

Administrative Conference of the United States

MINUTES OF THE NINTH MEETING OF THE COUNCIL

May 14, 1962

Council

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

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 Ninth Meeting of the Council
May 14, 1962

1. Approved the designation of Mr. Nathaniel H. Goodrich by the FAA to be a member of the Conference vice Daggett H. Howard.
2. Approved printing and distribution of the statistical compilation prepared by the Committee on Statistics and Reports.
3. Approved requests of the Committee on Information and Education and the Committee on Licensing for additional staff assistance.
4. Agreed that chairmen and staff directors of committees should attend Council discussions of recommendations developed by their committees.
5. Agreed that Judge Prettyman and a committee from the Council should confer with Mr. Feldman of the White House staff after the June plenary session concerning methods for implementing Conference recommendations, and directed the Executive Secretary and the committees to make recommendations on the subject.
6. The Council referred to the Conference for consideration at its June 29, 1962 plenary session the Licensing Committee recommendation and report on ICC Licensing of Truck Operations.

7. Adopted a suggestion that committees make greater use of the practice of holding "hearings" on subjects under study, wherever useful and appropriate.
8. Disapproved a plan which had been suggested to the Committee on Information and Education whereunder it would participate in a panel discussion at the annual meeting of the ABA in August 1962, to evaluate the Conference effort based upon its accomplishments to that time.
9. Approved the payment of travel and per diem for Professor Gellhorn to proceed from Vienna to Helsinki to study and report on aspects of Finnish civil government of interest to the Conference.
10. Authorized the Chairman to appoint a special committee to consider and report on the appropriate relationship between a continuing organization for improvement in administrative procedures and the President and the Congress.
11. The Council fixed, as the time of its next meeting, Thursday, June 28, 1962 at 2 p.m.

MINUTES OF THE NINTH MEETING OF THE COUNCIL OF
THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES
UNITED STATES COURT HOUSE, WASHINGTON, D. C.

Monday, May 14, 1962

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

Judge Prettyman called the meeting to order at the scheduled hour, 10:45 a.m. All members, except Mr. Healey, Dean Landis and Mr. McGowan, attended.

Designation of Nathaniel H. Goodrich

As the first item of business, Judge Prettyman reported that the Federal Aviation Agency had requested that Mr. Nathaniel H. Goodrich be substituted for Mr. Daggett H. Howard as a member of the Conference, Mr. Howard having left the agency to engage in the private practice of law. The Council agreed to this request.

Compilation of Statistics on Administrative Proceedings

Mr. Charles W. Bucy, Chairman of the Committee on Statistics and Reports, attended the Council meeting to

present for Council approval his committee's statistical compilation on administrative proceedings pending before Federal departments and agencies during the past fiscal year. He described, in some detail, the material collected and its limitations and distributed a sample page of the compilation to illustrate the manner in which the data were proposed to be presented.

Professor Gellhorn pointed out that to the extent the survey had used a sampling technique, the results should be used with caution. He suggested that the figures would perhaps have been more meaningful if the median in addition to the mean of time intervals were reported.

Professor Nathanson suggested that reporting time intervals by grouping, for example, less than 3 months, 3 to 6 months, 6 months to 1 year, etc., would be useful in addition to reporting the median times involved.

Judge Prettyman pointed out that the Committee's inquiry was intended only as a beginning, to indicate the possibilities in statistical reporting, suggest lines of investigation by reporting agencies, and provide a basis for improvements in further reports in the future. The proposed survey, he concluded, was not intended to serve as a basis for agency final action at the present time, but rather to provide guidelines for future examination of this nature.

The Council agreed that the Committee should proceed with the publication of its compilation in substantially the same form as that described by Mr. Bucy.

Additional Committee Staff Assistance

The Council approved the request of the Committee on Information and Education for authority to employ a research assistant at \$80 per week for full-time work for approximately three months, since Mr. Kantor is returning to his position with the Antitrust Division, Department of Justice, from which he was temporarily detailed.

A request of the Committee on Licensing for authority to employ two full-time research assistants at \$1.75 per

hour and a secretary at \$2.00 per hour for 20 hours per week also was approved.

Fiscal Report

Mr. Maxson reported that he now estimates that approximately \$57,000 of Fiscal Year 1962 Conference funds would be unexpended on June 30. The House Appropriations Subcommittee has indicated that it expects to report the bill for Fiscal Year 1963 funds for the Conference about June 1.

Participation of Committee Chairmen and Staff Directors in Council Consideration of Recommendations

Professor Gellhorn suggested that the Council's preliminary review of recommendations proposed by committees for Conference adoption might be greatly facilitated by the presence, at the Council meeting, of the Committee Chairman or Staff Director familiar with the details of the recommendation under consideration.

Some recommendations, of course, are fairly simple and straightforward and do not require extended examination. However, when elaborate proposals are being considered, it could be a great advantage to have present at the Council meeting someone steeped in the topic to explain the particular language used, to answer questions, and to indicate the committee's considerations in reaching the decisions involved.

The suggestion was considered by the Council and was deemed by all present to be eminently sound. The Executive Secretary was instructed to advise the committee chairmen and staff directors of the idea and to direct the committee chairmen to indicate to the Council liaison member involved, each time a recommendation was presented, their view as to the desirability of thus participating in the Council's review of the recommendation.

Implementation of Conference Recommendations

Upon the suggestion of Professor Gellhorn, the Council engaged in a general discussion of a plan for implementing Conference recommendations approved by the President. At the end of the discussion, there was general agreement that the Chairman and others from the Council should confer with

Mr. Feldman of the White House staff after the June plenary session to develop a plan for implementing Conference recommendations. By way of preparation therefor, the Executive Secretary was asked to circulate among the members of the Council a list of the recommendations adopted, showing specifically what action may be necessary to implement each recommendation in the event it is approved by the President.

In addition, the Council instructed the Executive Secretary to ask each committee chairman, where useful, to place before his committee the question of the manner in which the committee's recommendations should be implemented, and to submit to the Council committee suggestions with respect thereto.

Professor Latham, conceding the need, in the past, of pressing for the development of early recommendations for consideration at the early plenary sessions as a means of setting the Conference in motion, suggested that at this juncture emphasis should be shifted to what he characterized as ultimate, as distinguished from interim, recommendations. He expressed the hope that the recommendations of the Conference might be embodied in a special message to the Congress from the President early next year, and that Conference activity during the remainder of this year ought to look toward such objective, uncomplicated by efforts to meet some other schedule.

Recommendation of the Committee on
Licensing Relative to Licensing
of Truck Operations by the ICC

As the first recommendation submitted by a committee for Conference consideration at the fourth plenary session, the Council considered the recommendation of the Committee on Licensing that its proposals relative to the licensing of truck operations by the Interstate Commerce Commission be transmitted to the ICC for its study. Substantially the same recommendation had been considered at the eighth meeting of the Council, on March 24, 1962. At that time it had been returned to the Committee with a request that the ICC be afforded an opportunity to comment on the recommendation before it was considered by the Conference. This

action had been taken as a result of a policy formulated at that meeting of the Council which was stated in the minutes of the meeting as follows:

"(a) When a committee proposes to make recommendations pertaining to a particular agency or agencies, the committee shall, whenever feasible, obtain the views of the affected agencies before finally formulating its recommendations, and (b) committees are requested, before making recommendations concerning the procedures of particularly identified agencies, to consider whether general recommendations concerning the same subject matter are feasible and would be more desirable. This is not intended to foreclose particularized recommendations, but simply to assure consideration of all possibilities." (Minutes of the Eighth Meeting of the Council, March 24, 1962, page 8.)

After reviewing the conversations which had been arranged between Mr. Whitney Gilliland, Chairman of the Committee on Licensing, and members of the Interstate Commerce Commission relative to the recommendation, Mr. Hutchinson explained that the Committee now offered its recommendation for study by the ICC as indicated in the footnote added to the recommendation, without urging its adoption by the ICC, and that the ICC had no objection to its submission in this manner. He indicated, however, that proposal No. 9, set forth in the recommendation, still was unclear. Also, in order to more clearly reflect the Commission's position with respect to the recommendation, Mr. Hutchinson suggested a minor change in the last sentence of the footnote.

After discussion of the appropriate function of the Conference in developing recommendations for agency consideration, it was decided, upon motion by Mr. Gellhorn, that the recommendation should not be "that the Conference transmit" the proposals for study, but rather, that the Conference should recommend to the President that the proposals "be transmitted" to the ICC for study. The first sentence of the recommendation was changed accordingly.

In order to meet Mr. Hutchinson's objection that proposal No. 9 in the recommendation was unclear, Mr. Gellhorn suggested substitute language for that part of the recommendation. The substitute language was adopted.

Thereupon, the Council voted to refer the recommendation, as amended, to the Conference providing the Committee submitting the recommendation accepted the amendments. As thus approved by the Council, the recommendation is as follows:

"Interstate Commerce Commission
Licensing of Truck Operations

"The Committee on Licenses and Authorizations recommends^{1/} that there be transmitted to the Interstate Commerce Commission for its further consideration the following proposals relating to licensing of truck operations:

^{1/} Six of the nine proposals are directed to the difficult problems connected with the scheduling and supervision of hearings in truck licensing cases; two are directed to examiners' procedures; and one to the form of agency decisions. General proposals relating to problems shared with other agencies must await a study of their nature and scope at such other agencies and an opportunity for comparison.

The ICC is constantly engaged in the examination and re-examination of its own procedures in search of methods which will improve them. Important revisions have recently been made. Methods similar to some of those proposed have been considered by the ICC; some have been adopted, others rejected or abandoned, while still others remain under study. The Committee is of the view that further consideration of its proposals, in the context of the Committee's accompanying Report, would lead to beneficial results, particularly in the light of the relation its various proposals bear to one another. Informal conferences at the ICC, pursuant to the Council's request, tend to indicate that perhaps the Commission shares this view.

"1. That summaries of truck applications be published in the Federal Register as soon as possible after initial filing; and that assignment for processing under oral-hearing or no-oral-hearing procedures be postponed until protests are received and evaluated.

"2. That direct evidence of applicants and protestants concerning their own operations, services and proposals be submitted in affidavit form at the time of filing of applications and protests respectively; but that disclosure of the identity of supporting shippers be postponed until the hearing on the merits.

"3. That procedures be adopted to assure that applications are not filed without such shipper support as may be necessary, perhaps employing one of the following alternatives:

"(a) Requiring that all applications be accompanied by either (1) an affidavit of the applicant's attorney or representative stating that he has in his possession correspondence or statements from shippers promising necessary support of the application, or that shipper support is unnecessary and no supporting shippers will be called, or that, for stated reasons, the documents cannot be obtained; or (2) a similar affidavit from any applicant proceeding without an attorney or representative, with supporting documents transmitted for confidential retention by the Commission; or

"(b) Requiring that all applications be accompanied by evidence of shipper support in affidavit form, for confidential retention by the Commission until the oral hearing on the application or until the application is acted upon without oral hearing.

"4. That the shipper statements said to be possessed by the attorney or representative, pursuant to recommendation 3(a), be required to be produced if the application is withdrawn after

assignment for hearing or if no supporting shippers are called to testify at the hearing; and that any failure to produce such statements result in disciplinary action against the attorney or representative.

"5. That prospective protestants be permitted, with the consent of applicants, to file notices of pending negotiations in lieu of protests.

"6. That responsibility be conferred upon a unit within the Commission to supervise more closely the processing of truck applications. Such a unit might be a Control Committee, consisting of personal assistants of the three Commissioners of Division One and the Director of the Bureau of Operating Rights, or it might be the Director of the Bureau and his aides. In either case, the responsibilities of the unit should include:

"(a) Assuring compliance with rules pertaining to applications and protests;

"(b) Rejecting inadequate protests and assigning resulting unprotested applications for decision without oral hearing;

"(c) Identifying and devising special handling for troublesome, related or important cases, and making initial decisions on consolidation;

"(d) Channeling appeals from examiner decisions either to employee boards or Division One, and inviting industry participation where appropriate.

"7. That examiners be empowered to render decisions on the merits in advance of the conclusion of the hearing and issue definitive orders after pre-hearing conferences.

"8. That interlocutory review of examiner rulings be limited to matters certified for review either by the examiner or the unit controlling the processing of truck applications (the Control Committee or Bureau Director).

"9. That a decision upon review of an initial decision should state either that (1) the findings in the initial decision are adopted in their entirety, or (2) are adopted to the extent they are specifically identified by the review decision, or (3) new and specific findings are substituted for those embodied in the initial decision. A review decision should not state in general terms that the findings below are adopted except to the extent they are inconsistent with the review decision."

Identification of Topics for Study

The Chairman referred to the letter distributed on March 6, 1962 to each committee chairman requesting identification of (a) the particular subjects as to which his committee expects to complete its study and develop recommendations for Conference consideration this year, and (b) subjects recommended for future study by a continuing conference or other organization established for the purpose of improving administrative procedures.

Judge Prettyman reported that four committees had submitted the requested report and that a fifth committee is hard at work on the request, having developed two drafts and thus approached finalization of its report. After brief discussion it was agreed to urge the committees which had not reported to do so before the next plenary session.

Committee Hearings as a Technique for the Collection of Informed Views on Subjects Under Study

The Executive Secretary explained that the Committee on Rulemaking, at a recent meeting to review its ratemaking study, had called in ICC experts on the ratemaking procedures of that agency. Similarly, the Committee on Licensing the previous week had conducted a meeting at the Civil Aeronautics Board with the Vice Chairman, Mr. Swidler, presiding, at which the Committee discussed at length with four experts from that agency its tentative report on CAB route licensing. In addition, the Personnel Committee had arranged a similar hearing for May 18 and 19 at which it would have the benefit of the views of Mr. John Macy, Chairman of the Civil Service Commission, Mr. Wilson Matthews, who is in charge of that

agency's hearing examiner program, as well as classification experts, testifying on matters under study by the Committee.

Mr. Maxson reported that all persons who had attended the two such meetings already held were most enthusiastic as to their success. After some discussion the Council agreed that this technique should be urged on all committees as a device for the collection of expert views.

Participation in the August 1962
Meeting of the ABA

Judge Prettyman reported to the Council that the Committee on Information and Education, pursuant to general authority previously granted by the Council, had attempted to arrange a program at the ABA Convention in San Francisco on August 8, 1962, to acquaint members of the ABA with the activities of the Conference and to invite their participation therein. The Chairman advised that preliminary negotiations between Mr. Henderson, Chairman of the Committee, and officials of the Administrative Law Section of the ABA had resulted in a proposal that such participation take the form of a panel discussion at which persons representing the Conference and persons representing the Administrative Law Section would debate the value of the Conference effort as a means of improving administrative procedure.

The Council agreed that whereas such debate might be very useful following completion of this year's activity by Conference committees, any attempt to evaluate the Conference effort based upon the recommendations adopted to date, or even after the June 1962 session, would be undesirable, since the recommendations adopted to this point in no way represent a total product of the effort. Accordingly, it was decided to advise Mr. Henderson to decline the Administrative Law Section's offer to engage in such program.

Study of the Functions of the Finnish
Commissioner of Civil Government

On motion of Commissioner Hutchinson the Council agreed to authorize expenditure of funds for travel and per diem for a trip by Professor Gellhorn from Vienna, Austria, to Helsinki, Finland, for the purpose of consulting with Government officials

in Finland relative to the operation of the Office of Commissioner of Civil Government. Although considerable material is available relative to the Ombudsman and similar officials in other Scandinavian countries, it appears that there is a dearth of information relative to the Office of Finland.

Discussion with Professor Kenneth Culp Davis,
Consultant to the Council Relative to the
Form of Continuing Efforts Toward Improve-
ments in Administrative Procedure

As the principal item on the agenda, the Council then heard from Professor Davis his preliminary remarks relative to the ultimate question posed by Executive order concerning the need for further study after 1962 and the form which the effort should take for this purpose.

Professor Davis presented eight questions for Council discussion. No attempt was made to provide any definitive answers. Rather, the Chairman merely asked each member of the Council to express his preliminary thoughts with respect to the outline framed by Professor Davis. The eight questions presented were as follows:

1. Should a permanent organization be established as a successor to the Administrative Conference?
2. Is legislation necessary or desirable as the vehicle for establishing the successor organization?
3. Should the successor organization be headed by a director, a person of "high prestige"?
4. Should there be a small consultative body to aid the head of the successor organization?
5. If the successor organization includes a large deliberative assembly, should a majority of its members be persons in the Government?
6. What should be the relationship of such organization to the President and to the Congress?

7. Should the organization have authority to compel the disclosure of information?

8. Should the organization have authority to receive and investigate complaints from members of the Congress and the public?

There was very little discussion of the first and second questions, all members of the Council agreeing that future study is imperative and that an organization should be established therefor.

Professor Gellhorn suggested that whatever the organization, it should be conceived as a "continuing" body rather than as a permanent organization, acknowledging the fact that flexibility in its form may be desirable and that its form may change to meet current needs.

Professor Latham, with respect to the second question, outlined the advantages of providing a statutory basis for a continuing organization, but suggested that the Council, perhaps, should think in terms of temporary as well as permanent authority. Judge Prettyman complemented this point by noting that it may prove desirable simply to extend the present Conference, with such modification as may seem necessary, for two or three years beyond December 31, 1962. Mr. Paglin and Professor Nathanson expressed the view that any hiatus between the present organization and whatever effort may succeed it would be highly undesirable, and suggested that this militated strongly against attempting to establish a statutory basis at the present time.

Commissioner Cohen pointed out also that legislation, although imperative, not only could be slow but, in addition, might be prematurely sought. He felt that no request for legislation should be made until there can be placed before the Congress a complete demonstration of the work to be done by such organization and the machinery required to do the job. Commissioner Cohen also noted that any organization working toward improvements in administrative procedures would have to have an adequate staff and that legislation would be of assistance in fulfilling this need. If the present organization is merely extended by Executive order, the Conference may find itself confronted with both budget and staff difficulties.

Professor Davis noted that an organization might be far more effective than the present Conference can be if it were vested with the power to investigate complaints. Legislation probably would be required in order to provide this power.

The general discussion of questions 3, 4, and 5 developed a variety of interesting possibilities and culminated in tentative agreement that the organization should be predominantly an agency organization, that it should have the benefit of the leadership of a person of considerable prestige in Government who might serve both as Chairman of the deliberative body and Director of the supporting staff agency. The consensus reflected a preference for the Conference idea as opposed to the concept of a strong Office of Administrative Procedure or other single-headed agency. All agreed that the Conference idea offered several features, including the availability of a forum, the opportunity for composite judgments, and a high degree of acceptability for its recommendations, which could not possibly be enjoyed by a Director of Administrative Procedure, even though his activity had the benefit of an advisory body resembling the Conference in size and composition. Professor Nathanson, Mr. Lane, and Commissioner Cohen, conceding that the ideas being expressed were only tentative, pointed out that no reliable conclusions could be drawn with respect to questions 3, 4, and 5 until the Council had formulated a much more firm idea of the role and function of a Director of an Office of Administrative Procedure, or of a combination Chairman of the Conference and Director. Commissioner Hutchinson directed attention to the fact that the Director approach must be considered discarded in the light of the failure of several efforts over the past 25 years to establish such office.

Professor Latham urged that the Council, insofar as possible, attempt to reach its ultimate decision entirely apart from previous experience. He felt that many extrinsic factors had determined previous experience, not all of which were entitled to consideration in the Council's determination. He further expressed the view that the organization should be located at as high a level as possible, preferably in the White House, and that the Council's decision as to the appropriate size, form, and authority of such agency should be on the merits without regard to the complex of political and other factors referred to.

Professor Gellhorn directed attention to the several past proposals to include within the functions of such office substantial programs, such as the administration of the hearing examiner program. He felt that the Council's decision necessarily would have to consider such proposals in delimiting the authority of the organization. However, he expressed the opinion that a consultative assembly of some kind is imperative, whatever the form and functions of the supporting agency.

The Chairman, reviewing the thoughts expressed to that point and adding his own comment thereon, emphasized that a conference structured as a forum and voice of the agencies, meeting once or twice a year, seemed indispensable to prospective needs, whatever might be the supporting agency and its functions. He noted that an Office of Administrative Procedure, regardless of the prestige of its director, or even of the quality of its work, could not command the same attention for its proposals as a conference of agency officials. He added that the cohesive quality of agency thought which can be achieved only through an exchange of views in an agency conference could be expected to be extremely valuable, as it is for the courts as a result of Judicial Conference activity. Judge Prettyman felt that a variety of useful functions could be assigned to a full-time staff organized in an office with statutory authority and headed by a man of prestige, but that it is imperative that such office be an agency of the conference, designed to implement its proposals and otherwise furnish staff support for conference activity, rather than its being independent of or instead of a conference.

Commissioner Cohen, agreeing generally, thought that perhaps the only feature which needed added emphasis was the idea that the staff operation must have an executive position, whether occupied by the chairman of the deliberative body or in addition thereto. He believed that the inherent disadvantage of most group activity is frequently to be found in its absence of leadership, or at least focalized authority, and that if the whole effort is to be guided by a conference or other deliberative body, the authority of its supporting agency or staff must be centralized in a strong individual, executive position.

Both Professor Latham and Professor Nathanson noted that the ideas which had been expressed and which seemed to appeal to the Council suggested that a combination of director and conference might be most effective, and that perhaps special attention should be devoted to the idea of devising a combination organization which, insofar as possible, would enjoy the advantages and avoid the disadvantages of the individual forms suggested, i.e., an ombudsman, a conference, a strong office of administrative procedure, an Attorney General's committee, a council without a conference, etc.

Following this suggestion, Professor Davis asked for an around-the-table expression as to a combination of a director, an advisory council, and a consultative conference. In addition, he requested views as to what should be the division of functions and relationships between these three components, if such combination were deemed desirable.

Professor Gellhorn began the discussion with the proposition that experience dictates the need for a council in any case where the deliberative or consultative body is made up of more than a few individuals. Professor Latham and Mr. Paglin made the point that the question of the need for a council must follow a determination as to the size of the deliberative body, and Professor Nathanson pointed out that this question, in turn, must rely upon the crucial question of the ratio of Government to non-Government members.

Commissioner Hutchinson and Commissioner Cohen discussed the possibility of combining the offices of chairman, director, and executive secretary in a single individual, and providing a council or other small advisory group not selected by or dominated by the director.

Returning to Professor Nathanson's suggestion, Professor Davis elicited views as to the appropriate ratio of administrators to private practitioners, persons from academic life, and others.

Judge Prettyman suggested that although the participation of persons informed in ABA activities seemed to him very desirable, representation of sections of the ABA seemed

infeasible because of the slowness of the processes of decision-making within the ABA. In general, the discussion indicated no strong sentiments for revision of the 60-40% ratio of the present organization, but a clear agreement that this is an important question demanding of careful reexamination.

Professor Davis then asked for the preliminary views of members of the Council as to what should be the relationship, as a fundamental proposition in the theory of tripartite government and as a practical matter, of the new organization to the Executive and the Congress.

Commissioner Hutchinson described the advantages of a degree of independence from both the President and the Congress. Professor Gellhorn noted that provisions for appointment and tenure, particularly the latter, are critical to this question. Professor Nathanson suggested that it might be advantageous to establish the organization in a manner which might not clearly identify it as within any particular branch of government. It was concluded that whatever the solution, this question presents a delicate problem which merits most careful attention. Thereupon, the Council authorized the Chairman to select three or more experts in government to form a special committee to consider and report to the Council respecting the problem.

On the question of investigatory authority, Commissioner Hutchinson suggested that the slightest exercise of the authority might impair agency cooperation with the new organization, and that if access to files or other compulsory process is to be given, it should be limited to the clear need for such authority and provided only after the new organization has won a confidence and acceptance which would justify entrusting it with powers over the agencies. Professor Gellhorn noted that such authority probably is a necessary part of the power to investigate complaints.

The Council considered finally the question of the desirability of providing machinery for the investigation of complaints by the new organization, as one of its regular functions. Professor Gellhorn expressed the suspicion that present procedures for this purpose, to the extent that there may be regular procedures, are inadequate and susceptible of

great improvement. He suggested that Professor Davis might find it helpful to investigate such procedures of the House Committee on Interstate and Foreign Commerce, as an organization wherein such procedures may be fairly well developed. Commissioner Cohen expressed the view that duplication in this area should be avoided, and that any procedure established should be a part of a larger system, including the activity of Members of Congress and committees of Congress, and not in addition to their investigation of complaints. He felt that the new organization might serve a useful function as an agency of the Congress in this regard.

Professor Nathanson suggested that a part of the problem of Congressional influence in agency proceedings might be avoided through the use of the new organization by Congressmen to investigate complaints against agencies.

Judge Prettyman emphasized the necessity for limiting jurisdiction in the area of complaints, at least at the outset. Professor Latham concluded that delineation of the classes of complaints which the organization might accept would have to rely upon experience. He felt that at the time the organization is established it should have little or no obligation to investigate complaints.

Upon motion, it was agreed that Professor Davis should present his first report on his assigned topic at the October plenary session.

Date of Next Council Meeting

Whereupon, the Council adjourned to 2:00 p.m., Thursday, June 28, 1962, the day preceding the fourth plenary session.

