

LELIA HOLMES

v. Docket No. 89-CORR-002

WEST VIRGINIA DEPARTMENT OF CORRECTIONS

DECISION

Grievant Lelia Holmes was employed by the Department of Corrections at the West Virginia Penitentiary (WVP) in Moundsville as a Correctional Officer I from May 11, 1987 until her dismissal December 19, 1988. By letter of December 29, 1988, she filed a level IV grievance on the matter, stating, in part:

I feel that I have been discriminated against, because I told the truth in another case, pertaining to another officer who was employed at the WVP.

I feel these allegations were made to discredit me as her witness.

It is public policy for me to tell the truth in her case, in which I did and I feel I have been discharged because of this.

I have been sexually discriminated against since I testified for this officer in a human rights investigation. I did not reveal names for fear of more retaliation. [\(See footnote 1\)](#)

A scheduled January 27, 1989 level four hearing was continued to February 23, 1989, by agreement of the parties. The parties submitted written proposals on their respective positions March 14 and March 17, 1989.

Former Warden Jerry Hedrick issued the December 20, 1988 dismissal letter which stated in pertinent part:

After a thorough investigation into certain allegations and reports, you are charged with Gross Misconduct, in that:

1. You received and accepted a letter from an inmate. This was corroborated by statements given to our investigator by a private citizen.
2. According to several officer's statements, you were observed in close physical contact with an inmate (specifically: your chair was pulled up between an inmates' spread out legs.), you have bragged about watching inmates shower and made statements concerning their physical attributes (specifically, the size of their penis.)
3. According to several inmate's statements, you were observed either allowing an inmate to

whisper in your ear or kiss your neck. You were also observed on your knees, performing fellatio on an inmate.

4. According to statements from a civilian, you stated that you had sex with an inmate.

5. You were interviewed by our investigator and given the opportunity to take a lie detector test to clear yourself, however you declined and refused to take the test.

Resp. Ex. No. 1.

Respondent's principal witnesses at hearing were Officer Ronald Lowe, WVP co-worker during grievant's employment; Dorothy Day, grievant's neighbor in the near past; Major John Hepburn, Internal Affairs Investigator at the prison; and Carl Legursky, new prison Warden, who addressed prison policy as known by him.

Officer Lowe, a 5-year prison employee, testified generally on the function and responsibilities of a prison officer. [\(See footnote 2\)](#) He described "writing up" an Incident Report, a procedure to document prison problems such as inmate rule-breaking and misconduct which subjected the offending inmate to possible loss of privileges or other prison punishment. In that regard, and due to other organizational aspects of the position, the correctional officer inside the prison acted comparably with a police officer on the outside, according to Lowe.

Lowe also spoke of Corridor 56, or "Five-Six" in prison nomenclature. According to his testimony, the corridor separates "mainline" inmates from those in protective custody (PC). An officer is stationed in 56 who must control two doors, one which leads to the main corridor where mainliners have most of their movement, and the other, a first entrance to the Honor Hall and gymnasium. He testified that prison policy dictates that the corridor remain clear between inmate movement at various times for security reasons such as inmate control and to protect PC inmates from mainline inmates.

Lowe testified that he knew grievant because they had worked the same shift. He said that officers do not have "set duties" within the prison on their shift, but grievant had been the officer assigned to monitor 56 and control the doors on many occasions and he had observed her talking to inmates while at that post. He also related that he once had occasion to look through the small window of a door leading to 56 when grievant was on duty. He testified that he observed no inmate movement in the corridor but he saw an inmate sitting on a permanent wall bench in the corridor and grievant sitting on a chair [\(See footnote 3\)](#) facing him, and they were "extremely" close but he could

not observe whether they were physically touching. [\(See footnote 4\)](#)

Officer Lowe then testified about an occasion, he could not remember the date, when he advised grievant on proper prison procedures, and he wrote up an Incident Report thereafter. He said grievant had informed him that there were rumors about her in New Wall, the mainline housing unit where she was then working. He said he told her to report the matter to the watch commander and write up an Incident Report "as to what was happening." [\(See footnote 5\)](#) He said grievant would not reveal the nature of the problem, but she did state she was not going to "put it down on paperwork." He testified that later the same evening an inmate told him he was being harassed by grievant because of what had happened at New Wall between Lelia Holmes (grievant) and an inmate or inmates. Lowe said the inmate "started to elaborate on it" and he (Lowe) sent the inmate back to his housing unit. He testified, "I returned to the office and at that time I discussed it with the shift commander and I did write up an Incident Report." He said he wrote on the report about his encounter with grievant and her refusal to heed his advice about what to do, and also the inmate's report of harassment "and the reason for it was what he had heard and knew of." He testified that the inmate, David B., [\(See footnote 6\)](#) said Officer Holmes was trying to get a "BS write up" served on him and "other officers were starting to harass him." He said he did not bring a copy of the report with him, but he thought the incidents happened in late November (1988).

Officer Lowe was asked again by respondent's counsel whether inmate David B. elaborated. Lowe responded, "He started to elaborate that there was something that was going on between an inmate and Officer Holmes up on one of the tiers in New Wall and that he observed it." Lowe said that that is when he terminated the conversation because it was prison policy to have an officer as a witness when an inmate made an accusation against another officer to avoid a "set-up" as inmates are "con artists." Lowe testified, "That is when I stepped in and told him he should either go talk to the watch commander or wait until the following day." Lowe concluded his direct examination by saying he knew of one inmate who had loitered excessively at grievant's place of duty and the inmate had to be advised to cease the activity.

During further examination, by grievant's advocate, the matter of the Incident Report, and its whereabouts, came up again. Respondent's counsel said he had not thought the document necessary since Officer Lowe was present to testify on the matter, but a copy was obtained from Major Hepburn and it was admitted into the evidence. Lowe verified that his separate encounters with

grievant and the inmate had occurred and were written up on November 29, 1988, as indicated on the report. He continued testimony by respondent's counsel:

A: I was going to state here that this incident report will show that this incident report was written after the watch commander and me as a witness heard what this inmate had to say.

Q: Originally you had testified, "I don't want to hear anything."

A: Yes.

Q: Then you went back and confronted him with your watch commander?

A: Yes. Later on that night, after I talked to the watch commander.

The Incident Report form filled in and signed only by Officer Lowe notes "Suspects" with grievant's name filled in; "Victim" as W.V.P. Security and "Type of Incident" as "Alledged [sic] Involvement between an Officer and Inmate." Written "Details" are as follows:

On above date and time, I (COI R.Lowe) was told by an Inmate (who wishes to remain unknown) that he caught COI L. Holmes kissing Inmate Anthony M. Said Inmate also toldme that he herd [sic] COI Holmes give Inmate M. a Phone Number.

Also earlier on this date, COI Holmes told me that thier [sic] was rummores [sic] in New Wall about her In cluding the above. I Informed her to talk to Lt. Spencer and Holmes replied "I'm just going to keep quiet about It." COI Holmes also stated to me that the rummor's [sic] were because she got Inmate Walter P. locked up on 2-J.

Resp. Ex. No. 5. [\(See footnote 7\)](#)

Dorothy Day testified that she and grievant had been friends and neighbors for four years. Ms. Day said that when grievant got her job at the prison two years ago she told her often about the job and how much she enjoyed the work. She testified that after grievant had been on the job for about one- and-one-half or two months, grievant told her a letter for "Sue Adams" care of her, Dorothy Day, at her address, would be coming from a prison inmate, "Richard." She said grievant did not want her husband to get the letter or anyone to know about it. She testified, "approximately two days later, on a Wednesday or Thursday, I went to the mailbox to get the letter." She said it was in a white envelope and addressed as grievant had told her, with a cancelled stamp and "in the left hand corner it had thereturn address of the penitentiary and a question mark from the mailman." She made no mention of whether an inmate's name appeared on the return address. She stated that she called

grievant to tell her it was there and that grievant came over, got it and read it to herself. Ms. Day said she did not receive any more letters because she was afraid her own husband would find out and she was "scared" that if the inmate escaped he would come to her address. "Number three, I just didn't want to do it no more."

Ms. Day testified that grievant also discussed an inmate named "Eddie" and showed her a picture of a man who was supposedly Eddie. Ms. Day stated that she asked grievant if she and Eddie would "get together" when he got out, and grievant told her that she and Eddie could do so before he was released. Day said that grievant told her she took Eddie from his cell and they removed their clothes and "had sex" in a prison bathroom. Ms. Day said she asked grievant what would happen if she (grievant) got called on an emergency. Day testified that grievant told her she got a call another time when they were having sex but she radioed in to say she was in the bathroom, which was no lie, she was in the bathroom. Ms. Day said she was not mistaken about what was said about Eddie, that grievant had used the phrase, "had sex."

Ms. Day also testified that grievant talked on the telephone to Eddie in Huttonsville:

Q: But Eddie was up at Moundsville?

A: He got transferred to Huttonsville by now.

Q: How do you know that? A: Lelia had told me.

Q: All right. Go ahead. The phone call had come in from Huttonsville...

A: And I accepted the charges.

Q: Why would you accept a collect call from an inmate?

A: Because I was at her home, she was waiting on the call and she told me to do so.

Ms. Day said she did not remain at grievant's home during the conversation and returned to her own home. She said grievant discussed having problems with her telephone bills:

A: She told me she had a phone bill in the neighborhood of almost \$500 where she's accepted collect calls from Richard er..Eddie and that she was going to have to have her phone taken out because she couldn't pay it.

Q: You mentioned Richard, where did you get that name?

A: It was an accident. Richard was the one I got the letter from.

During cross-examination, Ms. Day said she did not inquire of grievant, nor did they discuss the

"physical attributes" of inmates, but they did discuss inmates. She said grievant told her Richard was tall, dark and handsome and Eddie was also black. Ms. Day stated that when she saw Eddie's picture she had told grievant that he was a very good looking man and "if I was not married, (I) wouldn't mind sleeping with something that looked that nice."

Ms. Day responded to inquiry about how or why prison officials got her name by stating she was told by them that an inmate gave her name who knew of the letter from grievant herself. Day said she had no personal knowledge of how the inmate would have her name.

When questioned about whether she had relatives employed at the prison, Ms. Day testified that her father-in-law and cousin were employed at the prison. She stated that her husband began employment at the prison December 12, 1988. [\(See footnote 8\)](#)

John Hepburn testified that he began his investigation the "first day of December" because of Incident Reports [\(See footnote 9\)](#) and reports of sexual improprieties going on in the hallways between grievant and inmates:

Q: Do you have names of inmates that she was supposed to be with?

A: Inmate was a man by the name of R., Lawrence R.

Q: Did your investigation ever reveal an inmate named Eddie or went by the name Eddie?

A: Yes. When we were talking to Mrs. Dorothy Day, she said she had received correspondence, an inmate by the name of Eddie had been involved in it.

Q: Did you ever figure out who Eddie was?

A: No, we didn't.

Major Hepburn testified that his investigation included interviews of individuals, inmates and officers which led to a belief that "this actually did happen." He stated that grievant was also interviewed "and she was less than cooperative." Hepburn's testimony continued:

Q: Did you take any steps to confirm those inmate statements?

A: Yes. ... I told them the only way I would accept the statements if they would subject themselves to a polygraph examination on their statements. They both subjected themselves to a polygraph examination which was conducted at the State Police barracks in Moundsville.

Q: Who conducted those tests?

A: The tests were conducted by John Brown from the Belmont County Sheriff's Office. He administered the tests.

Q: What relation does Mr. Brown have to you?

A: Mr. Brown and I are partners in a polygraph examining company outside the institution.

. . .

A: We offered, Mr. Brown did not offer Officer Holmes an opportunity to take the polygraph. I offered as internal affairs officer through the warden an opportunity to take a polygraph and she declined.

Direct examination of Major Hepburn was concluded without any specifics offered about parties who were questioned, information that may have been gleaned, or the results of inmate polygraphic tests taken during the course of his investigation.

Major Hepburn responded to inquiry by grievant's advocate about polygraph testing. He stated that taking a polygraph was not a condition of employment for an officer, but once hired, if a situation arose, it is offered to the officer and that grievant was not forced to take the test. Hepburn was asked again about "Richard" and "Eddie," whether "those people" were found to exist. Major Hepburn testified: "We determined that there were letters, by information given to us, from an Eddie and a Richard." Hepburn said that the information was given in testimony from the woman (Ms. Day) who received the letters originally. [\(See footnote 10\)](#)

Grievant's advocate asked Major Hepburn about instances where grievant was uncooperative in the investigation, when she may have refused to answer questions. Hepburn testified that grievant "was very evasive about questions," that she cooperated up to a point but then declined cooperation by virtue of a December 5, 1988 letter in which she wrote that she declined to take the polygraph at that time and to not answer any more questions without representation. He stated he would not interview when counsel was present because "it's fruitless to ask questions when they're advised not to answer." Hepburn was asked about his interview of grievant, whether she was "evasive" then and to provide specifics on the matter.

At that time respondent produced a transcript of a November 30, 1988 "interview" of grievant by Major Hepburn and Colonel Dennis Eisenhower. A recess was called to allow grievant's advocate opportunity to review the transcript. The document was then admitted as Joint Ex. No. 1. [\(See footnote 11\)](#) Hepburn would not agree with the analysis of grievant's advocate that the only aspect of uncooperativeness on grievant's part was that she would not submit herself to a polygraph test administered by a company half-owned by the Investigator. [\(See footnote 12\)](#)

Inasmuch as the transcript of respondent's initial inquiry into the matter which lead to grievant's dismissal was made part of the official record at level four, it is appropriate to explore the content therein as relates to the evidence given prior to its admission.

The 33-page transcript denotes that Major Hepburn and "Col. Dennis Eisenhower, Acting Warden" questioned grievant "on tape" in the presence of the warden's secretary from 1446 or 1416 (2:46 or 2:16 p.m.) until 1540 (3:40 p.m.). The formal questioning appeared to be subsequent to a prior "discussion" and grievant responded affirmatively that she was aware that "there have been charges" against her brought to the attention of the two officials, of her having a sexual relationship with an inmate.

Grievant was questioned about inmates Anthony M., had she kissed him; Lawrence "Pete" R., did she have a sexual relationship with him, namely oral sex; and Walter P., "What happened there?" She responded that, if there were eyewitnesses, as the officials suggested, they would be liars, because she did not do those things with inmates M. and R. She stated she had written up Walter P. for making a sexually offensive statement to her from his cell when she brought him scheduled medication.

Grievant continued to respond to all questions put to her. At one point she voiced concern that the duties on New Wall, where she had been steadily assigned of late, were difficult because there were 300 inmates who resented her presence and who felt they deserved privacy "with them showering and everything." She said she requested from Lt. Spencer that he relieve her from duty at New Wall, at least part of the time, but "he just looked at me with a smile on his face and said no." She said she talked to Ron Lowe about the problem, and Ron can verify that I had called him in the Captain's office . . . and asked him to ask Spencer to take me out of New Wall and Ron told me that he had specific orders not to touch the roll call sheet. Not to have anything to do with it. [\(See footnote 13\)](#)

She was also questioned at length about her family, her husband and children, and was asked on several occasions how her family would react if rumors about her became known to them. Near the end of the interview, she stated that she was not going to "take it," to have her family hurt and lose her job over untrue rumors. She was assured by the officers that they worked with fact, not rumors, and "[t]hat's why you're here, like I told you, to prove you innocent as well as guilty." She was told that she would be put back to work outside and that every thing said in the room would stay confidential. [\(See](#)

[footnote 14\)](#)

Warden Legursky testified that it was against policy for guards to receive letters on the outside from inmates as it compromised the security of the officer and the entire prison institution, and as such, was subject to discipline, as were actions involving close physical contact or intimate relations with an inmate, for the same reasons. The warden stated that an officer not cooperating with an investigation would not, in and of itself, subject the officer to dismissal. [\(See footnote 15\)](#) Grievant testified on her own behalf. She stated that during her employment she felt evaluations of her performance had been fairly made and she had never been counseled or advised by any superior that her on-the-job conduct was not satisfactory or that her conduct was unacceptable. She denied that she ever received a letter from an inmate but said that she had received notes in the prison, taped to the walls or thrown on the floor, which she took to "Mr. McCain," who made copies of them and told her not to worry about them. She said the note writing did not begin until after she talked to the investigator.

Grievant denied she asked Dorothy Day to receive mail or to take telephone calls from inmates for her. She said Ms. Day had asked her if there were "good-looking" inmates and she had told her there were. She admitted they had conversed about inmates occasionally. Grievant denied all remaining charges contained in respondent's dismissal letter. She stated she cooperated with respondent's investigation and had initially agreed to polygraph testing but ultimately refused the test on advice of her union representative.

Respondent argues it has shown by a preponderance of the evidence that grievant engaged in prohibited relations with inmates amounting to gross misconduct and said behavior warranted her immediate dismissal as a correctional officer. Conversely, grievant urges respondent Corrections has not met its burden of proof.

Respondent's assertion in its level four proposals that "grievant's behavior has caused problems within the institution affecting morale for both correctional officers and inmates in that word for [sic] activities has spread through the institution" was unsubstantiated, inasmuch as not one iota of evidence was presented to that effect. See Proposed Fact No. 5.

Respondent's Proposed Fact No. 6, states in part: "The charges of physical contact witnessed by inmates while taking showers, and the physical contact between grievant and an inmate were not supported by the evidence and therefore, will not be considered." Thus, with respect to grievant's

alleged gross misconduct, respondent relied entirely on the evidence presented by Officer Lowe and Dorothy Day.

From Lowe, respondent contends that grievant at one unidentified time sat in close proximity to an inmate in Corridor 56. It characterized that grievant's action "permitted an inmate to violate institutional security by allowing him to sit in a restricted area." From Ms. Day, a private citizen, it contends that two months into grievant's employment, she once received "contraband," a letter from an unknown inmate, "Richard," with the "penitentiary address" on it; during some unnamed period she received telephone calls from inmate "Eddie" in Huttonsville; and at two unidentified times she had sexual relations with an inmate while on duty. Ms. Day did not observe the alleged sexual encounters, but related that grievant told her that she "had sex" with Eddie in a prison bathroom.

Officer Lowe's evidence was inconsequential and proved, if anything, only that grievant may have once unwisely remained seated when an inmate stopped and sat down to talk, for which she was not timely disciplined, if discipline was indeed warranted. Ms. Day's evidence was not believable as accounts of factual events. [\(See footnote 16\)](#)

In addition to the foregoing narration, the following findings of fact and conclusions of law are made.

FINDINGS OF FACT

1. Grievant had an unblemished work record during her 18-month tenure as a Correctional Officer I assigned to the West Virginia Penitentiary before she was dismissed from her employment for alleged gross Misconduct.
2. Some of respondent's original charges of improper activity between grievant and inmates were not pursued at level four with any evidence, namely charges two and three, as set forth in its dismissal letter.
3. Grievant denied charges one and four and evidence proffered to support the charges was not reliable, credible or supported by the record herein.
4. Acting on the advice of her union representative, grievant refused a polygraph test administered by respondent's investigator who is half-owner of the polygraph testing company. Discipline for charge five, if refusal to subject to polygraph testing is construed as lack of cooperation in an investigation and is punishable, would not warrant dismissal, in and of itself, according to

respondent's warden. Respondent did not speak further of this charge by its proposed findings of fact and conclusions of law.

5. Grievant used poor judgement when she discussed inmates in any capacity with a private citizen-friend and by allowing a inmate to seat himself on a bench while she remained seated in a chair while on duty, but respondent Corrections, who knew of the latter, did not timely discipline her in any manner.

CONCLUSIONS OF LAW

1. Pursuant to the provisions of W.Va. Code §29-6A-6, the burden of proof in disciplinary matters rests with the employer and the employer must meet that burden by proving the charges against an employee by a preponderance of the evidence. See Ramey v. West Virginia Department of Health, Docket No. H-88-005 (December 6, 1988).

2. Respondent Department of Corrections has not satisfied its burden of proof on the matter of grievant's dismissal for gross misconduct.

For the foregoing reasons the grievance is **GRANTED** and respondent Corrections is Ordered to reinstate grievant to her COI position with payment of back wages less any appropriate set off.

Either party or the West Virginia Civil Service Commission may appeal this decision to the Circuit Court of Marshall County and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §29-6A-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.

DATED: March 31, 1989 _____

NEDRA KOVAL

Hearing Examiner

[Footnote: 1](#)

Grievant's account of testifying for an officer in a human rights investigation, and resultant discrimination and retaliation, was not brought up or pursued at level four by grievant or her advocate.

[Footnote: 2](#) Officer Lowe testified that correctional officers must undergo academy training, presently a three-week session, but he had not yet attended the academy.

[Footnote: 3](#) According to Lowe, the chair may be used by an officer if there is no corridor traffic. He said it was basically "preached" by shift commanders to discourage inmate loitering in the corridor. He admitted in cross-examination that he had seen other officers converse with inmates, and it was not uncommon for inmates to attempt to prolong such interactions, "they will stay there and BS with you all day long, some of them."

[Footnote: 4](#) On cross-examination, Officer Lowe said he had not written up an Incident Report on his observation of grievant. He said he was "not the only one" that observed it, and when he advised his shift commander, Pat Glasscock, of the incident, Glasscock said he had already been informed of the matter and would take care of it. If an Incident Report had resulted, respondent did not produce it or offer it as corroborative evidence.

[Footnote: 5](#) He said a written report would protect her and maintain security, for the institution would be alerted of a problem and the matter could then be monitored by the other shift personnel.

[Footnote: 6](#) Inasmuch as there appears to be no necessity to do so, the surnames of identified inmates will not be published herein.

[Footnote: 7](#) The probative value of Officer Lowe's evidence is questionable for he personally did not observe grievant engaging in conduct as was stated in respondent's dismissal letter. Further, there are obvious discrepancies in the account he gave about what he wrote on the report and what he did write. His testimony was that grievant had not discussed the nature of the rumors, but in the report he wrote that she did. Also, it is not entirely clear from testimony whether Officer Lowe actually had an officer "witness" to the inmate's statement and, if so, inconceivable why only Lowe would then sign the report or, at least, that he did not note that another officer heard the inmate's accusations.

[Footnote: 8](#) On close scrutiny, Ms. Day's testimony seemed somewhat incredible. If grievant had indeed collaborated with an inmate to establish a fictitious addressee name, "Sue Adams," and to give him Ms. Day's name and address instead of her own to ensure secrecy, it would not make sense then for the prison return address to appear on the envelope, especially without the letter writer's name, and Ms. Day was very explicit about exactly what was on the envelope. Also inexplicable is why grievant would ask Ms. Day to answer her telephone to receive a collect call from an inmate. Day did not say grievant was unable to pick up the telephone. Also, Ms. Day was precise about what the operator said, but Day said nothing of hearing Eddie speak. Instead, Ms. Day said that she went home and did not even hear a conversation. If, in fact, grievant had run up telephone charges in excess of \$500, she obviously did not need Ms. Day's intervention to conduct the activity.

The December 12, 1988 hiring of Ms. Day's husband less than two weeks after an investigation ensued on grievant's alleged sexual misconduct with inmates and exactly one week prior to her dismissal appears to be a very odd coincidence.

[Footnote: 9](#) He testified that Incident Reports had been placed in the hands of Col. Eisenhower but no other Incident

Reports were mentioned at hearing other than Officer Lowe's.

[*Footnote: 10*](#) *Major Hepburn's testimony casts further question on Ms. Day's credibility. Ms. Day gave him different information for she testified at hearing about one single letter, from Richard. Conversely, Hepburn speaks of letter(s), letters from Richard and Eddie, as reported to him by Ms. Day, "the woman who received the letters originally."*

[*Footnote: 11*](#) *Once proceedings resumed, disagreement ensued between Hepburn and grievant's advocate. Hepburn denied he had testified that grievant was evasive in answering questions. Hepburn then testified, "She gave evasive answers, I said she was uncooperative in the investigation, not in the interview."*

[*Footnote: 12*](#) *Grievant's advocate characterized Major Hepburn's activity with his polygraph testing company and its use on grievant as a conflict of interest.*

[*Footnote: 13*](#)

Grievant's account, given November 30, of the exchange between her and Officer Lowe on November 29 was much different than that which he wrote on the Incident Report on November 29 and his testimony at level four.

Grievant was told that other female officers were assigned to New Wall without incident, but grievant pointed out that she was the only female on the afternoon shift duty when the inmates apparently were released to run, use the gym and shower frequently or in number.

[*Footnote: 14*](#) *Presumably, since there was absolutely no mention of Eddie or Richard during the "interview" on November 30, respondent had not yet heard Ms. Day's information about them. Likewise, it would appear that respondent had not yet heard from the inmate who supposedly gave investigators Ms. Day's name, in accord with Day's account of what prison officials told her. At hearing, respondent offered no clarification about how or when it learned of grievant's association with Day. The undersigned is perplexed about why an inmate would come forward to prison officials with Ms. Day's name and information about Day's involvement with a letter from "Richard" to grievant 16 months after the incident allegedly occurred.*

[*Footnote: 15*](#) *Respondent's counsel indicated that he had expected another officer to testify but the officer had a personal emergency and could not attend; he stated he would therefore rest his case. The undersigned assured counsel the hearing could be left open; parties could be deposed and arrangements could be made to take additional evidence, if necessary, but counsel declined.*

[*Footnote: 16*](#) *Her evidence proved, if anything, that she and grievant may have had creative conversations in the past and that she retained a vivid imagination.*