the end the book may find its largest use in serving as a check-list for the legal mechanic faced with a "stalled car."

Looking back over administrative law writing in the post-war period I wonder if we are not neglecting investigation of the administrative process. For instance, the Hoover Commisison Staff might have taken up where the staff of the Attorney General's Committee left off in 1940, but it did not.[19] The state and local agencies, in particular, could be studied and described.[20] The pre-war materials have been digested, analyzed, codified to some extent, and discussed along with the case materials in a number of treatises. Before we launch into Act II of the administrative law drama, called for by the American Bar Association National Committee on Legislative Matters,[21] perhaps we should investigate agency by agency to see how things are working and what is needed.

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[19] Consult Davis, Evidence, 30 N.Y.U.L. Rev. 1309, 1341 (1955): "Satisfactory solutions are more likely to come from systematic description and analysis of experience."

[20] Land planning is daily becoming more important, but we know little enough about the administrative procedures in this area.

[21] Report of the National Committee on Legislative Matters, 9 Admin. L. Bull. 22, 27–28 (1957): "With the filing of this report the curtain is brought down on the first decade under the Administrative Procedure Act. . . . What is past is prologue. Those things which have been obtained mark only the beginning of a continuing struggle for fair and orderly procedures and a greater integrity in agency proceedings. This year will mark the opening of Act II which will unveil the Association's legislative program for a new Federal Administrative Code and related improvements in administrative law. . . ."

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Trade Association Law and Practice. By George P. Lamb and Sumner S. Kittelle, assisted by Carrington Shields. Boston, Mass.: Little Brown, 1956. Pp. 284. $10.00.

Trade Association Law and Practice is the first volume of a series designed "to provide legal handbooks containing systematic statements of legal principles applicable to typical problems in specific segments of this field of law," i.e., trade regulation (P. vii). In the words of the editor, Professor Oppenheim, the purpose is to provide "a guide for the general practitioner who has little experience in this field, for the economist or business executive who wants to be quickly oriented in one of the areas covered, and for the specialist who desires a ready reference tool" (P. viii).

Lawyers with special claim to expertise in trade association law collaborated to write this hornbook-like treatise, one of them serving as general counsel for fourteen national trade associations. The authors have succeeded in compressing into relatively few pages a great deal of information on a complex subject. Despite the brevity of treatment unavoidable in a book of this size,

the authors endeavor to distinguish between permissible and questionable trade association practices. Antitrust decisions and consent decrees have been scrutinized in an effort to define price-fixing, 'unfair' competition, trade abuses and the permissible limits of such association activities as statistical and price reporting, product simplification and standardization, joint research, cooperative export selling and mutual credit activities.

The underlying assumption is that the more common antitrust violations are unintentional (P. ix), hence, the need for a guide to the pervasive antitrust risks incident to trade association activity. The authors recommend that counsel be present at all association meetings at which "subjects having an antitrust connotation may be discussed" (P. 218). Moreover, they conclude that "antitrust implications exist in almost every aspect of trade association conclaves—from the decision as to frequency of meetings, through the preparation of the agenda, the observations made by the executive, the position taken by counsel, the discussions on the floor, the resolutions adopted, the conclusions reached, the recommendations made, the recording of minutes, the direction from the chair, and the attitude reflected by the members themselves, [and even] to what may be done . . . after a meeting" (P. 219).

The importance of a record to establish the legality of a program which may be questioned is stressed. Caution is advised in dealing with FTC attorney examiners or FBI agents. One or more of the following steps are recommended according to the circumstances:

a) Notify trade association counsel immediately. Sometimes it is desirable for counsel to be present during such an investigation, and counsel should have an opportunity to establish any procedures he deems appropriate.

b) Ask the investigator for a letter stating the subject matter of the investigation and the nature of the data or documents wanted. Hand the investigator for examination such file material as is within the scope of the letter instead of permitting him to browse through file cabinets. Sometimes the complaint which caused the investigation turns out to be completely unfounded but in the course of the investigation the investigator accidentally stumbles on documents which lead to prosecution on an entirely different charge.

c) Answer the investigator's questions with as much care as if on the witness stand. Decline to answer questions which cannot be answered from personal knowledge. If the trade association executive should later be called as a witness, statements made to the investigator might be brought out in an attempt to impeach his testimony.

d) Do not permit the investigator to take original documents or files out of the office, but make copies for him of the documents he designates. Keep a special file of duplicate copies of such documents. Include in such file a detailed, careful memorandum of all discussions had with investigator (P. 167).

The authors take the position that "there is no basic inconsistency between the ideal of competition embodied in the antitrust laws and the kind of co-

operation among businessmen that is made possible by the trade association" (P. 29). On the contrary, they see in the trade association "an instrument that keeps alive our 'common liberties,' our ideals of freedom in economic and political spheres," (P. ix) and "contributes to the preservation of small business by making it possible for the small firms to pool resources and secure industry information and 'know-how' which would otherwise be available only to large firms" (P. 19).

Like so much of the literature on the subject, this treatise on trade association law assumes a common understanding of the meaning of certain terms which makes definition unnecessary. Take, for example, the word *competition.* It clearly is not used in the classical sense of describing a market situation where suppliers are too numerous to be able to affect price; nor is it used in the same sense as in the Twentieth Century Fund's study of *Monopoly and Free Enterprise,* which characterizes the trade association movement as "an organized effort to moderate the rigors of competition."[1]

What some writers consider steps toward the adoption of an economic concept of monopoly resulting in part from resurrection of Section 2 of the Sherman Act from "judicial oblivion"[2] appears to the authors of *Trade Association Law and Practice* as "alien doctrines" which inhibit the trade association "in the conduct of legitimate activities which can promote competition" (P. 20). If trade associations are to contribute to the competitive goal, the requirements of antitrust policy, as they see it, are: enforcement officials should "not file a complaint simply because there is a trade association and later look for evidence to uphold the charges they have made"; there should be a "confining of the per se rule and an expansion of the rule-of-reason approach in determining whether or not given activities violate the antitrust laws"; and "eliminat[ion] or at least restrict[ion] of the application" of such concepts as "implied conspiracy as extended by 'conscious parallelism of action' and guilt by membership" (Pp. 20–21).

A plea is made for a modified antitrust policy along lines proposed elsewhere by Professor Oppenheim,[3] and trade associations in individual industries are urged to maintain a permanent lobby to see to it that unfavorable legislation does not "pass by default" (P. 155). If national antitrust policy is moderated along the lines suggested, and future decisions in antitrust cases reflect an "expansion of the rule-of-reason approach" and declining interest in market results where trade abuses are not shown, then *Trade Association Law and Practice* will have been a valuable guide indeed. If, however, contrary

[1] Stocking and Watkins, Monopoly and Free Enterprise 234 (1951).

[2] Id., at 288 et seq. Consult also The Sherman Act and the Enforcement of Competition, Papers and Proceedings of the Sixtieth Annual Meeting of the American Economics Association (Dec., 1947); Mund, Government and Business 175, 177 (1950).

[3] Oppenheim, Federal Antitrust Legislation: Guideposts to a Revised National Antitrust Policy, 50 Mich. L. Rev. 1139 (1952).

tendencies become more pronounced, those for whom the book is written may do well to include on their antitrust shelf additional materials which treat the same facts from viewpoints less favorable to the association and which use the same terms in a different sense. The Twentieth Century Fund's three volume study, with its more detailed treatment of cases, is an example in point.[4]

Despite the implication that unwarranted inferences of illegality have led to antitrust actions against trade associations, the lessons of the cases have been studied and advice offered which, if followed, should minimize the antitrust risks. "For the members and officers," the authors wisely point out, "the fundamental rule to be followed in keeping an association's operations within the antitrust laws is that there be no agreements, express or implied, which restrict the individual's freedom to make independent business decisions" (P. 30).

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[4] Stocking and Watkins, Cartels in Action (1946); Cartels or Competition (1948); Monopoly and Free Enterprise (1951).

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Partners and Partnerships: Law and Taxation. By J. M. Barrett and Erwin Seago. Charlottesville: Michie Co., 1956. 2 Vols. Pp. xviii, 765; xiv, 915.

When two or more persons join to accomplish a business objective an attorney is faced with choosing the legal form which will most effectively accomplish the objective and best satisfy the individual client's requirements. Several types of interests may be involved in a given project, including stock ownership in a corporation, an interest in a general or limited partnership, interest in an association taxed as a corporation, or interest in a partnership engaged in investment or the development of minerals, electing to be taxed as a corporation.

Although many lawyers reach for the incorporation forms when confronted with a proposal for a joint venture, there are still more partnerships than corporations in the United States. The greater feasibility and efficiency, and the resulting more frequent use of the partnership form, raise many problems of substantive and of tax law. The problems in the tax area have recently been given careful attention in Chapter K of the Internal Revenue Code of 1954, which seeks to give many needed answers.

In *Partners and Partnerships,* the authors have logically treated the substantive law of partnerships and have performed the additional service of giving, at the end of each section, a separate discussion of the applicable provisions of the Internal Revenue Code of 1954, and the applicable tax decisions under the 1939 and earlier revenue acts. Some day, perhaps, we will consider tax law the same as any other law, but for the present at least this method of