

## ***Dep't of Correction v. Blount***

OATH Index No. 142/12 (Feb. 6, 2012), *modified on penalty*, Comm'r Dec. (Mar. 22, 2012),  
**appended**

Correction officer found guilty of bringing a Nook Wi-Fi Reader into a prohibited area of the inmate facility at the Rose M. Singer Center. ALJ recommends ten days' suspension without pay. Because respondent was suspended pre-hearing for fifteen days without pay, ALJ further recommends that respondent be credited with five days' pay.

Commissioner found ALJ's recommended penalty to be insufficient, given security concerns involved. Commissioner imposed a 15 day suspension with credit for the 15 days already served pre-hearing.

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### **NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS**

*In the Matter of*  
**DEPARTMENT OF CORRECTION**  
*Petitioner*  
*- against -*  
**SONYA BLOUNT**  
*Respondent*

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### **REPORT AND RECOMMENDATION**

**INGRID M. ADDISON**, *Administrative Law Judge*

This disciplinary proceeding was referred by petitioner, the Department of Correction ("Department"), pursuant to section 75 of the Civil Service Law. The Department charged respondent, Sonya Blount, with bringing an electronic Nook Wi-Fi Reader into the Rose M. Singer correctional facility in violation of Dep't Operations Order No. 01/05 (eff. Apr. 7, 2005) (ALJ Ex. 1).

A hearing was conducted before me on January 20, 2012. The Department presented the testimony of Deputy Warden Michele Clifford, retired Captain Cynthia Nail, and Assistant Chief Mark Scott, as well as documentary evidence and respondent's Nook Wi-Fi Reader. Respondent appeared with counsel and testified on her own behalf.

For the following reasons, I find that respondent brought an electronic/recording device into an area of the Rose M. Singer Center where such devices were not permitted, in violation of Dep't Operations Order No. 01/05, and recommend that she be suspended for ten days without pay. Because respondent has already served a 15-day pre-hearing suspension without pay, I further recommend that she be credited with five days' pay, representing the difference between my penalty recommendation and her pre-hearing suspension.

### ANALYSIS

The Department prohibits staff from bringing unauthorized electronic and recording devices into its facilities, including all inmate housing facilities (Pet. Ex. 10). Upon entering a Department facility, staff members must secure their non-Department issued electronic/recording devices in their lockers. If they do not have private lockers, they must place such devices in a facility-approved secure area designated for storage of each staff member's personal articles (Pet. Ex. 8 at 2). But they may not bring electronic devices past the gates (Tr. 33-34). Electronic/Recording devices are defined by Dep't Operations Order No. 01/05 as:

Any type of instrument, which is designed to transmit and/or receive telephonic, electronic, digital, cellular or radio communication as well as any type of instrument designed to have sound and/or image recording or capturing capabilities.

(Pet. Ex. 8 at 1).

Before taking up their posts, correction officers at the Rose M. Singer Center report for a roll call at which the tour commander issues instructions about the safety risks associated with, and violations that may be imposed for introducing cell phones and electronic devices into the facility. Roll call is held in the facility's gym which is located within the facility's gate. At the roll call, staff members in possession of any unauthorized electronic devices are granted an "amnesty period" to secure those items without penalty in their lockers which are located outside the facility's gate. The tour commander memorializes in a Control Room log book that instructions against electronic devices were given. If an officer fails to use the amnesty period to secure electronic devices and is later discovered to be in possession of one, no further opportunity to return to the locker room is afforded. After roll call, some staff may be required to conduct an institutional search. Otherwise, they must assume their assigned posts (Clifford: Tr. 12-14, 37-38; Nail: Tr. 52-54, 67; Pet. Exs. 1, 2).

The charge against respondent stems from the discovery of a clear plastic bag containing food items and an electronic Nook Wi-Fi Reader behind a garbage pail outside the gym where roll call was held on March 29, 2011, for the 7:00 a.m. to 3:00 p.m. tour of duty.

Michele Clifford, a Department employee for 21 years, is a deputy warden (“DW”) at the Rose M. Singer Center, where she has worked for approximately one and a half years. On March 29, 2011, DW Clifford worked the 7:00 a.m. to 3:00 p.m. tour (Tr. 10-11). She testified that respondent’s normal tour of duty is 3:00 to 11:00 p.m. (Tr. 27). However, on that day, respondent was scheduled to cover for another officer during the 7:00 a.m. to 3:00 p.m. tour and resume her normal tour immediately after. According to DW Clifford, respondent was assigned to administrative segregation at the B post for the earlier tour (Tr. 18-19). At that post, officers have a desk from which they observe inmates. They also make periodic 30-minute security tours, or 15-minute tours if an inmate is suicidal. The tour certification report indicated that for the 3:00 to 11:00 p.m. shift, respondent was assigned as an escort officer (Pet. Ex. 4). Escort officers accompany certain inmates who are not permitted to walk the hallways unescorted. Otherwise, officers must be at their post observing the inmates. Officers are not permitted to read while on duty. As such, they may only have the log book at their post (Tr. 21-25).

DW Clifford testified that on March 29, 2011, she attended the 7:00 a.m. roll call in the gym (Tr. 11). When it ended, she spoke with the captains that were present and proceeded to leave the gym (Tr. 13-14). As she exited, she noticed a blue transparent plastic bag with food, in a corner near the garbage can. No officers were in the vicinity so DW Clifford asked Captain Nail, who was walking behind her, to find out whose bag it was and have the owner remove it to behind the facility gate (Tr. 15-16).

Recently retired Captain Cynthia Nail was employed by the Department for 20 years, seven of which were spent at the Rose M. Singer Center. On March 29, 2011, she worked the 7:00 a.m. to 3:00 p.m. tour. She confirmed that after the 7:00 a.m. roll call, DW Clifford instructed her to find out who owned a plastic bag that DW Clifford had seen outside the gym. Captain Nail testified that she waited around for about ten minutes to see if someone would come to retrieve it. She saw respondent near the sign-in sheets, which were in the general vicinity of the personnel office, but at the time, she did not know that the bag was respondent’s. She took the bag to Assistant Deputy Warden (“ADW”) Maria Texeira, the tour commander, whose office is outside the gate. They rummaged through it and found food items, an electronic Nook Wi-Fi

Reader, papers, and photographs which helped to identify respondent as the bag's owner. Afterwards, Captain Nail completed an incident report form (Tr. 55-59; Pet. Ex. 7). The report was slightly but not significantly different from her testimony as it related to the sequence of events. For instance, she testified that she searched the bag in ADW Teixeira's office, while her report indicated that she searched the bag before taking it to the tour commander. I accorded more weight to Captain Nail's contemporaneous report, and attributed the difference in her testimony to the passage of time, and the fact that she has since retired.

ADW Teixeira was not present to testify but petitioner submitted an Unusual Incident Report prepared by her, which I found to be a reliable synopsis<sup>1</sup> of what occurred, given the testimony of DW Clifford and Captain Nail (Pet. Ex. 5). In her report, which was signed by DW Clifford, ADW Teixeira indicated that she had notified the DW of Security, Mark Scott, of the discovery of respondent's bag and its contents.

Mr. Scott has been employed by the Department for 28 years, and is currently an assistant chief. On March 29, 2011, he worked the 7:00 a.m. to 3:00 p.m. tour (Tr. 67-70). AC Scott testified that ADW Teixeira brought respondent's bag to him and showed him the Nook Reader that they had found in it (Tr. 70). He stated that a Nook Reader is contraband because of its Wi-Fi capability. He reinforced DW Clifford's testimony that such a device poses security risks to the facility if an inmate gains access to it because it would permit communication with the outside world (Scott: Tr. 71-72; Clifford: Tr. 34, 44-47). AC Scott testified that the Nook Reader was returned to respondent's bag which he then took to the warden's office. There, they emptied the bag, examined its contents and confirmed its ownership. The warden, Vanessa Singleton, decided to suspend respondent for 15 days. AC Scott testified that this is an automatic suspension for bringing electronic contraband into the facility. Respondent was summoned to DW Scott's office. When she got there, she acknowledged that the bag was hers. She also told DW Scott that she had previously brought the Nook Reader into the facility but had never used it on the job. DW Scott informed her that she had violated Department rules and immediately suspended her (Tr. 72-74; Pet. Ex. 5).

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<sup>1</sup> Hearsay is admissible in disciplinary proceedings and may even be the sole basis for a finding of fact. *Dep't of Correction v. Connell*, OATH Index No. 1598/11 at 10 (May 24, 2011); *Human Resources Admin. v. Green*, OATH Index No. 3347/09 at 8 (Nov. 18, 2009); see also *People ex rel. Vega v. Smith*, 66 N.Y.2d 130, 139 (1985) (hearsay is admissible in state administrative proceeding and if sufficiently relevant and probative may constitute substantial evidence). However, hearsay must have probative value and bear some indicia of reliability in order to be given significant weight. *Green*, OATH 3347/09 at 8; *Dep't of Sanitation v. Jefferies*, OATH Index Nos. 2529/09, 2530/09 at 13 (Sept. 18, 2009).

Respondent, a correction officer since 2008, did not dispute bringing the plastic bag with her Nook Reader into the facility. Neither did she deny awareness of Dep't Operations Order No. 01/05, which prohibited the introduction of electronic/recording devices designed to transmit and/or receive electronic communication. However, she claimed that she brought the Nook Reader into the facility in error due to fatigue. Respondent stated that on March 28, 2011, she worked her normal 3:00 to 11:00 p.m. tour. After her tour, she normally gets home around 1:00 a.m. Because she was scheduled to work two tours the following day, commencing at 7:00 a.m., she had to be awake by 4:30 or 4:45 a.m., and therefore got very little sleep. She arrived at the Rose M. Singer Center at around 6:50 a.m., went to her locker, dressed in her uniform, took disinfectant wipes, a bottle of water, an orange, and some papers from her locker, and placed them in a bag. Respondent stated that she had two transparent blue plastic bags in her locker, and in an effort to be punctual for the 7:00 a.m. roll call, she must have grabbed the wrong bag containing the Nook Reader. She maintained that even before March 29, she had kept the device in her locker because when she works overtime on the midnight shift, she uses her meal break to read in the locker room (Tr. 79-83, 85).

Respondent confirmed that when she attended roll call on March 29, 2011, officers were warned about securing electronic devices, but because she was unaware that her bag contained the Nook Reader, she did not heed the warning (Tr. 85-86). She claimed that she placed her bag where fellow officers habitually placed theirs because there was no room in the gym to accommodate them (Tr. 93-95). After roll call ended, she did not immediately report to her post because the tour of the officer whom she was relieving was scheduled to end at 7:31 a.m. Instead, she went to the personnel office at around 7:15 a.m. (Tr. 87, 102). After leaving the personnel office, she went to retrieve her bag and found it missing. She inquired about it and was told by an officer that it had been taken to the control room, but the officers in the control room told her that they had not received it. As she headed for her post, she was summoned to DW Scott's office. When she got there, ADW Texeira was also present. Respondent identified her bag and Nook Reader and told DW Scott that she had inadvertently grabbed the wrong bag from her locker while rushing to roll call. DW Scott informed her that she was being suspended. She did not deny telling DW Scott that she had previously brought the Nook Reader to the facility but stated that she brought it to her locker, not to her post. At DW Scott's direction, she wrote a report in which she stated, as she maintained at trial, that she had mistakenly grabbed the

wrong plastic bag from her locker (Pet. Ex. 11; Resp. Ex. A). Because she was immediately suspended, neither she nor the Nook Reader made it to post (Tr. 86-91).

As an initial matter, respondent's counsel intimated that the introduction of a Nook Reader into the Department facility might not be as risky and harmful as a camera or cell phone. The Department's prohibition against electronic devices does not differentiate based on the level of risk of the device. Nor does counsel's perceived level of risk of the Nook Reader provide any kind of mitigation for it being brought into the facility. Moreover, respondent's testimony that the Nook Reader was not taken to her post does not make bringing it into the facility any less of a violation (Tr. 39, 45). The amnesty period serves as a final warning for officers to secure electronic devices before they report to their post by taking them back to their lockers outside the gate. But that does not mean that a violation occurs only when the electronic device is taken to the officer's post. Dep't Operations Order No. 01/05 prohibits the introduction of unauthorized electronic and recording devices into Department facilities (emphasis added). Respondent admittedly brought an electronic device into Department facilities. It was therefore unauthorized, whether or not she had taken it to her post.

DW Clifford testified that she had no reason to question the veracity of respondent's report, and acknowledged that respondent has an excellent work ethic and a reputation for honesty and integrity (Tr. 29, 31, 39). But she conceded that she did not know respondent personally (Tr. 33). DW Scott testified that respondent is very respectful and he understood her to be a good officer (Tr. 73). In spite of these accolades, I was not persuaded by respondent's claim that she left her bag behind the garbage pail because there was insufficient room in the gym for officers to bring in their belongings at roll call. Such an explanation was self-serving and uncorroborated. Besides, not only did the location seem to be undesirable, but stashing her bag behind the garbage pail appeared to be a deliberate attempt to conceal it. Likewise, her claim that other officers placed their bags in the same location was unsupported. As a consequence, I was not convinced that she inadvertently grabbed the wrong bag from her locker as she asserted.

In sum, I find that respondent brought her bag, knowing that it contained an electronic Nook Wi-Fi Reader, into an area of the Rose M. Singer Center where such devices are prohibited. Such conduct violated Operations Order No. 01/05, which prohibits staff from

bringing unto Department Facilities, electronic devices that can transmit and/or receive communication. It also threatened the good order and discipline of the Department.

### **FINDING AND CONCLUSION**

- 1) Petitioner established that respondent took an electronic device into the Department's facility in violation of Dep't Operations Order No. 01/05.

### **RECOMMENDATION**

Sections 3.20.030 and 3.20.300 of the Department's Rules and Regulations authorize the Commissioner to impose a penalty for an employee's failure to abide by the provisions of any order and for conduct that threatens good order and discipline. Dep't Rules 3.20.030, 3.20.300 (1996). In order to recommend an appropriate penalty, I requested and obtained respondent's personnel abstract from the Department. Respondent was appointed as a correction officer on August 7, 2008, and has no prior disciplinary history. Here, respondent was found to have brought an electronic device into the Department's facility against Dep't Operations Order No. 01/05. For that, she received an immediate 15-day suspension without pay. At trial, the Department sought a recommendation of an additional 30-day suspension without pay. I find that to be excessive and unduly harsh.

This tribunal has consistently applied the principles of progressive discipline. The concept underlying progressive discipline is employee behavior modification through increasing penalties for repeated or similar misconduct. *See Health & Hospitals Corp. (Woodhull Medical & Mental Health Ctr.) v. Ford*, OATH Index No. 2383/09 at 11 (July 10, 2009); *Health & Hospitals Corp. (Kings Co. Hospital Ctr.) v. Meyers*, OATH Index No. 1487/09 at 8 (Jan. 26, 2009), *adopted*, NYC HHC Pers. Rev. Bd. Dec. No. 1349 (July 31, 2009); *Human Resources Admin. v. Beauford*, OATH Index No. 1517/03 at 18 (Dec. 5, 2003), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 06-15-SA (Jan. 9, 2006). Thus, we have found that under certain circumstances, only a minimal punishment is warranted, particularly on the first occasion of misconduct. *Dep't of Correction v. Felle*, OATH Index No. 1410/07 at 8 (May 22, 2010), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 08-11-SA (Feb. 20, 2008); *Transit Auth. v. Ondeje*, OATH Index No. 1339/04 (Dec. 30, 2004); *Dep't of Transportation v. Jackson*, OATH Index No. 299/90 at 12 (Feb. 6, 1990) (“[i]t is a well-established principle in employment law that

employees should have the benefit of progressive discipline wherever appropriate, to ensure that they have the opportunity to be apprised of the seriousness with which their employer views their misconduct and to give them a chance to correct it”).

A fair penalty must take into account the particular circumstances of the incident and individual mitigating factors, where appropriate. *Dep’t of Correction v. Phoenix*, OATH Index No. 1543/08 at 10 (Apr. 14, 2008), *adopted*, Comm’r Dec. (June 6, 2008); *Transit Auth. v. Madsen*, OATH Index No. 121/98 at 7 (Sept. 5, 1997), *modified on penalty*, Auth. Dec. (Sept. 30, 1997); *see also Admin. for Children’s Services v. Goodman*, OATH Index Nos. 986/05, 1082/05 at 15 (Aug. 12, 2005) (respondent’s lack of a prior disciplinary record is a mitigating factor); *Dep’t of Correction v. Winniceck*, OATH Index No. 890/04 at 3-4 (May 7, 2004), *adopted*, Comm’r Dec. (Oct. 8, 2004) (misconduct mitigated by respondent’s personnel record and evidence that it was caused by stress related to a death in the family).

In *Department of Correction v. Finch*, OATH Index No. 652/07 (Nov. 28, 2006), *modified on penalty*, Comm’r Dec. (May 24, 2007), *modified on appeal*, NYC Civ. Serv. Comm’n Item No. CD 08-19-M (Mar. 19, 2008), a correction officer was found to have been off-post with an unauthorized cell phone, disrespectful to a superior officer who questioned him about the circumstances, and failed to submit an ordered report. Taking respondent’s 15 years and minimal disciplinary history with the Department, Administrative Judge Faye Lewis recommended a 12-day suspension without pay. The Department’s commissioner considered that recommendation to be too lenient and increased it to 30 days suspension without pay. On appeal, the Civil Service Commission found the Commissioner’s penalty to be excessive, and adopted ALJ Lewis’ recommendation.

In *Department of Correction v. Pierre-Clark*, OATH Index No. 2259/04 (Mar. 29, 2005), *aff’d*, NYC Civ. Serv. Comm’n Item No. CD 06-116-SA (Nov. 8, 2006), Administrative Law Judge Tynia Richard took the respondent’s 18-year history with the Department into account and recommended an eight-day suspension without pay for a correction officer who brought a cell phone and made personal calls while on post, and left the phone unsecured near an inmate holding area such that an inmate accessed it and made calls.

Here respondent does not have a lengthy employment history on which to rely. She has been with the Department for just over three years, and her proven misconduct occurred soon after her two and a half years anniversary. However, both DW Clifford and DW Scott had good



things to say about her. In addition, when confronted by DW Scott and ADW Texiera, respondent immediately acknowledged ownership and responsibility for her bag. At trial, she was contrite, openly expressing regrets at having brought the Nook Reader to the facility in the first place. She further indicated that she had learned her lesson. I found her contrition to be sincere.

Even though there were no negative repercussions as a result of respondent's conduct, the Department's legitimate security concern cannot be ignored. A Sullivan County court recently addressed the seriousness of an inmate's possession of a cell phone. In dicta, the court articulated that:

Telecommunication by cell phones, iPods, and the like (emphasis added) allow the possessor to contact persons, or obtain sources of information, without face-to-face interaction. Thus, use by inmates cannot be controlled or monitored in a detention facility, and for this precise reason they are banned for any staff, officer or inmate to possess.

*People v. Greene*, N.Y.L.J., June 17, 2011 at 1 (Co. Ct. Sullivan Co. June 14, 2011).

In this instance, respondent's Nook Reader falls within the "and the like" classification because of its Wi-Fi capability, which, according to DW Scott, would permit an inmate to communicate with the outside world. Thus, respondent's violation of the Dep't Operations Order No. 01/05 is serious. But unlike *Pierre-Clark*, OATH 2259/04, petitioner neither asserted nor established that the Nook Reader was located near an inmate holding area, or had been accessed by an inmate. Further, unlike *Finch*, OATH 652/07, respondent was not disrespectful to her supervisors when questioned about the bag, and she complied with their request to submit a report regarding same.

Weighing respondent's security breach against her clean disciplinary record, her supervisors' compliments, her regret, and her overall acceptance of responsibility for the infraction, I find that a penalty suspension of ten days without pay is appropriate, and I so recommend. Because respondent was automatically suspended without pay for 15 days, I further recommend that the Department credit her with five days' pay.

Ingrid M. Addison  
Administrative Law Judge

February 6, 2012

SUBMITTED TO:

**DORA B. SCHIRO**

*Commissioner*

APPEARANCES:

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**BY: STEVEN ISAACS, ESQ.**

**Commissioner's Decision (Mar. 22, 2012)**

On March 29, 2011 Respondent, Correction Officer Sonya Blount, brought her personal electronic Wi-Fi Nook Reader into the Rose M. Singer Center without permission or authority and in violation of Departmental rules, regulations and directives against bringing electronic recording devices into a correctional facility. At approximately 0730 hours, following roll call, Captain Cynthia Nail-Hill observed a plastic bag located behind a garbage can in the West Corridor. The plastic bag contained food items, pictures and the Wi-Fi Nook Reader, which Respondent subsequently admitted belonged to her. Officer Blount was summarily suspended for fifteen days.

As set forth in the attached Findings and Recommendations and Charges and Specifications, Respondent Sonya Blount was found guilty after trial at OATH. Hon. Ingrid Addison recommended that Respondent, who had been previously suspended for fifteen days without pay, receive a penalty of ten suspension days with the Department crediting Respondent with five days' pay. Based on the record in this matter, I adopt the findings of fact by Administrative Law Judge Ingrid Addison. However, I do not adopt the recommended penalty.

In finding Officer Blount guilty of bringing an electronic device into a correctional facility in violation of Departmental rules, regulations and directives, Judge Addison's analysis sheds light on Respondent's motives for doing so. Judge Addison found that Respondent's "stashing her bag behind the garbage pail appeared to be a deliberate attempt to conceal it" and that Respondent's explanation that "she left her bag behind the garbage pail because there was insufficient room in the gymnasium for officers to bring their belongings at roll call . . . was self-serving and uncorroborated." Respondent's intent is clear. Respondent placed the over-sized plastic bag behind the garbage pail to conceal it from supervisory staff at roll call and then to later remove the bag and take it to her post

In recommending a ten suspension day penalty, Judge Addison's recommendation was clearly based on the principle and concern for progressive discipline. However, Judge Addison did not properly account for the Department's legitimate and overriding concerns for security. In certain

instances, such as this case, the Department's legitimate concerns for security must override the concept of progressive discipline.

The Department's primary argument was that Respondent committed a breach of security when she brought the Nook Reader into the Rose M. Singer Center. Judge Addison found that the Department's legitimate security concern could not be ignored and cited *People v. Greene*, N.Y.L.J., June 17, 2011 at 1 (Co. Ct. Sullivan Co. June 14, 2011), a case in which Judge LaBruda of the Sullivan County Court ruled that cell phones or other telecommunication devices have a substantial probability that the item itself may be used in a manner that is likely to bring out major threats to a detention facility's institutional safety or security by ... inmates in the facility.

When Respondent's counsel argued that the Nook reader was less risky than a cell phone, Judge Addison countered that argument by stating that the Department's prohibition against electronic devices did not differentiate based on the level of risk [of the device], which argument did not provide any kind of mitigation for the Nook Reader being brought into Rose M. Singer Center as opposed to a cell phone. Additionally, as Judge Addison found, Respondent's testimony was suspect when Respondent testified that she hastily attempted to make roll call and inadvertently grabbed the wrong bag from her locker and placed the bag containing the Nook Reader behind a garbage pail outside the RMSC gymnasium because there was not sufficient room inside the gym. Judge Addison found that Respondent's testimony was self-serving and uncorroborated and the stashing of the bag behind the garbage pail appeared to be a deliberate attempt to conceal it. Judge Addison was not convinced that Respondent inadvertently grabbed the wrong bag from her locker as Respondent had testified.

In accordance with *Fogel v. Board of Education*, Respondent's counsel referenced the "outstanding descriptions" of Officer Blount's work and how the people who work with [Respondent] and know her best "spoke glowingly" of Officer Blount. The only testimony from the record is from Deputy Warden Clifford who stated, "I feel that she's honest." Also, Respondent's counsel, suggesting that under the theory of progressive discipline, a penalty of reprimand was the appropriate penalty for Respondent's violation, claimed that "[T]he principle of progressive discipline is to ensure a good and proper work force" and that "[A]ny violation of

the Department's Rules and Regulations does not automatically require a suspension, and I submit to you in this case a suspension is harsh and unfair.”

Although Judge Addison found that Respondent violated facility security, threatened the good order and discipline of the Department and emphasized that the Department's legitimate security concern could not be ignored, in recommending an appropriate penalty, Judge Addison placed specific emphasis on the principle of progressive discipline. I disagree. In weighing the violation of a breach of security against Respondent's clean disciplinary record, Judge Addison found that the clean disciplinary history trumped the Department's policy against the introduction of electronic devices into a correction facility. Judge Addison's penalty recommendation analysis was not only flawed but dangerously opens the door to other sympathetic recommendations when similar types of electronic devices are found inside a correction facility. This is an instance where the Department's legitimate concern for the security of its jails, correction officer staff, supervisory personnel and inmates outweighs the concept of progressive discipline.

The Department requested an additional fifteen suspension day penalty, which would have resulted in a thirty suspension day penalty. Judge Addison considered such recommendation too harsh. After consideration of the facts herein, I recommend that instead of an OATH recommended penalty of ten suspension days with the Department crediting Respondent with five days' pay, the Department recommends a total penalty of fifteen suspension days with credit for fifteen days already served on suspension from 3/29/2011 through 4/12/2011.

Dora B. Schriro, Commissioner

Mar. 22, 2012