

December 18, 1940

[Veto of Walter Logan Bill]

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FDR Speech File

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To the House of Representatives:

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I herewith return, but without my approval, the bill (H.R. 6324) entitled "An Act to Provide for the Expedited Settlement of Disputes with the United States and for Other Purposes."

The objective of the bill is professedly the assurance of fairness in administrative proceedings. With that objective there will be universal agreement. The promotion of expeditious, orderly, and sensible procedure in the conduct of public affairs is a purpose which commands itself not only to the Congress and the courts, but to the executive departments and administrative agencies themselves.

Despite the tremendous growth in the business of administration in recent years, I have observed that there has been a substantial improvement in the standards of administrative action. That does not mean that further improvement is not needed.

I am convinced, however, that in reality the effect of this bill would be to reverse and, to a large extent, cancel one of the most significant trends of the twentieth century in legal administration.

That movement has its origin in the recognition that the conventional processes of the courts are not adapted to handling controversies in the mass. Court procedure is adapted to the intensive investigation of individual controversies. But it is impossible to subject the daily routine of fact-finding in many of our agencies to court procedure. Litigation has become costly

beyond the ability of the average person to bear. Its technical rules of procedure are often traps for the unwary and technical rules of evidence often prevent common-sense determinations on information which would be regarded as adequate for any business decision. The increasing cost of competent legal advice and the necessity of relying upon lawyers to conduct court proceedings have made all laymen and most lawyers recognize the inappropriateness of entrusting routine processes of government to the outcome of never-ending lawsuits.

The administrative tribunal or agency has evolved in order to handle controversies arising under particular statutes. It is characteristic of these tribunals that simple and non-technical hearings take the place of court trials, and informal proceedings supersede rigid and formal pleadings and processes. A commonsense resort to usual and practical sources of information takes the place of archaic and technical application of rules of evidence, and an informed and expert tribunal renders its decisions with an eye that looks forward to results rather than backwards to precedent and to the leading case.

The administrative tribunal is not a recent innovation. The Interstate Commerce Commission, one of the first of the kind, was created as long ago as 1886. The administrative process and the administrative tribunal were firmly recognized by the courts many years ago. Before the commencement of my administration the Supreme Court, speaking through the present Chief Justice, definitely recognized the usefulness and constitutionality of the administrative tribunal and, speaking of a statute to create

such a tribunal, referred to "the obvious purpose of the legislation to furnish a prompt, continuous, expert, and inexpensive method for dealing with a class of questions of fact which are peculiarly suited to examination and determination by an administrative agency specially assigned to that task."

Forward-looking judges, experienced administrators, and many progressive and public-spirited lawyers have recognized that American jurisprudence must advance along two lines:

First, the cheapening, expediting, and simplifying of the judicial process itself. This cause has been greatly advanced through the adoption by the Supreme Court of simplified rules governing civil proceedings under an authorization made upon my recommendation. Revision of the rules of criminal practice has now also been authorized, upon my recommendation.

Secondly, the reservation of the judicial process for cases appropriate to its exercise and protection of the courts from being overwhelmed with masses of controversies, growing out of regulatory and remedial statutes. For this purpose the judicial process requires to be supplemented by the administrative tribunal wherever there is a necessity for deciding issues on a quantity production basis.

Notwithstanding recognition of this necessity by progressive lawyers, jurists, educators, administrators, and the more progressive bar associations, a large part of the legal profession has never reconciled itself to the existence of the administrative tribunal. Many of them prefer the stately ritual of the courts

in which lawyers play all speaking parts to the simple procedure of administrative hearings which a client can understand and even participate in. Many of the lawyers prefer that decision be influenced by a shrewd play upon technical rules of evidence in which the lawyers are the only experts, although they always disagree. Many of the lawyers still prefer to distinguish precedent and to juggle leading cases rather than to get down to the merits of the efforts in which their clients are engaged. Such lawyers have led a persistent fight against the administrative tribunal.

In addition to the lawyers who see the administrative tribunal encroaching upon their exclusive prerogatives there are powerful interests which are opposed to reforms that can only be made effective through the use of the administrative tribunal. Wherever a continuing series of controversies exist between a powerful and concentrated interest on one side and a diversified mass of individuals, each of whose separate interests may be small, on the other side, the only means of obtaining equality before the law has been to place the controversy in an administrative tribunal. Individual shippers could not cope in the courts with great railroad corporations over excessive charges that were small in single cases but important in the aggregate. So the Interstate Commerce Commission was created. Power consumers could not deal with electric rates, nor could individual security holders pit their strength against the concentrated power of brokerage interests, nor could

individual laborers bargain on equality with the concentrated power of employers. The very heart of modern reform administration is the administrative tribunal. A "truth in securities" act without an administrative tribunal to enforce it, or a labor relations act without an administrative tribunal to administer it, or rate regulation without a commission to supervise rates would be sterile and useless. Great interests, therefore, which desire to escape regulation rightly see that if they can strike at the heart of modern reform by sterilizing the administrative tribunal which administers them, they will have effectively destroyed the reform itself.

The bill that is now before me is one of the repeated efforts by a combination of lawyers who desire to have all processes of government conducted through lawsuits and of interests which desire to escape regulation. The effort was made in the recent New York Constitutional Convention by this same combination of influences to deprive state tribunals of their authority. That effort was wisely rejected by the people at the polls. The effort was continued on a national scale to destroy the administrative tribunals which enforce the nation's important laws. It is from this background that this bill has emerged.

While I could not conscientiously approve any bill which would turn the clock backwards and place the entire functioning of the government at the mercy of never-ending lawsuits and subject all administrative acts and processes to the control of the judiciary, I am not unaware that improvement in the administrative process is

as much the duty of those concerned with it as the improvement of legal procedure is a duty of the legal profession.

Recognizing this, more than a year ago I directed the Attorney General to select a committee of eminent lawyers, jurists, scholars, and administrators to review the entire administrative process in the various departments of the executive government and to recommend improvements, including the suggestion of any needed legislation. For over a year such a committee has been taking up in detail each of the several typical administrative agencies and has been holding prolonged sessions, hearings, inquiries, and discussions. Its task has proved unexpectedly complex. The objective of this committee, however, is not to hamper administrative tribunals but to suggest improvements to make the process more workable and more just and to avoid confusions and uncertainties and litigations. I should desire to await their report and recommendations before approving any measure in this complicated field.

Meanwhile, without substantial congressional hearings to consider the problems of the executive departments affected, this bill has been passed and sent to me. This bill has been unanimously condemned by the Committee on Administrative Law and the Committee on Federal Legislation of one of the oldest and most respected Bar Associations of America, the Association of the Bar of the City of New York, which, while recognizing the need of improvement in the administrative process, have said:

"Nevertheless, we think that the present bill, under the guise of reform, would force administrative and departmental agencies having a wide variety of functions into a single mold which is so rigid, so needlessly interfering, as to bring about a widespread crippling of the administrative process."

Agencies affected, including many whose activities have an important collateral effect on the defense program have pointed out serious delays and uncertainties which would be caused by the bill, if enacted.

At my request an analysis of the bill has been prepared by the Attorney General and is submitted herewith for the information of the Congress. Apart from a disagreement with the general philosophy manifest in some provisions of the bill, I am convinced that it would produce the utmost chaos and paralysis in the administration of the government and that it is an invitation to endless and innumerable controversies at a time when we can least afford to spend either governmental or private effort in the luxury of litigation.

For these reasons I return the bill without approval.

To be filed in Miscellaneous drafts
of Messages to Congress or Vetoes.

To the House of Representatives:

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*Administrative Justice, Commission for, and
Investigation, Hear, Tribunal, Expedited.*

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~~and~~ procedure ^{sought to be} a duty of the legal profession.

Recognizing this, more than a year ago I directed the Attorney General to select a committee of eminent lawyers, jurists, scholars, and administrators to review the entire administrative process in the various departments of the executive government and to recommend improvements, including the suggestion of any needed legislation. For over a year such a committee has been taking up in detail each of the several typical administrative agencies and has been holding prolonged sessions, hearings, inquiries, and discussions. Its task has proved unexpectedly complex. The objective of this committee, however, is not to hamper administrative tribunals but to suggest improvements to make the process more workable and more just and to avoid confusions and uncertainties and litigations. I should desire to await their report and recommendations before approving any measure in this complicated field. In this thought which, however, will be carried out in the course of the bill, I am fully satisfied.

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For these reasons I return the bill without approval.

At today, in sustaining American ideals of justice, no voice of action is worth more than a formal of argument.

The White House
December 18, 1940



Office of the Attorney General
Washington, D.C.

December 16, 1940

MEMORANDUM FOR THE PRESIDENT.

I would suggest that early in the message on the Walter-
Logan Bill something similar to the following should be included.

A
It appears from the text of the Bill that the Congress
considered the procedures and the delays incident to the procedures
provided by the Act inappropriate to agencies engaged in National
Defense functions. It is doubtless due to oversight that
important functions performed by the Maritime Commission, the
Department of Commerce, and the Treasury are affected by the Bill.
Functions as important to our economic defense as Foreign Funds
Control in the Treasury, where general regulations must be made
with utmost promptness, would be subjected to delay and hearing
and notice of hearing in advance. Quite apart from the
general philosophy of this Bill, its unintentional inclusion of
defense functions would require my disapproval at this time.

Respectfully submitted,

R. F. S.
Attorney General.