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# Research Review

## EVALUATION OF THE DISCIPLINE HEARING OFFICER PILOT PROJECT

### Abstract

Starting in late 1986, the Federal Prison System undertook a pilot project to examine the use of a single specially trained hearing officer to conduct administrative review hearings. This approach, which replaced the three man Discipline Hearing Committee, was initiated at six institutions and was evaluated by the Office of Research which collected information on the hearings and on staff and inmate reactions to the new procedure. Research results were positive and contributed to a decision to expand the discipline hearing officer approach system wide.

### Introduction

At the July, 1986 meeting of the Federal Bureau of Prisons' Executive Staff, a proposal submitted by the Northeast Regional Office was approved to establish a hearing examiner (discipline hearing officer) pilot project. The proposal shifted responsibility for hearing disciplinary cases at several institutions from a three man Institution Discipline Committee (IDC) to a specially trained discipline hearing officer (DHO). By assigning primary responsibility for disciplinary proceedings to a single individual, it was anticipated that the DHO approach would improve the quality and consistency of discipline hearings and would be perceived by inmates as fundamentally fair. In addition, the DHO approach would provide for more efficient use of staff resources by relieving high level managers of the obligation to sit on IDC's and enabling them to concentrate more on matters concerning their areas of expertise.

Part of the rationale for the proposal also stemmed from the increased complexity of laws in the area of disciplinary hearings and the implications this had for possible liability of Bureau of Prisons staff who currently sit on IDC hearings.<sup>1</sup> Of particular concern are the requirements that: (1) the hearing panel should be impartial, and (2) inmates should have qualified rights to call witnesses and present evidence. Also at issue is the question of whether due process rights of inmates apply to all disciplinary hearings or only to those where more severe sanctions such as disciplinary segregation or parole retardation recommendations may be ordered. In each of these areas, court rulings have made it apparent

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The subject of this *Research Review* is the Discipline Hearing Officer (DHO) pilot project which was undertaken at six federal prisons. The experience of the pilot project was quite positive and led to the decision by the Executive Staff to implement the DHO approach at all federal institutions. The Office of Research contributed to this assessment by providing comparative information on disciplinary hearings and survey response results from staff and inmates regarding the new approach.

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J. Michael Quinlan  
Director

that greater attention needed to be paid to procedural aspects concerning inmate disciplinary hearings. This obligation to improve the hearing process included efforts to insure that only the best qualified and well trained Bureau of Prisons staff serve as discipline hearing members.

Under these circumstances, it was thought that by assigning disciplinary hearing responsibility to one carefully trained individual as opposed to an often changing pool of staff, liability risks would be lowered and the quality and consistency of the disciplinary hearings would be improved. This approach, in effect, would maintain the current administrative nature of hearing procedures, as opposed to a more judicial type of hearing, yet would better ensure a high level of expertise among staff conducting the hearings.

### The State Experience

Support for the DHO approach was found among various state correctional systems which, in one form or another, used a single hearing examiner. A survey of state systems conducted in 1986 found that at least eight states had hearing examiners, some as early as 1974 and

1975. The survey also found that in several instances states adopted the DHO approach due to adverse court rulings concerning disciplinary proceedings, while in other instances the motivation had been more to simplify staff training needs or to free up institutional staff time for other purposes.<sup>2</sup>

In general, the states reported good success with the DHO approach, with the one exception of a state where attorneys without any significant correctional experience were the hearing examiners. Among the positive responses made by states surveyed were: more efficient use of staff resources; acceptance by both staff and inmates; and reduced number of court cases challenging inmate discipline. Several states noted that institutional staff had been initially resistant to the DHO approach, mainly out of concern over losing control over disciplinary proceedings; however, once the program was in place and functioning, this resistance tended to disappear and staff now endorsed the new approach. The experience at the state level called attention to the need to involve key custodial staff and particularly Captains in the implementation of the Bureau of Prisons' pilot DHO project.

This *Research Review* identifies the institutions chosen for the pilot project, reviews research findings, and indicates Executive Staff response once the pilot project was completed and research results presented.

### **Selection of Federal Institutions and DHO's**

Six institutions were included in the DHO pilot project. These were: Alderson, Butner, Danbury, Lewisburg, Otisville and Petersburg. At four facilities, the duties of the hearing examiner were added to the existing post of Executive Assistant to produce a combined DHO/Executive Assistant position. This occurred at: Lewisburg (the incumbent Executive Assistant was selected to be DHO); Butner (a former Unit Manager was moved into the combined DHO/Executive Assistant position); Alderson (where a staff member from personnel was transferred from the MCC, NY); and Petersburg (the Captain from Allenwood Camp was chosen as DHO).

In the case of Danbury and Otisville, it was decided that one individual would operate under the direction of the Northeast Regional Office and would travel between the two locations. This "circuit rider" position was filled by the incumbent Captain at Otisville.

In October 1986, the DHO's met at the Northeast Regional Office for a one week training session. The Captains from the pilot sites attended (to better ensure the full cooperation of correctional staff and to allay concerns that custodial staff might have about possible reduced involvement in disciplinary cases). The first ac-

tual disciplinary hearings using the DHO approach were started in December 1986, except for Alderson, which was delayed until February, 1987.

### **Research Methodology**

Two general approaches were taken by the Office of Research to evaluate the DHO pilot project. One approach was to collect information on the actual disciplinary hearings so that comparisons could be made between hearings conducted by IDC's and DHO's. This included information on inmate pleas; use of staff representatives and inmate witnesses; sanctions applied; incident reports expunged; and administrative remedy complaints filed and granted as related to disciplinary actions. The data collection phase involved obtaining IDC information at the six pilot institutions starting in the summer of 1986 and then continuing to collect the same information once the DHO pilot project was put into effect. The purpose of this approach was to determine if the use of DHO's resulted in differences in hearing outcomes and inmate responses during and following disciplinary hearings.

The second approach was to administer research questionnaires to staff and inmates at the pilot project institutions. The main concern was to measure staff and inmate perceptions regarding the new DHO procedure versus the IDC method. Of particular interest, in the case of staff, was the perception of how efficient the DHO procedure was and its perceived impact on custodial services. Among inmates, the focus of concern was more upon issues of fairness and compliance with BOP policy.

### **Disciplinary Hearing Comparisons**

Information on disciplinary hearings was collected on 759 IDC and 501 DHO hearings at the six pilot facilities for the period covering late summer of 1986 through March, 1987. Analysis of this material shows the following:

**IDC/DHO Expungements.** The overwhelming number of discipline hearings under both approaches resulted in a guilty finding. Of 759 hearings during the IDC period of study, only 22 (2.9%) were expunged, 13 for "not guilty" findings, one for administrative reasons, one because of procedural error and seven for "unknown" reasons. Of the 501 DHO hearings, an even lower figure of 9 (1.8%) were expunged, all based upon "not guilty" findings.

**Disciplinary Sanctions.** IDC's were slightly more likely to apply one sanction only following a guilty finding (38.2% vs. 33.0% for DHO's) while DHO's were somewhat more likely to apply two sanctions (49.4% vs. 42.0% for IDC's). Use of three or more sanctions per guilty finding was relatively infrequent and did not vary by IDC or DHO.

**Table 1**  
**AVERAGE NUMBER OF DISCIPLINARY SEGREGATION DAYS IMPOSED AND**  
**STATUTORY GOOD TIME DAYS FORFEITED,**  
**BY SEVERITY OF INCIDENT REPORT\* AND TYPE OF HEARING**

Disciplinary Action and Severity of Incident Report	Type of Hearing	
	Institution Discipline Committee	Discipline Hearing Officer
Disciplinary Segregation		
Greatest Severity (100 Level) .....	44.9	46.8
High Severity (200 Level) .....	23.7	22.3
Moderate Severity (300 Level) .....	15.2	16.0
Statutory Good Time Forfeited		
Greatest Severity (100 Level) .....	136.1	135.7
High Severity (200 Level) .....	49.0	38.2
Moderate Severity (300 Level) .....	20.6	23.4

\*All incident reports are classified into one of four categories ranging from greatest severity level to low moderate. Each level carries sanctions which can be imposed based upon a guilty finding.

As shown in Table 1, when disciplinary segregation and statutory good time forfeiture sanctions were applied, IDC's and DHO's generally functioned in a very similar manner. In the case of disciplinary segregation (DS) time, the average number of days given for greatest severity (100 level) incident reports was 44.9 days for IDC hearings and 46.8 days for DHO's, a difference of only 1.9 days. Among high severity (200 level) incidents, average DS time for IDC's was 23.7 days and 22.3 days for DHO's, a difference of 1.4 days. For moderate severity (300 level) incidents, the averages were 15.2 days for IDC's and 16.0 days for DHO's, a difference of 0.8 days.

Regarding loss of statutory good time (SGT), as also is shown in Table 1, the average sanction for greatest severity (100 level) incidents was 136.1 days for IDC's and 135.7 days for DHO's; for high severity (200 level) incidents, the respective figures were 49.0 days and 38.2 days; and for moderate severity (300 level) incidents, the figures were 20.6 days and 23.4 days. Only 200 level incident reports showed a sizable difference in SGT sanctions, with IDC sanctions, on average, 10.2 days longer than DHO sanctions. Overall, however, the indication is that IDC's and DHO's, in terms of number of sanctions

applied and DS and SGT sanctions imposed, operated along similar lines.

**Inmate Plea.** Inmates appearing before the DHO were somewhat more likely to plead not guilty than those who went before IDC's (43% vs. 35%).

**Staff Representative.** Inmates appearing before DHO's were somewhat more likely to request a staff representative than in the case of the IDC hearings (34% vs. 26%). This was particularly true if they had admitted to the charges (32% vs. 21%).

**Witnesses.** Inmates who went before a DHO called witnesses 25 percent of the time while those who went before IDC's called witnesses 22 percent of the time, a difference of only three percent. In both cases, the average number of witnesses called was 1.5.

**Administrative Remedies.** Of particular interest is the percentage of inmates who filed administrative remedies challenging IDC and DHO hearings. Overall, the appeal rate for DHO hearings was 10 percent or somewhat lower than the 13 percent rate for IDC hearings. By institution, four of the pilot facilities experi-

enced a decrease in the percent of appeals when DHO hearings were initiated, one was unchanged and one had an increase from 10.9 percent to 15.4 percent. When the number of times administrative appeals were granted or partially granted is tabulated, the relief rate was 13.7 percent for IDC and only 2.0 percent for DHO hearings.

**Summary and Conclusion.** The findings concerning incident report hearing information reflect fairly favorably on the DHO pilot project. The DHO program has lower rates of expungements, administrative remedy filings and administrative remedy relief grantings. Moreover, little difference is found between DHO and IDC hearings in the number of sanctions applied and in DS time given or SGT time taken.

There is some indication that inmates who appear before DHO's are more likely to plead not guilty and to request a staff representative when they do plead guilty. This suggests some inmates may consider one staff member (DHO) as being more readily influenced than a three member committee (IDC).

### Staff Response

Approximately four months after the inception of the DHO program, research questionnaires were administered to staff at five of the six pilot institutions (Alderson was scheduled later because of its later starting date). A total of 829 questionnaires were distributed to staff of which 392 or 47 percent were completed. Of those responding, most had had some direct experience with the inmate disciplinary process; 92 percent have written incident reports and 68 percent have been directly involved in IDC or DHO hearings. The survey questions, in general, addressed the efficiency of the discipline process, comparing the IDC and DHO procedures, and the involvement of correctional services in the discipline process with respect to the DHO program.

**Efficiency.** The survey found that a substantial number of staff believed the DHO was responsive to administrative concerns at their institution. Among those staff who had need to contact the DHO, 95 percent said the DHO has usually been available for consultation, information and hearings. Most staff (77%) indicated that in comparison with IDC's, the DHO system was a more efficient use of staff time and, among those with a preference, staff felt the DHO program was a better system for handling incident reports than IDC's by a 6 to 1 margin.

Another survey item asked staff to indicate how much time they spent on inmate discipline related matters during an average week, both under the IDC and DHO approaches. Among the 245 staff who responded to this question, results showed that 32.3 fewer days or 25 percent less time was spent on discipline related matters

under the DHO than the IDC procedure. The time savings was particularly true for staff who formerly chaired or sat on IDC's; of 101 such individuals, a total of 24.1 less days per week were reported spent on discipline matters, a reduction of 49 percent.

**Correctional Services Involvement.** Several questions were presented to staff regarding the involvement of correctional services in the discipline process. The results showed that most respondents (72%) believed that the DHO program is an advantage for the Captain and only 8 percent said it was a disadvantage. Almost a quarter of the respondents thought that correctional services influence over the discipline process had been reduced by the DHO system, although the vast majority (81%) still thought the present involvement of correctional services was sufficient and not in need of modification. Lastly, a substantial proportion of staff (40%) said that, since the inception of the DHO system, the institution's degree of control over inmate misconduct has remained the same while 13 percent saw increased institutional control and 6 percent less.

### Inmate Response

Research questionnaires were administered to 360 inmates (90 each from Petersburg, Lewisburg, Otisville, and Danbury). Responses were received from 255 inmates or 70 percent of those surveyed. Of these, 74 percent had experience with the disciplinary process, 40 percent before IDC only, 10 percent before DHO only and 24 percent before both. An additional 45 responses were received from Butner as part of their exit interviews and were analyzed separately.

**Discipline Hearings.** While the majority of inmates agree that discipline hearings are important to keep the institution safe and under control, there is no clear cut consensus as to whether the IDC or DHO approach is better. Overall, 38 percent of the inmates preferred IDC, 24 percent DHO and 37 percent said it made no difference. The 57 inmates who had experienced both the IDC and DHO and thus would be considered in the best position to judge, also favored IDC (46%) over DHO (16%); again, however, there was a sizable number (39%) who said it made no difference whether IDC or DHO held discipline hearings.

**Generalized Distrust.** Part of the ambivalence inmates have toward IDC and DHO hearings may reflect a general distrust of prison disciplinary practices. When asked about IDC hearings, 78 percent of the inmates did not feel, or were not sure, that IDC hearings at their institution were conducted according to BOP policy, and only 22 percent felt that IDC hearings were fair. Similarly, when asked about DHO hearings, 70 percent did not feel, or were not sure, that DHO hearings were con-

ducted according to policy, and 25 percent felt DHO hearings were fair.

**Summary and Conclusion.** Most inmate respondents agree discipline hearings are necessary but appear uncertain or indifferent as to the form the hearings should take. At least part of this reaction may be related to their generally negative perceptions of procedural accuracy and fairness of hearings.

Staff, on the other hand, seem favorably impressed with the efficiency of the DHO program and are generally satisfied with the level of involvement for correctional services and particularly the Captain in the discipline process with the DHO program in place. They report a 25 percent reduction in the time they personally spend in discipline related matters since changing from the IDC to the DHO system, and, for the most part, regard the DHO at their institution to be readily available to staff and responsive to administrative concerns. This fairly positive response was true both for correctional services staff and staff in other departments.

### **Executive Staff Review**

The research findings concerning the DHO pilot project were presented to the Executive Staff of the BOP at the May, 1987 meeting. At that time, the decision was made to expand the DHO approach to all level 1 and above institutions. Implementation date for this action was set for January, 1988 with monitoring of the DHO

approach to continue by the Office of Research and Evaluation. Meanwhile, a suit filed by an inmate at Danbury claiming a DHO hearing violated his due process rights was denied on the grounds no right exists to have disciplinary hearings by a three member IDC.

### **Footnotes**

<sup>1</sup>Since the 1974 *Wolff v. McDonnell* decision which set forth various due process requirements for disciplinary hearings when good time credits are at risk and the 1976 *Baxter v. Palmigiano* decision which provides limits on these due process rights, numerous cases have been heard which bear upon the issue of inmate rights in disciplinary proceedings.

<sup>2</sup>The material in the introductory section of the Research Brief relies heavily on information prepared by Sheree L. Sturgis, Assistant Regional Counsel, Northeast Region, Bureau of Prisons.

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