

We agree with Professor Gellhorn's observation that, as now drafted section 3(a) might be deemed to exclude such matters as "Government procurement procedures, selection and tenure of hearing officers, recruitment and training of Government attorneys, social security administration, land patents, grazing permits, steamship, locomotive, and aircraft inspection, proceedings involving determination of appropriate units for collective bargaining, and passport issuance, among other administrative activities important to persons outside the Government."

Remembering that section 3(c) so defines "administrative procedure" as to exclude "the scope of agency responsibility as established by law or matters of substantive policy committed by law to agency discretion," an unobjectional definition of "administrative program" can be devised by inclusion of any agency proceeding or action as defined by section 1001(g) of chapter XIX of title 5 of the United States Code.

This would bring clearly within the cognizance of the Administrative Conference many activities having direct and indirect impact on members of the public, which may now be foreclosed to assistance from the Administrative Conference by the language of section 3(a) as now drawn. We can perceive of no justification for the constrictive effect of that part of the bill if, as may be the case, its purpose is exclusionary.

As an alternative to the foregoing suggestions respecting section 3 those advocated by Professor Gellhorn would be acceptable to us.

I listened rather intently, Mr. Chairman, to the testimony of Mr. Staats this morning on this point, and particularly to his answers during colloquies to try to learn, if I could, why section 3 was drawn in the manner in which it now appears and why it was determined to be desirable to give the bill the constrictive effect which I have described.

I could not find in the affirmative written statement any explanation beyond this one sentence, and I quote:

The effect will be to enable the Conference to concentrate very largely on the procedure used in formal proceedings.

And I believe he answered in one colloquy that it would aid in focusing attention on formal proceedings.

Now, these things are so, Mr. Chairman, but I would submit that there is no logical relationship whatsoever between a determination of what things should come within, or without sections 4 and 5 of the Administrative Procedure Act, on the one hand, and section 3 determining the scope of the bill establishing the Administrative Conference, on the other.

The point developed this morning, it seems to me, would simply say that section 3 is designed to enable the Conference to give its primary attention to areas involving formal proceedings. Certainly that would not be barred by bringing within the purview of the bill, as now drawn with the modifications we suggest, other aspects of administrative procedure which are not subject to sections 4 and 5 and which we believe should have assistance from the Administrative Conference and benefit from its study and recommendations.

(2) Another area which we deem to require amendment involves several aspects of the organization of the Conference as one composed "preponderantly" of Federal officials and personnel.