

TEXT OF COMMITTEE REPORTS IN SUPPORT OF RECOMMENDATIONS NOS. 1-22 OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

RECOMMENDATION NO. 1

ADEQUATE HEARING FACILITIES

Administrative hearings of the Federal Government should be conducted in dignified, efficient hearing rooms, appropriate as to size, arrangement and furnishings. At the present time no central body is responsible for providing or planning the needed facilities. As a particular consequence, administrative hearings often have been conducted in surroundings unsuitable to the seriousness of these governmental proceedings. The General Services Administration could advantageously arrange for the service and the space needed by departments and agencies in which administrative hearings occur.

RECOMMENDATION

1. The General Services Administration should develop a set of four hearing room classifications explicitly identifying the features required with standards meeting at least the following minimum requirements. Such classifications should be developed in conjunction with representatives of the agencies, the bar, and examiners. The minimum requirements should be:

Type A—A formal conference room with table space for as many as 16 principals and additional seating for up to 20 other persons.

Type B—A small hearing room with a raised dais, a witness box, a reporter's table, table space for as many as six counsel, and additional seating for up to 30 others. The design and furnishings should be appropriate to a hearing which is judicial in nature and should include wherever possible an auxiliary room in which counsel may confer with their clients, witnesses may be sequestered, etc.

Type C—A large hearing room accommodating as many as 30 counsel at tables and up to 70 witnesses and spectators. This room should have the design and furnishings which are appropriate to formal hearings of a judicial nature.

Type D—An auditorium suitable for hearings of general public interest which might attract over 100 principals and spectators.

An essential requirement of each of the four types of hearing rooms should be a small, nearby room available to the examiner as his office and for such other uses as he designates.

2. The General Services Administration should prepare and maintain on a current basis an inventory which (a) identifies available hearing facilities throughout the country, classified under the system recommended in 1 above, including hearing rooms permanently assigned to particular agencies as well as courtrooms (local, State, and Federal), (b) identifies the GSA regional offices, local building managers, and others through whom such space can be obtained, and (c) provides information concerning the procedures to be followed to obtain space through the GSA for the conduct of hearings.

3. The General Services Administration should establish procedures for determining the frequency and location of administrative hearings which require facilities of each type within the system of classification recommended above in order to determine, by city, whether a permanent hearing room for multiagency use can be justified. A permanent hearing room should be considered justified wherever there is a continuing need of approximately one-fourth of the available working days.

4. The General Services Administration should provide for the administration and scheduling of permanent multiagency hearing facilities under the direction of GSA's Washington headquarters, but subject to such decentralization as the functions of inventorying, procuring, and planning may require.

5. The General Services Administration should establish a procedure for the systematic reporting, to the respective agency and to GSA, of deficiencies in assigned facilities discovered by presiding officers, and for the investigation and correction of such deficiencies.

6. The General Services Administration should establish an advisory committee of members of the bar and other interested professional, associations, agency representatives, and members of the public to facilitate the evaluation of present and future needs and to report annually to the Administrative Conference on its activities.

7. Permanent multiagency hearing rooms and hearing rooms permanently assigned to individual Federal agencies should be identified as "Federal Administrative Hearing Rooms."

8. The Chairman of the Administrative Conference should encourage the cooperation of State and local judges in the procurement of courtroom space for Federal administrative hearings.

9. The Judicial Conference of the United States should encourage the cooperation of Federal judges in the procurement of courtroom space for Federal administrative hearings.

10. Federal agencies should budget funds to provide for the payment of charges for the use of appropriate space when such space is not available on a free basis.

11. Federal agencies which conduct administrative hearings should designate an official to work with the General Services Administration in the procurement and planning of hearing facilities.

REPORT OF THE COMMITTEE ON PERSONNEL IN SUPPORT OF RECOMMENDATION NO. 1

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The Committee on Personnel has been charged by the Administrative Conference of the United States with responsibility for conducting studies to determine how the professional skills and effectiveness of Government personnel can be enhanced.

The Committee chose as its first study the question of whether adequate hearing room facilities are available for Federal agencies and departments.

To determine the extent to which there is a present need for improved facilities, the Committee has conducted two surveys of agencies; held an informal meeting between the General Services Administration, the Committee, representatives of the agencies and departments, and representatives of the various professional and bar associations; and conducted two days of public hearings.

Responses to the agency surveys, comments at the informal meeting and numerous contacts with individual Examiners, lawyers and agency officers and testimony at the hearing reveal that for some agencies the inadequacies are chronic, disruptive and demeaning to the authority and effectiveness of the agency.

The complaints tend to be directed toward three general problems:

- (a) a scarcity in some cities of suitable spaces;
- (b) a procurement system that is unfamiliar, inefficient, misunderstood or cumbersome to employ; and
- (c) a lack of understanding of the quasi-judicial character of many administrative proceedings and the need for a courtroom design for adversarial proceedings.

The problem of adequacy of hearing room space tends to be a problem of obtaining space in the field. On the whole, agencies report that their Washington spaces are adequate to very satis-

factory and, to a much lesser degree, that spaces provided for hearings at their regional offices tend to be satisfactory. The agencies reporting the most extensive problems are those engaged in large numbers of field hearings, particularly:

Interstate Commerce Commission (FY 68)	1,693 field hearings
Department of the Interior (FY 68)	1,590 field hearings
National Labor Relations Board (FY 68)	3,100 field hearings
Social Security Administration (FY 68)	24,700 (est.) field hearings

That the problem may be only an occasional one for agencies normally holding their hearings in Washington or in regional offices does not diminish the significance of the particular occasion. The damage done to the parties and to the public interest when a major regulatory agency such as the Federal Power Commission is reduced to obviously inferior and makeshift facilities must seriously concern everyone who values or must rely upon the administrative process. That the Federal Power Commission only held five hearings outside of Washington in Fiscal Year 1968 does not diminish the importance of those five hearings.

The problem is not limited to agencies requiring hearing space in the smaller cities. Your committee has received complaints of difficulties resulting from inadequate hearing rooms, occurring within the last two years, in the following major cities: Columbus, Ohio; Dallas, Texas; Birmingham, Alabama; Miami, Florida; New Orleans, Louisiana; Seattle, Washington; Philadelphia, Pennsylvania; Pittsburgh, Pennsylvania; Norfolk, Virginia; Detroit, Michigan; Cincinnati, Ohio; and Houston, Texas.

With the construction of additional Federal office buildings, such as new facilities in Boston, the problem has been somewhat diminished in some cities. Approximately one quarter of the agencies responding to the survey indicated that the availability or the quality of space, or both, had improved perceptibly in the last several years. But this slight improvement may soon be overshadowed by a substantial expansion in the next few years in the use of hearings and by the increasing size of the crops of Examiners.

The General Services Administration, through its Planning and Utilization Division, is exceedingly interested in facilitating the procurement of space in Federal and non-Federal buildings throughout the country. The regional officers and local officers of the General Services Administration offer the agencies the advantage of a greater familiarity with local facilities than local agency representatives are likely to have. It offers the total administrative system the advantage of a single source of procure-

ment, avoiding the harassment or confusion of local volunteers of space by appeals from a multiplicity of agencies.

The General Services Administration has indicated its willingness to provide permanent hearing room facilities in those cities where shared use by Federal agencies and departments would justify such assignment. The General Services Administration has indicated, also, that it would not apply the normal utilization minimum for justification of at least some use on at least 50% of the days, but would apply a more relaxed requirement similar to that used to evaluate the need for courtroom facilities. The G.S.A. recognizes that the character of the use for such facilities makes constant use unlikely. For example, in its *Occupancy Guide* for G.S.A. officers providing space for the Interstate Commerce Commission, G.S.A. notes, "Whenever a continuing need for hearing rooms approximates one-fourth of the available working days or more, a room suitable for conducting hearings should be provided and made available to the Commission on a permanent basis."

The agencies have not, however, made very great use of the procurement services of the General Services Administration. Only three agencies reported obtaining as much as 25% of their "outside Washington" hearing spaces through the General Services Administration. There appear to be three reasons for this:

(a) The agencies may believe that there simply is no space available, to G.S.A. or anyone else;

(b) The agencies may have found the G.S.A. procedures inconvenient, cumbersome or unproductive in the past, and/or feel that their examiners can more readily obtain space through the local bar or local agency representatives; or

(c) The agencies may feel that G.S.A. representatives do not understand the quasi-judicial character of the proceedings and cannot be relied upon to obtain appropriate space.

Much of the shopping about for space appears to be impelled by policies prohibiting the expenditure of funds upon hearing spaces when free space can be obtained. While a reasonable search for free space may promote the better utilization of Federal and state facilities, the direct money savings should not be allowed to force agencies into improvised or demeaning spaces that compromise the integrity of the proceeding and the dignity of the process. The picture painted by complaints received by your Committee of Examiners forced into crowded basement rooms, Civil Service examination rooms complete with blackboards and school desks, storage rooms, minimally furnished

conference rooms, etc., makes a sad spectacle of the Federal administrative process.

It is important to recognize that the words "hearing room" do not mean the same to every agency, Examiner or General Services Administration representative. In their survey responses, agencies indicated individual variations as to the exact features needed in their hearing spaces. The following five types of spaces with total hearing room days of occupancy for Fiscal Year 1968 for all responding agencies indicate the most general types of spaces required by the agencies:

Type A—A formal conference room with table space for up to 16 principals and additional seating for up to 20 others. (Days of use: In Washington, 208; in the field, 13,806. Principal user: Office of Economic Opportunity, 13,465 field hearings.)

Type B—A small hearing room with a raised dais, a witness box, a reporter's table, table space for up to 6 counsel and additional seating for up to 30 others. The design and furnishings would be those appropriate to a small courtroom. (Days of use: In Washington, 450; in the field, 379.)

Type C—A room identical to Type B but with additional auxiliary rooms, normally an office for the Examiner or for the use of counsel and a room for sequestering witnesses. (Days in use: In Washington, 1,128; in the field, 17,649. Principal users: In the field, N.L.R.B. with 3,450 adversarial hearings and 1,960 representation proceedings, and Health, Education and Welfare with 12,000 (est.).)

The N.L.R.B. reports a need for a third auxiliary room in its adversarial hearings.

Type D—A large hearing room accommodating up to 30 counsel at tables and up to 70 witnesses and spectators. This room, too, would be designed and furnished in the style of a courtroom, but would not provide auxiliary rooms. (Days of use: In Washington, 648; in the field, 54.)

Type E—An auditorium appropriate for large proceedings which might attract over 100 parties, spectators, etc. (Days of use: In Washington, 64; in the field, 107.)

Two comments should be made in regard to this data. First, the data is based upon approximations and estimates of agencies as to what would have been the appropriate facility. Thus, an N.L.R.B. hearing actually held in a conference room, but for

which the agency feels a TYPE C facility was needed, was counted under Type C. Second, this data is based upon 23 agencies responding as of November 1, 1968. The data should not be used, therefore, to evaluate the justification for the permanent assignment of field facilities, but should be used to obtain some idea of the relative demand among the various types of space.

This differentiation as to type of facility immediately suggests the need for two steps to optimize the procurement procedure. First, there is a need for a detailed inventory of available spaces by type. Second, there is a need for the formulation of explicit specifications by type so that those providing space, those procuring space, and those requesting space may reliably refer to the same type of hearing room. A step in this direction has already been accomplished by the preparation by the General Services Administration of *Occupancy Guides*, in which general hearing room requirements of a specific agency are described for the regional offices of G.S.A. The G.S.A. has indicated that they intend "to continue the study of your requirements and to further improve this Guide whenever possible," so such a step conforms to G.S.A.'s own interest in specification of standards. The *Occupancy Guide* descriptions are at present somewhat vague. There is not sufficient detail to give a regional officer of G.S.A. an idea of the quasi-judicial atmosphere that is required, of the particular need for the Examiner to see and hear the witness easily, of the need for a separation of the witness to impress upon him the significance of his participation and testimony, of the table space requirements of counsel and expert witnesses in complicated, economic proceedings, or of the many other requirements peculiar to an administrative hearing that agencies engaged in general conferences or meetings do not have. It is clear that many of the spaces offered, accepted and then found inadequate by Examiners would not have been considered had all parties fully understood the particular requirements of an adversarial hearing on the one hand and the particular characteristics of the space being offered on the other. A set of explicit specifications would reduce the incidence of such misunderstandings.

A recurring concern of the agencies and of the Examiners is that the quasi-judicial character of the administrative hearing be recognized and weighed in the definition of *appropriate space*. To this end, it has been repeatedly suggested to the Committee that it would be helpful in fixing the appropriate image in the minds of administrative officers and other laymen involved in the procurement of space if the hearing rooms were specifically

labeled "Administrative Courtroom." Although of minimal cost, such a step would appear to be useful in establishing the character of the proceeding.

The Committee found especially significant the support which the bar and professional associations provided the agencies and Examiners in their efforts to obtain more appropriate hearing spaces. The Hearing Examiner Committee of the Administrative Law Section of the American Bar Association has approved the standards unanimously adopted by the Federal Trial Examiners Conference in May, 1968, and has approved a resolution on this topic for submission to the Section Council. See Attachment A. The Federal Trial Examiners Conference standards are attached as Attachment B. The Federal Bar Association Committee has indicated its strong support, as have other bar associations.

The Committee has received several reports that complaints have been made to N.L.R.B. Examiners by counsel objecting to having hearings in N.L.R.B. spaces. An inquiry was therefore directed to other agencies to determine whether there had been other instances of such complaints, directed at improprieties or the appearance of undesirable ex parte contacts between Examiners and staff attorneys. Although nineteen other agencies reported conducting hearings in or immediately adjacent to their offices, no other agency reported receiving such complaints. Only two others indicated a belief that a physical separation would be desirable or necessary. A number of the agencies volunteered the observation that the accessibility of such an arrangement was important to the efficient conduct of agency business, and one indicated that industry counsel appeared to prefer the arrangement. At the informal meeting arranged by the Committee, several participants indicated that when possible their agencies made a positive attempt to separate hearings from their office spaces, but this was not reflected in the survey responses. This is a matter that can probably be best determined by each agency for itself. Certainly no general rule can be imposed without risking serious interference with agency efficiency and there is no evidence that a general rule is needed or would be practical.

Of fifteen agencies responding to a survey item inquiring whether they had any formal reporting procedure for the continuing evaluation of the adequacy of hearing rooms, only one agency said that it had such a procedure, the Interstate Commerce Commission. The form utilized for this purpose by the Interstate Commerce Commission is herewith attached as Attachment D. A device for collecting specific reports of deficiencies in facilities might well be more widely used to inform both the

agencies and the General Services Administration. The representative of the General Services Administration indicated at the informal meeting arranged by your Committee that it would very much like to have the regular feedback of information as to problems encountered by administrative agencies in arranging for hearing rooms.

The procedures by which agencies obtain information as to the availability of space vary from agency to agency. Most agencies rely most heavily upon their field officers. The Federal Trade Commission, for example, works from lists compiled by its field offices and from the *Register Department of Justice and the Courts of the United States*. The Interstate Commerce Commission assigns responsibility to the Office of the Secretary, Section of Records and Service, which works from a list of Federal facilities available by cities in each ICC Region. In some cases agencies go to the General Services Administration with a request for a specific courtroom or hearing room, sometimes with a general request for space. Most commonly, however, the agency or Examiner goes directly to the managers of identified space and negotiates directly with them for the use of the space. This bypassing of the General Services Administration is regarded by several agencies as more efficient and reliable, but it may reduce G.S.A.'s awareness of the agency's need and it may fail to develop for the agency information as to the full range of space available in a particular city.

When each agency was asked if the agency would be interested in participation in a permanent space committee of agency representatives, GSA officials, and members of the administrative bar to overview the hearing facilities problem, approximately half indicated that they would not. Approximately half indicated that they would. The Committee feels that such an advisory committee would prove useful to G.S.A. and the participating agencies.

Approximately half of the agencies indicated that they had space permanently assigned in Washington or in field locations or both for their exclusive use as hearing rooms. These agencies indicated that such spaces were heavily utilized and that it was normally impracticable for them to be made available to other agencies on a regular basis. When such space is free, however, it should be made available to other agencies for non-conflicting use.

ATTACHMENT A

RESOLUTION

Whereas, by resolution of the Board of Governors of the American Bar Association, as approved by its House of Delegates, the Section of Administrative Law has been directed, on behalf of the Association, by all necessary and proper means, to preserve the gains made by the adoption of the Administrative Procedure Act as the law of the land, and

Whereas one of the objectives of the Administrative Procedure Act was and is to improve and enhance the standing and stature of Hearing Examiners, and

Whereas the Council of the Section of Administrative Law is concerned with the physical conditions under which Hearing Examiners perform their duties and believes that the facilities afforded to them have a direct bearing on their standing and stature, whether such facilities be viewed by agency personnel or the public,

Now therefore be it

Resolved that the Section of Administrative Law urges the Federal Government to provide Hearing Examiners with office facilities and supporting personnel suitable to the discharge of their judicial function and at least equivalent to those of professional legal personnel of like Civil Service Grade within the same agency and which assure requisite privacy and confidentiality, and

Resolved further that the Section of Administration Law indorses in principle the "Standards for Federal Hearing Examiner Office Space, Equipment, Supplies, Facilities and Staff" adopted by the Federal Trial Examiners Conference on March 7, 1968, to the extent they refer to the foregoing, and

Resolved further that the Hearing Examiners Committee be assigned responsibility for conveying these views to any Government department or agency which fails to provide Hearing Examiners with accommodations consistent with these standards.

ATTACHMENT B

HEARING FACILITIES REQUIRED FOR FEDERAL ADMINISTRATIVE PROCEEDINGS
(Standards Adopted by Federal Trial Examiners Conference, May 1968)

I. GENERAL GUIDING PRINCIPLES

A. Nature of facilities should be commensurate with type of proceeding.

1. Courtrooms for trial of all adversary proceedings.

(a) Courtroom and accessory facilities should be that of, or equivalent to that of, United States District Court or highest State court of original (i.e., trial) jurisdiction.

(b) Courtroom of U.S. Referee in Bankruptcy is adequate in those cases where it in fact provides facilities reasonably sufficient for the number of counsel and witnesses.

(c) Auxiliary courtrooms (or Federal Administrative Courtrooms)—if feasible, with the facilities usually connected therewith

- (e.g., private office, counsel room, and witnesses room)—should be provided in all Federal buildings and courthouses wherever possible, for use by Federal Trial Examiners when courtrooms of United States District Court and Referee in Bankruptcy are not available.
2. Small court or conference rooms for nonadversary proceedings.
 - (a) Adequate in size, considering needs of counsel (if any) and the number of witnesses.
 - (b) Should ensure impression that a formal Government proceeding is being conducted.
 - (c) Must not reflect discredit upon the U.S. Government or place the Federal administrative process in disrepute.

B. Except at an agency's headquarters, trial of administrative proceedings should not be conducted in premises of the agency.

C. Procurement of courtrooms for trial of Federal administrative proceedings should be the responsibility of General Services Administration. The cooperation of the Administrative Office of the United States Court and the Department of Justice should be obtained in the implementation by General Services Administration of these Standards.

D. Responsibility within the agency itself for ensuring compliance with these Standards should be lodged in the agency's Chief or senior Trial Examiner, and not in investigating, prosecuting, administrative, or other personnel of agency.

II. SPECIFICATIONS FOR FEDERAL ADMINISTRATIVE COURTROOM FACILITIES

A. *Existing Federal Facilities (Non-Agency)*

1. Where Federal courtrooms are not in use for judicial proceedings, they should routinely be made available, upon request, for use by Federal Trial Examiners for adversary Federal administrative trials.

2. Where Federal courtrooms are not available, General Services Administration should provide (by lease or otherwise) for use of State, county, or local courtrooms and accessory facilities.

3. Order of preference:

- (a) Courtroom of United States District Court.

- (b) Courtroom of U.S. Referee in Bankruptcy (or, when provided, Auxiliary Courtroom or Federal Administrative Courtroom).

- (c) Courtroom of State court of highest original (i.e., trial) jurisdiction.

- (d) County courtroom.

- (e) Local (e.g., city) courtroom.

4. Facilities normally available to trial court judge (private office and lavatory) should routinely be made available to the Federal Trial Examiner together with the courtroom.

5. Federal Trial Examiners should be charged with enforcement of rules of decorum (e.g., no smoking) locally applicable to the particular facilities.

6. When constructing or furnishing Auxiliary Courtrooms of Federal Administrative Courtrooms in existing Federal Buildings, Federal Courthouses, and Post Office Buildings, the courtrooms should be the same as or comparable to the United States District Courtroom, except the spec-

tator section may be smaller. All other facilities normally connected with District Courtroom (office with private lavatory, counsel room, and witnesses room) should be provided.

B. *Federal Facilities (Non-Agency) under Construction or Projected*—All planned or projected new Federal building facilities, as well as those where space is available, housing a Federal courtroom (and also those not housing a Federal courtroom, where space is available and a need for regular use exists)—e.g., Federal Courthouses, Federal Buildings, Federal Complexes, Federal Centers, Post Office Buildings—should contain one or more Auxiliary Courtrooms or Federal Administrative Courtrooms, approximately equivalent to United States District Courtrooms, except the spectator section may be smaller; including, as part thereof, a private office with lavatory for the Federal Trial Examiner, a counsel room, a witnesses room.

Note: In this connection, see, e.g., "Symposium" Courthouses and Courtrooms," *Judicature* (Journal of the American Judicature Society), October–November 1966, for examples of modern courtroom design.

C. *Agency Facilities*

1. Except at an agency's headquarters, adversary Federal administrative trials should not be conducted on the premises of the agency itself, unless absolutely essential *because no other facility is available*.

2. In those instances where adversary Federal administrative trials cannot be conducted elsewhere, the trial facilities shall in all cases comply with acceptable operational standards (e.g., bench on dais, proper Reporter's facilities, witness box or chair at a reasonable distance from the Federal Trial Examiner and counsel, counsel tables of adequate size, adequate space and configuration of furniture to permit note-taking and consultation with clients and witnesses, and private office for the Federal Trial Examiner).