not trying to impute to him anything except that I sought the benefit of his experience.

Mr. SPRINGER. Now, did anyone else come with you down to talk to the chairman?

Mr. LANDIS. I do not recall.

Mr. SPRINGER. Did Mr. Minow?

Mr. LANDIS. Mr. who?

Mr. SPRINGER. Mr. Minow.

Mr. LANDIS. He may have done so individually.

Mr. SPRINGER. Not with you?

Mr. LANDIS. No.

Mr. SPRINGER. I believe that is all, Mr. Chairman.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Florida. No question.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Dean, I am sure that I do not have to tell you that I am not a lawyer but, I must say your answers are quite confusing.

Originally, you were head of a task force, were you not? They called it a task force.

Mr. LANDIS. No, I was not head of a task force. I was requested by the President-elect to examine this entire situation. There was nobody else appointed or delegated to do that except myself. I did get assistance from other people.

Mr. YOUNGER. Were the reports in the newspaper, correct when they said that you had recommended a czar to be established in the executive department overseeing the regulatory agencies?

Mr. LANDIS. No, they were not correct. They were far from correct.

Mr. YOUNGER. To what extent were they not correct?

Mr. LANDIS. They were not correct because my recommendations were simply a recommendation to establish in the Office of the President an individual, an office, which would oversee—I think the word was chosen wrongly on my part—which would oversee the operations of these administrative agencies and bring to their attention or to the attention of the appropriate authorities, Congress or other-

wise, lags in the process, the logjams that were occurring, and suggestions as to how to deal with these.

I had in mind something very similar to the Administrative Office of the U.S. Courts where that officer watches the flow of business through the various courts and tries to assist them in dispatching their business or bring matters to the attention of the Judicial Conference for amelioration and the like. I do not think that is being a czar in any sense of the term.

Mr. YOUNGER. Why did you abandon that plan?

Mr. LANDIS. I have not abandoned it. I still think it has got the seeds of a good idea in it.

Mr. YOUNGER. Well, it is not a part of the reorganization plan, is it?

Mr. LANDIS. No, it is not a part of this plan.

Mr. YOUNGER. Under the reorganization plan, is it your idea that there should still exist in the executive department an overseer?

Mr. LANDIS. Certainly not under this plan. There is no suggestion.

Mr. YOUNGER. No, but is it your idea that it would be well to still have an overseer in the executive department?

Mr. LANDIS. Well, I think perhaps that with the establishment of the Administrative Conference of the United States, those functions could perhaps be best performed by that Conference, and it might be unnecessary to create this additional office.

Mr. YOUNGER. If it were put into effect, would not that remove the regulatory agencies pretty much from the control of the Congress?

Mr. LANDIS. I do not think so because the Administrative Conference is really under the control of the administrative agencies themselves and they would just have somebody there that would watch, just as the Administrative Office in the Department of Justice now watches the progress of business in the various agencies. That is being done today.

Mr. YOUNGER. The courts are not under the jurisdiction, of the Congress. They are a separate and independent branch, like the legislative branch, the same as the executive is, but as I understand in your answer before to questions by Mr. Springer, you held that these regulatory agencies were arms of Congress.

Mr. LANDIS. That is right.

Mr. YOUNGER. Then if they are arms of the Congress, how can you put somebody in the executive branch to oversee them?

Mr. LANDIS. I also take the position that these administrative agencies are called upon to enforce the laws of the United States, the laws that are passed by the Congress, and that being so and the Constitution placing upon the President of the United States a duty to see that the laws are faithfully executed, not to change the laws but to see that the laws are faithfully executed, he has to keep his eye on just how well these outfits are performing.

Mr. YOUNGER. Well, it seems to me, just as a layman, that what you are trying to get is a control of the regulatory agencies and you were not able to get in your plan of having somebody in the executive office. Apparently that idea died or was abandoned for some reason and the reorganization plan was substituted. But I am rather convinced by your testimony and the reorganization act that you are attempting to accomplish exactly the same thing by putting all the power in the

Chairman of these Commissions with the Chairman designated by the President and the executive would accomplish exactly the same thing as you originally had in mind by putting a so-called czar in the executive branch. I cannot get away from that idea, Dean. I am not a lawyer and I cannot see through all of these ramifications, but I think I can see and follow a line of direct authority, and I am sure in my own mind that you still have that idea of a czar in mind and this reorganization plan has that same thought, but in a more subtle and roundabout way.

Mr. LANDIS. I will deny that. There is nothing subtle in this reorganization plan, and the one single point on which it increases the power of the Chairman is simply that he is given this new responsibility which he did not have before of assigning the personnel of the Commission to the various tasks that the Commission itself had indicated should be done.

Mr. YOUNGER. You just said a while ago that this reorganization plan did not assign a new function of any kind.

Mr. LANDIS. It transfers.

Mr. YOUNGER. That which was not existent in the present law.

Mr. LANDIS. It transfers.

Mr. YOUNGER. It gave them a new function, is what you just said.

Mr. LANDIS. Well, it gives the Chairman a new responsibility. That is true. But I do not regard that as any violation of section 5, subsection 4 of the reorganization act.

Mr. YOUNGER. Are there any functions provided in the reorganization act that could not be accomplished by a Chairman of a Commission under the present law?

Mr. LANDIS. I just could not quite understand that question. Could you read it back and maybe I could.

(The question referred to was read by the reporter.)

Mr. LANDIS. If I understand your question, I do not see that there is the imposition upon this agency of new functions, except in the distribution of the responsibilities within the agency of certain functions.

Mr. YOUNGER. Let me put it another way, Dean.

If you were Chairman of the Federal Communications Commission now and you wanted to accomplish all the things that you claim will be accomplished under this reorganization act, could you accomplish those things?

Mr. LANDIS No, I could not.

Mr. YOUNGER. Why?

Mr. LANDIS. Because there are certain functions that have to be abolished in order to accomplish it.

Mr. YOUNGER. Then there are functions provided in the present law that are abolished?

Mr. LANDIS. Yes.

Mr. YOUNGER. Then how can you reconcile that with what it says that no reorganization plan shall authorize any agency to exercise any function which is not expressly authorized by the law at the time the plan is submitted to the Congress?

How do you reconcile those two statements, Dean?

I am not a lawyer, but I cannot reconcile those two statements in my own mind at all.

Mr. LANDIS. I do not think the abolition of a function is necessarily the creation of a new one. The Reorganization Act in section 2—no, sction 3, paragraph 6, specifically authorizes the abolition of the whole or any part of any agency—no. I meant paragraph 2—the abolition of all or part of any functions of the agency. That specifically authorizes you to propose a reorganization plan which does that.

As I said before, you do abolish a function and also create the authorization to delegate which is specifically provided for by subsection 5 of section 3 of the Reorganization Act. That authority derives from the Reorganization Act which certainly the Commission and the Chairman do not possess at the moment.

Mr. YOUNGER. Could you accomplish that by amendment to the present Communications Act?

Mr. LANDIS. Oh, yes, you could accomplish anything that is in this reorganization plan by statutory amendment.

Mr. YOUNGER. Why was it not done by that process rather than the reorganization process?

Mr. LANDIS. That is a matter of choice, I guess.

Mr. YOUNGER. Choice of whom?

Mr. LANDIS. I suppose the administration. Congress has granted those powers.

Mr. YOUNGER. Just one other question.

You say that none of the reorganization plans have been tested in the courts, as I understand it?

Mr. LANDIS. There is nothing in the reorganization plan which——

Mr. YOUNGER. None of the reorganization plans that have been put into operation by approval of the Congress heretofore have ever been tested in the court? Nobody has contested them?

Mr. LANDIS. No, none of them have.

Mr. YOUNGER. That is what I understand.

In other words we are operating very much as we were before the "Humphrey decision." The President used to call for resignations, and even though a man was appointed for a definite term he resigned, until Mr. Humphrey came along and contested that theory. The Supreme Court found the President could not demand a resignation from one who was appointed for a definite term.

Is there any doubt in your mind that if this reorganization plan goes through, that it will not be tested by the court?

Mr. LANDIS. I do not know whether it will be tested or not.

Mr. YOUNGER. Is there any doubt in your mind but what it will be tested?

Mr. LANDIS. I think it will survive a court test without any question.

Mr. SPRINGER. Will you yield for two questions?

Would you supply for the record at this point a copy of the first plan that was under discussion which I mentioned in my questioning a few moments ago?

Mr. LANDIS. I do not know whether I can do that.

Mr. SPRINGER. May I put it this way: Will you ask the President if it will be all right to submit the plan for the record before this committee?

Mr. LANDIS. I can transmit your request, certainly.

Mr. SPRINGER. And if he says all right, then you will?

Mr. LANDIS. Of course.

Mr. SPRINGER. Dean Landis, this subcommittee is in essence, a successor to the Legislative Oversight Subcommittee of this same committee in the last two Congresses. I think we have rule of thumb that any contact by the executive department with an agency was "influence." Do you understand what I said? I want to be sure you understand what I said before you answer any other questions.

Mr. LANDIS. Yes.

Mr. SPRINGER. If we apply that same rule in this subcommittee to contact by the executive department that was applied in the 85th and 86th Congress, it would be said that the executive department was applying influence to this agency, would it not?

Would you like that question read back?

Mr. LANDIS. I would like that question read.

Mr. SPRINGER. Would you read that question, Miss Reporter, please?

(The question referred to was read by the reporter.)

Mr. LANDIS. I do not believe you quite mean that, Mr. Springer, that any contact with an administrative agency would be applying influence.

I quite agree with you that any effort to influence, except openly and in court, a regulatory agency with regard to an adjudicatory matter would be wrong. I simply need to refer to the President's message of April 13, I believe it is, where he enunciates that rule very, very plainly.

Mr. SPRINGER. In your contacts with the members of the Commission, were not you attempting to influence them in effect on this plan?

Mr. LANDIS. I would not regard that as an adjudicatory matter.

Mr. SPRINGER. But you are influencing. That is an adjudicatory matter. That is influence upon the course of which this Commission is going to pursue; is it not?

Mr. LANDIS. I do not believe you think that, Mr. Springer, that you cannot talk with an agency and suggest certain changes in the procedures that are followed that has not reference to any particular case and not discuss it with them and perhaps try to persuade them to your point of view.

Mr. SPRINGER. And are not you doing that? Not in open court but are you not doing that privately with these people?

Mr. LANDIS. I do not say that is a matter that should be done in open court.

Mr. SPRINGER. You do not? Do you not think that there ought to be other people who would have right—who are interested in the industry—to present their views upon changes in this the same way?

Mr. LANDIS. I assume they will.

Mr. SPRINGER. And have opportunity to present their views? Have they?

Mr. LANDIS. To whom?

Mr. SPRINGER. To the Commission.

Mr. LANDIS. To the Commission?

Mr. SPRINGER. Yes.

Mr. LANDIS. Oh, I think this has been a subject of general information for a long, long time.

Mr. SPRINGER. Could you name any hearing that has been set for the Commission where the change with reference to reorganization is

the same as is provided when you change a rule of the Commission in which you give notice?

Mr. LANDIS. Well, I understand that there are hearings scheduled on these reorganization plans.

Mr. SPRINGER. That there have been hearings?

Mr. LANDIS. That there are hearings.

Mr. SPRINGER. Before the Commission?

Mr. LANDIS. Not before the Commission. Before the Congress.

Mr. SPRINGER. Before the Congress?

Mr. LANDIS. Yes.

Mr. SPRINGER. But there was no opportunity to present any countersuggestions by the industry or other interested persons and no opportunity to present their views to this Commission as you did as the representative of the executive department?

Now, am I right or wrong?

Mr. LANDIS. I do not know whether there were other people that presented their views.

Mr. SPRINGER. When Mr. Minow testifies we can find out.

Mr. LANDIS. I do know that I have discussed the theory that underlies these plans not only with people wthin the Government but people at the bar, a great many people, to get their views on it.

Mr. SPRINGER. That is all.

The CHAIRMAN. Did you discuss it with people in the industry?

Mr. LANDIS. Yes; I have discussed it with people in the industry.

Mr. MOSS. Mr. Chairman.

The CHAIRMAN. Mr. Moss.

Mr. MOSS. I want to make it very clear that in the course of the 4 years of the existence of the Oversight Committee that there was no "rule of thumb" that discussions between the Commission and the executive departments ever implied "influence" unless it was on a matter pending before the Commission as an adjudicatory problem, and I would point out——

Mr. SPRINGER. Will the gentleman yield?

Mr. MOSS. No; the gentleman will not yield until the gentleman has finished.

I will point out that we require by law that these agencies communicate with the Executive in the preparation of budgets, a very important part of the function of these agencies is to see that they have the funds and the personnel to operate. We require them to have the approval of the Bureau of the Budget. Now, we do not say that they cannot submit to the Congress proposals which are disapproved by the Bureau, but we do require that they be first submitted to the Bureau. We also require that of certain forms and other things. In regard to action taken by the Congress, in the reorganization act, for the benefit of the gentleman—and I will yield to him later—I served on the committee which reported the last three amendments to the reorganization act. The act itself says that the President shall examine from time to time the organization of all agencies of the Government and shall determine what changes therein are necessary to accomplish the following purposes, and then enumerates the purposes; and it says whenever the President, after investigation, finds—and then again enumerates.

I do not think that the Congress participating in the drafting of this ever envisioned an arm's-length dealing in discussion of these

things which the President is directed to do. I do not want this record to show that a discussion of administrative problems under the law as it now exists is an exertion of influence, improper or otherwise. Now I will be happy to yield to the gentlemen.

Mr. SPRINGER. I will stand on the record. The gentleman from California was the most severe critic of contact by the Executive with any agency, and I will take it that he is the one originally who said the rule of thumb is any contact with an agency is "influence."

Mr. Moss. I would wager that the gentleman cannot produce that quote.

Mr. SPRINGER. I will let the record rest on what it is.

Mr. Moss. I will ask the gentleman for my benefit to give me the quote.

Mr. SPRINGER. You were te outstanding exponent of that theory.

Mr. Moss. Because the words I used in the instance of Mr. Adams first were to say that you, sir, first have laid down the rule in your discussions. I prefaced my remarks to the good Governor in that statement, and his intervention was in a matter then in dispute before the Commission.

Mr. SPRINGER. That has not been the position of the gentleman from California at all.

Mr. Moss. The gentleman stands on his position and the gentleman from Illinois has incorrectly in the extreme stated the position of the gentleman from California.

Mr. SPRINGER. I will let the record stand. There has been no more severe critic of contact of agencies than the gentleman from California.

Mr. Moss. In his own subcommittee, extensive hearings—and I remember Mr. Sinclair Armstrong coming before the committee and trying to place himself in a position where he felt it was proper to seek the advice of the Attorney General on matters then in adjudication before the Commission. That I challenged. But after all, the President appoints the gentlemen. We have given him that authority and I hope again in selecting them that it is not an arm's-length procedure. I think he should know them, have some idea of their competence, some measure of their capabilities. If he does not, he has not properly discharged his responsibilities.

Mr. SPRINGER. Could I ask the gentleman a question?

Mr. Moss. I yield to the gentleman.

Mr. SPRINGER. If this same reorganization plan had been submitted in the Eisenhower administration, would he have supported it?

Mr. Moss. I had not indicated what I intend doing now. I am merely taking exception to the gentleman's rule of thumb which is one which I think he has fabricated at this time and it has never before been stated.

Mr. SPRINGER. Will the gentleman just answer the question?

Mr. Moss. The gentleman does not propose now to give to the gentleman from Illinois an indication of what he has not yet concluded. I do not know whether I will support it.

The CHAIRMAN. Gentlemen, may the Chair kindly suggest that we return to the plans and try to analyze these proposed reorganization plans?

Mr. Moss. Mr. Chairman, it appeared for a few moments that we were here for the purpose of a political battle.

The CHAIRMAN. The Chair believes and hopes we will make a record on what the committee would like to do, if anything, with reference to the reorganization plans, and I propose that we proceed for those purposes.

Mr. ROGERS of Florida. Mr. Chairman, I have just a quick statement. As I say, I don't know what I want to do on this either. But I must say that I would disagree with any charge of influence in a matter of this type, and I feel that is a rather extreme statement and I would not want the record to show that, either.

Also, as I understood the testimony this afternoon, Dean Landis, you feel that some of the procedures that have been put into effect for instance in the Interstate Commerce Commission are advantageous and perhaps could be used in some of the other Commissions by allowing the Chairman the right to delegate certain powers and divide the Commission into panels, and also to delegate some authority where minor matters that are cluttering up the working of the Commission could be handled expeditiously. Is that your basic objective?

Mr. LANDIS. That is the basic objective, yes.

Mr. ROGERS of Florida. Thank you very much.

Mr. BENNETT. Mr. Chairman, I have raised a question as to whether this reorganization plan amounts to influence, and whether a contact or discussion by Mr. Landis with him with a Commissioner amounts to influence. I personally doubt that that could be said to be influence.

I think as long as that question has been raised, though, we ought to at least get the record in its proper perspective as to what your relationship would be, and is, as a member of the White House staff with respect to these agencies.

In line with this recommendation you made earlier last fall after the election and what is likely to happen as a result of it.

Now, you mentioned that there ought to be an overseer in the White House as far as regulatory agencies are concerned. You said that the President has the duty of enforcing all of the laws, and so it is proper to have someone in the White House breathing down the neck of these agencies to see whether they are enforcing the law. Maybe that is right, but will you give me one illustration of what an officer in the White House such as you suggest would do in respect to one of these agencies on the question of whether or not they were enforcing the law?

Mr. LANDIS. Yes, I can easily give you that. I would be interested, for example, in the time it takes to dispose of various different types of business, and if that time is unduly long, the old maxim that justice delayed is justice denied comes into operation. I think it is the business of the executive to watch all branches of Government, and to see that they effectively dispatch their business. Unfortunately, as I looked at the scene last December——

Mr. BENNETT. Before you leave that, then would you consider it proper for this officer at the White House to call the Chairman of the Federal Communications Commission, or some other Commission and say "Now, Mr. Chairman, here is case X. It has been down in your place for a year and a half. What is the trouble? Why hasn't a decision been made?"

Would you consider that to be a proper function of the officer?

Mr. LANDIS. I doubt that, with regard to case X, but if you say "Here is a category of cases that don't seem to be moving, is there something wrong that keeps those cases from moving," that I think is a very important thing for the Chief Executive to know.

Mr. BENNETT. Well, would you consider it proper for this officer to call for a Commission file in a case that had been adjudicated or was in the process of being adjudicated, to determine whether the law was being properly enforced?

When is the law being enforced, that is quite a broad question in itself, is it not?

Mr. LANDIS. It is a broad question. I have seen very frequently that a particular case is sticky, and it is difficult to decide, or something holds it up.

Now, those things happen in court and in any agency, but when you find a category of cases that you think should be disposed of within a reasonable time and they are not being disposed of within a reasonable time, I think then one should look at it and seen what can be done.

Mr. BENNETT. I frankly think that you are getting down to very, very thin ice, when you suggest that there be an officer in the White House or in the executive department looking after these agencies to see whether they enforce the law.

Regardless of how circumspect you may be, and this is not a question of bringing up the propriety of anybody's motives or conduct, but when somebody in the White House close to the President, one of his assistants, contacts a Commissioner, as Mr. Moss was talking about a few minutes ago—when he contacts a Commissioner or the Chairman of a Commission or a member of the Commission and says "Here is what we would like you to do," what is that poor guy going to say? Is he going to disagree? Is he likely to disagree very violently with an emissary of the President? That is the very question that we raised in the Sherman Adams case.

Mr. LANDIS. It is not the question.

Mr. BENNETT. It is not a question of who agreed with him. The mere fact that a presidential assistant makes an inquiry about a case, even about its status, implies to the person that he is talking to, the Commissioner or member of that Commission that the White House has an interest in the outcome of that case. Is that not true?

Mr. LANDIS. I would not say so.

Mr. BENNETT. You would not say so?

Mr. LANDIS. No, simply making an inquiry as to the status of a case, and that is all——

Mr. BENNETT. You think it is all right for the officer that you suggest in the White House to be calling the Commission and making inquiries about the status of cases?

Mr. LANDIS. I see no reason, because you could find out the status of the case by going to the public files.

Mr. BENNETT. That is not what I asked you.

Mr. LANDIS. If you asked someone to do it for you, because the public files are nearer there, I don't see that there is anything wrong there.

Mr. BENNETT. You think it would be proper for the overseer to be making these inquiries?

Mr. LANDIS. That astounds me, because you are asking only for public information, information that is public.

Mr. BENNETT. Don't you see any significance or any impact when a White House staff member calls a Commission member and asks him about the status of a particular matter that is pending?

Mr. LANDIS. In what way? You certainly are not saying "I would like to have you decide it this way or that way," and there is no implication of that. It is just what is the status of the case.

Mr. BENNETT. How long before you decide it?

Mr. LANDIS. I just want to know where it is.

Mr. BENNETT. There is nothing wrong with that. Is there anything else that you think the officers could ask him about the case?

Mr. LANDIS. I certainly don't think that he should suggest how that case should be disposed of.

Mr. BENNETT. I think we would all agree on that.

Mr. MOSS. Will the gentleman yield?

Mr. BENNETT. I will in a moment.

Do you think that there is anything else that this officer could properly discuss about a contested case with the Commissioner?

Mr. LANDIS. Very little, I think. I think very little because he should be extremely circumspect so as not to give any indication as to what disposition should be made of a case of that nature. He should be very circumspect.

Mr. BENNETT. Do you think that he should make an appointment for somebody to see a Commissioner about a case, to see what is holding it up?

Mr. LANDIS. I certainly do not.

Mr. BENNETT. Do you think it is right for him to inquire about delays?

Mr. LANDIS. He can inquire what the status is, and that may be an inquiry about delays.

Mr. BENNETT. Do you think it would be right for the officer to make an appointment for some interested party to go down and talk to the Commissioner about delays?

Mr. LANDIS. About delays as a whole?

Mr. BENNETT. Yes.

Mr. LANDIS. In a general category of cases?

Mr. BENNETT. Yes.

Mr. LANDIS. Well, if for example, some individual has studying one of these Commissions, and he was making a study of it, I should think it would be perfectly all right to call the Chairman and say "Here is professor So-and-So, and he would like to make a study of your agency, and I hope you can assist him in that manner."

I see nothing wrong in that.

Mr. BENNETT. You would not express an opinion on a controversial case?

Mr. LANDIS. Oh, no.

Mr. BENNETT. But you would allow considerable latitude in this overseer at the White House making an inquiry about the Commission's business, whether they are doing a good job or a poor job in getting it done?

Mr. LANDIS. I think the relationship is always one of trying to examine the governmental mechanism and see whether or not there are improvements possible. I certainly know when I was on the Securities and Exchange Commission and on the Civil Aeronautics Board, I sought the advice of members of this committee very frequently with reference to certain problems, and not individual problems, but problems of delay, and changes in the substance of the law and the like. Certainly you would like to get the experience of men who have that experience so as to enlighten you and see what can be done about these matters. I hope that relationship between this committee and the members of the Commissions endures, because I think it is a very important relationship. You can help the Commissions just as they can help you.

Mr. BENNETT. I think if you are talking about legislative matters, I think that I agree with you thoroughly.

Mr. LANDIS. I am talking about legislative matters.

Mr. BENNETT. That may be different. Well, is your job going to be to make these contacts, whatever contacts are made in this overseer capacity?

Mr. LANDIS. No, I wouldn't say so.

Mr. BENNETT. Are you going to be the overseer of the agencies?

Mr. LANDIS. I do not know whether there is going to be one.

Mr. BENNETT. Well, are you going to be the man in the White House who is going to see that these agencies are enforcing the laws?

Mr. LANDIS. Well, my appointment at the present time was announced as being temporary. I hope it will be.

Mr. BENNETT. While you are there, are you going to be the overseer of the agencies?

Mr. LANDIS. I am not the overseer of the agencies. I am examining them to see what ideas I can come up with, as to how better to improve their efficiency. That is my function.

Mr. BENNETT. Is your principal duty going to be to formulate reorganization plans such as this one for FCC and some of the other agencies, until you get them reorganized the way you want them to be?

Mr. LANDIS. I think probably that that will continue. I am working on some other agencies at the moment, seeing how their methods of doing business could be improved.

Mr. BENNETT. Have you talked to the chairman of this committee or the chairman of the Senate committee, which has jurisdiction over these regulatory agencies, regarding the feasibility of making your recommendations in the form of legislative recommendations and getting them passed by Congress?

Mr. LANDIS. I have sought their experience, as I indicated. But I certainly do not want to suggest that anything here is necessarily their thinking. I hope I have benefited from my contacts with the chairman of this committee, and with the comparable Senate committees and Chairman Dawson of the House Administrative Committee.

Mr. BENNETT. Have you sought advice from the chairman of this committee and the chairman of the committee in the Senate and have you consulted with them about the feasibility and advisability of handling these recommendations by reorganization plans or by legislation?

Mr. LANDIS. I do not know whether I have dealt with that specifically. I know I have talked generally about certain ideas and I have gotten the benefit of other ideas from people here in the Congress and people in the agencies, and people in the academies and people at the bar, and all along the line. That is what you do when you study something.

Mr. BENNETT. Essentially you are sitting there in your own office writing up these reorganization plans yourself, and they are your ideas, without consultation with the legislative branch in advance.

Mr. LANDIS. I do not feel that I should ask anybody in the legislative branch to put their "John Henry" behind a particular expression. I do not think that that is what you should do.

Mr. BENNETT. Well, Dean Landis, this committee and our chairman have a special committee that has been dealing with the very thing that you are dealing with here. I am not saying that you are a novice in this business by any means, but on the other hand I don't think that our chairman is a novice or even the members of the committee are novices in this field.

And yet, after our 4 years and after all of the sweat and tears that we have expended on this thing, we find now that somebody has had himself appointed as a special assistant to the President and instead of correcting the defects of the regulatory agencies by the usual legislative process, we find now that you have been set up down there by the President to do this job yourself, and not only to do it yourself but do it without consultation——

Mr. LANDIS. That is not so.

Mr. BENNETT. With this committee or anybody else, apparently.

The CHAIRMAN. Will the gentleman yield to me?

If the dean has any reluctance to state, I do not have any reluctance at all. Yes, Dean Landis has discussed these matters with me on numerous occasions, since his first designation by the President to make a report last November to him regarding certain matters concerning the agencies, which I believe I reported to this committee at that time, and to Mr. Lishman. I had a conference with him one entire afternoon, in connection with the problem and furnished him certain information from the committee, which we felt would be appropriate.

In addition to that, we consulted with at least two committees that were set up in connection with this, and since then Dean Landis in connection with his investigation of all of these matters has discussed several of them with me as chairman of the committee, on several occasions.

I don't hesitate to say that we have had such discussions and there have been some consultations. I do not want to indicate, however, that I take any credit for the reorganization plan at all and I would say to the gentleman, I think that the dean understands pretty well some of my views on a great many things affecting these matters that we have discussed very frankly. I would not want that to be any problem at all.

Mr. BENNETT. I raise it, Mr. Chairman, only from the standpoint of whether you had been consulted as to the advisability of making these changes by reorganization plans as against making the changes

by appropriate bills through this committee and through the House of Representatives.

The CHAIRMAN. We had discussed some of those points. We discussed very frankly the reorganization act which we are talking about now which—and I suggested my preference, and with reference to the right of any party on a review by oral argument to the Commission on initial decision, we discussed that. I told him that I thought that that was amending the basic act, and it seemed to me would be more appropriately approached by legislation.

We discussed section 3, the abolishing of the review staff, and very frankly I thought it was amending the present act. We discussed that very thoroughly, and I again expressed my feeling that it might be more appropriately approached by amendments to the act.

The dean, as he has told this committee today, has said that the matter could be expedited and reached more quickly to give the Commission leeway and authority to begin to do something about what we have tried to advocate over the years, and that is the enormous and innumerable delays that we have had down there.

So the dean and I have discussed that, and I still have that position, that I would prefer to handle this by legislation. He knows that. But they feel that this is the way to expedite it, and for that reason they proposed this reorganization plan.

Mr. BENNETT. I thank the chairman for his expression, and I want to say that I agree with him thoroughly. I think it would be much better to make this approach through legislation. I say that in the most kindly way, because there are some of these things that the dean has suggested in this reorganization plan, particularly the abolishment of the so-called review staff and the opinion-writing staff that I personally have been advocating for the last 4 or 5 years. I think it is a very wise and prudent thing to do.

But what we are talking about here today, and I think what some of us are interested in here, is whether we do this in an orderly way, or what we regard as an orderly way, or whether we do it by what I think is Presidential edict; namely, writing up these reorganization plans and sending them up here for us to exercise what we call a weak veto power over the veto, especially when they change the basic law of the land.

That is all, Mr. Chairman.

Mr. Moss. I just want to take the opportunity to concur in that portion of the statement of Mr. Bennett, that it is my conviction that any call from the White House inquiring the status of a case is improper, and I think that it does exert influence, whether or not that is the intent. I stated that very definitely at the time that Governor Adams appeared before the committee and I have not changed my views at all. I am convinced that the average man looking to the President for appointment or reappointment, is going to be intersted in expediting those matters where he knows there is an expressed Presidential interest. I would regard such calls as improper. I think that they have a very delicate relationship here and it is important that these Commissions be kept as independent of the executive on the regulatory functions delegated them by the Congress as it is humanly possible to achieve.

For that very reason I did not view at all favorably the proposal for an overseer in the White House. I felt that the overseer function can be adequately maintained by the committees of the Congress.

The CHAIRMAN. Dean Landis, you have been here for some time now, and the hour is getting late, but I would like to take just a few minutes, provided the other members of the committee have the time, to try to develop this and make the legislative history here and I will do my best to refrain from repetition.

The concern that we have, and it has always been my concern during the entire time, is the independence of these agencies. I do not think that there is any great area of disagreement that these are agencies that were established by the Congress and they are independent branches of our Government, set up to act for and instead of the Congress and in some way to legislate on behalf of the Congress.

It is our feeling, and certainly mine, and I think it is the feeling generally of this subcommittee, that that independence shall not in any way be interfered with. There is grave concern on behalf of the committee that there might be an unwarranted interference on behalf of the Executive and not necessarily because this administration happens to be in office now, but with reference to any administration. I am very glad, as has been expressed by others here, that with all deference to you, that your recommendation of the so-called czar, which you said you did not intend, and you did not claim that characterization of it, but an overseer just the same—I am very glad that that recommendation has not been carried out, and I think that that would probably be an unwarranted invasion of authority and influence and interference of these agencies as an independent branch of the Government, designed to perform a particular purpose.

That is the reason for the questions that have been asked you this afternoon, and that is the reason many members of the Congress have grave concern about these proposals. I think the objectives that are contained in these proposals here have a great deal of merit, and some of the things that are in them, and implied in them, our subcommittee has recommended to the Congress. I thinnk the important thing is to find out just what to do.

Now, in your explanation here, you have explained very carefully, I think, and clearly, that in the very first section, section 1, the authority that was delegated can be effectuated only by a published order or rule of the function of the Commission to a divisions of the Commission and so forth, and nothing can become applicable, as I see it—and I want to get that very clearly from you—as to whether or not that was intended. It says nothing here is to be delegated, except as the Commission as such by published order or rule that would bring about such delegation of authority. Is that true or not?

Mr. LANDIS. You are quite right on that, Mr. Chairman.

The CHAIRMAN. In other words, as you know from our conversations and some of the meetings that we have had, where I have expressed my feeling about this particular matter, and as you well know, and as members of this committee very well know, one of the things I was concerned with is taking away from the Commission the authority for the Commission to act as a commission and giving it to one man, the Chairman without the Commission having any authority whatsoever.

Now, as I understand from this proposal here, beginning with section No. 1, nothing can be done with reference to this reorganization plan without the Commission itself taking affirmative action to bring it about.

Mr. LANDIS. That is quite correct, that the delegation must be undertaken by the Commission and the words "published order or rule" imply very clearly that it shall not be an informal type of delegation, but it shall be a formal type of delegation, which the world will know, and that delegation can only be done by the action of the Commission as such.

The CHAIRMAN. And the Commission then after that delegation of authority by a published order and by affirmative action of the Commission, can by Commission action rescind the delegation if the Commission so desires.

Mr. LANDIS. At any time it can be rescinded.

The CHAIRMAN. Now, that is the first part of section 1.

The second part of section 1 has to do with 7(a) of the Administrative Procedure Act, which would maintain the authority therein contained with reference to hearings of matters before the Commission. In other words, that is, it may be heard by the Commission, by a Member of the Commission, or by a hearing examiner.

Mr. LANDIS. That is right.

The CHAIRMAN. And that rule of law is maintained in this proposal?

Mr. LANDIS. That is right.

The CHAIRMAN. Now, the third provision in section 1, then, is that the functions of the Commission with respect to the filings of exceptions to decisions of hearing examiners and the functions of the hearing oral arguments on such exceptions before the entry of any final decision, order, or requirement as is set forth in subsection "b" of section 409 of the Communications Act of 1934, are hereby abolished.

Now, that is the provision of law that, as you know, I raised some question about.

Mr. LANDIS. Yes, you did.

The CHAIRMAN. In other words, on initial decisions, the law presently provides that any party may file an exception, and therefore has the right to oral argument before the Commission and a review by the Commission.

Mr. LANDIS. That is the way the present law stands.

The CHAIRMAN. That is the present law?

Mr. LANDIS. Yes.

The CHAIRMAN. And by this language, that provision of the present law is repealed and adjudicatory matters are decided on the same basis as is now provided for nonadjudicatory problems?

Mr. LANDIS. Yes.

The CHAIRMAN. Making it discretionary whether or not the Commission would review it.

Mr. LANDIS. Yes, you are quite right in that field, that the existing law in the case of the Communications Commission that the regulatory functions can be delegated and provides a discretionary right of review over such action.

The CHAIRMAN. That is right.

Mr. LANDIS. That is right. Actually that rarely occurs. Well, it does occur in certain cases. I would say it does occur.

The CHAIRMAN. Of course I personally think, as the staff has suggested in its memorandum, which was read to you a moment ago, that you are getting in for some real litigation. I think the first time you have a license application before the Commission and this particular problem arises, I think that you are going to see it on its way to the courts. That is my own idea about it and I do not necessarily say it will happen or it will not. I have a feeling that that is what is going to happen.

Now, suppose it does, and that is the reason I raised the question—suppose it does, and then you have a long delay before the courts can decide. Would that not in itself cause a bottleneck to arise during this time, and you get no effective results from it whatsoever?

Mr. LANDIS. If that did happen, and if the court took the position that the reorganization plan was beyond the powers granted to the President under the Reorganization Act, you would revert to the present method of doing business, following a decision of that nature. The Commission would have to change its rules.

The CHAIRMAN. The Commission would be in the same position that it has been in so many times, it would be sitting down with no action one way or the other.

Mr. LANDIS. Well, I don't think so. I think that it just reverts to the existing scheme that it has now.

The CHAIRMAN. Well, I think one of the problems, regardless of all of the criticisms that have been made, and I suppose that I have had my share of them at times—but I think one of the problems which some of these commissions have had, is they have been tied up in court a lot of times, and that has tied everything up.

Mr. LANDIS. Well, it would tie up that particular case, and of course it would not tie up any other cases where no judicial review was sought.

The CHAIRMAN. You would agree with me that that is possible?

Mr. LANDIS. That is possible.

The CHAIRMAN. Now, subsection "b," that has to do with what we have just been talking about, the discretionary right of review, the action of any such commission, individual commissioner, hearing examiner, employee or employee board, upon its own initiative, No. 1, and No. 2, upon petition of a party, and No. 3, by an intervenor in such action.

In other words, this leaves the Commission with the authority by its own initiative or the Commission may on a petition by a party or on a petition by an intervenor to such action, within such time and manner as the Commission by rule may prescribe, within its discretion review the action of whatever officer might have been designated for that particular function.

Then you have the proviso—and this is the first safeguard that you mentioned, I believe, a moment ago—that is, a vote by a majority of the Commission less one member shall be sufficient to bring this action before it.

In other words, it can be forced to be brought before the Commission, if the Commission in its discretionary authority said, "No, we are not going to do it," then by majority of the Commission less one member, it must come before the Commission; is that right?

Mr. LANDIS. That is right.

The CHAIRMAN. Now, what do you mean by that? You have indicated here that it means a majority of the full Commission, as in the case of the FCC, seven members. Suppose there are only five members that are present and participating instead of the seven? Would it still mean a majority of the seven members and require three, or would it then mean a majority of the five members which would require two?

Mr. LANDIS. I think that you have to distinguish two cases there. If there are five members participating but there are two other members on the Commission, in my opinion this means that you would have to have three members in order to invoke this section.

The CHAIRMAN. I am sorry, but I was interrupted. Could I interrupt you just a moment off the record?

(Discussion off the record.)

Mr. LANDIS. I was going to distinguish that case from the case where you have five members on the Federal Communications Commission only because you have two vacancies. Now, in that situation, a majority of the Commission is three and minus one is two, and therefore, two members could invoke this provision.

The mere fact that certain members didn't participate does not reduce the majority, but if there are no more than five members on the Commission, then as I would read this section, it would mean that two of them, being a majority less one, could invoke that provision.

The CHAIRMAN. Well, we have had that question before, whether or not it requires in a Commission that is supposed to be a full Commission with seven, whether or not it would require four members voting in order for a decision to stand.

It seems to me as if there are some court questions on that. I am not sure, but I would hope that we would not again get into any uncertainty with reference to this and I have a feeling that that is just what we are doing. From what you have just said, if you have a seven-man Commission but there are only five members on it and two vacancies, you would construe or at least you intend this then to mean that a majority of whatever number of Commissioners are actually serving.

Mr. LANDIS. Yes, that is what I mean or would construe this section to mean.

The CHAIRMAN. That is what would be intended by it?

Mr. LANDIS. Yes, sir.

The CHAIRMAN. The courts on so many occasions have paid little attention to some of this legislative history on proposals and construed the language themselves; as what they understood the language to read, and I am just wondering if we would not get into that same box on this, as to whether or not in an important case it would hinge on this question.

I have some reservations with it myself.

Mr. LANDIS. I might call your attention to the fact, Mr. Chairman, that courts recently, much more so than say, 20 or 30 years ago, pay much more attention to the legislative history of statutes in construing them than they did some 20 or 30 years ago.

The CHAIRMAN. Well, I don't want to get into that argument, in view of some of the legislative appearances that I have had and when I have been right in the middle of it for the last 5 or 6 years.

But subsection (c)—we will go on to this—then is further reference to or what would happen if the exercise of the review were to be completed.

This means that even though an order of the hearing examiner may become final, it does not become final until the right of an individual or a party has been exercised if he so desires it, before the Commission and a final decision of the Commission on that which might revert back to the decision of the hearing examiner at the outset.

Mr. LANDIS. Yes. The hearing examiner's decision would then become final for all purposes, and just to make it clear that it is final for purposes of judicial review, this has been inserted, this section.

The CHAIRMAN. But it would not be until the right of some individual or some party or individual had already expired. I think that I understand very well the clear meaning of this provision.

Again, section 2 cannot be applicable unless the Commission, by published order or rule as provided in section 1 authorizes it.

Mr. LANDIS. That's right.

The CHAIRMAN. That is very clear, is it not?

Mr. LANDIS. It is very clear.

The CHAIRMAN. I think that there is a great deal of merit in providing authority or that there be some authority in somebody, to do the housekeeping and to assign this work and workload.

Still, I am very conscious of the fact that it should not be done without the full commission having some voice in it. But I do think that in these agencies we have to do something to expedite this work, and the only way I see how it can be done is to delegate some of this workload to various people. That would be appropriate to accomplish it.

Getting a little on the ridiculous side, I don't want to send a case or some work to the waterboy that should be given to the hearing examiner, and I don't think that that is intended by this at all. I would think that the Commission, in assuming its responsibility in its rule or order authorizing delegations, would clearly understand what was intended for the Chairman, in this case, to do in carrying out these responsibilities.

But what do you mean and what is intended by using the words "including Commissioners"? Are they to be treated as though they are ordinary members of the staff or the personnel of the Commission?

Mr. LANDIS. Well, there would be two situations in which they would be affected, namely, if the Commission acting pursuant to section 1, provides for, we will say, three panels of Commissioners, one for common carriers, and another for broadcasting and we will say a third having to do with safety or some other function.

Now, the assignment of the personnel to these panels would be the responsibility of the Chairman and it may very well be that one panel will not be too busy whereas another panel will be very busy.

The CHAIRMAN. If the intent is to delegate it to panels, I can conceivably see certain matters going to one Commissioner who acts as a Commissioner, but what I want to clear up is any misgivings if there are any. To use a ridiculous example again, could the Chairman, under this authority which the Commission might give him, send a Commissioner down to carry water for somebody?

Mr. LANDIS. I shouldn't think that the Commission would authorize the delegation of any authority of that nature. That would just be so stupid that the Commission would not act under section 1.

The CHAIRMAN. You say these matters are usually acted upon in a broad way, where a lot of things could be done. What I want to be sure of is whether it was intended here that the Commission be assigned to functions that are ordinarily and normally the job of Commissioners and personnel of the Commission be assigned for duties and functions that are normally the work of the personnel of the Commission.

Mr. LANDIS. I shouldn't think so. Certainly, it is the intention here to provide the possibility that instead of being forced to act either as a whole or in panels, they could act individually. If so, the schedule of assignments would be drawn up by the Chairman, and naturally any decent Chairman would consult his colleagues as to what their workload is, and it is always true that some men dispatch business much more quickly than others, and so you can't be too automatic about a thing of that nature. You have to be flexible.

The CHAIRMAN. In other words, is it the intention here then, that the Chairman would not be authorized to delegate a fellow Commissioner to hear a particular case in lieu of an examiner, without the Commission itself having previously approved it?

Mr. LANDIS. Yes. The Commission would have had to previously approve it pursuant to section 1, because section 2 applies only to the delegations under section 1, and it doesn't apply to any other delegations.

The CHAIRMAN. That is what is intended in your study and, of course, you have been in the middle of this all of the time and that is what you think that this means, and what it is intended to be?

Mr. LANDIS. Yes, that is right.

Mr. YOUNGER. Will the gentleman yield? It doesn't seem to me, Dean Landis, if I have understood you correctly, that once the transfer of functions to the Chairman is made, then the Chairman can assign a member of the Commission to hear a case without the approval of other Commissioners. Isn't that true?

Mr. LANDIS. If I correctly understand your question, once the delegation has been authorized by the Commission, the Chairman then can distribute this work to the individual Commissioners.

Mr. YOUNGER. He doesn't get the concurrence of the Commission again on each assignment?

Mr. LANDIS. No, he does not.

The CHAIRMAN. But when the original authority is delegated, though, it would have to include the delegation of a Commissioner, for example, to sit as an examiner?

Mr. LANDIS. A Commissioner could be delegated the work of a hearing examiner, because that is permissible under section 7(a) of the Administrative Procedure Act.

The CHAIRMAN. That is true.

Mr. LANDIS. Whether the Commission would want to do that would depend upon the Commission, actually.

The CHAIRMAN. Well, it would have to be under the published rule, as to whether or not that was the policy of the Commission?

Mr. LANDIS. That is right.

Mr. ROGERS of Florida. Would the chairman yield?

Just to make that a little clearer for me, in other words, the Commission itself would say to the Chairman, in their published order

or rule, that you will have the authority to assign one Commissioner as a hearing officer or you will have authority to assign two Commissioners as a panel and set up two panels or three panels, and it would be specific in that degree.

Mr. LANDIS. The Commission has to be specific in that degree; yes.

Mr. ROGERS of Florida. Thank you.

The CHAIRMAN. Now, briefly, with reference to section 3 and that really carries out a recommendation which this committee has made, to abolish the review staff, may I inquire if you intend by this that the staff today known as the review staff is to be utilized by the Commission in connection with the work of the Commission in its responsibility under these new procedures.

Mr. LANDIS. That was my intention, that you would leave these men doing exactly what they are doing now, but provide that they wouldn't be hamstrung the way section 5(2) hamstrings them now.

In other words, these people today can't come in and make a recommendation to the Commission as to how to dispose of a matter that they have studied. They should get ideas as to what should be done with it. They can't do it.

All this does is relieve that hamstringing of the review staff. The Commission, I don't believe, can get along without assistance of this type.

The CHAIRMAN. Would this contemplate, then, that a Commissioner be assigned to be responsible for opinions?

Mr. LANDIS. No, this doesn't require that. It makes it easier to introduce a practice of that nature if the Commission wants to introduce that practice.

The CHAIRMAN. It would not prohibit it, would it?

Mr. LANDIS. No, it would facilitate it, in fact.

The CHAIRMAN. I think some have raised that question and I wanted to get a clear analysis of it and what would be intended here. It seems to me, and I know it is our position that it would expedite these matters and I think would have better performance by Commissioners being assigned, to be responsible for opinions. There has been some discussion on it, and I hope that that would ultimately be brought about, and some of the commissions have already adopted that procedure, which I think is a very good one.

Mr. LANDIS. Both of these Commissions have adopted the principle of an individual Commissioner being responsible for seeing that the rationale of the decision of the Commission is fully set forth. Different commissions act different ways in dealing with this kind of a responsibility.

In the Securities and Exchange Commission you have what is known as an Opinion Writing Section, that hangs together pretty much as a unit. In other commissions you will find that the work is done by assistants to particular commissioners and they are not a unit, but it is done out of the commissioner's office.

This is flexible and allows them to do it in whatever way they think is best.

The CHAIRMAN. Now, finally, as I said at the outset, there is a great deal of fear on the part of some that the executive would encroach upon the prerogatives and the independence of the commissions. Do

you see anything at all where under this proposal there would be any transfer of authority or any encroachment whatsoever by the executive branch of the Government on the independence of the Commission, in their work and function?

Mr. LANDIS. I see nothing in these reorganization plans that would mean that the executive is encroaching upon the independence of the Commission.

The CHAIRMAN. Would this give the executive any authority whatsoever over the agencies or the independence of the agencies which it does not have today?

Mr. LANDIS. I would say definitely no. It doesn't give the executive any such authority.

The CHAIRMAN. And certainly that was intended when you presented it?

Mr. LANDIS. That was clear, it was intended, and I think the intention is carried out in the words of the plan.

The CHAIRMAN. Do you have any further questions?

Dean Landis, let me, on behalf of the committee, thank you for your appearance here this afternoon, and your patience in remaining with us during this time. We would extend to you an invitation to come back if you care to on Tuesday morning to observe the further proceedings.

Mr. LANDIS. I think that I would like to very much.

The CHAIRMAN. We will be very glad to have you come back if you desire. Thank you very much.

The committee will adjourn until Tuesday morning at 10 o'clock.

(Whereupon, at 5:55 p.m., the hearing in the above entitled matter was recessed, to be reconvened at 10 a.m. on Tuesday, May 16, 1961.)

REORGANIZATION PLANS 1 AND 2 OF 1961

TUESDAY, MAY 16, 1961

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON REGULATORY
AGENCIES OF THE COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10 a.m., in room 1334, New House Office Building, Hon. Oren Harris (chairman of the full committee) presiding.

Present: Oren Harris (chairman), Mr. Rogers of Texas, Mr. Flynt, Mr. Moss, Mr. Rogers of Florida, Mr. Bennett, Mr. Springer, Mr. Younger, Mr. Thompson.

Also present: Charles P. Howze, Jr., chief counsel of the subcommittee: George W. Perry, associate counsel of the subcommittee; Herman C. Beasley, subcommittee clerk; Rex Sparger, staff assistant of the subcommittee; Kurt Borchardt, legal counsel, House Committee on Interstate and Foreign Commerce; Allan H. Perley, Legislative Counsel of the House of Representatives; Elmer W. Henderson, counsel to the Subcommittee on Executive and Legislative Reorganization.

The CHAIRMAN. The committee will come to order.

Today the committee will resume hearings in connection with the Reorganization Plans 1 and 2.

This morning we have the Federal Communications Commission back with us in connection with Reorganization Plans Nos. 1 and 2.

Mr. Minow, you may take the chair, please, sir.

I believe this is the first time you have been before the committee officially.

STATEMENT OF HON. NEWTON N. MINOW, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Mr. MINOW. I was here, Mr. Chairman, on the educational television bill.

The CHAIRMAN. I want to say to you and to all members of the Commission, that we are glad to have you back here this morning so that we may have the benefit of your thinking and that of the other members regarding this important proposed reorganization.

At the outset, if you care to, you may advise the committee if your testimony is your own or for the Commission or certain parts of the Commission, or just what the situation is.

Mr. MINOW. Thank you, Mr. Chairman. I want to thank you and the committee for the opportunity of being here today.

I speak this morning personally, not for the Commission. When the chairman told me about the hearing I asked all my colleagues to attend, and they are all here. And I would like to make clear at the outset that I do not speak officially for the Commission.

The CHAIRMAN. I suppose we will not have any information or discussion from the Commission as such; each one will have his own individual views, it that it?

Mr. MINOW. That would be my judgment, Mr. Chairman. We would agree on some things and disagree on others, and I think it would be best if we individually stated our positions.

The CHAIRMAN. Very well. You may proceed.

Mr. MINOW. I have a prepared memorandum. What I would like to do is read that into the record if that is agreeable.

The CHAIRMAN. You may do so if you like.

Mr. MINOW. This is a memorandum in support of Reorganization Plan No. 2 of 1961.

Section 1: This section gives the agency much needed flexibility in handling its caseload. At the present time, the Commission must hear oral argument and pass on the exceptions in every adjudicatory case (see sec. 5(d)(1), 409(b) of the Communications Act of 1934, as amended, 47 U.S.C. 5(d)(1), 409((b)). And, even in the nonadjudicatory case where it may delegate its functions, the full Commission must then permit and pass upon an application for review (see sec. 5(d)(2)). In view of these restrictions, it is difficult, if not impossible, to alleviate the administrative lag or backlog, concerning which the Congress is so familiar. (See, e.g., H. Rept. No. 2238, 86th Cong., 2d sess., p. 43; S. Rept. No. 168, 87th Cong., 1st sess., pp. 1–2.) Equally important, the Commissioners' time is so much taken with deciding routine cases that the consideration of major matters of policy and planning necessarily suffers (S. Rept. No. 168, 87th Cong., 1st sess., pp. 7–9).

Reorganization Plan No. 2 would end this unfortunate situation. It would give the agency the discretion to handle each matter as it deserved. For example, when a petition for discretionary review of an examiner's initial decision in an adjudicatory case is filed, there would be the following possibilities:

(i) Where the Commission (or at least five Commissioners), after examination of the petition, determines that the case involves no new important policy or legal consideration nor any significant factual error or departure from established policy or law, it will simply deny the petition, thus making the examiner's decision final and appealable to the courts. This, I submit, is wholly sensible. For, it is a waste of time and energies of the parties, the agency, and, in effect, the public to insist that the administrative process continue before the full Commission for another year or so, only to end with the same result and for the same reasons and findings. (see S. Rept. 168, 87th Cong., 1st sess., pp. 7–9.)

(ii) If the Commission concludes that the case, although involving routine principles, does raise a serious question of factual error or some significant findings or a departure from establishd law or policy, review is of course called for. Where the facility or license at issue is a relatively unimportant one (as for example might be the case in many of the thousands of applications filed each year in the safety

and special services field), the Commission could delegate such review to a board composed of specialized employees having no other duties. Any alleged error of this board would then be subject to discretionary review by the Commission. But if, as I would hope, the board had corrected the factual errors, if any, and reached a proper decision, the petition for discretionary review would be denied (by the vote of a majority plus one) and again the case would be ripe for review by the courts.

(iii) Where the significant factual error or departure from established policy or law occurs in a case involving a valuable facility, the Commission might assign the case to a panel of three Commissioners. I would think that there would be included in this group a number of the standard broadcast and FM cases heard either on issues of comparative qualifications, allocation under section 307(b), interference, rules compliance or the like. Many of the common carrier adjudicatory proceedings (see app. A for an illustrative list of such proceedings) could be heard by panels as could operator license cases of more than routine nature. Here again there would be discretionary review of the panel's decision by the full Commission, upon the vote of any three Commissioners.

(iv) Finally, where the case raises important matters of policy or law, the full Commission would of course entertain the appeal. Further, I would expect that large, multiparty, comparative television proceedings involving the assignment of television channels to major cities or proceedings to revoke or deny renewal of a broadcast station license would in most instances be considered and decided by the full Commission.

Where the Commission grants the petition for discretionary review, exceptions will be permitted, either to the employee board, the division of Commissioners, or the full Commission. (See sec. 8(b) of the Administrative Procedure Act, 5 U.S.C. 1007 (b)). Oral argument would be allowed in every instance where it would serve a useful purpose. To hold such argument where it would serve no useful purpose—where, for example, the issues are few and clearly grasped from the pleadings—would be unjustified. The test of any procedure in any given case must be whether it serves a public purpose: If it does, it will be utilized, if it does not, private parties or their counsel have no legitimate complaint in its rejection. Of course, in the cases heard by the Commission because of their important policy connotations, oral argument would continue to be the rule.

Similarly, in the nonadjudicatory cases, the Commission could now deny, without assigning reasons, the petition for discretionary review, and thus make the delegated decisions its final action. I have set out in appendix B a few examples in just one field where such power would aid the Commission in the prompt dispatch of its business.

The foregoing observations as to the possible application of the plan are necessarily tentative at this time. Further, I have not described all the procedural possibilities available under the plan, and could not do so. For, obviously, such procedures and applications will be gradually and carefully developed by the full Commission over the next few years. What the plan has done is to remove the present straitjacket in order to enable the Commission to concentrate on im-

portant matters and to cut down the administrative lag. If we fail to make full use of this flexibility, the fault will be ours. But if flexibility is withheld, I do not believe Congress can fairly continue much of its criticism of the administrative process.

It may be urged that the Commission will not review decisions containing factual errors or important policy questions. I do not think we will let a decision containing a significant factual error slip by, provided the petition for discretionary review calls it to our attention. But if we do, the courts will catch the error and remand the case to the Commission. As to the important policy question, I assure you that neither I nor my colleagues serve the Commission to "duck" important issues. To let an examiner or an employee board be the final word on the development of important policy would be incongrous and incredible. But it is just as incongrous (although unfortunately not incredible) that this Commission, which is faced with urgent problems in space satellite communications, TV allocations, and a host of other matters, must set aside almost a full hour to hear, and necessarily additional time to decide, whether the ship station license for a coastal fishing boat should be revoked or suspended for 3 or 6 months.

I have set out in appendix C a list of the cases heard by the Commission in the last quarter of 1960. To give but one example of the effect of the plan, on the first day of argument in that quarter (October 13, 1960), the Commission heard argument on the following four cases, totaling 260 minutes, or roughly 4½ hours:

1. Springfield, Ill., deintermixture proceeding—In re amendment of section 3.606, table of assignments, television broadcast stations (Springfield, Ill.-St. Louis, Mo.), and proceedings pursuant to remand in *Sangamon Valley Television Corp.* v. *United States and FCC, et al.* One hundred and twenty minutes consumed in oral argument.

2. Patterson, La., ship radio revocation proceeding—In re Patterson Shrimp Co., Inc., in a show cause proceeding why there should not be revoked the license for radio station WC–3826 aboard the vessel *Howard Rochel* at Patterson, La. Forty minutes consumed in oral argument.

3. Proceeding in re application of James J. Williams for a construction permit for a new standard broadcast station at Williamsburg, Va. Forty minutes consumed in oral argument.

4. Proceeding in re applications of Herbert T. Graham and Triad Television Corp. for construction permits for a new standard broadcast station at Lansing, Mich. Sixty minutes consumed in oral argument.

The Commission then took additional time to discuss, decide, and prepare the decisions in these cases.

Under the plan—and I emphasize that I speak here personally only, as to my judgment about it—under the plan the Commission would undoubtedly have heard the argument in the first case, the Springfield, Ill., deintermixture proceeding, since the proceeding involved important and unusual policy and factual matters. But in the next case, the question whether the ship station's license of a shrimp boat should be revoked did not involve any novel question whatever: Certainly an employee board could have disposed of the factual issues raised. And, just as clearly, a division of the Commission (or perhaps an employee board) could have dealt with the two following cases

involving routine issues as to application for standard broadcast facilities. If either the panels or the board erred, such error could be corrected by the Commission on petition for discretionary review. I think this example day, which would be multiplied many times in view of the roughly 50 cases in which oral argument was heard last year, illustrates the benefits the Commission would derive from its newfound flexibility under the plan.

If I may digress for a moment, tomorrow, for example, we will sit as a Commission and hear oral argument in a number of cases. Today is the last day on which comments were due from the industry on the problem of space communication satellites. This is a matter of most urgent concern not only to the Commission but to the country. We should, in my judgment, be free to direct our full attention and give this the urgent priority and consideration it demands before the Commission.

I cite this as one example of the inflexibility of our present procedures.

Section 2: This section provides that the Chairman shall assign the personnel, including Commissioners—

> to perform such function as may have been delegated by the Commission to Commission personnel, including Commissioners, pursuant to section 1 * * *.

This provision is thus a housekeeping one: It is necessary that someone decide the makeup of the panels and boards and be responsible for the equitable and efficient allocation of such assignments. As the President pointed out in special message of April 13, 1961, that "someone" should be the Chairman—the agency's chief managerial officer. And, indeed, the act presently designates the Chairman as—

> the Chief executive officer * * * [with the] duty * * * generally to coordinate and organize the work of the Commission in such manner as to promote prompt and efficient disposition of all matters within the jurisdiction of the Commission (sec. 5(a)).

If I may digress here a moment, I feel a little on the spot here today because so much of this deals with the role of the Chairman in a regulator agency. And I have tried, and I know my colleagues have tried, to treat it on an impersonal basis and be less concerned with me as a Chairman, but whoever might be the Chairman from time to time. And it is in that spirit that I would like to talk about this, although I realize that it is hard to separate the two.

Some of my colleagues have informed me of their opposition to this provision. They have stated that while they know that I would not abuse the power so bestowed (and I in turn have assured them that any assignment made would be on a rotational basis as far as practicable), in principle the provision shifts the agency from an independent bipartisan commission to an administrator within the executive branch; that it puts the Commissioners' time and energies completely at the disposal of the Chairman, and that it is open to abuse in that it permits the deliberate selection by a Chairman of Commissioners with predisposed ideas on certain subjects to sit on the panels. I respect the position of my colleagues, but I believe that their reservations are without foundation.

First, under section 1 it is the Commission, not the Chairman, which has the complete control over whether a matter should be

delegated. If, for example, my six colleagues thought the present system was ideal, they could vote to retain that system. I think that would be a mistake but it certainly shows that it is the Commission which is in control of this entire delegation matter. Suppose, further, that a Chairman did abuse his assignment powers, by either overburdening Commissioners or making assignment with a view to obtaining a certain outcome. The short answer is the Commission, which can vote to reconsider any action it takes, would simply reverse its delegation and take up the matters itself. Thus, as a practical matter, the Chairman must act fairly or the Commission will in effect withdraw his power to act in this area. In view of these considerations, the agency cannot be converted by this minor housekeeping provision.

Second, the President was at pains to preserve the bipartisan nature of the agency. The plan specifically provides:

> in order to maintain the fundamental bipartisan concept explicit in the basic statute creating the Commission, for mandatory review of any such decision, report or certification upon the vote of a majority of the Commissioners less one member.

For this reason also, it would be senseless for the Chairman to abuse his assignment powers; by a vote of three Commissioners, his colleagues could and would bring the case to the full Commission.

In short, this provision does no more than vest in the chief executive officer the responsibility for work assignments requiring "continuous annd flexible handling" (Presidential transmitted message). By its own order, the SEC, on January 16, 1961, announced that in the preparation of formal decisions, "cases will be assigned by the Chairman to individual members of the Commission;" and several of the Federal courts of appeal have vested the power in the chief judge to assign the judges comprising the panels. Many similar examples could be given. The fact that such power is vested by order of the agency or court rather than by an execution plan is no distinction. For, as shown, the Commission has ample authority to deal immediately and effectively with any possible abuses.

Section 3: This provision abolishes the review staff, together with the functions established by section 5(c) of the Communication Act. Section 5(c) provides that the Commission must establish a "review staff" to aid it in the preparation of opinions in adjudicatory cases and that that staff may make no recommendations. Here again the agency lacks needed flexibility. Congressional recommendations (see, e.g., H. Rept. 2238, 86th Cong., 2d sess., pp. 19, 24–25; H. Rept. 2711, 85th Cong., 2d sess., p. 11), the President's message of April 13, 1961, and the administrative trend favor the practice of making individual agency members responsible for the preparation of the agency decisions. Four important agencies, three since the beginning of this year, have adopted this practice. But the Commission is handicapped in revising its decisional processes because of the rigid requirements of section 5(c). With the abolition of the review staff required by 5(c), the Commission will be able to devise the procedure which in its view will best deal with such factors as the need for prompt dispatch of business, the desirability of personal responsibility for the preparation of a decission, and the relative handicap of some Commissioners having no legal or similar background usually thought necessary for decisionwriting.

In this connection what I would personally have in mind would be something along the lines of this own committee's suggestion last year having to do with a roving technical staff. I would not want to take the present review staff and split it up into the offices of each member, but rather to keep it without its present inhibition under 5(c) about helping us, but to keep it so that it would be available to whatever Commissioner was assigned to the job of being responsible for the opinion.

Furthermore, the Commission will no longer have to pursue the cumbersome, wasteful two-step process in disposing of interlocutory matters. Because the review staff is prohibited from making any recommendations, it must first receive instructions from the Commission on all interlocutory matters, no matter how simple or routine, and then return again with a draft opinion and order for the Commission's approval. This is an obvious waste of the Commission's and the staff's time: Many, indeed most, of these matters could be disposed of at one meeting by permitting the staff to attach a draft-recommended order. The new discretion given by the reorganization plan would thus be used to eliminate the present inefficient method of handling interlocutory matters. This would represent a substantial saving in time and energy for the Commission: In 1960 the full Commission was called upon to dispose of 363 interlocutory motions.

Mr. Chairman, I have attached a number of appendixes and, in order to save time, unless the committee would want me to, I would just as soon insert those in the record at this point.

The CHAIRMAN. They may be included in the record.

(The appendixes follow:)

APPENDIX A

List of common carrier adjudicatory proceedings heard by full Commission in recent years which might well have been considered by a panel of Commissioners or perhaps employee review board:

Docket No. 11833. Application of William J. Therkildsen. New application; comparative hearing.

Docket No. 11184. Application of Radio Order Service, Inc. Request for extension of construction permit on failure to timely construct station.

Docket No. 11695. Application of Southwestern Bell Telephone Co. Section 221(a) acquisition case.

Docket No. 11393. Application of Blackhills Video Co. New application; comparative hearing.

Docket No. 11500. Application of Bell Telephone Co. of Pennsylvania. Protest hearing.

Docket Nos. 11883 and 11884. Application of Collier Electric Co., et al. New application; comparative hearing.

Docket Nos. 12155 to 12159, inclusive. Applications of Benjamin H. Warner, Jr., et al. New applications; comparative hearing.

Docket No. 11596. Application of Loyd Frame. Protest hearing.

Docket No. 12191. Application of Radio Dispatch Service. License renewal hearing.

Docket No. 11878. Application of J. B. Wathen. Protest hearings.

Docket Nos. 11268 through 11270, inclusive, and 11375 through 11388, inclusive. Applications of Wisconsin Telephone Co., et al. Protest hearing.

Docket Nos. 12682 and 12683. Applications of Texas Two-Way Communications. Protest hearing.

Docket No. 13201. Applications of Ruth and Seymour Chervinski, et al. New applications; comparative hearing.

Docket No. 11932. Application of New Jersey Exchanges, Inc. Protest hearing.

Docket Nos. 12627, 12628, 12631, and 12632. Applications of Robert C. Crabb, et al. New applications; comparative hearing.

Docket No. 13174. Application of Thomas R. Poor. Protest hearing.

APPENDIX B

Illustrative examples of forfeiture cases in the safety and special radio services field, which were required to be reviewed by the Commission en banc pursuant to section 5(d)(2) of the Communications Act:

1. Vessel *Esso Raleigh* and master thereof incurred forfeitures of $500 and $100, respectively, under section 507 of the Communications Act. After applications for relief, Safety and Special Radio Services Bureau mitigated fines to $50 and $10, respectively. There was a request for review by Commission under section 5(d)(2), and the Commission affirmed the staff action.

2. Vessel *Niagra* and master thereof incurred forfeitures of $1,500 and $100 respectively, under section 507 of the act. After applications for relief, Bureau mitigated fines to $100 and $10, respectively. Upon request for review by Commission under section 5(d), Commission affirmed staff's action.

3. Vessel *Ziegiest* incurred forfeitures of $500 under title III, part II, of the act. After application for relief, Bureau mitigated to $100. There followed a request for review by Commission under section 5(d) of the act, and the Commission affirmance of staff action.

4. Vessel *Janet Quinn* and master thereof, incurred forfeitures of $1,000 and $200, respectively, under title III, part II, of act. After applications for relief, Bureau mitigated forfeitures to $150 and $20, respectively. Upon request for review by Commission under section 5(d), Commission affirmed staff action.

5. Vessel *Cavalier II* and master thereof incurred forfeitures of $500 and $100, respectively, under title III, part II, of the act. After application for relief, Bureau mitigated to $100 and $50, respectively. Commission affirmed staff action upon request for review by Commission under section 5(d).

APPENDIX C

Cases in which Commission heard oral argument in the last quarter of 1960:

October 13, 1960, docket Nos. 11747 and 12936

Springfield, Ill., deintermixture proceeding: In re amendment of section 3,606, Table of Assignments, Television Broadcast Stations (Springfield, Ill.-St. Louis, Mo.), and proceedings pursuant to remand in *Sangamon Valley Television Corp.* v. *United States and FCC, et al.;* 120 minutes consumed in oral argument.

October 13, 1960, docket No. 13150

Patterson, La., ship radio revocation proceeding: In re Patterson Shrimp Co., Inc., in a show cause proceeding why there should not be revoked the license for radio station WC–3826 aboard the vessel *Howard Rochel* at Patterson,, La.; 40 minutes consumed in oral argument.

October 13, 1960, docket No. 13262

Proceeding in re applications of James J. Williams for construction permits for a new standard broadcast station at Williamsburg, Va.; 40 minutes consumed in oral argument.

October 13, 1960, docket Nos. 12826 and 12942

Proceeding in re applications of Herbert T. Graham and Triad Television Corp. for construction permits for a new standard broadcast station at Lansing, Mich.; 60 minutes consumed in oral argument.

October 14, 1960, docket No. 13331

In re application of Edward E. Urner and Bryan J. Coleman, doing business as Cal-Coast Broadcasters, for a construction permit for a new standard broadcast station at Santa Maria, Calif.; 60 minutes consumed in oral argument.

November 4, 1960, docket Nos. 12229 and 12230

Proceeding in re applications of Walter G. Allen and Marshall County Broadcasting Co. for construction permits for new standard broadcast stations at Huntsville, Ala., and Arab, Ala., respectively; 60 minutes consumed in oral argument.

November 4, 1960, docket Nos. 12315 and 12316

Sheffield, Ala., standard broadcast proceeding: In re applications of Iralee W. Benus, trading as Sheffield Broadcasting Co. and J. B. Falt, Jr., for a new standard broadcast station at Sheffield, Ala.; 60 minutes consumed in oral argument.

November 4, 1960, docket No. 12318

San Bernardina, Calif., FM proceeding: In re application of Richard C. Simonton, doing business as Telemusic Co., for a construction permit for a class B FM station at San Bernardino, Calif.; 60 minutes consumed in oral argument.

December 15, 1960, docket No. 13300

Proceeding in re application of Coast Ventura Co. for modification of construction permit of station KVEN–FM operating on channel 264 (100.7 megacycles) at Ventura, Calif.; 60 minutes consumed in oral argument.

December 15, 1960, docket No. 13274

Grand Rapids, Mich., TV proceeding: In re application of Wood Broadcasting Inc., to change the transmitter site of WOOD–TV, Grand Rapids, Mich; 60 minutes consumed in oral argument.

December 15, 1960, docket Nos. 12657 and 12658

Portland, Oreg., TV proceeding: In re applications of Fisher Broadcasting Co., and Tribune Publishing Co. for construction permits for new television broadcast stations at Portland, Oreg.; 60 minutes consumed in oral argument.

December 15, 1960, docket Nos. 12788, 12792, and 12797

Golden Valley, Minn., AM proceeding: In re applications of Charles J. Lanphier; Joe Gratz, trading as Minnesota Radio Co.; and Eider C. Strangland for construction permits for new standard broadcast stations in Golden Valley, Minn., Hopkins-Edina, Minn., and Sheldon, Iowa; 80 minutes consumed in oral argument.

December 16, 1960, docket Nos. 12885, 12886, and 12887

Proceeding in re applications of James B. Tharpe and Joseph L. Rosenmiller, Jr., doing business as Madison County Broadcasters; Charles H. Norman, John Karoly, and George J. Moran, doing business as Tri-Cities Broadcasting Co.; and East Side Broadcasting Co., for construction permits for a new standard broadcast station at Granite City, Ill.; 80 minutes consumed in oral argument.

December 16, 1960, docket No. 13000

Savannah, Ga., AM proceeding: In re application of WJIV, Inc., for a construction permit to increase power of standard broadcasting station WJIV, Savannah, Ga.; 40 minutes consumed in oral argument.

The CHAIRMAN. Does that conclude your statement?

Mr. MINOW. Yes, Mr. Chairman.

The CHAIRMAN. Mr. Chairman, I would like to say at the outset that I think that the objectives sought in connection with these proposals have a lot of merit. I think that the committee, from its experience, its studies and its investigation of problems over the past several years, has concluded, and has recommended on numerous occasions, that the Commissions have necessary authority, in order to do their work and expedite it, to avoid the long delays involved in the so-called lag problem, which seem to be common among the Commissions.

I do have some difficulty, after carefully studying the Reorganization Plan No. 2, affecting the Federal Communications Commission, in resolving some of the problems. I might say that I do not entertain this same difficulty in connection with some of the other plans like the Securities and Exchange Commission which we have before us for consideration, because they do not involve some of the amendments that the one affecting your agency involves.

I think perhaps that most everyone will applaud true efforts to take appropriate shortcuts and expedite the business of the Commission in order that the public, which is being served, can obtain the service that it is entitled to. And for that reason the objectives sought here seem to be rather laudable.

The one fundamental thing that has bothered me, and has certainly been close to my heart during the entire consideration of these matters, is that the Commission, as such, have control of its operation, and we do not have a one-man Commission. That, it seems to me, is pretty well reserved in section 1 of the act, as I viewed this thing and analyzed it. There is nothing that can result so far as this proposal is concerned except on the administrative side procedurewise, until and unless the Commission so decides by a published order or rule. I want to say that I agree with that provision.

Now, with reference to the other items in connection with the reorganization plan, we have recommended some of them ourselves, particularly with reference to the review staff and the responsibility as to opinion writing.

But I must say that I would prefer, when basic amendments are considered, that they be considered and handled in the regular legislative way. I think it would be a lot better, and there would be a greater understanding about it.

But there are a number of things that bother me about this plan. If the plan goes into effect, uncertainty and confusion may result as to whether, and the extent to which, certain other provisions of section 409 (b) and (c) of the Communications Act will continue to be in effect.

Have you given a great deal of thought to that?

Mr. MINOW. I have, Mr. Chairman.

I would like to state in response first, this plan which I supported as an individual, as a person, is not the work of the FCC, this is the President's reorganization plan.

The CHAIRMAN. I understand that.

Mr. MINOW. And I believe that it was submitted to the Attorney General, and that it received a clearance as to its legality and its effect upon other statutes. And based upon that, and also based upon my desire to expedite consideration of our cases in a fair way and to cut through the regulatory lag, this is the basis of my support for it.

I recognize that there are some legal questions that were discussed here at our session on Thursday. But I believe that it is legal and proper.

The CHAIRMAN. Well, I think it is legal. I don't know that I could quarrel with reference to its being proper or not. But the question that I raised is to the effect it would have on the other provisions of the act itself. Now, the way I see it, you just don't know the effect it would have on other basic provisions of the act. As an example, subsection (a) of section 409 provides that, in cases of "adjudication," hearings shall be conducted by the Commission or by "one or more examiners provided for in section 11 of the Administrative Procedure Act." This means, of course, that at the present time hearings in cases of "adjudication" may not be conducted otherwise.

Now, subject to section 7(a) of the Administrative Procedure Act, section 1 of plan No. 2 authorizes the Commission to delegate any

of its functions to a division of the Commission, an individual Commissioner, a hearing examiner, an employee board, or an individual employee.

You understand that to be true, don't you?

Mr. MINOW. Yes, sir.

The CHAIRMAN. However, because of the limitations prescribed in section 7(c) of the Administrative Procedure Act, the Commission would be authorized under the plan to delegate the function of holding hearings in cases of "adjudication" only to a division of the Commission, an individual Commissioner, or a hearing examiner or examiners.

Now, then, the question that arises to me is whether or not section 1 of the plan would completely swallow up and supersede 409(a)?

Mr. MINOW. I think not, Mr. Chairman. My interpretation of it is that section 1 is really addressed to the problem we have under 409(b) where we are now required by law to hear argument, and an acceptance from all cases coming from the examiner. I don't think it affects 409(a).

The CHAIRMAN. All right. If that be true, then, the plan would in effect repeal subsection 409(b) which gives any party the right to file exceptions with, and present oral arguments to the Commission. However, subsection (b) also contains the following provisions:

(b) The officers conducting a hearing to which subsection (a) applies shall prepare and file an initial decision, except where the hearing officer becomes unavailable to the Commission or where the Commission finds upon the record that due and timely execution of its functions imperatively and unavoidably require that the record be certified to the Commission for initial or final decision. * * * all decisions, including the initial decision, shall become a part of the record and shall include a statement of (1) findings and conclusions, as well as the basis therefore, upon all material issues of fact, law, or discretion, presented on the record; and (2) the appropriate decision, order or requirement.

Would these provisions of subsection (b) be in force after the plan takes effect?

Mr. MINOW. I think so, Mr. Chairman. I think they will be totally unaffected by the plan.

The CHAIRMAN. Now, this question seems to me to depend on whether subsection (a) still has any force and effect, because subsection (b) by its own terms seems to apply only to hearings "to which subsection (a) applies." Now, if these provisions were considered to still be in force, would they apply in the case of a hearing held by a division of the Commission or individual Commissioner as well as to a hearing held by an examiner?

Mr. MINOW. Yes, they would, Mr. Chairman, the same provisions would carry over whether it was heard by an individual Commissioner or a panel or an employee, or whoever it was, the same requirements that you have read would still apply.

The CHAIRMAN. Then there are other important questions that arise in connection with paragraphs (1) and (2) of subsection (c), which was added to the Communications Act in 1952, and which contains special requirements designed to insure, in cases of "adjudication," that the officers performing the decisionmaking function shall render their decisions on the basis of a record made in a public hearing.

Now, that paragraph, without reading it, refers to examiners all the way through, and it was designed for a particular purpose in the

1952 act, notwithstanding the provisions of the Administrative Procedure Act, which were then in effect.

Now, if you recall and read the entire paragraphs (c) (1) and (2), they refer to examiners and very clearly set out procedures.

Now, these paragraphs of present law were, of course, based on the policy that hearings in cases of adjudication should be conducted only by the entire Commission or by one or more examiners as provided for in section 11 of the Administrative Procedure Act.

Now, this is the kind of thing that bothers me, and of which I am somewhat wary. I think that there is a no man's land developed here, and you are going to be in more trouble. It is obvious to me that if this were to go through it would be necessary to come back with appropriate amendments to clarify this situation.

Mr. MINOW. Well, I would only say, Mr. Chairman, that my understanding is that none of those requirements or safeguards would be affected by the reorganization act. Whether the case is being heard by an examiner or a Commissioner or a panel, the same requirements would still apply.

The CHAIRMAN. Yes. But you can't just assume that specific provisions of the law are going to be amended by implication.

Mr. MINOW. Well, I don't think they are amended, Mr. Chairman. Furthermore, there are certain cases now standing for the same proposition having to do, as 409(c) (1) does, with ex parte matters. So the law is established. I don't think the reorganization plan would touch any of these points that we have been talking about in the last series of questions.

The CHAIRMAN. I wish I could agree with you, but I don't believe I can. I do think they affect them, but which way they go I don't know. As I say, I don't find the same problem with the other three plans that have been presented, because it is not proposed to change the basic law.

I have used more time than I should have, however it does worry me as to its effect. It would seem to me, though, that something should be done to give these agencies an opportunity to go on with the work and get it out. In another commission a couple of matters have been investigated and have been pending, I know, for over 2 years and they haven't come to any conclusion yet as to whether formal proceedings shall be held. That is just one example that with which I am familiar and we could go on with a lot more of them. These things just go on and on, and there is no way to serve the public and I agree in principle here that we should get something done. However, I do have some reservations about the method of going about it with reference to your agency now and I think you had better give some very serious consideration to it.

Mr. THOMSON. Will the gentleman yield for just one question?

The CHAIRMAN. Yes.

Mr. THOMSON. The cases that you mentioned, can they be handled under the present law, or is there inhibition in the present law that prevents a decision?

The CHAIRMAN. I would say that I would not want to state categorically, because it is always my feeling that when an agency has something under active consideration, I don't care to inquire into its merits or as to what should be done or not done. So I don't know, but

I do know a lot of people are interested in cases like that not only in my own State but all over the country. It seems to me that we should do something to cooperate with these agencies and help them to do their jobs. At the same time I don't want to set up a lot of revolving doors that nobody knows when to go in and when to come out.

Mr. MINOW. Mr. Chairman, on one point I can speak, I am confident, for the Commission and all my colleagues unanimously, and that is that we are dedicated to the expeditious handling of our work. I have only been there 2 months, but we have worked cooperatively and well together, and we all share the same purpose, we may disagree, but we all have the same purpose and objective in mind.

The CHAIRMAN. I appreciate that, and I think the agencies are to be commended. I am very glad that a lot has been done to relieve some of the problems that have developed in the past.

Mr. Bennett.

Mr. BENNETT. Mr. Chairman, I take it from what you have said that you feel the best way to approach these changes you are talking about is by reorganization plan rather than by direct action of the Congress.

Mr. MINOW. No, Mr. Bennett, I don't take that view at all. I am here today for the FCC as a member of the Commission. I think there are different ways to go at this. I think the legislative way would be perfectly proper way. I am here commenting on the President's reorganization plan, and I have not taken the position that this is the best way or the only way to do it.

Mr. BENNETT. Did Mr. Landis discuss the plan with you before it was officially announced?

Mr. MINOW. Yes, he did.

Mr. BENNETT. Did you approve it.

Mr. MINOW. I gave him my suggestions, and I consulted with my colleagues.

Mr. BENNETT. Did he talk with other members of the Commission, or just with you?

Mr. MINOW. Just with me, Mr. Bennett. I came over here and I had a talk with Chairman Harris, and some people over on the Senate side, and reflected back the various comments of my colleagues. And some differences of opinion existed and still exist about what the plan is or does.

Mr. BENNETT. When Mr. Landis first talked to you about these changes there were many more changes that you had in mind than are being presented?

Mr. MINOW. That is true, Mr. Bennett.

Mr. BENNETT. And after discussing the matter you weeded the others out or excluded them and decided to go ahead?

Mr. MINOW. I didn't personally. I gave my own views and some of the views of my colleagues, but I didn't have anything to do with the changing or revision of a particular——

Mr. BENNETT. I think you must recognize that one of the problems we are confronted with is this: Assuming that the suggested changes in the reorganization act are changes which should be made, the basic question is whether it should be accomplished in this fashion. If a litigant, for example, because of this reorganization act, were deprived of his present rights to review by the entire Commission, then I can see

no reason why other reorganization plans could not attack the whole fiber and structure of the Communications Act and make whatever changes the President and his advisors may see fit to make. But if that is going to be the policy—and I very much suspect that it is—then this committee might just as well fold up as far as having any legislative jurisdiction over any agency is concerned.

Mr. MINOW. Mr. Bennett, this is my first experience with the reorganization plan. My understanding of it is that Congress gave the President the power in effect to recommend to Congress a plan which could do certain things, either abolish a function, transfer a function, or delegate a function. It is up to Congress and the various committees here to decide whether this plan is a wise one or a sensible one. I happen to think that it is. I don't think this is the only way to meet these objectives, but I think that this particular plan would aid us very greatly in our work and enable us to proceed with more dispatch and efficiency. I don't think that it is the only way to go at this, and I certainly appreciate your concern about doing it through a legislative rather than through a reorganization technique.

Mr. BENNETT. Well, if this would be a precedent, then I repeat what I said. As far as this committee having legislative jurisdiction over the FCC or any of the other regulatory agencies, we might as well forget about it and turn them over to the President and the Government Operations Committee to handle. That is essence is what is happening here, aside from any of the objections one may have to the merits of the proposal set forth in the plan.

I want to ask you about the review staff. You said that you would retain the review staff, and even though you might assign the writing of an opinion to an individual Commissioner, you would want this staff still available to write the opinion for him.

Mr. MINOW. Well, I don't think I said write the opinion for him. What I would like for them to do is continue to give the assistance and recommendations and judgments. We have such an enormous caseload that I don't feel that we could conscientiously, each of us, take on the responsibility of writing all those opinions if we are going to do the job, because there are simply too many of them involving too many complex issues to give them the attention they deserve. Therefore we do need assistance.

Now, there are various ways you can do this. I understand, for example, that in some of the other agencies each Commissioner has a large staff of legal assistants in his own office to help him. I have discussed this with my colleagues. My desire and my preference would not be to move toward that system, but rather to follow what was suggested actually in this committee's report earlier this year, keeping a technical staff available to help the Commissioners, but to have each Commissioner take personal responsibility for an opinion, and his name would be on it.

Mr. BENNETT. The problem we are trying to get at there, I think you will agree, is the delays that have occurred as a result of the Commission having reached a decision and then having turned the writing of the decision over to this review staff, and then finding that the review staff required more time in writing the opinion than it took for all the rest of the proceedings put together.

Mr. MINOW. I don't think this is the case any longer, Mr. Bennett. When Fred Ford was Chairman I think great steps were taken to expedite that. I think now our review staff is pretty current. Mr. Berkemeyer is here today, if we want to get in the record where we are. But I think this is not one of our biggest problems.

Mr. BENNETT. I agreed when the recommendation was made with respect to doing away with the functions of the review staff as they had functioned in the past, because I think it has led to unnecessary delays. Now, I am not speaking about the personnel, I don't know anything about the personnel of the review staff at all, so I can't comment. But the procedure of having the staff go all over a record with which they have had no previous familiarity is certainly an unwieldly, impractical type of thing, and it has occasioned many delays. If you are going to abolish the review staff and make the individual Commissioners responsible for writing the opinions, and then still turn the job over to an opinion-writing staff so far as the facts of the case are concerned, then I think this suggested change accomplishes nothing. It can only accomplish something if the Commissioner writing the opinion has a staff who is as familiar or even more familiar with the facts as he is in the case and the procedure as it went along during its course before the Commission.

Mr. MINOW. I don't think I made myself clear. The latter is what I want to do. The way we have it now, they cannot even recommend anything to us. If we were free from the present restrictions, then they would be available to work with the Commissioners as a case developed and to carry it on through, which is what I would like to do.

Mr. BENNETT. You would have them in on a case from the beginning?

Mr. MINOW. I would have them in a lot earlier than they are now, now they get it when it is pretty well decided.

Mr. BENNETT. I just throw that out as a suggestion, because I think that part of the provision is a good one, provided it is arranged on a basis that will permit the so-called experts to be in on a case from the beginning.

Mr. MINOW. I agree with you, sir.

Mr. BENNETT. Mr. Chairman, you were here when Dean Landis testified the other day?

Mr. MINOW. Yes, sir.

Mr. BENNETT. What do you think of the idea of having an overseer in the White House with respect to these regulatory agencies?

Mr. MINOW. Well, I think I would be very much opposed to it. I feel that we are an independent agency in principle, aim, and objective. We are basically an arm of the Congress to administer and enforce the Federal Communications Act.

I do think that there is one wholly legitimate area in which the executive branch should be concerned, and that is to see that we are well organized, that we are not too far behind in our work, and things like that. But I don't feel that there should ever be an overseer or any supervisory function of our day-to-day work in the White House.

Mr. BENNETT. Do you think it should be the function of someone in the White House to call in and inquire about the delay in handling particular cases?

Mr. MINOW. I think not, Mr. Bennett. I think if they want to inquire about it, say, a whole category, say, "How far are you behind in your safety and specialty applications? Do you need some changes in the administration on that?" That, I think, would be proper, but never to talk about any specific case.

Mr. BENNETT. If you have a man in the White House riding herd on the Commission, unless the authority is pretty well circumscribed you would, it seems to me, get into the same area that has come in for so much criticism by this committee in the last few years.

Mr. MINOW. I think that is right, sir.

Mr. BENNETT. And therefore to get set on a White House overseer in charge of regulatory agencies seems to me not only unwise but highly improper.

Mr. MINOW. It certainly hasn't existed, Mr. Bennett.

Mr. BENNETT. It has been suggested, though.

I think that is all I have.

The CHAIRMAN. Mr. Flynt?

Mr. FLYNT. Mr. Chairman, I am inclined to be in accord with the objectives which you have announced in your statement. However, I would certainly like to concur with the chairman and also with Mr. Bennett, that I think the approach is what we might term a back-door approach. I would like to see many of these things accomplished by legislation, not by the Executive order.

I would hate to see the broad sweep changes made in the organic act of the Federal Communications Commission by anything except direct legislation.

I do want to join with the chairman and the other members of the committee in thanking you for the forthrightness of your statement. And while I agree with the objectives, I have to say that I very strongly disagree with the approach.

Thank you again, Mr. Chairman. It is a pleasure to have you before the committee.

Mr. MINOW. Thank you, Mr. Flynt. I appreciate that.

Mr. SPRINGER. Mr. Minow, you have heard Dean Landis' testimony last week?

Mr. MINOW. Yes, sir.

Mr. SPRINGER. With reference to what it was possible to delegate to one person under this reorganization act?

Mr. MINOW. Yes, sir.

Mr. SPRINGER. Do you agree with his analysis?

Mr. MINOW. Well, I think theoretically the analysis is true. I don't think it could ever happen that way.

Mr. SPRINGER. Are you a lawyer, Mr. Minow?

Mr. MINOW. Yes, sir.

Mr. SPRINGER. Whatever is theoretically possible is the law, is that right?

Mr. MINOW. Yes, sir.

Mr. SPRINGER. So there isn't any question that this could be dealt with?

Mr. MINOW. I think it could be; yes, sir.

Mr. SPRINGER. There isn't any question about the power contained in the act, is there?

Mr. MINOW. Well, the act presently would permit delegation to anyone on a nonjudicatory function.

Mr. SPRINGER. But your answer, I take it, to my question is "Yes"?

Mr. MINOW. Yes, sir.

Mr. SPRINGER. I may ask you some questions here which bring out your philosophy, Mr. Minow, as well as trying to find out what can be done.

Mr. MINOW. Fine. If I could answer one thing further on the last question, if the Commission today wanted to delegate to one person all functions having to do with nonjudicatory cases, this could be done theoretically under our present act.

Mr. SPRINGER. Now, in judicatory matters, this in essence adds to that in putting all the powers of the Commission subject to delegation.

Mr. MINOW. By the Commission; yes, sir.

Mr. SPRINGER. By the Commission.

Mr. MINOW. Yes, sir.

Mr. SPRINGER. Do you believe it to be possible to delegate all of the powers of the Commission to one person?

Mr. MINOW. Well, I will answer that this way. I would never be in favor of doing it, put it that way.

Mr. SPRINGER. Under section 1, would the delegated powers be covered by a rule which would prescribe and specify matters to be delegated, and the class of personnel to which it would be assigned?

Mr. MINOW. That is right, sir.

Mr. SPRINGER. Are you talking about minor matters to the Broadcast Bureau personnel?

Mr. MINOW. Yes. In my statement I tried to give an indication of the kind of matters that I thought were sensibly subject to delegation.

Mr. SPRINGER. If this is not done, a new route would have to be adopted for each matter, is that true?

Mr. MINOW. Or we could continue as we often do now and just handle it by the full Commission.

Mr. SPRINGER. Would this expand the Commission's work and proceed to burden rather than lighten it?

Mr. MINOW. I think not, Mr. Springer. I think it would simplify it.

Mr. SPRINGER. In the case of all section 1 delegations rule, would not an individual Commissioner, examiner, or staff member who would perform in a given case be prescribed by a later order of the Chairman under section 2?

Mr. MINOW. I think not, Mr. Springer. It would depend entirely on the nature of the delegation which the Commission gave to the Chairman. But I think that the Commission would never do that.

Mr. SPRINGER. You say it would not be possible for him to prescribe an order under section 2?

Mr. MINOW. To prescribe——

Mr. SPRINGER. A later order of the Chairman under section 2?

Mr. MINOW. Well, my answer is I don't think the Commission would ever permit such a thing.

Mr. SPRINGER. He could do it though, could he not?

Mr. MINOW. If the Commission delegated that to him; yes, sir.

Mr. SPRINGER. As I understand it, there is no limit to the Chairman's discretion in the person selected, so long as he is in the category of personnel specified in the rule.

Is that correct?

Mr. MINOW. I think it is not correct, Mr. Springer.

Mr. SPRINGER. Did you understand my question?

Mr. MINOW. Yes, sir.

Mr. SPRINGER. Why do you say that is wrong?

Mr. MINOW. Because it would depend upon the nature of the delegation made by the Commission. All this does is give the Commission the power to delegate.

What they do with it is another question. So it is impossible to answer that until you know the nature of the delegation the Commission undertook.

Mr. SPRINGER. But there would not be any limit? I do not think you understand. There would not be any limit on the Chairman's discretion in the person selected as long as he is in the category of personnel specified in the rule as made by the Commission?

Mr. MINOW. Provided that the Commission gave him that power.

Mr. SPRINGER. Now, would not the Chairman have the power himself to give the good assignments to Commisisoners who played ball?

Mr. MINOW. Well, I would still say, provided that the Commission gave it to him. If the Commission gave him such arbitrary power he could do so.

Mr. SPRINGER. Now, Mr. Minow, I have known a great many Chairmen in the 11 years I have been on this committee, under both Democrats and Republicans, and most of the complaints that have come to me, at least on this Commisison is that this is the thing that is done.

And a particular instance at the present time is you do not have assignments to the different Commissioners, but you, certainly, do at the examiner level and all of those below the level of the Commissioners at the present time.

Now, are you not extending this, if you so see fit to delegate it to the Commissioner—and I am talking about to the Chairmen—this right which I anticipate you are going to do, as I understand it, and he could give the good assignments to the persons who do play ball with him.

Mr. MINOW. Well, Mr. Springer, I think this would depend again on what my colleagues decided that they wanted the Chairmen to do, because unless it delegated it to me, I could not redelegate it to someone else.

Mr. SPRINGER. You are a little bit evasive, but I will——

Mr. MINOW. No, I think that is true, Mr. Springer, because if this plan is passed there is nothing whatever that I could do unless my colleagues decided to delegate to me or to others in the Commission some authority.

I could not do anything on the strength of the plan.

Mr. SPRINGER. I understand that. I think that is what you are going to get if this plan goes through, because that is what you have asked for.

You are certainly going to get the power to delegate this in your own hands, otherwise you would not be coming in and asking for it, and that is why I ask that as a prerequisite.

Now these are the personal psychological factors that are always far more important than law that I found in the assignment of various things that are done in the Commission.

Now the second thing: Would not the Chairman have the power to select a person for such assignments whose views on the issues in a particular case coincide with his own?

Mr. MINOW. Again, it would depend on the nature of the delegation by the Commission.

I have assured my colleagues, and they are all here and can certainly speak for themselves, that insofar as I am concerned, I would assign cases on a rotational basis.

Mr. SPRINGER. Thirdly, could not you, as the Chairman, under this kind of a delegation, make a recalcitrant Commissioner valueless and jeopardize his appointment by giving him no assignments of importance?

Mr. MINOW. Well, if the Commisison gave me such broad powers and if I abused them in such a way, all it would take would be for the Commission to take it back.

Mr. SPRINGER. I understand what you are talking about, Mr. Minow. But they are not going to get it back after you get it, I feel sure of that.

Mr. MINOW. Well, it would be——

Mr. SPRINGER. You have sufficient people on the Commisison, I take it, to give this or you would not be coming in here asking for it. I am assuming that is it.

I am assuming that you are not coming in here with some plan that you set up that is not going to be——

Mr. MINOW. Well, I cannot speak for my colleagues. I can only say this: I think they will agree with me on this, that in the first few months that we have been together we have gotten along famously as a Commission.

Mr. SPRINGER. Well, this the new era, is it not; you have not been on it for 2 or 3 years?

Mr. MINOW. I was saying, as a beginning.

Mr. SPRINGER. I am not trying to get into an argument with you. I am just taking the experience of previous Chairmen. I have gone through this process before.

Another one: The power of the Commission to harass litigants before the Commission by selecting personnel to hear their cases whose views were antagonistic to the litigants and I want to give you some examples:

Delays in the scheduling of hearings, adverse interpretations of issues, adverse rulings on evidence, expanded burdens of proofs, delays in the initial decision, slanted initial decisions.

Is all of that possible if the power is delegated——

Mr. MINOW. I think not, the way we do it now. The examiner takes these cases in rotation. This is the way it is done in most courts. This is the way I would want to do it here.

Mr. SPRINGER. And it also gives the power, generally, to mold the record of evidence and the initial decisions in the adjudicatory cases in the fashion desired by the Chairman?

Mr. MINOW. Well, I think not, Mr. Springer.

Mr. SPRINGER. Now while the Chairman would have the powers—and I am anticipating that you are going to get them—it is, of course,

possible that he would not abuse them, but what is to prevent him but his own self-restraint?

Mr. MINOW. My colleagues could prevent me. If not, Congress could.

Mr. SPRINGER. You mean, they are going to take back these powers maybe a year from now if they do not like the way it has been done?

Mr. MINOW. Well, it is certainly within their right to do so. If I were in their position, I certainly would.

Mr. SPRINGER. Now, I want to go a little further: Is the Chairman not himself subservient?

Mr. MINOW. I think not.

Mr. SPRINGER. He serves only at the pleasure of the President?

Mr. MINOW. That is correct, sir.

Mr. SPRINGER. Having these powers, would it not be a miserably inept Chairman who could not produce action that the Commission or the President wanted if these powers were given him?

Mr. MINOW. Well, I can only tell you that we are seven Commissioners. We often have six different views on a problem. They never bear any resemblance to a party.

We have never had a party vote that I know of. It is just a matter of looking at a problem from seven different points of view.

Mr. SPRINGER. Mr. Minow, when did you first learn of any plan to reorganize the Commission?

Mr. MINOW. Before I came down here. I read it in the paper when Dean Landis announced his thing—I read it, I think, in December or November.

Mr. SPRINGER. When were you not officially notified of your appointment, but when were you informally notified of your appointment to this Commission?

Mr. MINOW. Shortly after the first year.

Mr. SPRINGER. Just before the new administration came in?

Mr. MINOW. That is right.

Mr. SPRINGER. Did you go down to the White House to talk with Mr. Landis about this?

Mr. MINOW. When I came to Washington I met Mr. Landis socially. After I started my work and was here several weeks I had my first talk with Mr. Landis.

Mr. SPRINGER. All right. Now, I am not asking what was said.

Since you were appointed, how many trips have you made down to the White House—I am talking about the executive branch now—down to the White House or down to Mr. Landis' office?

Mr. MINOW. Well, I would say four or five, and I am perfectly willing to say that most of them were about the problem we are working on with respect to spectrum allocation

Mr. SPRINGER. Nothing about reorganization?

Mr. MINOW. I saw Dean Landis either once or twice about reorganization.

Mr. SPRINGER. Did you ever talk to Dutton?

Mr. MINOW. Fred Dutton?

Mr. SPRINGER. Yes.

Mr. MINOW. Yes, I have talked with him. I have never talked with him about the reorganization.

Mr. SPRINGER. Have you talked with him about the FCC?

Mr. MINOW. I had a note from him when I got here asking for a periodic report on our work.

Mr. SPRINGER. Now, I know you did that because that is a matter of record.

Now, I am trying to find out what did you do off the record. Did you talk with Mr. Dutton?

Mr. MINOW. Never, never about the FCC. No, sir.

Mr. SPRINGER. Well, how many times have you been to the White House to see Mr. Dutton?

Mr. MINOW. In the four or five times, that is what I included.

Mr. SPRINGER. And you say that would be the maximum? It would be five times?

Mr. MINOW. Approximately, sir. I was over there the other day. I do not think I counted that.

I would say approximately that. I am including in that visits to Dean Landis' office in the Old State Department Building.

Mr. SPRINGER. If you were voted these powers I am not talking about just you, Mr. Minow——

Mr. MINOW. I understand.

Mr. SPRINGER. I am talking about any chairman, whether he be Republican or Democrat.

Mr. MINOW. I am taking it in that spirit.

Mr. SPRINGER. Under these circumstances, how could we, here on this committee, expect the Commission to normally take action that was contrary to——

Mr. MINOW. I am sorry. How could you what?

Mr. SPRINGER. Under these circumstances, how could we, on this committee, expect you, as Chairman, to normally take action that was contrary to the White House views?

Mr. MINOW. Well, my—in the first place, I have never had any White House views on anything at the Commission except with respect to this reorganization plan.

And, secondly, I regard my obligation as being to the law. I feel I must administer the act which Congress has given us.

Mr. SPRINGER. I found out from past experience, Mr. Minow, that many litigants are close to the White House.

Mr. MINOW. Many what?

Mr. SPRINGER. Many litigants.

May I say that has been true under both administrations, and not just one, so I am not being partisan.

Some litigants who are close to the White House are frequently litigants before the Commission.

Would they not, naturally, tend to be favored even in the absence of any action by the White House?

Mr. MINOW. Well, I certainly would not, as far as I am concerned—can we go off the record a minute?

Mr. SPRINGER. Yes.

(Discussion off the record.)

Mr. SPRINGER. Does not section 2 in actual effect vest in the President the policy control over the Commission that was recommended by Landis' report?

Mr. MINOW. Does it vest in the——

Mr. SPRINGER. Let me read it again. Does not section 2, in actual effect, vest in the President the policy to control over the Commission that was recommended in Landis' report?

Mr. MINOW. I think not, Mr. Springer.

What it does is vest in the Chairman, if the Commission so decides, certain powers, but I do not think—it certainly doesn't go back to the White House.

Mr. SPRINGER. You are familiar with the section of the code with reference to censorship, are you not?

Mr. MINOW. Yes, I am, sir.

Mr. SPRINGER. I am referring to the speech now, Mr. Minow, because it is certainly a very good part of your outlook, as I see it, before the NAB last week.

Do you not intend to do something about programing?

Mr. MINOW. Well, I would certainly hope that we could do something about programing at the FCC.

My colleagues before me had started to do something about programing; yes, sir. I intend to help to continue it.

Mr. SPRINGER. Just how do you expect to accomplish this?

Mr. MINOW. I would hope very much to have a tighter insistence on performance by a licensee, matching his promise when he gets a license.

Mr. SPRINGER. By that, do you intend to see that he does certain types of programing?

Mr. MINOW. Well, we very often are confronted with the problem of choosing between a number of people who would like to broadcast and in making that selection we look to see what they propose to do with their license.

Mr. SPRINGER. What about those who are presently already licensed?

Mr. MINOW. Well, each person who has a license has made certain promises in getting his license, when he made his application.

Mr. SPRINGER. Do you expect to exert certain pressures upon that licensee to do certain types of programing?

Mr. MINOW. Not to do a certain type of programing, sir.

I would like to see that he meets the promises that he made.

Mr. SPRINGER. I beg your pardon?

Mr. MINOW. I said I would like to see that he meets or fulfills the promises that he made.

Mr. SPRINGER. I take it from the speech that you are very critical of programing.

Mr. MINOW. I am not critical of all programing. I am critical of some of it.

I do not feel that the industry has lived up to its great potential, and I have asked the industry to, itself, take on the task of improving the quality and the range and the diversity of programing it brings to the people.

Yes, sir.

Mr. SPRINGER. And you used the words "there is nothing permanent or sacred about a broadcast license."

Mr. MINOW. That is right, Mr. Springer.

Mr. SPRINGER. And in connection with that you used the words "vast wasteland."

Mr. MINOW. Not in connection with that, Mr. Springer.

Mr. SPRINGER. Well, that is all part of the speech, Mr. Minow.

Mr. MINOW. Yes. I thought I was careful, however——

Mr. SPRINGER. Do you think that any NAB man down there or anybody in the public interpreted that as other than unless programing is changed substantially, and I am not talking a little bit, but substantially, that you do intend to do something?

Mr. MINOW. Well, I think people can interpret it as they will.

I will hold to the statement that there is nothing permanent or sacred about a broadcast license. That is why we are there, after all.

Mr. SPRINGER. But you are not doing anything about censorship?

Mr. MINOW. No, sir.

Mr. SPRINGER. Would you be willing to take the opinion of people who have spent their lifetime in the business—not in the licensee business—as an opinion of what you meant by that as they interpreted it?

Mr. MINOW. Well, everyone is entitled to their opinion, and I would certainly welcome hearing it.

Mr. SPRINGER. Well, I speak now from one of the publications of the industry which has, as far as I know, no license but is only interested in the public interest.

I want to quote these words:

> Mr. Minow's speech last week made the Commissions' purpose even clearer. There can be no doubt now that he has embarked on a calculated plan of program controls.
>
> And it may be assumed that he believes he has the necessary votes to execute it. It seems to us that the real message at the NAB convention last week was this: Broadcasting must invigorate itself to keep what freedom it has and, indeed, to reclaim the freedom it has lost.

Now, it seems to me there is an opinion exactly as to how they interpreted what you intended to do.

Mr. MINOW. It certainly is. It is an opinion of one of the trade press, as you pointed out.

There have also been opinions voiced by many people who are not in the trade press, to the contrary.

Mr. SPRINGER. Yes, I read some of those, but it seems the great majority has been the other way, or at least, the ones that were on my desk from coast to coast are very substantially against this.

I will be glad to let you have—I think I saw most of those that were the other way.

Mr. MINOW. Well, I think not, Mr. Springer. I would be glad to supply you with those, but, in any event, I am not there. I do not regard my function is to please the trade press.

Mr. SPRINGER. Now, here is one that is not the trade press. This is just one that I would say is a coast-to-coast publication in the newspaper business and it is not local at all.

> But the real point is this: Who is going to permit what kind of entertainment TV is to offer? If that is not an implied plug for governmental censorship, then it is hard to figure just what Mr. Minow is talking about.
>
> It all smacks of the old business of intellectual puritanism. Somebody doesn't like the books you are reading, public tastes are too low and need to be elevated, so the answer is substitute official——

Mr. MINOW. I tried to make it as clear as I could in that speech that I would never want any dual credit judgment here to control what the taste is.

I have called upon, I think, as part of my role, part of the Commission's role——

Mr. SPRINGER. This is the last paragraph:

When people permit officials to do that they open up a real wasteland.

Mr. Minow, there are a few things here I wanted to ask you about with reference to your speech, because I think it gave us pretty much of a psychological outlook.

I invite you to sit down in front of your television set when your station goes on the air and stay there without a book, magazine, newspaper, profit and loss sheet, or rating book to distract you, and keep your eyes glued to that set until the station signs off. I can assure you that you will observe a vast wasteland.

Mr. MINOW. Yes, sir.

Mr. SPRINGER. I am talking about the entire committee now and not just this speech, I was on the Oversight Committee. I was the one most critical of programing.

I have been making a fight for good programing.

In my own district I got a very definite reaction when I made public my views. A lot of people wrote to me and I was interested.

I looked them up in my city director where I got those from and they said they wanted to be entertained, and "please do not give us something that we do not understand."

Now, I do not know whether you are the Phi Beta Kappa now, are you?

Mr. MINOW. I am not, Mr. Springer.

Mr. SPRINGER. Well, I take it you are a pretty bright fellow whether you are or not.

Mr. MINOW. Thank you.

Mr. SPRINGER. Now, are you intending to elevate the culture standards of programing to your intellect?

Mr. MINOW. No, I am not.

Mr. SPRINGER. At what level are you thinking in terms of——

Mr. MINOW. I am trying to help give a broader range of choice and alternatives to people. I am particularly interested in children's programing, as I tried to state.

If I do not feel, and I think it is perfectly within my job to urge the industry to improve the quality of its programs——

Mr. SPRINGER. Let's take children's programs, because that intrigued me. I have three who sit in front of it all the time.

Is there a time, generally, that the industry has set aside for children?

Mr. MINOW. I think probably the closest—I do not think there really is, but the closest would be in the late afternoon.

Mr. SPRINGER. All right. And early evening from around 4 o'clock to 6:30, with the exception of the news.

Is that not correct?

Would you say that the children's programs ought to be 7:30, 8:30, 9:30, and 10 o'clock?

Mr. MINOW. No, I do not think it is my prerogative or judgment to say.

Mr. SPRINGER. All right. You have been talking in this speech, have you not, about a prime time?

Mr. MINOW. Yes.

Mr. SPRINGER. Are you intending to put the prime time for the children's program——

Mr. MINOW. No.

Mr. SPRINGER. Well, I just want to be sure that I understood that.

Now, you say that of 73½ hours of prime evening time, the networks have tentatively scheduled 59 hours on categories of adventure, situation comedies, and so forth.

What would you substitute for that?

Mr. MINOW. It is not a question what I, personally, would substitute, Mr. Springer. It is a question of what the station promised to do when it got its license and it is a question of whether they are serving the interest of the community where they have their license.

I never proposed that any one of the governments say "Put this program on," or "Take that program off."

We might as well move to Russia.

What I have done is called upon the industry to elevate its standards to improve quality, the diversity of the programing it is giving to the people.

Mr. SPRINGER. All right. Now, aren't you, in effect, doing just that and substituting your own opinion?

Mr. MINOW. I think not, sir.

Mr. SPRINGER. Let me read this.

I like westerns and private eyes, too, but a steady diet for the whole country is obviously not in the public interest.

Do you believe that statement?

Mr. MINOW. I certainly do.

Mr. SPRINGER. Now, are you not substituting your judgment for theirs?

Mr. MINOW. No, I am not. I am calling upon the industry and the licensees to reflect, to try to find out—before I got here, Mr. Springer, last July the Commission adopted a programing policy after long exhaustive hearings. We were on the record on it.

The Commissioners, I supported. I want to find and help and encourage the licensees to serve their communities.

That is what I think our job is down there, and I hold to the view that broadcast license is not permanent. Otherwise, there would be no Commission.

Mr. SPRINGER. But in that sense, Mr. Minow, aren't you in fact substituting your judgment for theirs?

Mr. MINOW. I think not. I have told nobody what to put on the air.

Mr. SPRINGER. Well, you said that a steady diet of this is not in the public interest.

Mr. MINOW. This is my personal opinion. I think I am entitled to that.

Mr. SPRINGER. And that is what you are going to follow through on, I take it?

Mr. MINOW. Well, I think I should be judged on what I do, Mr. Springer.

Mr. SPRINGER. Well, Mr. Minow, you have a pretty good answer for your side and while I do not think you are very responsive to these questions—or some of them—I will go on for a minute.

Mr. MINOW. All right. You know, we, from Illinois, are used to this kind of stuff.

Mr. SPRINGER (reading):

You know, newspaper publishers take popularity ratings, too. The answers are pretty clear. It is almost always the comics, followed by the advice to the lovelorn columns. But, ladies and gentlemen, the news is still on the front page of all newspapers, the editorials are not replaced by more comics, the newspapers have not become one long collection of advice to the lovelorn.

Yet newspapers do not need a license from the Government to be in business. They do not use public property. But in television, where your responsibilities as public trustees are so plain, the moment that the ratings indicate that westerns are popular there are new imitations of westerns on the air faster than the old coaxial cable could take us from Hollywood to New York.

Now, I don't know but what these gentlemen do take ratings.

We have had hearings on ratings to find out whether they are honest enough.

Would you recommend that they put on there something that does not have much of a listening interest or audience interest?

Mr. MINOW. No, I do not know whether—what ratings are honest or not. I have no information about it.

What I am concerned about is that they should not be the sole guide.

Just because the majority may want something all the time, that does not mean that other people in the audience should not seek some programing too.

Mr. SPRINGER. Back here at the beginning of this speech, you also indicate that—Mr. Chairman, I will not be too much longer, but I think these are pretty important points to be covered.

Your industry possesses the most powerful voice in America.

With that sentence, I agree.

It has an inescapable duty to make that voice ring with intelligence and with leadership. In a few years, this exciting industry has grown from a novelty to an instrument of overwhelming impact on the American people. It should be making ready for the kind of leadership that newspapers and magazines assumed years ago, to make our people aware.

Are you intending to include more news in your broadcasts?

Mr. MINOW. Well, I would hope so, but again, it is not what I want that is going to count.

It is going to be what the licensee determines that his community wants. We are in favor on that point of encouraging editorializing by licensees.

Mr. SPRINGER. Are you encouraging editorializing, Mr. Minow, without expressing the opposing view?

Mr. MINOW. Without what, sir?

Mr. SPRINGER. Without giving expression to the other view——

Mr. MINOW. No, we have a doctrine, Mr. Springer, under our law known as the "fairness" doctrine.

We want broadcasters to take a position but we want them to give everyone in the community a fair chance to be heard.

Mr. SPRINGER. I do not know whether you know, but I have a clipping on my desk with reference to news reports and of the ones in the coming season, there is only one that has been taken up.

Mr. MINOW. One what?

Mr. SPRINGER. Only one option has been taken on the news, on a half-hour news program this fall.

There are two now awaiting sponsorship and have been for 6 weeks. They have not gotten an indication of sponsorship at all—and that is prime time, around 10, 10:30 in the evening.

Now, my point, Mr. Minow, is: What type of thing are you intending to project here, whether or not it is being accepted by the public?

Mr. MINOW. Well, I think time will tell. I do not intend to impose my views or my taste on anybody.

Mr. SPRINGER. You say here: "Clean up your own house or the Government will do it for you."

Mr. MINOW. I would like you to read the whole sentence there.

Mr. SPRINGER. All right.

It would not surprise me if some of you had expected me to come here today and say, in effect, "clean up your own house or the Government will do it for you."

Well, in a limited sense, you would be right. I have just said it.

Now, that——

Mr. MINOW. Well, the next paragraph says that it is not in that spirit "that I come here," if I recall correctly.

Mr. SPRINGER. Well, you go on to say that you are trying to help broadcasting but you do say that, and I think that you meant there that unless they clean up their house that you are going to do it for them or the Government is going to do it for them.

Mr. MINOW. I think not.

Mr. SPRINGER. That is the way I interpreted it and that is the way I think most of the NAB people did, because this statement is the one that was most quoted to me when I went up there to the reception the other night.

Now, do you believe that they are in a mess?

Mr. MINOW. Well, I would not want to characterize it with that word.

I do think there is substantial room for improvement.

Mr. SPRINGER. Well, that it is a wasteland? That would be a better one, would it not? You have used that word.

Mr. MINOW. I think much of television programing is, yes, sir.

Mr. SPRINGER. Well, you said if you sit there in the evening hours and you just see a vast wasteland.

I take it that is what you meant and that is what you did say, did you not?

Mr. MINOW. That is right, sir.

Mr. SPRINGER. Let's take, for instance, sports, which I happen to be interested in.

Would you call that segment of the industry a vast wasteland?

Mr. MINOW. I certainly would not.

Mr. SPRINGER. This would not be one area you would try to clean up, would it?

Mr. MINOW. Well, I do not want to accept the characterization that I am going to clean up anything.

Mr. SPRINGER. Well, I am glad to hear that, because I would like to see this testimony released so that the people could know what you did say.

Mr. MINOW. Well, I think all they would have to do would be to read what I said, Mr. Springer.

I do not think I have said anything here that is different.

Mr. SPRINGER. Mr. Chairman, that is all.

Mr. HARRIS. I think in view of the fact, in case there is any question regarding it, that is the speech, of course, and in view of the proposed delegation of authority under the plan here, I do think it would be advisable, if there are no objections, for the entire speech to be included in the record.

Mr. ROGERS of Texas. Could I inquire, Mr. Minow, if it is your wish that it be included?

Mr. MINOW. It would be fine with me.

Mr. HARRIS. If there is no objection, it will be included in the record at this point in its entirety.

(The speech above referred to is as follows:)

ADDRESS BY NEWTON N. MINOW, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION, TO THE 39TH ANNUAL CONVENTION OF THE NATIONAL ASSOCIATION OF BROADCASTERS, WASHINGTON, D.C., MAY 9, 1961

Governor Collins, distinguished guests, ladies and gentlemen, thank you for this opportunity to meet with you today. This is my first public address since I took over my new job. When the New Frontiersmen rode into town, I locked myself in my office to do my homework and get my feet wet. But apparently I haven't managed to stay out of hot water. I seem to have detected a certain nervous apprehension about what I might say or do when I emerged from that locked office for this, my maiden station break.

First, let me begin by dispelling a rumor. I was not picked for this job because I regard myself as the fastest draw on the New Frontier.

Second, let me start a rumor. Like you, I have carefully read President Kennedy's messages about the regulatory agencies, conflict of interest, and the dangers of ex parte contacts. And, of course, we at the Federal Communications Commission will do our part. Indeed, I may even suggest that we change the name of the FCC to the Seven Untouchables!

It may also come as a surprise to some of you, but I want you to know that you have my admiration and respect. Yours is a most honorable profession. Anyone who is in the broadcasting business has a tough row to hoe. You earn your bread by using public property. When you work in broadcasting you volunteer for public service, public pressure, and public regulation. You must compete with other attractions and other investments, and the only way you can do it is to prove to us every 3 years that you should have been in business in the first place.

I can think of easier ways to make a living.

But I cannot think of more satisfying ways.

I admire your courage—but that doesn't mean I would make life any easier for you. Your license lets you use the public's airwaves as trustees for 180 million Americans. The public is your beneficiary. If you want to stay on as trustees, you must deliver a decent return to the public—not only to your stockholders. So, as a representative of the public, your health and your product are among my chief concerns.

As to your health: let's talk only of television today—1960 gross broadcast revenues of the television industry were over $1,268 million; profit before taxes was $243,900,000 an average return on revenue of 19.2 percent. Compared with 1959, gross broadcast revenues were $1,163,900,000, and profit before taxes was $222,300,000, an average return on revenue of 19.1 percent. So, the percentage increase of total revenues from 1959 to 1960 was 9 percent, and the percentage increase of profit was 9.7 percent. This, despite a recession. For your investors, the price has indeed been right.

I have confidence in your health.

But not in your product.

It is with this and much more in mind that I come before you today.

One editorialist in the trade press wrote that "the FCC of the New Frontier is going to be one of the toughest FCC's in the history of broadcast regula-

tion." If he meant that we intend to enforce the law in the public interest, let me make it perfectly clear that he is right—we do.

If he meant that we intend to muzzle or censor broadcasting, he is dead wrong.

It would not surprise me if some of you had expected me to come here today and say in effect, "Clean up your own house or the Government will do it for you."

Well, in a limited sense, you would be right—I've just said it.

But I want to say to you earnestly that it is not in that spirit that I come before you today, nor is it in that spirit that I intend to serve the FCC.

I am in Washington to help broadcasting, not to harm it; to strengthen it, not weaken it; to reward it, not punish it; to encourage it, not threaten it; to stimulate it, not censor it.

Above all, I am here to uphold and protect the public interest.

What do we mean by "the public interest"? Some say the public interest is merely what interests the public.

I disagree.

So does your distinguished president, Governor Collins. In a recent speech he said, "Broadcasting to serve the public interest, must have a soul and a conscience, a burning desire to excel, as well as to sell; the urge to build the character, citizenship, and intellectual stature of people, as well as to expand the gross national product * * * By no means do I imply that broadcasters disregard the public interest * * * But a much better job can be done, and should be done."

I could not agree more.

And I would add that in today's world, with chaos in Laos and the Congo aflame, with Communist tyranny on our Caribbean doorstep and relentless pressure on our Atlantic alliance, with social and economic problems at home of the gravest nature, yes, and with technological knowledge that makes it possible, as our President has said, not only to destroy our world but to destroy poverty around the world—in a time of peril and opportunity, the old complacent, unbalanced fare of action-adventure and situation comedies is simply not good enough.

Your industry possesses the most powerful voice in America. It has an inescapable duty to make that voice ring with intelligence and with leadership. In a few years, this exciting industry has grown from a novelty to an instrument of overwhelming impact on the American people. It should be making ready for the kind of leadership that newspapers and magazines assumed years ago, to make our people aware of their world.

Ours has been called the jet age, the atomic age, the space age. It is also, I submit, the television age. And just as history will decide whether the leaders of today's world employed the atom to destroy the world or rebuild it for mankind's benefit, so will history decide whether today's broadcasters employed their powerful voice to enrich the people or debase them.

If I seem today to address myself chiefly to the problems of television, I don't want any of you radio broadcasters to think we've gone to sleep at your switch—we haven't. We still listen. But in recent years most of the controversies and cross-currents in broadcast programing have swirled around television. And so my subject today is the television industry and the public interest.

Like everybody, I wear more than one hat. I am the Chairman of the FCC. I am also a television viewer and the husband and father of other television viewers. I have seen a great many television programs that seemed to me eminently worthwhile, and I am not talking about the much bemoaned good old days of "Playhouse 90" and "Studio One."

I am talking about this past season. Some were wonderfully entertaining, such as "The Fabulous Fifties," the "Fred Astaire Show," and the "Bing Crosby Special"; some were dramatic and moving, such as "Conrad's Victory" and "Twilight Zone"; some were marvelously informative, such as "The Nation's Future," "CBS Reports," and "The Valiant Years." I could list many more—programs that I am sure everyone here felt enriched his own life and that of his family. When television is good, nothing—not the theater, not the magazines or newspapers—nothing is better.

But when television is bad, nothing is worse. I invite you to sit down in front of your television set when your station goes on the air and stay there without a book, magazine, newspaper, profit and loss sheet or rating book to distract you—and keep your eyes glued to that set until the station signs off. I can assure you that you will observe a vast wasteland.

You will see a procession of game shows, violence, audience participation shows, formula comedies about totally unbelievable families, blood and thunder, mayhem, violence, sadism, murder, western bad men, western good men, private eyes, gangsters, more violence, and cartoons. And, endlessly, commercials—many screaming, cajoling, and offending. And most of all, boredom. True, you will see a few things you will enjoy. But they will be very, very few. And if you think I exaggerate, try it.

Is there one person in this room who claims that broadcasting can't do better?

Well, a glance at next season's proposed programing can give us little heart. Of 73½ hours of prime evening time, the networks have tentatively scheduled 59 hours to categories of "action-adventure," situation comedy, variety, quiz, and movies.

Is there one network president in this room who claims he can't do better?

Well, is there at least one network president who believes that the other networks can't do better?

Gentlemen, your trust accounting with your beneficiaries is overdue.

Never have so few owed so much to so many.

Why is so much of television so bad? I have heard many answers: demands of your advertisers; competition for ever higher ratings; the need always to attract a mass audience; the high cost of television programs; the insatiable appetite for programing material—these are some of them. Unquestionably, these are tough problems not susceptible to easy answers.

But I am not convinced that you have tried hard enough to solve them.

I do not accept the idea that the present overall programing is aimed accurately at the public taste. The ratings tell us only that some people have their television sets turned on and of that number, so many are tuned to one channel and so many to another. They don't tell us what the public might watch if they were offered half a dozen additional choices. A rating, at best, is an indication of how many people saw what you gave them. Unfortunately, it does not reveal the depth of the penetration, or the intensity of reaction, and it never reveals what the acceptance would have been if what you gave them had been better—if all the forces of art and creativity and daring and imagination had been unleashed. I believe in the people's good sense and good taste, and I am not convinced that the people's taste is as low as some of you assume.

My concern with the rating services is not with their accuracy. Perhaps they are accurate. I really don't know. What, then, is wrong with the ratings? It's not been their accuracy—it's been their use.

Certainly, I hope you will agree that ratings should have little influence where children are concerned. The best estimates indicate that during the hours of 5 to 6 p.m. 60 percent of your audience is composed of children under 12. And most young children today, believe it or not, spend as much time watching television as they do in the schoolroom. I repeat—let that sink in—most young children today spend as much time watching television as they do in the schoolroom. It used to be said that there were three great influences on a child: home, school, and church. Today, there is a fourth great influence, and you ladies and gentlemen control it.

If parents, teachers, and ministers conducted their responsibilities by following the ratings, children would have a steady diet of ice cream, school holidays, and no Sunday School. What about your responsibilities? Is there no room on television to teach, to inform, to uplift, to stretch, to enlarge the capacities of our children? Is there no room for programs deepening their understanding of children in other lands? Is there no room for a children's news show explaining something about the world to them at their level of understanding? Is there no room for reading the great literature of the past, teaching them the great traditions of freedom? There are some fine children's shows, but they are drowned out in the massive doses of cartoons, violence, and more violence. Must these be your trademarks? Search your consciences and see if you cannot offer more to your young beneficiaries whose future you guide so many hours each and every day.

What about adult programing and ratings? You know, newspaper publishers take popularity ratings too. The answers are pretty clear: it is almost always the comics, followed by the advice to the lovelorn columns. But, ladies and gentlemen, the news is still on the front page of all newspapers, the editorials are not replaced by more comics, the newspapers have not become one long collection of advice to the lovelorn. Yet newspapers do not need a license from the Govern-

ment to be in business—they do not use public property. But in television—where your responsibilities as public trustees are so plain, the moment that the ratings indicate that westerns are popular there are new imitations of westerns on the air faster than the old coaxial cable could take us from Hollywood to New York. Broadcasting cannot continue to live by the numbers. Ratings ought to be the slave of the broadcaster, not his master. And you and I both know that the rating services themselves would agree.

Let me make clear that what I am talking about is balance. I believe that the public interest is made up of many interests. There are many people in this great country and you must serve all of us. You will get no argument from me if you say that, given a choice between a western and a symphony, more people will watch the western. I like westerns and private eyes, too—but a steady diet for the whole country is obviously not in the public interest. We all know that people would more often prefer to be entertained than stimulated or informed. But your obligations are not satisfied if you look only to popularity as a test of what to broadcast. You are not only in show business; you are free to communicate ideas as well as relaxation. You must provide a wider range of choices, more diversity, more alternatives. It is not enough to cater to the Nation's whims—you must also serve the Nation's needs.

And I would add this—that if some of you persist in a relentless search for the highest rating and the lowest common denominator, you may very well lose your audience. Because, to paraphrase a great American who was recently my law partner, the people are wise, wiser than some of the broadcasters—and politicians—think.

As you may have gathered, I would like to see television improved. But how is this to be brought about? By voluntary action by the broadcasters themselves? By direct Government intervention? Or how?

Let me address myself now to my role not as a viewer but as Chairman of the FCC. I could not if I would, chart for you this afternoon in detail all of the actions I contemplate. Instead, I want to make clear some of the fundamental principles which guide me.

First, the people own the air. They own it as much in prime evening time as they do at 6 o'clock Sunday morning. For every hour that the people give you—you owe them something. I intend to see that your debt is paid with service.

Second, I think it would be foolish and wasteful for us to continue any worn-out wrangle over the problems of payola, rigged quiz shows, and other mistakes of the past. There are laws on the books which we will enforce. But there is no chip on my shoulder. We live together in perilous, uncertain times; we face together staggering problems; and we must not waste much time now by rehashing the cliches of past controversy. To quarrel over the past is to lose the future.

Third, I believe in the free enterprise system. I want to see broadcasting improved and I want you to do the job. I am proud to champion your cause. It is not rare for American businessmen to serve a public trust. Yours is a special trust because it is imposed by law.

Fourth: I will do all I can to help educational television. There are still not enough educational stations, and major centers of the country still lack usable educational channels. If there were a limited number of printing presses in this country, you may be sure that a fair proportion of them would be put to educational use. Educational television has an enormous contribution to make to the future, and I intend to give it a hand along the way. If there is not a nationwide educational television system in this country, it will not be the fault of the FCC.

Fifth: I am unalterably opposed to governmental censorship. There will be no suppression of programing which does not meet with bureaucratic tastes. Censorship strikes at the taproot of our free society.

Sixth: I did not come to Washington to idly observe the squandering of the public's airwaves. The squandering of our airwaves is no less important than the lavish waste of any precious natural resource. I intend to take the job of Chairman of the FCC very seriously. I believe in the gravity of my own particular sector of the New Frontier. There will be times perhaps when you will consider that I take myself or my job too seriously. Frankly, I don't care if you do. For I am convinced that either one takes this job seriously—or one can be seriously taken.

Now, how will these principles be applied? Clearly, at the heart of the FCC's authority lies its power to license, to renew or fail to renew, or to revoke a

license. As you know, when your license comes up for renewal, your performance is compared with your promises. I understand that many people feel that in the past licenses were often renewed pro forma. I say to you now: renewal will not be pro forma in the future. There is nothing permanent or sacred about a broadcast license.

But simply matching promises and performance is not enough. I intend to do more. I intend to find out whether the people care. I intend to find out whether the community which each broadcaster serves believes he has been serving the public interest. When a renewal is set down for hearing, I intend—wherever possible—to hold a well-advertised public hearing, right in the community you have promised to serve. I want the people who own the air and the homes that television enters to tell you and the FCC what's been going on. I want the people—if they are truly interested in the service you give them—to make notes, document cases, tell us the facts. For those few of you who really believe that the public interest is merely what interests the public—I hope that these hearings will arouse no little interest.

The FCC has a fine reserve of monitors—almost 180 million Americans gathered around 56 million sets. If you want those monitors to be your friends at court—it's up to you.

Some of you may say,—"Yes, but I still do not know where the line is between a grant of a renewal and the hearing you just spoke of." My answer is: Why should you want to know how close you can come to the edge of the cliff? What the Commission asks of you is to make a conscientious, good-faith effort to serve the public interest. Every one of you serves a community in which the people would benefit by educational, religious, instructive or other public service programing. Every one of you serves an area which has local needs—as to local elections, controversial issues, local news, local talent. Make a serious, genuine effort to put on that programing. When you do, you will not be playing brinkmanship with the public interest.

What I've been saying applies to broadcast stations. Now a station break for the networks:

You know your importance in this great industry. Today, more than one-half of all hours of television programing comes from the networks; in prime time, this rises to more than three-fourth of the available hours.

You know that the FCC has been studying network operations for sometime. I intend to press this to a speedy conclusion with useful results. I can tell you right now, however, that I am deeply concerned with concentration of power in the hands of the networks. As a result, too many local stations have foregone any efforts at local programing, with little use of live talent and local service. Too many local stations operate with one hand on the network switch and the other on a projector loaded with old movies. We want the individual stations to be free to meet their legal responsibilities to serve their communities.

I join Governor Collins in his views so well expressed to the advertisers who use the public air. I urge the networks to join him and undertake a very special mission on behalf of this industry: you can tell your advertisers, "This is the high quality we are going to serve—take it or other people will. If you think you can find a better place to move automobiles, cigarettes, and soap—go ahead and try."

Tell your sponsors to be less concerned with costs per thousand and more concerned with understanding per millions. And remind your stockholders that an investment in broadcasting is buying a share in public responsibility.

The networks can start the industry on the road to freedom from the dictatorship of numbers.

But there is more to the problem than network influences on stations or advertisers influences on networks. I know the problems networks face in trying to clear some of their best programs—the informational programs that exemplify public service. They are your finest hours—whether sustaining or commercial, whether regularly scheduled or special—these are the signs that broadcasting knows the way to leadership. They make the public's trust in you a wise choice. They should be seen. As you know, we are readying for use new forms by which broadcast stations will report their programing to the Commission. You probably also know that special attention will be paid in these reports to public service programing. I believe that stations taking network service should also be required to report the extent of the local clearance of network public service programing, and when they fail to clear them, they should explain why. If it is to put on some outstanding local program, this is one reason. But, if it is simply to carry some old movie, that is an entirely different matter. The Com-

mission should consider such clearance reports carefully when making up its mind about the licensee's overall programing.

We intend to move—and as you know, indeed the FCC was rapidly moving in other new areas before the new administration arrived in Washington. And I want to pay my public respects to my very able predecessor, Fred Ford, and my colleagues on the Commission who have welcomed me to the FCC with warmth and cooperation.

We have approved an experiment with pay TV, and in New York we are testing the potential of UHF broadcasting. Either or both of these may revolutionize television. Only a foolish prophet would venture to guess the direction they will take, and their effect. But we intend that they shall be explored fully—for they are part of broadcasting's New Frontier.

The questions surrounding pay TV are largely economic. The questions surrounding UHF are largely technological. We are going to give the infant pay TV a chance to prove whether it can offer a useful service; we are going to protect it from those who would strangle it in its crib.

As for UHF, I'm sure you know about our test in the canyons of New York City. We will take every possible positive step to break through the allocations barrier into UHF. We will put this sleeping giant to use and in the years ahead we may have twice as many channels operating in cities where now there are only two or three. We may have a half dozen networks instead of three.

I have told you that I believe in the free enterprise system. I believe that most of television's problems stem from lack of competition. This is the importance of UHF to me: with more channels on the air, we will be able to provide every community with enough stations to offer service to all parts of the public. Programs with a mass market appeal required by mass product advertisers certainly will still be available. But other stations will recognize the need to appeal to more limited markets and to special tastes. In this way, we can all have a much wider range of programs.

Television should thrive on this competition—and the country should benefit from alternative sources of service to the public. And—Governor Collins—I hope the NAB will benefit from many new members.

Another and perhaps the most important frontier: television will rapidly join the parade into space. International television will be with us soon. No one knows how long it will be until a broadcast from a studio in New York will be viewed in India as well as in Indiana, will be seen in the Congo as it is seen in Chicago. But as surely as we are meeting here today, that day will come—and once again our world will shrink.

What will the people of other countries think of us when they see our western badmen and good men punching each other in the jaw in between the shooting? What will the Latin American or African child learn of America from our great communications industry? We cannot permit television in its present form to be our voice overseas.

There is your challenge to leadership. You must reexamine some fundamentals of your industry. You must open your minds and open your hearts to the limitless horizons of tomorrow.

I can suggest some words that should serve to guide you:

"Television and all who participate in it are jointly accountable to the American public for respect for the special needs of children, for community responsibility, for the advancement of education and culture, for the acceptability of the program materials chosen, for decency and decorum in production, and for propriety in advertising. This responsibility cannot be discharged by any given group of programs, but can be discharged only through the highest standards of respect for the American home, applied to every moment of every program presented by television."

"Program materials should enlarge the horizons of the viewer, provide him with wholesome entertainment, afford helpful stimulation, and remind him of the responsibilities which the citizen has toward his society."

These words are not mine. They are yours. They are taken literally from your own television code. They reflect the leadership and aspirations of your own great industry. I urge you to respect them as I do. And I urge you to respect the intelligent and farsighted leadership of Governor LeRoy Collins, and to make this meeting a creative act. I urge you at this meeting and, after you leave, back home, at your stations and your networks, to strive ceaselessly to improve your product and to better serve your viewers, the American people.

I hope that we at the FCC will not allow ourselves to become so bogged down in the mountain of papers, hearings, memorandums, orders, and the daily routine that we close our eyes to the wider view of the public interest. And I hope that you broadcasters will not permit yourselves to become so absorbed in the chase for ratings, sales, and profits that you lose this wider view. Now more than ever before in broadcasting's history the times demand the best of all of us.

We need imagination in programing, not sterility; creativity, not imitation; experimentation, not conformity; excellence, not mediocrity. Television is filled with creative, imaginative people. You must strive to set them free.

Television in its young life has had many hours of greatness—its "Victory at Sea," its Army-McCarthy hearings, its "Peter Pan," its "Kraft Theater," its "See It Now," its "Project 20," the world series, its political conventions and campaigns, "The Great Debates"—and it has had its endless hours of mediocrity and its moments of public disgrace. There are estimates that today the average viewer spends about 200 minutes daily with television, while the average reader spends 38 minutes with magazines and 40 minutes with newspapers. Television has grown faster than a teenager, and now it is time to grow up.

What you gentlemen broadcast through the people's air affects the people's taste, their knowledge, their opinions, their understanding of themselves and of their world. And their future.

The power of instantaneous sight and sound is without precedent in mankind's history. This is an awesome power. It has limitless capabilities for good—and for evil. And it carries with it awesome responsibilities, responsibilities which you and I cannot escape.

In his stirring inaugural address our President said, "And so, my fellow Americans: ask not what your country can do for you—ask what you can do for your country."

Ladies and gentlemen, ask not what broadcasting can do for you. Ask what you can do for broadcasting.

I urge you to put the people's airwaves to the service of the people and the cause of freedom. You must help prepare a generation for great decisions. You must help a great nation fulfill its future.

Do this, and I pledge you our help.

Mr. HARRIS. Mr. Moss?

Mr. MOSS. Mr. Minow, I want to congratulate you on the speech.

Mr. MINOW. Thank you.

Mr. MOSS. I thought it was one that required making.

I expressed myself in the matter in time with the hearings of the Oversight Committee and I am not talking about censorships any more than you.

I have done a lot of research on censorship. I find, with unanimity, it is an act of prior restraint on content or specific content.

I also have youngsters, and I am pleased to say, in view of the general caliber of programing, that they have gradually been weaned away from television.

I have been able to get them interested in more constructive things than the type of programing that we have.

I have never gotten over griping about the removal of "Voice of Firestone," by all three networks, as I recall.

It was a stepchild put around here and there. It had a good listening audience and was commercially sponsored and they were perfectly willing to pay for the prime time, but it did not produce the great mass of audience that the networks felt necessary.

So I would assume that it is their feeling that unless you can draw the very largest audience good programing is not to be tolerated; that you have got to bring it down to the level where you get the most viewers, if their rating systems are any good, and I have had a very interesting experience in trying to determine whether they are good or bad after reading what I regarded as a very fine study matter under the sponsorship of this subcommittee.

I am still a little hazy as to how the American Statistical Society characterizes the ratings. I assume from their study that at the local level they are not too much of a rival for the nationally projected ratings, but I think that it is inherent here in this license, in the public interest, to maybe just merge us a little, just slightly, and with the proper balance, I think that could be achieved.

But I am sometimes wondering whether the most important voice here is the licensee who has been licensed to operate in the public interest, the network, or the commercial sponsor. I understand there are songs that cannot be sung without rewriting. There are products or words that cannot be mentioned in certain programs, because of sponsors.

This, I think, is censorship because it is specific restraint on content. It goes on regularly by people who are not licensed, who are not answerable to the public. All they have to do is to create something to draw the most viewers.

Do you not think there is censorship there?

Mr. MINOW. I do. I think there has been a lot of throwing of the word "censorship" without a clear definition of what censorship actually is and what it is not.

I agree with that, sir. The last thing that we would do, and again I know on this I can speak for the Commission, is censor programing. This is not our purpose, and I am very grateful for your remarks.

Mr. Moss. Well, candidly, I would rather that you censored programing than to have some of the programs that appeared before our committee. I think there might be a little more responsibility to the public, but I would not want either of you——

Mr. MINOW. Right. It is not the Government's concern to do that. I think that this would be wrong.

Mr. Moss. And, you know, we talk a lot about television and deplorable as it is, it does not compare today to these electronic jukeboxes that we have in radio.

I have driven across this country quite a number of times, and I have gone all day where I could get nothing but the most raucus sounds on radio with a minimum, maybe one or two spot news plugs on the air.

No attempt, though, to render a public service, and I think radio, in its time, did an outstanding job of public service, but it has deteriorated alarmingly at this moment.

Mr. MINOW. Well, it is a much tougher problem, Mr. Moss, because of the vast number of stations and it is very complicated to know what exactly the future of radio is in this country.

Mr. Moss. Well, I just wanted to take this time to congratulate you——

Mr. MINOW. Well, thank you.

Mr. Moss (continuing). On your excellent speech. I think some of the speeches of the president of the National Association of Broadcasters—who is the president?

Mr. MINOW. Governor Collins.

Mr. Moss. I think some of his speeches reflected a concern with the problems which should be concerning all broadcasters because I get complaints from those who would like to be viewers, and I have many that I make silently to myself.

Mr. MINOW. Thank you, sir.

Mr. HARRIS. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

Mr. Minow, last Friday in the Post, one of the columns had quite an article about the appointees of the President in the domestic field as being selected because of their toughness and in the foreign field that they were selected and cleared and screened because of their kindliness.

Were you aware of that at all when you were selected?

Mr. MINOW. No, I was not, sir.

Mr. YOUNGER. Your speech is rather a tough speech.

It occurred to me that probably you were screened for your appointment on that basis?

Mr. MINOW. Well, the thing that has surprised me about my speech is the great attention it received, because I said nothing in it that I had not said when I came down here to be confirmed by the Senate and what I have said since.

The only thing is I think I said it to that particular audience, is the reason that it got all the attention that it did.

Nor, I might add, have I said anything terribly different than the Commission has said from time to time. I may have said it in blunter terms.

Mr. YOUNGER. Another circular, I understand, which has been handed around, was this one pertaining to the instructions of all men serving, as you serve, to mention the President early in the speech.

Are you familiar with that circular?

Mr. MINOW. I read about that in the paper, Mr. Younger. I have never seen that memorandum.

Mr. YOUNGER. Your mentioning of the President in the third paragraph was incidental?

Mr. MINOW. Yes, sir; it was.

Mr. YOUNGER. You do not follow the instructions of that circular.

Mr. MINOW. That is right. I do not, sir.

Mr. YOUNGER. When the President said he was going to make appointments, he said that he was only going to appoint individuals who were skilled and trained and experienced in the fields in which they were selected.

I think the report ought to show your experience in either practicing before the Communications Commission or your experience in the communications field.

Mr. MINOW. My experience in the communications field is limited, sir.

My experience has been that of a practicing lawyer in a very general practice, trying cases, doing corporate work.

I have represented people in educational television. I have represented talent in negotiations with stations and networks. I am a member or was a member of a large firm that had a great deal of work in the communications field but I, personally, would not regard myself as an expert or being terribly well-qualified for it.

Mr. YOUNGER. Well, as a practicing attorney and if you were practicing before the Commission, would you prefer to have these changes made in the basic law of the Communications Act rather than through the reorganization plan?

Mr. MINOW. Well, that is a hard question for me to answer, sir.

I would certainly want to—I would hope, if I were practicing there—to expedite, to enable the Commission to carry on its work in a more expeditious and sound manner.

Now, whether it should be done by one particular route, through a reorganization plan or by changes in the statutes, these are matters of opinion, and I think reasonable people could differ about that.

Mr. YOUNGER. Then you are not necessarily subscribing to the theory, as an attorney, that the more you confuse this issue the more business which is created for the attorney?

Mr. MINOW. Well, I would hope the less confusion the better. I would hope that the bar would cooperate in trying to help us get quicker decisions for their clients, because this is in the public interest.

These slow dragging out of these—I was on the other side in so many of these problems. This slow dragging out does no one any good.

Mr. YOUNGER. Well, I am not an attorney, but our very fine chairman is, and I was very much interested in the confusion in his mind, that this reorganization plan would establish, as against having it in the basic law, and being more understandable. That is why I asked the question.

Mr. MINOW. Well, I appreciate your concern on that, sir.

I would only say that, as I said before, I would support this plan, but I am not saying there are not other ways to accomplish these results.

Mr. YOUNGER. I did not understand a while ago what you meant when you said the program was not to be your judgment but what the licensee decides his community wants.

Mr. MINOW. Well, under our programing policy of last July, what we have asked the licensee to do is to circulate and canvass his community, talk to the church groups, talk to the parent-teachers, talk to the political groups, talk to everybody he can find, and say "What do you want on the air?" What do you need here to serve the community's interest?" and then come back and in his form, as the result of his inquiry, tell us what kind of programing he thinks will best serve the public interest.

This is the emphasis that——

Mr. YOUNGER. All right. If he comes back and says that he has done that and that his programing is satisfactory, even though you or the Commission disagree with him, you will grant him his license?

Mr. MINOW. If he can demonstrate to us that he has made a conscientious, sincere effort to find out, and that is what it turns out to be—we are not going to tell him that something else should be on the air; no, sir.

Mr. YOUNGER. It is going to be what the licensee decides?

Mr. MINOW. Well, what is—on the basis of his community——

Mr. YOUNGER. Survey?

Mr. MINOW. That is right.

Mr. YOUNGER. If he decides that, after his survey then he is in the clear?

Mr. MINOW. Well, provided that his survey—I mean, he can show us in documents that, "I talked to this fellow and I talked to that fellow and I have tried to do a job," that is right.

Mr. YOUNGER. That is right. He has made a survey.

Mr. MINOW. Right.

Mr. YOUNGER. He has decided on this program and it is not going to be what you think or what the Commission thinks?

Mr. MINOW. No, sir.

That is why I want to have these renewals in the field also, because I want them in the place where the fellow broadcast. We do not know what kind of a job he did.

Local people in the community know. We do not know.

Mr. YOUNGER. Do you believe that the networks should be brought under the Communications Act?

Mr. MINOW. Well, this is a matter which I know has been before this committee, and the Commission has taken a position on it.

I really have not formed a final judgment on it yet, sir. I want to study that further.

Mr. YOUNGER. Listening to Dean Landis the other day and to you in this explanation of the Reorganization Plan No. 2, I gathered the idea that the main objection to the present act is this feature where the Commission must hear oral arguments and pass on exceptions in every adjudicatory case.

Mr. MINOW. I think that probably goes to the heart of it; yes, sir.

Mr. YOUNGER. Well, that is what I thought. And now, I was very much surprised this morning to hear you describe these various cases as some 50 that you said were in the last year, and I quote:

> I think this example today would be multiplied many times in view of the roughly 50 cases in which oral arguments were heard last year.

And you gave examples of four.

They had an average of 65 minutes.

Now, 50 cases would be roughtly 50 hours a year on an 8-hour day or less than 1 week.

Mr. MINOW. Well, but this is my point——

Mr. YOUNGER. Wait a minute.

Mr. MINOW. Excuse me.

Mr. YOUNGER. You would have only 1 week actually of oral argument. It seems to me that this question of oral argument, if that is all it involves, is stretched way out beyond its just desserts.

Mr. MINOW. Well, first I would only say: This is a small part of our work. I regard, for example, going back to this decision, we have got to make now on this space satellite communications system——

Mr. HARRIS. Did you finish your statement?

Mr. MINOW. No. Go ahead. That is all right.

Do you want me to go ahead?

Mr. HARRIS. Yes. You finish your statement.

Mr. MINOW. We are so tied up now. It is not just the time of the argument. Then we have got to get together and decide it. Then we have got to give instructions on opinions.

Then we have got to go over all of these opinions and very often—take that shrimp boat case. I was not here when it was decided but to tie up the time of seven Commissioners and their staffs and the

opinion and review staff, this probably cost the Government thousands of dollars when what was at stake was a matter of, really, the most relatively unimportant concern.

What we want to do is be free to differentiate between the important and the unimportant.

Mr. HARRIS. Gentlemen, I have to interrupt the proceedings. We have a bill on the floor of the House. This committee has got to go over there to see about it.

Mr. Rogers, did you have any particular question you wanted to ask?

Mr. ROGERS of Florida. Well, in view of the time I will defer my questions that I have.

Mr. YOUNGER. I have a few more questions that I would like to ask.

Mr. HARRIS. I do not know how we are going to get to them right now.

This is off the record.

(Discussion off the record.)

Mr. HARRIS. We will now adjourn until 2 o'clock tomorrow, Wednesday, May 17.

(Whereupon, at 11:55 a.m., the committee was recessed, to reconvene at 2 p.m. Wednesday, May 17, 1961.)

REORGANIZATION PLANS 1 AND 2 OF 1961

WEDNESDAY, MAY 17, 1961

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON REGULATORY
AGENCIES OF THE COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to recess, at 2 p.m., in room 1334, New House Office Building, Hon. Oren Harris (chairman of the full committee) presiding.

Present: Oren Harris (chairman), Mr. Rogers of Texas, Mr. Moss, Mr. Rogers of Florida, Mr. Springer, and Mr. Younger.

Also present: Charles P. Howze, Jr., chief counsel of the subcommittee; George W. Perry, associate counsel of the subcommittee; Herman C. Beasley, subcommittee clerk; Rex Sparger, staff assistant of the subcommittee; Kurt Borchardt, legal counsel, House Committee on Interstate and Foreign Commerce; Allan H. Perley, Legislative Counsel of the House of Representatives; Elmer W. Henderson, counsel to the Subcommittee on Executive and Legislative Reorganization.

The CHAIRMAN. The committee will come to order.

Mr. Minow, will you resume the witness stand?

Yesterday, when the committee adjourned, by call of the House, Mr. Younger was interrogating Mr. Minow, now the Chairman of the Federal Communications Commission, and did not conclude his questions, and I think, Mr. Younger, you may proceed to take up where we left off yesterday.

STATEMENT OF HON. NEWTON N. MINOW, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION—Resumed

Mr. YOUNGER. Mr. Minow, we were discussing the amount of time consumed in the oral arguments.

Mr. MINOW. Yes, Mr. Younger.

Mr. YOUNGER. Of the 50 cases which you mentioned and if the 4 that are contained on page 7 of your paper are typical, then you would have an average of about 6 days, maybe a little longer, but it would be somewhere like a week's work on oral argument.

As I recall, you said it also takes the time for the Board of Commissioners to then make up their mind.

If these are as unimportant as you would indicate, it certainly wouldn't take the Commission very long to make up their minds and decide to get rid of them.

Is this not laying too much stress on this one situation which we wanted cured? It is too much like tearing out the roots of the tree to cure one branch.

Now tell me what your reaction to this would be?

Mr. MINOW. Well, Mr. Younger, the time spent listening to the argument, I would say, is sort of like the top of the iceberg, the bigger part of the time when the Commission meets, then to decide it, and then we have to agree on an opinion and decision, and sometimes there are dissents and concurrences and despite the fact that these cases may be of relative unimportance in terms of our overall work, nevertheless they do take a good deal of time to decide, even though perhaps the amount of money involved in them or the amount of effort on the overall public interest is small, they nevertheless are very time consuming.

Now if we could have, let us say, a panel of three Commissioners deciding a certain category of cases, then we could decide twice as many.

Mr. YOUNGER. My point is this: Is there anything in the present law that says you have to have more than the majority of the Commission present to hear the arguments?

Mr. MINOW. Yes; it says the full Commission. The statute says that these cases must be heard by the full Commission.

Mr. YOUNGER. All right, if one of the Commissioners is sick you can't hear any cases?

Mr. MINOW. We go ahead then, but the statute does require the full Commission.

Mr. YOUNGER. But if one of them is unavoidably detained somewhere, what happens?

Mr. MINOW. We go ahead.

Mr. YOUNGER. Otherwise, you go ahead?

Mr. MINOW. Yes, sir.

Mr. YOUNGER. All right.

Mr. MINOW. But, as a practice, we try to have all seven there.

Mr. YOUNGER. Unless the litigant objected, which I don't think he would if you had four listening to the oral arguments, three of the Commissioners could be employed somewhere else doing something else, if the Chairman wanted them to. I go back each time to this provision in the present law which says the Chairman generally shall coordinate and organize the work of the Commission in such manner to promote prompt and efficient disposition of all matters within the jurisdiction of the Commission. That is a provision of the law to me that possibly the Chairman has not taken full advantage of in the past.

It seems to me that it would be much better if the Chairman would operate under this provision of the law and with the cooperation of the other members of the Commission and see if he couldn't work out the problem rather than to go ahead now with the reorganization plan.

Mr. MINOW. Well, I wish that were possible, sir. However, in 1951 and 1952 Congress specifically directed that we not hear cases by panels.

Mr. YOUNGER. Is it in the law?

Mr. MINOW. It is 5–D–1 which says we cannot delegate in adjudicatory cases except as provided in section 409.

Mr. YOUNGER. You wouldn't be delegating any case, but if four Commissioners are there that heard it and there are no others that are

available, you would go ahead with the work and I don't think anybody would object. That is one feature.

Mr. MINOW. As I understand the present requirement of the law, Mr. Younger, we are under a duty, all of us, unless there is a good reason like illness or somebody being away, to hear all of the cases.

Mr. YOUNGER. Well, I think it could be worked out by the Chairman within the framework of the law and within the framework of the Commission without injury to any of the litigants.

Mr. MINOW. The Commission itself, prior to my arrival, had requested authority by law to hear cases in panels.

Mr. YOUNGER. For instance, last year did the Commission gain on their workload or were they further behind at the end of the year on cases than they were at the beginning of the year?

Mr. MINOW. My understanding—and correct me if I am wrong—was that we just held about even. We gained slightly.

Now on hearing cases we are pretty current now, sir.

Mr. YOUNGER. Well, that is what I had in mind. You remember last year we had provisions, or rather amendments, to the law in regard to penalty provisions and so forth.

Mr. MINOW. Those have all been very helpful, sir.

Mr. YOUNGER. And we found that even the provisions that were already in the law which provided that the Commission had a right to extend the license for a shorter period, for instance 6 months or a year, and where there was a licensee that the Commission felt wasn't doing a good job, it was not incumbent upon the Commission to give them a 3-year extension of their license, but they did. They didn't take advantage of the present law, and my contention is that if all of the provisions of the law were diligently observed and worked on, I think you could work out your assignment of cases and workload to a good advantage and if there is something needed, then we ought to do it by amendment and not go in, by a divisive way, to reach one or two angles of the operation.

Mr. MINOW. I think there is a good deal to what you say. I agree with you, sir, but I think on the adjudicatory cases, as I understand the present provisions of the law, we could not split ours into panels or delegate them.

Mr. YOUNGER. That could be amended very quickly.

Mr. MINOW. Yes.

Mr. YOUNGER. That particular provision of the law it could work its regular way and the Congress could work its will and you could operate under the law as an arm of the Congress rather than as an agent of the President or of the administration which I think you would operate under.

For instance, you talk about the Commission taking back from the Chairman rights that they once granted. Well, you and I are realistic enough to know that politically that could not be done.

Mr. MINOW. I think not. In my day-to-day observation so far with the Commission, and I have been there a short time, the Commissioners themselves agree it isn't going to work out.

Mr. YOUNGER. Well, my observation around here is quite different from that. I think the ones that are in favor of this Reorganization Act say so because they are all up for appointment this year or next year, and as you get near the appointment time they will do whatever the President wants them to do.

Mr. MINOW. I think not, sir. I think they are very independent-minded.

Mr. YOUNGER. I would be pretty willing to gamble on that.

That is all, Mr. Chairman.

Mr. MINOW. If you saw our votes—and we had our meeting this morning—if you saw how we split on issues, Mr. Younger, I don't think you would say that.

Mr. YOUNGER. But you are not operating under the reorganization plan now, either.

Mr. MINOW. We never have the same ones voting the same way. We are always on different sides.

The CHAIRMAN. Human nature is the same everywhere. We do the same thing here in Congress.

Thank you, Mr. Minow. You may step aside for a moment until Mr. Rogers from Texas arrives. He did have some questions of you.

Now I suppose the better way to approach this thing is to do it under the customary way that we have for doing things up here and that is by seniority.

Mr. Hyde, I think you are senior, but not in years, but by length of service.

STATEMENT OF ROSEL H. HYDE, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Mr. HYDE. Thank you, sir.

Mr. Chairman and members of the committee, the views I am about to express are personal views which I offer from the basis of more than 32 years' experience beginning with the Federal Radio Commission and more recently, of course, with the Communications Commission.

I have been a member of the Federal Communications Commission since 1946. The views I express are in frank terms because I think that is the only way that is appropriate in proper respect to the committee.

Now they are also designed to be completely impersonal and do not reflect any strain in relations among Commissioners and particularly, none with the new Chairman.

The Federal Communications Commission which was created in 1934 is the successor to the Federal Radio Commission which was created by Congress in 1927 to perform certain regulatory and licensing functions with respect to the use of radio, and especially to exercise broad policymaking authority which Congress delegated to it as an independent agency of Government. The considerations which persuaded Congress to establish a nonpartisan independent Commission are succinctly stated in the following excerpt from the report of the Senate Committee on Interstate Commerce, May 6, 1926, 69th Congress, 1st session, Report No. 772:

> After the consideration of the facts given your committee at the hearings the committee decided that the importance of radio and particularly the probable influence it will develop to be in the social, political, and economic life of the American people, and the many new and complex problems its administration presents, demand that Congress establish an entirely independent body to take charge of the regulation of radio communication in all its forms.

The exercise of this power is fraught with such great possibilities that it should not be entrusted to any one man nor to any administrative department of the Government. This regulatory power should be as free from political influence or arbitrary control as possible.

These considerations are valid today. What has happened since 1926 gives them even greater significance. Television is just one of the new services developed since 1926, and its potential is still not by any means fully appreciated. We are on the threshold of the development of space communications techniques which are expected to give worldwide dimensions to matters previously thought of in terms of national or continental interest. During the existence of the Federal Radio Commission and the Federal Communications Commission, there have been many Commissioners appointed with varied educational and experience qualifications who have contributed to the functioning of the agency. Some of them have been interested in one form of communications more than another. All of them, in my judgment, have contributed through exchange of viewpoints and development of particular interests to a balancing of relevant factors in the development of communications policy.

I believe that this approach to regulation and to development of communications policy adopted by Congress in 1927 and reaffirmed by Congress in 1934, would be overruled if Reorganization Plan No. 2 of 1961 is permitted to become operative. I believe that implementation of the plan would in effect shift the regulation of interstate and foreign communications and the development of policy from an independent Commission-type of agency to a single administrator under the aegis of an executive-overseer, although still maintaining the form of an independent commission.

The stated purpose of plan No. 2 is to provide greater flexibility in the handling of business before the Commission, permitting its disposition at different levels so as to better to promote its efficient disposition. This is not a new concept. The Commission is now authorized by section 5(d) of the Communciations Act to delegate matters not involving hearings to an individual Commissioner, to Commissioners, or to bodies composed of one or more employees. Extensive use has been made of this power to delegate. The great bulk of the Commission's examining, regulating, and licensing functions are now performed under delegations from the Commission. During the month of April just past, more than 32,000 authorizations were issued under delegated power by the Safety and Special Radio Services Bureau. Other bureaus are likewise authorized to dispose of a tremendous load of casework not involving hearings.

The reorganization plan would add matters involving hearings to those which may be delegated for final disposition. At the same time, and I think very significantly, it places the delegations previously made by the Commission as such and those now proposed to be made within the control of the Chairman. In providing for the delegation of hearing work for final disposition, the plan also undertakes to abolish the legal right of oral argument before the Commission provided for in section 309(b) of the Communications Act.

Under Reorganization Plan No. 2, section 1, authority to delegate is treated in terms of a grant to the Commission. But this grant must, of course, be considered in connection with section 2, which provides for the transfer from the Commission to the Chairman of the Com-

mission the functions of the Commission with respect to the assignment of Commission personnel, including Commissioners, to perform such functions as may have been delegated by the Commission to Commission personnel, including Commissioners, pursuant to section 1 of this reorganization plan.

Section 2 would authorize the Chairman without consultation with other members to choose and assign personnel as he might see fit to process the matters which have been delegated. The great bulk of the Commission's workload having been placed under delegations, the Chairman would be in position to control the disposition of the same. The only choice left to other Commissioners would be to cancel the delegations, an impossible choice because it would mean halting application processing which, in turn, could have unfortunate results, particularly in the safety services.

Insofar as new delegations are concerned, the individual Commissioners could be placed in the position of either accepting the Chairman's assignment of personnel, or refusing to agree to delegations. This means acquiesce in the wishes of the Chairman, or vote to deprive the agency of any advantages that might be in the proposed delegation.

I would respectfully suggest that rather than accept Reorganization Plan No. 2, that Congress give consideration to legislation granting the Commission greater flexibility in the management of its hearing work. I am certain this could be accomplished without bringing about the profound changes in the organization and the relationship of the Commission to Congress inherent in the reorganization plan.

That concludes my statement.

I would make this additional observation, that I think that a reorganization plan raises some serious questions with respect to hearing rights. I think that it seeks or undertakes to abolish the function of oral argument and which also would seem to make it possible for the Commission to assign, or the Chairman to assign Commissioners and hearing examiners to particular assignments and raises some serious legal questions.

My purpose in this statement, however, was to direct attention to what I believe to be the main policy issue. I think that the whole plan raises essentially a question of broad policy; namely, whether or not you would have a single administrator-type of operation or whether reporting to the executive arm of Government whether you would have an independent agency type of operation with a Commission representing various viewpoints of our political society and various qualifications based on experience that can be brought to bear where you have a multihead agency.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. Mr. Hyde, page 3, section 2 would authorize the Chairman, without consultation with other members, to choose and assign personnel as he might see fit to process the matters which have been delegated.

Now in that, I take it you are talking about the adjudicatory matter.

Mr. HYDE. I understand this to apply to all work of the Commission, Congressman Springer.

Actually, the Commission is now authorized to delegate anything on matters involving hearings and the only addition to the flexibility we now have is that under the new order of things hearing matters could be subjected to delegation.

However, under the new order of things, the assignment of personnel to these delegations would be given to the Chairman, and as I understand the plan, this assignment to the Chairman would also include the nonhearing matters which are already susceptible to delegation.

Mr. SPRINGER. Then this plan does, in essence, have its great impact on the adjudicatory matter.

Mr. HYDE. I think the impact is the same, if I may say so.

Mr. SPRINGER. On an adjudicatory matter.

Mr. HYDE. The adjudicatory matter would be more important because usually, an adjudicatory matter reaches that status because it involves one, a policy perhaps which is a rule of the Commission which has been violated or perhaps there is an application not consistent with a rule or previous policy, or a conflict between claimants or perhaps it is in the nature of an investigatory proceeding.

In this class of cases, you would have more of the policymaking function than you would have in the handling of a great bulk of routine applications which do not go to hearing.

Mr. SPRINGER. Now you have raised the second point. In many of these adjudicatory matters which could be delegated, you would, in effect, be formulating policy in the course of your official business.

Mr. HYDE. You could be very well.

Mr. SPRINGER. You could very well be forming policy.

Mr. HYDE. Yes. A typical reason for assigning a case to hearing is that it raises a policy question; that it is not consistent with a rule that defines policy or that the field is new and it needs to be explored in a hearing before any action is taken.

Mr. SPRINGER. At this time, has there been any discussion by the Commission as to what would be delegated to the Chairman?

Mr. HYDE. No, Mr. Springer, there has not.

Now the plan has only recently been announced and we have not undertaken development of any rules of procedure. There has been only a very brief discussion of this matter and the Commissioners understand from the Chairman that the efforts would be made to set up rules that would not prevent Commissioners from making their contribution to the workings of the agency.

Mr. SPRINGER. Mr. Hyde, I want to ask you this rather delicate question. I would like to get your opinion on it. You have been Chairman, haven't you?

Mr. HYDE. I was Chairman from April of 1953 to April 1954 and Acting Chairman from April 1954 to October of the same year.

Mr. SPRINGER. As I understand it generally, the Chairman has been subjected in the past—and I am not saying you—but has been subjected in the past to considerable pressures from people outside of the agency. Is that in essence true?

Mr. HYDE. I would say that the Chairman, and I think my predecessors and successors will agree, find that if they permit themselves to become available to hear the arguments and urgings of people that their life would be full, indeed. Many communications are addressed

to the Chairman and many calls are made upon him. A good deal of the work has to do with nonadjudicatory matters, some of those not in the adjudicatory status later move into that area.

The Chairman, as the chief executive of the agency, is naturally the person to whom petitions, letters, communications would be addressed.

Mr. SPRINGER. I take it your inference would be substantially that if powers were delegated to the Chairman that are anticipated under this plan, the pressures upon the Chairman would become even greater.

Mr. HYDE. I should think it would seem to amount to even more than he has had singled out under the provisions of the law as it now stands.

Mr. SPRINGER. There has been one thing as I have watched this in the past 11 years and that is there have been pressures exerted upon the Commissioners collectively and individually. I say this in both administrations, not just this one, but the past one and the present one. But it seems to me that, in the end, the Commission itself has hammered out these matters of policy where there was free discussion between them—where the decision was not made by one person—but where your collective minds were devoted to it. And even though there were serious differences in opinion, and the process was a little slower, you generally came up in the end with the correct solution.

Mr. HYDE. I believe, Congressman Springer, that there is a tremendous value in the approach to regulation which permits of an exchange of viewpoints and which gives to the formulation of a decision or a policy which is what we are talking about.

I have witnessed many discussions, prior to the time I became a member, which were very stimulating, which developed points of view not thought of before the discussion started.

One other matter that I would like to mention in this connection is that it is much, much easier to make a contribution to policy if you participate in the beginning than if you undertake after the preparation of a document to ask for consideration.

If your point of view is not brought before those who are writing the opinion at the beginning of the operation, you are likely to find things pretty well crystallized and a new approach pretty well foreclosed by the work that has already been done.

Mr. SPRINGER. I take it, then, that your general opinion is that the policy in these matters that could possibly be delegated or that you delegate at the Commission probably could be done better collectively by the Commission itself than with one person making that decision.

Mr. HYDE. I believe so, Mr. Springer, but I also recognize that an agency of seven Commissioners must have leadership. It must have a Chairman to carry out the functions of the Chairman in any organization.

Now, the Chairman must have authority to direct the operations of the agency and these he gets with the assistance of his associates.

There is no real difficulty in the Commission in recognizing the need for the Chairman to have a sufficient executive authority to direct the affairs of the agency to see to what are sometimes called the housekeeping functions, the administrative work therein.

But the Commissioners get a certain participation in this because the Chairman works under delegation from the other Commissioners and not from an order issued from outside that authority.

Mr. SPRINGER. In substance then, it is your feeling that it would be better to give the agency greater flexibility to do it through legislation originating in this and the Senate committee rather than this plan or reorganization.

Mr. HYDE. Yes, I would agree to that.

My recommendation is that the Congress give the agency, as such, greater authority and that operating independent agency of Government, under the watchful eye of the committee can exercise that discretion through a Chairman who performs the function of Chairman in such an organization.

Mr. SPRINGER. Now this one last question:

If this committee decides to take up the question of greater flexibility, would you believe it wise to stipulate the exact areas in which there ought to be flexibility rather than a general sentence or a paragraph on flexibility?

Do you understand my question?

Mr. HYDE. I believe I do. I understand the question to be whether an effort should be made to define the particular areas in which the Commission would have discretion to make delegations.

As the law now stands we have authority to make delegations in matters not involving hearings.

I believe, sir, that you could very well authorize the Commission, as such, to make delegations of hearing matters. I should think that in giving the Commission such authority you would indicate the desire, if it is the desire of the Congress, that the Commission be very cautious about delegations of matters where policy is concerned.

Mr. SPRINGER. Just this final statement.

The thing that disturbed me in this plan more than anything else is this broad area in general terms of giving flexibility without any strings on it whatsoever.

Now I don't know whether that sounds serious to the Commission but that is the part that impresses me most. Part of it may be due to the fact the speech the Chairman made gave me some ideas of what he intended to do. That was what, in effect, has alarmed me plus the fact that you had the reorganization plan.

If the reorganization plan had pointed to specific areas and limited it to that alone, I might have been able to go along with the plan.

Mr. HYDE. I believe a delegation to the entire Commission would be helpful to the discharge of our work and I think that the responsibility being placed in the whole organization would be handled with utmost care.

Mr. SPRINGER. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Moss?

Mr. MOSS. Mr. Hyde, do you favor any change at all in the Commission procedures at the present time?

Mr. HYDE. I certainly do. I would urge the Congress to give us more flexibility in handling our hearing work. I would urge that you give that flexibility to the Commission.

Mr. MOSS. To the Commission?

Mr. HYDE. Yes.

Mr. MOSS. So that it could, whenever it agreed, assign or delegate some of its hearing responsibilities?

Mr. HYDE. I think it would be desirable.

Mr. Moss. On a case-by-case basis?

Mr. HYDE. I think the Commission would find it necessary to make some classifications. There are certain types of hearing matters which ought not to require the time of the full quorum of the Commission.

Now there are other cases which raise basic policy questions which I think it would be very appropriate for the entire Commission to hear if they could possibly be present.

As the matter stands now, a litigant has a right to oral argument before the Commission and this has been construed to mean a quorum of the full Commission.

Mr. Moss. Do you feel they should continue to have that right?

Mr. HYDE. I do not think that this is essential in all cases. I think the Commission could be trusted to determine what classes of cases should be heard on this basis.

Mr. Moss. Then you are not concerned with this plan because it would take away the power.

Mr. HYDE. I am concerned because of the blanket way in which it seems to take away that right.

Mr. Moss. How blanket is it?

Mr. HYDE. It says in the latter part of section 1:

> *And provided further,* That in accordance with the provisions of subsection (b) of this section, the functions of the Commission with respect to the following exceptions and to decisions of hearing examiners and the function of hearing oral arguments on exceptions before entry of any final decision, order, or requirement as set forth in section (h) of section 409 of the Communications Act of 1934, as amended, are hereby abolished.

Mr. Moss. Well now, you are to have this power given to the Commission to exercise its discretion in the matter of hearing. In other words, it would no longer be a right.

Mr. HYDE. I would recommend that the language, that new language making this delegation, be developed in such a way as to not leave any of the ambiguities which I believe are present in this particular language.

Mr. Moss. Let's forget the ambiguities. I am not asking about this plan because this plan will be heard before another committee. We are just trying to get your ideas of what you people want, what your attitude is on this general policy involved here.

You have indicated that you have had no reluctance at all in advocating that the right be taken away and leaving it to the discretion of the Commission.

Mr. HYDE. I did not mean to recommend or even suggest that the right of oral argument be abolished. I did mean to suggest and recommend, in fact, that the Commission be given the authority to delegate this work to panels or, in some cases, to boards within the organization. I am not suggesting anything else.

Mr. Moss. Do you feel it would be absolutely essential that you retain a right in every instance for oral argument?

Mr. HYDE. I think, Congressman Moss, that it would be desirable for a litigant, in any case where a decision is to be rendered by persons who did not hear the evidence, to have the right or the opportunity for oral argument.

Mr. Moss. Opportunity for oral argument. Isn't it contained in this plan?

Mr. HYDE. There is some doubt about it in my judgment.

Mr. MOSS. Now, I think it has been very clearly stated both by the Chairman and by Mr. Landis that it was certainly intended that they have that opportunity, not the right, but an opportunity.

Mr. HYDE. The only language which I can find regarding oral argument is this which I just read and it seems to say that the function is abolished.

Mr. MOSS. Well, I think you are wrong on that and very much so. I would be prepared to discuss that further with you before the committee, but I think you are wrong.

Mr. HYDE. I understood from what Mr. Landis said that that was the case.

Mr. MOSS. If this were made clear this would be an opportunity, would you still have the same objection?

Mr. HYDE. This would give me less concern about a particular feature of the plan. But actually, this matter of oral argument is just one feature of a plan which, in the main, is designed, as I see it, to place the day-to-day direction of operation of our shop in one man rather than in the entire Commission.

Mr. MOSS. Do you favor increasing in any way the powers or expanding the duties of the Chairman?

Mr. HYDE. I believe the Chairman is in a very strong position under the provisions of the present act.

I do not see any necessity for extending them and I have no reason to recommend that they be curtailed.

Mr. MOSS. You would be opposed to any expansion or any change in the duties of the Chairman undertaken by specific statute enacted by this committee?

Mr. HYDE. I do not want to give an opinion on a change in the act which might be brought about through the regular legislative act.

Mr. MOSS. I asked you if in your considered judgment you would approve of any change. Do you feel any change is desirable?

Mr. HYDE. I do not see any present need for a change but I certainly would not be averse to the Congress examining the present situation to see if some improvement could be made.

Mr. MOSS. Well, it really wouldn't do you any good, because that would be a prerogative of Congress.

Mr. HYDE. No. I am really not volunteering this. I am trying to answer your question.

Mr. MOSS. I am trying to get you to answer my question, which is rather specific, and it is if you agree to any change at this time. You certainly know what your action would be, any data you wish to submit to us that would be desirable, any change in the duties or functions of the Chairman of the Commission.

Mr. HYDE. Having occupied the position of Chairman under the law substantially as it is now stated, I had no situation come to my mind that suggests to me the need for a change.

There have been many times when, momentarily, I felt a bit frustrated but on the basis of a somewhat lengthy experience and having in mind the value of the counsel and assistance of the other colleagues there, my overall judgment is that the present setup gives the Chairman adequate legal position to carry out the functions of the office.

I am not aware of any need for a change, but I do not want this statement of opinion to be understood as saying I would be opposed to any change that might be suggested. Perhaps someone else has an idea that would be helpful to the functioning of the Commission. I would certainly be willing to look upon any such proposal with an open mind.

Mr. Moss. Well, in another way, do you regard the present pattern as ideal?

Mr. Hyde. Now that you ask me whether it is ideal, I will mention the fact that the Chairman does serve at the pleasure of the Chief Executive. His term is undetermined in that sense. It might further the independence of the agency if it were either a fixed term or if it were by election by the Board, but these are matters I did not expect to testify on and it does suggest, I think, that there may be reason to give further thought to the provisions of the present act with respect to the chairmanship.

Mr. Moss. Do you think there should be any change in administrative responsibility of the Chairman?

Mr. Hyde. No.

Mr. Moss. Do you feel the Commission is able to efficiently and effectively handle administrative problems in its own shop?

Mr. Hyde. I believe we are. As a matter of fact, the Commission has been its own delegation, giving the Chairman very extensive administrative authority in this area.

Mr. Moss. The only change, then, that you can call to mind at the moment that you are advocating would be the granting to the Commission of more flexibility in delegating oral argument?

Mr. Hyde. That is the one thing proposed in the reorganization order which I would suggest might appropriately be taken up in legislation for the purpose of expediting our work.

The Commission has made a number of legislative recommendations which, of course, we are not talking about at this time.

Mr. Moss. Would you delegate to others on the staff or to panels of Commissioners the matter of oral argument or leave that to the Commission for determination?

Mr. Hyde. I believe it would be desirable for Congress to give the Commission authority to delegate some classes of hearing work to panels and in some instances to panels made up from the staff of the Commission.

Mr. Moss. Do you feel that the business of the Commission is expeditiously handled under the present procedures?

Mr. Hyde. I believe that there are a number of things that could be done to the present act which would permit us to improve our work in terms of expediting.

We have made a number of recommendations to Congress. One is directed to getting more latitude in the use of our review staff.

We asked for this in the previous Congress and we are currently asking for this authority now. There are other suggestions which we are making looking toward improvement in our processes.

Mr. Moss. That is all the questions I have, Mr. Chairman.

The Chairman. Mr. Younger?

Mr. Younger. No questions.

I do want to say I agree with your statement.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS of Florida. Just a question or two, Mr. Chairman.

As I understand it now, Mr. Hyde, you feel that the Commission is making a proper and extensive use of the delegation of powers in those matters that do not require a hearing.

Mr. HYDE. Mr. Congressman, I think we are, in those matters.

Now there are one or two areas where we can make further delegations within our present authority. One of those is the delegation of action on interlocutory matters. The Commission has been handling these, and as the Chairman mentioned in the previous hearing here, the volume was substantial. These could be delegated to the hearing examiners, and as a matter of fact the rulemaking for that purpose is now in progress.

Mr. ROGERS of Florida. How does the delegation of power presently used actually come about in work? In other words, I would like to know whether you delegate the authority to the Chairman, select personnel, or how is it handled?

Mr. HYDE. We have a functional organization—we have a Broadcast Bureau which processes and handles matters involving the broadcast services; a bureau called Safety and Special Radio Services which handles and processes applications in the miscellaneous group of services which comes under the scope of their authority; we have a Common Carrier Bureau.

In each instance, the Bureau chief is authorized to handle a multitude of routine and near routine matters.

For instance, in the Broadcast Bureau an application for assignment of license or transfer of control of a corporation may be handled within the Bureau without reference to the Commission, where it involves, let us say, a change in the form of the ownership.

An application for authority to put in new equipment not involving new service areas is handled in the Bureau without reference to the Commission.

In the Common Carrier Bureau where they handled 2,500 applications in a year for various common carrier services, they would be processed and acted upon by the Bureau chief.

In Safety and Special Radio Services, the volume is tremendous. They issue 1,600 licenses a day, a workday, and 320,000 in a year and these are issued under authority delegated to that Bureau by the Commission.

Now, all the members of the Commission feel a sense of participation in this activity because we had a hand in assigning and delegating the work first, and appointing and assigning the personnel that handled it and the men of the Bureau feel, I am sure, a responsibility to each member of the Commission.

I would like to mention that the total amount of hearing work from this one Bureau which issued more than 300,000 licenses last year was 27 cases. The great part of the policymaking in this area is done in rulemaking proceedings.

Once the rules are out and the conditions of licensing, the actual issuance of the permit, let us say, in what we call citizens' radio, amateur or business, can readily be handled by the Bureau chief.

Mr. ROGERS of Florida. Now, may I ask you do you have reference to panels of Commissioners or a separate Commissioner?

Mr. HYDE. We do make some special assignments. We have a telephone and telegraph committee. They have certain authority with respect to changes or actions on requests for changes in plan above a certain amount and a year ago last fall the telephone committee did conduct negotiations looking toward a reduction in rates.

Certain Commissioners have special duties.

Now Commissioner Bartley is what we call our defense commissioner. He succeeded Commissioner Lee in this office.

Commissioner Craven, who is an electrical engineer by experience and training, has had special assignments in allocation matters, and, more recently, in space communication matters.

Mr. ROGERS of Florida. Are these delegations made by the full Commission?

Mr. HYDE. They are.

Mr. ROGERS of Florida. Is there any rotation of these delegations?

Mr. HYDE. Yes, sir. They are not organized on an automatic rotation but they are changed.

Mr. ROGERS of Florida. How frequently?

Mr. HYDE. The telephone and telegraph committees have worked pretty much on a seniority basis in recent years.

We did make a change in assignments incident to the change in the administration when we asked Commissioner Bartley to be Defense Commissioner. It requires a certain liaison with the executive arm of the department and Commissioner Bartley became the Defense Commissioner and Commissioner Lee accepted the duties as assistant or alternate.

I am reminded by Commissioner Lee that when new Commissioners come into our organization we have looked over the committee assignments and undertaken to make a division of work that would be both appropriate and which would also make effective use of the special talents of the Commissioners available.

Mr. ROGERS of Florida. Does the new Commissioner participate in the assignment?

Mr. HYDE. Yes, he does. The new Commissioner gets certain specific honors when he comes to our place. We might ask him to give his views on the most difficult problems that come in first.

Mr. ROGERS of Florida. Then as I see it, you feel the entire Commission should be the one to make delegation of powers and you do believe people should have the right of an oral argument as a matter of right at least to one Commissioner or a panel of Commisisoners to be designated by the Commission?

Mr. HYDE. Yes, I do.

Now if I might take just another moment of time. I think the right to file execeptions and the right for oral argument is particularly important when a panel or some individual who did not find it possible to be present and hear all the testimony is called upon to make a judgment.

Mr. ROGERS of Florida. One last question. I wonder if you could briefly tell me if you feel the Commission has any responsibility as to program on television?

Mr. HYDE. Section 326 of the act provides that the Commission shall make no rule or regulation which would interfere with the right of free speech.

Mr. ROGERS of Florida. I am not asking you on censorship. That is the responsibility of the stations rendering a public service.

Do you feel any responsibility in your mission along that line, and if so, to what degree?

Mr. HYDE. We might feel the Commission has some responsibility in seeing to it that an applicant makes an earnest effort in this area.

Now this is a difficult area to deal with because I agree with the statement in principle that the Commission issued in 1949 that the paramount right that we are concerned with here is the right of the public for information, the right of the public to choose what they wish. In the somewhat well known opinion on editorialization by broadcast licensees which was issued in 1949, the Commission held that a paramount factor in determining whether an operation is in the public interest is whether or not the licensee of a station affords the public an opportunity to hear all sides of the public issue.

I personally think that it is paramount in the public interest that a licensee have the same freedom of action in this area of expression and in this area where we are dealing with creative art.

I do not see how the Commission, for instance, could set program standards without at the same time applying restrictions. But this is a matter of program covering a vast area.

I think, for instance, that the Commission must see to it that we do not tolerate deceptions or fraudulent advertising. There we have expressions of public policy in laws against fraud. The payola scandals are something, of course, that should not be tolerated.

We certainly should see to it and, of course, Congress has enacted legislation to see to it that we do not have a situation where programs are accepted and broadcast on the basis of payola rather than on their merit.

Mr. SPRINGER. Would the gentleman yield?

Mr. ROGERS of Florida. If I may just ask one more question then I will yield.

What public interest responsibility does the Commission have? I wasn't quite clear.

Mr. HYDE. I think the Commission should see to it that there are not restraints which operate against the free competition in this field where this is a matter of investigation right now in our progress.

I think we should see to it in our licensing practice that we prevent monopoly.

Mr. ROGERS of Florida. I was thinking more of the program line or program content if there is any responsibility.

Mr. HYDE. On that, I think we should use greater care in passing upon the qualifications of applicants to make sure we have responsible licensees who at least will know what is being broadcast over their stations.

Mr. ROGERS of Florida. Do you require any statement when they get a license as to what they will do as far as public interest and community interest is concerned?

Mr. HYDE. Applicants are required to submit a statement, a rather comprehensive one.

The agency, right now, is undertaking revisions in the application form in which they submit this statement of program fare and a recent statement of policy by the Commission contemplates requiring an application to survey his community and indicate in his applica-

tion what he is going to do to meet certain needs of that community.

Mr. ROGERS of Florida. You feel that is a good policy? Are you in agreement with that?

Mr. HYDE. No, I dissented to that policy statement.

I would be more inclined to require an applicant to show that he is going to provide in his organization facility, someone to examine materials offered to him. I would like to have him maintain some kind of a research or investigative service in his station which would seek out talent and make program judgments.

I would, if I had my way, require of an applicant that he have some well reasoned, thought out approach to program service, but would not undertake to tell him in advance what it would be and I would not want to exactly promise from him such specificity that he would have no latitude for change, no latitude to meet competition, no latitude to meet changing conditions during the content.

Mr. ROGERS of Florida. What I was wondering is what guidelines do you use as far as when you say you would have him determine what type of programs were to be used in a community? Is it what his particular community desires or what the broadcaster himself desires?

That is what I am wondering about.

Mr. HYDE. The Commission is struggling with this problem at the moment. The one area in which we have found it possible to set out guidelines has to do with fairness in a discussion of public issues. This, I submit, is the most vital field of all in broadcasting and in this there is the very well reasoned statement of policy to which I do subscribe.

Mr. ROGERS of Florida. But do you feel it is necessary for the Commission to check back with licensees on the statements they made upon the issuance of their license so far as presenting community programs and public interest programs?

Mr. HYDE. I think that technique has certain risks.

Mr. ROGERS of Florida. How would you do it?

Mr. HYDE. Well, there are a number of things involved in this matter of checking performance against promise.

If the promise you exact from him is one that he will tend to his business diligently; that he will maintain a program depth adequate to do a decent job; that he will check all his commercial copy as to its propriety and as to its compliance with law, those are promises that you can certainly expect him to live up to and for which you can take him to task if he fails.

However, if you exact from him in considering his application of promise in great detail as to a particular program content, you could, through that process, very well impose some prior restraints on what he is going to broadcast.

For instance, if you set up a condition under which he feels obliged to promise certain types of programing as a condition to getting his license with the knowledge that when he fails he will be taken to task for failure to comply with his promise, then you have gotten over into the area of censorship.

Mr. ROGERS of Florida. What I was thinking about is what do you do now to presently require along those lines?

Mr. HYDE. What we require now is essentially a breakdown, a percentage breakdown in classifications of program material and it is

mainly helpful in determining whether or not the applicant is making some effort, some conscientious effort in the operation of the station.

Astually, our interest is not whether or not he broadcasts a certain selection of songs or a certain dramatic skit. It is just a way of checking his overall performance.

If, for instance, we have an application form which indicated that the commercial manager was running the station and that the main burden of his program content was commercial, we would institute a further inquiry asking him how does this serve the public interest.

Mr. SPRINGER. Would the gentleman yield?

Mr. ROGERS of Florida. Yes.

Mr. SPRINGER. I would like to be specific and ask the gentleman to answer the question. What do you have to say about this:

> Particular areas of interest and type of program service may, of course, differ from community to community from time to time. However, the Commission does expect the broadcast licensees to take the necessary steps to inform himself of the needs in the area.

There are then listed 14 different types of programing. There is the answer and I think within that the Commission has its power, but the thing which the Chairman covered in his speech before the NAB was far more severe than that. He was going into the content of the program itself.

Mr. ROGERS of Florida. I didn't get that from the statement.

Mr. MOSS. I was interested in that.

The CHAIRMAN. Gentlemen, I know it is important to discuss programing and the Commissioners' views on programing and going into these various fields, but we have five more members of the Commission here. We only have this afternoon to get to them and their views on the reorganization plan and I would like to suggest that we try to see how these other members feel about it, if we can.

We are not going to have any further opportunity if we don't do it this afternoon. The Government Operations Committee starts hearings in the morning and this will be the last chance we have.

Mr. ROGERS of Florida. I have no more questions.

The CHAIRMAN. We will be glad to have a full-scale session on these other matters where we can have all the time we want to discuss it.

Mr. MOSS. I just have a couple of questions, Mr. Chairman.

When was the program investigation launched?

Mr. HYDE. December of 1959. In December of 1959 the policy statement which was issued after the hearings, was issued July 29 of last year.

Mr. MOSS. And that was launched before Mr. Minow became the Chairman of the Commission?

Mr. HYDE. It was.

Mr. MOSS. And, therefore, the Commission's interest was not suddenly sparked as a result of his address before the National Association of Broadcasters?

Mr. HYDE. The Commission, since the days of the Federal Commission, has been requiring a statement of service from applicants and has given consideration to overall service.

Mr. MOSS. And inherent in that certainly must be some concern with the type of programing proposed or actually undertaken by the licensee.

Mr. HYDE. Well, this is an area where viewpoints of Commissioners have been at considerable distance apart at times. But over the whole period, there has been an effort in determining whether the grant will serve the public interest to take what is called an overall look at their service.

Mr. MOSS. And you would have the responsibility of maintaining sort of an oversight function on the licensees, wouldn't you?

Mr. HYDE. Well, some Commissioners would not agree that it is an oversight responsibility.

I have some serious doubts myself about the 1 year.

Mr. MOSS. Just take his word and if he didn't perform as he indicated at all, just completely abandoned all his policy commitments to the Commission, you would have no further responsibility. Is that your conclusion?

Mr. HYDE. Oh, no. The usual case, Congressman Moss, where the Commission has refused to review a license has been one where a station was converted to what was obviously the selfish interest of the applicant.

This was the *Brinkley* case.

Mr. MOSS. Well, you must have then some interest in programing.

Mr. HYDE. Interest in programing shows up more particularly in the comparative cases and they certainly do weight one proposal against another and make——

Mr. MOSS. Would you not require fairness in the discussions?

Mr. HYDE. That is right. Fairness is a program consideration.

Mr. MOSS. We are dealing here with a license that is not quite as broad as that of the press because no one can require fairness in the discussion of public issues in either the editorials or the news columns of the daily paper.

Mr. HYDE. The fairness doctrine is a contribution of the Commission. It has actually been endorsed by Congress since it was developed by the Commission.

Mr. MOSS. And you had the requirement that if you get into political discussions there be an equal time for——

Mr. HYDE. The political time area, section 315, is one of those areas where Congress has pretty well defined the policy. We have administered it to the letter, I believe.

Mr. MOSS. We could not by any act of this Congress require that of the press, could we?

Mr. HYDE. The treatment of political questions is certainly different in radio from what it is in the press.

Mr. MOSS. That is all I have. Thank you.

The CHAIRMAN. You may be excused.

STATEMENT OF ROBERT T. BARTLEY, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

The CHAIRMAN. Commissioner Bartley?

I would like to make this suggestion, that unless there are different opinions, we let each one of the Commissioners proceed now to present their views before we engage in any further questions.

Mr. BARTLEY. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Bartley, you may proceed.

Mr. BARTLEY. I can make mine very brief, Mr. Chairman, as far as the statement is concerned.

It would be perfectly agreeable to me, if you wish, to—I believe each of you has before you a copy of my letter to Senator McClellan in response to his request for my comments on the bill. And that would be my statement here.

The CHAIRMAN. Yes, I have it.

Mr. BARTLEY. I can either read it into the record or it can go into the record, whichever you wish.

The CHAIRMAN. Whichever way you would like to present your views on it, will be all right.

Mr. BARTLEY. Well, if you are like I am, I would rather read it. It is before you. I would rather read it and then I will open myself up to questions.

I will point out that attached to this, for the information of the committee, is a legal opinion by my legal assistant. I might add that he is no kin to John Cross, our Commissioner.

That need not go into the record, I would not think, but you may have it.

The CHAIRMAN. All right.

Mr. BARTLEY. And if you have any——

The CHAIRMAN. Let the statement be included in the record without the opinion referred to, and then you may proceed however you choose to present it.

Mr. BARTLEY. This is all I have then, Mr. Chairman, and that is just the statement. And I am here for questions.

The CHAIRMAN. Well, I think we will save time by your explaining your statement or reading it or letting us know how you feel about it.

Mr. BARTLEY. Very well. I will read it.

The CHAIRMAN. This is off the record.

(Discussion off the record.)

Mr. BARTLEY. Very well, Mr. Chairman.

I think that the plan should be rejected.

The Constitution places the regulation of commerce in the Congress. Section 2 of the proposed plan could be employed, I believe, to shift the regulation of interstate and foreign communications from an independent commission to the executive branch of our Government. Whether this power would be exercised is not the question.

The proposed plan raises in my mind the basic question whether we are to have communications regulated by a bipartisan independent commission or by an administrator. I have grave doubt that the bipartisan nature of the Commission can be effectively preserved by the mere opportunity for a majority less one to require review of a delegated action. I perceive the possibility would be created for reducing the function of the six other Commissioners to almost that of scribes.

This is not to say that the Communications Act of 1934, as amended, does not need the attention of Congress. Required procedures are such that much of our time is spent in spinning our wheels in "undue process." Some of the objectives of the plan are most desirable. I

believe, however, the objectives should be accomplished through direct legislative amendment.

Now I might say that the conclusions that I have reached here, with respect to what have been termed by some as the creation of a one-man Commission or a shifting of that responsibility from the Congress to the executive branch, is actually based on another section of the Communications Act. And that is the section which provides that the President shall designate the Chairman.

For years I have felt that the chairmanship of the Commission should be placed within the Commission by vote of the Commission. I am certain that many of the delegations that we could make have not been made because the President does name the Chairman.

Now I am entirely delighted at the moment with the way it has worked out. I was entirely delighted with the previous appointment, but there have been some times when I have been very, very unhappy.

I think that one of the main reasons that the Chairman has not been delegated all the authority or many of the authorities that the Commission could delegate is for that very reason. My position on this plan might well have been different if it had included a provision, transferring the authority to name the Chairman from the President back to the Commission.

The CHAIRMAN. Then you would prefer your entire statement in the record for the information of the committee?

Mr. BARTLEY. That is correct.

(The full text of the letter above referred to is as follows:)

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., May 4, 1961.

Hon. JOHN L. MCCLELLAN,
Chairman, Committee on Government Operations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Responsive to your letter of May 3 with respect to Reorganization Plan No. 2 transmitted by the President on April 27, 1961, it is my opinion that the plan should be rejected.

The Constitution places the regulation of commerce in the Congress. Section 2 of the proposed plan could be employed, I believe, to shift the regulation of interstate and foreign communications from an independent commission to the executive branch of our Government. Whether this power would be exercised is not the question.

The proposed plan raises in my mind the basic question whether we are to have communications regulated by a bipartisan independent commission or by an administrator. I have grave doubt that the bipartisan nature of the Commission can be effectively preserved by the mere opportunity for a majority less one to require review of a delegated action. I perceive the possibility would be created for reducing the function of the six other Commissioners to almost that of scribes.

This is not to say that the Communications Act of 1934, as amended, does not need the attention of Congress. Required procedures are such that much of our time is spent in spinning our wheels in "undue process." Some of the objectives of the plan are most desirable. I believe, however, the objectives should be accomplished through direct legislative amendment.

Sincerely yours,

ROBERT T. BARTLEY, *Commissioner.*

The CHAIRMAN. Well, under the suggestion that you have just stated, then, if that is all you care to state at this time, we will let you step aside and hear Mr. Lee.

STATEMENT OF ROBERT E. LEE, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Mr. HARRIS. You may proceed, Mr. Lee.

Mr. LEE. Mr. Chairman, I would like to, in the interest of saving time, associate myself with the statements of Commissioner Hyde and Commissioner Bartley and also with the statement of Commissioner Ford yet to come.

Commissioner Ford's statement is very comprehensive and he has performed a great deal of legal research, and I think you would find it of interest.

I would therefore like to incorporate a very brief statement and I would summarize it for you, if I may, as to my position.

The CHAIRMAN. Yes; you may do that.

Mr. LEE. I am opposed to Reorganization Plan No. 2 of 1961. Although I agree with some of the fundamental objectives of the plan, I feel that these objectives can be obtained better through amendment of the Communications Act following legislative hearings.

As indicated by Chairman Harris, I am afraid that section 1 of the plan now before you would leave us in a state of doubt as to our hearing procedures. My primary concern with the plan arises out of section 2.

This, it seems to me, strikes at the basic philosophy underlying the structure of the Communications Act. As you know, this section withdraws from the Commission the function of assigning personnel and makes an absolute grant of this function to the Chairman.

There are no exceptions to this grant of authority. The Chairman's word would be absolute to the point that he would have authority to assign all Commission personnel, including Commissioners and the personal staffs of the several Commissioners.

In my study of the proposal before you I have reviewed the hearings on the Reorganization Plan No. 11 of 1950, which bears some similarity to the plan now before the Congress. And, in reviewing this record, I was particularly impressed with the testimony of former Senator Edwin C. Johnson, of Colorado, in which he quotes former Senator Champ Clark, of Missouri, later a great jurist, and also Senator Barkley, subsequently Vice President of the United States.

In effect, they make a great case for maintaining the independence of the regulatory agencies as an arm of the Congress rather than the executive branch.

Now, I would like to make it quite clear and digress for a moment to say that I have absolutely no concern with the current Chairman. He has been a real delight and I do not think that he would ever, in any way, abuse any delegated power, whether that power was delegated to him by the Commission or by the law.

He has indicated a very understanding desire to work as a team with the full Commission.

Laws, however, are not made for men but for the public interest and, in my opinion, the approval of section 2 of this plan would open the door to wide abuse on the part of an ambitious or unscrupulous Chairman.

He could, for example, assign me to duties away from the Commission's offices for an extended period and, thereby, perhaps affect the result of a decision on an important policy question by reason of my absence.

He could assign members of my personal staff to duties which would deprive me of their services during periods when they would be required to assist me in, perhaps, analyzing highly technical engineering and legal matters.

Through the assignment of staff personnel to special projects, he could achieve a predetermined result insofar as the staff recommendation is concerned. These, briefly, are the practical difficulties I have with Reorganization Plan No. 2, and I would like to say that, as far as I am concerned, I would be prepared to make further delegations to the Chairman.

As a matter of fact, we have a staff study underway on further delegations to the staff, but I would prefer to retain on an absolute basis the ability to remove that delegation when the need no longer existed or, perhaps, it were abused.

I would also like to make, as, say, one of the nonlawyer members of the Commission, a case for the oral argument.

I would just like to say that as one member of the Commission I actually find it a great help to me personally, in reaching my conclusions, when we require these practitioners before us to present to us, generally within a 20-minute period, their case.

Now this requires them to really capsule what is the strong point in their case, both the pro and the con. This, I find, is very helpful. The practitioners feel, as well as the applicants feel, that it is their only opportunity to reach and to talk to the people who would make a decision in this area.

I think, Mr. Chairman, that about covers briefly my position on this matter.

The CHAIRMAN. Thank you very much, Commissioner Lee, and I understand you had a statement you wanted to file in addition to that?

Mr. LEE. Yes.

The CHAIRMAN. Very well. You may step aside at this time.

The statement may go in the record.

(The complete text of the statement of Commissioner Robert E. Lee is as follows:)

STATEMENT OF ROBERT E. LEE, COMMISSIONER, ON REORGANIZATION PLAN NO. 2, 1961

I am opposed to Reorganization Plan No. 2 of 1961. Although I agree with some of the fundamental objectives of the plan, I feel that these objectives can be attained better through amendment of the Communications Act following legislative hearings. In this connection, I have reference to the area that would give the Commission a greater amount of latitude in handling its internal administrative procedures.

As indicated by Chairman Harris, I am afraid that section 1 of the plan now before you would leave us in a never-never land insofar as our hearing procedures are concerned. This is not to say that I am unwilling to delegate functions because I have acquiesced in such delegations in the past and I am willing to delegate more functions in the future. I am uncertain, however, just what effect section 1 of the plan will have on the existing provisions of section 409 of the Communications Act of 1934, as amended.

My primary concern arises out of section 2 of the reorganization plan. This, it seems to me, strikes at the basic philosophy underlying the structure of the Communications Act. As you know, this section withdraws from the Commission the function of assigning personnel and makes an absolute grant of this function to the Chairman. There are no exceptions to this grant of authority. The Chairman's word would be absolute to the point that he would have authority to assign all Commission personnel, including Commissioners and the personal staff of the several Commissioners.

In my study of the proposal before you, I reviewed the hearings on Reorganization Plan No. 11 of 1950. The latter plan bears some similarity to Reorganization Plan No. 2 of 1961, although it did not seem to go as far as the current reorganization plan appears to do.

In reviewing the 1950 hearing record, I was particularly impressed with the testimony of former Senator Edwin C. Johnson of Colorado in opposition to the plan. His testimony is set forth in the transcript of "Hearings before the Committee on Expenditures in the Executive Department, U.S. Senate, 81st Congress, second session, on Senate Resolution 253, 254, 255, and 256," which were held on April 24, 25, and 26, 1950. I feel that the following quotation from his testimony (transcript, p. 16) is apropos:

"It is the long-established congressional policy that regulatory agencies must be independent and directly responsible to Congress.

"The necessity of maintaining the independence of regulatory bodies was discussed during the Senate debate in 1938 on the Government departments reorganization bill, a legislative culmination of a professional study of government and how to reorganize it. In that debate former Senator Champ Clark, of Missouri, one of the Senate's greatest students of parliamentary history, now one of our really great judges on the Federal bench, pointed out that the 'principal functions of such commissions as the Interstate Commerce Commission, the Federal Trade Commission, and the Communications Commission are as agencies of the legislative branch of the Government and as extensions of the legislative power' and that 'the important function which has been conferred on such commissions is the ascertainment of particular facts in order to carry out a policy of Congress enunciated in a statute' and 'they are legislative rather than executive or administrative in character.'

"Many of these statements are direct quotes of Mr. Clark.

"Senator Barkley, the then majority leader and now our distinguished Vice President, stated during the debate that he 'would not approve any measure which provided for a one-man Interstate Commerce Commission, or a one-man Communications Commission, or a one-man Federal Trade Commission, or a one-man Power Commission, because those Commissions are agencies set up by Congress in the performance of the duty of Congress to regulate commerce among the States.

"Senator Barkley, now our Vice President, said:

"They are quasi judicial and quasi legislative. They are quite different from a commission which is created merely to aid the President in determining how he shall perform his executive duty of appointing people to office, in the way of testing their qualifications (for instance, the Civil Service Commission). One is an executive function, the others are legislative and judicial, and the only reason why the Interstate Commerce Commission was set up, and why the Federal Trade Commission, and the Power Commission, and the Communications Commission, were set up under the authority to regulate commerce among the States and with foreign governments, was the knowledge that Congress itself could not do that.

"But Plan No. 7 does just exactly what Vice President Barkley said he would never approve. It makes the Interstate Commerce Commission a one-man agency, just as plans Nos. 8, 9, and 11 make one-man agencies of the Trade, Power, and Communications Commission."

I am certain that Senator Johnson would view the reorganization plan before you as being equally repugnant.

At this point I would like to digress for a moment to make it abundantly clear that I have no concern that the current Chairman would in any way abuse any delegated power, whether that power was delegated to him by the Commission or by the law. On the contrary, the Chairman has indicated a very understanding desire to work as a team with the full Commission. Laws, however, are not made for men but for the public interest and, in my opinion, the approval of section 2 of Reorganization Plan No. 2 of 1961 would open this door to wide abuse on the part of an ambitious or an unscrupulous chairman. A concrete example or two will demonstrate my concern.

The Chairman could assign me to duties away from the Commission's offices for an extended period and thereby affect the result of a decision on an important policy question.

He could assign members of my personal staff to duties which would deprive me of their services during periods when they would be required to assist me in analyzing highly technical engineering and legal matters.

He could assign me to a special project, such as for example the subscription television case, that would take all of my time to the detriment of my other work.

Through the assignment of staff personnal to special projects, he could achieve a predetermined result insofar as a staff recommendation is concerned. In this connection, the psychological effect on the staff of making one Commissioner so much more powerful than the others cannot be ignored. The staff will be quick to recognize who is supreme and will react accordingly. They would be less than human if they did not.

These are the practical difficulties I have with Reorganization Plan No. 2 of 1961.

I appreciate the opportunity to express my opinion on this matter and should you require anything further I would be most happy to oblige.

The CHAIRMAN. Mr. Craven?

STATEMENT OF T. A. M. CRAVEN, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Mr. CRAVEN. Mr. Chairman, and members of the committee, my name is T. A. M. Craven. I am a member of the Commission. I subscribe to the general objectives of the proposed FCC Reorganization Plan No. 2 insofar as these objectives relate to expediting the adjudicatory and administrative processes of the Commission.

I agree in principle with the statement presented by the Chairman of the Federal Communications Commission to this subcommittee yesterday. However, since I am not a lawyer, I doubt my competence to pass judgment upon the legality of plan No. 2 in terms of the Reorganization Act of 1949 pursuant to which the President transmitted the plan to Congress.

That ends my statement.

The CHAIRMAN. That concludes your statement?

Mr. CRAVEN. That is right, sir. A 60-second commercial.

Mr. MOSS. You are entitled to an additional 10, I understand.

The CHAIRMAN. Very well. Did you have an additional statement that you wanted to include in the record?

Mr. CRAVEN. No, sir. I read it.

The CHAIRMAN. You read it? Thank you very much.

Commissioner Frederick W. Ford is our next witness.

STATEMENT OF FREDERICK W. FORD, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

The CHAIRMAN. Commissioner Ford?

Mr. FORD. Do you want me to read this statement, Mr. Chairman?

The CHAIRMAN. Well, Commissioner, you have a rather lengthy statement or probably I should say that you have a rather full and complete statement and avoid the connotation by the term that I did use, and it would require some time to read the entire statement, would it not?

Mr. FORD. I would judge in the neighborhood of about 20 or 25 minutes, maybe 30.

The CHAIRMAN. Well, my apprehension is that we will be called to the floor of the House and I wanted to get the position from each of you before we get into that, so we can have it in the record.

Mr. FORD. I will be perfectly happy just to file it.

The CHAIRMAN. Could you file it and then give us a brief résumé of it?

Mr. FORD. Yes. I will describe what is in the statement.

The CHAIRMAN. Yes, or if you care to you may proceed to read the statement, since the others were very brief anyway. I mean, the other Commissioners' statements were very brief.

Mr. FORD. Well, I will be governed by whatever the committee wishes.

Mr. ROGERS of Texas. I would like to ask now, with the permission of the chairman, that his entire statement with appendices be included in the record. And then Commissioner Ford will have the opportunity to read or summarize any or all portions of it.

The CHAIRMAN. Very well, if that suits the Commissioner.

Mr. FORD. What I have attempted to do in the statement, really, is to accumulate all the materials which I consider appropriate for the use of the committee in making up its mind as to whether or not it is for this reorganization plan or is against it.

I have, in effect, here constructed the statement on the basis of what the statute presently authorizes the Commission to do on the basis of all of our authority. And then I tried to set forth what the reorganization plan does, and then I have gone into a discussion of first, section 1 and section 2 and then section 3 of the reorganization plan and pointed out all of the deficiencies which, I think, exist in it.

Then, in conclusion, I have pointed out the four or five basic problems I have with the plan, and I have done that by stating that my own view is that Reorganization Plan No. 2 of 1961 should be rejected because it threatens to impair the status of the agency as an independent body of seven coequal members; because it is unlikely to achieve its objective of more economical and expeditious administration * * *; and because it attempts in the name of reorganization to alter radically the procedural rights of litigants before the Commission, an undertaking far more appropriate for legislative consideration by the Congress than for Executive action pursuant to the Reorganization Act.

That conclusion is based on the detailed examination of the language and I have set forth that the big problem I had with it is, on the one hand, you have the Administrative Procedure Act, which prescribes the method of hearing and the method of review.

On the other hand, you have the Communications Act which prescribes the method of hearing and the method of review. Now, cutting across that you have this reorganization plan with the stated intention that the reorganization plan does not, in any way, attempt to modify the Administrative Procedure Act.

And so I come to a very difficult task, it seems to me, of trying to find out what is left both in the Communications Act and what the effect would be of the Administrative Procedure Act on our procedures as set forth in our regular practice. And I have been trying to be a little bit constructive.

I did not have an opportunity in the short period of time to try to draft a proposal which I thought would meet some of these very

favorable things that I found in the plan and then eliminate those which I felt were not good and would throw our procedures into somewhat of a chaotic condition.

And so in the conclusion I have indicated that, on the constructive side, if plan No. 2 is rejected I am hopeful that the Congress will consider putting the Commission in a position to adopt rules that will enable us to to establish a Board of Hearing Appeals composed of high-grade employees who would handle all oral arguments on exceptions to examiners' decisions assigned to them by the Commission.

If, however, the Commission desired, it should be able to assign a case or other work to a panel of Commissioners or retain important cases for hearing by the full Commission. In any case in which the Board or a panel issued a final decision with which three Commissioners do not agree, the matter could be ordered before the full Commission on their own motion but not by petition of the party.

The system should work very much like the Board of Immigration Appeals in the Department of Justice.

Thus the routine cases would be weeded out and the Commission would be occupied only with cases of some importance. And what this seeks to do is to give us the flexibility to set up a board of employees down there who are highly skilled in these hearing matters and in the small "shrimp boat" case and in the other small cases we have hundreds of operators, any one of which can tie up this Commission for a half day on a fairly minor matter, when our time is quite pressed looking toward space and things of that sort.

And it seems to me on those routine cases, if we had a board of that kind with good hearing officers, appellate officers, then they would write the decision. We would delegate the oral argument to them, because I am firmly convinced that oral argument should be preserved at some level of review, and this would permit us to do that.

I do not think that we can delegate oral argument under the Reorganization Plan No. 2 because of the language of section 1(b) which says that the Commission shall retain the right of review. So that I do not find that we can do that.

So, on the whole, while I am very sympathetic with some of the things attempted to be accomplished here, I am just afraid that we cannot quite do it. Then on the question of writing decisions, the Commissioners writing decisions, this is very troublesome with this reorganzation plan.

Mr. BENNETT. Before you leave that, could I ask you one question about your conclusion?

You say that any case where a board or panel issued a final decision with which three Commissioners do not agree, the matter could be ordered to the full Commission on their own motion but not by petition by the parties.

You do not mean you would deprive a party of a right to ask for it, do you?

Mr. FORD. Yes, sir.

Mr. BENNETT. You would not permit them even to ask for it?

Mr. FORD. No, sir; I would not.

Mr. BENNETT. Why not?

Mr. FORD. Well, under the Administrative Procedure Act, in section 1, "agency" is defined as an authority.

Now within the framework of Government there are many authorities within agencies. The Board of Immigration Appeals is such an authority within the Department of Justice, and in my construction of the Administrative Procedure Act you are entitled to one appeal, and this agrees with the Attorney General's Manual of 1947.

So that once you have your one appeal you have had your one argument before a reviewing authority, and then, to me, the purposes of fairness of justice, of review, have been accomplished.

Now, since some of these opinions can, in effect, establish policy, some of them can go off halfcocked, and it would seem to me that the Commission should be in a position for three Commissioners to reach down and pull that case up and say, "Look, we are going to review it," and then review it and order a full-scale oral argument or proceed in which manner the Commission saw fit.

Mr. BENNETT. By the same token, if the Commissioner went off halfcocked, should not the litigant, at least, have the right to ask for a review and set forth his reasons, if there is any substance to them?

Mr. FORD. Well now, if this is in statutory language in such a fashion that the Commission can say no, then that is all right, but if the Commission has to abide by the *Saginaw* case in which we have to set forth at great length all of our reasons and review the things, and if they have to satisfy the court of appeals, as in the *WLOX* case, and set forth our reasons, then there is no reason for us to have this intermediate board and we might as well hear the whole thing.

And that is the reason I was trying to state it in such a fashion that it would be within our discretion.

I am seriously afraid that, under the reorganization plan, under 6(d) of the Administrative Procedure Act, we are going to have to set forth our full reasons and all of this delegation and the timesaving that we hope for in the reorganization plan No. 2 just would not come about because the court would require us to review the whole thing anyway. And that is the reason that I put it in that sort of a frame.

Now, it isn't that I have any objections to asking for a review, but I am trying to put it in such a position that the court of appeals will not require us to review every bit of the testimony and write full long opinions on it, and then we are just right back where we started and that is what I am trying to avoid.

I would have no objection to his filing a petition for appeal as long as I could read it through and say no, but if I have got to go into it at great length that is another thing.

On the question of writing decisions, I am very much troubled by this plan, and I would like to point that out especially.

The idea seems to be that the Commission could—and this all deals with the abolition of the functions of the review section and of the staff. And now, in 5(c), the last sentence of that section says that no one can assist the Commission in writing these decisions except the three people appointed under section 4(f) or something of that sort.

Now, so that if you abolish the staff, you abolish their function and no one can help me write the decision except my engineering assistant, and my confidential secretary.

Now, if nobody can help me write any of the decisions—and we write 60 decisions a year, and the average examiner issues 10 decisions a year—then I will be so completely bogged down in writing decisions that I just won't get anything else done.

And that is one of the basic objections I have to the plan. And if the plan does go into effect I am hopeful that something can be done to make clear that the last section of 5(c), with that restriction in it, that something is done about it so that I won't just have to read and write everything that there is to come out down there, and the Commissioners won't have to do this personally.

Mr. BENNETT. The thing I believe you are trying to get rid of is the delay that has been caused by having this review section review something that they had nothing to do with initially.

So having a complete review of the matter after the Commission has gone over it and rendered its final decision——

Mr. FORD. Well, you see, I think with my intermediate board we wouldn't have that problem, because those people would have an opportunity to study these cases and write those decisions.

Whereas, I don't see how we are going to reassign—and I know there is a difference of opinion on this and on the interpretation of the plan—but I don't see how we are going to take the review staff and assign them around to my office when the last sentence of section 5(c) says I can't use them.

So we couldn't have seven review sections and somebody immediately under my control or we couldn't have them all in one group.

Well, those were the two points I had specially to make. I am afraid I got a little away from the summarization of the statement.

The CHAIRMAN. That is all right.

Mr. SPRINGER. Mr. Chairman, I want to take this opportunity to thank Mr. Ford for his statement. I have read it and it is excellent.

I think it is very, very good.

Mr. FORD. Well, I think you will find in the appendix I have set forth the specific language of the sections of the Administrative Procedure Act and the Communications Act which I think are appropriate to consider in connection with the plan.

I have set forth or quoted the reorganization plan itself. I have set forth the Reorganization Plan of 1950 which included an exception of Commission personnel from the jurisdiction of the Chairmen in making assignments; whereas, this one does not contain this exception so that the legislative history of the two indicate to me that if this is accepted then the Chairman would have the authority to reach in and take my personal secretary, and, of course, I wouldn't like that very well.

And in addition to that, I have included Administrative Order No. 11, adopted by the Commission initially as Administrative No. 8, I think, about 1949, delegating and further defining the duties, the executive functions of the Chairman.

And that was revised in 1958, I believe, and I have set that forth so that the committee would have the information on the manner in which the Commission has delegated further authority to the Chairman.

Mr. ROGERS of Texas. I would just like to say, Commissioner Ford, as a member of this subcommittee, I am very grateful to you for the time and everything that you have put into that statement. It is, in

my opinion, a scholarly approach to this question. I believe it will be of much benefit to the subcommittee when we go into this.

Mr. FORD. Thank you very much.

The CHAIRMAN. Commissioner Ford, thank you very much.

(The full text of the statement of Commissioner Frederick W. Ford with appendixes is as follows:)

STATEMENT OF FREDERICK W. FORD, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION, ON REORGANIZATION PLAN NO. 2 OF 1961

I. INTRODUCTION

My name is Frederick W. Ford. I have been a member of the Commission since 1957 and served as its Chairman for almost a year. I also served on the staff of the Commission in the opinion-writing section, now called the review section, and later as Chief of its Hearing Division from early 1947 until late 1953. I appear here today to present my personal views on Reorganization Plan No. 2 of 1961, providing for reorganization in the Federal Communications Commission.

I am in agreement with the President's stated objectives in submitting plan No. 2 to provide, "* * * for greater flexibility in the handling of the business before the Commission, permitting its disposition at different levels so as better to promote its efficient dispatch," and of relieving "* * * the Commissioners from the necessity of dealing with many matters of lesser importance and thus conserve their time for the consideration of major matters of policy and planning."

I am also in agreement with the House Committee on Government Operations in its Report 195, 87th Congress, 1st session, recommending extension of the Reorganization Act of 1949 when it stated at page 2 that, "Criticisms have been made and the committee has been concerned with the tendency of the Executive to draft reorganization plans in general terms so that the full scope of the reorganization is not always readily apparent from the contents of the plans as presented." This statement is particularly true of the plan now before you. It will be necessary, therefore, for me to analyze in some detail the provisions of plan No. 2 in an effort to assist the committee in reaching a conclusion on its merits.

In order to understand the effect of this plan, it is desirable to review the present statutory authority of the Commission and its Chairman, and compare that authority with the delegations contained in the plan and the power given to the Chairman. This will also aid in understanding the functions which are abolished. In this way I hope to be of the greatest assistance to the committee.

II. PRESENT AUTHORITY OF THE COMMISSION

The authority of the Commission has been delineated after years of study and hearings by this and other committees. The sections of the law which I believe bear on Reorganization Plan No. 2 are summarized in the following narrative.

Section 5(d)(1)[1] of the Communications Act of 1934, as amended, hereinafter referred to as Communications Act, provides for delegations of authority except in adjudicatory cases for which provision is made in section 409.[2]

Section 5(d)(1) authorizes the Commission when necessary to the proper functioning of the Commission and the prompt and orderly conduct of its business, by order to assign or refer any portion of its work, business, or functions to an individual Commissioner or Commissioners or to a board composed of one or more employees of the Commission to be designated by such order for action thereon, and may at any time amend, modify, or rescind any such order. It further provides that any action taken under such order unless appealed shall have the same effect as if done by the Commission and may be enforced in the same way.

Section 5(d)(2)[3] provides for an appeal from such action to the Commission which shall be passed upon by the Commission and if granted it may affirm,

[1] See app. 1 for full text of sec. 5(d)(1).
[2] See app. 2 for appropriate subsections of sec. 409.
[3] See app. 1 for full text of sec. 5(d)(2).

modify, or set aside such action or order a rehearing in accordance with section 405.[4]

Section 405 provides that any person aggrieved by any decision, order or requirement of the Commission may petition for rehearing within 30 days from public notice of the action complained of and specifically requires the Commission to enter an order "* * * with a concise statement of the reasons therefor, denying a petition for rehearing or granting such petition, in whole or in part, and ordering such further proceedings as may be appropriate." In this connection the provisions of section 6(d)[5] of the Administrative Procedure Act should be considered in which the requirement is made that prompt notice of denials be given of any written application, petition, or other request by an interested person in any agency proceeding. Except where it affirms a prior denial or is self-explanatory, the notice must contain a simple statement of procedural or other grounds therefor.

Section 409 contains provisions relating to cases of adjudication designated for hearing. It provides that the Commission en banc or an examiner, provided for in section 11 of the Administrative Procedure Act, shall conduct the hearing; that the officer or officers conducting the hearing shall file an initial decision (except where he is unavailable or the Commission for good reasons orders the record certified to it); that the Commission shall permit the filing of exceptions to such initial decisions and hear oral argument on such exceptions before entry of a final order or decision; and that all decisions including the initial decision become a part of the record and shall "* * * include a statement of (1) findings and conclusions, as well as the basis therefor, upon all material issues of fact, law, or discretion, presented on the record; * * *." There follows in other subsections restrictions on examiners, certain ex parte contacts, separation of staff according to function, provisions as to witnesses, etc. It is well to add here that section 11 of the Administrative Procedure Act provides for the appointment and assignment of examiners. In addition, it expressly provides that examiners shall "* * * perform no duties inconsistent with their duties and responsibilities as examiners."

It should also be noted that the 1952 amendments to the Communications Act amended section 409[6] in such a way as to eliminate the authority of individual Commissioners to preside at the taking of evidence in adjudicatory proceedings. This amendment specifically referred to the Administrative Procedure Act in section 409(d)[7] as required by section 12 of that act in making this and other modifications, including that in section 7(a) of the Administrative Procedure Act. This latter section authorizes one or more Commissioners to preside at the taking of evidence in an adjudicatory proceeding.

Section 5(a)[8] of the Communications Act provides that the "* * * Chairman shall be the chief executive officer of the Commission." It assigns certain duties to him including, "* * * generally to coordinate and organize the work of the Commission in such a manner as to promote prompt and efficient disposition of all matters within the jurisdiction of the Commission." The executive responsibility of the Chairman with respect to the internal affairs of the Commission is further defined in Administrative Order No. 11.[9]

Section 4(f)(1)[10] gives the Commission the authority to appoint such employees as are necessary in the exercise of its functions and section 4(f)(2)[11] authorizes each Commissioner to appoint a legal assistant, an engineering assistant, and a secretary, each of whom shall perform such duties as such Commissioner shall direct.

Section 4(i)[12] gives the Commission broad authority to make rules and regulations and issue orders not inconsistent with the act which are necessary in the execution of its functions.

Section 4(j)[13] authorizes the Commission to conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.

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[4] See app. 3 for full text of sec. 405.
[5] See app. 6 for full text of sec. 6(d).
[6] See app. 2 for text of sec. 409 before 1952 amendment.
[7] See app. 2 for full text of sec. 409(d).
[8] See app. 1 for full text of sec. 5(a).
[9] See app. 8 for full text of Administrative Order No. 11.
[10] See app. 7 for full text of sec. 4(f)(1).
[11] See app. 7 for full text of sec. 4(f)(2).
[12] See app. 7 for full text of sec. 4(i).
[13] See app. 7 for full text of sec. 4(j).

In part O of its published rules, the Commission has set forth the functions of its bureaus and major staff offices. It also has set forth certain delegations of final authority to them. From an examination of these regulations, it can be seen that the Commission has assigned all of its personnel to the various work, business, and functions of the Commission, but has retained the function of voting on all actions for which final authority has not been delegated. These retained functions include instructions to the staff through the Chairman, the formation of policy, hearing oral argument and deciding adjudicatory cases, adoption of rules and regulations and the like.

We conduct our business at the regular weekly meeting. At this time all business for which final authority has not been delegated is presented by the staff on 1 of 12 agenda classified according to the major workload of the Commission. We also have numerous special meetings at which major matters are considered in greater detail, hold oral arguments, hearings en banc, etc. It is in this way that our work is organized and the Commission exercises its functions.

III. PROPOSED AUTHORITY OF THE COMMISSION

Before beginning my discussion of the plan and some of the modifications it makes in present law, I would like briefly to summarize plan No. 2.

Section 1(a) [14] of the plan grants to the Commission *in addition* to its existing authority to delegate "the authority to delegate, by *published* order or rule, any of its functions to a division of the Commission, an individual Commissioner, *a hearing examiner*, or an employee or employee board, including functions with respect to *hearing*, *determining*, ordering, certifying, reporting or otherwise acting as to *any work*, *business* or *matters*; * * *." [Emphasis supplied.] This section then contains two provisos. The first to the effect that nothing in the plan shall supersede section 7(a) [15] of the Administrative Procedure Act authorizing the agency or one or more members of the body comprising the agency or examiners to preside at the taking of testimony. The second proviso in accordance with subsection (b) abolishes the function of the Commission with respect to the filing of exceptions to decisions of hearing examiners and the function of hearing oral arguments on such exceptions before the entry of any final decision as set forth in section 409(b) [16] of the Communications Act.

Section 1(b) requires the Commission to retain a discretionary right of review of delegated actions on its own initiative, by a vote of three members, or, upon petition by a party or intervenor of actions taken under delegated authority within such time and in such manner as the Commission may by rule prescribe.

Section 1(c) provides that if discretionary review is declined or no review is sought within the time specified by the Commission, then the delegated action shall be deemed the action of the Commission for all purposes.

Section 2 of the plan transfers to the Chairman the functions of the Commission with respect to the assignment of Commission personnel including Commissioners to perform such functions as may have been delegated by the Commission to Commission personnel including Commissioners, pursuant to section 1 of the reorganization plan.

Section 3 abolishes the review staff and its functions created by section 5(c) [17] of the Communications Act.

IV. DISCUSSION

Section 5(d)(1) of the Communications Act grants broad powers to the Commission to delegate any of its functions except those relating to cases of adjudication as defined in the Administrative Procedure Act which are specifically provided for in section 409 of the Communications Act. This power of delegation is to be exercised when it meets the statutory standard "* * * when necessary to the proper functioning of the Commission and the prompt and orderly conduct of its business * * *." Section 1(a) of plan No. 2 appears to include all of the authority in section 5(d)(1) and in addition to include cases of adjudication for which special provision is made in section 409 by the use of the words

[14] See app. 4 for full text of Reorganization Plan No. 2 of 1961.
[15] See app. 5 for full text of sec. 7(a) of the Administrative Procedure Act.
[16] See app. 2 for full text of sec. 409(b).
[17] See app. 1 for full text of sec. 5(c).

"any of its functions" without any standard and without any reservation except section 7(a) of the Administrative Procedure Act relating to presiding officers [38] and the discretionary right of review mentioned in section 1(b) of plan No. 2. In fact, it specifically includes functions with respect to hearing, determining, ordering or certifying as to "any work, business or matter." This language appears at first to give the Commission authority to drastically alter its present procedures under sections 409 and 405. The Commission would apparently be enabled to delegate to a panel of Commissioners or a board of employees authority to review initial decisions and rule on petitions for reconsideration unless the review provisions of section 5(d)(2) are held to apply to delegations under plan No. 2. This would not seem to be the case because it is limited by its terms to "such delegations" meaning those in section 5(d)(1). Moreover, those supporting the plan make no contention that the authority in the plan merges with that in the Communications Act. In fact, they state the intention is to the contrary.

One other impediment might prevent the Commission from delegating review functions without affirmative legislation. It has been stated that the Administrative Procedure Act does not entitle one to an appeal from an initial decision. However, at page 83 of the Attorney General's manual on the Administrative Procedure Act issued in 1947 when Justice Clark was Attorney General, in commenting on section 8(a) of the Administrative Procedure Act, it is stated: "Parties may appeal from the hearing officer's initial decision to the agency, which must thereupon itself consider and decide the case." In addition, section 6(d) of that act provides for prompt notice to be given of the denial of requests by interested parties in any agency proceeding and unless it affirms a prior denial or is self-explanatory, it is to be accompanied by a simple statement of procedural or other grounds.

The report of the House Committee on the Judiciary to accompany S. 7, which became the Administrative Procedure Act, indicated in commenting on this section that the ruling on a request should state the actual grounds for the denial and be sufficient to apprise a party of the basis for it. Since a panel of Commissioners or a board of employees could be an "agency" under section 2 of the Administrative Procedure Act, I was hopeful that the Commission would be able to delegate all of its functions in adjudicatory cases of a routine nature if it so desired. However, what setcion 1(a) gives, section 1(b) takes away in stating that the "Commission shall retain a discretionary right of review * * * upon its own initiative or upon petition of a party * * *." Thus, if the Attorney General's manual is correct and the Commission must retain the discretionary right of review under plan No. 2 on petition, it would seem that we will have to permit either proposed findings or exceptions to delegated actions and decide the cases ourselves under the Administrative Procedure Act. Moreover, section 6(d) of the Administrative Procedure Act would require the Commission to review and set forth the reasons for our denial of a review of delegated actions under section 1 of plan No. 2 and section 405 of the Communications Act would require the same thing concerning delegated actions under section 5(d)(1) of that act even if 5(d)(2) is held to permit us to refuse to consider the merits in "passing upon" an application for review of actions under 5(d)(1). This procedure in itself will require substantial review of the merits and result in little saving of time.

At the same time section 1(b) of plan No. 2 gives back what section 1(a) abolished with respect to exceptions and oral argument and yet probably prevents a delegation of those restored functions.

Section 1(a) abolishes the function of the Commission in accordance with section 1(b) with respect to the filing of exceptions to "decisions" of hearing examiners and of hearing oral argument on such exceptions provided by section 409(b) of the Communications Act. Section 1(b) of plan No. 2 provides that the discretionary right of review retained by the Commission with respect to its delegated functions shall be within such time and in such manner as the Commission shall by rule prescribe. Even though the function of oral argument is

[38] I do not believe it could be seriously contended that the statement in plan No. 2 "* * * that nothing herein contained shall be deemed to supersede the provisions of sec. 7(a) of the Administrative Procedure Act" by inference could be construed as a modification of other sections of that act, especially since those who support plan No. 2 state that there is no intention to modify that act in any way; and, in addition, there is some question as to whether a reorganization plan could modify a purely procedural statute.

abolished, the Commission could by rule prescribe [10] exceptions and oral argument among other things as the manner of review, but since it is to be retained by the Commission, that method of review probably could not be delegated.

The language of section 1(a) of the plan would appear to permit the delegation of any function to hearing examiners. Section 11 of the Administrative Procedure Act provides that examiners "* * * shall perform no duties inconsistent with their duties and responsibilities as examiners." The Commission, therefore, has no function of making other assignments to them, but is by this language expressly prohibited from doing so. The provisions of the Reorganization Act of 1949 (5 U.S.C. 133z–3(a)(4)) states that no reorganization plan shall provide for or have the effect of "authorizing any agency to exercise any function which is not expressly authorized by law at the time the plan is transmitted to the Congress. * * *" It should be made clear, therefore, if this plan is to become effective, that it does not affect the independence of hearing examiners nor permit the Chairman under section 2 to modify the method of their assignment provided in section 11 of the Administrative Procedure Act.

In granting authority to delegate, plan No. 2 states "by published rule or order" whereas section 5(d)(1) of the Communications Act merely uses the word "order" leaving to the Commission the determination of when they should be published. Section 3 of the Administrative Procedure Act provides for publication of delegations of final authority and other matters such as procedure, etc. This requirement of publication in plan No. 2 would appear to be much broader. In some way it should be made clear that the requirement of publication does not go to every minor delegation not covered by the Administrative Procedure Act or we may find ourselves with a very stringent limitation in issuing instructions to our staff if the plan becomes effective.

I think it is clear from the foregoing that section 1 would not bring about a reorganization in the usual sense. Rather, its primary objective is the elimination of procedural rights given to litigants before the Commission under the 1952 amendments to the Communications Act. I have mentioned various problems that the plan presents, but I am sure many others will arise in its operation which are not obvious to me now.

The Commission, the communications bar, and the Congress all recognize that much could be done to improve on the 1952 amendments. Public Law 752, passed last year, was intended as a step in this direction. The Commission has adopted legislative proposals this year which we feel would bring further improvement. However, all of these proposals, as well as the 1952 amendments, become law only after extensive hearings and much revision representing the best efforts of all who will be affected.

Since sections 1 and 3 of this plan, to the extent that they represent anything new, are only incidentally concerned with internal agency organization and are essentially an overhaul of the procedure governing the manner in which parties are to have their cases heard and decided, I believe that it would be far more appropriate to consider these measures in the normal course of the legislative process rather than as a reorganization plan to be adopted or rejected by the Congress within 60 days. In this way, there would be far greater opportunity to consider the pros and cons, to keep what is good and reject the rest.

I would now like to turn to section 2 of plan No. 2. This section appears to give the Chairman the power to assign any delegated function under section 1 to a Commissioner. I have already pointed out that most of our work is delegated. Thus, the Chairman apparently could assign a Commissioner against his will to perform any work of whatever character to which a member of the staff could be assigned under the delegation of authority in section 1 of the plan. This could include assigning a Commissioner to preside at a protracted hearing in a distant section of the country to get him out of the way, writing many of the final decisions for the Commission or writing summaries of minor applications. The Chairman would also appear to have the power to remove a Commissioner from work assigned to him by the Commission and substitute other Commissioners or Commission personnel more to his liking.

The only protection members of the Commission would have from a vindictive Chairman would be to refuse to use any of the authority granted by this plan to delegate functions. This may not be possible, since section 3 of plan No. 2 abolishes the review staff and its functions. This raises a question in my mind

[10] See sec. 8(b) of the Administrative Procedure Act for additional authority to permit exceptions to initial decisions. App. 9.

of whether it abolishes the last sentence of section 5(c) of the Communications Act, which prevents any employee who is not a member of the review staff from performing any of the duties and functions to be performed by it except the legal, engineering, and personal secretary of each Commissioner. Does the plan by abolishing the review staff and its functions require Commissioners and their three assistants to prepare all of the final decisions which may be assigned to them by the Chairman? It would appear that it does. Would the Chairman have the power to invade the private office of a Commissioner and assign his personal staff to any delegated function under section 1 of the plan such as perhaps to assist another commissioner in delegated work? It would appear so, because Reorganization Plan No. 11 of 1950 excepted that personnel [20] but no similar provision is contained in plan No. 2.

If the Chairman assigns a task to my personal secretary who has been with me many years and I assign her to other work, such as assisting me with this statement, which assignment takes priority, mine or his?

It may be contended that there are safeguards against such action by a Chairman because the Commission could rescind a delegation under plan No. 2 and redelegate it under section 5(d)(1) of the act. This is true except perhaps for the writing of final decisions or unless four commissioners wanted to punish another commissioner. It may also be contended that the assignment of commissioners and staff by the Chairman could only be to the same class of work usually performed by them, but I find no such limitation in the language of plan No. 2.

It should be noted that the present Commission is very compatible but there have been times in the past, I am told, when one Commissioner would not speak to another.

I do not believe that any of these various possibilities for unfair treatment would take place, but with section 2 in effect they could. The mere fact that this power would exist would be a substantial deterrent to using the authority provided by this plan. To the extent that the authority would be used all Commissioners would be aware of the power and its possible exercise by a willful Chairman.

This power would permit the Chairman to select a Commissioner with predisposed ideas on certain subjects to write selected decisions opening the way for internal dissension. This has apparently been the case in some courts which did not use a form of rotating judges. More importantly, I feel, that notwithstanding the analogy to the judiciary which could be drawn, that the proposed system might well provoke suspicion and criticism which, however, unwarranted or misconceived would tend to impair respect for the integrity of our processes.

In any multiheaded agency such as ours there must be some directing head, particularly in our quasijudicial work, just as there is in courts. In this connection it should be noted, that the Chairman already exercises substantial power in the employment, assignment, and promotion of personnel by virtue of section 5(a) of the Communications Act and Administrative Order No. 11.

I know of few instances in which the Chief Judge of a court, however, is given plenary authority over work assignments to his brother judges aside from a rule of court which can be altered by the court in case of abuse. In fact, the Congress has provided by law that assignments are to be made as the court directs (28 U.S.C. 46). Moreover, since only a part of our work is of a quasijudicial nature, it would be possible to so overburden a Commissioner with this type of assignment as to curtail his performance of other important duties.

It is my belief that the principal power of the Chairman is the sympathy we all have with him in his assignment to one of the most difficult jobs in Washington—he is always on the firing line—but in addition, he controls a staff of 1,200 people, whereas a Commissioner has only 5 or 6. When documents of some length are prepared under the Chairman's direction, it is almost impossible to alter the course set by them because of the sheer volume and pressure of work.

Turning to the final section of the plan—the abolition of the review staff. This is a step with which I am in at least partial agreement. On several occasions I have advocated the repeal of section 5(c) on the ground that it

[20] See app. 10 for text of Reorganization Plan No. 11 of 1950.

was unduly restrictive and that adherence by the agency to the provisions of section 5 of the Administrative Procedure Act would provide all of the safeguards required.

As indicated above, I believe that abolishing the review staff and functions instead of a repeal of section 5(c) may have the effect of requiring commissioners and their small staffs to write all final decisions personally. As you know I am opposed to the requirement that decisions be prepared and signed under the name of the several Commissioners on a routine basis, as I indicated in my testimony before the House Interstate and Foreign Commerce Committee in March 1960. I must say, however, that if we were relieved of preparing decisions in rountine cases, the burden of this work could possibly be carried without resort to a diffuse institutional type opinion writing process, and I mean by that seven opinion writing sections instead of one. I have in mind that our examiners hear and prepare an average of about 10 cases a year; that hearing cases occupy considerably less than half of a Commissioner's already crowded days; that 60 cases a year after exceptions and oral argument should be issued by the Commission; and that unless there is a substantial increase in the number of Commissioners our present memberhip would become hopelesly bogged down in the judicialization of our work. On the other hand, if we could delegate the routine cases, it is my belief that Commissioners who are lawyers could, with help, prepare their own decisions in important cases. I was hopeful that this plan would permit this course of action, but I do not believe it possible for the reasons I have stated.

The preparation of an opinion of a judicial nature is, as you know, one of the highest forms of art in the legal profession. How decision writing is to be accomplished by nonlawyers on our Commission I do not know, unless they rely on someone else. This, of course, would defeat the object of the requirement. Yet we need nonlawyer members, such as engineers and businessmen to take the lead in many important areas of our regulator work.

V. CONCLUSION

My own view is that Reorganization Plan No. 2 of 1961 should be rejected because it threatens to impair the status of the agency as an independent body of seven coequal members; because it is unlikely to achieve its objective of "more economical and expeditious administration; * * *" and because it attempts in the name of reorganization to alter radically the procedural rights of litigants before the Commission, an undertaking far more appropriate for legislative consideration by the Congress than for the executive action pursuant to the Reorganization Act.

On the constructive side, if plan No. 2 is rejected, I am hopeful that the Congress will consider putting the Commission in a position to adopt rules that would enable us to establish a "Board of Hearing Appeals" composed of high grade employees, who would handle all oral arguments on exceptions to examiner's decisions assigned to them by the Commission. If, however, the Commission desired, it should be able to assign a case or other work to a panel of commissioners or retain important cases for hearing by the full Commission. In any case in which the Board or a panel issued a final decision with which three commissioners did not agree the matter could be ordered before the full Commission on their own motion, but not by petition of a party. The system should work very much like the Board of Immigration Appeals in the Department of Justice. Thus, the routine cases would be weeded out and the Commission would only be occupied with cases of some importance.

APPENDIX 1

COMMUNICATIONS ACT OF 1934, AS AMENDED

SEC. 5. (a) The member of the Commission designated by the President as Chairman shall be the chief executive officer of the Commission. It shall be his duty to preside at all meetings and sessions of the Commission, to represent the Commission in all matters relating to legislation and legislative reports, except that any commissioner may present his own or minority views or supplemental reports, to represent the Commission in all matters requiring conferences or communications with other governmental officers, departments or agencies, and generally to coordinate and organize the work of the Commission in such manner

as to promote prompt and efficient disposition of all matters within the jurisdiction of the Commission. In the case of a vacancy in the office of the chairman of the Commission, or the absence or inability of the chairman to serve, the Commission may temporarily designate one of its members to act as chairman until the cause or circumstance requiring such designation shall have been eliminated or corrected.

(b) Within six months after the enactment of the Communications Act Amendments, 1952, and from time to time thereafter as the Commission may find necessary, the Commission shall organize its staff into (1) integrated bureaus, to function on the basis of the Commission's principal workload operations, and (2) such other divisional organizations as the Commission may deem necessary. Each such integrated bureau shall include such legal, engineering, accounting, administrative, clerical, and other personnel as the Commission may determine to be necessary to perform its functions.

(c) The Commission shall establish a special staff of employees, hereinafter in this Act referred to as the "review staff," which shall consist of such legal, engineering, accounting, and other personnel as the Commission deems necessary. The review staff shall be directly responsible to the Commission and shall not be made a part of any bureau or divisional organization of the Commission. Its work shall not be supervised or directed by any employee of the Commission other than a member of the review staff whom the Commission may designate as the head of such staff. The review staff shall perform no duties or functions other than to assist the Commission, in cases of adjudication (as defined in the Administrative Procedure Act) which have been designated for hearing, by preparing a summary of the evidence presented at any such hearing, by preparing, after an initial decision but prior to oral argument, a compilation of the facts material to the exceptions and replies thereto filed by the parties, and by preparing for the Commission or any member or members thereof, without recommendations and in accordance with specific directions from the Commission or such member or members, memoranda, opinions, decisions, and orders. The Commission shall not permit any employee who is not a member of the review staff to perform the duties and functions which are to be performed by the review staff; but this shall not be construed to limit the duties and functions which any assistant or secretary appointed pursuant to section 4(f)(2) may perform for the commissioner by whom he was appointed.

(d)(1) Except as provided in section 409, the Commission may, when necessary to the proper functioning of the Commission and the prompt and orderly conduct of its business, by order assign or refer any portion of its work, business, or functions to an individual commissioner or commissioners or to a board composed of one or more employees of the Commission, to be designated by such order for action thereon, and may at any time amend, modify, or rescind any such order of assignment or reference. Any order, decision, or report made, or other action taken, pursuant to any such order of assignment or reference shall, unless reviewed pursuant to paragraph (2), have the same force and effect, and shall be made, evidenced, and enforced in the same manner, as orders, decisions, reports, or other action of the Commission.

(2) Any person aggrieved by any such order, decision, or report may file an application for review by the Commission, within such time and in such form as the Commission shall prescribe, and every such application shall be passed upon by the Commission. If the Commission grants the application, it may affirm, modify, or set aside such order, decision, report, or action, or may order a rehearing upon such order, decision, report or action under section 405. * * *

Appendix 2

Communications Act of 1934, as Amended

Sec. 409. (a) In every case of adjudication (as defined in the Administrative Procedure Act) which has been designated for a hearing by the Commission, the hearing shall be conducted by the Commission or by one or more examiners provided for in section 11 of the Administrative Procedure Act, designated by the Commission.

(b) The officer or officers conducting a hearing to which subsection (a) applies shall prepare and file an initial decision, except where the hearing officer becomes unavailable to the Commission or where the Commission finds upon the record that due and timely execution of its functions imperatively and unavoida-

bly require that the record be certified to the Commission for initial or final decision. In all such cases the Commission shall permit the filing of exceptions to such initial decision by any party to the proceeding and shall, upon request, hear oral argument on such exceptions before the entry of any final decision, order, or requirement. All decisions, including the initial decision, shall become a part of the record and shall include a statement of (1) findings and conclusions, as well as the basis therefor, upon all material issues of fact, law, or discretion, presented on the record; and (2) the appropriate decision, order, or requirement.

(c) (1) In any case of adjudication (as defined in the Administrative Procedure Act) which has been designated for a hearing by the Commission, no examiner conducting or participating in the conduct of such hearing shall, except to the extent required for the disposition of ex parte matters as authorized by law, consult any person (except another examiner participating in the conduct of such hearing) on any fact or question of law in issue, unless upon notice and opportunity for all parties to participate. In the performance of his duties, no such examiner shall be responsible to or subject to the supervision or direction of any person engaged in the performance of investigative, prosecutory, or other functions for the Commission or any other agency of the Government. No examiner conducting or participating in the conduct of any such hearing shall advise or consult with the Commission or any member or employee of the Commission (except another examiner participating in the conduct of such hearing) with respect to the initial decision in the case or with respect to exceptions taken to the findings, rulings, or recommendations made in such case.

(2) In any case of adjudication (as defined in the Administrative Procedure Act) which has been designated for a hearing by the Commission, no person who has participated in the presentation or preparation for presentation of such case before an examiner or examiners or the Commission, and no member of the Office of the General Counsel, the Office of the Chief Engineer, or the Office of the Chief Accountant shall (except to the extent required for the disposition of ex parte matters as authorized by law) directly or indirectly make any additional presentation respecting such case, unless upon notice and opportunity for all parties to participate.

(3) No person or persons engaged in the performance of investigative or prosecuting functions for the Commission, or in any litigation before any court in any case arising under this Act, shall advise, consult, or participate in any case of adjudication (as defined in the Administrative Procedure Act) which has been designated for a hearing by the Commission, except as a witness or counsel in public proceedings.

(d) To the extent that the foregoing provisions of this section are in conflict with provisions of the Administrative Procedure Act, such provisions of this section shall be held to supersede and modify the provisions of the Act.[94]

APPENDIX 3

COMMUNICATIONS ACT OF 1934, AS AMENDED

SEC. 405. After a decision, order, or requirement has been made by the Commission in any proceeding, any party thereto, or any other person aggrieved or whose interests are adversely affected thereby, may petition for rehearing; and it shall be lawful for the Commission, in its discretion, to grant such a rehearing if sufficient reason therefor be made to appear. Petitions for rehearing must be filed within thirty days from the date upon which public notice is given of any decision, order, or requirement complained of. No such application shall excuse any person from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. The filing of a peti-

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[94] The Communications Act Amendments, 1952, substituted subsections (a), (b), (c), and (d) to read as above, for subsection (a). This subsection formerly read as follows:

"SEC. 409. (a) any member or examiner of the Commission, or the director of any division, when duly designated by the Commission for such purpose, may hold hearings, sign and issue subpenas, administer oaths, examine witnesses, and receive evidence at any place in the United States designated by the Commission; except that in the administration of title III an examiner may not be authorized to exercise such powers with respect to a matter involving (1) a change of policy by the Commission, (2) the revocation of a station license, (3) new devices or developments in radio, or (4) a new kind of use of frequencies. In all cases heard by an examiner the Commission shall hear oral arguments on request of either party."

tion for rehearing shall not be a condition precedent to judicial review of any such decision, order, or requirement, except where the party seeking such review (1) was not a party to the proceedings resulting in such decision, order, or requirement, or (2) relies on questions of fact or law upon which the Commission has been afforded no opportunity to pass. The Commission shall enter an order, with a concise statement of the reasons therefor, denying a petition for rehearing or granting such petition, in whole or in part, and ordering such further proceedings as may be appropriate: *Provided*, That in any case where such petition related to an instrument of authorization granted without a hearing, the Commission shall take such action within ninety days of the filing of such petition relates to an instrument of authorization granted without a hearmission may establish, except that no evidence other than newly discovered evidence, evidence which has become available only since the original taking of evidence, or evidence which the Commission believes should have been taken in the original proceeding shall be taken on any rehearing. The time within which a petition for review must be filed in a proceeding to which section 402(a) applies, or within which an appeal must be taken under section 402(b), shall be computed from the date upon which public notice is given of orders disposing of all petitions for rehearing filed in any case, but any decision, order, or requirement made after such rehearing reversing, changing, or modifying the original order shall be subject to the same provisions with respect to rehearing as an original order.

APPENDIX 4

REORGANIZATION PLAN NO. 2 OF 1961

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, April 27, 1961, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949, as amended

FEDERAL COMMUNICATIONS COMMISSION

SECTION 1. *Authority to delegate.*—(a) In addition to its existing authority, the Federal Communications Commission, hereinafter referred to as the "Commission", shall have the authority to delegate, by published order or rule, any of its functions to a division of the Commission, an individual Commissioner, a hearing examiner, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter: *Provided, however*, That nothing herein contained shall be deemed to supercede the provisions of section 7(a) of the Administrative Procedure Act (60 Stat. 241), as amended: *And provided further*, That in accordance with the provisions of subsection (b) of this section the functions of the Commission with respect to the filing of exceptions to decisions of hearing examiners and the function of hearing oral arguments on such exceptions before the entry of any final decision, order, or requirement as set forth in subsection (b) of section 409 of the Communications Act of 1934, as amended (66 Stat. 721), are hereby abolished.

(b) With respect to the delegation of any of its functions, as provided in subsection (a) of this section, the Commission shall retain a discretionary right to review the action of any such division of the Commission, individual Commissioner, hearing examiner, employee or employee board, upon its own initiative or upon petition of a party to or an intervenor in such action, within such time and in such manner as the Commission shall by rule prescribe: *Provided, however*, That the vote of a majority of the Commission less one member thereof shall be sufficient to bring any such action before the Commission for review.

(c) Should the right to exercise such discretionary review be declined, or should no such review be sought within the time stated in the rules promulgated by the Commission, then the action of any such division of the Commission, individual Commissioner, hearing examiner, employee or employee board, shall, for all purposes, including appeal or review thereof, be deemed to be the action of the Commission.

SEC. 2. *Transfer of functions to the Chairman.*—There are hereby transferred from the Commission to the Chairman of the Commission the functions of the Commission with respect to the assignment of Commission personnel, including Commissioners, to perform such functions as may have been delegated

by the Commission to Commission personnel, including Commissioners, pursuant to section 1 of this reorganization plan.

SEC. 3. *Review staff.*—The review staff, created by section 5(c) of the Communications Act of 1934, as amended (66 Stat. 712), together with its functions, is hereby abolished. The employees of such staff may be assigned as the Commission may designate."

APPENDIX 5

ADMINISTRATIVE PROCEDURE ACT

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

(a) PRESIDING OFFICERS.—There shall preside at the taking of evidence (1) the agency, (2) one or more members of the body which comprises the agency, or (3) one or more examiners appointed as provided in this Act; but nothing in this Act shall be deemed to supersede the conduct of specified classes of proceedings in whole or part by or before boards or other officers specially provided for by or designated pursuant to statute. The functions of all presiding officers and of officers participating in decisions in conformity with section 8 shall be conducted in an impartial manner. Any such officer may at any time withdraw if he deems himself disqualified; and, upon the filing in good faith of a timely and sufficient affidavit of personal bias or disqualification of any such officer, the agency shall determine the matter as a part of the record and decision in the case. * * *

APPENDIX 6

ADMINISTRATIVE PROCEDURE ACT

SEC. 6(d) DENIALS.—Prompt notice shall be given of the denial in whole or in part of any written application, petition, or other request of any interested person made in connection with any agency proceeding. Except in affirming a prior denial or where the denial is self-explanatory, such notice shall be accompanied by a simple statement of procedural or other grounds.

APPENDIX 7

COMMUNICATIONS ACT OF 1934, AS AMENDED

SEC. 4. (f) (1) The Commission shall have authority, subject to the provisions of the civil-service laws and the Classification Act of 1949, as amended, to appoint such officers, engineers, accountants, attorneys, inspectors, examiners, and other employees as are necessary in the exercise of its functions.

(2) Without regard to the civil-service laws, but subject to the Classification Act of 1949, each commissioner may appoint a legal assistant, an engineering assistant, and a secretary, each of whom shall perform such duties as such commissioner shall direct. In addition, the chairman of the Commission may appoint, without regard to the civil-service laws, but subject to the Classification Act of 1949, an administrative assistant who shall perform such duties as the chairman shall direct. * * *

(i) The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions.

(j) The Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. No commissioner shall participate in any hearing or proceeding in which he has a pecuniary interest. Any party may appear before the Commission and be heard in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of any party interested. The Commission is authorized to withhold publication of records or proceedings containing secret information affecting the national defense. * * *

APPENDIX 8

ADMINISTRATIVE ORDER NO. 11

ORDER DEFINING THE EXECUTIVE RESPONSIBILITY OF THE CHAIRMAN WITH RESPECT TO THE INTERNAL AFFAIRS OF THE COMMISSION

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 25th day of April 1956:

In accordance with Section 5(a) of the Communications Act of 1934, as amended, which reads, in part:

"The member of the Commission designated by the President as Chairman shall be the chief executive officer of the Commission. It shall be his duty to preside at all meetings and sessions of the Commission, to represent the Commission in all matters relating to legislation and legislative reports except that any commissioner may present his own minority views or supplemental reports, to represent the Commission in all matters requiring conferences or communications with other governmental officers, departments or agencies, and generally to coordinate and organize the work of the Commission in such a manner as to promote prompt and efficient disposition of all matters within the jurisdiction of the Commission."

the executive responsibility and authority of the Chairman with respect to the internal affairs of the Commission are hereby defined.

A. *In internal matters of a fairly routine character.* As to these, the Chairman takes final action, need not report specifically thereon to the Commission, but from time to time advises the Commission in general of such actions taken. Illustrations of this type of matter are:

1. procurement and disposition of office space;
2. setting of priorities in use of service facilities;
3. classification of positions up to and including GS–14;
4. approval of individual personnel actions affecting employees up to and including grade GS–9 or its equivalent, except involuntary separations and actions affecting personnel employed in the immediate offices of Commissioners.
5. approval of minor and non-substantive changes in operating procedure, except changes which involve the protective provisions of the Communications Act or of the Administrative Procedure Act; and
6. promulgation of manuals and other procedural instructions with respect to administrative matters.

B. *In internal matters of a non-routine character which do not involve policy determinations.* As to these, the Chairman takes final action but specifically advises the Commission of each action taken. Illustrations of this type of matter are:

1. making of work assignments to the staff of a substantial and unusual nature;
2. establishment of personnel ceilings or staffing schedules;
3. installation or revision of statistical or reporting systems for administrative purposes;
4. approval of individual personnel actions affecting employees in grades GS–10 through 14 or their equivalent, except involuntary separations and all actions affecting personnel employed in the immediate offices of Commissioners. Only those actions which affect grade, permanent assignment, and professional qualifications are reported to the Commission on a case-by-case basis;
5. approval of minor changes in organization within a bureau or staff office; and
6. approval of major changes in procedure except changes of a substantive nature or which involve the protective provisions of the Communications Act or the Administrative Procedure Act.

C. *In internal matters of an important character or which involve policy determinations.* As to these, the Chairman develops proposals for presentation to the Commission. All matters of this nature originating with the staff or other Commissioners are addressed to the Commission through the Chairman. Illustrations of this type of matter are:

1. approval of budgetary requests to be submitted to the Bureau of the Budget;
2. allotment of funds among purposes, bureaus, and offices;
3. promulgation of formal personnel policies;

4. approval of extraordinary assignments of personnel (e.g. details outside the agency);

5. approval of major changes in organization within a bureau or staff office and all changes affecting two or more bureaus or staff offices;

6. approval of changes in procedure of a substantive nature or which affect the protective features of the Communications Act or the Administrative Procedure Act;

7. approval of all involuntary separations of personnel; and

8. approval of actions affecting personnel at the grade GS–14 level and and above, except those actions affecting personnel employed in the immediate offices of Commissioners.

D. *With respect to the personnel in Commissioner's offices.* The individual Commissioners control appointments to and separations from such positions except that all such actions will be taken only after consultation with the Chairman or his designated representative to assure conformance with budget limitations, civil service regulations, and similar requirements.

E. *With respect to supervision of staff.* On behalf of the Commission and pursuant to Section 5(a) of the Act, the Chairman has responsibility and authority to supervise the staff of the Commission in its day-to-day activities. This authority does not involve in any way the content of policy recommendations or the Commission's adjudicatory decisions.

F. *Authority to delegate.* To the extent he finds necessary or desirable the Chairman may delegate to appropriate officials performance of duties covered by this order.

G. Nothing in this order shall be interpreted to confer upon the Chairman any authority inconsistent with any laws, rules, or regulations governing personnel administration or other management matters.

H. This order rescinds and supersedes Administrative Order No. 8, dated June 2, 1949.

FEDERAL COMMUNICATIONS COMMISSION,
MARY JANE MORRIS, *Secretary.*

APPENDIX 9

ADMINISTRATIVE PROCEDURE ACT

SEC. 8. (b) SUBMITTALS AND DECISIONS.—Prior to each recommended, initial, or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions of subordinate officers or to tentative agency decisions, and (3) supporting reasons for such exceptions or proposed findings or conclusions. The record shall show the ruling upon each such finding, conclusion, or exception presented. All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial therof.

APPENDIX 10

REORGANIZATION PLAN NO. 11 OF 1950

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 13, 1950, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949

FEDERAL COMMUNICATIONS COMMISSION

SECTION 1. *Transfer of functions to the Chairman.*—(a) Subject to the provisions of subsection (b) of this section, there are hereby transferred from the Federal Communications Commission, hereinafter referred to as the Commission, to the Chairman of the Commission, hereinafter referred to as the Chairman, the executive and administrative functions of the Commission, including functions of the Commission with respect to (1) the appointment and supervision of personnel employed under the Commission, (2) the distribution of

business among such personnel and among administrative units of the Commission, and (3) the use and expenditure of funds.

(b) (1) In carrying out any of his functions under the provisions of this section the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

(2) The appointment by the Chairman of the heads of major administrative units under the Commission shall be subject to the approval of the Commission.

(3) Personnel employed regularly and full time in the immediate offices of commissioners other than the Chairman shall not be affected by the provisions of this reorganization plan.

(4) There are hereby reserved to the Commission its functions with respect to revising budget estimates and with respect to determining upon the distribution of appropriated funds according to major programs and purposes.

SEC. 2. *Performance of transferred functions.*—The Chairman may from time to time make such provisions as he shall deem appropriate authorizing the performance by any officer, employee, or administrative unit under his jurisdiction of any function transferred to the Chairman by the provisions of this reorganization plan.

STATEMENT OF JOHN S. CROSS, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Mr. HARRIS. Commissioner Cross?

Mr. CROSS. Mr. Chairman and gentlemen, I do not have a prepared statement but, with your permission, will speak from notes as I am accustomed to doing.

I personally support the reorganization plan.

While I am not a lawyer, I just don't see the great bugaboos under the bed that some of my colleagues apparently see in this plan.

First off, I would point out that in the 3 years that I have been a member of this Commission I have never known of even one adjudicatory case that was decided on strictly party lines. The Commission just doesn't operate that way.

Moreover, the Commission, in my opinion, could well use the flexibility provided in Reorganization Plan No. 2 to speed up its processes. In fact, we ourselves have recommended changes in the Communications Act to permit panels of Commissioners to hear adjudicatory cases which now must be heard by the full Commission en banc.

In my opinion, we have more due process than any other regulatory agency, and we have just about reached the point where we have so much due process that we are too busy to work.

For instance, in the adjudicatory cases, we must, as a full Commission, meet even the side interlocutory matters. Unless the Commission were willing to abdicate its responsibilities to the Chairman, I see no way for the Chairman to usurp such responsibilities under the proposed reorganization plan.

At the present time when cases are ripe for hearing they are designated by the Commission for hearing on specific issues approved by the Commission. At that time the Commission could, under the proposed reorganization plan, announce by published order that this particular hearing would be held by an examiner, a single Commissioner, a panel of several Commissioners, or the full Commission, whatever the Commission wanted to do in this specific case.

Suppose in a specific case the Commission decided that it would have a panel of three Commissioners hear the case. Then, and only then, could the Chairman designate by name which three Commissioners would be assigned to the panel.

Moreover, once these three Commissioners consider the case and render a decision, any three Commissioners, a majority less one, could compel a review of that decision by the full Commission.

Under these circumstances, it appears to me that the threat, if any, in regard to the Commission's independence appears pretty far fetched and, even so, is offset by the proviso that any three Commissioners, a majority less one, can assure a review by the full Commission of any action taken under the delegated authority.

Then, too, there is also recourse to the courts which is in no way disturbed by the reorganization plan. So that, in my opinion, the litigants will still continue to get due process.

From what I gathered in listening to testimony and the questions before this Committee thus far, and in reading the separate views of my colleagues, there appears to be some misunderstanding of section I of the plan, that is the section giving the Commission authority to delegate.

This section, as I read it, merely gives the Commission the authority to delegate. It does not say that it must delegate. Again, as I read it, the Commission, under this section could continue to operate just as it does now if it chose to do so.

On the other hand, if it chose not to hear oral argument or to relieve the full Commission from hearing oral argument on exceptions and delegated this to a Commissioner or a panel of Commissioners it would have the authority under section I to do so.

It is my understanding that it is this proviso on which the bar association bases its opposition, and it is easy to understand why they would oppose it, because this is taking away some of the due processes which, I understand, were put there at the express instigation of the lawyers.

Don't get me wrong. I have many friends and acquaintances among the legal profession, and I have great respect for that profession but, as I told the Federal Communications Bar Association, sometime ago, asking them to assist the Commission in cutting out some of the red-tape that goes under the name "due process," is like asking the butcher to cut out the red meat department and sell only poultry and fish.

Ever since I became a Commissioner, and even during the previous years, I was dealing with communications before becoming a member of the Commission, and one of the most bitter complaints against the FCC was a seemingly interminable length of time it took to get a decision out of it.

That complaint still exists. And, although our processes have speeded up some from what they were when I first became a Commissioner, there is still considerable room for improvement in our opinion.

Yet, when concrete suggestions are made to cut down on the very things that contribute to our considerable backlog, such as are made in the reorganization plan before us, we get a hue and cry from various sources which, in substance, says, "For mercy's sake, don't do it this way; do it some other way."

I would point out to you again that we ourselves at the Commission as recently as this year recommended changes in Communications Act which would permit a panel of Commissioners to hear adjudicatory cases, just as they can now hear other cases under the existing statutes.

Do you think for 1 minute that the bar association is going to be

any less opposed to our suggestion just because it came from the Commission? I doubt it very much.

On first reading the plan I had some doubts about the wisdom of abolishing our review staff. My doubts in this regard were due to my fears that such abolition would not only slow down our overall output markedly, but would also result in opinions and orders which were not as solidly based as our opinions and orders are now.

Our opinions and orders are issued on the basis of the majority vote and the individuals comprising the majority often arrive at their decisions for different reasons.

Accordingly, welding the separate views into one majority opinion order takes expert draftsmanship and detailed knowledge of the record. If the Commissioners take on this job I feel reasonably sure they will do it well, but the extra burden thus placed on them is almost certain to be reflected in a less overall output.

Moreover, it is only natural to expect that a Commissioner, charged with writing the opinion on a certain case, about which he has firm convictions, such as multiple ownership, trafficking, technical violations, excessive spot announcements, monopoly, antitrust, and so on, may tend to weave his own views into the doctrine.

This can lead either to excessive rewriting, when the majority reads his efforts, or to numerous separate opinions concurring in the results, all of which are time consuming.

In addition, with seven Commissioners writing opinions, there is a possibility that they will not always have the time for the extensive research necessary to base their opinions as solidly on past precedent as the review staff now does, since that staff is comprised of experts who spend full time in this field and do nothing else.

I realize only too well that the sentiment outside the Commission is overwhelmingly in favor of having the Commissioners write their own opinions and the tide may well be too strong to buck, however, it must be remembered that we are not a judicial body in the true sense of the word but are quasi-judicial, quasi-administrative, and quasi-legislative.

So the rules that apply to us should be designed to fit our unique operations rather than having us conform to rules designed for general application or for others, regardless of how they fit us.

For example, the wide range of the Commission's activities make it highly desirable to have engineers, accountants, broadcasters, communicators, and lawyers as members of the Commission instead of having only lawyers, which means that under a strict interpretation of the reorganization plan there will be nonlawyers writing legal opinions.

Moreover, despite any notions to the contrary, Commissioners are extremely busy people and handle a great amount of business moneywise as well as volumewise. I have heard it said that a Commissioner handles more business moneywise in a year than an average Federal judge handles in a lifetime.

Accordingly, for these reasons and primarily in the interest of more production and, consequently, less backlogging, I would prefer to see us retain the review staff. However, I believe that my fears in this regard can be overcome within the framework of the reorganization plan; that is, a Commissioner who is assigned a particular case would

avail himself of a review staff or the same people under a different name if he desired, who would write up the case in draft form with the assistance of the Commissioner's legal assistant.

Then the Commissioner would review the draft in detail, correct it as he deemed it necessary, sign it, and submit it to his colleagues for approval.

It is my understanding that this procedure, while not exactly in accordance with the strict interpretation of the President's reorganization plan, would not violate it. Actually, I think this procedure would not reduce our overall output materially, and would strengthen our opinions and orders, because it is only reasonable to assume that any Commissioner who was personally signing an opinion and order would take considerable care to insure its correctness in every respect.

Moreover, I feel reasonably certain that by its own internal procedures, the Commission can adopt this type of procedure under the reorganization plan. Consequently, on this basis I am prepared to accept the abolition of the review staff.

In summation, Mr. Chairman, and gentlemen, I personally support the President's reorganization plan for the Federal Communications Commission. I hasten to point out, however, that the views that I have expressed are my own but that is kind of redundant since you have heard the others yourself.

Thank you.

The CHAIRMAN. Mr. Rogers, did you have some questions of the Chairman?

Mr. ROGERS of Florida. Well, I think a number of them have been answered, Mr. Chairman.

STATEMENT OF HON. NEWTON N. MINOW—Resumed

Mr. ROGERS of Florida. I would like to ask just one question.

I wanted to make sure that I understood the Chairman's position in the delegation of authority that before the Chairman could make any assignments an overall delegation of authority would be required by the full Commission to the Chairman but it would not require specific delegations of authority as to panels and so forth or would it?

Mr. MINOW. Well, it would be entirely up to the Commission, Mr. Rogers.

My understanding of the plan is that I, as Chairman, could delegate nothing, either generally or specifically, unless the Commission so authorized me to proceed.

Mr. ROGERS of Florida. For instance, if they said, "Now we will give you authority to set up three panels," is it your understanding that they could also delegate which members or would that be left to the discretion of the Chairman?

Mr. MINOW. As I understand it, under section 1, the Commission could make certain delegations of the kinds of areas of problems to be delegated. Then if it got to a panel under section 2, the Chairman would assign the makeup of the membership of the panels.

Mr. ROGERS of Florida. And now, one more question: Do I understand it is your interpretation of the plan that anytime the full Commission desired they could review that delegation of authority and,

if they so desired, revoke the delegation of authority and bring it back to the full Commission?

Mr. MINOW. Unquestionably, that is correct.

Mr. ROGERS of Florida. Thank you, Mr. Minow.

Thank you, Mr. Chairman.

Mr. BENNETT. If the Commission delegated to the Chairman this authority and then after a month or two decided it was a mistake and then took action to rescind the delegation of authority, would that end the matter?

I mean, could they do that?

Mr. MINOW. I believe so, sir; yes.

Mr. BENNETT. Then the following day, if they wanted to they could redelegate it?

Mr. MINOW. Right.

I think any——

Mr. BENNETT. The authority that the Commission has is a continuing authority that it can take or give, as it sees fit. Is that your understanding?

Mr. MINOW. That is my understanding; yes, sir.

Mr. THOMSON. Mr. Chairman, I would like to ask the Chairman of the Commission if he has a policy on acknowledging letters from Members of Congress?

Mr. MINOW. I do, sir. I try very hard to answer them as promptly as I can.

Did I miss one? I am very sorry if I did. I am not aware of it.

We have a rule in my office that we try to understand them every day. We have a great number and if I missed one, I would be very glad if you would call it to my attention. I would be very apologetic.

Mr. BENNETT. This is off the record.

(Off-the-record discussion.)

The CHAIRMAN. Mr. Chairman, I would like to ask this question which, I think, is rather important:

Would the rule contemplated by this reorganization plan, section 1(a) be one to which section 4 of the Administrative Procedures Act applies?

That is, would interested persons be afforded an opportunity to submit their views on the proposed rule?

Mr. MINOW. Well, I think it would be entirely up to the Commission to decide that, Mr. Chairman.

If we wanted—if the Commission wanted to have a rulemaking on it, I think we could, or as the reorganization plan, you recall, used the words "by published order or rule," I think it could be done either way, as the Commission saw fit.

The CHAIRMAN. In other words, that would be discretionary with the agency.

Mr. MINOW. That is right, sir. As a matter of personal opinion, if there were any major changes I think the sense of the Commission, certainly would be to interchain comments from all interested persons.

The CHAIRMAN. And it would not be necessary to hold hearings?

Mr. MINOW. No, it would be up to the Commission to decide. It could be up for written comments of rulemaking or if it was, it would depend on the nature of it. But it would be up to the Commission to decide whether to do it or not.

The CHAIRMAN. There is some question about it which has been raised. In fact, a lot of questions have been raised in connection with this entire proposal that do not affect other provisions of the act involved.

Are there any further questions before we dismiss the Commission?

Thank you very much, Mr. Chairman.

Mr. MINOW. We thank you.

Mr. HARRIS. We appreciate your cooperation.

We thank you and the Commission.

Mr. MINOW. We thank you, Mr. Chairman, and all of the members of the committee.

(Whereupon, at 4:05 p.m., the subcommittee adjourned subject to call of the Chair.)

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