



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Collaborative Governance Minutes of Meeting – April 21, 2011

Committee Members

Jody Freeman, Chair (by video Skype)
Daniel Elliott (by telephone)
Michael Herz (by telephone)
James Johnson (by telephone)
Simon Lazarus (by telephone)
Patrick Patterson

Project Consultant

James O'Reilly

Administrative Conference Staff

Paul Verkuil
Jonathan Siegel
David Pritzker
Reeve Bull

Public

Reamy Ancarrow, STB
Celia Viggo Wexler, Union of Concerned Scientists

The meeting commenced at 1:00 PM. The meeting was conducted by Committee Chair Jody Freeman, who participated via Internet video and telephone connection. Ms. Freeman opened the meeting by noting that this is the second meeting of the committee to consider potential recommendations concerning the Federal Advisory Committee Act (FACA) and the use of electronic media.

Ms. Freeman stated that after further consideration of the draft report by Professor O'Reilly and a revised draft recommendation, she is recommending that the committee not move forward with a recommendation on the narrow question of the use of electronic media under FACA, but instead should broaden the study to dig deeper into the problems that agencies face more generally with FACA. The work done to date would be part of the broader study. She suggested proceeding with a program of reaching out to the agencies, by initially polling their Administrative Conference members, to identify the full range of problems agencies may be experiencing with FACA. This would be followed up with a workshop in the summer for active discussion of the issues. The committee would not be abandoning the ideas generated thus far, but rather would be enlarging the scope of the inquiry, aiming for a recommendation on the agenda of the Conference's December plenary session.

Mr. O'Reilly endorsed this idea, saying that agencies face other problems with FACA beyond any issues concerning use of new media, though this doesn't detract from the need to resolve some of the media issues. Mr. Herz and Mr. Patterson also agreed that Ms. Freeman's proposal makes good sense.

Mr. O'Reilly reminded the committee that it would be appropriate to have a response to comments submitted by staff of the General Services Administration's Committee Management Secretariat. Mr. Siegel said that Conference staff is following up with GSA, particularly to clarify the meaning of some of the GSA comments and to understand better the basis of certain expressed objections to statements in the report.

Ms. Freeman recalled that at the March meeting, committee members had mentioned the FACA chartering process as a source of problems. She also mentioned the reported use of various workarounds by agencies to avoid triggering FACA as an issue. She suggested that the poll of Conference members to identify FACA issues start with these points as examples, but be open-ended about identifying further issues.

Mr. Herz urged that any further inquiry about agency experience with FACA ask not just what the defects are, but also what aspects of FACA have been working well. He said that although FACA is one of most complained about statutes, we should try to identify the core principles that should be preserved and hold onto what is valuable. Ms. Freeman agreed, noting that we should not assume that nothing about FACA is working well. She proposed that the inquiry set out some problems that people have suggested, but also seek other ideas, framing the inquiry as Mr. Herz had

suggested. Mr. Johnson advised seeking not only what works well, but asking also what else agencies think is needed within the ambit of FACA measures.

Ms. Freeman stated that we learned from Mr. O'Reilly's work that it can be difficult to identify exactly what the real problems are. Mr. O'Reilly added that several people he interviewed had declined to offer any substantive critique of the Act or the regulations.

Mr. Pritzker recalled that some speakers at the March meeting had advised trying to contact individuals and organizations outside the government as well as committee management and other agency personnel. He suggested using the Conference's website tools for this purpose, and noted that any such inquiry should be formulated in a way that would obtain useful input without having to obtain OMB approval under the Paperwork Reduction Act for a structured information collection.

Ms. Freeman offered Ms. Wexler (Union of Concerned Scientists) an opportunity to add her comments. Ms. Wexler Wexler expressed appreciation for the decision to take more time for a broader inquiry, and offered to assist the committee in contacting the non-governmental organization (NGO) community. She also noted her appreciation of Mr. O'Reilly's willingness to communicate with them.

The meeting was adjourned at 1:30 PM.