

The Final Report of the Attorney General's Committee on Administrative Procedure states that:

"The committee has regarded as the distinguishing feature of an 'administrative' agency the power to determine, either by rule or by decision, private rights and obligations."

The president of the American Bar Association, in an article discussing the pending bill which became the APA, stated:

"It had come to be widely held that such legislation * * * should apply to kinds of operations rather than to forms of agencies. Accordingly, the proposed statute deals primarily with the *legislative and judicial functions of administrative agencies*." [Emphasis added.]

The comments of Senator McCarran, chairman of the Senate Judiciary Committee, during consideration of S. 7, also illuminate the philosophy reflected in the APA:

"We have set up a fourth order in the tripartite plan of Government which was initiated by the founding fathers * * * They set up the executive, the legislative, and the judicial branches; but since that time we have set up a fourth dimension, if I may so term it, which is now popularly known as administrative in nature. So we have the legislative, the executive, the judicial, and the administrative.

* * * * *

"The rules and regulations [of the administrative agencies] are the very things that impinge upon, curb, or permit the citizen who is touched by the law * * *

* * * * *

"S. 7, the purpose of which is to improve the administration of justice by prescribing fair administrative procedure, is a bill of rights for the hundreds of thousands of Americans whose affairs are controlled or regulated in one way or another by agencies of the Federal Government. It is designed to provide guaranties of due process in administrative procedure."

The report also quotes from Dean Landis' book, "The Administrative Process":

"* * * agencies were created whose functions embraced the three aspects of government * * * These agencies, tribunals, and rulemaking boards were for the sake of convenience distinguished from the existing governmental bureaucracy by terming them 'administrative.' The law the courts permitted them to make was named 'administrative law,' so that now the process in all its component parts can be appropriately termed the 'administrative process.'"

In debates on S. 7 in the House of Representatives Congressman Walter said:

"We are not here concerned so much with mere custodial or managerial tasks of management. But we are concerned with administrative powers which are compulsory in their nature. We are mainly concerned with administrative processes, in other words, which are regulatory in their effect."

Therefore, it is clear that the exclusions are intended primarily to mark the distinction between those matters which are purely "executive" and those which are "administrative," to use Senator McCarran's terms.

Respecting the specific exclusions from section 4 of S. 7, Congressman Walter also said:

"The exemption of military and naval functions needs no explanation here. The exempted foreign affairs functions are those diplomatic functions of high importance which do not lend themselves to public procedures and with which the public is ordinarily not directly concerned. The exemption of proprietary matters is included because in those cases the Government is in the position of an individual citizen and is concerned with its own property, funds, or contracts."

5. Examples of matters excluded from the APA and S. 1664

a. *Exclusion resulting from the definition of agency.*—Section 2(a) of the APA defines "agency," as used in the act, to exclude Congress, the courts, or the governments of the possessions, territories, or the District of Columbia. The term "courts" includes the Tax Court, the Court of Customs and Patent Appeals, the Court of Claims, and similar courts. The act also excludes (except from sec. 3, "Public Information") agencies composed of representatives of the parties or of representatives of organizations of the parties, such as the