PROCESSES AND PRINCIPLES INVOLVED IN THE 1950
REORGANIZATION OF THE DEPARTMENT
OF COMMERCE

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PROCESSES AND PRINCIPLES INVOLVED IN THE 1950
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CHAPTER I

INTRODUCTION

The federal administrative structure has undergone many changes as a result of governmental reorganizations. In analyzing one of these various reorganizations, the author was convinced that though there were many reasons for change, the plans were based on some set ideas, congenial to the efficient working of governmental machinery. This study will demonstrate how the principles of public administration are employed and emphasized in the reorganization plans. Before explaining further the significance of the problem, it seems pertinent to discuss some aspects of reorganization, and the involved data.

Meaning and Aspects of Reorganization

Reorganization

This thesis is concerned with administrative reorganization. It seems necessary, therefore, to define reorganization. For a reorganization, an organization must necessarily exist. The term organization and its principles are inherent in every form of joint human effort. For example, people building a house should work in coordination. One suggests the procedure,
another starts the work, and others follow the directions. In these actions, the principles of advice, coordination, and leadership are seen. Therefore, an organization is a human mechanism created for an agreed purpose. John D. Millett describes an organization as "... the structural framework within which the work of many individuals is carried on for the realization of a common purpose."\(^1\)

Several books and periodicals were consulted to find the exact meaning of the term reorganization; however, authors have explained the term in different ways.

Millett writes that "the word ... [reorganization] means only a change in organizational arrangements or procedures. ... The two terms most commonly associated with the word reorganization are economy and efficiency."\(^2\)

Herbert Emmerich states that "[reorganization] is going on all the time as a result of both internal and external pressures. ... There is a continuing adjustment of federal administrative structure to the ever-changing scope and complexion of federal activities."\(^3\) While explaining when reorganization takes place, he writes that "... a change


in the size, distribution, and nature of the executive functions, or their staffing and financing, and particularly when these changes measurably affect the ability of the head of the executive branch . . . to supervise . . ., necessitate reorganization.

Leonard D. White explains reorganization as "... a composite of several related trends, designed primarily to secure greater efficiency and economy through closer control of the spending agencies of government." According to him, reorganization covers

... not only the consolidation of many small operating units into a few large ones, but also the extension of the authority of the President, governor, and mayor or manager, the adoption of efficient budget systems and methods of fiscal control, and the improvement of coordination and central direction.

Guy B. Hathorn, Howard R. Penniman, and Harold Zink have the following thoughts about administrative reorganization:

The two concepts most frequently associated with the term reorganization have been economy and efficiency. While economy and efficiency are without question desirable goals in any type of organization, the determination of what is economical and what is efficient with respect to governmental administration is fraught with difficulties unknown to most other types of administration. The vastness of the governmental structure, its coercive

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4Ibid., pp. 3-4.


6Ibid., p. 174.
characteristics, the unremitting struggle for its control by political parties, the constant group pressures on the formation and administration of policy, and the fact that government services generally—unlike business services—are not predicted on the profit motive underscore some of these difficulties.7

Relation of Other Factors to Reorganization

Woodrow Wilson's philosophy that politics and administration are separate8 has been controverted by considerable evidence that these two fields in government are inseparable. In fact, public administration is an instrument for the exercise of political power. This situation puts several limits on the authority of administrators.

Pressures from taxpayers create intangible checks on the politicians and on the administrators. They are open to constant questioning: Are operations being conducted as efficiently as possible? Could more service be rendered with the same resources of personnel and materials? Could the operating hands be reduced without any loss of essential services? These and several related questions necessitate reorganization.

Sometimes there is pressure from the agencies or agency heads on the reorganization proposals. The bureau chiefs


and their subordinate officials desire to retain autonomy. The two best cases are "The Transfer of the Children's Bureau" and "The Office of Education Library." According to the reorganization plans, the Children's Bureau was proposed for transfer from the Labor Department to the Federal Security Agency. The bureau chief made all possible efforts to oppose the proposal and to maintain its autonomy in the Labor Department. Similarly, in the Office of Education Library case, the proposal to combine the scattered libraries of the Social Security Administration, Vocational Rehabilitation, and the Office of Education to avoid duplication of the same work was opposed by the Commissioner of Education.

Beyond this kind of pressure, a mass of interested pressure groups consisting of a mixture of citizens, congressmen, and bureau heads must be considered. Often they create political limitations on reorganization. Several instances are well known. To cite one, an unhealthy competition was seen when two agencies, the Corps of Engineers and the Bureau of Reclamation, were working on the same plan of construction for a multi-purpose reservoir on the Kings River in California. Because the Corps of Engineers

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10 Ibid., pp. 31-52.
11 Ibid., pp. 533-572.
enjoyed support of important private interests and many congressmen, efforts by the President to coordinate the agencies were unsuccessful.

It is true that the ever expanding work of the government creates an increased need for experts. But the experts also need to be checked by some means. Several authors, including Peter M. Blau and Chester A. Newland, have explained the good and bad characteristics of bureaucracy born from a need for experts. Peter M. Blau explains the defects in a bureaucracy, such as elaborate routine procedures, lack of adequate delegation of discretion, postponement of decisions, meticulous application of detailed rules, adherence to the rules, and opposition to innovations in organizations. Likewise, while explaining the dark side of bureaucracy, Chester A. Newland states that it involves "... the identification of undesirable characteristics ... such as mediocrity, inertia and stagnation, arbitrariness, formalism and impersonality, and officiousness." But he says that "bureaucracy is a dominant feature of modern civilization and could only be eliminated by reversion to small-scale organizations in every field of social endeavor."

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14 Ibid., p. 27.
Such an occurrence is, of course, impossible because the work of government is ever expanding and the world is becoming one. One of the remedies, therefore, is to impose reorganizations, which may be either large or small in scope. For example, civil service officials are often transferred from one agency to another; and branches and units are abolished or modified, to remove inertia in the work, to eliminate piled up work, or to introduce new techniques, new blood, and new ideas.

It will thus be seen that reorganization is induced by such factors as change in programs, change of leadership, expansion of work, change in management outlook, and change in pressure groups or their attitudes. In addition, international changes also influence organization. Several changes have occurred in the organization of the Department of State and the Department of Commerce in the last two decades as a result of international situations. Reorganization proposals are enhanced or opposed by taxpayers, congressmen, agency heads, and interested groups.

Several factors are implied in reorganization, such as change in status, authority and personnel. Efforts are always made to consolidate activities and functions similar in nature, to limit expenditures to the lowest amount consistent with efficiency in performance, to abolish activities not necessary. In short, the main goal is always to promote economy and efficiency.
One more facet of reorganization should be mentioned. The President and Congress act as checks on each other on proposed reorganization schemes. As pointed out by Leiserson, the law provides that the President should undertake the study of the executive branch and prepare proposals in legal form which should indicate steps to be taken after the proposals are passed. And the Congress puts statutory limitations by exempting some departments from the President's reorganization power, and by prescribing that such proposals shall be subject to a legislative veto.

A Short History of Governmental Reorganization

Structural reorganization of the administrative departments and independent agencies of the national government seem to have been on the agenda of the President and/or Congress almost continually throughout the history of the nation.

White traces a reorganization movement as early as 1816-1817, a consequence of the War of 1812. He outlines still another important reorganization plan proposed in 1842. Millett believes that the reorganization movement

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16White, op. cit., p. 174.
17Ibid.
was started in 1838. In that year, "... a Senate Select Committee known as the Cockrell Committee submitted a number of recommendations for administrative reform."Then "the appointment of the National Commission on Economy and Efficiency by President Taft set a new pattern for systematic appraisal of the executive branch." The Commission was largely responsible for the passage of the Budget and Accounting Act of 1921.

According to Lloyd M. Short, a major effort towards reorganization was made in 1932, though some developments took place before that year. He writes,

In response to repeated recommendations by President Hoover for reorganization legislation, the House of Representatives created an Economy Committee in February, 1932, whose subsequent proposals were enacted into law as Part II of the appropriation act approved on June 30, 1932. This act affected a number of administrative transfers and consolidations, but its most significant section gave the President sweeping authority to make additional changes by executive order subject to a veto by either house of Congress within sixty days of the transmission of the order. President Hoover, acting on this authority, issued several reorganization orders, which among


19 Ibid.


21 Ibid.
other things, consolidated... educational, health, and... public works agencies... 22

In 1936, President Franklin D. Roosevelt appointed a President's Committee on Administrative Management, known also as the Brownlow Committee, which transmitted in January, 1937, an exhaustive 380 page report.23 The Committee broadly suggested a five-point program.24 Millett finds two great needs identified: "... (i) to bring the number of administrative agencies within manageable compass... and (ii) to equip the President with administrative machinery to help him in exercising effective supervision over all administrative agencies of the federal government."25

The legislation of 1939 seems to be significant in that it introduced a new balance between the President and Congress regarding the authority to reorganize. A President could reorganize departments and agencies, within limits, unless within sixty days both houses of Congress joined in a


24 Ibid., p. IV.

concurrent resolution to the contrary.\textsuperscript{26} Although the Reorganization Act of 1939 had empowered the current President to submit reorganization proposals, that authority was limited to a set of proposals during that time. Section 1(a) of the Reorganization Act of 1939 reads as follows:

\begin{quote}
... The \textbf{President} shall investigate the organization of all agencies of the government and shall determine what changes therein are necessary. ...\textsuperscript{27}
\end{quote}

Further, sections 3(a), 3(b) and 12 of the same act respectively read:

\begin{quote}
\textbf{No reorganization plan} under section 4 shall provide---

(a) \underline{for the abolition} or transfer of . . . .

(b) . . . \underline{Civil Service Commission} . . . .

\underline{Interstate Commerce Commission} . . . .
\end{quote}

No reorganization specified in a reorganization plan shall take effect unless the plan is transmitted to the Congress \underline{before} January 21, 1941.\textsuperscript{28}

It will be seen from the above that the 1939 act limited the power of submission of proposals by \underline{time} and by giving exemptions to some departments and the independent regulatory commissions.

\textsuperscript{26}\textit{U. S. Statutes at Large}, LIII, Part II, 561 (1939).

\textsuperscript{27}\textit{U. S. Statutes at Large}, LIII, Part II, 561 (1939). Emphasis added.

\textsuperscript{28}\textit{U. S. Statutes at Large}, LIII, Part II, 561-564 (1939). Emphasis added.
World War II increased the defense needs and the responsibilities in the international fields. While considering the post-war period, Lloyd M. Short states that

World War II brought many new agencies into the national administrative system, most of which were created by executive orders. . . . The new agencies . . . were established outside the regular departmental system. . . .

In response to the request of President Truman, Congress passed the Reorganization Act of 1945. . . . This act again confers on the chief executive, for a limited time, . . . authority to transfer, consolidate, and abolish executive agencies and functions, subject to congressional veto within sixty days.29

A Major Change

"Under President Hoover the Executive Branch, which employed approximately 600,000 persons, cost four billion dollars a year to operate. Lacking proper organization, it laid, even then, a great burden upon the Executive."30 In this connection, the Commission's report on General Management states that within a period of twenty years--1925 to 1945--the number of civil servants had reached 2,100,000. The annual expenditures had risen to over forty-two billion dollars.31

29Short, op. cit., p. 53.


The necessity for reorganization of the executive branch of the government was recognized by the Congress, and it created the Hoover Commission in July, 1947. The Commission, with twenty-four task forces, carried on an extensive series of studies and submitted in February, 1949, nineteen reports, including a final report, containing several recommendations. The reports touched many facets of administration, including budgeting, personnel, national defense, foreign affairs, and public works. The Reorganization Act of 1949, the result of the Hoover Commission study, contained a few notable provisions. First, no agencies were exempt from reorganization by presidential authority, a definite advantage to the Executive. Under the 1939 law, the Congress could disapprove a reorganization plan only by a concurrent resolution requiring a majority vote by both the House of Representatives and the Senate. Under the 1949 Act,


36 U. S. Statutes at Large, LIII, Part II, 562 (1939).
Congress might disapprove a reorganization plan by resolution passed by the affirmative vote of a majority of the authorized membership of either house. This made it easier for the reorganization plans to be disapproved by the Congress.

Removal of the time limit in the 1949 act was another important provision. The President was given the power to examine the organization of the agencies from time to time.

Sources of the Data

Under the above authority, President Harry S. Truman effected an extensive examination of the executive branch of government on the basis of the recommendations of the Hoover Commission's report of 1949; and on March 13, 1950, President Truman submitted twenty-one reorganization plans to Congress.

Message for the Plan Under Consideration

One general message was delivered which outlined the twenty-one proposed plans. Another general message referred to the first thirteen of the twenty-one plans. In his general message relating to all the plans, the President informed Congress that the first six plans, one of which was the plan under consideration, transferred to the heads of six departments the functions and powers then conferred by law on subordinate officials. The six affected departments were the

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37 U. S. Statutes at Large, LXIII, Part I, 205 (1949).
38 U. S. Congressional Record, Vol. 96, p. 3239.
departments of Treasury, Justice, Interior, Agriculture, Commerce, and Labor.\textsuperscript{39}

In the message relating to the first thirteen plans, the President explained that "... all \textsuperscript{40} the plans had \textsuperscript{40} the same objective—to establish clear and direct lines of authority and responsibility for the management of the executive branch." \textsuperscript{40} The proposal was to make the heads of departments clearly responsible for the effectiveness and economy of governmental administration and to give them corresponding authority. The idea behind this proposal was that the public, the Congress, and the President should be able to hold them accountable for results, both in terms of accomplishments and of cost.\textsuperscript{41}

The President explained that the Hoover Commission on Organization placed great stress upon the establishment of clear lines of authority and responsibility.\textsuperscript{42} The President emphasized that "responsibility and accountability \textsuperscript{42} were \textsuperscript{42} impossible without authority. The exercise of authority \textsuperscript{42} was \textsuperscript{42} impossible without a clear line of command from the top to the bottom, and a return line of responsibility and accountability

\textsuperscript{39}\textit{Ibid.}, pp. 3239-3241.
\textsuperscript{40}\textit{Ibid.}, p. 3239.
\textsuperscript{41}\textit{Ibid.}, pp. 3239-3240.
\textsuperscript{42}\textit{Ibid.}, p. 3240.
from the bottom to the top." The President concluded with a hope that the goals of the Hoover Commission, namely to improve the overall management of the executive branch, would be fulfilled.

According to the Reorganization Act of 1949 and the President's message which accompanied the plans of 1950, the following purposes were to be accomplished:

1. to promote the better execution of laws, the more effective management of the executive branch of the Government and of its agencies and functions, and the expeditious administration of the public business;
2. to reduce expenditures and promote economy, to the fullest extent consistent with the efficient operation of the Government;
3. to increase the efficiency of the operations of the Government to the fullest extent practicable;
4. to group, coordinate, and consolidate agencies and functions of the Government, as nearly as may be, according to major purposes;
5. to reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish such agencies or functions thereof as may not be necessary for the efficient conduct of the Government;
6. to eliminate overlapping and duplication of effort.

Discussions in the committee hearings and in the Congress were held on each plan, and detailed reports were submitted by the committees of the Senate and the House of Representatives. It is not feasible to deal either with all the plans of one set of proposals or with all the reorganizations of

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43 Ibid.
44 Ibid.
one department; therefore, one plan of these twenty-one plans has been singled out for study in this research. The plan was entitled "The Reorganization Plan No. 5 of 1950" and related entirely to the Department of Commerce.

The Plan, Its Meaning and Its History

The bare text of the Reorganization Plan No. 5 of 1950 reads as follows:

Section 1. Transfer of functions to the Secretary.—(a) Except as otherwise provided in subsection (b) of this section, there are hereby transferred to the Secretary of Commerce all functions of all other officers of the Department of Commerce and all functions of all agencies and employees of such Department.

(b) This section shall not apply to the functions vested by the Administrative Procedure Act (60 Stat. 237) in hearing examiners employed by the Department of Commerce, nor to the functions of the Civil Aeronautics Board, of the Inland Waterways Corporation or of the Advisory Board of the Inland Waterways Corporation.

Section 2. Performance of functions of Secretary.—The Secretary of Commerce may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer or by any agency or employee, of the Department of Commerce of any function of the Secretary, including any function transferred to the Secretary by the provisions of this reorganization plan.

Section 3. Administrative Assistant Secretary.—There shall be in the Department of Commerce an Administrative Assistant Secretary of Commerce, who shall be appointed, with the approval of the President, by the Secretary of Commerce under the classified civil service, who shall perform such duties as the Secretary of Commerce shall prescribe, and who shall receive compensation at the rate of $14,000 per annum.

Section 4. Incidental transfers.—The Secretary of Commerce may from time to time effect such transfers within the Department of Commerce of any of the records, property, personnel, and unexpended balances
(available or to be made available) of appropriations, allocations, and other funds of such Department as he may deem necessary in order to carry out the provisions of this reorganization plan.46

In brief, the major changes suggested by the aforementioned plan are as follows:

(1) All functions of the Department of Commerce should be transferred to the Secretary of Commerce except those mentioned in section 1(b) above;

(2) The Secretary would be entitled to delegate his powers to any officer under him;

(3) A post of an Administrative Assistant Secretary would be created; and

(4) The Secretary of Commerce may make from time to time such transfers of records and property as he deems necessary.

Although the Secretary of Commerce already had general supervisory authority over the administration of the functions of the subordinate agencies, all the statutes authorizing formation of those agencies did not define explicitly supervisory authority. This deficiency will be seen in detail in the next chapter. A major purpose of the Plan was to invest a clear line of authority from top to bottom. Everybody in the Department of Commerce was to be responsible

to the President and Congress through the Secretary only. This necessity will be explained in detail at the relevant places in the following chapters. Authority was sought by the Secretary in all the fields—functional, operational and supervisory. This will be discussed.

The opponents of the Plan expressed the fear that arbitrary changes by the Secretary of Commerce were likely in the Department. Some also felt that it was improper for the Secretary to have supervisory authority over the Commissioner of Patents, an official in the Department of Commerce.47

The Plan was referred in each house to the Committee on Expenditures in the Executive Department. Senate resolution No. 259 to reject the bill was introduced, and hearings were held in April, 1950.48 Senate Report No. 1561 based on the hearings was filed, and on May 23, the Senate voted twenty-nine to forty-three against the resolution and in favor of the Reorganization Plan No. 5 of 1950.49

In the House, resolution No. 546 was introduced, rejecting the Plan. Hearings were held in April, 1950. House Report No. 1976 was filed, and the House resolution was

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49 Ibid.
rejected by the House on May 18, 1950, on voice vote, thus
upholding the Plan. The Plan finally became effective on
May 24, 1950.50

The Problem and the Purpose of the Study

Reorganization Plan No. 5 of 1950 will be analyzed,
taking into consideration all of the hearings for and against
the Plan and criticisms of the Plan. The "new management"
principles (the term used by many authors, such as John D.
Millett) specify that the wise manager is one who successfully
delegates; and there were strong suggestions to decentralize
in some reorganization reports. Many authors—for example—
Henry Wilbur Kamp, in his study51 of the Veterans' Adminis-
tration—have also emphasized decentralization. How then was
the centralization of power in the Secretary of Commerce
justifiable? Possibly the Secretary wanted authority with a
view to delegate. This will be discussed in detail at the
relevant places.

The taxpayers demand an efficient and economical manage-
ment of governmental administration. They believe that the
departments, the sections, and the branches of government
should be organized or reorganized to prevent overlapping or

50Ibid.

51Henry Wilbur Kamp, "Central-Field Relations in the
Veterans' Administration (1945-1953)," unpublished doctoral
dissertation, Department of Government, Columbia University,
Ann Arbor, Michigan, 1958.
waste. However, when organizational, functional, or operational changes in the offices are actually proposed, many of the interested segments of the public tend to object to the changes. Why? How does this situation apply to the Plan in question? How did the pressure groups react in connection with the implementation of the Plan? These questions will be examined.

The Secretary of Commerce asked for full powers to make any organizational changes. He was finally given those powers. But has he, in fact, used those powers during the last fifteen years? This will be discussed.

The Secretary of Commerce desired control over all the heads under him. Did that demand cover any judicial powers, and if so, to what extent? And to what extent were they justifiably transferred to the Secretary?

The President has authority to select and appoint the agency heads, the heads of the independent regulatory commissions, and to remove the heads of departments. By approving the Plan in question, the Congress has brought the Commissioner of Patents completely under the Secretary of Commerce. Does this amount to increasing the powers of the President in any way?

By analyzing the history of the Reorganization Plan No. 5 of 1950, efforts to answer these questions will made in this
thesis. And finally, how the principles of public administration were reiterated by passage of this Plan will be discussed.

Method of Procedure

In the following chapter the functions of the Department of Commerce and the statutes forming various agencies will be explained in brief. Then the functions of the Patent Office will be discussed, since the principal controversy resulted from the inclusion of that office in the Plan. In the next chapter the important testimonies for and against the Plan will be examined. The following chapter will evaluate the criticisms and point out any changes which have been made in the Patent Office as a result of the passage of the Plan. The last chapter will discuss the principles of public administration involved.

The main sources for this thesis are the basic government documents, including the Congressional Record, House and Senate Committees' Hearings, their Reports, and House and Senate Documents. Some use of the masterpieces of the renowned authors in the fields of public administration and business administration has, of course, been made.
CHAPTER II
THE DEPARTMENT OF COMMERCE AND THE FUNCTIONS
OF THE PATENT OFFICE

The discussion in this chapter has been divided into two major sections. The first section will deal with the authority of the various bureaus within the department in respect to the laws that created them and their relation to the Secretary. In the second section, the scope has been limited to the Patent Office and specifically the powers of the Commissioner of Patents and his relation to the Secretary.

The Department of Commerce

Creation and Authority

The Department of Commerce was originated in the year 1903 along with the Department of Labor, the full title being the "Department of Commerce and Labor." The department consisted of the Office of the Secretary, eight bureaus, the Lighthouse Service, the Lighthouse Board, the Coast and Geodetic Survey, and the Steamboat-Inspection Service.

After some organizational changes in the years 1904, 1906, 1910, and 1912, the Department of Commerce and Labor was bifurcated. The Department of Commerce was established by the Act of March 4, 1913.²

The annual reports of the Department of Commerce indicate that the department underwent at least thirty to forty organizational changes between 1913 and 1950.³ There is no necessity to go into those changes in this paper. A chart of the 1949 organization of the Department of Commerce is enclosed on the next page, which explains at a glance the organization as it stood in that year--before the Reorganization Plan No. 5 of 1950 was implemented.

It will be seen from the organization chart that the work was distributed among various officers under the Secretary of Commerce. As the head of the department he was responsible for advising the President on policy and programs affecting the industrial and commercial segments of the national economy.⁴ The heads of all fourteen offices shown in the chart on the following page reported to the Secretary of Commerce.

³Ibid.
Fig. 1--Organization of the Department of Commerce; 1949.

Some of these offices were in the Department of Commerce from the beginning, while others were transferred or added as a result of several reorganizations. For example, the census work had been in the department from the beginning, while the Public Roads Administration was transferred on August 20, 1949, from the Federal Works Agency to the Department of Commerce.  

Purpose and Objectives

"The statutory functions of the Department are to foster, promote, and develop the foreign and domestic commerce, the mining, manufacturing, shipping and fishing industries, and the transportation facilities of the United States." Though related functions have been added, the basic purposes have remained substantially the same.

The Secretary of the Department of Commerce is appointed by the President with the consent of the Senate. The Department of Commerce and, therefore, the Secretary of Commerce also are the principal sources of advice to the President on policy formulation regarding commerce. The Secretary performs such duties as the President might assign to him. Being head of the department, the Secretary is to have charge of all records of the department and is authorized to appoint personnel.

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7 Ibid.
Examination of Relevant Laws and Orders

At this point it is necessary to study the acts which created the agencies and some subsequent orders issued by the agency heads. The Secretary's primary complaint about the organization of his department was that he did not have complete authority over all the agencies in the Department of Commerce. According to him, his authority was restricted. Most of the authority for the functions of the agencies was vested in the heads of the agencies or the agencies themselves.

In this section, therefore, the original laws formulating each agency are examined. Then some of the executive orders issued by the bureau heads before 1949 are perused. The purpose is to show that authority was diffused prior to the 1950 reorganization. It will be seen that in some areas the Secretary had some authority; in other areas he had divided authority; and in some he had no authority. The line of demarcation is very thin at some places.

Weather Bureau.—The work of the Weather Bureau originated in the Signal Corps of the Army in 1870. The

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9Ibid.

Weather Bureau itself was constituted in the Department of Agriculture on July 1, 1891. Through the 1940 Reorganization Plan No. 4, the Weather Bureau was transferred to the Department of Commerce, effective June 30, 1940. Since this paper is concerned with the powers of the Secretary of Commerce and of his agency heads, the law transferring the bureau to the Department of Commerce is examined here.

The act of 1940 provided that the Chief of the Weather Bureau would be appointed by the President with the consent of the Senate and that the Chief and the employees in that bureau would perform the duties of the bureau. Thus, the functions of the Weather Bureau were vested in the Chief and his subordinates.

An order issued by the Chief of the Bureau on August 29, 1946, is also indicative of his powers. The relevant portion of that order stated that "the Chief of Bureau directs, supervises and coordinates the activities of the Weather Bureau." But the act of 1940 further provided that the Chief of the Bureau, under the direction of the Secretary of Commerce,
had charge of forecasting weather, displaying weather signals, issuing storm warnings, and similar functions of the bureau.\textsuperscript{15}

It appears that the functions were mainly administered by the Chief of the Bureau and that all the authority was vested in him, though he was under general supervision of the Secretary.

\textbf{Bureau of the Census}.—The bureau was established and made a permanent office in the Department of Commerce and Labor in 1903.\textsuperscript{16} When that department was bifurcated, the bureau was retained in the Department of Commerce.\textsuperscript{17}

The act bringing the bureau into the Department of Commerce clearly provided for the Director of Census to be appointed by the President with the consent of the Senate, to be in charge of the Census Bureau, and to be responsible for the duties and the functions of that office.\textsuperscript{18}

Furthermore, an executive order issued by the Director shows that he was also responsible for coordination of the research work and for the general administration of the

\textsuperscript{15}\textit{U. S. Code}, Title 15, section 313 (1947).


\textsuperscript{18}\textit{U. S. Code}, Title 13, section 2 (1947).
bureau.\textsuperscript{19} The authority to get necessary information printed and to declare some information secret whenever necessary was vested entirely in the Director.\textsuperscript{20}

The Census Bureau was under the jurisdiction of the Department of Commerce, which gave some general supervisory authority to the Secretary.

The **National Bureau of Standards.**—This bureau was created in 1901\textsuperscript{21} and was brought into the Department of Commerce and Labor in 1903.\textsuperscript{22} The bureau remained in the Department of Commerce when it was separated from the Department of Commerce and Labor. Other than the transfer provision, the act went unchanged in its contents.

The original act provided for the **Director** to be appointed by the President with the consent of the Senate and for the **Director** to be **responsible** for administering the affairs of the bureau.\textsuperscript{23}

An executive order issued on August 29, 1946, stated that the **Director** was also **responsible** for the development

\textsuperscript{19}\textit{Federal Register}, Vol. 11, p. 177A-304, section 41.1.  
\textsuperscript{20}\textit{U. S. Code}, Title 13, sections 4 and 82 (1947).  
\textsuperscript{21}\textit{U. S. Code}, Title 15, section 271 (1947).  
\textsuperscript{23}\textit{U. S. Code}, Title 15, section 274 (1947).
and coordination of the bureau policies and for discharging the responsibilities of the bureau.\textsuperscript{24} In addition, he was to issue directives for the performance of the functions of the bureau.\textsuperscript{25}

The order contained an important addition that the Director would work under the general direction of the Secretary of Commerce.\textsuperscript{26} In other words, the functions of the bureau were vested in the Director and the bureau, under the general and broad supervision of the Secretary of Commerce. The line of authority was not clear.

The Bureau of Foreign and Domestic Commerce.--The bureau was established in the Department of Commerce and Labor on August 23, 1912,\textsuperscript{27} with the bureau continuing in the Department of Commerce when it was separated.\textsuperscript{28} It is apparent from the United States Organization Manuals and from the annual reports of the Department of Commerce of the last twenty years that the foreign and domestic commerce offices were sometime combined and sometime separated from one another, and that additions and subtractions were made in

\textsuperscript{24}\textit{Federal Register}, Vol. 11, p. 177A-327, section 253.1.  
\textsuperscript{25}\textit{Ibid.}  
\textsuperscript{26}\textit{Ibid.}  
\textsuperscript{28}\textit{Ibid.}
the sub-agencies thereof. But most of the functions of these offices remained the same as those in the existing Bureau of Foreign and Domestic Commerce. According to the act which brought this bureau into the Department of Commerce, making investigations and reports concerning business were duties of this bureau. The act does not show that the authority of this bureau over its functions was shared with anyone else.

According to the orders issued in the Federal Register in 1946, the bureau was divided into several sub-bureaus, the Office of Business Economics, the Office of Domestic Commerce, the Office of International Trade, among others. The Director's role may be illustrated as follows: "the Office of the Director . . . exercises general supervision over, and furnishes certain staff services to the . . . operating branches." In addition, the Director was also responsible for planning, supervising, coordinating and directing the work of the bureau.

Thus, the authority and responsibility for all the functions was vested in the bureau, though it was under the jurisdiction of the Department of Commerce. The Secretary did not have direct control through any formal authority.

29U. S. Code, Title 15, section 172 (1947).
31Federal Register, Vol. 11, p. 177A-312, section 360.7.
32Federal Register, Vol. 11, p. 177A-306.
Coast and Geodetic Survey.—A survey of the coast of the United States was authorized by act of Congress on February 10, 1807.\(^\text{33}\) The responsible agency came into the Department of Commerce and Labor and then into the Department of Commerce in 1913.\(^\text{34}\) After several intermittent changes the act of August 6, 1947, repealed most of the previous authorizing legislation, and set forth the duties of the Coast and Geodetic Survey in regard to surveys and other functions.\(^\text{35}\) The provisions of the act seem to be rather typical. The Director of the agency was appointed by the President with the consent of the Senate;\(^\text{36}\) the Secretary of Commerce was responsible for the annual reports of the agency which were to be prepared by the Director;\(^\text{37}\) and the President was to call for surveys and see that some other duties mentioned in the act were performed.\(^\text{38}\) It appears, as stated by the Secretary of Commerce that the work of the agency was the responsibility of the Director.


\(^{\text{35}}\)U. S. Code, Title 33, section 351a (1947).

\(^{\text{36}}\)U. S. Code, Title 33, section 352 (1947).

\(^{\text{37}}\)U. S. Code, Title 33, section 355 (1947).

\(^{\text{38}}\)U. S. Code, Title 33, sections 355, 881, 884 (1947).
under the supervision of the Secretary of Commerce, and that whose word should finally prevail was not clear.

Civil Aeronautics Administration.—The Civil Aeronautics Administration was created on June 30, 1940, by the Reorganization Plan No. III. Almost all the functions relating to civil aeronautics were vested in the Administrator of Civil Aeronautics. The Administrator was responsible for directing the development of civil aeronautics; he was to designate and establish airways; and he was to supervise all developmental work. Several other functions were given to him by the act, and there was no reference to the Secretary of Commerce.

An executive order issued by the Administrator also illustrates that he was the sole authority.

The Administrator:

Adopts and promulgates the regulations . . . with respect to the designation of civil airways, the registration of aircraft . . . ;


41 U. S. Code, Title 49, sections 451 to 458 (1948).

42 Ibid., section 451.

43 Ibid., section 452.

44 Ibid., section 455.
Recommends to the Civil Aeronautics Board the adoption or revision of rules and regulations with respect to safety in air commerce; [and] in an over-all capacity directs, supervises and coordinates all functions and activities of the Civil Aeronautics Administration.45

The Administrator was authorized to appoint some officials like medical examiners, and could accept compromise offers to settle civil penalties resulting from violation of some provisions.46

The Administrator did virtually all these activities quite independently of the Secretary of Commerce even though the Civil Aeronautics Administration was in the Department of Commerce, which gave the Secretary some supervisory authority.

The Patent Office. — The Patent Office was established in 1790 to administer the patent laws enacted by the Congress.47 Several changes took place before 1949, but the major functions, such as determination of the policy, formation of rules of practice, and direction of the operations of the office, continued to be directed by the Commissioner of Patents though under the supervision of the Secretary of

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45 Federal Register, Vol. 11, p. 177A-315, section 650.11.
46 Ibid.
Commerce. Functions of the Patent Office are to be related in detail below for the reasons explained at the relevant place.

Comments

It is obvious from the above description of the seven major units in the Department of Commerce that most of the functions of the constituent and subordinate bureaus of the Department of Commerce were vested in the individual chiefs or in the bureaus themselves.

Still it could not be accepted that the Secretary of Commerce had absolutely no power over them. The administration of the functions of some of the above agencies was subject to the general jurisdiction or supervision of the Secretary.

The original act which separated the Department of Commerce from the Department of Commerce and Labor in 1913 stated that the Department of Commerce will be headed by the Secretary. It further stated that the bureaus in the department "shall be under the jurisdiction and supervision of the Department of Commerce."
Furthermore, Section 11.1 of the Secretary's order published in the Federal Register dated September 11, 1946, says that "the office of the Secretary is responsible for the general planning, direction, supervision, and coordination of activities of the Department."\(^{51}\) Policy making and guidance for the diversified activities of the department were to be provided through the office of the Secretary.

According to those in favor of the Reorganization Plan No. 5 of 1950, however, the wording of the statement that "the Office of the Secretary is responsible for the planning, direction, supervision . . ." was not sufficiently clear to indicate that the Secretary had all the powers; for similar, equal, or, in some instances, more authority was given to the bureau heads and/or the bureaus. The Secretary had broad powers to regulate the bureaus in the department. However, the language by which this control was granted varied, and the particular effect of each provision was not clear since there were conflicting provisions. Therefore, the wording of the proposed Reorganization Plan No. 5 of 1950 was phrased purposely to vest all the powers of all the bureaus first in the Secretary.

The Necessity of Understanding the Functions of the Patent Office

Section 1 (a) of the Reorganization Plan No. 5 of 1950 was the primary stimulant of interest in the Plan by many responsible individuals and organizations. As discussed in Chapter I, Section 1(a) transferred to the Secretary of Commerce all functions of all other officers of the Department of Commerce and all functions of all agencies and employees of the Department of Commerce except the following:

1. those of hearing examiners employed by the whole Department of Commerce, and
2. those of the Civil Aeronautics Board, and
3. the Inland Waterways Corporation, and
4. its Advisory Board.

The Patent Office was not included in the above exceptions, although the examiners of the Patent Office were included. The greatest and most unique objections to the Plan were centered in the possible effects of the Plan upon the Patent Office. Before discussing the testimonies and the effects of the Plan on the Patent Office, it is necessary to examine the functions and the working of that office in detail.

A Short History

The Constitution of the United States provides that "Congress shall have power to promote the progress of science
and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." The main purpose of the provision is to protect the rights of the original inventors and to encourage men of genius. A patent creates an exclusive right for an inventor. The right prohibits others from using or making his invention. A patent office was created to implement those constitutional provisions, taking in 1802 the form of a distinct bureau situated in the Department of State. There was a general revision of the patent laws in July of 1836, when the office was reorganized and the official in charge was designated as Commissioner of Patents. In 1849, the Patent Office was transferred to the Department of Interior; and in April, 1925, it was transferred to the Department of Commerce. The act establishing the Patent Office required it to safely keep and preserve all records, books, models, drawings, specifications, and other papers and

54 Ibid.
55 U. S. Code, Title 35, section 1 (1947).
items pertaining to patents. The Patent Office also administers the trademark laws.

**An Important Note**

Before the organization and authority of the Patent Office, the role of the Patent Office, the authority of the Commissioner of Patents, and other related topics are further explained, it is again important to remember that the contents of the sections in the United States Codes describing these items are the same before and after the Plan was passed, except for only one addition before each section in the editions printed after the approval of the Plan that the functions of all the offices and agencies were transferred to the Secretary. The 1947 and 1951 editions of the United States Code have been studied carefully. The United States Organization Manuals before and after the Reorganization Plan No. 5 of 1950 was passed were also consulted. The wording of the statements concerning the Patent Office is quite identical.

The Secretary of Commerce had assumed that he already had powers to "direct" under existing law, but he wanted to make those powers clearer in law by adopting the proposed Plan. On the other hand, the opposition to the Plan claimed

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56 Ibid.

57 *U. S. Code*, Title 15, section 1051 (1947).
that the Commissioner of Patents had many powers independent of the Secretary of Commerce and that those powers should be retained to avoid hampering the semi-judicial nature of the work of the Patent Office. Each item explained below should be viewed from these two perspectives. Again, it may be noted that past tense is used to indicate that the position was as it prevailed before 1949.

The Organization of the Patent Office

The hierarchy of the Patent Office consisted of a Commissioner of Patents, one First Assistant Commissioner, two Assistant Commissioners, and nine Examiners-in-Chief, all appointed by the President with the consent of the Senate. These same officers comprised the Board of Appeals. All other lower officers and employees were appointed by the Secretary of Commerce upon the nomination of the Commissioner of Patents. In other words, the authority to appoint these lower officers was divided between the Secretary and the Commissioner. The organization chart of the Patent Office of the year 1964 is on the next page.

58 U. S. Code, Title 35, section 2 (1947).
59 Ibid., section 7.
60 Ibid., section 2.
Fig. 2--Organization of the Patent Office.

Source: Administrative Assistant to the Commissioner of Patents, Department of Commerce, Washington.
The Role of the Patent Office and the Board of Appeals

The work of the Patent Office was the same in 1949 as it is today. The role of that office was to undertake the basic responsibility of examining applications for patents and issuing patents upon approval of such applications. The registration of trademarks was performed in a similar manner. In order to understand the operations of the functions vested in the Patent Office, it is necessary to describe briefly the basic patent procedure.

An application for a patent was referred to one of the Patent Office divisions, which studied the application and made a search among all prior patents to find if any patents previously granted was similar to the applicant's. The division would approve the application and issue a patent if it found the invention patentable. If the final decision of the division was adverse, however, the applicant could appeal to the Board of Appeals of the Patent Office. The Commissioner of Patents, the first Assistant Commissioner, the Assistant Commissioner, and the Examiners-in-Chief constituted the Board of Appeals. The Board's duty was to review and determine the validity of the adverse decisions.

61 U. S. Code, Title 35, sections 31, 32 (1947).
62 U. S. Code, Title 15, sections 1051, 1052 (1947).
63 Federal Register, Vol. 11, p. 177A-334, section 10.28.
Each appeal was to be heard by at least three members of the Board of Appeals. The Board had the sole power to grant rehearings. The members of this Board were the persons of competent legal knowledge and scientific ability.

Thereafter, an appeal could be taken to the United States Court of Customs and Patent Appeals, which could review the case on the basis of record. However, if the applicant desired a trial de novo, he could bring a civil suit against the Commissioner in the United States District Court for the District of Columbia.

The procedure for trademarks was, in general, similar to that relating to patent application, except that the internal appeal was to the Commissioner of Patents in person.

The Role of the Commissioner of Patents
The Commissioner's functions and powers are grouped under the following broad divisions: (A) Powers and Duties; (B) Supervisory Functions over which the Secretary had some power.

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64 Federal Register, Vol. 11, p. 177A-332, section 10.8.
65 U. S. Code, Title 35, section 7 (1947).
66 Ibid.
68 Ibid., section 10.29.
(A) **Powers and Duties.**

(i) To determine who shall receive patents.---The act provided that the Commissioner was to see that an examination was made of the applications filed in the Patent Office. If the applicant was entitled to a patent, that is, if the invention was sufficiently useful and important, the Commissioner would issue a patent. Of course, many other formalities as prescribed by law were to be fulfilled. This portion of the act clearly implies that the Commissioner had complete authority in the scrutiny of applications and in granting patents.\(^6^9\)

(ii) To make decisions concerning registration of trade-marks.---The Commissioner prescribed rules for filing applications for registering trademarks in the Patent Office. He decided on the number of specimens or facsimiles of the mark required and the rules or regulations governing the granting of trademarks.\(^7^0\)

(iii) To decide which inventions shall be kept secret.---The Commissioner had the power to order that a particular invention be kept secret in the national interest. The Commissioner's opinion as to whether issuance of a particular patent was detrimental to the public safety or defense was final. In such cases, the applicants would release their inventions to the Government for its use.\(^7^1\)

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\(^{6^9}\) U. S. Code, Title 35, section 36 (1947).

\(^{7^0}\) U. S. Code, Title 15, section 1051 (1947).

\(^{7^1}\) U. S. Code, Title 35, section 42 (1947).
(iv) To decide cases as a member of the Board of Appeals.—This has been discussed in detail previously under "The Role of the Patent Office." But an important provision needs to be noted: the members of each hearing were to be designated by the Commissioner,\textsuperscript{72} which gave him some additional power.

(v) To decide whether or not interference should be declared.—This contingency arises when an application for patent interferes with any pending application or with an unexpired patent. When both inventions are very close in their features, a tie arises. The authority to decide whether such interference existed or not is vested in the Commissioner. After reaching his decision, the Commissioner appointed a board of three examiners to determine the question of priority of invention.\textsuperscript{73}

(vi) To decide inter partes controversies.—The provision of the act concerning trademarks was similar to the one mentioned in (v) above. To declare whether or not an application for trademark resembled a mark previously registered was the duty of the Commissioner.\textsuperscript{74} Then the Commissioner would choose examiners and direct them to

\textsuperscript{72}Ibid., section 7.
\textsuperscript{73}Ibid., section 52.
\textsuperscript{74}U. S. Code, Title 15, section 1066 (1947).
decide the respective rights of registration.\textsuperscript{75} It was the Commissioner who finally refused or granted the trademark applied for.\textsuperscript{76}

(vii) To decide all controversies on appeal.—In cases of trademark appeals on examiners' decisions, the principles of equity were applied; however, appeal could be filed only with the Commissioner and in person.\textsuperscript{77}

(viii) To prescribe rules and regulations governing trademark registration procedures.—This has been discussed previously in connection with the Commissioner's power to decide who shall receive certificates of trademarks.

(ix) To disbar attorneys.—Since the task of prosecuting a patent application to obtain strong protection required professional knowledge, an applicant was allowed to employ an attorney. Such patent attorneys doing private practice were at times found guilty of misconduct. In such instances the Commissioner could suspend them from further practice in a particular case or from patent practice in general. The Commissioner could also disbar them for incompetence.\textsuperscript{78}

\textsuperscript{75}Ibid., section 1067.
\textsuperscript{76}Ibid., section 1068.
\textsuperscript{77}Ibid., sections 1069 and 1070.
\textsuperscript{78}U. S. Code, Title 35, section 11 (1947).
Finally, it may be mentioned that the Commissioner of Patents was to present to Congress every January an annual report giving a detailed statement of all moneys received for patents and of all expenditures, a list of patents granted, and all other work done during the preceding year.\(^{79}\) There was nothing in the act to prevent the Commissioner of Patents from preparing the annual reports in the way he desired. The Secretary had no direct control over the preparation or submission of the annual reports.\(^{80}\)

(B) The supervisory functions of the Commissioner over which the Secretary had some power.--(i) To frame rules for attorneys.--The Commissioner prescribed the rules and regulations governing the recognition of patent attorneys or agents. But this authority of the Commissioner was divided between the Commissioner and the Secretary. The Secretary's approval was required to finalize any rules.\(^{81}\)

(ii) To select employees.--The act provided for a Commissioner of Patents, one First Assistant Commissioner, two Assistant Commissioners, and nine Examiners-in-Chief. As seen earlier, all these officers were appointed by the President with the advice and consent of the Senate. Each

\(^{79}\)Ibid., section 20.

\(^{80}\)Ibid., section 2.

\(^{81}\)Ibid., section 11.
officer, excluding the Commissioner, performed the duties of the office assigned to him by the Commissioner. All other officers and employees were appointed by the Secretary of Commerce upon the nomination of the Commissioner in accordance with the law.\(^2\) Thus, the power of appointment of the other staff had been divided between the Commissioner and the Secretary.

(iii) To make rules.—With the approval of the Secretary of Commerce, the Commissioner framed rules and regulations for the conduct of proceedings in the Patent Office.\(^3\)

(iv) To ensure performance of duties.—The Commissioner superintended all duties in connection with the granting and issuing of patents. But he did this work under the direction of the Secretary.\(^4\) However, the act did not indicate any direct control on the Commissioner in his work of keeping charge of all books, records, machines, and other items belonging to the Patent Office.

Comments

The preceding detailed discussion of the relevant provisions of the patent act makes obvious the Patent Commissioner's full control over a major portion of the operational

\(^2\)Ibid., section 2. \(^3\)Ibid., section 6. \(^4\)Ibid.
activities of the Patent Office. He could judge appeal
cases through the Board of Appeals because he named the
members of the Board in each hearing. He could disbar
incompetent attorneys. He determined who should receive
patents. To declare the secrecy of inventions was under
his authority only. He alone decided whether or not inter-
ferences existed. He decided who should receive certificates
for trademarks and judged interparty controversies. And he
had complete ruling power in all appeal controversies in
trademark cases.

The Commissioner also had autonomous control in such
areas as the preparation of annual reports. Finally, he
divided power with the Secretary of Commerce in framing
rules and regulations for appointment of personnel, in the
general administration of the Patent Office, and in recog-
nition of patent attorneys.

Summary

Those who opposed the Plan felt that the Commissioner
of Patents should retain full control over the powers he
already had.

The proponents of the Plan, however, explained that the
Secretary already had broad powers over the Commissioner.
However, the language by which those broad powers were vested
in the Secretary was not clear enough to give the Secretary
sufficient control. The purpose of the Reorganization Plan No. 5 of 1950 was, therefore, to transfer to the Secretary all functions and authority of all the agencies in the Department of Commerce, as stated in section one of the Plan. A few exceptions were made for independent, autonomous bodies like the Civil Aeronautics Board. Independent action on the part of hearing examiners was assured. After vesting all the power in the Secretary, the power of the Secretary to delegate authority to subordinate officers was provided for in the Plan. The functions of the heads of the bureaus including the Commissioner of Patents, and their subordinates, remained the same after the Plan was passed except that all authority was first vested technically in the Secretary. Such a Plan was in accordance with some of the principles of public administration, which will be demonstrated in the chapters ahead.
CHAPTER III

DEBATES IN COMMITTEES AND DISCUSSIONS
ON THE FLOOR

Both the Senate and the House Committees on Expenditures in the Executive Departments undertook a study of the Reorganization Plan No. 5 of 1950 after it had been presented by President Truman. At the hearings some of the outstanding students of administration both in and out of government expressed their opinions on questions of both law and fact, defending their views in detail.

After the hearings were complete, the Plan was sent to the floor, with the House Committee reporting favorably,¹ but without recommendation by the Senate Committee.² Discussions of the implications of the Plan followed on the floor. Some of the statements by individual members of Congress merit consideration and will be related as a part of this chapter.

The discussions presented positions on matters involving principles of public administration as well as references to


the practices of business administration. The major purpose of this study is to identify these principles as they are utilized in this Plan. Preliminary to this analysis, it is necessary to consider some of the more significant concepts expressed before the committees and on the floor of Congress.

The statement presented by the Secretary of Commerce and the answers given by him are considered first. The criticisms of the opposition to the proposed Plan follow, and at the end the rebuttals by the Plan's supporters are presented.

Secretary's Presentation in Favor of the Plan

Charles Sawyer was the Secretary of the Department of Commerce when the Plan was proposed and discussed. Because the Plan in question referred to all the bureaus under the department, the Secretary's statement related to a broad program for improving the quality of administration in all the agencies.\(^3\) The Secretary first mentioned the importance of the whole Plan. Then he turned to the expected criticisms from the patent lawyers, and explained the necessity of bringing the Patent Office under the Plan. Since the Plan was opposed exclusively by the patent lawyers, the Secretary's

\(^3\)U. S. House of Representatives, Committee on Expenditures in the Executive Departments, 81st Congress, 2nd Session, Hearings on House Resolution No. 546 (Washington, 1950), pp. 18-20, 28-34.
testimony relating to that office receives major consideration here.

While referring particularly to the nature of the work in the Patent Office, the Secretary said,

... the functions of the Patent Office have many of the characteristics of judicial actions in that they affect the private rights of inventors and the public and confer exclusive rights through the issuance of patents. These functions should be carried out in a skilled and professional fashion. ... However, the Patent Office is not unique in the high professional standards with which its work is carried out. Other bureaus in the department have important duties involving the rights and privileges of the public and affecting their safety and lives. ... 4

In other words, many other bureaus also had semi-judicial work, but they were not exempt. Furthermore, he insisted that proper provision was made for some workers in the Patent Office doing semi-judicial work. This was clearly expressed in the following statement by the Secretary:

"... the functions of hearing examiners are exempted from transfer in recognition of the need for independence of any primarily judicial work handled by hearing examiners." 5

In regard to the judicial nature of the work of the Patent Office, the Secretary pointed out that the Plan did not limit court review of the decisions of the Patent Office. 6

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4Ibid., p. 33.  
5Ibid., p. 29.  
6Ibid.
He further stated that "in addition to the normal review provided by law, the Commissioner is amenable to action in the nature of mandamus in the event of improper action. . . ."\textsuperscript{7} In other words, any unlawfully withheld action in regard to grant of patents or trademarks could be reviewed by a Court. And there was not going to be any change in these provisions.

The Secretary had actually prepared a draft order concerning the effect of his judicial, delegational, and organizational authority, which he had intended to issue after the Plan was passed. The order assured the status quo. The relevant portion of the order said, "No action of the Commissioner of Patents or . . . . employees of the Patent Office will be reviewed by the Secretary of Commerce, except as may have been provided for by law prior to the coming into force of Reorganization Plan No. 5 of 1950."\textsuperscript{8}

In clarifying the exemptions granted to a few bodies under section 1(b) of the Plan from the transfer provision under section 1(a), the Secretary said that

\textquoteleft . . . the functions of the Civil Aeronautics Board are exempted presumably in recognition of the principle that a Board is a more effective instrument for fulfilling primarily regulatory responsibilities. The functions of the Inland Waterways Corporation are exempted in recognition of its corporate form of organization . . . .\textquoteright \textsuperscript{9}

\textsuperscript{7}Ibid., p. 34. \hfill \textsuperscript{8}Ibid., p. 22. \hfill \textsuperscript{9}Ibid., p. 29.
Visualizing the expected criticism of his increased power to delegate authority under section two of the Plan, the Secretary said:

... I am fully cognizant that fears may be engendered by such a plan. If the language is considered very literally, without recognition of the ever-present restraining factors in the operation of a large Federal agency, it might appear to some persons that any future Secretary would be entirely free to shift delegations of authorities among bureaus and officials without restraint. ... [But] there are a number of factors which act as checks and balances against arbitrary organizational changes. ...10

The relevant portion of the Secretary's draft order, which he had proposed to issue after the Plan was passed, read as follows:

Acting under the provisions of section 2 of Reorganization Plan No. 5 of 1950, I hereby authorize the United States Patent Office, and the Commissioner of Patents and other officers and employees of the United States Patent Office, to perform the functions of the United States Patent Office and the several officers and employees thereof, as specified in the patent laws (U. S. C., title 35) and in the trade-mark law (U. S. C., title 15, secs. 1051 to 1127) prior to the coming into force of said reorganization plan; and such Commissioner of Patents and other officers and employees are further authorized individually to perform and continue to perform the functions performed by them individually prior to the coming into force of said reorganization plan.11

Then, referring to the last section of the Plan, which related to his increased organizational power, the Secretary explained that he did not expect any change in the Patent

10Ibid., pp. 31-32.  
11Ibid., p. 22.
Office. Since there was no problem with work duplication, no reorganization was called for in the whole Department of Commerce and the Secretary indicated in his statement that such a policy would be maintained. This can be seen from the following portion of his statement:

... the Department of Commerce has few problems of jurisdictional overlapping or program conflicts since the responsibilities of several bureaus seldom if ever impinge one on the other. For example, there is very little problem of relationships between agencies so far apart in their responsibilities as the Civil Aeronautics Administration, the Bureau of Census, and the Patent Office. Within the Department the various constituents need coordination primarily in terms of broad program objectives rather than organizational delineation.12

What he felt necessary was consolidation of payrolls for the department, a subject which he had mentioned in the discussions at the time of the hearings. However, it is not necessary to go into the details of that proposal. Specifically concerning the Patent Office, Sawyer said:

The main functions of the Patent Office do not overlap or duplicate those of other bureaus and agencies of the Department. . . . In view of the technical analysis involved, the importance of the files and records of the Patent Office, and the immense volume of applications, it is not realistic to consider any change in the organization . . . of the Patent Office . . . . I have no intention of changing the present procedures or the present powers of the Patent Commissioner or the Patent Office, and I have already announced my intention of authorizing the Commissioner, and the Patent Office to

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12 Ibid., p. 32.
continue to carry on their functions in accordance with their present statutory powers. 13

The relevant portion of the Secretary's draft order read as follows:

The main functions and duties of the Patent Office are to consider applications for patents and for trade-mark registrations and to issue patents and register trade-marks to those applicants who are entitled to them. These functions are prescribed by and carried out under specific statutory authority, and the statutes also provide for direct judicial review of the actions of the Patent Office . . . the administration of the Patent Office in its relation to the Secretary and other bureaus and agencies of the Department does not require reorganization. For these reasons, I have determined to delegate to the Commissioner of Patents, and to the other officials and employees of the Patent Office, the functions of those officials which were transferred to the Secretary of Commerce by Reorganization Plan No. 5 of 1950, so that those functions may continue to be carried on in the same independent and professional fashion as before, subject to review only by the courts of the United States. 14

In short, the Secretary explained the implications of each section of the Plan, including the background of each implication. He pointed out that the Plan conformed to the Hoover Commission recommendations and that the Plan did not disturb the quasi-judicial nature of the work of the Patent Office. No quasi-legislative, quasi-judicial, or

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13 U. S. Senate, Committee on Expenditures in Executive Departments, 81st Congress, 2nd Session, Hearings on Senate Resolution No. 259 (Washington, 1950), p. 32.

administrative functions of the Patent Office were withdrawn by the Plan. Nor were any of the remedies of the applicants removed by the Plan. It only vested all the functions of the Patent Office, as well as those of all other agencies of the Department of Commerce in the Secretary. He also pointed out that the Plan authorized adjustments within the department and delegations of functions by the Secretary. The idea behind exempting the Civil Aeronautics Board and Inland Waterways Corporation was also made clear. He clearly disclosed the order he proposed to issue and did not leave any doubts about what he wanted to do after the Plan was passed.

Some major criticisms of the Plan follow, succeeded by the major replies given to those criticisms.

Opposition and Criticisms

Joseph R. Bryson

Bryson was a representative in Congress from South Carolina and chairman of sub-committee No. 4 of the House Judiciary Committee. He offered the House of Representatives the resolution for disapproval of the Reorganization Plan No. 5 of 1950.\(^\text{15}\)

\(^{15}\)U. S. Congressional Record, Vol. 96, p. 5491.

Bryson felt that the Plan would convey to the Secretary of Commerce all the discretionary functions then residing in
the Commissioner of Patents. He disclosed the unanimous judgment of the sub-committee of the House Judiciary Committee that the result of the Plan would be very harmful to the American patent system since the Patent Office exercised quasi-judicial functions.

Bryson felt that the transfer of discretionary authority to the Secretary would lead to unwise actions on his part. According to him, there was no distinction between the Civil Aeronautics Board and the Patent Office, and both should have been exempted.

Robert C. Watson

Watson represented the American Patent Law Association. Because the 1945 Reorganization Act contained a clause which excluded any Plan interfering with the operation of an agency performing quasi-judicial functions, Watson could not understand why there was no exemption of the Patent Office in the Plan in question.

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16 Ibid., p. 5492.
19 Ibid., p. 36.
Watson emphasized that after the Plan was passed, the Secretary of Commerce would become an ex-officio member of the Board of Appeals. Furthermore, by his status as head of the department, the Secretary would dominate the Board of Appeals, causing the members of the Board to lose their functions. Watson feared that in such a situation, although members could go to the Senate with a complaint, the Board members' influence would be negligible in comparison to that of the Secretary of Commerce.

He further charged that the Secretary had no knowledge of the subject matter; thus it was improper for him to be superior to the Commissioner in a judicial way. According to Watson, the Secretary did not explain why the Patent Office was not exempted, despite the fact that the entire office performed judicial functions.

Fritz Lanham

Lanham, formerly a representative in Congress from Texas, had been a member of the Committee on Patents of the House of Representatives and Legislative representative of the National Patent Council. He alleged that the Plan would destroy inventors' incentive and impair American

\[\text{Ibid.}, \ p. \ 40.\]
\[\text{Ibid.}, \ p. \ 41.\]
\[\text{Ibid.}, \ p. \ 42.\]
\[\text{Ibid.}, \ p. \ 43.\]
\[\text{Ibid.}, \ p. \ 44.\]
progress. He emphasized that the Plan, in effect, interfered with the courts since the functions of the Patent Office were decidedly judicial.²⁵

**Maurice W. Levy**

Levy, an attorney from Verona, New Jersey, appeared purely in a personal capacity.²⁶ According to Levy, although an applicant could go to the court of Customs and Patent Appeals, he was very restricted since the court would review from the record of the Patent Office only.²⁷

**George E. Folk**

Folk, adviser to the Committee on Patents and Research of the National Association of Manufacturers, spoke on behalf of the National Association of Manufacturers.

His testimony brought forth two new objections to the Plan. First, in granting patents involving discretionary questions, the staff of the Patent Office always followed the leadership of the head of that office. By the Plan, that leadership would go to the Secretary. Secondly, while redelegating the functions, the Secretary could ignore some officers of the Patent Office and thus jeopardize the administration of that office.²⁸

²⁵Ibid., pp. 11-13.  
²⁶Ibid., pp. 59-60.  
²⁷Ibid., p. 60.  
²⁸Ibid., pp. 65-66.
Alexander Wiley

Wiley was a Republican Senator from the State of Wisconsin and a member of the Senate Judiciary Committee. He had originally introduced the resolution to disapprove Plan No. 5 and was the first testifier before the Senate committee. He based his opposition principally on the grounds that shifting to the office of the Secretary all of the functions of the subordinate units of the Department of Commerce involved a very grave danger to the American people.\textsuperscript{29}

Wiley emphasized that it was extremely dangerous to vest blank-check powers in any human being. He feared some future Secretary of Commerce might indeed misuse the enormous powers involved in the administration of the Patent Office. He said that the plan gave absolute control to the Secretary, who could wreck it and could inject into it any arbitrary idea of patents that he desired.\textsuperscript{30}

On the floor of the Senate, Wiley stated:

\ldots there is grave suspicion through America that plan No. 5 \ldots is being used as a guise \ldots behind which the President and his cohorts are attempting to foist their notions of a huge centralization. \ldots.

\textsuperscript{29}U. S. Senate, Committee on Expenditures in the Executive Departments, 81st Congress, 2nd Session, Hearings on Senate Resolution No. 259 (Washington, 1950), p. 21.

\textsuperscript{30}Ibid., p. 8.
My action is in no sense in contrast to a Hoover Commission suggestion because the Commission made no studies in the Patent Office.... The potentialities for harm to the... private invention are tremendous because some future unscrupulous Secretary... could establish rules over the conduct of the Patent Office which could paralyze American industry....

In the following statement, Wiley further expressed his fear of the Plan: "... if I have time we could review a great body of literature in the 1930's produced by leftist thinkers, communists, socialists, so-called new dealers, who denounced the patent system, who bitterly criticized it as an alleged tool of monopoly capitalism."

According to him, such persons, if they got control of the patent system, would destroy it.

Lawrence C. Kingsland

Kingsland was formerly Commissioner of Patents, having resigned on December 1, 1949, after having served over two years in that office. He represented the Patent, Trademark and Copyright Section of the St. Louis Bar Association.

He believed that ". . . the issues involved [were] much deeper than the mere question of potential immediate effect

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31 U. S. Congressional Record, Vol. 96, p. 5235.
32 Ibid., p. 7385.
According to him, the Commissioner never controlled the decisions of the Boards of Appeals, but under the proposed Plan, there was nothing to prevent the Secretary from high-handedly directing the appeals. He said, "If a situation arises where the personnel of the Patent Office, in the judgment of the Secretary, had better be used somewhere else in the department, there is nothing in the world to prevent it." This was going to upset the judicial system of the Patent Office, according to him.

He further emphasized that the political control of the Patent Office would lower the morale of that office. Although there was provision for a court review, it would probably be ineffective. Kingsland strongly felt that though there was redelegation of functions to the officers in the Patent Office, the whole judicial system of that office would be upset by giving all powers to the Secretary.

About the general working of the Patent Office, he said that "since the Patent Office has its specific duty designed by Congress to perform these functions it is my judgment that Congress alone should retain that control and not abrogate its right under the Constitution."

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34 Ibid., p. 52.  
35 Ibid., pp. 54-55.  
36 Ibid., p. 58.  
37 Ibid., p. 59.  
38 Ibid.  
39 Ibid., p. 61.  
40 Ibid., p. 60.  
41 Ibid., p. 55.
Henry R. Ashton

Ashton was President of the American Patent Law Association and a patent lawyer in New York. He was also the Chairman of the National Council of Patent Law Associations, which included all of the principal patent law associations in the United States.\(^\textit{42}\)

He explained that the functions of the Patent Office were not all performed by the Commissioner of Patents, some being performed by other officers. According to him, a policy could therefore be established by the Secretary to issue patents to a particular class of persons. In such situations he felt there was no remedy.\(^\textit{43}\)

Albert R. Teare

Teare, from Cleveland, Ohio, represented Trademark and Copyright laws, American Bar Association.

He emphasized the importance of secrecy of applications. He pointed out that the Secretary, using the power granted to him under section four of the Plan, could transfer any records of the Patent Office. But one of the principles in the patent proceedings was that no one should know what was in the other party's application. In addition, for the sake of the national defense, no one should know the contents of any application. Because of the increased power of the

\(^\textit{42}\)Ibid., p. 67. \(^\textit{43}\)Ibid., p. 68.
Secretary, Teare claimed that secrecy would not be maintained in the Patent Office.\textsuperscript{44}

\textbf{Robert F. Rich}

Rich, a member of the House of Representatives, severely attacked the centralization of power in one executive officer. At the time of the discussions on the floor of the House after the House Report was submitted, he said that "what we oppose is the New Deal philosophy of trying to center everything in Washington."\textsuperscript{45}

\textbf{Richard W. Hoffman}

Hoffman of Michigan was a member of the House Committee on Expenditures in Executive Departments. In his arguments against the Plan, he cited a portion of the opinion of judges in a case of 1884 (Butterworth v. Hoe, 112 U. S. 50) which was as follows:

\ldots to whatever else supervision and direction on the part of the head of the Department may extend, in respect to matters purely administrative and executive they do not extend to a review of the action of the Commissioner. \ldots It is not consistent with the idea of judicial action that it should be subject to the direction of a superior. \ldots \textsuperscript{46}

He emphasized that the decision should be valued. This case showed, according to Hoffman, that the Commissioner was

\textsuperscript{44}\textit{Ibid.}, p. 75.
\textsuperscript{45}\textit{U. S. Congressional Record}, Vol. 96, p. 7271.
\textsuperscript{46}\textit{Ibid.}, p. 7268.
entirely independent of his superior.\textsuperscript{47} He felt that the Patent Office was doing judicial work and that it should be continued as it was.\textsuperscript{48} The following statement of Hoffman indicates how strongly he felt that the Patent Office was a completely judicial agency.

It is doubtful if there is any other executive bureau of the Government—any agency or office—more judicial in its functions than is the United States Patent Office. That its functions are judicial in nature is known throughout the land, to the hundreds of thousands of inventors who have received patents . . . and to all those who follow the legal profession. . . . Judicial temperament of the highest quality is required, as is vast experience, extensive training, and a knowledge of the decisions rendered from time to time by the Federal courts in patent cases. Again, these decisions of the Commissioners are of a judicial nature, as has been recognized and established by the courts.\textsuperscript{49}

Views of Those in Favor of the Plan

Frederick J. Lawton

Lawton, the Director of the Bureau of the Budget, gave testimony before the Senate Committee on Expenditures in Executive Departments.\textsuperscript{50} He explained that the Plan was designed to give effect to the recommendations of the

\textsuperscript{47}Ibid., p. 7267. \hfill \textsuperscript{48}Ibid., pp. 7266-7268. \hfill \textsuperscript{49}Ibid., p. 7267. \hfill \textsuperscript{50}U. S. Senate, Committee on Expenditures in the Executive Departments, 81st Congress, 2nd Session, Hearings on Senate Resolution No. 259 (Washington, 1950), pp. 16-24.
Commission on Organization of the Executive Branch of the Government. The method used was to center all functions of the Department of Commerce in the head and to authorize him to delegate.

He explained the exemptions distinctly. The examiners' functions were exempted as they did quasi-judicial work; and the corporations were exempted because "... of the peculiar nature of the corporations as a government agency, and because of the desirability that corporate functions ordinarily remain associated with a corporate structure." Finally, the Civil Aeronautics Board was exempted because its functions were vested in a board having in large measure the attributes of the independent regulatory boards and commissions of the Federal government.

Lawton further pointed out that an exemption to the Patent Office as a whole would have raised a number of questions with regard to agencies equally deserving consideration, and that the merit of the Plan would have been defeated. Emphasizing that the Secretary intended to retain the present organization of the Patent Office, Lawton expressed certainty that any future Secretary would take a similar approach in the absence of major defects in patent administration.

According to Lawton, no Secretary was likely to seriously disturb the functions merely because he was given more authority.56

William L. Dawson

Congressman Dawson of Illinois, the Chairman of the House Committee on Expenditures in the Executive Departments, presided over the hearings.57

According to him, if a Secretary should overrule a judicial decision of the Commissioner, the applicant could go to a court of law.58 Dawson was asked why the Secretary should supervise the semi-judicial responsibility of the Patent Office. Dawson said that the Congress had placed quasi-judicial responsibility in certain individuals—for example, the Commissioner of Patents, the Assistant Commissioners, and the Examiners. Such responsibility was not given to the President, yet the President held those with it responsible for carrying out the functions, whether they be judicial or otherwise.59 Dawson emphasized that in the same way the Secretary should have authority to run whatever the Congress put into his department.60

56Ibid.


58Ibid., p. 47.

59Ibid., p. 46.

60Ibid., p. 53.
Dawson further claimed that the patent lawyers' arguments were based on fears and that it was impossible to legislate on fears. Dawson explained that any organization consisted of dividing jobs into component parts. Each part would have a head, but power and authority would be centered in one, to whom all the different heads would be responsible.

**Chet Holifield**

Holifield was a member of the House Committee on Expenditures in Executive Departments from California. He explained that the Plan neither changed the appointive power of the President nor interfered with any of the statutory duties of the Commissioner of Patents.

Holifield pointed out that the transfer of functions to the Secretary of Commerce did not affect the law under which those functions were performed by the Commissioner of Patents. The transfer merely changed the line of responsibility for administration from the Commissioner of Patents to the Secretary. According to Holifield, the Commissioner would be primarily responsible to the Secretary instead of the President. He mentioned that the Secretary already had

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64 *U. S. Congressional Record*, Vol. 96, p. 7270.
power to approve the nominations made by the Commissioner of Patents. Likewise, the Secretary had the right to superintend the Patent Office through section 6 of title 35 of the United States Code.\textsuperscript{65}

While explaining that the Secretary would not be able to overrule the Commissioner's decisions and that the Plan would enable smooth functioning in the department, Holifield drew a comparison to the Interstate Commerce Commission. He stated that though the Interstate Commerce Commission had many different quasi-judicial boards, there was no attempt to influence those boards by the Chairman or by the members of the Commission.\textsuperscript{66} He emphatically explained that the basic principles of organization must be applied throughout the Federal service and that this application of basic principles should be on a uniform basis in the governmental management.\textsuperscript{67} According to him, this was the intention of the Plan, and he dismissed any arguments based on apprehension and fear that some time in the future, the President of the United States might make a poor appointment to the


\textsuperscript{66}\textit{Ibid.}, p. 41.

\textsuperscript{67}U. S. \textit{Congressional Record}, Vol. 96, p. 7273.
office of the Secretary of Commerce thereby affecting the working of the Patent Office.68

Arthur S. Flemming

Flemming was President of Ohio Wesleyan University and a former member of the Hoover Commission.

He explained that whenever things go wrong in an executive department, each official who testifies generally tries to place the blame on someone else. The passage of Reorganization Plan No. 5 would eliminate such uncertainty of responsibility.69 He explained that after the Plan was passed, the Secretary could move in the direction of economy and efficiency, as he could then impress upon the Commissioner about ideas for improved efficiency and for effecting savings.70

Flemming further mentioned that it was important to keep in mind that the Congress had "... vested quasi-legislative and quasi-judicial functions in Cabinet officers in other areas...[but] Congress had also succeeded in surrounding...those responsibilities with sufficient safeguards so as to prevent arbitrary action."71 According to

68Ibid.

69U. S. Senate, Committee on Expenditures in the Executive Departments, 81st Congress, 2nd Session, Hearings on Senate Resolution No. 259 (Washington, 1950), p. 41.

70Ibid., p. 46.  
71Ibid., p. 45.
him, it was impossible to build a reorganization plan around personalities because Government had to develop what was regarded as a sound set of management principles and apply them right down the line.\textsuperscript{72} He pointed out some positions like hearing examiners were exempted from executive control though they were posted in the agencies. They could not be removed without the consent of the Civil Service Commission.\textsuperscript{73}

\textbf{Harley M. Kilgore}

Kilgore, while attacking the main idea of the opposition that the Patent Office was a judicial body, said, "we have heard a great deal said about the Patent Office being a judicial body. . . . If it is a judicial body why was it not placed in the judicial establishment? Why was it not made a Court?"\textsuperscript{74} He explained this point at length showing differences between the judges of the courts and the Patent Commissioners, and the Patent Office and a court of law.

Kilgore, speaking in general about the Plan, said that whenever an attempt was made to put a small or a big agency under the centralized power of some officer, there was always opposition. Emphasizing centralization for good management, he said that ". . . the Government has long needed a pulling

\textsuperscript{72}Ibid., p. 47.
\textsuperscript{73}Ibid., p. 50.
\textsuperscript{74}\textit{U. S. Congressional Record}, Vol. 96, p. 7400.
together of the ramifications of the various agencies.\textsuperscript{75} He pointed out that the executive agencies were so spread out that efficiency was hardly possible.\textsuperscript{76}

Concluding Remarks

Many more private parties and members of the Senate and the House of Representatives testified before the respective committees and there was additional debate on the floor of Congress. Included were William Benton of Connecticut, Karl E. Mundt of South Dakota, Andrew F. Schoeppel of Kansas, and Anthony F. Tauriello of New York. These additional statements, however, generally overlapped and repeated what has been included in detail.

To summarize the criticisms of the Plan, many doubts were expressed by the opposition about the effective working of the Plan. Some felt that the Plan granted an unrestricted, continuing authorization to the Secretary to organize the Patent Office; some held that the Plan would seriously impede the Commissioner of Patents and the performance of other officers; and some emphasized that the Secretary should not be responsible for judicial decisions of the Patent Office. Much emphasis was given to the idea that the Patent Office was doing judicial work, and to the belief that the Plan was bringing the evil of centralization.

\textsuperscript{75}Ibid. \hfill \textsuperscript{76}Ibid.
Those in support of the Plan explained that there was no reason to exempt the Patent Office from the Plan and that the fears of the opposition were uncalled for. It was also pointed out that the right to appeal to the Boards of Appeal and to the Court of Customs and Appeals was maintained and that there was no possibility of unnecessary interference on the part of the Secretary or anyone else. The Secretary had clearly mentioned how he already had power to approve the rules and regulations of the Patent Office and that the aim of the Plan was to establish a clear line of authority through every phase of the organization. He explained that the purpose was sound business management, not simply centralization for the sake of accumulation of power. Finally, as seen in Chapter I, the President in his message had also explained the necessity of concentrating authority in one place for the smooth working of the organization.
CHAPTER IV

EVALUATION OF CRITICISMS

It is clear from the testimonies mentioned in the last chapter that several doubts were expressed about a smooth and successful operation of the Patent Office if the Plan were passed. In this section all the major and minor criticisms made by the opponents are grouped, and comments are made on each of them. The opponents' criticisms are weighed with the replies in order to ascertain which side was more reasonable. The proponents and opponents of the Reorganization Plan are noted first. The criticisms and replies are then summarized.

The Two Sides

The individuals and the institutions on the two sides of the Plan who have been referred to in this thesis were as follows:

<table>
<thead>
<tr>
<th>Proponents</th>
<th>Opponents</th>
</tr>
</thead>
<tbody>
<tr>
<td>President Harry S. Truman</td>
<td>Joseph R. Bryson, member, House of Representatives</td>
</tr>
<tr>
<td>Charles Sawyer, Secretary, Department of Commerce</td>
<td>Robert C. Watson, representative of the American Patent Law Association</td>
</tr>
</tbody>
</table>
### Proponents
- Frederick J. Lawton, Director, the Bureau of the Budget
- William L. Dawson, member, House of Representatives and Chairman of the House Committee on Expenditures in the Executive Departments
- Chester Holifield, member, House Committee on Expenditures in the Executive Departments
- Arthur S. Flemming, former member of the Hoover Commission
- Harley M. Kilgore, member, Senate

### Opponents
- Fritz Lanham, legislative representative of the National Patent Council
- Maurice W. Levy, an attorney
- George E. Folk, representative, National Association of Manufacturers
- Alexander Wiley, member, Senate
- Lawrence C. Kingsland, former Commissioner of Patents, represented Patent Trade Mark and Copyright Section, St. Louis Bar Association
- Albert R. Teare, Trade Mark and Copyright Laws, American Bar Association
- Robert F. Rich, member, House of Representatives
- Richard W. Hoffman, member, House of Representatives

### The Criticisms and Replies

**Judicial Nature**

It will be seen from the testimony and from the record of discussions that the opposition based its arguments on a notion that the entire Patent Office was doing work of
judicial nature; therefore, it was improper to bring it under the authority of an executive officer, namely, the Secretary of Commerce. The arguments of the opposition were mainly founded on this contention. Watson emphasized this point to a great extent. There were many others—for example, Lanham, Kingsland, Hoffman, and Ashton—who stressed this view, though their views on this issue are not explained in detail in this thesis to avoid repetition. All remaining doubts about the Plan were corollaries of this thought. It was feared that the successful conduct of the judicial activities of the Patent Office would suffer if the Secretary were given authority over that office: for instance, the Secretary might infiltrate political ideas into the judicial functions.

Those who were in favor of the Plan tried to explain how the Patent Office was not a pure and simple judicial body like a court of law. Otherwise, the Patent Office would have been placed in the judiciary. Such remarks are seen in Kilgore's discussion on the floor.

It was true that some work of the Patent Office had semi-judicial characteristics. A casual reading of titles 35 and 15 of the United States Code which refer to patents and trademarks will justify such an interpretation. The Patent Commissioners and some of their subordinate officers were required to perform semi-judicial functions. On the
basis of these facts, the opponents of the Plan tried to prove that the Patent Office did judicial work and, therefore, should be exempted from the Plan. To refute this, some proponents of the Plan contrasted the officers of the Patent Office, its work, and its rules and regulations with the judiciary. It is irrelevant to discuss these contrasts here because the opposition did not demand that the Patent Office be moved from the Department of Commerce to the judiciary.

The point which should have been emphasized by the opposition was that the Patent Office should enjoy independence like the Civil Aeronautics Board since it performed quasi-judicial work. The testimony of the Director of the Bureau of the Budget, Lawton, and the Secretary, Sawyer, explained why the Civil Aeronautics Board was exempted and why the Patent Office was not. Dawson also pointed out this difference. But this issue was not discussed in depth either at the time of the committees' hearings or on the floor. Therefore, it is necessary here to delve into this pivotal issue.

The Civil Aeronautics Board and the Patent Office

The Civil Aeronautics Board was an independent regulatory agency established in 1940. Its four chief functions were:

1. Regulation of the economic aspects of United States air carrier operation both domestic and international;
2. Promulgation of safety standards in the form of civil air regulations;
3. Investigation and analysis of aircraft accidents;
4. Cooperation and assistance in the establishment and development of international air transportation.

While performing the above activities, the Civil Aeronautics Board framed rules and regulations. For example, it prescribed rules and regulations for the issuance of airman certificates and air carrier operating certificates, and had power to revoke them. The extensive rule-making powers of the Civil Aeronautics Board had an economic impact on individuals and on companies.

Such was not the case with the Patent Office. It made decisions affecting the rights of individuals to acquire patents and trademarks, but did not regulate the trade in any way.

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3Ibid., p. 336.
4Ibid.
Like other regulatory agencies, the Civil Aeronautics Board had investigatory authority. It could investigate on its own initiative matters relating to enforcement of its rules and regulations. It could issue orders compelling persons to comply with its rules. It could also issue cease and desist orders. As pointed out by Meriam and Schmeckebier, the independent regulatory agencies exercise the congressional powers of investigation and fact finding for legislative purposes. They "prescribe uniform systems of accounting and reporting upon which rest the comparable financial and operating statistics compiled by the commissions over the years." Furthermore, the Civil Aeronautics Board could prosecute and supervise the airlines. The Patent Office did not have similar areas of authority.

There was considerable difference in the manner of appointment and the terms of the members of the Civil Aeronautics Board and the Patent Office. The Civil Aeronautics Board was composed of five members, appointed by the President with the consent of the Senate. Thus, it was a

6 U. S. Code, Title 49, section 642 (1948).
7 Lewis Meriam and Laurence F. Schmeckebier, Reorganization of the National Government (Washington, 1939), p. 70.
8 Ibid.
plural-headed body, whereas the Patent Office was single headed by the Commissioner of Patents. In addition, the members of the Civil Aeronautics Board had to be from two parties, whereas bipartisan spirit could not exist in the Patent Office since it was single-headed.

The commissioners of the Civil Aeronautics Board could be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. But the Commissioner of Patents was removable by the President for any reason that the President thought justified for such a removal. In other words, the President's removal power in the case of the Commissioners of the Civil Aeronautics Board was more restricted than his power over the Commissioner of Patents. Civil Aeronautics Board members were protected by the principle of the Supreme Court's decision in Humphrey's Executor v. United States, where the Court invalidated removal by President Roosevelt of a member of the Federal Trade Commission. The Commissioner of Patents was not so protected.

Furthermore, members of the Civil Aeronautics Board were appointed for definite, staggered terms, while the Commissioner of Patents kept his job at the discretion of the President.

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10 U. S. Code, Title 49, section 421 (1948).
12 U. S. Code, Title 49, section 421 (1948).
As was the case with the other regulatory commissions, the decisions of the Civil Aeronautics Board were final so far as the Chief Executive was concerned. They were not discussed with the White House and were not subject to suspension or veto by the President. There was no channel of direct communication between the President and the Civil Aeronautics Board. As pointed out by White, upon the inauguration of a new President the members of the Civil Aeronautics Board did not have to wait to receive directions about policy from the President. Such was not the case with the Commissioner of Patents. The rules and regulations of his office were always subject to approval by the Secretary, as seen in Chapter II.

In short, the Civil Aeronautics Board was framed around entirely different objectives. The aims, the work, and the appointment and removal procedures of the members were similar to other boards and commissions. The aim was that the representatives of business should not call into play their congressmen and senators to seek to control the decisions of the regulatory commissions. The second determination was to separate the quasi-judicial and quasi-legislative powers of the commissions from the executive branch.

14Ibid., Chapter 9.
15Ibid.
Thus, the type of work, the procedures of the appointments, the reasons for removal, and the set up of these two bodies—the Patent Office and the Civil Aeronautics Board—were entirely different. They had only one common feature: some of the work of the Civil Aeronautics Board and the Patent Office was of quasi-judicial nature. For that one reason, the Patent Office could not be compared with the Civil Aeronautics Board and exempted from the Plan. The overall picture of the Patent Office suggested the administrative branch and, therefore, should be under the Secretary's control even though, as seen earlier, the examiners of the Patent Office were protected under section 1(b) of the Plan.

**Lowering of Efficiency**

Another contention of the opposition to the Plan was that the efficiency of the Patent Office would be hampered by giving to the Secretary of Commerce full authority, including authority over the officers' semi-judicial powers. At the same time, it was alleged that the principles laid down in the *Butterworth v. Hoe* case would be violated.

In this case, Mr. Gill had applied to the Commissioner of Patents for a patent to a certain machine. But another gentleman, Walter Scott, was given the patent because an

16112 U. S. 51 (1884).
interference was established. Gill appealed to the then Commissioner of Patents, who reversed the decision of the examiners. Scott appealed to the Secretary of the Department of Interior (the Patent Office was then in that department). The appeal was upheld by reversing the Commissioner's decision. The case went to the District Court of District of Columbia and then to the Supreme Court of the United States.\textsuperscript{17} Justice Stanley Matthews stated, while delivering the opinion, that the Secretary of the Department could not reverse an adjudication of the Commissioner.

The Secretary . . . has no power by law to revise the action of the Commissioner of Patents in awarding an applicant priority of invention, and adjudging him entitled to a patent. The executive supervision . . . [that the secretary] may exercise over his subordinates in matters administrative and executive do not extend to matters in which the subordinate is directed by statute to act judicially.\textsuperscript{18}

The opposition to the Plan tried to emphasize with the help of the above case that the Secretary should not be allowed to influence the semi-judicial, discretionary decisions of the Commissioner. They felt that the wording of the proposed Plan would bring that evil. But the same case can be understood in a different way. The case proves that the judiciary takes proper care of such situations. Whenever an executive officer crosses his limits and endangers

\textsuperscript{17}\textit{Ibid.}, p. 52. \textsuperscript{18}\textit{Ibid.}, p. 50.
the judicial, discretionary powers of another officer, the latter is protected by the judiciary. Finally, if the Secretary reverses the Commissioner's decision in the larger interest of society in a particular case, that view must prevail. Such a viewpoint can be seen in several court decisions. For example, in United States v. Line Material Company, Justice Douglas said, "but however that may be, the Constitution places the rewards to inventors in a secondary role. It makes the public interest the primary concern in the patent system."\(^{19}\)

By the powers vested in the Secretary by the reorganization Plan No. 5, he became a member of the Board of Appeals of the Patent Office. However, it does not logically follow that the quasi-judicial work of the Patent Office would be hampered by the Secretary's becoming a member of the Board of Appeals. It could not be assumed that the work would be hampered by a lack of knowledge of the patent laws on the part of the Secretary because the Secretary would be more prone to take the advice of the Commissioner, the Assistant Commissioner, and the Examiners before arriving at any decision. The doubts expressed by Watson, Kingsland and others were not justifiable.

\(^{19}\)333 U. S. 287 (1947).
Another argument was that the Secretary of Commerce would be unable to state an opinion when requested because of a lack of knowledge concerning the Patent Office. An important feature of a democratic system of government is that top officials like Secretaries are often given portfolios in which they are not experts. The same is true with the ministers of departments in parliamentary governments. They can take dispassionate views on policy matters. For example, an elected member of parliament who is a professional lawyer is several times given a portfolio concerning finance or education. By this arrangement he receives a broader outlook while deciding policy issues of his department. For instance, the present education minister of India, M. C. Chagla, was the Chief Justice of the High Court of Judicature at Bombay. And, in like manner, a barrister-at-law, Punjabrico Deshmukh, was the Minister for Agriculture of the Democratic Republic of India. In the United States also it is seen several times that the department heads have little prior knowledge of the work of their departments.

Of four Secretaries of State between 1933 and 1948, two had no previous experience with the department. Of four Secretaries of the Treasury, three had no previous experience. . . . Of six Secretaries of Commerce, five were without prior contact with the department.\(^20\)

Thus, experience is not the only criterion for efficient working of a department.

Misuse of Power to Delegate

As can be seen in the testimonies of Levi and others, fears were expressed that the power to distribute or delegate the functions of the Patent Office would be improperly used if given to the Secretary. The fear was based on an assumption that the Secretary would delegate only to those whom he wanted to give the delegated functions.

Theoretically, it was true that the power of delegation was being transferred completely to the Secretary and that he could use it in the way he wanted. But no congressman in either House raised any doubts about the current Secretary of Commerce, Sawyer, because of his ability to work and because he had publicly declared his intention to delegate the functions of the personnel in the Patent Office exactly as they were before the Plan was passed. The Secretary had actually prepared a draft order to that effect, as seen in the last chapter.

Watson and other opponents were rather unrealistic in raising doubts about the future secretaries. The cabinet officers are appointed by the President with the consent of the Senate. The Commissioner of Patents is appointed in the same manner. Therefore, it is just as logical to assume that
the Commissioner will misuse delegated power as it is to assume that the Secretary will. Furthermore, the citizens of a representative democracy must have faith in the cabinet officers selected by the President.

**Improper Organizational Changes**

It was alleged that future secretaries would make organizational changes detrimental to the efficiency of the Patent Office. As stated in the previous criticism, the Secretary had already prepared an order to be issued after the Plan was passed. No changes were suggested for the Patent Office by the Secretary. On the contrary, he had assured the *status quo*. Besides, there are always some checks on a Secretary against arbitrary, organizational changes. The delegation of functions and the major or minor organizational changes are always done after proper study and after issuing official orders which are published from time to time. Such orders of the Secretary can be seen in the *Federal Register*. The changes are never done without recording them. For example, (1) the Office of Commissioner, United States Science Exhibit, was established in the Office of the Secretary of Commerce by the Secretary's department order number 167 of January 20, 1960; (2) the Office of Materials Distribution was transferred to the Office of Domestic Commerce by the Secretary's department
order number 18 of May 1, 1948; (3) the Office of Small Business was transferred to the Office of Domestic Commerce by the Secretary's department order number 18 of June 30, 1948. There is at the same time a check from the Congress and from the Chief Executive on organizational changes. The House and Senate committees play a sound role in this respect. As pointed out by White, "the [committee] hearings turn not only on policy and achievement or failure, but may involve controversy on organization, on procedure, . . . or the personal problems of an individual employee." Finally, the Bureau of the Budget, an arm of the President, through its Office of Organization and Management, constantly studies organization and suggests methods for economy and efficiency.

Though the opposition's argument that the Secretary could make internal changes in the personnel of the Patent Office after the Plan was passed was true, this authority was applicable to all the bureaus under the Department of Commerce, not just the Patent Office. No other bureau raised any doubts about the Secretary's increased power to

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22 White, op. cit., p. 500.

make organizational changes. It was, moreover, one of the aims of the Plan to invest the Secretary with the power to make internal changes when he thought necessary. This was done to give him authority commensurate with his responsibilities, a point considered in detail in the next chapter. If any organizational changes were to increase budgetary pressure, they were, of course, subject to review by the Bureau of the Budget, the President, and the Congress. The Office of Organization and Management checks the departmental and bureau operations to bring them into conformity with the President's expected standards.

**Need of Skilled Direction**

The critics felt that the fine results obtained by the Patent Office should be recognized and valued. They emphasized that there was great need for skilled direction and personnel. The Secretary of Commerce had no time or training to do the job. This has been seen in several testimonies, including Wiley's.

Giving functional authority to the Secretary did not mean that the Secretary would start acting as the Commissioner of Patents. He has many other bureaus and agencies under him to look after. He also has to devote sufficient time to the President. Therefore, he could never afford to indulge in the day-to-day workings of the Patent Office.
Besides, the Secretary of Commerce is a responsible officer in the government—a cabinet officer.

The opposition was correct in pointing out that the Secretary was not skilled in patent matters. However, they should have considered that the Secretary's responsibility to the people was always greater than that of the Commissioner. He would, therefore, always encourage more efficiency and more economy in the administration of the Patent Office. For this purpose, he would certainly value the expert advice of the Commissioner of Patents and his office.

**Political Pressure**

Much was said about the use of political pressure on the part of the Secretary, an assertion made obvious by the testimony of Kingsland, Wiley, and others opposing the Plan. However, if the Secretary of Commerce was found to be using undue political influence in the Patent Office, he would be subject to questioning and possibly removal from office. There is no doubt that in a democratic government the policies of each department reflect the political views of the party in power. The President and his cabinet officers are partisan leaders. Dimock and Dimock say, "in public administration politics is a process that affects every aspect of governmental operations..."  

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influenced by the Secretary's personal philosophies, it should also be remembered that there are many limitations on him.

The major objects of public policy are decided by Congress. The bureaus may suggest shaping of new policies, but the decision is always from Congress. The Secretary of Commerce has to stay within the goals fixed by the laws passed by the Congress, and he cannot shift them by his increased authority over the bureaus.

Secondly, the Congress can restrict executive discretion through its authority to grant or withhold funds and by attaching specific conditions to appropriations for agencies. Furthermore, the Congress may determine the number of employees, their qualifications, and salaries. Though under the Plan the Secretary was to get more authority to make reappropriation of the sanctioned funds, the authority was restricted by the Congress.

The House and Senate committees are in constant contact with the agencies and their heads. Administration of the policies and occasionally, the working of the day-to-day administration are watched by such committees.

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25 Meriam and Schmeckebier, op. cit., p. 125.
26 Ibid., p. 126.
27 Ibid.
administrative officers are sometimes required to explain their actions or their proposals in committees of Congress. It is advantageous for the heads of the bureaus and departments to establish good relations with the committee members and the congressmen.

Legislative investigations, or a threat of investigation, are often sufficient to make the heads of bureaus and departments behave according to the laws.\(^\text{29}\) This is a very effective check on the executive personnel since an investigation may be in the form of an open hearing.

The next major control on a Secretary is from the President through his appointment and removal power. Constitutionally, all executive power is vested in the President,\(^\text{30}\) who must see that the laws are faithfully executed.\(^\text{31}\)

The courts also have a great influence on the actions of the department and bureau heads. For example, the order of the Secretary of Agriculture in the Morgan case was declared invalid because the Secretary did not hear the evidence.\(^\text{32}\) At the time of the steel crisis, the order of the Secretary of Commerce, Charles Sawyer, was nullified by the

\(^{29}\)Ibid.


\(^{31}\)Ibid., Article II, section 3, p. 515.

\(^{32}\)Morgan v. United States, 298 U. S. 468 (1936).
Supreme Court since it exceeded the jurisdiction of the Secretary's authority.33

Pressure groups are another important check on the Secretary's arbitrary actions in the Patent Office. Hathorn, Penniman, and Zink have pointed out five ways by which the pressure groups influence public policy.34 Direct influence upon the Secretary's actions could be created through talking with legislators, appearing at committee hearings, or by sending telegrams and letters to congressmen. Pressure groups also try to influence by working with government officials. Dimock and Dimock state that "every government program has some kind of backing from an interest or client group..."35 Even further, Presthus says, "... real power is sometimes held by anonymous private groups or individuals who manipulate those holding formal positions of authority in the political system."36 If individuals seeking patents felt that their interests were not protected by the Secretary's arbitrary


35Dimock and Dimock, op. cit., p. 341.

actions, they would certainly use available methods to change his policies.

Centralization

Some, including Rich, criticized the Plan because it would centralize power. Several opponents, including Senator Wiley and George E. Folk, alleged that the Plan did not fall within any of the recommendations or purposes of the reorganization act of 1949.

The President in his message, the Secretary in his statement, and the supporters of the Plan in their replies clearly stated that the Plan furthered some of the recommendations of the Hoover Commission, 1949. Those recommendations were these: The line of authority from departmental heads through subordinates should be made clear; the department heads do not have authority commensurate with their responsibilities; the department heads should be given authority to determine the organization within departments. At the time of the hearings, the Secretary actually cited these basic principles. The whole Plan was, in fact, based on these recommendations of the 1949 Hoover Commission. These principles will be discussed in detail in the next section. Here it would suffice to say that the

allegation was entirely wrong since the whole Plan was the outcome of the Hoover Commission's reports.

As seen in Chapter II, the Secretary was trying to make his authority complete and clear in law. The idea was to make delegations clear-cut. There was no devious attempt to centralize power. This will be seen in the next section.

Actual Changes Made and Results

To this point the criticisms of the Plan have been examined, utilizing comments made in the hearings and on the floor of Congress and some general concepts of the American governmental system.

This section of the study will discuss the changes in the Department of Commerce after the Plan was passed. It appears from the organization charts of the Department of Commerce that the Department has been modified several times. Some notable changes during 1950 to 1961 are as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>The Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>1952-53</td>
<td>The Office of Domestic and Foreign Trade was separated into two offices, one for Domestic and one for International Trade.</td>
</tr>
<tr>
<td>1954-55</td>
<td>The Bureau of the Census was brought under the Assistant Secretary for Domestic Affairs, that is, one step down the ladder.</td>
</tr>
</tbody>
</table>

The annual reports of the Secretary of Commerce indicate that as many as twenty-two major changes have taken place by the Secretary's departmental orders. The question remains as to the effect on the Patent Office.

The best method for determining the progress of work of the Patent Office is to examine its receipts and disposals. A table has been prepared at the next page from the information in the annual reports of the Department of Commerce and of the Patent Office. The third column shows the number of applications for patents filed in the Patent Office, including the applications for reissues of previous inventions. The fourth column of the table shows the applications disposed of and the requests actually granted.

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TABLE I
PROGRESS IN THE PATENT OFFICE WORK BETWEEN
1949 and 1960*

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Year</th>
<th>Total applications filed for patents (including applications for inventions and reissues)</th>
<th>Total applications decided with grant of requests</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1949</td>
<td>66,292</td>
<td>30,564</td>
</tr>
<tr>
<td>2</td>
<td>1950</td>
<td>69,295</td>
<td>33,683</td>
</tr>
<tr>
<td>3</td>
<td>1951</td>
<td>63,237</td>
<td>45,646</td>
</tr>
<tr>
<td>4</td>
<td>1952</td>
<td>60,386</td>
<td>43,187</td>
</tr>
<tr>
<td>5</td>
<td>1953</td>
<td>70,343</td>
<td>42,734</td>
</tr>
<tr>
<td>6</td>
<td>1954</td>
<td>75,271</td>
<td>38,753</td>
</tr>
<tr>
<td>7</td>
<td>1955</td>
<td>78,710</td>
<td>29,775</td>
</tr>
<tr>
<td>8</td>
<td>1956</td>
<td>75,733</td>
<td>40,694</td>
</tr>
<tr>
<td>9</td>
<td>1957</td>
<td>73,783</td>
<td>45,102</td>
</tr>
<tr>
<td>10</td>
<td>1958</td>
<td>76,956</td>
<td>43,676</td>
</tr>
<tr>
<td>11</td>
<td>1959</td>
<td>78,363</td>
<td>52,482</td>
</tr>
<tr>
<td>12</td>
<td>1960</td>
<td>79,331</td>
<td>50,607</td>
</tr>
</tbody>
</table>

It will be seen from the table that more applications were received in all the years following 1949—that is, the year of the Plan in question—than before, with the exception of 1951 and 1952. The figures in column four show that more cases were disposed of in all the years after 1949, except for 1955, than before. However, the 1955 figure was only 789 cases below that of 1949. The Secretary of Commerce, in his annual report for 1955, said,

The decrease [in] disposals . . . was due to the unusually large number of new applications filed, fewer examiner assistants because of budgetary limitations, and concentration of examiner efforts for a considerable part of the year on the examination of new applications, which result in relatively few disposals on first action.40

With the exception of 1955, it appears that every year the percentage of disposals in relation to the new applications received increased steadily.

These statistics show that the case load disposed of by the Patent Office increased after the Reorganization Plan was adopted. They do not, of course, show whether political or other undesirable considerations entered into decisions, as feared by opponents of the Plan. At the same time, however, no evidence of improper action was found during the period of the increased work-load, suggesting that the Plan was successful.

CHAPTER V

THE PRINCIPLES OF PUBLIC ADMINISTRATION OBSERVED

In the first chapter the meaning and importance of reorganization--the subject of this thesis--was discussed. The second chapter explained how the authority in the Department of Commerce had been diffused and scattered in various bureaus and the bureau heads. In the next chapter the important questions and answers raised in the House and the Senate committees were examined, along with the discussions on the floor. And in the fourth chapter, the criticisms of the Reorganization Plan No. 5 of 1950 were grouped under broad headings and commented upon. One factor remains to be explained in depth--the principles of public administration underlying this Plan.

The Trend

The President's Committee on Administrative Management of 1937 made a substantive report suggesting an increase in the powers of the Secretaries.\(^1\) The 1949 Hoover Commission

also indicated a strong trend toward giving more functional authority to the Secretaries. As seen earlier, the present Plan was also aimed at centralization of authority, responsibility, and accountability in the Secretary of Commerce. It is the purpose of this section to explore the ideas behind this increase of functional power of the heads of the departments. Increased power is necessary because (1) the Secretary has heavy responsibilities, and (2) the decisions of his department are institutional.

The Nature of the Secretary's Responsibility

The department heads are presidential appointees and are political leaders. They are "... expected to provide a certain political point of view to departmental operations." Theoretically, they should not oppose the President's policies, for they are regarded as extensions of the President's personality. Among the officers and the operational staff under him, the Secretary is supposed to "... create an atmosphere for the guidance of public

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effort." He is the link between the selected civil service careermen and the President. In other words, the secretary of a department has a political responsibility.

Another task of a Secretary is administrative duties. He has to align departmental purposes with the laws; he must build loyalty to the general purpose of his department; he must lead the department; and he should assure efficient performance of the work of his department.

As the leader of the Department, the Secretary is responsible for all the administrative work, operational work, and policy matters of his department. The President has to rely on him to see that all the work of his department is done. Appleby clearly points out that because of other duties, the President has very little time to look into the day-to-day activities of each department.

Moreover, according to Dimock and Dimock, "the President is not chief executive but chief legislator and we judge him by what he succeeds in getting Congress to do." It is not the purpose of this thesis to discuss that particular aspect.

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5Ibid., p. 39. 6Ibid.
7Ibid., pp. 41-42.
of the President's functions further, but it is necessary to understand that the Secretaries have tremendous responsibilities within their departments. The success of a department depends upon the Secretary's abilities to grasp the core of the policies laid down by the law and to be responsible for all the activities of his department. Appleby correctly says that "... the department and agency heads must be viewed as ... actually responsible for everything that has been done."

Specialists, Coordination and Goal Accomplishment

Because of the complexities and comprehensiveness of work and the tremendous responsibilities of the Secretary, he is given assistance. The Secretary has specialists in all of his areas of responsibility to work under him. Specialization is a dire need in a bureaucracy as it is in industry. The specialists are authorities in their respective subjects, and for their work are given sufficient authority, material, and freedom. But a question remains: Is an array of specialists sufficient to run a department successfully?

Henry S. Dennison says, "... the specialist is essential to progress but cannot be left to run the show alone."  

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The specialist's view is a relatively narrow one. The specialized section heads or bureau heads certainly contribute to the efficiency of the department, but they tend to diverge from the common goals. Because of their deep knowledge in one subject and skills, the specialists try to create their own rights. When these rights are unchecked, such units become impediments in the organization.

Occasionally the experts, having grown stronger and having become entrenched in the organization, are likely to express doubts about others and to show lack of respect toward superiors. Dimock and Dimock write that "... most experts ... belittle the scientific character and importance of the other fellow's specialty and magnify their own, creating social and professional distinctions that interfere with cooperative effort."\(^{12}\) By forgetting common goals, the specialists are less competent as administrators. Therefore, they should never have authority that equals or excels that of their superiors.

Luther Gulick writes that "administration has to do with getting things done; with the accomplishment of defined objectives."\(^{13}\) The most important job of a department is to work toward some definite goals. Whenever the specialists of the

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\(^{12}\)Dimock and Dimock, op. cit., p. 361.
\(^{13}\)Gulick and Urwick, op. cit., p. 191.
Various bureaus lose sight of these goals, the Secretary has to direct their efforts to the objectives, to direct a coordinated action. The whole department should run as one continuing activity.

Each individual comes to work with his own background—social, denominational, environmental, and so on. Also, each bureau works in a particular field. The Census Bureau collects statistics about population and production. And one of the jobs of the Bureau of Foreign and Domestic Commerce is to collect information about the facilities for foreign trade. But the Secretary has to coordinate all of these activities with the general policy of the Commerce Department. In other words, the Secretary has to ensure that neither the individual employee's interests nor the bureau's limited outlook conflicts with the general, and greater, interest of the department.

Institutional Decisions

Each department is necessarily an institution—an institution within the larger institution—the executive branch. As pointed out by Chester A. Newland, "the executive function is becoming increasingly institutional rather than individual in character."14 Appleby says that "the process

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of democratic public administration is one of group judgment. . . ."15 It is perfectly true that in the enormously expanded work of the modern government, many decisions must be made at the lower levels. Furthermore, when a head of a department makes a decision, the case is almost always prepared by the subordinates and a decision suggested by them. However, it is equally true that when the subordinates make decisions, they should stay within the orbit of authority delegated to them by their superiors. Likewise, when a decision is suggested to the head by a subordinate, the former is and should be free to alter it or substitute a better one for it. Robert Presthus says that although a subordinate is torn between conflicting demands, he will give priority to claims of the superiors.16 Appleby also asserts that group judgments are subject to review, modification, or revocation.17

Newland provides the reason for such a situation when he says that "... goals [of organizations] are seldom clear and rarely simple. . . ."18 A welfare state has various


functions to perform, some being unclear and some needing adjustments. The laws passed by Congress provide broad policies. As they come to the relevant department, the general goals need to be broken up and made very specific for the operating agencies and their staffs. And when they are worked upon by the staff according to the plan and come up the line, they need to be coordinated. The primary object of an industry is crystal clear: to produce more goods and increase profit. But the objectives of a modern, complex government department are several. It is a multipurpose, huge endeavor. Furthermore, as shown in the first chapter of this study, the administration of a democratic state is constantly under the pressure of various changing currents and pressure groups. It is, therefore, a difficult task for the head of a department to reconcile diverse goals with the changing internal and external politics. Therefore, he needs greater authority.

Sanction of Authority

Upon acceptance of the foregoing, one question remains: how can the institutional decisions be channeled into a coordinated effort? Besides the leadership qualities that the Secretary may have, some sort of sanction is required, particularly in the form of sanctioned functional authority.
As explained by Meriam and Schmeckebier, "function" is a much broader term than "activity."\textsuperscript{19} Activities are done in furtherance of broad functions or in achieving general objectives.\textsuperscript{20} The Secretary wanted all the functional authority vested in him, not in each activity. Once he passes down the President's orders, he should be able to get compliance.

As pointed out by Mooney and Reiley, the principle at the root of the process of organization is authority, meaning formal authority.\textsuperscript{21} A head should be able to require action of others. This is called control, which means "... regulation and manipulation of something."\textsuperscript{22} Urwick says, "a failure to allocate the necessary authority ... at one or other of the essential levels or in respect of a vital function may cause organizations to work very badly."\textsuperscript{23} Effective control needs help, in other words, sanction of formal authority.

\textsuperscript{19}Meriam and Schmeckebier, \textit{Reorganization of the National Government} (Washington, 1939), p. 87.

\textsuperscript{20}\textit{Ibid.}


\textsuperscript{23}Urwick, \textit{op. cit.}, p. 45.
Mary Follett said, "authority is . . . a form of voluntary consensus." But reliance entirely upon this principle leads to a corollary that a subordinate has a choice every time to reject his superiors' advice, direction, or order. He can follow his own pattern of behavior. Certainly, such a situation does not exist because there are some factors which work prior to the acceptance of superiors' directions by subordinates. A subordinate must calculate the results of his acceptance or rejection of his superiors' directions. If the Secretary's orders are not followed, there is the possibility of departmental action, pay reduction, or removal. If accepted, everything runs smoothly. Such calculating behavior of subordinates necessarily assumes the formal nature of authority.

This certainly does not suggest that administrative directions and subsequent acceptance are based on coercion or fear. Acquiescence founded purely on fear leads to the collapse of an organization. A good example is the Czarist empire in Russia.

The core of the acceptance theory is then optimum balance between the existence of formal authority in the superior and its acceptance by subordinates. The act of acceptance follows the opportunity to accept. The functional authority should

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\(^{24}\)Dimock and Dimock, op. cit., p. 166, citing Mary Follett.
first exist in the superior, who will distribute power to others or will advise them to act in a particular manner. As pointed out by Dimock and Dimock, "all parts of the program must be integrated under the executive direction of a single person, who then delegates authority and responsibility as needed."25 All functional authority in an organization should first pull together like a water reservoir.

Presthus defines authority as "the capacity to evoke compliance in others on the basis of formal position and of any psychological inducements, rewards, or sanctions that may accompany formal position."26 While further explaining the sources of authority, he says, "sanctioned control of organized resources through formal position is . . . the major source of power. . . ."27 Therefore, specific statutory provisions making clear the holders of functional authority are necessary.

Legal Implications

The Secretary of Commerce wanted complete recognition in law of his functional authority over his department. As

25Dimock and Dimock, op. cit., p. 231.
27Ibid.
seen in Chapter II, he had general supervisory authority but it was not clear. For example, if A owes B $100, and A writes "I owe you $100," it appears to be a clear statement of fact and law that A owes B $100 and is willing to repay the money some time. But under the law such a statement is not quite enough for B to legally claim the amount. A should further say, "and I promise to pay you." Likewise, the provisions of the United States Code giving the Secretary power to supervise and direct the department were not quite sufficient according to the proponents of the Plan. Furthermore, the task force report on departmental management says that "in practice the phrase 'direction and supervision' had been too frail a support for effective responsibility and authority in a department head."

Dimock and Dimock write that "to be effective, ... supervision must be based on authority adequately delegated." At every level in the administration, authority should be precisely located and defined. Accordingly, the Secretary requested that all functional power be vested clearly and simply in him. He could then delegate authority in the most

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30 Dimock and Dimock, *op. cit.*, p. 221.
logical manner. The Secretary is the legal head of the Department of Commerce. Though various orders are signed by the subordinate bureau heads and sub-heads, all actions are taken in the Secretary's name. All the legal notices against the department are issued in the name of the Secretary and the Secretary only, though independently or jointly with other officers. The Secretary was not disturbing the current arrangement but was trying to make his legal responsibility and authority clearer.

Reasons for Opposition

Although the Plan was founded on sound principles of good management, it was opposed. It may be that some reorganization proposals appear to be creating hierarchal pyramids in order to bring about an integrated governmental structure with the President at the top. As pointed out by Millett, "... the legislature is often unwilling to accept the major assumption that the Chief Executive is the only effective avenue for popular control over the bureaucracy." The opposition may result, therefore, from the frequent reluctance on the part of Congress to make the executive stronger. It can be said that the opposition

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probably felt that by vesting all functional authority in the Secretary of Commerce, the President's power, in turn, was being increased. The interest groups, namely the patent lawyers, felt perhaps that their influence in the patent program would be lessened because they would have to face the Secretary in addition to the Commissioner, and, moreover, the Secretary was a political leader.

Conclusions

The following generalizations can be made from the preceding discussions:

1. There was no overt opposition to the Plan except from the patent lawyers and a few Congressmen. No member of any bureau in the Department of Commerce or of the Patent Office opposed the Plan, indicating perhaps that the opposition was politically based and/or was based on groundless fears.

2. The evidence indicates that the patent lawyers' fear that the Plan would hamper the work of the Patent Office was baseless. They might have thought that they would have to face an additional officer—namely, the Secretary of Commerce—after the Plan was passed, which would disturb the interests of the applicants. This presumption has been found wrong also.
3. Both opponents and proponents wanted efficiency and economy, but there was opposition even though the Plan did not disturb any current arrangement in the Patent Office and did not take away any quasi-judicial functions of the members of the Staff. This shows that efficiency and economy are not the only criteria for opposition. It is sometimes politically motivated.

The principles of public administration emphasized in the Plan were as follows:

1. There should be a clear line of command from a cabinet head down through his agency and bureau heads to every employee.

2. For this purpose all functional authority and power of a department must first be vested in its head.

3. This arrangement enables a head to shoulder all the responsibilities of his department. Because the Secretary of Commerce is accountable to the President and to the Congress through the President, he should have the tools to frame his program.

4. The idea behind centralization of functions was to decentralize in a logical fashion. The Plan encouraged decentralization, but opposed complete autonomy of the bureaus.
5. A bureau or an administrative agency should be responsible to the President and the Congress, but only through the head of the department.

6. By this arrangement it is easy to fix responsibility when there is some error.

7. Delegation of authority to the specialists is necessary, but they should recognize the functional authority of the head.
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