Circuit-Riding Hearing Officers Improve the Adjudication Process

by Robert Daly, General Counsel, New York City Department of Correction

Riding the circuit" is an American tradition. Almost every large pioneer settlement had a church, but many lacked ordained ministers to conduct services for a growing frontier population. A traveling preacher visited many settlements regularly to conduct church services. The preacher was called a "circuit rider" because he rode horseback from one settlement to another on a route known as a circuit.

A similar approach was used in the court system. In the early years of the nation's independence, United States federal judges traveled from courthouse to courthouse to try cases and to hear appeals. The route assigned to the court was called the circuit. By 1790 Congress had divided the thirteen states into three circuits, and many state judges also rode county circuits. Lawyers usually traveled with the judges to argue cases brought before the court.

The circuit concept has extended into modem times. The men and women who conduct inmate disciplinary hearings for the New York City Department of Correction still work in a similar fashion, although the buggy has given way to the automobile.

On any given day, the department is charged with the custody of 20,000 detainees and sentenced inmates. That inmate population is dispersed in seventeen major facilities. Although some of those facilities hold several hundred inmates, others hold more than 2,000. Because 75 percent of the inmate population consists of detainees held for relatively brief periods, total admissions exceed 120,000 in a calendar year. This inmate population generates approximately 35,000 infractions each year that require disposition. That task is performed by the department's fourteen circuit riders who make up the adjudication unit.

The seminal case outlining the minimal due process requirements of prison and jail inmate disciplinary hearings is *Wolff v. McDonnell,* 418 US. 539 (1974). *Wolff* and subsequent cases require disciplinary hearings to be conducted by an impartial hearing officer or board if the requirements of due process are to be satisfied. To make a hearing as impartial as possible, the board or officer conducting the hearing ideally should have no prior knowledge of the incident giving rise to the infraction. This requires, at a minimum, no direct involvement in the incident and no involvement in the routine, pm-hearing preparation of the reports and evidence to be presented at the hearing.

Over the years the department has experimented with several models to help achieve impartiality. Three-member disciplinary committees have evolved into single, specially trained hearing officers.

Trained, full-time hearing officers offer several advantages over hearing board members drawn on a rotating basis from regular facility uniformed and civilian staff, given the growing complexity of conducting hearings that will withstand court challenges and make the most effective use of staff resources. Advantages include:

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- Greater expertise in conducting hearings, gained, in part, from introductory and ongoing training;
- Mote efficient use of staff time by having a single staff member replace three-member committees;
- Improved written decisions that will be upheld when scrutinized by a reviewing court; and
- The opportunity to create a professional corps of truly impartial hearing officers, in fact and in appearance.

The hearing officers of the department's adjudication unit are all members of the uniformed force who have volunteered for the assignment. They are veteran first-line supervisors with many years of facility experience as officers and supervisors. Each is assigned to the adjudication unit on a full-time basis and performs no other facility assignments. The officers conduct all business wearing civilian clothes to be further distinguished from facility staff.

The hearing officers are under the direct supervision of a legal division attorney who provides ongoing training and provides guidance in situations requiring legal expertise.

Most important, the hearing officers report, not to the head of the facility to which they are assigned, but to the corrections department's general counsel. This arrangement helps to insulate their decisions from influence by facility administrators and helps prevent them from identifying with facility staff.

To maintain that independence, the unit's members "ride-the circuit" by rotating from one facility to another every twenty working days. Because of substantial differences in the number of inmates assigned to facilities, some facilities are assigned two hearing officers while others share the services of a single hearing officer. After four weeks, all members of the unit report to their next assignment as they rotate throughout all the department's facilities. The hearing officers are under the direct supervision of a legal division attorney who provides ongoing training and is available to provide guidance in situations requiring legal expertise.

The New York City Department of Correction's size and the proximity of its correctional facilities to one another lends itself to this unique arrangement. Although this system may be difficult to replicate in another setting, we believe it has features that other jail systems may wish to consider:

- It promotes impartiality by having hearing officers report to an administrator outside the facility hierarchy;
- It removes hearing officers from other line responsibility to prevent them from being involved in incidents they may have to adjudicate;
- It places hearing officers in civilian clothes to prevent their automatic identification with line staff in the eyes of the inmates being charged; and
- It professionalizes hearing officers through periodic training and access to legal advice.

These aspects of our system can improve the hearing process in all jail systems.

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