

and that, because no rollcall votes were taken at the plenary sessions of the Conference, it is impossible to trace precisely the instances in which Conference participants "crossed the line," as it were, by taking a position contrary to that which might be expected of them. Nevertheless, it remains my feeling that the proceedings of the former Conference gave no evidence of "bloc voting." The reasons for this conclusion are discussed in the attached memorandum.

If I can be of any further assistance to your subcommittee in this matter, please do not hesitate to let me know.

Sincerely yours,

MAX D. PAGLIN, *General Counsel.*

MEMORANDUM

A question has arisen as to whether there was any evidence of "bloc voting" in the proceedings of the recently concluded Administrative Conference of the United States.

In my opinion, based on my participation in the proceedings of that Conference, there were no indications that the Conference participants divided themselves into "blocs" representing their particular interests. Quite to the contrary, as recognized by the Conference in its final report to the President, of December 15, 1962, and for the reasons hereinafter enumerated, it is my belief that the Conference participants faithfully complied with the mandate of section 5 of Executive Order 10934, enjoining each member of the Conference to participate in all respects "* * * according to his own views, and not necessarily as a representative of any department or agency or other group from which he may have been chosen."

In this connection, the final report of the recently concluded Conference notes (p. 11) :

"4. *Unanimity in basic interest.*—In this Conference bloc division was not discernible between practitioners and Government personnel, or between big agencies and small agencies, or between departments and independent agencies. Specters of such divisions were exorcised by an all-pervading interest in the better administration of justice and better government, and by the active presence of strong personalities from many points of origin."

I believe that the absence of bloc voting was due to a number of reasons, including (a) the makeup of the Conference committees, (b) the nature of the recommendations made by the Conference, (c) the action of Conference members, as evidenced by the debates at the plenary sessions, and (d) the mandate of section 5 of Executive Order 10934, quoted above.

The first factor, the makeup of the committees, is largely self-explanatory. Since the committees of the Conference consisted of a cross section of representatives from the Government, the bar, and the academic world, this composition by itself tended to discourage bloc division.

Here, it seems to me, that once the participants became aware of an operation which encompassed the interests of all those who have a concern with procedural problems, they took a broader view of their roles, at the same time rejecting the sharply partisan viewpoints which it might have been expected self-interest would dictate.

As to the nature of the Conference's recommendations, the procedural nature of such recommendations also had an important effect in blurring lines of self-interest, thus again permitting Conference participants to view recommendations in terms of their overall effect. Of course, this is not to say that simply because the Conference's recommendations were procedural, there were no sharply expressed viewpoints, for there were. Still, to my mind, there was none of that rigidity of views which, carried to its logical limits, could be expected to make for bloc voting. For instance, many of the recommendations of the Conference, such as those dealing with the right to counsel, subpoena powers, contract disputes, debarment of contractors, and ex parte communications would result in the imposition of new and more stringent standards of practice upon the Government. The cleavage along lines of self-interest which might normally be expected here—i.e., flat opposition by Government representatives; strong advocacy for the new standards by non-Government conferees—simply did not develop. In fact, in some instances, surprising as it may seem, strong support for the new standards came from Government personnel, who were entirely willing to agree and urge that the need for greater fairness dictated the new requirements. Further, opposition to these recommendations came from a cross-section of the participants, not from the Government side alone.