

1 agencies, which I think you can argue whether that is
2 appellate jurisdiction or original jurisdiction, because
3 it doesn't arise from an appeal, appeal from the Judiciary.
4 We want to leave that flexible.

5 JUDGE CLAPP: There is no problem under the
6 present setup, is there?

7 THE CHAIRMAN: No. The Constitution doesn't
8 say anything about it.

9 MR. MARTINEAU: The Court of Appeals juris-
10 diction is not limited to appellate jurisdiction.

11 THE CHAIRMAN: Under the present Constitution.

12 JUDGE CLAPP: If I recall, I am going back in
13 history, but Judge Lerner's feeling was that the Court
14 of Appeals jurisdiction was always restricted to
15 appellate jurisdiction by implication. It is something
16 that I never went into. That was one of the reasons for
17 your difficulties with grants of writs of prohibition
18 and things of that kind in the Court of Appeals at the
19 present time. There was that feeling that it was an
20 appellate court of appeals without original jurisdiction.

21 MR. SYKES: There is a slight inconsistency.