

of the public interest, I am not at all convinced that it should be available in this particular way.

That would not happen so very often, but it would happen sufficiently to indicate its possibility, and I am sure such things would continue to grow and increase as the Conference continues.

With respect to some of the particular questions about this bill, I also think that the jurisdiction of the Conference could very profitably be expanded so as to include all of the subjects generally covered under administrative adjudication and rulemaking without the particular exceptions which are now included in the proposed bill. I recognize that those exceptions have good and carefully thought out reasons so far as the Administrative Procedure Act itself is concerned.

Senator LONG. Mr. Fensterwald has a question.

Mr. FENSTERWALD. I want to ask you if your suggestion and change relate to section 3(a) of the bill.

Professor NATHANSON. I think that is the definition section.

Mr. FENSTERWALD. Yes.

Professor NATHANSON. That would be directed particularly to 3(a) 1 and 2. I would be happy to see that definition left entirely as it is without the exceptions.

Mr. FENSTERWALD. What is your reason for wanting to take the exceptions out?

Professor NATHANSON. Well, I would say that the exceptions tend to freeze what are now some of the particular exceptions of the Administrative Procedure Act which may be desirable from the point of view of the Administrative Procedure Act itself as a statute which actually imposes certain procedural requirements, but, from the point of view of study and examination, which is all that this bill is concerned with, I see no reason why the scope of investigation should not be as broad as the administrative process itself. Out of that study and investigation, there then may come appropriate determinations as to what should be excepted from general procedural regulations, and what should not be. In other words, I cannot see any harm done from a broad power and a spirit of inquiry, which is what this bill is concerned with. There is also the additional consideration that the definitions now suggestions with respect to the exceptions will involve some rather difficult legal questions as to just what proceedings must be conducted in conformity with sections 7 and 8 of Administrative Procedure Act. This itself is an evolving area of the law. There have been considerable doubts, some of which have been resolved by decisions of the courts and some of which are still pending. This is necessary and appropriate for the Administrative Procedure Act itself, but it seems strange to me that a subject of inquiry should be foreclosed by a doubtful problem as to whether this particular question comes within or does not come within section 7.

Mr. FENSTERWALD. Is it your opinion, if it is left the way it is, that the Conference might spend a great deal of time deciding whether it should or should not consider a particular problem?

Professor NATHANSON. Yes, although I would assume that the Conference would show some good sense about this, I would not like there to be a stumbling block which really has nothing to do with the major work of the Conference.