

In The Circuit Court for Baltimore City
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In the Matter of

DANIEL THOMPSON

VS.

DEPARTMENT OF PUBLIC SAFETY
& CORRECTIONAL SERVICES



DATE DOCKET ENTRIES NO.

7/16/92	Deft's Memorandum of Law in Support of Administrative Agency Decision <i>Id.</i>	11
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IN THE CIRCUIT COURT FOR BALTIMORE CITY

CATEGORY APPAA

CASE NO. 91340071/CL141323 PAGE 1 of

PARTIES	ATTORNEY(S)
DANIEL THOMPSON	HOWARD AVRUM MILIMAN <i>923399</i>
VS.	
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES	<i>643085</i> <i>Richard B. Rosenblatt</i>

DATE	DOCKET ENTRIES	NO.
12-6-91	ORDER FOR APPEAL FROM THE DECISION OF THE MARYLAND OFFICE OF ADMINISTRATIVE HEARING AND SECRETARY OF PERSONNEL, FILED.	1
12/16/91	<i>Pltff's petition of appeal. fd.</i>	2
12/17/91	<i>Certificate of compliance.</i>	3
1/31/92	<i>App. of Atty. Richard B. Rosenblatt for Pltff. vs. same day answer.</i>	4
1-16-92	<i>Pltff's Request for Extension of Time</i>	5
1-20-92	<i>Order of Court that a 15 day extension be "granted" regarding the filing of the transcript. (Kross J.)</i>	6
2-11-92	<i>Transcript of Record fd. by Pltff. 7 notice sent for a certificate of no sale B-1V</i>	7
4/15/92	<i>Pltff's copy of transcript fd.</i>	8
6/8/92	<i>Petitioner's Rule 912 Memorandum in Support of Order for Appeal fd.</i>	(9)
6/8/92	<i>Pltff's Answer to Motion to Dismiss fd. (See under 2)</i>	(10)
6/9/92	<i>Sub Curia pending final hearing Memorandum.</i>	



DANIEL THOMPSON	*	IN THE	
Appellant	*	CIRCUIT COURT	SEP 4 1992
v.	*	FOR	(10)
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES	*	BALTIMORE CITY	CIRCUIT COURT BALTIMORE CITY
Appellee	*	Case No. 91340071/CL141323	*
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MEMORANDUM OPINION AND ORDER

Hollander, J.

I. Introduction and Background

Daniel Thompson ("Thompson") is a Correctional Officer IV assigned to the Jessup Pre-Release Unit within the Division of Correction. The Department of Public Safety and Correctional Services (the "Department") charged Thompson with a violation of Division of Correction Regulation ("DCR") 50-2, for "indifference, carelessness, or negligence in performance of duties" relating to losing his institutional keys. The Department imposed a three day suspension, without pay. Thompson appealed the decision to the Office of Administrative Hearings.

Thereafter, a hearing was held on July 31, 1991 (the "Hearing") before Administrative Law Judge James P. Klima, Jr. (the "ALJ"). At the Hearing, Thompson contended that a mechanical defect in the clip on his security belt must have caused the keys to fall, and that he was not negligent. On August 23, 1991, the ALJ affirmed the Department's proposed three day suspension.

On September 9, 1991, Thompson filed exceptions to the ALJ's findings of fact and conclusions of law with the Secretary of Personnel (the "Secretary"). After an Exceptions Hearing, the Secretary sustained the ALJ's decision on November 8, 1991. On December 6, 1991, Thompson filed an Order for Appeal which is the subject of this Memorandum Opinion.

II. Factual Summary

On May 23, 1991, Thompson was the Shift Commander at the Jessup Pre-Release Unit, assigned to the 10:00 P.M. to 6:00 A.M. shift. He had in his possession supervisor keys which were carried on a key ring attached by a clip to his belt. R.13,14,39,¹ The key ring contained four keys, one of which was to the security box where other keys are secured and stored. R.14,39.

Approximately one hour into his shift, Thompson was taking some paperwork to other officers located outside Jessup's main vehicle gate. R.34,35. When he re-entered the institution, he reached for his key set, but noticed "it was gone." R.35. Thompson promptly notified his duty sergeant, Sergeant Clark. R.35. Due to the obvious security threat, an immediate and thorough search of the grounds was conducted. R.13,14,35.² At approximately 12:30 A.M., the keys were found on the ground

1. "R" stands for reference to the Record which has been sequentially numbered for the instant appeal.

2. Thompson testified: "After searching the building and not turning them up, searching the inmates and not finding them, I notified Captain Lilley.... The building was again searched. The trash cans were searched. The inmates were again searched." R.36.

outside the vehicle gate, in the area where Thompson earlier had delivered paperwork. R.5,16,17.

Thomas Passaro ("Passaro"), the Facility Administrator of the Jessup Pre-Release Unit, testified at the Hearing that he was aware of Thompson's contention that the keys were lost due to a mechanical defect in the clip on his belt. R.22. He stated that Thompson "didn't show [him] anything to support" his claim of mechanical failure. R.15. On the contrary, Passaro testified that Thompson showed him the key clip on the belt which Thompson claimed was faulty (R.23) but his examination of the key clip revealed no defects. Although Passaro did not personally inspect the belt (R.22,23), he testified that nothing seemed to be wrong with it. He added that no repairs were ever made to the belt, and Thompson was never issued a new belt. R.24,25.

While Passaro acknowledged that it was "possible"³ that there was a mechanical defect in Thompson's key clip, he attributed the incident to Thompson's negligence. R.23,25. He testified that "if you snap [the keys] on properly they stay" (R.15), and the keys would come off if they were "not [secured] firmly," or if "the clasp was [not] clasped real solidly." R.25.

When Thompson testified, he denied any negligence. He wore the same belt he had worn on the day of the incident, and said that he had worn that same belt for "about 9 years." R.34.

3. Passaro said: "Anything is possible." R.22. According to Passaro and Captain Lilley, during their tenure, no other keys have been lost at the institution in a way similar to that which occurred here. R.6,77,80.

Thompson further testified as to the nature of the key clip on his belt, on which the key ring was hooked. He stated that the key clip was spring loaded, and that it required two hands to operate it. R.39-41. He asserted that because the spring in the clip was "a little bit out of line," it would slide up if "hit just right." R.41. The following colloquy is illuminating:

Thompson: Since the incident because of the suspension and not being able to trust this key hook, I have gone to a different design that has a positive lock. Okay? I haven't lost a key since.

ALJ: That is just an addition that you made to the belt or was that on there....

Thompson: That was on there at the time [of the incident]. But like I said it is a positive lock. It is a pain to use.

R.41-42.

Thompson reasoned that because of the difficulty involved in retaining keys on his old key hook, and no other incidents of loss after his change to a positive lock, that a mechanical failure in the key clip must have caused the loss. However, Thompson readily admitted that he had "no idea" as to how the keys were lost. R.39. Thus he said: "I honest to God I don't know. I mean I would agree with Mr. Passaro in the sense that it is very unlikely that such a mechanical failure would occur. The odds of it happening would have to be less than winning the Lotto and people win the Lotto every weekend." R.45.

III. Scope of Review

Decisions of administrative agencies, such as those of the

Department, are prima facie correct, and carry with them the presumption of validity. Thus, on appeal, the agency's decision must be viewed in the light most favorable to the agency. Maryland State Police v. Lindsey, 318 Md. 325, 334 (1990). See generally, Bulluck v. Pelham Woods Apts., 283 Md. 505 (1978). As a reviewing court, this court may not "substitute [its] judgment for the expertise of the agency." Lindsey, supra, 318 Md. at 333.

The substantial evidence test applies to the judicial review of decisions of the Department. See, e.g., Greene v. Secretary of Pub. Safety, 68 Md. App. 147, 159 (1986); Hewitt v. Dept. of Pub. Safety, 38 Md. App. 710, 715 (1978). This test is satisfied when, upon review of the record, there is found to exist "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Greene, supra, 68 Md. App. at 149 (citation omitted).

In Commissioner, Baltimore City Police Dep't. v. Cason, 34 Md. App. 487 (1977), the Court discussed the role of the reviewing court in an appeal of an administrative agency's decision. What was said is instructive here:

A reviewing court may, and should examine any inference, drawn by an agency, of the existence of a fact now shown by direct proof, to see if that inference reasonably follows from other facts which are shown by direct proof. If it does, even though the agency might reasonably have drawn a different inference, the court has no power to disagree with the fact so inferred.

A reviewing court may, and should examine any conclusion reached by an agency, to see whether reasoning minds could reasonably reach that conclusion from facts in the record before the agency, by direct proof, or by permissible inference. If the conclusion could be so reached, then it is based upon substantial evidence, and the court has no power to reject that conclusion.

A reviewing court may, and should examine facts found by an agency, to see if there was evidence to support each fact found. If there was evidence of the fact in the record before the agency, no matter how conflicting, or how questionable the credibility of the source of the evidence, the court has no power to substitute its assessment of credibility for that made by the agency, and by doing so, reject the fact.

Id. at 518. The validity of these general principles has been reaffirmed numerous times. See, e.g., Maryland State Police v. Lindsey, supra; Terranova v. Board, 81 Md. App. 1 (1989); Kade v. Hickey School, 80 Md. App. 721 (1989).

IV. Discussion

On appeal, Thompson claims as follows:

- (1) The Department acted illegally and in excess of its authority and jurisdiction, in that Petitioner was not given a disciplinary suspension form as specified in COMAR 06.01.01.46B;
- (2) The conclusions of law and order of the ALJ were not supported by competent, material and substantial evidence, were arbitrary and capricious, and were made upon unlawful procedure.
- (3) The regulation upon which the charge against Petitioner was based could not support a valid charge.
- (4) The ALJ acted arbitrarily, capriciously, and in violation of Petitioner's rights in imposing the penalty of suspension.

It is undisputed that, prior to the Hearing, Thompson did not receive a Disciplinary Suspension Form, as specified in COMAR 06.01.01.46(B). Thompson thus argues that the suspension was never properly effectuated.

This section of COMAR provides:

Written Notice; Form. The appointing authority shall file with the Secretary the original written notice of suspension on a form provided by the Secretary. The notice shall state the reasons for and duration of the suspension, and shall inform the employee of the appropriate appeal route.

It is uncontroverted that Thompson did learn of the proposed suspension through the Matter of Record, dated June 3, 1991, filed by Passaro. R.18. Although the Matter of Record accurately stated the reason for and duration of the suspension, it lacked information as to appeal procedures. Nevertheless, Thompson also learned, through other channels, of his rights of appeal. Thus the ALJ concluded that Thompson "did timely file for an appeal and any irregularity because of the improper form or lack of stated appeal rights was cured when he, in fact, accessed the appeal procedure." ALJ Decision at 5. Accordingly, he determined that Thompson was not prejudiced by his failure to receive written notice; he had an evidentiary hearing and an appeal.

This court agrees with the ALJ's conclusion. The substance of the rights COMAR is designed to protect were secured, and a reversal of Thompson's suspension based on a procedural technicality is unwarranted. See, e.g., Motor Vehicle Administration v. Shrader, 324 Md. 454, 463 (1991), and cases cited therein. (Dismissal is not necessarily required when an agency fails to comply with a rule that is dictated as mandatory. "The purpose and policy of the statute or rule must be considered in determining the appropriate sanction.").

Thompson also contends that he was improperly charged with the wrong offense. He was charged with negligence in the performance of his duties, but claims that he "should have been charged under the separate section concerning control of keys." Petitioner's B12 Memorandum at 4.

One's conduct may give rise to violations of several civil and/or penal statutes. Thompson has cited no reason or authority to support his claim that the conduct complained of had to be brought under the section concerning control of keys. This court finds no reversible error because Thompson was charged with "negligence in performance of duties" rather than "mishandling keys." R.82-84.

Thompson also complains that the ALJ's decision was arbitrary and capricious. He argues that the evidence was legally insufficient to support a finding of negligence.

"Negligence" is defined as the failure to exercise ordinary care. Dominion Construction, Inc. v. First National Bank of Maryland, 271 Md. 154, 160 (1974). The test as to whether the evidence is legally sufficient to establish negligence is whether the evidence serves to prove a fact, or permits an inference of fact, that would enable an ordinarily intelligent mind to draw a rational conclusion therefrom that such party has been guilty of negligence. See, Beahm v. Shortall, 279 Md. 321 (1977); Curley v. General Valet Service, 270 Md. 248 (1973); Dalmo Sales of Wheaton, Inc. v. Steinberg, 43 Md. App. 659 (1979). An individual's negligence may be

shown by either direct or circumstantial evidence and may be inferred from the facts of the particular case. Pearson v. Wiltrout, 17 Md. App. 497 (1973).

The ALJ determined from the facts and evidence in the record that Thompson's loss of the keys and key ring was due to his negligence. Even if there was no direct evidence of a breach of Thompson's duties, applying the appropriate standard of review, circumstantial evidence supported the ALJ's decision.

Thompson clearly had the duty to control the custody and care of his keys. Moreover, there was no actual evidence of mechanical defect in the key ring or belt loop. Rather, Appellant's testimony amounted to speculation. It was the ALJ's responsibility to assess and weigh the credibility of the testimony, including Appellant's bald assertion that the key ring must have malfunctioned. To the extent the evidence was conflicting, it was the fact finder's function to resolve the conflict. See, e.g., Leidenfrost v. Atlantic Masonry, Inc., 235 Md. 244 (1964); Yellow Cab Co. v. Hicks, 224 Md. 563 (1961).

Accordingly, under the standards of review which govern this proceeding, this court will not disturb the ALJ's factual findings and legal conclusion.

Based on the foregoing, it is this 2nd day of September, 1992, by the Circuit Court for Baltimore City.

ORDERED that the ALJ's Proposed Decision of August 23, 1991 and the Secretary's Order of November 8, 1991 be, and the same hereby are, AFFIRMED.

Costs to be paid by Appellant.

Ellen L. Hollander
Ellen L. Hollander, Judge

cc: Mr. Daniel Thompson, Appellant
Howard A. Miliman, Esquire
Richard B. Rosenblatt, Esquire

J. Alesandro
FILED
JUN 23 1991
CIRCUIT COURT FOR
BALTIMORE CITY

DANIEL THOMPSON * IN THE
Plaintiff * CIRCUIT COURT
vs. * FOR
DEPARTMENT OF PUBLIC SAFETY * BALTIMORE CITY
AND CORRECTIONAL SERVICES *
Defendant * Case No.: 91340071/CL141323
*

PETITIONER'S RULE B12 MEMORANDUM IN SUPPORT
OF
ORDER FOR APPEAL

Now comes the Petitioner, Daniel Thompson, by Howard Avrum Miliman and D'Alesandro, Miliman and Yerman, filing this Rule B12 Memorandum in Support of order for appeal and states that:

1. Petitioner was charged by the Department of Public Safety and Correctional Services ("the Department") with a violation of Division of Correction Regulation (DCR) 50-2 for losing certain keys on May 23, 1991. He was suspended for three days.

2. As a result of said suspension, Petitioner appealed to the Office of Administrative Hearings where the suspension was upheld. copy of the decision is attached hereto. This appeal follows.

3. The Petitioner contends that the findings, conclusions and Order of the Administrative Law Judge are unlawful, not fairly within the scope of his delegated power, arbitrary, capricious discriminatory, illegal, unreasonable and unconstitutional and for reasons says:

A. THE DEPARTMENT ACTED ILLEGALLY AND IN EXCESS OF ITS

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SARATOGA 7-0114

AUTHORITY AND JURISDICTION, IN THAT PETITIONER WAS NOT GIVEN A DISCIPLINARY SUSPENSION FORM AS SPECIFIED IN COMAR 06.01.01.46 (B).

B. THE MERE FACT THAT PETITIONER LOST POSSESSION OF THE KEYS IS NOT IN AND OF ITSELF SUFFICIENT TO PROVE NEGLIGENCE.

C. PETITIONER WAS INCORRECTLY CHARGED.

ARGUMENT

A. THE DEPARTMENT ACTED ILLEGALLY AND IN EXCESS OF ITS AUTHORITY AND JURISDICTION, IN THAT PETITIONER WAS NOT GIVEN A DISCIPLINARY SUSPENSION FORM AS SPECIFIED IN COMAR 06.01.01.46 (B).

Code of Maryland Regulations (COMAR) 06.01.01.46 B provides:

Written Notice; Form. The appointing authority shall file with the Secretary the original written notice of the suspension on a form provided by the Secretary. The notice shall state the reason for and the duration of the suspension, and shall inform the employee of the 3 appropriate appeal route.

In the case at bar, it is undisputed that petitioner did not receive a copy of the notice required by COMAR (page 2-3 of transcript). Since the instant suspension was never properly perfected by the agency, the action must be voided.

COMAR uses the mandatory language "shall" in directing the appointing authority to provide written notice to the Secretary. No discretion is permitted. Hence, the failure of the appointing authority to provide the written notice requires reversal. Bright v. Unstate C&J Fund Bd., 2765 Md 165, 169-70, 338 A.2d 248 (1975); Md. State Bar Assn. v. Frank, 272 Md. 528, 533, 325 A.2d 718 (1974); Ginnavon v. Silverstone, 246 Md. 500, 55, 229 A.2d 124 (1967).

COMAR does not provide a remedy for an authority's failure to

provide notice to an employee. However, it must be assumed that a specific procedure was set forth to ensure all employees are treated equally and informed of their rights and obligation in these types of matters. If an authority is permitted to ignore their obligations under COMAR and still succeed in issuing suspensions and other forms of discipline, the very purpose of COMAR is defeated. Therefore, the suspension in this case must be vacated.

Finally, it should be noted this very issue has been decided before, in favor of Petitioner's position. A copy of a decision of the Department of Personnel is attached hereto. As can be seen the Appellant's suspension was vacated as a result of the department's failure to provide the notice require by COMAR. In the interest of fairness and consistency, the suspension in this case must be vacated.

B. PETITIONER'S CONDUCT, IN AND OF ITSELF, IS NOT EVIDENCE OF NEGLIGENCE.

The Department of Public Safety alleged, and the Administrative Law Judge found that Petitioner's loosing the keys was an act of negligence, warranting suspension. This finding is clearly erroneous, with justification in law or fact, and must be reversed.

First, page 23 of the transcript indicates that the department's witness could not state with certainty that the loss of the key was caused by the negligence of the petitioner. If the agency's own witness could not conclude that negligence was

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SARATOGA 7-0114

involved, the finder of fact had no basis to reach that conclusion, and therefor, the decision must be reversed.

In addition, Petitioner testified that the key hook which he was using in this was poorly designed and since the incident, he has switched types of hooks. (Transcript, pages 39-41). The key hook had been provided by the State and was over ten (10) years old. Finally, Mr. Passaro, the supervisor at the scene testified that he failed to inspect the key hook and that it was possible that a mechanical defect caused the keys to fall off the hook (pages 22-23). Since petitioner also testified that he had "no reason at all" to remove the keys from the hook at the point where they were found (Page 43), it must be concluded that the key hook was defective and that Petitioner was not negligent.

The agency present no evidence of negligence. The only evidence presented was that Petitioner had possession of the keys and that the keys were lost. Mere loosing of the keys is not evidence of negligence. Since the agency failed to provide evidence of negligence, in addition to the loss of the keys, the decision of the Administrative Law Judge must be reversed.


C. PETITIONER WAS INCORRECTLY CHARGED

Petitioner was charged with negligence in the performance of his duties. As indicated above, the agency provided no evidence of Petitioner's negligence. If Petitioner is guilty of any violation, and no such admission is made, Petitioner should have been charged under the separate section concerning control of keys. Since Petitioner was not charged with the correct violation, he cannot be

suspended for that violation of that section, and the suspension must be reversed.

CONCLUSION

Based on the above argument, it is respectfully requested that this Honorable Court reverse the decision of the Administrative Law Judge.



HOWARD AVRUM MILIMAN, ESQUIRE
D'Alesandro, Miliman & Yerman
5 Light Street
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Baltimore, MD 21202
(410) 727-0114

CERTIFICATE OF MAILING

I hereby certify that on this 22 day of June, 1992, a copy of the foregoing was mailed, postage prepaid to:

RICHARD B. ROSENBLATT, ESQUIRE
ASSISTANT ATTORNEY GENERAL
DEPARTMENT OF SAFETY AND CORRECTIONAL SERVICES
SUITE 312
6776 REISTERSTOWN ROAD
BALTIMORE, MD 21215



HOWARD AVRUM MILIMAN

D'ALESSANDRO, MILIMAN
& YERMAN
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5 LIGHT STREET, 11TH FLOOR
BALTIMORE, MD. 21202

SARATOGA 7-0114

IN THE MATTER OF AN APPEAL
OF A DISCIPLINARY SUSPENSION
IMPOSED UPON GEORGE WASHINGTON
CORRECTIONAL MAINTENANCE
OFFICER I

BY THE MARYLAND HOUSE OF
CORRECTION (MHOC)
DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES

BEFORE MARGARET T. EMBARDINO

A REPRESENTATIVE OF THE
SECRETARY OF THE
DEPARTMENT OF PERSONNEL

CASE NO. S-5775

PROPOSAL FOR DECISION

November 9, 1988

DATE OF INCIDENT: August 3, 1988

DATE(S) AND LENGTH OF SUSPENSION: August 4, 1988 (One day)

INCREMENT DENIED: No

APPEAL ROUTE: Directly to the Department of Personnel

DATE OF APPEAL TO

Department of Personnel: August 4, 1988

DATE OF HEARING: November 2, 1988

Management Representative: Lois Gatewood
Employee Relations Officer
Division of Correction

Employee Representative: Raymond Lenzi
Labor Relations Representative
Maryland Classified Employees
Association

FINAL RECEIPT OF DOCUMENTS: November 2, 1988

REASON FOR SUSPENSION: Violation of DCR 50-2, Section IV.A.5
(contraband) and 25 (reports)

At the outset of the hearing, Ms. Gatewood was asked to
produce the suspension form. She advised that the form had

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never actually been prepared and was not available for the record in this case.

PROPOSED FINDINGS OF FACT

1. MHOC officials intended to suspend Mr. George Washington, Correctional Maintenance Officer I, for one day on August 4, 1988 for an incident which occurred on August 3, 1988.
2. The agency has not as yet prepared a suspension form to effectuate the disciplinary action.

PROPOSED CONCLUSION OF LAW

Code of Maryland Regulation (COMAR) 06.01.01.46.B, concerning written notice for disciplinary suspensions, specifies, in pertinent part:

- B. Written Notice; Form. The appointing authority shall file with the Secretary the original written notice of the suspension on a form provided by the Secretary. The notice shall state the reasons for and duration of the suspension, and shall inform the employee of the appropriate appeal route.

Since the agency failed to submit the original notice of the suspension to the Secretary as required, I find that the instant suspension was never properly effectuated by the agency; and that the action must be voided.

-3-

PROPOSED ORDER

IT, THEREFORE, IS ORDERED that Mr. George Washington, Correctional Maintenance Officer I at MHOC, be reimbursed with one day of back pay and benefits for August 3, 1988.

Margaret T. Embardino
Margaret T. Embardino
Hearing Officer
Employee Relations

Reviewed by:
Eleanor A. Wilkinson
Eleanor A. Wilkinson
Assistant Director of
Employer-Employee Relations

Distribution:

Bishop Robinson
John G. Sybert
Lois Gatewood
Raymond Lenzi
Viola Byrd
George Washington
Jeanne M. Zarnoch

Hollander (11)
FILED

DANIEL THOMSON

* IN THE

APPELLANT

* CIRCUIT COURT

JUL 16 1992

V.

* FOR

DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES

* BALTIMORE

CIRCUIT COURT FOR
BALTIMORE CITY

APPELLEE

* CITY

* CASE NO. 91340071/CL141323

* * * * *

MEMORANDUM OF LAW IN SUPPORT OF
ADMINISTRATIVE AGENCY DECISION

The Department of Public Safety and Correctional Services, Appellee, by its attorneys, J. Joseph Curran, Jr., Attorney General of Maryland, and Richard B. Rosenblatt, Assistant Attorney General, pursuant to Maryland Rule B12, submits the following Memorandum in Support of the Administrative Agency Decision rendered in the within case.

Statement of the Case

Appellant, an employee of the Maryland Division of Correction, was charged by Appellee with a violation of Division of Correction Regulation 50-2 for losing certain keys on May 23, 1991. He was suspended for three days. An appeal to the Office of Administrative Hearings resulted in an affirmance of the suspension. An appeal was noted to this Court.

Questions Presented

1. Whether the Appellant's admission that he was not prejudiced by the deviation from the form for notice promulgated by the Secretary obviates the need for reversal?

2. Whether evidence of the circumstances under which Appellant lost his keys was sufficient upon which to draw an inference of negligence?

3. Whether Appellant was properly charged?

Statement of Facts

Lt. Thomson, Appellant, was the Supervisor on the 10:00 p.m. to 6:00 a.m. shift at the Jessup Pre-Release Unit on May 23, 1991, when he lost the supervisory key set off of his belt. Following 1 1/2 hours of searching and taking precautionary measures, the keys were found laying on the ground in an area in front of the vehicle gate. Thomson was charged with having lost the keys and a three day suspension resulted.

Argument

- I. THE FAILURE TO ADVISE APPELLANT OF HIS SUSPENSION ON THE FORM DIRECTED BY THE SECRETARY OF PERSONNEL DOES NOT NECESSITATE REVERSAL OF THE SUSPENSION.

At the outset of the hearing before the Administrative Law Judge, Appellant's representative preliminarily moved for dismissal of the case based on the agency's failure to utilize the disciplinary form provided by the Secretary of Personnel. (T.2). When the Administrative Law Judge asked whether Thomson was familiar with the specifics of the charges, his representative replied, "Now we know why we are here but I think it is incumbent upon the agency to give him what they are required to give him according to COMAR regulations." (T.3). The admission made on behalf of Appellant confirms that this allegation is an attempt to exalt form over substance.

In Motor Vehicle Administration v. Shrader, 324 Md. 454, 597 A.2d 939 (1991), the Maryland Court of Appeals held that while a rule may dictate a mandatory on the part of an agency, the noncompliance with that rule does not necessarily require

dismissal of the case. In determining whether dismissal is required for the noncompliance, the Court of Appeals set forth a tripartite analysis: (1) Is dismissal required in order to achieve the purpose and policy of the rule?; (2) Is dismissal specifically required by the rule as a sanction for non-compliance?; and (3) Is dismissal required to preclude prejudice to the other party?

Under this analysis, dismissal is clearly not warranted in the instant case. The purpose of the regulation is not furthered by a sanction of dismissal inasmuch as Appellant had notice of the charges against him and perfected an appeal of the suspension through appropriate administrative channels. The sanction of dismissal is not specified anywhere in the regulations for the failure to utilize the specific form promulgated by the Secretary of Personnel. Appellant's representative admitted there was no prejudice to Appellant from the failure to utilize the form. Under these circumstances, there was no error in refusing to dismiss the charges for the failure to utilize the forms specified in COMAR.

II. THE FINDING OF NEGLIGENCE WAS SUPPORTED
BY SUBSTANTIAL EVIDENCE APPEARING IN THE
RECORD.

Appellant seeks refuge in the fact that no one observed him mishandle his keys. It is apparently his position that no inference of negligence can be drawn from the loss of the master set of keys by the supervisor while on duty. Clearly, the record in the instant case supports the inference of negligence drawn by the Administrative Law Judge in the instant case.

The only incident of lost or misplaced keys at the institution was the incident involving Lt. Thomson. (T.68). Even Thomson admitted that he had never had any problems in maintaining control over keys rings on the key hook, with the exception of one other occasion when one key ring fell to the ground as he attempted to take another key ring off of the hook. (T.44-45). Indeed, while Thomson himself testified to the possibility that the keys fell off the key hook due to a mechanical defect, he testified that the "odds of [a mechanical failure] happening would have to be less than winning the lotto." (T.45).

A person's negligence may be shown by either direct or circumstantial evidence, and may be inferred from all facts in the case. Pearson v. Wiltrout, 17 Md.App. 497, 302 A.2d 678 (1973). If unknowns exist, an inference of negligence, deducible from facts and circumstances, may be considered by the fact finder in determining whether a person was negligent. Armstrong v. Johnson Motor Lines, Inc., 12 Md.App. 492, 280 A.2d 24 (1971). Included in the reasonableness of an inference of negligence are whether the subject of the negligence is within the exclusive control of the person charged with such conduct, and whether damage is such as, in the ordinary course of things, does not occur if the one having such control uses proper care. See U.S. v. Chesapeake and Delaware Shipyard, Inc., 369 F.Supp. 714 (D.Md. 1974) (applying doctrine of res ipsa loquitur).

In this case, this Court is constrained to determine whether there was sufficient evidence to support the conclusion

of the Administrative Law Judge -- that is, whether there appeared substantial evidence on the record to support the inference drawn of negligence. It is not for this Court to determine whether it would have drawn such an inference, but rather whether such an inference could be drawn reasonably. Under the circumstances of this case, the conclusion reached by the Administrative Law Judge was appropriate.

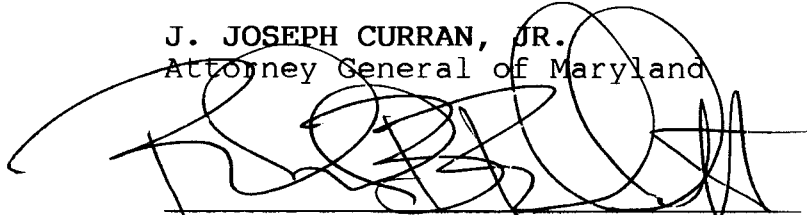
III. APPELLANT WAS PROPERLY CHARGED.

Appellant was not separately charged with mishandling keys. Thus, his suspension was not imposed for that offense. Rather, Appellant was charged with negligence in the performance of his duties. As discussed above, that charge was sustained by the evidence. There was no error in charging Appellant with "negligence" as opposed to charging him specifically with the "mishandling of keys" offense.

WHEREFORE, Appellee respectfully requests that the decision of the administrative agency be affirmed.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
Attorney General of Maryland



RICHARD B. ROSENBLATT
Assistant Attorney General
Department of Public Safety and
Correctional Services
Suite 312
6776 Reisterstown Road
Baltimore, Maryland 21215-2341
Tel: 764-4072

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of July, 1992, a copy of the foregoing Memorandum of Law in Support of Administrative Agency Decision was mailed, first class, postage prepaid to Howard Avrum Miliman, Esquire, D'Alesandro, Miliman & Yerman, 5 Light Street, 11th Floor, Baltimore, Maryland 21202.



RICHARD B. ROSENBLATT
Assistant Attorney General

PRESIDING JUDGE *Hollander*

COURTROOM CLERK *Loz*

STENOGRAPHER *Day*

ASSIGNMENT FOR TUESDAY JUNE 09, 1992

CASE NUMBER - 91340071
CASE TITLE - THOMPSON VS DEPART. OF PUBLIC SAFETY CL141323 CL
CATEGORY - APPEAL FROM ADMINISTRATIVE AGENCY
PROCEEDING - COURT TRIAL - FAST TRACK

ROSENBLATT, RICHARD DEFENSE ATTORNEY 764-4071
MILIMAN, HOWARD PLAINTIFF ATTORNEY 727-0114

Pending Post. by Memorandum

TYPE OF PROCEEDING: (___ JURY) (NON-JURY) (___ OTHER)

DISPOSITION (CHECK ONE)
(___ SETTLED) (___ CANNOT SETTLE) (___ NEXT COURT DATE)
(___ VERDICT) (___ REMANDED) (___ NON PROS/DISMISSED)
(___ JUDGEMENT NISI) (___ ORDER/DECREE SIGNED) (___ OTHER) PLEASE EXPLAIN:
(___ JUDGEMENT ABSOLUTE) (___ ORDER/DECREE TO BE SIGNED)
(___ POSTPONED) (___ MOTION GRANTED)
(SUB CURIA) (___ MOTION DENIED)

JUDGE SIGNATURE _____ DATE _____

Hollande

DANIEL THOMPSON

: In The
: Circuit Court
: For

V.

DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES

: Baltimore City
: Case No.: 91340071/CL 1323

FILED

JUN 8 1992

CLERK OF COURT
BALTIMORE, MD

.....

ANSWER TO MOTION TO DISMISS

Now comes the Petitioner, Daniel Thompson, by Howard Avrum Miliman and D'Alesandro, Miliman and Yerman, filing this Answer to Motion to Dismiss, and in support states that:

1. A copy of the memorandum required to filed pursuant to Maryland Rule B12 is attached hereto and filed simultaneously herewith.

2. Respondent has not been prejudiced and as such dismissal is not an appropriate sanction.

WHEREFORE, it is respectfully requested that this Honorable Court:

A. Deny Respondent's Motion to Dismiss; and

B. Grant such other and further relief as the nature of this case may require.

HOWARD AVRUM MILIMAN, ESQUIRE
D'Alesandro, Miliman & Yerman
5 Light Street
11th Floor
Baltimore, MD 21202
(410) 727-0114

D'ALESSANDRO, MILIMAN
& YERMAN
ATTORNEYS AT LAW
5 LIGHT STREET, 11TH FLOOR
BALTIMORE, MD. 21202

CERTIFICATE OF MAILING

I hereby certify that on this 9th day of June, 1992, a copy of the foregoing was mailed, postage prepaid to:

RICHARD B. ROSENBLATT, ESQUIRE
ASSISTANT ATTORNEY GENERAL
DEPARTMENT OF SAFETY
AND CORRECTIONAL SERVICES
SUITE 312
6776 REISTERSTOWN ROAD
BALTIMORE, MD 21215



HOWARD AVRUM MILIMAN

Hollander
9

DANIEL THOMPSON

: In The
: Circuit Court
: For

V.

DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES

: Baltimore City
: Case No.: 0071/CL141323

FILED
JUN 8 1991
CIRCUIT COURT FOR BALTIMORE CITY

.....

PETITIONER'S RULE B12 MEMORANDUM IN SUPPORT
OF
ORDER FOR APPEAL

Now comes the Petitioner, Daniel Thompson, by Howard Avrum Miliman and D'Alesandro, Miliman and Yerman, filing this Rule B12 Memorandum in Support of order for appeal and states that:

1. Petitioner was charged by the Department of Public Safety and Correctional Services ("the Department") with a violation of Division of Correction Regulation (DCR) 50-2 for loosing certain keys on May 23, 1991. He was suspended for three days.

2. As a result of said suspension, Petitioner appealed to the Office of Administrative Hearings where the suspension was upheld. A copy of the decision is attached hereto. This appeal follows.

3. The Petitioner contends that the findings, conclusions and Order of the Administrative Law Judge are unlawful, not fairly within the scope of his delegated power, arbitrary, capricious, discriminatory, illegal, unreasonable and unconstitutional and for reasons says:

A. THE DEPARTMENT ACTED ILLEGALLY AND IN EXCESS OF ITS AUTHORITY AND JURISDICTION, IN THAT PETITIONER WAS NOT GIVEN A DISCIPLINARY SUSPENSION FORM AS SPECIFIED IN COMAR 06.01.01.46 (B). (Page 2 of transcript).

D'ALEXANDRO, MILIMAN
& YERMAN
ATTORNEYS AT LAW
5 LIGHT STREET, 11TH FLOOR
BALTIMORE, MD. 21202
SARATOGA 7-0114

B. THAT CONCLUSIONS OF LAW AND ORDER OF THE ADMINISTRATIVE LAW JUDGE WERE NOT SUPPORTED BY COMPETENT, MATERIAL AND SUBSTANTIAL EVIDENCE; WERE ARBITRARY AND CAPRICIOUS, AND WERE MADE UPON UNLAWFUL PROCEDURE.

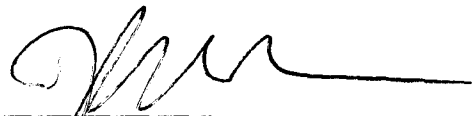
C. THE REGULATION UPON WHICH THE CHARGE AGAINST PETITIONER WAS BASED COULD NOT SUPPORT A VALID CHARGE.

D. THE ADMINISTRATIVE LAW JUDGE ACTED ARBITRARILY, CAPRICIOUSLY, AND IN VIOLATION OF PETITIONER'S RIGHTS IN IMPOSING THE PENALTY OF SUSPENSION.

WHEREFORE, it is respectfully requested that this Honorable Court:

A. Reverse and Vacate the Order of the Administrative Law Judge; and

B. Grant such other and further relief as the nature of this case may require.



HOWARD AVRUM MILIMAN, ESQUIRE
D'Alesandro, Miliman & Yerman
5 Light Street
11th Floor
Baltimore, MD 21202
(410) 727-0114

CERTIFICATE OF MAILING

I hereby certify that on this 4th day of June, 1992, a copy of the foregoing was mailed, postage prepaid to:

RICHARD B. ROSENBLATT, ESQUIRE
ASSISTANT ATTORNEY GENERAL
DEPARTMENT OF SAFETY
AND CORRECTIONAL SERVICES
SUITE 312
6776 REISTERSTOWN ROAD
BALTIMORE, MD 21215

D'ALESSANDRO, MILIMAN
& YERMAN
ATTORNEYS AT LAW
5 LIGHT STREET, 11TH FLOOR
BALTIMORE, MD. 21202

SARATOGA 7-0114



HOWARD AVRUM MILIMAN

CERTIFICATE OF MAILING

I hereby certify that on this 7th day of June, 1992, a copy of the foregoing was mailed, postage prepaid to:

RICHARD B. ROSENBLATT, ESQUIRE
ASSISTANT ATTORNEY GENERAL
DEPARTMENT OF SAFETY
AND CORRECTIONAL SERVICES
SUITE 312
6776 REISTERSTOWN ROAD
BALTIMORE, MD 21215

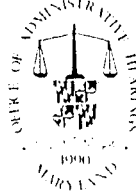


HOWARD AVRUM MILIMAN

D'ALESSANDRO, MILIMAN
& YERMAN
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5 LIGHT STREET, 11TH FLOOR
BALTIMORE, MD. 21202

SARATOGA 7-0114

William Donald Schaeter
Governor



John W. Hardwicke
Chief Administrative Law Judge

James G. Klair
Deputy Chief Administrative
Law Judge

OFFICE OF ADMINISTRATIVE HEARINGS

ADMINISTRATIVE LAW BUILDING
GREEN SPRING STATION
10753 FALLS ROAD
LUTHERVILLE, MARYLAND 21093
(301) 321-3993
FAX 301-321-2040

WRITER'S DIRECT DIAL NO.

August 23, 1991

Lieutenant Daniel L. Thomson
Route 6, Box 418
Salisbury, Maryland 21801

Steven J. Lorenzet
Personnel Officer
Maryland Correctional
Pre-Release System
Administration
7931 Brock Bridge Road
Jessup, Maryland 20794

RE: OAH #91-DOP-CORC-002-1194

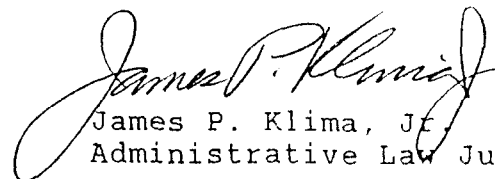
Dear Lt. Thomson and Mr. Lorenzet:

Enclosed is the Proposal for Decision with findings of fact and conclusions of law in accordance with State Government Article, Section 10-212 of the Annotated Code of Maryland.

You will be given 15 days from the date of this letter to file written exceptions and to request an opportunity to present oral argument to Hilda E. Ford, Secretary of Personnel, or her designee at 301 W. Preston Street, Baltimore, Maryland 21201. Should you wish to present oral argument, you will be notified as to when argument will be heard by that office. Each party will be given 15 minutes to present its argument.

If no exceptions are filed, the decision will become final.

Very truly yours,


James P. Klima, Jr.
Administrative Law Judge

JPK/kc
cc: Ricardo R. Silva
John Udris
John Sybert
Margaret Embardino

DANIEL L. THOMSON

VS.

DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES

* BEFORE JAMES P. KLIMA, JR.
*
* ADMINISTRATIVE LAW JUDGE
*
* OF THE MARYLAND OFFICE OF
*
* ADMINISTRATIVE HEARINGS
*
* CASE NO: 91-DOP-CORC-002-1194
*

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW

STATEMENT OF THE CASE

Lieutenant Daniel Thomson is a Correctional Officer IV assigned to the Jessup Pre-Release Unit. He was charged with violation of Division of Correction Regulation (DCR) 50-2 for losing certain keys on May 23, 1991. He was suspended for three days and appeals.

A hearing was held on July 31, 1991. Management was represented by Steven Lorenzet, Personnel Officer, Pre-Release System; Lieutenant Thomson was represented by Ricardo R. Silva, Director, Field Services, Maryland Correctional Union.

Thomas Passaro, Facility Administrator, Jessup Pre-Release Unit, testified for Management.

Appellant Lieutenant Thomson testified in his own behalf. Captain Deborah Lilley, who is assigned as Key Control Supervisor at the Jessup Pre-Release Unit was subpoenaed to testify for the Appellant.

MANAGEMENT'S EXHIBITS

1. Memo, Daniel Thomson to Thomas Passaro, re Lost Supervisor Key Set, dated May 24, 1991.
2. Memo, Myrick Clark to Thomas Passaro, re Misplaced Keys, dated May 25, 1991.
3. Matter of Record from Thomas Passaro dated June 3, 1991.

EMPLOYEE'S EXHIBITS

1. Security Cabinet Key Log, May, 1991.
2. Copies of fifteen pages of Supervisor's Journal chronicling occurrences on shifts.
3. List of authorized recipients of security cabinet keys.
4. Page 333 of Supervisor's Journal showing occurrences on 2:00 p.m. to 10:00 p.m. shift on June 13, 1991.

ISSUE

Whether the Department of Public Safety and Correctional Services properly suspended Appellant for three days.

SUMMARY OF THE EVIDENCE

On May 23, 1991, Lieutenant Thomson was working as Shift Commander on the 10:00 p.m. - 6:00 a.m. shift at the Jessup Pre-Release Unit. He had possession of the supervisor's key ring which

he carried on a holder attached to a belt. At approximately 11:00 p.m. Lieutenant Thomson noticed that the keys were missing from his belt. He advised his supervisor of the situation. A search was undertaken and inmate sanitation workers who were out of their cells were strip-searched. At approximately 12:30 a.m. the keys were found on the ground outside the front gate, in an area where Lieutenant Thomson earlier had delivered some paperwork to a vehicle transferring an inmate to another facility.

As a result of his losing the keys, Appellant was suspended for three days for violation of DCR 50-2 (19): indifference, carelessness, or negligence in performance of duties. A three day suspension was imposed under the progressive discipline provisions of DCR 50-6, because it was the third violation of DCR 50-2 by Lieutenant Thomson in the current reckoning period.

Appellant does not dispute that he lost the keys, but claimed that key regulations are consistently violated and no one else has been penalized. He suggested that he was singled out because he has an outstanding grievance with regard to his work assignment, which is 120 miles from his home. He presented evidence that employees had taken keys home by mistake, and that unauthorized persons were given access to keys, and no penalties were assessed.

Captain Lilley, the Key Control Supervisor, testified that at times keys are issued to personnel who are not on the authorized list, but this was for reasons of expediency due to staff being short-handed; that employees who took keys home by mistake were reprimanded; and that she knew of no other instance where keys have been lost.

FINDINGS OF FACT

1. As shift supervisor, Appellant Lieutenant Thomson was responsible for custody of the supervisor's key ring on May 23, 1991.

2. The keys were discovered to be missing from their holder on Lieutenant Thomson's belt at approximately 11:00 p.m.

3. The keys were found at approximately 12:30 a.m. in an area where Lieutenant Thomson had traveled earlier on the shift.

4. Lieutenant Thomson had received a reprimand and a one day suspension for prior violations of DCR 50-2 in the reckoning period.

DISCUSSION

Mr. Silva moved to dismiss on grounds that a Disciplinary Suspension Form had not been given to Appellant as specified in COMAR 06.01.01.46 (B):

The appointing authority shall file with the Secretary the original written notice of suspension on a form provided by the Secretary. The notice shall state the reasons for and duration of the suspension, and shall inform the employee of the appropriate appeal route. The appointing authority shall:

(1) Give a copy of the notice to the suspended employee....

The "form provided by the Secretary" is SEC Form #4A (REV.1-86), and such was not given to Appellant prior to the hearing.

A copy of a Matter of Record dated June 3, 1991, which accurately states "the reason for and duration of the suspension"

here under consideration was received by Lieutenant Thomson on June 5, 1991. This did constitute notice of the suspension, but it did not contain information as to appeal procedure and, of course, was not on "a form provided by the Secretary".

In a letter addressed to the Office of Administrative Hearings dated June 6, 1991, Lieutenant Thomson requested to be advised of the "scheduled hearing date", and in a Notice of Hearing sent to Lieutenant Thomson dated June 19, 1991, the "Date appealed" is designated as June 10, 1991.

Thus, Lieutenant Thomson did timely file for an appeal and any irregularity because of the improper form or lack of stated appeal rights was cured when he, in fact, accessed the appeal procedure.

The Motion for Dismissal is DENIED.

There is little dispute in the facts of this case. There is no question that Lieutenant Thomson was charged with custody of certain important keys and that the keys were lost for a time on his watch. The essence of Lieutenant Thomson's defense is that his act was not willful and that others have violated regulations with regard to the custody of keys and were not penalized.

Lieutenant Thomson is charged with violation of DCR-50-2 (19)(a), which provides in part "Indifference, carelessness, or negligence will constitute grounds for disciplinary action". It has not been shown that the Lieutenant was "indifferent". "Carelessness" and negligence" are generally regarded as being synonymous.

"Negligence" is failure to exercise ordinary care. Dominion Construction, Inc. v. First National Bank of Maryland, 271 Md. 154, 315 A.2d 69. "Negligence" without qualification in its ordinary sense, is the failure of a responsible person, either by omission

or by action, to exercise that degree of care, vigilance, and forethought which, in the discharge of the duty then resting on him, the person of ordinary caution and prudence might exercise under the particular circumstances; it is a want of diligence commensurate with the requirement of the duty at the moment...Winslow v. Tebbetts, 131 Me 785, 162 A.785.

Lieutenant Thomson was in the position of the "responsible person" in the Winslow case, and the fact that he lost the keys entrusted to him constituted "negligence". He is thus subject to disciplinary action for violation of DCR-2 (19)(a).

A penalty is warranted because of the serious nature of the violation as compared to other violations noted by Lieutenant Thomson. During the time the supervisor's key ring was lost, the institution was imperiled. There could have been dire consequences if the keys had been found by an inmate who chose to take advantage of the situation.

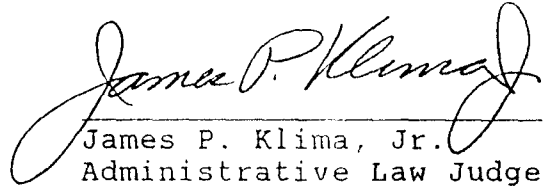
While it might be argued that a three day penalty is too severe for an admittedly unintentional violation which ultimately cause no harm, it was shown that this was the third violation of DCR 50-2 by Lieutenant Thomson in the current reckoning period. DCR 50-6 (c) provides that a three day suspension is the proper sanction for such. The three day suspension is mandatory in that Section D of DCR 50-6 provides that any exception requires the approval of the Commission of Correction.

In light of the above, Lieutenant Thomson's claim that the penalty was in retaliation for an outstanding grievance is not persuasive.

PROPOSED CONCLUSIONS OF LAW

Management has shown by a preponderance of evidence that its action in suspending Appellant for three days for his third violation of DCR 50-2 in the current reckoning period was appropriate. It is, therefore, proposed that the suspension be sustained.

August 23, 1991
Date


James P. Klima, Jr.
Administrative Law Judge

JPK/kc

cc: Stephen Lorenzet
Ricardo R. Silva
John Udris
John Sybert
Margaret Embardino
Daniel Thomson

6/19/92

Hollander

FILED

JUN 2 1992

CIRCUIT COURT FOR BALTIMORE CITY

DANIEL THOMSON

APPELLANT

V.

DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

APPELLEE

* IN THE *
* CIRCUIT COURT *
* FOR *
* BALTIMORE *
* CITY *
* CASE NO. 91340071/CL41323 *

* * * * *

MOTION TO DISMISS

The Department of Public Safety and Correctional Services, Appellee, by its attorneys, J. Joseph Curran, Jr., Attorney General of Maryland, and Richard B. Rosenblatt, Assistant Attorney General, pursuant to Maryland Rule B5, moves to dismiss the above-captioned appeal from a decision of the Secretary of Personnel. In support, Appellee submits:

1. The within case is an appeal from a decision rendered on behalf of the Secretary of Personnel in conjunction with a challenge to an employment suspension.

2. On February 11, 1992, the record from the administrative agency was filed with this Court. On February 14, 1992 notice was sent by the clerk in accordance with Maryland Rule B12 advising the parties that the record had been received.

3. Maryland Rule B12 requires that a memorandum setting forth a concise statement of all issues raised on appeal and argument on each issue, including citations of legal authorities and references to pages of the transcript and exhibits relied on be filed within 30 days after being notified by the Clerk of the filing of the Record.

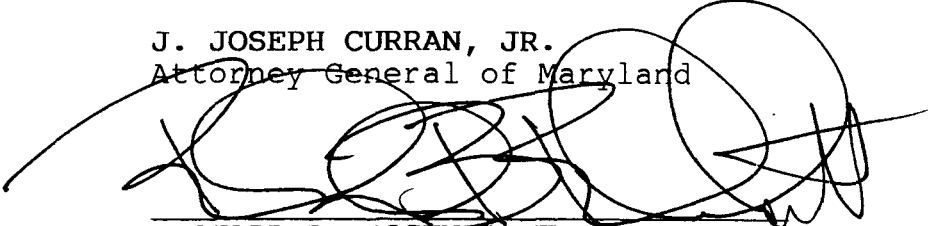
4. To date, no memorandum in accordance with Maryland Rule B12 has been filed on behalf of Appellant.

5. Dismissal of the administrative appeal is an appropriate sanction for failure to comply with this Rule. Gaetano v. Calvert County, 310 Md. 121, 527 A.2d 46 (1987).

WHEREFORE, Appellee respectfully requests that the within appeal from the decision rendered on behalf of the Secretary of Personnel be dismissed with prejudice.

Respectfully submitted,

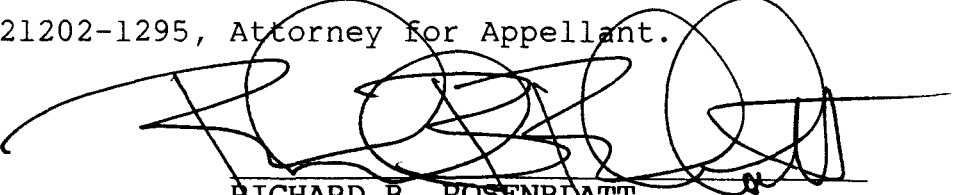
J. JOSEPH CURRAN, JR.
Attorney General of Maryland



RICHARD B. ROSENBLATT
Assistant Attorney General
Department of Public Safety
and Correctional Services
Suite 312
6776 Reisterstown Road
Baltimore, Maryland 21215-2341
Tel: (410) 764-4072

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of June, 1992, a copy of the foregoing Motion to Dismiss was mailed, first class, postage prepaid to Howard Avrum Miliman, Esquire, D'Alesandro, Miliman & Yerman, Attorneys at Law, 5 Light Street, 11th Floor, Baltimore, Maryland 21202-1295, Attorney for Appellant.



RICHARD B. ROSENBLATT
Assistant Attorney General

DANIEL THOMSON

APPELLANT

V.

DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES

APPELLEE

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE
* CITY
* CASE NO. 91340071/CL41323

* * * * *

ORDER

The Motion to Dismiss filed on behalf of Appellee
having been considered, it is this _____ day of _____,
1992,

ORDERED that the above-captioned case be and is hereby
DISMISSED.

JUDGE

DANIEL THOMPSON

: In The

: Circuit Court

V.

: For

DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES

: Baltimore City

: Case No.: 91340071/CL141323

.....

PETITIONER'S RULE B12 MEMORANDUM IN SUPPORT
OF
ORDER FOR APPEAL

Now comes the Petitioner, Daniel Thompson, by Howard Avrum Miliman and D'Alesandro, Miliman and Yerman, filing this Rule B12 Memorandum in Support of order for appeal and states that:

1. Petitioner was charged by the Department of Public Safety and Correctional Services ("the Department") with a violation of Division of Correction Regulation (DCR) 50-2 for losing certain keys on May 23, 1991. He was suspended for three days.

2. As a result of said suspension, Petitioner appealed to the Office of Administrative Hearings where the suspension was upheld. A copy of the decision is attached hereto. This appeal follows.

3. The Petitioner contends that the findings, conclusions and Order of the Administrative Law Judge are unlawful, not fairly within the scope of his delegated power, arbitrary, capricious, discriminatory, illegal, unreasonable and unconstitutional and for reasons says:

A. THE DEPARTMENT ACTED ILLEGALLY AND IN EXCESS OF ITS AUTHORITY AND JURISDICTION, IN THAT PETITIONER WAS NOT GIVEN A DISCIPLINARY SUSPENSION FORM AS SPECIFIED IN COMAR 06.01.01.45 (B). (Page 2 of transcript).

D'ALESSANDRO, MILIMAN
& YERMAN
ATTORNEYS AT LAW
5 LIGHT STREET, 11TH FLOOR
BALTIMORE, MD. 21202

SARATOGA 7 0114

B. THAT CONCLUSIONS OF LAW AND ORDER OF THE ADMINISTRATIVE LAW JUDGE WERE NOT SUPPORTED BY COMPETENT, MATERIAL AND SUBSTANTIAL EVIDENCE; WERE ARBITRARY AND CAPRICIOUS, AND WERE MADE UPON UNLAWFUL PROCEDURE.

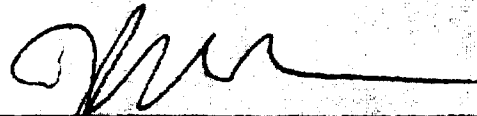
C. THE REGULATION UPON WHICH THE CHARGE AGAINST PETITIONER WAS BASED COULD NOT SUPPORT A VALID CHARGE.

D. THE ADMINISTRATIVE LAW JUDGE ACTED ARBITRARILY, CAPRICIOUSLY, AND IN VIOLATION OF PETITIONER'S RIGHTS IN IMPOSING THE PENALTY OF SUSPENSION.

WHEREFORE, it is respectfully requested that this Honorable Court:

A. Reverse and Vacate the Order of the Administrative Law Judge; and

B. Grant such other and further relief as the nature of this case may require.



HOWARD AVRUM MILIMAN, ESQUIRE
D'Alesandro, Miliman & Yerman
5 Light Street
11th Floor
Baltimore, MD 21202
(410) 727-0114

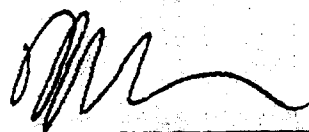
CERTIFICATE OF MAILING

I hereby certify that on this 4th day of June, 1992, a copy of the foregoing was mailed, postage prepaid to:

RICHARD B. ROSENBLATT, ESQUIRE
ASSISTANT ATTORNEY GENERAL
DEPARTMENT OF SAFETY
AND CORRECTIONAL SERVICES
SUITE 312
6776 REISTERSTOWN ROAD
BALTIMORE, MD 21215

SANDRO, MILIMAN
& YERMAN
ATTORNEYS AT LAW
417 STREET, 11TH FLOOR
BALTIMORE, MD. 21202

SARATOGA 7-0114



HOWARD AVRUM MILIMAN

CERTIFICATE OF MAILING

I hereby certify that on this 5th day of June, 1992, a copy of the foregoing was mailed, postage prepaid to:

RICHARD B. ROSENBLATT, ESQUIRE
ASSISTANT ATTORNEY GENERAL
DEPARTMENT OF SAFETY
AND CORRECTIONAL SERVICES
SUITE 312
6776 REISTERSTOWN ROAD
BALTIMORE, MD 21215


HOWARD AVRUM MILIMAN

LESANDRO. MILIMAN
& YERMAN
ATTORNEYS AT LAW
EIGHT STREET, 11TH FLOOR
BALTIMORE, MD. 21202

SARATOGA 7-0114

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4/15

D'ALESSANDRO, MILIMAN & YERMAN

ATTORNEYS AT LAW

5 LIGHT STREET, 11TH FLOOR

BALTIMORE, MARYLAND 21202-1295

RECEIVED

TELEPHONE 410 727-0114
FAX MACHINE 410 727-0076

THOMAS J. D'ALESSANDRO, III
JACOB YOSEF MILIMAN
ROBERT JAY YERMAN
HOWARD AVRUM MILIMAN*

BRIAN S. BROWN*
SUSAN N. MILIMAN
JOAN S. BROWN
*MEMBER MD. & DC. BARS

April 14, 1992 **APR 15 1992**

**CIRCUIT COURT
FOR BALTIMORE CITY**

Saundra E. Banks, Clerk
Circuit Court for Baltimore City
Room 462 - Court House East
111 North Calvert Street
Baltimore, MD 21202

Re: Case No.: 91340071/CL41323
Thomson vs. Dept. of
Public Safety

Dear Madam Clerk:

Please accept the enclosed copy of a transcript regarding the above-referenced case for filing in the court file.

Very truly yours,

Howard Avrum Miliman

Howard Avrum Miliman

HAM/ndh
Enclosure

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IN THE MATTER OF
AN APPEAL

FILED BY DANIEL THOMSON
CORRECTIONAL OFFICER IV

DEPARTMENT OF PUBLIC
SAFETY AND CORRECTIONAL
SERVICES

* BEFORE JAMES P. KLIMA, JR.
*
* ADMINISTRATIVE LAW JUDGE
*
* OF THE OFFICE OF
*
* ADMINISTRATIVE HEARINGS
*
* CASE 91-DOP-COCR-002-1194
*
*

* * * * *

JULY 31, 1991

TRANSCRIPT OF PROCEEDINGS

PRESENT:

RICARDO R. SILVA,
On Behalf of the Employee

STEVE LORENZET,
On Behalf of Management

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EXHIBITS

MANAGEMENT EXHIBITS:

#1 - 5/24/91 memo from Thomson to Passaro	Page 20
#2 - 5/25/91 memo from Myrick to Passaro	Page 20
#3 - 6/3/91 Matter of Record (Passaro)	Page 20

EMPLOYEE EXHIBITS:

#1 - May, 1991 security cabinet key log	Page 50
#2 - 15 pages of Supervisor's journal	Page 52
#3 - Authorized recipients of security keys	Page 53
#4 - Page 333 of Supervisor's journal	Page 54

PAGE	LINE	CORRECTION
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NOTE

Within this transcript of proceedings, some of the names and/or medical terms are spelled phonetically inasmuch as exhibits, files, and support documentation were not made available to us for reference.

1 JAMES KLIMA:

2 This hearing is for a disciplinary suspension for
3 Lieutenant Daniel L. Thomson. My name is James Klima. I am
4 the Administrative Law Judge assigned to this matter. We
5 are at the Office of Administrative Hearings on today,
6 July 31, 1991 at 1:00 p.m.

7 Lieutenant Thomson is here and is represented by
8 Ricardo Silva of the Maryland Correctional Union. Is that
9 correct?

10 RICARDO SILVA:

11 That is right.

12 JAMES KLIMA:

13 And Management is represented by Steven Lorenzet,
14 Personnel Officer, Pre-Release System.

15 In the appeal of the disciplinary suspension
16 Management has the burden of showing that the suspension is
17 justified. Are there any preliminary matters?

18 RICARDO SILVA:

19 Yes Your Honor. First can I have a copy of the
20 disciplinary suspension?

21 STEVEN LORENZET:

22 It hasn't been processed.

23 RICARDO SILVA:

1 It has not been processed yet?

2 STEVEN LORENZET:

3 No, due to a staff shortage with one vacancy and
4 another person out sick we got a little behind. But we will
5 do it very soon.

6 JAMES KLIMA:

7 Okay. This is an appeal of a suspension which was
8 imposed on Lieutenant Thomson on May 28th, May 29th and
9 June 3, 1991 for a violation of DCR 50-2. Do you have
10 opening statements?

11 RICARDO SILVA:

12 Your Honor I have preliminary matters.

13 JAMES KLIMA:

14 Okay.

15 RICARDO SILVA:

16 I don't have COMAR with me. But I move for a
17 dismissal in this case in that the agency is required to
18 submit to the employee a copy of the disciplinary form that
19 is provided by the Secretary of Personnel which outlines the
20 specific charges that the employee has been charged with.
21 Without that it is very, not impossible, prejudicial to our
22 presentation if we do not know the specifics as to the
23 charge.

1 JAMES KLIMA:

2 Are you saying that Lieutenant Thomson doesn't
3 know the specifics that have been charges?

4 RICARDO SILVA:

5 Well first and foremost, the agency is required to
6 file that disciplinary suspension from with the employee.
7 Now we know why we are here but I think it is incumbent upon
8 the agency to give him what they are required to give him
9 according to COMAR Regulations.

10 JAMES KLIMA:

11 All right. I don't have my COMAR with me either.
12 I am going to take your motion under advisement and will
13 consider it. But I will not dismiss the procedure we are
14 here gathered for and will hold the hearing. But I will see
15 if your motion for dismissal does have merit.

16 RICARDO SILVA:

17 I believe it is 06.01.01.46 Your Honor.

18 Secondly, on July 11, 1991 Mr. Thomson sent a
19 letter to the Office of Administrative Hearings requesting
20 the presence of Captain Deborah Lilley who I understand is
21 here. The 2 Sergeants, Nick Hurshan and Myrick Clark are
22 not present. I would like to have an explanation as to
23 whether or not they received a summons. I think it was sent

1 out and why are they not here.

2 JAMES KLIMA:

3 I haven't any idea. Does Management?

4 STEVEN LORENZET:

5 We never received the summons. I knew that
6 Captain Lilley was summonsed even though I didn't have paper
7 I told her to be here. I did not know until today that
8 Sergeants Hurshan and Clark were supposed to be here. So
9 without paper to tell me I took no action. I have been told
10 verbally from (inaudible) about Captain Lilley's required
11 presence. So even without the paper I just told her to be
12 here.

13 JAMES KLIMA:

14 I do have in the file of the case copies of
15 subpoenas to Sergeant Clark, Captain Lilley and Sergeant
16 Hurshan. Captain Lilley did you receive a copy of this?

17 DEBORAH LILLEY:

18 No I did not.

19 JAMES KLIMA:

20 You did not.

21 RICARDO SILVA:

22 I am not questioning that they went out.

23 JAMES KLIMA:

1 Are these people crucial to your case?

2 RICARDO SILVA:

3 They could be Your Honor. They could be.

4 JAMES KLIMA:

5 I guess would Management have any problem with
6 postponing this hearing?

7 RICARDO SILVA:

8 I don't want to postpone it. I would like to know
9 why they were not -- I assume that the Office of
10 Administrative Hearings sent it to the Personnel Office.

11 JAMES KLIMA:

12 I would assume that too. But I don't know.

13 STEVEN LORENZET:

14 I received the subpoenas and send a copy over to
15 the unit (inaudible).

16 JAMES KLIMA:

17 When did you receive the subpoenas?

18 STEVEN LORENZET:

19 Somewhere around July 23rd.

20 JAMES KLIMA:

21 Did you send it to Mr. Passaro?

22 STEVEN LORENZET:

23 Yes.

1 JAMES KLIMA:

2 What day was that sent to him?

3 STEVEN LORENZET:

4 Excuse me. I can't even read by own writing.

5 July 22nd.

6 JAMES KLIMA:

7 This is a memorandum here in the file dated July
8 18th, subject subpoenaes. It says please distribute the
9 attached subpoenaes. The thing that bothers me is that
10 there are 2 copies of these subpoenaes. Maybe one of them
11 is supposed to go out.

12 RICARDO SILVA:

13 Well we do know that Mr. Lorenzet, Personnel
14 Officer of the Maryland Pre-Release System, did receive
15 them. It is a little odd. Mr. Lorenzet you said that on
16 July 23rd you received in your office.

17 STEVEN LORENZET:

18 I was mistaken, July 22nd.

19 RICARDO SILVA:

20 You received them July 22nd and what did you do
21 with them?

22 STEVEN LORENZET:

23 I made a copy of them and sent them over Mr.

1 Passaro.

2 RICARDO SILVA:

3 On 7/23?

4 STEVEN LORENZET:

5 On 7/22.

6 RICARDO SILVA:

7 The same day?

8 STEVEN LORENZET:

9 Yes.

10 RICARDO SILVA:

11 Mr. Passaro I assume you didn't receive the
12 copies.

13 THOMAS PASSARO:

14 Correct.

15 JAMES KLIMA:

16 They were not subpoenaed them obviously.

17 RICARDO SILVA:

18 Well they were subpoenaed but they were not
19 delivered by the person.

20 JAMES KLIMA:

21 Then the person did not know they were subpoenaed.

22 RICARDO SILVA:

23 Well Your Honor normal course of business with the

1 Department of Personnel is that once it goes out it is the
2 responsibility of the Personnel Officer to make sure that
3 those subpoenas are handed to those persons.

4 So I ask for -- and this is an additional motion
5 for dismissal in that the Personnel office or someone in the
6 Maryland Pre-Release System did not deliver the appropriate
7 summonses for these people. That will be prejudicial to our
8 case but we are ready to proceed. If we ask for a
9 continuance we reserve that right.

10 JAMES KLIMA:

11 Well you tell me if you have to ask for a
12 continuance. If these people are critical to your case I
13 would say that we would have to.

14 STEVEN LORENZET:

15 (Inaudible) aside where does your part come into
16 in notifying the people that you wanted to be here?

17 RICARDO SILVA:

18 We are only required to submit the request which
19 we did on July 22th to the Office of Administrative
20 Hearings. Sometimes they are even hostile witnesses and we
21 don't necessarily talk to people.

22 STEVEN LORENZET:

23 My normal method of operation is we provide

1 personnel for 10 different locations throughout the State.
2 I am there and when I get the notices that come in that way
3 I make copies and send them out to the units. Normally they
4 get distributed. Sometimes there is a mess up like this
5 case.

6 JAMES KLIMA:

7 Well if you want to get a fair hearing with the
8 witnesses that he thinks is crucial to his side I don't know
9 how we can proceed.

10 STEVEN LORENZET:

11 There is a report from Sergeant Clark that could
12 be introduced. That is the only thing I see. I don't see
13 anything from Sergeant Hurshan that would require him to be
14 here.

15 RICARDO SILVA:

16 Your Honor we will go through the hearing but we
17 reserve the right just in case to call these witnesses if we
18 deem it is crucial.

19 JAMES KLIMA:

20 Okay. Any more preliminary matters?

21 RICARDO SILVA:

22 Just a motion for sequestration of the witness.

23 JAMES KLIMA:

1 Not many people to sequester.

2 RICARDO SILVA:

3 I will just make the motion any way.

4 JAMES KLIMA:

5 Is there any objection to that? It is a perfectly
6 reasonable motion.

7 STEVEN LORENZET:

8 Sequestering the...

9 RICARDO SILVA:

10 Just in case for the record when you have to
11 continue with the case. Just for the record.

12 JAMES KLIMA:

13 Do you have any objection to that?

14 STEVEN LORENZET:

15 No.

16 JAMES KLIMA:

17 All right. We will sequester the witness then.
18 Who is going to testify first?

19 STEVEN LORENZET:

20 Mr. Passaro might as well stay here.

21 RICARDO SILVA:

22 Just for the record Your Honor.

23 JAMES KLIMA:

1 Any opening statements?

2 STEVEN LORENZET:

3 No.

4 RICARDO SILVA:

5 I do Your Honor.

6 JAMES KLIMA:

7 Mr. Silva go ahead.

8 RICARDO SILVA:

9 Your Honor you will see before you today a
10 situation of a very diligent employee, Mr. Daniel Thomson a
11 Lieutenant, who is in a supervisory position at JPRU who on
12 the day in question was doing his job. Unfortunately there
13 was a mechanical problem of his belt. Security belt that he
14 is wearing today that is acquiesced and approved as proper
15 equipment by the Division of Correction. You will see that
16 it was a mechanical flaw that occurred and that Management
17 has been arbitrary and capricious in giving this employee a
18 suspension on negligence. You will see that at no time was
19 Lieutenant Thomson negligent but that a mechanical defect
20 occurred and an unfortunate situation occurred.

21 As soon as he found out what occurred he
22 immediately took steps to find the missing key. Thank you
23 Your Honor.

1 JAMES KLIMA:

2 Okay.

3 STEVEN LORENZET:

4 Mr. Passaro.

5 THOMAS PASSARO

6 JAMES KLIMA:

7 Have a seat please. Would you raise your
8 right-hand. Do you solemnly swear or affirm under the
9 penalty of perjury that the testimony you will give at this
10 hearing will be the whole truth and nothing but the truth?

11 THOMAS PASSARO:

12 I do.

13 JAMES KLIMA:

14 Would you state your name and position with the
15 State please.

16 THOMAS PASSARO:

17 Thomas Passaro. I am the Facility Administrator
18 of the Jessup Pre-Release Unit.

19 JAMES KLIMA:

20 Pardon. What is it?

21 THOMAS PASSARO:

22 The Facility Administrator of the Jessup
23 Pre-Release Unit.

1 JAMES KLIMA:

2 Thank you. How long have you been with the State?

3 THOMAS PASSARO:

4 Two (2) years and some days.

5 JAMES KLIMA:

6 Thank you. Mr. Lorenzet.

7 STEVEN LORENZET:

8 On may 23rd did something unusual happen
9 concerning Lieutenant Thomson?

10 THOMAS PASSARO:

11 Yes sir.

12 STEVEN LORENZET:

13 Did Sergeant Myrick Clark report to you?

14 THOMAS PASSARO:

15 No. Lieutenant Thomson -- no. Captain Deborah
16 Lilley called me at home at night. Sergeant Clark did not
17 contact me.

18 STEVEN LORENZET:

19 What did Captain Lilley have to say?

20 THOMAS PASSARO:

21 Captain Lilley told me that she had received a
22 call from Lieutenant Thomson who was the Supervisor during
23 the 10:00 to 6:00 shift that night. Some of his keys were

1 missing off his belt. There was a search in progress to try
2 to find them. It was the key ring that was lost. Among
3 other things it had on it was the key that would have gotten
4 us into the security box where our other keys and that a
5 search was in place trying to find it. They were trying to
6 locate them.

7 I talked to William Filbert who was at that time
8 the Assistant Warden to whom I answered. We decided that we
9 needed to try to get a locksmith in there to try to get into
10 the box with the other keys in it. So we got Captain Lilley
11 who was still at home on the phone calling to try to get a
12 locksmith. I think Lieutenant Thomson may have been looking
13 too. By that time one of Lieutenant Thomson's officers
14 found the keys out on the compound.

15 STEVEN LORENZET:

16 So the keys (inaudible).

17 THOMAS PASSARO:

18 It was a ring.

19 STEVEN LORENZET:

20 Approximately how many keys were on that ring?

21 THOMAS PASSARO:

22 I am not sure off the top of my head but 4 or 5.
23 Maybe more. I am not sure.

1 STEVEN LORENZET:

2 In follow up to that did you have a conference
3 with Lieutenant Thomson?

4 THOMAS PASSARO:

5 Yes and I informed him that Assistant Warden
6 Filbert and I had discussed this. That the keys that were
7 lost were extremely important; that Custody Supervisors need
8 to keep track of the keys and that we were compromised. I
9 mean those keys could have been picked up by an inmate. We
10 almost had to incur an expense with a locksmith. In
11 accordance with DCR 50-2 a suspension was in order.

12 Lieutenant Thomson told me during the conference
13 that he thought it was a mechanical failure. But he didn't
14 show me anything to support that. I have never had an
15 officer, lieutenant or a captain off their belt in over 2
16 years. You snap them on and if you snap them on properly
17 they stay there.

18 STEVEN LORENZET:

19 What part did Sergeant Clark play in this
20 incident?

21 THOMAS PASSARO:

22 Without the paperwork in front of me I can't
23 recall for certain. I believe he was one of the Sergeants

1 on duty that night. He may have, in fact, been the Duty
2 Sergeant though I am not going to swear to that at this
3 moment.

4 STEVEN LORENZET:

5 Can we go off the record for a moment to obtain
6 the written report?

7 JAMES KLIMA:

8 Go off the record.

9 (WHEREUPON, THERE WAS A BREAK IN THE RECORD)

10 JAMES KLIMA:

11 Back on the record. Go ahead.

12 STEVEN LORENZET:

13 What part did Sergeant Clark play in this?

14 THOMAS PASSARO:

15 Sergeant Clark helped to search for the keys.

16 Also strip searched some of the inmates who were in the area
17 to make sure that they didn't get access to the keys. Also
18 was one of the officers looking for the keys. Eventually as
19 he says in his memo to me -- Sergeant Clark says in his memo
20 to me, Officer Irving found the keys by the front vehicle
21 gate. The front vehicle gate entrance.

22 STEVEN LORENZET:

23 Did that lead you to any conclusions as to how the

1 keys got lost?

2 THOMAS PASSARO:

3 Well his memorandum confirmed what Lieutenant
4 Thomson told me in that Lieutenant Thomson had to go out --
5 I am going to confirm part of what Lieutenant Thomson told
6 me. That he had to go out of the compound out toward the
7 front entrance to drop off some paperwork to an officer who
8 was going up to Brockridge, another institution in the
9 immediate vicinity.

10 Lieutenant Thomson thought that his keys had been
11 lost somewhere around there. But he also told me over the
12 phone that night that he had officers out there looking. He
13 himself had looked and they couldn't find them. This
14 started around 11:00. Around 12:30 people were continuing
15 to look and started to retread the same ground or at least
16 retread ground that other people had tried. That is when
17 Officer Irving found the keys by the front vehicle gate
18 entrance.

19 STEVEN LORENZET:

20 In that area where they were found would that
21 normally be an area where someone would use those keys?

22 THOMAS PASSARO:

23 Well no. They are supposed to be on his belt.

1 The fact that he had gone out there with them on his belt is
2 not anything unusual.

3 STEVEN LORENZET:

4 The unusual part is that they came off his belt.

5 THOMAS PASSARO:

6 Yes. Real unusual.

7 STEVEN LORENZET:

8 Did you write up a Matter of Record concerning
9 this incident?

10 THOMAS PASSARO:

11 Sure to confirm the conference that he and I had
12 the day that I informed that we were issuing a 3 day
13 suspension.

14 STEVEN LORENZET:

15 Did you copy Lieutenant Thomson on that?

16 THOMAS PASSARO:

17 I served it on him. Yes. He got a copy of it.

18 STEVEN LORENZET:

19 Is this a copy of that?

20 THOMAS PASSARO:

21 Yes.

22 STEVEN LORENZET:

23 For the record I would like to introduce a report

1 submitted since then from Sergeant Clark who was subpoenaed,
2 Lieutenant Thomson's report and Mr. Passaro's report. We
3 will have to make copies of the 2 reports that are stapled
4 together, Sergeant Clark's and Lieutenant Thomson's.

5 JAMES KLIMA:

6 Lets go off the record.

7 (WHEREUPON, THERE WAS A BREAK IN THE RECORD)

8 JAMES KLIMA:

9 Back on the record now. Any objection to these?

10 RICARDO SILVA:

11 No objection to Mr. Passaro's report of June 3,
12 1991. No objection to Lieutenant's Thomson's report of May
13 24, 1991. I have to read Clark's.

14 JAMES KLIMA:

15 Does it make any difference what order these come
16 in as exhibits?

17 STEVEN LORENZET:

18 As a collective exhibit.

19 JAMES KLIMA:

20 Well I will make them three.

21 STEVEN LORENZET:

22 Then I would think in order of Lieutenant Thomson,
23 Sergeant Clark, and Mr. Passaro.

1 RICARDO SILVA:

2 No objection Your Honor.

3 JAMES KLIMA:

4 Lieutenant Thomson's memo will be Management
5 Exhibit #1. You say Sergeant Clark would be Management #2?
6 Is that proper sequence?

7 STEVEN LORENZET:

8 Yes.

9 JAMES KLIMA:

10 Memo dated May 25, 1991 by Sergeant Myrick Clark
11 will be Management Exhibit #2. The Matter of Record from
12 Thomas Passaro dated June 3, 1991 will be Management Exhibit
13 #3.

14 (WHEREUPON, MANAGEMENT EXHIBIT #1, #2 AND #3 WAS
15 INTRODUCED INTO EVIDENCE.)

16 STEVEN LORENZET:

17 No further questions.

18 JAMES KLIMA:

19 Mr. Silva?

20 RICARDO SILVA:

21 Yes. Mr. Passaro you have had 2 and a half years
22 working with the Pre-Release System?

23 THOMAS PASSARO:

1 With that particular one. I have much more than
2 that with other units. But yes with that unit a little over
3 2 years. That unit and the preceding. You know we moved
4 at some point.

5 RICARDO SILVA:

6 Lieutenant Thomson would you stand up for a minute
7 please. Is this the belt that is approved by the Division
8 of Correction?

9 THOMAS PASSARO:

10 I believe it to be.

11 RICARDO SILVA:

12 On the day in question when you brought Mr.
13 Thomson into the conference, Mr. Thomson told you that the
14 keys fell off the ring did he not or the part of the belt.

15 THOMAS PASSARO:

16 Yes.

17 RICARDO SILVA:

18 Have you ever had a situation where Lieutenant
19 Thomson had lost keys before?

20 THOMAS PASSARO:

21 No.

22 RICARDO SILVA:

23 And Lieutenant Thomson told you it was a

1 mechanical defect, correct?

2 THOMAS PASSARO:

3 Very generally he said that. Yes.

4 RICARDO SILVA:

5 Did you inspect the belt?

6 THOMAS PASSARO:

7 No I did not.

8 RICARDO SILVA:

9 Is it a possibility that it was a mechanical
10 defect?

11 THOMAS PASSARO:

12 No I don't think so. I guess anything is
13 possible. In direct answer to your question yes. Anything
14 is possible. So sure I guess it is.

15 RICARDO SILVA:

16 Isn't it a fact that Lieutenant Thomson had the
17 keys on his possession and on the belt for approximately an
18 hour before the keys were found to be missing?

19 THOMAS PASSARO:

20 Probably not. I wasn't there remember. It is
21 more likely that he was taking them on and off for various
22 reasons but then again I wasn't there. It was when I was
23 off duty.

1 RICARDO SILVA:

2 Do you know for sure whether or not it was a
3 question of negligence or a question of a mechanical defect
4 of the belt? Do you know for sure which one it was?

5 THOMAS PASSARO:

6 I don't know for certain. I don't think you can
7 know.

8 RICARDO SILVA:

9 No further questions.

10 JAMES KLIMA:

11 Any redirect?

12 THOMAS PASSARO:

13 Can I respond further to one question? I think I
14 gave an inaccurate answer.

15 JAMES KLIMA:

16 Sure.

17 THOMAS PASSARO:

18 I didn't inspect the belt in terms of having him
19 take the belt off and so forth. But he did show me with his
20 hands as I recall the clip, the clip that was at fault. I
21 did do that much as I recall. I just wanted to clarify
22 that.

23 JAMES KLIMA:

1 What was your finding?

2 THOMAS PASSARO:

3 I saw and I see no reason to believe the clip was
4 in error. I mean it has not happened since. Not to
5 Lieutenant Thomson and as I said before not to anyone.
6 This has simply not happened before or since in the 2 years
7 and some days that I have been there.

8 JAMES KLIMA:

9 Any recross?

10 STEVEN LORENZET:

11 Along those lines, when you looked at the belt
12 that day it appeared to you that there wasn't anything wrong
13 with it?

14 THOMAS PASSARO:

15 Not that I could see. Exactly right.

16 STEVEN LORENZET:

17 To your knowledge has Lieutenant Thomson had to be
18 given another belt?

19 THOMAS PASSARO:

20 Not to my knowledge. No.

21 STEVEN LORENZET:

22 Or had any repairs made to it?

23 THOMAS PASSARO:

1 Not to my knowledge.

2 STEVEN LORENZET:

3 What would account in your mind then for the keys
4 coming off?

5 THOMAS PASSARO:

6 Not securing the keys in there firmly. Not making
7 sure the clasp was clasped real solidly when you put them
8 back.

9 STEVEN LORENZET:

10 So it would be like half on and then they could
11 fall off?

12 THOMAS PASSARO:

13 Yes. Something like that sure.

14 STEVEN LORENZET:

15 So basically your examination led you to believe
16 it was negligence and not something mechanical?

17 THOMAS PASSARO:

18 Correct.

19 STEVEN LORENZET:

20 I have no further questions.

21 THOMAS PASSARO:

22 That and the fact that we have had no complaints
23 from him since.

1 JAMES KLIMA:

2 Redirect.

3 RICARDO SILVA:

4 Yes. Where the keys were found, they were found
5 in a place where no inmates were around. Is that correct?
6 Or basically had been around, correct.

7 THOMAS PASSARO:

8 No that is not correct. Certainly inmates could
9 have been depending on the time, depending on where the
10 sanitation crew was working and depending on who was going
11 in and out. They could have been not necessarily standing
12 right on top of the keys but very much in that area. Yes.

13 RICARDO SILVA:

14 No other questions.

15 JAMES KLIMA:

16 Any re-redirect?

17 STEVEN LORENZET:

18 No.

19 JAMES KLIMA:

20 Okay. Thank you.

21 STEVEN LORENZET:

22 That basically is our case.

23 JAMES KLIMA:

1 Okay. Mr. Silva?

2 RICARDO SILVA:

3 Your Honor could I have 5 minutes with the
4 employee?

5 JAMES KLIMA:

6 We will go off the record.

7 (WHEREUPON, THERE WAS A BREAK IN THE RECORD)

8 JAMES KLIMA:

9 Back on the record now in the hearing for
10 Lieutenant Thomson.

11 RICARDO SILVA:

12 The witnesses are sequestered and we respectfully
13 request that Mr. Passaro be excused because we might call
14 him for a recall.

15 JAMES KLIMA:

16 Any objection to that?

17 STEVEN LORENZET:

18 No. You might want to call him?

19 RICARDO SILVA:

20 Yes. I might want to call him again.

21 STEVEN LORENZET:

22 How about sticking around the waiting room.

23 RICARDO SILVA:

1 I would like to call Lieutenant Thomson to the
2 stand.

3 DANIEL THOMSON

4 JAMES KLIMA:

5 You can stay where you are. Would you raise your
6 right-hand please. Do you solemnly swear or affirm under
7 the penalty of perjury that the testimony you give at this
8 hearing will be the whole truth and nothing but the truth?

9 DANIEL THOMSON

10 I do sir.

11 JAMES KLIMA:

12 State your name and your position please.

13 DANIEL THOMSON

14 Daniel E. Thomson, Correctional Officer IV, 10:00
15 to 6:00 shift Supervisor at JPRU.

16 JAMES KLIMA:

17 Thank you.

18 RICARDO SILVA:

19 Lieutenant Thomson how long have you been in the
20 Correctional Officer ranks?

21 DANIEL THOMSON

22 Since November, 1981.

23 RICARDO SILVA:

1 Just for the record where did you begin working
2 November, 1981?

3 DANIEL THOMSON

4 Maryland House of Correction.

5 RICARDO SILVA:

6 How long did you stay there?

7 DANIEL THOMSON

8 Until May of -- July of 1987.

9 RICARDO SILVA:

10 Where did you go?

11 DANIEL THOMSON

12 ECI.

13 RICARDO SILVA:

14 How long did you work there?

15 DANIEL THOMSON

16 Until November of 1990.

17 RICARDO SILVA:

18 Then where did you go?

19 DANIEL THOMSON

20 To the Pre-Release Unit.

21 RICARDO SILVA:

22 Lieutenant Thomson you live in Salisbury right
23 now?

1 DANIEL THOMSON

2 Yes I do.

3 RICARDO SILVA:

4 How long have you been living in Salisbury?

5 DANIEL THOMSON

6 Since my transfer to ECI.

7 RICARDO SILVA:

8 Transfer to ECI?

9 DANIEL THOMSON

10 Yes sir.

11 RICARDO SILVA:

12 Where did you live before?

13 DANIEL THOMSON

14 Anne Arundel County.

15 RICARDO SILVA:

16 So when you were working at the House of
17 Corrections you worked in Anne Arundel County and then you
18 went to ECI and you moved down to Salisbury?

19 DANIEL THOMSON

20 Yes sir.

21 RICARDO SILVA:

22 Do you still live in Salisbury?

23 DANIEL THOMSON

1 Yes I do.

2 RICARDO SILVA:

3 Yet you work in Jessup?

4 DANIEL THOMSON

5 Yes sir I do.

6 STEVEN LORENZET:

7 Objection. Why?

8 JAMES KLIMA:

9 On relevance.

10 STEVEN LORENZET:

11 What does it have to do with the incident?

12 JAMES KLIMA:

13 I don't know. Maybe it does or maybe it doesn't.

14 But we are not bound by the strike rules of evidence as in a
15 court. I would just as soon let it in and give it whatever
16 worth it deserves. If it is not relevant it won't be
17 relevant.

18 RICARDO SILVA:

19 Thank you Your Honor. Why did you transfer to
20 JPRU from ECI if you live in Salisbury? How many miles is
21 that from Salisbury, your home?

22 DANIEL THOMSON

23 It is about 120 one way.

1 RICARDO SILVA:

2 Why did you do that?

3 DANIEL THOMSON

4 Because I couldn't work at ECI any longer.

5 RICARDO SILVA:

6 Why not?

7 DANIEL THOMSON

8 ECI had been (inaudible) campaign (inaudible)
9 created by my fellow supervisors and endorsed my Management
10 (inaudible) reaction after I reported it. It reached a
11 point where the State Medical Director recommend that I be
12 transferred for my own health.

13 At that point I had requested a transfer to Poplar
14 Hill but I was...

15 RICARDO SILVA:

16 Where is Poplar Hill?

17 DANIEL THOMSON

18 It is adjacent to Salisbury? I was sent here to
19 JPRU.

20 RICARDO SILVA:

21 By whom?

22 DANIEL THOMSON

23 Commissioner (inaudible).

1 RICARDO SILVA:

2 Did you agree to that transfer?

3 DANIEL THOMSON

4 Not to JPRU. No.

5 RICARDO SILVA:

6 Is that the subject of a grievance right now?

7 DANIEL THOMSON

8 Yes sir.

9 RICARDO SILVA:

10 So you commute about 200 and some miles a day?

11 DANIEL THOMSON

12 My round trip is a little over 240 miles daily.

13 RICARDO SILVA:

14 And that is the subject of a grievance right now?

15 DANIEL THOMSON

16 It is sir.

17 RICARDO SILVA:

18 All right. On the day in question were you
19 wearing the belt that you are wearing today?

20 DANIEL THOMSON

21 I was sir.

22 RICARDO SILVA:

23 Could you stand up a minute. Is that the same

1 belt that you wore that day?

2 DANIEL THOMSON

3 The piece of equipment is exactly the same sir.

4 RICARDO SILVA:

5 How long have you been wearing that belt?

6 DANIEL THOMSON

7 Well it has been about 9 years.

8 RICARDO SILVA:

9 I assume that Management knew that you were
10 wearing that belt?

11 DANIEL THOMSON

12 Yes sir.

13 RICARDO SILVA:

14 Now do you have a set of keys that are similar to
15 the set of keys you had on the night in question?

16 DANIEL THOMSON

17 I have my personal key ring. (Inaudible)
18 approximately the same size.

19 RICARDO SILVA:

20 Can you tell the Judge what happened on the night
21 in question.

22 DANIEL THOMSON

23 We were checking a man into Brockridge

1 (inaudible). The transporting officers were getting ready
2 to leave the institution as well as the man and I had some
3 paperwork to go up to (inaudible) at Brockridge. I xeroxed
4 it and took it up to the officers waiting in the vehicle
5 outside the vehicle gate of the institution.

6 RICARDO SILVA:

7 Is that outside the institution?

8 DANIEL THOMSON

9 Yes sir. It is outside the institution. I handed
10 the officer the paperwork and double checked with them that
11 they had everything they needed. I came back inside the
12 institution and walked through the door and reached for my
13 key set and it was gone. I immediately instituted a search
14 procedure.

15 RICARDO SILVA:

16 Immediately?

17 DANIEL THOMSON

18 Immediately. I notified my duty sergeant. First
19 I went and checked myself.

20 RICARDO SILVA:

21 Who was your duty sergeant?

22 DANIEL THOMSON

23 Sergeant Clark. First we checked to make sure

1 that I had the Duty Keys and I hadn't left them. I had
2 locked the file cabinet as I was leaving my office because
3 it isn't supposed to be left unsecured without supervision.
4 At first I thought I may have locked them in there. But I
5 notified Sergeant Clark so we could get the sanitation
6 inmates. We had 4 of them in the area and sat them in the
7 lobby until we identified where the keys were.

8 After searching the building and not turning them
9 up, searching the inmates and not finding them, I notified
10 Captain Lilley and told her that I thought I probably locked
11 them in the file cabinet. When we got the file cabinet open
12 I found the keys weren't in there. I again call Captain
13 Lilley and told her that I had to report the keys lost and
14 do you have any idea where I could find them (inaudible).

15 The building was again searched. The trash cans
16 were searched. The inmates were again searched.

17 RICARDO SILVA:

18 I assume that you took the precautions to make
19 sure the inmates were secured while you were looking?

20 DANIEL THOMSON

21 They sat in the lobby on a couch under the
22 supervision of Sergeant Hurshan of the Control Center the
23 entire time from the time I knew the keys were missing until

1 we strip searched them and sent them back to their housing
2 unit.

3 RICARDO SILVA:

4 And they were the only inmates who were out of
5 their bunks at that time?

6 DANIEL THOMSON

7 They were the only ones around that time out in
8 the area where I lost the keys.

9 RICARDO SILVA:

10 So you immediately secured them while you looked
11 around for these keys.

12 DANIEL THOMSON

13 Immediately secured. Yes sir.

14 RICARDO SILVA:

15 Mr. Passaro has already testified basically that
16 the keys were found outside the facility. Tell the Judge
17 exactly where outside the facility.

18 DANIEL THOMSON

19 If you have ever been to JPRU the entrance to the
20 institution is adjacent to the main vehicle gate. It is a
21 double winged gate that vans and such go back and forth.
22 They were found laying in front of that gate where the
23 vehicle had been.

1 JAMES KLIMA:

2 Is the gate normally locked?

3 DANIEL THOMSON

4 The gate is always locked.

5 JAMES KLIMA:

6 Did you have to use your keys to open it?

7 DANIEL THOMSON

8 No sir. We don't go in and out of that gate
9 except to let a vehicle through. On the night in question,
10 the inmate that we were checking in, we didn't bring the
11 vehicle inside the compound. We parked it there and walked
12 the inmate to the vehicle.

13 JAMES KLIMA:

14 How did you get to the vehicle?

15 DANIEL THOMSON

16 I went out the pedestrian gate adjacent to it.

17 JAMES KLIMA:

18 Do you have to unlock that?

19 DANIEL THOMSON

20 That is controlled by a buzzer from the Control
21 Center.

22 JAMES KLIMA:

23 So you didn't need to use your key for that one?

1 DANIEL THOMSON

2 No. The only thing those supervisor keys were for
3 is for the door knobs, the file cabinets in the office and
4 the security key box that hangs on the wall. That is the
5 only that are on there. There are 4 keys.

6 RICARDO SILVA:

7 Now how did the fall off?

8 DANIEL THOMSON

9 I have no idea. I don't carry the keys around
10 with me as a habit. I have got 3 key hooks.

11 RICARDO SILVA:

12 What key hook did you put the keys on?

13 DANIEL THOMSON

14 I most normally hooked them on this first hook
15 right here.

16 RICARDO SILVA:

17 Just show the Judge how you hook them on. Is that
18 the exact hook?

19 DANIEL THOMSON

20 This is the hook. It is a 2 handed operation.
21 You have to hook them like that. I can't hook them one
22 handed because it won't slide. I can't catch it. So I have
23 to do a 2 handed operation. Okay?

1 RICARDO SILVA:

2 Now what is the probability that you would have
3 clipped them in the manner that they would easily fall off?
4 In other words what is the probability that you would hook
5 them in a manner that they would not fall completely
6 through?

7 DANIEL THOMSON

8 The only way I could do it would be if I did it
9 deliberately. I would have to like balance them here.

10 RICARDO SILVA:

11 You would have to do what now?

12 DANIEL THOMSON

13 I would have to like balance them here against the
14 pressure of the thing to let them stay and even that...

15 JAMES KLIMA:

16 Does that spring close far enough so that you
17 can't pull them off without...

18 DANIEL THOMSON

19 It is spring loaded and they don't normally get
20 pulled off even running around the compound or something of
21 this nature. But sometimes if have extra keys on there more
22 than 1 key set will come off. That is another reason why I
23 have to use 2 hands to get them off. As you can see it has

1 got to be forced.

2 JAMES KLIMA:

3 So the spring is not quite...

4 DANIEL THOMSON

5 Well the thing is a little bit out of line.

6 JAMES KLIMA:

7 But you still have to depress the spring board to
8 get the keys off.

9 DANIEL THOMSON

10 Unless it was hit just right. If this was out of
11 line and it was hit just right it will slide up.

12 JAMES KLIMA:

13 Okay.

14 DANIEL THOMSON

15 Since the incident because of the suspension and
16 not being able to trust this key hook, I have gone to a
17 different design that has a positive lock. Okay? I haven't
18 lost a key since.

19 JAMES KLIMA:

20 That is just an addition that you made to the belt
21 or was that on there...

22 DANIEL THOMSON

23 That was on there at the time. But like I said it

1 is a positive lock. It is a pain to use.

2 JAMES KLIMA:

3 Okay.

4 RICARDO SILVA:

5 So you explained this to the Warden. What did the
6 Warden say about you losing it in the manner that you did?

7 DANIEL THOMSON

8 You mean Mr. Passaro?

9 RICARDO SILVA:

10 Yes.

11 DANIEL THOMSON

12 He said there was no way that it was a mechanical
13 failure. In his experience in corrections he has never had
14 an officer lose keys by mechanical failure and he didn't buy
15 it.

16 RICARDO SILVA:

17 What time did you report for duty?

18 DANIEL THOMSON

19 At approximately 9:10.

20 RICARDO SILVA:

21 Is this your normal reporting time?

22 DANIEL THOMSON

23 Yes sir it is.

1 RICARDO SILVA:

2 Did you carry the keys on that clip from 9:00
3 until the time that you lost them?

4 DANIEL THOMSON

5 I carried the keys from approximately 10:00 p.m.
6 when I relieved the 2:00 to 10:00 shift. When I wasn't
7 using them they were on that clip.

8 RICARDO SILVA:

9 Did you have any reason to use the keys on the
10 outside where they were eventually found?

11 DANIEL THOMSON

12 No sir. There is no lock out there or a device
13 which they would operate out there.

14 RICARDO SILVA:

15 So on the night in question you did not take those
16 keys -- when you were on the outside near this van you did
17 not bother with these keys at all?

18 DANIEL THOMSON

19 No sir. I had no reason to.

20 RICARDO SILVA:

21 No reason at all?

22 DANIEL THOMSON

23 No reason at all.

1 RICARDO SILVA:

2 Tell the Judge exactly what you were doing at that
3 van?

4 DANIEL THOMSON

5 I was carrying what I call a shot gun envelope, an
6 intragency routing envelope with some paperwork in it. Four
7 (4) or 5 sheets of paper. I walked out to the officers in
8 the van, handed it in to the officer through the window,
9 looked to see if the inmate was secure, if they had the
10 property and told them to take him up to Brockridge and
11 walked back into the institution.

12 RICARDO SILVA:

13 And in almost 10 years of working you have never
14 had a situation like this before?

15 DANIEL THOMSON

16 I had lost -- well I didn't lose. I had a key
17 fall off of my key hook on a previous occasion but I noted
18 it right away. I mean I heard it fall.

19 JAMES KLIMA:

20 How did it fall?

21 DANIEL THOMSON

22 Sir?

23 JAMES KLIMA:

1 How did it fall? Do you have any idea?

2 DANIEL THOMSON

3 The first time?

4 JAMES KLIMA:

5 Any time. Yes.

6 DANIEL THOMSON

7 The first time I had about 5 or 6 different key
8 rings on the key hook. I was taking 1 off and another fell
9 off with it.

10 JAMES KLIMA:

11 Okay.

12 DANIEL THOMSON

13 The second time, honesty to God sir I don't know.

14 JAMES KLIMA:

15 Which is this time.

16 DANIEL THOMSON

17 Which is this time. I honest to God I don't know.
18 I mean I could agree with Mr. Passaro in the sense that it
19 is very unlikely that such a mechanical failure would occur.
20 The odds of it happening would have to be less than winning
21 the Lotto and people win the Lotto every weekend.

22 JAMES KLIMA:

23 Okay.

1 RICARDO SILVA:

2 Officer Thomson you have been in JPRU since
3 November of 1990, correct?

4 DANIEL THOMSON

5 Yes I have.

6 RICARDO SILVA:

7 Are you familiar with the Key Control of that
8 institution?

9 DANIEL THOMSON

10 I am familiar with the Directive of how it impacts
11 on my job.

12 RICARDO SILVA:

13 Who is the Key Control Officer?

14 DANIEL THOMSON

15 The Key Control Officer is Sergeant Eps on the
16 6:00 to 2:00 shift. The Key Control Supervisor is Captain
17 Lilley.

18 RICARDO SILVA:

19 Now tell the Judge why you feel it was unfair that
20 you were suspended in this matter.

21 DANIEL THOMSON

22 The biggest reason I feel it was unfair is that I
23 am a very conscientious employee. I take my duties and

1 responsibilities thereof quite seriously. I feel it is
2 unfair to be disciplined for one incident when, in fact, it
3 is known to myself and Captain Lilley that there are
4 literally hundreds of incidents of failure to properly
5 control keys in the institution each month.

6 RICARDO SILVA:

7 How do you know that?

8 DANIEL THOMSON

9 The Supervisor's office keeps a journal. That
10 journal is a record of events that transpired during the
11 shifts. It also keeps a log of the issue and return of all
12 keys out of that security cabinet which isn't necessarily
13 accomplished, many of those things listed in the journal.
14 All you have to do is read the journal and compare it to the
15 key log and find the spare or not. Where they have logged
16 such and such a thing happening. The key set necessary on
17 that function is not logged out.

18 RICARDO SILVA:

19 What happens to the employees who don't log it
20 out? Are they required to log it out?

21 DANIEL THOMSON

22 The lieutenants, supervisors and captains are
23 required to log any key that comes out of that cabinet

1 whether I take it out for my own use or I take it out to
2 issue it to somebody. That key must be logged out of that
3 box.

4 RICARDO SILVA:

5 Do you have any evidence that this was happening
6 and other employees were not being disciplined for it?

7 DANIEL THOMSON:

8 I do sir.

9 RICARDO SILVA:

10 Do you have it with you right now?

11 THOMSON

12 I do.

13 RICARDO SILVA:

14 Is this a copy of some of these things that you
15 have found during the month of May?

16 DANIEL THOMSON:

17 It is sir.

18 RICARDO SILVA:

19 I have to explain this. But I want to submit this
20 as Employee Exhibit #1. I will let Mr. Thomson explain it.

21 JAMES KLIMA:

22 Any objection?

23 STEVE LORENZET:

1 No.

2 JAMES KLIMA:

3 We have a copy of the log for the security cabinet
4 key. Is that correct?

5 DANIEL THOMSON:

6 Yes sir it is.

7 JAMES KLIMA:

8 That is for May, 1991?

9 DANIEL THOMSON:

10 Yes sir it is. The month in which the incident
11 occurred.

12 JAMES KLIMA:

13 These are pages 333. There are a whole bunch of
14 pages.

15 DANIEL THOMSON:

16 There are approximately 15 pages from the
17 supervisor's journal.

18 JAMES KLIMA:

19 This is from the supervisor's journal?

20 DANIEL THOMSON:

21 Yes. At the front page you will find that there
22 are a series of supervisor's journal and a copy out of the
23 key lock stapled together. You will also find in there...

1 STEVE LORENZET:

2 This one here, what is this one?

3 DANIEL THOMSON:

4 That is a complete copy of the key log for the
5 month of May.

6 JAMES KLIMA:

7 The security cabinet key log.

8 DANIEL THOMSON:

9 Security key log.

10 JAMES KLIMA:

11 All right. I will mark that as Employee Exhibit
12 #1.

13 (WHEREUPON, EMPLOYEE EXHIBIT #1 WAS INTRODUCED INTO
14 EVIDENCE.)

15 JAMES KLIMA:

16 It seems to be that the pages are out of order.

17 DANIEL THOMSON:

18 Well they are in descending order sir starting
19 about June 13th and going up until late during the month of
20 April.

21 JAMES KLIMA:

22 Okay. I have 2 copies of page 333 here.

23 DANIEL THOMSON:

1 Yes sir. That is correct.

2 JAMES KLIMA:

3 All right. So they are in descending order from
4 233 to 254 and then there is another page 340 here.

5 DANIEL THOMSON:

6 You should also have...

7 JAMES KLIMA:

8 So these are copies of what?

9 DANIEL THOMSON:

10 These are copies of the supervisor's journal for
11 the supervisor that keeps a running record of the
12 occurrences on that supervisor's post during the shift.
13 Attached to them is a copy of the key log for that period.

14 JAMES KLIMA:

15 Is is the key lock.

16 DANIEL THOMSON:

17 Well yes but what I am talking is what is stapled
18 to that individual journal sheet which is a copy of the
19 individual's key log sheet for that particular time.

20 JAMES KLIMA:

21 Okay. This pack of papers will be Employee
22 Exhibit #2.

23 RICARDO SILVA:

1 Just for the record here I think the top sheet
2 should be identified as Employee Exhibit #3 because I am
3 going to ask something specific with this.

4 DANIEL THOMSON:

5 This also should be separate. This is the journal
6 and this is the log sheet.

7 JAMES KLIMA:

8 Are they the same pages as these?

9 DANIEL THOMSON:

10 Yes sir they are. But they are separated like
11 this because they pertain to this specific page. These 2
12 should be separate.

13 JAMES KLIMA:

14 So the supervisor's journal sheets with the
15 attached log pages?

16 DANIEL THOMSON:

17 Correct sir.

18 JAMES KLIMA:

19 This would be Employee Exhibit #2.

20 (WHEREUPON, EMPLOYEE EXHIBIT #2 WAS INTRODUCED INTO
21 EVIDENCE.)

22 RICARDO SILVA:

23 For the record Your Honor this is a journal of who

1 is supposed to issue the keys.

2 DANIEL THOMSON:

3 It identifies who were authorized to give a
4 specific keys in the supervisor's restrictive key cabinet to.
5 For instance this number 2 set, other than the person that
6 works in that office, can only be issued to the captain.
7 What is not shown on here is the lieutenants can take any
8 key out. That goes without speaking because we are the ones
9 that issue them.

10 JAMES KLIMA:

11 This is a list of authorized recipients for keys
12 from the security cabinet. Is that right?

13 DANIEL THOMSON:

14 Right.

15 JAMES KLIMA:

16 This will be Employee Exhibit #3. Any objection?

17 (WHEREUPON, EMPLOYEE EXHIBIT #3 WAS INTRODUCED INTO
18 EVIDENCE.)

19 RICARDO SILVA:

20 Mr. Thomson why do you have a different 333?

21 DANIEL THOMSON:

22 The one with the log page attached to it is to
23 highlight the area to document failure to properly control

1 keys by the supervisors. The one by itself documents the
2 instance in which an employee took a set of keys and left
3 the institution.

4 RICARDO SILVA:

5 That is Employee Exhibit #4 which shows that an
6 employee took the keys home. A Mr. Lawson?

7 DANIEL THOMSON:

8 Yes sir. He didn't actually take them home. He
9 did depart the institution and returned them.

10 JAMES KLIMA:

11 Wait a minute. This purports to be the same page.

12 RICARDO SILVA:

13 Same page.

14 DANIEL THOMSON:

15 The same page but the highlighted areas are
16 different.

17 RICARDO SILVA:

18 We will get into that.

19 JAMES KLIMA:

20 Okay. This will be Employee Exhibit #4. This is
21 the page 333 highlighted at 20:40 and 20:50 hours. That
22 will be #4. Okay.

23 (WHEREUPON, EMPLOYEE EXHIBIT #4 WAS INTRODUCED INTO

1 EVIDENCE.)

2 RICARDO SILVA:

3 Mr. Thomson looking at Employee Exhibit #4 where
4 it is highlighted 20:40. Employee Larson took his keys
5 home. Tell the Judge why you wanted this submitted into
6 evidence to show what.

7 DANIEL THOMSON:

8 To show that there is an incident of an employee
9 departing the institution with a set of keys which is not
10 authorized. This key set is like all other key sets in the
11 institution. It is a controlled set. He departed the
12 institution with it. It was noticed (inaudible) he brought
13 them back to the institution.

14 RICARDO SILVA:

15 Was he disciplined?

16 DANIEL THOMSON:

17 Not that I am aware of.

18 RICARDO SILVA:

19 Who wrote this on 6/13?

20 DANIEL THOMSON:

21 The supervisor on the 2:00 to 10:00 shift who was
22 working that night which I believe was Lieutenant Marshall.

23 RICARDO SILVA:

1 All right. Now look at Employee Exhibit #2 which
2 is the same sheet 333 that has an accompanying document
3 which you testified as the security key log sheets.

4 DANIEL THOMSON:

5 Yes sir.

6 RICARDO SILVA:

7 Explain to the Judge Employee Exhibit #2. Take
8 for instance the 20:30. Remember using Employee Exhibit #
9 and compare it with Employee Exhibit #2. Explain to the
10 Judge what you see as to disparate treatment.

11 DANIEL THOMSON:

12 There are 2 entries highlighted on there. At
13 20:30 hours an Officer Davis reports that he found during a
14 dietary storage room open. That area is controlled by key
15 set #20 which on Employee Exhibit #3 is highlighted in red.
16 It says dietary storage and it is to be issued only CSO
17 which is Correctional Supply Officers. Officer Davis is not
18 a Correctional Supply Officer.

19 RICARDO SILVA:

20 Go down to 22:00.

21 DANIEL THOMSON:

22 At 22:00 hours the institution received an inmate
23 from the reception center as a transfer. Institution policy

1 requires that the files that come within the property be
2 placed in certain areas. Each of those areas are the base
3 room, base file room, medical file room and the property
4 storage area. Key set #4 is the base file room which can be
5 issued to anybody as necessary. Key set #26 is the medical
6 key set which isn't even listed on here and key set #24 is
7 the main property room where the property is stored. That
8 is to be issued only to Correctional Supply Officers. Their
9 Supervisor Mary Shappel, captains and lieutenants.

10 RICARDO SILVA:

11 In this case what happened?

12 DANIEL THOMSON:

13 In this case you are talking 3 key sets. Key set
14 #4 and key set #9 or #26 and key set #24. If you look on
15 the key log sheet on the second page.

16 RICARDO SILVA:

17 333.

18 DANIEL THOMSON:

19 You will see in the margins where I wrote the key
20 sets that were necessary to be issued. But yet that shift
21 made no log entries reflecting the issue of those keys.
22 None at all.

23 RICARDO SILVA:

1 So Employee Exhibit #2 in total will show the Judge
2 that in the month of May, correct me if I am wrong, that
3 there were serious problems with key control in the entire
4 institution. Is that correct?

5 DANIEL THOMSON:

6 Exhibit #2 shows at least 15 instances in which
7 key sets were documented as being used and yet there was no
8 documentation for the issue or control of those key sets at
9 all.

10 RICARDO SILVA:

11 And you testified earlier that Captain Lilley is
12 basically in charge of key control, correct?

13 DANIEL THOMSON:

14 She is.

15 RICARDO SILVA:

16 Does she know that these problems exist?

17 DANIEL THOMSON:

18 She does.

19 RICARDO SILVA:

20 How do you know that?

21 DANIEL THOMSON:

22 We have discussed it on many occasions.

23 RICARDO SILVA:

1 And what has she done to correct the situation?

2 DANIEL THOMSON:

3 She has reiterated the order to the supervisors
4 that they must document the issue of all keys. By her
5 assertion to me she has reported these violations to Mr.
6 Passaro and the continuing problem.

7 RICARDO SILVA:

8 Are these people disciplined for not following
9 procedure?

10 DANIEL THOMSON:

11 No sir.

12 RICARDO SILVA:

13 I have no other questions. I'm sorry. One other
14 thing here. Explain to the Judge security key log Employee
15 Exhibit #1.

16 DANIEL THOMSON:

17 This is a xerox copy of the key control log for
18 the entire month of May, the month in which the incident
19 happened. In that there are 63 occurrences highlighted in
20 blue. There being no entry as to who issued key sets out of
21 that box which is in violation of both the Post Order,
22 Supervisor's Key Control Directive for the institution, and
23 key control DCR for the division.

1 There are 72 occurrences of the supervisors' not
2 logging a key set back into the box which again is in
3 violation of those articles. There are 106 documented
4 occurrences of the key sets being issued to somebody who
5 they are not authorized to be issued to by Exhibit #3.

6 JAMES KLIMA:

7 Which color?

8 DANIEL THOMSON:

9 Colored coded in the red. Which gives us plus 15
10 where they didn't log anything at all, the issuer, who they
11 gave them to, who gave them out, time they went out or the
12 time they came back in. With those 15 added that is 256
13 occurrences of failure to properly follow -- failure to
14 perform duties relative to key control by the supervisors of
15 the institution in the month of May.

16 RICARDO SILVA:

17 No other questions.

18 JAMES KLIMA:

19 Cross-examination?

20 STEVE LORENZET:

21 How can you make that conclusion based on what
22 is here in front of you?

23 DANIEL THOMSON:

1 I can add.

2 STEVE LORENZET:

3 Shoe me one for example.

4 DANIEL THOMSON:

5 Pick one.

6 STEVE LORENZET:

7 If I am understanding you correctly you are
8 looking at the security key log, right?

9 DANIEL THOMSON:

10 Yes sir I am.

11 STEVE LORENZET:

12 What are the pink ones?

13 DANIEL THOMSON:

14 The pink ones are cases of the keys being issued
15 to somebody that is not authorized to receive them.

16 STEVE LORENZET:

17 How do you know that?

18 DANIEL THOMSON:

19 By Exhibit #3 which is a document that reflects
20 who you are authorized to give these restrictive key sets
21 to.

22 STEVE LORENZET:

23 The following restrictive keys will be issued to

1 designated individuals?

2 DANIEL THOMSON:

3 That is correct sir.

4 STEVE LORENZET:

5 All right. Lets take that through. Number 20.

6 DANIEL THOMSON:

7 Officer Parkston.

8 JAMES KLIMA:

9 Wait a minute. Let me follow you, #20?

10 DANIEL THOMSON:

11 Officer Parkston is on the 2:00 to 10:00 shift.

12 #20 key set is issued to -- it is supposed to be
13 Correctional Dietary Officers (inaudible) it says
14 Correctional Supply Officers. Officer Parkston is not a
15 Correctional Dietary Officer. She is a CO I.

16 JAMES KLIMA:

17 Why would she want the key?

18 DANIEL THOMSON:

19 Because they were (inaudible) for the work release
20 inmates who returned to the institution rather than the
21 lieutenant going down there and doing it himself. They
22 normally give the keys out to another officer to go down
23 there and get a (inaudible) inmate otherwise.

1 STEVE LORENZET:

2 It shows she got the key.

3 DANIEL THOMSON:

4 She got the key. She is not authorized to have
5 the key by our key control record of the institution.

6 STEVE LORENZET:

7 Did she lose that key?

8 DANIEL THOMSON:

9 No sir. Apparently not. It is logged as being
10 returned.

11 STEVE LORENZET:

12 No further questions. Thank you.

13 JAMES KLIMA:

14 Any redirect?

15 RICARDO SILVA:

16 No other questions.

17 STEVE LORENZET:

18 I would like to -- well go ahead.

19 RICARDO SILVA:

20 I would like to call Captain Lilley to the stand.

21 (WHEREUPON, THERE WAS A BREAK IN THE RECORD)

22 DEBORAH LILLEY

23 JAMES KLIMA:

1 Back on the record. Captain Lilley would you
2 raise your right-hand please. Do you solemnly swear or
3 affirm under the penalty of perjury that the testimony you
4 give at this hearing will be the whole truth and nothing but
5 the truth?

6 LILLEY:

7 I do.

8 JAMES KLIMA:

9 Could you state your name and your position with
10 the State please.

11 LILLEY:

12 Deborah Lilley, Captain, Jessup Pre-Release Unit.

13 JAMES KLIMA:

14 I never know how to spell Deborah.

15 LILLEY:

16 D-e-b-o-r-a-h.

17 JAMES KLIMA:

18 Okay. What is that position.

19 LILLEY:

20 Captain.

21 JAMES KLIMA:

22 Mr. Silva?

23 RICARDO SILVA:

1 Captain Lilley could you tell the Judge how you
2 worked at JPRU?

3 LILLEY:

4 Since February of 1989.

5 RICARDO SILVA:

6 Could you tell the Judge what responsibilities you
7 have with regard to key control.

8 LILLEY:

9 I am the supervisor who oversees key control.

10 RICARDO SILVA:

11 Now have you ever been charged with a violation of
12 DCR 50-2 (19), performance of duties?

13 LILLEY:

14 Have I ever been charges with it? No sir.

15 RICARDO SILVA:

16 Since you have come to JPRU.

17 LILLEY:

18 No sir.

19 RICARDO SILVA:

20 Could you tell the Judge, do you have problems in
21 general with key control at the Institution?

22 LILLEY:

23 We have problems with officers handling keys.

1 Yes.

2 RICARDO SILVA:

3 Could you tell the Judge and be more specific?

4 LILLEY:

5 Many times officers fail to log keys out and log
6 keys back in. Just basically some type of unaccountability
7 in the officers' performance.

8 RICARDO SILVA:

9 Have you told that to Mr. Passaro?

10 LILLEY:

11 Yes I have.

12 RICARDO SILVA:

13 And has Mr. Passro disciplined officers for not
14 following the requirements?

15 LILLEY:

16 Yes.

17 RICARDO SILVA:

18 How many times has he disciplined officers to your
19 knowledge?

20 LILLEY:

21 I know of several officers who have received
22 reprimands. I don't know exactly sir.

23 RICARDO SILVA:

1 How about the supervisors?

2 LILLEY:

3 I don't know of any supervisors that have been
4 disciplined other than Lieutenant Thomson.

5 RICARDO SILVA:

6 With regard to performance of duties with regard
7 to the keys?

8 LILLEY:

9 Correct.

10 RICARDO SILVA:

11 I would like you to look at what is identified as
12 Employee Exhibit #1. It is a security key log. Generally
13 there are some codes here where it says none authorized
14 access of 106 occurrences in May of 1991. Not logged back
15 in. Green is 72 occurrences as not logged. Who issued is
16 blue with 63 occurrences.

17 Looking through this if you could, I would assume
18 that there are many supervisors who had different employees
19 under their responsibilities in the month of May where these
20 employees did not properly file procedures. Is that
21 correct?

22 LILLEY:

23 There are certain instances where procedures have

1 been verbally changed which would account for some of these
2 but not all of these.

3 RICARDO SILVA:

4 Can you tell the Judge why supervisors then were
5 not disciplined for making sure their employees follow the
6 rules and regulations with regard to key control?

7 LILLEY:

8 I can't answer that sir.

9 RICARDO SILVA:

10 And that has to do with the performance of their
11 duties does it not?

12 LILLEY:

13 That is correct.

14 RICARDO SILVA:

15 No other questions.

16 STEVE LORENZET:

17 In concurrence of key control has there been any
18 cases of lost or missing keys reports involving employees
19 (inaudible) where they didn't receive any discipline?

20 LILLEY:

21 The only incident of lost keys has been with
22 Lieutenant Thomson or misplaced.

23 STEVE LORENZET:

1 In terms of this log -- I believe this is the same
2 log?

3 LILLEY:

4 Yes. I assume.

5 STEVE LORENZET:

6 When you look at #20, Parkston, not authorized
7 access. Would that indicate to you that some kind of
8 discipline is possible?

9 LILLEY:

10 I would have to -- the #20 key I believe is the
11 dietary key. The 2:00 to 10:00 shift does dietary
12 inspections. That key is issued to whoever the supervisor
13 authorizes to have that key to do that inspection or to be
14 able to open the access cabinets for the evening meals.

15 STEVE LORENZET:

16 So by looking at that and reviewing that would
17 something appear to be out of order there to you?

18 LILLEY:

19 I would not have utilized that younger officer,
20 however that is up to the lieutenant's discretion.

21 STEVE LORENZET:

22 Would you feel that any kind of discipline is
23 called for in this case?

1 LILLEY:

2 No. I wouldn't say any disciplinary action was
3 called for.

4 STEVE LORENZET:

5 Has Lieutenant Thomson reported any key control
6 irregularities to you?

7 LILLEY:

8 A few days prior to the grievance, Yes. He has
9 brought it up to me.

10 STEVE LORENZET:

11 Did you review those matters?

12 LILLEY:

13 Off handedly yes very quickly.

14 STEVE LORENZET:

15 Did you feel any discipline was called for?

16 LILLEY:

17 I am not in a position to discipline those people.
18 That is up to Mr. Passaro.

19 STEVE LORENZET:

20 Did you recommend any discipline by way of Mr.
21 Passaro?

22 LILLEY:

23 I informed him of the irregularities, yes. I did

1 not recommend any discipline. That is his decision.

2 STEVE LORENZET:

3 Well in your judgment (inaudible)?

4 RICARDO SILVA:

5 Objection. I think she has been rather explicit.
6 She testified that she said there were problems of
7 irregularities and she is not in a position to basically say
8 why the people were not disciplined.

9 JAMES KLIMA:

10 What is the question?

11 STEVE LORENZET:

12 I was trying to get her to give her feeling as to
13 whether discipline was called for or not. Basically in her
14 judgment she said she does recommend discipline.

15 JAMES KLIMA:

16 I will overrule the objection. Go ahead.

17 STEVE LORENZET:

18 In your judgment was discipline called for?

19 RICARDO SILVA:

20 In which case?

21 STEVE LORENZET:

22 In any of them.

23 RICARDO SILVA:

1 In any of these?

2 STEVE LORENZET:

3 Yes.

4 LILLEY:

5 I would say keys, although this is not -- of these
6 3 issues?

7 STEVE LORENZET:

8 Yes.

9 LILLEY:

10 Not authorized access, not logged back in or not
11 logged as to who issued?

12 STEVE LORENZET:

13 Yes.

14 LILLEY:

15 Without going through and reading each one and
16 having to know each circumstance of what happened, I can't
17 necessarily say. However, when supervisors come into the
18 unit and are on duty they must account for all keys when
19 they take over the position. In doing so they must review
20 the logs and count the keys that are in the box to the key
21 that are out. Now if that be the case and there were keys
22 actually missing then they would have determined at that
23 point that there were keys missing.

1 STEVE LORENZET:

2 You mentioned recently that Lieutenant Thomson
3 brought a couple of matters to your attention?

4 LILLEY:

5 Yes he did.

6 STEVE LORENZET:

7 Did any of those matters in your judgment call for
8 disciplinary action?

9 LILLEY:

10 If we were at full capacity with staff under ideal
11 situations I would say yes that some of those situations
12 would have called for disciplinary action. However, being
13 very short staffed we just do not have people to go by ideal
14 rules and regulations.

15 STEVE LORENZET:

16 Can you recall any specifics?

17 LILLEY:

18 Specifics of not having keys logged out at all.
19 Of course that is not what Lieutenant Thomson refers to in
20 this here.

21 STEVE LORENZET:

22 There wasn't -- they weren't -- so they weren't
23 logged out. Lets get into some specifics. We won't name

1 names. The key wasn't logged out when it should have been.
2 What would be the sanction in your own judgment for that?

3 LILLEY:

4 I would say that according 50-2 under category
5 (i), first infractions, a written counseling and then
6 progressive discipline. Depending of course on the
7 seriousness of the key.

8 STEVE LORENZET:

9 I have no other questions.

10 RICARDO SILVA:

11 Captain Lilley you testified, looking at Employee
12 Exhibit #1, that if at the end of the shift supervisors are
13 required to make sure they have all the keys.

14 LILLEY:

15 The oncoming supervisor.

16 RICARDO SILVA:

17 The oncoming supervisor. correct me if I am
18 wrong. Doesn't this sheet show you that there are some
19 problems with regard to key control during the shift?

20 LILLEY:

21 No doubt all 3 shifts.

22 RICARDO SILVA:

23 All 3 shifts?

1 LILLEY:

2 Yes.

3 RICARDO SILVA:

4 And isn't it a fact that you told Mr. Passaro that
5 that is a problem with your supervisors not making sure that
6 these people log in and out these security keys and whether
7 or not supervisors have given permission to junior officers
8 to use these security keys throughout their shift and that
9 Mr. Passaro hasn't done anything about it?

10 LILLEY:

11 Yes I have informed him of that. There was a memo
12 issued out concerning filling out the logs appropriately.

13 RICARDO SILVA:

14 How long ago did you tell Mr. Passaro this?

15 LILLEY:

16 I have discussed it twice with him. The first
17 time was when the memo was issued out.

18 RICARDO SILVA:

19 When was that?

20 LILLEY:

21 Five (5) months ago. That is an approximation.

22 RICARDO SILVA:

23 Isn't it a fact that it is a possibility that with

1 not having good control of these keys throughout the tour of
2 any shift that possibly keys can be lost at any given time
3 during the tour of the shift by any officer and found later
4 on during the shift and turned into the supervisor of the
5 shift who would return them to the oncoming supervisor.
6 Isn't that a possibility or a probability?

7 LILLEY:

8 Well anything is possible. If supervision does
9 not have knowledge of it how can you deal with it? We don't
10 have E.S.P.

11 RICARDO SILVA:

12 Well supervision is supposed to issue out keys and
13 are supposed to make sure the keys are logged in and logged
14 out.

15 LILLEY:

16 Right.

17 RICARDO SILVA:

18 And they haven't been doing that in a lot of
19 cases. Isn't that correct?

20 LILLEY:

21 Well depending on -- yes. In some cases yes.

22 RICARDO SILVA:

23 And by not being right on top of the situation

1 these supervisors don't know whether keys are lost by the
2 subordinate officers through the shift and found later on in
3 the shift, correct?

4 LILLEY:

5 Understand that some of these keys are signed out
6 on one shift and when the oncoming supervisor inventories
7 that set they may not be there. They may be with somebody
8 else. That does not mean it is unaccountable.

9 RICARDO SILVA:

10 Just for the record would you say that the key
11 control problems at JPRU have to be tightened up to have
12 better accountability of the use of the keys throughout the
13 tour of the shifts?

14 LILLEY:

15 I think the accountability is fine. I think the
16 problem is with the logging of the keys. We have had no
17 lost keys at all.))

18 RICARDO SILVA:

19 No other questions.

20 JAMES KLIMA:

21 Anything else?

22 STEVE LORENZET:

23 No.

1 JAMES KLIMA:

2 Okay. Thank you Captain.

3 RICARDO SILVA:

4 Thank you.

5 LILLEY:

6 Will I be needed any more? Can I return to work?

7 STEVE LORENZET:

8 Fine with me.

9 JAMES KLIMA:

10 Will you be needing Captain Lilley?

11 RICARDO SILVA:

12 No. No.

13 JAMES KLIMA:

14 Thank you.

15 (WHEREUPON, THERE WAS A BREAK IN THE RECORD)

16 RICARDO SILVA:

17 Your Honor that concludes our case except for
18 closing.

19 JAMES KLIMA:

20 Okay. I will hear closing arguments.

21 STEVE LORENZET:

22 Just for the record I would like to recall Mr.
23 Passaro. Can I do that?

1 (WHEREUPON, THERE WAS A BREAK IN THE RECORD)

2 THOMAS PASSARO

3 JAMES KLIMA:

4 Back on the record with Mr. Passaro. You have
5 been sworn Mr. Passaro and recalled by Management. Go
6 ahead.

7 STEVE LORENZET:

8 Are you aware of key control problems at JPRU?

9 PASSARO:

10 Am I aware of what?

11 STEVE LORENZET:

12 Key control problems at JPRU?

13 PASSARO:

14 I am aware that when we first opened up we had
15 some key control problems because we didn't have the proper
16 equipment.

17 STEVE LORENZET:

18 Have any incidents of employees taking keys home
19 or not properly controlling keys brought to your attention?

20 PASSARO:

21 Yes in a couple of occasions. Sure.

22 STEVE LORENZET:

23 (Inaudible).

1 PASSARO:

2 On the ones where the keys were taken home they
3 were reprimanded in accordance with progressive discipline.
4 Sure.

5 STEVE LORENZET:

6 Had there been any other incidents to your
7 knowledge where they were lost?

8 PASSARO:

9 Lost for an hour and a half? No, not to my
10 knowledge.

11 STEVE LORENZET:

12 Nothing further.

13 JAMES KLIMA:

14 Mr. Silva anything?

15 RICARDO SILVA:

16 No.

17 JAMES KLIMA:

18 Thank you.

19 PASSARO:

20 Can I go now?

21 STEVE LORENZET:

22 Yes. I think so.

23 JAMES KLIMA:

1 Sure. Ready for closing?

2 STEVE LORENZET:

3 Lieutenant Thomson when he was demonstrating to
4 you how he secured the keys mentioned that he had the
5 positive lock available. But he didn't use it. Now he uses
6 it. It is unfortunate that it took this incident for him to
7 (inaudible).

8 I think by his own testimony he was negligent that
9 day. Therefore, we had to suspend him for that negligence.

10 JAMES KLIMA:

11 Anything else?

12 STEVE LORENZET:

13 No.

14 JAMES KLIMA:

15 Mr. Silva?

16 RICARDO SILVA:

17 Your Honor there is no standard State equipment
18 given to Correctional Officers with regard to how they
19 control the keys. Management surely would have brought that
20 to your attention.

21 So what we have here is a dedicated employee who
22 has a belt that is approved by the Division of Correction.
23 Mr. Passaro testified that this belt was approved by the

1 Division of Correction including the key holders.

2 Now if State felt there was a problem that Mr.
3 Thomson used on the day in question then they should have
4 told Mr. Thomson that you shouldn't use that key holder. It
5 was Mr. Thomson's own initiative that he got another type of
6 key holder. Again the most important thing is that this is
7 equipment that the State said is okay.

8 Now remember this employee is charged with not
9 questions of lost keys which is Section (16) of the old DCR
10 50-2. Incidentally Your Honor the Division of Correction
11 Regulations had been submitted to you. Is that correct?

12 JAMES KLIMA:

13 Not officially. I have got copies here. But I
14 think I can take notice of the regulations. I don't think
15 there is any point in introducing these. Quite frankly I
16 want to keep them because they come up all the time. I
17 could make copies if you want to keep them.

18 RICARDO SILVA:

19 No. I just wanted to make sure. He is charged
20 with performance of duties. He is not charged with
21 questions of key control Your Honor and that is very
22 important. Because as you see today there are a lot of
23 problems with key control in JPRU. So we must narrow it to

1 the question of performance of one's duties.

2 Now I think we have shown be a preponderance of
3 evidence that a mishap occurred. But clearly that the
4 employee was not negligent with regard to the performance of
5 his duties. He would have had to do a clear balancing act
6 and if the employee took the keys and had missed the hook
7 the keys would have fallen. If the employee did miss the
8 hook it is all likelihood that they would have gone through
9 entirely. It is a very finite improbability that he could
10 have put the keys in the situation for the keys to be
11 falling off but they did. So a logical conclusion is that
12 it did not fall down initially on the ground because he had
13 it for an hour; that it was on secure; that it wasn't in the
14 balancing spectrum for lack of another way to say it, it was
15 clearly secured. Possibly he hit something at the same time
16 that the keys fell off. That is a possibility.

17 But what is clear is that the employee is not
18 negligence with regard to the performance of his duties if
19 the State says this is a belt that is okay. Again
20 performance of duties. Again a pattern has been shown that
21 at JPRU there is a problem with keys in general and that no
22 supervisor has been disciplined. That is Captain Lilley's
23 testimony. Only Lieutenant Thomson who incidentally has a

1 grievance for being involuntarily transferred 240 miles to
2 JPRU and he wanted to be at Poplar Hill right outside his
3 home. That is still subject to a grievance now. It just so
4 happens to be there.

5 Again I think we have shown be a preponderance of
6 the evidence that it is a mishap but not a question of
7 performance of duties. To discipline this supervisor when
8 under these circumstances no other supervisor has been
9 disciplined. I think it has been clearly shown that without
10 properly logging in and logging out JPRU knew that there was
11 a problem, i.e. by Captain Lilley's testimony who told Mr.
12 Passaro but Mr. Passaro believes that the problem has been
13 resolved. I think we have shown by a preponderance of the
14 evidence that in May of 1991, 5 months after Captain Lilley
15 told Mr. Passaro that the problem wasn't resolved then,
16 nobody has been disciplined. Only Lieutenant Thomson.

17 I think we have shown by a preponderance of the
18 evidence that the State has been arbitrary and capricious.
19 We ask that the suspension be rescinded. Thank you.

20 **JAMES KLIMA:**

21 All right. That will conclude this hearing.
22 Thank you.

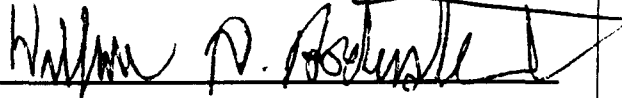
23 **(CONCLUSION OF HEARING)**

1 STATE OF MARYLAND:

2
3 I, the undersigned, a Notary Public in and for the
4 State of Maryland, do hereby certify that the within
5 transcript was transcribed from tapes supplied to me to the
6 within typewritten transcript in a true and accurate manner.

7 I FURTHER CERTIFY that I am not of counsel to any
8 of the parties, nor am I an employee of counsel or any
9 relation to any of the parties, nor in any way interested in
10 the outcome of this action.

11 AS WITNESS my hand and Notarial Seal, this 3rd
12 day of February, 1992.

13
14
15
16 

17 Notary Public

18
19
20 My Commission expires 11/1/95.

Richard B. Rosenblatt
Assistant Attorney General
Department of Public safety And
Correctional services
6776 Reisterstown Road
Suite 312
BALto.Md. 21215-2341

Howard Avrum Miliman
5 Light Street 11th Floor
BALto.MD. 21202

NOTICE SENT IN ACCORDANCE WITH MARYLAND RULE B-12

Daniel Thompson

Docket:

vs.

Folio:

Department Of Public Safety and
Correctional Services

File: 91340071/CL141323 ..

Date of Notice: 2/14/92

STATE OF MARYLAND, ss:

I HEREBY CERTIFY, That on the 11th day of Feb.,
Nineteen Hundred and ninety-two, I received from the Administrative
Agency, the record, in the above captioned case.

SAUNDRA E. BANKS, Clerk
Circuit Court for Baltimore City

2

CC-39

NOTICE SENT IN ACCORDANCE WITH MARYLAND RULE B-12

Daniel Thompson

Docket:

vs.

Folio:

Department Of Public Safety and
Correctional Services

File: 91340071/CL141323

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Circuit Court for Baltimore City

CC-39

OFFICES OF THE ATTORNEY GENERAL

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STATE OF MARYLAND
DEPARTMENT OF PERSONNEL

STATE OFFICE BUILDING
301 WEST PRESTON STREET
BALTIMORE, MARYLAND 21201

February 6, 1992

FILED

FEB 11 1992

CIRCUIT COURT FOR
BALTIMORE CITY

Saundra Banks
Clerk of the Circuit Court
for Baltimore City
111 N. Calvert Street, Room 462
Baltimore, Maryland 21202

Re: Daniel Thomson v. Department of Public
Safety and Correctional Services
Circuit Court for Baltimore City
Case No. 91340071/CL141323

Dear Ms. Banks:

Please file the enclosed Certificate of Record in reference to the above-captioned case.

Thank you for your attention to this matter.

Very truly yours,


James F. Truitt, Jr.
Principal Counsel

JFT:dsd

Enclosures

cc: Howard Avrum Miliman, Esq.
Stuart M. Nathan, Esq.



DANIEL THOMSON

* IN THE

Appellant

* CIRCUIT COURT

v.

DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES

* FOR

* BALTIMORE CITY

Appellees

* Case No. 91340071/CL141323

* * * * *

CERTIFICATE OF RECORD

I HEREBY CERTIFY that the attached documents consisting of
(a) Exhibits; (b) Transcript of Proceedings dated July 31, 1991;
(c) Proposal for Decision dated August 23, 1991 and
(d) Order of the Secretary dated November 8, 1991 is the full,
complete and official record of these proceedings.

Margaret Embardino

MARGARET EMBARDINO
Personnel Administrator

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of February, 1992, a
copy of the foregoing Certificate of Record was mailed postage
prepaid to Howard Avrum Miliman, Esq. D'Alesandro, Miliman and
Yerman, 5 Light Street, 11th Floor, Baltimore, Maryland 21202 and
to Stuart M. Nathan, Principal Counsel, Department of Public
Safety and Correctional Services, 6776 Reisterstown Road, Suite
310, Baltimore, Maryland 21215-2341.

James F. Truitt, Jr.
JAMES F. TRUITT, JR.

William Donald Schaefer
Governor



John W. Hardwicke
Chief Administrative Law Judge

James G. Klair
Deputy Chief Administrative
Law Judge

OFFICE OF ADMINISTRATIVE HEARINGS

ADMINISTRATIVE LAW BUILDING
GREEN SPRING STATION
10753 FALLS ROAD
LUTHERVILLE, MARYLAND 21093
(301) 321-3993
FAX 301-321-2040

WRITER'S DIRECT DIAL NO.

August 23, 1991

Lieutenant Daniel L. Thomson
Route 6, Box 418
Salisbury, Maryland 21801

Steven J. Lorenzet
Personnel Officer
Maryland Correctional
Pre-Release System
Administration
7931 Brock Bridge Road
Jessup, Maryland 20794

RE: OAH #91-DOP-CORC-002-1194

Dear Lt. Thomson and Mr. Lorenzet:

Enclosed is the Proposal for Decision with findings of fact and conclusions of law in accordance with State Government Article, Section 10-212 of the Annotated Code of Maryland.

You will be given 15 days from the date of this letter to file written exceptions and to request an opportunity to present oral argument to Hilda E. Ford, Secretary of Personnel, or her designee at 301 W. Preston Street, Baltimore, Maryland 21201. Should you wish to present oral argument, you will be notified as to when argument will be heard by that office. Each party will be given 15 minutes to present its argument.

If no exceptions are filed, the decision will become final.

Very truly yours,

James P. Klima, Jr.
Administrative Law Judge

JPK/kc
cc: Ricardo R. Silva
John Udris
John Sybert
Margaret Embardino

DANIEL L. THOMSON

VS.

DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES

* BEFORE JAMES P. KLIMA, JR.
*
* ADMINISTRATIVE LAW JUDGE
*
* OF THE MARYLAND OFFICE OF
*
* ADMINISTRATIVE HEARINGS
*
* CASE NO: 91-DOP-CORC-002-1194
*

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW

STATEMENT OF THE CASE

Lieutenant Daniel Thomson is a Correctional Officer IV assigned to the Jessup Pre-Release Unit. He was charged with violation of Division of Correction Regulation (DCR) 50-2 for losing certain keys on May 23, 1991. He was suspended for three days and appeals.

A hearing was held on July 31, 1991. Management was represented by Steven Lorenzet, Personnel Officer, Pre-Release System; Lieutenant Thomson was represented by Ricardo R. Silva, Director, Field Services, Maryland Correctional Union.

Thomas Passaro, Facility Administrator, Jessup Pre-Release Unit, testified for Management.

Appellant Lieutenant Thomson testified in his own behalf. Captain Deborah Lilley, who is assigned as Key Control Supervisor at the Jessup Pre-Release Unit was subpoenaed to testify for the Appellant.

MANAGEMENT'S EXHIBITS

1. Memo, Daniel Thomson to Thomas Passaro, re Lost Supervisor Key Set, dated May 24, 1991.

2. Memo, Myrick Clark to Thomas Passaro, re Misplaced Keys, dated May 25, 1991.

3. Matter of Record from Thomas Passaro dated June 3, 1991.

EMPLOYEE'S EXHIBITS

1. Security Cabinet Key Log, May, 1991.

2. Copies of fifteen pages of Supervisor's Journal chronicling occurrences on shifts.

3. List of authorized recipients of security cabinet keys.

4. Page 333 of Supervisor's Journal showing occurrences on 2:00 p.m. to 10:00 p.m. shift on June 13, 1991.

ISSUE

Whether the Department of Public Safety and Correctional Services properly suspended Appellant for three days.

SUMMARY OF THE EVIDENCE

On May 23, 1991, Lieutenant Thomson was working as Shift Commander on the 10:00 p.m. - 6:00 a.m. shift at the Jessup Pre-Release Unit. He had possession of the supervisor's key ring which

he carried on a holder attached to a belt. At approximately 11:00 p.m. Lieutenant Thomson noticed that the keys were missing from his belt. He advised his supervisor of the situation. A search was undertaken and inmate sanitation workers who were out of their cells were strip-searched. At approximately 12:30 a.m. the keys were found on the ground outside the front gate, in an area where Lieutenant Thomson earlier had delivered some paperwork to a vehicle transferring an inmate to another facility.

As a result of his losing the keys, Appellant was suspended for three days for violation of DCR 50-2 (19): indifference, carelessness, or negligence in performance of duties. A three day suspension was imposed under the progressive discipline provisions of DCR 50-6, because it was the third violation of DCR 50-2 by Lieutenant Thomson in the current reckoning period.

Appellant does not dispute that he lost the keys, but claimed that key regulations are consistently violated and no one else has been penalized. He suggested that he was singled out because he has an outstanding grievance with regard to his work assignment, which is 120 miles from his home. He presented evidence that employees had taken keys home by mistake, and that unauthorized persons were given access to keys, and no penalties were assessed.

Captain Lilley, the Key Control Supervisor, testified that at times keys are issued to personnel who are not on the authorized list, but this was for reasons of expediency due to staff being short-handed; that employees who took keys home by mistake were reprimanded; and that she knew of no other instance where keys have been lost.

FINDINGS OF FACT

1. As shift supervisor, Appellant Lieutenant Thomson was responsible for custody of the supervisor's key ring on May 23, 1991.

2. The keys were discovered to be missing from their holder on Lieutenant Thomson's belt at approximately 11:00 p.m.

3. The keys were found at approximately 12:30 a.m. in an area where Lieutenant Thomson had traveled earlier on the shift.

4. Lieutenant Thomson had received a reprimand and a one day suspension for prior violations of DCR 50-2 in the reckoning period.

DISCUSSION

Mr. Silva moved to dismiss on grounds that a Disciplinary Suspension Form had not been given to Appellant as specified in COMAR 06.01.01.46 (B):

The appointing authority shall file with the Secretary the original written notice of suspension on a form provided by the Secretary. The notice shall state the reasons for and duration of the suspension, and shall inform the employee of the appropriate appeal route. The appointing authority shall:

(1) Give a copy of the notice to the suspended employee....

The "form provided by the Secretary" is SEC Form #4A (REV.1-86), and such was not given to Appellant prior to the hearing.

A copy of a Matter of Record dated June 3, 1991, which accurately states "the reason for and duration of the suspension"

here under consideration was received by Lieutenant Thomson on June 5, 1991. This did constitute notice of the suspension, but it did not contain information as to appeal procedure and, of course, was not on "a form provided by the Secretary".

In a letter addressed to the Office of Administrative Hearings dated June 6, 1991, Lieutenant Thomson requested to be advised of the "scheduled hearing date", and in a Notice of Hearing sent to Lieutenant Thomson dated June 19, 1991, the "Date appealed" is designated as June 10, 1991.

Thus, Lieutenant Thomson did timely file for an appeal and any irregularity because of the improper form or lack of stated appeal rights was cured when he, in fact, accessed the appeal procedure.

The Motion for Dismissal is **DENIED**.

There is little dispute in the facts of this case. There is no question that Lieutenant Thomson was charged with custody of certain important keys and that the keys were lost for a time on his watch. The essence of Lieutenant Thomson's defense is that his act was not willful and that others have violated regulations with regard to the custody of keys and were not penalized.

Lieutenant Thomson is charged with violation of DCR-50-2 (19)(a), which provides in part "Indifference, carelessness, or negligence will constitute grounds for disciplinary action". It has not been shown that the Lieutenant was "indifferent". "Carelessness" and negligence" are generally regarded as being synonymous.

"Negligence" is failure to exercise ordinary care. Dominion Construction, Inc. v. First National Bank of Maryland, 271 Md. 154, 315 A.2d 69. "Negligence" without qualification in its ordinary sense, is the failure of a responsible person, either by omission

or by action, to exercise that degree of care, vigilance, and forethought which, in the discharge of the duty then resting on him, the person of ordinary caution and prudence might exercise under the particular circumstances; it is a want of diligence commensurate with the requirement of the duty at the moment...Winslow v. Tebbetts, 131 Me 785, 162 A.785.

Lieutenant Thomson was in the position of the "responsible person" in the Winslow case, and the fact that he lost the keys entrusted to him constituted "negligence". He is thus subject to disciplinary action for violation of DCR-2 (19)(a).

A penalty is warranted because of the serious nature of the violation as compared to other violations noted by Lieutenant Thomson. During the time the supervisor's key ring was lost, the institution was imperiled. There could have been dire consequences if the keys had been found by an inmate who chose to take advantage of the situation.

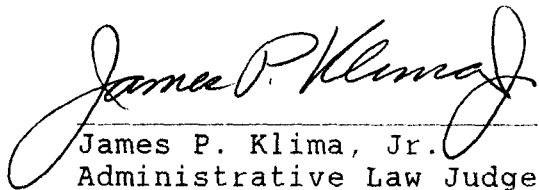
While it might be argued that a three day penalty is too severe for an admittedly unintentional violation which ultimately cause no harm, it was shown that this was the third violation of DCR 50-2 by Lieutenant Thomson in the current reckoning period. DCR 50-6 (c) provides that a three day suspension is the proper sanction for such. The three day suspension is mandatory in that Section D of DCR 50-6 provides that any exception requires the approval of the Commission of Correction.

In light of the above, Lieutenant Thomson's claim that the penalty was in retaliation for an outstanding grievance is not persuasive.

PROPOSED CONCLUSIONS OF LAW

Management has shown by a preponderance of evidence that its action in suspending Appellant for three days for his third violation of DCR 50-2 in the current reckoning period was appropriate. It is, therefore, proposed that the suspension be sustained.

August 23, 1991
Date


James P. Klima, Jr.
Administrative Law Judge

JPK/kc

cc: Stephen Lorenzet
Ricardo R. Silva
John Udris
John Sybert
Margaret Embardino
Daniel Thomson

May 91 Cell #1

NOT authorized access	██████	106	OCCURRENCES
Not logged back in	██████	72	OCCURRENCES
Not logged who issued	██████	63	OCCURRENCES
		<hr/>	
		241	
		<hr/>	
		15	NOT LOGGED AT ALL
		<hr/>	
		256	

FILED
FEB 11 1992
CIRCUIT COURT FOR
BALTIMORE CITY

5/31/91	7	Parson	Pendell	0800	
	13	Corcoran		0800	11645
5/31/91	18	martin	Pendell	0810	1300
5/31/91	22+23	martin	Pendell	0810	1300
	19	masinski		0815	1550
	25	maloney		0820	1408
5/31/91	#28	Capt. Lilley		0845	0848
5/31/91	20	Gawron	Gawron	1045	1900
5-31-91	18	t	Pendell	1335	1555
	#28	Self	Lt Marshall	1345	1410
	25	Ruzicka	Marshall	1430	2030
	7	Parson		1505	1705
	20	Parson	VA 11 Air	1957	2030
	26	Sgt. Ruzicka	VA 11 Air	2020	2115
	24	Self	Crampton	22 ³⁰	22 ³⁵
	#20	Sgt Clark		23 ⁴⁰	24 ³⁰
6/1/91	20	CDO Porter		3 ⁰⁰ AM	
	26	Sgt Neal		4 ³⁰ AM	5 ³⁰ AM
	11	Cohen		6 ⁰⁰ AM	1357
	21	Cohen		6 ⁰⁰ AM	1357
6/1/91	19+20	Belling	Pendell	0702	1344
6/1/91	25	reberlein	Pendell	10 ⁰⁰ AM	

6-1-91	25	Belling	Marshall	1402	1500
	29	Bendeck		1700	1725
	20	Wilson		2000	2030
	26	Pallitt		2100	2125
	2	Sgt Clark	Crampton	23 ⁰⁰	1 ⁰⁰ AM
	3	Sgt Clark			1 ⁰⁰
	5	Sgt Clark			1 ⁰⁰
	6	Sgt Clark			1 ⁰⁰
	7	Sgt Clark		23 ⁰⁰	1 ⁰⁰
	1210	Sgt Neal		23 ⁵⁰	24 ⁰⁰
	13	Kick		1 ⁰⁰ AM	3 ³⁰ AM
6-2-91	20	CDO Porter		3 ⁰⁰ AM	1900
	26	Sgt Neal		3 ⁵⁵ AM	4 ⁵⁵ AM
	5	Sells		4 ⁴⁵ AM	4 ⁴⁷ AM
	11	Cohen		5 ⁵⁵ AM	1400
6-2-91	21	Cohen		5 ⁵⁵ AM	1400
	26	self	Marshall	1530	1545
	20	Winfield		2000	2030
	26	Pallitt		2100	2115
	24	self	Crampton	22 ¹⁰	22 ¹⁵
	2	Sgt Neal		22 ¹⁰	1 ³⁰ AM
	3	Sgt Neal		22 ¹⁰	1 ³⁰ AM

5-30-91	24	Porter	Smith	0605	0616
	27	Porter	Smith	0605	0616
	4	Glass	Smith	0609	0621
	3	Kraus	Smith	0621	0624
	24	Epps	Smith	0630	0637
	25	Porter	Smith	0631	0703
	9	Bolling	Smith	0727	
	24	Bolling	Smith	0727	
	3	Porter	Smith	0727	0736
	4	Porter	Smith	0727	0736
	13	Corcoran	Smith	0805	1614
	4	Corcoran	Smith	0805	0835
	7	Parsons	Smith	0815	1106
	24	Porter	Smith	0821	0828
	10	Owens	Smith	0830	
	16	Legendre	Smith	0832	1900
	25	Pden	Smith	0834	
	2	Passaro	Smith	0845	1035
	18	Martin	Smith	0845	
	24	Martiny	Smith	0845	
	20	Junatall	Pindell	1012	1900
	19	Mamunski	Smith	1120	2100

5-30-91	2	Passaro	Pindell	1130	
	25	Blackston	Martell	1545	
	26	Blackston		1605	1614
				6 ³⁰	2130
	25	Mulligan		23 ³⁰	23 ⁴⁵
	20	Sgt Carmezzi	Crompton	1⁴⁰ AM	2¹³ AM
5/31/91	9	Sgt Carmezzi		1 ⁴⁰ AM	2 ¹⁵ AM
	20	Sgt Carmezzi		1 ⁴⁰ AM	1 ⁴⁵ AM
	24	Self		2 ¹⁵ AM	3 ⁰⁰ AM
	26	Sgt Carmezzi		2 ¹⁵ AM	3 ⁰⁰ AM
	4	Sgt Carmezzi		3 ⁰⁰ AM	1045
	20	CDO Porter		4 ²⁵ AM	5 ⁴⁵ AM
	26	Sgt Carmezzi		5 ³⁰ AM	
	5	Capt Hillier		5 ⁴⁵ AM	5 ⁵⁰ AM
	4	Self		5 ⁵⁵ AM	
	11	Cohen		5 ⁵⁵ AM	
	21	Cohen		5 ⁵⁵ AM	5 ⁵⁶ AM
	3	Sgt Carmezzi		0635	
5/31/91	6	DRifort	Pindell	0700	1645
	16	Legendre		0707	1353
	9	Bolling	Pindell	0718	0719
	24	Self	Crompton	0758	0810
	4	Self			

5-28-91	2	Passaro	Pondell	0845	1635	5-29-91	23	Martin	Pondell	0830	1445
"	4	Dawling		0905	1350		19	MAMINSKI		0830	1550
"	4	Dawling	Pondell	0905	1350		10	OWENS		0833	1500
5-28-91	18+24	MARTIN	Pondell	0820	1232		25	GREEN		0835	1815
"	7	Parsons	Pondell	0830	1650		2	PASSARO		1147	1650
"	10	owens	Pondell	1340	1805		16	Legendre	Marshall	1545	23 ⁰⁰
	9-26	Armstrong	Marshall	1405	1530		12	Blackston		1730	2150
	25	Martin		1500	1635		24	Self	Crampton	22 ³⁰	23 ⁰⁰
	7	Parson		1515	1635		20	Sgt Neal		24 ⁰⁰	24 ¹⁵
	12	Blackston		1935	2100	5/30/91	4	Self		2 ³⁰	2 ³⁵
	20	Wickell		2000	2040		26	Self		2 ³⁰	2 ³⁵
	20	Self		2100	2105		20	CDO Porter	Crampton	3 ⁰⁰ AM	1012
	26	Blackston		2105	2125		4	Sgt Neal		3 ³⁰	4 ⁰⁰
5-29-91	20	CDO Porter	Smith	0254	1900		9	Sgt Neal		3 ³⁰	3 ⁵⁰
	26	Neal	Smith	0416	0550		26	Sgt Neal		3 ³⁰	4 ⁴⁵ AM
	9	Neal	Smith	0531	0530		24	Self		5 ⁰⁰ AM	5 ⁰¹ AM
5-29-91	6	Jenstall	Smith	0600	1600		5	Capt Lilly		5 ¹⁵ AM	5 ³⁰ AM
	9+26	Dawling	Pondell	0740	1600		6	Sgt Dreyfus		5 ³⁰ AM	5 ⁴⁰ AM
	11+21	Kraus	Pondell	0805	1650		4	Off Presto		5 ⁴⁰ AM	5 ⁴² AM
	7	Parson	Pondell	0815	1650		4	Sgt Dreyfus		5 ⁴² AM	5 ⁴⁶ AM
	4	CORCORAN	Pondell	0815	0830	5-30-91	11	Kraus	Smith	0600	1405
5-29-91	18+24	MARTIN	Pondell	0830	1445		21	Kraus	Smith	0600	1405

5/24/91	3	Sell	Thomson	0510	0515	5-27-91	11+21	Kraus	Purdell	0623	135P
Rup acct for	2	Fabiano	Smith	0600	1050	5-27-91	18	Sgt. Woss		0823	10 ⁰⁰ Am
5-26-91	4	Epps	Smith	1049	1208	5-27-91	3+4	PARSONS	Purdell	0840	0850
	26	Epps	Smith	1049	1208		26	Martin	Marshall	1530	1545
	25	Mullegan	Smith	1115	1208		12	Green		1815	1845
	25	Sell	Thomson	2200	2225		20	Hampton		2000	2100
	4	Sell		2230	2231		26	Martin	Thomson	2101	2110
	3	Sell		2231	2232		3	Sell		2315	2320
	6	Sell		2232	2234		20	Whitaker		2320	0300
	5	Sell		2234	2235		20	Bellamy		0300	1900
	10	Duggitt		2235	0120		26	Sell		0415	0540
	13	Duggitt		2238	0120		2	Sell		0435	0436
	14	Duggitt		2235	0120		6	Thomson		0535	1605
	17	Duggitt		2235	0120		3	Sell	Thomson	0545	0546
	20	Adams		2248	2300	5-28-91	4+26	Sgt. Porter	Purdell	0612	0640
	24	Duggitt		2248	2250		14	Legendre		0655	1615
	20	Sell		2330	2350		3	Legendre		0655	0705
	20	Vinystalb		0310			9+26	Adams		0704	1345
	26	Duggitt		0405			22	Sgt. Porter		0805	
	9	Duggitt		0405	0451	5-28-91	11+21	Kraus	Purdell	0810	1352
	4	Duggitt		0405	0451		3	Dawling		0812	0850
	2	Sell	Thomson	0535	0536		4	"		0812	0850

5-24-91	22	Martin	Smith	0811	0954
	23	Martin	Smith	0811	0954
	24	Martin	Smith	0811	1244
	7	Parsons	Smith	0820	
	11	Robinson	Smith	0830	0835
	21	Robinson	Smith	0830	0835
	2	Passaro	Smith	0833	1149
	11	Robinson	Smith	0913	1324
	21	Robinson	Smith	0913	1324
	19	Belron	Smith	1017	1600
	23	Martin	Smith	1110	1245
	24	Martin	Smith	1250	1337
	27	Martin	Smith	1257	1324
	2	Passaro	Smith	1338	1820
	26	Bolding	Smith	1340	1350
	25	Mulligan	Marshall	1415	1430
	9	Thomas		1445	1550
	26	Bolding		1445	1550
	7	Douling		1535	1710
	20	Holland	Vallain	2000	2630
	26	Battle	Vallain	2110	2135
	24	Lawson	Vallain	2117	2129

5/24/91	4	Self	Thomas	2310	2312
	20	Orfitt		2325	0220
	24	Orfitt		0045	0110
	27	ADMs		0135	0147
	20	Lawcaum		0230	1900
	4	Self		0340	0345
	9	Self		0340	0345
	26	Orfitt	Thomson	0415	0445
Recd acct for 5-25-91	4	McDaniel	Smith	0710	0710
	26	Sgt. Epps	Smith	0844	0846
	21	Sgt. Epps	Smith	1045	1400
	26	Self	Vallain	1545	1600
	12	Green	Vallain	1740	1810
	20	M. Davis	Vallain	2000	2032
	24	Self	Vallain	2010	2020
	4/26	Self	Vallain	2017	2045
	26	Sgt. Martin	Vallain	2110	2127
	20	Self	Thomas	2325	2335
	20	Lawcaum	Thomson	0230	
	24	Self		0400	0405
	3	Self		0400	0405
	26	Orfitt	Thomson	0400	0535

5/22/91	16	Legendre	Crampin	23 ⁰⁰	23 ³⁰
5/23/91	9	Sgt Clark		24 ²⁰	1 ⁰⁰ AM
	26	Sgt "		24 ²⁰	1 ⁰⁰ AM
	4	Sgt "		24 ²⁰	1 ⁰⁰ AM
	20	CDO Gauson		2 ³⁰ AM	/
	26	Sgt Clark		4 ²⁵ AM	4 ⁵⁵ AM
	5	Capt Jilley		5 ²⁰ AM	/
	6	Sgt Dreifort		5 ³⁰ AM	/
	26	Self	Crampin	5 ²⁰ AM	5 ²⁵ AM
	11	Cohen		5 ⁵⁵ AM	/
	21	Cohen		5 ⁵³ AM	/
Rep acct for 5-23-91	04	Dreifort	Smith	0604	0605
	9	Bulling		0704	1218
	26	Bulling		0704	1218
	24	Sgt. Glass		0712	0714
	24	Sgt. Glass		0806	0807
	17	Dowling		0825	1153
	4	Dowling		0827	0842
	7	Dowling		0831	1153
	2	Passaro		0835	
	18	Martin		0835	1430
	24	Martin	Smith	0835	1430

6-2 Cont.

5-23-91	25	Nieburlein	Smith	0835	0850
	16	Legendre	Smith	0840	
	10	Owens	Smith	0846	1640
	19	Zelron	Smith	1214	2115
	9	Thomas	Smith	1249	1515
	26	Thomas	Smith	1249	1515
	7	Owens	Marshall	1540	1650
	7	Dowling		1551	1612
	26	Major	Velfer	2003	2020
	24	Clark	Thomson	2240	2245
	4	Self		2245	2250
	20	Clark		0030	0055
	20	Laucaza		0230	1845
	4	Clark		0345	0445
	9	Clark		0345	0445
	26	Clark		0345	0445
	16	Legendre	Thomson	0510	1425
Rep acct for 5-24-91	7	Thomas	Smith	0722	1315
	26	Thomas	Smith	0722	1315
	7	Dowling	Smith	0809	0815
	17	Dowling	Smith	0809	0903
	18	Martin	Smith	0810	1244

9	Bolling	Smith	0727	1630		5	Capt Killey	Cramp	5 ²⁰ AM	1410
26	Bolling	Smith	0727	1630		11	Cohen		6 ⁰⁵ AM	1355
6	Drifort	Smith	0728	1400		21	Cohen		6 ⁰⁵ AM	1355
4	Sgt. Glass	Smith	0730	0746		3	Self		6 ⁰⁵ AM	6 ⁰⁶ AM
4	Corcoran	Smith	0805	0808	5-22-91	6	LT SPENCER	Capt Killey	0648	1430
17	Dowling	Smith	0805	1340		18 ²⁴	MARTIN	H. Pundell	0815	1155
13	Corcoran	Smith	0805	1545		(4) 27	Dawling	H. Pundell	0820	4-8850 17-1150
18	Martin	Smith	0826	1043		9+26	THOMAS	H. Pundell	0820	1600
24	Martin	Smith	0826	1043		13 ⁷	CORCORAN		0825	(7) 0932 1324
23	Martin	Smith	0834	1043		10	OWENS		0830	1640
19	Gilbron	Smith	0838	1635		25	NEIBERLEIN		0835	0843
7	Parsons	Smith	0848	1630		7	CORCORAN		1130	
22	Cohen	Smith	0849	1405		25	MALONEY		1315	1332
18	Martin	Smith	1105	1400	5-22-91	2	Parsons	H. Pundell	1330	
23	Martin	Smith	1125	1400		7	Dawling	H. Pundell	1332	1640
24	Martin	Smith	1125	1400		24	Sgt. Glass	H. Pundell	1333	1350
10	Quervo	Smith	1137	1400	5-22-91	16	Legende	Marshall	1650	
20	Major	Vallan	2000	2045		7	Dawling		1720	
4	Sgt Clark	Cramp	22 ³⁰	23 ⁰⁰		20	Vallan	Valla	2010	
26	Sgt Clark	Cramp	22 ³⁰	23 ⁰⁰		11	Sgt Neal	Cramp	2240	2245
20	CO Gausman	Cramp	2 ³⁰ AM			21	Sgt Neal	Cramp	2240	2245
26	Sgt Hershan		4 ³⁰ AM	445		24	Self		2240	2245

5-20-91	25	Porter	Smith	0750	0812	5/20/91	20	Self	Thouman	2210	2215
	3	Self	Capt. Lilly	0751	0752		24	↓		2255	2300
	17	Dowling	Smith	0807	0925		24	↓		2318	2340
	4	Dowling	Smith	0807	0819		4	Clark		2340	2345
	9	Thomas	Smith	0819	1430		26	Clark		2340	2345
	26	Thomas	Smith	0819	1630		7	Clark		2345	2350
	25	Hiberlein	Smith	0823	0835		2	Self		2345	2350
	7	Parsons	Smith	0824	1700	5/21/91	20	Lilly		0015	0230
	18	Martin	Smith	0824	1310		4	Clark		0120	0145
	24	Martin	Smith	0824	1310		9	Clark		0120	0145
	10	Owens	Smith	0835	1510		26	Clark		0120	0500
	19	Hebron	Smith	0835	1630		20	Quarrier		0230	1900
	25	Cohen	Capt. Lilly	1012	1030		5	Self		0335	0340
	2	Passaro	Smith	1011	1400		5	Lilly		0520	1500
	27	Martin	Smith	1149	1232		11	Cohen		0555	1407
	5	Cpt. Lilly	Smith	1258	1345		26	Cohen	Thouman	0555	1407
	24	Martin	Vallan	1420	1400	Replaced for 5-21-91	24	Sgt. Porter	Smith	0644	0645
	16	Parson	Vallan	1445	1620		3	Sgt. Glass		0644	0644
	13	Copeland	Vallan	1447	1730		4	Sgt. Glass		0644	0651
	20	G. Davis	Vallan	2000	2035		9	Sgt. Glass		0651	0701
	26	Pallott	Vallan	2105	2115		26	Sgt. Glass		0651	0701
	24	Self	Thouman	2200	2215		16	Legendre	Smith	0654	1530

6-2 Shifts

5-17-91	11	Cohen	Smith	1130	/	5-18-91	20	Brown	Marshall	2000	2020
	21	Cohen	Smith	1130	/		26	Martin		2100	2115
	4	Parsons	Smith	1130	/		3	Rice	Crampton	22 ²⁰	22 ³¹
	12	Blackston	Marshall	1400	1420		20	Nice		23 ³⁰ AM	23 ³⁵ PM
	25	Blackston		1400	1420	5-19-91	20	CDO Porter		3 ⁰⁰ AM	
	27	Martin, COO		1420	1510		26	Sgt Neal		4 ³⁰ AM	4 ⁴⁵ AM
	25	Martin, Sgt.		1425	1440		11	Cohen		5 ⁵⁵ AM	
	17	Dowling	Vallain	1810	2145		21	Cohen		5 ⁵⁵ AM	
	7	Dowling		1845	1904	5-19-91	6	Sgt. Porter	Purdell	0703	0820
	20	Battle	Vallain	2000	2100		26	Battle	Marshall	1545	1550
	4	Dowling		2145	2200		20	Winfield		2000	2020
5/19/91	24	Self	Crampton	2 ⁰⁵ AM	2 ²⁰ AM		26	Battle		2130	2155
	20	CDO Bellamy	Crampton	2 ⁵⁵ AM			24	Self	Crampton	22 ³⁰	22 ³⁵
	4, 26	Self		2 ⁵⁵ AM	3 ⁰⁰ AM	5/20/91	20	CDO Gausson		2 ³⁰	
	11	Cohen		5 ⁵⁵ AM	1 ³⁰ PM		26	Sgt Neal		4 ⁰⁰ AM	4 ⁴⁵ AM
	21	Cohen		5 ⁵⁵ AM	1 ³⁰ PM		3	Sgt Neal		4 ³⁰ AM	4 ³⁴ AM
5/18/91	9+26	Balling	Purdell	6 ¹³ AM	1 ⁰⁵ PM		5	Capt Lilly		5 ²⁰ AM	1110
	25+12	Blackston		1035	11 ⁰⁰ PM		3	Sgt Glass		5 ⁵⁰ AM	5 ⁵¹ AM
	12	Sgt Mass	Purdell	1235	1 ²⁰ PM	dispace for 5-20-91	11	Cohen	Smith	0610	
	12	Blackston	Marshall	1405	1600		21	Cohen		0610	
	26	Martin		1545	1550		4	Porter		0620	0650
	24	Self		1950	2000		6	G SPONCEA	Capt Lilly	0703	

5-16-91	26	Sgt. Tuzicka	- Vallan	1535	1732
	4	Sgt Carnaggio	Crampton	22 ²⁵	22 ³⁰
	9	Sgt Carnaggio		22 ²⁵	22 ³⁰
	26	Sgt Carnaggio		22 ²⁵	22 ³⁰
	5	Lt Marshall		22 ²⁵	22 ³⁰
	24	Lt Crampton		22 ³⁰	23 ⁰⁰
	27	Adams		22 ⁵⁵	22 ⁵⁶
5/17/91	5	Lt Marshall		1 ¹⁵ _{AM}	1 ¹⁷ _{AM}
	2			1 ²⁵ _{AM}	1 ²⁶
	9	Sgt Carnaggio		3 ¹⁵ _{AM}	5 ²⁰ _{AM}
	26			3 ¹⁵	5 ²⁰ _{AM}
	4			3 ¹⁵ _{AM}	4 ³⁰ _{AM}
	20	CDO Bellamy		3 ¹⁵ _{AM}	1847
	25	Self		3 ³⁰ _{AM}	3 ³⁵ _{AM}
	2	Off Oshie		3 ³⁰	4 ³⁰ _{AM}
	5			3 ³⁰	4 ³⁰ _{AM}
	6			3 ³⁰	4 ³⁰ _{AM}
	7			3 ³⁰	4 ³⁰ _{AM}
	25	Self	Crampton	4 ³⁰	4 ³⁵ _{AM}
	4	Preston	Crampton	5 ³⁰ _{AM}	5 ⁵⁵ _{AM}
Respect for 5-17-91	4	Cohen	Smith	0600	0758
	21	Cohen	Smith	0600	0759

6-3. Cont.

5-17-91	26	Dorn	Smith	0610	0614
	6	Porterado	Smith	0610	
	9	Sgt. Dorn	Smith	0614	0618
	25	Sgt. Dorn	Smith	0620	0638
	3	Legendre	Smith	0653	0758
	4	Legendre	Smith	0653	0758
	16	Legendre	Smith	0653	
	12	Blackiston	Smith	0658	0727
	25	Cohen	Smith	0658	0707
	9	Brinkley Thomas	Smith	0717	
	26	Blackiston Thomas	Smith	0717	
	13	Corcoran	Smith	0802	
	4	Corcoran	Smith	0802	0807
	18	Martin	Smith	0807	1234
	22	Martin	Smith	0807	1234
	23	Martin	Smith	0807	1234
	24	Martin	Smith	0807	1234
	10	Owens	Smith	0825	1054
	25	Nieberlin	Smith	0832	0925
	2	Passaro	Smith	0835	1835
	25	Cohen	Smith	1006	1018
	19	Nwobu	Smith	1104	

						DATE	Keying #	Issued TO	by	Time out	time in	
5/15/91	18	martin	Pindell	0810	1350	5/16/91	26	GUNTER	Crampton	4 ³⁰ AM	4 ⁴⁵ AM	
	24	martin		0810	1350		5	Capt Lilley		5 ²⁰ AM	1830	
	23	martin		0810	1350		6	Sgt Dufford		5 ³⁰ AM	1435	
	7	Parson		0840	1635		3	Lt Pindell		5 ⁴⁰ AM	555	
	27	martin		0847	0912		3	Sgt. Dufford		0605	0703	
	19	ZEBRON		0900	1120		9+26	Nurse Thomson		0705	1530	
	19	martin		1158	1350		4+17	Doubling		0805	0840 171555	
	16	Legendre		12 ⁰⁰ noon	2100		7	Parson		0825	1700	
	9+24	Nurse Thomson		12 ⁴⁵	1615		10	LEGENDRE		0830	1645	
	12	Bunch	Marshall	1430	1443		10	OWENS		0830	1645	
	24	Self		1630	1640		13	CORCORAN		0835	1558	
	20	Davis	Capt. Street	2015	2100		24	18	MARTIN		0843	1205
	12	Sgt. Blackiston	Capt. Street	2045	2100		2	PASARRO		0855	1820	
	2	Okehie	Crampton	23 ⁰⁰	1 ⁵⁰ AM		25	MCCARTHY		0950	11 ⁰⁰	
	3	Okehie	Crampton	23 ⁰⁰	1 ⁵⁰ AM		12	Sgt. BLACKISTON		1113	1220	
	5	Okehie		23 ⁰⁰	1 ⁵⁰ AM		25	MCCARTHY		1120	1201	
	6	Okehie		23 ⁰⁰	1 ⁵⁰ AM		11, 21 25	Sgt. BLACKISTON		1201 pm	1250	
	7	Okehie		23 ⁰⁰	1 ⁵⁰ AM		19	ZEBRON		1220	1340	
	19	Gunter		23 ⁰⁰	2415	5-16-91	25	mccarthy		1310	1658	
	4	Gunter		23 ⁰⁰	2415	5-16-91	19	Zebon	Vallain	1405	2145	
	26	Gunter		23 ⁰⁰	2415		12	Blackiston	Jaffin	1500	1800	
5/16/91	20	CDO Bellamy		2 ⁴⁵ AM	1840		25	Blackiston	Vallain	15 ⁰⁰	1730	

5/14/91	4	Gunter	Thomson	0400	0540	5/14	2	PASSARO	Purdell	1145	1530
	26	Gunter		0400	0540	5/14	6	LT. Spencer	Purdell	2 ⁰⁵ pm	1500
	9	Gunter		0400	0540		10	Owens	Mardell	1440	1815
	5	Lilly	Spencer	0525	22 ⁰⁵		2	Passaro		1700	1825
	25	Self	Thomson	0550	0600		24	Self		1825	1826
5-14-91	9	U Boeing	Capit Lilly	0710	1615		10	Owens		1900	2015
	26	Boeing		0710	1615		20	Bunch		2020	2045
	6	LT SPENCER		0710	1314		26	Martin		2115	2125
	4	SELF		0715	0725		4	Gunter	Crampton	22 ²⁵	22 ⁵⁵
	16	LEGENDRE		0728	1815		26	Gunter		22 ²⁵	22 ⁵⁵
	4	Dawling		0807	0810		9	Gunter		22 ³⁰	22 ⁵⁵
	17	Dawling		0807	1705		20	Gunter		23 ³⁰	24 ³⁰
	12	Sgt Epps		0810	1120	5/15	24	Self	Crampton	24 ¹⁰ AM	24 ³⁰
	21	Sgt Epps		0810	1120		20	CDO Porter	Crampton	2 ³⁰ AM	
	23	Sgt Epps		0810	1120		26	Gunter	Crampton	4 ³⁰ AM	4 ⁴⁵ AM
	11	Sgt Epps		0816	1120		3	Self	Crampton	5 ⁰⁰ AM	5 ¹⁵ AM
	22	Sgt Epps		0816	1120	5/15/91	5	Capt Lilly		5 ³⁰ AM	22 ⁰⁰
	25	SELF		0817	1010		6	CDO Porter	Purdell	0645	1900
	19	D ZERBRAN		0822	1700		17	Dawling		0803	0840
	7	M PARSONS		0822	1705		4	Dawling		0803	0830
	18	MARTIN		0845	1214		9	NURSE Thomas		0805	1140
	24	MARTIN		0845	1214		26	NURSE Thomas		0805	1140

5/11/91	3	Sell	Thomson	2215	2217	5-17-91	17	Dowling	Purdell	0815	1040
	20	Ntal		2340	0250		19	Denise		0820	1205
	20	Truystall		0250	1900		18-24	matie	Purdell	0820	2 ⁰⁰ PM
	3	Sell		0344	0345		10	Owens		0828	1610
	26	Ntal		0425	0500		25	m'Carthy		1045	1425
	24	Sell		0450	0455	5-13-91	9	Parsons		1157	1700
	2	Sell		0500	0502	5-13-91	9+24	Thomson	Purdell	0825	1530
	3	Sell	Thomson	0500	0502	5-13-91	7	Parsons	Purdell	0830	1635
Rep account for 5-12-91	4	McDaniel	Smith	0720	0734	5-13-91	5	Capt. Tulley	Purdell	1045	2200
	11	Preston	Smith	0720	0905	5-13-91	19	Wmabel	Marshall	1410	1615
	21	Preston	Smith	0720	0905		7	Dowling		1800	1802
	4	Sgt. Porter	Smith	1205	1220		7	Dowling		1832	1837
	24	Sell	Thomson	2210	2225		20	Bunch		2200	2040
	3	Sell		2225	2228		20	Battis		2105	2125
	20	Ntal		2330	0255		4	Marshall	Thomson	2200	2215
	20	Bellamy		0255	1900		26	Marshall		2200	2215
	26	Neal		0420	0500		24	Sell		2200	2245
	4	Neal		0420	0500		20	Sell		2215	2220
	5	Tulley	Thomson	0515	0758		26	Sell		2245	2248
5-13-91	16	Lynche	Purdell	0655			20	Whitner		2325	0300
	④ 26	Sgt. Egan	Purdell	0703	0730		2	Sell		2350	0100
	6	St. Spurr	Purdell	0710	1510		20	Bellamy	Thomson	0300	

5/9/91	4	Camaggio	Thomson	2250	2305
	26	Camaggio		2250	2305
	25	Camaggio		2325	0015
	20	Lilly		0012	0255
	4	Camaggio		0200	0330
	9	Camaggio		0200	0330
	26	Camaggio		0200	0500
	20	Tempstall		0255	1630
	5	Lilly		0500	2 ¹⁵
	6	Duffert		0525	1540
keep acct 5-10-91	26	Bolling	Smith	0709	1630
	9	Bolling		0709	1630
	4	Dowling		0742	0811
	17	Dowling		0742	2 ¹⁰
	18	Martin		0811	1545
	22	Martin		0811	1545
	23	Martin		0811	1545
	24	Martin		0811	1545
	25	Maloney		0831	2 ²⁰
	19	MAMINSKI	Camaggio	0900	1540
	27	RIDENOUR	Camaggio	0900	1330
5-10-91	7	Owens	Camaggio	0900	2 ¹⁰

5-10-91	27	LT SMITH	Capt. Kelly	0900	1400
	27	Capt. Street	Off. Green	14 ⁰⁰	2100
	10	Owens	Capt. Street	1440	1506
	7	Parsons	Capt. Street	1440	1500
	12	Lt. Blackinton	" "	1530	1700
	7	Parsons	" "	1530	1640
	20	Sgt. Ruzicka	Sgt. Vallin	2000	2030
	26	Sgt. Ruzicka	Sgt. Vallin	2100	2115
	25	Neal	Thomas	2200	2300
	20	Neal		2330	0245
	25	Neal		0228	0300
	20	Tempstall		0245	1900
	26	Jones	Thomson	0420	0530
keep acct for 5-11-91	9	Bolling	Smith	0710	1150
	26	Bolling	Smith	0710	1203
	3	Glass	Smith	0740	0743
	6	Porter co	Smith	0913	0915
	11	Preston	Smith	1007	1115
	21	Preston	Smith	1007	1115
	20	Winfield	Vallin	2000	2045
	26	Sgt. Ruzicka	Vallin	2105	2200
	25	Neal	Thomson	2200	2300

6-2 Cont.

5-8-91	23	Martin	Smith	1005	1400
	5	Street	Smith	1215	1236
	25	McCarthy	Smith	1236	1400
	11	Kraus	Smith	1330	1400
	21	Kraus	Smith	1330	1400
	12	Blackston	Marshall	1500	2140
	20	Cumbe		2000	2040
	21	Apt. Blackston	Capt. Street	2110	2140
	24	Valla	Valla	2125	2140
	25	Gallatt	Valla	2123	2140
	24	Self	Crampton	22 ³⁰	22 ³⁵
	20	Sgt Carneggie	Cramp	23 ³⁰	23 ⁴⁵
5/9/91	24	Self	Cramp	1 ³⁰ AM	1 ⁴⁵ AM
	20	COO Tunstall		2 ⁵⁰ AM	1845
	4	Sgt Carneggie		2 ⁵⁵ AM	3 ¹⁰
	9	Sgt Carneggie		2 ⁵⁵ AM	2140 3 ³⁰ AM
	26	Sgt Carneggie		2 ⁵⁵ AM	3 ⁴⁰ AM
	26			4 ³⁰ AM	4 ⁴⁵ AM
	5	SELF	Capt. Hutton	0520	2200
	6	SET DRIFT		0520	0600
Rep acct for 18 5-9-91	3	Sgt Drifort	Cramp	5 ²⁰ AM	5 ³¹ AM
	6	Porter COO	Smith	0600	1400

5-9-91	9	Thomas	Smith	0720	1525
	26	Thomas	Smith	0720	1525
	4	Garrett	Smith	0730	0736
	7	Parsons	Smith	0805	1725
	18	Martin	Smith	0837	1116
	24	Martin	Smith	0837	1116
	12	Epps	Smith	0900	0914
	27	Martin	Smith	1017	1116
	25	McCarthy	Smith	1017	1130
	11	Kraus	Smith	1106	1116
	10	Corcoran	Smith	1106	1635
	13	Corcoran	Smith	1106	1700
	24	MARTIN	Smith	1227	1245
	19	Mamunski	Smith	1241	2000
	24	Martin	Marshall	1435	1515
	17	Doung		1500	2145
	12	Blackston		1505	2145
	25	Blackston		1508	1515
	26	Blackston		1545	2145
	16	Doung	Vallair	2115	2145
	24	Self	Thomson	2200	2245
	27	Hickman	Thomson	2230	2345

					Mark	alder						
5-7-91	2	Passaro	Crampton	5 ³⁵ _{AM}	0938	5-8-91	6	Self	Crampton	24 ²⁰	24 ²¹ _{AM}	
	6	Porter ^{COO}	Smith	0616	1600	5-8-91	3	Sgt. Carnegie	}	2 ²⁰ _{AM}	2 ²¹ _{AM}	
	11	Kraus	Smith	0803	1020		20	COO Tunstall		2 ⁵⁰ _{AM}	1845	
	21	Kraus	Smith	0803	1020		3	Self		3 ⁰⁵ _{AM}	306 _{AM}	
	18	Martin	Smith	0803	1600		4	Sgt Hershan		3 ⁴⁵ _{AM}	4 ⁰⁰ _{AM}	
	24	Martin	Smith	0803	1600		9	Sgt Hershan		3 ⁴⁵ _{AM}	4 ⁰⁰ _{AM}	
	12	Batten	Smith	0820	0910		26	Sgt Hershan		3 ⁴⁵ _{AM}	4 ⁴⁵ _{AM}	
	22	Kraus	Smith	0826	0844		4	Preston		5 ⁴⁵ _{AM}	5 ⁴⁵	
	19	Maminski	Smith	0827	1900		6	Sgt Drifert		5 ⁴⁵ _{AM}	0600	
	27	Epps	Smith	0847	0912	sup acc for 6-5-8-91	6	COO Porter		Smith	0603	
	7	Parsons	Smith	0848	1600		4	Epps			0628	
	9	Bolling	Smith	0848	1600		11	Kraus		0729	0841	
	26	Bolling	Smith	0848	1640		21	Kraus		0729	0841	
	5	Cpt. Lilly	Smith	1020	1400		9	Bolling		0736	1600	
	25	Nieburien	Smith	1020	1300		26	Bolling		0736	1600	
	20	Sgt. Blackston	Capt. Street	2000	2050		17	Dowling		0808		
	25	Sgt. Buckton	Capt. Street	2000	2020		4	Dowling		0808	1050	
	20	Holland	Valla	2100	2115		7	Parsons		0809	1050	
	24	Self	Valla	2107	2119		18	Martin		0809	1400	
	28	Capt Street	Valla	2155	2200		24	Martin		0809	1400	
5-7-91	3	Crampton	Crampton	22 ²⁰ _{PM}	22 ²¹		19	Maminski		0824	1600	
	20	Self	"	23 ³⁰	23 ²⁵		2	Passaro	Smith	0836	1700	

5/6/91	5	Capt Kilby	Crampton	5 ³⁰	2200
	6	Sgt. Diefert	Crampton	5 ³⁰ AM	0600
5-6-91	24	Self	Capt Kilby	0630	0631
	6	Porter CDO	Smith	0641	1600
	3	Legendre	Smith	0655	0711
	16	Legendre	Smith	0655	1500
	4	Ridenour	Smith	0805	0809
	18	Martin	Smith	0809	1257
	24	Martin	Smith	0809	1257
	9	Thomas		0825	1695
	26	Thomas		0825	1645
	11	Kraus		0830	1003
	21	Kraus		0830	1003
	2	Passaro		0840	1118
	7	Parsons	Smith	0840	1630
	10	Owens	Smith	0840	1630
	23	Martin	Smith	0908	1257
	25	Niiberlein	Smith	1147	1300
	11	Kraus	Smith	1217	1257
	21	Kraus	Smith	1217	1257
	2	Passaro	Smith	1218	1630
	25	Kraus	Smith	1305	1326

6-2 Cont.

5-6-91	11	Kraus	Smith	1330	1400
	21	Kraus	Smith	1330	1400
	19	Maninski	Vallain	1502	1538
	25	Thompson	Crampton	22 ⁰⁵	22 ¹⁰
	24	Self	"	22 ¹⁰	22 ¹³
	5	Thomson	Thomson	2210	2211
	26	Thomson	Crampton	23 ¹⁵	23 ²⁰
	20	Self	Crampton	24 ⁰⁰	24 ²⁰
	4	Self	"	24 ¹⁵	24 ²⁰
	26	Self	"	24 ¹⁵	24 ²⁰
5/7/91	3	Sgt. Carnaggio	"	2 ⁰⁵ AM	2 ⁰⁷ AM
	20	CDO Tunstall	"	3 ⁰⁰ AM	6 ⁵⁰
	4	Sgt. Hershan	"	4 ¹⁰	0430
	9	Sgt. Hershan	"	4 ¹⁰	0430
	26	Sgt. Hershan	"	4 ¹⁰	OK
	5	Self	Thomson	0445	0450
	3	Self	Thomson	0450	0455
	3	Legendre		0455	0616
	4	"		0455	0901
	16	Legendre		0455	
	5	Capt. Kilby	Crampton	5 ²⁵ AM	0850
	6	Sgt. Diefert	"	5 ²⁵ AM	1600

5-3-91	24	Self	Marshall	1700	1701	5-4-91	5	M'Daniel	Lt Crampton	22 ³⁰	23 ³⁰
	20	Gamble		2000	2040		6	M'Daniel	"	22 ³⁰	23 ³⁰
	26	Blackiston		2115	2135		7	M'Daniel	"	22 ³⁰	23 ³⁰
	24	Self	Crampton	22 ¹⁵	22 ³⁰	5/5/91	5	Self	Crampton	1 ³⁰ _{AM}	1 ³¹ _{AM}
	4	Self		22 ¹⁵	22 ³⁰		3	Sgt Larnaggio	"	2 ¹⁰ _{AM}	2 ¹² _{AM}
	26	Self		22 ¹⁵	22 ³⁰		20	CDO Gausan	"	2 ³⁵ _{AM}	*dim*
	20	Sgt Clark		23 ⁵⁵ _{PM}	23 ⁵⁹		26	Sgt Clark	"	4 ¹⁵ _{AM}	5 ⁵⁹ _{AM}
5/4/91	24	Self		1 ¹⁰ _{AM}	1 ¹² _{AM}		3	Self	Crampton	4 ⁵² _{AM}	4 ⁵² _{AM}
	3	Sgt Larnaggio		2 ⁰² _{AM}	2 ⁰¹ _{AM}	5/5/91	6	M'Daniel	Pindell	0650	
	20	CDO Gausan		2 ³⁵ _{AM}	1830		7	Parson	Marshall	1635	1710
	4	Sgt Larnaggio		4 ⁰⁰ _{AM}	4 ¹⁵ _{AM}		20	Gamble		2000	2005
	24	Self		4 ³⁰ _{AM}	4 ³⁵ _{AM}		26	Blackiston		2100	2120
	26	Sgt Clark		4 ³⁰ _{AM}	4 ⁵⁰ _{AM}		24	Self	Crampton	22 ¹⁵	22 ³⁵
5-4-91	9+26	Bolting	H. Pindell	6 ²⁵ _{AM}	1425		3	Self	Crampton	22 ³⁰	22 ³⁵
5-4-91	2	Parson	H. Pindell	1203	1430		16,17	Sgt Clark		23 ³⁰	24 ³⁰
	25	Self	Marshall	1530	1545		13	Sgt Clark		23 ³⁰	24 ³⁰
	26	Blackiston		1610	1615		20	Sgt Clark		23 ³⁰	24 ³⁰
	12	Blackiston		1730	2145	5/6/91	2	Self	Crampton	1 ³⁵ _{AM}	1 ³⁶ _{AM}
	20	Blackiston		2015	2110		3	Sgt Larnaggio		1 ⁴⁰ _{AM}	1 ⁴² _{AM}
	26	Blackiston		2100	2122		20	CDO Tunstall		2 ⁵² _{AM}	
	26	Self	Crampton	21 ³⁰	21 ⁴⁰		4,3	Sgt Clark		3 ¹⁵ _{AM}	3 ²⁵ _{AM}
	24	Self		21 ³⁰	21 ⁴⁰		26	Sgt Clark		3 ¹⁵ _{AM}	OR

	7	Parson	Marshall	1550	1845	5-3-91	26	SET GLASS	Capt Hilly	0657	0709
	25	Pallett		1610	1725		9	BOWING		0710	1830
	25	self		1955	2005		26	BOWING		0710	1830
	20	Parson		2010	2100		4	CORCORAN		0813	
	17	Doutny		2015	22 ⁰⁰		13	CORCORAN		0813	1620
	26	Williams		2101	2125		7	PARSONS		0814	11 ^{AM}
	4	Dowling	Crampton	22 ⁰⁰	22 ¹⁵		19	MAMINSKI		0822	1610
	24	Self	Crampton	22 ¹⁵	22 ³⁰		17	DOWLING		0823	2045
	20	Sgt Clark	Crampton	22 ⁴⁰	23 ³⁵		16	LEGENDRE		0845	1720
5/3/91	2	Self	Crampton	1 ²⁵ AM	1 ²⁶ AM		18	MARTIN		0850	1310
	4	Sgt Neal	Crampton	2 ¹⁵ AM	2 ⁵⁵ AM		24	MARTIN		0850	1310
	26	Sgt Neal		2 ¹⁵ AM	4 ⁴⁵ AM		23	MARTIN		0850	1310
	9	Sgt Neal		2 ¹⁵ AM	2 ⁴⁰ AM		22	MARTIN		0850	1310
	20	CDU Gausson		2 ³⁰ AM			10	OWENS	Purdell	0927	1845
	11	Kraus		6 ⁰⁰ AM	11 ⁰⁰ AM		25	NEIBERLEIN		1013	1025
	21	Kraus		6 ⁰⁰ AM	11 ⁰⁰ AM		25	MCCARTHY		1035	1445
	5	Capt Hilly		5 ³⁰ AM	1400		7	PASSARO	Purdell	1325	1327
5-3-91	22	Kraus	Capt Hilly	0605	0850		21	Green	Marshall	1410	1420
	6	Sgt DREIFORT		0610	1520		7	Parson		1415	1515
	24	SELF		0627	0628		21	Green		1420	1425
	3	Sgt DREIFORT		0640	0643		12	Blackton		1433	1545
5-3-91	9	SET GLASS	Capt Hilly	0657	0709		7	Parson		1600	1720

DATE	KEY #	ISSUED TO	ISSUED BY	TIME OUT	TIME IN						
5-1-91	4	Sgt Dreifort	Cramp	0740	0743	5-1-91	24	Self	Crampton	22 ⁴⁵	22 ⁵⁰
5-1-91	4	DOWLING		0810	0825		26 9	Sgt Neal	"	23 ⁰⁰	24 ³⁰
	7	PARSONS		0815	1608	5-2-91	20	Rice	Crampton	24 ⁰⁰ AM	24 ³⁰ AM
	2	PASSARO		0837	1330		20	CO Lawson	Crampton	2 ³⁰ AM	1830
	24	Self		0850	0851		26	Sgt Neal	Crampton	4 ¹⁵ AM	4 ⁴⁵ AM
	9	BOWING		0945	1200		5	Capt Jolley	Crampton	5 ³⁰ AM	1440
	26	BOWING		0945	1200		6	Sgt Duffit	"	5 ³⁰ AM	1500
	17	DOWLING		0945	1608		11	Loken	"	6 ⁰⁰ AM	1 ⁵⁵ PM
	18	MARTIN		0947	1250		21	Loken	"	6 ⁰⁰ AM	1 ⁵⁵ PM
	24	MARTIN		0947	1250	5-2-91	4	Sgt Dreifort	Purdell	0615	0720
	19	MAMINSKI		1220	2100		9+26	Thomas	"	0720	1150
	9	THOMAS		1250	1615		18+24	MARTIN	"	1815	1 ⁰⁵ PM
	26	THOMAS		1250	1615		4	CORCORAN	"	0817	0820
	10	OWENS		1255	1330		13	CORCORAN	"	0817	1645
	10	Owens	Marshall	1425	1555		19	MAMINSKI	"	0825	1550
	2	Passaro		1500	1755		2	PASSARO	"	0832	1018
	16	Legendre		1555			14	LEGENDRE	"	0902	1635
	7	Parson		1620	1640		25	McCarthy	"	0945	1450
	20	Davis, M.		2000	2040		7	PARSON	"	1032	1520
	24	Self		2020	2025	5-2-91	9+26	THOMAS	"	1240	1530
	20	Willaris		2055	2100	5-2-91	2	PASSARO	"	1 ¹⁵ PM	1745
	3, 4	Legendre	Cramp	22 ³⁵ PM	23 ²⁰		10	Owens	Marshall	1540	1635

						w-2 Shift Cont.					
4-29-91	4	Legendre	Marshall	2115	2155	4-30-91	10	Owens	Smith	1127	1343
	24	Self	Crampton	22 ¹⁰	23 ⁰⁰		15	Martin	Smith	1142	1420
	2	M. Million	Crampton	22¹⁰	23⁰⁰		22	Martin	Smith	1142	1420
	20	Hershem	Crampton	23 ⁰⁰	23 ³⁰		18	Martin	Smith	1142	1420
4/30/91	20	CDO Coasman	Crampton	2 ³⁰ AM	1845		10	Owens	Marshall	1445	1930
	4, 9, 26	Sgt Neal	Crampton	4 ¹⁵ AM	4 ⁴⁵ AM		24	Self		1615	1616
-Resp acct for 4/30/91	11	Cohen	Smith	0600	1355		28	Self		1640	1645
	21	Cohen	Smith	0600	1355		20	Hatcher		2005	2050
	6	Porter CDO	Smith	0623	1440		26	Williams		2100	2120
	4	Sgt. Porter	Smith	0705	0752		24	Self	Crampton	22 ¹⁵	23 ²⁵
	9	Sgt. Porter	Smith	0705	0752		X 21	Sgt Clark	"	22 ¹⁵	23 ²⁰
	26	Sgt. Porter	Smith	0705	0752	5-1-91	20	Self	Crampton	24 ⁰⁰	24 ¹⁵
	9	Bolling	Smith	0752	1220		5	Self	Crampton	2 ⁰⁰ AM	2 ⁰⁵ AM
	26	Bolling	Smith	0755	1220		20	CDO Coasman	Crampton	2 ³⁰ AM	1845
	15	Sgt Porter	Smith	0755	0830		9	Sgt Neal		4 ¹⁵ AM	4 ⁴⁰ AM
	22	Sgt. Porter	Smith	0755	0830		4	Sgt Neal		4 ¹⁵ AM	4 ⁴⁰ AM
	7	Parsons	Smith	0809	1645		26	Sgt Neal		4 ¹⁵ AM	4 ⁴⁰ AM
	4	Parsons	Smith	0822	0908		5	Capt Lilly	Crampton	5 ²⁰ AM	1355
	19	Maminski	Smith	0823	1550		11	Cohen	Crampton	5 ⁵⁵ AM	/
	25	Neuberken	Smith	0833	0928		21	Cohen	Crampton	5 ⁵⁵ AM	/
	24	Porter	Smith	09.3	0928	5-1-91	9	Bowng	Capt Lilly	0718	0815
	24	Martin	Smith	0928	1420		26	Bowng	Capt Lilly	0718	0815

Cell #2 333

6-13-91

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10-6 Supervisor

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2230

1545 Received Family Leave Papers for inmates David Lowery #113-705 and Nathaniel Rowe #109-265. Leave Papers placed in file cabinet.

1555 Yard closed for feedup.

1600 Feed up in progress.

1730 Security count in progress.

1800 Security count is clear. (411)

1805 Yard is open.

1830 Visiting Room open for guests.

1930 Security rounds made.

2030 Officer Mc Davis reported that he found Door #40 (Dietary Storage Room) open.

2100 Visiting Room + Yard closed.

2125 Contacted Mr. Dombrosky P.A. at MHC Hospital about inmate Clay Roscoe 194-704. Per Mr. Dombrosky he will see the inmate at MHC.

2130 Security count in progress.

2240 Informal that Mr. Lawson took his office key home. Mr. Lawson residence was contacted but there was no answer. Incident report was submitted.

2050 Mr. Lawson returned his office key. Incident report was conciled. Security count clear (411)

2200 Received inmate Stephen Ray # 215-230 from MRCC. Commitment placed in file cabinet. All the files placed in their assigned area.

10-6 Shift 6/13/91

2200

Lt Crompton relieved Lt Marshall of duty, Keys accounted for, Log reviewed. re

Clay Roscoe 194704 escorted to MHC Hospital with Sgt Hershman, commissary still open, Officer Oshie observing. re

Per BIMC

Sgt Hershman has been taken off Modified duty this date. (Lt Cramp)

Nathaniel Rowe 109265 - furlough money \$55.00 placed in Supervisor's file. re Commissary Officer out. re

set 11. ... with ...

The Following Restricted Keys Will be Issued to Designated Individuals:

E'le #3

<u>DOOR #</u>	<u>RING #</u>	<u>LOCATION</u>	<u>ISSUED TO:</u>
11	1	Lieutenants Office	
*12	2	Facility Administrator	Captains
13	3	Clerical	
15	4	Base Files	
*19	5	Captains	Facility Administrator
20	6	Dietary Supv./Admin Sgt.	
*21	7	Classification Supervisor	Captains; Class. Counselors
*30	8	Commissary Storage	C.S.O.'s; Mary Schaffle
31	9	Medical	Sergeants
*34	19	Commissary	C.S.O.'s; Mary Schaffle
*40	20	Dietary Storage	C.S.O.'s
*14	24	Main Property	C.S.O.'s; Mary Schaffle; Cpts.; Lieutenants ONLY
1H2	10	Classification Counselor	
1H3	11	Sanitation	
1H4	21	Dirty Linen	Sergeants
1H18	12	Holding Room	CO Staff
2H2	13	Classification Counselor	
2H3	14	Recreation	
*2H18	15	Inmate Clothing Storage	C.S.O.'s; Mary Schaffle
3H2	16	Classification Counselor	
3H3	17	Classification Counselor	
3H18	18	Property Packing	
*34	19	Commissary	C.S.O.'s; Mary Schaffle
1H4	21	Dirty Linen	Sergeants
2H4	22	Inmate Clothing	C.S.O.'s; Mary Schaffle
3H4	23	Property Packing	
16, 17	25	Electrical/Mech. Access	Maintenance - NO INMATES ALLOWED IN THIS AREA!!
	27	V-56	
	28	EMERGENCY BOX @ CAPT OFFIC	

All supervisors (Lts. and Cpts.) are designated access to all areas except where noted by *

Facility Administrator is designated access to all areas.

Sergeants are designated, as noted, in other areas.

Under emergency situations, contact the Captains or Facility Administrator.

For approval however, if contact cannot be made, use sound judgement and document the incident in writing to the Facility Administrator.

Exec 74

6-13-91

2-10

- 1545 Received Family Leave Papers for inmates David Lowery #113-405 and Nathaniel Rowe #109-265. Leave Papers placed in file cabinet.
- 1555 Yard closed for feed up.
- 1600 Feed up in progress.
- 1730 Security count in progress.
- 1800 Security count is clear. (411)
- 1805 Yard is open.
- 1830 Visiting Room open for guests.
- 1930 Security rounds made.
- 2030 Officer M. Davis reported that he found Door #40 (Dietary Storage Room) open.
- 2100 Visiting Room + Yard closed.
- 2125 Contacted Mr. Dombrosky P.A. at MHC Hospital about inmate Clay Roscoe 194-704. Per Mr. Dombrosky he will see the inmate at MHC.
- 2130 Security count in progress.
- 2040 Informed that Mr. Lawson took his office key home. Mr. Lawson residence was contacted but there was no answer. Incident report was submitted.
- 2050 Mr. Lawson returned his office key. Incident report was conc'd. Security count clear (411)
- 2200 Received inmate Stephen Ray # 215-230 from MRCC. Commitment placed in file cabinet. All the files placed in their assigned area.

10-6 Shift

6/13/91

1200

Lt Crampton relieved Lt Marshall of duty, Keys accounted for, Log reviewed. re
 Ch. Roscoe 194704 escorted to MHC Hospital with Sgt Herdman,

MPT*

STATE OF MARYLAND
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES
DIVISION OF CORRECTION

WILLIAM DONALD SCHAEFER
GOVERNOR
MELVIN A. STEINBERG
LT. GOVERNOR
BISHOP L. ROBINSON
SECRETARY

F R O M	JESSUP PRE-RELEASE UNIT P.O. BOX 536 JESSUP, MARYLAND 20794	AGENCY NAME & ADDRESS
	<i>Daniel Thomson</i> LT DANIEL L. THOMSON, 10-6 Shift	NAME & TITLE
	Lost Supervisor Key Set	SUBJECT

RICHARD A. LANHAM, Sr.
COMMISSIONER
MERRY COPLIN
DEPUTY COMMISSIONER
THOMAS R. CORCORAN
WARDEN
THOMAS PASSARO
FACILITY ADMINISTRATOR

To: Mr. Passaro, Facility Administrator

Date: 24 May 1991

Sir:

On 05/23/91 at approximately 2300 hrs I discovered that I was missing the Supervisory Key Set. After approximately 15 minutes of searching by both SGT Clark and I, I contacted CPT Lilley for guidance. I had thought that I may have locked them into one of the file cabinets in the supervisor's office.

At CPT Lilley's direction, I broke into the file cabinet and discovered that the missing keys were not there. I again contacted CPT Lilley, who directed that I contact BCF Maintenance to see if they could be of assistance. I called the pager number for the on-call maintenance staff and Mr. Mulligan responded. He advised that he could be of no assistance and to call a 24-hour locksmith.

At this time I again contacted CPT Lilley and advised her of Mr. Mulligan's response. She instructed me to wait while she got authorization for the locksmith and to continue searching.

The night time sanitation crew were gathered into the lobby and shaken down, without result.

After approximately one hour had passed without finding the keys, the sanitation crew was strip searched and returned to their housing units. At this time the support building was thoroughly searched again.

At approximately 0030 hrs, a search of the area immediately in front of and around the vehicle gate was organized because it was the last place I had been before I discovered the keys missing. Almost immediately, Officer Irving discovered the keys laying on the ground. It is assumed that the keys somehow came loose from my key holder while I was giving Officer Rice some materials requested by MAJ Helmcamp, BCF.

cc: file

*Please note, there is no way to get
to the spare keys if you leave the
Supervisors out,*

STATE OF MARYLAND
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES
DIVISION OF CORRECTION

MA #2

WILLIAM DONALD SCHAEFER
GOVERNOR

MELVIN A. STEINBERG
LT. GOVERNOR

BISHOP L. ROBINSON
SECRETARY

F R O M	JESSUP PRE-RELEASE UNIT P.O. BOX 536 JESSUP, MARYLAND 20794	AGENCY NAME & ADDRESS
	<i>SGT Clark</i> SGT MYRICK CLARK, CO III	NAME & TITLE
	Misplaced Keys	SUBJECT

RICHARD A. LANHAM, Sr.
COMMISSIONER
MERRY COPLIN
DEPUTY COMMISSIONER
THOMAS R. CORCORAN
WARDEN
THOMAS PASSARO
FACILITY ADMINISTRATOR

To: Mr. Passaro

Date: 05/25/91

Sir:

At approximately 11:00 PM on 05/23/91, LT Thomson informed me that he had misplaced his supervisory key set. Upon this notice the night time sanitation crew were ordered to the lobby area until further notice. Each of the sanitation crew was frisk searched. The support building was searched, including all trash cans.

At approximately 12:00 AM Officer Beckett and I strip searched the night sanitation crew. Nothing was found.

At approximately 12:30 AM in a last effort to recover the keys, Officers Irving, Okehie, Beckett, SGT Hershan and I searched the outside front area. After moments into the search, Officer Irving found the keys by the front vehicle entrance gate.

My assessment of this incident is as follows:

During the process of transporting Inmate Ronald Drain, #208-276, ticket #189-91 to BCF LT Thomson had gone outside the front gate to pass on to the transporting officers (K. Rice and K. Beckett) information requested by MAJ Helmcamp. While outside the gate the keys apparently worked their way loose from LT Thomson's key holder.

cc: LT Thomson
file

STATE OF MARYLAND
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES
DIVISION OF CORRECTION

Mgt #3

WILLIAM DONALD SCHAEFER
GOVERNOR
MELVIN A. STEINBERG
LT. GOVERNOR
BISHOP L. ROBINSON
SECRETARY

F R O M	JESSUP PRE-RELEASE UNIT P.O. BOX 536 JESSUP, MARYLAND 20794	AGENCY NAME & ADDRESS
	Thomas M. Passaro <i>T M Passaro</i> Facility Administrator	NAME & TITLE
	Lieutenant Thomson - 3 day Suspension	SUBJECT

Richard A. Lanham, S
COMMISSIONER
Merry Coplin
DEPUTY COMMISSIONER
THOMAS R. CORCORAN
WARDEN
THOMAS PASSARO
FACILITY ADMINISTRATOR

To: Matter of Record

Date: June 3, 1991

This letter will serve as written notice of disciplinary action taken against Lieutenant Daniel Thomson.

Specifically, on May 23, 1991, Lieutenant Thomson, 10-6 Shift Commander was responsible for controlling the Supervisor's key ring and issuing the restricted keys from the Supervisor's box to Officers assigned to the 10-6 shift as needed.

At approximately 2300 hours, Lieutenant Thomson, discovered that the keys were missing and he could not account for them. After approximately one and one half hours Officer M. Irving located the keys on the ground, outside the unit.

On May 26, 1991, at approximately 0600 hours, a conference was held. In attendance were Lieutenant Thomson and Mr. Passaro, Facility Administrator. Mr. Passaro informed Lieutenant Thomson that he was in violation of DCR 50-2, #19 Performance of Duties, that this was his third violation of DCR 50-2 and in accordance with DCR 50-6, Section VI, C.3. Lieutenant Thomson, would be receiving a three day suspension for his actions.

Lieutenant Thomson was informed that Assistant Warden Filbert was consulted prior to this action.

CHRONOLOGY OF EVENTS:

- May 23, 1991 - worked - day of incident
- May 24, 1991 - worked
- May 25, 1991 - worked
- May 26, 1991 - worked - conference held
- May 27, 1991 - worked
- May 28, 1991 - suspension - day one
- May 29, 1991 - suspension - day two
- May 30, 1991 - work off
- May 31, 1991 - work off
- June 1, 1991 - work off
- June 2, 1991 - work off
- June 3, 1991 - suspension - day three
- June 4, 1991 - return to duty - regularly scheduled day

June 3, 1991

A review of Lieutenant Thomson's file indicates the following actions:

- Lieutenant Thomson began duty at JPRU on November 2, 1990
- January 7, 1991 - Reprimand/Violation DCR 50-2, #4
- May 7, 1991, Suspension/Violation DCR 50-2, #19, a,b - 1 day
- May 28, 1991 - Suspension/Violation DCR 50-2 #19, a - 3 days current

Thank you.

TMP:SS:afr

cc: William O. Filbert, Jr.

~~Steve Lorenzet~~
Payroll Department
Personnel File
Unit File
Lieutenant Thomson
File

Daniel L Thomson 6/5/91

SIGNATURE

DATE

SIGNATURE DOES NOT IMPLY AGREEMENT OR
RECEIPT; ONLY INDICATES RECEIPT.

STATE OF MARYLAND
DEPARTMENT OF PERSONNEL



William Donald Schaefer
Governor

Hilda E. Ford
Secretary
Donna B. Price
Deputy Secretary

301 West Preston Street Baltimore, Maryland 21201-2370
Area Code 301 • 225- 4477

November 8, 1991

Lieutenant Daniel L. Thomson
Route 6, Box 418
Salisbury, Maryland 21801

Re: Case #91-DOP-CORC-02-1194

Dear Lieutenant Thomson:

Enclosed please find the Order of the Secretary in the above referenced matter.

This is to advise you that in accordance with Chapter 1100, Rule 4-B, Maryland Rules, Annotated Code of Maryland, you have thirty days from the date of this letter in which to file an appeal in the appropriate Circuit Court.

Sincerely,

Margaret T. Embardino
Margaret T. Embardino
Assistant to the Secretary

MTE:dj

Enclosure

cc: Bishop Robinson
John Sybert
Steven Lorenzet
John Udris
Ricardo Silva
Madeline Lewis
Jeanne M. Zarnoch

IN THE MATTER OF AN APPEAL OF : BEFORE JAMES KLIMA
A DISCIPLINARY SUSPENSION :
IMPOSED UPON DANIEL THOMSON : ADMINISTRATIVE LAW JUDGE
CORRECTIONAL OFFICER IV : OFFICE OF
BY THE JESSUP PRE-RELEASE UNIT/ : ADMINISTRATIVE HEARINGS
DEPARTMENT OF PUBLIC :
SAFETY & CORRECTIONAL SERVICES : CASE #91-DOP-CORC-02-1194

ORDER OF THE SECRETARY

November 8, 1991

The attached Proposal for Decision, including findings of fact and conclusions of law, was served upon the parties on August 23, 1991.

In a letter dated September 9, 1991 from his representative, Mr. Thomson filed exceptions to the proposed decision with the Secretary of Personnel. On October 7, 1991, an exceptions hearing was held by this designee of the Secretary. Argument was presented that day by Mr. Ricardo Silva, Director of Field Services, Maryland Correctional Union, who represented Mr. Thomson and by Mr. Steven Lorenzet, Personnel Officer for the Pre-Release System, who appeared on behalf of the Jessup Pre-Release Unit.

Having heard oral argument and having reviewed the record in this case, I adopt all of the attached proposed findings of fact and all of the attached proposed conclusions of law as final findings and conclusions.

Mr. Silva filed exceptions to the proposed decision for three basic reasons:

- 1) The agency violated Code of Maryland Regulation (COMAR) 06.01.01.48 by failing to provide Mr.

Thomson with a copy of the suspension form until well after the suspension was imposed. Mr. Silva explained that he made a motion to dismiss the suspension on this basis, but the Administrative Law Judge considered it inconsequential.

- 2) The Administrative Law Judge ignored Division of Correction Regulation (DCR) 20-2 which requires that employees receive correspondence at least ten days after an incident. Mr. Silva argued that management's failure to comply with this regulation violated Mr. Thomson's appeal rights.
- 3) With regard to the merits of the case, the Administrative Law Judge failed to consider Mr. Thomson's contention that his key ring malfunctioned. As soon as he lost the keys, Mr. Thomson took steps to secure the facility. Consequently, no breach of security occurred.

For these reasons, Mr. Silva requested that the instant suspension be overturned and that Mr. Thomson be reimbursed for all back pay and benefits due him.

I have carefully evaluated the written and oral arguments proffered by Mr. Silva on behalf of Mr. Thomson. However, I conclude that the Administrative Law Judge considered all of the evidence presented to him before deciding that the instant suspension was warranted and should be upheld.

COMAR 06.01.01.46B specifies:

- B. Written Notice; Form. The appointing authority shall file with the Secretary the original

written notice of the suspension on a form provided by the Secretary. The notice shall state the reasons for and duration of the suspension, and shall inform the employee of the appropriate appeal route. The appointing authority shall:

- (1) Give a copy of the notice to the suspended employee; or
- (2) Mail a copy of the notice to the last known address of the employee.

The record reveals that a copy of the suspension form was mailed to Mr. Thomson on August 1, 1991, which was after the May 28 suspension and the July 31 hearing. It also reflects that Mr. Thomson received a copy of Mr. Passaro's matter of record on the May 23 incident on June 5, 1991 and that he appealed the suspension to the Office of Administrative Hearings in a letter dated June 6. Consequently, I conclude with the Administrative Law Judge that Mr. Thomson was aware of the reasons for and duration of the suspension, as well as the appropriate appeal route. I do not believe that the agency violated COMAR .46B as Mr. Silva alleged.

Mr. Silva also contended that the agency abridged Mr. Thomson's appeal rights in contravention of DCR 20-2. There is no indication in the record that DCR 20-2 was entered into evidence at the hearing. It is, therefore, difficult to determine what, if any, rights Mr. Thomson was denied and what relevance the regulation has to the instant case.

As to Mr. Silva's assertions about Mr. Thomson's inadvertent loss of the keys, the Administrative Law Judge addressed this issue on pages five and six of the proposal.

I find no error of fact or law that would warrant rescinding

the action recommended by the Administrative Law Judge. I adopt the proposal to uphold Mr. Thomson's suspension.

ORDER

IT, THEREFORE, IS ORDERED that the three day suspension imposed upon Mr. Daniel Thomson, Correctional Officer IV at the Jessup Pre-Release Unit on May 28, 1991, be sustained.

Margaret T. Embardino
MARGARET T. EMBARDINO
SECRETARY OF PERSONNEL DESIGNEE

DISTRIBUTION:

Bishop Robinson
John Sybert
Steven Lorenzet
John Udris
Ricardo Silva
Daniel L. Thomson
Madeline Lewis
Jeanne M. Zarnoch

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IN THE MATTER OF
AN APPEAL

FILED BY DANIEL THOMSON
CORRECTIONAL OFFICER IV

DEPARTMENT OF PUBLIC
SAFETY AND CORRECTIONAL
SERVICES

* BEFORE JAMES P. KLIMA, JR.
*
* ADMINISTRATIVE LAW JUDGE
*
* OF THE OFFICE OF
*
* ADMINISTRATIVE HEARINGS
*
* CASE 91-DOP-COCR-002-1194
*
*

* * * * *

JULY 31, 1991

TRANSCRIPT OF PROCEEDINGS

PRESENT:

RICARDO R. SILVA,
On Behalf of the Employee

STEVE LORENZET,
On Behalf of Management

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EXHIBITS

MANAGEMENT EXHIBITS:

#1 - 5/24/91 memo from Thomson to Passaro	Page 20
#2 - 5/25/91 memo from Myrick to Passaro	Page 20
#3 - 6/3/91 Matter of Record (Passaro)	Page 20

EMPLOYEE EXHIBITS:

#1 - May, 1991 security cabinet key log	Page 50
#2 - 15 pages of Supervisor's journal	Page 52
#3 - Authorized recipients of security keys	Page 53
#4 - Page 333 of Supervisor's journal	Page 54

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NOTE

Within this transcript of proceedings, some of the names and/or medical terms are spelled phonetically inasmuch as exhibits, files, and support documentation were not made available to us for reference.

1 JAMES KLIMA:

2 This hearing is for a disciplinary suspension for
3 Lieutenant Daniel L. Thomson. My name is James Klima. I am
4 the Administrative Law Judge assigned to this matter. We
5 are at the Office of Administrative Hearings on today,
6 July 31, 1991 at 1:00 p.m.

7 Lieutenant Thomson is here and is represented by
8 Ricardo Silva of the Maryland Correctional Union. Is that
9 correct?

10 RICARDO SILVA:

11 That is right.

12 JAMES KLIMA:

13 And Management is represented by Steven Lorenzet,
14 Personnel Officer, Pre-Release System.

15 In the appeal of the disciplinary suspension
16 Management has the burden of showing that the suspension is
17 justified. Are there any preliminary matters?

18 RICARDO SILVA:

19 Yes Your Honor. First can I have a copy of the
20 disciplinary suspension?

21 STEVEN LORENZET:

22 It hasn't been processed.

23 RICARDO SILVA:

1 It has not been processed yet?

2 STEVEN LORENZET:

3 No, due to a staff shortage with one vacancy and
4 another person out sick we got a little behind. But we will
5 do it very soon.

6 JAMES KLIMA:

7 Okay. This is an appeal of a suspension which was
8 imposed on Lieutenant Thomson on May 28th, May 29th and
9 June 3, 1991 for a violation of DCR 50-2. Do you have
10 opening statements?

11 RICARDO SILVA:

12 Your Honor I have preliminary matters.

13 JAMES KLIMA:

14 Okay.

15 RICARDO SILVA:

16 I don't have COMAR with me. But I move for a
17 dismissal in this case in that the agency is required to
18 submit to the employee a copy of the disciplinary form that
19 is provided by the Secretary of Personnel which outlines the
20 specific charges that the employee has been charged with.
21 Without that it is very, not impossible, prejudicial to our
22 presentation if we do not know the specifics as to the
23 charge.

1 JAMES KLIMA:

2 Are you saying that Lieutenant Thomson doesn't
3 know the specifics that have been charges?

4 RICARDO SILVA:

5 Well first and foremost, the agency is required to
6 file that disciplinary suspension from with the employee.
7 Now we know why we are here but I think it is incumbent upon
8 the agency to give him what they are required to give him
9 according to COMAR Regulations.

10 JAMES KLIMA:

11 All right. I don't have my COMAR with me either.
12 I am going to take your motion under advisement and will
13 consider it. But I will not dismiss the procedure we are
14 here gathered for and will hold the hearing. But I will see
15 if your motion for dismissal does have merit.

16 RICARDO SILVA:

17 I believe it is 06.01.01.46 Your Honor.

18 Secondly, on July 11, 1991 Mr. Thomson sent a
19 letter to the Office of Administrative Hearings requesting
20 the presence of Captain Deborah Lilley who I understand is
21 here. The 2 Sergeants, Nick Hurshan and Myrick Clark are
22 not present. I would like to have an explanation as to
23 whether or not they received a summons. I think it was sent

1 out and why are they not here.

2 JAMES KLIMA:

3 I haven't any idea. Does Management?

4 STEVEN LORENZET:

5 We never received the summons. I knew that
6 Captain Lilley was summonsed even though I didn't have paper
7 I told her to be here. I did not know until today that
8 Sergeants Hurshan and Clark were supposed to be here. So
9 without paper to tell me I took no action. I have been told
10 verbally from (inaudible) about Captain Lilley's required
11 presence. So even without the paper I just told her to be
12 here.

13 JAMES KLIMA:

14 I do have in the file of the case copies of
15 subpoenas to Sergeant Clark, Captain Lilley and Sergeant
16 Hurshan. Captain Lilley did you receive a copy of this?

17 DEBORAH LILLEY:

18 No I did not.

19 JAMES KLIMA:

20 You did not.

21 RICARDO SILVA:

22 I am not questioning that they went out.

23 JAMES KLIMA:

1 Are these people crucial to your case?

2 RICARDO SILVA:

3 They could be Your Honor. They could be.

4 JAMES KLIMA:

5 I guess would Management have any problem with
6 postponing this hearing?

7 RICARDO SILVA:

8 I don't want to postpone it. I would like to know
9 why they were not -- I assume that the Office of
10 Administrative Hearings sent it to the Personnel Office.

11 JAMES KLIMA:

12 I would assume that too. But I don't know.

13 STEVEN LORENZET:

14 I received the subpoenas and send a copy over to
15 the unit (inaudible).

16 JAMES KLIMA:

17 When did you receive the subpoenas?

18 STEVEN LORENZET:

19 Somewhere around July 23rd.

20 JAMES KLIMA:

21 Did you send it to Mr. Passaro?

22 STEVEN LORENZET:

23 Yes.

1 JAMES KLIMA:

2 What day was that sent to him?

3 STEVEN LORENZET:

4 Excuse me. I can't even read by own writing.
5 July 22nd.

6 JAMES KLIMA:

7 This is a memorandum here in the file dated July
8 18th, subject subpoenaes. It says please distribute the
9 attached subpoenaes. The thing that bothers me is that
10 there are 2 copies of these subpoenaes. Maybe one of them
11 is supposed to go out.

12 RICARDO SILVA:

13 Well we do know that Mr. Lorenzet, Personnel
14 Officer of the Maryland Pre-Release System, did receive
15 them. It is a little odd. Mr. Lorenzet you said that on
16 July 23rd you received in your office.

17 STEVEN LORENZET:

18 I was mistaken, July 22nd.

19 RICARDO SILVA:

20 You received them July 22nd and what did you do
21 with them?

22 STEVEN LORENZET:

23 I made a copy of them and sent them over Mr.

1 Passaro.

2 RICARDO SILVA:

3 On 7/23?

4 STEVEN LORENZET:

5 On 7/22.

6 RICARDO SILVA:

7 The same day?

8 STEVEN LORENZET:

9 Yes.

10 RICARDO SILVA:

11 Mr. Passaro I assume you didn't receive the
12 copies.

13 THOMAS PASSARO:

14 Correct.

15 JAMES KLIMA:

16 They were not subpoenaed them obviously.

17 RICARDO SILVA:

18 Well they were subpoenaed but they were not
19 delivered by the person.

20 JAMES KLIMA:

21 Then the person did not know they were subpoenaed.

22 RICARDO SILVA:

23 Well Your Honor normal course of business with the

1 Department of Personnel is that once it goes out it is the
2 responsibility of the Personnel Officer to make sure that
3 those subpoenas are handed to those persons.

4 So I ask for -- and this is an additional motion
5 for dismissal in that the Personnel office or someone in the
6 Maryland Pre-Release System did not deliver the appropriate
7 summonses for these people. That will be prejudicial to our
8 case but we are ready to proceed. If we ask for a
9 continuance we reserve that right.

10 JAMES KLIMA:

11 Well you tell me if you have to ask for a
12 continuance. If these people are critical to your case I
13 would say that we would have to.

14 STEVEN LORENZET:

15 (Inaudible) aside where does your part come into
16 in notifying the people that you wanted to be here?

17 RICARDO SILVA:

18 We are only required to submit the request which
19 we did on July 22th to the Office of Administrative
20 Hearings. Sometimes they are even hostile witnesses and we
21 don't necessarily talk to people.

22 STEVEN LORENZET:

23 My normal method of operation is we provide

1 personnel for 10 different locations throughout the State.
2 I am there and when I get the notices that come in that way
3 I make copies and send them out to the units. Normally they
4 get distributed. Sometimes there is a mess up like this
5 case.

6 JAMES KLIMA:

7 Well if you want to get a fair hearing with the
8 witnesses that he thinks is crucial to his side I don't know
9 how we can proceed.

10 STEVEN LORENZET:

11 There is a report from Sergeant Clark that could
12 be introduced. That is the only thing I see. I don't see
13 anything from Sergeant Hurshan that would require him to be
14 here.

15 RICARDO SILVA:

16 Your Honor we will go through the hearing but we
17 reserve the right just in case to call these witnesses if we
18 deem it is crucial.

19 JAMES KLIMA:

20 Okay. Any more preliminary matters?

21 RICARDO SILVA:

22 Just a motion for sequestration of the witness.

23 JAMES KLIMA:

1 Not many people to sequester.

2 RICARDO SILVA:

3 I will just make the motion any way.

4 JAMES KLIMA:

5 Is there any objection to that? It is a perfectly
6 reasonable motion.

7 STEVEN LORENZET:

8 Sequestering the...

9 RICARDO SILVA:

10 Just in case for the record when you have to
11 continue with the case. Just for the record.

12 JAMES KLIMA:

13 Do you have any objection to that?

14 STEVEN LORENZET:

15 No.

16 JAMES KLIMA:

17 All right. We will sequester the witness then.
18 Who is going to testify first?

19 STEVEN LORENZET:

20 Mr. Passaro might as well stay here.

21 RICARDO SILVA:

22 Just for the record Your Honor.

23 JAMES KLIMA:

1 Any opening statements?

2 STEVEN LORENZET:

3 No.

4 RICARDO SILVA:

5 I do Your Honor.

6 JAMES KLIMA:

7 Mr. Silva go ahead.

8 RICARDO SILVA:

9 Your Honor you will see before you today a
10 situation of a very diligent employee, Mr. Daniel Thomson a
11 Lieutenant, who is in a supervisory position at JPRU who on
12 the day in question was doing his job. Unfortunately there
13 was a mechanical problem of his belt. Security belt that he
14 is wearing today that is acquiesced and approved as proper
15 equipment by the Division of Correction. You will see that
16 it was a mechanical flaw that occurred and that Management
17 has been arbitrary and capricious in giving this employee a
18 suspension on negligence. You will see that at no time was
19 Lieutenant Thomson negligent but that a mechanical defect
20 occurred and an unfortunate situation occurred.

21 As soon as he found out what occurred he
22 immediately took steps to find the missing key. Thank you
23 Your Honor.

1 JAMES KLIMA:

2 Okay.

3 STEVEN LORENZET:

4 Mr. Passaro.

5 THOMAS PASSARO

6 JAMES KLIMA:

7 Have a seat please. Would you raise your
8 right-hand. Do you solemnly swear or affirm under the
9 penalty of perjury that the testimony you will give at this
10 hearing will be the whole truth and nothing but the truth?

11 THOMAS PASSARO:

12 I do.

13 JAMES KLIMA:

14 Would you state your name and position with the
15 State please.

16 THOMAS PASSARO:

17 Thomas Passaro. I am the Facility Administrator
18 of the Jessup Pre-Release Unit.

19 JAMES KLIMA:

20 Pardon. What is it?

21 THOMAS PASSARO:

22 The Facility Administrator of the Jessup
23 Pre-Release Unit.

1 JAMES KLIMA:

2 Thank you. How long have you been with the State?

3 THOMAS PASSARO:

4 Two (2) years and some days.

5 JAMES KLIMA:

6 Thank you. Mr. Lorenzet.

7 STEVEN LORENZET:

8 On may 23rd did something unusual happen
9 concerning Lieutenant Thomson?

10 THOMAS PASSARO:

11 Yes sir.

12 STEVEN LORENZET:

13 Did Sergeant Myrick Clark report to you?

14 THOMAS PASSARO:

15 No. Lieutenant Thomson -- no. Captain Deborah
16 Lilley called me at home at night. Sergeant Clark did not
17 contact me.

18 STEVEN LORENZET:

19 What did Captain Lilley have to say?

20 THOMAS PASSARO:

21 Captain Lilley told me that she had received a
22 call from Lieutenant Thomson who was the Supervisor during
23 the 10:00 to 6:00 shift that night. Some of his keys were

1 missing off his belt. There was a search in progress to try
2 to find them. It was the key ring that was lost. Among
3 other things it had on it was the key that would have gotten
4 us into the security box where our other keys and that a
5 search was in place trying to find it. They were trying to
6 locate them.

7 I talked to William Filbert who was at that time
8 the Assistant Warden to whom I answered. We decided that we
9 needed to try to get a locksmith in there to try to get into
10 the box with the other keys in it. So we got Captain Lilley
11 who was still at home on the phone calling to try to get a
12 locksmith. I think Lieutenant Thomson may have been looking
13 too. By that time one of Lieutenant Thomson's officers
14 found the keys out on the compound.

15 STEVEN LORENZET:

16 So the keys (inaudible).

17 THOMAS PASSARO:

18 It was a ring.

19 STEVEN LORENZET:

20 Approximately how many keys were on that ring?

21 THOMAS PASSARO:

22 I am not sure off the top of my head but 4 or 5.
23 Maybe more. I am not sure.

1 STEVEN LORENZET:

2 In follow up to that did you have a conference
3 with Lieutenant Thomson?

4 THOMAS PASSARO:

5 Yes and I informed him that Assistant Warden
6 Filbert and I had discussed this. That the keys that were
7 lost were extremely important; that Custody Supervisors need
8 to keep track of the keys and that we were compromised. I
9 mean those keys could have been picked up by an inmate. We
10 almost had to incur an expense with a locksmith. In
11 accordance with DCR 50-2 a suspension was in order.

12 Lieutenant Thomson told me during the conference
13 that he thought it was a mechanical failure. But he didn't
14 show me anything to support that. I have never had an
15 officer, lieutenant or a captain off their belt in over 2
16 years. You snap them on and if you snap them on properly
17 they stay there.

18 STEVEN LORENZET:

19 What part did Sergeant Clark play in this
20 incident?

21 THOMAS PASSARO:

22 Without the paperwork in front of me I can't
23 recall for certain. I believe he was one of the Sergeants

1 on duty that night. He may have, in fact, been the Duty
2 Sergeant though I am not going to swear to that at this
3 moment.

4 STEVEN LORENZET:

5 Can we go off the record for a moment to obtain
6 the written report?

7 JAMES KLIMA:

8 Go off the record.

9 (WHEREUPON, THERE WAS A BREAK IN THE RECORD)

10 JAMES KLIMA:

11 Back on the record. Go ahead.

12 STEVEN LORENZET:

13 What part did Sergeant Clark play in this?

14 THOMAS PASSARO:

15 Sergeant Clark helped to search for the keys.
16 Also strip searched some of the inmates who were in the area
17 to make sure that they didn't get access to the keys. Also
18 was one of the officers looking for the keys. Eventually as
19 he says in his memo to me -- Sergeant Clark says in his memo
20 to me, Officer Irving found the keys by the front vehicle
21 gate. The front vehicle gate entrance.

22 STEVEN LORENZET:

23 Did that lead you to any conclusions as to how the

1 keys got lost?

2 THOMAS PASSARO:

3 Well his memorandum confirmed what Lieutenant
4 Thomson told me in that Lieutenant Thomson had to go out --
5 I am going to confirm part of what Lieutenant Thomson told
6 me. That he had to go out of the compound out toward the
7 front entrance to drop off some paperwork to an officer who
8 was going up to Brockridge, another institution in the
9 immediate vicinity.

10 Lieutenant Thomson thought that his keys had been
11 lost somewhere around there. But he also told me over the
12 phone that night that he had officers out there looking. He
13 himself had looked and they couldn't find them. This
14 started around 11:00. Around 12:30 people were continuing
15 to look and started to retread the same ground or at least
16 retread ground that other people had tried. That is when
17 Officer Irving found the keys by the front vehicle gate
18 entrance.

19 STEVEN LORENZET:

20 In that area where they were found would that
21 normally be an area where someone would use those keys?

22 THOMAS PASSARO:

23 Well no. They are supposed to be on his belt.

1 The fact that he had gone out there with them on his belt is
2 not anything unusual.

3 STEVEN LORENZET:

4 The unusual part is that they came off his belt.

5 THOMAS PASSARO:

6 Yes. Real unusual.

7 STEVEN LORENZET:

8 Did you write up a Matter of Record concerning
9 this incident?

10 THOMAS PASSARO:

11 Sure to confirm the conference that he and I had
12 the day that I informed that we were issuing a 3 day
13 suspension.

14 STEVEN LORENZET:

15 Did you copy Lieutenant Thomson on that?

16 THOMAS PASSARO:

17 I served it on him. Yes. He got a copy of it.

18 STEVEN LORENZET:

19 Is this a copy of that?

20 THOMAS PASSARO:

21 Yes.

22 STEVEN LORENZET:

23 For the record I would like to introduce a report

1 submitted since then from Sergeant Clark who was subpoenaed,
2 Lieutenant Thomson's report and Mr. Passaro's report. We
3 will have to make copies of the 2 reports that are stapled
4 together, Sergeant Clark's and Lieutenant Thomson's.

5 JAMES KLIMA:

6 Lets go off the record.

7 (WHEREUPON, THERE WAS A BREAK IN THE RECORD)

8 JAMES KLIMA:

9 Back on the record now. Any objection to these?

10 RICARDO SILVA:

11 No objection to Mr. Passaro's report of June 3,
12 1991. No objection to Lieutenant's Thomson's report of May
13 24, 1991. I have to read Clark's.

14 JAMES KLIMA:

15 Does it make any difference what order these come
16 in as exhibits?

17 STEVEN LORENZET:

18 As a collective exhibit.

19 JAMES KLIMA:

20 Well I will make them three.

21 STEVEN LORENZET:

22 Then I would think in order of Lieutenant Thomson,
23 Sergeant Clark, and Mr. Passaro.

1 RICARDO SILVA:

2 No objection Your Honor.

3 JAMES KLIMA:

4 Lieutenant Thomson's memo will be Management
5 Exhibit #1. You say Sergeant Clark would be Management #2?
6 Is that proper sequence?

7 STEVEN LORENZET:

8 Yes.

9 JAMES KLIMA:

10 Memo dated May 25, 1991 by Sergeant Myrick Clark
11 will be Management Exhibit #2. The Matter of Record from
12 Thomas Passaro dated June 3, 1991 will be Management Exhibit
13 #3.

14 (WHEREUPON, MANAGEMENT EXHIBIT #1, #2 AND #3 WAS
15 INTRODUCED INTO EVIDENCE.)

16 STEVEN LORENZET:

17 No further questions.

18 JAMES KLIMA:

19 Mr. Silva?

20 RICARDO SILVA:

21 Yes. Mr. Passaro you have had 2 and a half years
22 working with the Pre-Release System?

23 THOMAS PASSARO:

1 With that particular one. I have much more than
2 that with other units. But yes with that unit a little over
3 2 years. That unit and the preceding. You know we moved
4 at some point.

5 RICARDO SILVA:

6 Lieutenant Thomson would you stand up for a minute
7 please. Is this the belt that is approved by the Division
8 of Correction?

9 THOMAS PASSARO:

10 I believe it to be.

11 RICARDO SILVA:

12 On the day in question when you brought Mr.
13 Thomson into the conference, Mr. Thomson told you that the
14 keys fell off the ring did he not or the part of the belt.

15 THOMAS PASSARO:

16 Yes.

17 RICARDO SILVA:

18 Have you ever had a situation where Lieutenant
19 Thomson had lost keys before?

20 THOMAS PASSARO:

21 No.

22 RICARDO SILVA:

23 And Lieutenant Thomson told you it was a

1 mechanical defect, correct?

2 THOMAS PASSARO:

3 Very generally he said that. Yes.

4 RICARDO SILVA:

5 Did you inspect the belt?

6 THOMAS PASSARO:

7 No I did not.

8 RICARDO SILVA:

9 Is it a possibility that it was a mechanical
10 defect?

11 THOMAS PASSARO:

12 No I don't think so. I guess anything is
13 possible. In direct answer to your question yes. Anything
14 is possible. So sure I guess it is.

15 RICARDO SILVA:

16 Isn't it a fact that Lieutenant Thomson had the
17 keys on his possession and on the belt for approximately an
18 hour before the keys were found to be missing?

19 THOMAS PASSARO:

20 Probably not. I wasn't there remember. It is
21 more likely that he was taking them on and off for various
22 reasons but then again I wasn't there. It was when I was
23 off duty.

1 RICARDO SILVA:

2 Do you know for sure whether or not it was a
3 question of negligence or a question of a mechanical defect
4 of the belt? Do you know for sure which one it was?

5 THOMAS PASSARO:

6 I don't know for certain. I don't think you can
7 know.

8 RICARDO SILVA:

9 No further questions.

10 JAMES KLIMA:

11 Any redirect?

12 THOMAS PASSARO:

13 Can I respond further to one question? I think I
14 gave an inaccurate answer.

15 JAMES KLIMA:

16 Sure.

17 THOMAS PASSARO:

18 I didn't inspect the belt in terms of having him
19 take the belt off and so forth. But he did show me with his
20 hands as I recall the clip, the clip that was at fault. I
21 did do that much as I recall. I just wanted to clarify
22 that.

23 JAMES KLIMA:

1 What was your finding?

2 THOMAS PASSARO:

3 I saw and I see no reason to believe the clip was
4 in error. I mean it has not happened since. Not to
5 Lieutenant Thomson and as I said before not to anyone.
6 This has simply not happened before or since in the 2 years
7 and some days that I have been there.

8 JAMES KLIMA:

9 Any recross?

10 STEVEN LORENZET:

11 Along those lines, when you looked at the belt
12 that day it appeared to you that there wasn't anything wrong
13 with it?

14 THOMAS PASSARO:

15 Not that I could see. Exactly right.

16 STEVEN LORENZET:

17 To your knowledge has Lieutenant Thomson had to be
18 given another belt?

19 THOMAS PASSARO:

20 Not to my knowledge. No.

21 STEVEN LORENZET:

22 Or had any repairs made to it?

23 THOMAS PASSARO:

1 Not to my knowledge.

2 STEVEN LORENZET:

3 What would account in your mind then for the keys
4 coming off?

5 THOMAS PASSARO:

6 Not securing the keys in there firmly. Not making
7 sure the clasp was clasped real solidly when you put them
8 back.

9 STEVEN LORENZET:

10 So it would be like half on and then they could
11 fall off?

12 THOMAS PASSARO:

13 Yes. Something like that sure.

14 STEVEN LORENZET:

15 So basically your examination led you to believe
16 it was negligence and not something mechanical?

17 THOMAS PASSARO:

18 Correct.

19 STEVEN LORENZET:

20 I have no further questions.

21 THOMAS PASSARO:

22 That and the fact that we have had no complaints
23 from him since.

1 JAMES KLIMA:

2 Redirect.

3 RICARDO SILVA:

4 Yes. Where the keys were found, they were found
5 in a place where no inmates were around. Is that correct?
6 Or basically had been around, correct.

7 THOMAS PASSARO:

8 No that is not correct. Certainly inmates could
9 have been depending on the time, depending on where the
10 sanitation crew was working and depending on who was going
11 in and out. They could have been not necessarily standing
12 right on top of the keys but very much in that area. Yes.

13 RICARDO SILVA:

14 No other questions.

15 JAMES KLIMA:

16 Any re-redirect?

17 STEVEN LORENZET:

18 No.

19 JAMES KLIMA:

20 Okay. Thank you.

21 STEVEN LORENZET:

22 That basically is our case.

23 JAMES KLIMA:

1 Okay. Mr. Silva?

2 RICARDO SILVA:

3 Your Honor could I have 5 minutes with the
4 employee?

5 JAMES KLIMA:

6 We will go off the record.

7 (WHEREUPON, THERE WAS A BREAK IN THE RECORD)

8 JAMES KLIMA:

9 Back on the record now in the hearing for
10 Lieutenant Thomson.

11 RICARDO SILVA:

12 The witnesses are sequestered and we respectfully
13 request that Mr. Passaro be excused because we might call
14 him for a recall.

15 JAMES KLIMA:

16 Any objection to that?

17 STEVEN LORENZET:

18 No. You might want to call him?

19 RICARDO SILVA:

20 Yes. I might want to call him again.

21 STEVEN LORENZET:

22 How about sticking around the waiting room.

23 RICARDO SILVA:

1 I would like to call Lieutenant Thomson to the
2 stand.

3 DANIEL THOMSON

4 JAMES KLIMA:

5 You can stay where you are. Would you raise your
6 right-hand please. Do you solemnly swear or affirm under
7 the penalty of perjury that the testimony you give at this
8 hearing will be the whole truth and nothing but the truth?

9 DANIEL THOMSON

10 I do sir.

11 JAMES KLIMA:

12 State your name and your position please.

13 DANIEL THOMSON

14 Daniel E. Thomson, Correctional Officer IV, 10:00
15 to 6:00 shift Supervisor at JPRU.

16 JAMES KLIMA:

17 Thank you.

18 RICARDO SILVA:

19 Lieutenant Thomson how long have you been in the
20 Correctional Officer ranks?

21 DANIEL THOMSON

22 Since November, 1981.

23 RICARDO SILVA:

1 Just for the record where did you begin working
2 November, 1981?

3 DANIEL THOMSON

4 Maryland House of Correction.

5 RICARDO SILVA:

6 How long did you stay there?

7 DANIEL THOMSON

8 Until May of -- July of 1987.

9 RICARDO SILVA:

10 Where did you go?

11 DANIEL THOMSON

12 ECI.

13 RICARDO SILVA:

14 How long did you work there?

15 DANIEL THOMSON

16 Until November of 1990.

17 RICARDO SILVA:

18 Then where did you go?

19 DANIEL THOMSON

20 To the Pre-Release Unit.

21 RICARDO SILVA:

22 Lieutenant Thomson you live in Salisbury right

23 now?

1 DANIEL THOMSON

2 Yes I do.

3 RICARDO SILVA:

4 How long have you been living in Salisbury?

5 DANIEL THOMSON

6 Since my transfer to ECI.

7 RICARDO SILVA:

8 Transfer to ECI?

9 DANIEL THOMSON

10 Yes sir.

11 RICARDO SILVA:

12 Where did you live before?

13 DANIEL THOMSON

14 Anne Arundel County.

15 RICARDO SILVA:

16 So when you were working at the House of
17 Corrections you worked in Anne Arundel County and then you
18 went to ECI and you moved down to Salisbury?

19 DANIEL THOMSON

20 Yes sir.

21 RICARDO SILVA:

22 Do you still live in Salisbury?

23 DANIEL THOMSON

1 Yes I do.

2 RICARDO SILVA:

3 Yet you work in Jessup?

4 DANIEL THOMSON

5 Yes sir I do.

6 STEVEN LORENZET:

7 Objection. Why?

8 JAMES KLIMA:

9 On relevance.

10 STEVEN LORENZET:

11 What does it have to do with the incident?

12 JAMES KLIMA:

13 I don't know. Maybe it does or maybe it doesn't.
14 But we are not bound by the strike rules of evidence as in a
15 court. I would just as soon let it in and give it whatever
16 worth it deserves. If it is not relevant it won't be
17 relevant.

18 RICARDO SILVA:

19 Thank you Your Honor. Why did you transfer to
20 JPRU from ECI if you live in Salisbury? How many miles is
21 that from Salisbury, your home?

22 DANIEL THOMSON

23 It is about 120 one way.

1 RICARDO SILVA:

2 Why did you do that?

3 DANIEL THOMSON

4 Because I couldn't work at ECI any longer.

5 RICARDO SILVA:

6 Why not?

7 DANIEL THOMSON

8 ECI had been (inaudible) campaign (inaudible)
9 created by my fellow supervisors and endorsed my Management
10 (inaudible) reaction after I reported it. It reached a
11 point where the State Medical Director recommend that I be
12 transferred for my own health.

13 At that point I had requested a transfer to Poplar
14 Hill but I was...

15 RICARDO SILVA:

16 Where is Poplar Hill?

17 DANIEL THOMSON

18 It is adjacent to Salisbury? I was sent here to
19 JPRU.

20 RICARDO SILVA:

21 By whom?

22 DANIEL THOMSON

23 Commissioner (inaudible).

1 RICARDO SILVA:

2 Did you agree to that transfer?

3 DANIEL THOMSON

4 Not to JPRU. No.

5 RICARDO SILVA:

6 Is that the subject of a grievance right now?

7 DANIEL THOMSON

8 Yes sir.

9 RICARDO SILVA:

10 So you commute about 200 and some miles a day?

11 DANIEL THOMSON

12 My round trip is a little over 240 miles daily.

13 RICARDO SILVA:

14 And that is the subject of a grievance right now?

15 DANIEL THOMSON

16 It is sir.

17 RICARDO SILVA:

18 All right. On the day in question were you
19 wearing the belt that you are wearing today?

20 DANIEL THOMSON

21 I was sir.

22 RICARDO SILVA:

23 Could you stand up a minute. Is that the same

1 belt that you wore that day?

2 DANIEL THOMSON

3 The piece of equipment is exactly the same sir.

4 RICARDO SILVA:

5 How long have you been wearing that belt?

6 DANIEL THOMSON

7 Well it has been about 9 years.

8 RICARDO SILVA:

9 I assume that Management knew that you were
10 wearing that belt?

11 DANIEL THOMSON

12 Yes sir.

13 RICARDO SILVA:

14 Now do you have a set of keys that are similar to
15 the set of keys you had on the night in question?

16 DANIEL THOMSON

17 I have my personal key ring. (Inaudible)
18 approximately the same size.

19 RICARDO SILVA:

20 Can you tell the Judge what happened on the night
21 in question.

22 DANIEL THOMSON

23 We were checking a man into Brockridge

1 (inaudible). The transporting officers were getting ready
2 to leave the institution as well as the man and I had some
3 paperwork to go up to (inaudible) at Brockridge. I xeroxed
4 it and took it up to the officers waiting in the vehicle
5 outside the vehicle gate of the institution.

6 RICARDO SILVA:

7 Is that outside the institution?

8 DANIEL THOMSON

9 Yes sir. It is outside the institution. I handed
10 the officer the paperwork and double checked with them that
11 they had everything they needed. I came back inside the
12 institution and walked through the door and reached for my
13 key set and it was gone. I immediately instituted a search
14 procedure.

15 RICARDO SILVA:

16 Immediately?

17 DANIEL THOMSON

18 Immediately. I notified my duty sergeant. First
19 I went and checked myself.

20 RICARDO SILVA:

21 Who was your duty sergeant?

22 DANIEL THOMSON

23 Sergeant Clark. First we checked to make sure

1 that I had the Duty Keys and I hadn't left them. I had
2 locked the file cabinet as I was leaving my office because
3 it isn't supposed to be left unsecured without supervision.
4 At first I thought I may have locked them in there. But I
5 notified Sergeant Clark so we could get the sanitation
6 inmates. We had 4 of them in the area and sat them in the
7 lobby until we identified where the keys were.

8 After searching the building and not turning them
9 up, searching the inmates and not finding them, I notified
10 Captain Lilley and told her that I thought I probably locked
11 them in the file cabinet. When we got the file cabinet open
12 I found the keys weren't in there. I again call Captain
13 Lilley and told her that I had to report the keys lost and
14 do you have any idea where I could find them (inaudible).

15 The building was again searched. The trash cans
16 were searched. The inmates were again searched.

17 RICARDO SILVA:

18 I assume that you took the precautions to make
19 sure the inmates were secured while you were looking?

20 DANIEL THOMSON

21 They sat in the lobby on a couch under the
22 supervision of Sergeant Hurshan of the Control Center the
23 entire time from the time I knew the keys were missing until

1 we strip searched them and sent them back to their housing
2 unit.

3 RICARDO SILVA:

4 And they were the only inmates who were out of
5 their bunks at that time?

6 DANIEL THOMSON

7 They were the only ones around that time out in
8 the area where I lost the keys.

9 RICARDO SILVA:

10 So you immediately secured them while you looked
11 around for these keys.

12 DANIEL THOMSON

13 Immediately secured. Yes sir.

14 RICARDO SILVA:

15 Mr. Passaro has already testified basically that
16 the keys were found outside the facility. Tell the Judge
17 exactly where outside the facility.

18 DANIEL THOMSON

19 If you have ever been to JPRU the entrance to the
20 institution is adjacent to the main vehicle gate. It is a
21 double winged gate that vans and such go back and forth.
22 They were found laying in front of that gate where the
23 vehicle had been.

1 JAMES KLIMA:

2 Is the gate normally locked?

3 DANIEL THOMSON

4 The gate is always locked.

5 JAMES KLIMA:

6 Did you have to use your keys to open it?

7 DANIEL THOMSON

8 No sir. We don't go in and out of that gate
9 except to let a vehicle through. On the night in question,
10 the inmate that we were checking in, we didn't bring the
11 vehicle inside the compound. We parked it there and walked
12 the inmate to the vehicle.

13 JAMES KLIMA:

14 How did you get to the vehicle?

15 DANIEL THOMSON

16 I went out the pedestrian gate adjacent to it.

17 JAMES KLIMA:

18 Do you have to unlock that?

19 DANIEL THOMSON

20 That is controlled by a buzzer from the Control
21 Center.

22 JAMES KLIMA:

23 So you didn't need to use your key for that one?

1 DANIEL THOMSON

2 No. The only thing those supervisor keys were for
3 is for the door knobs, the file cabinets in the office and
4 the security key box that hangs on the wall. That is the
5 only that are on there. There are 4 keys.

6 RICARDO SILVA:

7 Now how did the fall off?

8 DANIEL THOMSON

9 I have no idea. I don't carry the keys around
10 with me as a habit. I have got 3 key hooks.

11 RICARDO SILVA:

12 What key hook did you put the keys on?

13 DANIEL THOMSON

14 I most normally hooked them on this first hook
15 right here.

16 RICARDO SILVA:

17 Just show the Judge how you hook them on. Is that
18 the exact hook?

19 DANIEL THOMSON

20 This is the hook. It is a 2 handed operation.
21 You have to hook them like that. I can't hook them one
22 handed because it won't slide. I can't catch it. So I have
23 to do a 2 handed operation. Okay?

1 RICARDO SILVA:

2 Now what is the probability that you would have
3 clipped them in the manner that they would easily fall off?
4 In other words what is the probability that you would hook
5 them in a manner that they would not fall completely
6 through?

7 DANIEL THOMSON

8 The only way I could do it would be if I did it
9 deliberately. I would have to like balance them here.

10 RICARDO SILVA:

11 You would have to do what now?

12 DANIEL THOMSON

13 I would have to like balance them here against the
14 pressure of the thing to let them stay and even that...

15 JAMES KLIMA:

16 Does that spring close far enough so that you
17 can't pull them off without...

18 DANIEL THOMSON

19 It is spring loaded and they don't normally get
20 pulled off even running around the compound or something of
21 this nature. But sometimes if have extra keys on there more
22 than 1 key set will come off. That is another reason why I
23 have to use 2 hands to get them off. As you can see it has

1 got to be forced.

2 JAMES KLIMA:

3 So the spring is not quite...

4 DANIEL THOMSON

5 Well the thing is a little bit out of line.

6 JAMES KLIMA:

7 But you still have to depress the spring board to
8 get the keys off.

9 DANIEL THOMSON

10 Unless it was hit just right. If this was out of
11 line and it was hit just right it will slide up.

12 JAMES KLIMA:

13 Okay.

14 DANIEL THOMSON

15 Since the incident because of the suspension and
16 not being able to trust this key hook, I have gone to a
17 different design that has a positive lock. Okay? I haven't
18 lost a key since.

19 JAMES KLIMA:

20 That is just an addition that you made to the belt
21 or was that on there...

22 DANIEL THOMSON

23 That was on there at the time. But like I said it

1 is a positive lock. It is a pain to use.

2 JAMES KLIMA:

3 Okay.

4 RICARDO SILVA:

5 So you explained this to the Warden. What did the
6 Warden say about you losing it in the manner that you did?

7 DANIEL THOMSON

8 You mean Mr. Passaro?

9 RICARDO SILVA:

10 Yes.

11 DANIEL THOMSON

12 He said there was no way that it was a mechanical
13 failure. In his experience in corrections he has never had
14 an officer lose keys by mechanical failure and he didn't buy
15 it.

16 RICARDO SILVA:

17 What time did you report for duty?

18 DANIEL THOMSON

19 At approximately 9:10.

20 RICARDO SILVA:

21 Is this your normal reporting time?

22 DANIEL THOMSON

23 Yes sir it is.

1 RICARDO SILVA:

2 Did you carry the keys on that clip from 9:00
3 until the time that you lost them?

4 DANIEL THOMSON

5 I carried the keys from approximately 10:00 p.m.
6 when I relieved the 2:00 to 10:00 shift. When I wasn't
7 using them they were on that clip.

8 RICARDO SILVA:

9 Did you have any reason to use the keys on the
10 outside where they were eventually found?

11 DANIEL THOMSON

12 No sir. There is no lock out there or a device
13 which they would operate out there.

14 RICARDO SILVA:

15 So on the night in question you did not take those
16 keys -- when you were on the outside near this van you did
17 not bother with these keys at all?

18 DANIEL THOMSON

19 No sir. I had no reason to.

20 RICARDO SILVA:

21 No reason at all?

22 DANIEL THOMSON

23 No reason at all.

1 RICARDO SILVA:

2 Tell the Judge exactly what you were doing at that
3 van?

4 DANIEL THOMSON

5 I was carrying what I call a shot gun envelope, an
6 intragency routing envelope with some paperwork in it. Four
7 (4) or 5 sheets of paper. I walked out to the officers in
8 the van, handed it in to the officer through the window,
9 looked to see if the inmate was secure, if they had the
10 property and told them to take him up to Brockridge and
11 walked back into the institution.

12 RICARDO SILVA:

13 And in almost 10 years of working you have never
14 had a situation like this before?

15 DANIEL THOMSON

16 I had lost -- well I didn't lose. I had a key
17 fall off of my key hook on a previous occasion but I noted
18 it right away. I mean I heard it fall.

19 JAMES KLIMA:

20 How did it fall?

21 DANIEL THOMSON

22 Sir?

23 JAMES KLIMA:

1 How did it fall? Do you have any idea?

2 DANIEL THOMSON

3 The first time?

4 JAMES KLIMA:

5 Any time. Yes.

6 DANIEL THOMSON

7 The first time I had about 5 or 6 different key
8 rings on the key hook. I was taking 1 off and another fell
9 off with it.

10 JAMES KLIMA:

11 Okay.

12 DANIEL THOMSON

13 The second time, honesty to God sir I don't know.

14 JAMES KLIMA:

15 Which is this time.

16 DANIEL THOMSON

17 Which is this time. I honest to God I don't know.
18 I mean I could agree with Mr. Passaro in the sense that it
19 is very unlikely that such a mechanical failure would occur.
20 The odds of it happening would have to be less than winning
21 the Lotto and people win the Lotto every weekend.

22 JAMES KLIMA:

23 Okay.

1 RICARDO SILVA:

2 Officer Thomson you have been in JPRU since
3 November of 1990, correct?

4 DANIEL THOMSON

5 Yes I have.

6 RICARDO SILVA:

7 Are you familiar with the Key Control of that
8 institution?

9 DANIEL THOMSON

10 I am familiar with the Directive of how it impacts
11 on my job.

12 RICARDO SILVA:

13 Who is the Key Control Officer?

14 DANIEL THOMSON

15 The Key Control Officer is Sergeant Eps on the
16 6:00 to 2:00 shift. The Key Control Supervisor is Captain
17 Lilley.

18 RICARDO SILVA:

19 Now tell the Judge why you feel it was unfair that
20 you were suspended in this matter.

21 DANIEL THOMSON

22 The biggest reason I feel it was unfair is that I
23 am a very conscientious employee. I take my duties and

1 responsibilities thereof quite seriously. I feel it is
2 unfair to be disciplined for one incident when, in fact, it
3 is known to myself and Captain Lilley that there are
4 literally hundreds of incidents of failure to properly
5 control keys in the institution each month.

6 RICARDO SILVA:

7 How do you know that?

8 DANIEL THOMSON

9 The Supervisor's office keeps a journal. That
10 journal is a record of events that transpired during the
11 shifts. It also keeps a log of the issue and return of all
12 keys out of that security cabinet which isn't necessarily
13 accomplished, many of those things listed in the journal.
14 All you have to do is read the journal and compare it to the
15 key log and find the spare or not. Where they have logged
16 such and such a thing happening. The key set necessary on
17 that function is not logged out.

18 RICARDO SILVA:

19 What happens to the employees who don't log it
20 out? Are they required to log it out?

21 DANIEL THOMSON

22 The lieutenants, supervisors and captains are
23 required to log any key that comes out of that cabinet

1 whether I take it out for my own use or I take it out to
2 issue it to somebody. That key must be logged out of that
3 box.

4 RICARDO SILVA:

5 Do you have any evidence that this was happening
6 and other employees were not being disciplined for it?

7 DANIEL THOMSON:

8 I do sir.

9 RICARDO SILVA:

10 Do you have it with you right now?

11 THOMSON

12 I do.

13 RICARDO SILVA:

14 Is this a copy of some of these things that you
15 have found during the month of May?

16 DANIEL THOMSON:

17 It is sir.

18 RICARDO SILVA:

19 I have to explain this. But I want to submit this
20 as Employee Exhibit #1. I will let Mr. Thomson explain it.

21 JAMES KLIMA:

22 Any objection?

23 STEVE LORENZET:

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No.

JAMES KLIMA:

We have a copy of the log for the security cabinet key. Is that correct?

DANIEL THOMSON:

Yes sir it is.

JAMES KLIMA:

That is for May, 1991?

DANIEL THOMSON:

Yes sir it is. The month in which the incident occurred.

JAMES KLIMA:

These are pages 333. There are a whole bunch of pages.

DANIEL THOMSON:

There are approximately 15 pages from the supervisor's journal.

JAMES KLIMA:

This is from the supervisor's journal?

DANIEL THOMSON:

Yes. At the front page you will find that there are a series of supervisor's journal and a copy out of the key lock stapled together. You will also find in there...

1 STEVE LORENZET:

2 This one here, what is this one?

3 DANIEL THOMSON:

4 That is a complete copy of the key log for the
5 month of May.

6 JAMES KLIMA:

7 The security cabinet key log.

8 DANIEL THOMSON:

9 Security key log.

10 JAMES KLIMA:

11 All right. I will mark that as Employee Exhibit
12 #1.

13 (WHEREUPON, EMPLOYEE EXHIBIT #1 WAS INTRODUCED INTO
14 EVIDENCE.)

15 JAMES KLIMA:

16 It seems to be that the pages are out of order.

17 DANIEL THOMSON:

18 Well they are in descending order sir starting
19 about June 13th and going up until late during the month of
20 April.

21 JAMES KLIMA:

22 Okay. I have 2 copies of page 333 here.

23 DANIEL THOMSON:

1 Yes sir. That is correct.

2 JAMES KLIMA:

3 All right. So they are in descending order from
4 233 to 254 and then there is another page 340 here.

5 DANIEL THOMSON:

6 You should also have...

7 JAMES KLIMA:

8 So these are copies of what?

9 DANIEL THOMSON:

10 These are copies of the supervisor's journal for
11 the supervisor that keeps a running record of the
12 occurrences on that supervisor's post during the shift.
13 Attached to them is a copy of the key log for that period.

14 JAMES KLIMA:

15 Is is the key lock.

16 DANIEL THOMSON:

17 Well yes but what I am talking is what is stapled
18 to that individual journal sheet which is a copy of the
19 individual's key log sheet for that particular time.

20 JAMES KLIMA:

21 Okay. This pack of papers will be Employee
22 Exhibit #2.

23 RICARDO SILVA:

1 Just for the record here I think the top sheet
2 should be identified as Employee Exhibit #3 because I am
3 going to ask something specific with this.

4 DANIEL THOMSON:

5 This also should be separate. This is the journal
6 and this is the log sheet.

7 JAMES KLIMA:

8 Are they the same pages as these?

9 DANIEL THOMSON:

10 Yes sir they are. But they are separated like
11 this because they pertain to this specific page. These 2
12 should be separate.

13 JAMES KLIMA:

14 So the supervisor's journal sheets with the
15 attached log pages?

16 DANIEL THOMSON:

17 Correct sir.

18 JAMES KLIMA:

19 This would be Employee Exhibit #2.

20 (WHEREUPON, EMPLOYEE EXHIBIT #2 WAS INTRODUCED INTO
21 EVIDENCE.)

22 RICARDO SILVA:

23 For the record Your Honor this is a journal of who

1 is supposed to issue the keys.

2 DANIEL THOMSON:

3 It identifies who were authorized to give a
4 specific keys in the supervisor's restrictive key cabinet to.
5 For instance this number 2 set, other than the person that
6 works in that office, can only be issued to the captain.
7 What is not shown on here is the lieutenants can take any
8 key out. That goes without speaking because we are the ones
9 that issue them.

10 JAMES KLIMA:

11 This is a list of authorized recipients for keys
12 from the security cabinet. Is that right?

13 DANIEL THOMSON:

14 Right.

15 JAMES KLIMA:

16 This will be Employee Exhibit #3. Any objection?

17 (WHEREUPON, EMPLOYEE EXHIBIT #3 WAS INTRODUCED INTO
18 EVIDENCE.)

19 RICARDO SILVA:

20 Mr. Thomson why do you have a different 333?

21 DANIEL THOMSON:

22 The one with the log page attached to it is to
23 highlight the area to document failure to properly control

1 keys by the supervisors. The one by itself documents the
2 instance in which an employee took a set of keys and left
3 the institution.

4 RICARDO SILVA:

5 That is Employee Exhibit #4 which shows that an
6 employee took the keys home. A Mr. Lawson?

7 DANIEL THOMSON:

8 Yes sir. He didn't actually take them home. He
9 did depart the institution and returned them.

10 JAMES KLIMA:

11 Wait a minute. This purports to be the same page.

12 RICARDO SILVA:

13 Same page.

14 DANIEL THOMSON:

15 The same page but the highlighted areas are
16 different.

17 RICARDO SILVA:

18 We will get into that.

19 JAMES KLIMA:

20 Okay. This will be Employee Exhibit #4. This is
21 the page 333 highlighted at 20:40 and 20:50 hours. That
22 will be #4. Okay.

23 (WHEREUPON, EMPLOYEE EXHIBIT #4 WAS INTRODUCED INTO

1 EVIDENCE.)

2 RICARDO SILVA:

3 Mr. Thomson looking at Employee Exhibit #4 where
4 it is highlighted 20:40. Employee Larson took his keys
5 home. Tell the Judge why you wanted this submitted into
6 evidence to show what.

7 DANIEL THOMSON:

8 To show that there is an incident of an employee
9 departing the institution with a set of keys which is not
10 authorized. This key set is like all other key sets in the
11 institution. It is a controlled set. He departed the
12 institution with it. It was noticed (inaudible) he brought
13 them back to the institution.

14 RICARDO SILVA:

15 Was he disciplined?

16 DANIEL THOMSON:

17 Not that I am aware of.

18 RICARDO SILVA:

19 Who wrote this on 6/13?

20 DANIEL THOMSON:

21 The supervisor on the 2:00 to 10:00 shift who was
22 working that night which I believe was Lieutenant Marshall.

23 RICARDO SILVA:

1 All right. Now look at Employee Exhibit #2 which
2 is the same sheet 333 that has an accompanying document
3 which you testified as the security key log sheets.

4 DANIEL THOMSON:

5 Yes sir.

6 RICARDO SILVA:

7 Explain to the Judge Employee Exhibit #2. Take
8 for instance the 20:30. Remember using Employee Exhibit #
9 and compare it with Employee Exhibit #2. Explain to the
10 Judge what you see as to disparate treatment.

11 DANIEL THOMSON:

12 There are 2 entries highlighted on there. At
13 20:30 hours an Officer Davis reports that he found during a
14 dietary storage room open. That area is controlled by key
15 set #20 which on Employee Exhibit #3 is highlighted in red.
16 It says dietary storage and it is to be issued only CSO
17 which is Correctional Supply Officers. Officer Davis is not
18 a Correctional Supply Officer.

19 RICARDO SILVA:

20 Go down to 22:00.

21 DANIEL THOMSON:

22 At 22:00 hours the institution received an inmate
23 from the reception center as a transfer. Institution policy

1 requires that the files that come within the property be
2 placed in certain areas. Each of those areas are the base
3 room, base file room, medical file room and the property
4 storage area. Key set #4 is the base file room which can be
5 issued to anybody as necessary. Key set #26 is the medical
6 key set which isn't even listed on here and key set #24 is
7 the main property room where the property is stored. That
8 is to be issued only to Correctional Supply Officers. Their
9 Supervisor Mary Shappel, captains and lieutenants.

10 RICARDO SILVA:

11 In this case what happened?

12 DANIEL THOMSON:

13 In this case you are talking 3 key sets. Key set
14 #4 and key set #9 or #26 and key set #24. If you look on
15 the key log sheet on the second page.

16 RICARDO SILVA:

17 333.

18 DANIEL THOMSON:

19 You will see in the margins where I wrote the key
20 sets that were necessary to be issued. But yet that shift
21 made no log entries reflecting the issue of those keys.
22 None at all.

23 RICARDO SILVA:

1 So Employee Exhibit #2 in total will show the Judge
2 that in the month of May, correct me if I am wrong, that
3 there were serious problems with key control in the entire
4 institution. Is that correct?

5 DANIEL THOMSON:

6 Exhibit #2 shows at least 15 instances in which
7 key sets were documented as being used and yet there was no
8 documentation for the issue or control of those key sets at
9 all.

10 RICARDO SILVA:

11 And you testified earlier that Captain Lilley is
12 basically in charge of key control, correct?

13 DANIEL THOMSON:

14 She is.

15 RICARDO SILVA:

16 Does she know that these problems exist?

17 DANIEL THOMSON:

18 She does.

19 RICARDO SILVA:

20 How do you know that?

21 DANIEL THOMSON:

22 We have discussed it on many occasions.

23 RICARDO SILVA:

1 And what has she done to correct the situation?

2 DANIEL THOMSON:

3 She has reiterated the order to the supervisors
4 that they must document the issue of all keys. By her
5 assertion to me she has reported these violations to Mr.
6 Passaro and the continuing problem.

7 RICARDO SILVA:

8 Are these people disciplined for not following
9 procedure?

10 DANIEL THOMSON:

11 No sir.

12 RICARDO SILVA:

13 I have no other questions. I'm sorry. One other
14 thing here. Explain to the Judge security key log Employee
15 Exhibit #1.

16 DANIEL THOMSON:

17 This is a xerox copy of the key control log for
18 the entire month of May, the month in which the incident
19 happened. In that there are 63 occurrences highlighted in
20 blue. There being no entry as to who issued key sets out of
21 that box which is in violation of both the Post Order,
22 Supervisor's Key Control Directive for the institution, and
23 key control DCR for the division.

1 There are 72 occurrences of the supervisors' not
2 logging a key set back into the box which again is in
3 violation of those articles. There are 106 documented
4 occurrences of the key sets being issued to somebody who
5 they are not authorized to be issued to by Exhibit #3.

6 JAMES KLIMA:

7 Which color?

8 DANIEL THOMSON:

9 Colored coded in the red. Which gives us plus 15
10 where they didn't log anything at all, the issuer, who they
11 gave them to, who gave them out, time they went out or the
12 time they came back in. With those 15 added that is 256
13 occurrences of failure to properly follow -- failure to
14 perform duties relative to key control by the supervisors of
15 the institution in the month of May.

16 RICARDO SILVA:

17 No other questions.

18 JAMES KLIMA:

19 Cross-examination?

20 STEVE LORENZET:

21 How can you make that conclusion based on what
22 is here in front of you?

23 DANIEL THOMSON:

1 I can add.

2 STEVE LORENZET:

3 Shoe me one for example.

4 DANIEL THOMSON:

5 Pick one.

6 STEVE LORENZET:

7 If I am understanding you correctly you are
8 looking at the security key log, right?

9 DANIEL THOMSON:

10 Yes sir I am.

11 STEVE LORENZET:

12 What are the pink ones?

13 DANIEL THOMSON:

14 The pink ones are cases of the keys being issued
15 to somebody that is not authorized to receive them.

16 STEVE LORENZET:

17 How do you know that?

18 DANIEL THOMSON:

19 By Exhibit #3 which is a document that reflects
20 who you are authorized to give these restrictive key sets
21 to.

22 STEVE LORENZET:

23 The following restrictive keys will be issued to

1 designated individuals?

2 DANIEL THOMSON:

3 That is correct sir.

4 STEVE LORENZET:

5 All right. Lets take that through. Number 20.

6 DANIEL THOMSON:

7 Officer Parkston.

8 JAMES KLIMA:

9 Wait a minute. Let me follow you, #20?

10 DANIEL THOMSON:

11 Officer Parkston is on the 2:00 to 10:00 shift.

12 #20 key set is issued to -- it is supposed to be
13 Correctional Dietary Officers (inaudible) it says
14 Correctional Supply Officers. Officer Parkston is not a
15 Correctional Dietary Officer. She is a CO I.

16 JAMES KLIMA:

17 Why would she want the key?

18 DANIEL THOMSON:

19 Because they were (inaudible) for the work release
20 inmates who returned to the institution rather than the
21 lieutenant going down there and doing it himself. They
22 normally give the keys out to another officer to go down
23 there and get a (inaudible) inmate otherwise.

1 STEVE LORENZET:

2 It shows she got the key.

3 DANIEL THOMSON:

4 She got the key. She is not authorized to have
5 the key by our key control record of the institution.

6 STEVE LORENZET:

7 Did she lose that key?

8 DANIEL THOMSON:

9 No sir. Apparently not. It is logged as being
10 returned.

11 STEVE LORENZET:

12 No further questions. Thank you.

13 JAMES KLIMA:

14 Any redirect?

15 RICARDO SILVA:

16 No other questions.

17 STEVE LORENZET:

18 I would like to -- well go ahead.

19 RICARDO SILVA:

20 I would like to call Captain Lilley to the stand.

21 (WHEREUPON, THERE WAS A BREAK IN THE RECORD)

22 DEBORAH LILLEY

23 JAMES KLIMA:

1 Back on the record. Captain Lilley would you
2 raise your right-hand please. Do you solemnly swear or
3 affirm under the penalty of perjury that the testimony you
4 give at this hearing will be the whole truth and nothing but
5 the truth?

6 LILLEY:

7 I do.

8 JAMES KLIMA:

9 Could you state your name and your position with
10 the State please.

11 LILLEY:

12 Deborah Lilley, Captain, Jessup Pre-Release Unit.

13 JAMES KLIMA:

14 I never know how to spell Deborah.

15 LILLEY:

16 D-e-b-o-r-a-h.

17 JAMES KLIMA:

18 Okay. What is that position.

19 LILLEY:

20 Captain.

21 JAMES KLIMA:

22 Mr. Silva?

23 RICARDO SILVA:

1 Captain Lilley could you tell the Judge how you
2 worked at JPRU?

3 LILLEY:

4 Since February of 1989.

5 RICARDO SILVA:

6 Could you tell the Judge what responsibilities you
7 have with regard to key control.

8 LILLEY:

9 I am the supervisor who oversees key control.

10 RICARDO SILVA:

11 Now have you ever been charged with a violation of
12 DCR 50-2 (19), performance of duties?

13 LILLEY:

14 Have I ever been charges with it? No sir.

15 RICARDO SILVA:

16 Since you have come to JPRU.

17 LILLEY:

18 No sir.

19 RICARDO SILVA:

20 Could you tell the Judge, do you have problems in
21 general with key control at the Institution?

22 LILLEY:

23 We have problems with officers handling keys.

1 Yes.

2 RICARDO SILVA:

3 Could you tell the Judge and be more specific?

4 LILLEY:

5 Many times officers fail to log keys out and log
6 keys back in. Just basically some type of unaccountability
7 in the officers' performance.

8 RICARDO SILVA:

9 Have you told that to Mr. Passaro?

10 LILLEY:

11 Yes I have.

12 RICARDO SILVA:

13 And has Mr. Passaro disciplined officers for not
14 following the requirements?

15 LILLEY:

16 Yes.

17 RICARDO SILVA:

18 How many times has he disciplined officers to your
19 knowledge?

20 LILLEY:

21 I know of several officers who have received
22 reprimands. I don't know exactly sir.

23 RICARDO SILVA:

1 How about the supervisors?

2 LILLEY:

3 I don't know of any supervisors that have been
4 disciplined other than Lieutenant Thomson.

5 RICARDO SILVA:

6 With regard to performance of duties with regard
7 to the keys?

8 LILLEY:

9 Correct.

10 RICARDO SILVA:

11 I would like you to look at what is identified as
12 Employee Exhibit #1. It is a security key log. Generally
13 there are some codes here where it says none authorized
14 access of 106 occurrences in May of 1991. Not logged back
15 in. Green is 72 occurrences as not logged. Who issued is
16 blue with 63 occurrences.

17 Looking through this if you could, I would assume
18 that there are many supervisors who had different employees
19 under their responsibilities in the month of May where these
20 employees did not properly file procedures. Is that
21 correct?

22 LILLEY:

23 There are certain instances where procedures have

1 been verbally changed which would account for some of these
2 but not all of these.

3 RICARDO SILVA:

4 Can you tell the Judge why supervisors then were
5 not disciplined for making sure their employees follow the
6 rules and regulations with regard to key control?

7 LILLEY:

8 I can't answer that sir.

9 RICARDO SILVA:

10 And that has to do with the performance of their
11 duties does it not?

12 LILLEY:

13 That is correct.

14 RICARDO SILVA:

15 No other questions.

16 STEVE LORENZET:

17 In concurrence of key control has there been any
18 cases of lost or missing keys reports involving employees
19 (inaudible) where they didn't receive any discipline?

20 LILLEY:

21 The only incident of lost keys has been with
22 Lieutenant Thomson or misplaced.

23 STEVE LORENZET:

1 In terms of this log -- I believe this is the same
2 log?

3 LILLEY:

4 Yes. I assume.

5 STEVE LORENZET:

6 When you look at #20, Parkston, not authorized
7 access. Would that indicate to you that some kind of
8 discipline is possible?

9 LILLEY:

10 I would have to -- the #20 key I believe is the
11 dietary key. The 2:00 to 10:00 shift does dietary
12 inspections. That key is issued to whoever the supervisor
13 authorizes to have that key to do that inspection or to be
14 able to open the access cabinets for the evening meals.

15 STEVE LORENZET:

16 So by looking at that and reviewing that would
17 something appear to be out of order there to you?

18 LILLEY:

19 I would not have utilized that younger officer,
20 however that is up to the lieutenant's discretion.

21 STEVE LORENZET:

22 Would you feel that any kind of discipline is
23 called for in this case?

1 LILLEY:

2 No. I wouldn't say any disciplinary action was
3 called for.

4 STEVE LORENZET:

5 Has Lieutenant Thomson reported any key control
6 irregularities to you?

7 LILLEY:

8 A few days prior to the grievance, Yes. He has
9 brought it up to me.

10 STEVE LORENZET:

11 Did you review those matters?

12 LILLEY:

13 Off handedly yes very quickly.

14 STEVE LORENZET:

15 Did you feel any discipline was called for?

16 LILLEY:

17 I am not in a position to discipline those people.
18 That is up to Mr. Passaro.

19 STEVE LORENZET:

20 Did you recommend any discipline by way of Mr.
21 Passro?

22 LILLEY:

23 I informed him of the irregularities, yes. I did

1 not recommend any discipline. That is his decision.

2 STEVE LORENZET:

3 Well in your judgment (inaudible)?

4 RICARDO SILVA:

5 Objection. I think she has been rather explicit.

6 She testified that she said there were problems of
7 irregularities and she is not in a position to basically say
8 why the people were not disciplined.

9 JAMES KLIMA:

10 What is the question?

11 STEVE LORENZET:

12 I was trying to get her to give her feeling as to
13 whether discipline was called for or not. Basically in her
14 judgment she said she does recommend discipline.

15 JAMES KLIMA:

16 I will overrule the objection. Go ahead.

17 STEVE LORENZET:

18 In your judgment was discipline called for?

19 RICARDO SILVA:

20 In which case?

21 STEVE LORENZET:

22 In any of them.

23 RICARDO SILVA:

1 In any of these?

2 STEVE LORENZET:

3 Yes.

4 LILLEY:

5 I would say keys, although this is not -- of these
6 3 issues?

7 STEVE LORENZET:

8 Yes.

9 LILLEY:

10 Not authorized access, not logged back in or not
11 logged as to who issued?

12 STEVE LORENZET:

13 Yes.

14 LILLEY:

15 Without going through and reading each one and
16 having to know each circumstance of what happened, I can't
17 necessarily say. However, when supervisors come into the
18 unit and are on duty they must account for all keys when
19 they take over the position. In doing so they must review
20 the logs and count the keys that are in the box to the key
21 that are out. Now if that be the case and there were keys
22 actually missing then they would have determined at that
23 point that there were keys missing.

1 STEVE LORENZET:

2 You mentioned recently that Lieutenant Thomson
3 brought a couple of matters to your attention?

4 LILLEY:

5 Yes he did.

6 STEVE LORENZET:

7 Did any of those matters in your judgment call for
8 disciplinary action?

9 LILLEY:

10 If we were at full capacity with staff under ideal
11 situations I would say yes that some of those situations
12 would have called for disciplinary action. However, being
13 very short staffed we just do not have people to go by ideal
14 rules and regulations.

15 STEVE LORENZET:

16 Can you recall any specifics?

17 LILLEY:

18 Specifics of not having keys logged out at all.
19 Of course that is not what Lieutenant Thomson refers to in
20 this here.

21 STEVE LORENZET:

22 There wasn't -- they weren't -- so they weren't
23 logged out. Lets get into some specifics. We won't name

1 names. The key wasn't logged out when it should have been.
2 What would be the sanction in your own judgment for that?

3 LILLEY:

4 I would say that according 50-2 under category
5 (i), first infractions, a written counseling and then
6 progressive discipline. Depending of course on the
7 seriousness of the key.

8 STEVE LORENZET:

9 I have no other questions.

10 RICARDO SILVA:

11 Captain Lilley you testified, looking at Employee
12 Exhibit #1, that if at the end of the shift supervisors are
13 required to make sure they have all the keys.

14 LILLEY:

15 The oncoming supervisor.

16 RICARDO SILVA:

17 The oncoming supervisor. correct me if I am
18 wrong. Doesn't this sheet show you that there are some
19 problems with regard to key control during the shift?

20 LILLEY:

21 No doubt all 3 shifts.

22 RICARDO SILVA:

23 All 3 shifts?

1 LILLEY:

2 Yes.

3 RICARDO SILVA:

4 And isn't it a fact that you told Mr. Passaro that
5 that is a problem with your supervisors not making sure that
6 these people log in and out these security keys and whether
7 or not supervisors have given permission to junior officers
8 to use these security keys throughout their shift and that
9 Mr. Passaro hasn't done anything about it?

10 LILLEY:

11 Yes I have informed him of that. There was a memo
12 issued out concerning filling out the logs appropriately.

13 RICARDO SILVA:

14 How long ago did you tell Mr. Passaro this?

15 LILLEY:

16 I have discussed it twice with him. The first
17 time was when the memo was issued out.

18 RICARDO SILVA:

19 When was that?

20 LILLEY:

21 Five (5) months ago. That is an approximation.

22 RICARDO SILVA:

23 Isn't it a fact that it is a possibility that with

1 not having good control of these keys throughout the tour of
2 any shift that possibly keys can be lost at any given time
3 during the tour of the shift by any officer and found later
4 on during the shift and turned into the supervisor of the
5 shift who would return them to the oncoming supervisor.
6 Isn't that a possibility or a probability?

7 LILLEY:

8 Well anything is possible. If supervision does
9 not have knowledge of it how can you deal with it? We don't
10 have E.S.P.

11 RICARDO SILVA:

12 Well supervision is supposed to issue out keys and
13 are supposed to make sure the keys are logged in and logged
14 out.

15 LILLEY:

16 Right.

17 RICARDO SILVA:

18 And they haven't been doing that in a lot of
19 cases. Isn't that correct?

20 LILLEY:

21 Well depending on -- yes. In some cases yes.

22 RICARDO SILVA:

23 And by not being right on top of the situation

1 these supervisors don't know whether keys are lost by the
2 subordinate officers through the shift and found later on in
3 the shift, correct?

4 LILLEY:

5 Understand that some of these keys are signed out
6 on one shift and when the oncoming supervisor inventories
7 that set they may not be there. They may be with somebody
8 else. That does not mean it is unaccountable.

9 RICARDO SILVA:

10 Just for the record would you say that the key
11 control problems at JPRU have to be tightened up to have
12 better accountability of the use of the keys throughout the
13 tour of the shifts?

14 LILLEY:

15 I think the accountability is fine. I think the
16 problem is with the logging of the keys. We have had no
17 lost keys at all.

18 RICARDO SILVA:

19 No other questions.

20 JAMES KLIMA:

21 Anything else?

22 STEVE LORENZET:

23 No.

1 JAMES KLIMA:

2 Okay. Thank you Captain.

3 RICARDO SILVA:

4 Thank you.

5 LILLEY:

6 Will I be needed any more? Can I return to work?

7 STEVE LORENZET:

8 Fine with me.

9 JAMES KLIMA:

10 Will you be needing Captain Lilley?

11 RICARDO SILVA:

12 No. No.

13 JAMES KLIMA:

14 Thank you.

15 (WHEREUPON, THERE WAS A BREAK IN THE RECORD)

16 RICARDO SILVA:

17 Your Honor that concludes our case except for
18 closing.

19 JAMES KLIMA:

20 Okay. I will hear closing arguments.

21 STEVE LORENZET:

22 Just for the record I would like to recall Mr.
23 Passaro. Can I do that?

1 (WHEREUPON, THERE WAS A BREAK IN THE RECORD)

2 THOMAS PASSARO

3 JAMES KLIMA:

4 Back on the record with Mr. Passaro. You have
5 been sworn Mr. Passaro and recalled by Management. Go
6 ahead.

7 STEVE LORENZET:

8 Are you aware of key control problems at JPRU?

9 PASSARO:

10 Am I aware of what?

11 STEVE LORENZET:

12 Key control problems at JPRU?

13 PASSARO:

14 I am aware that when we first opened up we had
15 some key control problems because we didn't have the proper
16 equipment.

17 STEVE LORENZET:

18 Have any incidents of employees taking keys home
19 or not properly controlling keys brought to your attention?

20 PASSARO:

21 Yes in a couple of occasions. Sure.

22 STEVE LORENZET:

23 (Inaudible).

1 PASSARO:

2 On the ones where the keys were taken home they
3 were reprimanded in accordance with progressive discipline.

4 Sure.

5 STEVE LORENZET:

6 Had there been any other incidents to your
7 knowledge where they were lost?

8 PASSARO:

9 Lost for an hour and a half? No, not to my
10 knowledge.

11 STEVE LORENZET:

12 Nothing further.

13 JAMES KLIMA:

14 Mr. Silva anything?

15 RICARDO SILVA:

16 No.

17 JAMES KLIMA:

18 Thank you.

19 PASSARO:

20 Can I go now?

21 STEVE LORENZET:

22 Yes. I think so.

23 JAMES KLIMA:

1 Sure. Ready for closing?

2 STEVE LORENZET:

3 Lieutenant Thomson when he was demonstrating to
4 you how he secured the keys mentioned that he had the
5 positive lock available. But he didn't use it. Now he uses
6 it. It is unfortunate that it took this incident for him to
7 (inaudible).

8 I think by his own testimony he was negligent that
9 day. Therefore, we had to suspend him for that negligence.

10 JAMES KLIMA:

11 Anything else?

12 STEVE LORENZET:

13 No.

14 JAMES KLIMA:

15 Mr. Silva?

16 RICARDO SILVA:

17 Your Honor there is no standard State equipment
18 given to Correctional Officers with regard to how they
19 control the keys. Management surely would have brought that
20 to your attention.

21 So what we have here is a dedicated employee who
22 has a belt that is approved by the Division of Correction.
23 Mr. Passaro testified that this belt was approved by the

1 Division of Correction including the key holders.

2 Now if State felt there was a problem that Mr.
3 Thomson used on the day in question then they should have
4 told Mr. Thomson that you shouldn't use that key holder. It
5 was Mr. Thomson's own initiative that he got another type of
6 key holder. Again the most important thing is that this is
7 equipment that the State said is okay.

8 Now remember this employee is charged with not
9 questions of lost keys which is Section (16) of the old DCR
10 50-2. Incidentally Your Honor the Division of Correction
11 Regulations had been submitted to you. Is that correct?

12 JAMES KLIMA:

13 Not officially. I have got copies here. But I
14 think I can take notice of the regulations. I don't think
15 there is any point in introducing these. Quite frankly I
16 want to keep them because they come up all the time. I
17 could make copies if you want to keep them.

18 RICARDO SILVA:

19 No. I just wanted to make sure. He is charged
20 with performance of duties. He is not charged with
21 questions of key control Your Honor and that is very
22 important. Because as you see today there are a lot of
23 problems with key control in JPRU. So we must narrow it to

1 the question of performance of one's duties.

2 Now I think we have shown be a preponderance of
3 evidence that a mishap occurred. But clearly that the
4 employee was not negligent with regard to the performance of
5 his duties. He would have had to do a clear balancing act
6 and if the employee took the keys and had missed the hook
7 the keys would have fallen. If the employee did miss the
8 hook it is all likelihood that they would have gone through
9 entirely. It is a very finite improbability that he could
10 have put the keys in the situation for the keys to be
11 falling off but they did. So a logical conclusion is that
12 it did not fall down initially on the ground because he had
13 it for an hour; that it was on secure; that it wasn't in the
14 balancing spectrum for lack of another way to say it, it was
15 clearly secured. Possibly he hit something at the same time
16 that the keys fell off. That is a possibility.

17 But what is clear is that the employee is not
18 negligence with regard to the performance of his duties if
19 the State says this is a belt that is okay. Again
20 performance of duties. Again a pattern has been shown that
21 at JPRU there is a problem with keys in general and that no
22 supervisor has been disciplined. That is Captain Lilley's
23 testimony. Only Lieutenant Thomson who incidentally has a

1 grievance for being involuntarily transferred 240 miles to
2 JPRU and he wanted to be at Poplar Hill right outside his
3 home. That is still subject to a grievance now. It just so
4 happens to be there.

5 Again I think we have shown be a preponderance of
6 the evidence that it is a mishap but not a question of
7 performance of duties. To discipline this supervisor when
8 under these circumstances no other supervisor has been
9 disciplined. I think it has been clearly shown that without
10 properly logging in and logging out JPRU knew that there was
11 a problem, i.e. by Captain Lilley's testimony who told Mr.
12 Passaro but Mr. Passaro believes that the problem has been
13 resolved. I think we have shown by a preponderance of the
14 evidence that in May of 1991, 5 months after Captain Lilley
15 told Mr. Passaro that the problem wasn't resolved then,
16 nobody has been disciplined. Only Lieutenant Thomson.

17 I think we have shown by a preponderance of the
18 evidence that the State has been arbitrary and capricious.
19 We ask that the suspension be rescinded. Thank you.

20 JAMES KLIMA:

21 All right. That will conclude this hearing.
22 Thank you.

23 (CONCLUSION OF HEARING)

1 STATE OF MARYLAND:

2

3 I, the undersigned, a Notary Public in and for the
4 State of Maryland, do hereby certify that the within
5 transcript was transcribed from tapes supplied to me to the
6 within typewritten transcript in a true and accurate manner.

7

8 I FURTHER CERTIFY that I am not of counsel to any
9 of the parties, nor am I an employee of counsel or any
10 relation to any of the parties, nor in any way interested in
11 the outcome of this action.

12

13 AS WITNESS my hand and Notarial Seal, this 3rd
14 day of February, 1992.

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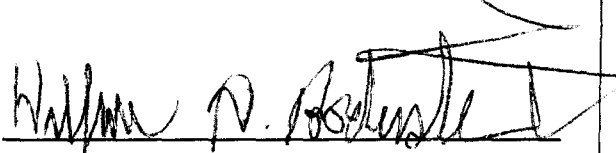
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Notary Public

My Commission expires 11/1/95.

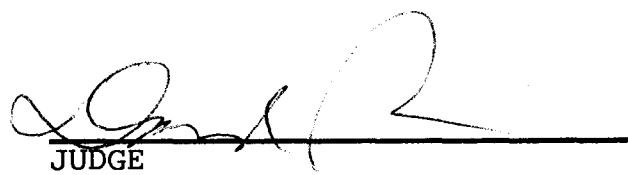
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DANIEL THOMSON, : IN THE
 Appellant : CIRCUIT COURT
 vs. : FOR
 DEPARTMENT OF PUBLIC SAFETY : BALTIMORE CITY
 AND CORRECTIONAL SERVICES, :
 Appellee : Case:91340071/CL141323
 OAH No: 91-DOP-CORC-02-1194 :

.....

ORDER

With regard to the foregoing Request for Extension, it is this
30 day of January, 1992, ORDERED that a ^{fifteen}~~sixty (60)~~ day
 extension be granted regarding the filing of the transcript with
 this Honorable Court.


 JUDGE

5

FILED

DANIEL THOMSON,
Appellant

: JAN 16 1992
: CIRCUIT COURT FOR
: BALTIMORE CITY

IN THE
CIRCUIT COURT
FOR

vs.

DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES,

: BALTIMORE CITY

Appellee

Case: 91340071/CL141323

OAH No: 91-DOP-CORC-02-1194

.....

REQUEST FOR EXTENSION

DANIEL THOMSON, Appellant, by his attorneys, Howard Avrum Miliman and D'Alesandro, Miliman & Yerman, respectfully file this Motion for Extension and state as follows:

1. That this office filed a Petition of Appeal on December 16, 1991, before this Honorable Court.
2. That the undersigned spoke with the Attorney General's Office and an extension was mutually agreed to.
3. That we have also requested a copy of the transcript of the July 31, 1991, hearing before the Honorable James P. Klima; however, have not received same to date.
4. That the transcribing service of C.R.S. has indicated a backlog of at least two (2) weeks in processing transcripts to be forwarded to this office.

THEREFORE, the Appellant respectfully requests that this Court grant a sixty (60) day extension regarding this case.

D'ALESSANDRO, MILIMAN
& YERMAN
ATTORNEYS AT LAW
5 LIGHT STREET, 11TH FLOOR
BALTIMORE, MD. 21202

SARATOGA 7-0114

Howard A. Miliman

Howard Avrum Miliman
D'ALESANDRO, MILIMAN & YERMAN
5 Light Street, 11th fl.
Baltimore, Md., 21202
(410) 727-0114

Attorneys for Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a copy of the foregoing Motion was mailed, postage prepaid, this 16th day of January, 1992, to, Ms. Linda Berge, Chief Clerk, Office of Administrative Hearings, Administrative Law Building, Green Spring Station, 10753 Falls Road, Lutherville, Maryland, 21093; and to Mr. Steven G. Hildebrand, Assistant Attorney General, Department of Public Safety and Correctional Services, 6776 Reisterstown Road, Suite 310, Baltimore, Maryland, 21215.

Howard A. Miliman

Howard Avrum Miliman

DANIEL THOMSON,
Appellant

FILED

JAN 16 1992

IN THE
CIRCUIT COURT
FOR
BALTIMORE CITY

vs.
DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES,

CIRCUIT COURT FOR
BALTIMORE CITY

Appellee
OAH No: 91-DOP-CORC-02-1194

Case: 91340071/CL141323

.....

REQUEST FOR EXTENSION

DANIEL THOMSON, Appellant, by his attorneys, Howard Avrum Miliman and D'Alesandro, Miliman & Yerman, respectfully file this Motion for Extension and state as follows:

1. That this office filed a Petition of Appeal on December 16, 1991, before this Honorable Court.
2. That the undersigned spoke with the Attorney General's Office and an extension was mutually agreed to for Appellant to obtain the transcript of the Administrative Hearing.
3. That we have also requested a copy of the transcript of the July 31, 1991, hearing before the Honorable James P. Klima; however, have not received same to date.
4. That the transcribing service of C.R.S. has indicated a backlog of at least two (2) weeks in processing transcripts to be forwarded to this office.

D'ALESSANDRO, MILIMAN
& YERMAN
ATTORNEYS AT LAW
5 LIGHT STREET, 11TH FLOOR
BALTIMORE, MD. 21202

SARATOGA 7-0114

WHEREFORE, the Appellant respectfully requests that this Court grant a sixty (60) day extension regarding the filing of the

transcript with the Honorable Court.



Howard Avrum Miliman
D'ALESANDRO, MILIMAN & YERMAN
5 Light Street, 11th fl.
Baltimore, Md., 21202
(410) 727-0114

Attorneys for Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a copy of the foregoing Motion was mailed, postage prepaid, this 15th day of January, 1992, to, Ms. Linda Berge, Chief Clerk, Office of Administrative Hearings, Administrative Law Building, Green Spring Station, 10753 Falls Road, Lutherville, Maryland, 21093; and to Mr. Steven G. Hildebrand, Assistant Attorney General, Department of Public Safety and Correctional Services, 6776 Reisterstown Road, Suite 310, Baltimore, Maryland, 21215.



Howard Avrum Miliman

FILED

JAN 3 1992

DANIEL THOMPSON

Appellant

v.

DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES

Appellee

OAH NO. 91-DOP-CORC-02-1194

* IN THE
* CIRCUIT COURT FOR
* BALTIMORE
* CITY

CASE NO. 91340071/CL141323

* * * * *

ANSWER TO PETITION FOR REVIEW OF ADMINISTRATIVE
AGENCY DECISION

The Department of Public Safety and Correctional Services, by its attorneys, J. Joseph Curran, Jr., Attorney General of Maryland, and Richard B. Rosenblatt, Assistant Attorney General, pursuant to Maryland Rule B2, states in answer to the petition of appeal, the following:

1. Appellee denies that the Administrative Law Judge failed to take into account critical facts, and denies that the State failed to satisfy any burden of proof.

2. Appellee denies that the testimony of the State's witness was insufficient to demonstrate the propriety of Appellant's suspension.

3. Appellee denies that the decision of the Administrative Law Judge, is arbitrary and capricious, denies that the decision is the result of an unlawful procedure, denies that the decision is unsupported by competent, material and substantial evidence in light of the entire record, and denies that the decision is affected by other errors of law.

Handwritten initials and signature.

WHEREFORE, Appellee respectfully requests that the decision of the Administrative Law Judge be affirmed.

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL OF MARYLAND

Richard B. Rosenblatt

RICHARD B. ROSENBLATT
ASSISTANT ATTORNEY GENERAL
Department of Public Safety and
Correctional Services
6776 Reisterstown Road
Suite 312
Baltimore, Maryland 21215-2341
(410) 764-4071

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of December, 1991, a copy of the foregoing Answer to Petition for Appeal of Administrative Agency Decision was mailed, postage prepaid, to Howard Avrum Miliman, D'Alesandro, Miliman and Yerman, 5 Light Street, 11th Floor, Baltimore, Maryland 21202-1295.

Richard B. Rosenblatt

RICHARD B. ROSENBLATT
ASSISTANT ATTORNEY GENERAL

FILED

DEC 17 1991

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EJB

DANIEL THOMPSON

Appellant

v.

DEPARTMENT OF PUBLIC
SAFETY AND CORRECTIONAL
SERVICES

Appellee

CIRCUIT COURT FOR
BALTIMORE CITY

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* CASE NO. 91340071/CL141323
*

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that notice of the filing of the appeal has been given to every party to the proceeding in conformity with Maryland Rule B.2(d).

James F. Truitt, Jr. (dtd)
JAMES F. TRUITT, JR.
Principal Counsel
Department of Personnel
301 West Preston St., Rm. 1009
Baltimore, Maryland 21201
(301) 225-4725

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of December, 1991, a copy of the foregoing Certificate of Compliance was mailed, postage prepaid to Howard Avrum Miliman, D'ALESANDRO, MILIMAN & YERMAN, 5 Light Street, 11th Floor, Baltimore, Maryland 21202 and to Stuart M. Nathan, Principal Counsel, Department of Public Safety and Correctional Services, 6776 Reisterstown Road, Baltimore, Maryland 21215-2341.

James F. Truitt, Jr. (dtd)
JAMES F. TRUITT, JR.

Page

DANIEL THOMSON, ;
Appellant ;
vs. ;
DEPARTMENT OF PUBLIC SAFETY ;
AND CORRECTIONAL SERVICES ;
Appellee ;

IN THE
CIRCUIT COURT
FOR
BALTIMORE CITY

FILED

APR 16 1991

CIRCUIT COURT FOR BALTIMORE CITY

91340071/00141323

OAH No: 91-DOP-CORC-02-1194

.....

PETITION OF APPEAL

DANIEL THOMSON, Appellant, by his attorneys, Howard Avrum Miliman and D'Alesandro, Miliman & Yerman, pursuant to Maryland Rule B2 files this Petition of Appeal and states as follows:

1. That the Administrative Court failed to take into account critical facts that clearly indicate that the burden of proof has not been met by the State.

2. The testimony of the State's witness alone was not sufficient to demonstrate by a preponderance of the evidence that he was suspended for an illegal or unconstitutional reason.

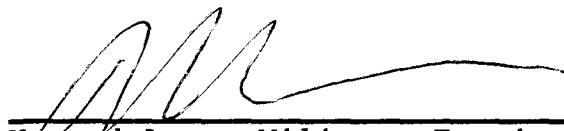
3. The decision of the Administrative Law Judge is arbitrary and capricious, is the result of an unlawful procedure, is unsupported by competent, material and substantial evidence in light of the entire record, and is affected by other errors of law.

THEREFORE, the Appellant respectfully requests that this Court (a) reverse the decision of the Administrative Law Judge, or (b) remand this matter to the Administrative Law Judge for further

D'ALESSANDRO, MILIMAN & YERMAN
ATTORNEYS AT LAW
5 LIGHT STREET, 11TH FLOOR
BALTIMORE, MD. 21202
SARATOGA 7-0114

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proceedings and the taking of additional evidence, and (c) grant such other and further relief as may be appropriate.

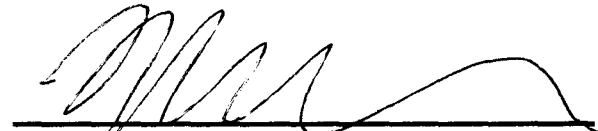


Howard Avrum Miliman, Esquire
D'ALESSANDRO, MILIMAN & YERMAN
5 Light Street, 11th fl.
Baltimore, Md., 21202
(301) 727-0114

Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petition of Appeal was mailed, postage prepaid, this 16th day of December, 1991, to: Ms. Linda Berge, Chief Clerk, Office of Administrative Hearings, Administrative Law Building, Green Spring Station, 10753 Falls Road, Lutherville, Maryland, 21093; and to Mr. Steven G. Hildebrand, Assistant Attorney General, Department of Public Safety & Correctional Services, 6776 Reisterstown Road, Suite 310, Baltimore, Maryland, 21215, in accordance with Chapter 1100. Rule B2(c), of the Maryland Rules of Procedure.



Howard Avrum Miliman

Defect

①

FILED

DEC 6 1991

DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES

IN THE
CIRCUIT COURT FOR
BALTIMORE CITY

Appellee

vs.

DANIEL THOMPSON

BALTIMORE CITY

91340071

Appellant

OAH No:91-DOP-CORC-02-1194

Case: 9:33AM12/09/91 00245498 A

CL 149323

Defect

.....	CIVIL	\$80.00
.....	LITEN	\$5.00
.....	TTTL	\$85.00
.....	CHECK	\$85.00
.....	CHNG	\$0.00

ORDER FOR APPEAL

Daniel Thompson, the Appellant, by Howard A. Miliman and D'Alesandro, Miliman & Yerman, his attorneys, hereby notes an appeal pursuant to Maryland Rule B2 and B4 from a decision of the Maryland Office of Administrative Hearings and Secretary of Personnel, in Case No. 91-DOP-CORC-02-1194.

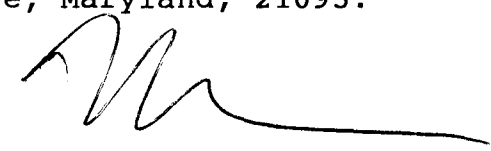


Howard Avrum Miliman
D'ALESSANDRO, MILIMAN & YERMAN
5 Light Street, 11th fl.
Baltimore, Maryland 21202

Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Order for Appeal was mailed, postage prepaid, this 6th day of December, 1991, to: Stuart M. Nathan, Assistant Attorney General, Department of Public Safety and Correctional Services, 6776 Reisterstown Road, Suite 312, Baltimore, Maryland, 21215, and to Chief Clerk, Office of Administrative Hearings, Administrative Law Building, Green Spring Station, 10753 Falls Road, Lutherville, Maryland, 21093.



Howard Avrum Miliman


D'ALESSANDRO, MILIMAN
& YERMAN
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5 LIGHT STREET, 11TH FLOOR
BALTIMORE, MD. 21202

DEPARTMENT OF PUBLIC SAFETY	;	IN THE
AND CORRECTIONAL SERVICES	;	CIRCUIT COURT
Appellee	:	FOR
vs.	:	BALTIMORE CITY
DANIEL THOMPSON	:	Case:
Appellant	:	
OAH No:91-DOP-CORC-02-1194	:	

;;;;;;;;;;;;;

CERTIFICATE OF COMPLIANCE

Daniel Thompson, the Appellant, by Howard A. Miliman and D'Alesandro, Miliman & Yerman, his attorneys, hereby certifies, pursuant to Maryland Rule B2.c., that a copy of the Order for Appeal from the decision of the Office of Administrative Hearings and Secretary of Personnel, in Case No. 91-DOP-CORC-02-1194, was hand delivered this 6th day of December, 1991, to Chief Clerk, Office of Administrative Hearings, Administrative Law Building, Green Spring Station, 10753 Falls Road, Lutherville, Maryland, 21093.



 Howard Avrum Miliman
 D'ALESSANDRO, MILIMAN & YERMAN
 5 Light Street, 11th floor.
 Baltimore, Maryland 21202

Attorneys for Appellant

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 & YERMAN
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 BALTIMORE, MD. 21202

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TELEPHONE 410 727-0114
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THOMAS J. D'ALESSANDRO, III
JACOB YOSEF MILIMAN
ROBERT JAY YERMAN
HOWARD AVRUM MILIMAN*

December 6, 1991

BRIAN S. BROWN*
SUSAN N. MILIMAN
JOAN S. BROWN
*MEMBER MD. & DC. BARS

Clerk
CIRCUIT COURT FOR BALTIMORE CITY
111 N. Calvert Street
Baltimore, Maryland 21202

RE: OAH No: 91-DOP-CORC-02-1194
Dept. of Public Safety and Correctional
Services vs. Daniel Thompson

Dear Sir/Madam Clerk:

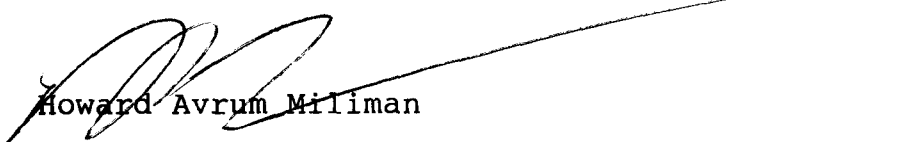
With regard to the above-captioned case, enclosed are a Certificate of Compliance as well as Order for Appeal.

Also enclosed is our check representing filing fees.

Please file same appropriately.

Thank you for your assistance and cooperation in this matter.

Sincerely yours,


Howard Avrum Miliman

HAM/cam
Enclosures

1991

RC
3-2-10
Scanned
288 pages

HALL VS PRIEST Box 1803 Case No. 91303043

[MSA T2691-4440, OR/12/11/74]

File should be named msa_sc5458_82_150_[full case number]-####

THOMPSON VS DEPART.OF PUBLIC SAFETY Box 1869 Case No. 91340071

[MSA T2691-4507, OR/12/13/14]

File should be named msa_sc5458_82_150_[full case number]-####

SAMET VS INSURANCE COMM., ET. AL. Box 1892 Case No. 91354017

[MSA T2691-4530, OR/12/13/37]

File should be named msa_sc5458_82_150_[full case number]-####

THOMPSON VS DEPT. OF HUMAN RESOURES Box 1892 Case No. 91354021

[MSA T2691-4530, OR/12/13/37]

File should be named msa_sc5458_82_150_[full case number]-####

KLINERS VS BD. OF APPEALS DEPART.OF ECON. Box 1896 Case No.

91358008

[MSA T2691-4534, OR/12/13/41]

File should be named msa_sc5458_82_150_[full case number]-####