

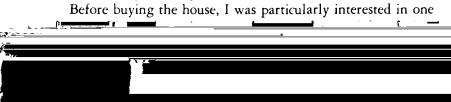
The Administrative Court Proposal — or Should Judicial Functions of Administrative Agencies Be Transferred to an Administrative Court

(For the Negative-Earl W. Kintner²)

Mr. Chairman, Mr. Sellers and Other Fellow Members of the Federal Bar Association:

I.

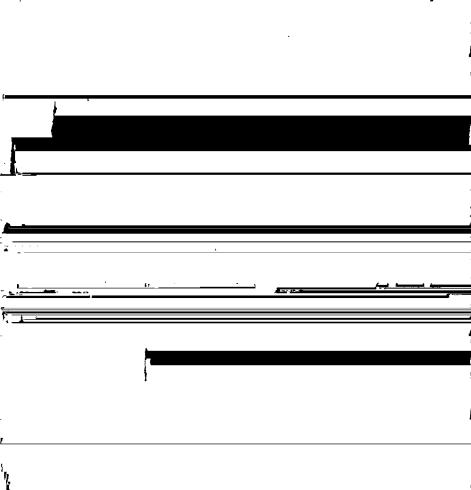
Several weeks ago I bought a house, not a very luxurious or fancy house. In fact, one might say that it looked "beat up". But my wife and I plan eventually to redo the house inside and out, and at the end of that time we expect to have a rather comfortable, pleasant place in which to live.



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The latter proposals are embodied in recommended legislation which would change the rules of evidence and procedure applicable to administrative proceedings, which would curtail the opportunity of agency members to participate genuinely in the decisions for which the agency must accept responsibility,



in a number of existing statutes. Seeing the same word in five statutes the Task Force assumed that five agencies were operat-

ing in a single field, since each one must decide whether something was fair or not fair. Actually, there is no real overlap among the fields concerned. What is unfair in aviation is not necessarily unfair in agriculture. The determination of what is unfair in any one of the statutes can be made only upon the basis of expert knowledge in each field. An administrative court operating in all such fields would openly and directly conflict with the work of all of the agencies and confusion would be created rather than removed.

With respect to the argument that the administrative court would save money, no argument and no facts were presented by the Task Force, and I shall present none in rebuttal, except to sav that in my own experience it appears that the creation

of a new agency, whether judicial or otherwise, could not avoid

	increased costs. Parenthetically it has been pointed out many
- <u>1</u>	times that the Federal Trade Commission is unique in Govern-
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	1918. The increase in efficiency argument makes no sense The
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	Task Force objects to the handling by the Federal Trade Com- mission of its famous <i>Cement Institute</i> case, apparently criti- cizing the Commission for having granted due process of law to the respondents before it.

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neither by experience nor by study. As a result, the errors were many. As to why such errors were adopted by the Task Force itself and subsequently by the Hoover Commission, I have no satisfactory explanation, but along with Robert Freer, who has long been prominent in the Federal Bar Association and who is a past Chairman of the Federal Trade Commission, I feel that many of the errors were unintentionally carried forward

III.

staff was aminped for its recommendations

The adoption of such errors by the American Bar Association Special Committee is another matter. I cannot understand how modern lawyers, interested in the best interests of their proferring and of the public can account any proposal to worker

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1	sound administration of the Federal Trade Commission of its assigned duties was a factor in selecting this agency for judicial- izationa novel but poor reason for remedial legislation.
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the following Special Committee language: "Other transfers should be expected as the Congress explores the field and finds other adjudicatory functions to be within that category." This is the piecemeal, or divide and conquer, approach.

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most charitable attitude, misguided. I find it difficult to be charitable, and it is my own personal conclusion that the Federal Trade Commission was a cold-blooded selection by the Hoover Commission Task Force staff and the ABA Special <u>Committee as the agency which should first be sacrificed. In</u>

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my opinion the choice was made on the basis of two principal considerations: (1) the Federal Trade Commission has a large measure of quasi-judicial work to which it increasingly has applied accepted judicial standards of due process; and (2) the	

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	e expected to rise to its defense in the	
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as not being in accord with our legal traditions. However, Congress decided that the people of the country needed administrative law despite the fact that it might not be in accord with what the minds of some lawyers demanded. This is 1956. What is now more "traditional" anyway, the "new" administrative court or the Interstate Commerce Commission, founded about 70 years ago?

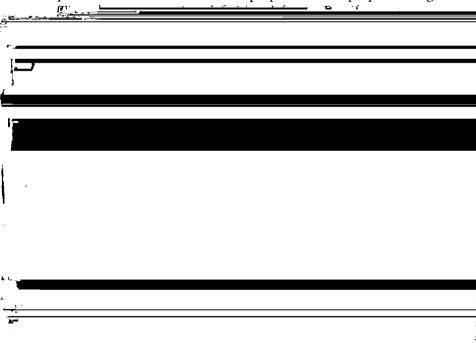
The next major argument was that administrative law was unconstitutional. The Supreme Court has set us straight as to that argument.

The next phase of the argument was that the administrative process is doomed to failure—it cannot do the job. History has shown the emptiness of this argument. The administrative law has played a very important part in the success of the American system of Government during the last half century.

Thus, I oppose the "new" opposition. Congress' action in response to the needs of the people, approval of the Supreme Court, and practical results evidenced in recent history—all support my position.

IV.

I have felt it important in the brief time of this luncheon to place the administrative court proposal in its proper setting.



summarize the various advantages of the administrative process over the proposed trade regulation court, or others of similar

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fairly begin to tell the story. They show some of the reasons

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