STATEMENT OF

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COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

HEARING ON THE
ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

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Mr. Chairman and Members of the Subcommittee. Thank you for the invitation to comment upon the Administrative Conference of the United States. I participated in its activities from 1981 to 1994 as a "liaison" from the Judicial Conference to the Administrative Conference. As I testified before this Committee six years ago, I believe that the Conference served an important purpose—improving our government, in many ways beneficial to the average American—at low cost. This statement, which I give in my capacity simply as a former participant in and observer of the Conference's activities, describes my recollections of the Conference's unique function and contributions.

The Conference primarily examined government agency procedures and practices, searching for ways to help agencies function more fairly and more efficiently. It generally focused on achieving "semi-technical" reform. That is to say, it focused on changes in practices involving more than a handful of cases and, frequently, more than one agency—but changes that were neither so controversial nor so politically significant as likely to provoke a general debate, say, in Congress. Thus, it would study and adopt recommendations concerning better rule-making procedures, or ways to avoid unnecessary legal technicalities, controversies, and delays through agency use of negotiation. While these subjects themselves and the related recommendations often sound technical, in practice they often simply make it easier for citizens to understand what government agencies are doing, to challenge arbitrary government actions that could cause harm, and to prevent such arbitrary decisions in the first place.

The Administrative Conference developed its recommendations by bringing together at least four groups of people: top-level agency administrators; professional agency staff; private practitioners (including practitioners from "public interest"

organizations); and academicians. The Conference would typically commission a study by an academician, say, a law professor, who would have the time to conduct the study thoughtfully, but who might lack first-hand practical experience. The professor would spend time with agency staff, who often have otherwise-unavailable facts and experience, but might lack the time for general reflection and comparisons with other agencies. The professor's draft would be reviewed and discussed by private practitioners, who typically brought a critically important practical perspective, and by top-level administrators such as agency heads, who could add further practical insights, make inter-agency comparisons, and add special public perspectives. The upshot was frequently a work-product drawing upon many different points of view, both practically helpful and commanding general acceptance.

In seeking to answer the question, "Who will regulate the regulators?" most governments have found it necessary to develop institutions that continuously review, and recommend changes in, agency practices. In some countries, ombudsmen, in dealing with citizen complaints, will also recommend changes in practices and procedures. Sometimes, as in France and Canada, expert tribunals will review decisions of other agencies and help them improve their procedures. And in Australia and the United Kingdom, special councils will advise ministries about needed procedural reforms. Our own nation developed this rather special approach—drawing together scholars, practitioners, and agency officials—to bring about reform of a sort that is more general than the investigation of individual complaints, yet less dramatic than that normally needed to invoke Congressional processes. Given the Conference's rather low cost (a small central staff, commissioning academic papers, endless amounts of volunteered

private time, and two general meetings per year), it is indeed a pity that, in allowing the Conference to lie dormant for years, we have weakened our federal government's ability to respond effectively, in this general way, to the problems of its citizens.

I have not found other institutions readily available to perform this same task. Individual agencies, while trying to reform themselves, sometimes lack the ability to make cross-agency comparisons. The American Bar Association's Administrative Law Section, while a fine institution, cannot call upon the time and resources of agency staff members and agency heads as readily as could the Administrative Conference. Congressional staffs cannot as easily conduct the research necessary to develop many of the Conference's more technical proposals. The Office of Management and Budget does not normally concern itself with general procedural proposals.

All of this is to explain why I believe the Administrative Conference performed a necessary function, which, in light of the modest cost, should have been maintained. I recognize that the Conference was not the most well known of government agencies. But that, in my view, simply reflects the fact that it did its job, developing consensus about change in fairly technical areas. That is a job that the public, whether or not it knows the name "Administrative Conference," needs to have done. And, for the reasons I have given, I believe that the Administrative Conference was well suited to do it.

I am, therefore, delighted that Congress authorized funding for the Conference last year. I hope the Conference will have sufficient resources to undertake the work it once did. And I hope my views on that work may provide some assistance as the Conference begins again.