

**THE ADMINISTRATIVE CONFERENCE  
OF THE UNITED STATES**

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In July of 1949 there was testimony before a Special Subcommittee of the Judiciary Committee of the House of Representatives relating to delays in the trial of certain cases. In the course of these hearings the chairman announced: ". . . we have communicated with Chief Justice Vinson and we have asked him to request the Senior Council of Circuit Judges, when they meet in September, to endeavor to develop some timesaving procedures, procedures especially in the antitrust laws." Thereafter, at its September meeting, 1949, the Judicial Conference of the United States adopted a resolution which read, in part:

The conference was of the opinion that experience has indicated the desirability of examining the present procedure governing controversies arising under the antitrust laws and the various statutes establishing regulatory agencies with a view to advancing their effective, expeditious, and economic disposition, and authorized the designation of a committee of the conference to consider: [means by which these ends might be achieved.]

The Chief Justice appointed a committee of ten judges, Circuit Judges Stone, Magruder, Augustus Hand, Lindley, and Prettyman, and District Judges Chesnut, Kloeb, Leahy, Rifkind, and Yankwich.

At its first meeting the committee took action which is reflected in the following extract from a letter from the committee to the Chief Justice:

The committee was troubled by the assignment to it of the administrative agency phase of the general problem. The members of the committee were of the view that their own limited experience in this field would place a limited value upon their recommendations in the field.

After careful discussion the committee unanimously instructed me to suggest respectfully to you the appointment of a second section to this committee, to be composed of persons familiar with the problems of the administrative agency procedure, for example, members or general counsel of commissions or experienced private practitioners before the agencies, or both.

Thereupon the Chief Justice authorized the appointment of "an Advisory Committee, composed of persons in and out of the government familiar with the problems of administrative agency procedure." On June 20, 1950, such an Advisory Committee was appointed. It had twelve members--three members of administrative agencies, three general counsel for agencies, two private practitioners who had then recently left membership on administrative agencies, and three lawyers in the general practice with prior administrative law experience. In a footnote are the names of the members of that committee.<sup>1</sup>

This Advisory Committee spent nine months in "a firsthand investigation of the causes of excessive delay and expense and unduly voluminous records

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<sup>1</sup> E. Barrett Prettyman, chairman; Clyde B. Aitchison, John Carson, Benedict P. Cottone, Robert K. McConnaughey, E. L. Reynolds, Paul L. Styles, Preston C. King, Jr., Joseph J. O'Connell, Jr., Bradford Ross, John L. Sullivan, Roger J. Whiteford.

in the procedures of federal regulatory agencies, and possible remedies therefor." On March 30, 1951, it submitted its report, which contained a dozen recommendations. The first was for an "Administrative Agency Conference." The idea was first suggested by Clyde Aitchison, of the ICC, a member of the committee, and at that time the dean of all commissioners in the government. At any rate he made a speech during that time to the ICC Practitioners Association, which was later published in its Journal of November, 1950 (Vol. XVIII, pp. 118, 120-122). In that talk the commissioner stressed the responsibility of the commission and of its practicing bar in the formulation of remedies for the problems of cumbersome, costly, and overly detailed procedures. Here the germ of an idea can be readily detected. The Advisory Committee said:

The regulatory agencies themselves must solve this problem. The solution may best be accomplished by the co-operation of all agencies involved; in fact, a co-operative approach, with mutual exchange of experience and suggestions, seems imperative for the most efficient functioning of the administrative agencies. With such an approach to this problem in mind, your committee's primary recommendation is that the Judicial Conference suggest to the President that he call or cause to be called, a Conference of Representatives of the Administrative Agencies having adjudicatory and substantial rule-making functions, for the purpose of devising ways and means for achieving the objectives with which this committee is concerned.

The Judicial Conference Committee to which this report was addressed approved it, and the Judicial Conference itself approved it. At its meeting in September, 1951, the conference adopted a resolution as follows:

Upon consideration, the conference ordered that the committees' suggestions and recommendations with respect to the call of a Conference of Representatives of the Administrative Agencies having adjudicatory and substantial rule-making functions, be approved with this additional recommendation:

That representatives from the federal judiciary and the bar as may be desired be designated to attend said conference and to serve in such capacity as the President may determine.

Chief Justice Vinson duly transmitted this suggestion to the President.

On April 29, 1953, President Eisenhower issued a document addressed "To All Executive Departments and Administrative Agencies." He said, in part: "Accordingly, I am happy to call a conference of representatives of the departments and agencies, and of the judiciary and the bar, for the purpose of studying the problems thus described."

He requested the Attorney General to cause a list to be prepared of the departments and administrative agencies having adjudicatory and rule-making functions. He requested each department and agency thus listed by the Attorney General to designate a representative to meet with other such representatives in a conference. With the agreement of the Chief Justice he invited three federal judges to participate. He named three trial examiners and twelve practicing lawyers to participate.

The Attorney General listed 57 agencies. Thus the conference was composed of seventy-five members. This conference came to be known as the President's Conference on Administrative Procedure. It operated in the following fashion: A "Committee on Organization and Procedure," consisting of six members, was appointed and acted as an executive committee, planning the organization and the rules of procedure. Nine other standing committees were appointed--on prehearing, pleadings, evidence, trial problems, hearing officers, judicial review, uniform rules, office of federal administrative procedure, and style.<sup>2</sup>

These committees conducted studies of the subjects assigned to them by the conference. Some of them conducted extensive hearings. They summoned to their assistance prominent experts in the field, who were denominated consultants. The committees prepared reports, some of which were extensive and contained much basic material. These reports were circulated to the members of the conference but were not debated or acted upon by the conference. The committees also submitted "recommendations," which were direct and succinct and based upon or drawn from reports. These recommendations were placed on the agenda of the conference and were debated and adopted or rejected. When adopted, they were referred to the Committee on Style for editorial revision. This

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<sup>2</sup> The chairmen of these committees were John C. Doerfer, Allison Rupert, Emory T. Nunneley, Jr., Edmund L. Jones, Earl W. Kintner, Lambert McAllister, Thomas J. Herbert, John A. Danaher, and Conrad E. Snow.

procedure was, generally speaking, the procedure usually followed by legislative bodies.

The conference held four plenary sessions, June 10, 11, 1953, November 23, 24, 1953, October 14, 15, 1954, and November 8, 9, 1954. It adopted 35 recommendations, two addressed to the President, three to the Judicial Conference, seven to the Civil Service Commission, one to the General Services Administration, and 22 to the various government agencies. It adopted a final report, which was duly transmitted to the President. As its final action the conference adopted a resolution recommending that a similar conference be established on a permanent basis. President Eisenhower acknowledged receipt of the report on March 3, 1955, and said, in part:

The work of the conference has shown that an exchange of experience and views between federal administrators and between them and members of the practicing bar and the judiciary produces useful results. I am confident that means will be devised for continuing such co-operative effort.

The resolution respecting a permanent conference was referred by the President to the Attorney General.

Thereafter several parallel series of events ensued. The Judicial Conference of the District of Columbia Circuit, the American Bar Association, the Federal Bar Association, and the chairman of the large independent agencies all studied and took action in respect to the proposal for a permanent conference of the agencies respecting their procedures and other problems.

In the fall of 1958, in preparing for the Judicial Conference of the District of Columbia Circuit to be held in the spring of 1959, the Committee on Arrangements listed as one topic for the consideration of the conference "Problems of Administrative Law."

This Circuit Judicial Conference consists of all the federal judges on the district court and the circuit court of appeals, various federal and municipal law officials, and about 120 members of the practicing bar who are selected by a committee of judges and lawyers. Several months before a meeting of the conference its Committee on Arrangements selects topics for debate, consideration, and action. Study groups, usually composed of twenty or twenty-five members each, are assigned to study and present recommendations on these topics. The membership of the 1959 conference included a number of government attorneys and a large number of attorneys engaged in practice before the administrative agencies.

The study group on the Administrative Law topic was chairmanned by William C. Koplovitz, Esquire. It presented three reports. All reports recommended the establishment of a permanent Conference on Administrative Procedure but they differed on machinery.

One report recommended that the Attorney General call together a group to formulate plans for the conference and to make appropriate recommendations to the President for its establishment. Another report recommended that the President call an interim conference pending

enactment of a statute, and that the permanent conference be established by legislation. The third report recommended that the chairmen of the seven large independent agencies meet and establish the conference.

After extensive debate the Judicial Conference adopted the second of these proposed recommendations; that is, an interim conference to be established by the President and a permanent conference to be established by an act of Congress. That recommendation was transmitted to the Judicial Conference of the United States, which at its September, 1959, meeting appointed a committee to consider the matter. At its meeting in March, 1960, this conference--i. e., the Judicial Conference of the United States--adopted the following resolution:

Resolved, That this conference approves the establishment of a permanent conference on the procedures of executive departments and administrative agencies in adjudications and rule makings, in which conference representatives of the departments, the agencies, and the practicing bar would participate, for the purpose of exchanging information and making recommendations to the several agencies and departments for the improvement of the administration of justice by them. The Chief Justice, as chairman of this conference, is authorized to communicate this action, at such times as he deems appropriate, to the President and to such other officers, including members of the Congress, as may be concerned with this subject from time to time; and the Chief Justice is

further authorized to implement this action further in such other ways as he may deem appropriate.

Chief Justice Warren thereafter transmitted the resolution to President Eisenhower, together with his own strong personal recommendation for such a conference.

In the meantime, coincident with the study undertaken by the Judicial Conference (D. C.) a special committee of the Federal Bar Association began a study of the matter and made a report to the National Council of that association. On May 20, 1959, the day before the meeting of the D. C. Judicial Conference, the National Council of the Federal Bar unanimously adopted a resolution which endorsed the concept of a permanent conference, and called upon the Attorney General to invite a committee of representatives of the agencies and the practicing bar to formulate plans to be presented to the President for such a conference. The Federal Bar, it can be safely said, was opposed to legislation as an initial step.

On September 24, 1959, Chief Justice Warren addressed the annual convention of the Federal Bar Association in a speech which was one of the key events in the development of administrative law in recent years. Among other things he said:

Today it is generally recognized that far too many administrative proceedings in federal agencies are also subject to excessive and unnecessary delay. Perhaps even more discouraging in the agency proceedings is the fact that meaningful information

on the state of the backlog, and the extent of the delay, is not even available.

This is true because there presently exist few criteria or standards for determining how long it should normally take to get final agency action on the ordinary administrative case.

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If there is anything which symbolizes the disillusion of the American people--of the lay public--in our legal system, it is the factor of unconscionable delay.

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Turning briefly to the legal services performed in the administrative agencies, I know that many of you are aware that last year 21 federal administrative agencies terminated in excess of 25,000 proceedings, and that the trend is continually upward....

For this reason, I am particularly glad to inform you that the Judicial Conference of the United States, at its meeting last week, approved in principle the proposal for a Permanent Conference on Administrative Procedure -- which the Federal Bar Association and judges have been advocating.

Such a conference--composed basically of agency representatives, but with practicing lawyers and other participants as well, is sorely needed to conduct continuing and practical studies of ways to eliminate undue delay, expense, and volume of hearing record; to develop uniform rules of practice and procedure; and generally to promote greater efficiency and economy in the administrative process.

Also in the meantime, at the meeting of the Council of the Administrative Law Section of the American Bar Association at Miami in August, 1959, a resolution was adopted endorsing the idea of a Permanent Conference on Administrative Procedure, the steps to be an interim conference to be setup by the President and a permanent conference to be created by the Congress. This, we may note, was the same as the view taken by the Judicial Conference (D. C.). That resolution was adopted by the section, transmitted by special order to the House of Delegates, and there adopted. Transmission to the Judicial Conference (U. S.) and to the President was authorized. At the same time the House of Delegates designated the Council of the Administrative Law Section and the Special Committee on Procedure, chaired by Smith W. Brookhart, Esquire, to act jointly in the preparation of legislation on the subject. Proposed legislation was prepared for presentation to the midwinter meeting of the House of Delegates in Chicago in February, 1961. On account of then pending events, action on that report was postponed until the August meeting, 1961.

In February, 1960, the Subcommittee on Legislative Oversight, of which Congressman Oren Harris was the chairman and Robert W. Lishman was chief counsel, submitted an interim report (House Report No. 1258, 86th Congress, 2d Session), in which attention was called to the steps being taken in the process of the formulation of a proposed permanent group to study the over-all problems of the agencies. The subcommittee said:

Current thinking is that this new organization, to be known as the Conference on Administrative Procedures, will perform, in

the administrative law field, the present functions in the judicial field which are performed by the Conference on Judicial Procedures.

Still in the meantime, the chairmen of six of the large independent agencies (Civil Aeronautics Board, Federal Trade Commission, Federal Power Commission, Federal Communications Commission, Securities and Exchange Commission, and Interstate Commerce Commission) jointly prepared a letter to the President. This was a long, detailed statement, in which the need for a permanent conference was stated and the composition of such a conference suggested. The letter further proposed that an Organization Committee prepare an agenda for the conference and suggested further that consideration of legislation not be undertaken until after organization of the conference and that recommendations respecting legislation be adopted by the conference itself. In this letter it was proposed that eight of the Cabinet departments, the Civil Service Commission, the Atomic Energy Commission, the Federal Aviation Agency, and the seven large independent agencies send representatives to the conference, and that certain bar associations nominate members. "Such associations," said the letter, "might well include" the American Bar, the Federal Bar, the I. C. C. Practitioners, the Motor Carrier Lawyers Association, the Federal Power Bar, the Federal Communications Bar, the Federal Trial Examiners' Conference, "and similar organizations." That letter was eventually completed and dated August 25, 1960.

Under date of August 29, 1960, President Eisenhower concurred in the proposal and authorized arrangements for the initial organization of such a conference. A committee, which came to be known as an Organization Committee, was thereupon appointed<sup>3</sup> and after several weeks of work completed a proposed set of bylaws.

The conference envisioned by that set of bylaws was an assemblylike body of sixty-five delegates, forty of whom would be from the government and twenty-five from outside the government. One delegate would be designated by the secretary of each of nine Cabinet departments, two from each of the seven big agencies, two trial examiners, and six to be appointed at large by the chairman, with the approval of the Executive Committee. The plan envisioned that five delegates be named by the president of The American Bar Association, two by the President of the Federal Bar Association, eight from the practicing bar, five from university faculties, and five experts in nonlegal fields, all to be named by the chairman, with the approval of the Executive Committee. The plan provided for Standing committees, for a permanent secretariat, and for liaison with the Congress through the naming of six representatives, three from each house, by the Vice President and Speaker, respectively.

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<sup>3</sup>The names of the members of this committee were Donald C. Beelar, Marver H. Bernstein, Kent H. Brown, John L. Fitzgerald, Robert W. Ginnane, Earl W. Kintner, Robert Kramer, John C. Mason, Thomas G. Meeker, Carl R. Miller, E. Blythe Stason, Theodore F. Stevens, Jerrold G. Van Cise, Franklin M. Stone; E. Barrett Prettyman, chairman; and William C. Koplovitz, secretary.

The proposed bylaws described in some detail the subjects which would be considered by the conference. About this time the national election occurred, and action looking toward a call of the conference was postponed.

Promptly after the election, President-elect Kennedy named Dean James M. Landis to prepare for him a report on the administrative agencies and their problems. Dean Landis submitted his report on December 26, 1960. In it he referred to the President's request of August 29th, to the Organization Committee, and to the preliminary draft of bylaws. He recommended that this work be encouraged and continued. He said, in part:

. . . . Much can come from this effort, including not merely revisions in our administrative procedures but also the making of our regulatory agencies into a system just as the Judicial Conference of the United States has made a system of what were once isolated and individual federal courts. . . .

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The concept of an Administrative Conference of the United States promises more to the improvement of administrative procedures and practices and to the systematization of the federal regulatory agencies than anything presently on the horizon. It could achieve all that the concept of the Office of Administrative Procedure envisaged by the Hoover Commission

and endorsed by the American Bar Association hoped to accomplish, and can do so at a lesser cost and without the danger of treading on the toes of any of the agencies.

On April 13, 1961, President Kennedy sent to the Congress a Special Message on Regulatory Agencies. In the course of that message he discussed the establishment of an Administrative Conference of the United States. He said, in part: "The process of modernizing and reforming administrative procedures is not an easy one. It requires both research and understanding. Moreover, it must be a continuing process, critical of its own achievements and striving always for improvement." He announced that he had issued an Executive Order calling at the earliest practicable date the conference, to be organized by a council of lawyers and other experts from the agencies, the bar, and university faculties. He said that the council would consider questions concerning the effective dispatch of agency business, "along with the desirability of making this conference, if it proves itself, a continuing body for the resolution of these varied and changing procedural problems." He further said:

The results of such an Administrative Conference will not be immediate but properly pursued they can be enduring. As the Judicial Conference did for the courts, it can bring a sense of unity of our administrative agencies and a desirable degree of uniformity in their procedures. The interchange of ideas and techniques that can ensue from working together on problems

that upon analysis may prove to be common ones, the exchanges of experience, and the recognition of advances achieved as well as solutions found impractical, can give new life and new efficiency to the work of our administrative agencies.

In his Executive Order (No. 10934) President Kennedy established the Administrative Conference of the United States, to consist of a council of eleven members named by him and a general membership from the executive departments, the administrative agencies, the practicing bar, and other persons specially informed. "The purpose of the conference," says the Executive Order, "shall be to assist the President, the Congress, and the administrative agencies and executive departments in improving existing administrative procedures." The order provided that the composition of the membership should be determined by the council; that the total membership be not less than fifty persons, a majority of whom should be from the executive departments and administrative agencies; that the government members be designated by the heads of their respective departments and agencies; and that the other general members be named by the chairman, with the approval of the council. The order provided that the Director of the Office of the Administrative Procedure, which is in the Department of Justice, should act as the executive secretary of the conference. It authorized the making of arrangements with the President of the Senate and the Speaker of the House for participation by interested committees of the Congress.

The next day after the foregoing events the Subcommittee on Administrative Practice and Procedure of the Senate Judiciary Committee returned a report (Senate Report No. 168, 87th Congress, 1st Session) in the course of which it said, in part:

VI. The subcommittee recommends that every assistance should be given in making permanent an Administrative Procedure Conference, and that Congress should provide the Office of Administration and Reorganization with funds to provide a permanent secretariat for that conference.

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That such an assembly of the persons most directly concerned with the functioning of administrative agencies offers a continuing possibility of improvement in procedures through interchange of ideas is a matter of universal agreement. . . . . The subcommittee recommends that every congressional encouragement be given to the establishment and continuation of the conference. Since, as we have pointed out elsewhere, we believe that the guidance of the President is necessary for the improvement of the administrative process, we recommend that the permanent staff should be a part of the Office of Administration and Reorganization, and therefore a part of the President's own staff.

On April 29, 1961, the President announced the appointment of the Council of the Administrative Conference. In so doing he called attention to the fact that the council membership, apart from the chairman, was

equally divided between those from the government and those from outside the government. The members, besides the chairman, were Manuel F. Cohen, member of the Securities and Exchange Commission; Walter Gellhorn, professor of law, Columbia University, New York city; Joseph P. Healy, vice president-general counsel, Boston Edison Company, Boston Massachusetts; Everett Hutchinson, chairman, Interstate Commerce Commission; James M. Landis, special assistant to the President; John D. Lane, of the firm of Hedrick & Lane, Washington, D. C.; Earl Latham, Eastman professor of political science, Amherst College, Amherst, Massachusetts; Carl McGowan, of the law firm of Ross, McGowan, and O'Keefe, Chicago, Illinois; Nathaniel L. Nathanson, professor of law, Northwestern University, Evanston, Illinois; and Max D. Paglin, general counsel, Federal Communications Commission. Webster Maxson, Director of the Office of Administrative Procedure, was Executive Secretary.

The council thus constituted included, besides the chairman, three practicing lawyers, three professors (one of whom is an outstanding authority in political science and two are outstanding professors of administrative law), and three are from government agencies. The tenth member of the council, Dean James M. Landis was highly experienced in the chairmanship of regulatory agencies, highly experienced in the teaching of law, and highly experienced in the practice of the law.

The council was immediately called into session and met in three sessions, Monday and Tuesday, May 8th and 9th, Monday and Tuesday, May 22nd and 23rd, and on Monday June 26, 1961. On May 23rd it finalized

plans for the institution and operation of the conference. It named the agencies to be invited, approved a list of nongovernment members to be named, adopted bylaws to be proposed to the conference, adopted in general terms a program of work for the conference, and adopted a budget to be submitted to the Congress. It called the first meeting of the conference for Tuesday, June 27th, in Washington. That first plenary session was held as scheduled.

The conference thus set up was composed of a chairman and eighty-five members. Of these, ten were the council named by the President; forty-four members were named by the heads of executive departments and agencies, twenty-nine were named from outside the government, and two trial examiners were designated. The members not named by the departments and agencies were named by the chairman of the conference with the approval of the council. The composition of the conference was 60 per cent from the government agencies and 40 per cent from the outside ( $5 + 44 + 2 = 51$ ;  $5 + 29 = 34$ ). Members named by the heads of government agencies were as follows: By the Secretaries of the Cabinet departments each one member, and by some whose departments include several agencies, two members; by the heads of each of the so-called Big Seven independent agencies, two members; by the heads of 14 other agencies having rule-making or adjudicatory functions, one member each. Of the members from outside the government service, twenty-one were practicing lawyers, three were from law school faculties, two were from faculties of schools of government, and one was an accountant.

In the selection of the members from the practicing bar, a major effort was made to produce a cross section of all shades of interest in administrative law procedure. A list was made of the names of over a hundred thoroughly qualified people from which to choose. Specialists in each of the major areas of federal regulation were named. Some others with broad general experience in several areas were included. Some lawyers not specialists were named. Geography, both of the lawyers and of their major clients, was a factor, although of course several from Washington, D. C., were necessarily on the list. Not more than one member of any one law firm, or from any one university, was named. Different interests in the several areas of interest are represented, as, for example, shippers as well as the railroads and motor carriers in the field of interstate commerce. A mixture of political affiliations was sought. Every invitee accepted. The roster of the conference is attached.

No member of the conference, either from the government or from outside, appeared in a representative capacity. Each appeared as an individual, and while of course each gained assistance by inquiry and consultation, the views expressed and the votes cast by each were understood to be his own.

The conference operated on an assembly or legislative basis. Subjects for study and recommendation were immediately assigned to committees. Nine Standing committees were established. Their principal areas of interest were respectively: (1) personnel, (2) rule-making proceedings, (3) licensing and certificating proceedings, (4) compliance and enforcement

proceedings, (5) the adjudication of claims, (6) statistics and reports, (7) internal operation and procedure, (8) education and information, meaning the preparation of manuals on procedure and the holding of seminars in the field, and (9) judicial action of various sorts. Specific topics were assigned for study and recommendation, ranging from recruitment programs for lawyers in government, through improvements in procedure for all sorts of cases, formulation of criteria for measuring delay and backlogs, better internal operations, grass-root informational meeting, manuals in craftsmanship, the massive complex which is delay and expense, all the way to better means for judicial review.

The chairmen of these committees are Ashley Sellers, Esquire; Commissioner Gilliland of the CAB; Commissioner Hyde of the Federal Communications Commission; Messrs. Robert W. Ginnane, James McI. Henderson, and Cyrus R. Vance, who were, respectively, general counsel of the Interstate Commerce Commission, the Federal Trade Commission, and the Department of Defense; Messrs. Charles W. Bucy and David Ferber, who were associate counsel of the Department of Agriculture and the SEC; and Professor Emmette S. Redford of the University of Texas.

Liaison with the Congress by means of members of each house, designated by the Vice President and the Speaker, respectively, which designees are invited to attend the sessions of the conference and to enjoy the privilege of the floor. These designees are Senators Hart, Muskie, and Dirksen, and Congressmen Oren Harris, Walter Rogers, and John B. Bennett.

The Committees were fortunate in obtaining the services of educators in leading law schools in the country, who acted as full-time staff directors and as consultants as the need appeared. The names of these scholars were: Auerbach of Wisconsin and Minnesota, Cramton of Michigan, Jones of Columbia, Kramer of George Washington, Lester of Cincinnati, McKay of New York University, and Metzger of Georgetown. And the committees were authorized to secure the services of research directors, upon a retainer basis of employment, but members of the Council and of the Conference and most of the consultants served without compensation. Administrative and secretarial services were supplied the Conference and the Committees by the Office of Administrative Procedure of the Department of Justice.

The Conference, as a whole, operated in the form of a legislative assembly. The course of operation was: (1) A subject was suggested for study. Such suggestion might come from anywhere or anybody. (2) The Council adopted the suggestion and proposed its assignment to a Committee. (3) The assembly approved the Council assignment. (4) The Committee considered the subject and directed research into it. (5) A staff director made or directed the research and formulated the data thus accumulated into a staff report. (6) The Committee considered the staff report and prepared a recommendation of action on the subject. It formulated a report -- usually, of course, based upon the staff report -- in support of its recommendation. These -- the Committee report and its recommendation -- were two separate documents, one somewhat extensive

and the other succinct. (7) The Council considered the recommendation and passed it along to the assembly. Both the report and the recommendation were circulated to the entire membership. (8) The assembly debated the recommendation in a public plenary session and voted on it. (9) If adopted by the assembly, the recommendation was transmitted to the President. A total of 30 recommendations were adopted, covering a wide variety of matters, more importantly the following:

Jurisdiction and procedures for review orders of the Interstate Commerce Commission, Production of Records and briefs by means more economical than printing, and designation of record after the filing of briefs, Unification of the Armed Services Board of Contract Appeals, and elimination of subsidiary boards, Re-examination by agencies of their procedural rules, and creation of machinery within the agencies for continuous observation of procedures, Delegation of final decisional authority, Subpena practices, Licensing of truck operations by the Interstate Commerce Commission, Right to counsel of persons compelled to appear, Improper ex parte representations, Statistics on administrative proceedings (1962), Judicial enforcement of orders of the National Labor Relations Board, Rate-making procedures, Civil Aeronautics Board procedures for the consideration of domestic route applications, Federal Communications Commission procedures for the consideration of mutually exclusive applications for broadcast facilities in the same community, Federal Communications Commission procedures for broadcast licensing

Right to counsel of persons who appear voluntarily, Continuing statistical study, Advanced training of agency professional personnel; examiners; legal career service, Debarment of contractors, Discovery in administrative proceedings.

The Conference met in six plenary sessions. The First was held on June 27, 1961. The five later sessions convened on December 5 and 6, 1961, April 3, 1962, June 29, 1962, October 16, 17, and 18, 1962, and December 4 and 5, 1962. The first session was attended by 76 members, the second by 74 members, the third by 77 members, the fourth by 69 members, the fifth by 81 members, and the final session by 72 members.

The nine standing committees met for the first time immediately following the First Plenary Session. During the 18 months which followed there were a total of 93 such committee meetings.

Initial arrangements for the operation of the Conference included the establishment of an inter-agency group fund, pursuant to authority contained in the Executive order and 31 U.S.C. § 691. In this way \$60,000 was made available for the first few months of Conference operation. In September 1961, Congress added an appropriation of \$150,000 for Conference operations during the remainder of the fiscal year 1962, and in October 1962 an additional \$100,000 was appropriated for the six months of fiscal year 1963 in which the Conference would be in operation.

At the end of fiscal year 1961, \$28,018.09 of the funds contributed to the inter-agency group fund remained unobligated. At the end of fiscal 1962, \$57,543 remained unused from the total funds available. These unobligated balances were released to the Treasury of the United States.

The Conference rendered a final report of its activities under date of December 15, 1962. The report was made public.

At the same time, under date of December 17, 1962, the Conference, pursuant to section 2 of Executive Order 10934, reported its suggestions of appropriate means to be employed in the future for the purpose of improving the processes of administrative agencies. It said, in part:

"We recommend the establishment of means by which agencies in the Federal Government may cooperatively, continuously, and critically examine their administrative processes and related organizational problems. Believing that the main sources of information as well as the resolve to couple fairness with efficiency lie within the agencies themselves, we urge that the proposed organization be composed largely of governmental personnel, but with a sufficient infusion of outside experts to assure objectivity and variety of views."

It recommended the creation, on a permanent footing, of an Administrative Conference of the United States, to be composed of a council and an assembly. The Council, it said, should consist of a chairman and ten other members, the chairman to be appointed by the President, by and with the advice and consent of the Senate, for a term of five years, and other Councilors to be appointed by the President to serve three-year terms.

The Assembly, the Conference said, should be composed of the members of the Council and, in addition, not more than eighty members, to be

named preponderantly from among Government personnel by the heads of agencies designated by the Council, and, in lesser numbers, chosen by the Council from the bar, the universities, and other sources. The Administrative Conference, the recommendation said, should have power to inaugurate and conduct studies of any phase of any agency's procedures, giving "procedures" the broadest meaning, and should have power to submit recommendations to the President, the cabinet departments, the administrative agencies, the Congress and its Committees, and the Judicial Conference of the United States.

The report related the recommendation in considerable detail, and recited at length the reasons which impelled the recommendation. The report was made public.

Thereafter the Bureau of the Budget translated the recommendation of the Conference for a continuing Conference into the form of a proposed bill. The draft was introduced in the Senate by Senator Long of Missouri as S. 1664 88th Congress - 1st Session, and was referred to the Committee on the Judiciary.

## APPENDIX

### IDENTIFICATION OF COUNCIL MEMBERS

Judge E. Barrett Prettyman (Chairman), Senior Judge of the United States Court of Appeals for the District of Columbia Circuit.

Max D. Paglin (Vice Chairman) General Counsel, Federal Communications Commission, formerly Assistant General Counsel and staff member.

Manuel F. Cohen, Member of the Securities and Exchange Commission, formerly Director, Division of Corporation Finance, Securities and Exchange Commission.

Walter Gellhorn, Professor of Law, Columbia University, 1933 to date; Director, Attorney General's Committee on Administrative Procedure, 1939-1941; Office of the Solicitor General, United States Department of Justice, 1932-1933; author of various books on administrative law.

Joseph P. Healey, Vice-President-General Counsel of Boston-Edison Company; former Commissioner of Corporations and Taxation for the Commonwealth of Massachusetts; former law partner in law firm of Hemenway and Barnes, Boston, Massachusetts; Professor of Corporate Law at Boston College Law School since 1947.

Everett Hutchinson, Member and former Chairman of the Interstate Commerce Commission.

James M. Landis, Partner in the firm of Landis, Brenner, Feldman and Reilly; formerly Special Assistant to the President; Chairman of the Civil Aeronautics Board; Chairman of the Securities and Exchange Commission; Dean of the Harvard Law School.

John D. Lane, Member of the firm of Hedrick and Lane, Washington, D. C. ; formerly Administrative Assistant to Senator Brien McMahon of Connecticut.

Earl Latham, Eastman Professor of Political Science, Amherst College, Amherst, Massachusetts.

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Nathaniel L. Nathanson, Professor of Law, Northwestern University; consultant to the Justice Department with respect to administrative procedures, 1961; Office of Price Administration, Associate General Counsel, 1942-1945; Securities and Exchange Commission, 1935-1936; Law Clerk to Justice Louis D. Brandeis, 1934-1935; author of casebook on administrative law.

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