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**STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS**

**INVESTIGATION OF ALLEGATIONS OF  
AGE AND SEXUAL HARASSMENT AND RETALIATION**

**AT THE  
MONROE CORRECTIONAL COMPLEX**

**MARCH - MAY 2001**

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**I. INTRODUCTION**

I was hired by the Washington State Department of Corrections, to investigate allegations brought by **Person A**, an employee at the Monroe Correctional Complex (MCC), that she was subjected to harassment based on her gender and her age, specifically because she was a young and attractive female. She also alleges that rumors about her conduct with the Superintendent were not only false, but created a sexually hostile working environment for her. Additionally, she alleges retaliation. Following my investigation I conclude that **Person A** was not harassed because of her appearance. I also do not find that her managers engaged in retaliation. I do conclude, however, that she was probably subjected to a hostile working environment and that her managers failed to take appropriate steps to curb rumors that she was having an intimate relationship with the Superintendent.

First I describe the issues I considered. Next I describe the procedure that I used. This is followed by the information I collected, my analysis of this material and the conclusions I reached concerning each issue. Finally, I set out a summary of my conclusions.

**II. ALLEGATIONS**

- A. **Person A** alleges she was harassed on the basis of her age and gender by older female co-workers and supervisors when she worked in the MCC Mail Room, the Business Office and the Superintendent's Office because she is "an attractive young female".

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B. **Person A** contends that she was sexually harassed when **Person AA, manager** at MCC, spread rumors both at the facility and in the community that he found her and Superintendent Leslie Ryder, Jr., in a compromising situation in the Superintendent's office.

C. **Person A** alleges that she was sexually harassed and retaliated against by DOC senior management when they failed to follow DOC procedures once they became aware of her concerns. Specifically she alleges that Dennis Thaut, NW Regional Administrator, not only failed to follow DOC procedures but that he also failed to follow through on his promises to **Person A** regarding his response to her allegations. **Person A** also alleges that she and Ryder were retaliated against by Lynn DeLano, Assistant Deputy Secretary, Office of Correctional Operations, when DeLano investigated **Person A** and Ryder rather than **Person A's** allegations of sexual harassment.

### **III. PROCEDURE**

I interviewed 28 DOC employees<sup>1</sup> between March 12 and April 16, 2001. Each witness was interviewed individually, all but two<sup>2</sup> were interviewed face-to-face, and some were interviewed twice. The interviews were conducted at the Washington State DSHS Facility in Monroe and at MCC.

A Declaration or written statement signed under penalty of perjury was prepared for each witness during his/her interview. Each witness was given written instructions for correcting the Declaration and allotted five business days in which to put the corrected and signed statement into the mail. Witnesses were also advised that if they failed to return the Declaration in a timely manner I would use their draft Declaration as their testimony. Only one witness failed to<sup>3</sup> return her Declaration.

I also informed each witness of the sensitivity of the issues addressed and admonished them not to disclose the allegations or the information we discussed

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<sup>1</sup> A list of those interviewed and their relative working relationships is attached to this report. Those who were interviewed twice are so indicated by an asterisk (\*) next to their names.

<sup>2</sup> Two witnesses were interviewed by telephone: Lynn DeLano and **Person F**.

<sup>3</sup> This witness, **Person D**, was interviewed twice. She returned the Declaration prepared during her first interview, but not the second.

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to co-workers.

Additionally, each person was advised that participating in an investigation such as this one is considered protected activity under State and Federal law as well as DOC policies and procedures. They were requested to report as soon as possible any action they felt was retaliatory, directed either at them or at any other witness. In addition, each manager was instructed not to retaliate against any of his/her employees who were interviewed. Aside from **Person A's** initial allegations of retaliation, as of the date of this report, no witnesses have reported they were targeted for reprisal.

### **III. FACTUAL INFORMATION PROVIDED, ANALYSIS AND CONCLUSIONS REACHED**

#### **A. Background**

**Person A** began working as a Temporary Mail Machine Operator in the Twin Rivers Unit (TRU) Mail Room at MCC on February 2, 1998. Initially she was [REDACTED] by **Person G**, [REDACTED]. From January 11, 1999 to May 11, 1999 she was supervised by Sergeant Theresa L. Cohn, among others. Cohn evaluated **Person A** at the end of her probationary period as "work[ing] hard and diligently and ... successfully [meeting] all the expectations of a Mail Machine Operator 3." **Person A** was notified on January 25, 2001 that she was nominated by Cohn for the Fourth Quarter MCC Employee of the Quarter Award. **Person A** also received an undated thank you note from the family of an inmate while she was in the Mail Room for providing information regarding what an inmate may receive and procedures followed during visits.

With the consolidation of the TRU and three other facilities into the Monroe Correctional Complex, TRU Mail Room staff was moved to the Mail Room at the Washington State Reformatory (WSR). Associate Superintendent Willie Daigle oversaw the consolidation of the Mail Rooms and **Person C** became the direct supervisor of the staff of the consolidated Mail Room. **Person A** became a Permanent Mail Machine Operation on January 11, 1999. On August 12, 1999, all Mail Room staff, including **Person A**, received a Letter of Expectation from Daigle concerning a lack of communication that caused dissension among the Mail Room staff.

**Person A** received a Temporary Appointment as a Fiscal Technician in the Office of Inmate Accounts in the Business Office on November 22, 1999. In that position her [REDACTED] was **Person M**, [REDACTED]. **Person A** failed

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the test that would have made her eligible to become a Permanent Fiscal Tech.

**Person A** became the Office Assistant Senior in the MCC Superintendent's Office<sup>4</sup> on August 21, 2000, following an open application process. This was a newly created position. **Person A** was selected by **Person B**, Secretary [REDACTED] who became **Person A's** [REDACTED] **Person B** described **Person A** on her January 30, 2001 Employee Development and Performance Plan as :

a quick learner [who] has eagerly taken on new tasks. Her upbeat personality has been an asset to this office. Her telephone skills are excellent and she is to be commended for her tact when dealing with difficult individuals. Her organizational skills are excellent. She organized several areas of the office. **Person A** is a team player who understands the goals of this office and strives to do her part in reaching them. She is loyal and uses the chain of command. She is punctual and willing to stay until a job is completed.

**Person A** was also commended in this evaluation for her contributions to the Lunchroom Improvement Committee and the Safety Committee.

**Person A** filed a DOC Internal Discrimination Complaint on February 20, 2001 alleging age and sexual harassment. In this complaint **Person A** claims she was treated poorly while working in the Mail Room, the Business Office and the Superintendent's Office by older employees because she is "an attractive young woman". **Person A** also filed two Employee Conduct Reports on February 21, 2001, in which she alleges she was subjected to sexual harassment and retaliation while working in the Superintendent's Office. She attributed this misconduct to **Person AA**, manager, Northwest Regional Administrator Dennis Thaut, and Assistant Deputy Secretary for the Office of Correctional Operations Lynn DeLano.

**Person A** [REDACTED] **Person A's** [REDACTED]  
[REDACTED]  
[REDACTED]

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<sup>4</sup> There is some disagreement about whether **Person A** was the only one who applied or if an applicant from DSHS was also considered.

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[REDACTED]

[REDACTED]

Person A is still on leave.

DOC's former Sexual Harassment Policy, Policy Number 853.025, dated February 24, 1992, directed employees who believed they were the target of unwelcome "sexual behavior" to immediately notify the harasser and his/her supervisor of the offensive conduct, and, in certain circumstances, they were also instructed to notify the appropriate appointing authority and personnel officer and/or the DOC Work Place Diversity Section. Employees were informed of their right to file a formal Internal Discrimination Complaint.

DOC Policy 853.025 states that upon becoming aware of alleged sexual harassment, supervisors were to promptly notify the respective personnel office and the appointing authority. Management was then to ensure that an investigation was conducted .

DOC's February 15, 2001 Sexual Harassment Policy Directive, DOC 850.625, provides that all DOC employees are guaranteed a work environment free of "unsolicited, unwelcome, and inappropriate sexual behavior" and that the Department will take active measures to prevent such harassment from occurring. The policy also provides that: "The Department will promptly investigate allegations of *sexual harassment* and where *sexual harassment* has been substantiated in a fact-finding process, will take appropriate corrective or disciplinary action(s), up to and including dismissal." (Emphasis in original).

DOC Policy 850.625 recommends that employees who believe they are the target of harassment inform their "Supervisor, Appointing Authority, Human Resource Consultant, and/or Workplace Diversity Section" of the unwelcome and

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harassing conduct. Additionally, this policy directs that when a supervisor is informed of an allegation of sexual harassment, s/he "shall promptly notify the respective Workplace Diversity designee, Human Resource Consultant, and the Appointing Authority." Supervisors are also directed to maintain confidentiality of the alleged sexual harassment "to the extent possible". Supervisors who fail to follow this policy are subject to corrective and disciplinary action.

Under DOC Policy 850.625, when a Deputy Secretary or Regional Administrator learns of an allegation s/he "shall ensure that the appropriate investigation is conducted. Finally, this policy guarantees freedom from retaliation to the complaining employee and any other employee who participates in the investigation.

### **B. Harassment because "young and attractive"**

**Person A's** first allegation is that she has been harassed on the basis of her gender and age<sup>5</sup> by older, and presumably less attractive, female co-workers and supervisors during the entirety of her employment at MCC, specifically because she is an "attractive young woman". She says that this harassment began when she worked in the Mail Room, continued through her tenure in the Business Office, and persisted even after she went to work in the Superintendent's Office.

**Person A** says that her working environment was unpleasant in the TRU Mail Room because she was "picked on". She says that her two co-workers, one male and one female, placed her in the middle of their constant bickering. **Person G**, **Person A's** [REDACTED] says that **Person A** definitely did good work. However, he contends that she complained to him several times that she was "doing all of the work", which he says was impossible. He told everyone in the Mail Room that they were each expected to carry their share of the work load and they all discussed how to work together and make the assignments more equitable.

**Person G** describes **Person A** as an "outgoing person who joked around a lot". He never felt she was targeted because she was a young, attractive woman or for any other reason. Others have observed that, even after she left the Mail Room, **Person A** repeatedly "came crying" to **Person G** whenever she had a problem. In fact, until recently, **Person G** was described by at least one co-worker as

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<sup>5</sup> **Person A's** birthday is [REDACTED] 1961, and at the time of her interviews she was 39 years old.

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**Person A's "biggest supporter".**

**Person G** says that while she was in the Mail Room, **Person A** told him repeatedly that she wanted a transfer because she was unhappy with her environment and her co-workers. In fact, he contends, even after she moved to the Business Office and then to the Superintendent's office, **Person A** continuously called him to complaint about her co-workers. However, she never attributed her unhappiness to either age or sexual harassment.

**Person A's** chief concerns of harassment during this period focus on the period of time after the TRU Mail Room merged with the Mail Room at WSR. **Person A** says that she always dresses nicely and wears make-up every day, "no matter what job [she is] doing". She contends that no one else in the Mail Room "took care of themselves" and that her co-workers there began talking about her "big hair", her eye make-up and her clothes. As early as her first day at work at the new location, **Person A** contends that an older female co-worker swore at her for parking in "her spot". Later, she claims, her co-workers gave her the "silent treatment". **Person A** says that she finally complained to her [REDACTED] **Person C**, mainly about the fact that her co-workers left most of the work for her to do. She believes that female employees working in the Training Center next to the Mail Room also told **Person C** that **Person A** was "the only one working".

One of these Training Center employees says that she complained to **Person C** that his staff was smoking too close to the building, not that she felt that **Person A** was the only one who was working. She adds, however, that **Person A** wasn't a smoker at the time and that **Person A** was always working whenever she saw her in the Mail Room. The other trainer remembers a female co-worker of **Person A's** complaining that **Person A** was not carrying *her* share of the work load.

**Person C** says that although **Person A's** performance was fine, she was very moody, crying over small things. **Person C** denies ever hearing anyone bothering **Person A** about the way she dressed or her appearance. Nor did she complain to him that anyone was. He says that the only thing she complained about was that people were giving her the silent treatment. He says he reminded **Person A** that he had told his staff that they didn't have to talk to a co-worker they didn't like, but that they did have to work together. He says that no matter what he talked to **Person A** about, her position was always that whatever the problem, it was never her fault.

**Person A** also complained to Associate Superintendent Willie Daigle while



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working in the consolidated Mail Room. Daigle says that there were "personality problems" between Person A and some of the other women in the WSR Mail Room, although he doesn't believe any of these were related either to Person A's age or her gender. He viewed Person A to be part of the problem.

Daigle issued a Letter of Expectation, dated August 12, 1999 to everyone in the consolidated Mail Room, including Person A and Person C. The letter stressed that a lack of communication was causing dissension among the staff and that clear communication was essential to the effective functioning of the Mail Room. Employees were directed to treat fellow staff members with dignity and respect.

According to Person A when the TRU and WSR Mail Rooms merged, she and a male co-worker continued to scan the mail and perform other functions as they were trained to do at TRU. She claims that the WSR employees failed to handle the mail in this more stringent manner and as she believes they were required to do. She says that this caused friction between the TRU and WSR employees. Daigle says that the mail screening process at TRU was more elaborate because most of the inmate population there were sex offenders. The Washington State Reformatory had a different approach because of the difference in the WSR inmate population. Apparently no one explained this to Person A.

Person C says that Person A wanted to run things her way and he felt she wasn't interested in hearing the ideas of others. He says that Person A had some good ideas, but he couldn't implement them at the time.<sup>6</sup> Person A says that in August 1999 she told Person C that she could no longer take the silent treatment she was receiving and the tension in the Mail Room.

Associate Superintendent Mike Williams recalls Person A talking to him several times about problems she was having with co-workers after the TRU Mail Room was merged into the WSR Mail Room. He says she complained that she "didn't fit into the established group" at WSR, but never that her concerns were related to her being an attractive young woman. When Person A said she felt her co-workers should be handling the mail in the manner that they had at TRU, Williams tried to explain to her that that was a decision for her supervisor. Williams says that Person A was so emotional when she talked to him that he was concerned that the inmates would perceive her vulnerability or that she

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<sup>6</sup> Person A also contends that Person C opened confidential mail addressed to a Corrections Officer who was temporarily assigned to the WSR Mail Room while that employee was under investigation, something that Person C denies. Again, the validity of this allegation is beyond the scope of what I was asked to consider.

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might have difficulty performing her duties or driving.

Person A next applied and was selected for a temporary position as a Fiscal Technician in the Business Office. Although she "really loved that job", Person A contends that once again she was harassed by older female supervisors and co-workers. For instance, she was criticized by her [REDACTED] Person M, [REDACTED] and other women in her chain of command because she didn't meet a fictional dress code. She says that Person BB, manager [REDACTED] told her that her shirt, which didn't tuck in, was too short when she lifted her arms over her head. On another occasion she says that Person BB told her that her dress was too short because the hem didn't touch the floor when she kneeled down. Person A. contends that she was being held responsible for adhering to a non-existent dress code. She also believes she was singled out for this requirement because she was young and attractive. In any case, she contends that she always dressed "very appropriately". She claims further that other women were similarly harassed about their appearance: one woman who is almost exactly Person A's age was criticized for being "too skinny", while a "very attractive 60 year old woman who is not over weight", was subjected to "verbal abuse".

Person M says that because they work in the TRU building, her staff is required to follow that unit's dress code. The fact that they work with inmates daily makes it particularly important for employees to cover their bodies.

Person BB points out that she isn't in Person A's chain of command. She doesn't recall anyone complaining about Person A's dress and in fact Person BB always felt that Person A looked "very nice". She recalls, however, that on the day Person A wore a [REDACTED] to work, she suggested that she check to see if her attire met TRU's dress code.

*Short*  
Person A says that she also complained about her treatment to Person CC, manager [REDACTED]. Person CC was also not in Person A's chain of command although she is co-located with the MCC Business Office. Person CC only recalls one incident where Person A said that a co-worker, who was apparently in charge in Person M's absence, told her she couldn't wear what she had on: walking shorts and a matching jacket. Person CC told Person A she had no problem with what she was wearing, although she knew that TRU restricted the wearing of shorts.

Person A says that when she raised concerns she had over Person M's supervision with Person CC, Person CC had Person M come to talk to her. Person CC also reports that Person M

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told her that although she attempted to address a problem with everyone she supervised, Person A refused to speak to her because she felt she was being singled out. When Person CC met the next day with Person M and Person A, she describes Person A as "very upset". She stressed during the meeting that they were there because Person A was required to meet with her [REDACTED] when requested to do so. Person CC notes that even at this emotional meeting, Person A never said anything that gave Person CC the impression Person A felt she was being harassed either because of her age or her gender. In fact she recalls that people were always very complimentary about Person A's appearance.

Person DD, manager, says that Person A never complained to her that she was being harassed. She explains that there is a dress policy at TRU and, among other things, it prohibits the wearing of shorts. She says that before Person A came to work in the Business Office, she re-issued the dress policy after an employee wore shorts.-doesn't recall ever speaking to Person A about her clothes, nor does she recall Person BB checking the length of Person A's dress in her presence.

Only one of Person A's former co-workers in the Business Office felt that Person A was treated poorly because she was "young, attractive and thin". This person says that she was also treated poorly for similar reasons. Yet, confusingly, this same person says she doesn't feel that Person M targeted people for criticism who were young and attractive. Another of Person A's co-workers recalls that Person A was sent home at least once (although Person A didn't mention this) when she wore things that were too short and which this witness describes as "inappropriate". At least two other former co-workers of Person A in the Business Office felt that the clothes that Person A wore were "very close to the line" of what was inappropriate.

Person A also accuses Person M of being a poor supervisor. For instance, Person M criticized employees in front of their peers and was openly disrespectful towards those she supervised. Person A readily admits that Person M did not single her out for this abusive behavior. She describes how Person M discouraged a temporary co-worker from applying for a permanent position, hiring her friend, instead. Others agree that Person M treated the entire staff poorly, including reprimanding Person A and others in front of the staff. At least one co-worker in the Business Office reported to Person CC seeing that Person M treated Person A poorly. Another feels that at some point Person M began to single Person A out after she learned her supervision-by-fear tactics weren't effective on Person A.

Person M says she didn't have concerns about the quality of Person A's work, only

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the speed with which she completed it. However, **Person DD**, **Person A's** [REDACTED] at the time, says that **Person M** told her that **Person A** was doing as much work as the others. **Person M**, who was a friend of **Person A** before becoming her supervisor, says she and **Person A** had conflicts because **Person A** had difficulty understanding that **Person M**, as her [REDACTED] could no longer treat her primarily as her friend. **Person M** says, for instance, **Person A** showed up at her home unannounced on a Sunday; **Person M** tried to make **Person A** understand that wasn't the way she should act towards her supervisor. **Person M** believes this made **Person A** angry. **Person DD** describes **Person A** as "very bubbly and happy" and someone who made her co-workers laugh. Because the staff still worked well, **Person DD** felt this laughter fostered a positive working atmosphere.

**Person DD** says that **Person A** was hired as a temporary Fiscal Tech, and when she failed to pass the test to become permanent, **Person A** showed up at her home "really wildly upset". **Person DD** tried to assure **Person A** that she was a valuable employee and that they wanted to retain her. She told **Person A** that they would get her the training she needed in order to pass the test. **Person M** says that **Person A** refused to take the test again because she felt "degraded". **Person M** spoke to **Person DD** about offering **Person A** an in-training position, although these are quite rare.

Virtually all of **Person M's** managers have concerns about her supervisory skills. However, none of the senior staff in the Business Office felt this poor supervision either targeted **Person A** more than any other staff member, or was based on **Person A's** appearance or that of any of her co-workers.

According to **Person A**, harassment based on her appearance continued after she moved to the Superintendent's Office. She claims the support staff who report to various high level managers at MCC accused her of losing mail, misfiling, and misrouting memos and documents. She has heard that one support person complained to Olympia that Ryder hired a "young attractive blonde who was unqualified". She says that when Ryder defended her, "the vicious, nasty rumors" about an affair began.<sup>7</sup>

Associate Superintendent Mike Williams says that when he learned **Person A** was going to be working in the Superintendent's office, he told Ryder that she was "very talkative" and that she had "lots of emotional ups and downs". He believes he might even have said he had concerns about "someone like that" working with confidential information.

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<sup>7</sup> These rumors are addressed in the following section.

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**Person AA, manager** says that **Person A** used to work for him at Twin Rivers and that no matter where she moved, she continued to have conflicts with her co-workers. He saw the same pattern develop when she moved to the Business Office. He says that he had a concern all along that **Person A** would file a complaint against Ryder.

Ryder says he heard complaints from **Person EE, manager** and **Person P Secretary** [REDACTED] that **Person A** was misrouting documents. He claims, however, that each time he looked into it, his office was exonerated. Because the allegations were "always extremely petty", Ryder felt that **Person EE** and **Person P** and their clerical support were "purposely ganging up on" **Person A**. He adds that **Person EE** frequently challenged him as well.

**Person P** recalls asking **Person A** about some errors **Person A** made on a legal document. She thinks she may have embarrassed **Person A** because she asked her about it in the lobby in front of some of **Person A's** friends. **Person P** says she later heard a rumor that she supposedly yelled at **Person A**. **Person P** doesn't think that she spoke to **Person A** at all after that incident. She says that **Person A** avoids eye contact with her whenever they see each other.

Several witnesses feel that after moving to Ryder's office, **Person A's** attitude seemed to be that the fact she worked for the Superintendent was sufficient to give her the authority to do whatever she wanted. For instance, **Person DD** described how **Person A** signed Ryder up for a class that he wanted, when **Person A** knew from working in the Business Office that this should have been handled by someone there and, in any case, was "definitely beyond her responsibilities". Several days later, **Person DD** says that **Person A** brought Ryder into the warehouse to point out things that she wanted to have changed. **Person DD** says that **Person A** never told her she had concerns about the Warehouse when she worked there. Moreover, Ryder had no authority over the Warehouse as he wasn't in **Person DD's** chain of command.

**Findings and Conclusions.** *Employment harassment occurs when unwelcome conduct is directed at an employee because of that person's membership in a protected classification and that negatively impacts that person's ability to perform her duties.*

*Applying this standard, there are several problems with **Person A's** allegations that she was treated poorly throughout her tenure at MCC because she is 'young and attractive' First, as harassment is a form of discrimination, it must be*

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*based on the targeted employee's membership in a protected classification. An employee's protection against age discrimination begins at age 40. As **Person A** was younger than age 40 during the time she says she was being harassed, she is not afforded the protection of statutory prohibitions against age discrimination and harassment.*

*Second, for similar reasons, **Person A's** allegation that she was harassed because she is an "an attractive woman" is beyond the protections of both the Washington and Federal laws against gender harassment and discrimination. All women are guaranteed freedom from harassment; there is no subclassification for those women who are more attractive. Stripped of the additional qualification of attractiveness, **Person A's** allegations that she was harassed because she is a woman are unconvincing. In large part this is so because **Person A** consistently distinguishes herself from her female co-workers, basing any difference in treatment on her superior appearance.*

*Third, even if being an attractive female provided **Person A** some protection, I am not convinced that the conduct she now complains of was either sufficiently intrusive or pervasive as to affect a term or a condition of her employment. Many, if not most, of **Person A's** conflicts with her co-workers and her contemporaneous complaints were related to performance, e.g., who performed more work, and not to her appearance. Employees are not guaranteed complete freedom from all hostility in the workplace. For example, understandably the poor performer whose work is being criticized by a supervisor would describe his/her working environment as hostile. However, this would be a situation where the hostility would be both expected and acceptable, completely independent of and unrelated to that person's membership in a protected class.*

*Fourth, **Person A's** position is that she dressed nicely and appropriately at all times. I think there is little disagreement that she was always well groomed and fashionable in her dress. Being stylish in one's dress does not always mean the same as dressing appropriately. Whether the Business Office or TRU has a dress code is not as important as whether an employee is dressed appropriately to work in a sexual offender's unit and where she interacts with inmates daily. I do not find that requiring female employees to have their bodies fairly well covered while working under such circumstances to be harassing.*

*Fifth, while **Person A** may rationalize that her negative treatment emanated from her dress or her attractiveness, nowhere does she offer convincing evidence that such is the case. Moreover, testimonial evidence was presented that indicated that her attractiveness and personal grooming was an asset to her working*

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environment.

*Finally, and most significantly, although **Person A** complained to her managers and supervisors throughout her time at MCC about her treatment by co-workers, she apparently failed at any time until February 2001 to allege that the poor treatment she believed she was receiving was related to either her gender or her age. I do not believe that this is a situation where **Person A's** managers should have been able to infer the basis of **Person A's** alleged harassment. It appears, in fact, that many of **Person A's** co-workers and supervisors felt that her appearance was a positive attribute.*

*An employer is liable for employee harassment only if the employee appropriately used the employer's complaint process, but the employer failed to timely and appropriately consider whether impermissible harassment actually occurred or failed to take prompt and appropriate remedial action. When the employee's concerns are not readily apparent, as was the case here, at least while **Person A** worked in the Mail Rooms and the Business Office, it is incumbent on the employee to make the employer aware of her concerns. Although I feel that the Department's 1995 Sexual Harassment Policy has defects, I conclude that under either that policy or the current one, **Person A** failed to meet this requirement. While she complained to supervisors, she did not alert them to the possibility that she was being targeted for harassment because of either her gender or her age.*

### C. Harassment by rumors

The following facts are undisputed: After work hours on November 21, 2000<sup>8</sup>, **Person A** and Ryder attended an Aikido class on the MCC campus. After the class they returned to Ryder's office. **Person AA, manager** came into the outer office of the Superintendent's suite at about 6:30 that evening. Ryder and **Person A** were in Ryder's inner office with the door closed. **Person AA** spoke briefly with Ryder before leaving to run an emergency drill at MCC. Ryder went to his Administrative Assistant's home for dinner and **Person A** returned home. At 9:00 p.m. that evening, Ryder returned to MCC to attend a Quality Management Meeting held at the Special Offenders Unit. **Person AA** was also present at this meeting.

Dennis Thaut, Northwest Administrator, visited MCC on January 19, 2001, at

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<sup>8</sup> **Person A** reports this incident took place several weeks later -- on December 7, 2000 -- although the November 21<sup>st</sup> date was confirmed by several other witnesses.

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which time he spoke with **Person A**, **Ryder**, **Person AA** and **Person P**, Secretary [REDACTED] office. On Friday, January 26<sup>th</sup>, **Ryder** met with Deputy Secretary **Eldon Vail**, Assistant Deputy Secretary, Office of Correctional Operations **Lynne DeLano** and Northwest Regional Administrator **Dennis Thaut** in **Vail's** office in Olympia.

On Thursday, February 1st, **Thaut** again met with various people at MCC, including **Ryder**, **Person A**, **Person P** and **Person AA**. On Tuesday, February 13 **DeLano** interviewed various MCC staff at the facility concerning **Ryder's** conduct. At the end of her interviews **DeLano** sent **Ryder** home. From that date, **Ryder** was either on leave or special assignment until his recent separation from employment.

It is **Person A's** contention that **Person AA** not only misinterpreted what he saw that evening in the Superintendent's Office but that he also spread false rumors about it. She claims that **Person AA** told numerous people at MCC that he caught her and **Ryder** in a "compromising situation" or that they were "naked". She claims this fueled other rumors about her and **Ryder**, and that one of these rumors was actually put into writing. She contends that **Person AA** also reported this false information to **Thaut**, **DeLano**, and **Riordan**, among others. She further asserts that **Person AA** shared this false information with her husband<sup>9</sup> and openly discussed this alleged incident at "drinking establishments in Monroe".<sup>10</sup>

**Person A** says that on "December 7, 2000" she and **Ryder** attended an Aikido class on the MCC campus after work. Around 6:30 p.m. they returned to the Superintendent's Office's to "collect [their] belongings". **Person A** says that **Ryder** closed his office door to ask her in private about bruises he had seen on her

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<sup>9</sup> **Person A** says that **Person AA** and her husband were high school friends [REDACTED]

[REDACTED] she has always been very loyal to him and that she was never involved with **Ryder** or anyone else. During her interview **Person A** showed me pictures of bruises on her arm that [REDACTED]

<sup>10</sup> Although **Person A** raised concerns that **Person AA** was spreading rumors about her outside of the institution, she failed to provide any support for this assertion. In a telephone call to me, **Person AA** reported that only twice during this period did he stop in a Monroe eating establishment after work and that on neither occasion did he discuss **Person A**.



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arms.<sup>11</sup> She says that they entered Ryder's office and were starting to gather their work clothes when they heard someone come into the outer office. She says that Ryder was "putting his dress clothes on OVER his sweats" at the time. (Emphasis in **Person A's** February 13, 2001 letter to Delano). She says that the rumors **Person AA** was spreading didn't make sense because Ryder wouldn't have opened the door if they were doing anything wrong.

Ryder says that he was wearing running tights, not sweats, and that he pulled jeans on over them. He says that he and **Person A** were "just talking" when they heard something in the outer office. When he opened the door he saw **Person AA**, who said he was just checking his mail. Ryder thought it "strange" that **Person AA** would be doing this at 6:30 p.m. when work is over at 5:00 p.m. He says that right after that **Person A** left for home and he went to dinner at the home of his Administrative Assistant. Afterwards he returned to MCC to attend a Quality Council meeting with his senior staff, including **Person AA**.

**Person AA** says that after work that day he went to the gym to work out and then he returned to the Administration Building to do some paperwork before running an emergency response drill at 7:00 p.m. He says that when he pulled into the parking lot he saw that Ryder's car was still there but the lights were all off in the Superintendent's office. He says that he went to his office to do some work and that as he came downstairs he stopped at the Superintendent's office to drop off the mail he had been working on.

**Person AA** says that because he wasn't used to unlocking the door, he fumbled with his keys and when he came into the outer office he heard "shuffling" in Ryder's office. Then Ryder opened the door and asked **Person AA** what he was doing. **Person AA** doesn't remember whether he actually saw **Person A** or heard her voice, but in either case he was aware that she was in Ryder's office as well. He says that Ryder said "we're just in here changing our clothes".

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<sup>11</sup> DOC Policy 851.015, Employee Personal Problems provides guidance to supervisors and employees about personal problems that "impact job performance or are detrimental to the department." **Person A** provided a copy of this policy and photographs of bruises on her arm at the time of her first interview.

Both **Person A** and Ryder represent that what others interpreted to be indications they were having an affair was actually evidence that Ryder was assisting her in handling these personal matters. Whether or not this is so does not alter the basic question of whether **Person A** was subjected to sexual harassment.

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**Person AA** concedes that beginning that same evening he did seek advice from a number of people. The first person he spoke to was **Person EE, manager**, whom he views as a mentor. This conversation occurred later that same night after the Quality Management meeting. **Person AA** was concerned that if **Person A** subsequently filed a sexual harassment complaint against Ryder she could say that **Person AA** knew about what happened but didn't report it. He was also concerned that if he raised his concerns, Ryder would know that he must be the one who reported them. **Person EE** recalls that **Person AA** was very upset and while he thought what he observed was inappropriate, he didn't want to become involved in something that "wasn't his business". **Person EE** recommended he talk to Northwest Regional Administrator Dennis Thaut. She says that **Person AA** repeatedly asked her not to tell anyone what he said. She feels that subsequent to this incident it was *Ryder* who took steps to discredit **Person AA**.

**Person AA** also spoke to **Person E**. He recalls that **Person E**, like **Person EE**, recommended that he talk to Thaut because Thaut was Ryder's boss. According to **Person E**, **Person AA** was concerned because there was already so much talk. He says that **Person AA** didn't even allude to the possibility that something was going on in the Superintendent's Office. He says that **Person AA** only thought that it "looked strange".

**Person AA** called Thaut the day following the incident in Ryder's Office. **Person AA** says that Thaut asked if he could "see anything" and **Person AA** told him he didn't. He told Thaut that all he knew was that Ryder said they were changing clothes and that he felt it was inappropriate for them to be in the office together with the doors locked and the lights out. Thaut describes **Person AA** as "disturbed" by this because there were lots of rumors going around about Ryder favoring **Person A**. Thaut says that, as early as October, he had also heard this rumor and he had personally witnessed things when he visited MCC that seemed to confirm it. Thaut says that whenever he spoke to Ryder about this, Ryder always assured him that he wasn't involved with **Person A**. Thaut says that he explained to Ryder that there was at least a perception that they were in a relationship.

**Person AA** says that in late October, even before the November 21<sup>st</sup> incident, he had talked to Ryder about staff concerns. He says he explained that he was receiving phone calls about the conduct of Ryder and **Person A**. He says that Ryder denied that anything was going on between them. When the calls continued, however, **Person AA** decided to speak to Ryder again and when he couldn't before leaving for vacation over the holidays he talked to Bob Riordan, Human Resource Manager. This was some time during the week of December 18<sup>th</sup>

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through the 22<sup>nd</sup>.

**Person AA** says he didn't tell Riordan about the incident in the Superintendent's office. However, he did tell Riordan about the calls he was receiving reporting rumors concerning the Superintendent's conduct. He also told Riordan that he was making a note of their conversation to show that he had reported his concerns to Personnel. **Person AA** says that when Riordan asked him what he thought was going on, he told Riordan that "if [he] was doing what Ryder was doing, Riordan would have intervened already". **Person AA** says that Riordan later told him that he did talk to Ryder.

Riordan says that he told **Person AA** that he had some concerns as well and that he would talk to Ryder "when the time seemed right". He recalls that he talked to Ryder on a Thursday, "sometime between November 16th and December 14<sup>th</sup>". Riordan says that after speaking to **Person AA**, he also spoke with **Person E**. **Person E**, like **Person AA** and Riordan, had also heard rumors and felt something had to be done.

While on vacation over the holidays, **Person AA** heard that Ryder was upset with him because **Person Q** told Ryder that **Person AA** had "turned him in to Olympia". **Person AA** told Ryder that he hadn't called Olympia. (**Person Q** says that she told **Person AA** that it was Ryder who told her that "someone" had gone to Olympia, without identifying the person.) During this same meeting, **Person AA** says that when Ryder told him that Riordan wouldn't say who spoke with him, **Person AA** acknowledged that he had <sup>12</sup> **Person AA** says that he didn't tell Ryder that he had talked to Thaut or anyone else because Ryder didn't ask. **Person AA** says that it was never his intention to get Ryder into trouble. He felt that if Thaut spoke to Ryder, Ryder's conduct with **Person A** might stop.

**Person AA** says that Ryder told him that he had been called down to Olympia on Friday, January 26<sup>th</sup> and asked if he was having a "relationship" with **Person A**. He believes that Ryder explained to his superiors that **Person A** was having problems that he was trying to help her with. **Person AA** says that while he told Ryder that he didn't care if they were involved, if they were, he should "take it off grounds". He says that Ryder assured him that he was going to stay as far away from **Person A** as he could. **Person AA** says that he saw that Ryder stayed away from **Person A** for "only one day".

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<sup>12</sup> Note that in fact **Person AA** was not the only one who addressed the perception with Riordan that **Person A** and Ryder were involved. **Person E** and Thaut, as well as Riordan's supervisor also spoke to Riordan about the rumors.

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In any case, **Person AA** was not the only one who warned Ryder about the perceptions of the MCC community. After he heard that the rumors were "outside the institution", Riordan spoke to Ryder, both as a friend and as the Human Resource Manager. He says they talked about "perceptions" and rumors, some of which had even gotten to Olympia. He told Ryder that he felt it would be "a shame for him to lose his career over a woman". He also told Ryder that he didn't need to know whether they were actually involved, but that Ryder must understand that was how it appeared. He recalls Ryder specifically denying that he was involved with **Person A**. Riordan remembers that Ryder said "something" about **Person AA** that he neither confirmed nor denied.

According to Riordan, the morning following their conversation Ryder told him that **Person A** [REDACTED] that she came to work with bruises [REDACTED]

[REDACTED] **Person A**, [REDACTED]  
[REDACTED] **Person A** said that Ryder spoke to her about the rumors and she confirmed to Riordan that they were false.

Riordan says that on the following Monday, Ryder asked him what he could do to "fix the situation". He told him that he needed to distance himself from **Person A**, but other than that he couldn't tell him how to fix it. He says that again Ryder repeated that he wasn't involved with **Person A**. Riordan says that was the last time that he addressed the issue with Ryder.

Riordan says that sometime in January, his supervisor, the Northwest Regional Human Resource Manager called him wanting to know what was happening with Ryder and he explained that he had already talked to Ryder. He says that his supervisor confirmed that what he told Ryder was appropriate. Riordan says that his supervisor may also have told him that the rumors had reached Thaut. In any case, shortly after that Thaut called him directly.

**Person E** also talked to Ryder and when he did, the Superintendent said he thought that **Person G**, the [REDACTED], was one of the people spreading the rumors. **Person E** remembers Ryder saying that he thought **Person G** wanted to "get into [Person A's] pants" or words to that effect. **Person E** doesn't recall Ryder mentioning that he thought that **Person AA** was also spreading rumors, explaining that the Superintendent might not have wanted to tell him that he suspected one of his [REDACTED] was involved.

Ryder denies that **Person AA** spoke to him about **Person A** prior to January 29, 2001, the Monday following his meeting in Olympia. Ryder claims he told **Person AA** that he

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wasn't angry, but that he didn't understand why **Person AA** hadn't come to him directly if he was concerned about his behavior.

Ryder says that **Person AA** denied going to Olympia or discussing the rumors with anyone other than speaking to Riordan sometime in December. Ryder says that when he talked to Riordan in December, Riordan told him that he had heard a rumor about him and **Person A** from "some Associate Superintendents and some Lieutenants", although Riordan wouldn't tell him who those people were.

**Person AA** also spoke to Associate Superintendent Mike Williams, although neither recall the specific date. Williams remembers that **Person AA** said that people were talking to him about a perceived relationship between Ryder and **Person A** and that he had talked to the Superintendent about this perception. Williams believes that staff talked to **Person AA** because he was the only Associate Superintendent whose office was located at the WSR. Williams recalls **Person AA** saying that it was he (**Person AA**) who opened the Superintendent's door and that he saw **Person A** adjusting her clothes and that Ryder came into the office from his bathroom also adjusting his clothes. Williams says that although there were rumors that **Person AA** had seen them having sex, **Person AA** denied ever seeing or implying that.

Ryder says that the only other Associate Superintendent who discussed the situation with him was Willie Daigle. He claims that Daigle told him that he had heard a rumor about the incident in the Superintendent's office from the "Monroe gang", and that **Person AA** was the "source" of the rumor. Daigle says that basically the rumors were that **Person A** and Ryder were involved in a "full blown relationship". He adds that in the rumors that he heard, it was reported that **Person AA** was the one who saw them together. He feels that Ryder was "a very reasonable person". When Daigle brought the rumors to Ryder, it was *Ryder* who indicated that he thought it was **Person AA** who started them.

**Person A** says that on January 4, 2001, **Person Q**, who describes herself as **Person A's** friend, told her that people were taking the rumors about her and Ryder seriously. **Person Q** also warned **Person A** to be careful because the rumors could get back to her home or she might even lose her job. She says she told **Person Q** she didn't care about the rumors because they weren't true. She says that **Person Q** couldn't remember whom she heard the rumors from.

**Person Q** confirms the substance of this conversation. She says that she also warned **Person A** that her conduct could jeopardize both her's and Ryder's jobs. She says that **Person A** apparently told Ryder about their conversation because when she met with him later that same day Ryder brought up what she said to

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**Person A. Person Q** says that Ryder told her that "someone" had gone to Olympia about the rumors. He flatly denied that he was in a relationship with **Person A**: he was just trying to help her through a rough time.

Thaut went to MCC the first time in response to Ryder's stated intention to move Person AA. After speaking to people at MCC, Thaut met with Vail and Delano and they decided to call Ryder to Olympia for a meeting. Thaut and Delano agree that Ryder was definitely put on notice during that meeting that he had to distance himself from **Person A**, yet they both observed that Ryder failed to do this. Delano felt that Ryder's disregard for their warning amounted to insubordination. Thaut says that Ryder told him that he was accused of being involved with a Secretary in Florida who turned out to be the wife of his best friend. Thaut says that Ryder said he was exonerated in that instance and so he wasn't concerned if he was investigated again.

Although no one that I interviewed reports knowing who began the rumors about Ryder and **Person A**, with rare exception MCC staff described conduct they noticed between them that they felt was indicative of an intimate relationship.<sup>13</sup> This included observations that they were always together, traveled together, took breaks together, ate lunch together and were seen arriving at work together. They shared cigarettes and stood unusually close. They worked behind closed doors and on at least one occasion failed to open the door when someone knocked. They observed that Ryder gave **Person A** preferential treatment when he created a parking space for her. When she parked in the lower lot, Ryder drove her to and from her car. She was seen driving Ryder's personal vehicle. She brought her children to work for entire days and they were present in the Superintendent's office, even when he was conducting business with other staff. Ryder had the locks to the Superintendent's office changed and contrary to prior practice, failed to provide keys to the Associate Superintendents. Some questioned why Ryder created a second secretarial position in the Superintendent's office. Many suggested that they felt Ryder's conduct was contrary to what they expected from a Superintendent.

**Person A's** initial allegation was that **Person AA** was the key perpetrator of the most

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<sup>13</sup> I was not asked to determine whether Person A and Ryder were having an affair or whether Ryder's conduct was appropriate for a Superintendent. Therefore, I am not attributing any validity to the specifics of what various witnesses told me they heard or saw that led them to believe that Person A and Ryder were involved. Suffice it to say that most of the people interviewed reported having seen *something* which they felt confirmed the rumors.

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offensive rumor about catching her and Ryder in a compromising situation. However, during their second interviews both Ryder and **Person A** stated their belief that [REDACTED] **Person G** was also a prime instigator or initiator of the rumors about their relationship.

**Person A** alleges that **Person G** was trying to have a sexual relationship with her, which **Person G** denies. She says that she and **Person G** were friends and that they joked around "a lot". She contends that **Person G** asked her to have "a roll in the hay" with him but that she wouldn't sleep with him. For this reason, she feels that **Person G** might have been one of the people to spread rumors about her and Ryder, essentially because she believes **Person G** thought that Ryder "got" her when he hadn't.

**Person G** says that he and **Person A** joked a lot, including about things that might be "over the line" in a work setting. For instance he says that she told him to walk away so that she could see his "better half". He says that he joked back with her in the same manner, but claims that he never seriously said that he wanted to have a relationship with her. He claims that **Person A** understood that those remarks were mutual and always said in jest.

**Person G** denies that he started any of the rumors about **Person A** and Ryder. He says that no one needed to spread any rumors: that it was their behavior that generated them. He noticed about three months before Ryder was reassigned that **Person A** began dressing up, wearing make-up and perfume and telling people that she would "handle things with the boss" for them. He felt these were indicators they were involved. He says that although he didn't talk to either **Person A** or Ryder about his observations he changed his conduct towards **Person A** so that everything was "strictly business". He suggests that his change in behavior upset **Person A** and may explain why she accuses him of spreading rumors about her and Ryder.

**Person G** says that during the last three months before Ryder was reassigned, the Superintendent instructed him and **Person AA** not to communicate with each other. He says that Ryder felt that the "Twin River people" were out to get him. **Person G** says that he bounces things off of **Person AA** just as he does with **Person E** and others. **Person G** says that he has heard rumors about himself and **Person A**, for instance, that Ryder was angry at him because he was interested in her and because he supposedly was the one who got her job for her.

**Person A** also contends that she became aware that **Person G** violated DOC policies and procedures during the time he was her supervisor. Apparently her

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position is that **Person G** spread rumors about her and Ryder in order to discredit her in raising these "violations". She says that she looked for a job outside of the Mail Room because she began to fear she "might end up in jail". For instance, she says that **Person G**, who was her first [REDACTED] at TRU, expected her to perform "special projects"<sup>14</sup> for him, which she did. She says that it wasn't until much later while working in the Superintendent's office that she became aware that these tasks violated DOC policies. **Person G** denies that **Person A** was ever asked to engage in illegal activities in the Mail Room. He says that she performed essentially the same functions as her co-workers.

In addition to the rumors, **Person A** describes two recent incidents that involved **Person G** and which she believes substantiates her allegation that he was engaging in rumors that contributed to her harassment. The first occurred when **Person G** went to lunch with **Person F**<sup>15</sup> and several other of her co-workers. **Person F** claims that **Person G** told her that if **Person A** were to spend the night with him and "get a taste for a real man" that she would never go back to her "loser" husband or that **Person A** "needs to get rid of her old man so [he] can show her what a real man is all about".

Although **Person F** believes that others at the table<sup>16</sup> heard what **Person G** said to her, none of those present can recall this statement. Although they describe **Person G** as a "flirt", no one remembers **Person G** doing or saying anything that led them to believe he was seriously interested in **Person A**. On the other hand at least one person who describes herself as **Person A's** friend, recalls **Person A** saying she found **Person G** attractive. Others believe that if neither were married, **Person A** would "go after" **Person G**. **Person G** describes the people who went to lunch as a group who commonly jokes around with each other. He admits that he might have said something like what **Person A** attributes to him, but contends that, if he did, it was said in jest. He denies ever having a physical or emotional

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<sup>14</sup> Specifically, **Person A** says that **Person G** [REDACTED]

[REDACTED] These issues are beyond the scope of what I was asked to do and I do not address them here.

<sup>15</sup> **Person A** describes **Person F** as her [REDACTED]

<sup>16</sup> **Person A** says that Theresa Cohn was also at this lunch and proposed that I speak to her about this conversation. Cohn was on leave during the time of my on site interviews and several attempts to interview her by telephone were unsuccessful. As I was able to speak to three persons who were present besides **Person G**, I did not attempt further to reach Cohn.



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attraction towards **Person A**.

The second incident occurred in January 2001. **Person A** describes answering the telephone in the Superintendent's Office. It became apparent that the caller was unaware he had activated his cell phone. When she heard references to various staff at MCC she told Ryder, who put the call on the speaker phone. **Person A** recognized **Person G's** voice saying that they needed to "get some fucking whores down here". She says that acting [REDACTED] **Person I's** answer was that he needed "some pussy". She believes that **Person G's** next<sup>17</sup> comment was directed at the [REDACTED] **Person H**, when he said, "You better not tell that whore **Person F** as she will tell **Person A** who will tell everybody as she is a fucking big mouth". **Person A** explains that **Person G**, **Person I** and **Person H** were attending training in Olympia.

Ryder describes the phone call in near identical terms to those used by **Person A**. He says that about 15 minutes after he terminated the call, he called **Person G** back. They discussed some on-going cases and then Ryder cautioned **Person G** that he had been speaking on an "open mike" whether he realized it or not, and that he needed to watch his "locker room language". He told **Person G** that he overheard him "talking dirty" and making negative comments about staff. Ryder says that although he thought that **Person G** and the others were cutting the training he didn't counsel them on this because he was awaiting verification that this was the case. Ryder says that he attempted to learn from Don Wilbrecht, who was in charge of the training, whether **Person G**, **Person I** and **Person H** were at the training. Ryder says that Wilbrecht kept changing what he told him about whether they were there.

Ryder says that he had also complained to Wilbrecht about his concerns that **Person G** was not properly following procedures. In addition he complained that **Person G** was reporting to **Person AA** instead of to him. Ryder acknowledges that some of his concerns came from things that **Person A** had told him about **Person G**. For these reasons, like **Person A**, Ryder suspects that **Person G** might have been involved in spreading rumors about him and **Person A**.

**Person G** says that the training was over for the day and that he, **Person I** and **Person H** were on their way to a bowling alley and "talking stupid". He claims they didn't expect that their conversation was being overheard and he doesn't think they did anything wrong. He notes that one of the common topics at the time was **Person A** and Ryder. Moreover, **Person G** denies that they said anything quite as

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<sup>17</sup> **Person H** is currently living with **Person F**, **Person A's** [REDACTED]

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derogatory as **Person A** alleges, although admitting it is fairly representative of the content of their conversation. He says that Ryder called him back and said that he overheard what they were saying and that he should watch his phone. He says the issue was never brought up to him again. **Person I** and **Person H** basically confirm **Person G's** description of their conversation. Neither was ever counseled about their conduct at the training.

During the interviews I observed that many of the incidents and, in particular, renditions of conversations, **Person A** and Ryder described, were virtually identical. At the time of his second interview I asked Ryder how **Person A** knew the details of his conversations with others even when she wasn't present. Ryder says that the only conversation that he spoke to her about was the one at the meeting in Olympia when his supervisors urged him to move **Person A** in spite of the fact she had no performance issues. He says he wanted to warn **Person A** that she could be moved. He also suspects that **Person A** picked up information when she opened his mail and kept his e-mail and from conversations she overheard because his office door was open.

**Findings and Conclusions.** *Workplace sexual harassment occurs when unwelcome conduct is directed at an employee because of that person's membership in a protected classification and when that conduct affects a term or condition of employment. **Person A** alleges that by spreading false rumors about her and Ryder, **Person AA** sexually harassed her. Interestingly, **Person A** seems to be concerned by only one rumor, that she and Ryder were caught by **Person AA** in a compromising situation after work hours on November 21st. Both **Person A** and Ryder apparently place no importance on the fact that each was warned by persons other than **Person AA** that their behavior was inappropriate and could get them into trouble. I find it odd that both **Person A** and Ryder feel that their denials of any involvement were somehow sufficient to deflect the importance of any of the other numerous rumors about their conduct.*

*Although witnesses provided me with significant and substantial information about why there were rumors that Ryder and **Person A** were having an affair, I considered this information for a very limited purpose: whether their conduct was such that it generated rumors, regardless of what occurred in the Superintendent's office after work hours on November 21st. I conclude that Ryder and **Person A's** conduct was sufficient, in and of itself, to spawn the rumors. Having concluded this, however, does not alter the importance of the rumors that involved the specific incident on November 21st which was witnessed by only three people: Ryder, **Person A** and **Person AA**.*

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**Person AA** reports that he only told a limited number of people what he saw that evening: Ryder's supervisor, Dennis Thaut, two of the three other [REDACTED] **Person EE**, and Mike Williams; Bob Riordan, the HR Manager, and **Person E**. I found **Person AA** to be generally credible in this representation. However, the fact remains that someone did begin the rumor that **Person AA** "caught" Ryder and **Person A** in what he felt was a "compromising situation" I conclude that **Person AA** was no more likely to be the one who began this "rumor" than any of the five individuals that he told.

This, of course, raises another significant question: was it appropriate for **Person AA** to tell anyone at all, let alone the five individuals that he did. I cannot fault him for doing so. In fact, his failure to tell at least Thaut and Riordan would be contrary to the Department's Harassment Policy, DOC Policy 850.625, that requires a supervisor who observes conduct that s/he believes could be indicative of harassment to bring that information to someone with the authority to do something about it. (Whether the Department's senior managers acted appropriately on receiving this information is considered in the next section.)

**Person A's** allegations against **Person G** fare no better. By describing the remark at lunch and the overheard telephone calls, she implies that **Person G** was one of the originators of the rumors. Interestingly, while **Person A** states that **Person G** propositioned her, she raises it only as an explanation of why he might be spreading rumors about her. She never indicates that she found these advances to be unwelcome. Her focus is on the rumors and the role she believes **Person G** may have played in their dissemination. Although **Person G** himself admits that he engaged in spreading the rumors, I find nothing to support an allegation that he initiated any of them. That, however, does not excuse someone in a position such as **Person G's**, who obviously understands the importance of confidentiality, from spreading rumors, regardless of whether he believed them to be true. Nor does it excuse him from making advances to or engaging in sexual banter with co-workers, even in jest.

The question remains, however, whether the rumors, with or without the one about the November 21<sup>st</sup> incident, created a harassing working environment for **Person A**. I believe that they probably did. There is little doubt that the rumors were unwelcome and that they were directed at **Person A** because of her gender. I accept her representation that they impacted her health and therefore her ability to perform her duties. One accepted analysis of the rumors could result in a conclusion of no harassment: that is, because identical conduct was directed at members of opposite protected classifications, in this case those based on gender, neither discrimination nor harassment could have occurred. Another

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*analysis focuses on whether the challenged conduct is sexual in nature and if it is, then it is automatically determined to be because of her gender. Indeed this was the Department's position in its former Sexual Harassment Policy. I believe that the best approach would have been to consider the conduct at issue here to be within the definition of sexual harassment. (Also of significance, as I discuss in the following section, at the time the Department became aware of **Person A's** concerns, it had an obligation to investigate to determine whether harassment had occurred.)*

*The real issue, of course, is whether **Person A's** apparently voluntary participation in certain activities that generated the rumors negates a conclusion that she was sexually harassed. I believe that it probably does not. I conclude that while **Person A's** own conduct contributed to the generation of the rumors, it does not destroy the guarantee that she is to be free of workplace harassment, and, more importantly, triggers the employer's duty to investigate. On the other hand I feel that it is completely appropriate to consider this information when making conclusions about the severity of the harassment that may have occurred.*

***Person A** and Ryder apparently believe that their representations that they were not actually having an affair should have been sufficient to dispel the rumors. I find this position to be naïve at best, for neither seems to be aware that the perception of a relationship can be, and, in this instance, was just as significant as the reality. Ryder's lapse in this regard is the more serious, particularly since as a manager he is expected to enforce the prohibition against sexual harassment.*

*Finally, I am very aware of the striking similarities, unexpected to this degree, in the facts as reported by **Person A** and Ryder concerning several significant events. **Person A** was able to describe in precise detail entire conversations that Ryder held when she was not present. For these reasons I conclude that **Person A** and Ryder have most likely conformed their stories. By doing so, I find that the credibility of each is weakened. I have taken this fact into account in making various judgements about the facts they propose.*

### **D. Harassment and Retaliation by Senior Managers**

*In addition to the harassing rumors, **Person A** claims that a handwritten message routed to the superintendent's office was additional specific evidence of sexual harassment. On January 17<sup>th</sup> she opened an interoffice envelope addressed to the superintendent. Inside was a job*

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description announcing a Warden's position in Idaho. Handwritten at the top of the page was the message: "Perhaps this would be an option for you and **Person A**. You've lost all respect here. (Maybe your wife too!)" The message was unsigned, although **Person A** believes that **Person P**, [REDACTED] Secretary, was the author. In fact, she claims that when Ryder gave a copy of the message and a sample of **Person's P's** handwriting to Thaut, he reacted by saying, "Oh my God! It's **Person P's** handwriting."

According to **Person A**, Thaut advised Ryder that he would be coming to MCC in order to confront **Person P** about the handwritten note. She claims that Thaut, who had supervised **Person P** in the past, told Ryder that he was going to speak to **Person P** before he had the handwriting analyzed because he felt **Person P** would probably admit writing the message.

**Person A** says that when Thaut came to investigate the handwritten message and the rumors about her and Ryder on January 19<sup>th</sup>, he "assured her" that he would have the handwriting analyzed and that he would hold accountable the person responsible for *this* act, as well as the rumors. She says that on February 1<sup>st</sup>, Thaut told her that **Person P**, the person he suspected of writing the note, denied writing it, but admitted writing "Superintendent Ryder on the envelope. **Person A** says that Thaut also told her that because of the denial there was nothing he could do. She contends that after providing Thaut with "documentary evidence of ... abuse, rumor mongering and harassment" she "demanded that he take action". She claims that he assured her that he would have the handwriting analyzed by a crime lab, and she offered to pay for that. She claims he told her that wouldn't be necessary and assured her again that he would hold accountable the person responsible.

Ryder says that when he showed Thaut the Idaho job announcement, Thaut's words were, "My God, that's **Person P's** handwriting." He claims that Thaut said that he was "going to investigate it", and that Thaut took the notice with him when he went up to speak to **Person P** and **Person AA**. Like **Person A**, Ryder is upset that when Thaut returned he said that because **Person P** denied writing the message, that was "all that he could do about it".

Thaut says that when Ryder showed him the sheet that he was using to compare **Person P's** handwriting to the note, he agreed that it looked like her handwriting, but he denies ever saying that he was sure it was.

Thaut says that he told Ryder that he didn't think that they should do a handwriting analysis, that he believed **Person P** when she said that she hadn't

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written the note. He denies that he ever promised **Person A** that he would do a handwriting analysis. Nor, he contends, did she ever offer to pay for such an examination by a lab. Thaut says that when he saw the announcement he couldn't figure out what the message "amounted to" because he didn't think that it was sexual harassment given there was "nothing sexual" about it.

Thaut says that once again he told Ryder that regardless of what his relationship was with **Person A**, the perception was that they were involved. He says he told Ryder to do specific things to change that perception, including moving **Person A**. Thaut says that Ryder said he didn't want to do that.

**Person AA** doesn't really think that the handwriting on the announcement is **Person P's** because she usually uses cursive when she writes messages. Also **Person P** told him that although she agreed that it "looked like" her handwriting, it wasn't. **Person P** says that she explained to Thaut that while the handwriting on the announcement is "very similar" to hers, she denies writing the message. She doesn't recall being shown the envelope the announcement was in. When Thaut said that it was suggested that a handwriting analysis be done, she told him that would be fine. She has no idea whose handwriting it is, nor does she know who would write something like that to the Superintendent.

Ryder says that he never spoke to either **Person AA** or **Person P** about the handwritten message because he was concerned that, after **Person AA** "lied" to him about talking to no one other than Riordan, anything he said to **Person AA** might be construed as retaliation.

**Person A** says that although sexual harassment complaints are to be kept confidential under DOC Policies, Thaut discussed the details of her complaint with numerous parties throughout DOC. She contends that he also failed to notify her of her right to file a complaint or take her to Personnel to file a complaint as he is required to do. Nor has he filed her complaint either with DOC or any outside agency as required by DOC Policy 850.625.

In response to **Person A's** allegation that he did not properly follow the sexual harassment procedures, Thaut denies that **Person A** ever made any "complaint of sexual harassment". In fact he first learned that she had concerns about "sexual harassment" after Ryder was sent home. He denies that he ever talked to anyone about her "allegations" because he was completely unaware that she had any, with the exception of her concern about the note on the job announcement.

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According to **Person A**, Thaut advised Ryder on Friday, February 9<sup>th</sup> that the rumors were persisting and that Headquarters had received complaints and anonymous letters and that they were now going to investigate the matter, even though they didn't believe the rumors. On the next Monday, February 12<sup>th</sup>, Thaut told Ryder that DeLano was coming to the complex to conduct the investigation.

**Person A** claims that Thaut and Lynne DeLano, Assistant Deputy Secretary, Office of Correctional Operations, retaliated against her and Ryder by launching a "full scale investigation" of *them* which added further credibility to the rumors.

DeLano says that although she knew that Ryder and **Person A** were concerned about the announcement with the handwritten message, DOC managers didn't view it as more than a "minor subissue" of their consideration of the appropriateness of Ryder's conduct. She describes it as simply another example of the fact that people felt there was something going on between **Person A** and Ryder.

**Person A** says that DeLano retaliated against her when DeLano came to MCC to *investigate her complaint* on February 13<sup>th</sup>. She believes that DeLano's investigation was flawed in several significant ways: DeLano conducted her investigation at the worksite where the people responsible for her harassment could overhear the interviews; DeLano spent three hours with **Person AA** before contacting her or Ryder; DeLano asked **Person P**, the person **Person A** suspected wrote the handwritten note, to contact **Person A** when it was time for her interview; and DeLano "interrogated" her which she believes was an "outright attempt" at intimidation and retaliation.

For instance, **Person A** says that DeLano asked if Ryder was ever inappropriate with her or if he had ever used his position to coerce her into a situation that could be considered inappropriate. She told DeLano that he "absolutely" had not. She says that DeLano asked her how she felt about Ryder and she answered that he was "a friend, a co-worker" and "like a father figure". She says that DeLano asked "numerous times" about her parking situation, about Ryder picking her up in the parking lot, about how often she and Ryder had lunch together, and about how often she went to meetings out of the office with Ryder. **Person A** says that DeLano told her that her investigation had nothing to do with her, that it was Ryder. **Person A** says she told DeLano that her name was included in the handwritten message on the job announcement and that she felt she was "completely involved."

**Person A** also questions why DeLano failed to interview Associate

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Superintendent Willie Daigle when it was Daigle who said that he "heard the rumor "directly from **Person AA**". (As mentioned above, Daigle's statement was that whenever he heard the rumor, it was linked to **Person AA**. He did not say that he ever heard **Person AA** remark on the incident.)

Ryder says that DeLano asked him about the same things that she asked **Person A** about. At the end of his meeting with DeLano, she put him on administrative leave. He doesn't understand this because Vail had told him that his performance was "just fine".

DeLano acknowledges that when she went to MCC, her focus was on *Ryder's* conduct. She formulated a list of who she felt she needed to talk to based in part on her discussions with Thaut. She says that she didn't include Daigle because she had heard, primarily from Thaut, that Daigle wouldn't know any specific information since he is located in a different part of the institution. DeLano didn't feel there was anything wrong at the time about having **Person P** ask **Person A** to meet with her. Nor did she think there was a problem in interviewing people in **Person AA's** office. In retrospect she says that maybe she should have been more sensitive about these things.

DeLano says that when **Person A** came to speak to her, **Person A** immediately showed her a bruise on her arm, explaining that it was the result of [REDACTED]. DeLano says that when she asked **Person A** about her relationship with Ryder, she thought it strange that **Person A** described him as "a friend and co-worker", but not as her boss. When she later interviewed **Person B** and then Ryder, they, too, used similar terms to describe the Ryder/**Person A** relationship.

**Person A** also claims that she was retaliated against by other managers after she went on medical leave. For instance, **Person EE** refused to return **Person A's** set of keys to the Superintendent's office. She doesn't understand why **Person EE** couldn't have made a duplicate set off of **Person B's** keys. She explains that if something went wrong she could get in trouble for not having the keys in her possession. **Person EE** says that **Person A** "very rudely" insisted that the keys were hers and must be returned. **Person EE** says that she told **Person A** that she was keeping the keys until she could make a copy. **Person EE** felt that **Person A's** behavior was "very rude and aggressive, especially towards a [REDACTED]". She says that she had **Person A's** set of keys copied that same morning, but that Thaut told her not to return **Person A's** set of keys to her because she had been seen taking things out of the office.



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When **Person A** returned to MCC with more medical documentation to support her on-going leave, she says that the Officer in the Tower said that she couldn't come on grounds because she had been fired. She had him call the Superintendent's office and they said she could be admitted. **Person A** says that after she left, **Person B** told her that **Person EE** wanted to know what she had taken. She claims she hadn't taken anything.

According to **Person A**, on her third trip to MCC she introduced herself to Robert Moore, the new Superintendent. She told him that although she was on medical leave she was looking forward to coming back and working with him. She claims that Superintendent Moore told her he intended to go over the two support positions in the Superintendent's Office because he didn't think there was a need for two people. She says that when she left she felt the new Superintendent was looking for a reason to get rid of her.

**Findings and Conclusions.** *Person A believes that the conduct of Thaut and DeLano evidenced both sexual harassment as well as retaliation for filing her complaint. I conclude that they definitely did not engage in sexual harassment. Nor do I believe that they retaliated against Person A. What I do conclude is that they, as well as Riordan, acted in a manner that is contrary to the requirements placed on senior managers by DOC's current sexual harassment policy as well as settled case law in this area.*

*I wish to say at the outset that I readily understand why DOC felt that the issue that needed to be addressed was whether Ryder's conduct was creating a sexually harassing situation for Person A. As discussed above, although Riordan was told as early as November that there was a concern about Ryder's conduct and he concedes he has his own concerns even before that, he waited until "the time was right" before addressing this with Ryder. Riordan should have acted immediately. More importantly, aside from talking to Ryder, Riordan took no steps to formally investigate whether the Superintendent's conduct created a sexually harassing situation for Person A. As an official identified in the Department's Sexual Harassment policy as one point of contact when sexual harassment is suspected, Ryder should have known that he was to launch an investigation as quickly as possible.*

*Second, it appears that Thaut misunderstands what sexual harassment is. While sexual harassment may include conduct that is sexual in nature, as Thaut represents, it also includes all other harassing or annoying conduct that is directed at an employee because of that person's gender. However, given the Department's 1995 sexual harassment policy that describes this impermissible*

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conduct in terms of sexual language or conduct, I am not surprised at his confusion. The most recent policy rectifies this problem, and I hope that managers are provided training on the new policy as quickly as possible.

Third, although Thaut was aware that there were rumors about **Person A** and Ryder at the time that they complained about the handwritten note, he focused exclusively on the authorship of the note, making no attempt to ascertain whether the other rumors were creating a hostile work environment for **Person A**. **Person A** says that she told Thaut about the rumors at the same time they discussed the handwritten message. I believe that she probably did for Thaut says he spoke to her several times and by that time **Person A** was undeniably upset.

However, even under his limited definition of what constitutes sexual harassment, I am surprised that Thaut did not view the implication of the note to be that **Person A** and Ryder were have a sexual relationship. By speaking to **Person P**, Thaut excluded her as the author of the note. He did not undertake to learn who else might have sent it. Moreover, the handwritten message was in my view essentially a different form of a rumor. Consequently, I believe Thaut should have undertaken a full investigation into whether the rumors (as well as the note) created a harassing situation for an employee.

Fourth, Delano says that she was investigating Ryder's conduct and **not Person A's** complaints. While this was an entirely appropriate approach for her to take, it remains the case that no one acknowledged that the conduct of anyone other than Ryder could contribute to an unpleasant work setting for **Person A**.

Finally, **Person A** contends that Thaut failed to heed various procedural requirements. Specifically she claims that Thaut was not to discuss her concerns with anyone else until she filed a formal complaint and that he was required to assist her in filing such a complaint or file on her behalf. **Person A's** position is incorrect in both regards.

An employer is required to investigate as soon as it perceives that harassment might be occurring. While this requirement to investigate can be triggered by a formal complaint, it also arises under a number of other circumstances: for instance, when a manager observes some conduct that s/he feels might be inappropriate or when an employee informally mentions inappropriate conduct directed at a co-worker. However, there is no basis in DOC policy or in State or Federal statutory or case law for requiring that the employer file a formal complaint on an employee's behalf or do more than make the complaint filing

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*process readily available to the employees.*

### **IV. SUMMARY OF CONCLUSIONS**

After reviewing all of the information collected, I make the following conclusions:

- I conclude that **Person A** was neither sexually harassed nor hassled by supervisors and co-workers because of her age or gender on the basis that she was younger and more attractive. I also conclude that **Person A** reasonably viewed her working environment in the Superintendent's office to be hostile because of the rumors about he conduct and that of Ryder. Additionally I conclude that **Person A's** own conduct contributed substantially to these rumors.
- I conclude that **Person AA** appropriately initiated discussions with other managers about what he witnessed in the Superintendent's office, since he has an obligation to report any conduct he believes might be considered harassment. However, I was not able to determine who made this incident common knowledge at the institution.
- I conclude that it was entirely appropriate for MCC senior managers to investigate whether Ryder was creating a sexually hostile working environment for **Person A**.
- On the other hand, I conclude that the MCC HR Manager and several upper level managers failed to recognize that the rumors could have created a hostile work environment for **Person A**. Indeed, I conclude that their failure to act promptly to investigate her allegations *could* have contributed to **Person A's** feeling that she was sexually harassed or retaliated against.

Presented by:

Marcia B. Ruskin  
Attorney at Law

May 22, 2001

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### **WITNESS LIST<sup>18</sup>**

**LYNN DeLANO, Assistant Deputy Secretary, Office of Correctional Operations.**

**DENNIS THAUT, Northwest Regional Administrator, has worked with DOC since 1974. He became the Southwest Regional Administrator in November 1999 and in April 2000 he transferred back to the Northwest Region in the same position.**

**\*LESLIE W. RYDER, JPL, *FORMER* Superintendent of the Monroe Correctional Complex. Ryder was at MCC for 18 months. At the time of his interviews he was on a special assignment. Shortly after his second interview he was separated from employment.**

**\*Person B,**

**\*Person A**

**\*WILLIE DAIGLE, Associate Superintendent, assigned to run the Minimum Security Unit, has been at MCC over seven years and with DOC for 23 years.**

**Person C**

**Person D,**

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<sup>18</sup> An asterisk (\*) appears next to the names of those persons who were interviewed more than once.

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**\*Person AA, manager**

**Person E,**

**Person P,**

**Person EE, manager**

**MIKE WILLIAMS**, Associate Superintendent, has been with DOC since 1971 and at Monroe since 1983. He transferred from WSR to TRU at the time of the consolidation.

**Correctional Sergeant**

**Person F**

**Person G**

**Person H**

**Person I**

**\*Person Q,**

**Person J,**

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**Person CC, manager,**

**Person BB, manager,**

**Person K**

**Person L,**

**Person DD, manager,**

**Person M**

**Person N**

**Person O**

**NW Regional Resource Manager**

**ROBERT J. RIORDAN, MCC Human Resource Manager, has been in his current position for three or four years and with DOC since 1989.**

□