1965

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Recommended Citation
Edward V. Long, Proposed Changes in Administrative Law, 19 Sw L.J. 203 (1965)
https://scholar.smu.edu/smulr/vol19/iss2/1

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PROPOSED CHANGES IN ADMINISTRATIVE LAW

by

Senator Edward V. Long

I. INTRODUCTION

The basic reason for the establishment of a multitude of federal administrative agencies has been the general belief that matters within their jurisdiction can be dealt with more expeditiously by administrative rather than by legislative or judicial procedures. Developments during the last few years, however, have cast some doubt on this basic premise. Administrative procedures have become tremendously complicated, often very lengthy and usually terribly expensive. If, within the bounds of due process, administrative proceedings cannot be made less complicated, less lengthy and less costly, the whole fabric of the administrative process may begin to unravel.

This Article will outline the combination of factors that contribute to a slow down of administrative proceedings and will discuss the current major proposals to rectify this situation. Before discussing the problems and proposed solutions, however, it is helpful to understand the complexity of the system of government under discussion, i.e., the administrative process. This system of government is administered by appointive officials who exercise delegated authority to guard and promote the public interest by subordinating private interests where necessary.

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The current major proposals consist of two bills in the Senate that would amend the Administrative Procedure Act, 60 Stat. 237 (1946), as amended, 5 U.S.C. § 1001-11 (1958). The bills are S. 1663, 88th Cong., 1st Sess. (1963), and S. 2335, 88th Cong., 1st Sess. (1963). S. 1663 was revised by the subcommittee staff, but was not reintroduced as revised. S. 2335 died in the 88th Congress, and as yet has not been reintroduced in the 89th Congress. See Hearings on S. 1663 Before the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary, 88th Cong., 2d Sess. (1964).

*Agencies dealing primarily with private individuals and dispensing or administering private benefits and the like are charged, of course, to act in keeping with the overall goals of the public interest. Examples are the Veterans Administration and the Social Security Administration.

*See S. Doc. No. 248, 79th Cong., 2d Sess. at iii (1946), in which the administrative area of government is referred to as that area "lying between the traditional legislative and fundamental judicial processes on the one hand and authorized executive functions on the other." See also 1 Davis, Administrative Law § 1.01, at 2 (1958).
The administrative process consists of various agency activities such as conducting investigations, promulgating rules and regulations, adjudicating adversary interests, licensing private activities, determining rates, and continuously supervising particular industries. Through such activities, the administrative process controls or influences most of our nation's liberties, economics, health, safety and welfare. If some of the myriad agency activities that may affect an area of national life are only mentioned, the complexity and pervasiveness of the administrative process become readily apparent. They include collecting taxes; setting rates or prices for gas, electricity, telephone calls and transportation; regulating the use of public airwaves by radio and television; protecting against adulterated food and drugs; administering various insurance programs; granting loans to businesses and house buyers; establishing minimum wages; arbitrating and mediating labor disputes; protecting the safety of interstate transportation; and controlling the production of food. Indeed, since the administrative process was begun in 1789, it has expanded to such an extent that today the agencies make more rules and regulations than the Congress passes laws, and they hear more cases than do the federal courts; in innumerable other ways the agencies affect the average citizen more directly and more often than any of our three traditional branches of government. It would seem that the agencies in fact have earned the dubious title of the "fourth branch of government."

Such a huge operation must be conducted as smoothly and efficiently as is possible. Quite surprisingly, it is handled with the least possible resemblance to a smooth or efficient operation. The late Dean James Landis, in his report on regulatory agencies to the then President-elect John F. Kennedy, reported that the administrative process was hampered by inordinate delays. His study showed that in 1959 thirty-six percent of the pending agency proceedings had remained undisposed of for more than three years. One agency's backlog of cases increased four times in just over two years. Another agency itself admitted that even if its present staff were tripled, it would take until the year 2043 to become cur-

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4 The term "agency" is used throughout this Article as defined in the Administrative Procedure Act § 2(a), 60 Stat. 237 (1946), as amended, 5 U.S.C. § 1001(a) (1958).
5 An example of such supervision is the supervision of national banks by the Comptroller of the Currency of the Department of Treasury. See generally, 1 Davis, op. cit. supra note 3, § 4.04.
6 This designation was first applied to the administrative agencies in 1937 in the Report with Special Studies of the President's Committee on Administrative Management (1937).
rent by disposing of its present backlog and the new cases that were yet to be filed.

In a recently completed statistical study\textsuperscript{8} of case volume and time lapse in certain agency proceedings,\textsuperscript{9} it was discovered that over the last two fiscal years the gradual slowing down of the administrative process had continued to inch forward. From the end of the fiscal year 1961 to the end of the fiscal year 1963, the case load had increased by 21,000 cases. Although there was a corresponding increase of 14,000 in case output, an additional 7,000 cases were added to an existing backlog of some 24,000 for a grand total of 31,000 backlogged cases at the end of fiscal year 1963.\textsuperscript{10} Translated into percentages, the backlog of cases increased approximately twenty-nine percent during this two-year period. Certain statistical unknowns prevent the use of this compilation for definitive analysis of the exact causes for the increase. It does serve to show, however, that unless the administrative process is revitalized and updated, it ultimately will find itself embroiled in an impossible quagmire of backlogs and delays.\textsuperscript{11}

Since the end of the fiscal year 1963, the case backlog has continued to increase. In all fairness, this increase does not necessarily involve the same agencies as those singled out in 1960. And in regard to the length of the interval between the beginning and end of a case, little, if any, improvement can be found.

Today, a rate-making case may consume anywhere from almost one year (349 days) to over seven years of the time and efforts of the particular agency and citizens involved. The longest rate case recorded as of fiscal year 1963 required more than eight years to complete. The story is much the same for other types of agency proceedings. A rule-making proceeding may last from seventy-three days to over three years. The longest rule-making proceeding on record through fiscal 1963 also took over eight years. In claims for benefits cases,\textsuperscript{12} the spread is from sixty-five days to almost seven

\textsuperscript{8} Staff of Subcomm. on Administrative Practice and Procedure, Senate Comm. on the Judiciary, 88th Cong., 2d Sess., Statistical Data Related to Administrative Proceedings Conducted by Federal Agencies Fiscal Year 1963 (Comm. Print 1964).

\textsuperscript{9}Id. at Appendix p. 1. This study was directed to those federal agencies which conduct administrative proceedings that (1) involve an oral hearing with a verbatim transcript and (2) result in the determination of private rights, obligations or privileges.

\textsuperscript{10} The total number of cases handled in fiscal year 1963 was well over 100,000. This figure is given proper perspective if it is realized that only a limited type of case is included. At present, there is no actual count of the many other matters that the agencies handle each year.

\textsuperscript{11} Delay, of course, is only one facet of the problem. Fairness is another, especially as it is affected by delays.

\textsuperscript{12} One claims case, with only twenty-nine pages of transcript, took approximately seven years to complete.
years, with the outside limit being about eight years. Cases involving disciplinary proceedings range from 101 days to over five years in length and extend occasionally to over nine years. The duration of other proceedings has varied from thirty-six days to almost six years and once skyrocketed to ten and one-half years.  

Such excessive lapses of time are cause for real concern. In the next section, some reasons for the loss of time and money because of delays in the administrative process will be discussed.

II. PROBLEMS CONTRIBUTING TO THE DELAY AND EXPENSE OF ADMINISTRATIVE PROCEEDINGS

The excessive backlogs and wide variation in time consumption by proceedings in the administrative process are the result of many causes, big and small, that are combined and exacerbated by daily problems and routine.

A. Agency Personnel

Frequently the amount of business that comes before an agency is simply too much for it to handle, even with a competent and efficient staff. In the past two fiscal years alone, the agencies’ workloads increased twenty-three percent in the reported proceedings included in the Subcommittee’s latest statistical compilation.

Obviously, additional personnel are necessary for undermanned agencies to handle the increase in business efficiently. However, before agencies can obtain and utilize capable staffs to handle this influx of new business, budgets must be approved by the Bureau of the Budget, money must be appropriated, recruiting and training programs must be set up and staff members must be assigned to their duties. A considerable amount of time is consumed during these phases, and at the same time the filing of new cases and business before the agencies continues relentlessly.

Moreover, all too often an agency will be saddled with a limited and even parsimonious budget preventing the necessary recruitment, proper training and timely assignment of a qualified staff to keep...

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13 Shortly after these statistics were compiled, the author received a letter complaining about a railroad merger application which has been considered for 7½ years without a solution being reached.

14 Some of the problems discussed herein were spotlighted years ago by some very conscientious and able men in the administrative law field. These problems are still with us. However, some review of them, although perhaps repetitious, is warranted.

15 Some of the causes for delay and expense set forth here will not receive direct attention in the next section, which discusses legislative remedial proposals; these causes are not susceptible of legislative remedy, but they should be mentioned in order not to imply that all which can be or needs to be done may be accomplished only by legislative fiat.

16 See note 9 supra.
current with the agency’s new business. Such a budget also hampers efforts by the agency to retain top men in their positions and causes a continual turnover in agency personnel. The problem of retaining career men, who know the difficulties and needs of an agency and who can direct and effect improvements in the agency’s handling of its business, compounds the problem of obtaining new men to handle the increased workloads of the agencies. Without larger staffs for increased workloads and without experienced staffs for the overall management of an agency, delays are inevitable.

Personnel thus becomes a key factor in reducing delays in the administrative process. As Dean Landis pointed out: “Good men can make poor laws workable; poor men will wreak havoc with good laws.” To get good men, good salaries, security and prestige are necessary. These factors are, of course, important; but they are not the whole answer. Agency heads must be appointed for their knowledge, experience and ability—not for their political loyalties or contributions. Once appointed, the agency heads must be given and encouraged to use the appropriate discretionary powers necessary to formulate and implement policies that can serve as definite guidelines for the people regulated and supervised, the courts, the other agencies and the Congress.

These two ideas are theoretically sound, but their practicality is another matter. For example, in 1961, reorganization plans were proposed that would make the heads of the agencies also the leaders of the agencies by vesting in them the authority to carry out their assigned functions with dynamic force. The plan failed for at least two reasons. First, the problems that come to these men are so complex and so numerous that they would tax the intellects of the Olympian Gods. Agency heads are (fortunately or unfortunately) only human. As such, it is not surprising that agency members might be reluctant to put their reputations and jobs on the chopping block—the risk assumed when they exercise dynamic leadership in enunciating general policies.

The second reason is the cause of the first. The Congress and the Executive Office are all too slow or uninterested in supporting the agency heads who do attempt to fulfill their jobs. Both Congress and the Executive refrain from exerting undue influence on the agencies, but they also refrain from pronouncing any support for the men who want to effectuate their ideas. To a reasonable degree, the agency members should have the full support of the Congress and the Execu-
tive even when they must experiment. With support, it would be
easier and more attractive for the qualified men to act to carry out
the tasks assigned them and to stay in their jobs."

B. Relationship Between Agencies, Congress And The Executive

The relationship between the agencies and the Congress and the
Executive is not good, but nevertheless can be improved. In all cases
of adjudication, of course, the relationship of both the Executive and
the Congress to the agencies should be one of "hands off." And in
most other agency functions and operations, independence should be
the standard. There will and should be, however, some liaison and
contact with the agencies by the Executive and the Congress, because
the former has the duty to see that the laws are faithfully executed
and the latter must oversee the proper operation of the administra-
tive bodies it has created by legislation. This relationship should be
characterized by mutual respect and confidence (something that is
more difficult if the appointees owe their appointment more to
political factors than to ability). The contact should help to convey
the design and objective of the President's programs as well as the
best means of effectuating those programs. At the same time, the
various administrators can comment and recommend improvements
in the content and accomplishment of the program, drawing upon
their expertise and experience.

The Executive should stand behind the agency personnel when
they are conscientiously performing their tasks. He also should use
his power and influence to remove any administrator who is not
carrying out his statutory duties. In this latter function, care must
be taken so as not to support the theory that members of agencies
serve at the Executive's pleasure. This is difficult because the Execu-
tive appoints most of the agencies' top officials and controls their
budget requests to Congress as well as their comments on and pro-
posals for legislation.

Congress' relationship with the agencies also must be characterized
by mutual respect and by confidence in the independent judgment
of the agencies. After establishing an agency and the framework in
which it is to operate, Congress should play the role of a friendly
watchdog. Congress has to guard against improprieties and, therefore,
must be familiar with the proceedings of the administrative process.
If error, wrongdoing or omission occurs, deft and swift remedial
measures must be taken. Heavyhandedness in other situations, how-

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18 In the past few years, there have been changes in the head of the Post Office Depart-
ment, Federal Communications Commission, Securities and Exchange Commission, Depart-
ment of Health, Education and Welfare, and the Internal Revenue Service.
ever, will serve only to perpetuate mediocre administration that is guided not by the public interest but by desire for job security and an untarnished reputation.

To achieve a relationship of mutual respect and confidence, greater understanding of both the problems and the goals of each body of government involved will be necessary. To reach this understanding, there must be a continuous exchange of information and ideas. It is the author's hope that the newly created Administrative Conference\textsuperscript{a} will facilitate this exchange, which will further reduce delays due to mediocre administration of agency tasks.

C. The Making Of Policy By Agency Heads

The task assigned members of a given agency is basically to administer the organic act that established the agency and created the program formulated by Congress. To administer an act requires primarily the defining of policy, and this function, above all else, calls for highly competent and courageous personnel. Today, the delay and cost of the administrative process are fostered more by the appalling lack of policy formulation than by any other independent factor.

It is unfortunate that the chief decisional authorities in the agencies are so bogged down in unnecessary and unrelated tasks that policy decisions are not being made. Policy formulation is concerned primarily with planning measures for the best disposition of current problems and for forecasting and exploring solutions to the problems still on the horizon. In contrast, too much time presently is being consumed in adjudicating on a case-by-case, \textit{ad hoc} basis that is not designed to result in broad range and visionary plans. Because of this situation, no decipherable pattern of policy is discernible; and, as a result, the public, the agency staff and the courts are confused and unable to be consistent or correct in their attempts to do what is best for the public interest.

Lack of definite policies causes delays because each case must be individually considered, with the result that much duplication of effort exists both at the hearing and review stages of the proceeding. Instead of a staff member applying settled policy to a set of facts and reaching a decision which would be subject to review by the agency's members in important cases, the agency itself hears and takes evidence in the case and then issues a decision that affects no one but the parties before the agency in the particular case.

The duty to undertake long-range planning is set forth with considerable specificity in most of the organic acts that establish the different agencies.\textsuperscript{20} Not only has such planning failed to evolve, but there is also actual agency opposition in some instances.\textsuperscript{21} It is obviously less difficult to take problems one at a time and to solve each case individually than it is to adopt an overall policy that may prove erroneous when put into practice. But be that as it may, the job of agency members is to adopt overall, wide-ranging policies, and failure to do so without ample justification should be sufficient grounds for removal from office.

D. Agency Preoccupation With Subjects of Minor Significance

Besides the delays and confusion caused by the lack of defined policies, many of the agencies' programs have become obsolete and misdirected. Small problems removed from the arena of controversy are dwelt upon and used as excuses for ignoring the problems affecting the public interest that are often controversial and more open to criticism. Surely, the problems in the golf-ball retreading industry do not deserve the intense interest and work given them by one agency. The problem of competition between nonprofit community blood banks and commercial blood banks did not deserve the effort required for one agency to gain jurisdiction over the matter, conduct extensive hearings, and issue a decision containing an initial finding, among other things, that nuns were engaging in anticompetitive practices. Considering the problem of whether cities X and Y should be linked by more passenger air service is hardly worth the same time and effort by an agency as the problem of whether adopting the airplane as a commercial transport for air cargo operations is more valuable than the millions spent subsidizing our local service airlines.

E. Overlapping Jurisdiction

If an agency hesitates or fails to adopt policies because of preoccupation with lesser problems or otherwise, there is also the problem that when a broad public policy is finally adopted, it may be frustrated by another agency with chronic overlapping jurisdiction.\textsuperscript{22} For example, 72 Stat. 384 (1958), 15 U.S.C. §§ 631, 633 (1958) (setting forth the Congressional mandate to the Small Business Administration); 49 Stat. 452 (1935), as amended, 29 U.S.C. § 156 (1958) (National Labor Relations Board); 72 Stat. 740 (1958), 49 U.S.C. § 1302 (1958) (Civil Aeronautics Board).


\textsuperscript{21} The Subcommittee staff was confronted with a positive reaction of fear and shock when it explained to one agency a legislative proposal that would provide more time for the agency heads to devote to policy formulation.

\textsuperscript{22} This problem was highlighted in 1960, but there has been little, if anything, to solve it. Cf. Staff of Subcomm. on Administrative Practice and Procedure, Senate Comm. on the Judiciary, 86th Cong., 2d Sess., Report on Regulatory Agencies to the President-Elect 24 (Comm. Print 1960).
example, national banks are regulated by the Comptroller of the Currency in the Department of the Treasury, the Federal Reserve Board of Governors and the Federal Deposit Insurance Corporation. In the past year or so, the policies formulated by the Comptroller’s office have clashed with those set by the Federal Reserve on such matters as bank mergers, investment in foreign banks, the underwriting of revenue bonds, corporate saving deposits and quarterly bank call reports. The only thing accomplished by the conflict of policy on these matters is further turmoil and confusion.

Similar problems of overlapping jurisdiction exist elsewhere. There are no fewer than eight agencies having jurisdiction over various aspects of national transportation. Eight agencies share jurisdiction over communications. Other areas suffering from overlapping jurisdiction include the fields of energy and monopoly and unfair trade practices.

The need for definite policies is even more urgent where agencies share jurisdiction. The policy pronounced must reflect not only the agency members’ concept of the public interest, but also what other authorities decide is the public interest in the related area. Coordination of basic policy is essential, and for its achievement only clear indications of the thinking of each agency will suffice.

F. Expense

Thus far, attention has been directed toward the delays in the ad-

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23 The federal agencies primarily concerned with the development of various aspects of transportation policy include the Interstate Commerce Commission, Civil Aeronautics Board, Federal Maritime Board, Federal Power Commission, Bureau of Public Roads, Military Transportation Service, Army Corps of Engineers, and Department of Commerce. In addition, of course, various state and municipal agencies also have some jurisdiction over transportation that could affect a national policy.

24 The agencies with concern in this area include the Federal Communications Commission, State Department, National Aeronautics and Space Administration, Interdepartmental Radio Advisory Committee of the Office of Civil and Defense Mobilization, Army, Navy, Air Force, and Federal Aeronautics Administration.

25 Various departments and agencies have concern with segments of this problem. Surface transportation of oil, coal and liquified gas lies within the purview of the Interstate Commerce Commission and the Federal Maritime Board. Natural gas is a concern of the Federal Power Commission. Electric power in its various forms falls within the purview of the Federal Power Commission, the Department of the Interior, the Corps of Army Engineers, the Tennessee Valley Authority and similar entities. The derivation of energy from fissionable materials is the business of the Atomic Energy Commission. General concern over the conservation of resources from which energy is developed rests primarily with the Department of the Interior. The State Department and the Tariff Commission deal with the extent to which our foreign investment is concerned with the production of fuel abroad and the extent to which these fuels should enter the domestic market.

26 The Federal Trade Commission and the Department of Justice are primarily involved here, but the Interstate Commerce Commission, Civil Aeronautics Board, Federal Power Commission and Federal Communications Commission also play a part in this area. The Federal Trade Commission could also clash with the Food and Drug Administration of the Department of Health, Education and Welfare over unfair trade practices such as false advertising.
ministrative process with only passing reference to the inseparable problem of costs caused by these delays. Before discussing the proposed remedies to reduce delays and costs, some salient features of the expense of the administrative process should be pointed out.

Interminable hearings, voluminous records and court costs if judicial review is taken can increase the cost of an agency proceeding to outlandish proportions. In a recent rate case, the transcript included over 11,000 pages. The cost of such a transcript alone could be over $11,000. In the same proceeding, there were 834 exhibits and 394 private parties; there were seventy-five actual hearing days. Considering the legal fees, witness fees, room and board, costs of exhibits and transcript, and other necessary and incidental costs, the final figure was probably shocking.27

If the direct costs are shocking, the indirect costs certainly are cause for dismay. These indirect costs are borne not only by the participants in an agency proceeding, but also by the customers, employees and suppliers of the participants and ultimately by the national economy as a whole. In the past, for example, delays in the establishment of rates for the transportation of gas have held up programs for expansion which involved millions in steel construction. If supporting industries are affected, unemployment—always a chronic problem—is increased. And if the isolated proceedings that are delayed are multiplied, the effect on the national economy can be extremely serious.

The excessive length and cost of so many administrative proceedings go right to the heart of business initiative and business growth. In one case,28 the delays and costs of an administrative proceeding contributed to the downfall of an entire company. After extensive hearings and judicial review, the company won its case; but it also spent $285,000 in legal expenses, and its sales dropped so quickly that the company simply fell apart. It was defunct when the decision was given.

Delays and costs are particularly devastating to small businesses. Such businesses simply do not have the resources to undergo the growing number of lengthy and costly administrative proceedings. Quoting Dean Landis: "The result is that in many situations the small businessman is practically excluded from an opportunity to

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In larger businesses that can afford the recurrent expense and delay of regulation and supervision, the cost is charged off as an operating expense which is passed on to the general public in the form of higher rates or increased subsidies.

Peculiarities in agency organization, jurisdiction or leadership also may result in increased costs. Because of lack of time, misunderstanding or indecision, some agencies operate under time-consuming, overly detailed and unnecessary structures and procedures. Too often, agencies with an excess of caution will take a case to a full evidentiary hearing with the attendant features of cross-examination and other trial-like procedures when there is no issue of fact or other question that can be solved best by such an extended proceeding.

It is clear that if the economy is to continue to expand, if a higher level of employment is to be reached, and if the growth of small business is to be encouraged further, the delays and costs of the administrative process must be curtailed.\footnote{Staff of Subcomm. on Administrative Practice and Procedure, Senate Comm. on the Judiciary, 86th Cong., 2d Sess., Report on Regulatory Agencies to the President-Elect 10 (Comm. Print 1960).}

\section*{III. Proposed Changes in the Administrative Procedure Act}

Even before World War II, the agencies, the courts, legal scholars and the bar were concerned with administrative procedures. Finally, after much effort, the Administrative Procedure Act\footnote{In the areas of private interests, such as claims adjudication and benefit applications, delay and cost must also be reduced. Although the net effect on the nation's economy is less in these cases, the impact of delays and costs to the individual person is equally disastrous.} was passed in 1946. It represented a considerable legislative achievement at that time. The act never has been amended significantly, however, and although some of the procedures have proved burdensome, the agencies nevertheless remain bound by law to follow them.

Also, since 1946 the courts have developed and widely employed new procedural techniques that have increased their effectiveness and efficiency. Heretofore, the innovations devised by the courts have not received very much attention from the agencies or from Congress. New proposals currently before the Subcommittee on Administrative Practice and Procedure, however, do reflect the adaptation of some of the new judicial procedures to the agencies. It is believed that if they can be fashioned to fit the peculiar needs of the administrative process, a great deal of improvement will be achieved.

Amending the APA is not an easy task. But due to the act's comprehensive application to almost all agencies\footnote{60 Stat. 237 (1946), as amended, 5 U.S.C. §§ 1001-1011 (1958).} and the judicial inter-
pretation of the act over the past eighteen years, most of the serious proposals to improve the administrative process have taken the form of amendments to the act. The comprehensive coverage of the act presents the greatest obstacle to improvement. To be too specific is to impose rigid and inflexible rules on agencies so disparate and varied in their nature and functions as to admit of few common traits. On the other hand, to be overly flexible is simply to abandon an imperfect system with at least some standards of similarity in procedures to a more imperfect system of utter disparity and confusion.

The problems primarily causing excessive delays and costs in the administrative process may be capable of more complete and effective solution by means other than legislation—at least at the present stage. Continuing studies of the permanent Administrative Conference, discussed later, will be a moving force in updating and improving the whole administrative process. Today's problems are so confusing and complex that new legislation in the general areas discussed previously would probably only create more problems than it would solve. However, largely because of past studies by distinguished groups of attorneys, scholars and government personnel, particular aspects of some of the enumerated problems can be at least partially solved by new legislation in the area of administrative procedures. To this end, amendments to the Administrative Procedure Act of 1946 are presently under consideration by the Subcommittee on Administrative Practice and Procedure.

The object of the proposed new procedures is to improve the effectiveness, efficiency and fairness of the administrative process. Certain suggested amendments are designed by clarification to provide more uniform procedures in similar types of cases and to separate and classify more realistically certain agency proceedings. Policy formu-

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lation will be encouraged with new procedures designed to afford more time for this function. It is hoped that delays and costs will be reduced and that new prestige will be provided for those who make the decisions.

As alluded to earlier, delays and the expense engendered thereby are probably the most acute and frustrating problems currently confronting the realization of a good administrative process. Most causes of delay will be found in agency adjudications, and for that reason this agency function heretofore has received the most attention of those who seek to reduce the time and cost of agency proceedings.

A. Prehearing Conferences

A current proposal to reduce the length of hearings calls for utilizing prehearing conferences more fully and more effectively. The objectives of such conferences should be (1) to reach early agreement on important procedural matters, such as requests for information, exchange of written testimony, the timetable for the hearing and simplified methods of proof; (2) to exchange ideas on the merits of the case with a view toward elimination or simplification of some issues; and (3) to provide a convenient forum for the initiation of settlement negotiations between the parties.

The use of prehearing conferences has engendered much debate. In the view of some people, a prehearing conference must end in a settlement or it is deemed a failure. On the other hand, other people see such conferences as a panacea for all of the deficiencies of an administrative hearing. The real value of such a device more likely depends upon its correct use in appropriate cases than upon either of the two extremes.

The correct use of a prehearing conference is not easy. It requires the appointment of a qualified hearing examiner to conduct the case who can exercise the powers necessary to make the conference productive. The cooperation of the parties is necessary. Finally, it is essential that the parties, including the agency staff, regard the conference as an integral and vital part of the entire proceeding to the

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87 60 Stat. 237 (1946), 5 U.S.C. § 1001(d) (1958). Section 2(d) of the Administrative Procedure Act defines adjudications as the "agency process for the formulation of an order." Ord" is defined in the same section as the "whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of any agency in any matter other than rulemaking but including licensing."

88 Cf. S. Doc. No. 24, 88th Cong., 1st Sess. 94 (1963). Recommendation 19 of the Administrative Conference was phrased to avoid certain undesirable debates over the use and utility of prehearing conferences. The Committee on Rulemaking phrased their discussion of this prehearing device in simple terms of conference procedures prior to hearing.

89 A proposal has been made to amend § 7(b) of the Administrative Procedure Act to give the examiner such power. This section sets forth the powers a hearing examiner may exercise. 60 Stat. 241 (1946), 5 U.S.C. § 1006(b) (1958).
same degree as the hearing itself. In this regard, the parties should be expected to give adequate study in advance of such conferences to all material submitted in the case, and they should be expected to attend fully prepared for a useful discussion of all procedural and substantive problems involved in the proceeding. Also, the parties themselves should be able to make binding commitments with respect to the matters discussed.

The examiner's task should be to exercise imaginative leadership in all phases of the particular proceeding leading to the prehearing conference. In order for him to do so, the examiner should be assigned to the case as soon as possible after the notice or pleadings have been filed. After assignment he should see that all expeditious efforts and devices are effectively used. At the conference itself there should be a detailed exploration of each major contested issue in the proceeding and of the conflicting positions which will be taken on each issue by all parties, including the agency staff. The general objective should be to identify those matters on which there will be serious controversy as to either the basic facts or the conclusions to be drawn therefrom. In this regard, the examiner should explore the possibility of handling certain types of problems by requiring the submission of written materials to identify specific issues or other matters to which the application of oral, hearing techniques would not assist the agency in reaching an accurate and informed decision. If it appears that a decision can be reached on the basis of written materials alone and that the time expended would be significantly reduced thereby, the examiner should order the use of written materials, i.e., briefs and/or written evidence.

If any participant withholds any information or data, the usefulness of the prehearing conference will be diminished. Here, perhaps, the examiner, supported by an agency rule, could refuse to accept any data or other evidence at the hearing which could have been presented at the prehearing conference.

Finally, the prehearing conference should end with the issuance by the examiner of a prehearing order or ruling which should control the subsequent course of the proceeding. It is essential that the examiner be given the authority to dispose in this ruling of any procedural matter which he would be authorized to decide during the course of the hearing itself, regardless of the parties' consent or lack thereof.

If proper use is made of prehearing conferences in appropriate cases, there is good reason to believe that many proceedings can be reduced to a more reasonable length of time. This conclusion is even
more optimistic if consideration is given to the other devices that can supplement the prehearing conference technique. Here, reference is made to a report prepared by a committee of the Administrative Conference dealing with protracted cases.⁴⁰ A special officer within the agency could examine initiating pleadings and report to the agency those cases that probably will be protracted in length. An alternative procedure would be to allow the attorneys for the parties to inform the agency that an extended proceeding is likely. Early identification of a potentially protracted case will enable the agency to utilize more effectively the prehearing conference techniques and thereby will reduce further the time consumed.

B. Abridged Procedures

In some instances, of course, prehearing conferences may not be effective. This situation may be due to the inaccessibility of the parties to a common meeting place at which a conference could be held or to a failure to identify the issues that can be agreed upon or simplified because of the parties' lack of preparation. Whatever the cause might be, a new provision has been designed to apply to those proceedings in which a prehearing conference cannot save time or, for that matter, to any other situation in which the parties do not desire the full panoply of formal procedures. This proposal has been incorporated into new subsection, which would enable the parties to consent to the use of abridged procedures.

This "new" procedure⁴¹ will allow the parties to consent to the omission of time-consuming cross-examination and other trial-like processes whenever they deem it to be to their advantage. This provision will allow decisions to be made more quickly where, although a hearing may be required by statute or the Constitution,⁴² a full evidentiary hearing would not advance the public interest or contribute to a better decision.

C. Restrictions On Offers Of Settlement

A surprising source of delay in adjudications is the procedure for the settlement of cases.⁴³ Too often the parties before the agency sub-

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⁴⁰ Committee on Information and Education, Administrative Conference of the United States, Recommended Procedures for Protracted Hearings Before Administrative Agencies, (Second Draft 1963). This report or manual was not published in the selected reports of the Conference, but is on file with the Subcommittee.

⁴¹ This procedural device to help expedite agency adjudications is not entirely new. Some agencies already employ a similar device, including the Interstate Commerce Commission and the Federal Power Commission.

⁴² This accords with the general holding in Wong Yang Sung v. McGrath, 339 U.S. 33 (1950).

⁴³ 60 Stat. 219 (1946), 5 U.S.C. § 1004(b) (1958). The Administrative Procedure Act says little else than that the parties shall have the opportunity to submit and to have considered their offers of settlement.
mit, amend, resubmit or negotiate continuously in regard to offers of settlement, thereby postponing the commencement of the hearing. In order to curtail this practice, a proposal has been made to allow the parties to submit offers of settlement on an absolute basis before the hearing begins but only subject to the discretion of the agency once the hearing is commenced.

Delay in the commencement of the hearing would be reduced in two ways under the proposed procedural change. First, the possibility that the parties no longer may have an opportunity to settle after the hearing begins should assure that only the more serious offers of settlement will be made prior to the hearing. Second, the agency has the discretion to set the day of the hearing and thereby can determine the allowable time before the commencement of the hearing during which the offers can be made pursuant to the parties' absolute right of settlement. If no settlement has been reached when the agency commences the hearing, then the parties' right to settle becomes discretionary with the agency and will depend upon whether the time or nature of the proceeding or the public interest permits.

**D. More Effective Use Of Declaratory Orders**

An effort also has been made to revise the present provision of the APA concerning declaratory orders. Presently the agencies are simply authorized to issue such orders. For the most part the agencies either have refused to promulgate declaratory orders or have done so in such a way as to limit their use and effectiveness. The agencies have interpreted the limiting preamble to section 5 of the present APA to apply to the declaratory-order provision and have concluded that they are not authorized to issue such orders unless a statutory hearing is required. This interpretation frequently permits the agencies to avoid the issuance of a declaratory order that would clarify agency policy and thereby obviate the necessity for formal hearings or other proceedings at a later time. The agencies prefer not to decide anything until absolutely forced to do so in a regular adjudicatory proceeding.

This interpretation and its consequent delay and confusion have been soundly criticized. To remedy this situation, it has been proposed that the APA provision on declaratory orders be taken out of

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44 Prehearing conferences should also help to alleviate this problem.
46 Ibid.

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section 5 and thus removed from the strained interpretation limiting its effectiveness.

Another objection to the present section on declaratory orders concerns its lack of binding effect. If an order is issued, it may be treated by the agency as so much unofficial advice which cannot be relied upon as expressing a guide for present or future conduct. For example, such orders issued by the Federal Power Commission are not subject to judicial review and do not resolve any issues that cannot be retried in subsequent ad hoc proceedings.

A case before the FPC was brought to the attention of the Subcommittee recently that illustrates the confusion and delay caused by the present status of declaratory orders. In August, 1954, the Internal Revenue Act of 1954\(^\text{48}\) permitted liberalized methods of depreciation for public utility companies. This new development in the tax law created substantial accounting and rate-regulation problems for the public utilities. Several companies filed an application before the FPC in November, 1954, for a declaratory order so that they would know how to keep their books, how to compute federal income taxes for rate-making purposes, and what elections they should exercise under the statute. All interested natural gas companies and regulatory authorities were permitted to intervene. Extensive hearings were held before an examiner. Leading accountants and other persons testified, and numerous exhibits illustrating the effect of the tax statutes were introduced.

The presiding examiner issued an order on February 29, 1956, approving the proposed accounting procedures and prescribing accounting rules necessary to implement the declaratory order. The FPC affirmed the examiner’s decision and later denied an application for rehearing. This denial stated among other things that the views expressed in the declaratory order would be effectuated in subsequent rate proceedings.

The cities that opposed the FPC’s action appealed to the Court of appeals for the District of Columbia. The FPC moved to dismiss on the grounds that the appellants were not aggrieved within the meaning of the Natural Gas Act\(^\text{49}\) and, therefore, that the FPC’s order was not judicially reviewable. The FPC took the position that the parties could only obtain judicial review by waiting until its action was effectuated in a rate proceeding. The FPC prevailed and the case was dismissed on June 26, 1957, with the result that the issue still was not settled.

Later, in a proceeding involving the rates of United Fuel Gas Company (one of the parties to the declaratory-order proceeding), the same cities which sought review of the declaratory order intervened and opposed the accounting and rate treatment prescribed for accelerated depreciation in the declaratory order. Extensive hearings were held again with respect to this issue. The same parties presented the same witnesses in support of their respective views. The presiding examiner issued a decision, exceptions were filed and oral argument was heard by the Commission. Its final order was consistent with the declaratory order. An application for rehearing was denied, and the case was taken to the Court of Appeals for the Fourth Circuit by the same parties that had unsuccessfully sought review of the same issues in the declaratory order proceeding four years earlier. In October, 1961—seven years after the initial application for a declaratory order was filed—the Court upheld the FPC's action.50 The same issues also were tried in rate cases involving several other companies, and similar decisions of the FPC were upheld by the courts.

After seven years, much confusion, litigation and expense, the result still seems to be a nebulous policy subject to the vagaries of ad hoc development; all of this could have been avoided if the agency had effectively used the time-saving and policy-clarifying device of a declaratory order and then had adhered to its initial determination. Clearly this lack of proper use of declaratory orders and the lack of judicial review of such orders caused substantial wasted time and effort and the perpetuation of uncertainty as to applicable law. In addition, the agency ignored the desideratum of flexibility that such orders afford in saving the parties from having to run the risk either of violating agency policy in order to determine their rights and obligations or of waiting until the questions can be raised in the normal channels of adjudication or rule-making.

E. Increasing The Authority Of The Hearing Examiner

So far, attention has been focused on procedural devices that will help to speed up the administrative process—prehearing conferences, abridged procedures, revised settlement methods, more effective use of declaratory orders. But another way to help reduce delay and costs is to revitalize the hearing examiner’s powers and duties. Under the present APA, the presiding examiner either lacks certain necessary powers to aid in the expeditious handling of the proceedings over which he presides, or possesses them only to the extent allowed by agency rule.51 In either case, the result is (1) that the volume of the

50 City of Lexington v. FPC, 295 F.2d 109 (4th Cir. 1961).
record increases needlessly to such an extent as to preclude its exact use on agency review, or (2) that the presiding officer must await agency consideration of routine and recurrent requests before he can continue with the proceeding. An example of the latter is the distinction made by some agency rules and statutes between the signing and issuing of subpoenas. The Administrative Conference found that it makes no sense to require an agency member to sign a subpoena if the presiding officer or other subordinate official determines whether a signed subpoena is to be used in particular cases.\(^\text{58}\)

When some records reach as high as 11,000 to 20,000 pages and many more records total from 2,500 to 5,000 pages, the quality of decisions is lowered, and greater lengths of time are required to reach those decisions. Huge records help to perpetuate the institutional decision. Since no agency member can be expected to sift (much less read) each record, a staff member must summarize it for him. Admitting that such condensing is necessary, it does not resolve the problem that the one who ultimately decides a case gets only a limited view of the facts and issues. It does not solve the problem that the agency members formulate new policy or settle or reaffirm old policy on the basis of a cold and summarized record.

Obviously, agency heads cannot be expected to devote more time to reading the record. It probably is not even desirable. But if records can be reduced in size, they can be reviewed more intelligently and comprehensively, and better, consistent decisions may be possible.

Utilizing such devices as prehearing conferences and abridged procedures will reduce the size of the records, but giving the examiners more power to control the hearings and as a result what goes into the record will help also. The examiner must be able to control the number of witnesses (at least expert witnesses), the documents introduced and the extent of cross-examination. He should be trained to exclude extraneous and irrelevant evidence and should be encouraged to do so. These additional powers will enable the presiding officer to control the record. Of course, frequently the factors contributing to the size of a record are beyond the presiding officer's control because of the complexity of the case, the number of parties or necessary exhibits or the existence of factual issues which require heavier burdens of proof and more extensive cross-examination. Little improvement can be made in these situations by increasing the examiner's powers. However, in some cases, it is the agency's fault for not vesting sufficient authority in the examiner.

All too often an agency causes a decision to turn upon some procedural equity or statutory authority. If the examiner has had any experience with the agency, he will try to develop every minute issue possible instead of trying to eliminate unnecessary technical points. He will accept all manner of objections and will insist upon the most formal methods of proof available. It is also true that in some agencies the examiner is treated like a policeman whose main duty is simply to be present at the hearing to maintain order. In such instances there is little reason for him to help the parties to a discussion and presentation on the material issues. Better decisions, shorter hearings and more concise records can result if the examiner is treated as part of the agency's decisional processes who has something to contribute to the final outcome of the proceeding, and if he is given the necessary powers to make his contribution productive.

In order to attain these objectives, a proposal to increase the decisional authority of the examiner has been studied by the Subcommittee, in addition to the proposal to increase his authority to control the hearing. This proposal envisions that there will be only one decision in agency adjudications which will be subject to limited review before the agency. It is hoped that this new decisional authority will increase the status of the examiner and thereby result in better prepared decisions. There is also reason to believe that with this additional decisional authority in the examiner, the agency will be relieved of hearing minor cases, of rehearing entire cases, and thus wading through gigantic records, and that it will be free to devote more time to questions involving broader public policy considerations.

Another means of expediting the decisional process is to authorize hearing examiners to make summary decisions, decisions on the pleadings and decisions in response to motions to dismiss. Such authorization will enable the presiding officer to dispose of cases without undue formality if no controvertible issues of fact, law or policy are presented; if no argument will contribute to the making of a better decision; and if the facts, law and policy are incontestibly established by the pleadings.

F. Limitations On Intra-Agency Review Of Administrative Proceedings

Increasing the presiding officer's control over the proceedings and the authority of his decisions, like the procedural reforms previously discussed, represents an attempt to expedite the hearing stage of agency proceedings. However, the appellate-review stage of agency proceedings is also a source of delay and is in need of revision.
The present provisions of the APA vest in the agencies all powers on review that they would have if they themselves were presiding at the hearing. In effect, this broad power of review permits the agencies to review the entire record if they are so disposed. They are free to substitute their independent judgment, even on issues of fact, and to circumvent completely the examiner's decision. Although the agencies have the primary responsibility for developing and implementing policy, the persistent practice of some agencies to ignore completely an examiner's decision after extensive and often lengthy hearings already have been held has caused delays and needless duplication of effort. Agencies have used this broad power to re-examine the record in detail no matter how unspecified or unconvincing are the grounds set out for appeal. Parties also have taken advantage of this power in an effort to impose upon the agency the burden of complete re-examination by making blanket exceptions without reference to pages in the record and without in any way narrowing the issues.

To stop this wasted effort, it has been proposed that parties seeking administrative review of an examiner's decision be required to specify the alleged errors in the presiding officer's decision and the portions of the record supporting the allegations of error, and that the agencies confine their review to the specified errors and portions of the record. Under this proposal an agency's powers on review clearly would not be as extensive as the powers it would have if deciding the case initially.

These proposals, in addition to according greater administrative finality to the decisions of presiding officers, would enable agencies to devote more of their time to more important problems. It is not necessary to refer again to the increased workloads, mounting backlogs and delays in final agency action. Some agencies actually have kept abreast of their work, but this fact does not always indicate that the agency is making the wisest use of the time and skills of its members and staff.

56 In 1961, President Kennedy sought to relieve agency members "from the necessity of dealing with many matters of lesser importance and thus conserve their time for the consideration of major matters of policy and planning." President's messages transmitting to Congress Reorganization Plans Nos. 1-5 of 1961.
57 The word "wisest" was defined by the Conference to mean "best calculated to effectuate the aims of the statute entrusted to the agency's administration and, at the same time, accord full due process to affected parties." S. Doc. No. 24, 88th Cong., 1st Sess. 119 (1963).
G. Modification Of Agency Appellate Review Structures

In addition to the proposals just discussed, two suggestions have been advanced for reworking agency appellate structures to expedite administrative review. One would authorize appellate boards composed of some of the agency members or some specially designated appellate examiners to hear and to decide appeals. This procedure would relieve the agency members from hearing all appeals by allowing them either to sit in panels and thereby increase the total number of cases that agency members as a group could handle, or to delegate final decisional authority to subordinates in cases of lesser importance.

The other suggestion would grant to the agencies the discretionary right to choose the cases they wish to review. This method would be patterned on the certiorari-type review procedure now used by the Civil Aeronautics Board. Under this procedure, the agency would either review a case or refuse review—regardless of the merits of the examiner’s decision—depending upon whether or not the case was important enough to warrant the attention of the agency members.

Neither of these types of procedures is a complete solution, however. In many instances, certain agencies do not need appeal boards because of lack of volume of cases. On the other hand, if agencies are given total discretion to review any case they want, there is the risk that every case, regardless of its importance, will be reviewed because of an overemphasized fear that refusal to review is tantamount to shirking the responsibilities imposed upon the agencies by Congress. Such difficulties may necessitate compromising both methods by systematically blending both forms of review into an alternative structure.

H. Summary

If these various proposals for changes in the hearing, decisional and review stage of agency proceedings are adopted and prove to be viable in practice, the agencies should be able to devote more time to studying and enunciating policy. If this result emerges, the delays and costs of administrative adjudication can be reduced. Subordinate officers can apply the policy to the various factual situations presented to them and can reach a logical and consistent decision in accord with the overall objectives of both the Congress and the agency. This will reduce the size of records, make the administrative process available to more citizens and help to refresh and strengthen the national economy. Increasing the status of certain personnel in

89 Id. at 177 L., 217.
the agencies will attract better qualified men to the Government, which will itself create a source for future high quality administrators who can be promoted and advanced when the need exists.

IV. Administrative Conference

The proposed remedies that have been discussed previously can be criticized as being directed to only a very small portion of the problems confronting the administrative process. Admittedly, the greatest effect of enacting the revised APA will be to update and expedite agency adjudications. In one way, however, this Article gives a somewhat misleading picture of the proposed amendments to the APA. Due to limitations of time and space, many other significant amendments have not been discussed. But even the amendments omitted from discussion, which would broaden the overall effect of a new APA, cannot be regarded as resolving all of the problems; in fact, no legislation, no matter how comprehensive, could act as a panacea. Because the remedial effect of legislative action is limited, it is gratifying and significant that a permanent Administrative Conference has been created by Congress.

This Conference should be to the administrative agencies roughly what the Judicial Conference of the United States is to the federal courts. It will provide a means whereby stimulating and continuing effort can be directed toward encouraging the agencies (1) to implement recommendations for improvement through the making of necessary reforms and (2) to aid in developing the usefulness and meaning of the new APA. More important, the Conference itself will perform a similar service in regard to its own recommendations.

The Conference will be composed of a Chairman, a Council, and an Assembly. The Chairman will be appointed for a five-year term by the President with the advice and consent of the Senate. He will be responsible for continuously encouraging the agencies to act in accordance with the general purposes of the Conference and to effectuate recommendations which had been made by the Conference. The Council will consist of eleven members (including the Chairman) appointed by the President. To assure adequate reflection of diverse experience and public interest, the Council will include agency personnel, members of the bar and, in all likelihood, some scholars in the field of administrative law. The members of the Assembly of the Conference will be agency personnel, practicing attorneys, scholars in

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For background and development of this Conference, See Hearings on S. 1664 Before the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary, 88th Cong., 1st Sess. 7-18 (1963).
administrative law and government, and others specially qualified to serve.

The design for this Conference is based largely on the two temporary Conferences that preceded it. The last temporary Conference made thirty knowledgeable and precise recommendations. Some were actually incorporated into the bill to amend the APA. Other recommendations were such that they should probably be referred to different committees of the Congress if legislative action is appropriate or to the various agencies for independent implementation.

The real value of this Conference will be its ability to direct continued effort toward solving the immense problems that have been discussed in this Article and that will arise in the future. The reason for including this brief description of this new Conference and its goal is to round out the explanation of the current changes in administrative law. As has been stated before, without the supplementary effect of continued review, study and revision, the problems of the administrative process soon would become incapable of solution. Realizing that there are numerous matters which should be considered by the Conference, the author will suggest a few topics to which the Conference should direct its attention as soon as possible after it is organized.

First, the statistical compilation and study, discussed earlier in this Article, should be continued and extended. This project is of the utmost necessity for providing reliable information on the effects of the new legislative changes in the APA and for pinpointing the various causes of delay and other problems inherent in administrative proceedings.

In fact, serious consideration should be given to the elimination of periodic agency reporting if the statistical study is continued. Agency reports are subject to selective treatment which can affect their validity, and they become available too late for maximum value. Instead, some method should be devised for a continuous flow of statistics as the facts giving rise to the statistics occur. The information would be more free from human errors and would provide a much better knowledge and understanding of the total administrative process. Other improvements in the gathering of statistics can also be made.

Other problems will not be reached by revising the APA. They include overlapping jurisdiction of the agencies, better relations be-

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61 To mention a few: Provision to amend the sections on subpoenas and on administrative review, to make transcripts more freely available, and to improve the right to counsel in administrative proceedings and investigations.

62 See notes 8-9 supra and accompanying text.
tween the agencies and the Congress and Executive, and the overall problem of securing and keeping better personnel. Likewise, there is a great deal of confusion about the nature and authority of contract appeal boards and the types of procedures that should be made applicable to them. In due time the Conference should focus its attention on these difficult but important matters.

The last temporary Conference made an excellent study of the problem of external separation of functions. In need of similar scrutiny now, however, is the problem of what influences the decisional process internally. Present proposals in this area have been confused. They have failed, for example, to distinguish between and to assess the significance (if any) of the hearing and appellate stages of a proceeding in determining who can consult with whom, to what degree, and on what issues.

Procedures have been overhauled that should enable the agencies to devote more time and energy to policy making. However, the availability of more time for policy making does not necessarily mean that any more policy in fact will be made. Some conclusions should be reached by the Conference as to how this additional time may be best used to determine the cases in need of policy solutions, the factors that should be considered in making policy, and the best and most expeditious methods for making these determinations.

The whole system of hearing-examiner selection and control needs detailed examination. The new responsibilities and duties of these men make it imperative that only the most qualified men be accepted into the examiners' ranks. A study should be made to determine whether the Civil Service Commission should retain its jurisdiction over the examiners, and if not, the study should reach a conclusion as to what new body should control the recruiting, training and compensation of the examiners.

Three other topics deserving of consideration by the Conference may be mentioned briefly. Agency investigations is an area about which little is known. How do they function? Are they fair? Methods to identify proceedings in which advisory opinions can be used to obviate disputes and reduce caseloads should be explored. New and meaningful use of discovery techniques should be examined with a view to formulating some uniform rules applicable to many of the agencies.

In order that the Conference does not become merely an academic

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The Subcommittee is currently engaged in an investigation of the extent to which administrative nonsecurity agencies employ various investigative techniques that could possibly constitute an invasion of privacy.
discussion group, a follow-up committee should be established as a permanent arm of the Conference. The duty of this committee would be to follow up the recommendations of the Conference to see whether or not they were being utilized and to determine the effects of their adoption or rejection by the agencies.

The Conference also should establish some type of machinery for handling citizen complaints, inquiries and suggestions. This committee also would compile factual documentation for needed improvements and would serve as the first level for determining new areas of study. Through this committee the Conference would establish a point of contact with the citizens of the nation and a liaison that could contribute valuable independent views on how to improve the administrative process.

V. CONCLUSION

This Article has attempted to show the problems that currently are confronting an effective administrative process and to describe the remedies that have been proposed for some of these problems. Although the points raised have not been discussed in detail, it is clear that complexity, pervasiveness and contrariety characterize the administrative process and that even partial solution of the comprehensive question of better administration will not be solved by one-shot legislation.

It is also important to remember that cooperation and coordination are necessary from the myriad facets constituting the administrative process. Otherwise, and without the treatment of any problem as only a part of a much broader one with web-like ramifications for the whole process, any solution will be at best only partial and temporizing.

Study, dedication and ultimately action are necessary. If the Administrative Conference becomes solely a discussion or academic body, the Conference to that extent will fail. If the agencies, the Congress and the Executive fail to interact with harmonious relations, understanding and a desire for improvement, to that extent all progressive innovations will fall short of their intended goals. And if the citizens of this nation remain apathetic to the problems of the administrative process, to that extent this nation will be saddled with an inefficient and unfair method of government.