

Y4  
.J89/1  
91/2

1020

KANSAS STATE UNIVERSITY LIBRARIES

9114  
J89/1  
91-2

# CEILING ON APPROPRIATIONS FOR ADMINISTRATIVE CONFERENCE

GOVERNMENT

Storage

## HEARINGS

BEFORE

### SUBCOMMITTEE NO. 3

OF THE

## COMMITTEE ON THE JUDICIARY

## HOUSE OF REPRESENTATIVES

NINETY-FIRST CONGRESS

FIRST SESSION

ON

## H.R. 4244

TO AMEND SECTION 576 OF TITLE 5, UNITED STATES CODE,  
PERTAINING TO THE ADMINISTRATIVE CONFERENCE OF  
THE UNITED STATES, TO REMOVE THE STATUTORY CEILING  
ON APPROPRIATIONS

MARCH 20, 1969

Serial No. 91-2



Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1969

27-194



AY  
1/28/27  
5/10

CEILING ON APPROPRIATIONS FOR  
ADMINISTRATIVE CONFERENCE

## COMMITTEE ON THE JUDICIARY

EMANUEL CELLER, New York, *Chairman*

MICHAEL A. FEIGHAN, Ohio  
PETER W. RODINO, JR., New Jersey  
BYRON G. ROGERS, Colorado  
HAROLD D. DONOHUE, Massachusetts  
JACK BROOKS, Texas  
JOHN DOWDY, Texas  
ROBERT W. KASTENMEIER, Wisconsin  
WILLIAM L. ST. ONGE, Connecticut  
DON EDWARDS, California  
WILLIAM L. HUNGATE, Missouri  
JOHN CONYERS, JR., Michigan  
ANDREW JACOBS, JR., Indiana  
JOSHUA EILBERG, Pennsylvania  
WILLIAM F. RYAN, New York  
JEROME R. WALDIE, California  
EDWIN W. EDWARDS, Louisiana  
WALTER FLOWERS, Alabama  
JAMES R. MANN, South Carolina  
ABNER J. MIKVA, Illinois

WILLIAM M. McCULLOCH, Ohio  
RICHARD H. POFF, Virginia  
WILLIAM T. CAHILL, New Jersey  
CLARK MacGREGOR, Minnesota  
EDWARD HUTCHINSON, Michigan  
ROBERT McCLODY, Illinois  
HENRY P. SMITH III, New York  
THOMAS J. MESKILL, Connecticut  
CHARLES W. SANDMAN, JR., New Jersey  
TOM RAILSBACK, Illinois  
EDWARD G. BIESTER, JR., Pennsylvania  
CHARLES E. WIGGINS, California  
DAVID W. DENNIS, Indiana  
HAMILTON FISH, JR., New York  
R. LAWRENCE COUGHLIN, Pennsylvania

BESS E. DICK, *Staff Director*

BENJAMIN L. ZELENKO, *General Counsel*

KENNETH R. HARKINS, *Chief Counsel, Antitrust Subcommittee*

GARNER J. CLINE, *Counsel*

HERBERT FUCHS, *Counsel*

WILLIAM P. SHATTUCK, *Counsel*

CHARLES J. ZINN, *Law Revision Counsel*

DONALD G. BENN, *Associate Counsel*

FRANKLIN G. POLK, *Associate Counsel*

HOWARD FOGT, *Associate Counsel*

### SUBCOMMITTEE No. 3

ROBERT W. KASTENMEIER, Wisconsin, *Chairman*

WILLIAM L. ST. ONGE, Connecticut  
JOHN CONYERS, JR., Michigan  
WILLIAM F. RYAN, New York  
ABNER J. MIKVA, Illinois

RICHARD H. POFF, Virginia  
EDWARD HUTCHINSON, Michigan  
EDWARD G. BIESTER, JR., Pennsylvania  
CLARK MacGREGOR, Minnesota

HERBERT FUCHS, *Counsel*

HOWARD FOGT, *Associate Counsel*

(II)

## CONTENTS

---

|                                                                                                                                                                                       | Page |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| Text of H.R. 4244 (Mr. Celler)-----                                                                                                                                                   | 1    |
| Testimony:                                                                                                                                                                            |      |
| Williams, Jerre S., Chairman, Administrative Conference of the United States, accompanied by John F. Cushman, Executive Director, Administrative Conference of the United States----- | 6    |
| Related data:                                                                                                                                                                         |      |
| Explanation of H.R. 4244-----                                                                                                                                                         | 2    |
| Memorandum of March 3, 1969, comparing 1964 estimate of operating costs with the present budget requirements-----                                                                     | 3    |
| Recommendations of the Administrative Conference (app. B of interim report)-----                                                                                                      | 14   |







## CEILING ON APPROPRIATIONS FOR ADMINISTRATIVE CONFERENCE

---

THURSDAY, MARCH 20, 1969

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE NO. 3 OF THE COMMITTEE ON THE JUDICIARY,  
Washington, D.C.

The subcommittee met at 10:15 a.m., pursuant to call, in room 2226, Rayburn House Office Building, Hon. Robert W. Kastenmeier (chairman of the subcommittee) presiding.

Present: Representatives Kastenmeier, Mikva, Poff, Hutchinson, Biester, and MacGregor.

Staff members present: Herbert Fuchs, counsel; Howard Fogt, associate counsel.

Mr. KASTENMEIER. The subcommittee will come to order.

Subcommittee No. 3 has met this morning to receive testimony on H.R. 4244, a bill to amend section 576 of title 5, United States Code, pertaining to the Administrative Conference of the United States, to remove the statutory ceiling on appropriations.

This legislation was introduced by Chairman Celler at the instance of the Administrative Conference. A copy of H.R. 4244, the letter from the Conference requesting enactment, an accompanying explanation of the bill, and a memorandum dated March 3, 1969, submitted by the Administrative Conference, which compares the 1964 estimate of operating costs with the present budget requirements of the Conference, will be placed in the record at this point.

[H.R. 4244, 91st Cong., first sess.]

A BILL To amend section 576 of title 5, United States Code, pertaining to the Administrative Conference of the United States, to remove the statutory ceiling on appropriations

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 576 of title 5, United States Code, pertaining to the Administrative Conference of the United States is amended by deleting therefrom the following language: "There are authorized to be appropriated sums necessary, not in excess of \$250,000, to carry out the purpose of this subchapter." and substitute in lieu thereof: "There are authorized to be appropriated such sums as may be necessary to accomplish the purpose of this subchapter."

---

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES,  
Washington, D.C., January 8, 1969.

HON. JOHN W. McCORMACK,  
Speaker of the House of Representatives,  
Washington, D.C.

DEAR MR. SPEAKER: The Administrative Conference has adopted as a part of its legislative program for the 91st Congress a proposal to amend Section 576 of Title 5, United States Code to remove the statutory ceiling on appropriations for the Conference.



A draft bill to accomplish the foregoing objective was submitted to the Bureau of the Budget for its consideration. We have been advised by Bureau letter dated December 16, 1968 that from the standpoint of the Administration's program there would be no objection to the presentation of the draft bill to the Congress for its consideration. Accordingly, there are enclosed six copies of our draft bill and explanatory statement on this subject.

The early consideration by the House of the proposed amendment to the Administrative Conference Act would be greatly appreciated. The Conference would be most happy to furnish any additional information that may be desired by the House or by the Committee to which this proposal is referred.

Sincerely yours,

JERRE S. WILLIAMS, *Chairman.*

EXPLANATION OF PROPOSED AMENDMENT TO THE ADMINISTRATIVE CONFERENCE ACT  
(5 U.S.C. 576) To REMOVE THE STATUTORY CEILING ON APPROPRIATIONS

Section 576, Title 5, United States Code, provides that the appropriations for carrying out the purposes of the Administrative Conference of the United States may not exceed \$250,000. It is the view of the Administrative Conference that this limitation is so restrictive as to prevent it from carrying out in any meaningful way the important studies and programs Congress contemplated in creating the agency.

As initially introduced as S. 1664, 88th Congress, 1st Session, the bill which ultimately became the Administrative Conference Act, Section 7 pertaining to appropriations contained the language now being sought by this amendment. The bill passed the Senate without any statutory limitation on appropriations.

When the bill came up for hearing before Subcommittee No. 3 of the Committee on the Judiciary, 88th Congress, 2nd Session, March 5, 1964, the question was raised as to approximately how much it would cost to finance the operations of the Conference. The only experience then available upon which to predicate an estimate were the expenses of the temporary Administrative Conference of 1961-62. During its 18-month life the temporary Conference spent \$223,517.20. That figure however did not include any funds for the salary of the Chairman, Judge E. Barrett Prettyman, the salary of the Director of the Office of Administrative Procedure, Department of Justice, or the full-time professional and clerical staff of that office which served the Conference. In addition, it did not include the costs of the services of a number of young lawyers in other government agencies who were assigned to work with the Conference and paid by their agencies. Thus as appears at page 50 of the House hearings the \$223,000 was used almost entirely for the employment of intermittent consultants, travel, per diem, printing and duplicating.

Based on this 1961-62 experience and with salaries of a small professional staff in mind, (House Committee hearings (pp. 50-54)) Judge Prettyman advised that approximately \$256,500 would be the estimated cost of the proposed Conference at that time. The bill was subsequently amended to include the statutory limit of \$250,000.

In this connection, however, it should be emphasized that the salary of the Chairman at that time was estimated at \$20,500 whereas the comparable salary today is \$30,000. This kind of substantial increase across the board in salaries and other expenses between 1962 and 1968 form the basis for our request to seek this amendment to our statute.

Of the \$250,000 appropriated to the Conference for fiscal 1969, approximately \$200,000 will be required for fixed charges; salaries for a staff of 9, including the Chairman, communications, stenographic reporting, duplicating and office supplies and equipment. Every effort has been made to keep all expenditures in this area to a bare minimum in order to make available as large amount as possible for general Conference purposes.

The result is that only about \$50,000 will be available in fiscal 1969 for the employment of consultants to assist Committees, to pay travel and per diem of members and consultants for Committees and to cover costs of plenary sessions of the Conference. The Conference is composed of the Chairman (the only full-time paid member), 10 Presidential appointees who comprise the Council, 45 high-level government officials representing 34 Executive departments and agencies, and 32 prominent lawyers, law school professors, and others highly knowledgeable in administrative law.



In the event Congress removes the statutory limitation on expenditures, the Conference will show the need for and justification of a modest increase in its appropriation to the appropriate Committees of Congress. We wish to emphasize that we would not seek to increase the size of the full-time permanent staff of the Conference. Rather, we wish to be able to retain intermittent consultants and experts to make substantial studies of problems in administrative law and to develop recommendations therefrom for procedural reforms. We wish to be able to pay travel and per diem for committee meetings and plenary sessions of the Conference. In other words, we wish to be in a position to take the fullest advantage of the prominent group of persons who are donating their time and talent to the Conference in order to carry out our statutory mandate to improve the procedures by which government agencies deal with the public.

---

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES,  
Washington, D.C., March 3, 1969.

MEMORANDUM COMPARING THE 1964 ESTIMATE OF OPERATING COSTS WITH THE  
PRESENT BUDGET REQUIREMENTS

On March 5, 1964, Subcommittee No. 3 of the House Committee on the Judiciary held hearings on the Senate-passed bill to establish the Administrative Conference as a continuing agency. Judge E. Barrett Prettyman, Chairman of the two pilot Conferences called by President Eisenhower in 1953 and by President Kennedy in 1961, submitted a detailed estimate of the cost of the proposed activity. His estimate is summarized as follows at page 54 of the printed hearings :

|                                                            |            |
|------------------------------------------------------------|------------|
| Salary of the Chairman.....                                | \$ 20, 500 |
| Full-time staff (five professional and five clerical)..... | 101, 000   |
| Per diem pay of experts employed part time.....            | 80, 000    |
| Printing, reproduction, and duplicating.....               | 27, 000    |
| Travel expenses.....                                       | 18, 000    |
| Utilities, equipment, supplies, and other expenses.....    | 10, 000    |
| Total estimated annual cost.....                           | 256, 500   |

When the full Committee voted to report the bill, it adopted several amendments, one of which, based upon this estimate, imposed a \$250,000 ceiling on appropriations for the Conference. The bill ultimately was enacted with this limitation.

Over the past five years operating costs for activities of this nature have increased substantially. To provide for the operation of the Administrative Conference in the manner and at the same level of activity as contemplated by the Congress when it passed the Administrative Conference Act in 1964 will require approximately \$150,000 more than the amount of the present ceiling. The purpose of this memorandum is to explain the increases.

*Salary of the Chairman.*—Only one member of the 80-90 member Conference receives compensation for his participation. He is the Chairman, and his salary is fixed by the Act at "the highest rate established by statute for the chairman of an independent regulatory board or commission" (5 U.S.C. 573(b)). Thus, the Chairman's compensation is set at the same level as that of the Chairman of the Atomic Energy Commission, Level II, and pursuant to Public Law 90-206, December 16, 1967, and the recent action of the current Congress with respect thereto, compensation at that level now is \$42,500 per annum.

*Full-time staff.*—The 1964 estimate contemplated a full-time staff of 5 professional and 5 clerical employees to provide necessary support services for the Chairman, the 11-member Council, and the ten committees into which the membership is divided. The \$101,000 which appears as the second item of the above schedule was to cover the cost of their salaries and personnel benefits.

In accordance with the general reductions in employment levels dictated by Public Law 90-364, June 28, 1968 and the President's Memorandum on the subject dated February 17, 1969, the number of full-time staff positions has been reduced from 10 to 8 (4 professional and 4 clerical). However, the General Schedule salary table under the Federal Employees Salary Act of 1962, 5 U.S.C. 5332, has been revised upward six times since the 1964 estimate—effective July 1, 1964 (P.L. 88-426), October 1, 1965 (P.L. 89-301), July 1, 1966 (P.L. 89-554), October



1, 1967, (P.L. 90-206), July 1, 1968, and July 1, 1969 (P.L. 90-206 and E.O. 11413, June 11, 1968). These pay raises and corresponding changes in personnel benefits (computed according to the standard Bureau of the Budget formula at 7% of total salaries at the "payline" level) increase the total cost of full-time staff, beginning with the fiscal year 1970, to approximately \$157,620.

*Intermittent employment.*—An essential feature of the success of the 1961-62 Conference was the research work performed and the reports prepared by law school professors engaged on a part-time basis to work on special projects of the several committees of the Conference. Their work is again essential to the effort. These experts were paid at rates of from \$50 to \$75 per day. The total amount of such compensation paid by the Kennedy Conference was \$113,568.45. Based upon that experience, the 1964 estimate included an item of \$80,000 or an average of \$8,000 per committee for such intermittent employment.

Substantial increases in faculty salaries (upon which the per diem rates authorized are based) and the increasing reliance of private foundations and government grant programs upon the part-time employment of university professors now make it impossible to obtain the experience and talent needed for Administrative Conference studies at the per diem rates paid by the 1961-62 Conference. Instead, the \$100 per day maximum fixed by the Act (5 U.S.C. 575(c)(10)) tends to become the standard, and a minimum of \$11,500 per committee or a total of \$115,000 is needed to provide the necessary part-time research support.

The 80 to 90 members of the Conference, including American Bar Association presidents, university presidents and law school deans, scholars of national reputation, and many of the Nation's most respected lawyers, represent a tremendous wealth of knowledge and experience in law and government. They serve for two-year terms without compensation. To provide them with inadequate research assistance is to waste an invaluable asset of the Government.

*Printing and reproduction.*—Because the 1961-62 Administrative Conference spent a total of \$40,498.12 on duplicating and reproduction services during its 18 months of operation, the 1964 estimate included \$27,000 or approximately two-thirds of that amount to cover the annual cost of such services.

Over the past five years, significant improvements in equipment and technology have effected reductions in printing costs. However, the Office of the Comptroller, Government Printing Office, advises that notwithstanding these savings, rising labor costs have increased GPO charges approximately 21% over that period. Therefore, \$32,670 is needed today to provide the services which \$27,000 would have paid for in March 1964.

*Travel expenses.*—Although members of the Conference (other than the Chairman) receive no compensation for their services, the Act (5 U.S.C. 573(c)) provides that they are entitled to reimbursement for travel expenses under 5 U.S.C. 5703, including \$16 per diem in lieu of subsistence. To assure the broadest possible representation of affected interests, the Conference membership is selected from all parts of the country. Each member attends two plenary sessions and at least three committee meetings at other times during the year. A somewhat greater amount of travel is required of the law school professors employed on a per diem basis to provide research assistance since they make trips to Washington in connection with their research, in addition to travel incident to Conference and committee meetings. Also, the Chairman and Executive Director occasionally travel in the interests of encouraging the participation of bar and industry groups in Conference studies.

Throughout the 1961-62 operation, most of the out-of-town members of the Conference declined to submit travel vouchers, and the 1964 estimate of travel costs anticipated a continuation of that experience. Now, as a permanent agency, almost all members regularly submit vouchers. In addition, according to the Civil Aeronautics Board Bureau of Accounts and Statistics, air fares have increased approximately 10 percent since 1964. The average trip in connection with Conference activities now costs approximately \$127 for air fare, \$24 for per diem in lieu of subsistence, and \$13 for airport buses and taxis, telephone calls, and other allowable expenses, or a total of \$164 per trip. Since the Conference operation involves a minimum of 200 trips per year, it is reasonable to expect a total expense of at least \$32,800.

*Other expenses.*—The 1964 cost estimate concluded with an item of \$10,000 to cover furniture, books, equipment, supplies, and other miscellaneous costs. Payroll, fiscal, and supply services for the continuing Conference now are performed by the General Services Administration. That agency's charge for its services,



alone, is \$12,000 at the present time. The total amount needed for these "house-keeping" services, plus long-distance and other telephone services, the cost of transcripts of plenary sessions, and all of the other items of miscellany contemplated by the 1964 estimate, therefore, is at least \$20,000.

# RECAPITULATION

| Item of expense                 | 1964 estimate | Present cost |
|---------------------------------|---------------|--------------|
| Chairman's salary .....         | \$20,500      | \$42,500     |
| Full-time staff .....           | 101,000       | 157,620      |
| Per diem employment .....       | 80,000        | 115,000      |
| Printing and reproduction ..... | 27,000        | 32,670       |
| Travel .....                    | 18,000        | 32,800       |
| Other expenses .....            | 10,000        | 20,000       |
| Total .....                     | 256,500       | 400,590      |

Mr. KASTENMEIER. The bill would delete the existing \$250,000 limitation on the annual appropriation for the Administrative Conference, which has been in effect since establishment of the Conference in 1964.

Essentially, the reason for the requested deletion of the limit on authorized appropriations is the alleged underestimation of costs in 1964 and the overall increase in costs since that time.

By letter dated March 4, 1969, the Bureau of the Budget has recommended enactment of H.R. 4244, which has the support of the present administration. The subcommittee is advised that similar approval was given by the Bureau of the Budget under the Johnson administration.

Notwithstanding these endorsements, the Subcommittee deems it desirable to meet with the Chairman and Executive Director of the Conference for a more detailed discussion of the need of the Conference for funds and the advisability of deleting the limitation on authorized appropriations.

Our witnesses are Hon. Jerre S. Williams, Chairman, and Mr. John F. Cushman, Executive Director of the Conference. Both gentlemen are very welcome before the Subcommittee.

Do my colleagues have any statement to make at this time?

Mr. POFF. Mr. Chairman, it is the function of this subcommittee to justify whatever action it takes; first, before the full committee, and then on the floor—to persuade the majority of those on the floor of the House to agree with us.

This is no mean task. I am sure the witnesses will appreciate, notwithstanding the endorsements of the Johnson administration and the Nixon administration, that Congress makes the decision about appropriations.

There has been, I might say, an inbred hostility in the Congress in rather substantial measure to so-called open end authorizations.

That is not true with respect to the regulatory agencies such as the ICC, and we recognize that your organization is similiar in many respects to such regulatory bodies, with no regulatory power, however.

Yet, I think you must understand from the outset that you begin with a strike against you. Had this been the initial authorizing legislation, the question about closed end or open end authorizations might be more fairly presented to and considered by the subcommittee.



Now that a closed end authorization has been imposed upon it, the great burden of proof is upon those who want to open it. And this is no small burden.

Thank you.

Mr. KASTENMEIER. I would like at this time to welcome our witnesses. Mr. Williams, would you like to present your statement, and, if you desire, sir, you may offer your submission for the record, and summarize it if that is your pleasure.

**STATEMENT OF HON. JERRE S. WILLIAMS, CHAIRMAN, ACCOMPANIED BY JOHN F. CUSHMAN, EXECUTIVE DIRECTOR, ADMINISTRATIVE CONFERENCE OF THE UNITED STATES**

Mr. WILLIAMS. Thank you, Mr. Chairman.

I think it would be useful to present my statement for the record and then summarize it for you knowledgeable gentlemen. It will give more opportunity for discussion, which I think will be useful, and at the same time I want to emphasize the basic nature of the Administrative Conference, what we have been doing and what we plan to do.

Mr. KASTENMEIER. Without objection, then, the statement will be made part of the record and you may proceed, sir, in your own fashion.

(The statement referred to follows:)

**STATEMENT OF JERRE S. WILLIAMS, CHAIRMAN, ADMINISTRATIVE CONFERENCE OF THE UNITED STATES**

Mr. Chairman, my name is Jerre S. Williams, and I am Chairman of the Administrative Conference of the United States. I am accompanied today by the Executive Director of the Conference, Mr. John F. Cushman. Also present are the Executive Secretary of the Conference, Mr. Webster P. Maxson, and Mr. David Kartalia, Staff Attorney.

I appear at the invitation of the Committee to discuss H.R. 4244, and we appreciate very much your scheduling this hearing so early in the session. As you know, this proposed legislation has been introduced at the request of the Administrative Conference. It was originally approved for submission by the Bureau of the Budget last December. The Conference and this legislation also have the express support of the new Administration.

H.R. 4244 would amend the Administrative Conference Act by eliminating the \$250,000 statutory ceiling on annual appropriations contained in section 576. The effect would be to permit the Conference to go before the Bureau of the Budget and the Congressional Appropriations Committees and justify such funds as are necessary for it to carry out effectively its important Congressional mandate.

Since this is my first appearance before this Committee, I would like to take the opportunity to discuss briefly with you what the Administrative Conference is, how it operates, and what it can be expected to achieve. I believe this background information will be helpful to the Committee as I am sure we shall be appearing here on other occasions. But a brief statement of our functions and activities should also be most helpful in understanding why we so urgently seek enactment of H.R. 4244.

The Administrative Conference of the United States is a new, independent agency of the Federal Government. The Conference is established at the same level as the major independent regulatory agencies such as the Interstate Commerce Commission, Atomic Energy Commission, Civil Aeronautics Board, and the like. Its statutory charge is to develop recommendations for improvements in the procedures by which Federal Departments and agencies fix the rights and obligations of private businesses and individuals through administrative adjudication, rulemaking, licensing, and investigation. The Conference has no regulatory power; it may only make recommendations concerning these administrative practices and procedures. It reports to the President, the Congress, the Judicial Conference, and the Departments and agencies themselves.



The establishment of the Conference is the outgrowth of a history of more than fifteen years. A temporary experimental Conference lasting eighteen months was called by President Eisenhower in 1953. A second temporary, experimental Conference, also lasting eighteen months, was established by President Kennedy by Executive Order in 1961. Both of these Conferences were under the able Chairmanship of Judge E. Barrett Prettyman of the United States Court of Appeals, District of Columbia Circuit. They established the feasibility and effectiveness of the Administrative Conference device.

The Conference idea as developed in the experiments and as now enacted into law follows the fundamental philosophy that the Federal Departments and agencies themselves can make far-reaching and meaningful improvements in their practices and procedures. The means to accomplish this is to work together as a coordinated group, with substantial aid and guidance from private citizens who are knowledgeable and skilled in administrative law matters. Thus, the law establishing the Conference provides that the Departmental and agency representatives must at all times be in a majority in the Conference, but there will also be a strong minority of close to 40% of private citizen-experts who will contribute their creative ideas as well.

In terms of technical organization, the Conference consists of three elements. The first is the Chairman who is the only paid, full-time member of the Conference. He is appointed by the President and confirmed by the Senate for a term of five years. To work with the Chairman in organizing and governing the Conference, there is a Council of ten, in addition to the Chairman, also appointed by the President but without Senate confirmation. The law provides that no more than five of the ten Council members may be Government officials. The Council members, as well as all the other members of the Conference, are not paid for their services. They receive only travel expenses to attend meetings. The Council members are appointed for terms of three years.

The third element is the full Conference membership acting as an entity. The total membership of the Conference by statute consists of from seventy-five to ninety-one persons, including the Chairman and the members of the Council. The Conference was originally constituted in 1968 with a total of eighty-two members. Each Cabinet member and the head of each major independent regulatory agency is a statutory member of the Conference. He may in turn delegate his responsibility to one of his subordinates. Because of the great press of their duties, all of the Cabinet members have delegated their responsibilities to high level subordinates. But most of the Chairmen of the major independent regulatory agencies have chosen to serve as members of the Conference.

The private citizens who are members are appointed for two year terms by the Chairman with the approval of the Council. This group is made up of experts in administrative law throughout the United States. Most of them are lawyers; some of them are the top administrative law experts in the nation's leading law schools, and others are skilled in public administration. To give some indication of the caliber of the private citizens who have been contributing their great abilities to the Conference, mention should be made of the fact that those serving as citizen members include a former Cabinet member, one of your esteemed former colleagues in Congress, the current President of the American Bar Association and two former Presidents of that prestigious organization, a university president, a law school dean, and many of the nation's acknowledged experts in the practice and teaching of Administrative Law.

The Interim Report of the Conference, dated January 15, 1969, copies of which have been furnished to the Committee, contains the names of the entire membership of the Conference. I think you will agree that this is a very impressive group and the Conference itself a unique resource of the Government.

The entire membership is broken up into ten standing Committees along functional lines. These Committees are: (1) Personnel, (2) Agency Organization and Procedure, (3) Informal Action, (4) Grant and Benefit Programs, (5) Claims Adjudications, (6) Rulemaking, (7) Licenses and Authorizations, (8) Compliance and Enforcement, (9) Information, Education, and Reports, and (10) Judicial Review.

Each of the Committees undertakes studies of procedural problems where serious need for improvement is indicated. An expert knowledgeable in the field in which he will work is hired to make a thorough, objective investigation. Typically he is a young law professor who specializes in administrative law. His report and proposed recommendations are prepared under the general guidance of the Chairman of his Committee working with the Chairman of the Conference and his staff.



The report is considered and evaluated by the Committee and, if favorably reported out of the Committee, is passed on through the Council to the floor of the Conference. The Council has the authority to recommend changes in the proposal or to recommend disapproval by the Conference, but does not have the authority to veto it.

The proposed recommendation then reaches the floor of the Conference at a plenary session. It is then considered and debated much in the manner of proposed legislation. It may be amended, returned to Committee, defeated, or adopted. If it is adopted, it becomes an official recommendation of the Administrative Conference of the United States.

At this point, a significant advance over the temporary experimental Conferences comes into play. The statute provides that the Chairman has the responsibility to work with Departments and agencies to help them implement the recommendations of the Conference. This power, the duty to report to the President and Congress, and the general prestige of the Conference should be sufficient to insure acceptance by the agencies. But it is well to keep in mind the fact that Conference recommendations are the product of inter-agency cooperation, and this is another reason to be optimistic about implementation.

The role of the Administrative Conference must be seen more broadly than the technical evaluation of the detailed procedures under the Administrative Procedure Act which control the formal administrative processes. The enabling act provides that the administrative procedure which is the concern of the Conference is: " \* \* \* to be broadly construed to include any aspect of agency organization, procedure, or management which may affect the equitable consideration of public and private interests, the fairness of agency decisions, the speed of agency action, and the relationship of operating methods to later judicial review \* \* \*."

There are some thirty-five Executive Departments and administrative agencies which conduct the bulk of administrative proceedings affecting private rights. There is infinite variety to these proceedings. They affect our natural resources, transportation, power, finance, commerce, communications, securities, taxation, labor, credit, advertising, housing, veterans' benefits, the supply, quality, and price of food and fibers, public health, immigration, social welfare programs, drug control, and countless other areas of activity.

Thus, the administrative processes which are the concern of the Conference are not limited to the large formal cases such as the licensing of an atomic power plant by the Atomic Energy Commission, the determination of area rates of natural gas producers by the Federal Power Commission, or the awarding of domestic airline routes by the Civil Aeronautics Board. The administrative procedures also include medicare claims, veteran's claims, a permit to graze cattle on public lands, and the entire area of procedures for governmental procurement and purchase of supplies. Even this enumeration is only a very small indication of the breadth of Federal administrative activity which is subject to Conference scrutiny.

The Conference was activated in the spring of 1968. The first plenary session at which recommendations were considered and adopted was held December 10 and 11, 1968. The recommendations adopted at that session begin to give some indication, although only a small one, of the breadth of the areas of concern of the Conference. While the full texts of the eight recommendations appear in the Interim Report, they are in brief directed toward:

(1) The improvement of the quality of hearing room facilities used by Federal agencies, particularly outside the city of Washington.

(2) Provision for a more informative and readable *United States Government Manual* for the guidance of all interested citizens in their dealing with the complex of Federal agencies and bureaus.

(3) The correction of existing errors and inclusion of omissions in the Table of Statutory Authorities and Rules found in the Code of Federal Regulations.

(4) The establishment of an experimental "Consumer Bulletin" to be published by a Government agency and to summarize governmental action of interest to all consumers. This bulletin is to be given broad, general circulation.

(5) Provision for systematic means to insure that the poor be represented in agency rulemaking. This would be done in two ways. First, the agencies are requested to set up procedures by which there is assurance that the point of view of the poor who are typically unrepresented in Federal policy making will be obtained. Second, it is recommended that legislation be enacted to establish a People's Counsel to represent the poor in appropriate cases before the agencies.



(6) As a means of speeding up formal administrative procedures and to relieve Commissioners of run-of-the-mill cases, agencies are asked to consider the establishment either of an intermediate appeal board to review decisions by hearing examiners, subject only to discretionary review by the agency or Commission itself or, in the alternative, to give much greater finality to the decision of the hearing examiner, subject again only to review at the discretion of the agency or Commission. In either case, reasons for denying review would not have to be given by the agency or Commission.

(7) The elimination of the jurisdictional requirement of \$10,000 as a minimum amount in controversy now applicable to United States District Court suits challenging Federal administrative action. The effect of the adoption of this recommendation would be to enable judicial review of Federal administrative action without regard to a minimum amount of money involved.

(8) Recommendation that the statutes providing for judicial review of orders of the Interstate Commerce Commission before a special three judge District Court be revised to bring such orders into the general pattern of judicial review of orders of other major Federal administrative agencies.

It will be seen from this summary that the first recommendations of the Administrative Conference cover a wide range of subjects. They reflect a concern for citizen participation in Federal Government action. While some of the recommendations are highly technical or administrative in nature, others are obviously oriented toward bringing Government closer to the people. Thus a measure of balance was achieved in the first recommendations of the Conference which can be expected to continue as the Conference moves ahead.

The foundation of the work of the Conference must be grounded in the basic proposition that administrative procedures must work. Every attention needs to be given to protecting the procedural rights of citizens in their dealings with the Government. At the same time, claimed individual rights cannot be allowed to become so overpowering and the procedures for asserting them so long and complex that Government cannot function effectively. Our function is to seek a proper balance between the two.

The Administrative Conference is not designed to fulfill an ombudsman function as the term is normally understood and used. This is true even though citizen complaints against administrative activities are highly relevant to our work.

The Chairman of the Conference has the statutory power "to make inquiries into matters he deems important for Conference consideration, including matters proposed by persons inside or outside the Federal Government." This is a specific authorization for the Chairman and the Conference to investigate particular regulatory processes and procedures whenever there is indication that they constitute trouble spots. The indication may arise from a single citizen's complaint, a series of citizens' complaints, or by being brought to our attention by agencies, the Congress, or other sources. The agencies, for example, have already brought a number of problems to our attention. Out of these investigations may come remedial procedural improvements which will redound to the advantage of individual complainants as well as all persons affected by the regulatory or benefit program involved.

The Conference is off to a good start. But we can get only the very minimal return from this distinguished group if we must continue to operate on a budget of \$250,000. Congress gave us the maximum \$250,000 for fiscal 1969. We are keeping within that limit only by reducing expenditures which greatly decrease the valuable contributions that the Conference, more properly funded, could make.

We have prepared and submitted to the Committee two documents relevant to the \$250,000 appropriation limitation contained in the Administrative Conference Act. The first is the explanation for the removal of the limitation which accompanied the legislative proposal. The second is a document dated March 3, 1969 which compares the 1964 estimate of operating costs with present budget requirements.

Let me emphasize several key points which I believe fully justify favorable action on this legislation by the Congress.

The limitation of \$250,000 in the 1964 legislation was based in large part on the cost of the 1961-1962 Conference. That figure is quite clearly way out of line with comparable costs today. While it was clearly contemplated that the permanent statutory Conference was to be an even more effective resource of Government than the temporary Conference, the effect of the budget limitation is to permit the Conference just barely to hobble along.



I would emphasize we are operating with a total permanent staff of seven; three are lawyers, the rest secretaries and a clerk-messenger. We desperately need at least one more lawyer and one more secretary. Our 1969 fiscal budget was supposed to have provided funds for such a staff but because of the increase in costs, we just plain cannot afford to complete our minimal staff on our existing budget.

I want to assure you that our permanent staff needs will always be small. Barring some substantial assignment of major new duties by Congress, a staff of about a dozen is all that is ever contemplated. Additional funds made available will be to support scholarly studies and reports leading to specific recommendations to improve particular processes and for travel and per diem incident to Committee and plenary sessions.

We have indicated in the supporting justification memoranda that about \$400,000 is required today to do what \$250,000 did in 1961-62. All we seek from you is the removal of the restriction so that we may approach the Bureau of the Budget and the Appropriations Committees with a realistic budget request. But unless the limitation is removed, we cannot even ask.

Mr. Chairman, the simple fact is that we have 82 highly qualified people who are willing to devote their time and talents to see how the procedures of Government can be made fairer, cheaper, and more expeditious. The Government members participate in addition to their regular official duties. The non-Government members contribute their time and talent. Fifteen years of experimentation indicate that a Conference such as this can work. But it cannot work if it cannot afford staff support. It cannot succeed if there are insufficient funds for the Conference to meet and conduct its business.

The thought I am trying to express to you was best put by Judge Prettyman, the father of the Administrative Conference idea, when in welcoming the members at our first plenary session said:

"It is all very well to have theories, but I am devoted to the thesis that government is supposed to work. Our administrative system works pretty well, but in lots of cases it has substantial flaws: it costs too much; it takes too long, and the process is too cumbersome.

"This Conference has the opportunity to make the administrative part of a democratic system of government work. You could not have a greater opportunity."

If we are given the opportunity to present our actual needs to the Appropriations Committees, I am confident that we will be given that greater opportunity for public service which Judge Prettyman envisioned for the Administrative Conference.

Mr. WILLIAMS. Thank you.

My name is Jerre S. Williams and I am Chairman of the Administrative Conference of the United States. I am accompanied today by Mr. John F. Cushman, Executive Director of the Conference.

We also have present in the room Mr. Webster Maxson, Executive Secretary of the Conference, Mr. David Kartalia, staff attorney, and my executive assistant, Mrs. Margie Barnes.

This is virtually all the staff of the Administrative Conference; all the full-time staff, at least.

Gentlemen, I would like to make it clear to you that I would appreciate interruptions for questions at any time as I talk informally summarizing the statement which we have submitted.

As you know, I appear before you today at the request of the committee in connection with H.R. 4244. The chairman has summarized the fact that this proposal, designed to remove the \$250,000 appropriations limitation contained in the Administrative Conference Act, has the approval of both the preceding national administration and the current administration.

I would like to emphasize to this committee that the sole purpose of this proposed legislation is to remove the limitation. It does not in any way relieve us from approaching the Bureau of the Budget and the proper appropriations committees to convince them of the need for a realistic appropriation.



All we are concerned with in this statute is the removal of the ceiling.

Obviously, however, the removal of the ceiling is related to how much money we need and how much we may ask for, and I am not saying it isn't an appropriate consideration for this committee. But the only function of this statute which we propose is to remove the ceiling and it does not in any way commit this committee to any indication that we are entitled to any more than the ceiling or entitled to any particular sum, since those sums have to be established through the appropriate committees.

I appreciate very much the opportunity to appear before this committee. I appreciate your setting up this hearing relatively early in the session. I expect I will be having the opportunity on behalf of the Conference to appear before you again from time to time in the future.

In view of this fact, I would like to take this opportunity to describe to you briefly the Administrative Conference, what it is, what it has been doing and what we hope to do in the future.

The Administrative Conference of the United States was established by statute in 1964 as an independent agency of the Federal Government at the same level as the major independent regulatory agencies, such as the Interstate Commerce Commission, Atomic Energy Commission, Federal Trade Commission, and the like.

Its statutory charge is to make studies resulting in recommendations to improve administrative practices and procedures throughout the Federal Government. Only military affairs and foreign affairs are exempt.

Those are the two categories also exempt as I am sure you gentlemen know in the Administrative Procedure Act.

We are only indirectly concerned with what we might call internal administrative problems or administrative red tape. The administrative procedure and practice which is the major concern of the Administrative Conference is the dealing between the agency and department and the citizen, the legal procedures in the dealings between the Administrative Agency and the citizen. We are concerned with the internal problems of administration as they are related to these legal procedures.

Our charge is limited to procedural matters only. We are not concerned with substance as such, nor are we concerned with assignment of function as between various agencies and departments except as it might have to do with improvement of procedures.

Our concern is simply in trying to make the process work, through our recommendations, as best they can be made to work. We only have the power to recommend, as Congressman Poff said, but at the same time we have a reporting function to the President and to the Congress, to the Judicial Conference, and to the agencies and departments themselves.

The Conference grows out of a history of more than 15 years. President Eisenhower called the first temporary experimental Administrative Conference in 1953 and 1954. It lasted 18 months.

President Kennedy set up the second temporary experimental conference by Executive order and it lasted 18 months in 1961 and 1962.

Both of these temporary conferences were under the chairmanship of Judge E. Barrett Prettyman of the U.S. Circuit Court of Appeals, District of Columbia circuit.



Those conferences developed the philosophy of the Administrative Conference and in a sense proved it would work. The basic philosophy is that the Federal agencies and departments themselves working together in a structured cooperation can accomplish far-reaching and effective improvements in their own procedures when they are aided also by a strong group of private citizens, experts in the field, who are working with them.

And this basically is the role that the Conference is supposed to play. There are three elements in the actual structure to the Conference.

The first is the Chairman and the Office of the Chairman, his small permanent staff. The Chairman is appointed by the President and confirmed by the Senate for a term of 5 years. He is the only paid full-time member of the Conference.

He is aided in organizing and governing the Conference by a Council, which consists of 10, in addition to the Chairman, all appointed by the President, but without Senate confirmation, for terms of 3 years.

The statute provides that no more than five of these 10 can be Government officials, and the members of the Council as well as the remaining members of the Conference, all serve without compensation. They are paid only travel expenses. They contribute their time and their great abilities to the work of the administrative Conference.

The third element is the entire Conference, acting as an entity. By statute the Conference consists of from 75 to 91 members, including the Chairman and the Council.

As we originally organized the Conference, it had and now has 82 members, all of them again, with the exception of the Chairman, contribute their time and energies. They serve without pay.

The remaining members of the Conference in addition to the Chairman and the Council consist of the heads of the Cabinet departments and independent regulatory agencies, or their designees, and the private citizens.

None of the Cabinet members have had the time to serve on the Conference and they have all designated top level subordinates. However, I am quite pleased to tell you that well over a majority of the chairmen of the major independent regulatory agencies have elected to serve on the Conference.

By statute the Government members must always be in a majority on the Conference. This is an agency and departmental Conference, and the concept is, and it was proved in the experimental conferences I mentioned to you earlier, that working together as a group the agencies can accomplish these effective improvements in procedures which they could not accomplish on an individual basis.

But aiding them is this strong group of private citizens running around 40 percent of the total membership of the Conference. They are appointed by the Chairman with the approval of the Council for 2-year terms.

We have endeavored to get a variegated cross section of the top administrative law experts in the United States, and in those public members I think we have been highly successful.

Let me take just a moment to pinpoint a few of those significant members to you.

Until January 20 we were able to claim two former Cabinet members. However, one of them, former Attorney General William Rogers,



is now the Honorable Secretary of State, and so he has had to leave us. He has returned to the Cabinet in a more exalted position.

Our other former Cabinet member is Charles Brannan, former Secretary of Agriculture. We have the current president of the American Bar Association and two former presidents of the American Bar Association, including one on the Council, Mr. Whitney North Seymour.

Also on the Council we have a distinguished former colleague of yours, former Representative Joe Kilgore of Texas now an outstanding administrative law practitioner.

We have a university president, a dean of a law school, plus outstanding practitioners and teachers in the field of administrative law. We have the list of all of the members, of course, in the Interim Report which is before you and which has been submitted to you, but I emphasize a few of these names to indicate the quality of the personnel who are as public citizens contributing their time and energies to the work of the Conference.

Now very briefly how does this body of 82 people operate? It is broken up into standing committees on functional lines, and the committees will investigate a problem or a series of problems where they think improvement in administrative procedures may be indicated.

They may choose the problem—after all, they are all experts—or they may take a problem which has been referred to them by the Chairman and the Council. An expert research assistant is hired to do a thorough, objective study of the problem. Typically this will be a young law professor teaching administrative law who is paid on a per diem basis and does his work sandwiched in with his full-time work on the law faculty of the school.

His report and recommendations go to his committee. They work through it. If they develop a recommendation that they feel should go to the Conference, they send it to the Chairman and the Council. The Council may suggest modifications, may return it for further study, may recommend disapproval, but it does not have the veto power.

The recommendation will go to the floor of the Conference meeting in plenary session. This means all 82 members of the assembly—and the attendance has been high—and the proposed recommendation then is considered by this group very much as if it were proposed legislation.

It can be amended, it can be tabled, it can be returned to the committee, it can be defeated, or it can be passed. The sessions are open to public debate from the floor on these measures. If the recommendation is adopted, it becomes an official recommendation of the Administrative Conference of the United States.

At this point a significant advance and a significant additional function of the now permanent Conference goes into play because the statute requires the Chairman to work with the agencies and departments to get the recommendations adopted by them.

We have no regulatory power, but because of this power of the Chairman, because of the fact that this is an agency Conference, because of the prestige of the people on the Conference, and finally because of the reporting function of the Chairman to the Congress and to the President and to the Judicial Conference, we are highly optimistic that the recommendations of the Conference will be readily adopted by the various agencies and departments unless there is some serious problem standing in the way. And if there is, then under the power of the Chair-



man we shall work with them to try to resolve that problem so that the recommendation can be adopted.

This in brief is how the Conference operates.

Although our enabling statute was passed in 1964, the Conference was not activated until I came to Washington in January of 1968. Thus, we have been operating just a little over a year. Our first plenary session took place May 27, 1968, and was for the purpose of organizing, adopting bylaws, and establishing standing committees.

On December 10 and 11 we had our second plenary session, and it was the first at which we adopted recommendations. At that time we adopted eight recommendations. They are printed in full in appendix B to the interim report which you have in your hands. They are also summarized briefly in my written statement.

Mr. KASTENMEIER. We shall incorporate Appendix B to the Interim Report in the record.

(Appendix B to the Interim Report of the Administrative Conference of the United States, dated January 15, 1969, is as follows:)

#### RECOMMENDATIONS OF SECOND PLENARY SESSION, DECEMBER 10-11, 1968, WASHINGTON, D.C.

##### RECOMMENDATION NO. 1—ADEQUATE HEARING FACILITIES

Administrative hearings of the Federal government should be conducted in dignified, efficient hearing rooms, appropriate as to size, arrangement, and furnishings. At the present time no central body is responsible for providing or planning the needed facilities. As a particular consequence, administrative hearings often have been conducted in surroundings unsuitable to the seriousness of these governmental proceedings. The General Services Administration could advantageously arrange for the service and the space needed by departments and agencies in which administrative hearings occur.

##### *Recommendation*

1. The General Services Administration should develop a set of four hearing room classifications explicitly identifying the features required with standards meeting at least the following minimum requirements. Such classifications should be developed in conjunction with representatives of the agencies, the bar, and examiners. The minimum requirements should be:

Type A—A formal conference room with table space for as many as 16 principals and additional seating for up to 20 other persons.

Type B—A small hearing room with a raised dais, a witness box, a reporter's table, table space for as many as 6 counsel, and additional seating for up to 30 others. The design and furnishings should be appropriate to a hearing which is judicial in nature and should include wherever possible an auxiliary room in which counsel may confer with their clients, witnesses may be sequestered, etc.

Type C—A large hearing room accommodating as many as 30 counsel at tables and up to 70 witnesses and spectators. This room should have the design and furnishings which are appropriate to formal hearings of a judicial nature.

Type D—An auditorium suitable for hearings of general public interest which might attract over 100 principals and spectators.

An essential requirement of each of the four types of hearing rooms should be a small, near-by room available to the examiner as his office and for such other uses as he designates.

2. The General Services Administration should prepare and maintain on a current basis an inventory which (a) identifies available hearing facilities throughout the country, classified under the system recommended in 1 above, including hearing rooms permanently assigned to particular agencies as well as courtrooms (local, state, and Federal), (b) identifies the GSA regional offices, local building managers, and others through whom such space can be obtained, and (c) provides information concerning the procedures to be followed to obtain space through the GSA for the conduct of hearings.

3. The General Services Administration should establish procedures for determining the frequency and location of administrative hearings which require facilities of each type within the system of classification recommended above



in order to determine, by city, whether a permanent hearing room for multi-agency use can be justified. A permanent hearing room should be considered justified wherever there is a continuing need of approximately one-fourth of the available working days.

4. The General Services Administration should provide for the administration and scheduling of permanent multi-agency hearing facilities under the direction of GSA's Washington headquarters, but subject to such decentralization as the functions of inventorying, procuring, and planning may require.

5. The General Services Administration should establish a procedure for the systematic reporting, to the respective agency and to GSA, of deficiencies in assigned facilities discovered by presiding officers, and for the investigation and correction of such deficiencies.

6. The General Services Administration should establish an advisory committee of members of the bar and other interested professional associations, agency representatives, and members of the public to facilitate the evaluation of present and future needs and to report annually to the Administrative Conference on its activities.

7. Permanent multi-agency hearing rooms and hearing rooms permanently assigned to individual Federal agencies should be identified as "Federal Administrative Hearing Rooms."

8. The Chairman of the Administrative Conference should encourage the co-operation of state and local judges in the procurement of courtroom space for Federal administrative hearings.

9. The Judicial Conference of the United States should encourage the co-operation of Federal judges in the procurement of courtroom space for Federal administrative hearings.

10. Federal agencies should budget funds to provide for the payment of charges for the use of appropriate space when such space is not available on a free basis.

11. Federal agencies which conduct administrative hearings should designate an official to work with the General Services Administration in the procurement and planning of hearing facilities.

#### RECOMMENDATION NO. 2—U.S. GOVERNMENT ORGANIZATION MANUAL

The Manual at present falls short of its goal because the narrative text submitted by some of the agencies is outdated, unrevealing, cumbersome, or otherwise deficient. The text should be rewritten at a high level of competence.

##### *Recommendation*

1. Each agency covered by 5 U.S.C. 552 should assign the writing of material for the *United States Government Organization Manual* to an office having the competence to achieve the brevity, clarity, and general excellence of presentation required to serve the purpose of this handbook and to reflect credit on our government.

2. Included in the description of each agency should be information concerning the means by which more detailed knowledge of the agency's organization and functions may be obtained.

#### RECOMMENDATION NO. 3—PARALLEL TABLE OF STATUTORY AUTHORITIES AND RULES (2 CFR CH. I)

The Parallel Table of Statutory Authorities and Rules (2 CFR Ch. I) should be an accurate and complete listing of United States Code provisions cited as rulemaking authority in executive agency documents which prescribe general and permanent rules. The present Parallel Table is deficient. Agencies have not given sufficient time and attention to citing proper authorities and to keeping them current. Moreover, the Table's present method of preparation leads to omission of relevant references.

##### *Recommendation*

1. Each agency covered by 5 U.S.C. 552 should review all of its rules published in the Code of Federal Regulations to determine if the cited rulemaking authorities are complete, accurate, and current. The Conference requests that formal documents correcting deficient citations be submitted to the Office of the Federal Register for publication in the daily *Federal Register*.



2. The Office of the Federal Register should take the steps necessary to broaden the coverage of the Table to include pertinent citations in preambles and in codified text as well as those in the formal statements of authority.

#### RECOMMENDATION NO. 4—CONSUMER BULLETIN

Most Americans are probably unaware of the multitude of day-to-day Federal activities reflected in proposed, revised, and recently promulgated rules, regulations, or determinations which substantially affect the price, quantity, quality, labeling, safety, and other aspects of products and services available to the public. A bulletin of general distribution containing an easily understood summary of current information about administrative activities in areas of consumer interest could serve a widespread public need which is not now met by the *Federal Register* or by agency and private publications of a more specialized nature.

##### *Recommendation*

1. A consumer bulletin should be established on an experimental basis. It should extract and paraphrase in popular terms the substance of Federal agency actions of significant interest to consumers. Initially, the bulletin should concentrate on items published in the *Federal Register*, but as it gains public acceptance, it should be broadened to include materials secured from other sources. It should indicate expressly that the bulletin does not constitute official notice of government action.

2. The Office of the Consumer Council in the Department of Justice appears at this time to be the agency best prepared to publish such a bulletin. If the bulletin were undertaken by that Office, it could not only disseminate information, but also stimulate public response, thus aiding the effective discharge of the duties of the Consumer Council.

3. Initial circulation should include the press, consumer organizations, public and scholastic libraries, and individuals who request to be put on the mailing list. Format, subscription costs, frequency of publication, and related matters should be the subject of study during the experiment.

4. After a reasonable period of time, the effectiveness of and interest in the bulletin should be evaluated to determine whether it should be continued and, if so, in what form.

#### RECOMMENDATION NO. 5—REPRESENTATION OF THE POOR IN AGENCY RULEMAKING OF DIRECT CONSEQUENCE TO THEM

##### *Recommendation*

##### *A. Agency Efforts*

1. Federal agencies should engage more extensively in affirmative, self-initiated efforts to ascertain directly from the poor their views with respect to rulemaking that may affect them substantially. For this purpose, agencies should make strong efforts, by use of existing as well as newly devised procedures, to obtain information and opinion from those whose circumstances may not permit conventional participation in rulemaking proceedings. The "rulemaking" referred to is that defined by the Administrative Procedure Act, § 2(c), 5 U.S.C. 551(4) and (5).

2. Agencies should employ as many of the following procedures as are feasible, practicable, and necessary to assure their being fully informed concerning the relevant interests of the poor:

(a) Agencies should seek to inform the poor of all rulemaking proposals that may affect them substantially and should provide opportunities for the poor to submit their views concerning these and related proposals.

(b) Agencies should hold formal public hearings or informal conferences in close geographic proximity to the poor substantially affected by contemplated rulemaking.

(c) Agencies should take care to invite individuals constituting a representative cross-section of the poor to submit their views orally or in writing as to proposed rules substantially affecting the poor.

(d) Agencies should conduct field surveys among the poor to discover their attitudes concerning particular government policy-making substantially affecting them.

(e) Agencies should use advisory committees made up of representatives of the poor as continuing consultants for all programs having a substantial effect on such persons.



(f) When necessary to assure adequate representation for the poor, agencies should pay the personal expenses and wage losses incurred by individuals incident to their participation in rulemaking hearings. Congress should support agency requests for funds and for authority, where none exists, to make discretionary payments for this purpose. Agencies already authorized to make such payments in whole or in part should use their existing authority and should allocate funds accordingly.

In deciding whether the use of any one or more of the above devices is feasible, practicable, or necessary in a given situation, agencies should resolve doubts in favor of utilizing them; but their enumeration should not exclude or discourage the development and use of other devices to achieve the same result.

In carrying out paragraphs 1 and 2 of this Recommendation, agencies should consult with and coordinate their efforts with other Federal agencies having responsibilities in this area and should make maximum feasible use of the facilities of such other agencies for communicating with and obtaining expressions of the views of the poor.

3. Agencies should be encouraged in appropriate circumstances to determine that the exemptions in 5 U.S.C. 553(a) (2) should not be applied with respect to rulemaking which may have a substantial impact on the poor.

#### *B. People's Counsel*

4. (a) An organization should be authorized by statute to employ a staff to act as "People's Counsel." The People's Counsel should represent the interests of the poor in all Federal administrative rulemaking substantially affecting the poor.

(b) The People's Counsel should be charged with assuring that the views of significant separable minority interests among the poor are represented in such Federal administrative rulemaking.

(c) The People's Counsel should be required to disseminate to all interested poor people's organizations pertinent information concerning rulemaking substantially affecting the poor.

(d) The People's Counsel should be authorized to participate suitably in its own name to represent the interests of the poor in any Federal agency proceedings in which the poor have a substantial interest.

(e) The People's Counsel should be authorized to provide representation for organizations and groups of the poor who seek judicial review of administrative action substantially affecting their interests. This recommendation is not to alter the kinds of agency action amenable to judicial review, the requirements of standing to seek review, or the scope of that review.

(f) As an incident to its main responsibilities the People's Counsel should be empowered to recommend to Congress or the President or to both such legislation or other action as it deems appropriate to correct deficiencies in or otherwise improve Federal programs having a substantial impact on the poor.

5. (a) Congress should provide for an appropriate body to perform the functions outlined in Section 4. Deserving of consideration as such body would be a new single-purpose corporation, to be created by Congress, modeled on the Corporation for Public Broadcasting, Pub. Law 90-129, 81 Stat. 368 (1967), 47 U.S.C. (Supp. III) 396, and to be known as the People's Counsel Corporation. In the event this form of organization is adopted, the following considerations should apply:

(1) The People's Counsel Corporation should be made tax exempt and authorized to accept grants of private funds. Gifts to the Corporation should be made deductible as charitable contributions for Federal income tax purposes.

(2) Federal financing of the Corporation should be made available to the extent necessary to assure its effective operation.

(3) The governing board of the People's Counsel Corporation should be constituted to give the poor meaningful representation thereon. Such body should be constituted to ensure close communication with the poor and effective representation of the viewpoints of the poor.

6. All Federal agencies should be required by Executive order to notify the People's Counsel of all proposed rules which would have a substantial impact on the poor. Agencies also should be required by that Executive order to give the People's Counsel an opportunity to present the views of the poor with respect to such proposed rules. Exceptions to these obligations should be permitted only "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that [such] notice and \* \* \* [an opportunity for the People's Counsel to present its views] are impracticable, unnecessary, or contrary to the public interest." (See 5 U.S.C. 553(b) (B).) In



these exceptional cases, agencies should be required to notify the People's Counsel as soon as practicable of any consummated rulemaking substantially affecting the poor, and should be required to give the Counsel as soon as practicable an opportunity to communicate to the agency its views concerning the desirability of further action with respect to such rulemaking.

Without prejudice to creating or empowering any other appropriate body to perform the general functions outlined in paragraphs 4, 5, and 6, any special provision therefor should be so structured as to take maximum advantage of the capabilities in this field of non-government organizations, and of other public bodies, including notably the Office of Economic Opportunity.

SEPARATE STATEMENTS CONCERNING RECOMMENDATION NO. 5—REPRESENTATION OF THE POOR IN AGENCY RULEMAKING

*Statement of John H. Crooker, Jr.*

The majority position with respect to Recommendation No. 5 is that "Federal agencies" should make strong efforts to ascertain from the poor their views regarding rulemaking "that may affect them substantially." I believe that (a) the major independent agencies are seldom involved in rulemaking affecting the poor except insofar as the poor are members of the public generally; and (b) it was the intent of the Congress, in establishing the Administrative Conference, to have studies conducted and information collected and interchanged, so that administrative agencies might improve and expedite their general procedures.

Therefore, I doubt that the Congress, in enacting section 5 of the Administrative Conference Act, 5 U.S.C. 574, intended that the Conference should address itself to the matters treated in Recommendation No. 5. My dissent is not, in any way, directed to the wording of the recommendation.

*Statement of Paul Rand Dixon*

I disagree with the adoption of paragraphs 4, 5, and 6 of Recommendation No. 5 developed by the Committee on Rulemaking respecting the creation of a People's Counsel to represent the poor generally before Federal administrative bodies. I am fully aware of and sympathetic with the plight of the poor in our society. I recognize it as one of the primary problems that must be solved if our democratic way is to survive. However, I am fully of the opinion that this is a problem that should be debated and resolved by Congress. I find nowhere in the legislative history leading to the creation of the Administrative Conference of the United States any thought that the Administrative Conference would delve into this social problem. Even if I could bring myself to the thought that it was rightfully within the purview of the duties of the Administrative Conference to deal with the plight of the poor, I still would question the wisdom of creating a Poor People's Counsel as the sole, if not principal, protector of the rights of the poor. The plight of the poor needs everyone's protection, not just the protection of a People's Counsel.

So that my position will not be misunderstood, I want it clearly known that I stand in the forefront of those who deem it necessary to do more to protect those low-income people in our society who are generally classified as poor.

*Statement of Joe M. Kilgore (joined by Richard H. Keatinge, Jim C. Langdon, Norman A. Flanningam,<sup>1</sup> Ross L. Malone, Starr Thomas, Harold L. Russell)*

We did not support paragraphs 4, 5, and 6 of Recommendation No. 5. We do support encouraging the formation of and recognition of a People's Counsel, as a private entity, to represent the public interest in the area of rulemaking in Federal agencies; with such Counsel being oriented to represent most fully those of the public whose interests would otherwise be un-represented or under-represented; and with such People's Counsel being eligible to receive Federal grants as required to permit its function.

This dissent from the majority view is dictated by—

1. The concern that this proposed function should be restricted, at least until experience might dictate otherwise, to the rulemaking function; and
2. The belief that the proposed representation should not be limited to any segment of the public, even though its principal thrust would be so directed.

<sup>1</sup> Mr. Flanningam joins in this statement noting that the term "rulemaking" as used therein refers to Federal agency processes for formulation, amendment, or repeal of rules of general applicability.



*Statement of Malcolm S. Mason*

I support the purposes of this recommendation. When a People's Counsel is constituted, however, it is important to make a distinction between two kinds of advocacy, so different that they cannot be directly conducted by the same organization. There is first of all adversary advocacy, owing an attorney's complete loyalty to a specific client. In this sense, there cannot be a People's Counsel for the poor, because the poor are many and different and must be able to speak with many voices. This kind of advocacy is needed. It must be aggressive and hard-hitting. If it is conducted directly by a Government or Government-controlled agency, its independence may be impaired. For this kind of advocacy an appropriate model is suggested by the Legal Services Program conducted by many separate private local organizations: funded by OEO, but free, and indeed encouraged, to act fully on behalf of an actual client without limiting its vigor by reason of relationship to OEO. This, I believe, will also be the pattern of the new HEW Legal Services Program.

There is also cooperative advocacy: unaggressive, quiet, nonadversary, seeking to foster an awareness, a concern and a more lively recognition that poor people are affected by proposed administrative action. This kind of advocacy can be conducted by a Government or quasi-Government organization without inconsistency and with benefit to the effectiveness of its work. An appropriate model is suggested by such accomplishments as new rules on loans to demonstration cooperatives of poor farmers (achieved by mutual agreement of the Department of Agriculture and OEO); new clarification of Government security regulations, removing barriers to the employment of hard-core unemployed with a criminal record (achieved by joint action of the Department of Defense, Department of Labor and OEO); a new consensus on the wider use of policy advisory boards in programs affecting the poor (resulting in part from encouragement of this kind of action by OEO).

I urge that the Conference Recommendation be implemented. In its implementation, contributions already made in this field should be recognized and used as a basis for expanded activity. The distinction between the two different types of advocacy should also be reflected in the choice of appropriate structure. Both are needed.

*Statement of Nathaniel L. Nathanson*

I would like to explain why I voted in favor of the recommendation for a People's Counsel, as amended during the debate, because I believe that my interpretation of the final action taken may have been shared by others who also voted in favor of the proposal and is therefore entitled to some consideration in efforts to secure its implementation.

While I was deeply troubled by some of the arguments advanced against the proposal, particularly by the misgivings expressed concerning the arrogance of a government agency or public corporation undertaking to determine the interests of the poor in particular agency action, I felt that this concern could be met by emphasis upon the representative character of the People's Counsel and a requirement that specific, identifiable interests be represented, rather than hypothetical interests which might be imagined by the People's Counsel. This requirement could appropriately be implemented by the further requirement that those interests be identified in the form of particular groups or associations who could determine their own interests and make their own wishes or basic positions known to the People's Counsel. This view was certainly made explicit in the amendment, proposed by the Judicial Review Committee and accepted by the Rulemaking Committee, to paragraph 4(e) and it is also consistent with the final language of paragraph 4(d) as amended in the course of the debate so as to substitute "participate suitably" for the original word "intervene." This left a large measure of discretion to each agency in allowing participation by the People's Counsel in a particular proceeding, including the requirement of a showing that the concern or position which the People's Counsel undertook to present was in fact shared by an identifiable group of people who were at least informed of the position which the People's Counsel was taking. I also doubt that the leaders of the Poor People's movement who were quoted by Professor Bonfield as favorable to the proposal envisaged a People's Counsel who would not be in any way answerable to the people he undertook to represent.

I appreciate that this interpretation, emphasizing as it does the representation of identifiable groups who may exercise some control over the People's Counsel, may not be entirely acceptable to the original proponents of the proposal, partic



ularly those who accepted the amendments with some reluctance. Nevertheless, they did accept the amendments, presumably for the purposes of mollifying the opposition and with some appreciation of the fact that the reasons for the amendments were more than technical. Particularly in view of the closeness of the vote on the final approval of paragraphs 4, 5, and 6, the original proponents are hardly now in a position to insist upon the rejection of a reasonable interpretation which may have been decisive in the approval of the recommendation. They may also take some comfort in the fact that the current requirements for standing to participate in both administrative and judicial proceedings by groups indirectly affected by governmental action will scarcely inhibit the activities of a People's Counsel anxious and resourceful enough to find out what the people he purports to represent really want.

*Statement of Robert W. Graham*

May I respectfully record my dissent from the recommendations of the Conference embodied in paragraphs 4, 5, and 6 of Recommendation No. 5. No one can disagree with the stated objectives of these recommendations, and I do not. However, I do not conceive that these recommendations are appropriate within the mission of the Administrative Conference in its efforts to seek improvement of administrative procedures. Furthermore, I consider unsound attempts to fractionate the public interest which is properly the concern of our Federal administrative agencies.

RECOMMENDATION NO. 6—DELEGATION OF FINAL DECISIONAL AUTHORITY SUBJECT TO DISCRETIONARY REVIEW BY THE AGENCY

*Recommendation*

1. In order to make more efficient use of the time and energies of agency members and their staffs, to improve the quality of decision without sacrificing procedural fairness, and to help eliminate delay in the administrative process, every agency having a substantial caseload of formal adjudications should consider the establishment of one or more intermediate appellate boards or the adoption of procedures for according administrative finality to presiding officers' decisions, with discretionary authority in the agency to affirm summarily or to review, in whole or in part, the decisions of such boards or officers.

2. Section 8 of the Administrative Procedure Act, 5 U.S.C. 557, should be amended as necessary to clarify the authority of agencies to restructure their decisional processes along either of the following lines:

(a) *Intermediate appellate boards*

(1) Whenever an agency deems it appropriate for the efficient and orderly conduct of its business, it may, by rule or order—

(a) establish one or more intermediate appellate boards consisting of agency employees qualified by training, experience, and competence to perform review functions;

(b) authorize these boards to perform functions in connection with the disposition of cases of the same character as those which may be performed by the agency;

(c) prescribe procedures for review of subordinate decisions by such boards or by the agency; and

(d) restrict the scope of inquiry by such boards and by the agency in any review, without impairing the authority of the agency in any case to decide on its own motion any question of procedure, fact, law, policy, or discretion as fully as if it were making the initial decision.

(2) Any order or decision of an intermediate appellate board, unless reviewed by the agency, shall have the same force and effect and shall be made, evidenced, and enforced in the same manner as orders and decisions of the agency.

(3) A party aggrieved by an order of such board may file an application for review by the agency within such time and in such manner as the agency shall prescribe, and every such application shall be passed upon by the agency.

(4) In passing upon such applications for review, an agency may grant, in whole or in part, or deny the application without specifying any reasons therefor. No such application shall rely upon questions of fact or law upon which the intermediate appellate board has been afforded no opportunity to pass.

(5) An agency, on its own initiative, may review in whole or in part, at such time and in such manner as it shall determine, any order, decision, report, or other action made or taken by an intermediate appellate board.



(6) If an agency grants an application for review or undertakes review on its own motion, it may affirm, modify, reverse, or set aside the order, decision, report or other action of the intermediate appellate board, or may remand the proceeding for reconsideration.

(7) The filing of an application for agency review shall be a condition precedent to judicial review of any order of an intermediate appellate board.

(8) Agency employees performing review functions shall not be responsible to or subject to the supervision or direction of any employee or agent engaged in the performance of investigative or prosecuting functions for any agency.

*(b) Discretionary review of decisions of presiding officers*

(1) When a party to a proceeding seeks administrative review of an initial decision rendered by the presiding officer (or other officer authorized by law to make such decision), the agency may accord administrative finality to the initial decision by denying the petition for its review, or by summarily affirming the initial decision, unless the party seeking review makes a reasonable showing that—

(a) a prejudicial procedural error was committed in the conduct of the proceeding; or

(b) the initial decision embodies—

(i) a finding or conclusion of material fact which is erroneous or clearly erroneous, as the agency may by rule provide;

(ii) a legal conclusion which is erroneous; or

(iii) an exercise of discretion or decision of law or policy which is important and which the agency should review.

(2) The agency's decision to accord or not to accord administrative finality to an initial decision shall not be subject to judicial review. If the initial decision becomes the decision of the agency, however, because it is summarily affirmed by the agency or because the petition for its review is denied, such decision of the agency will be subject to judicial review in accordance with established law.

RECOMMENDATION NO. 7—ELIMINATION OF JURISDICTIONAL AMOUNT REQUIREMENT  
IN JUDICIAL REVIEW

*Recommendation*

Title 28 of the United States Code should be amended to eliminate any requirement of a minimum jurisdictional amount before United States district courts may exercise original jurisdiction over any action in which the plaintiff alleges that he has been injured or threatened with injury by an officer or employee of the United States or any agency thereof, acting under color of Federal law. This amendment is not to affect other limitations on the availability or scope of judicial review of Federal administrative action.

RECOMMENDATION NO. 8—JUDICIAL REVIEW OF INTERSTATE COMMERCE COMMISSION  
ORDERS

*Recommendation*

Judicial review of orders of the Interstate Commerce Commission in cases where at present a special three-judge District court is used under 28 U.S.C. 2325 should be by petition to review in the United States Courts of Appeals in the same general manner as review of agency orders under the Judicial Review Act of 1950, 28 U.S.C. (Supp. II, 1967) 2341-2352.

Mr. WILLIAMS. Let me very quickly mention four or five of them that I think might be of particular interest to you.

One recommendation urges the administrative agencies to consider the adoption either of an intermediate appeal board with only certiorari-type review to the agency for a number of cases—and I can use that shorthand way of describing the review because all of you are lawyers—or, in the alternative, to delegate greater decisional power to the hearing examiners, subject only to certiorari-type review by the agency itself in certain kinds of cases.

Notice the obvious purpose of this recommendation is to try to urge the agencies, the members themselves, to concentrate on the more diffi-



cult and serious cases, leaving the more routine cases to be handled at the lower level, except always with the possibility that the Commission may review them if it wants to.

Both of these devices have been effectively used in some of the administrative agencies and we are asking broader consideration.

Another recommendation has to do with insuring that poor people be adequately represented and have their point of view adequately presented in administrative rulemaking. That is a neglected area.

We have been concerning ourselves a great deal in the last few years with insuring that people have counsel in various situations, particularly in the criminal area. But in the rulemaking process no particular attention or no structure has been created.

Our recommendation is in two parts. The first urges the agencies and departments themselves to set up procedures to insure that the position of the economically disadvantaged be adequately heard in the rulemaking process.

The second part of the recommendation recommends the establishment by legislation of a people's counsel to represent the poor in agency rulemaking to insure that the point of view of these people usually not heard from is presented.

In more technical legal recommendations, which I am sure you as lawyers appreciate, the Conference recommended the removal of the \$10,000 jurisdictional amount in suits in the U.S. district courts to review administrative action. This has been a troublesome provision that doesn't fit all kinds of situations, such as selective service and injunction situations, and we recommend the removal.

Mr. POFF. What would that do to the caseload?

Mr. WILLIAMS. There is no indication that it would seriously increase it. Our study didn't show that it would. The problem has been mainly a problem of troublesomeness in trying to meet the \$10,000 limitation by stretching things.

Mr. POFF. Is there any evidence that it would not increase it?

Mr. WILLIAMS. No; it obviously would increase it to some extent.

Mr. POFF. This is one of your recommendations?

Mr. WILLIAMS. This is one of the recommendations.

Mr. POFF. But you have no empirical data to justify it?

Mr. WILLIAMS. Yes. We do have a report written by Roger Cramton of the University of Michigan, in which he studied this, and also, data based upon a study made by the American Law Institute which made the same recommendation at an earlier time. The conclusion—and I can't quote you the data now—but the basic conclusion is that they do not foresee any staggering amount of increased caseload, but they certainly recognize that there will be given a right to judicial review in some situations where it does not now exist or is very difficult to get.

We, also, recommended in accordance with legislation already pending before the Congress that the special three-judge district court review for the Interstate Commerce Commission be changed—it is a unique system—be changed to make the Interstate Commerce Commission judicial review fall into the pattern of the other independent regulatory agencies. As I say, there is already legislation pending in Congress on this.



As further indication of the broad range of the kinds of things the Conference considers, the Conference also recommended the establishment of a consumer bulletin on an experimental basis.

Now this would be done not with the idea in mind of trying to propagandize or sell anybody anything. Basically, it would be a simple paraphrase of the notices contained in the Federal Register of hearings on consumer matters and actions on consumer matters, plus whatever additional similar notices would be of use to consumers. It would be a very simple sheet which would be given very broad circulation simply to give the people of the country a better opportunity to know what their Government is doing and how they can reach their Government with their point of view.

So, it would be basically a notification device rather than an attempt to sell anybody anything or to keep them from buying anything. Just a paraphrase of something that is available now, except that nobody reads it. Certainly, the consumers don't read the Federal Register, although it is fulfilling its function properly, of course.

Again, to show you the broad range, we made a recommendation on improving hearing facilities, especially outside the city of Washington, for the great number of administrative hearings held by the Federal Government.

This is, in a sense, a "sleeper" recommendation.

When the committee got into it, they thought this was a relatively minor and routine thing. As they got into it more and more, many people from all walks of life and lawyers out in the field felt this was tremendously important, that the situation as far as holding official Federal hearings in the field outside of Washington is just appalling, and that there is no coordination and no way of working it out so that the facilities which are available can be effectively used.

The General Services Administration was concerned and felt it couldn't do anything without the help of a recommendation. This started as a relatively minor thing that snowballed and became quite a significant recommendation and very strongly backed from many sources.

I just mention these examples to give you some feel for the breadth of the range of the activities of the Administrative Conference. You will note that the Conference is quite concerned with citizen participation in Government. The Conference is also concerned with efficiency in Government as its proposal on intermediate appeal boards and greater delegation of authority in routine cases to hearing examiners would indicate. I might add that we now have major projects under way to try to cut down on delay in administrative proceedings which arises from many other sources.

Two other brief items I might mention to complete the picture of the Administrative Conference.

One, we are often asked the question what relationship do we have to an ombudsman. Of course, the ombudsman concept is a concept of a Government individual taking a citizen's complaint and following through on his complaint and solving his complaint for him.

We do not have that power, although citizens' complaints are very important to us. Citizens' complaints may point up to us an area where



administrative procedures are not working well, and we have already received a number of citizens' complaints doing this.

Then we can go in and investigate the procedures and make recommendations to improve them. But we do not have the statutory authority to go in and solve this particular citizen's complaint for him so that we can write back to him and say, "We have solved your complaint," as a true ombudsman would do.

We get complaints on procedures, not only from citizens but from the agencies also, and we have had a number from the agencies themselves. But our focus is on improving the procedures so there will be less complaint in the future and our improvements will be done to the advantage not only of the citizen who complained, but to all citizens and to the Government agencies themselves.

The other general observation I would like to make is this: The ultimate goal of the Administrative Conference and, it is a goal of the utmost importance, must be to make administrative procedures work.

Now we should give every protection to the right of the individual dealing with the Government that he justly is entitled to, but we must be wary that we don't give him the opportunity to claim rights that he really doesn't need, which can be used as a delay device or can simply tie up the procedures so they won't work at all.

Now, this is a delicate balancing matter and we are aware of this. It seems to me that this is one of the significant roles that the Administrative Conference can play in working on this delicate balance, trying to maintain it between having procedures which will work fairly and expeditiously, and yet will work and not become bogged down in such technicality that the process itself simply cannot accomplish what it is supposed to do.

Now, with that description of the Conference, let me return again to our money problem and the need for removal of the limitation on appropriations.

We have submitted to you two documents. We have the explanation of our proposed statute, which accompanied our bill, and we also have a detailed cost memorandum.

Now, the difficulties that we face basically are these: The limitation of \$250,000 was based upon the expenses of the 1961-62 Conference which totaled approximately \$255,000, but on the basis of substantial contributions of time and equipment that are not now available.

For example, the Chairman of the temporary Conference was a Federal judge who contributed his time and there was no salary at all. There was no permanent staff. Our cost memorandum will show you that on the basis of the \$250,000, even at the time the statute was passed in 1964, to have the same amount of money available now takes approximately \$400,000, the same amount for the same purposes.

Now, this is a combination of a number of factors, but the cost figures show you exactly how those factors enter in.

At the present time we are moving ahead with a staff of three professionals and four support people, although we have statutory authorization for 11—seven instead of 11—because we don't have money for any more.

We desperately need one more lawyer full time and one more secretary. We simply do not have the money under the \$250,000 which we have been given this year.



Let me assure you that I contemplate the staff will always be small in the foreseeable future. Unless Congress assigns us some new functions, I never see a need for more of a staff than about a dozen full-time people.

The additional money we need is money to pay travel expenses to our members who not only attend plenary sessions twice a year, but attend committee meetings which meet several times when they are developing recommendations, and to pay the per diem costs of our experts, young law professors hired in many instances at our maximum per diem of \$100 per day, which is less than they are being paid as a matter of salaries at their law school today, who work on these research reports with the committees developing the reports and the recommendations.

This basically is where the money is needed.

Now, again, let me remind you that we are not asking you for any particular sum. We are asking to be relieved of what I believe, what the Council of the Conference has gone on record believing, and indeed what the entire Conference has gone on record believing, is an unrealistic limitation.

We ask you for its removal to give us the power to ask the Bureau of the Budget and the Appropriations Committees for a realistic budget and I remind you, of course, that we have to justify whatever we ask for to them.

Could I summarize just by making this general observation.

The distinguished people serving on this Conference, Government officials, and private citizens, all serve without compensation. They believe it is important. I think you will agree, looking at that list, that this is a list of highly distinguished, knowledgeable, and competent citizens.

I can't think of any place in the Government where we can get more for our money than by giving this group of dedicated citizens adequate staff support so that they can do their job, since they are contributing their time and energies. And that is all we are asking for in this statute.

Gentlemen, I thank you very much for your attention and will be delighted to try to answer any questions you may have, and if we can't do it here today, we will get the answers for you.

Mr. KASTENMEIER. Thank you, Mr. Williams, for a lucid explanation of the Conference's activities, and for your explanation in support of H.R. 4244.

Going to the question of the recommendations of the Conference at its plenary session of last December, I take it that the first four recommendations really call for executive action and do not require any legislative action; is that correct?

Mr. WILLIAMS. Basically this is correct.

Mr. KASTENMEIER. Is it your intention to report on how the executive branch acts on these recommendations?

Mr. WILLIAMS. Yes, it certainly is. Let me explain what we have done. We have been held up a little bit by the change in administration, because the heads of some of the agencies are in the process of changing, but we have written all of the agencies involved in these recommendations, sending them copies of the recommendations, indicating that we will be in touch with them again before the end of the fiscal year for a report on what they have done to adopt or implement the recommendations.



Mr. CUSHMAN. May I just supplement that, Mr. Chairman, by stating that the bylaws provide for congressional representation in the Conference. They have the privilege of the floor, but not a voting right. In the past Conference in 1961 and 1962, of which I had the privilege of being a member, there was very active congressional liaison handled through the very helpful staff assistants to the major committees, this being one of them, so you get the direct liaison with our work as it is going on.

Mr. KASTENMEIER. In that connection, was the Congress represented at your plenary session or other meetings last December?

Mr. WILLIAMS. Yes, it was.

Now since at that time, because of the election, Congress was in the process of going through some changes, what we did was phone the chairmen of the critical committees that deal with us and suggest that they send representatives. Since January, I have written the President of the Senate and Speaker of the House and suggested that formal liaison representatives be appointed.

Mr. MACGREGOR. If the Chairman will yield, the Speaker has acted in response to your suggestion and your request, Mr. Williams.

Mr. KASTENMEIER. Yes. I would be interested to know which Members of Congress or their representatives attended the Conference. I was not aware, incidentally, that the Speaker had acted on this.

Mr. WILLIAMS. We will be delighted to get that information for you.

Mr. KASTENMEIER. I take it the other four recommendations, the last four, might or do require legislative action?

Mr. WILLIAMS. Yes. In part.

Mr. KASTENMEIER. I notice in particular one of your recommendations, No. 5. It occurs to me that Mr. Feighan of this committee has introduced a bill, H.R. 1776, relating to a people's counsel which, as I understand it, would authorize grants to the National Legal Aid and Defender Association.

Does that grow out of your recommendation or is it related to it in some respect?

Mr. WILLIAMS. That bill was introduced at the last session before our committee made its recommendation, and our committee built on the foundation of Representative Feighan's bill.

Now while they paid significant homage to Representative Feighan's bill, however, the committee felt, and the Conference by adopting the recommendation feels, that the people's counsel should be somewhat differently structured than Representative Feighan's bill proposes.

Chairman Celler has already written us to comment on Representative Feighan's bill, and we have already done so. We have written a letter in which we point out approximately what I have said to you, that certainly the recommendation of Representative Feighan's bill moves in the same general direction but that the Conference represented a somewhat more structured people's counsel than Mr. Feighan's bill.

Mr. KASTENMEIER. I understand.

And while this hearing is not on that bill, nevertheless, insofar as your Conference deals directly with that subject matter, it is relevant to our purposes.



Mr. WILLIAMS. It certainly is and we volunteered to work with Chairman Celler, or Mr. Feighan, or anyone, in working on this problem.

Mr. KASTENMEIER. Going to the question of authorization, particularly with Mr. Poff's appropriate comments in mind, and while it is obvious that you prefer an open-ended authorization, what compelling argument can you make against our continuing to submit a dollar limitation, that is to say, replacing \$250,000 with another figure, rather than merely removing the ceiling?

Mr. WILLIAMS. Let me state some arguments. It is up to you gentlemen to know how compelling they are.

As was said, the major independent regulatory agencies do not have such limitations as a typical matter. We are created by statute in their image to deal with them, and this is why the statute contemplates that we be on a par with them. We cannot very well be in a position of recommending that they do things unless we are an equal among equals in a relative sense.

This I think is one argument.

Mr. KASTENMEIER. May I interrupt and ask do you know the legislative history of the limitation? Was it that this argument did not prevail at the time of the law's inception?

Mr. WILLIAMS. Yes. We have the legislative history and the history basically was that the limitation originated in the House in committee, and as near as we can say, it came up relatively near the end of the development of the measure in the House.

It was not contained in the Senate measure and, as near as we can guess, it was basically upon the feeling, "Well, we are moving into a new field and agency. Let us not give them carte blanche to become a superagency at the outset."

This leads to the second argument—

Mr. POFF. May I interrupt? I believe the amendment was adopted in executive session of the full Committee on the Judiciary before the bill reached the floor of the House.

Mr. WILLIAMS. It was before it reached the floor of the House. Yes, I knew that.

Mr. POFF. I am sorry to interrupt.

Mr. WILLIAMS. That is all right.

But I think this leads also to the second argument which I would make. The Conference is now established and operating. It seems to me that we can show that the members are responsible, and that we are not developing in the direction of what some people expressed fears about at that time of becoming a superagency or ombudsman, and we would simply like to take our place as one of the major independent agencies of the Federal Government, although we are not regulatory.

Mr. KASTENMEIER. In the event Congress should feel that there should be a specific dollar limitation on the authorization although it ought to be changed in amount, what amount would be an appropriate amount as far as a minimum limitation?

Would the \$400,590 you estimate as your present costs, be an appropriate limitation?

Mr. WILLIAMS. Mr. Chairman, I would say that that is too small to be an adequate maximum. We are not yet fully developed in our significant statistical function which is given to us by statute and



which is in addition to what the temporary Conference did, and we are not yet fully developed on the breadth of our investigations.

But I would say—you have asked for a figure—that I would be glad to give you one. I don't foresee in the reasonably near future the need for more than \$500,000 a year and if it is felt that there has to be some limitation, this is the one that I would recommend.

Again may I stress—it is belaboring the point I know—but I just don't know where in Government you can get more for your \$500,000 or \$400,000 or whatever the budget is in getting the tremendous competence of these people to work on these very serious problems.

Mr. KASTENMEIER. In a letter you have written to the President, you indicate that a budget of approximately \$400,000 a year is needed in the next year or two to enable the Conference to move ahead effectively.

Mr. WILLIAMS. That is right.

Mr. KASTENMEIER. Therefore, if there were such a limitation as \$400,000, at least for the short term you could operate.

Mr. WILLIAMS. Yes; I would be willing to accept that, but it would put us in the position again of having the ceiling in a sense be just what we at the moment foresee. There is no flexibility here whatsoever for additional expenses that might arise, even in very small amounts, such as a 10-percent increase in airline fares that would hit us significantly.

The pay increases of employees hit us significantly because we are such a small agency and it is such a large part of our budget, and this would be the difficulty with putting on such a ceiling even though it is true we talk in general terms of about \$400,000 in the next year or two.

Mr. CUSHMAN. Mr. Chairman, may I just elaborate.

While I am a lawyer, I have undertaken to do some of the budget work and it is my job, not a very happy one, to have to tell Mr. Williams: "No, you can't do this, or you can't do that." The fixed overhead costs, if I can use that general term, of the things that are daily, our salaries, payments to GSA for supporting services, this type of thing, absorb about \$205,000, so we are functioning essentially on about \$45,000 this year.

Now, the only reason we are able to do as much as we have done is because we did receive a supplemental for fiscal 1968 which was actually paid to us in July of 1968, after the end of that fiscal year, and through the cooperation of the Bureau of the Budget and the General Services Administration, they permitted us to obligate certain funds.

So, in effect, we carried forward into this fiscal year almost \$40,000. So, that while I say, we are working on \$45,000 I don't want to be hiding the fact that we were able to carry forward about \$40,000. It doesn't add up exactly but it is roughly that.

Mr. KASTENMEIER. I understand. Apparently the item for printing and reproduction in your memorandum of March 3 has remained relatively stable. I ask this question because it is the subcommittee's experience with another commission, which had a limited life and very special purpose, that printing costs rose tremendously in a short period of time, although for a very specific reason.

You anticipate no undue rise in such costs in the near future?



Mr. WILLIAMS. Not undue, but we are faced with this kind of problem. We have these excellent research reports which are written, and we have our recommendations. We have the serious need to compile and print these so they are readily available to make the greatest use of them we can make.

Thus far we haven't been able to do it because we don't have the money. So we don't anticipate a rise in all printing costs, but we anticipate the need to establish, if you will, a reporter for the Administrative Conference to print these reports and the recommendations as they develop and as we go along so they will be in one particular place.

I just have at hand here an example of one. This was done by Professor Freedman at the University of Pennsylvania Law School, and it is on the role of review boards in the administrative process building up to our recommendation No. 6. This is a thorough, approximately 50-page report on this problem.

On the people's counsel, the poor people's counsel, Professor Bonfield, at the University of Iowa Law School, made a thorough study and report on the representation of the poor in Federal rulemaking. This again is an approximately 50-page report.

Now, Professor Bonfield has gotten at least one version of this published in the Michigan Law Review, and we encourage this as much as possible, but also we would like to gather them all together and publish them all together. So we do anticipate that much increase in printing costs.

Mr. CUSHMAN. And we have a mailing list of approximately 250 at the moment. That includes, of course, the Conference members, and this list increases as we become better known. So while we are working off of a Xerox machine, we do have a substantial printing cost.

Mr. KASTENMEIER. Mr. Mikva, do you have any questions?

Mr. MIKVA. No, Mr. Chairman.

Mr. KASTENMEIER. Mr. Poff?

Mr. POFF. Thank you, Mr. Chairman.

I neglected a moment ago to mention one of the real reasons the Legislative Committee, as distinguished from the Appropriations Committee, likes to close authorizations rather than leave them open ended.

This device provides the Legislative Committee, which, really, is the parent of the organization concerned, with the opportunity for continuing legislative oversight.

Mr. WILLIAMS. Appearances just like this one here today.

Mr. POFF. I was about to suggest that. But important is the fact that if we hadn't imposed a \$250,000 ceiling on your authorization previously, there would have been no occasion for you to appear before this subcommittee today.

And, we are glad to have you here because it is impossible, with all of the many duties which face the Congress, for us to watch carefully the work of our offspring.

This is not just some petty concern, not some prideful obsession that we have. We are trying to discharge the function which is ours.

I must say that I don't quite understand the validity of the analogy that you attempt to make between this Conference and a regulatory



commission. It seems to me that the regulatory commission cannot possibly anticipate its future workload. It changes from year to year, month to month, week to week, depending upon the adversary proceedings with which it deals.

For that reason perhaps Congress can justify an open-ended authorization.

In your case it does seem possible at least, to project in a reasonably intelligent way what your financial requirements will be from year to year.

There are some cases of hardship, and in such cases we have the device of the supplemental appropriation, and as long as the authorization is high enough to accommodate the supplemental appropriation, you have no real problem there.

If it is not high enough, you still have ready access to the legislative committee to seek relief in the authorization at that time.

So, I really don't see quite the parallel. If you would like to amplify the previous statement, I would be glad to hear it.

Mr. WILLIAMS. I would be glad to respond to that.

I think basically, Congressman Poff, what you say is correct. I can give you some things that concern us. One is that our ceiling at the present time has us in such a straightjacket that we cannot carry out effectively the congressional mandate.

Now, if this particular legislation gets lost in this session of Congress for one reason or another, we are in desperate trouble.

So that whenever we have a ceiling and we are close to it, we always have the fact that there may be some lag there which may put a squeeze on us.

More particularly to the problem you mentioned, let me give you a couple of examples of the unanticipated kind of difficulty we might have.

One is, of course, from time to time, as you know, there have been proposals for a complete revision of the Administrative Procedure Act—

Mr. POFF. I hope you will understand that I support efforts of reform in that area. You may know that Senator Long and I introduced bills to accomplish that purpose.

Mr. WILLIAMS. Yes, I know that.

Now, if we, as part of the function of the Administrative Conference, and it seems to me it would be part of our function, were to sit down and rework and study the entire Administrative Procedure Act and make a recommendation for a complete revision, this would be a project which would entail the expenditure of funds that would not fit within such a budget.

Now whether this will happen or not we don't know. We have made the decision at the moment to move on a piece-by-piece basis, revise it as we go along, as we see problems, and this was the decision made by the Council.

But if the legislative situation changed or the situation from the interest of the American Bar Association which is concerned with this changed, and it was felt we better do something broad at the moment, the money wouldn't be there for us to do it.

Mr. POFF. I appreciate your concern and I respect your attitude about it fully. I am bound to make some comparison, however, with the mission which is assigned your Conference and that which is assigned the National Commission on Reform of Federal Criminal Laws.



As broad as the issues involved in the Administrative Conference, as complicated as those procedures might become, as detailed as the legislation we offer might be, I suggest it doesn't properly compare with the complexity of the criminal statutes on the Federal statute books.

Mr. WILLIAMS. I think you are quite right about that.

Mr. POFF. Title 18 is only a part of the criminal code, as you know. That Commission is mandated by the Congress to reform—and that is not recodify—the Federal Criminal Law, including both the statutory laws and the case laws.

That Commission has been functioning now for 2 of its 3 years. We are about prepared to publish and circulate for scholarly criticism the first tentative draft of a complete new code. I can't begin to describe the amount of work that has gone into that. We hope to submit our first required report in November, and we hope that we will be granted an extra year in order to complete our work.

But this Commission initially had a closed-in authorization of \$500,000, and of that sum today we have spent only \$450,000. We are currently requesting \$350,000 to accommodate the printing chore to which the Chairman made reference.

Our staff is larger than your staff. Our membership on the Commission is not as large, but we have in addition to the Commission an advisory committee, and the members of these two bodies come from the most remote corners of the United States.

They, too, are experts in their field and they, too, make their services available gratis.

We pay their travel expenses and per diem, and we have met several times each year for 2 years. On the basis of that comparison, it is difficult to understand how we members of this committee could defend an open-end authorization for the Congress on the floor of the House.

I hope you appreciate our problem. It is not for want of any sympathy with your problem. On the contrary, we are entirely sympathetic. But we are realistic. And I don't believe that this committee can go to the floor and carry legislation removing a previous limitation and making the authorization open end. I must be perfectly candid.

Mr. MIKVA. Will the gentleman yield?

Mr. POFF. Yes, Mr. Mikva.

Mr. MIKVA. I think you have to take on Congressman Poff on a much harder issue.

If in fact this committee has an oversight function here, and I must confess I was very much interested in hearing the work of the Conference being reported firsthand, then I think Congressman Poff's point is well taken.

Can a case be made, though, that having once established the Conference, there is really no oversight function that ought to be played by this committee; that the Conference ought to function the way other agencies function, and that is, justify its need for appropriations to the Appropriations Committee on a biannual basis, but that there is no specific or unique reason for this committee to continue to review the work of the Conference on a regular basis.

Can you comment on that?



Mr. WILLIAMS. Yes, I would say that I personally would see no greater need for a specific oversight obtained by having the Appropriations limitation on the Conference than on any other Federal Government agency. Of course, we also have a similar relationship with the Senate Judiciary Subcommittee, and we are fully aware that they also are interested in what we are doing and in a sense exercising an informal oversight. I would say that the oversight is similar to the oversight that takes place with any independent agency of the Federal Government. That is, the oversight is there, and these oversight hearings have been going on, I believe, up on the Hill just in the last few weeks with the independent agencies, even though the oversight didn't arise because of the need to raise ceilings.

But note my point. I recognize Congressman Poff's difficulty with respect to the open-end appropriation, and I have indicated to you that if this cannot be, that I think that \$500,000 would be an adequate ceiling. It is just that I am not alone in this.

We discussed this very thoroughly in the Council of the Conference and it has been discussed thoroughly with the Bureau of the Budget, and we went ahead on the basis of removing any ceiling because it was felt now it could be seen there was no serious danger from not having a ceiling in this particular independent agency.

Mr. POFF. I thank the witness for responding so candidly.

Mr. CUSHMAN. Mr. Poff, may I just comment?

This isn't an answer. It is just an observation.

We in fact, and rather uniquely I believe, received our entire appropriation of \$250,000 for the present fiscal year. I think if you look at the other agencies you will see that we are somewhat unique.

I think you can draw from that some conclusion, but I did want to observe that we are not now in the position of coming up in April or May and asking for a supplemental. This is an absolute ceiling so when the Chairman gets a reasonable, substantial, and well-earned salary increase, we have to find ways to take care of that. We have anticipated this problem.

Mr. POFF. I realize that.

Mr. CUSHMAN. It is not an answer to your question, sir.

Mr. POFF. No, but it is responsive to the theme.

It should be added in the context, however, that we really had only one meeting in plenary session. How often has the Council itself met?

Mr. WILLIAMS. It is about six or seven meetings thus far, but I would also remind you that every member is a member of a committee.

Mr. POFF. How many times have the committees met?

Mr. WILLIAMS. Some at least six or seven times in the past year; others not nearly that often. It depends on the particular status of a particular committee. For example, we have one committee that has six projects it would like to be working on all at once. It is only working on one because it only has one expert available and he can only work on one.

Mr. POFF. Now these meetings were held in the last calendar year, is that right?

Mr. WILLIAMS. That is right.

Mr. POFF. Were any held prior to that time?

Mr. WILLIAMS. No.



Mr. POFF. I am interested to know why there was such a long delay between the establishment of the Conference——

Mr. WILLIAMS. Do you mean from the time the statute was passed until I was appointed?

Mr. POFF. Yes. Well, yes. Until the Commission began functioning.

Mr. WILLIAMS. Well, the chairman was not appointed and I didn't take office until January of this year. In other words, the statute was passed in 1964. The first chairman took office in January of 1968.

Mr. POFF. I am asking, why the delay?

Mr. WILLIAMS. No, I don't know why the delay for that period of time.

Mr. POFF. Was any money spent between the time——

Mr. WILLIAMS. No money. There was no organization existing. In other words, with the appointment of the first chairman, the organization came into being. Until that time the statute was there without any implementation whatsoever.

Mr. POFF. But there must have been some cause for the inertia.

Mr. WILLIAMS. Well——

Mr. CUSHMAN. I think you are asking the chairman an embarrassing question.

Mr. POFF. I didn't intend it to be embarrassing.

Mr. CUSHMAN. Apparently it was very difficult for the administration to find the right man and it took them substantially longer than they thought it would.

Mr. POFF. Nearly 4 years.

Mr. CUSHMAN. I think they made a great find.

Mr. POFF. I am sure this is true.

Mr. WILLIAMS. I have been told informally and rather casually that the first attempts were to try to find an academic expert in the administrative law field. Then it was determined that this was not wise because he would already have been committed on a number of these problems because of his writings.

So then the necessity was to find someone who was close to the administrative law field, but was not deeply in it. Now if that was a qualification, I fit it, because my field was constitutional law and labor law as a teacher at the University of Texas for 22 years, but I am not publicly committed in writing on the specific problems of the administrative law field, although many years ago I also did teach it. But administrative law is not the area of my primary interest and my writings are not in that field. So this may be an explanation.

Mr. POFF. Well, I thank you both.

Mr. KASTENMEIER. Mr. Biester.

Mr. BIESTER. I wonder if we could pursue the point that Mr. Mikva and Mr. Poff raised about the matter of legislative oversight. I think that there may be a distinction that one can draw between the normal regulatory agency and its work, and the need for legislative oversight in the instance of your work.

It strikes me that your work product lies in recommendations to the Congress, and that being the case, if it were not for legislative oversight, the only work product and inputs that we are going to get are those which you choose to bring to our attention.



There may be healthy differences and honest differences within your own Council and your own committees, and the organization itself, which would never surface to our attention unless there were some kind of regular oversight.

I would like to explore how many man-days you have purchased so far in terms of per diem on expert work? Do you know?

Mr. WILLIAMS. I can give you a very close approximation.

About 250.

Mr. BIESTER. About \$25,000 spent in that?

Mr. WILLIAMS. At the moment, yes. Now, of course, we are committed to substantially more this spring. We have them working right now.

Mr. BIESTER. I would appreciate it if you could supply to us the work product represented by those \$25,000?

Mr. WILLIAMS. Yes; we would be delighted to.

Mr. BIESTER. Without binding yourself to the whole list, could you give me your recollection of what that is?

Mr. WILLIAMS. Yes. Every one of the eight recommendations is based upon a work product of some sort. Now, in addition, there are two or three areas of work product where no recommendation developed.

Just to give you an example, one problem which one of the committees started on was discovered to be in only one agency, and in dealing with that agency the agency said, "Well, we didn't realize we had that difficulty, and we will correct it."

We hope there will be a lot more of this. But there were quite a few man-days spent in this before this was accomplished, and there is no written work product at all.

But we have eight reports of the type which I showed you of varying degrees of length and completeness based upon these eight recommendations.

Now, in addition as I say, many of these things are pending, but we will be glad to get you a copy of each one of those.

Mr. POFF. Were those papers prepared under contract?

Mr. WILLIAMS. Yes, sir, they were prepared under contract.

Mr. POFF. How do you arrive at the amount of the contract in each case?

Mr. WILLIAMS. This gets very complicated.

Mr. POFF. I know it does. We have had some experience.

Mr. WILLIAMS. I would like to turn it over to Mr. Cushman. It gets complicated because of the status of the supplemental appropriation last year and the commitment of the funds.

Mr. CUSHMAN. Well, very briefly, the General Counsel of GSA with the Bureau of the Budget's approval permitted us to enter into contracts with specific professors as independent contractors.

In other words, with that arrangement, as you know, you can use funds which were appropriated in 1 fiscal year over into the next fiscal year, and under that arrangement, and bearing in mind the sum we had, we said, "we have ten committees, we will in effect assign one man to each of these 10 committees, we will write a contract with each of these gentlemen for \$2,000, and expect in return 20 days work."

In fact, we got 30 to 35 to 40 days' work in most instances.



Mr. POFF. Do those contractors appear before the Conference or the Council to present their papers?

Mr. WILLIAMS. Oh, yes. They attend all of the committee meetings in and out of Washington all the time. They followed right through to the Conference. They participate in the Conference right along with the chairman of the committees.

Mr. POFF. Yes. I think in defense of the academic community it should be said here that those contracts have been very useful to the Congress in preparing legislation, and while the price sometimes seems high to those who are not familiar with the mechanics of a situation, I can assure you from the experience we have had on our commission that the professor who undertakes one of those contracts earns it.

He is not finished when he completes the paper. When he presents it to the Congress, thereafter he is likely to be called without compensation as a witness before several congressional committees to defend his work.

So I admire and respect their willingness to undertake what really becomes a rather thankless chore.

Mr. BIESTER. I agree with my colleague on that.

Mr. POFF. I am sure you do.

Mr. BIESTER. No question about the fact that a work product such as you exhibited here is not going to be bought at 20 days' work, nor its defense, or anything else.

By the same token, I don't believe these gentlemen receive compensation at the rate of \$100 a day in their academic work.

Mr. WILLIAMS. We are finding, Congressman Biester, in most instances that they are. On a 9-months' basis the pay of law professors has skyrocketed amazingly.

Mr. BIESTER. That is very gratifying.

Mr. WILLIAMS. One of the men mentioned here is, I think, probably the highest paid 32-year-old law professor in the United States, and he is taking a substantial cut from his pay rate to work at \$100 a day for us.

Mr. BIESTER. Well, actually, it wouldn't be \$100 a day in work that he does. It is more like \$50 a day.

Mr. WILLIAMS. That is right, but even at \$100 he takes a substantial pay cut.

Mr. BIESTER. That is very gratifying to know.

Mr. KASTENMEIER. As a followup to the question on oversight, does the statute creating the Conference provide for a mandatory report of your Conference?

Mr. WILLIAMS. Yes; a mandatory annual report.

Mr. KASTENMEIER. To the Congress?

Mr. WILLIAMS. To the Congress; to the President.

Mr. KASTENMEIER. One other question: If this bill or some variant is enacted into law, will this relieve you of the limitation for purposes of the fiscal year ending June 30, 1969? Is that your purpose? Or do you intend that the subsequent fiscal year 1970 should be the first to be affected?

Mr. WILLIAMS. We are interested basically in fiscal 1970. Because of the limitations which we have had, we have now structured our spending for the rest of this year on the lower level, and the result is that several of the committees are in a sense almost idling because



they have no help at the moment. And we are projecting our next plenary session for June and obviously it is too late now to get and spend a large sum of money to greatly increase what that session will do in June, although it will be an adequate session.

But we are quite concerned, of course, that we be enabled to get enough money to get an adequate appropriation for fiscal year 1970, so we can plan ahead. We must get these very busy administrative law teachers tied up so that they can work with us and for us, and get an adequate staff so we can really move next year.

Mr. CUSHMAN. May I just add it is the fiscal 1970 appropriations hearings which are coming up immediately, and obviously we cannot ask for more than \$250,000 until the ceiling is removed or raised so we can ask for more than \$250,000.

Mr. KASTENMEIER. What you are saying is that prompt treatment of this legislation would be very helpful.

Mr. WILLIAMS. Yes; and tremendously appreciated on behalf of the entire Conference.

Mr. KASTENMEIER. Have you any plans to appear before the other body in connection with this? I noted in a recent Congressional Record that Senator Kennedy has introduced an identical bill.

Mr. WILLIAMS. That is right, and we have not yet been notified of a hearing.

Mr. KASTENMEIER. I see. Well, on behalf of the committee I want to thank you very much for your most enlightening, informative, and cooperative appearance this morning.

Mr. WILLIAMS. Mr. Chairman, I want to thank you for the opportunity to appear.

Mr. KASTENMEIER. The hearing is adjourned.

(Whereupon, at 11:35 a.m., the subcommittee adjourned, subject to the call of the Chair.)

( )