

4th Council Meeting

Sept. 18, 1961

Summary of Principal Actions

Council

E. Barrett Prettyman, *Chairman*
Manuel F. Cohen
Walter Gellhorn
Joseph P. Healey
Everett Hutchinson
James M. Landis
John D. Lane
Earl Latham
Carl McGowan
Nathaniel L. Nathanson
Max Paglin

Administrative Conference of the United States

Executive Secretary, WEBSTER P. MAXSON
Director, Office of Administrative Procedure
Department of Justice, Washington 25, D.C.

Summary of Principal Actions Taken at Fourth Meeting of the Council September 18, 1961

1. Decided against requesting the Senate to restore the \$65,000 by which the House had reduced the Conference budget. (The 1962 Supplemental Appropriation bill subsequently enacted provides an appropriation for the operation of the Conference until June 30, 1962 of \$150,000, to be supplemented by agency contribution of funds to provide a total budget of \$187,000 for fiscal year 1962, which is \$65,000 less than the \$252,000 originally planned.)

2. Authorized the Executive Secretary to employ the additional personnel (two attorneys and one secretary) contemplated in the original budget request.

3. Voted that committee staff directors be compensated at the rate of \$50 per day for time spent on Conference business through the end of the first quarter of fiscal year 1962, and thereafter at the rate of \$75 per day, with a maximum aggregate compensation of \$6,750 per committee for the nine months (October through June) comprising the last three quarters of the fiscal year.

4. Requested the Executive Secretary to submit for Council approval a proposed re-allocation of funds remaining, after the above obligations are provided for, in order to accommodate the reduction from the amounts originally requested.

5. Voted that each committee should be allocated \$1,000, on an interim basis, for the compensation of students or other non-Government assistants engaged to work with the committee or its staff director, pending a final allocation of funds for this purpose.

6. Determined that each committee should submit to the Council the names of any consultants to be engaged for committee work.

7. Approved the appointment of Messrs. Robert L. Stern and J. Lee Rankin as consultants to the Committee on Judicial Review, and Messrs. Robert M. Benjamin and Charles A. Horsky as consultants to the Committee on Compliance and Enforcement Proceedings, and authorized the Executive Secretary to place the names of the aforesaid consultants on the roll of persons eligible for the privilege of the floor at Conference sessions.

8. Accepted the resignation of Mr. Jerome K. Kuykendall and the designation of Mr. Joseph ~~V.~~ Swidler in his place as a general member of the Conference. The Chairman was requested to address a letter to Mr. Kuykendall expressing the appreciation of the Council for his participation in the Conference to date.

9. Voted to invite the Federal Maritime Commission (newly created under Reorganization Plan No. 7 of 1961) to designate one general member of the Conference.

10. Prescribed that all reports and data to be circulated with respect to the agenda for the plenary session of the Conference scheduled for December 5, 1961 must reach the Executive Secretary no later than November 21, 1961, and instructed the Executive Secretary to have such materials as the Council orders to be circulated reproduced and mailed to the Conference membership by November 27, 1961.

11. Agreed to invite the chairmen of Conference committees to hold one meeting for the purpose of discussing matters of coordination among themselves and their committees and to consider whether additional such meetings should be held.

12. Voted to request the Committee on Internal Organization and Procedure to report to the Council in November on S. 1734 (87th Cong., 1st Sess.) as modified by amendments proposed by the Bureau of the Budget, after consulting with such other Conference committees as may be interested in this legislation.

13. Agreed to accept the offer of the Information and Education Committee to map out the handling of publicity for the Conference or the dissemination of Conference information.

14. Voted that the Council should meet in New York City on Saturday, November 25, 1961, for the purpose of reviewing and commenting upon committee proposals, in accordance with the bylaws, prior to their submission to the Conference for consideration. This Council meeting is subject to cancellation by the Chairman of the Conference, after consultation with the Council members, if it appears that no meeting is necessary for the purpose stated above.

MINUTES OF THE FOURTH MEETING OF THE COUNCIL OF
THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES
HEARING ROOM B, INTERSTATE COMMERCE COMMISSION,
WASHINGTON, D.C.

September 18, 1961

MEMBERS OF THE COUNCIL

Judge E. Barrett Prettyman,
Chairman
Mr. Max D. Paglin,
Vice-Chairman
Mr. Manuel F. Cohen
Professor Walter Gellhorn
Mr. Joseph P. Healey
Mr. Everett Hutchinson
Mr. James M. Landis
Mr. John D. Lane
Professor Earl Latham
Mr. Carl McGowan
Professor Nathaniel L. Nathanson

Mr. Webster P. Maxson,
Executive Secretary

The morning session and the first portion of the afternoon session consisted of a joint meeting of the Council and the Chairmen and Staff Directors of the Conference committees. The concluding portion of the afternoon session was devoted to an executive session of the Council.

Morning Session - Joint Meeting of the Council
With the Committee Chairmen and Staff Directors

The Chairman opened the meeting at 10:00 a.m. All members of the Council were present except Mr. Lane (who joined the meeting at 11:00 a.m., having been engaged, at the Chairman's request, in Conference business involving the Conference's appropriation request under consideration during the morning

in the Senate Appropriations Committee), and Mr. Landis. The following Committee Chairmen or representatives were present to participate in the joint meeting:

Lawrence V. Meloy (attending for Emmette S. Redford, Chairman of the Committee on Personnel, who was unable to be present)

David Ferber - Committee on Internal Organization and Procedure

Robert W. Ginnane - Committee on Rulemaking

Whitney Gilliland - Committee on Licensing

Rosel H. Hyde - Committee on Compliance and Enforcement Proceedings

Charles W. Bucy - Committee on Statistics and Reports

James McI. Henderson - Committee on Information and Education

Ashley Sellers - Committee on Judicial Review

It was announced that Mr. Vance, Chairman of the Committee on Claims Adjudication, was unable to attend, but that Mr. Metzger, the Committee Staff Director, would represent him.

The following committee Staff Directors were present:

Professor Wilbur Lester - Personnel

Professor Roger C. Cramton - Rulemaking

Professor William K. Jones - Licensing

Professor Robert B. McKay - Compliance and Enforcement Proceedings

Professor Stanley D. Metzger - Claims Adjudication

Dean Robert Kramer (Staff Director) and Professor Arthur Miller (Associate Staff Director) - Judicial Review

Professor Carl A. Auerbach, Staff Director for the Committee on Internal Organization and Procedure, arriving late from New York, joined the meeting at 10:45 a.m.

The Chairman, after welcoming the Committee Chairmen and Staff Directors, briefly explained the purpose of the joint meeting, pointing out that it afforded an opportunity for the Council and the Committee Chairmen and Staff Directors to become better acquainted and more unified as a body concerned with common problems of the Conference, and further, that it gave the Council the benefit of the advice of the Committee Chairmen and Staff Directors in discussion of problems confronting the Council.

Judge Prettyman emphasized the fact that the organization of the Conference places responsibility for progress in the work of the Conference upon the standing committees of Conference members, and that the task of assuring timely completion of Conference undertakings falls immediately upon the Committee Chairmen. He expressed the hope that there would exist a cohesiveness and cooperation among the Committee Chairmen and among the Staff Directors which would minimize duplication of effort and facilitate the timely completion of committee projects. He stressed the importance of concentrating attention at this time upon committee activities which reasonably can be expected to produce specific recommendations prior to the December 1961 plenary session of the Conference, so that tangible progress can be demonstrated by the Conference by that time, without losing sight of the parallel objective of application to other problems which will require attention over the full period of Conference operation.

The Chairman explained, parenthetically, that the committee reporters had been designated in the Conference appropriation request as "staff directors," and would hereafter be referred to as such in order to avoid confusion with the "committee reporter" concept which, on Capitol Hill, generally refers to transcribing reporters.

The Chairman then proceeded to call upon the Committee Chairmen and Staff Directors to give brief statements of the progress, program, and prospects of their respective committees.

"Round Table" Reports by Committee Chairmen
and Staff Directors

Committee on Personnel

Mr. Meloy, reporting on the meeting of the Committee on Personnel held on September 16, stated that the Committee had decided, in defining the scope and priorities of its activities, to direct its attention first to matters relating to the personnel status of examiners appointed pursuant to Section 11 of the Administrative Procedure Act; second, to the personnel status of hearing officers generally; and third, as time permits, to matters relating to the employment and status of attorneys in the Federal Government. He stated that the Committee had adopted a statement furnishing direction and guidance to its Staff Director and had resolved that the Committee members be particularly alert to identify and advise the Staff Director of any relatively separable item upon which the Committee might act within a relatively brief period. Mr. Meloy expressed the view that the Committee is making reasonable progress in its assigned field of study.

Professor Lester, supplementing Mr. Meloy's remarks, stated that his primary aim is to have a good report on hearing officers by December 1962, and that it will be well into next summer before any answers to the examiner question will be developed. He indicated that it might be difficult to have concrete recommendations on broad problems by December 1961, but that the Committee might be able to present recommendations concerning some more particularized subjects by that time (e.g., extension of the Department of Justice Honor Graduate Program, or In-Service training programs for hearing officers).

Committee on Internal Organization
and Procedure

Mr. Ferber reported that the Committee had held three meetings and had developed three "outlines of study" as follows:

- (a) Delegation within agencies;

(b) Separation of functions within agencies
and the institutional decision;

(c) The role and function of the hearing examiner.

He explained that Professor Auerbach, the Staff Director, had met with agency personnel assigned to collecting information necessary for the studies, and that the Delegation Study was under way. Mr. Ferber indicated that it might be possible to complete this study in time for the development of recommendations and consideration thereof by the Conference at its December 1961 session. That study was given priority because of the fact that considerable current material on the subject is available in connection with the reorganization plans of 1961 and S. 1734 (87th Cong.).

Mr. Ferber pointed out that the study of delegation of authority probably would include the problems involved in S. 1734, but that the Committee decided to express no views on any current legislative proposals because that would divert the Committee's attention from the orderly pursuit of its planned studies and possibly involve the Conference in controversy or in time-consuming activities which would preclude it from completing its work in the allotted span of time assigned to the Conference. Accordingly, the Committee would prefer to address itself to the principles involved in S. 1734 without dealing with the proposed legislation directly.

Mr. Ferber indicated that the Committee felt a need and desire for close coordination with the Committee on Personnel and other Conference committees, inasmuch as their studies would coincide at numerous points.

Committee on Rulemaking

Mr. Ginnane listed the major areas of this Committee's concern as (1) formal rulemaking and (2) informal rulemaking. As to formal rulemaking, the Committee had decided to center its studies upon ratemaking as exemplified by the proceedings of the Interstate Commerce Commission and the Federal Power Commission. He stated that the ICC has assigned an attorney to work with the Staff Director and that the Committee hopes

to have an attorney similarly assigned by the FPC. As to informal rulemaking, Mr. Ginnane stated that the Committee is initially reviewing studies in this field heretofore made by the American Bar Association, the Hoover Commission Task Force, and others. He indicated that the study of formal ratemaking could not be completed in time for the December 1961 meeting and not before the spring of 1962 at the earliest. The Committee may, however, have a report for the December meeting with respect to informal rulemaking.

Professor Cramton stated that he would be able to devote considerable time to the ratemaking study between now and January 1962. He hopes to complete the ICC ratemaking study shortly and the FPC study in time to report to the Conference in June.

Committee on Licensing

Mr. Gilliland reported that his Committee was (1) working on a compilation of Federal licensing functions and (2) studying the licensing functions of particular agencies involving competitive economic licensing (e.g., the multiple-party route proceedings of the CAB). He stated that the Committee would examine its studies to ascertain what concrete proposals could be recommended to the December 1961 Conference session, but expressed uncertainty whether the Committee would be able to give full consideration to proposals and formulate specific recommendations within that time schedule.

Professor Jones, Staff Director for the Committee, explained that he was concentrating his studies on the question of competitive economic licensing in the ICC, the CAB, the FPC, and the FCC. He stated that his method to date had consisted principally of personal interviewing (in the ICC study) and that it had worked well, but that assistants are needed to facilitate early completion of studies of the other three agencies. He announced that he contemplates devoting about three months to the study of each agency, and intends to complete all four studies by June 1962.

Committee on Compliance and Enforcement Proceedings

Mr. Hyde stated that at its June meeting, the Committee had undertaken pilot studies of compliance and enforcement

proceedings in four agencies, and that at its meeting of September 8, it had added six more agencies to be studied. The Committee hopes to have monographs on all ten agencies prepared in time for its meeting of November 13, 1961.

Professor McKay briefly outlined his method of study, aimed at isolating problems for subsequent intensive study.

Committee on Claims Adjudication

Professor Metzger reviewed the activities at the Committee meetings held in June and July, and stated that the Committee had defined its possible field of inquiry as follows:

- (1) Contract claims adjudications;
- (2) Land claims adjudications;
- (3) Tort claims;
- (4) Benefit claims determinations.

The Committee decided to concentrate first on a study of contract claims adjudications and to use any time left after completion of that study to a review of the second category, land claims. Professor Metzger stated that replies received from agencies in response to a memorandum concerning their contract claims adjudications are being analyzed, and that detailed studies of a few agencies with broad and varied contract claims adjudication activities would be undertaken, with particular attention to problem areas disclosed by these studies. He indicated that interviews with the Chairmen of the Boards of Contract Appeals in such agencies would begin immediately. Professor Metzger stated that he has met with representatives of the Government Contracts Section of the American Bar Association and will consider suggestions received from that source as a supplement to his interviews with Government personnel. He expressed hope that the Committee could have some specific recommendations for the December 1961 Conference meeting, but stated that it was still too early to ascertain whether that time schedule could be met.

Committee on Statistics and Reports

Mr. Bucy stated that his Committee had held five meetings, and that it was concerning itself with (1) a study of the

Office of Administrative Procedure and its functions, (2) review of the Federal Reports Act, and (3) study of possible methods of grouping and classifying proceedings to facilitate comparison of activities among Federal agencies. On the latter item he has met with a representative of the Administrative Office of the United States Courts to ascertain the extent to which the experience of that Office might be useful in establishing a classification system for administrative agencies.

In the preliminary study of the functions of the Office of Administrative Procedure, Mr. Bucy stated that he found both a severe lack of funds and a lack of outside appreciation of the functions which such an Office could perform and that the statistical material which the Office has been able to gather is, as a result, deficient in many areas where statistical information could be highly useful. He stated that the Committee is making its own statistical survey, in order to fill in some of the gaps in a manner which will be useful to the other Conference committees in their studies. A questionnaire in connection with such a survey is presently being prepared.

Mr. Bucy stated that in his opinion, statistical information should not be limited to that arising out of proceedings before hearing examiners, as has been the case in Office of Administrative Procedure statistics. He stated that further studies would be made as soon as replies to the questionnaires are received.

Mr. Bucy explained that his Committee does not have a Staff Director. It has contacted the Bureau of the Census, the Bureau of the Budget, and the ICC Federal Statistical Bureau, hoping for their assistance in processing the information disclosed by the replies to the questionnaire.

Mr. Bucy indicated that it would be difficult for the Committee to arrive at any specific recommendations by December 1961, although a recommendation could perhaps be ready on the question of additional funds for statistical activities of the Office of Administrative Procedure within that time.

Committee on Information and Education

Mr. Henderson, reviewing his Committee's activities to date, stated that it had given particular attention to the following items:

1. Mr. Eberhart of the Committee has compiled a bibliography of information published under section 3 of the Administrative Procedure Act which is available to practicing lawyers. It was found that such information is voluminous and is not well organized.

2. The Committee is preparing a compilation or index-digest of information which agencies are required by statute to make public, as a basis for ascertaining the degree of agency compliance with such requirements.

3. The Committee is investigating the feasibility of compiling practice manuals for proceedings before administrative agencies. The agencies have been asked to supply copies of any practice manuals which they have prepared. Apparently, only a few agencies have such manuals and they are for agency use and are not generally made available to practicing lawyers. The Committee also intends to consider the feasibility of arranging meetings with practicing lawyers in various parts of the United States to learn what they consider to be their needs in connection with their practice before Federal agencies.

4. Along the same lines and possibly at the same time, the Committee might conduct seminars around the country to inform practicing lawyers and the public about the Administrative Conference and its work and to furnish a forum for the expression of their ideas relating to the work or subject matter of the Conference.

Committee on Judicial Review

Mr. Sellers announced that the Committee would limit itself to specific projects and would not undertake broad studies (such as, for example, whether rights of judicial review should be expanded). He listed the immediate and the longer range objectives of the Committee. As an immediate

objective, the Committee will undertake a study of the size and cost of records on appeal from administrative decisions and their bearing on delay in the decisional process. The Committee plans to give attention to the proposed new rules in the Court of Appeals for the Fifth Circuit which would provide that portions of the record to be printed need not be designated until after the filing of briefs. The Committee also plans to consider whether there are some means by which the record can be reproduced as it is developed in such form that it need not be printed or reprinted for appeal. The Committee also will study the use of pre-trial procedures on appeals for the purpose of narrowing issues and eliminating parts of records, or even dispensing entirely with production of the record on appeal in some circumstances. Mr. Sellers stated that a second immediate objective is a study of the feasibility of extending the Hobbs Act (5 U.S.C. § 1031) to other agencies than those to which it now applies, including the study of whether it should be extended to cover agencies (e.g., the ICC) from whose orders appeals are taken under special statutory provisions to special three-judge District courts. He hopes that the Committee will have a recommendation on the Hobbs Act ready for the December 1961 meeting.

As to longer range activities of the Committee, Mr. Sellers stated (1) that the Committee is maintaining liaison with the American Bar Foundation in connection with its projected study of judicial review matters looking toward the possible development of a model statute on judicial review, (2) that the Committee is in contact with Professor Bernard Ward of Notre Dame University, who is Reporter to the Advisory Committee on Appellate Rules of the Judicial Conference of the United States, and (3) the Committee also hopes to undertake a review of the rules of the various courts of appeals to determine whether there are additional areas in which uniformity of rules can be achieved and whether such uniformity could be useful in reducing costs and delays.

Comments of Judge Prettyman on
the Future of the Conference

Judge Prettyman reviewed several problems which he thought might be discussed in the joint meeting, pointing out that the Conference is now at a critical juncture, climaxing many years of activity by previous organized efforts toward

improvements in the administrative process, and that the crucial question now is whether a conference of this type can make genuine contributions. If not, there is the prospect that other devices, such as a detailed administrative code prescribed by Congress, or a White House office established by the President, or an independent office established by Congress, might eventually be tried as solutions to problems arising in the administrative process. Judge Prettyman alluded to the fact that every study of administrative procedures in the past had concluded that an administrative conference such as this one is worthwhile. He emphasized that the most important recommendation at the end of the 18 months of Conference activity may well be whether the Conference should be made permanent and, if so, the nature of a permanent Conference. The Chairman stated that the real answer to this question lies in what this Conference does rather than in debate concerning the philosophy of the administrative process. On this basis, he said, the Conference cannot afford to attempt to solve all of the many broad problems which exist, but should concentrate simultaneously on discerning and cataloging the problems, while proceeding vigorously toward specific recommendations for the solution of those problems which are susceptible of earliest solution.

The Chairman re-emphasized the importance of settling upon particular problems which can be studied thoroughly and as to which recommendations can be presented in time for the December 1961 meeting of the Conference. He gave as illustrations of problems which might reasonably be matured between now and December the following:

1. Examination of the 1954 Conference's study of uniformity of agency rules, and preparation of proposed rules to be submitted to the agencies, with implementation follow-up by the Executive Secretary of the Conference.
2. Cooperation with the ABA Committee on Judicial Review in the project for which the ABA Committee had obtained a \$75,000 grant from the American Bar Foundation. The Chairman stated that the study would be under the direction of Dean Stason, who has offered to meet with the Conference Committee on Judicial Review.

3. A study of the systemization of activities of the administrative agencies through classification of administrative proceedings, reviewing the extent, if any, to which the experience of the Judicial Conference of the United States can be profitably applied to administrative agencies.

4. Pinpointing, as soon as possible, the areas in which delays occur most frequently in the administrative process.

The Chairman then called upon the members of the Council for a round table discussion of the general nature of the Conference objectives and its time schedule.

Council Members - Round Table Discussion
of Conference Objectives and Procedures

Mr. McGowan urged concentration first upon projects on which action can be completed by December 1961, and second on those which can be completed by the June 1962 session. He stressed the importance of demonstrating concrete results this year to the fullest extent possible without becoming involved in trivialities put forward merely to attain agenda action at the December session. As an example, he said, a real contribution for his committee would be to identify causes of delay in the administrative process.

Professor Nathanson agreed on the need for focusing efforts on attainable objectives without pressing the committees for premature recommendations to meet a December time schedule. He stated, however, that even in those areas where mature committee recommendations can not be expected by December, it would be useful to have the committees' analyses of the problems (short of recommended solution) and, perhaps, suggestions as to how solutions might be sought. If such analyses are presented in advance of the Conference session, the committees would have the benefits of Conference discussions. He referred also to the desirability of obtaining maximum interchange of views and actions in the Conference as a body, to minimize the separation of talents which is otherwise occasioned by the committee system of study.

Mr. Cohen concurred in Professor Nathanson's views, emphasizing the importance of early completion of specific recommendations by the committees, but not at the expense of reporting

prematurely on undigested proposals. He also supported the idea of presenting some committee analyses to the Conference prior to their development into recommendations, for the purpose of eliciting a fuller interplay of Conference opinions on major items.

Professor Gellhorn agreed on the importance of selecting accomplishable objectives for early treatment. He pointed out also that it was important for the committees and the Conference to disclose or identify those items which clearly can not be reached by this Conference, but will remain for future treatment.

Mr. Healey urged strongly that the committees deal immediately with those problems susceptible of early analysis and thereby avoid the danger of inaction which will exist if all recommendations are delayed by insistence that nothing be finalized until the total picture is developed. If only five or six fully-developed items can be presented for decision in December 1961, this will constitute ample demonstration that the Conference can serve its purpose. Mr. Healey also thought it vital that fresh approaches to existing problems be sought rather than a mere affirmance of old studies. He supported the proposal of having seminars around the country, at an early date, in which practicing lawyers could participate and contribute their ideas.

Professor Latham suggested that this Conference need not yet concern itself too much with the question of desirability of establishing a permanent conference. This question should be dealt with in December 1962. On the question of time schedules he urged that the committees should not be pushed prematurely into making recommendations without thorough study, and suggested that the time schedule could be divided into three phases. By December 1961 the Conference could identify the principal problems without necessarily attempting to propose solutions, except where that could be done without sacrifice of mature consideration; by June 1962 tentative reports on most items might be possible, perhaps even in time to use them as bases for discussions in seminars around the country; and by December 1962 the aim must be for final recommendations. Professor Latham also cautioned against over-compartmentalization of committee work, suggesting that in some substantial fields which cut across agency and committee lines (e.g., hearing officer problems) more coordinated committee work may be needed, to achieve more unified recommendations.

Mr. Hutchinson suggested that the principal focus should be on ascertaining causes and suggesting cures for excessive costs and undue delays in the administrative process. He pointed out, however, that the Conference should not assume that these arise solely from procedural deficiencies, but may result from substantive deficiencies in the statutes under which a particular agency operates. He joined in urging the fullest measure of coordination between committees.

Mr. Paglin expressed the view that in the limited time allotted for this Conference, it should attempt to answer the ultimate question inherent in the Executive order--whether a conference can be effective to coordinate the study and review of agency problems. He stated that it is important for the Conference to distinguish between substantive problems which require long-range study and procedural problems, at least some of which are susceptible of early and specific solution and therefore should be the object of the committees' present focus. He also indicated his belief that the Conference can serve an important purpose as a vehicle of communication between the agencies and the bar.

Mr. Lane stressed the importance of pressing for early and tangible results in Conference work, and urged the Committee Chairmen to push for some recommendations by December 1961.

The morning joint session adjourned for lunch at 12:30 p.m. At Judge Prettyman's request, the Council remained for a few minutes to discuss in executive session certain budget problems as hereinafter described in the section of these minutes devoted to the executive session of the Council.

Afternoon Joint Session

The joint session of the Council, Committee Chairmen, and Staff Directors resumed at 1:30 p.m. with all persons present who were present at the close of the morning session, except that Mr. Frank Hale of the Federal Trade Commission attended as an observer for Mr. Henderson, who was unable to return to the afternoon session, and Mr. Lane, who rejoined the afternoon session at 2:30 p.m. after completing further business on behalf of the Conference relating to the budget.

Committee Chairmen and Staff Directors -
Round Table Discussion of Problems

The afternoon session opened with a round table discussion, first by all of the Committee Chairmen, and then by all of the Committee Staff Directors concerning their various problems and suggestions for meeting Conference objectives. The Chairmen stated generally that they would seek to single out such relevant problems for immediate study as appeared capable of matured consideration by their respective committees prior to the December meeting, in order to have significant items, either in the form of recommendation or preliminary analyses, completed in time for that meeting.

The Chairmen and Staff Directors also presented their views on the need for, and the best means of obtaining, greater coordination in the work of the various committees in order to eliminate excessive duplication of effort and profit from exchanges of views and experiences in committee work.

It was the consensus that committee documents should be exchanged among Committee Chairmen who can determine whether such documents would be useful for distribution to other members of their committees.

After full discussion, it was also expressed as the consensus of the Chairmen present at the meeting that a meeting of all the Chairmen, organized without undue formality, might be useful in promoting inter-committee coordination. At the first such meeting the Committee Chairmen could decide whether additional meetings on a regular or intermittent basis would be useful. It was also expressed as the consensus that each committee should review its fields of study to determine whether it can present to the December Conference session some finished recommendation on specific problems, plus a report identifying the problems with which the committee is concerned and outlining its plans for attacking such problems.

It was agreed by those present that any data or committee reports to be presented to the Conference plenary session in December must be furnished to the Executive Secretary no later than November 21, 1961, so that he can reproduce such reports for the Council meeting on November 25, 1961, and forward them to the Conference members at least one week before the Conference plenary session opens.

Consideration of S. 1734

The Chairman explained to those present that Senator Carroll had requested him to ask the Conference to consider whether it might want to comment on S. 1734, relating to the delegation of authority within the agencies, on which the Senator's subcommittee was conducting hearings. The Chairman therefore raised the question whether a study of S. 1734 should be assigned to a committee for study and recommendation to the Conference at the December meeting. Mr. Ferber reviewed his previous comments concerning the action of the Committee on Internal Organization and Procedure with respect to S. 1734, and its conclusion that the Committee should not comment on this bill specifically, but rather, upon the principles involved therein. He stated also that the Committee was of the view that Congress should not be encouraged to await Conference action on specific legislation, but should proceed with its consideration of such legislation in normal course without regard to the Conference. Mr. McKay stated that his committee would be prepared to furnish general comments on the problem of internal delegation of authority. It was then decided that the Council, in later executive session, would vote on whether to direct a study of S. 1734.

Assistance to Committees

The Chairman described the assistance available to committees, in addition to the Staff Directors, as follows:

1. Assistance by agency personnel designated by participating agencies to work with committees and Staff Directors. Requests for such assistance should be made to the Executive Secretary of the Conference.

2. Research assistance by law students, junior faculty members, or others on a paid, per diem basis. Requests by Committee Chairmen for such assistance, under the bylaws, must be approved by the Council.

3. Assistance by consultants who are persons recognized in their fields serving without compensation or on the basis of payment of transportation and travel expenses only. Under the bylaws of the Conference such consultants may be given the privilege of the floor. Although the committees can appoint

such consultants, they should be registered with the Executive Secretary so that he may place their names on the roll of persons eligible to participate in floor debate. Consultants may be assigned specific projects or may work generally with the committees. Under the bylaws, the payment of expenses of consultants must be authorized by the Council in advance.

The Chairman requested the Committee Chairmen to advise the Executive Secretary by mail of their needs for funds or assistance. Such requests, where necessary, would then be taken up with the Council.

Rules for Floor Debate at Conference Sessions

The Chairman suggested that if any of the individuals present at the joint meeting wished to suggest ideas as to rules for floor debate at Conference sessions, they were welcome to express those ideas for consideration. It was decided, however, to defer to a later date any decision on adoption of rules for floor debate.

The joint meeting of the Council with the Committee Chairmen and Staff Directors was closed at 3:20 p.m., and was followed by an executive session of the Council.

Executive Session of the Council

The executive session of the Council opened at 3:35 p.m., after the Committee Chairmen and Staff Directors had departed.

Appropriation for Fiscal Year 1962

At the noon recess the Council, in executive session, had considered the question of the Conference budget.

The Chairman explained that the Conference had requested an appropriation of \$215,000, in addition to the \$37,000 which it was estimated the agencies would contribute, to meet the anticipated expenditures of \$252,000. On September 15, the House of Representatives had passed the Supplemental Appropriation Bill for 1962 (H.R. 9169), which included the amount of \$150,000 for the Administrative Conference in place of the \$215,000 appropriation requested. The Senate Appropriations Committee had under consideration at that moment the Supplemental Appropriation bill. The question presented was whether

the Council should take action seeking to obtain a restoration of the \$65,000 eliminated from the requested budget by the House of Representatives or whether to advise the Senate Committee informally that the Conference would attempt to adjust its activities to come within the \$150,00 limitation, if that sum were concurred in by the Senate. It was unanimously agreed by the Council, after discussion, that the Conference should take the latter course. Mr. Lane was authorized to advise the Senate Committee staff informally of this decision. This action presumably would eliminate the necessity for any appearances or statements before the Senate Committee on behalf of the Conference appropriation request.

1. Re-allocation of Budget to Conform to Anticipated Reduction in Appropriation

As the first order of business in the afternoon executive session of the Council, consideration was given to a re-allocation of the anticipated appropriation of \$150,000 reducing the amounts previously allocated sufficiently to reduce the anticipated Conference expenditures in the amount of \$65,000. After a review and discussion of the budget request as originally presented to the House Subcommittee, the Council reached the following conclusions:

a. Full-time Employees. That the sum of \$22,000, originally allocated for the employment of additional personnel on a full-time basis to assist the Executive Secretary, should not be reduced. The Executive Secretary was authorized to employ the additional personnel (two attorneys and one secretary), provided for in the original budget request, as soon as the appropriation becomes available for expenditure, using as much of the \$22,000 originally allocated as is necessary for that purpose.

b. Compensation of Staff Directors. That the compensation for committee staff directors, which was originally considered in terms of an average of \$9,000 per year for each committee should be allocated on the basis of three quarters of a year, i.e., \$6,750 per committee for the last three quarters of fiscal 1962. It was determined by the Council that reporters should be compensated at the rate of \$50 per day for services rendered through the end of the first quarter (September 30, 1961); and thereafter at the rate of \$75 per day (the maximum authorized by the pending appropriation bill)

with a maximum aggregate compensation of \$6,750 for each committee for the nine months comprising the last three quarters of fiscal 1962. Such compensation as the Staff Directors had received for services during the first quarter of fiscal 1962 would not be counted toward the aggregate maximum of \$6,750. In the case of the Committee on Judicial Review, the compensation of the Staff Director and the Associate Staff Director would be combined in computing the aggregate maximum of \$6,750 for the last three quarters.

It was stressed by various Council members that the employment of the Committee Staff Directors is essentially on the basis of completion of the task as a whole regardless of time involved, and that the \$75 per day is used simply as a necessary measure for ascertaining compensation on a measurable basis.

The Council voted that Staff Directors for the Committee on Statistics and Reports and the Committee on Information and Education should be included at the rate of \$6,750 for the last three quarters in computing the allocation of funds for the Conference, even though those committees have not yet engaged such personnel.

c. Executive Secretary to Submit Proposal for Further Allocation of Budget Items. That a specific proposal for the allocation of funds remaining after the above obligations are provided for should be prepared by the Executive Secretary and submitted to the Council for approval.

2. Part-time Assistance for Staff Directors

The Council voted that each committee should be allocated \$1,000 on an interim basis for the compensation of students or other assistants employed to work with Staff Directors, and that a final allocation of funds for this purpose will be determined at a later date.

3. Approval of Appointment of Consultants

The Council voted that each committee should submit to it the names of consultants they desire to engage for committee work.

The Council approved the appointment of Robert L. Stern and J. Lee Rankin as consultants to the Committee on Judicial

Review, and Robert M. Benjamin and Charles A. Horsky as consultants to the Committee on Compliance and Enforcement Proceedings, and authorized the Executive Secretary to place their names on the roll of persons eligible for the privilege of the floor at Conference sessions.

4. Resignation of Jerome K. Kuykendall

The Chairman advised the Council of the resignation from the Conference of Mr. Kuykendall who had explained that his term with the Federal Power Commission would expire prior to the completion of the Conference's work and that he felt it to be in the interest of the Conference and the Federal Power Commission to have as a member an individual whose term would continue beyond that date. The Chairman stated that Mr. Joseph R. E. Swidler, Chairman of the Federal Power Commission, had been designated by the Federal Power Commission to replace Mr. Kuykendall as a general member of the Conference. The Council voted to accept Mr. Kuykendall's resignation and requested the Chairman to address a letter to Mr. Kuykendall expressing its appreciation for his participation in the Conference to date.

5. Invitation to Federal Maritime Commission to Designate General Member of the Conference

The Council voted to invite the Federal Maritime Commission (newly created under Reorganization Plan No. 7 of 1961) to designate one general member of the Conference.

6. Inquiry Concerning the Future Participation of Mr. Carman G. Blough

The Council noted the report of the Chairman of the Committee on Statistics and Reports concerning his difficulty in contacting Mr. Carman G. Blough, a member of the Committee. The Council requested the Chairman of the Conference to ascertain from Mr. Blough whether he would be available to participate in Conference and committee activities in the future.

7. Deadline for Materials to be Considered at December 1961 Plenary Session

The Council prescribed that all reports and data to be circulated for the December 5 plenary session must be in the hands of the Executive Secretary no later than Tuesday,

November 21, 1961 and instructed the Executive Secretary to have such materials reproduced and mailed to the Conference membership by November 27.

8. Coordination Meeting for Committee Chairmen

The Council voted to invite the Committee Chairmen to hold one meeting for the purpose of discussing matters of coordination among themselves and their committees and to consider whether additional such meetings should be held.

9. Referral of S. 1734

The Council discussed Senator Carroll's request for comments on S. 1734. It was voted that S. 1734 be referred to the Committee on Internal Organization and Procedure; and that the Committee be requested to report on the bill (referring to S. 1734 as modified by the proposed amendments of the Bureau of the Budget) in November, after consulting with such other Conference committees as may be interested in this legislation.

10. Dissemination of Information on
Conference Activities

The Council voted to accept the offer of the Information and Education Committee to map out the handling of any publicity for the Conference or the dissemination of any Conference information program. It deferred consideration of publicity programs tendered by outside sources.

11. Council Meeting, November 25, 1961

The Chairman raised the question of the necessity for a Council meeting in November to permit the Council to perform its function of reviewing and commenting upon committee proposals prior to their submission for consideration by the December session of the Conference. Since such proposals are to be submitted by November 21, the Council voted to set a meeting for Saturday, November 25, 1961, subject to the meeting's being cancelled by the Chairman of the Conference, after informal consultation with the Council, if it became clear that the Council members had no comments on or objections to the committee proposals.

12. The Council deferred consideration of the adoption of rules to govern floor debate in Conference sessions.

The executive session of the Council adjourned at 5:30 p.m.

