Marine Act of 1936, as amended, (2) applications by subsidized carriers to enter the protected domestic, coastwise, or intercoastal trades pursuant to section 805(a) of the act, and (3) applications by lumber shippers desiring to use foreign-flag vessels between ports in the United States and Puerto Rico pursuant to Public Law 87–877. Occasionally nonstatutory hearings are being held pursuant to discretionary authority. These concern applications for so-called title XI shipbuilding mortgage insurance and appeals from decisions of the Maritime Administration contracting officer in disputes arising under shipbuilding contracts.

We have a staff of two hearing examiners and six attorneys who, as required, act as public counsel in the processing of formal proceedings. The chief hearing examiner, Mr. Paul N. Pfeiffer who is also the current president of the Federal Trial Examiners Conference, and the assistant general counsel, Division of Operating Subsidy Contracts, Mr. Louis Zimmet, would be happy to discuss any problems on administrative procedure with your Mr. Fensterwald at his convenience.

The Maritime Administration has been greatly impressed by the work of the Administrative Conference in producing numerous carefully considered and well-documented reports on the subjects of licensing, rulemaking, contract appeals, functions of hearing examiners and public or staff counsel. It would appear that the reestablishment of the Administrative Conference on a permanent basis would be a desirable step in developing further improvements in the technique of administrative adjudication. The cross-fertilization of ideas stemming from an expert body composed of Government lawyers and hearing examiners, private practitioners, and law professors should serve as a catalytic agent toward the attainment of this important goal.

With renewed congratulations and best wishes for the success of your subcommittee.

Sincerely yours,

(Signed) DONALD W. ALEXANDER,
Maritime Administrator.

LAW OFFICES OF HEDRICK & LANE,
Washington, D.C., June 17, 1963.

BERNARD FENSTERWALD, Jr., Esq.,
Chief Counsel, Senate Subcommittee on Administrative Practice,
Room 3214, New Senate Office Building,
Washington, D.C.

DEAR BUD: After Friday's hearing, we discussed the possibility of an exemption from the conflict-of-interest laws for non-Government personnel that will be appointed to the Conference. You called my attention to the testimony given by Webb Maxson in which he states that under Public Law 87–849, a new category of Government employees was created. They are termed "special Government employees." These "special Government employees" are relieved from certain prohibitions and penalties of the conflict-of-interest laws. Maxson goes on to state, "It is clear that both the Conference member and the per diem staff assistant would come within the definition of 'special Government employee'." As I read section 202 of title 18 of the United States Code, I do not agree that this is clear. You have to bear in mind that Council members will be appointed for 3-year terms, and the statute defines a "special Government employee" as one "who is retained, designated, *appointed*, or employed to perform, with or without compensation, *for not to exceed one hundred and thirty days* during any period of three hundred and sixty-five consecutive days * * *." [Emphasis supplied.]

I believe that Maxson takes the position that since the Council will only meet on a relatively few days in any year, the Council member will be entitled to draw per diem for only those days and therefore will work less than 135 days during the year and he thereby becomes a "special Government employee." It is my contention that the Council member is appointed for the entire 365 days in the year and the force and effect of the statute does not turn on the days worked or whether or not he has earned compensation. This precise reading of the statute, therefore, would mean that the individual appointed to the Council would not be a "special Government employee" and, therefore, would not be entitled to the immunity so provided.