

Mr. KENNEDY. Well, since he did say that, is there a disagreement as to how broad the Administrative Act is? Judge Prettyman says that the bill is deficient because it is not as broad as the act. You say that it is as broad as the act?

Mr. STAATS. Well, he speaks of this—

Mr. KENNEDY. May we have your advice as to just which set of words we should pay the most heed to?

Miss GUFFEY. Mr. Chairman, there have been certain suggestions that the definitions in the Administrative Procedure Act, section 2, be used to set the scope of the Conference. Now, those definitions do not, themselves, set the scope of the Administrative Procedure Act. The scope of the act is set, not by the definitions, but by the subsequent sections of the act. S. 1664 is consistent with details of the coverage of the sections which deal with rulemaking and adjudication in the APA, except that in one instance the scope of S. 1664 is broader than the scope of the Administrative Procedure Act in that it would let the Conference consider instances in which an administrative agency may impose a penalty on a private party without meeting the formal requirements of sections 7 and 8 of the APA.

Mr. KENNEDY. Mr. Chairman, on this point, this goes back to something Miss Guffey said earlier: that these exceptions which are placed in the APA and the substantive sections dealing with specific types of proceeding, are partially because Congress in some of the instances has some doubt about agency procedures.

I think particularly of that *de novo* exception that Miss Guffey has mentioned.

But since this Conference is to study and make recommendations to improve agency procedures—perhaps they could improve them so much that the Congress would no longer have to place this *de novo* exception in the Administrative Procedure Act, and, yet, if we follow the reasoning of the draft of the bill prepared by the Bureau of the Budget, we would be preventing the Conference from looking into a means of improving agency procedure in that area.

Miss GUFFEY. Mr. Chairman, I would like to comment on the possibility that Congress might want to drop the exception relating to trials *de novo*.

If the proposal contemplates that the agencies would, themselves, give the trial in those cases, you would be transferring, I believe, from the courts to the agencies functions which the courts have been perfectly able to handle and which Congress has never seen any reason to bring within the scope of what we call the administrative process—and that, itself, is a technical term.

Mr. KENNEDY. Mr. Staats—

Mr. FENSTERWALD. I wonder if I could interrupt. I am not quite sure I understand.

All this power this Conference has is to study and recommend.

Miss GUFFEY. Right.

Mr. FENSTERWALD. I do not understand why you want to limit the powers of study and recommendation to certain fields, excluding, for example, the question of trials *de novo*. We are not considering what power the agencies have. We are only discussing the power of the Conference to study and make recommendations in this field, and I do not see the danger there.