tioned the American Telephone & Telegraph hearing, and the manner in which it was conducted; the censorship question which developed subsequent to the Commission's order with respect to short wave international broadcasting,[18] the matter of political broadcasting, in which a radio station still stands between the devil and the deep sea; the extensive questionnaires which the Commission has submitted to all broadcasting stations in recent years;[19] the general allocation with which the Committee will be confronted when the Havana Treaty comes into force; as well perhaps as the problem of stations' sharing time on the same wave length, which has in the past been responsible for some of the most bitter and most extended litigation with which the Commission and the courts have had to deal.

That in some respects the monograph has, since January 1st, become out of date, is simply another illustration of what Mr. Justice Frankfurter in the *Pottsville* case termed "the rapidly fluctuating factors characteristic of the evolution of broadcasting and of the corresponding requirement that the administrative process possesses sufficient flexibility to adjust itself to these factors." Thus by a recent order the Commission has terminated all broadcasting licenses as of August 1st next, in lieu of the three-year period referred to in the monograph[20] and it has likewise, on February 28, 1940, approved new rules to regulate "limited commercial" television operation, although the allocation of channels for television was deferred until the conclusion of the hearings on frequency modulation broadcasting.[21] The omission of matters such as these is not an indication of any inadequacy in the monograph, for the Commission's rules, its procedure, and the matters with which it deals change from week to week and often from day to day. On the contrary, the fluid nature of the subject gives the monograph hope of achieving greater effectiveness than it could have if it dealt with a formalized commission whose field of action was a static one.

JOHN R. GREEN.†

MONOGRAPH NO. 7, ADMINISTRATION OF THE GRAIN STANDARDS ACT.

In the administration of the Grain Standards Act by the Department of Agriculture, grades are established, inspectors to apply these grades in the inspection of grain are licensed or deprived of license, the work of the licensed inspectors is supervised and reviewed, misrepresentation as to grades is determined, and the findings published.[1]

Violation of certain of the provisions of the Act is a misdemeanor subject to fine of not more than $1,000 or to imprisonment for not more than one

18. Cf. H. R. 8509, which would amend the Communications Act "in order to preserve and protect liberty of expression in radio communication," introduced in the House of Representatives, Feb. 16, 1940.

19. The data obtained by these questionnaires, although published, do not appear to be made use of in the monograph.

20. P. 4. See (March 1, 1940) Broadcasting 16.

21. (March 1, 1940) Broadcasting 17.

† Member of St. Louis, Missouri, Bar.

1. (1916) 39 Stat. 482, (1939) 7 U. S. C. A. sec. 71.

year or both,[2] but these punishments are not imposed by the Department of Agriculture. On the contrary, such punishment is imposed in accordance with the ordinary judicial processes by federal courts. Misrepresentation respecting grade is punishable only by a "slap on the wrist" in the shape of publication by the Secretary of his findings.

Licensed inspectors grade grain[3] and their action is reviewed by District Supervisors. The action of the latter in turn is reviewed by Boards of Review,[4] whose action ultimately becomes the finding of the Secretary when the findings are signed in the Secretary's name by an employee in the Grain Division.[5] Such findings are only *prima facie* evidence in the courts of law,[6] so that if questioned in court they must be proved in some other manner.

The most drastic procedure performed by the Department under the Act concerns the suspension or revocation of inspectors' licenses. Although it may result in loss of a means of livelihood, this procedure affects only a part of the personnel provided by the Act for its own administration rather than some portion of the public in general, as is the case with many other administrative agencies.[7] Certainly a wide latitude is allowed to the Department in the policing of its own instrumentalities, even though they are compensated by fees collected from the public for whom the inspection service is performed.

In this aspect of the proceedings of this agency, just mentioned, lies the principal difference between the administration of the Grain Standards Act and the conduct of the vast majority of the administrative agencies of the federal government. This difference should and does foster an entirely different *modus operandi*. Any attempt to assimilate to court procedure, as ordinarily understood, the procedure of the Department in licensing and unlicensing inspectors, in grading grain, in establishing general standards, and in merely publishing findings of misrepresentation of grade, is not only unnecessary but also probably unsound.

As aptly pointed out in the monograph,[8] the requirements of formal hearing procedure, intermediate reports, insulation of judge from advocate, *et cetera*, simply do not apply to proceedings of the kind contemplated by the Grain Standards Act, except of course to the extent that they are required by the language of the Act itself.[9]

In the actual operation of the Grain Standards Act three complaints

2. (1916) 39 Stat. 485, (1939) 7 U. S. C. A. sec. 85.
3. 2,269,713,000 bushels in 1939, Monograph 7, p. 4.
4. There were 986 such appeals in 1939, Monograph 7, p. 4.
5. (1916) 39 Stat. 484, (1939) 7 U. S. C. A. sec. 78; Monograph 7, p. 32.
6. (1916) 39 Stat. 484, (1939) 7 U. S. C. A. sec. 78; Monograph 7, p. 33.
7. *E. g.*, the Treasury Department in the collection of taxes; the Federal Trade Commission in a cease and desist order.
8. P. 8.
9. *E. g.*, section 80 provides for an opportunity for a hearing to a licensee before suspension or revocation of a license. It is seriously questioned whether this right would exist independently of the statutory requirement, even under the doctrine of the Morgan case. (Morgan v. United States (1936) 298 U. S. 468, and (1938) 304 U. S. 1, 23.)

have been met. The first complaint is that federal supervision of licensed inspectors is not uniformly exercised. In the busy season much grain is loaded into warehouses past inspectors who are inadequately supervised. At a later date when the grain is loaded out of the warehouse a much closer supervision may be exercised over the inspection. The result is that grain which was loaded into a warehouse as one grade may come out of the warehouse as another grade, although the only difference lies in the kind of inspection given.

The second complaint is that while the inspectors are licensed, the samplers are not. In a rush period inexperienced men may be employed to sample cars. An inspection can be no better than the sample. If, for example, a sample is merely a pan-full of grain scooped off the top of the car, it would be the merest accident if it accurately represented the entire contents of the car. If samplers were required to be licensed by the federal government, the objection might well be obviated.

The third complaint is that in many, if not most, instances the Board of Appeal uses the Supervisor's sample instead of its own. The monograph states that either practice may be followed by the Board. It has been suggested by persons in the trade that the Board should always draw a new sample by a competent person of its own selection.

RALPH R. NEUHOFF.†

MONOGRAPH NO. 8, RAILROAD RETIREMENT BOARD.

The Railroad Retirement[1] and Unemployment Insurance[2] Acts represent a significant departure from the time-honored, but unrealistic theory that regulatory measures concerning the labor relationship need go no farther than the actual terms and conditions of employment. Of late, the view has become generally accepted that unless satisfactory provisions are made for the care of railroad employees who are separated from the service because of advanced age, consolidation of several carriers, or technological change, men in the service will be under such a sense of insecurity and uncertainty as will affect their efficiency and lead to unrest and strife obstructing transportation.[3] The provisions of the above acts which recognize these truths and which purport to remedy the asserted evils may be briefly stated. The Railroad Retirement Act applicable to carriers by railroad[4] provides for

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† Lecturer in Law, Washington University.

1. Railroad Retirement Act of 1937, 50 Stat. 307, c. 282, (1939 Supp.) 45 U. S. C. A., sec. 228a-228r.

2. Railroad Unemployment Insurance Act of 1938, 52 Stat. 1094, c. 680, (1939 Supp.) 45 U. S. C. A., sec. 351-367.

3. United States v. Lowden (1939) 60 S. Ct. 248; also see dissent of Mr. Justice Hughes in Railroad Retirement Board v. Alton R. R. (1935) 295 U. S. 330, 374, which invalidated the Railroad Retirement Act of 1934 on the dual grounds that it was beyond the proper scope of the commerce clause and amounted to a deprivation of due process.

4. Railroad Retirement Act of 1937, 50 Stat. 307, c. 282, (1939 Supp.) 45 U. S. C. A. sec. 228a-228r.