

(9) As now drafted, S. 1664 contains no provision respecting the time of meetings of the Conference. We believe a safeguard provision should be included that the Conference meet at least once a year.

In closing, I join Mr. Sellers and Mr. Russell in urging enactment of S. 1664 if it be amended as we recommend.

I wish to thank the subcommittee for its patience, and to express again my appreciation of your invitation to appear before you.

In conjunction, Mr. Chairman, with point No. 8 which appears on page 10 of my prepared statement, I would at this juncture like to add that I am seriously disturbed over the testimony which I read in yesterday's transcript of Mr. Maxson and testimony which I heard this morning partly from Mr. Staats and I believe partly from Mr. Seidman, having to do with the possibility that participation by the private practitioner in the operations of this Conference might subject him to liability under the conflict-of-interest statutes. If that part of the bill is left as it now stands, and there is no provision such as is suggested in section 8, I think you will have a further deterrent against a voluntary contribution by members of the practicing bar from their expertise to the function of this Conference.

It will be one step further toward freezing out participation of the members of the practicing bar which, in conjunction with the other aspects of the bill as now drawn, have led already to the characterizations in the press as a "superagency."

Thank you, Mr. Chairman.

Senator LONG. Thank you, Mr. Foster. We certainly appreciate the time and effort we know that has gone into the preparation and study of this matter. We are grateful to you gentlemen as representatives of the American Bar Association appearing here and making your contribution to the committee.

Mr. Fensterwald, do you have any questions?

Mr. FENSTERWALD. I have two questions, Mr. Chairman.

Before I ask them I would like to thank all three of these gentlemen and the American Bar Association for the time that they have devoted to this subject. They have been extremely helpful to the subcommittee in its consideration of this matter. I want it in the record that we are deeply grateful.

Mr. Sellers, one question that arose in my mind during the testimony was this question of the scope of the Conference. I followed the work of your Committee on Judicial Review with great interest. Is it your feelings that if we set up an Administrative Conference as outlined in S. 1664 and you again were made the Chairman of such a committee of the Conference that you would be hobbled by the limitations which would be enacted in the bill itself?

Mr. SELLERS. Oh, very very definitely. Aside from the fact that the Conference could not study with the hope of perhaps improving or changing the method of judicial review of functions, administrative functions, the Conference probably would be precluded from inquiring into the subject of judicial review in any degree, by virtue of the definitions in S. 1664. One of the great things that needs to be done and which a permanent conference with a Committee of Judicial Review would need most urgently to take up would be whether there should be judicial review of functions that are not now subject to judicial review or conceivably, conversely whether there aren't some functions