

Statement

of

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before the

Subcommittee on Commercial and Administrative Law
Committee on the Judiciary
United States House of Representatives

Hearing on the Reauthorization of the Administrative
Conference of the United States

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Mr. Chairman and Members of the Subcommittee. Thank you for the invitation to comment upon the Administrative Conference of the United States. I participated in its activities from 1981 to 1994 as a "liaison" to the Administrative Conference from the Judicial Conference. I believe that the Conference was a unique organization, carrying out work that is important and beneficial to the average American, at low cost.

During that time, the Administrative Conference primarily examined government agency procedures and practices, searching for ways to help agencies function more fairly and more efficiently. It normally focused upon achieving "semi-technical" reform, that is to say, changes in practices that are general (involving more than a handful of cases and, often, more than one agency) but which are not so controversial or politically significant as likely to provoke a general debate, say, in Congress. Thus, it would study, and adopt recommendations concerning better rule-making procedures, or ways to avoid legal technicalities, controversies, and delays through agency use of negotiation, or ways of making judicial review of agency action less technical and easier for ordinary citizens to obtain. While these subjects themselves, and the recommendations about them, often sound technical, in practice they can make it easier for citizens to understand what government agencies are doing to prevent arbitrary government actions that could cause harm.

The Administrative Conference was unique in that it developed its recommendations by bringing together at least four important groups of people: top-level agency administrators; professional agency staff; private (including "public interest") practitioners; and academicians. The Conference would typically commission a study by an academician say, a law professor, who often has the time to conduct the study thoughtfully, but may lack first-hand practical experience. The professor would spend time with agency staff, which often has otherwise

unavailable facts and experience, but may lack the time for general reflections and comparisons with other agencies. The professor's draft would be reviewed and discussed by private practitioners, who bring to it a critically important practical perspective, and by top-level administrators such as agency heads, who can make inter-agency comparisons and may add special public perspectives. The upshot was likely to be a work-product that draws upon many different points of view, that is practically helpful and that commands general acceptance.

In seeking to answer the question, "Who will control the regulators?" most governments have found it necessary to develop institutions that continuously review, and recommend changes in, technical agency practices. In some countries, ombudsmen, in dealing with citizen complaints, will also recommend changes in practices and procedures. Sometimes, as in France and Canada, expert tribunals will review decisions of other agencies and help them improve their procedures. Sometimes, as in Australia and the United Kingdom, special councils will advise ministries about needed procedural reforms. Our own Nation developed this rather special approach (drawing together scholars, practitioners, and agency officials) to bringing about reform of a sort that is more general than the investigation of individual complaints yet less dramatic than that normally needed to invoke Congressional processes. Given the Conference's rather low cost (a small central staff, commissioning academic papers, endless amounts of volunteered private time, and two general meetings a year), it is indeed a pity that by abolishing this Conference, we have weakened our federal government's ability to respond effectively, in this general way, to the problems of its citizens.

I have not found other institutions readily available to perform this same task. Individual agencies, while trying to reform themselves, sometimes lack the ability to make cross-agency comparisons. The American Bar Association's Administrative Law Section, while a fine

institution, cannot call upon the time and resources of agency staff members and agency heads as readily as could the Administrative Conference. Congressional staffs cannot as easily conduct the technical research necessary to develop many of the Conference's more technical proposals. The Office of Management and Budget does not normally concern itself with general procedural proposals.

All of this is to explain why I believe the Administrative Conference performed a necessary function, which, in light of the cost, should have been maintained. I recognize that the Conference was not the most well known of government agencies; indeed, it was widely known only within a fairly small (administrative practice oriented) community. But, that, in my view, simply reflects the fact that it did its job, developing consensus about change in fairly technical areas. That is a job that the public, whether or not it knows the name "Administrative Conference," needs to have done. And, for the reasons I have given, I believe that the Administrative Conference was well suited to do it.

I hope these views will help you in your evaluation of the need to re-establish the Conference. I highly recommend that Congress do so.