

APPENDIX B

TWELVE POINT PRIMER

BY

Honorable
JOSEPH B. EASTMAN

From His Response
At a Silver Anniversary Celebration
Held in His Honor February 17, 1944
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Commission Practitioners

12 POINT PRIMER

(1) With the country as big and complex as it is, administrative tribunals like the Interstate Commerce Commission are necessities. Probably we shall have more rather than less. To be successful, they must be masters of their own souls, and known to be such. It is the duty of the President to determine their personnel through the power of appointment, and it is the duty of Congress to determine by statute the policies which they are to administer; but in the administration of those policies these tribunals must not be under the domination or influence of either the President or Congress or of anything else than their own independent judgment of facts and the law. They must also be in position and ready to give free and untrammelled advice to both the President and Congress at any time upon request. Political domination will ruin such a tribunal. I have seen this happen many times, particularly in the States.

(2) The courts were at one time much too prone to substitute their own judgment on the facts for the judgment of administrative tribunals. They are now in danger of going too far in the other direction. The principle that it is an error of law to render a decision not supported by substantial evidence is a salutary principle. The courts should enforce it.

(3) An administrative tribunal has a broader responsibility than a court. It is more than a tribunal for the settlement of controversies. The word "administrative" means something. The policies of the law must be carried out. If in any proceeding the pertinent facts are not fully presented by the parties, it is the duty of the tribunal to see to it, as best it can, that they are developed of record. A complainant without resources to command adequate professional help should be given such protection. The tribunal should also be ready to institute proceedings on its own motion, whenever constructive enforcement of the law so requires.

(4) There is no safe substitute in the procedure of the tribunal for full hearing and argument of the issues, when they are in controversy, although the hearing need not always be oral. This takes time, but it is time well spent.

(5) The decisions of the tribunal should present succinctly the pertinent facts, as they are found to be, and the conclusions reached, but also state clearly the reasons for the conclusions.

(6) The statutes which the tribunal administers should be well, simply, and carefully framed, but the personnel which does the administering is more important than the wording of the statute. Good men can produce better results with a poor law than poor men can produce with a good law.

(7) It is not necessary for the members of the tribunal to be techni-

cal experts on the subject-matter of their administration. As a matter of fact, you could not find a man who is a technical expert on any large part of the matters upon which the Interstate Commerce Commission finds it necessary to pass. The important qualifications are ability to grasp and comprehend facts quickly, and to consider them in their relation to the law logically and with an open mind. Zealots, evangelists, and crusaders have their value *before* an administrative tribunal, but not *on* it. Other important qualifications are patience, courtesy, and a desire to be helpful to the extent that the law permits.

(8) Moral courage is, of course, a prime qualification, but there are often misapprehensions as to when it is shown. The thing that takes courage is to make a decision or take a position which may react seriously in some way upon the one who makes or takes it. It requires no courage to incur disapproval, unless those who disapprove have the desire and the power to cause such a result. Power is not a permanent but a shifting thing. I can well remember the time when it was a dangerous thing to incur the displeasure of bankers, but there has been no danger in this since 1932. It became a greater danger to incur the displeasure of farm or labor organizations. There is nothing more important than to curb abuse of power, wherever it may reside, and power is always subject to abuse.

(9) Selection of the members of an administrative tribunal from different parts of the country has its advantages, but they turn to disadvantages, if the members regard themselves as special pleaders for their respective sections.

(10) Sitting in dignity and looking down on the suppliants from the elevation of a judicial bench has its dangers. A reversal of the position now and then is good for the soul. It has for many years been my good fortune to appear rather frequently before legislative or congressional committees. They are a better safeguard against inflation than the *O.P.A.*

(11) In any large administrative tribunal, like the Interstate Commerce Commission, a vast amount of the real work must necessarily be done by the staff. It is a difficult problem to give the individual members of the staff proper recognition for work well done—recognition on the outside as well as the inside. It is very important that this problem be solved, but I am frank to say that its full solution has not yet been reached.

(12) One of the great dangers in public regulation by administrative tribunals of business concerns is the resulting division of responsibility, as between the managements and the regulators, for the successful functioning of these concerns. For example, there was a tendency at one time, and it may still exist, on the part of those financially interested in the railroads to think of the financial success of those properties solely in terms of rates and wages and the treatment of rates and wages by public

authorities. Sight was lost of the essentiality of constant, unremitting enterprise and initiative in management. The importance of sound public regulation cannot be minimized, but it must not be magnified to the exclusion of those factors in financial success upon which ordinary private business must rely.