

Miss GUFFEY. Well, the principle involved here relates to what is the administrative process, and why did Congress find it necessary to pass the Administrative Procedure Act in the first place? We had gotten into certain situations where agencies could make decisions, and where the courts in reviewing the decisions could not review the facts from the beginning, and in which it was possible to say that the Government was not protecting due process.

Now, unless that situation exists where the courts are precluded from giving a comprehensive review, then the administrative agency is able to proceed in an expeditious, executive manner, subject always to the knowledge that if it is capricious or if it is not getting all the facts, it is subject to court review.

Mr. FENSTERWALD. Well, I still do not see what harm could derive from letting the Administrative Conference have the authority to study this whole problem and make recommendations, provided that the problem exists and some recommendations might be helpful.

Miss GUFFEY. It is fundamentally outside of the objective of the Conference as it is viewed. The primary intent of the Conference is to improve the operation of the regulatory agencies and the regulatory programs which regulate private interests.

Mr. STAATS. I think you are quite correct in saying it is advisory, but even in that framework we feel that the acceptance of this program, as far as the agencies are concerned, is going to be much improved if we can limit it to the central thesis that we are trying to deal with here, which is administrative procedure.

I think that this is what was behind the exclusions: We included them for the obvious reasons which are back of the exclusions in the Administrative Procedure Act respecting the areas of military policy, foreign policy, regulations respecting internal management, budgets, personnel, and all of this. Even though your principle of it being advisory would still apply, we would not think it would be too profitable or appropriate or even essential that they get into areas of this kind. If we are going to develop something which the agencies are going to have a fear about, then I think we have largely defeated the basic principle here, which is cooperation and acceptance of the idea that this is a useful framework in which to discuss these issues.

Mr. FENSTERWALD. Well, I am still somewhat confused on this. The last Administrative Conference had a very productive committee on judicial review which was headed by one of our witnesses this morning, Mr. Ashley Sellers, and they produced some very valuable committee reports and recommendations.

Whether these are put into effect or not will depend upon a number of things, but I do not know why it is not productive to have as broad a jurisdiction as you can for this Conference because its powers are so limited, and I can see where you think it might be better to have them concentrate in certain fields, and this may very well be true, but I wondered if by legislation we should narrow this thing down and exclude broad areas.

Miss GUFFEY. It would not be created to improve the operation of the courts. It would be created primarily to deal with procedures of executive agencies, and that should be its emphasis.

Mr. KENNEDY. Mr. Fensterwald, could I interject there a couple of specific examples that I wonder—