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HEARING

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE LAW
AND GOVERNMENTAL RELATIONS

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

H.R. 7662

ADMINISTRATIVE CONFERENCE ACT

JULY 26, 1977

Serial No. 29



Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1978

99-807

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ADMINISTRATIVE CONFERENCE ACT

JULY 26, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERN-
MENTAL RELATIONS OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 2226, Rayburn House Office Building, Hon. George E. Danielson chairman of the subcommittee presiding.

Present: Representatives Danielson, Mazzoli, Harris, Moorhead, and Kindness.

Also present: William P. Shattuck, counsel; Alan F. Coffey, Jr., associate counsel; and Florence McGrady, clerk.

Mr. DANIELSON. We do not have a numerical quorum of the full subcommittee but, under our more relaxed rules, we can receive testimony with two members present.

In order to save time and, hopefully, to discharge our calendar for the morning, we will proceed.

I might announce that for today's calendar I have scheduled the authorization hearing for the Administrative Conference, H.R. 7662, and also a continuation of our work on the bill for public participation in agency proceedings, H.R. 3361.

[A copy of H.R. 7662 follows:]

(1)

95TH CONGRESS
1ST SESSION

H. R. 7662

IN THE HOUSE OF REPRESENTATIVES

JUNE 8, 1977

Mr. DANIELSON introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Administrative Conference Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That (a) section 576 of title 5, United States Code, is
4 amended to read as follows:

5 "§ 576. Appropriations

6 "There are authorized to be appropriated \$1,400,000,
7 for each of the fiscal years ending September 30, 1979,
8 September 30, 1980, and September 30, 1981, to carry out
9 the purposes of this subchapter."

10 (b) The amendment made by subsection (a) shall take
11 effect October 1, 1977.

The latter measure is to trail the first. I do not at this time venture an opinion as to whether we will have a quorum for the second matter.

So, we have the pleasure of having with us this morning to testify Mr. Robert A. Anthony, Chairman of the Administrative Conference of the United States, and he is accompanied by the Honorable Harold Leventhal, circuit judge of the U.S. Court of Appeals for the District of Columbia Circuit; Cornelius Kennedy, Esq., of Kennedy, Webster & Gardner, Washington, D.C.; and Sheldon Cohen, Esq., Cohen & Uretz, Washington, D.C.

I might state to the subcommittee and for the record here that the authorization for the Administrative Conference runs through September 30, 1978, but it will obviously have to be renewed if the Conference can continue with its work.

I might also point out that while the Conference has lived within the authorization in past years, they have found it a little bit difficult to do at times. The bill which I introduced, H.R. 7662, is introduced solely to serve, as a vehicle so we have something to act on here, and it will be subject to amendment.

Mr. Anthony, why don't you proceed? I think it would be most helpful to us if you can tell us—it's in the material you have given me, but in case someone hasn't heard it—what the budget is that you have been operating under, and to what extent the Appropriations Committee has met its authorizations, what burdens you have experienced because of the gradually tightening restrictions resulting from it, and what you feel you are going to need for the next 2 or 3 years.

TESTIMONY OF HON. ROBERT A. ANTHONY, CHAIRMAN, ADMINISTRATIVE CONFERENCE OF THE UNITED STATES, ACCOMPANIED BY DAVID B. H. MARTIN, RESEARCH DIRECTOR AND RICHARD K. BERG, EXECUTIVE SECRETARY

Mr. ANTHONY. Thank you very much, sir.

Would it serve the pleasure of the subcommittee if I gave the brief prepared summary I have, which may address some of the questions, or would you rather begin straight out?

Mr. DANIELSON. Very frankly, if you would like to ad lib, I think your message comes across an awful lot better. Without objection, your entire presentation will be lodged with the subcommittee and the subcommittee will exercise its discretion in determining which portion should be put into print. I like to cut down on printing bills where we can; we will take all of the meat out and print that. You have done an excellent job of giving us background here, but I don't see any need to print this whole volume.

Without objection, that is the way we will proceed.

[The prepared statement of Hon. Robert A. Anthony follows:]

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

STATEMENT OF ROBERT A. ANTHONY, CHAIRMAN

Mr. Chairman and Members of the Subcommittee: I deeply appreciate the opportunity to testify in support of the legislation before you, to amend section 576 of the Administrative Conference Act. This also provides a welcome oppor-

tunity for me to tell the Subcommittee something about what the Conference is doing and to discuss its role for the future.

The Administrative Conference Act, 5 U.S.C. section 576, as amended in 1972, authorized appropriations for the Conference in annually increasing amounts, leveling off at \$950,000 for fiscal 1978 and each fiscal year thereafter.

The Conference needs greater budget authority to carry on the work which it should be doing in response to the needs of the times and which the Congress in enacting the Administrative Conference Act expected it to do. The problems of inefficiency, delay and perceived unfairness in governmental processes have become primary concerns of the Congress, the Administration, and the public. The Conference was created to combat these problems; it has significant demonstrated potential to attack these large issues if it is given the opportunity to justify the necessary level of appropriations each fiscal year. As this statement will show, the funding level now authorized is sharply below what is necessary to carry out the Conference's mission effectively and efficiently. The purpose of the legislation we propose is to provide such authority by removing the appropriations ceiling in 5 U.S.C. section 576 or by setting it at a substantially high figure.

I. BACKGROUND

The Administrative Conference of the United States was established in 1964 pursuant to the Administrative Conference Act, 5 U.S.C. sections 571-576, and was activated in January 1968 with the appointment of its first chairman. It was the successor to two very successful temporary Administrative Conferences, one established by President Eisenhower in 1953, the other by President Kennedy in 1961. Its creation was also the outcome of the work of several temporary bodies established in earlier years to examine Federal administrative process, including the Brownlow Committee and the Attorney General's Committee of the 1930's and the two Hoover Commissions. Though the scope and focus of these bodies varied, they all urged the establishment of a permanent Federal organization, to examine on a continuing basis the administrative procedures of Federal departments and agencies and to recommend improvements. The result was the Administrative Conference Act of 1964 (5 U.S.C. sections 571-576), which empowers the Conference to "study the efficiency, adequacy, and fairness of the administrative procedure used by administrative agencies" and to make recommendations for the improvement of those procedures, "to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest."

From the outset it was recognized that the new agency would occupy a unique place in the governmental structure of the United States. First, it is unique in its mission which is, in effect, to monitor all aspects of the administrative process in all of the executive and independent agencies; to identify and analyze the causes of administrative inefficiency, delay and unfairness; and to recommend specific means of improving the quality of administrative justice as it affects millions of Americans in their daily lives. It is, thus, not an agency with an on-going operating program of fixed dimensions.

Second, the Administrative Conference is unique in its composition. Leadership is provided by a full-time Chairman, who is appointed by the President with Senate confirmation for a 5-year term, and by a 10-member Council appointed by the President for 3-year terms and drawn in part from Federal agencies and in part from private life. Its membership also includes 44 high-level representatives designated by 38 major departments and agencies of the Federal Government, and 36 "public members," distinguished citizens from outside the Federal Government who are specially informed with respect to administrative procedure. While the Government members are assured a small numerical predominance, the Conference enjoys the benefit of the broad expertise of private practitioners, academics, state officials and others who act as strong leavening agents.

Third, the method of operating of the Conference is unique. The 90 members, other than the Chairman, furnish their time and talents without compensation and beyond their regular full-time Government or private endeavors. The membership, known as the Assembly, meets in plenary session at least once and usually twice a year, and conducts its business much like a legislative body. Proposals are referred to the Assembly for action from the Conference's Committees. Each Conference member is assigned to one of the nine standing committees. (In addition, special committees are occasionally established to deal with particular problems.) Committee activities are supported by a small, highly qualified staff in the Office of the Chairman and by part-time consultants, drawn mostly

from law school faculties, who provide the expertise for the in-depth studies which form the basis of Conference recommendations.

Fourth, the Conference is unique in its standing to make recommendations directly to the agencies, the President, the Congress and the Judicial Conference of the United States. Thus, it may address itself to all problems of administrative procedure, whether they call for administrative, legislative or judicial solutions, or some combination thereof.

Finally, the Administrative Conference is unique among advisory bodies in its permanence. Most commissions and advisory groups are established for the sole purpose of studying specific problems and cease to exist after they report their findings and conclusions to the Congress or the President. The Administrative Conference, however, as a permanent agency has the opportunity to seek implementation of its recommendations to develop an institutional expertise. A continually growing responsibility of the Chairman's office is to work with the agencies to effect the recommended changes that will strengthen the Federal administrative process or to seek necessary legislation from the Congress.

We thus have a full-time, permanent independent agency whose sole responsibility is to seek to improve the machinery of government. Since its authority is only recommendatory, the Conference draws its strength from the high calibre of its membership, the quality of its research, and the persuasive force of its recommendations. In its 9-year existence the Conference has built a solid record of achievement.¹

II. BRIEF SUMMARY OF CONFERENCE ACTIVITIES

Since the Conference was set up in 1968 it has adopted 64 formal recommendations or sets of recommendations, and has issued six formal statements. These are summarized in Appendix C. (A statement represents a position taken on some issue or issues relating to administrative procedure, other than in the form of a specific recommendation. For example, statements adopted in 1971 and 1973 were responses to proposals by the President's Advisory Council on Executive Organization and by the American Bar Association, respectively.) Some recommendations are addressed to all agencies, some to several agencies, some to a single agency. Some are directed to Congress, and a few to the courts. All recommendations, upon adoption, are communicated by the Chairman of the Conference to those officials who are in the best position to act upon them. In the case of recommendations to the agencies, a report on agency compliance is requested.

The Conference attempts to achieve wide circulation for its recommendations and statements, as well as for the reports which underlie them. Recommendations and statements are published in the Federal Register upon adoption, and those of general and continuing interest are collected in the Code of Federal Regulations (1 C.F.R. Parts 305, 310). Reports are usually published in professional journals and are periodically collected and published in bound volumes of Conference Recommendations and Reports.

Conference recommendations have sought to achieve such diverse goals as:

- Improving Internal Revenue Service procedures in administering the tax laws (Recs. 75-5 through 75-10);
- Expediting trial-type administrative proceedings through such devices as the use of summary procedures, discovery, and reduction of interlocutory appeals (Recs. 70-3, 70-4 and 71-1);
- Strengthening the informational and notice-giving functions of the Federal Register (Rec. 76-2);
- Improving and simplifying procedures governing adverse actions against Federal employees (Rec. 72-8);
- Encouraging the use of civil money penalties to supplement or replace more drastic sanctions, and urging imposition by a more efficient, agency-administered procedure (Rec. 72-6);
- Setting forth minimum standards and practices to govern the issuance of adverse agency publicity (Rec. 73-1);
- Achieving compliance with the Freedom of Information Act (Rec. 71-2);
- Improving procedures for the grant and denial of parole to Federal prisoners (Rec. 72-3);

¹ Appendix A sets forth excerpts from recent letters commenting on the work of the Conference. Appendix B sets forth a recent resolution of the Council of the Administrative Law Section of the American Bar Association in support of the proposed legislation.

- Broadening public participation in administrative proceedings (Rec. 71-6) ;
- Eliminating unneeded exemptions from the procedural requirements of the Administrative Procedure Act (Recs. 69-8 and 73-5).

Some of the projects now underway deal with :

- Procedures for making significant scientific or technical determinations.
- Agency practice under the Federal Advisory Committee Act.
- Simplified judicial review of smaller cases and alternatives thereto.
- Judicial review of actions of the U.S. Customs Service.
- Delay in ratemaking procedures.
- Procedures for agency adaptation of externally-developed standards for regulatory use.
- Ex parte communications in rulemaking.
- State administrative procedural innovations that might be useful on the Federal level.
- Systems for agencies to evaluate their own procedures.
- Statutory time limits on agency actions.
- Procedures for waivers and exemptions.
- Emergency economic control agency procedures.
- Disclosure as a regulatory technique.

The conduct of studies and adoption of recommendations are only part of the range of activities of the Conference. The Office of the Chairman of the Conference is also responsible for seeking implementation of recommendations, through agency, legislative or judicial action, as the case may be. The Chairman's Office has, in recent years, also devoted increasing attention to the collection and publication of statistics and other information relating to federal administrative procedure, to the furnishing of advice and assistance to the agencies and Congress on problems of administrative law, and to cooperation in Administration and interagency task forces and study groups. Congress has come to look to the Conference as a source of expertise and has, on occasion, specifically assigned through legislation a research or advisory role to the Conference, for example in the Magnuson-Moss Federal Trade Commission Improvement Act and in the Government in the Sunshine Act. The Conference also has often assisted committees of the Congress on a less formal basis. In addition, it pursues various clearinghouse and educational activities, including a new regulatory agency management seminar program for Presidential appointees. All these activities are described in greater detail in Part IV of this paper.

III. THE APPROPRIATION CEILING

The Conference's appropriation ceiling has been a recurrent source of difficulty. The Administrative Conference Act, enacted in 1964, authorized sums necessary "not in excess of \$250,000." By the time President Johnson activated the Conference in 1968 the \$250,000 ceiling was already so restrictive as to prevent the Conference from carrying out its program in a meaningful way. Consequently, Congress in 1969 increased the authorization to \$450,000, an increase, one might note, which simply reflected more realistically the resources needed to activate the organization as contemplated by the 1964 legislation.

By 1972 rising costs and expanding responsibilities required the Conference to seek relief from the ceiling. A bill removing the ceiling entirely was approved by the Senate. The House Judiciary Committee, although recognizing that the Conference had made "a strong argument for eliminating the ceiling altogether," recommended instead a staged increase in the ceiling starting with \$760,000 in fiscal year 1974 rising to \$950,000 in fiscal 1978 and each fiscal year thereafter. (H. Rept. 92-1418). The raised ceiling was intended to permit a substantial programmatic increase in fiscal 1974, with annual increases thereafter "for normal inflation and growth." (Although the Judiciary Committee contemplated appropriations to the limit authorized, in fact the Conference has had to operate at somewhat below that level.)

In providing for a leveling off of the authorization after fiscal 1978, the 1972 legislation implicitly foresaw the need for legislative review of the ceiling for fiscal 1979 and subsequent years. In fact the drain on Conference resources brought about by the cost of two major, Congressionally requested or mandated research projects, studies of Internal Revenue Service procedures and FTC rule-making, both described below, caused us to seek in the last Congress relief for fiscal 1978, but without success.

IV. PRINCIPAL CONFERENCE ACTIVITIES AND THEIR NEEDS

Members other than the Chairman serve without compensation; except for the travel and meeting expenses of members, then, the Conference's budgetary needs may be analyzed in terms of the various activities and responsibilities of the Chairman's Office. In this section we describe in detail those activities with significant budgetary implications.

It should be emphasized from the outset that the foundation for virtually all the work of the Administrative Conference must be a strong program of research and analysis. The value and persuasiveness of the Conference recommendations depend on the quality of the underlying research, while the scale and the success of its implementation effort, and the demand for and productivity of its consultative and advisory functions, depend ultimately on the number and quality of the recommendations.

A. Research

Although the 91 members of the Conference constitute a unique repository of experience and energy, they cannot simply be brought together in plenary session and be expected to formulate, debate, and adopt recommendations for improved administrative procedures right on the spot. To efficiently harness the talents of this large number of members, and to facilitate focused development of proposals, the membership is divided into committees. The nine standing committees of the Conference are as follows:

- Committee on Agency Decisional Processes.
- Committee on Agency Organization and Personnel.
- Committee on Compliance and Enforcement Proceedings.
- Committee on Grants, Benefits and Contracts.
- Committee on Informal Action.
- Committee on Judicial Review.
- Committee on Licenses and Authorizations.
- Committee on Rulemaking and Economic Regulation.
- Committee on Rulemaking and Public Information.

Assignments to committees aim for a suitable representation of public and private members and take account of particular expertise and interests of the members.

The Committees of the Conference have responsibility for formulating and presenting to the full Conference proposed recommendations and policy statements designed to produce improvements in agency performance. Before a proposal for improved agency performance can be formulated and placed on the Conference's plenary session agenda for action, a report based on careful research and analysis must be prepared for and considered by a committee of the Conference.

Thus, research into possible improvements in administrative procedure is the foundation upon which committee proposals and full Conference actions directly rest. The development and management of that research is a preeminent responsibility of the Office of the Chairman. The research program entails the following functions:

- Identification of areas and aspects of Federal agency performance to be researched by means of analytic and empirical inquiry;
- Assessment of the feasibility and utility of proposed research projects;
- Design and specification of research projects to be carried out;
- Selection of particular individuals to carry out research as designed;
- Oversight of and participation in the conduct of research, preparation of reports, and preparation of proposed recommendations or policy statements;
- Obtaining technical, general public, and official reviews and comments on research reports and proposed recommendations and policy statements;
- Editing and preparing for publication of reports, recommendations, and policy statements.

The actual work of research and analysis and the preparation of reports, together with drafts of proposed recommendations and policy statements, is carried out by a combination of efforts provided by professional staff members of the Office of the Chairman and by contract-consultants engaged by the Office of the Chairman.

Given the large number and the wide variety of functions performed by Federal agencies, the increasing complexity of many of these functions, and grow-

ing concerns about the cost, responsiveness, competence, efficiency, and fairness of Federal agency performance, there is an increasing need for deliberate, informed assessment of the organization and administrative procedures of Federal agencies. Indeed, the opportunities to diagnose deficiencies and prescribe improvements in the ways that Federal agencies perform their functions are virtually limitless. Of course, we recognize that there must be some limit on Conference resource capacity and thereby some limit on what it can be expected to accomplish.

We recommend that the resource capacity for the Conference be set at a level that will accommodate a substantially increased program of research and analysis. The program should encompass certain basic and fundamental aspects of administrative legal procedure which should continuously be under active scrutiny by the Conference. It should enable the Conference to initiate at least one major-scale agency procedural audit each year. It should also enable the Conference to initiate a sufficient number of specific other projects each year to assure that the resource comprised of the members of the Conference, as organized for efficiency into standing and select committees, can be most productively harnessed to the formulation of recommendations for improvement in the administrative procedures of Federal agencies.

1. *Continuous Scrutiny of Basic Aspects of Administrative Procedure*

A. Procedural Statutes of Government-Wide Application.—Federal departments and agencies are subject to a growing body of statutory provisions of general application which collectively form the framework of Federal administrative law. These statutes include the Administrative Procedure Act, Federal Advisory Committee Act, Federal Reports Act, Federal Register Act, Freedom of Information Act, Government in the Sunshine Act, and Privacy Act.

Since its inception the Conference has of course been concerned with the procedures provided in the Administrative Procedure Act. Many of its research projects and the recommendations to which they led have been focused on general issues related to procedures for agency rulemaking and adjudication and to procedures pertaining to judicial review of agency action. The Office of the Chairman is completing an interpretive guide to the Government in the Sunshine Act, growing out of its special consultative role established in that Act. In addition, the Conference has carried out specific projects relative to agency procedures that are governed by other statutes listed above.

Agency application and judicial interpretation of the procedural requirements of these acts deserve to be monitored and assessed systematically and continuously, rather than sporadically on a "squaky wheel" basis. Such sustained attention, looking to the need for refinement, adjustment, elaboration, or modification of the procedures generally prescribed by these acts, is implicit in the basic mandate of the Conference, but it has not had the resources to conduct these activities on a comprehensive and sustained basis. The Administrative Conference is the only institution within the Federal establishment with the authority and potential competence to provide such systematic attention. One product of such effort should be the development and publication on a continuing basis of manuals of interpretation and practical guidance to assist agency personnel who have responsibility within their agencies for carrying out the requirements of the acts.

B. Other Generic Elements of Administrative Procedure.—In addition to those aspects of administrative legal procedure which have significance arising from their place in a statutory scheme of general applicability to all Federal agencies, there are many other procedural areas and issues of general significance which are not addressed simply by reference to statutes.

Some of these relate to particular elements within generally prescribed procedures as to which the statutory scheme is silent. An example of such an issue, on which the Conference will probably take action at its September 1977 plenary session, is the question of what restrictions should be placed on ex parte communications in informal rulemakings carried out under § 553 of the Administrative Procedure Act.

Other cross-cutting procedural themes are a good deal broader. They range from questions of what is good procedure in proceedings that are common to many agencies (such as informal adjudication, informal rulemaking, and grants) to the procedural aspects of some of the capital governmental issues of our day (regulatory reform, reorganization, federal-state relationships):

Informal rulemaking procedures. What procedures beyond the bare requirements of the Administrative Procedure Act should an agency provide, and under what circumstances, for informal rulemaking? This has been a matter of broad

concern to agencies and courts alike, and has been addressed by enactments such as the so-called "hybrid" rulemaking procedures (more than "notice-and-comment" but less than "formal, on-the-record") mandated for trade regulation rules by the Federal Trade Commission Improvement Act.

Informal adjudication. What procedures should agencies employ in executing actions that are not obliged to be treated as formal adjudication under §§ 556 and 557 of the Administrative Procedure Act? In a line of decisions triggered by the Supreme Court's 1970 opinion in *Goldberg v. Kelly*, courts have been wrestling with answers to this question as a matter of Constitutional due process. But consideration by the courts of particular cases cannot furnish a thorough and practical examination of the many variations of agency procedures and their consequences. With adequate resources, the Conference could undertake the major study needed to develop criteria for informal action procedures that could be expected to satisfy due process expectations without being unduly costly or slow on the one hand or insufficiently responsive to considerations of fairness and acceptability on the other.

Formal adjudicative procedure. The "institutional decision process" of formal agency adjudication continues to present important areas that merit study, particularly of an empirical style that closely examines the procedures of many different agencies. Examples include the utilization and functions of administrative law judges, use of the Federal Rules of Evidence, official notice, designation of issues for hearing, simplification of transcripts, the preparation and use of opinions, and the use of uniform terms or rules of procedure. Topics like these have little glamour, but when empirically examined with sufficient resources, throughout the agencies, they hold the prospect for valuable improvements to make the administrative process simpler, faster and fairer.

Procedures under Federal grants. What procedures should agencies establish for minimizing and resolving disputes arising from their exercise of authority to make grants? The past two decades have witnessed a great expansion in the number, variety, and dollar volume of Federal agency grant programs. No general framework of laws and regulations has been developed to structure the procedures employed by agencies in exercising their grant authority. This situation is in marked contrast to that prevailing in Federal agency procurement action, which is highly structured. It would be very desirable to undertake a substantial empirical research project aimed at formulating recommendations for minimizing and resolving disputes in Federal grant programs.

Agency procedures for resolving scientific and technical issues. Many agency functions of risk management, resource management, and resource allocation are increasingly dependent for their performance on the exercise of scientific and technical judgment. Frequently, controversy and public skepticism about the soundness of agency action arises from asserted deficiencies in agency procedures for dealing with scientific and technical issues. We have initiated a pilot project to survey agency practice. Our ultimate aim is to assess and recommend improvements in agency procedures for dealing with scientific and technical controversies, but thorough completion of this important inquiry will require resources for research and analysis which far exceed the Conference's present limited capacity.

Federal-state procedural relationships. There are numerous procedural aspects of the Federal-state (or Federal-local) relationships that develop in the implementation of regulatory, grant, benefit, and other Federal agency programs. This general area has been the source of much dissatisfaction, and the Conference could usefully pursue a series of interrelated projects aimed at improving this complicated area of our Federal system.

Regulatory reform. After broad and intensive consideration of the many-sided theme of "regulatory reform", we have concluded that the contribution of the Conference should focus on the examination and improvement of the legal and managerial structure of decisionmaking in regulatory agencies. We have made a fair start on planning a series of inquiries into regulatory decisionmaking, that would examine initial agency planning for implementing a regulatory statute and development of regulations, prerulemaking procedures, publicly-initiated rulemaking, use of trial-type hearings for questions resolved by general rulemaking, information developed by agency staff, advice from another agency or outside group, externally developed standards, use of consultants in agency decisionmaking, resolution of major scientific and technical questions in adjudicatory proceedings, interagency coordination, federal-state coordination of regulatory programs, and judicial review of regulations. Elements of this series intersect with other generic themes the Conference attempts to keep under examination.

Procedural aspects of reorganization. The Executive Branch is commencing a major study of government reorganization. Although it is too early to tell what directions this enterprise will take, it seems fair to expect that recurring problems will be discovered—both in the existing organizational arrangements that need reorganization, and in the actual process of reorganizing—and that some of these problems will be procedural in nature. We think it very likely that some of these procedural problems patterns will warrant the attention of the Conference, not only through consultation with reorganization task forces, but also through major research projects.

2. *Procedural Audits*

The Conference should have the capacity to conduct thorough audits of the fairness and effectiveness of the whole range of procedures of a given single agency, or of a category of an agency's proceedings. The approach should be empirical and practical, examining the day-to-day workings of the agency as well as the broad structure of its procedures. Our Internal Revenue Service projects, described above, demonstrates the value and feasibility of such an approach to the study of administrative procedures. That project also demonstrates that such an undertaking is a major one. Any audit would doubtless proceed selectively and focus on areas showing the most promise for improvement.

One of the most vexing and persistent problems of administrative procedure has been that of delay. Administrative delay has been the subject of much study and writing, and yet it continues. We believe this reflects the fact that there are few generic solutions, and that the problems of delay tend to arise from the particular circumstances of each agency. It is most fruitful to attack administrative delay on an agency-by-agency basis. Problems of delay would thus be among the major concerns of any procedural audit, which would examine the agency's functions and consider the suitability of its procedures for the punctual discharge of its responsibilities.

3. *Examination of Particular Problems of Administrative Procedure*

Realizing that members of the Subcommittee may quite naturally ask what particular projects the Conference will undertake in the fiscal years for which increased authorizations are sought, 1979 and thereafter, we have given a good deal of thought to the question of how to present such information to the Subcommittee. We must be frank to say that it is difficult to do so. That is because we are not in a position to set forth specific projections of plans for particular research topics in those future years. Even if we had the resources to plan and evaluate topics that far ahead, we do not think it would be desirable to plan them definitely, since it is important to keep much of our research geared to energy and sometimes fast-breaking problems.

We believe the most important material we can present to the Subcommittee is a description of the general themes and areas of Conference research responsibility, as we have done just above with respect to administrative procedure both under general statutes and in other areas of generic concern. A few of these generic areas, as set forth above, themselves represent a topic or the theme of a related series of particular topics for Conference research in the years ahead. The other particular topics to be specifically addressed in 1979 and thereafter will, in the great majority of cases, flow from then-current concerns with problems in these general subject areas.

We should add a word about the process by which specific Conference research topics are selected. A project idea may originate with our members, individually or through their committees, or it may arise from the research or consultative work of the staff. Often, too, ideas originate with the agencies, members of Congress, and many other outside sources. In any case, before we can settle upon a topic for full-scale research and Committee consideration, the project must receive evaluation: evaluation of the likelihood that improvements in procedure will result, assessment of the feasibility of conducting the project (cost, need for widespread investigation at many agencies, relation to other research, etc.), and consideration of whether similar topics have been or are being examined elsewhere (as in Congress, in other agencies or private institutions). Insufficient manpower to conduct such evaluations is our most acute staffing problem, and the performance of these evaluations and related project design work comprises the most important element in the staffing requirements outlined in the next section. With our very small staff, which as explained throughout this statement is spread very thin, it is all

we can do to evaluate proposed topics for immediate purposes, within the current budget, and frankly there has been no staff time to build projections for fiscal 1979 and beyond, even if it were desirable to plan definitely so far ahead.

Therefore, so far as citing particular project topics is concerned, we believe we can best serve the Subcommittee by listing illustrative projects of the sort that we might undertake in the future, assuming they were found feasible and warranted priority at the time. We hope that this will give members a tangible and broad sense of the varied topics we can and do address. A list of such illustrative topics appears in Appendix C-2. There is no reason to believe that any of these topics is not a feasible one to undertake with adequate resources, and there is some reason to believe that each of them has merit. But, as stated, further exploration of each would be required before it could be definitely projected.

Additional illustrations of the kinds of specific topics studied by the Conference are found in the list of current projects, on page 6 above, and in the summary of past Conference recommendations set forth in Appendix C.

4. Research Program Resource Requirements

The needs that must be met in order to execute a research program along the lines described are (a) sufficient professional staff members of the Office of the Chairman and (b) adequate funds for research contracts.

(a) As explained earlier, Conference members are assigned to nine standing committees, which are effective units for drawing efficiently and productively on the effort and expertise of the large membership. From time to time special and select committees are established for particular Conference undertakings. These committees provide the basic organizational structure through which the Conference's program of research and analysis is formulated and conducted. For planning purposes, each standing committee should be looked to each year to initiate at least one research project and to complete at least one project yielding recommendations for action by Conference plenary session. Such a plan does not preclude greater productivity by any particular committee. As described and at the minimum level of productivity suggested, each Conference committee will need to meet formally each year an average of five to seven times and may in addition hold a number of informal, consultative or subcommittee meetings.

It is essential to recognize that the efficiency and productivity of committee function requires not only contract research consultants, but also substantial staff support and collaboration. The significance of the work of the professional staff members cannot be exaggerated. They must participate in every aspect of the research process as described earlier. Particularly time consuming is their role in the assessment of project feasibility, design and planning; oversight of research performance; and review, editing and preparation for publication of reports. In addition, as the means of achieving that involvement of committee members, the full-time staff must prepare agendas, notice and minutes of meetings; help in drafting proposed recommendations and policy statements of committees; and perform a wide range of associated research and analytic work. On an annual basis, these staff-work requirements call for approximately two-thirds of a year of professional staff time for each of the nine standing committees.

The need for committees of the Conference to function on schedules of meeting and work that overlap means that each committee should be assigned its own professional staff member to perform the work described above. Thus, the Office of the Chairman requires a minimum of nine professional staff to work in the basic committee-staff research and recommendation development process of the Administrative Conference. At least seven person-years of their available effort will be occupied by research in the manner described, under supervision of the Research Director.

(b) As we have said earlier, the actual work of research and analysis in Conference projects is carried out in significant part by contract-consultants. The volume of such effort necessary for any particular research project obviously varies greatly from project to project depending on the scope and character of the project. The availability of professional manpower within a particular period of time will be a crucial determinant of how long it takes to complete a project. By and large it seems fair to observe that most of the Conference's projects have taken longer to complete than we might have preferred. Where

the research must be conducted quickly, or keep pace with breaking agency actions, necessary staffing tends to increase the costs.

Until the past three years most of the Conferences' research projects were scaled to be carried out by individual law professors, working part-time, largely in their offices with documentary materials, and perhaps modestly aided by student research assistants. Repeatedly, as such efforts have proven inadequately supported to match the problems they were designed to address, it has become evident that much more is needed.

The main reason is that the tough procedural problems have to be attacked through a mode of research that is intensely practical and empirical. This requires small teams of shoe leather and eyeball researchers as well as the academic consultants characteristic of smaller Conference studies of the past. There is need for far more personal interviewing, observation and file searching by the researchers. More use can also be made of questionnaires and other methods, to overcome overly selective or impressionistic research findings.

Accordingly, the sort of research the Conference should be doing will inevitably be more costly than most of the research it has done in the past. A focus on two of the Conference's significant recent undertakings well illustrates this point.

The first was our study of procedures of then Internal Revenue Service. In 1974, this project was undertaken in a spirit of urgency as a consequence of discussions between the Chairman of the Senate Appropriations Subcommittee having jurisdiction over both the Conference and the Internal Revenue Service, and the Conference Chairman. In retrospect, though the term was not used at the time, it can be said that a rather thorough "procedural audit" of the Internal Revenue Service was commissioned, with emphasis on procedures affecting individual taxpayers.

It was recognized that such a study had to examine not only the Service's procedures as they were prescribed by provisions of the Internal Revenue Code and by regulations and manuals of the Service, but also actual experience with those procedures and the undocumented practices of the Service as revealed by interviews with IRS personnel and with taxpayers and their representatives. It was recognized that to perform a study of the magnitude contemplated in a relatively short time—within a year or so—would require a substantial number of researchers. In addition, it was clear that the project would require administrative, clerical and logistical support well beyond that normal available to a Conference project within the Office of the Chairman. Consequently a principal consultant was selected to give full-time direction to work on the project, and the Conference entered into its largest research contract up to that time, totaling \$216,000, with him. The consultant then engaged the services of seven part-time academic consultants (all law faculty members with specialists in various branches of tax and administrative law) and a full-time project staff of five people, including two lawyers. A special Conference committee, composed of leading experts in tax law and administration from law schools and private law practice, was given responsibility to oversee the project and to prepare recommendations to be proposed for Conference action. This Steering Committee was chaired by Shelton S. Cohen, a former Commissioner of Internal Revenue. It met frequently through the project. The results, in terms of the outcome of the project, were gratifying: 72 separate recommendations, published in six sets (Recommendations 75-5 through 75-10), have catalyzed many improvements in Internal Revenue Service procedures.

Notwithstanding very substantial resource commitments, the scale and complexity of the project and the need to complete it and get recommendations before a plenary session of the Conference with dispatch put very severe strains on the Office of the Chairman. The project absorbed virtually all research contract funds available and preempted a great deal of attention, time, and effort that would otherwise have gone into other Conference activities.

The second project that illustrates the higher cost of empirical research work is the study of the new trade regulation rulemaking procedures of the Federal Trade Commission in which we are now engaged by direction of the Congress under the Magnuson-Moss Federal Trade Commission Improvement Act. The focus of this study is narrower than the IRS project, in that it deals with only one agency function, rulemaking, though it is a novel and complicated form of rulemaking. As in the IRS project, however, the research necessary is heavily empirical, involving much interviewing, use of questionnaire surveys, and direct observation of hearings and meetings, as well as the analysis of enormous records running into hundreds of thousands of pages. The volumes of data necessarily involved to assure adequate coverage have dictated that computer techniques be employed

for data management and analysis. Once again we have contracted with a principal consultant who is director of the project; in this instance, his role can be performed on a part-time basis. He in turn has engaged a full-time staff of seven persons including two lawyers. Our contract for the project is in the amount of \$220,000, covering only project-staff personnel costs and travel expenses necessary to enable observation of FTC hearings around the country. Over and above this, the Conference has been responsible for providing fully equipped office space for the project staff and computer services. We have been able to arrange for some of these services to be provided by the Federal Trade Commission. The Conference also incurred significant costs in designing this project, including a consultant contract and many person-months of staff time.

We have every reason to expect that this project will produce a most valuable report and recommendations that will be of interest and utility to the Congress. It will be useful not only for improving the rulemaking procedures of the FTC but also as a basis for better design and execution of so-called "hybrid" rule-making procedures generally.

The needs of research, to work for improvements in the significant areas of administrative process that we have described, will require more projects of this costly empirical type. Some may need to be planned on a scale comparable to the IRS and FTC investigations; others may require a lesser but nevertheless substantial allocation of funds. To conduct such projects, together with some less empirical small scale projects, will require contract research funds well beyond the existing level.

We believe that the Conference should have available annually at least \$600,000, to be used for commissioning 12-15 contract research projects at a variety of funding levels appropriate to the particular project needs. By way of illustration, with such a capacity we might undertake two projects a year in the \$125,000-\$250,000 range, two or three projects in the \$40,000-\$70,000 range, and eight to ten smaller scale projects of \$5,000-\$25,000 each.

It bears repeating that the funds spent on research not only bring a direct return in the form of reports leading to Conference recommendations and statements, but they also supply the foundation for most of the Conference's other activities, as described below.

B. Implementation of Conference Recommendations

An important function of the Office of the Chairman is to secure the implementation of Conference recommendations through agency, legislative or judicial action, as appropriate. This is a time-consuming and difficult task. The Conference has no authority to require agency implementation of recommendations. Rather, it must seek to achieve voluntary agency compliance, relying largely on the persuasiveness of the recommendations themselves. When account is taken of the large number of agencies and the large number of recommendations, it will be seen that it is a huge job to monitor in any detail the current status of implementation, let alone conduct sophisticated evaluations. Although it might have managed in the early years when the recommendations were few in number, the Conference in recent years has never had the resources to do what it needs to do to assess systematically and on an updated basis the consequences of its recommendations.

One major implementation assessment was completed in 1976. A report was prepared evaluating the implementation of 17 broadly applicable recommendations by the independent agencies of government. The report demonstrated that there was a high degree of compliance with Conference recommendations. However, the study also revealed that significant gaps exist in the Conference's ability to assess the impact of its recommendations. In the first place, the intermittent attention the small staff of the Office of the Chairman has traditionally been able to devote to implementation has resulted in incomplete and fragmentary files on the status of agency efforts to implement Conference recommendations. Moreover, the more sophisticated aspect of implementation—an evaluation of the practical impact of recommendations that have been implemented—has not been feasible to any significant degree thus far. This situation is the result of inadequate staff resources for assignment to this function.

Until quite recently, implementation has been the part-time concern of one attorney under supervision of the Conference's Executive Director. Assignment of additional staff to this work necessarily reduces staff effort on other work. Nevertheless, to get a start on catching up, the staff in 1977 has been conducting

an extraordinary project to survey much more fully than in 1976 the extent of agency implementation of approximately 60 Conference recommendations. This project has involved the part-time exertions of almost all members of the Conference's legal staff, in addition to their other duties. Through it, we are endeavoring to gather the information that was found missing in the 1976 assessment of 17 broadly applicable recommendations by independent agencies. In addition, the current project is designed to evaluate the implementation of recommendations addressed to particular agencies, and of recommendations that call for the enactment of legislation.²

In 1978, we plan to survey the implementation of Conference recommendations by the 11 Executive Departments and their component operating units.

The Conference must increase the resources available to pursue implementation with the agencies and to keep its information up-to-date on the implementation status of all recommendations. Equally important, it should begin to assess carefully the impact of the recommendations implemented to date. Part of this endeavor may be accomplished within an expanded research program, but the full-time effort of two attorneys should be devoted to this important function.

C. Advice to the Agencies, Comment on Legislation, Participation in Task Forces, and Similar Functions

A staff function of sharply increasing significance is the furnishing of advice and assistance to the agencies and to the Congress on problems of administrative procedure. The Administrative Conference Act specifically contemplates a role for the Conference in advising the agencies and arranging for the interchange of information among them on matters of administrative procedure. See 5 U.S.C. §§ 574(2), 575(c) (14). Because of its perspective over the broad range of agency and administrative programs, the consultative capacity of the Conference is a unique resource—and could be vastly more effective as such if this function were adequately funded. This work can only be performed by Office of the Chairman staff members.

Some examples of consultative activities by the Chairman's Office with the agencies in recent years include preparation of a detail analysis of the procedural aspects of the Consumer Product Safety Act, shortly after its enactment, for the Office of Management and Budget; an examination, at the request of the Department of Justice, of the appeals procedures of the Board of Immigration Appeals; advice to the Occupational Safety and Health Review Commission on expediting the disposition of cases; conduct of and participation in seminars and other training programs for legal staffs of agencies, including the Environmental Protection Agency, Consumer Product Safety Commission, Federal Trade Commission and Equal Employment Opportunity Commission. In addition, the staff of the Chairman's Office is continually consulted on an informal basis by members of agency legal staffs.

On several occasions Congress has specifically directed the Conference to perform advisory and consultative services for the agencies. The most notable example is the Government in the Sunshine Act, which required the 47 agencies affected by the Act's open meeting requirements to consult with the Office of the Chairman in the preparation of their regulations.

Complying with this responsibility became a major undertaking for the Chairman's Office. Shortly after enactment of the Sunshine Act last fall we circulated to covered agencies a letter offering our consultative assistance and a checklist of issues which the new regulations would need to address. We encouraged the agencies to make available to us for circulation to other agencies memoranda of law, draft regulations, and other materials which might be useful. This clearing-house service proved especially valuable to the agencies. We hosted a series of meetings of agency representatives, at which there was a frank exchange of views on problems which had arisen in the course of preparation of the Sunshine regulations. We consulted informally with the agencies by telephone and in person, and offered written comments on several of the agencies' proposed regulations. Since the effective date of the Act in March 1977, we have been engaged in the preparation of an interpretive guide to the Act, and a tentative version was circulated to the agencies and other interested persons in May. We have received substantial comment, mostly favorable, and intend to prepare a revised version later this summer. Thereafter, we should play a continuing role in moni-

² Some of the completed reports from this project are presented in Appendix D.

toring experience under the Act and making suggestions for improvements in the regulations and in the statute.

Another example of a Congressionally assigned consultative responsibility was presented by the Railroad Revitalization and Regulatory Reform Act of 1976. That statute provided for fundamental changes in the Interstate Commerce Commission's procedures for railroad regulation. The Act directed the ICC to propose and submit to Congress detailed rules of practice governing adjudicatory and rulemaking proceedings under the Act. The Administrative Conference was directed within 60 days to present to Congress and to the Commission its views on the proposed procedural rules. In compliance with this assignment we submitted an extensive memorandum of comments on March 31, 1977.

In addition to these advisory and consultative functions, the Chairman's Office is frequently called upon to participate in inter-agency task forces and working groups dealing with particular problems. In some cases the problem under consideration is wholly or largely procedural; in others Conference participation provides a procedural perspective on what is otherwise an examination of substantive problems. For example, in 1976 and 1977 one of our senior attorneys served as a member of the National Labor Relations Board's Chairman's Task Force on Procedural Review. He also served as co-chairman of the Presidential Task Force on the Revision of OSHA Safety Regulations. Requests for Conference staff members to participate in the President's Reorganization Project are pending.

Finally, a significant and challenging consultative role is that of commenting on pending legislation at the request of Congressional committees and the Office of Management and Budget.³ Our comments are, of course, limited to procedural aspects of the bills, and this activity is in one sense an aspect of our implementation program in that it offers an opportunity to call to Congress' and OMB's attention pertinent Conference recommendations and studies. However, where the full Conference has not itself addressed a particular matter, our staff nevertheless attempts to foresee and analyze procedural problems in the bills and to provide whatever guidance and suggestions it can, pointing out that the views expressed are those of the Office of the Chairman and not necessarily those of the Conference as a body. In addition to testimony and written comments, our staff frequently consults informally with Congressional staff on procedural problems in pending legislation. Recent examples of major legislative activities of this nature, involving both preparation of testimony and extensive staff consultation include our work with the Judiciary Committees of both Houses and Senate on amendments to the Administrative Procedure Act, work with the Government Operations Committees of both the House and the Senate on the Consumer Protection Agency legislation, and work with the Senate Government Operations Committee on the Government in the Sunshine Act.

The demand for the advisory and consultative services described above is substantially more than we can handle with present staff resources.⁴ Our Executive Secretary is primarily responsible for legislative and agency advisory work, and can devote to these activities approximately half of his time. He also has available to him most of the time of one attorney. In addition, our senior staff attorney with responsibility for regulatory reform matters has served on a number of interagency groups, and spends a substantial portion of his time on other consultative work.

The present level of demand for the advisory and consultative services of the Chairman's Office amply justifies the commitment of approximately four person-years of professional services, including a substantial portion of the times of the Executive Secretary. This includes an estimated one person-year for participa-

³ Less frequently, the Conference may itself sponsor and actively support legislation, as in the case of the package of amendments to the Administrative Procedure Act introduced in the 94th Congress in cooperation with the American Bar Association. Hearings were held on this legislation in both Judiciary Committees, and one bill was enacted P.L. 94-754. Other items of the package have been re-introduced in the 95th Congress (H.R. 3564; H.R. 7204; S. 1720; S. 1721).

⁴ It is, of course, difficult to express this demand in quantitative terms, but some idea can be obtained from our recent experience with requests for legislative comment. From the beginning of the 95th Congress through the first week in June, we have received requests from Congress and the OMB to comment on 42 bills. We have been able to respond with respect to 13. Of course, figures on numbers of bills are an imperfect guide to demands on time since some bills overlap. On the other hand, our Congressional requests come almost exclusively from a few committees familiar with our work. Most committees do not regularly refer bills to us even when they involve problems of administrative procedure, and we lack the resources to identify and follow the progress of such legislation.

tion in interagency projects. This would involve close to a doubling of our present level of commitment, just to cover the present demand for these activities. In the future the demand is likely to increase, and call for the allocation of greater staff resources to these functions, but we are not in the projections below including any allowance for it. We recognize, of course, that this activity to a considerable extent generates its own demand. That is to say, as it becomes known that we are able to provide advice and assistance, we will be requested all the more to do so. Obviously, the Conference should not be viewed as simply a source of free legal services for the agencies. It would not be appropriate and it is not our intention to perform those services which would otherwise be performed by the agency's own legal staff. But it has been our experience that the Conference's staff, by reason of its exposure to a broad range of agency programs and because of its particular interest in problems of procedure, is able to provide a quality of assistance and a perspective which is not available elsewhere in the Government. Strengthening our ability to render advice on legislative and other proposals would be an important means of translating the Conference's work product into practical results. It would complement our implementation efforts and make more effective the entire range of Conference activities.

D. Educational and Clearinghouse Activities

The Conference has also undertaken over the years a variety of projects pursuant to its statutory charge to "arrange for the interchange among administrative agencies of information potentially useful in improving administrative procedures." 5 U.S.C. § 574(2).

In 1974 the Conference published a Manual for Administrative Law Judges, to give wider currency to the best procedural devices and techniques used in the various agencies. It contains suggestions for more efficient and effective use of pretrial procedures, exchange and presentation of written evidence, methods of shortening and simplifying formal hearings, treatment of intervenors and non-party participants, techniques of presiding, preparation of written opinions and standards of conduct for presiding officers. Hundreds of copies of the Manual have been distributed to Federal administrative law judges, members of boards of contract appeals, members of Atomic Energy Safety and Licensing panels and selected Federal staff personnel. Copies of the Manual were also made available to the public through the Government Printing Office. While it was intended primarily for the use of Federal administrative law judges, the Manual is also helpful to both agency and private attorneys who appear before them, and to those who preside or appear in all formal proceedings conducted in Federal, State and local administrative agencies.

A current and rather different program undertaken by the Conference is the Regulatory Agency Management Seminar (RAMS). The RAMS program evolved from consideration by the Conference's Committee on Agency Organization and Personnel of a study that pointed to a need for special efforts to orient new chairmen and members of multimember agencies to the unique working relationships and management problems in a collegial body. Accordingly, the Committee proposed and the Assembly of the Conference adopted in 1975 a statement calling for the conduct by the Conference of seminars for such regulatory agency officials.

With the advent of the new Administration, we began detailed planning of such a seminar program for new appointees, broadly covering the external relationships of agencies (e.g. with Congress, the courts, public groups, industry, the press) as they bear on agency operations, and problems of internal management and decisionmaking in collegial agencies.⁵ By arrangement with the White House and the Civil Service Commission, our program will constitute, for the new members of 19 independent regulatory agencies, the briefing desired by the President for his appointees. Because many such appointments remain to be made, the first RAMS program has been postponed from the earlier announced July dates and rescheduled to be held October 13-15, at the Federal Executive Institute in Charlottesville, Virginia. We hope that, among other benefits, the informal format and small size of the group will supply a basis for closer working relationships among the new chairmen and commissioners at the various agencies. Further RAMS sessions will be held periodically, perhaps annually, as justified by the flow of new appointees.

During the recent period of heightened concern with "regulatory reform", a Conference staff member has gathered and maintained information from each

⁵ A copy of the tentative curriculum is attached as Appendix E.

of the major regulatory agencies about their activities and experiences with reviewing and revising their own procedures. In this way information from each agency has been available to the other agencies for consideration in their own procedural review processes. The Conference has now commissioned an important project to evaluate various methods by which the regulatory agencies have reexamined their own procedures, with the aim of developing guidelines for future procedural reviews by the agencies.

These activities are merely suggestive of the untapped potential for Conference activity in the area of education and interchange of information. The RAMS program can serve as an example of other seminars and training programs for agency personnel that might usefully be undertaken by the Conference, either alone or in cooperation with the Civil Service Commission.

Similarly, our work with the agencies has frequently called attention to the need for a practical but authoritative guide to dealing with some common problem of administrative procedure. Our interpretive guide to the Government in the Sunshine Act, described above, is an attempt to meet such a need in a fairly specialized area. A larger undertaking of this nature would be the preparation of a manual on the conduct of informal rulemaking proceedings. This would attempt to bring together both relevant judicial decisions and agency experience and insights into a practical guide for mid-level and high-level agency personnel. Projects of this kind could be multiplied, for the fact is that whereas there is an abundance of published literature on how to practice administrative law, that is to say, on the administrative process as seen from the outside, there is very little available on how to deal with the problems as seen from the inside. Each agency must ordinarily rely on the perspectives gained from its own experience. The Conference, however, has the capacity—or at least the potential—to gather, correlate, and pass on to each agency the cumulative experience of all the agencies.

At least one and one-half person-years of staff attorney time should be devoted to the activities described in this section.

E. Statistics About Agency Proceedings

Specific provision in the Administrative Conference Act calls on the Conference to "collect information and statistics from administrative agencies and publish such reports as it considers useful for evaluating and improving administrative procedures." 5 U.S.C. § 574(3).

The Conference has initiated a Uniform Caseload Accounting System (UCAS) for collecting and publishing certain uniform statistical data relative to all formal adjudicative proceedings which are presided over by administrative law judges under the Administrative Procedure Act. This program is proving valuable but very time-consuming. There are over a hundred different types of proceedings of this kind, with over a hundred thousand cases yearly. The first report from this system, presenting statistics for fiscal year 1975, is at the printer and should be available for distribution in August. The delay in compiling and publishing these data is a direct consequence of the unavailability of more staff time to be assigned to this undertaking. Resource limitations have also slowed the implementation of improvements in the system. To support the UCAS program adequately on a current basis would require the addition of at least one professional staff member, funds to purchase computer-related services (including consultants on programming and statistical analysis), and funds for publication and dissemination of statistical reports.

Beyond its UCAS project on formal adjudication proceedings, the Conference eventually should develop the capacity to collect and publish data about other aspects of the administrative process such as: rulemaking; informal decision-making; assessment, mitigation and collection of civil penalties; judicial review of agency decisions; Congressional veto of agency actions; and the like. No provision for such an enlarged statistical function is included in the projections in this document, however, since the resource needs would be carried up to an entirely different order of magnitude. For rough comparison, the budget of the Information Systems Division of the Administrative Office of the U.S. Courts, which gathers and analyzes statistics on the Federal courts, is about \$1.8 million in fiscal 1977.

F. Publications

A major part of the work product of the Conference takes the form of research reports, committee reports, statistical reports, and manuals like those on conduct of formal administrative proceedings and on the Government in the Sunshine

Act, as well as recommendations. If it is to be fully effective, this work product must be promptly reproduced and widely distributed. Conference reports and other materials are circulated to agencies, Conference members and other interested persons, and ordinarily are supplied to the public on request and without charge. In addition, reports and recommendations are periodically collected and published in bound volumes, of which three have been published to date. The Conference also publishes an annual report and a periodic newsletter.

The Conference's publishing activities, like its other activities, have felt the strain of our limited resources. The fourth bound volumes in the series publishing our recommendations and reports should have been produced in fiscal 1977, but for lack of money the \$13,000 cost of this publication has been postponed to fiscal 1978. This may seem like a small amount that could be absorbed in the ordinary course, but in fact it represents almost half of the funds that the Conference has had any discretion to spend for any purpose whatsoever through the last half of fiscal 1977. Our 1100-page report on the procedures of the Internal Revenue Service was reproduced under contract with the General Services Administration. When the initial run was exhausted in the face of heavy demand, we sought to avoid additional reproduction costs by having the report published as a Senate document. Eventually we were successful,⁶ but difficulties in obtaining the necessary concurrent resolution delayed general availability of the report for nearly a year.

Although the increment would be modest, the Conference urgently needs additional funds for its publications beyond the amount that can possibly be budgeted under the present ceiling.

G. Library

The Conference's research and advice-giving functions require a good collection of the basic documentary materials pertaining to the Federal agencies, particularly as regards their administrative procedures. Such a collection must of course include legislative materials, including Congressional hearings and reports, and agency materials, including regulations, manuals of practice, and periodic reports of operations. We have recently made arrangements to be designated as a Depository Library, enabling us to obtain without cost one copy of each government publication, including legislative and agency materials, that we should have in our library. In addition, we must purchase the advance sheets and then the bound volumes of decisions of the Supreme Court, and the lower Federal Courts. Other necessary materials include professional journals, various specialized legal reporting services, and books and treatises. In addition to these rather usual library resources, we plan to acquire a terminal that will give us access to the growing computer-stored collection of basic legal resource materials being developed by the Department of Justice in the so-called JURIS system.

The appointment last year of a professional librarian/information specialist has given us a good start toward development of an adequate library. Adequate progress will require funds for more materials, additional space in which to store materials and provide for use of the JURIS terminal, and a staff member for clerical work.

H. Administrative Functions

As a Federal agency, the Administrative Conference is subject to all administrative and statutory requirements applicable to Federal agencies generally. The fulfillment of these requirements takes the full time effort of an administrative officer, the majority of the time of the Executive Director, and much of the time of the Chairman, as well as imposing intermittent demands upon the time of other professional staff. This is not an insignificant allocation of resources when one considers that the total personnel of the agency is currently 16 full-time positions.

These administrative duties include budget preparation and execution, management reporting requirements, personnel matters, the drafting and supervision of contractual arrangements, and compliance with numerous statutory administrative obligations. Although some of these particular duties are not particularly onerous in themselves, some of them are and they all involve a certain irreducible minimum of attention, time, and paperwork. Collectively they are a severe strain on our small staff, and a diversion of the time and attention of the Executive Director and other senior staff to administrative details that could be handled by lower level personnel if we had them. Additional clerical support for the Executive Director and the administrative officer would permit appropriate delegations of these responsibilities.

⁶ The report was published as S. Doc. 94-266.

V. BUDGET NEEDS OF THE ADMINISTRATIVE CONFERENCE

The foregoing sections describe in general terms the Conference's activities and accomplishments, and the principal areas in which it needs increased resources. In this section we shall describe more precisely what level of resources we seek and how we plan to use them.

In fiscal year 1977 the Conference is operating with a permanent staff of 16 and a budget of \$880,000, of which \$231,000 was budgeted for research and related activities. (This last figure includes sums available for contract research and also sums budgeted for the RAMS and statistical projects.) The amount actually available has been less, since the October and February pay increases had to be covered from the amount budgeted for research. For fiscal 1978 our total budget is \$914,000; we have been authorized an additional attorney position, but our research budget will drop to \$184,000. As the table in Appendix F demonstrates, since fiscal 1974 (the first year in which the budget reflected the authorization increase enacted in 1972) the overall level of Conference activities has been fairly constant, taking account of inflation, with a modest shift in the relative allocation of resources between research and permanent personnel, reflecting the increasing responsibilities of the Chairman's Office.

We respectfully submit that funding at such a level is grievously insufficient for the Administrative Conference to do the job expected of it by the Congress and by the Administration and, ultimately, by the American people. We submit that it is important in the public interest, as this document has shown, that the Conference have a substantial increase in its appropriations, and that it have the legislative authorization that will enable it to justify those needed appropriations.

A. Need for Ceiling Removal

The bill proposed by the Administrative Conference provides for removal of the present appropriations ceiling and the authorization of "such sums as may be necessary." This is what the Conference requested in 1972. Removal of the ceiling would in no way constitute a blank check to the Conference, since it would still be subject to the regular budgetary and appropriations process. (In each fiscal year since the 1972 increase in our ceiling our appropriation in fact has been less than the sum authorized.)

We recognized the special interest of this Subcommittee in the work of the Conference, and its desire to be kept informed with respect to our general activities. That oversight function can be exercised through periodic reviews of our authorizations, though of course that is not the only way in which it can be exercised. The Subcommittee has full and continuous authority to conduct oversight hearings with respect to an agency within its purview. We would welcome the opportunity to appear before the Subcommittee at any time to discuss our work and matters of common interest, independently of the authorizations process.

The present process of seeking authorizations in advance of appropriations requires a degree of long-term forecasting which is to a great extent unrealistic with respect to an agency like the Administrative Conference. We attempt now to describe the kinds of projects and activities we would undertake in fiscal years 1979, 1980 and 1981. But, in reality, we must retain the flexibility to adjust our priorities and our scale of activities in order to be able to address needs and problems as they emerge. Since our role is to advise and to recommend, we are not entirely in control of our own agenda; we must be prepared to respond on an appropriate scale to the emerging needs of Congress, the agencies, the Administration, and affected members of the public.

This problem is illustrated by the impact on our activities of two major studies, undertaken in one case at the suggestion of a Congressional committee and in the other at the direction of Congress.

At the urging of the Chairman of the Senate Appropriations Subcommittee having jurisdiction over both the Conference and the Internal Revenue Service, the Conference undertook a massive review of procedures of the IRS affecting individual taxpayers. As described in this statement, this highly-acclaimed project resulted in 72 separate recommendations published in six sets (Recommendations 75-5 through 75-10). It cost \$216,000 in direct contract fees plus substantial staff and other support during fiscal years 1974 and 1975. In each of those years expenditures for this project were substantially more than for all other research and project activities of Conference combined.

The Magnuson-Moss Warranty-Federal Trade Commission Improvement Act of 1975 directs the Conference to study the operation of the complicated new

trade regulation rulemaking procedures established by that Act, and to report to the Congress by July 1978. The Act makes no provision for financing this demanding assignment. As with the IRS project, a team of consultants and researchers is conducting the extensive empirical work required to fulfill the statutory mandate. A total of \$220,000 in direct contract fees has been obligated for this project in fiscal years 1976 and 1977. An additional amount will have to be committed in fiscal 1978. Again, the expenditures for this project markedly exceeded those for all other research and project activities of the Conference in the first two years in question.

Statutorily-assigned consultative functions have also strained our resources, although not to a degree comparable to the strain imposed by the IRS and FTC studies. Discharge of our responsibilities under the Government in the Sunshine Act, as described above, took about two-thirds of the time of two of the seven lawyers on the Conference's staff for a period of over five months. In relative terms, this is an enormous preemption and diversion of already-thin staff resources. Similarly, the detailed evaluation of the revised rules of practice of the Interstate Commerce Commission, for submission to Congress as required by the Railroad Revitalization and Regulatory Reform Act of 1976, occupied almost the full time of a senior staff lawyer for over a month.

Similar assignments may be expected in the future, and, indeed, we welcome them. The Conference should be able to respond to such calls upon its special capacities and expertise, even where specific provision is not made for funding. But the Conference must have the budget capacity for such unforeseeable undertakings. It should not be forced to curtail or postpone activities to which it is committed by its basic mission.

There perhaps are few agencies that operate on so small a budget that they cannot absorb an unanticipated demand of \$100,000 to \$200,000, or the preemption of two or three professional staff members for sustained periods. But since under its ceiling the Conference must operate with a very small budget and staff, and in constantly straitened circumstances, the impact of a Congressional assignment is much greater than it would be on other agencies.

For similar reasons it is very difficult to comply in any substantial way with Administration requests, for example, to participate in major regulatory reform or reorganization projects. Again, these are things we should be doing, but the ceiling prevents our budget from seeking a level at which we can accommodate the needed expenditures.

We cannot even seek a supplemental appropriation to cover such costs, no matter how important or urgent the need, if that would push our budget beyond the ceiling.

Removal of the ceiling would permit the Conference to justify appropriations for the basic program at a level it realistically needs to combat the problems of administrative procedure. Of equal significance, removal of the ceiling would free the Conference to seek the resources needed to respond to the initiatives and mandates of the Congress and the Administration in the realm of administrative procedure—either by provision in the regular budget cycle if there is enough lead time, or otherwise through supplemental appropriation.

B. Suggested Ceilings

If nevertheless the Congress concludes that a ceiling is desirable, what should it be? This depends to a considerable extent on what the Congress wishes the Administrative Conference to be. The Conference is empowered by 5 U.S.C. § 574 to

"(1) study the efficiency, adequacy, and fairness of the administrative procedure used by administrative agencies in carrying out administrative programs, * * *;

"(2) arrange for interchange among administrative agencies of information potentially useful in improving administrative procedure; and

"(3) collect information and statistics from administrative agencies and publish such reports as it considers useful for evaluating and improving administrative procedure."

There should be no doubt that several times the present annual budget of the Conference might usefully be devoted to these tasks.⁷ The question, therefore,

⁷ For an interesting comparison, the Commission on Federal Paperwork has a budget for fiscal 1977 of \$6.4 million, and employs 100 fulltime staff, down from a peak of 200 at one stage.

comes down to one of how large a role the Conference should have in working for the improvement of Federal administrative procedure.

This is a time of special challenge and opportunity for those who are concerned with public administration and administrative procedure. There is in the country at large a surge of frustration and discontent with government. Some call for more open and more responsive government, others for more rationally organized government, while some ask simply for less government. All agree that the government must set its own house in order. The Congress and the President have addressed and are addressing these concerns. The Administrative Conference has a significant role to play. The area of its concern—fair and efficient administrative procedures—is an indispensable element in any comprehensive program for governmental reform.

The Administrative Conference, a statutorily created permanent body with stature, independence, balanced viewpoint and proven record of accomplishment, should do a far bigger job in these areas than it has been able to do so far. It is the logical choice to conduct or to participate actively in all major studies of broad procedural problems. It should be able, at a minimum, to keep abreast of and to contribute its expertise on request to any procedural study conducted within the Government.

We have demonstrated in this statement how severely limited resources have made it difficult for the Conference to attempt those things, or even to carry out its basic responsibilities. Indeed the Conference at present cannot operate with high efficiency. Efficient use cannot be made of the membership and the committees because of a shortage of projects in the pipeline, and it is hard to develop needed projects with staff spread so thin. A highly disproportionate amount of senior staff time is diverted to administrative tasks, to matters of marginal importance, and above all, to attempting to cope with budgetary and related problems.⁸

We have shown a particularly acute need to enlarge the Conference's research program, to supply both the contract funds and the staff needed to carry forward the more extensively empirical research required to attack the toughest problems. We have also shown, conservatively, the necessity of small additions to our staff to conduct increasingly significant functions—advice-giving, consultative, educational, clearinghouse, statistics-gathering, and implementing functions—that now we simply cannot carry out in a way adequate to meet present demands. Adequate funding and staff would enable the Government to obtain full benefits from this unique agency.

We respectfully propose authorizations of \$2,050,000 for fiscal 1979, \$2,175,000 for fiscal 1980, and \$2,300,000 for fiscal 1981 and each year thereafter. This would permit a substantial expansion in the Conference's level of activities in the first year, with increases in subsequent years purely to cover anticipated inflation.

A budget of \$2,050,000 for fiscal 1979 would enable us to:

- (1) Commit approximately \$600,000 to research contracts, and approximately \$20,000 to computer services, for projects as described above.
- (2) Increase our permanent staff to 34, by adding ten attorneys, a statistical specialist and seven clericals. Thus we could:
 - (a) assign at least the full time of two attorneys⁹ to the implementation program under the supervision of the Executive Director;
 - (b) assign five staff attorneys plus the Executive Secretary to agency and legislative consultation, interagency task forces, and educational and clearinghouse activities;
 - (c) assign seven attorneys, in addition to the Research Director, to research activities and committee support;
 - (d) assign a professional to work full time on our statistical reporting system; and
 - (e) provide greater clerical support for administrative functions to permit delegation of routine responsibilities by the Executive Director.

⁸ For example, the shortage of resources to finance the FTC rulemaking study caused us to engage in lengthy negotiations with the FTC for logistical and other support. Our inability to finance at an adequate level our study of procedures for making scientific and technical determinations has caused us to seek assistance from the National Science Foundation. While joint agency funding of projects of common interest may sometimes be desirable, there are obvious disadvantages in seeking financial assistance from an agency whose procedures we are examining. Reliance on outside resources may lead to loss of control over the funded project. Nor should we be forced repeatedly to devote valuable staff time to fund raising.

⁹ The references in this breakdown are actually to estimated person-years of attorney time. We would expect individual attorneys to work on a variety of Conference activities.

- (3) Moderately enlarge our use of nonpermanent employees such as law interns.
- (4) Improve the distribution and quality of our publications and expand our library.
- (5) Cover ancillary costs of our expanded operation, such as rent, travel, and equipment.

The increased authorizations which we request for fiscal 1980 and 1981 would allow for 6% inflation but no program increase.

With ceilings, whether they are at these levels or others, there remains a potentially grave problem for the Conference, which we earnestly solicit the help of the Subcommittee in solving. That problem arises from the likelihood that the Congress will continue by statute to assign the Conference responsibilities that require substantial resources to fulfill, thereby draining away support from basic work already budgeted under the ceiling. We can predict that such assignments are likely to be made, but we cannot predict the amounts that such responsibilities will cost. Though we sincerely welcome such assignments, we know from experience that their impact on the other work of the Conference, in budgetary and operational terms, can be severe, since under the ceiling no relief is available even by supplemental appropriation. We respectfully urge the consideration by the Subcommittee of a solution to this dilemma which will permit our agency to carry on its basic work through appropriations limited by the ceiling, and also permit it to seek additional amounts if it needs them to carry out responsibilities assigned by the Congress from time to time in the future. We believe this solution should be accomplished by authorizing, in addition to the specified ceilings, the appropriation of such sums as may be necessary to carry out responsibilities assigned by legislation enacted on or after October 1, 1977. Such authority would be limited by its express terms to the support of new responsibilities assigned by Congress, and all other activities would remain limited by the regular ceiling. We are not trying to get around that ceiling. This is not a bypass or a subterfuge. It is, so far as we can see, the only practical solution to the real possibility that costly new assignments could seriously disrupt the workings of this agency. Again, we only ask that our authorizing legislation permit us to seek and justify the resources needed to do what Congress may assign us to do.

We appreciate the consideration of the Subcommittee.

APPENDICES

Appendix A

Whereas, the Administrative Conference of the United States is a worthwhile mechanism for the improvement of administrative procedure, and its work is of significant value to the entire administrative legal community; and

Whereas, as its work has become more widely recognized the Administrative Conference has increasingly been called on by Congress and the Executive to undertake substantial activities; and

Whereas, the assignment of such additional activities, together with the effective discharge of its basic mission in response to increasing public concern with the problems of administrative procedure, will require increased appropriations for the Administrative Conference; and

Whereas, 5 U.S.C. § 576 at present limits the authorization of appropriations for the Administrative Conference to \$950,000 for Fiscal Year 1978 and each year thereafter; and

Whereas, the existence of this ceiling restricts the ability of the Administrative Conference to present through the regular budget and appropriations process the justification for increased resources that may be required to carry out its mission and to collaborate in particular initiatives of the Executive and the Congress

Now, Therefore Be it Resolved, That the Section of Administrative Law supports the enactment of legislation removing the statutory ceiling on appropriations for the Administrative Conference of the United States, and authorizing to be appropriated such sums as may be necessary to carry out the purposes of the Administrative Conference Act.

Adopted May 15, 1977.

AMERICAN BAR ASSOCIATION,
Council of Section of Administrative Law,
Spring meeting, Hershey, Pa.

Appendix B

RECENT RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE

RECOMMENDATION 72-1

BROADCAST OF AGENCY PROCEEDINGS

(Adopted June 8, 1972)

This recommendation calls upon agencies to announce policies with respect to the broadcast of their proceedings. It encourages broadcast coverage of proceedings involving issues of broad public interest, subject to appropriate limitations and controls for the purpose of preventing disruption and protecting witnesses. It further provides that audiovisual coverage should be excluded in adjudicatory proceedings involving past culpable conduct where the person involved objects.

Agency response to this proposal has been widely varied, due in part to the diverse nature of the proceedings affected and in part to lack of experience in handling requests for broadcast permission. The Department of Labor, the Department of Housing and Urban Development and the Federal Communications Commission have all published rules which achieve substantial implementation. By far the largest number of agencies, however, while indicating agreement with the broadcasting standards of the proposal, have declined to embody them in rules but instead propose to apply them on a case-by-case basis.

RECOMMENDATION 72-7

CONFLICT-OF-INTEREST PROBLEMS IN DEALING WITH NATURAL RESOURCES OF INDIAN TRIBES

(Adopted June 9, 1972)

Disputes concerning land and water rights of American Indians have resulted in serious conflict-of-interest problems for the agencies charged with the dual responsibility of acting as trustees for Indian property and of carrying out Federal programs involving the lease or other use of the property. The recommendation is in two parts: first, it calls for legislation to provide independent legal counsel to protect Indian claims to natural resources; second, it urges the Departments of Justice and Interior to lessen conflict-of-interest problems through administrative action until legislation is enacted.

Through an exchange of correspondence between the White House, the Secretary of the Interior and the Attorney General, administrative procedures have been adopted which implement the second part of this recommendation. The understanding provides that the Department of Justice will advise the Department of the Interior of cases involving Indian rights, and that upon the request of the Secretary or his Solicitor, the Justice Department brief will include views with respect to Indian natural resource trust interests.

Legislation to implement the first part of the recommendation by establishing an Indian Trust Counsel Authority have been introduced in Congress.

RECOMMENDATION 72-3

PROCEDURES OF THE U.S. BOARD OF PAROLE

(Adopted June 9, 1972)

Determinations of the U.S. Board of Parole involving the grant, deferral or revocation of parole, control more than two-thirds of the time served under Federal prison sentences. This recommendation seeks to assure greater fairness and consistency in Board decisions through a number of changes in procedures, including publication of the standards and criteria by which parole determinations are made, permitting prisoners the assistance of counsel or other representatives at the parole interview, allowing prisoners to see the contents of their prison files (subject to reasonable limitations), and providing a written statement of reasons in support of orders denying parole.

Many of the recommendations of the Conference have been incorporated in new regulations governing parole issued by the Board; recent court cases have implemented other aspects.

RECOMMENDATION 72-4

SUSPENSION AND NEGOTIATION OF RATE PROPOSALS BY FEDERAL REGULATORY AGENCIES

(Adopted June 9, 1972)

This recommendation is directed (1) to the procedures by which the Civil Aeronautics Board, the Federal Communications Commission, the Federal Power Commission and the Interstate Commerce Commission suspend and investigate newly filed rate proposals, and (2) to the manner in which rate proposals are disposed of by means of negotiation or settlement.

The recommendation is under study by the four agencies to which it is directed. The CAB and the FCC have expressed agreement with its objective, and are seeking to bring their procedures into compliance. The ICC is likewise in accord although it has noted problems of implementation in view of the large volume of proceedings involved—in excess of 4,000 annually.

RECOMMENDATION 72-5

PROCEDURES FOR ADOPTION OF RULES OF GENERAL APPLICABILITY

(Adopted December 14-15, 1972)

This recommendation primarily concerns future legislation. It urges Congress, in the absence of special circumstances, not to impose upon rulemaking of general applicability mandatory requirements beyond those contained in the Administrative Procedure Act. Agencies are requested to adhere to this policy in new legislation which they propose, and to consider revision of existing statutes that violate it. In the latter category, the recommendation singles out Section 701(e) of the Federal Food, Drug and Cosmetic Act, and urges that it be amended to make clear that trial-type procedures should be used only for issues of specific fact.

Responses to inquiries concerning this recommendation have been received from over 30 agencies, indicating their intention to be guided by its principles. The great majority of agencies have already examined their statutes and have found no need to propose amendments. Several agencies have noted that the recommendation has been useful in connection with pending legislative proposals. The Food and Drug Administration has under consideration draft legislation to revise Section 701(e) in accordance with the recommendation.

RECOMMENDATION 72-6

CIVIL MONEY PENALTIES AS A SANCTION

(Adopted December 14-15, 1972)

In this recommendation agencies are requested to review their regulatory and enforcement powers to determine whether civil money penalties might advantageously be used to supplement or replace criminal penalties and more drastic civil sanctions; and whether such civil money penalties for particular classes of offenses might desirably be imposed in formal adjudicative proceedings at the administrative level, rather than in the courts. They are urged to seek the legislation necessary to apply their conclusions.

The recommendation has already received widespread and active support. Ten agencies have pending or in preparation legislation which applies its principles. This includes legislation to provide civil penalties under the Interstate Land Sales Full Disclosure Act (HUD); to provide civil penalties for violation of rules under Parts I and II of the Interstate Commerce Act (ICC); to permit administrative assessment of penalties in Hazardous Materials and Motor Carrier Safety proceedings (DOT); to provide civil penalties under the Small Business Investment Company program (SBA); and to permit administrative assessment of penalties under the Federal Aviation Act (CAB).

RECOMMENDATION 72-7

PREINDUCTION REVIEW OF SELECTIVE SERVICE CLASSIFICATION ORDERS AND RELATED PROCEDURAL MATTERS

(Adopted December 14-15, 1972)

This recommendation calls for legislation to authorize preinduction judicial review of draft classification orders and for referral of contested conscientious objector claims to the State Director level for an advisory opinion. It also calls upon the Selective Service to amend its regulations by allowing registrants to have the benefit of counsel at local and appeal board hearings, to provide suitable transcripts of hearings, and to enlarge the staff and jurisdiction of the National Appeal Board.

At the time of adoption of this recommendation the Conference was aware that substantial alterations in the draft program would take effect in July 1973; it believed that its proposals should be applied even during a period of "stand-by" classification. The Selective Service System has taken a different view, reporting that no efforts will be undertaken to implement either the legislative or administrative aspects of this recommendation at this time.

RECOMMENDATION 72-8

ADVERSE ACTIONS AGAINST FEDERAL EMPLOYEES

(Adopted December 14-15, 1972)

This recommendation calls for major revisions in adverse action proceedings by agencies and by the Civil Service Commission. It provides for an evidentiary hearing at the agency before a qualified hearing officer appointed by the Civil Service Commission, a single review of that decision by the agency or its designee, direct review by an appellate board in the Commission, and discretionary review by the Commission itself. Other major aspects are open hearings at the employee's option, and adoption of procedures to permit reassignment of an employee or retention on administrative leave with pay for a reasonable period pending final action by the employing agency.

New regulations promulgated by the Civil Service Commission have incorporated most of the major features of this recommendation.

RECOMMENDATION 73-1

ADVERSE AGENCY PUBLICITY

(Adopted June 7-8, 1973)

This recommendation calls upon agencies to adopt regulations setting forth minimum standards and structured practices governing the issuance of publicity which directs attention to agency action or policy which may adversely affect identified persons. Such publicity should be factual in content and accurate in description; normally it should issue only where immediate public notice is necessary to meet a significant risk to health, safety or of economic harm, where publicity is required to bring notice of pending adjudication to affected persons, or where the investigation or proceeding will in any event receive media attention and agency publicity will foster efficiency, public understanding or accuracy. Agencies are encouraged to give respondents advance notice of publicity which may be adverse and to afford an opportunity to prepare a response in advance; erroneous or misleading publicity should be retracted or corrected.

This recommendation was brought to the attention of all member departments and agencies; by-and-large the responses indicate that current agency practices are in conformity with the principles enunciated in the recommendation. A number of agencies have indicated their intention to implement the recommendation either through the issuance of internal instructions or the promulgation of rules or policy statements.

RECOMMENDATION 73-2

LABOR CERTIFICATION OF IMMIGRANT ALIENS

(Adopted June 7-8, 1973)

This recommendation calls for refinement of the Department of Labor's procedures governing application for labor certification by immigrant aliens seeking permanent residence. In its principal points, the recommendation urges publication of the Department's Guidelines and supplemental memoranda; provision directly to the alien of notice of denial of certification and of the right to appeal; greater specificity in the record of the reasons for grant or denial of certification; and full access to the record by the alien who chooses to appeal.

This recommendation has largely been implemented. The Manpower Administration of the Department of Labor issued a Field Memorandum in December 1973 containing operating instructions to assist regional offices in implementing the recommendation. The substance of this internal memorandum, as well as additional material further to perfect the Department's immigrant labor certification process, will be included in revisions to regulations at 29 CFR Part 60.

RECOMMENDATION 73-3

QUALITY ASSURANCE SYSTEMS IN THE ADJUDICATION OF CLAIMS OF ENTITLEMENT TO BENEFITS OR COMPENSATION

(Adopted June 7-8, 1973)

This recommendation calls upon Federal agencies responsible for large-volume benefit and compensation programs—like Social Security, workmen's compensation and welfare—to maintain statistical reporting systems that monitor caseload and decisional patterns, and to use the information thus obtained as part of a continuous process of evaluating and improving adjudicatory performance. Such systems are necessary to assure overall accuracy, timeliness and fairness in programs where the small size of individual claims and the limited resources of claimants make the pursuit of appeal and adversarial representation inadequate.

This recommendation has received widespread acceptance by those agencies which administer programs to which the proposal has application; indeed, most already have programs although many of them lack some of the key features called for by the proposal.

RECOMMENDATION 73-4

ADMINISTRATION OF THE ANTIDUMPING LAW BY THE DEPARTMENT OF THE TREASURY

(Adopted December 18-19, 1973)

This recommendation calls for changes both in the statute and in the procedures used by the Treasury Department in administering the anti-dumping law which provides for the imposition of an equalizing duty when it has been determined that foreign manufacturers are selling their products in the United States at prices less than those charged abroad, and that such price discrimination injures domestic competitors. The statutory amendments would eliminate unnecessary and inefficient procedures, principally a rigid bifurcation of the decisional process between Treasury and the Tariff Commission. The recommendations for administrative changes would increase the fairness of the procedures by permitting interested parties to make suggestions to the Customs Representative prior to the completion of the field investigation, make the tentative decision of the Commissioner of Customs available to interested parties, and require a more detailed statement of findings and conclusions in all tentative and final decisions. The recommendation would also exclude from the official Finding of Dumping those exporters whose sales have been subjected to the standard sampling and as to whom no less than fair value sales have been found.

The legislative aspects of the recommendation have been called to the attention of appropriate Congressional committees. The Department of the Treasury was fully consulted during the period when the research was being conducted and cooperated fully in the investigation; it now has the recommendation under study.

RECOMMENDATION 73-5

ELIMINATION OF THE "MILITARY OR FOREIGN AFFAIRS FUNCTION" EXEMPTION FROM
APA RULEMAKING REQUIREMENTS

(Adopted December 18-19, 1973)

This recommendation calls for an amendment to Section 553(a) of the Administrative Procedure Act to eliminate as unnecessarily broad and unwarranted the categorical exemption from public rulemaking procedures of matters which involve a "military or foreign affairs function of the United States." It would retain, however, exemptive provisions for matters required to be kept secret by Executive Order and would permit narrowly drawn categories of rules to be exempt from public procedures. Affected agencies are also called upon to use public procedures voluntarily, even though not required to do so by the statute.

Agency responses to this recommendation have been most encouraging. Both the Department of Defense and the Department of State have informed the Conference that they will hold public rulemaking proceedings in many matters involving military or foreign affairs functions even though not required to do so by the Administrative Procedure Act and notwithstanding their previous policies to the contrary. The proposed amendment to the APA has been brought to the attention of the appropriate Congressional committees for consideration with other proposed amendments to that Act.

RECOMMENDATION 73-6

PROCEDURES FOR RESOLUTION OF ENVIRONMENTAL ISSUES IN LICENSING PROCEEDINGS

(Adopted December 18-19, 1973)

The recommendation calls upon each licensing agency to identify environmental issues common to more than one application and appropriate for across-the-board treatment. Issues so identified should be disposed of in "generic" proceedings, pursuant to procedures which will ordinarily enable the conclusions to be binding in subsequent cases barring special local conditions or changed circumstances. The recommendation also urges that the standard practice of agencies should be to disclose at the earliest practicable date all relevant reports and documents and to draft environmental statements in terms readily understandable by the public.

Almost all of the licensing agencies to whom this recommendation was sent are either using some form of generic proceeding in order to help prevent repetitious litigation over environmental issues or are in the process of developing appropriate procedures. Among the agencies now using generic proceedings are the Environmental Protection Agency, the Department of Interior (oil shale and coal mine leases), the Corps of Engineers (Alaskan pipeline, dredging projects), and the Atomic Energy Commission. Agencies in the process of implementing the recommendation include the Department of Health, Education and Welfare (particularly the Food and Drug Administration), the Civil Aeronautics Board and the Federal Communications Commission.

RECOMMENDATION 74-1

SUBPENA POWER IN FORMAL RULEMAKING AND FORMAL ADJUDICATION

(Adopted May 30-31, 1974)

In its June 1973 statement regarding the American Bar Association's proposals for revising the Administrative Procedure Act, the Conference endorsed an amendment which would make agency subpoenas available to the parties in all adjudications subject to 5 U.S.C. §§ 554, 556 and 557. Recommendation 74-1 applies and somewhat expands upon this statement by proposing specific statutory language.

The recommendation calls for a new subsection to section 556 making agency subpoenas available in all proceedings, both adjudication and rulemaking, governed by that section. The recommendation also proposes an amendment to section 555(d) of the Administrative Procedure Act specifying that agencies must delegate to presiding officers authority to sign and issue subpoenas in proceedings

governed by section 556. Such delegation is probably required by the present law, [§ 556(c) (2)] and has been effected in nearly all agencies, but it was thought desirable to remove whatever doubts may exist. Accordingly, legislation has been introduced to implement this proposal.

RECOMMENDATION 74-2

PROCEDURES FOR DISCRETIONARY DISTRIBUTION OF FEDERAL ASSISTANCE

(Adopted May 30-31, 1974)

This recommendation applies to all domestic programs involving discretionary distribution of Federal assistance, not merely in the form of grants but in all forms other than personal services (including, for example, loans and guarantees). It urges agencies to state publicly the specific results sought to be achieved by their assistance programs and to articulate the criteria guiding their actions in making awards. Whenever possible such criteria should provide for the award of aid either on an entitlement basis, to all who meet specific requirements, or on a competitive basis, to those who best satisfy stated selection factors. Since awareness of problems and of violations of rules is essential to sound administration, the recommendation urges the establishment of clear and accessible complaint procedures. The specific mechanism for receiving and acting on complaints is left to the agencies' judgment.

Eight of the major agencies which distribute discretionary Federal assistance have indicated that their procedures are in compliance or are being brought into compliance with the recommendation.

RECOMMENDATION 74-3

PROCEDURES OF THE DEPARTMENT OF THE INTERIOR WITH RESPECT TO MINING CLAIMS ON PUBLIC LANDS

(Adopted May 30-31, 1974)

The Department of the Interior adjudicates mining claims on public lands under the General Mining Law of 1872. Under that law, a miner acquires a valid possessory interest only when he discovers a valuable mineral deposit; but he may "stake" a claim without any proof of such discovery, and—under the Department's present procedures—can protect the claim without any filing beyond a metes-and-bounds description in the State courthouse for the county in which the claim is located. When the Department wishes to establish clear Federal title to the land—in order, for example, to establish a new National Park or build a new dam—it conducts a tedious search of county land records; and it provides a formal APA hearing for the claims thus identified, even when the claimant has made no preliminary showing of a mineral discovery.

The Conference recommendation is in three parts. First, it calls for improved procedures for identifying claims. Federal registration of claims should be required, either by legislation or, if possible, by Department rule. Second, the Department's procedures for hearing and reviewing claims should be revised to require a claimant to set forth the facts supporting his claim in order to establish a right to a hearing and place upon the claimant the burden of going forward as well as the burden of proof. Third, the recommendation calls for increased opportunity for inspection of and comment upon Government-developed data in connection with notice-and-comment rulemaking. It also recommends that the Department simplify the relevant sources of law by including in published regulations matter presently incorporated in staff manuals and other internal documents, by codifying in regulations policies generated through the adjudicatory process, and by publishing a full description of the BLM's organization and operating procedures.

The Department of the Interior has this recommendation under active consideration.

RECOMMENDATION 74-4

PREENFORCEMENT JUDICIAL REVIEW OF RULES OF GENERAL APPLICABILITY

(Adopted May 30-31, 1974)

This recommendation considers some of the complex and difficult questions that arise when courts review rules adopted through informal procedures before they are applied to particular persons in adjudicative proceedings, including:

(1) a description of the administrative materials that should be available for the court to review;

(2) a statement that references to "substantial evidence" in recent statutes providing for judicial review of rulemaking should not, in and of itself, be used as a basis for the conclusion that the agency must provide rulemaking procedures beyond the notice-and-comment requirements of 5 U.S.C. § 553;

(3) a reaffirmation that the proper test for judicial review of rules is the "arbitrary, capricious [or] an abuse of discretion" test of 5 U.S.C. § 706(a) (A); and

(4) a recommendation that future statutes providing for judicial review of informal rulemaking should refer only to the standards for such review established by the APA, 5 U.S.C. § 706.

This recommendation was transmitted to the Judicial Conference of the United States for its consideration.

RECOMMENDATION 75-I

LICENSING DECISIONS OF THE FEDERAL BANKING AGENCIES

(Adopted June 5-6, 1975)

At the Federal level, entry into banking and banking markets is controlled by four Government agencies: the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Home Loan Bank Board, and the Federal Deposit Insurance Corporation. These agencies operate pursuant to statutes that contain little detail on the standards to be applied in determining the merits of applications for entry into the banking community. By and large the agencies have not provided this detail by adopting statements of policy or rules of general applicability defining the standards and requirements that must be satisfied in their proceedings.

As a usual practice, hearings are not held nor are explanatory opinions issued when banking entry applications are decided. As a result, the information gap that exists because of the lack of statutory standards or agency policy statements or rules is exacerbated and judicial review of such decisions, an increasingly frequent occurrence, is hampered.

The recommendation urges that the banking agencies adopt policy statements and rules of general applicability specifying as much as possible the standards relevant to banking entry applicants and the policies and regulatory objectives the agencies seek to implement in their decisional processes. In addition, reasoned opinions should be issued and published in a regular format in cases other than routine, uncontested matters and in cases which present issues of general importance. It is recognized that nonpublication may be appropriate where the grounds for rejection would lead to substantial injury to a bank or individual if made public.

RECOMMENDATION 75-2

AFFIRMATIVE ACTION FOR EQUAL OPPORTUNITY IN NONCONSTRUCTION EMPLOYMENT

(Adopted June 5-6, 1975)

This recommendation reflects the Conference's judgment that the application of the Government's equal employment opportunity rules for nonconstruction

Federal contractors should be reviewed for possible revision to reflect more closely the characteristics of specific industry and occupational categories. At present, Department of Labor equal employment opportunity regulations, issued pursuant to Executive Order 11246, are divided into only two sets, one of which governs the construction industry, with the other applicable to all other Federal contractors. Such a division may ignore important variations in nonconstruction industries and occupations that warrant more particularized equal employment opportunity rules for Federal contractors.

The recommendation also addresses the system of sanctions for breaches by Federal contractors of the equal employment opportunity clauses in Government contracts. The Department of Labor is urged to pursue, legislatively if necessary, the adoption of a system of graduated sanctions. Sanctions should not be imposed except after opportunity for a hearing.

The concluding section of the recommendation is addressed to the Department of Health, Education, and Welfare as the primary agency responsible for equal employment opportunity compliance by Federal contractors in the field of higher education. Several procedural changes are recommended, including the adoption of better defined and uniform policies, the recruitment of staff familiar with the field of higher education, and greater coordination with representatives of higher education and other concerned Federal agencies.

RECOMMENDATION 75-3

THE CHOICE OF FORUM FOR JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

(Adopted June 5-6, 1975)

This recommendation seeks to formulate criteria for use by Congress in selecting the appropriate forum for judicial review of Federal administrative action, and, in particular, the criteria for choosing between review in the district courts and the courts of appeals. The recommendation rests on three basic premises: (1) direct review by the court of appeals, where feasible, is generally desirable in the interest of efficiency and economy; (2) direct review by the courts of appeals is not necessarily rendered unfeasible by the absence of an evidentiary record; but (3) in the interest of conserving scarce judicial resources review by the courts of appeals should, to the extent possible, be reserved for the resolution of major issues of law or policy.

Administrative review cases should be heard in the district courts if they do not present issues of law or policy of major impact and if they would not ordinarily be appealed to the courts of appeals unless brought there initially. Where district court decisions in administrative cases are frequently appealed and legal questions or major policy issues are lacking, the legislation to make review by a court of appeals discretionary should be considered. Review of Social Security Administration orders in cases of disability, health insurance, retirement, or survivors' benefits should continue to be in the district courts; if the volume of appeals from such district court decisions increases, Congress should consider permitting discretionary review in the courts of appeals.

The Congress should consider making orders of the Department of Labor Benefits Review Board in black-lung cases initially reviewable in district court rather than the courts of appeals as the law now provides.

With respect to judicial review of rules adopted pursuant to the notice-and-comment procedures of 5 U.S.C. § 553, direct review by a court of appeals is warranted if the public interest requires a prompt ruling and an appeal of a district court decision would ordinarily be taken in any event. The absence of a formal trial-type hearing record does not necessarily negate the propriety of direct court of appeals review. Rules issued by agencies that regularly engage in formal adjudication and whose orders are directly reviewable in the courts of appeals should in any event be reviewable directly in the courts of appeals.

Informal actions other than rules should be reviewed initially by a district court, except in cases where eventual court of appeals review is likely, issues of law or major policy considerations are present, and an evidentiary trial is not needed.

Statutory authorization for the transfer of jurisdiction among Federal courts should be expanded in the interests of justice and expedition of the appellate process.

RECOMMENDATION 75-4

PROCEDURES TO INSURE COMPLIANCE BY FEDERAL FACILITIES WITH ENVIRONMENTAL QUALITY STANDARDS

(Adopted June 5-6, 1975)

Despite large Federal expenditures, uniform and consistent compliance with Federal and non-Federal environmental standards has not been achieved by the more than 20,000 facilities owned or operated by the United States. Moreover, there are unjustifiable variations among the enforcement procedures employed at all levels of government in securing compliance by Federal facilities with air, water, noise, solid waste, and ocean-dumping standards. The resulting lack of uniformity has been compounded by conflicting court interpretations of the applicability of non-Federal standards and procedures to Federal facilities.

The Conference recommends that Congress delegate to one agency exclusive authority to insure compliance by Federal facilities with all applicable non-Federal environmental requirements. Procedures used to effectuate compliance with such non-Federal standards should provide for local notice to the public and to relevant local public officials, an opportunity for public hearing, and authority for the presiding official to make recommendations concerning compliance.

RECOMMENDATIONS 75-5 THROUGH 75-10

INTERNAL REVENUE SERVICE PROCEDURES

(Adopted December 11-12, 1975)

A primary focus of the Office of the Chairman through all of 1975 was a major Internal Revenue Service procedures study, the largest project yet undertaken by the Conference. The study was carried out by a team of consultants and special staff, and guided by a distinguished steering committee. The project was carried to a successful culmination through adoption, at the December 1975 Plenary Session, of six sets of recommendations, 75-5 through 75-10, each concerned with an area of tax administration. The steering committee is being kept intact to monitor compliance with these recommendations and to consider further studies.

The Office of the Chairman transmitted the recommendations to the IRS and to the Congress early in 1976. The IRS, which had worked closely with the Conference during the study, immediately adopted the majority of the recommendations, and is currently considering means to implement others. The IRS submitted a detailed report to the Office of the Chairman in July of 1976, indicating the manner in which compliance with most of the recommendations had been achieved and the future IRS plans with respect to all of the recommendations. The steering committee reviewed the IRS report, and issued a report in November of 1976, analyzing the IRS responses and recommending specific follow-up actions to the Office of the Chairman. The Office of the Chairman has carried on a further detailed examination of the implementation of Recommendations 75-5 through 75-10; this activity will culminate in a report to the steering committee and the Chairman in 1977.

A description of the several IRS procedure Recommendations, along with the results of Conference implementation efforts with the IRS and the Congress, follows. Bracketed references (e.g., [a]) are to numbered subparts of the Recommendations.

RECOMMENDATION 75-5

INTERNAL REVENUE SERVICE PROCEDURES: THE AUDIT AND SETTLEMENT PROCESS

(Adopted December 11-12, 1975)

This Recommendation calls for the IRS to establish procedures to enhance the fairness and effectiveness of the manner in which tax returns are selected for audit. The IRS has substantially complied with four parts of the recommendation. It has included in its Audit Information Management System (AIMS) procedures to require that [a] the reasons for an auditor's request for a tax

return be in writing and subject to regular review by the auditor's superior. It has adopted procedures which [c] minimize the probability of repetitive audits of the same taxpayer; a planned computer data system will further be used to avoid repetitive audits. It has created procedures to ensure that [d] reasons for audit selection be verified on a continuing basis for appropriateness and accuracy; future AIMS procedures will augment this process. The IRS has further taken steps to ensure that [e] Taxpayer Compliance Measurement Programs will be staffed from among its most capable and experienced agents and auditors.

The IRS is in partial compliance with those parts of the recommendation calling for it [b] to notify taxpayers of the criteria under which their returns have been selected for audit, [f] to better inform taxpayers of the audit selection process, [g] to seek funds from the Congress for the purpose of studying voluntary compliance, and [h] to prepare a comparative study of the effectiveness, by taxpayer class, of IRS settlement processes. The IRS has agreed to conduct studies in these areas and to look for proper means for implementation.

A bill, H.R. 306, has been introduced in the 95th Congress by Representative Conte which would amend the Internal Revenue Code so as to incorporate a number of the Conference's recommendations on the audit process. In particular, H.R. 306 would require the establishment of formal procedures and criteria for the selection of individual tax returns for audit, would mandate that individuals be informed of the reasons that their returns were selected for audit, and would require the IRS to conduct studies, by taxpayer class, of the impact of the auditing process. In each of the areas covered by the bill, the IRS has not yet reached total compliance with the conference's recommendations.

RECOMMENDATION 75-6

INTERNAL REVENUE SERVICE PROCEDURES: COLLECTION OF DELINQUENT TAXES

(Adopted December 11-12, 1975)

This Recommendation called for the IRS to adopt a number of measures designed to minimize the hardships to taxpayers resulting from the collection of delinquent taxes. The IRS agreed with most of the parts of the Recommendation and has taken affirmative actions to modify its procedures accordingly. It has [a(2)] modified the content of its final notices before seizure to advise taxpayers that seizure action could be taken at any time following ten days after notification, and has agreed [a(3)] to renotify taxpayers if no action is taken for 120 days. It has issued manual supplements to its agents to assure that [b(2)] a taxpayer is notified of the filing of a tax lien against his property and that [b(3)] releases of liens by the IRS are promptly filed without the necessity of action by the taxpayer.

With respect to seizures and sales of non-liquid assets, the IRS has instituted procedures whereby [d(1)] higher-level employees will review the decision to seize property and will make certain that seizure and sale will actually reduce a taxpayer's delinquent account. The IRS plans substantial implementation of the recommendation [d(3)] which suggests that the IRS analyze data on the effectiveness of its seizure and sale activities.

The recommendation [f] calls for several improvements in the IRS's use of installment payments for satisfying delinquent accounts. The IRS has amended its procedures so as to facilitate the use of installment payments by providing automatic notification to delinquent taxpayers that deficiencies may be paid in installments, encouraging the utilization of payroll deduction agreements for delinquent accounts, and softening the effects on the delinquent taxpayer of missed installment payments so as to encourage continuation of installment agreements.

The IRS joined with the Conference in recommending to Congress that [c] a minimum amount of a taxpayer's salary or wages should be exempt from tax levy, and that levies should be continuous until tax liability is satisfied without the necessity for subsequent court action by IRS. The Congress responded by exempting \$50 (plus \$15 per dependent) per week from tax levies, and by providing for the continuing viability of tax levies. These provisions are contained in the Tax Reform Act of 1976, P.L. 94-455, Section 1209.

In the past, jeopardy and termination assessments have been unduly harsh on taxpayers. The Conference made three recommendations with respect to such assessments. The Congress enacted the first of these [g(1)] into law in the Tax Reform Act of 1976, P.L. 94-455, Sections 1204(a), (b), (c), and (d).

The Act provides for expedited administrative review and for effective judicial review in which the burden of showing the reasonableness of a jeopardy or termination assessment is on the IRS. The Act also provides that property seized under an assessment may not ordinarily be sold during the period of administrative or judicial review. The Act further softens the impact of termination assessments by providing that such an assessment does not terminate a taxpayer's taxable year or automatically create a deficiency. Finally, the Act permits a taxpayer subject to a termination assessment to contest his tax liability in the Tax Court, rather than being limited to administrative review (or an independent suit in the District Court) as was previously the case. The IRS complied with the second of these recommendations [g(2)] by amending its internal procedures to require a determination by the District Director, based on substantial evidence, that a tax is due and that the eventual collection of the tax is jeopardized before a jeopardy or termination assessment is imposed. The IRS has further adopted procedures [g(3)] ensuring that distrained property may be returned to a taxpayer upon the taxpayer's posting of an adequate surety covering the anticipated net proceeds of a forced sale of the property.

The IRS has also arranged for an agreement with the Federal Reserve System so that [h] employer tax payments to IRS may be received within ten days rather than requiring four to seven weeks as before. To further assist and inform new employers of their tax responsibilities [i], IRS has published a new booklet entitled "The Collection Process (Employer's Quarterly Tax Returns)" which has been made available at all IRS field offices and will be included with delinquency notices sent to businesses. In addition, it has produced a 27-minute color film which is available on a no-charge basis to interested groups from IRS District Offices. The film, "Hey, We're In Business", depicting a young couple starting a restaurant and describing the associated tax responsibilities and the consequences of non-compliance, has been aired on a number of television stations throughout the nation.

RECOMMENDATION 75-7

INTERNAL REVENUE SERVICE PROCEDURES: CIVIL PENALTIES

(Adopted December 11-12, 1975)

This Recommendation deals with measures to improve the fairness and effectiveness of the system of civil penalties imposed on taxpayers for underpayment of taxes. The Conference proposed restructuring the penalty scheme so that variations in the amounts of different penalties would more nearly reflect the differing degrees of carelessness or culpability of the underpaying taxpayers. The IRS has agreed to evaluate the possibility of using data on penalty collections in order to determine the effectiveness of penalties in achieving compliance with the tax laws [a]. It has also provided its agents with a set of "reasonable cause" criteria under which late filing of a tax return will not subject the taxpayer to penalties [e], and is considering the proper place to publish these criteria so as to best inform the public. The Recommendation calls for increased opportunities for a taxpayer to appeal a penalty assessment [f], and IRS has responded by agreeing to test a local district appeal procedure for delinquency penalties. Parts [b], [c] and [d] of the Recommendation requires legislation for their implementation, but were not included in the Tax Reform Act of 1976. They call for revisions in the structure of the system of penalties for underpayment of tax and failure to file returns or pay tax.

RECOMMENDATION 75-8

INTERNAL REVENUE SERVICE PROCEDURES: TAX RETURN CONFIDENTIALITY

(Adopted December 11-12, 1975)

Under the tax laws prior to the passage of the Tax Reform Act of 1976, tax returns were regularly disclosed by the IRS for many purposes unrelated to the tax laws to many governmental agencies. The thrust of this recommendation is substantially to narrow IRS's authority to disclose tax returns of individuals so as to raise the level of confidentiality accorded to individual taxpayers. The Tax Reform Act of 1976, Section 1201(a), substantially implemented all parts of the Conference's legislative suggestions. The Act narrows the circumstances in which returns may be given to Executive agencies or departments [c]. Strict

limitations are placed on the ability of the Executive Office of the President to obtain and use tax returns [d]. Limits are imposed on the ability of Congressional committees to obtain tax returns [e]. Protective measures are included to prevent misuse of tax returns by State governments [f]. In many instances, the Act goes beyond the recommendations of the Conference. Criminal penalties for unauthorized disclosures are raised to maximums of a \$5,000 fine and five years imprisonment [Act section 1202(d)]. A civil remedy is provided for a taxpayer damaged by an unlawful disclosure [Act section 1202(e)].

Part [g] of the Recommendation calls for the IRS to tighten its internal practices by which its employees have access to tax returns. Procedures are being implemented by IRS, principally through the audit mechanism, which will reduce the number of unnecessary or unauthorized uses of taxpayers' returns by IRS personnel.

Part [h] of the Recommendation suggests that the IRS inform taxpayers of the types of disclosures (for other than tax purposes) to which returns are subject. A brief message relating to disclosure was included in the Privacy Act Notification on page 5 of the Form 1040 Instruction Booklet for 1976.

RECOMMENDATION 75-9

INTERNAL REVENUE SERVICE PROCEDURES: TAXPAYER SERVICES AND COMPLAINTS

(Adopted December 11-12, 1975)

This Recommendation calls for better communications between the IRS and taxpayers, and for improved administrative handling of taxpayer complaints. The IRS has taken numerous steps to improve its procedure in this area. A separate accounting system for taxpayer services has been established [a]. IRS has also created a Taxpayer Service Sampling System which allows the IRS to distinguish in its records between taxpayer requests relating to administrative and operating procedures, and requests for substantive tax advice. This new system should permit the IRS to determine the cost of and time consumed by each type of taxpayer service.

The IRS has instituted a number of procedures which will ensure that specialized taxpayer services will be performed by capable IRS employees for each specialty [b]. During 1976, several IRS districts conducted test projects in which certain tax assistants, selected by reference to specialization category, existing skills, employee inclination, and prior training, were assigned to specialties demanding experience and skill. Special studies are being conducted to ascertain the nature and amount of additional training, knowledge, and skills which will facilitate tax assistant performance.

The Recommendation calls for the IRS adequately to inform taxpayers seeking tax advice that such advice is subject to reinterpretation and does not legally bind IRS or the Federal Government in subsequent tax proceedings [c]. The IRS has accordingly revised its "disclaimer notice" so as to make more clear the liabilities of taxpayers acting upon IRS advice. The IRS is prominently displaying the notice in all of the areas where advice is given, and is undertaking to assure that the notice is included in all its published materials available relating to tax advice. A recording is being developed for use on IRS toll-free telephone services which will inform callers of the disclaimer.

In order to improve taxpayer-IRS employee relationships [d], the IRS in 1976 conducted tests of a Problem Resolution Procedure designed to identify the causes of complaints against IRS employees, to assess the effectiveness of complaint responses, and to determine changes necessary to eliminate the causes of such taxpayer complaints.

RECOMMENDATION 75-10

INTERNAL REVENUE SERVICE PROCEDURES: THE IRS SUMMONS POWER

(Adopted December 11-12, 1975)

Part [a] of this Recommendation calls for a revision of the IRS summons form so as to eliminate confusing and unnecessary information and so as to include necessary information on appeal rights and liabilities of the summoned party for failure to comply. The IRS has undertaken to revise its summons form, and is in agreement with the Conference's suggestions. A new form should be in use during 1977.

Part [b] calls for notification to a taxpayer whenever a summons is issued to a third party requesting the third party to provide testimony or documents relating to the taxpayer. This part was adopted by Congress in the Tax Reform Act of 1976, Section 1205. Congress went somewhat beyond the Conference's recommendation by further providing that the taxpayer could intervene in proceedings to contest the third party summons, and could obtain a stay of compliance with the summons by giving notice to the third party and to the IRS. Since this change in the law will require a change in the IRS summons form, the IRS will be making provisions for the necessary information regarding third party summonses as a part of their contemplated form revisions noted with respect to part [a].

Part [c] spells out specific data gathering measures to assure better oversight, by IRS management, of the use of the summons power. The IRS has proceeded to modify its Administrative Summons Reporting System so as to gather and analyze all of the data suggested by the Conference. Full implementation of the modifications is expected in 1977.

RECOMMENDATION 76-1

EXCEPTION FROM MANDATORY RETIREMENT FOR CERTAIN PRESIDENTIAL APPOINTEES

(Adopted June 3-4, 1976)

The Civil Service Retirement Act provides for mandatory retirement of federal employees at age 70 and upon completion of 15 years of service. The President has broad discretionary power to grant exemptions from mandatory retirement, and certain exceptions are specifically provided for in the statute. This recommendation proposes that the Congress amend the statute to add an exception for employees appointed by the President with the advice and consent of the Senate to serve for a definite term of years.

RECOMMENDATION 76-2

STRENGTHENING THE INFORMATIONAL AND NOTICE-GIVING FUNCTIONS OF THE FEDERAL REGISTER

(Adopted June 3-4, 1976)

This recommendation suggests ways to improve the usability and effectiveness of the Federal Register system by strengthening the informational and notice-giving functions of the Federal Register and of the Code of Federal Regulations.

The recommendation has four parts. The first urges the agencies and the Administrative Committee of the Federal Register to assure preservation in the annual Code of Federal Regulations of description of each agency's organization and functions as required by the Administrative Procedure Act. Any changes in such descriptions or functions should first be published in the Rules and Regulations section of the Federal Register. It is also recommended that the statements of basis and purpose (or portions thereof) that are published in the Federal Register with newly promulgated rules of continuing interest should be preserved in the Code of Federal Regulations. Where publication on a cumulative basis is likely to become cumbersome, the material could be published only once, in that year's edition of the Code of Federal Regulations. Also, the annual editions of the Code of Federal Regulations should include the Federal Register citations to pending rulemaking proceedings.

The second part of the recommendation notes that despite publication requirements in the Administrative Procedure Act, few agencies publish in the Federal Register statements of their general policy and interpretations of general applicability. In addition to publishing such statements and interpretations, it is recommended that, when an agency utilizes an adjudicatory opinion or an instruction to staff for the purpose of announcing a general policy or an interpretation of general applicability, the pertinent portion of such opinion or instruction should be published in the Rules and Regulations section of the Federal Register and should be preserved in the Code of Federal Regulations when they are of continuing interest to the public.

The third section of the recommendation sets forth standards to guide the Congress and the Director of the Federal Register with regard to the publication

of notices pertaining to adjudicatory matters in the Federal Register. Among other points, it suggests that the Federal Register should not be used to publish the texts of agency orders or opinions in adjudicatory proceedings or notices of those decisions if there is no further opportunity available for interested persons to participate in the proceeding, except when publication serves a necessary legal purpose. It further suggests that the Federal Register should not be used to publish notices of applications, hearings or other adjudicatory matters unless the notices are intended to inform interested members of the public of the opportunity to comment or otherwise to participate in the proceeding.

The final part of the recommendation urges the Administrative Committee of the Federal Register to require an appropriate format for notices pertaining to adjudicatory matters, including information on the nature of the proceeding, the agency's legal authority, the matters of fact and law asserted, and the opportunities available to comment or otherwise participate in the proceeding. The recommendation also suggests that an agency publish notice of specific applications or hearings where public participation is particularly important, even though the agency does not publish participation is particularly important, even under the same statutory provision.

RECOMMENDATION 76-3

PROCEDURES IN ADDITION TO NOTICE AND THE OPPORTUNITY FOR COMMENT IN INFORMAL RULEMAKING

(Adopted June 3-4, 1976)

This recommendation builds upon the Conference's recognition in Recommendation 72-5 that agencies should decide in the circumstances of particular informal rulemaking proceedings whether or not to provide procedural protections going beyond the notice-and-comment requirements of 5 U.S.C. § 553.

The recommendation sets forth for agency consideration certain rulemaking procedures, and describes some of the circumstances of particular proceedings that should move agencies to consider their use. Procedures suggested to the agencies include: planning from the outset for the possibility of two cycles of notice-and-comment or providing a second cycle even where only one was originally contemplated; incorporating in the notice of a notice-and-comment cycle information about the agency's attitudes and the data upon which it relies; providing an explanation of tests utilized by the agency and allowing an opportunity for comment thereon; holding public conferences with opportunity for interested groups to question each other; and hearing oral argument.

It is also recommended that agencies also give interested persons an opportunity to indicate issues of specific fact as to which they contend that cross-examination is appropriate. Cross-examination, where permitted, should be strictly limited as to subject and duration.

RECOMMENDATION 76-4

JUDICIAL REVIEW UNDER THE CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Adopted December 9-10, 1976)

This recommendation is intended to facilitate Congressional attention to a variety of problems which, experience has shown, arise in the interpretation and application of the judicial review provisions of the Clean Air Act and the Federal Water Pollution Control Act (FWPCA). The guiding principle of this recommendation is that where jurisdictional provisions are crafted, Congress should draw bright lines to minimize the waste and expense of litigation about whether a case has been brought in the right court.

More specifically, the recommendation urges that review of national standards under the FWPCA be centralized in the District of Columbia Circuit, as in now the case under the Clean Air Act. On the other hand, review of state implementation plans under the Clean Air Act, and review of regulations, standards or determinations affecting single states or facilities under the FWPCA, should be decentralized to the circuits containing the states or facilities in question. In addition, it calls upon the courts of appeals to utilize their discretion to transfer judicial review proceedings, where transfer can avoid undue duplication of litigation or aid in the administration of justice.

Those sections of the Acts, which authorize citizen suits in the district courts to require the Administrator of the Environmental Protection Agency to perform nondiscretionary duties, should be clarified so that they cannot be read to furnish an alternative or premature method of review of questions that can be raised by petitions for review in the courts of appeals. Courts of appeals should be given exclusive jurisdiction over actions to compel or to postpone the issuance or revision of regulations whose validity is to be determined in a court of appeals; remands to the EPA or a district court should be permitted where the reviewing court determines that an evidentiary proceeding is necessary. A provision for transfers between courts of appeals and district courts in such cases is needed to prevent unfairness that might result from litigant's choice of a wrong court.

Non-statutory review actions, alleging grounds that correspond to those appropriate for the filing of citizen suits, should be made to comply with the notice requirements of the citizen-suit provisions.

The time limits in both Acts for the filing of petitions to review regulations in the courts of appeals should be changed to 60 days. Such time limits should be made inapplicable where the petitioner can show reasonable grounds for failure to file a timely petition.

Congress should amend both Acts to permit the validity of a regulation to be challenged in defense to an enforcement proceeding.

Various actions of the EPA are not now reviewable in the courts of appeals. Some of these omissions appear to be inconsistent with the general statutory plan; corrective amendments are suggested.

Finally, it is recommended that Congress adopt a single test of standing to govern all proceedings for judicial review under the two Acts.

RECOMMENDATION 76-5

INTERPRETIVE RULES OF GENERAL APPLICABILITY AND STATEMENTS OF GENERAL POLICY

(Adopted December 9-10, 1976)

The Conference states in this recommendation that it is beneficial to both the agencies and potentially affected elements of the public that agencies provide an opportunity for public comment upon interpretive rules of general applicability and statements of general policy, either before or after their issuance. The provision of such procedures makes for greater confidence in ultimate agency judgments. The Administrative Procedure Act requires the publication of interpretive rules and policy statements in the Federal Register, but does not require the opportunity for public participation in their issuance, though such a requirement has been imposed by the courts in some instances.

The first part of the recommendation urges agencies, except in the context of adjudicatory opinions, normally to utilize the notice-and-comment procedures of Section 553 of the APA when adopting interpretive rules or policy statements that are likely to have a substantial impact on the public. To this end, a proposed interpretive rule or policy statement should be published in the Federal Register, and should include a concise statement of basis and purpose and provide an opportunity for the submission of written comments, with or without the opportunity to make oral presentation. If such procedures are not practicable, necessary, or in the public interest, they can be omitted provided a brief statement of reasons is included with the interpretive rule or policy statement.

The recommendation also sets forth a procedure to be followed when there has been no pre-promulgation notice and opportunity for comment in the issuance of an interpretive rule of general applicability or statement of general policy. In those situations, the agency should entertain comment for a period of at least thirty days following publication of the interpretive rule or policy statement, and should, within sixty days after such comment period, publish in the Federal Register a statement of its adherence to or alteration of its previous action, with responses to significant comments received. Such procedures can be omitted where no public interest would be served or where they are too burdensome, provided a brief statement of reasons is included with the interpretive rule or policy statement.

OFFICIAL STATEMENTS OF THE ADMINISTRATIVE CONFERENCE

STATEMENTS OF VIEWS ON THE PRESIDENT'S ADVISORY COUNCIL "REPORT ON SELECTED REGULATORY AGENCIES"

(Adopted May 7, 1971)

On February 11, 1971, the President released a report of his Advisory Council on Executive Organization (the "Ash Council") entitled "A New Regulatory Framework—A Report on Selected Independent Regulatory Agencies." The report recommends far-reaching changes in the structure and regulatory responsibilities of six independent regulatory agencies—the Civil Aeronautics Board, Federal Maritime Commission, Federal Power Commission, Federal Trade Commission, Interstate Commerce Commission, and the Securities and Exchange Commission. It also recommends a reduction in the size of the membership of the Federal Communications Commission. The President's statement urged vigorous public discussion of the Ash Council's report and early submission of comments from interested public and private groups.

The Administrative Conference gave careful consideration to the Report at its Fifth Plenary Session. On May 7, 1971, it adopted and transmitted to the President views on those aspects of the report that raise general issues of administrative organization and procedure and of judicial review of administrative action. The full text of the Conference statement is printed at pp. 60-64, *infra*.

With respect to the Ash Council recommendation to transform the transportation, power, securities and consumer protection agencies into executive agencies headed by a single administrator responsible to the President, the Administrative Conference stated that a persuasive case had not been made for such a "fundamental alteration in structure." It concluded that "structural alteration in itself offers only possibilities for limited improvement in regulatory performance," that whether an existing regulatory framework should or should not be continued is largely dependent upon "substantive rather than organizational considerations" and that "further study . . . is required." The Conference went on to say that if a decision were made to eliminate various substantive restraints affecting the transportation industry, the remaining regulatory controls might be vested in a new and differently structured agency. The Conference also concluded that, if the collegial form is retained, its advantages can best be achieved "with a limited number of members, ordinarily no more than five" and through greater delegation of responsibilities for internal management to the Chairman and key subordinate officials.

With respect to the Ash Council proposal to have a single administrator review initial decisions of hearing examiners within 30 days for consistency with agency policy, the Conference noted that prior experience with inflexible time periods as a device to expedite decisions in complex matters has proved to be "unsatisfactory" and that it is "undesirable" and "unfair" to cut off the decision-maker from party participation in the consideration of an appeal. It urged adoption of alternative procedures, such as development of policy through rulemaking and according greater finality to Examiners' decision.

Finally, the Administrative Conference did not favor the establishment at this time of a specialized appellate court, staffed by other than regular judges, to hear appeals from the restructured transportation, power and securities agencies. It found that such a tribunal would not be justified by workload, could not be expected to contribute to uniformity in administrative law, and might become or give the appearance of becoming identified with the agency or industry point of view.

STATEMENT CONCERNING ABA PROPOSALS TO AMEND THE ADMINISTRATIVE PROCEDURE ACT

(Adopted June 7-8, 1973)

The Conference statement which was adopted at the Ninth Plenary Session is addressed to the twelve Resolutions for amending the Administrative Procedure Act adopted by the House of Delegates of the American Bar Association in August 1970. In some respects the statement goes beyond the bare text of the Resolutions and addresses itself to the further elaboration contained in the implementing Recommendations subsequently adopted by the Administrative Law Section of the ABA.

The Conference endorsed those proposals that would eliminate certain exceptions to the present statutory procedural requirements for rulemaking; extend to rulemaking, ratemaking and initial licensing the existing statutory provision barring agency personnel who engage in investigation or litigation of a case from participating or advising in its decision; authorize agencies to delegate final decisional authority to administrative law judges or appellate boards, subject to discretionary agency review; encourage agencies to provide by rule for prehearing conferences; and grant agencies authority to make subpoenas generally available in formal adjudicatory proceedings.

The Conference approved in principle, but recommended further study concerning the means of implementing, those ABA proposals calling for improved definitions of "rule" and "order"; prohibition of *ex parte* communications between agency members and interested persons outside the agency on any fact at issue in a pending case; greater authority for administrative law judges in the conduct of adjudicatory proceedings; and the adoption of rules prescribing procedures for use in cases of informal adjudication. The Conference disapproved legislative proposals that would require the Conference to prescribe uniform procedural rules for all federal agencies; authorize agencies to provide by rule abridged hearing procedures for use by unanimous consent of the parties; and amend the Administrative Procedure Act to deal with agency issuance of prejudicial publicity.

Certain members filed a separate statement, the substance of which was to disagree with the Conference's approval of extending separation-of-functions requirements to rulemaking of general applicability.

STATEMENT OF THE ADMINISTRATIVE CONFERENCE ON ABA RESOLUTION NO. 1 PROPOSING
TO AMEND THE DEFINITION OF "RULE" IN THE ADMINISTRATIVE PROCEDURE ACT

(Adopted December 18-19, 1973)

The Conference adopted a formal statement endorsing Resolution No. 1 of the American Bar Association's Resolutions concerning amendment of the Administrative Procedure Act. This calls for improved definitions of "rule" and "order" so as to distinguish more clearly between the nature of rulemaking and the nature of adjudication. Specifically, the Conference endorses the recommendation of the ABA that the word "or particular" and the entire second clause be deleted from the definition of "rule" in 5 U.S.C. § 551 (4).

This Conference statement was qualified in a number of respects in order to assure that the amendment would not be interpreted to bring about undesired changes in the operative sections of the Act. The statement specifies, for example, that a matter may be considered to be of "general applicability" (and therefore a "rule") even though it is directly applicable to a class which consists of only one or a few persons, if the class is open in the sense that in the future the number of members of the class may be increased. By the same token a matter may be considered to be of "particular applicability" (and therefore an "order") even though it is applicable to several persons, if the agency clearly specifies an intention to limit its applicability to the particular persons concerned. Other express understandings deal with the effect of the deletion of the second clause of the definition of "rule"; with technical changes necessary to avoid inadvertent alteration of the procedures applicable to ratemaking; with the precedential value of agency decisions; with informal adjudication; and with the prospective application of the definitional change.

The recommended change in the definition of rule is not intended to affect a number of prior Conference recommendations which treat with rulemaking, trial-type procedures, and articulation of agency policies (See Conference Recommendations 71-3, 71-6, and 72-5). The statement is a further refinement of the position taken by the Conference in June, 1973, when it addressed itself to this and other ABA Resolutions to amend the APA (Statement printed in 1972-73 Annual Report of the Administrative Conference, pp. 49-53).

STATEMENT ON ABA RESOLUTION NO. 8 CONCERNING THE ROLE OF PENDING
OFFICERS IN FORMAL PROCEEDINGS

(Adopted December 18-19, 1973)

The Conference adopted a revised statement of policy with respect to issues raised by the American Bar Association in its Resolution No. 8 to amend the Administrative Procedure Act.

The statement of policy notes the importance of the role of administrative law judges in formal agency proceedings. It endorses the provision of present law making an intermediate decision by the administrative law judge mandatory in all cases of formal adjudication other than initial licensing, even where there is not material issue of fact. It further asserts that such an intermediate decision is ordinarily highly desirable, even in ratemaking, initial licensing and formal rulemaking, though in those proceedings the agency should (as under present law) have authority to omit it where the need for expedition makes it impractical or when the agency's own tentative decision or the recommended decision of a responsible agency employee might be more helpful. Determinations to omit intermediate decisions should be able to be made either on a case-by-case basis or in advance for a specifically defined category of cases.

The statement also reaffirmed the Conference's view that agencies should be enabled to accord finality to the decisions of their administrative law judges without the necessity of actual agency review in each case. (See Conference Recommendation 68-6).

STATEMENT ON STRENGTHENING REGULATORY AGENCY MANAGEMENT THROUGH SEMINARS FOR AGENCY OFFICIALS

(Adopted June 5-6, 1975)

A formal statement was adopted by the Assembly recommending that the Conference, with the participation of the Civil Service Commission and the concerned agencies, conduct periodic seminars for members and top staff personnel of the regulatory agencies in order to exchange views on management problems, approaches to policy formulation, relationships among the agencies and with other segments of government, and the unique problems that arise in a collegial agency. The seminars should place special emphasis on the interests and needs of officials who are newly appointed to their positions.

STATEMENT ON PROCEDURES TO DEAL WITH EMERGENCY SHORTAGES OF NATURAL GAS

(Adopted December 9-10, 1976)

The Conference adopted a formal statement calling for early consideration by the Congress of procedures to deal with possible emergency shortages of natural gas. The statement notes that currently the government is unable to deal adequately with an emergency created by a severe shortage of natural gas. The range of possible legislative responses to this problem is wide, and the procedural questions involved are highly complex. The investigation and resolution of these questions should begin at an early date, lest adequate procedures be sacrificed in a hastily established program designed to react to an emergency. The statement outlines many of the issues that need to be considered in establishing procedures to deal with emergency shortages. It recommends that policies and regulations be developed through the rulemaking process as far in advance of an actual emergency as is possible, and sets forth minimal administrative procedures to be followed in determining matters involving specifically identifiable parties.

Appendix C

ILLUSTRATIVE SPECIFIC RESEARCH TOPICS

This Appendix lists illustrative specific research topics, to show the kinds of projects the Conference might undertake in the years for which authorization is sought, 1979 and thereafter. This is offered with the thought that it will give members of the Subcommittee a more tangible idea of the breadth and nature of the specific topics that our research can address.

It must be emphasized that these topics are purely illustrative. We cannot list projects as being definitely or even tentatively planned for those years. This is for two reasons. First, it is undesirable to make fixed project plans too far ahead, since the Conference must be able to keep much of its research geared to emerging and fast-breaking current problems. Also, before a project can be initiated, the topic must be evaluated for feasibility and the likelihood of useful results. Our very small staff is able only to evaluate projects for current action, not for years in the future. Therefore the topics we are able to list are merely illustrations of the sorts projects we might undertake, assuming they were found feasible and warranted priority at the time.

To place these specific topics in context, it should be mentioned that some of the broad general themes cited in the text of our statement also represent topics for research projects, or series of projects, if adequate funds were available. Examples are procedures for minimizing and resolving disputes under federal grants, procedures for resolving scientific and technical issues, and federal/state procedural relationships. Further, a number of specific topics are listed within the headings "formal adjudicative procedure" and "regulatory reform."

Other illustrative specific topics:

1. A procedural audit of the U.S. Customs Service, following upon our current study of judicial review of Customs Service actions.

2. Practical problems of delegation and subdelegation of lawmaking and decisional authority; creation of procedural and enforcement rules under broad delegations.

3. Assessment of the recently adopted statutory and regulatory restrictions (based in part on Conference Recommendation 75-8) upon IRS disclosure of tax returns and tax return information to law enforcement agencies.

4. The effect on official actions of tort liability of Federal officials, whose privilege defense has been cut back by recent decisions, leading to an increase in suits against them.

5. Department of Labor procedures for determining the compliance of state unemployment compensation systems with Federal requirements.

6. Good agency practices for the early development and evaluation of ideas for new regulations, before the initial publication stage.

7. Procedures governing the treatment by Federal agencies of trade secrets and confidential commercial and financial information in agency litigation.

8. Appraisal of new ICC procedures setting time limits, reducing appeal layers, and revising rules for rate cases and protests, pursuant to the Railroad Revitalization and Regulatory Reform Act of 1976.

9. Simplifying and clarifying the form of initiating nonstatutory review of administrative action in the Federal district courts.

10. Procedures for interagency coordination of regulatory actions, where either end-to-end (e.g., ICC-FMC regulation of transport by train and then by ship of containerized cargo) or overlapping regulation (e.g., potential regulation of pesticides by EPA, OSHA and CPSC) are involved; how to avoid conflict, delay and duplication of effort.

11. Informal adjudicatory procedures for the mitigation or remission of forfeitures and civil penalties.

12. Delays in obtaining waiver or review of the denial or revocation of a pilot's license, in FAA and NTSB.

13. Circumstances in which proposed procedural regulations should be made subject to prior publication and opportunity for public comment, despite the exemption for such rules in § 553 of the Administrative Procedure Act.

14. Causes of delays by OSHA in developing new health and safety standards and updating existing ones.

15. The extent to which rules of procedure, rules of evidence and terminology can be made uniform for all agency trial-type proceedings.

16. Alternatives to the Federal Register as a practical means of giving notice, for example to persons who would be affected by a proposed regulation.

17. Speeding up agency actions, for example in FEA (new DOE), by revising exception and waiver procedures to trigger rulemakings when issues have general applicability.

18. Procedural aspects of deregulation or revised regulation in the transportation agencies.

19. Procedures to improve consistency of Internal Revenue Service rulings and similar actions.

20. Time limits on judicial review of regulations, and the problems this may cause if it results in denial of the right of a defendant to challenge the regulations in later enforcement proceedings against him.

21. Practical problems of the interworkings of the open meeting requirements of the Government in the Sunshine and Federal Advisory Committee Acts on the one hand and the Freedom of Information Act on the other.

22. With respect to the paperwork problem, projects following on (in ways we cannot now specify) the work of the Commission on Federal Paperwork, which expires in 1978.

23. Evaluation of the FPC experience of setting gas rates regionally or nationally by general rulemaking instead of by more individualized adjudicatory procedures, for possible improvement or application elsewhere.

24. Retroactive application of new interpretations of regulations: practical consequences and ways to avoid them.

25. Case studies of the practical effects for agencies and the public of selected Administrative Conference recommendations, such as those on public participation in agency proceedings, use of civil money penalties as a sanction, summary decision in agency adjudication, and elimination of the defense of sovereign immunity in suits against the United States and its officials.

Mr. ANTHONY. All right, thanks very much, Mr. Chairman.

Let me say that the matter of this authorization is of the greatest importance to the administrative conference, and we are very appreciative of the opportunity to appear before you in support of our proposal. We are especially appreciative that this hearing has been scheduled today.

Mr. DANIELSON. I would like to interrupt to have something in the record. I don't think ever in the history of the United States has an authorization hearing taken place in advance of the expiration of the fiscal year. In fact, when I talked to the chairman of the Budget Committee as to whether he could see any reason why we couldn't hold an authorization hearing at this time, he says you mean for the fiscal year commencing after September 30, 1978, and I said yes. He said, "Hell, we haven't even finished the appropriations for this year yet." We debated it for a while, and I said really I don't know of any reason why we can't do it. So we are now establishing a precedent. This is without doubt the earliest hearing ever to be held on this type of matter.

Proceed. I am sorry to interrupt, but I just thought when you have a brandnew precedent you should drive a stake, or some such thing.

Mr. ANTHONY. We are appreciative of it, Mr. Chairman, because it gives us an opportunity to present our fiscal 1979 budget, which goes up on September 1, with the hearings behind us, and the guidance of the subcommittee perhaps by that time.

What we are asking for, Mr. Chairman, Congressman Moorhead, is authorization to do two things: One, we want to be able to do our job and do it effectively, and that means, as I will try to demonstrate, a substantially increased scale of authorization so we can justify through the appropriation process a larger appropriation so we can do our job.

Second, we want to be able to carry out the assignments that may be given us in the future by the Congress and by the President through Executive order, so that we won't have the situation where having budgeted under the ceiling for a program that is doing the job we are supposed to do of attacking the problems of administrative procedure, we get that planning and that money shoved aside by a new assignment.

We welcome the assignments of the Congress to undertake studies and projects with respect to administrative procedure, and we are quite sincere about that.

We wish the Congress would give us some money to go with them. If it can't, and it ordinarily would not or at least our experience has been such, we hope we can have authorization that will permit the appropriation of money to do the jobs that Congress asks us to do.

I won't labor, Mr. Chairman, the times that we live in where there is the growing discontent with Government and with the processes of Government as complex, remote, inefficient and slow, and sometimes

people think they are unfair. But the fact is our act, the Administrative Conference Act, gives us a mandate to study the efficiency, adequacy and fairness of the administrative procedure used by the administrative agencies, and to make recommendations for the improvement throughout the whole Government with respect to its procedures, and yet, our authorization ceiling at present, which was set in 1972, is \$950,000. Our staff is 15. Just last night one of the last things I looked at was the current issue of the National Journal, which recites a Civil Service Commission study of public relations expenditures in the Government. They are cited as being \$400 million a year, 19,000 Government employees in the public relations work of the U.S. Government. That is 200 times the size of our operation.

There is a Commission on Federal Paperwork, as you members of the committee know. It is still in business until early next year. Its budget for fiscal 1977 was \$6.4 million. We have got less than \$1 million to do a range of things.

Mr. MOORHEAD. Could I ask you something? Does that 16 employees include your clerical staff?

Mr. ANTHONY. Yes, sir.

Mr. MOORHEAD. How many attorneys?

Mr. ANTHONY. We have eight counting myself.

Mr. MOORHEAD. And eight secretaries?

Mr. ANTHONY. That is right.

We submit that this is the year, as the chairman has already indicated, where action has to be taken, and we believe it's got to be major action.

Now, we originally came forward with a proposal to remove the ceiling entirely. Every chairman, I have looked back in the history of the administrative conferences, tried to do that. He has always failed, and I can understand why. I understand, the members of the conference I believe understands the concern that members of this subcommittee and, indeed, Members of the Congress generally may have, about unlimited authorization without the oversight accompanying the annual or every 2 or 3 years review of ceilings, and we very willingly accept that approach, if that be the approach of the subcommittee.

Mr. DANIELSON. Sir, let me interrupt to explain something, because I know you will understand it, but I don't think it's fully registered. We have a Constitution, and the Congress has not only the power but the responsibility of appropriating. Internally the Congress organizes itself just as the administrative conference, and you have a chairman and you have some people there who aren't chairmen, for example. But the point is the Appropriations Committee has authority to appropriate, but they only have authority to appropriate what the legislative committee authorizes.

There have been breaches of that policy in the past, and there no doubt will be in the future. But part of the movement in the Congress to have it resume its responsibilities is for the legislative committees to exercise their responsibility of authorizing, and not just simply brush it off by telling Appropriations you can appropriate whatever you see fit. Because it puts an absolutely impossible burden on the Appropriations Committee to have some expertise in all of the different legislative fields. So that is why we are returning, most committees of Congress, are resuming their responsibility of oversight

and authorization. I think you will find it's a wholesome policy, if we get it back to its feet, and we are trying real hard to do it. Even the Defense Department comes in, not once in 3 years but each year to get its appropriation.

Mr. MOORHEAD. There is one other thing I was interested in.

The Government in the Sunshine work has taken a lot of your time during the last year or so, I understand.

Mr. ANTHONY. Yes, sir.

Mr. MOORHEAD. About what percent of your staff time has that taken, and are you close to the end of it or is there still a heavy load in that area ahead?

Mr. ANTHONY. It's taken, Congressman, as we estimated up until about a month ago, the bulk of the time, the majority of the time of two of our seven staff, including our top staff attorney, the executive secretary, for 5 months. That is two-thirds, as we estimate it, of the time of two people for 5 months out of the total of our staff that deals with the planning of the research that goes into recommendations, and the giving of advice, especially commenting on legislation and the implementation of recommendations and the very heavy job of administration with a little agency where you have all of the business of a big agency and you have to do all of the administration. That took a period.

Mr. DANIELSON. Sir, may I interrupt and apologize—but this is a part of it—you hear the bells ringing. They rang 5 minutes ago, and at 10:16 the vote will close. The vote is on the adoption of the conference report to accompany the legislative branch appropriation.

We have to go to vote, but we will try to be back in approximately 10 minutes. I am sorry about the delay.

Mr. ANTHONY. Yes, I understand.

Mr. DANIELSON. No one has yet figured out how to get around it. [A short recess was taken.]

Mr. DANIELSON. We are going to start right away. Go ahead, Mr. Anthony.

Mr. ANTHONY. If I might, with the leave of the committee, ask Judge Leventhal to make his statement now. He has a delegation to the White House at 11 o'clock.

Mr. DANIELSON. Fine. I am glad you brought it up.

Judge Leventhal, please come forward and we will be more than pleased to hear you right away.

TESTIMONY OF HON. HAROLD LEVENTHAL, CIRCUIT JUDGE, U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Judge LEVENTHAL. Thank you, Mr. Chairman. I will endeavor to be very brief.

Mr. DANIELSON. We will try to not interrupt you; how's that?

Judge LEVENTHAL. A judge isn't used to being interrupted, and sometimes it's a wholesome diversion.

My role here today, members of the subcommittee, is I suppose in a sense to be a character witness rather than address myself specifically to the projects Mr. Anthony is going to expand on.

I have had the privilege of having been designated in October 1969 by Chief Justice Burger to be the liaison between the Judicial Conference of the United States and the Administrative Conference, and so I

have had the benefit of attending a majority of the meetings of the Conference and of the Committee on Judicial Review of which I happen to be a liaison member, and I have seen the people at work and have a very high opinion of the quality of the research, Mr. Chairman, deliberations of the sessions.

There is a lot of expensive lawyer time being bought at cut rates, if I may put it that way, from the public members of the Conference, the professors and lawyers who specialized in this field of administrative law. I must say, although I don't agree with all of the recommendations of the Administrative Conference, I have the privileges of the floor but not the privilege of voting, I do feel that I have been in a position to have watched the process and observed its functioning in a systematic and deliberate and in a thorough way, and it seems very efficient.

I have had some experience in government, and then in private practice, and I can sort of size up an agency that is operating in an efficient and purposive way, and that is my very definite reaction to the way this Conference works.

I suppose as a character witness I feel a little bit like the man who was asked to plead to the indictment, and said I didn't do it, and besides, I was drunk. I have to say on the one hand they are doing a swell job, and on the other hand, they need more to do the job they should do. That seems to me to relate to the scope of the things they are doing, as Mr. Anthony was about to indicate when he made way for me because of my schedule.

Another point that I feel to some extent my reactions to the whole Administrative Conference are shaped by the fact when I first came on the bench in 1965 my colleague, then Judge E. Barrett Prettyman, who has retired. He had been chief judge and had been a very instrumental force in shaping the original temporary Administrative Conference. He had a long talk with me for a couple of hours on what he hoped to get out of it, never knowing I would be designated as a liaison member. It's very dramatically etched in my memory, and it seems to me the way this Conference has run and developed has fulfilled his hopes and promises when he started on this project in 1960.

The fact you have got these outside people, even though they are not a majority of the committee, really means that you get an outside point of view, blending with the internal Government members. And the Government officials, mainly lawyers, on the committee have the situation of seeing how what they do and the way they are doing it appears to the outside world, and to comment on it in detail.

We are all striving for objectives of simplicity, fairness, and effectiveness, so those are the three magic words. But to get to do it right you just have to know the details, you have to know the territory. This combination I think is a very felicitous one of having the majority of the Government side, Government people in Government positions, but a very substantial minority from the law schools and from people in active practice, has meant a very healthy and effective interchange.

One more point I would like to make is I have been very much impressed by the fact that though a majority of the Conference are members of Government agencies, they are not monolithic, they don't vote as a bloc. They don't just support someone because he happens to be the Government official. They vote as individuals, they speak as

individuals, but more than that, they have their general approach to problems of administrative procedure.

You all know how difficult they are. I won't bore you with my own views on that. I have been studying them for many years, but I have been very much impressed and heartened by the way in which this process has taken place.

So what you get in the end is some kind of a uniformity of approach that is hammered out at these meetings, and yet with some ability to recognize the differences between agencies size, and it's a very effective, careful process that goes on, and the people that participate in it. So, as I say, although I can't speak to the specifics, which is really what you are concerned about, perhaps, but I do want to endorse them in a character witness type statement along the lines of the indicated.

I realize you are just doing authorizations. The particular budgets will come up when those committees get to work on it, but even in terms of authorizations, it seems to me what you do want to have is a viewpoint of what things are likely to shape up to in the future, and one thing I feel is that one can repeat the epithet that someone coined, "complexity has a bright future."

I think that was attributed to E. B. White. I feel that very particularly is true for what to do about structure, personnel, procedures of the administrative agencies. And to handle that complexity, some institutions and some ongoing institution like this seems to me would work out very well and should be fully supported.

Thank you very much for your time.

Mr. DANIELSON. I thank you very much, Judge Leventhal.

Mr. Kindness, did you wish to inquire?

Mr. KINDNESS. Thank you, Mr. Chairman.

Realizing your schedule is very tight, Judge, I would just like to inquire concerning the membership of the Administrative Conference. There appears to be quite a shared community of interest, even taking into account what you have said about the differing points of view that are represented. I wonder what your opinion would be about there being an infusion of some additional members from other sectors? Would there be any advantage in having representatives of consumer groups, unions, the business and finance world in some greater degree?

I think, currently, there are two members associated with the business world. That is the extent of that sort of representation.

Judge LEVENTHAL. I think a case could be made for some minor modification, but I would say this, Mr. Kindness, it's one of these things if it's working well, you feel like not changing it, and I would testify that it's working well. Abstractly there is no reason why the kind of thought you have ventured couldn't be folded in. But it seems to me that there have been people from unions and finance, business, and of course, a lot of the lawyers in private practice in one way or another do represent industry or some particular industries subject to regulation, and for this kind of procedural reflection it seems to me that it's more important to have persons who really are familiar with the details of how procedure works than are there simply to express broad points of view.

You want a combination. I think I have said all I can say. I don't see anything wrong with what you have had to say, in abstraction, but my own instinct is if something is working, don't change it. That is my own philosophy of things.

Mr. KINDNESS. I am reminded of what Billy Carter was quoted as saying recently, to the effect that "the trouble with Government is it's always trying to fix something that ain't broke."

Thank you.

Mr. DANIELSON. Mr. Mazzoli?

Mr. MAZZOLI. Mr. Chairman, thank you.

I am sorry, Judge, I came in late, and I apologize, and you may well have addressed yourself.

Mr. DANIELSON. I want to alert you to the fact that the Judge has to leave in 4 minutes.

Mr. MAZZOLI. All right.

You say you are doing your job well. Can you cite the specifics on that?

Judge LEVENTHAL. Yes. I think one important question that has been before the Administrative Conference is what to do about rulemaking procedures.

Basically the Conference, the Administrative Procedures Act authorized rulemaking, and as a new device, giving notice and opportunity for comment, but it has come to be used in the last 10 years for matters that are very complicated, and a lot of scientific facts have to be evolved, Food and Drug Administration, Environmental Protection Agency, and the like.

Questions have arisen as to how to take the skinny part of the Administrative Procedures Act, which is just formal notice and opportunity for comment, and add to that procedures that will provide for more detailed reflection on crucial issues, on the hard nut questions when they come up without making it an inflexible requirement.

This matter has come to the attention of the Administrative Conference. They have had a report that took some time to prepare, I think perhaps almost 2 years, in which there was a discussion of some court decisions and what the agencies were doing. My impression is that they have hammered out a series of proposals which are going to be very effective, and which have sort of won the acceptance of the administrative agencies.

It seems to me what happens is that working with those on the inside of the Government, and yet exposing them to the reactions of the people outside, has led to this kind of an effective way. Now, I am not sure I can say it's going to be wholly effective, because the issue is a very difficult one inherently, but insofar as anybody can predict I think they worked out a very good set of recommendations, and I think the evidence is it is being followed by the agencies. So you get the ability, you don't clog the wheels of Government by saddling the agencies with impossible administrative procedures.

Mr. MAZZOLI. Judge, are you endorsing an increase up from the authorization ceiling of \$950,000 to \$2,000,050 for the first years?

Judge LEVENTHAL. Before you came in, Mr. Mazzoli, I said I am really not prepared to discuss the specifics. I was sort of a character witness. I think that is in the ball park. I mean, just from my own sense of it, but I haven't reviewed their specific proposals, and I am not really, or I should not be taking up your time on those. But I am not prepared to testify as to the specifics.

That is my impression.

Mr. MAZZOLI. I assume, sir, you are Chairman of the Commission?

Judge LEVENTHAL. No. This is the Chairman. I am leaning on his time, Mr. Mazzoli, because I have a group in my office to meet me at 11 o'clock. I am a liaison member of the Administrative Conference from the Judicial Conference. I am liaison between the Judicial Conference and Administrative Conference, so I am sort of a kibbitzer in a way, but I think I have really an opportunity for a bird's-eye view.

Mr. DANIELSON. Judge, if you will forgive me, I want to interrupt. You have to be on your way. I would like to point out to Mr. Mazzoli that Circuit Judge Leventhal is here to give what he likes to call character evidence. But nobody is impugning the Conference's character, so I am not sure you are in order. But we will receive it and with thanks.

Actually, Judge, you have given generously of your time, and I am sure you have covered your subject. We do have witnesses here, Mr. Mazzoli, who can get into all of the details.

Thank you very much.

Judge LEVENTHAL. Thank you.

Mr. MAZZOLI. Thank you, Judge.

Mr. DANIELSON. I hope you make your conference on time.

OK. Now Mr. Anthony, you know who is here and why better than I. The floor is yours; you are the witness. If you would like to, if you need to accommodate someone else, let us know. But otherwise, just proceed.

Mr. ANTHONY. Thanks so very much, Mr. Chairman.

Mr. Kennedy has given me a note saying he has a meeting with the Senate Ethics and Rules Committees at 11 o'clock. I don't know whether that leaves you time to say what you might wish to say, Neil, but by the leave of the committee.

Mr. DANIELSON. We might as well.

Mr. KENNEDY. If they can defer my attendance over there.

Mr. MAZZOLI. I think it's fine, Mr. Kennedy. Take your seat, because we do want to get you on your way, but this isn't exactly 10 cents, this is \$2 million the first year, and I do hope we have more intensive testimony, sir.

Mr. DANIELSON. If the gentleman will yield, I would like to point out Mr. Anthony is chairman of the Administrative Conference.

Mr. MAZZOLI. He has already presented us with this material, and will support the request for added authorization. Maybe you haven't seen the schedule of witnesses.

Mr. MAZZOLI. I did, sir, I did see that.

Mr. DANIELSON. Mr. Kennedy, won't you proceed?

TESTIMONY OF CORNELIUS KENNEDY (KENNEDY, WEBSTER & GARDNER), WASHINGTON, D.C.

Mr. KENNEDY. Thank you, Mr. Chairman and members of the committee.

My name is Cornelius Kennedy. I am a lawyer in private practice in the firm of Kennedy, Webster & Gardner here in Washington, D.C.

I have been around—I use the term “around” I think accurately—the Administrative Conference since the time of the legislation creating it. I am presently the chairman of the section of the administrative law of the American Bar Association. I have been the chairman of

the Committee on Administrative Law of the Federal Bar Association, and I am also a member of the American Law Institute and a member of the foundation.

I am honored to be one of the 32 or so public members of the Administrative Conference.

I am chairman of its Committee on Rulemaking and Public Information, so that we have had to consider the problems of government in the sunshine, privacy, various problems in the rulemaking area which you have already heard reference to.

Let me turn first to my capacity as chairman of the section on administrative law, because in our spring council meeting, the section of administrative law, council of that section, did endorse a significant increase in funding for the Administrative Conference.

If the committee has not received a copy of that resolution from the secretary of the American Bar Association, I will see that one is forwarded to you.

Mr. ANTHONY. It is attachment B in our presentation.

Mr. DANIELSON. I thought it was included there.

Mr. KENNEDY. The section of administrative law of the American Bar Association covers everything from rulemaking to adjudication and the like, across the board. We have committees ranging from the problems of the Department of Agriculture to the Veterans' Administration, so we do have within the American Bar Association, within our section, a broad range of issues, problems, dealing with administrative procedure.

We have worked very closely with the Administrative Conference in these areas. As a matter of fact, the Administrative Conference, the legislation creating it was at the urging of the American Bar Association, and that proposal originated in our section.

I shared the concern at the time of some members of the American Bar Association and some lawyers at a conference that two-thirds Government, by statute, Government representatives, one-third representatives from the public world, the private world, would create an imbalance in which there would be a party line by the Government representatives.

I have found as a three-term member of the conference and the chairman of one of its committees that the Government people do, in fact, in accordance with the requirements of the conference, express their own views. I found it very heartening. We have had very tough recommendations at times. We have had the benefit of the individual experience and views of the Government representatives as well as those on our committee and the Conference as a whole from the private bar. So I think it has worked well, and my qualms on that expired some time ago from actual, everyday experience.

As a matter of fact, interestingly, in my committee on rulemaking, the one I am chairman of, we have even had a recommendation a few years ago dealing with modification of exemption from the Administrative Procedures Act in areas of the military and foreign affairs, and on the committee we had representatives from the Department of Defense, and we invited a representative from the Department of State. We managed to wrestle through a recommendation which they endorsed.

So I think it's proof of the fact that the Government representatives do, in fact, take a broad view.

I think this blend of people from within and without the Government that Judge Leventhal referred to, has worked very well indeed.

I think it is the only way through this administrative conference that we are going to get the kind of continual oversight which is going to solve the problems of public dissension with the work of the various administrative departments and agencies. So we regard it as an extremely necessary Government activity, which should be adequately funded.

I mentioned—let me turn to my second role—I guess here I mentioned that I am one of the 30-odd public members of the conference and chairman of its committee on rulemaking and public information.

Chairman Anthony has sometimes chided me we are altogether too active in that committee, because we do produce a considerable flow of recommendations to the plenary session.

Those recommendations are the result of very extensive studies. Mr. Anthony is kind enough to fund them with consultants to the limit of the conference's ability to fund them, but these professors and their staffs come in with reports which our committee must review, which are an inch or 2 inches thick.

The problem very simply is that when we make a recommendation in rulemaking or in government in the sunshine or in privacy or any of these areas, it's generally a Government-wide recommendation, it affects departments and agencies throughout the Government, and the studies must cover those bases. Otherwise, we are off base in our recommendation, and it takes an extremely detailed study to do that.

We presently have before our committee the congressionally mandated study of the Moss-Magnuson Act, and the Federal Trade Commission, and there we have a staff of senior consultants and six others working on that study. The time of consultants has to be expressed in terms of money.

I rely on Mr. Anthony and his staff to supply the allocation of the budget. I can't testify as to the dollars precisely that are required in this recommendation in the conference budgeting roughly from \$1 million to \$2 million, but I can tell you there is an absolute need for adequate studies, and that they do cost money.

As a matter of fact, I did, on my own, a little check of it, of what we are trying to ride herd on, and if you take the administrative budget of the various departments and agencies over which the mandate of the conference extends and compare it to the budget of the administrative conference, it's four one-millionths of the budget of these agencies and departments which actually deal with the public, but it's their procedures that are of concern to us.

I think four one-millionths is a pretty small ratio and I think emphasizes the need for an adequate funding, and certainly the conference staff is very, very small indeed.

Mr. DANIELSON. I want to be sure that the record is what one man characterizes as crystal clear on what you are saying. Did you say four one-millionths of the budget of the administrative agencies?

Mr. KENNEDY. Of departments and agencies.

Mr. DANIELSON. But not of the total U.S. Government budget?

Mr. KENNEDY. No; excluding defense and foreign affairs, excluding the matters not within the purview of the administrative conference.

Mr. DANIELSON. I understood that, but I just wanted to be real sure the record reflects it. We may have a debate on the floor some day, and I would like to be able to quote you.

Mr. KENNEDY. Those are my views, both as the chairman, the views I am expressing on behalf of the American Bar Association as chairman of its section, and my views as a member of the Conference, lawyer in private practice, and as chairman of one of the conference committees, which has had a very continuing flow of work for the plenary session to consider.

If there are any questions I will do my best to answer them.

Mr. DANIELSON. Mr. Mazzoli?

Mr. MAZZOLI. Mr. Chairman, thank you.

Mr. Kennedy, you say that the Commission has made tough recommendations. Could you cite some of the tough recommendations that they have made to you?

Mr. KENNEDY. Well, let me take the one I did refer to earlier on the military and foreign affairs exemption.

The Administrative Procedure Act contains a very broad exemption for military and foreign affairs functions, and yet it was quite clear to us that the Department of Defense, for example, was engaged in a number of nonmilitary activities, the Corps of Engineers, for example, in dams and flood control and everything, things which should really be the subject of public hearings and notice, and rulemaking proceedings, and perhaps adjudication in appropriate instances, but we were dealing in my committee with rulemaking, so that was a very tough issue, because there was an area previously considered sacrosanct and yet with the cooperation with the representatives of the Department of Defense and others we did come up with a recommendation which they enforce as well.

Mr. MAZZOLI. With all due regard, sir, that sounds a bit remote from what people write me about. Maybe many of them are concerned about that, but just out of curiosity, did the Commission ever tangle with OSHA or FEA or any delays in the paperwork thing?

Why, for instance, do regulatory agencies seem to be the ones most productive of paperwork? Did your committee maybe not get into that question so we find a separate Paperwork Commission was appointed?

Mr. KENNEDY. Let me say my own attentions to the Conference's activities are in the rulemaking area rather than adjudication, so when OSHA finds somebody in violation, that is outside of the jurisdiction of my particular committee.

Mr. MAZZOLI. Did they not have to issue rules though to reach the point where they were able to cite, you know, this parade of horrors you always hear about?

Mr. KENNEDY. OSHA is a somewhat different area. As a matter of fact, it's one which I have long been urging the Congress to get enough money to fund in a somewhat different sense. We very much have lacked in our administrative system appropriate rulemaking procedures for emergency rules, and I use the term "emergency" to cover everything from where new agencies are created and start out, to where we have petroleum emergencies and threats of gas rationing and the like.

Our rulemaking process in the Administrative Procedure Act more envisions established agencies going on in their everyday practice of

operations, and we don't have the ability to, at the present time, come up with a good set of rules quickly, to guide things like OSHA which would have kept OSHA on track. OSHA operates, I think, to a large degree without adequate rules governing its procedure and that is one of the problems.

There weren't hearings before they put in this system of inspections and the like of plants. We really do need the funds which I have been after Chairman Anthony to get, to do some work in this area.

Mr. MAZZOLI. Let me ask, Mr. Kennedy, I know you have to be on your way, too, and we have a vote.

Do you support the \$600,000 for assignment outside for research contracts to go outside of your organization?

Mr. KENNEDY. That is exactly the way we get out data for these projects.

Mr. MAZZOLI. If I am not mistaken, I think you are asking for a substantial increase in money, and maybe Mr. Anthony can handle that better, but you do support the idea of using research contracts and not doing it in-house?

Mr. KENNEDY. Let me say this: Our committee, for example, there are eight members to my committee, I believe three from the private sector, and the rest from the Government.

The Government representatives are all people of the general counsel or higher level, I think, by and large. They cannot personally do the work, and if they did, we would have a very narrow factual base because there are only three of them, anyway. What we need is a Government-wide study. That is why we use these outside consultants to do that.

Mr. MAZZOLI. Thank you, Mr. Chairman.

Mr. DANIELSON. Mr. Kindness?

Mr. KINDNESS. I have no questions, Mr. Chairman. However, I might just comment that with respect to the four parts per million, under the Food and Drug Act, an increase of four parts per million to eight parts per million in a food additive substance would be considerable. [Laughter.]

Mr. KENNEDY. I think we need a considerable increase here, Congressman; I think we really do in order to do the job.

Mr. DANIELSON. We have a vote, on an amendment to a conference report, to concur with the Senate amendment. We are going to have to depart.

Mr. Kennedy, thank you very much for appearing and for your contribution to our hearing. Again, I beg your indulgence; here is the second bell and we have to go. I can do nothing about it except to respond.

Thank you very much, and we will be back.

[A short recess was taken.]

Mr. DANIELSON. There are two of us back, so we will proceed.

Mr. Anthony, why don't you just go ahead and let us know about the essentials of your Conference, and maybe we can get on with it.

Mr. ANTHONY. OK. Thank you. I will try to be brief and to the point.

I recognize that the members of the committee have questions like those of Mr. Mazzoli, and perhaps if he returns, I will address those specific ones or any others that members of the committee may have.

Briefly, the Conference has 91 members; its members are divided into committees, and that is the structure for the development of recommendations. Now those recommendations depend on research, and that research has to be done by a collaboration of our staff which checks out the feasibility of projects, sees whether they are likely to lead to good results, considers how much it's going to cost to set them up, and tries to do all of that before commissioning an outside consultant. So it's the staff plus the outside consultants for which we need the level of staffing and money for our research functions that the summary in our presentation speaks of.

Let me talk just for a moment to the research function, because it's the function on which the other activities, like advice-giving and consulting, depend.

We have four staff person years, as we have counted them, for the research function, and it's spread very, very thin. We have indicated in our prepared statement that we need nine persons in the research, because it's such a tremendous job to support the evaluation and the oversight of the development of these projects.

We have at present \$226,000, and next year only \$180,000 for research contracts. It's that amount that we believe and we urge be raised to \$600,000. It is because of the tough procedural problems that we are running into—it's easy enough to take some matter that can be considered by members of a committee with a single academic consultant, maybe a law professor, as is typical, working part-time through part of an academic year and the summer, and deal with some of the kinds of questions that have been dealt with in the past.

What is needed now for these tough procedural problems, we respectfully submit, is empirical research—what I call shoe leather and eyeball research—where you have to talk to people in the agencies, you have to talk to people in the bar, and talk to people in the affected industries, and talk to people in the public interest groups. Sometimes this means eyeballing hearings which are held out of town around the country and talking to people and plowing through files, using questionnaires, getting basic data on the basis of which the kind of analysis of something significant can depend, something significant like, for example, the bases, the factual bases, on which rules are developed, especially rules in the scientific and technical area.

We have begun a project which simply begins to survey the many kinds, in 40-odd agencies, of styles of deciding technical and scientific questions, everything from saccharin and laetrile to consumer products safety and environmental protection and the rest, which depends on good techniques of decisionmaking of these scientific and technical questions.

Now, we all came up here today to say we can't give this subcommittee any numbers on projects, and we can't. The reason we can't give you numbers that really mean something is, we haven't got the manpower to plan out, evaluate, and cost out what a project is going to cost us for something we want to do a couple of years in the future, but I am going to give you ballpark figures, as you asked me, Mr. Chairman, on the scientific and technical project.

It will be at least \$100,000 and more likely \$200,000 to survey 40-odd Federal agencies that make technical decisions and analyze them on an empirical basis. The matter of Federal and State procedural re-

lations, which I think is exceedingly important and represents a number of patterns of procedural difficulties that we would like to address, again we haven't costed that out, but to do that kind of job and figure out what hurts the States and what hurts the departments that may be collaborating or overriding the actions or requiring plans to be submitted by the States, or approving their unemployment compensation procedures or what have you, there are lots of kinks in this, and it is going to take a lot of shoe leather and a lot of eyeballs to address and attack in some way that is meaningful.

We believe there is a job to be done on developing or on coming close to uniformity in the results of procedure and the rules of evidence and the terminology used in the formal procedures of the various Federal agencies. There are 26 that conduct formal proceedings.

That job would cost, in my opinion, \$100,000 or \$150,000 a year for a couple of years. It would take a tremendous task force; that is, tremendous by the standards of what we have been doing in the past.

I could go on. We need to talk, for example, Congressman Mazzoli raised the question of paperwork. One of the early thoughts was that the Administrative Conference would deal with paperwork. It's a herd of stampeding elephants, paperwork. The Paperwork Commission has \$6½ million a year; we have less than \$1 a year, and yet we would like—the Paperwork Commission expires in February—we would like, on a contingency basis, we can't say now, and we have to be very careful to say what we have placed in our exhibit of possible projects are illustrative, and we can't say for sure they are going to check out and be feasible and have priority and be doable within the kind of money we have, but if it is, paperwork is high on the priority.

Similarly, we think that the President's reorganization initiative inevitably is going to yield procedural problems, that it's appropriate for the Administrative Conference to take on, not only as part of a task force, as we have been invited three times now to do, and we can't accept because I don't have the manpower except in a very limited way, but as patterns emerge in reorganization that are procedural in nature, we believe we can attack those through the kinds of research we are talking about.

We have ongoing responsibility, and as sort of keeper of the Administrative Procedure Act and some of the other procedural acts, like the Sunshine Act and Freedom of Information and Federal Advisory Committees Act, we should be making a comprehensive review and reexamination and consideration of the modernization of those acts.

We try to do all of these things. Well, not all of them because some of them are simply on a different order of magnitude from what we can do with our very, very limited resources, but these are the kinds of things we would aim to attack with the \$600,000 research budget, and with the added staffing that we believe is essential for our research program.

I would like, in that connection, to mention, I hope there will be time for Mr. Sheldon Cohen, the former Commissioner of the Internal Revenue and Chairman of our Special Steering Committee on the Procedural Audit we conducted of the Internal Revenue Service, I hope there will be time for him to testify as he has planned to do.

This project was by far our largest to date. It cost \$216,000 in direct project costs. It was aimed at, if you like, auditing or surveying the procedures of the IRS, to the extent we could with our resources, so far as they affected the individual. It has had a tremendous and very beneficial impact, as the letter in our prepared materials from the new Commissioner testifies, and we have plenty of other people who can tell you about that.

That illustrates the value of the empirical research. It illustrates the scale on which the projects of the sort we are talking about have to be undertaken; indeed, I am not complaining, but that was very skimpy. I had to take for 6 months practically full time and put our staff on this to the exclusion of everything else to just get this IRS project in the barn, to get it to the conclusion we arrived at on schedule.

I am not saying, members of the committee, everything we are going to do is going to be a \$200,000 or \$250,000 or even \$100,000 or \$50,000 project, but some of the kinds of things I think the Congress set the Administrative Conference up to do and attack some of the big problems and areas, and nobody else is in a position to do them, some of them simply have to have that scale of funding.

We cannot tell you today what they are. We cannot tell you today what they are going to cost, but I am telling you anyway the kinds of things I think they are, and the kinds of scale I think they are going to cost, because I know the members of the committee are interested in that, and it's our best ballpark and best intelligent guess at the kinds of things we will be doing or that we can be doing with the scale of funding that we request.

You know, I want to talk also about one other aspect of the Conference, and I will be brief on that, but Mr. Shattuck has copies of a little document that members of our staff just got up in the last day or so. It shows the amounts that are expended here, for example, by the Law Enforcement Agency Administration, in Justice, by the National Science Foundation on law related studies that are pending, and by the General Accounting Office, a whole spread of things, and by the Commission on Paperwork.

They just have been good enough to give us these figures very recently. You will notice the range of studies and the range of amounts going up to \$400,000 from a low of \$38,000 for LEAA on their projects. For NSF in these comparable kinds of things about regulation, in their program on research applied to national needs which is much like, at least in the same generic field as the sorts of things we do, their projects run here, these are current ones, and I have backup documents on them, run from \$42,000 to \$275,000 per project.

We are informed the average of their projects is \$140,000 per project.

General Accounting Office, which does most of theirs in-house and was good enough to draw the extensions of their costs here for us, has a schedule, as you see there, of current or recently concluded projects, going from \$30,000 up to \$406,000. We have been doing projects for \$5,000 and \$8,000 and \$12,000, and some of them don't pay off because it isn't enough, because we haven't got enough horses in there to do what the needs call for, and certainly not for the needs of the kinds of projects I have spoken about.

Commission on Federal paperwork procurement study, \$100,000; health care study, \$148,000, and so on. Here's one right down our alley we couldn't begin to touch it, National Research Council, study of decisionmaking in the Environmental Protection Agency, \$750,000. I am sure many of you have heard of the recently concluded study of FDA procedures for new drugs by the new drug regulations for the Secretary of HEW. I was advised it was \$910,000. The figure here is \$950,000 to \$1 million.

We are not going to do a \$950,000 to \$1 million project. We should be doing some \$200,000, \$250,000 projects mixed in with some \$5,000 maybe, if we can still do them, or \$10,000 or \$20,000 projects, and some at \$50,000. We mention in the full presentation a procedural audit of these antiquated procedures of the customs service, for example, our oldest administrative agency with some of the most antiquated procedures.

That is going to cost \$100,000 or more if we do it, and we have a strong lead on that. Or one of the smaller projects would be the Interstate Commerce Commission's new procedures under the Railroad Revitalization and Regulatory Reform Act on which we have done some work, by the mandate of the Congress.

Those are the kinds of things that we could be doing.

Now, I am going to go easy on the disclaimers. I ought to make a lot of disclaimers. My staff rightly advises me we can't say now we are going to do this in 1979 or 1981 and it's going to cost *x*, *y*, or *z*, and we can't say it, and they are right and I know it, but I know members of the subcommittee want something a little more tangible and that is what I have.

I will be glad to answer questions. If I might, I have two other points. One is that the work of the office of the chairman, the staff, myself, which at present is 16 people counting the messenger, has burgeoned in the last many years, and our own committee, your own subcommittee, knows one of the reasons, which is that from you we get a large, steady flow of legislation referred to us for our comment.

Our ability to respond to that is part of the time of Mr. Richard Berg, the executive secretary, sitting over there, along with the other duties he has.

Mr. Shattuck is well aware Mr. Berg cannot answer all of those things as promptly as we would like, and perhaps as the subcommittee would like. We ought to have a couple of other savvy people who have been around and can say we see from this, by our experience, that there could be a problem with that provision of the draft of the bill.

We also comment to the Office of Management and Budget for the same kind of things, and there are times the bill comes over to us as an enrolled bill, as was the case with the Magnuson-Moss Federal Trade Commission Act, that threw us into the job of making a study which is going to cost us about \$220,000 obligated so far.

Sometimes, however, they want, most—I tuck that in—most of the time they want our comment on the administrative procedural side of legislation.

We get asked to be on task forces, and I think I already mentioned that the OMB and White House task forces on reorganization and regulatory reform have three times requested our help. All we can do is say we will be available for up to, in this case I called Harrison Well-

ford and said, look, all we have is part-time of one guy for a while, and that is the best we can do for that kind of thing.

We have the job of implementing our recommendations. Every year we have more recommendations, and every year the job of implementing them among 60 or 80 agencies, depending on how you count, because some of the executive departments have dozens of operating units within them, to try to see that those agencies have been doing what the Conference has been recommending to do.

This has been the skimpy part of one junior attorney. That is all we have had. There is a time also where the executive director had a responsibility and still does, and his ability to deal with this was impaired by an illness, and we got behind and we are still behind. We have our whole staff out doing the extraordinary job of trying to effect implementation across the board for independent agencies now, just to effect and see what the status of it is, not to evaluate how effective it has been, because that takes research.

There are other advisory and consultative, task forces, implementation, and education kinds of functions, very valuable new seminar programs we are going to have; it's all set up with the White House and Civil Service Commission for the new chairman and new commissioners of the Federal administrative, independent agencies, everything from the FCC and SEC, ICC, and all of the rest of the regulatory independent agencies that will be held in October rather than July as originally scheduled because the flow of the new appointments has not been as fast as anticipated, but this is going to be a valuable thing.

It takes planning and costs money. We are trying to actually get some funding to do our job as we ought to do it. We are not trying to reach out and build new empires to do new things, except as we can take on projects that have a little, indeed, a great deal more left to them than the kinds of nickels and dimes we have been able to spend for the kinds of smaller projects, with the exception of the Internal Revenue Service project and the Magnuson-Moss mandated Federal Trade Commission rulemaking project, which both weigh in at about \$225,000 or \$220,000 each, and we have been going along on what is left.

The pay increases have come along and have cut straight into the research money because that is the only money we have any flexibility on, is the research, and the pay increases cut that down.

Those are the justifications, gentlemen, of this subcommittee for the figures that we have presented.

I will be glad to give further explanation of those as you wish.

My last point is this: We have ceilings. Mr. Chairman, I beg to differ with you, it has registered with me, yours and the subcommittee's feeling about authorization and its constitutional and oversight rule, and I say that very sincerely. We are glad to have the oversight.

This is my final point. The problem this can pose is that if next year or next month or the year after Congress comes along while we have ceilings that are established—and we are justifying these down to the penny and I have some down to the penny documents here—and something happens like the Magnuson-Moss Act which mandates us without any authorization or without any money to conduct a study, which we have trimmed it down as far as we could, it has cost \$220,000

so far and will cost a few thousand more in fiscal 1978 on the procedures of these new, very, very complicated, very interesting, and a lot can be learned from them, very tough procedures of the Federal Trade Commission for their trade regulation rulemaking, that comes along and the \$220,000 pushes everything else we have going to the side.

In our case, the scale of our operation and discretionary money we have any flexibility on has been so slight it has almost preempted our research operation for the 2 fiscal years in question.

What we ask, therefore, is that in addition to the authorization that the subcommittee may wish to establish, that we be enabled to do the job that Congress in the future may ask us to do or that the President through Executive order, which has the same consequences, may ask us to do, and if we are assigned responsibilities by new legislation and we propose there has to be cutoff date in the new fiscal year after October 1, new legislation or a new Executive order that comes along and says study the procedures of the EPA on the approval of State plans under the Clean Air Act which is crying out for study and is going to cost us \$300,000 or even \$50,000 to do a thorough job, and we don't boondoggle these things, we ask only that the subcommittee include language to say that we are authorized the sums necessary to carry out future assignments of this nature.

Excuse me for speaking so emphatically, but I wanted to get off my chest what I had to say in the time I had.

Mr. DANIELSON. I don't see anybody here who is offended by emphatic speech. I think if you can't be heard, you might as well not say it.

With the permission of the gentlemen of the subcommittee, I notice we do have Mr. Sheldon Cohen, and it's my impression you are making a living as a lawyer at the present time.

Am I right?

Mr. COHEN. Yes, sir.

Mr. DANIELSON. I am thinking of time. If Mr. Cohen can stay with us, because I intend to keep going for a while, I would be glad to let the interrogation of Mr. Anthony commence.

On the other hand, if he has to leave before long, I wouldn't want to miss the opportunity to hear what he has to say, and we will still keep Mr. Anthony with us. We have a leash on Mr. Anthony.

Mr. COHEN. Mr. Chairman, I have a client coming to see me about 12:15, so if it suits your pleasure—

Mr. DANIELSON. I am going to exercise the privilege of the Chair and recognize Mr. Cohen now.

Mr. COHEN. Anyone with a client ought to go back to him.

Mr. DANIELSON. I figure people who hang out a shingle have to do something to keep it flapping in the breeze.

TESTIMONY OF SHELDON COHEN (COHEN & URETZ), WASHINGTON, D.C.

Mr. COHEN. Excuse me, Mr. Chairman, I have to earn a living in order to give the volunteer time.

Mr. DANIELSON. I understand that, and that was the point that concerned me.

Mr. COHEN. Mr. Chairman and members of the committee, I am Sheldon Cohen, and you have mentioned my law firm. I am a native

of Washington, D.C. and I have practiced law in this city for 25 years, about half of that time in the Federal Government first as legislative attorney drafting legislation for the Treasury Department in the tax field, and later as chief counsel of the Revenue Service and subsequently Commissioner of the Internal Revenue.

I have practiced law intermittently with Paul Weiss, with Arnold Porter, and now am presently in my own firm.

I first became acquainted with the Administrative Conference back in the 1960's when I met its first chairman, Jerre Williams, and became friendly with him, and we discussed a number of administrative problems he was facing.

I first became acquainted officially with the Administrative Conference back in 1974 when its then chairman, Mr. Scalia, asked me to serve on a committee of which I was later chairman, which was to act as a steering resource for an intensive study into administrative procedures within the Internal Revenue Service at the request at that time of a number of Members of Congress.

You will recall, Mr. Chairman, that was a time when there were accusations that the Service was being used in an improper manner. There were also numerous, as there are today, numerous taxpayer complaints about procedures, and it was an appropriate time, the Congress thought, to institute a study, and they evidently thought so, those members of the committee thinking about this, thought that the Administrative Conference was a good agency, with its resources and its access to both insiders and outsiders, to run such a study.

That study, I suppose, was the most expensive study run by the agency to that date. It was only held to about \$215,000 or \$220,000 through very arduous efforts on behalf of the Office of the Chairman, both Mr. Scalia and Mr. Anthony, and the members of the Steering Committee who attempted to attack only the most urgent problems affecting individuals.

This is the study. It resulted in numerous recommendations both to the administrative agency, the Internal Revenue Service, and a number of recommendations to the Congress for statutory changes.

For example, one of the severe problems many small taxpayers found were the collection procedures of the Service. The Service likewise found itself in a bind. The Congress had mandated correction procedures without discretion, without certain kinds of discretion, and in order to be fair, they had to be applied uniformly, which meant they had to be applied rather rigorously to everyone. There were no exemptions.

In other words, if there was a levy on a man's salary there was a levy on a man's salary in toto, because the Service had no discretion to say we will levy half of the salary or we will levy all of the salary in excess of \$125 a week or whatever the number might be. That is only an illustration. But, that was one of the legislative recommendations we made, that there be appropriate limitations. That was adopted by the Congress.

The Service was fairly receptive, but like with any other administrative agency that is used to doing what it is used to doing, the people directly involved, of course, resist. That is not unusual, but the top echelons of the Service were open, they attended our meetings, they attended even some of our planning meetings to discuss with us and with our staff the problems.

We had meetings around the country, we met with bar people, we met with all sorts of people. We sent our staff out to discuss with working people in the field the collection procedures or audit procedures or requisition of returns, which was one of the issues involved. They brought us back first-hand information. In addition we seasoned that with the experience of the six or seven members of that Steering Committee, all of whom had extensive experience in various roles within the tax administration inside or out.

We had a great series of recommendations, a great number, I hope they were great in quality. I think they were. The present Commissioner of Internal Revenue has so attested. His predecessor, Mr. Alexander, likewise was affirmative on most of these. The Ways and Means Committee and Finance Committee last year in the tax bill which passed last October included a number of the recommendations for collection procedures, for more openness in summons enforcement procedures, for the recommendations, our recommendations are the basis of the recommendations, are the basis of the statute now in regard to taxpayer return confidentiality.

Mr. Anthony and I have appeared before a number of committees on substantive problems and, indeed, the Chairman has maintained the Steering Committee to act as an oversight device to test the waters later on to see if some of the ideas that the Service says it has accepted are, indeed, put into effect.

I would say that that is a pretty big bang for the buck. Now, the Service is an agency with something in excess of a \$1 billion budget, probably it has 75,000 or 85,000 personnel, I would guess about 75,000 permanent personnel, and probably is operated 85,000 by use of temporaries. We had a very able principal consultant, Prof. Charles Davenport, a professor at the University of California, Davis, Law School. He is presently assistant director of the Congressional Budget Office. He was our principal consultant on that project, and he had five or six assistants, and you see the amount of money spent.

The chairman has described to the committee some of the other projects. I have been serving with a number of Members of the Congress. I became a member of the conference about a year ago. I am probably one of the new members to investigate the kinds of activities that this agency ought to be involved in.

We are concerned that there are procedures occurring, ad hoc, around the government, and around the country, with little coordination. This is an agency which can provide some of that coordination, and it would be my experience that it can provide it effectively and rather inexpensively.

The numbers that the chairman has been, this chairman over here has been talking about with this committee this morning, are numbers of possibilities and probabilities. As I understand it, if this committee were to recommend authorization, it would be for a number of years, and this would not be a budget which would be requested and all full blown on the first year, and not to be increased from time to time.

I gather it would be an authorization which would be the authorization for at least 2 and perhaps even longer years, and then there would be justification from time to time rather than coming back to the committee on an annual basis.

My own experience, Mr. Chairman, is I operated an agency which did not have to go through this process. We appeared before our sub-

stantive committees regularly and often, and kept them fully informed, but the process in that size agency is very difficult to go through on an annual basis, such as this, so I don't have that experience. But I can well understand the committee's desire to have that annual playback of what is going on and what do you plan for the future.

I will be glad to answer any questions you might have, Mr. Chairman.

Mr. DANIELSON. Mr. Moorhead?

Mr. MOORHEAD. You know, I would think that the prestige the Administrative Conference deserves for doing such a good job and still having a budget under \$1 million, would be something you surely wouldn't want to lose.

I do have a few questions I wanted to ask you. About what percent of your budget is made up of personnel, of actual salaries?

Mr. ANTHONY. About 40 percent, I believe, Congressman. It's in excess of 40 percent.

Mr. MOORHEAD. In excess of 40 percent. Basically, what are the largest items in your budget besides salary?

Mr. ANTHONY. It's pretty skimpy on substantive things. As an agency that has members, there is a lot of travel, certain amount of travel, and there are the overhead sorts of things you need to do to run an agency, and what is left is what we have for research.

Mr. MOORHEAD. Say you get another couple hundred thousand; would you hire more personnel or would it go for more research or what?

Mr. ANTHONY. It would be a split, I think. We urgently need personnel in the research area for evaluating and designing the projects before we commission them, so we can know how much money to put on them, and that we have a good chance of striking some oil with that one instead of a dry hole. We haven't had too many dry holes, but that is what we need it for, and also the research contracting.

Mr. MOORHEAD. The costs related to travel—does it go to members of the conference?

Mr. ANTHONY. Almost all of it. There is comparatively little travel by our staff.

Mr. MOORHEAD. In looking down the list of people you have, they are basically lawyers, professors, or they are employees of the Federal Government.

Mr. ANTHONY. That is largely true; yes.

Mr. MOORHEAD. I wondered whether there was any reason there were no legislative branch representatives; are they prohibited by law?

Mr. ANTHONY. I think not prohibited, but I don't think it was contemplated by the act there be representatives of the Congress. The General Counsel of the GAO is a liaison member, and that is the way Congress is represented.

Mr. MOORHEAD. Do you think any strength could be added by representatives from industry or labor, or others that might have a different perspective on how these administrative agencies affect all our lives?

Mr. ANTHONY. Yes. I think maybe we are a little too heavy on the lawyers, Congressman. Maybe we ought to have some of the people who are the objects of the governmental action, if you will, but I will say we have got a good spread of public representatives, of American bar types, of people in the various specialties of administrative law, of

environmentalists, and it's quite a Ouija board for me with these 36 appointments to put the names down and make sure we have all of the different kinds of constituencies represented.

Mr. DANIELSON. If the gentleman will yield, I am really going to ask a question. I know Mr. Cohen has concluded his presentation. I thought I heard him say, if you have any questions, I will be glad to try to answer them.

We have a lot of questions for Mr. Anthony, but may I respectfully request the subcommittee, if you have any questions of Mr. Cohen, ask him and then we can free him to go. Then, we can come in hard and fast on Mr. Anthony after that.

Mr. MOORHEAD. I would like to say I think Mr. Cohen did a good job in his testimony and I think he answered most of my questions in his testimony.

Mr. DANIELSON. I would appreciate it if we could, at this time, direct our questions to Mr. Cohen.

Mr. Mazzoli, do you have any questions of Mr. Cohen? We are going to save Mr. Anthony; he is not going away.

Mr. MAZZOLI. Yes, because everybody so far has to get out of here, and I have to, myself. I appreciate your coming, Mr. Cohen, and I thank you for your testimony. It is evident from my earlier questions I have some concerns about the Board and the Commission and what it is doing and how it is doing. One of the earlier witnesses, Mr. Kennedy, I believe, said there were some tough recommendations which the Commission made but he seemed unable to put his finger on a great many of them. I think you have helped us with respect to the IRS part. If I heard your testimony correctly, you say even now you are not sure the IRS will pursue those and there is going to be a need for oversight. Is that essentially correct?

Mr. COHEN. I think by and large I would guess a rough estimate they agreed with about three-quarters of our recommendations and agreed to implement most of those. There were a number that they agreed with the objective but said they think there is a different route they could get there better than the route we suggested. Those are the things one ought to look at maybe a year or two or three down the pike to say, well, the objective was A and you chose, of course, one to get there, we recommended course B, to get there. Did you get there? Because if you do not look at it 2 or 3 years down the road, it will lay there. Nobody will ever look at it again, and it may be a problem in the future. That is the kind of thing if you are going to make recommendations, our feeling was, the chairman's and my own, as chairman of this subcommittee, that we ought to look at it to see how it worked.

Are taxpayers happier with the new procedure? Is it fair or is it causing more burden than benefit? Those are the things that do not require much money right now because they are moving. We have been sort of watching the legislative angle, their testimony. They seem to be moving in the right direction. We would say, let's wait a year or two. Let's reconvene the committee, let's get in our consultant again and let's take a quick look at only those items which we believe require some look to see whether there is a follow-on problem.

Mr. MAZZOLI. I notice the paper Mr. Shattuck circulated. Apparently this is the Commission's budget for fiscal year 1978, something like in research, \$184,000 as against \$437,000 in salaries, roughly 2 to 1.

It is roughly half as much money spent on salaries as spent on research, which I assume is outside research.

Mr. COHEN. In our study most of the research was done by Professor Davenport and his consultants, although David Martin, who is the research director of the agency, was, I suspect, for the last 6 months or a year of our effort spending pretty close to full-time helping us polish the product.

Mr. MAZZOLI. Are you satisfied this agency has to go outside that much and cannot do the thing within?

Mr. COHEN. Take our committee. We had a committee of six outsiders and a chairman. We had one accountant. We had a law professor who was running a public interest law firm from Georgetown who was looking out for the small taxpayer and the small citizen, and we had a group of tax experts, both a professor, then the dean of the University of Pennsylvania Law School, and several practitioners.

That was a pretty good group against which to gain an experience, and yet they were not going to take the time or could not take the time to go out and talk to that collection officer in Baltimore to find out how he treats the ghetto resident when he goes in to make a collection case, or the auditor when he goes into a small interview-type audit. That is what our staff did. That was consultants' fees, so they were paid.

Mr. MAZZOLI. Maybe I misunderstand you. Is there some reason why an auditor could not have been hired by the staff and then deployed to Baltimore to make the interviews? Why hire out for that?

Mr. COHEN. That is exactly what happened. We hired six or seven or eight people but they were only hired ad hoc for this job, so they never technically became employees of the agency. They were technically outside reachers but each one of those people had an expertise or experience that would fit this particular project.

Now, they might not fit the next project the agency has, therefore Mr. Anthony would not want them on his full-time staff.

Mr. MAZZOLI. Did your subcommittee have to obtain permission in order to hire out? Did you have to justify the fact that this type of project required you technical interests and special kinds of backgrounds which could not be satisfied by the Commission?

Mr. COHEN. We went to the chairman and he met whatever the bureaucratic problems were within the authorization of getting that staff for us. We originally said approximately how much we thought it would cost.

Mr. MAZZOLI. Thank you very much.

Mr. DANIELSON. Mr. Moorhead.

Mr. MOORHEAD. I do have one more question. When you hire the academics to do research, is there any limitation on their right to publish elsewhere?

Mr. COHEN. In this case Professor Davenport has not published any materials elsewhere. I think one or two of his subconsultants have asked if they could use some of the materials—you see, this was published, so they have asked if they could use some of the materials relating to this to go off in a different tangent than what we have done, and of course this is available to the public and it adds to the information flow that would help the next researcher, the more this material is available, so we of course have allowed them to publish any of that material they would like.

Mr. MOORHEAD. You have published it first?

Mr. COHEN. Yes; none were allowed to publish this until this study appeared and our recommendations.

Mr. DANIELSON. I want to see if I can recap, Mr. Cohen. You are a former Commissioner of Internal Revenue and your field of expertise is the Internal Revenue Code?

Mr. COHEN. Allegedly, sir.

Mr. DANIELSON. You were on the committee which made a study on behalf of the Administrative Conference of the procedures followed by Internal Revenue?

Mr. COHEN. Yes.

Mr. DANIELSON. The product of that committee's work is the huge volume there in paperwork before you. It is your impression that the many findings and recommendations contained in the report were of value to the public as well as to the Internal Revenue Service and about three-fourths of them were adopted in one form or another, and that a number of others may at least have been the motivation for the Service to follow another route and attempt to achieve a recommended goal within the findings of your committee. Is that about it?

Mr. COHEN. Yes, sir. I think that is a fair summary.

[The material referred to follows:]

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INTERNAL REVENUE SERVICE PROCEDURES:
TAXPAYER SERVICES AND COMPLAINTS

PART (A): SEPARATE ACCOUNTING FOR TAXPAYER SERVICE FUNCTIONS

RECOMMENDATION TEXT

(a) *Separate Accounting for Taxpayer Service Functions.* The Internal Revenue Service should, on a basis consistent from year to year, compile data on all personnel and funds allocated to and utilized in the performance of functions by its Taxpayer Service Division. Such data should be broken down, perhaps on the basis of statistical sampling, for each of the major types of taxpayer service provided, with attention to at least the following functions:

- (1) Responding to individual inquiries and requests for assistance regarding administrative and operating procedures of the Service which have an impact on particular taxpayers;
- (2) Answering individual inquiries for tax law advice and providing assistance in tax return preparation; and
- (3) General education of members of the public about the tax laws, their tax-return-filing and tax-payment responsibilities, and the administrative and operating procedures of the Service.

LEGISLATIVE IMPLEMENTATION: NOT APPLICABLE

AGENCY IMPLEMENTATION: SUBSTANTIAL (IRS)

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ANALYSIS

The Internal Revenue Service (IRS) has taken several steps to implement Part (a). Taxpayer Service was made a separate budget item, with its own accounting system, in 1976. A new management reporting system, reflecting details of various types of work being performed and the categories of employees engaged in various types of work, was instituted in 1975. Through a Taxpayer Service Sampling System, established in 1976, IRS is presently able to distinguish between types of questions asked of Service personnel, and can distinguish between questions requiring substantive tax advice and questions regarding administrative functions.

PART (B): TAXPAYER SERVICES

RECOMMENDATION TEXT

(b) *Taxpayer Services.* The Internal Revenue Service should consider establishing a procedure whereby taxpayer inquiries and requests for assistance can be promptly screened and referred for response to Service personnel selected on the basis of their competence and authority to respond to particular categories of inquiry or assistance. Such a screening and referral system might be facilitated by:

- (1) Developing statistical profiles of the categories of inquiry and requests for assistance that are most frequently made;
- (2) Specifically training and assigning some personnel to review taxpayer inquiries and requests for assistance and to make referral of them to those Service personnel whose competence and authority will assure prompt and effective responses;
- (3) Specifically training some personnel as specialists in the administrative and operating procedures of the Internal Revenue Service, with emphasis on the operation of Service Centers, to whom referral of inquiries and requests for assistance will be made;
- (4) Continuing to make available experienced and knowledgeable Audit Division personnel to whom referrals of inquiries and requests for assistance may be made, especially during tax-

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return-filing season; and

(5) Continuing to maintain high quality staffing of taxpayer contact units in the Service Centers until some workable alternative thereto is developed.

LEGISLATIVE IMPLEMENTATION: NOT APPLICABLE

AGENCY IMPLEMENTATION: SUBSTANTIAL (IRS)

ANALYSIS

The Service has instituted a number of procedures and administrative initiatives which should ensure that specialized taxpayer services will be performed by capable IRS employees in each specialty. During 1976, several IRS districts conducted test projects in which certain tax assistants, selected by reference to specialization category, existing skills, employee inclination, and prior training, were assigned to specialties demanding experience and skill. Special studies are presently being conducted to ascertain the nature and amount of additional training, knowledge, and skills necessary to facilitate tax assistant performance. The Service is in agreement with the objectives of each of the other various techniques suggested for possible implementation of Part (b): special training is provided for front-line tax assistants; a 65/35 percent mix of auditors/revenue agents is made available for taxpayer assistance purposes during the filing season; and data is being gathered to provide a break-down of the most frequently asked questions.

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PART (C): TAX LAW ADVICE TO TAXPAYERS

RECOMMENDATION TEXT

(c) *Tax Law Advice to Taxpayers.* The Internal Revenue Service should adopt procedures designed to assure that any taxpayer who inquires for tax law advice from any employee of the IRS Taxpayer Service Division will be informed that: (1) the answer to his inquiry is based on the facts understood by the employee and that such understanding may not be identical to, nor as comprehensive as, the taxpayer's; (2) the Service is not bound by the advice given by the employee and may assert a different position at some later date, for example, if the taxpayer's return is audited; (3) the advice given by the employee is based on the Service's interpretation of the tax laws and, if such be the case with respect to a particular inquiry, that there is authority for a different interpretation as to which the taxpayer should seek his own tax law advice; and (4) the taxpayer should preserve any records pertaining to the subject matter of the inquiry for at least three years following the time fixed by law for filing the tax return to which the inquiry pertains. The substance of the foregoing information should be incorporated into all written materials issued by the Service describing the availability of taxpayer services or responding to inquiries for tax law advice. The substance of such information also should be mentioned in oral responses to inquiries for tax law advice, to the degree appropriate to the nature and circumstances of the contact.

LEGISLATIVE IMPLEMENTATION: NOT APPLICABLE

AGENCY IMPLEMENTATION: SUBSTANTIAL (IRS)

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ANALYSIS

The Service has revised its "disclaimer notice"—which states that tax advice is subject to reinterpretation and does not legally bind the Federal Government in subsequent collection proceedings—so as to make more clear the liabilities of taxpayers acting upon IRS advice. The Service is prominently displaying the notice in all of the areas where advice is given, and is undertaking to assure that the notice is included in all IRS published materials relating to tax advice. A recording, which will inform callers of the disclaimer, is being developed for use on IRS toll-free telephone services.

PART (D): TAXPAYER COMPLAINT RESPONSE PROCEDURES

RECOMMENDATION TEXT

(d) (1) *Taxpayer Complaint Response Procedures.* The Internal Revenue Service should establish regular procedures whereby any taxpayer can obtain a prompt and impartial response to any legitimate complaint about the conduct of any individual IRS employee. These complaint response procedures should be organized and operated so as to provide for the receipt and processing of such complaints by Service personnel who have thorough familiarity with the authority, organization, and administrative and operating procedures of the Service.

(2) The recommended complaint response procedures should be well publicized and easily accessible to taxpayers through all IRS personnel, however organized and wherever situated, whose responsibilities include the provision of assistance, advice, or other services to taxpayers (for example, Taxpayer Service Representatives and personnel of Service Center Taxpayer Contact Units).

(3) The recommended complaint response procedures should be designed and operated so as to provide information that will enable the line management of the Service systematically to:

- (i) Identify the causes of all legitimate complaints about the conduct of individual IRS employees;

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- (ii) Assess the effectiveness of the complaint response procedures from the standpoint of taxpayers; and
- (iii) Determine what changes, consistent with the Service's duty to administer the internal revenue laws, may be necessary in the training, supervision, or assignment of Service personnel to eliminate causes of legitimate complaints about the conduct of individual IRS employees.

LEGISLATIVE IMPLEMENTATION: NOT APPLICABLE

AGENCY IMPLEMENTATION: PARTIAL (IRS)

ANALYSIS

The Service is testing a problem resolution procedure in four districts. The tests have been publicized. Data is being gathered on the number and nature of complaints received. An attempt is being made to gauge taxpayer satisfaction under the test procedures and to develop criteria on changes in IRS procedures necessary to eliminate causes of complaints.

Substantial implementation of Part (d), not yet achieved by IRS, will require the completion of the test procedures, and the institution of regular programs in all districts.

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INTERLOCUTORY APPEAL PROCEDURES

RECOMMENDATION TEXT

Interlocutory appeal procedures for agency review of rulings by presiding officers must balance the advantages derived from immediate correction of an erroneous ruling against interruption of the hearing process and other costs of piecemeal review. Striking an appropriate balance between these competing concerns requires that the exercise of discretion in individual cases be carefully circumscribed. Procedures that delegate the responsibility for allowing interlocutory appeals to presiding officers, with a reserved power in the agency to handle exceptional situations, have proven most satisfactory.

RECOMMENDATION

Each agency which handles a substantial volume of cases that are decided on the basis of a record should adopt interlocutory appeal procedures based on the following principles:

1. Presiding officers should be authorized to rule initially on all questions raised in the proceeding. A ruling by the presiding officer, supported by a reasoned statement, usually should precede interlocutory review of the question raised.
2. In general, interlocutory appeal from a ruling of the presiding officer should be allowed only when the presiding officer certifies that (a) the ruling involves an important question of law or policy concerning which there is substantial ground for difference of opinion; and (b) an immediate appeal from the ruling will materially advance the ultimate termination of the proceeding or subsequent review will be an inadequate remedy.
3. Allowance of an interlocutory appeal should not stay the proceeding unless the presiding officer determines that extraordinary circumstances require a postponement. A stay of more than 30 days must be approved by the review authority.
4. If the number of interlocutory appeals in an agency is substantial, the authority to affirm, modify, or reverse the presiding officer's interlocutory ruling should be delegated, to the extent permitted by law, to a review authority designated by the agency.
5. Unless the review authority orders otherwise in the particular case, the review authority should decide the interlocutory appeal on

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the record and briefs submitted to the presiding officer without further briefs or oral argument. The review authority should summarily dismiss an interlocutory appeal whenever it determines that the presiding officer's certification was improvidently granted or that consideration of the appeal is unnecessary. If the review authority does not specify otherwise within 30 days after the certification or allowance of the interlocutory appeal, leave to appeal from the presiding officer's interlocutory ruling should be deemed to be denied.

6. Interlocutory review by petition to the review authority without certification by the presiding officer should be restricted to exceptional situations in which (a) vital public or private interests might otherwise be seriously impaired, and (b) the review authority has not had an opportunity to develop standards which the presiding officer can apply in determining whether interlocutory review is appropriate.

LEGISLATIVE IMPELMENTATION: NOT APPLICABLE

AGENCY IMPLEMENTATION

STATUS	AGENCY	INTERLOCUTORY APPEAL PROCEDURES
●	CAB	14 CFR §302.18(f)
?	CFTC	
●	CPSC	16 CFR §1025._____
?	CSC	
-	EEOC	
●	EPA	40 CFR §164.100
●	FCC	47 CFR §1.301
●	FDIC	12 CFR §308.8
-	FHLBB	

- Substantial
- ◐ Partial
- Non-conformity
- ? Undetermined
- Not applicable

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STATUS AGENCY INTERLOCUTORY APPEAL PROCEDURE

●	FMC	46 CFR §502.153	● Substantial
●	FPC	18 CFR §1.28	○ Partial
●	FRS	12 CFR §263.10(d)	○ Non-conformity
●	FTC	16 CFR §3.23	? Undetermined
-	GSA		- Not applicable
●	ICC	49 CFR §1100.87	
?	ITC		
-	NASA		
●	NLRB	29 CFR §102.25--.26	
●	NRC	10 CFR §2.730	
●	OSHR	29 CFR §2200.75	
●	PRC	39 CFR §3001.32	
●	SEC	17 CFR §201.12	
●	SBA	13 CFR §109.19	
○	USPS		
-	VA		

ANALYSIS

Recommendation 71-1 is addressed to agencies handling a substantial volume of cases that are decided on the basis of a record. The Recommendation is not applicable to EEOC, GSA, and NASA, none of which handles such cases, or to FHLEB which does not handle a substantial volume of cases. Although VA handles a large number of cases which are decided on the basis of a record, the non-adversary character of VA cases and the

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brevity of VA proceedings make interlocutory appeals unnecessary. In three instances (FDIC, FRS, SEA), agencies handling a volume of cases insufficient to warrant employment of a full-time administrative law judge have nevertheless adopted interlocutory appeal rules.

The basic thrust of the Recommendation is contained in Part 2, i.e., that interlocutory appeals from adjudicatory rulings be limited to instances where "(a) the ruling involves an important question of law or policy concerning which there is a substantial ground for difference of opinion; and (b) an immediate appeal from the ruling will materially advance the ultimate termination of the proceeding or subsequent review will be an inadequate remedy." Accordingly, conformity to the Recommendation has been characterized as substantial whenever an agency, as evidenced by its rules of procedure, has undertaken to limit interlocutory appeals to situations similar to those outlined in Part 2, whether or not all aspects of the other Parts of the Recommendation have been incorporated into the agency's rules. All but one of the agencies under review are in substantial conformity with the Recommendation.

Two agencies are in full conformity. The rules of procedure for EPA and FRS correspond closely to the particular suggestions made in all Parts of the Recommendation, and agency rules track the language of the Recommendation in many instances.

Most agency rules deviate in minor respects from some feature of the Recommendation. The rule at FPC allows interlocutory appeals only in "extraordinary circumstances"; possible grounds for appeal are not stated. In the case of NLRB, an interlocutory appeal requires permission from the Board, rather than certification from the presiding officer. Rules at CPSC are "interim", rather than "final" (see 39 FR 26832, July 23, 1974). Final adoption and recodification of CPSC rules is expected in 1977.

Only one agency is in non-conformity with the Recommendation. Although handling a substantial volume of cases, USPS has not adopted rules limiting interlocutory appeals.

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ELIMINATION OF DUPLICATIVE HEARINGS IN
FAA SAFETY DE-CERTIFICATION CASES

RECOMMENDATION TEXT

The Federal Aviation Administrator has authority to revoke or suspend the licenses of aviation personnel and training facilities, airworthiness certificates, and other permits related to the operation of aircraft. Present procedures contemplate a full trial-type hearing, if one is desired by the respondent, before the Administrator issues an order of suspension or revocation. If an appeal is taken from that order, a second full hearing is afforded by the National Transportation Safety Board. This is wasteful of time and personnel, and is unnecessary as a protection of affected parties.

In order to expedite proceedings bearing directly on public safety, without sacrificing the interests of individual respondents, the Federal Aviation Administrator should discontinue providing hearings in the nature of trials in "certificate actions." This will not result in "punishment before trial," since the effective date of a certificate action order is invariably postponed, except in emergency situations, pending the outcome of proceedings before the National Transportation Safety Board.

LEGISLATIVE IMPLEMENTATION: NOT APPLICABLE

AGENCY IMPLEMENTATION: SUBSTANTIAL (FAA)

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ANALYSIS

Prior to May 1, 1970, an aircraft pilot licensed by the Federal Aviation Administration (FAA) was entitled to two evidentiary hearings before suspension or revocation of his pilot's certificate: a full hearing was held by the FAA and then the pilot was also entitled to a trial de novo before the National Transportation Safety Board. The recommendation urged the elimination of the hearing before the FAA on the grounds that it was duplicative and unnecessary.

The recommendation was fully implemented when the FAA adopted a regulation terminating, effective May 1, 1970, its procedures for a formal hearing (14 C.F.R. §13.19(c)). Pilot decertification hearings are now held only before the National Transportation Safety Board, although they are preceded by an FAA investigation and conference which provides information to the pilot and an opportunity for settlement.

In 1974 the Independent Safety Board Act separated the National Transportation Safety Board from the Department of Transportation. This action did not alter the applicable procedure in FAA safety decertification cases; FAA rules still provide for a formal hearing only before the Board.

The affected agencies have indicated strong approval of the change in hearing procedures. About a year after the new procedure went into effect, the FAA reported that the hearing procedures were working well and that there had been a reduction in the time and cost of processing enforcement actions. In a June 2, 1977 letter to the Conference the Chief Counsel of the FAA reaffirmed the efficacy of the changed procedures, indicating that "neither the pilots nor the public interest has been prejudiced" by the elimination of the FAA formal hearing in safety de-certification cases.

The National Transportation Safety Board has also registered its approval of the changed procedures. In 1971 the Board indicated to the Conference that the elimination of the FAA hearing had expedited proceedings without prejudicing the rights and interests of the airmen involved. A recent letter from the Board's General Counsel indicated that the changed procedure "has been both effective and clearly in the public interest."

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7/11/77	rkb	68-8	1	1

JUDICIAL REVIEW OF INTERSTATE COMMERCE COMMISSION ORDERS

RECOMMENDATION TEXT

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 U.S. 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.

LEGISLATIVE IMPLEMENTATION: SUBSTANTIAL

AGENCY IMPLEMENTATION: NOT APPLICABLE

ANALYSIS

This Recommendation was fully implemented by the enactment, January 2, 1975, of P.L. 93-584. Those orders of the Interstate Commerce Commission previously reviewable by three-judge district courts are now reviewable in the courts of appeals under the Administrative Orders Review Act, 28 USC §2341.

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CONSUMER BULLETIN

RECOMMENDATION TEXT

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 Counsel 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 Counsel.
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.

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LEGISLATIVE IMPLEMENTATION: NOT APPLICABLE

AGENCY IMPLEMENTATION: SUBSTANTIAL (OFFICE OF CONSUMER AFFAIRS-HEW)

ANALYSIS

In response to the Conference's adoption of Recommendation 68-4, the Office of Consumer Affairs in the Executive Office of the President initiated the bi-weekly publication of *Consumer News* in April, 1971. In February, 1972 this publication was expanded to include a *Consumer Register* which highlighted items of consumer interest that appeared in the *Federal Register*.

Special Assistant to the President for Consumer Affairs, Virginia H. Knauer, reported in 1972 that, based on a paid circulation of 50,000 copies, as many as 200,000 persons read the *Consumer News/Consumer Register*. In addition to paid subscribers, the publication was distributed free to almost 1500 journalists, Federal and state officials, consumer organizations, and to all members of Congress.

Today the *Consumer News* and *Consumer Register* are published by the Office of Consumer Affairs of the Department of Health, Education, and Welfare. The *Consumer Register* continues to concentrate on items of interest to consumers that appear in the *Federal Register*. In addition to alerting consumers to proposed agency rules and policies, the *Consumer Register* provides consumers and their representatives with details on how comments can be submitted to agencies regarding pending matters and directs readers to sources of additional information.

The *Consumer News*, on the other hand, concentrates on other information emanating from or reported by the Federal Government, including reports, publications, enacted consumer legislation, consumer related proposals, agency actions, and product recalls. Occasionally more lengthy reports on issues of interest to consumers are included. Recent such reports include articles on the Harris poll on consumer attitudes, the proposed consumer agency bill, the President's energy message, Tris, Sacchirine, and the President's consumer message. *Consumer News* also frequently includes feature material on such varied subjects as the

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reintroduction of the two dollar bill, household moving hints, and personal record-keeping.

Consumer News also attempts to elicit public response by requesting comments and by providing addresses and phone numbers--especially toll-free numbers--for agencies and officials concerned with issues or actions described in the newsletter.

Mr. DANIELSON. On the basis of your experience, do you feel that the Conference should have a greater budget for the purpose of conducting research, and you feel that the research which it conducts does bring back a definite benefit in administrative procedures?

Mr. COHEN. Yes, sir. The reason is this: I know the financial and economic field. I do not know a number of other fields but they are fairly close to each other in administrative similarities. The substance may be different. Each of them falls into its own little convenient pattern of behavior, historic pattern perhaps.

They did it because they did it before, not because it is the best way to do it. An agency such as this which has the ability, as Sir Walter Scott, to see ourselves as others see us, provide that outside view of what do you look like to the outsider, is a tremendous selfhelp. The agencies appreciate it.

It also takes place without the glare of publicity, if you will. This is a peer review kind of process. No one is holding anyone up to ridicule. No one is saying, "Why did you do that?" It is quiet and it is thorough but it does not ridicule or hold anybody up to any kind of public exposure, so therefore there is a great deal more cooperation with that kind of ongoing procedural review process, if you will.

I think that lends to some of its ability to get at some of the problems. There are a lot of ways to oversee. This is a good way, I believe, from my experience, and it would seem to me if an agency like the Service, 85,000 personnel, can yield to a number of suggestions from outsiders and attempts to make breaks with its past behavior, I think many other agencies, if carefully selected—that is part of the process of top level review in the chairman's office—would yield similar kinds of results.

Mr. DANIELSON. That report, the one before us, was the product of an investigation which I believe you said cost about \$225,000?

Mr. COHEN. Yes, sir.

Mr. DANIELSON. You feel that has had at least an equivalent beneficial effect for the people of our country?

Mr. COHEN. I believe if you asked the worker who might have had his whole salary seized and now has a statutory exemption, I think his answer would be yes—if he knew it, of course.

Mr. DANIELSON. I am only asking your opinion.

Mr. COHEN. Yes. I think the benefits to the public are far outweighed many, many times the cost.

Mr. DANIELSON. I have no more questions. Thank you, Mr. Cohen. We appreciate your coming here.

Now we will get back to Mr. Anthony. I would like to include in the record—unless there is some objection, and I do not know what in the world it would be—Mr. Anthony has provided us with a summary of a budget history for the last 5 years as well as a staffing, and so forth. I think that the Members ought to have copies of these. Is there some inhibition against Members seeing these?

Mr. SHATTUCK. No, indeed.

[The material referred to follows:]

[Budget figures in thousands]

	Fiscal year—				
	1974	1975	1976	1977	1978
Authorization.....	\$760	\$805	\$850	\$900	\$950
Appropriation.....	700	750	785	880	914
Personnel compensation (excluding benefits).....	352	355	385	395	437
Research.....	185	205	195	231	184
Permanent positions.....	14	14	16	¹ 16	17

¹ 17th position authorized but not filled for lack of funds.

Mr. DANIELSON. Go ahead. I believe I had interrupted you, Mr. Moorhead. I am going to watch time here so we will all share in it, but you can continue, if you will.

Mr. MOORHEAD. Who selects the public members of the Conference?

Mr. ANTHONY. I do, the chairman, with the concurrence of the Presidentially appointed council.

Mr. MOORHEAD. If you decided that it should be expanded a little more, perhaps, to include a member or two from the judicial or legislative branches, or members of industry—

Mr. ANTHONY. The statute establishes that.

Mr. MOORHEAD. I know the problem is that you want to have some workers, persons who really are going to appreciate the technical details. But there also can be some advantages, I am sure, in having the viewpoint of the effects that these rulings may have on the average person. That is just an idea.

Mr. ANTHONY. I understand that.

Mr. MOORHEAD. Who makes the determination of what research contracts the Conference is going to undertake?

Mr. ANTHONY. The chairman essentially makes that decision. There are all sorts of sources from which suggestions may arise. We have had them come from Members of the Congress, from Senators, Mr. Kennedy, for example, mentioned one he suggested about the new emergency agencies, and we have a project in pursuance of that suggestion. It is my job to husband this little fund of money we have and parcel it out to the uses that seem best.

Mr. MOORHEAD. You understand the realities of legislative process. The chances of getting up to \$2 million over a period of years might be pretty good, but to double the budget all at once is a pretty difficult thing. It would be the best of all worlds as far as you are concerned?

Mr. ANTHONY. We feel we have to do it.

Mr. MOORHEAD. Very difficult to obtain.

I appreciate your testimony today and I understand the good job you are doing. I think a lot of people appreciate your efforts. There is a competitive struggle all the way down the line on appropriations.

Mr. ANTHONY. I do appreciate your words very much, Congressman. We recognize it is tough to double a budget, even one that by comparison with not only the Department of Defense but even the paperwork commission is kind of small. We have to do it to stay in business. We have to do it to mean something. I think what this committee has to decide—it may not make it all the way through the Congress—whether we are going to mean something substantial or limp along every year with the greater costs of overhead and salaries eating up the money

we have for the research and for the kinds of things we ought to be doing that leave us unable to make full use of our membership, and, more important, to go after those tough problems that we think we were created by the Congress to go after.

Mr. MOORHEAD. What is the status of the legislative veto study?

Mr. ANTHONY. That is through the committee which Mr. Kennedy chairs. The next step will be for its proposal to be presented to our council, the Presidentially appointed group, and then it will go on the agenda of our meeting in September.

Mr. MOORHEAD. We in this subcommittee are very interested in that project, because we have jurisdiction over that legislation. We will be glad to receive any information or recommendations that you have.

Mr. ANTHONY. We would be happy to. We have supplied to the subcommittee through Mr. Shattuck a copy of the report which is at hand so far.

Mr. MOORHEAD. I am reminded the minority has not.

Mr. DANIELSON. Neither have I. I do not know how you get it around here.

Mr. ANTHONY. I will remedy those deficiencies.

Mr. DANIELSON. Mr. Anthony, I would like to have you review something. I want it in the record. I also want it to clarify any misunderstandings I may have. First of all, the final organism, the Conference, currently has 16 members; is that correct?

Mr. ANTHONY. It has 91 members.

Mr. DANIELSON. What do you call your group that has 16 members?

Mr. ANTHONY. That is the staff of the Office of the Chairman—his staff.

Mr. DANIELSON. The staff of the Office of the Chairman has 16 permanent employees—8 attorneys and 8 support staff?

Mr. ANTHONY. That is correct.

Mr. DANIELSON. You find that the workload exceeds the capacity of that staff to take care of, I would imagine?

Mr. ANTHONY. Tremendously.

Mr. DANIELSON. Beyond that, the Conference itself has, you say, 91 members?

Mr. ANTHONY. Yes, sir.

Mr. DANIELSON. Does that include the 16 persons to which we have referred?

Mr. ANTHONY. No. They are Government employees. The 91 members, with the exception of the Chairman, myself, all serve without charge.

Mr. DANIELSON. You, as the Chairman of the Conference, are ex officio or otherwise at least a member of the Conference?

Mr. ANTHONY. Yes. As Chairman, I am Chairman of the Conference, and I have a staff to support all the work of the Conference.

Mr. DANIELSON. The membership of the Conference is constituted in what manner?

Mr. ANTHONY. Ten are appointed by the President, five private, five Government. Forty-four are designated by the heads of their agencies, either executive departments or independent agencies.

Mr. DANIELSON. Is there more than one from any one agency?

Mr. ANTHONY. Yes. The Department of Transportation has an extra member from FAA; HEW has an extra member from Food and Drug

and Social Security, in addition to the regular HEW member, and I think there may be another example. Then we also have administrative law judges who serve on a rotating basis from the various agencies for 2-year terms.

Mr. DANIELSON. How many of them?

Mr. ANTHONY. Two.

Mr. DANIELSON. That is a rotating assignment; is that correct?

Mr. ANTHONY. Yes.

Mr. DANIELSON. The rest not to exceed one from an agency?

Mr. ANTHONY. Yes; there may be one other exception.

Mr. DANIELSON. Fundamentally?

Mr. ANTHONY. That is right.

Mr. DANIELSON. The other 36 are designated as public members?

Mr. ANTHONY. Public members appointed by the Chairman with the consent of the council.

Mr. DANIELSON. In other words, when you need to fill vacancies from the public sector of your Conference, you consider persons who are eligible and interested, and so forth, and could contribute?

Mr. ANTHONY. That is right.

Mr. DANIELSON. You suggest their names to the council, which consists of the presidential appointees plus yourself. Do you have a vote?

Mr. ANTHONY. Yes, I do.

Mr. DANIELSON. Does that make an 11-member council?

Mr. ANTHONY. Yes.

Mr. DANIELSON. Then the council approves or disapproves, as the case may be, the suggested appointee as a public member.

How long do they serve?

Mr. ANTHONY. Two-year terms. The public members' terms run from July 1 of even-numbered years, so we appointed a batch effective July 1976 for the term to expire June 30, 1978.

Mr. DANIELSON. Do you make some appointments each year, or is it a total turnover every 2 years?

Mr. ANTHONY. Except for vacancies, it is a total turnover. Unhappily, Mr. Manuel Cohen, former Chairman of the SEC, died about a month ago, so there is now a vacancy. When a public member becomes a Government official, a person loses his or her public membership. In the case of Miss Poston of New York, she recently became a Civil Service Commissioner.

Mr. DANIELSON. Can the public members be reappointed for a second or third term?

Mr. ANTHONY. Yes, for a second and, less frequently, for a third term.

Mr. DANIELSON. Is a second term very frequent?

Mr. ANTHONY. Yes, it is almost automatic, unless the member has contributed quite little.

Mr. DANIELSON. So you get some continuity, probably from a built-in staggering of the reappointed 4-year terms?

Mr. ANTHONY. That is correct.

Mr. DANIELSON. You will have continuity. You do not have a turnover every 2 years then?

Mr. ANTHONY. No. I think this last time we had only 11 new appointments out of 36 members. Of course, the Government members often stay on longer.

Mr. DANIELSON. How long is their term?

Mr. ANTHONY. They have no terms. They are designated for as long as the head of their agency designates them. Some have been on virtually from the beginning.

Mr. DANIELSON. The head of an agency can remove them by simply selecting someone to fill that spot; is that correct?

Mr. ANTHONY. That is correct.

Mr. DANIELSON. How about the 10 council members?

Mr. ANTHONY. Their term is 3 years without the advice and consent of the Senate. The Government members are all members of his administration, so generally there will be a preponderance of members of the party of the President.

Mr. DANIELSON. You say their term is how long?

Mr. ANTHONY. 3 years.

Mr. DANIELSON. Are they staggered terms?

Mr. ANTHONY. Yes, they are staggered. It sort of depends on when the President appoints them.

Mr. DANIELSON. What compensation, if any, is paid to the public members of the Conference, other than yourself?

Mr. ANTHONY. No compensation. They are reimbursed for travel and other related expenses.

Mr. DANIELSON. That would be, I presume, their ticket and their per diem when they come to Washington or wherever the meeting is being held?

Mr. ANTHONY. That is correct.

Mr. DANIELSON. How about the Government employees; are they paid from the Conference's budget or are they paid out of their own agency?

Mr. ANTHONY. Their own agency.

Mr. DANIELSON. That includes travel and per diem?

Mr. ANTHONY. Yes.

Mr. DANIELSON. Your travel and expense money is for public members and is basically just that?

Mr. ANTHONY. So far as public members is concerned.

Mr. DANIELSON. I am talking about the members of the conference, this 91.

Mr. ANTHONY. That is correct.

Mr. DANIELSON. The Conference has committees which conduct investigations of a given subject?

Mr. ANTHONY. Right.

Mr. DANIELSON. Do they do that sua sponte, or are they assigned an investigation?

Mr. ANTHONY. I suppose on the average they are assigned by me more often than they cook it up themselves, but on the other hand it is rather frequent that members or the chairman of a committee or maybe this whole committee will say, "We want to do a study on a particular subject," and I will endeavor to accommodate that because obviously a committee that is as interested as that should be accommodated.

Mr. DANIELSON. At the same time, the staff itself can become aware of the need for an investigation. I like the word "investigation."

Mr. ANTHONY. We quit calling them studies and started calling them projects.

Mr. DANIELSON. When you investigate a subject, first you and your staff try to prescribe some parameters to the investigation and try to identify some salient features of the subject that you feel needs some exploration?

Mr. ANTHONY. Yes, sir; we try to do that. We cannot do it as much as we ought to because we have not the manpower. It is a big problem.

Mr. DANIELSON. I sensed that. I just wanted to have the record clear. That is a problem for you.

Mr. ANTHONY. It is our biggest staffing problem.

Mr. DANIELSON. I can understand how the public members really would not have time to sit down and ponder the plan of investigation; they might not mind evaluating the result of the investigation after someone else has performed it.

Mr. ANTHONY. You have caught the situation exactly.

Mr. DANIELSON. I can see a difference there.

Your last authorization was for how many years, in the aggregate?

Mr. ANTHONY. 5 years, sir.

Mr. DANIELSON. I think that is too long for your Conference, and yet I would not want to put you on a 1-year sprocket like the Defense Department.

Mr. ANTHONY. Please do not.

Mr. DANIELSON. It should not be, but it is too long. Five years' inflation, averaging better than 7 percent, has given you a 35 percent cut in your appropriations so far as effective money is concerned.

Mr. ANTHONY. There was a staggered increase but it was pretty well wiped out by inflation.

Mr. DANIELSON. I have looked at your increase and it has been nominal. As a matter of fact, you have never reached full authorization.

Mr. ANTHONY. We have always got appropriated everything OMB let us request.

Mr. DANIELSON. As I understand, you have never reached your full authorization.

Mr. ANTHONY. That is correct.

Mr. DANIELSON. You have come as close as \$20,000 in this current fiscal year, but that is pretty nominal in today's expenses for any organization.

Mr. ANTHONY. It is big money to us. We tried to get a supplemental for it.

Mr. DANIELSON. I understand. I do not think you should have 5 years—not because I would not trust you for 5 years, but I think it makes it impossible for us to give you some kind of realistic ceiling under which to live. We cannot project that far ahead.

Mr. ANTHONY. I agree with that, sir.

Mr. DANIELSON. In this last 5 years, what new and unanticipated responsibilities were mandated to you, things you had not expected at the time you got your last authorization?

Mr. ANTHONY. The largest was that of the Magnuson-Moss Federal Trade Improvement Act of early 1975.

Mr. DANIELSON. Is that two things or one thing?

Mr. ANTHONY. That is one thing. One act and one responsibility. The act set up a very elaborate procedure for the FTC to observe in making its so-called trade regulation rules. It is what is called hybrid rule-making, and it is quite novel. It applied to some 16 areas in which the Commission was proposing rules, and we costed it out. The statute

required we conduct a study of the new procedures. We costed it out at a great deal more, but budget limitation required us to operate on a sampling basis and we put it at the amount of \$220,000 in addition to the original costs of designing the project.

We will have to add a little more to that, we are afraid, in fiscal 1978. That is the largest.

Mr. DANIELSON. What was that, the biggest figure you gave us there?

Mr. ANTHONY. We have spent in contract, obligated in contract costs, \$220,000.

Mr. DANIELSON. Was that in more than 1 fiscal year?

Mr. ANTHONY. Yes; it is in 2 fiscal years.

Mr. DANIELSON. That is one. I would like a little list. As a matter of fact, I would like to have you tell us about a few but I would also request this, that you might put some of your legal eagles to work, or bookkeepers, to give us a laundry list of these unanticipated obligations which you have been mandated to perform but which could not have been considered in the budgeting process the last time you were authorized. I do not want this to become burdensome.

Mr. ANTHONY. I believe they are in our presentation.

Mr. DANIELSON. This is one time I know I am not going to be outvoted. Without objection, it will be placed in the record at this point.

[The information referred to follows:]

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES,
Washington, D.C., July 28, 1977.

HON. GEORGE E. DANIELSON,
*Chairman, Subcommittee on Administrative Law and Governmental Relations,
House Committee on the Judiciary, Washington, D.C.*

DEAR CHAIRMAN DANIELSON: During the course of the hearings before your subcommittee on July 26 you asked that we provide you with a description of those special projects undertaken by the Conference under mandate that could not have been anticipated at the time our appropriations ceiling was established in 1972. You also asked that we set forth the approximate cost of each such project.

As we mentioned during the hearing, there have been four special projects of this sort, which may be summarized as follows.

1. *IRS Project.*—This project was undertaken at the request of former Senator Montoya, in his capacity as Chairman of our Senate appropriations subcommittee. The project was designed to review the effect of certain Internal Revenue Service procedures upon individual taxpayers. It resulted in 72 specific recommendations, most of which have been implemented either by IRS or Congressional action. The project cost the Conference \$216,000 in consultant and related fees over two fiscal years—1975 and 1976. Moreover, we estimate that the involvement of the Conference's permanent staff in this project resulted in direct labor and overhead costs of approximately \$66,000. Thus, the total cost of this project was about \$282,000.

2. *Government in the Sunshine Project.*—The "open meeting" provisions of the Government in the Sunshine Act provide, among other things, that "[e]ach agency subject to the [Act] shall, within 180 days after the date of enactment * * * following consultation with the Office of the Chairman of the Administrative Conference of the United States * * * promulgate regulations". P.L. 94-409, § 3, 5 U.S.C. 552b(g). During the 180 day period prescribed for this process the Conference consulted with approximately fifty agencies. Thereafter, the Conference, in response to requests for further guidance in this area, began developing a handbook for the ongoing use of the agencies affected by the legislation. A draft of this handbook has been reviewed by the agencies and will soon be put into final form. Taking into account direct labor and overhead expenses, we estimate that this unanticipated project cost approximately \$28,000.

3. *The Magnuson-Moss Warranty.*—Federal Trade Commission Improvement Act, Public Law 93-637, § 202(d), as amended by Public Law 94-299, § 2, prescribes certain rule-making procedures for the FTC and, among other things,

directs "the Administrative Conference of the United States [to] conduct a study and evaluation of [those] rulemaking procedures * * * and * * * submit a report of its study (including any legislative recommendations) to the Congress * * *." The bulk of the empirical study called for by this legislation is being performed for the Conference by contract consultants and the Conference has thus far committed approximately \$220,000 for this purpose. An initial study designed to identify the proper scope of the project was also performed under contract during the early part of fiscal year 1976 at a cost of \$4,000. Additionally, we estimate that the cost for this project attributable to our permanent staff, including direct labor costs and overhead, will be approximately \$40,000. Thus, total expense of about \$260,000 will be incurred for the fiscal years 1976 and 1977. Furthermore, the July 5, 1978 deadline for submitting our report was set on the assumption that we could complete our study of the FTC's new trade regulation rulemaking procedures by the fall of 1977. The study is necessarily based on actual observation of these procedures. Because the FTC's pace of hearings and expected completion of rules under the new procedures is proving to be far slower than expected, it now appears that our study may not be completed until the winter or spring of 1978. Thus, and while we are not now in a position to determine the amount, it is clear that we will need to commit substantial additional contract funds in fiscal year 1978 to complete the study. It is even possible, depending on the rate of progress of the FTC's rulemaking, that we will need to seek an extension of the deadline for our report to Congress. The longer this project must be continued—something over which we have little control—the more costly it grows.

4. The Railroad Revitalization and Regulatory Reform Act of 1976, Public Law 94-210, among other things, directed the ICC to submit to Congress within a prescribed time period certain revised rules of practice with respect to matters involving common carriers by railroad. In section 305(b), the Act also provided that "[w]ithin 420 days after the date of enactment of this Act, the Administrative Conference of the United States shall submit to Congress and to the [Interstate Commerce] Commission its comments on the rules of practice * * *, together with such recommendations as it considers appropriate." Our report pursuant to this mandate was forwarded to Congress on March 31, 1977. We estimate that the direct labor and overhead costs of the project were \$4,000.

Again, we greatly appreciated the opportunity to discuss the important subject of our ceiling with you and the other members of the subcommittee during the July 26 hearings. And we are pleased to have this opportunity to describe in concrete terms the impact that Congressionally-mandated projects have on our budget planning. At the same time, I wish to stress that projects of this sort are just the kind of thing the Conference is designed to deal with and which, in the judgment of many, it has dealt with successfully in the past. We value confidence Congress as placed in us and would welcome future such projects. Our point is simply that we need adequate funding to do the job.

If the Subcommittee would like any further information concerning this or related issues, we will be happy to furnish it.

Sincerely yours,

ROBERT A. ANTHONY, *Chairman.*

Mr. DANIELSON. If you can append to it or make an extension in round numbers—but not too round—what it costs to do that, it would help.

Can you tick off just a few?

Mr. ANTHONY. There are only four. They are all mentioned in our presentation.

Mr. DANIELSON. I would like to get them in this record.

Mr. ANTHONY. The first I have mentioned. The second was really a request rather than a statutory mandate that was the Internal Revenue Service project Mr. Cohen described.

Mr. DANIELSON. The one that cost about \$225,000 and 75 percent of the recommendations have been adopted?

Mr. ANTHONY. That is correct. You have the essential information, Mr. Chairman. That was requested by the then chairman of the Senate Appropriations Subcommittee that has oversight over both the

administrative conference and the Internal Revenue Service. It was at the time of such things as the enemies list—this was before I was chairman—and the thought was that it would be a valuable thing for the conference to undertake. While it was not a statutory mandate, when your appropriations chairman speaks you listen.

Mr. DANIELSON. What was No. 3?

Mr. ANTHONY. The Sunshine Act of 1976, which required that each of the 47 collegial agencies covered by that act consult the Office of the Chairman of the Administrative Conference in preparation of their regulations to implement the act. As I answered today Mr. Moorhead, that took—we are not done yet—two-thirds of the time of Mr. Berg and the top staff man and another lawyer for a period of 5 months.

Mr. DANIELSON. It took some support staff time too, I imagine.

Mr. ANTHONY. Yes.

Mr. DANIELSON. Can you give me a ballpark figure as to what that cost?

Mr. ANTHONY. I would be glad to submit it for the record.

[See letter of July 28, 1977, from Robert A. Anthony, Chairman, Administrative Conference of the United States to Hon. George E. Danielson, Chairman, Subcommittee on Administrative Law and Governmental Relations *supra*, at p. 87.]

Mr. DANIELSON. You mentioned a fourth.

Mr. ANTHONY. That was the 1976 Railroad Revitalization and Regulatory Reform Act, which, with respect to railroad regulation, established a whole bunch of new requirements to be met by the ICC in new procedures for railroad proceedings.

Mr. DANIELSON. What was your function on that?

Mr. ANTHONY. The Commission had a period of time within which to generate these revisions of their procedures. Then we had a period of 60 days in which we were to report to the Congress and to the Commission the views that we held on these revisions. We did that.

Mr. DANIELSON. How big a burden did that constitute for your office?

Mr. ANTHONY. That took the bulk of the time, and I would say 75 percent or more of our time, of the senior staff attorney for about a month?

Mr. DANIELSON. You needed some support on that, too?

Mr. ANTHONY. Yes.

Mr. DANIELSON. You have an attorney. I know that means you have at least one other person. If you could do that, we will plug it.

Mr. Mazzoli, I will yield to you. Just in very brief capsule, Mr. Anthony, in your absence, has told us about the structure of the Conference, which is a little unique in government. I cannot think of anything else quite like it. The Conference is an unsalaried, unpaid organization of 90 people. Mr. Anthony simply happens to be the Chairman—and he makes the 91st person—and the 16 people we are talking about are the Chairman's staff.

The bulk of the work is done by the evaluation, guidance, and public policy decisions made by the 91-person Conference, who are not paid out of the budget. Much of it is volunteer service, and your 16-person staff is the implementing end of it.

I yield to the gentleman from Kentucky.

Mr. MAZZOLI. I thank the chairman.

I apologize for having to depart momentarily. I thank you for your patience.

Bear with me when I say this, Mr. Anthony. I think your statement earlier was inimitably unpersuasive to me as to the need for the entire Commission, much less for the need to go from \$950,000 to \$2 million. The reason it was unpersuasive was because when the chairman asked the question, or Mr. Moorhead or Mr. Kindness, you did not have available to you quickly the figures as to how much money went for staff. You said something like 40, perhaps, and you concluded very much in excess of 40.

Mr. ANTHONY. I wanted to be as accurate as I could.

Mr. MAZZOLI. That should be basic testimony. You should have that not only in your mind but certainly on a piece of paper, because that is what this whole program is. You are coming to us to ask for a doubling or a trebling in the amount of your money, a jump from 16 to 34 in your staff, indicating that you are at that point being able to accept a great many more assignments with this additional, and yet very basic information, it seemed to me, was not available.

How was it you were not prepared to answer that particular question?

Mr. ANTHONY. It is a fair question, Mr. Mazzoli, and I recognize I may have been better prepared than I was or should have been.

I know my ballpark figures on my personnel on our research and on the other administrative costs. I have the figures in front of me, I am prepared, I wanted to give Mr. Moorhead a more accurate figure. It turns out my figure is very accurate. It is a little in excess of 40 percent. I know my rough parameters. I have not computed it.

Mr. DANIELSON. Would the gentleman yield?

While you may not know the percentage, do you know the dollars?

Mr. ANTHONY. Yes, sir.

Mr. DANIELSON. You can compute the percentage. Can you give the gentleman the dollars?

Mr. ANTHONY. Yes.

Mr. MAZZOLI. I would like you to know, and I assure you I appreciate your question—our staff each month does a projection on how much money we have spent, how much is going to be obligated, and how much runs out to the end of the fiscal year, and I will be glad to give you a copy, so that we know down to the nickel if we can, how much money we have. The reason we need to know down to the nickels is we need those nickels.

This is current fiscal year 1977. The budget authority is in column 1, \$375,000 for salaries, out of \$880,000. You see that because of the October and February pay increases those figures without an increase in staff have risen to be projected to be \$406,000 instead of \$375,000.

Mr. MAZZOLI. That is through the end of the fiscal year?

Mr. ANTHONY. Yes, sir. You see a question mark there under other Research and Seminars in column 3. We do not want to run over. That is the amount we are going to have for research between now and the end of the year, or any other discretionary expenditure. The place we get it is out of this balance down here in the corner. That is all the discretionary money we have left for this fiscal year, \$28,000, and I hope to hang on to it to commission a little research.

Mr. MAZZOLI Let me just say, Mr. Anthony, I appreciate these figures. They are new to me and I wish I had a computer. I am unable to put the 2 and 2 together to make 4 out of it. With the chairman's indulgence, I would ask permission to have a chance to look these over and submit questions in writing to satisfy me if there is any discrepancy which might, at least to our appearance, prove to be out of sync.

Were these figures that you had proposed to file with us, or would these not have been filed with us except for the questioning this morning?

Mr. ANTHONY. I brought this, in anticipation of this question. This is the current year and I did not know how much the subcommittee wanted to get into the current year.

Mr. DANIELSON. I hate to interrupt you. You mean this \$28,000 is the unobligated money from your budget through September 30, 1977?

Mr. ANTHONY. That is correct.

Mr. DANIELSON. Then, of course, you are in your new fiscal year?

Mr. ANTHONY. That is correct.

Mr. DANIELSON. I just wanted to be sure.

Mr. MAZZOLI. The only other inquiry until I can have a chance to look at this—because basically we are here for money—if the committee accepts the fact there is some function to be played by your organization, the question is to decide how much money should be granted, I must confess to you any jump from roughly 100 percent increase or maybe over a 100 percent increase really has to be looked at cautiously by any committee that has to go back home and defend this thing.

I do have another question. It has to do with what appears to be the proclivity of the group to go outside for its research. I would have pursued one line of questioning with Mr. Cohen, who was pressed for time, that is, if there is a need to have outside perspective and if there is a need to have economists and demographers and whatever else you use to make your mind up, what is the need for commission?

Mr. ANTHONY. I think there are a couple questions there and I am glad to have a chance to address them because it needs to be clarified.

The work product is largely recommendations. That has to depend in the unanimous opinion of all of us on some pretty thorough research. I tried to described a little bit of what it is to tell you how the costs of that research piles up for different uses for different projects. You do not just wing it. Usually we can do pretty well by getting a law professor, we do not have to pay their overhead because they have an office and secretary—sometimes we have to pay their secretary or student research assistants, or law clerks—but we have to have one of these products that is a good piece of solid work.

Mr. MAZZOLI. When you say you cannot do that from within—

Mr. ANTHONY. For this reason. As Mr. Cohen indicated, we have a project here on tax. Our people—you can imagine, are specialists in administrative law, but for that project they had to be specialists in tax. We'd have to have people who know something about nuclear

licensing or communications law or the problems of, as I mentioned, the customs service. We could not put together a staff that knows enough about the Federal Trade Commission and securities and transportation regulations to be able to handle the whole span of the kinds of agencies and the kinds of proceedings whose procedures we need to look at.

This is clear from the legislative history from the early years of the conference. It was never intended the research be done by our staff. We would need a staff three or four times as big to get a tax specialist one in airline regulation and have the OSHA and Food and Drug specialists on there. Once you have them on one project, you cannot put them on something else. It is much cheaper if you get a consultant for the available time—and sometimes the projects are underfunded because that is all the money we have—and have a try at it and sink a hole and see whether we can strike some oil.

Mr. MAZZOLI. I appreciate that analogy. I would like to strike oil, too, but when I go back home and tell them about striking oil, they say this sounds like a make-work operation, so as far as we know, your statements are very vague and very general, with few specifics of information of what you supplied. Maybe they exist, but if I had seen on my desk a series of programs which you have accomplished and which are laid out, start at page A and end at page Z, I would be a little more amenable to being persuaded. If I look at these figures correctly for fiscal 1978, the same would be even more true for fiscal year 1977, your research, which I assume basically is an outside component, is half of what you spend, \$395,000 in fiscal year 1977, and then \$231,000 of research. Fiscal year 1978 is projected, \$437,000 in personnel compensation, and so forth, and almost \$200,000, or roughly half, in outside research, second only to the double-dipping good-boy network around here, is the old boys' ties who work in the universities.

I am wondering if perhaps you have been led into this thing maybe innocently where you have to rely upon the university network of for-hire consultants who spend all their summers traipsing around. Do you not have talent and expertise within this Government of 2 million workers of every kind of skill that you cannot call on and have objectivity as well as expertise?

Mr. ANTHONY. In the last few years since I have been here we have been trying to reduce a little bit our reliance on the pure use of law professors. Even though they are the cheapest we can get, because they are in it for their own interests, they are interested and they are thoroughly and—

Mr. MAZZOLI. Excuse me one second. I happen to be a lawyer, but that is the kiss of death to say we are all lawyers and therefore we understand what we are talking about. That is just the problem. I sometimes wonder if there is not too much in-house lawyer in it, and I include myself in that area. I think that may be part of the problem, but you might proceed. I think that is kind of a mental block all of us have about the outsiders cannot understand what we are doing because we are lawyers and they are not.

Mr. ANTHONY. I appreciate your point on that.

Mr. MAZZOLI. It is not meant to be nitpicking, just an illustration we might be on different wavelengths than the taxpayer who has to foot this bill.

Mr. ANTHONY. I sincerely appreciate that. I was trying to make the point that you get a pretty good bang from your buck from the law professors; they are responsible and thorough and they do a good job. They are not professors of something else. I think that means something, but we have been trying to move away from pure reliance on that. In the FTC project we tried to get paralegals, people with some college, or college graduates, because they are less expensive.

We needed statistical consulting. We brought a fellow on in on a per diem, per hour, from Georgetown University instead of getting a consultant on a fuller basis or a staff person to handle the statistics.

Mr. MAZZOLI. Who makes the judgments about whether you go outside or whether you try to accomplish it with your permanent staff?

Mr. ANTHONY. I make the judgments and almost uniformly the judgment is it should be done outside because our staff is so thinly spread.

Mr. MAZZOLI. You have four lawyers.

Mr. ANTHONY. There are eight counting myself.

Mr. MAZZOLI. You exclude yourself because of administrative duties. You have seven lawyers?

Mr. ANTHONY. Yes.

Mr. MAZZOLI. That would be 7 of 16?

Mr. ANTHONY. Seven of 15 if you exclude me.

Mr. MAZZOLI. So almost 50 percent of your group is lawyers, yet you say it is routine in these investigations you are going to need an economist or statistician or—

Mr. ANTHONY. It is rare we have used them. We try to get paralegals.

Mr. MAZZOLI. If you do not have to go outside for them, do you have need for more lawyers? You have seven right there?

Mr. MAZZOLI. We need the lawyers to check out the projects so we can do a good job. When we get suggestions from you people or from other sources, say, "Take a look at the paperwork problems in ERISA, that is a big job to see what the nature and parameters of the thing are, whether, if we can do it, it is going to have promise of good results and be something we can handle financially.

Mr. MAZZOLI. Your people are busy?

Mr. ANTHONY. Yes, sir, they are very busy.

Mr. MAZZOLI. Just checking things, is that basically what they do? Are they like editors? Sending back for rewrite of some things that have been done?

Mr. ANTHONY. There is some of that, but this is only a minority of that group of seven, and that is only a small part of the work they do.

Mr. MAZZOLI. Has there ever been a suggestion you perhaps have too many lawyers? Maybe you can have the number of lawyers if they are acting as lockers over and critiquing work that has been done, and maybe if you need an economist, get one full-time economist and one full-time statistician, and you could eliminate some of your outside work. With all due regard to these law professors who come so cheap, what little contact I have had with the professional, old-boy network, it does not come all that cheap or they would not hold themselves out.

They do not go for the minimum wage, that is for sure. Have you done a study on whether you can do it cheaper inhouse than by outside consultation?

Mr. ANTHONY. We have not done a study, Congressman, but we know we cannot. When you have a law teacher, he has an office, secretarial help. In effect, we are riding the backs of the university, whether they are wearing the old boys' ties or not, they are contributing something that we get. The rule of thumb for good professional investigators is \$60,000 by the time you pay their salary and give them office space and a secretary and their travel and the rest of it. We do not have to pay that much even on a full-time equivalent basis. We also have the advantage of being able to choose a consultant who knows something about the particular problem. If we have a problem in the Federal Trade Commission or trade regulation area, we go straight for a person, assuming he has all the other credentials, who knows something about that and who has already a running start on it.

If we had them on our staff, we would have a person who could deal with the question we have.

Mr. MAZZOLI. I have had your indulgence long enough, and the Chairman's, and I would not persist in the line of questions. I just have to express to you my own reservation about this much outside work as against maybe doing it inhouse. I have to express a concern about top-heaviness about legal talent. As I understand, you are hiring out for nonlegal talent sometimes. It is possible they could be taken aboard. I have not had a chance to study your schematic of what you intend to spend and what you have spent. As far as I know, this was not sent to us, so I have not really had a chance to look it over.

Mr. DANIELSON. I received it several days ago.

Mr. MAZZOLI. Maybe my attorney did not send it to me. I did have this summary of your statement which I read this morning, which I assume gives me basically what is in the more detailed schedule, but I have to confess I have some concern about the magnitude of the proposed increase in appropriations in view of what I see to be rather vague justification and mostly the speculation as to where you might be in the future.

Mr. ANTHONY. If I might—

Mr. MAZZOLI. I appreciate your help. I do not want to delay the committee.

Mr. DANIELSON. You had an answer.

Mr. ANTHONY. If I might respond, it is vague because we cannot say for sure what we are going to be doing 2, 3, or 4 or 5 years from now. The chairman asked me to produce a bookkeeper's pro forma budget. This is what I have done. I spent a hot day without air-conditioning doing it.

Mr. DANIELSON. This material came today but we just got it. You may have observed my comment; why can't we pass this out? This is very useful to us.

Mr. ANTHONY. What I have tried to do, Mr. Mazzoli, is to respond with the hardest, sharpest numbers we can in a situation where it is very hard to say we are going to do this in 1980 and it is going to cost that. I realize you have reservations, and I appreciate them. I understand where they come from. Either the committee and the Congress want us to do a job or they do not. That is our pitch.

Mr. DANIELSON. Let me interrupt you for a moment. First of all, without objection, I would like to have appear in the record the sheet attached, "Staffing of the Administrative Conference of the United

States"; second, the "Administrative Conference of the United States," a display of the budget for fiscal 1978 and a pro forma for 1979 broken down by OMB object classifications, and, third, the three-page document captioned, "Budget Report" dated June 6, 1977. I am showing it to the reporter so she will be sure to understand the documents to which I refer.

[The documents follow:]

STAFFING OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES—SHOWING STAFFING OF MAJOR ADMINISTRATIVE CONFERENCE FUNCTIONS

[In person; year equivalents]

Actual staffing, July 25, 1977	Proposed staffing fiscal 1979	Salaries ¹
Chairman, level II.....	Chairman, level II.....	57.5
Administration Assistant/Secretary, GS-10.....	Administration Assistant/Secretary, GS-10.....	18.0
Advice consulting, clearinghouse, education, and related functions:		
Executive secretary, GS-18.....	Executive secretary, GS-18.....	47.5
Senior staff attorney, GS-15.....	Senior staff attorney, GS-15.....	38.0
1/2 attorney, GS-12.....	1 attorney, GS-13.....	26.0
1/2 secretary, GS-7.....	2 attorneys, GS-12.....	44.0
1 secretary.....	1 attorney, GS-11.....	18.0
	3 secretaries, GS-7, GS-6, GS-5.....	33.0
Research and development of conference recommendations; statistics:		
Research director, GS-15.....	Research director, GS-15.....	44.0
2 attorneys, GS-13.....	2 attorneys, GS-14.....	59.0
1 secretary, GS-7.....	2 attorneys, GS-13.....	51.0
1/2 secretary, GS-8.....	3 attorneys, GS-12.....	64.0
Librarian/information specialist, GS-9.....	1 secretary, GS-8.....	14.0
	5 secretaries, GS-7, GS-6, GS-5.....	52.0
	Librarian/information specialist, GS-9.....	15.0
	Statistics-computer specialist, GS-11.....	17.0
Administration and implementation of conference recommendations:		
Executive director, GS-17.....	Executive director, GS-17.....	47.5
Administrative officer, GS-10.....	Administrative officer, GS-11.....	21.0
1/2 attorney, GS-12.....	1 attorney, GS-13.....	26.0
1/2 secretary, GS-8.....	1 attorney, GS-11.....	18.0
1/2 secretary/receptionist, GS-7.....	2 secretaries, GS-7, GS-6.....	23.0
Machine operator/messenger, GS-2.....	Machine operator/Messenger, GS-3.....	8.0
Total at July 1977 scales.....		741.5
Add 10 percent for Comparability Act increases October 1977 and October 1978.....		74.0
Salary cost at projected level, fiscal year 1979.....		815.0

¹ These are entered at July 1977 pay levels, before allowing for comparability increases.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

[In thousands]

	Budget fiscal 1978	Pro forma budget fiscal 1979
OMB object classifications:		
Personnel:		
Permanent.....	402	815
Other than permanent.....	35	54
Personnel benefits: Civilian.....	133	77
Travel and transportation.....	57	110
SLUC (rent).....	56	115
Other (communications, utilities).....	46	72
Printing and reproduction.....	25	53
Other services:		
Research (including statistical).....	184	600
Computer services.....	0	20
Related contracts (mainly GSA charges).....	45	70
Supplies and materials.....	25	50
Equipment.....	6	11
Total.....	914	2,047

Project title	Amount	Time period	Grantee
DEPARTMENT OF JUSTICE, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION			
Performance Measures in the Criminal Prosecution and Adjudication Process.	\$377,438	Aug. 1, 1974, to June 30, 1976....	The Rand Corp.
Effect of Adjudicative Process on the Amenability to Rehabilitation.	218,460	Sept. 1, 1974, to Dec. 31, 1976....	Stanford University.
An Assessment of the Trial Judges' Role in Plea Bargaining and Alternatives to the Guilty Plea System (Visiting Fellowship).	41,467	June 30, 1975, to June 29, 1976....	Albert W. Alschuler, University of Texas Law School.
Comparative Assessment of Alternative Policy Options in Dispute Adjudication.	250,000	March 17 to Dec. 31, 1977.....	University of Southern California.
Phase I Evaluation of Intensive Special Probation.	95,530	January 10 to Oct. 9, 1976.....	Georgia Institute of Technology.
Empirical Investigation of the Effects of Omnibus Hearing on Measures of Efficiency and Justice.	188,531	Aug. 15, 1975, to Dec. 14, 1976....	American Bar Association Section of Criminal Justice.
Computers and the Police: An Evaluation of the Use, Implementation and Impact of Information Technology.	38,755	Dec. 15, 1975, to Dec. 14, 1976....	Massachusetts Institute of Technology.
Plea Bargaining in the United States:			
Phase I.....	303,614	Sept. 1, 1975, to Dec. 31, 1976....	Georgetown University.
Phase II.....	439,110	May 1, 1977, to July 31, 1978....	Do.
Phase I Evaluation of Pretrial Release Programs.	86,209	Feb. 15, to Sept. 14, 1975.....	National Center for State Courts.
Phase I Report on Operation Identification Projects.	96,257	Oct. 1, 1974 to Aug. 15, 1975....	Institute for Public Prog. Analysis.
Phase I Report on Early-Warning Robbery Reduction Projects.	93,311	Mar. 15 to Nov. 21, 1975.....	Mitre Corp.
NATIONAL SCIENCE FOUNDATION			
A Comparative Study of the Decision-making Process of the Federal Communications Commission and the Environmental Protection Agency.	194,500	Nov. 1, 1975, to Nov. 30, 1977....	Sheila Mahoney, Urban Institute.
The Process and Outcome of Safety Regulation: The Case of Nuclear Power Generation.	204,200	Oct. 1, 1975, to Dec. 31, 1976....	Roger C. Noll, California Institute of Technology.
Innovative Forms of Regulation.....	42,300	Sept. 1, 1975, to Feb. 28, 1977....	Richard Schmalensee, University of California San Diego.
Identification of Optimum Operational Parameters and Procedures for Small Claims Courts.	275,500	June 1, 1975, to Feb. 1, 1977....	National Center for State Courts.
Identifying and Measuring Judicial Performance in American Trial Courts.		Apr. 1, 1976, to Oct. 1, 1977.....	American Judicature Society.

Note: The above projects have received support from National Science Foundation-Research Applied to National Needs (RANN). We are informed that the average cost of all RANN research projects is approximately \$140,000. RANN cost figures normally include relatively large expenditures for empirical data collection and data processing.

GENERAL ACCOUNTING OFFICE

Title of report	Total cost ¹	Date of report
Food Stamp Receipts—Who's Watching the Money?.....	\$210,504	June 15, 1977
If Defense and Civil Agencies Work More Closely Together, More Efficient Search/Rescue and Coastal Law Enforcement Could Follow.....	131,580	May 26, 1977
The Role of the Postal Rate Commission Should be Clarified.....	39,780	Apr. 7, 1977
Design and Administration of the Adverse Action and Appeal Systems Need to Be Improved.....	195,000	Feb. 5, 1974
Manual on Remedies Available to Third Parties in Adjudicating Federal Employee Grievances.....	28,000	Mar. 30, 1977
Financial Disclosure Systems in Banking Regulatory Agencies.....	30,000	Mar. 23, 1977
Problems and Progress in Holding Timelier Hearings for Disability Claimants.....	97,344	Oct. 1, 1976
Audit of Individual Income Tax Returns by the Internal Revenue Service.....	250,250	Dec. 2, 1976
The Food and Drug Administration's Financial Disclosure System for Special Government Employees: Progress and Problems.....	50,000	Jan. 24, 1977
Reducing Nuclear Powerplant Leadtimes: Many Obstacles Remain.....	50,050	Mar. 2, 1977
Alcohol and Tobacco Excise Taxes: Laws and Audits Need Modernizing.....	² 406,000	Apr. 8, 1977

¹ We are informed that the cost figures listed are overall costs, including overhead, staff salary, travel, consultant fees, and fees for outside services.

² This figure represents the cost of the entire project, including several other reports.

COMMISSION ON FEDERAL PAPERWORK

Health care study-----	\$148, 000
Procurement study-----	110, 000
Occupational safety and health study-----	26, 000
Equal employment opportunity study-----	97, 000
Segments of business study-----	44, 000

[The Commission's total budget in fiscal year 1977 was \$6,400,000.]

NATIONAL RESEARCH COUNCIL—NATIONAL ACADEMY OF SCIENCES

(Committee on Environmental Decision Making of the Environmental Studies Board).

Decision Making in the Environmental Protection Agency, January 1974 to August 1977, approximately \$750,000.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Review Panel on New Drug Regulation (Food and Drug Administration), February 1975 to May 1977, approximately \$950,000 to \$1,000,000.

Mr. DANIELSON. At that point I will yield to Mr. Coffey, counsel for the minority.

Mr. COFFEY. Thank you, Mr. Chairman.

I just have two or three questions, Mr. Anthony. Is it possible for you to give the subcommittee an estimated percentage of the research projects that you finance, that eventually are transformed into recommendations made by the Conference? Is that possible?

Mr. ANTHONY. Yes; it is possible on a strict numerical basis. I could not contrive that figure right now, but we could supply it.

Mr. COFFEY. Are almost all of the Conference's recommendations based upon research projects or contracts?

Mr. ANTHONY. Yes.

Mr. COFFEY. They are never arrived at from in-house suggestions that are studied and developed?

Mr. ANTHONY. Perhaps I misunderstood your first question. They are all based on research, somebody's. There have been a few examples in the past, not very recently, where that work has been done in-house. The last one was in 1974 producing recommendations in 1975.

Mr. Berg did a project a couple years before that in-house on use of the subpoena power. It was not a very large project in comparison to some of the others.

Mr. COFFEY. Your staff itself would work on these recommendations?

Mr. ANTHONY. Yes; on the ones that are developed by outside consultants and working with the committees. There is a great deal of staff relationship on the committee and to the consultant, both beginning and during the course of the development of the project, and recommendations.

Mr. COFFEY. Once you decide upon a particular research project and whomever is going to conduct the research is selected, I assume then there is a contract? Is there a due date written into that contract? What kind of oversight, in terms of how quickly it is done, is carried out by your staff?

Mr. ANTHONY. There is a due date. The dates sometimes are slipped. We try to keep the consultants moving. On the other hand, sometimes

they cannot be kept moving for some reasons, and where that does not conflict with our circumstances we permit extended time.

Mr. COFFEY. There is one particular person on your staff who has oversight for all the research projects?

Mr. ANTHONY. Yes; the research director seated to my left, Mr. David Martin.

Mr. COFFEY. Both Mr. Moorhead and Mr. Kindness have expressed some interest in the membership of the Conference. More specifically, they inquired about the scope of interest represented by the various public members that you select. In answering Mr. Moorhead, I think you said that it was not contemplated in the legislation—I think that is the phrase you used—that persons from the judicial or legislative branch would be members of the Conference. In reading the statute it is not quite that clear. Some of the language could be used to argue for participation by Members of the Congress or congressional staff.

Mr. ANTHONY. Governmental employees, of course, may not be public members, and Members of the Legislature and of the judiciary are Government employees, so they are not eligible.

Mr. COFFEY. It says,

The Chairman shall select the members in a manner which will provide broad representation of the views of private citizens and utilize diverse experience. The members shall be members of the practicing bar, scholars in the field of administrative law or government, or others specially informed by knowledge and experience with respect to federal administrative procedure.

Maybe I am missing it. I do not see any prohibition against somebody being a Federal employee.

Mr. ANTHONY. I can't find the precise language. But it does say that it shall be selected to obtain broad representations of the views of private citizens.

Mr. COFFEY. I didn't mean to take a lot of time of the committee. I thought it might be good to consider, if there is a prohibition in the statute, an amendment to provide for this kind of representation.

Mr. ANTHONY. I think that is an excellent suggestion.

Mr. SHATTUCK. Is not the case you are talking about private citizens? Therefore, if the member was a member of one of the other branches he would have to be appointed as a private citizen, not as a representative capacity, because he is a member of some other agency?

Mr. ANTHONY. That is my understanding. I can't find the language that says that.

Mr. COFFEY. I know in the list of members there are people from State agencies. Are they public or private members?

Mr. ANTHONY. They are public members, not Federal Government employees. Does that answer your question?

Mr. COFFEY. In the sense it's an inconsistency. You say Members of Congress could not be a public member, but somebody from the Minnesota Utility Commission could be.

Mr. ANTHONY. That is correct.

Mr. SHATTUCK. I think the point here is not because he is a State official, but because of his position as a private individual who would represent a knowledge of administrative law.

Mr. ANTHONY. That is correct.

Mr. MAZZOLI. Mr. Chairman, could I ask one question?

Mr. DANIELSON. Surely.

Mr. MAZZOLI. I am a little bit confused by these papers, and I apologize on asking a stupid question. Appendix C at page 49 there is a recommendation 76-5 which was adopted December 9 and 10 of 1976. That is page 49 of appendix C. I am just wondering, that date, December 9, appears to be the last date in this packet. Does that signify that is the last of the recommendations gotten out?

Mr. ANTHONY. That is right.

Mr. MAZZOLI. It has been 6 months since there has been a recommendation issued.

Mr. ANTHONY. There usually are two sessions a year, and one was planned provisionally for June. For a lot of reasons it has slipped over to September. So we will have a session in September.

Mr. MAZZOLI. In other words, you don't adopt anything unless by sessions when you have a session, you get together?

Mr. ANTHONY. That's right, for the formal recommendations.

Mr. MAZZOLI. Those occur usually twice a year?

Mr. ANTHONY. That's right.

Mr. MAZZOLI. Like summertime and wintertime?

Mr. ANTHONY. Usually June and December.

Mr. MAZZOLI. And perhaps you have problems you encountered. Were they internal problems, external problems, or problems of just hassling in general?

Mr. ANTHONY. Well, they were primarily that a couple of the items that we have been counting on to be ready for the membership to consider at a session in June just weren't quite ready. They were close, within a few weeks, but they didn't make it.

Mr. MAZZOLI. The old boy network let you down? Is that a fair statement?

Mr. ANTHONY. Well, I wouldn't look at it that way.

Mr. MAZZOLI. It's facetious, and I apologize for the statement; but it could be that in-house people would have more easily directed and perhaps been a little bit easier to supervise and monitor?

Mr. ANTHONY. No, sir.

Mr. MAZZOLI. Not really?

Mr. ANTHONY. Mr. Mazzoli, I recognize your reservations about even our existence, but if there is one thing I would like to try to clear up it is it just doesn't make sense to use in-house people for the whole broad range of the kinds of things, it doesn't make sense moneywise or expertisewise.

Mr. MAZZOLI. You know, I am not so sure you are not correct. I mean, I haven't made my mind up entirely on that point. I am just saying that 50 percent of your salaries that you pay, and a figure equal to 50 percent of that is paid outside, and I am just wondering if that is an inordinate amount or whether that is suitable or, you know, that is where I am kind of coming up against some imponderables personally.

Thank you very much, Mr. Chairman.

Mr. DANIELSON. I might state, Mr. Mazzoli, that in your absence I did try to run through with Mr. Anthony the composition of the Conference, because I think it's significant here. You have to remember that the staff that we are talking about is not the Conference. It's deemed to be the staff of the chairman of the Conference. The Conference is 90 people who are not salaried, approximately half of whom

come from the private sector and approximately—well, it's a little bit more from the Government sector—and a little more than half from the Government sector, but they are not salaried, they are not compensated people except they do get their travel expenses and per diem while here, and apparently they have two meetings a year.

I wasn't aware of that. How long does a meeting usually last?

Mr. ANTHONY. It usually lasts the better part of 2 days. It starts at noon or after lunch one day.

Mr. DANIELSON. Is this something like the annual meetings of the Board of Delegates of the American Bar Association? That is a very broad analogy, a loose analogy. But they meet a couple of times a year for the purpose of receiving the reports of the various committees, or at least for the purpose of discussing and voting upon those reports.

Is that the idea?

Mr. ANTHONY. And debating, yes.

Mr. DANIELSON. And it's the function of the staff to have this agenda ready for action by the Conference when it does meet, I would suppose?

Mr. ANTHONY. Yes, that is correct, sir. There are other functions of the staff.

Mr. DANIELSON. All right. Go ahead with them.

Mr. ANTHONY. First, I would like to say that the idea of the Conference was to bring together people from the private sector, representatives of agencies, and people appointed by the President as a forum. Some people are experts, if you like, and some just happen to be the general counsel of the department, and then maybe they aren't experts in administrative law but they bring the perspective of their agency or department.

The idea is to bring them together and consider problems of mutual concern. Sometimes the problem only affects a single agency, like Internal Revenue Service or Federal Trade Commission, but generally speaking, like the one Mr. Mazzoli was just alluding to, it has to do with regulations across the board, interpretive regulations. There is a good example.

There were regulations of the Internal Revenue Service that changed the qualification for a hospital to be tax exempt under I think it's 501 (c) (3) of the Internal Revenue Code, such that they no longer had to make available facilities and services to the poor, or not as much.

This was objected to as being a substantive change, but it was only an interpretation, and, therefore, didn't have to be the subject of the requirements of the rulemaking section, 553 of the APA.

Our recommendation would reach across all of the agencies to require in a case like that where there is substantial impact that there be the use of rulemaking procedures, as in the case of so-called legislative rules.

The idea, I am sorry, Mr. Chairman, if I am taking too much time, but the idea is that people come together and they bring their different perspectives and different expertise to try to address these problems.

Now, the reason our staff—even if we just took the part of our staff committed to research—can't do it is that only a portion of the

staff can be committed to research. We have an Executive Director who, God help him, he is here on the second day with all of the budget and stuff. We have pretty much all of the problems a big agency has, and it's a bigger proportion of our time to cope with them.

Our Executive Director is a lawyer and participates in the substantive work of the Conference as well. However, a function more important perhaps for the mission of the Congress is the advice-giving function, where upon request of your committee, frequently committees from the Senate and Government Operations Committees, Governmental Affairs and others, we are asked to and it's very time consuming, to review legislation and give advice.

The same from the agencies who have something in mind. The same from the Office of Management and Budget.

We also, as I may have mentioned before when you were out of the room, Mr. Mazzoli—

Mr. MAZZOLI. Excuse me, Mr. Anthony.

Mr. DANIELSON. We have to run in a minute or so. The bell is about ready to ring again, and I know it's a vote from the signal up there. So let me make a suggestion, Mr. Anthony.

I have made a few requests of you to submit some data or some figures to support a couple of comments. You will recall them, I know, because you were taking them down.

I am going to request that the reporting company get the transcript up fairly quickly so that we will be able to move rather quickly on this.

I have, Ron, in your absence, consented to the inclusion in the record of the various tables and so on on the bulky report, I have simply had it lodged with the subcommittee and we can determine how much to be printed. It's just too big a book otherwise.

Mr. MAZZOLI. Thank you very much, sir.

Mr. DANIELSON. We are going to take the matter under consideration to give us a chance to study the transcript and to study these accounting figures and tables you have given to us. We may very well get back to you with a request for something additional, but, meanwhile, we are going to take the subject matter under advisement.

I counsel you not to become too concerned, because we are going to come out with a decision on this rather quickly. I don't like to have things dangling, if I can avoid it.

Thank you very much, you and your staff, for being here this morning.

Mr. ANTHONY. Thank you, sir.

Mr. DANIELSON. I think we have learned a good deal; I know we have, and the information you have given us should work out very well.

Mr. ANTHONY. Thank you very much, Mr. Chairman.

Mr. DANIELSON. The subcommittee will stand adjourned.

[Whereupon, at 1:15 p.m., the subcommittee adjourned.]

CORRESPONDENCE

AUGUST 22, 1977.

MR. JOSEPH SCOTT,
*Executive Director, Administrative Conference of the United States, Wash-
 ington, D.C.*

DEAR MR. SCOTT: In conjunction with the Subcommittee on Administrative Law and Governmental Relations' consideration of H.R. 7662, a bill to increase the ceiling of the annual authorization of appropriations for the Administrative Conference through fiscal 1981, I would deeply appreciate it if you could provide for the Members' study the following supplemental information:

(1) A Table of Organization of the Conference. It would be of considerable assistance to the Subcommittee if you could graphically reflect the organization of the Conference as set forth in 5 U.S.C. § 575, indicating the relationship between—

- (a) the Conference and its various committees and subcommittees,
- (b) the officers and permanent and temporary employees of the Conference, including the staff of the Office of the Chairman, and
- (c) the various special employees of the Conference, i.e. contractors and consultants;

(2) A line description of permanent and temporary staff positions and responsibilities. The Members are interested in a listing, by pay grade designation, of currently-filled, authorized salary positions. This listing should include as pertinent to each such position, a description of routine general responsibilities and currently-assigned research, reporting and follow-up assignments in conjunction with specific Conference committees, Federal agencies, contractors and consultants and research or evaluation projects already underway; and

(3) A listing of the status of outstanding research contracts. Most beneficial in this area would be a listing, by project title and brief description, of the status of each outstanding, funded research contract. It would be most helpful if each designation included the total amount authorized, the number of contractors or consultants, and the amount expended and the status of the project to date, as reflected by the contractor's performance of expected obligations. An indication of dedication of permanent and temporary staff time committed to contractees for specific projects would also be of benefit to the Subcommittee.

A reply at your earliest opportunity would be greatly appreciated. If you have any questions, in this regard, please do not hesitate to get in touch with me. Thank you for your continued cooperation.

Sincerely,

WILLIAM P. SHATTUCK,
Counsel.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES,
 Washington, D.C., September 7, 1977.

WILLIAM P. SHATTUCK, Esq.,
*Counsel, Committee on the Judiciary,
 U.S. House of Representatives,
 Washington, D.C.*

DEAR MR. SHATTUCK: Attached for use in connection with the Subcommittee's consideration of H.R. 7662 is the supplemental information you requested in your August 23 letter. If you have any questions about this material, or wish any additional information, please let us know.

Sincerely yours,

JOSEPH B. SCOTT,
Executive Director.

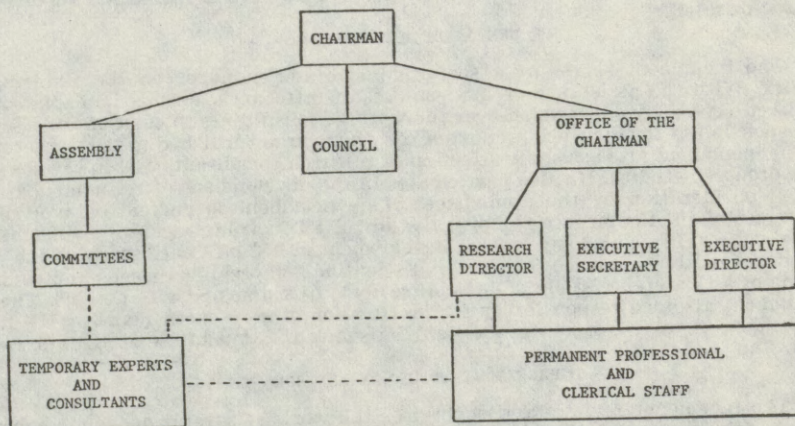
Attachments.

Attachment 1

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

2120 L STREET, N.W., SUITE 500
WASHINGTON, D.C. 20037
(202) 254-7020

OFFICE OF
THE CHAIRMAN



Attachment 2

CURRENT ACUS PERMANENT AND TEMPORARY STAFF

EXECUTIVE SECRETARY—GS-18

This is the senior staff position and the incumbent serves as the first assistant to the Chairman in respect to all aspects of the Conference's operations. The incumbent also serves as the Conference's General Counsel. He also exercises the primary responsibility for the Office of the Chairman for providing advisory and consultative services concerning administrative law matters to Congress, OMB and the agencies and preparing positions of the Office of the Chairman on proposed legislation and occasionally testifying before committees of Congress. The incumbent also shares with the Executive Director and Research Director responsibility for supervising the Conference's permanent staff. The incumbent is currently involved as the chief staff person in the preparation of the Conference's interpretive guide to the Government in the Sunshine Act. He is also being called upon to provide advice and guidance to the President's task force on reorganization of the Government's equal employment opportunity activities, and is currently serving as the staff person on the Conference's Ad Hoc Committee on Members' Disqualification. The incumbent also has a regular assignment as Staff Liaison to the Conference's Committee on Agency Organization and Personnel.

EXECUTIVE DIRECTOR—GS-17

The incumbent provides sustained administrative leadership and coordination of all Conference activities. He prepares the budget, allocates funds, and shares in supervision of the permanent staff. He also reviews the work of Conference consultants and experts and offers recommendations of subjects of Conference study. He assists in the preparation of agendas for plenary sessions and prepares the Conference's annual report. The incumbent is currently involved in budget deliberations with OMB, including preparation of the Zero Based Budget submission for FY 1979, and in planning for the upcoming Regulatory Agency Management Seminar. The incumbent is also assigned as Staff Liaison to the Committee on Rulemaking and Public Information where, among other things, he is involved in review of the consultant's study of FTC's trade regulation rulemaking procedures.

RESEARCH DIRECTOR—GS-15

The incumbent serves as a senior advisor and manager on the Chairman's staff. With the assistance of less senior staff attorneys, he has immediate and direct day-to-day supervision over the work of consultants to the Conference and responsibility for the work product of the contractors furnished to the Conference. The incumbent also assists in selection of research consultants and in the shaping of proposed studies. He also participates in the development of recommendations for consideration by the Committees. The incumbent is currently involved in overseeing the Conference's empirical study of FTC's trade regulation rulemaking procedures. He is also supervising development of a Conference study of the procedures used by agencies for resolving scientific and technical issues and completion of a Conference study of judicial review of Customs Service actions. The incumbent also has responsibility for preparation of a research plan for FY 1978. He has a regular assignment as Staff Liaison to the Committee on Grants, Benefits and Contracts.

SUPERVISORY ATTORNEY-ADVISOR—GS-15

The incumbent reviews and supervises the work of several academic consultants. He is assigned difficult and complex legal research problems and in addition to conducting research he is called upon to draft reports, prepare opinions and serve as Conference representative to various task force and study groups set up to deal with administrative law issues. He has responsibility for the Conference's program of regulatory reform and its clearinghouse of information on regulatory procedure. The incumbent is currently assigned responsibility for development of a pamphlet on rulemaking for distribution to the agencies. He is also staff liaison to the Committees on Licenses and Authorizations and on Rate-making and Economic Regulation and is currently involved in review and oversight of four major research studies: nature and sources of delay in ratemaking proceedings and procedures to ameliorate its adverse consequences; relationship between regulatory agencies and standards that are developed and drafted outside the agency but are used by the agency as part of its regulatory scheme; relationship between Federal and State banking regulation; separation of adjudicative and legislative functions between banking regulation; separation of adjudicative and legislative functions between OSHRC and OSHA and effects thereof on occupational safety and health policy. The incumbent is also assisting in preparation of the 1977 Report on Implementation of Recommendations of the Administrative Conference (hereafter Implementation Report).

STAFF ATTORNEY—GS-13

The incumbent conducts in-depth legal research and prepares opinions and recommendations for changes on matters of procedure with respect to administrative law. He participates in Plenary Sessions and ACUS meetings and supervises the work of consultants and contract employees. The incumbent is staff liaison to two Conference committees, Committee on Informal Action and Committee on Judicial Review. He is currently involved in work on the Conference's study of Judicial Review of Customs Service actions, in the development of studies in the area of informal adjudication (most notably, concerning procedures for mitigation of civil penalties), in the development of a study of State administrative procedure acts, and in review of the work of the Civil Service Commission's Advisory Committee on Administrative Law Judges. The incumbent is also the principal staff

person responsible for preparation of the Conference's Uniform Caseload Accounting System (UCAS) report and is also assisting in preparation of the Implementation Report.

STAFF ATTORNEY—GS-13

The general responsibilities are the same as those of the other GS-13 staff attorney position. The incumbent has current responsibility for the Conference's study of scientific and technical decision-making, including original research and writing in the area as well as review and oversight of the consultant's activities and the work of a temporary para-legal specialist. The incumbent is responsible for review and oversight of four other Conference studies: time limits for agency action; exercise of prosecutorial discretion in the FDA; the use of surveys in FTC decision-making; and study of agency procedural self-appraisal. The incumbent has a permanent assignment as Staff Liaison to the Committee on Agency Decisional Processes and has substantial continuing responsibility for assisting in the preparation of the UCAS and Implementation reports.

STAFF ATTORNEY—GS-12

The incumbent has the same kinds of responsibilities assigned to staff attorneys at the GS-13 level, although he usually performs his duties with greater supervisory control. He is the principal, permanent staff person responsible for preparation of the Implementation Report. He also has been assigned to assist the Executive Secretary in the preparation of the Conference's interpretive guide to the Government in the Sunshine Act and the Executive Director in preparation of the Zero Based Budget submission. The incumbent also has substantial responsibility for development of the Conference's Regulatory Agency Management Seminar. He has a permanent assignment as staff liaison to the Committee on Compliance and Enforcement Proceedings.

LIBRARIAN—GS-9

The Conference's librarian performs regular library duties, including the classifying and cataloging of ACUS's collection of legal and reference materials and the arranging of them in an organized fashion. The incumbent also manages the acquisition of new library materials and establishes systems for distribution of pertinent legal research and other reference materials. He also serves more generally as the Conference's information specialist.

STAFF ASSISTANT—GS-10

Serves as personal secretary to the Executive Director and also performs duties of the administrative officer, including payment of all bills and handling of all personnel actions.

PRIVATE SECRETARY TO THE CHAIRMAN—GS-10

Incumbent performs the full range of secretarial duties for the Chairman and also assists him in liaison with Conference Members and in the making of arrangements for Conference Plenary Sessions, committee meetings and the like.

SECRETARY—GS-8

Incumbent performs secretarial duties for the Executive Director and one staff attorney. She also serves as backup secretary to the Chairman and assists Chairman's private secretary in full range of activities she performs.

SECRETARY—GS-7

Incumbent serves as personal secretary for the Research Director and, on a time available basis, assists staff attorneys by providing secretarial services to them.

SECRETARY—GS-7

Incumbent provides secretarial duties for several staff attorneys and also serves as Conference receptionist.

SECRETARY—GS-6

Incumbent serves as personal secretary to the Executive Secretary and, on a time available basis, assists staff attorneys by providing secretarial services to them.

CLERK TYPIST—GS-2

Incumbent performs routine typing duties, serves as copy machine operator and messenger.

PARA-LEGAL SPECIALIST (TEMPORARY)—GS-7

Incumbent, on a temporary basis, assists a staff attorney in work on the Conference's study of scientific and technical decision-making. Duties include research and legal writing.

Attachment 3

STATUS OF OUTSTANDING RESEARCH PROJECTS

(a) *FTC Project*.—An evaluation of the procedures employed by FTC in prescribing trade regulation rules.

Total Authorization.—\$224,000.

Project Staff.—Professor Barry Boyer is the principal contractor and the balance of the project staff is as follows:

Jamie Bennett, Research Manager.

Michael Bowers, Attorney.

Carol DeVita, Research Analyst.

Sharon Page, Secretary.

Helene Toiv, Research Analyst.

Miriam Witlin, Attorney.

J. Bradley Reese, Coder.

Lin Hoffman, Coder.

B. Cartwright, Consultant.

Status.—\$209,000 of the contract amount has been disbursed. Professor Boyer has submitted a draft of a portion of the report and he and staff are working on balance of report. Delays in completing the project have been caused by the FTC time table and the fact that the new rulemaking process is taking longer than expected.

ACUS Staff Assistance.—Research Director has devoted substantial time working with Mr. Boyer for past year and a half, and other professional staff members have worked a total of about 3 months on the project.

(b) *Waiver and Exemption Project*.—A study of the procedures for waivers and exemptions from rules of general applicability

Total Authorization.—\$3,500.

Project Staff.—Marshall Breger, contractor.

Status.—None of the contract money has yet been disbursed. Project is expected to be completed by 7/30/78.

ACUS Staff Assistance.—None.

(c) *FTC Survey Project*.—A review of the use by FTC of surveys in its decision making.

Total Authorization.—\$3,500.

Project Staff.—Ernest Gellhorn.

Status.—No contract funds have yet been disbursed and we are awaiting submission of the contractor's report.

ACUS Staff Assistance.—None.

(d) *Outside Standards Project*.—Study of the relationship between regulatory agencies and standards that are developed and drafted outside the agency but are used by the agency as part of its regulatory framework.

Total Authorization.—\$8,000.

Project Staff.—Robert W. Hamilton, contractor.

Status.—Mr. Hamilton has submitted an initial draft of his report and on that basis \$2,000 of the contract amount has been disbursed to him. Conference staff are currently reviewing the draft and it will soon be returned to Mr. Hamilton for revision.

ACUS Staff Assistance.—General supervision and review only.

(e) *Emergency Procedures*.—Study of the procedures used in emergency economic control programs.

Total Authorization.—\$8,000.

Project Staff.—Edmund Kitch, contractor.

Status.—No contract funds have yet been disbursed to the contractor.

ACUS Staff Assistance.—None.

(f) *State Administrative Law Procedures.*—Project to identify specific procedural ideas drawn from state administration law, which may be appropriate for adaptation and use in the reform of federal administrative law.

Total Authorization.—\$8,500.

Project Staff.—Leslie Levinson, contractor.

Status.—Approximately \$800 of the contract amount has been disbursed to cover the expenses of research assistants. No additional contract funds have been disbursed and the project is expected to be completed by September 1978.

ACUS Staff Assistance.—General supervision and review only.

(g) *Prosecutorial Discretion in Antitrust Enforcement.*—Justice and FTC discretion in investigating and prosecuting antitrust cases.

Total Authorization.—\$5,000.

Project Staff.—Thomas J. Maroney, contractor.

Status.—No contract funds have yet been disbursed, although in accordance with the contract terms, Mr. Maroney has been reimbursed for travel expenses he has incurred and for a small amount of research assistance. The project is expected to be completed by 6/30/78.

(h) *Judicial Review Alternatives.*—A study of alternatives to judicial review of administrative action.

Total Authorization.—\$12,850.

Project Staff.—Theodore Miles, contractor.

Status.—Approximately \$4,300 of the total contract price has been disbursed to cover expenses associated with research assistance and related matters.

ACUS Staff Assistance.—General supervision and review only.

(i) *Rate-making Delay.*—A study of the sources and delays in rate-making proceedings and procedures to ameliorate its consequences.

Total Authorization.—\$8,000.

Project Staff.—Thomas D. Morgan, contractor.

Status.—On the basis of the submission of a preliminary outline, and in accordance with the terms of the contract, \$2,000 of the contract amount has been disbursed to the contractor. Additionally, and again pursuant to the terms of the contract, approximately \$528 has been disbursed to the contractor to reimburse him for research assistance he obtained in connection with the project.

ACUS Staff Assistance.—General supervision and review only.

(j) *Judicial Review of Rulemaking.*—A study of the effects of judicial review on the procedures agencies use in their Section 553 of the APA rulemaking proceedings.

Total Authorization.—\$6,000.

Project Staff.—Nathaniel Nathanson, contractor.

Status.—Under the terms of the contract and on the basis of an initial submission, \$2,000 has been paid to the contractor. Because of the press of other responsibilities, the contractor has indicated his inability to complete the project and the Conference is now in the process of finding a new contract consultant. Approximately \$1,400 has also been disbursed to cover costs of research assistants.

ACUS Staff Assistance.—General supervision and review.

(k) *Scientific/Technical Project.*—Study of agency procedures for making scientific and technical determinations.

Total Authorization.—\$18,950.

Project Staff.—Michael Baram, contractor. On a fairly regular basis, contractor has used the services of: Edward Selig (Attorney); Brian Coyne, Richard Rook, Brian Cassidy (Research Assistants); Susan Cartwright and Donanleen Rousseau (Clerical).

Status.—\$9,950 of the contract amount has been disbursed, largely to cover salary expenses of Mr. Baram's assistants. Contractor has submitted a number of initial drafts concerning various facets of the project and Conference staff is awaiting imminent submission of additional material. A tentative judgment has been made that the project is far larger than originally contemplated and the Conference is now considering possible methods of further funding.

ACUS Staff Assistance.—One staff attorney and one temporary paralegal specialist have assisted for several months each in the research and writing associated with the project. There has also been extensive supervision and review by the ACUS Research Director.

(1) *Agency Procedural Self-Appraisal*.—A survey of methods used within past three years by selected regulatory agencies in reviewing their administrative procedures.

Total Authorization.—\$16,115.

Project Staff.—Max D. Paglin, contractor.

Status.—Approximately \$7,500 of the contract amount has been disbursed on the basis of work done by the contractor.

ACUS Staff Assistance.—Regular clerical and secretarial assistance provided to the contractor by ACUS permanent staff.

(m) *Federal Advisory Committee Act Project*.—Survey of agency experience under the legislative guidelines of the Federal Advisory Committee Act.

Total Authorization.—\$7,500.

Project Staff.—Robert E. Park, contractor.

Status.—There has been disbursement to the contractor of contract funds.

ACUS Staff Assistance.—General supervision and review by the Executive Secretary.

(n) *Disclosure Project*.—Study of the employment of disclosure requirements and procedures to guide the design of improvement of programs of federal agency regulation.

Total Authorization.—\$8,500.

Project Staff.—Roy Schotland, contractor.

Status.—No contract monies have yet been disbursed.

ACUS Staff Assistance.—None.

(o) *OSHC-OSHA Interface*.—Study of the separation of adjudicative and legislative functions between OSHRC and OSHA and effects thereof on occupational safety and health policy.

Total Authorization.—\$4,300.

Project Staff.—Neil J. Sullivan, contractor.

Status.—Contractor has submitted a draft report and on that basis, \$1,500 has been disbursed to him. Project is expected to be completed during September.

ACUS Staff Assistance.—General supervision and review only.

(p) *Time Limits Project*.—A study of the experience of selected agencies with statutory requirements that rules be promulgated within a fixed period of time and/or license applications be acted on within a fixed period of time.

Total Authorization.—\$8,000.

Project Staff.—Edward A. Tomlinson, contractor.

Status.—\$2,000 of the contract price has been disbursed to the contractor on the basis of his submission of an initial draft and pursuant to the contract terms. The completed report is due December 30, 1977.

ACUS Staff Assistance.—General supervision and review only.

(q) *Federal and State Bank Regulation Project*.—Project to review recently completed Conference study on federal and state banking regulation and design additional project concerning economic implications of the dual banking regulation system.

Total Authorization.—Consultant is on a per diem at the rate of \$152.32 per day.

Project Staff.—Frances K. Topping, consultant.

Status.—Consultant has submitted several proposed project designs and has been paid a total of \$609.28. Additional payments are pending review of her further submissions.

ACUS Staff Assistance.—General supervision and review only.

(r) *Grants Dispute Project*.—A report on the feasibility of a project concerning mechanisms for dispute resolution in intergovernmental grant programs.

Total Authorization.—Consultant is on per diem at the rate of \$150 per day.

Project Staff.—Lee Albert, consultant.

Status.—Professor Albert has submitted a final report entitled, "A Role for the Federal Judiciary in the Federal Grant Programs: An Evaluation Report for the Administrative Conference of the United States", and on that basis, total payment of \$1,050 has been made.

ACUS Staff Assistance.—General supervision and review only.