

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF ARIZONA et al.,

Defendants.

Civil Action
No. 97-476-PHX-ROS

SETTLEMENT AGREEMENT

I. INTRODUCTION

On March 10, 1997, the United States initiated this litigation alleging that Defendants were violating the constitutional rights of inmates incarcerated in Arizona women's prisons to be free from sexual misconduct and unlawful invasions of privacy. While Defendants believe the United States' Complaint had no basis in fact, to avoid the cost, inconvenience, and uncertainty of trial, the parties have agreed to resolve this litigation. Nothing contained in this Settlement Agreement is to be construed as an admission that Defendants violated the constitutional rights of any female inmate. This Settlement Agreement incorporates and refers to those areas in which ADOC will continue current policies and practices that are designed to eliminate inappropriate staff-inmate behavior.

II. DEFINITIONS

1. "ADOC" means the Arizona Department of Corrections.
2. "Inmate" means any female inmate incarcerated in ADOC.
3. "Staff" means correctional officers, maintenance workers, kitchen workers, teachers, counselors, and any other person with direct access to inmates, whether employed by ADOC or some other entity.
4. "Management" means Director, Deputy Director, Warden, Deputy Warden and/or Female Programs Administrator.
5. "DOJ" means the United States Department of Justice.
6. "Inappropriate staff-inmate behavior" means one or more of the following: (a) sexual contact between inmates and staff; (b) unprofessional conduct by staff, including overfamiliarity, improper comments, and other acts prohibited by ADOC policies, and (c) inappropriate invasions of "privacy" interests, as

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defined below.

7. "Serious sexual misconduct" means one or more of the following: oral sexual contact, sexual intercourse, or any direct or indirect touching, fondling or manipulating of any part of the genitals, anus or female breast by any part of the body or by any object or causing a person to engage in such contact.

8. "Privacy" means the interest of female inmates not to be viewed by male staff while dressing, showering, or toileting absent a legitimate security interest that cannot be reasonably accomplished by female staff.

9. "Consult" means only provision of written and/or oral comments to counsel.

III. ADOC POLICIES AND PROCEDURES

A. Policies And Procedures Regarding Misconduct ADOC will obtain policies and procedures relating to inappropriate staff-inmate behavior from the Federal Bureau of Prisons, the Georgia Department of Corrections, the National Institute of Corrections, and other states that ADOC believes have comprehensive policies and procedures relating to inappropriate staff-inmate behavior. Where necessary, ADOC will revise its current policies and procedures utilizing concepts and materials obtained from these sources to ensure that its policies and procedures are simple, direct, and explicitly define and prohibit inappropriate staff-inmate behavior. Prior to final adoption of any revised policy and procedure, ADOC will provide DOJ with a reasonable opportunity to review the proposed policy and procedure and to consult with ADOC regarding the proposed policy and procedure.

B. Policies And Procedures Regarding This Settlement Agreement (1) ADOC will revise as necessary its policies and procedures to ensure that all of the provisions of this Settlement Agreement are incorporated into ADOC policies and procedures. (2) Prior to final adoption of any revised policy and procedure, ADOC will provide DOJ with a reasonable opportunity to review the proposed policy and procedure and to consult with ADOC regarding the proposed policy and procedure. (3) Defendants agree that policies and procedures adopted pursuant to this Settlement Agreement will continue to be implemented after the Complaint has been dismissed; provided, however, that this provision is not intended to, nor does it, prevent ADOC from changing its policies for purposes of confronting issues that could arise in the future. (4) Within three months of executing this Settlement Agreement, ADOC will notify affected employees of the changes in policy and practice and require each employee to verify that he or she is aware of the changes.

IV. PRE-EMPLOYMENT SCREENING

A. Current Non-Correctional Staff With Inmate Contact
Within six months of the execution of this Settlement Agreement, ADOC will conduct background checks on all current non-corrections staff with inmate contact who have not already undergone background checks to determine whether they have been convicted of or pled guilty or nolo contendere to any felony charge either before or after their employment with ADOC. ADOC will remove any staff that has been convicted of or pled guilty or nolo contendere to any felony charge from contact with female inmates.

B. Future Correctional Staff ADOC will continue to utilize at least the following measures prior to hiring correctional staff: tests to assess personality to be scored by a professional psychologist; fingerprints to be sent to the Federal Bureau of Investigation; investigation of information in background questionnaire including information about drivers license number and record, past employment, past education, references, criminal arrest and conviction record; National Crime Information Center record check; law enforcement agency check of agencies where applicant has lived; military discharge status; investigation of whether applicant has ever worked in ADOC prisons, and if so, whether they were the subject of investigations and allegations of inappropriate staff-inmate behavior.

C. Future Non-Correctional Staff With Significant Inmate Contact ADOC will utilize the same pre-employment screening measures for non-correctional staff who will have significant inmate contact as it does for correctional staff. If the non-correctional staff is employed by an entity other than ADOC, ADOC will require the entity employing the non-correctional staff to utilize those same pre-employment screening measures, and will require that entity to demonstrate that each employee has passed those measures. Non-correctional staff with significant inmate contact means maintenance, kitchen, teaching, recreation, medical, dental and mental health staff; investigators; contract paralegals; off-site supervisors of work crews; substance abuse counselors; chaplains; and volunteers.

V. STAFF TRAINING

A. Training Materials ADOC will obtain pre-service and in-service training material relating to inappropriate staff-inmate behavior from the Federal Bureau of Prisons, the Georgia Department of Corrections, the National Institute of Corrections, and other states that ADOC believes have comprehensive pre-service and in-service training materials relating to inappropriate staff-inmate behavior. Where necessary, ADOC will

revise its current training materials utilizing concepts and materials obtained from these sources so that it will have a current, complete set of training materials relating to inappropriate staff-inmate behavior. Prior to final adoption of any new training materials, ADOC will provide DOJ with a reasonable opportunity to review the proposed training materials and to consult with ADOC regarding the proposed materials.

ADOC will revise its current training materials to incorporate all of the provisions of this Settlement Agreement. Prior to final adoption of any such revised training materials, ADOC will provide DOJ with a reasonable opportunity to review the proposed training materials and to consult with ADOC regarding the proposed materials.

ADOC will create a video describing inappropriate staff-inmate behavior, how to report it, and the disciplinary action staff will incur for engaging in inappropriate staff-inmate behavior. ADOC will show the video to all current staff and all staff hired after execution of this Settlement Agreement. ADOC will enact a policy that all staff must acknowledge in writing viewing of the video, and will place a copy of this statement in their personnel files. This video will be shown yearly to all staff during in-service training. Prior to final approval for a staff training video, ADOC will provide DOJ with a reasonable opportunity to review the video, and to consult with ADOC regarding its contents.

B. Training Topics Regarding Inappropriate Staff-Inmate Behavior ADOC will continue to include in both its pre-service and in-service staff training, or will add to such training, at least the following concepts: (1) identification of what constitutes inappropriate staff-inmate behavior; (2) explanation of how inmates are harmed by inappropriate staff-inmate behavior; (3) description of how the security of the facility is jeopardized by inappropriate staff-inmate behavior; (4) a statement of the legal consequences of participating in inappropriate staff-inmate behavior; (5) a description of how to report inappropriate staff-inmate behavior, including when, how, and to whom it should be reported, with emphasis on staffs' obligation to monitor, observe, and report the behavior of other staff regarding inappropriate staff-inmate behavior and disciplinary consequences for failure to report; (6) instruction on supervising, observing, and interacting with opposite gender inmates; and (7) instruction on the privacy interests women retain while incarcerated.

C. Routine Inservice Training Subsequent to this initial in-service training, the Director of ADOC, after consultation with the Female Programs Administrator (see Section VII(A)(3)(e) below) and the Administrator for Staff Development and Training Programs, will determine the number of hours of mandatory in-

service training covering the topics described in Section V(B) to be required of all management, corrections officers, and non-correctional staff with inmate contact.

D. Pre-employment Training ADOC will include at least sixteen hours of pre-employment training covering the topics described in Section V(B) above for all newly hired management and corrections officers, and eight hours of pre-employment training covering the same topics for non-correctional staff with inmate contact. The parties disagree as to whether ADOC has in the past provided sixteen hours of preemployment training covering those topics.

VI. INMATE EDUCATION

A. Reception As part of inmates' orientation process, ADOC will provide inmates with both written (see Section VI(B) below) and oral information concerning at least the following concepts: (1) identification of what constitutes inappropriate staff-inmate behavior; (2) a statement that ADOC prohibits inappropriate staff-inmate behavior; (3) a statement of the consequences of participating in inappropriate staff-inmate behavior; (4) a description of how to report inappropriate staff-inmate behavior, including when, how, and to whom it should be reported; (5) a statement on the consequences of reporting misconduct as a victim and as a witness, including assurances of confidentiality and non-retaliation, and that investigatory detention differs in significant respects from punitive detention (see Section VII(A)(3)(b)-(d) below); (6) information on the rules regarding interacting with opposite gender staff; (7) information concerning the privacy interests women retain while incarcerated; and (8) the name and address of the Female Programs Administrator to whom inmates may report inappropriate behavior.

ADOC will provide non-English speaking inmates with both oral and written translations of at least the information set forth in Section VI(A) above.

B. Inmate Handbook The information set forth in Section VI(A) above shall be provided in the inmate handbook.

C. High Visibility Reminders ADOC will post in all inmate living areas, and in other areas (such as work, recreation, and dining) in which inmates spend significant time, signs that remind readers of ADOC's prohibition of inappropriate staff-inmate behavior.

VII. FACILITATION AND ENCOURAGEMENT OF INMATE AND STAFF REPORTING OF ALLEGATIONS OF INAPPROPRIATE STAFF-INMATE BEHAVIOR

A. Inmate Reporting ADOC will take all reasonable measures to encourage inmates to report inappropriate staff-inmate behavior, and to reduce fear of reporting inappropriate staff-inmate behavior, including, but not limited to, the following. The parties disagree as to whether ADOC has in the past taken all reasonable measures to encourage inmate reporting of inappropriate staff-inmate behavior.

1. Verbal reporting ADOC will continue its practice of allowing inmates to orally report inappropriate staff-inmate behavior, and will respond to such oral allegations as it would a written complaint.

2. Grievances/Kites/Letters ADOC will continue to encourage inmates who allege to have suffered from inappropriate staff-inmate behavior to report such allegations through grievances, kites or letters.

3. Minimization of Deterrents to Reporting

a. Limits on Investigative Detention Inmates will continue to be confined for investigative detention a maximum of thirty days, unless extension is authorized by the Deputy Director of Prison Operations, for exigent circumstances.

b. Conditions of Investigative Detention ADOC management will take all reasonable measures to make conditions of investigative detention as similar to regular housing as possible. ADOC will minimize the restrictions on the conditions of investigative detentions, including, but not limited to, allowance of property pursuant to policy, out-of-cell time, non-inmate visitation, mail and phone calls. The parties disagree as to whether ADOC has in the past taken all reasonable measures to make conditions of investigative detention as similar as possible to regular housing.

c. Confidentiality ADOC will take all reasonable steps to ensure the confidentiality of inmates who report inappropriate staff-inmate behavior, including, but not limited to, warnings not to discuss investigations, and disciplinary action if the confidentiality of an investigation is compromised intentionally by an inmate.

d. Prohibition of Retaliation Against Inmates ADOC will continue to prohibit retaliation by staff or inmates against inmates who report inappropriate staff-inmate behavior by maintaining its policy of investigating reports of retaliation

and by continuing to allow inmates to present retaliation as a defense in disciplinary violation proceedings.

e. Female Programs Administrator ADOC will appoint a Female Programs Administrator, who will be based at Central Office. Inmates will be permitted to write the Female Programs Administrator in confidence about allegations of inappropriate staff-inmate behavior; such confidentiality, however, will not preclude ADOC investigations of inmate allegations. Information about the Female Programs Administrator will be provided to inmates at orientation and in the inmate handbook. The Female Programs Administrator will have appropriate experience and training necessary to address inappropriate staff-inmate behavior in women's prisons, including but not limited to the training identified in Section VIII(A) below. The Female Programs Administrator will conduct frequent random interviews of inmates regarding, at a minimum, inappropriate staff-inmate behavior. These interviews will be documented and the interview notes preserved. The Female Program Administrator will have the authority to request a criminal or administrative investigation of any allegations of inappropriate staff-inmate behavior.

B. Staff Reporting ADOC will continue to take all reasonable measures to encourage staff to report inappropriate staff-inmate behavior, and to reduce fear of reporting inappropriate staff-inmate behavior, including, but not limited to the following:

1. Confidentiality ADOC will continue to ensure the confidentiality of staff who report inappropriate staff-inmate behavior, including, but not necessarily limited to, warnings not to discuss investigations, and disciplinary action if the confidentiality of an investigation is compromised intentionally by an employee.

2. Prohibition of Retaliation Against Staff ADOC will continue to prohibit retaliation by staff against staff who report inappropriate staff-inmate behavior.

VIII. INVESTIGATION OF ALLEGATIONS OF INAPPROPRIATE STAFF-INMATE BEHAVIOR

A. Investigator Training ADOC investigators will receive training specific to conducting inappropriate staff-inmate behavior investigations in a prison setting. Investigators will continue to have on-the-job investigative experience regarding general investigations techniques.

B. Temporary Transfer of Employee ADOC will continue its practice of removing staff accused of serious sexual misconduct

from all contact with female inmates pending the outcome of the investigation. ADOC will revise its policies to reflect this practice.

C. Timely Investigations Absent unusual circumstances, ADOC will complete investigations of allegations of inappropriate staff-inmate behavior within 30 days of receipt of the allegation. The investigator must document in writing the reasons why an investigation cannot be completed in 30 days, and that document will be reviewed by ADOC investigative management. The parties disagree as to whether in the past ADOC has consistently completed investigations in thirty days.

D. Complete, Effective, And Unbiased Investigations

1. Interviewing Witnesses ADOC will interview all potential witnesses in inappropriate staff-inmate behavior investigations, and will actively seek out potential witnesses by interviewing inmates who live or work with the alleged victim and staff who work with the alleged suspect. Inmate witnesses will be interviewed for equal lengths of time when that is necessary to eliminate the perception that some inmates were more cooperative with the authorities than others. The parties disagree as to whether in the past ADOC has consistently interviewed all potential witnesses.

2. Following Leads ADOC will interview all persons named as possible witnesses, victims, or suspects, by other witnesses, victims, or suspects in inappropriate staff-inmate behavior investigations. The parties disagree as to whether in the past ADOC has consistently followed all investigative leads.

3. Polygraphs ADOC will continue to routinely offer inmates and staff the opportunity of polygraph examinations to support their contentions.

4. Search For Past Conduct ADOC will ensure that every inappropriate staff-inmate behavior investigation includes a search for past investigations concerning inappropriate staff-inmate behavior, whether or not sustained, against the alleged perpetrator, and that investigators include previous investigations or discipline related to inappropriate staff-inmate behavior in their investigation of current allegations. Gathering this information will be the final step in the investigative process before forwarding findings to the approving authority or prosecutor.

5. Continuation Of Investigations and Other Inquiries Following an Employee's Resignation ADOC will continue its practice of continuing criminal investigations of inappropriate staff-inmate behavior even after an employee resigns. When an employee resigns during the course of an administrative

investigation of inappropriate staff-inmate behavior, ADOC wardens and deputy wardens will have the discretion to continue an inquiry into whether there are sufficient administrative concerns (e.g., an interest in determining the full scope of any inappropriate conduct, or an interest in determining whether the alleged inappropriate conduct has systemic implications that should be considered by ADOC) that warrant a continued inquiry into the subject matter of the investigation. ADOC wardens and deputy wardens will have the discretion to discuss any information obtained from administrative investigations in which the staff member resigned in the Post-Incident Management Review meetings described at IX(G) below.

E. Inference Regarding Staff Members Who Resign While Under Investigation The resignation of a staff member while that staff member is under investigation for inappropriate staff-inmate behavior shall be considered an admission that the staff member did in fact engage in the inappropriate behavior unless there is credible evidence to the contrary, and shall prevent that staff from being rehired by ADOC.

F. Mandatory Staff Participation In Investigations ADOC will discipline (up to and including dismissal) staff who are accused of sexual misconduct and who refuse to cooperate with an investigation.

G. Response to Allegations Arising In This Lawsuit ADOC will continue or begin to investigate all allegations of sexual misconduct and invasions to privacy set forth in the expert reports and exhibits to expert reports in this case, or in depositions in this case.

IX. PROACTIVE SEARCH FOR AND APPROACH TO INAPPROPRIATE STAFF-INMATE BEHAVIOR

A. Minimization of One on One Situations ADOC will implement a new policy that requires male staff to notify their supervisor when they will be alone in a secluded area with a female inmate and require the supervisor to be responsible for monitoring the situation. Existing policy will include language to the effect that staff shall minimize the situation where a female inmate and male staff are alone together. The following exceptions apply to this provision: emergencies, medical care, counseling, questioning during investigations, and reporting of confidential information. This provision will be satisfied if one staff is in the presence of two or more inmates.

B. Minimization of Access to Secluded Areas ADOC will undertake an examination of its female facilities to determine inmate and staff access to secluded areas conducive to inappropriate staff-inmate behavior. ADOC will take all

reasonable measures to eliminate access to secluded areas that is not necessary for the operation of those facilities.

C. Monitoring For Secluded Areas ADOC will increase the monitoring of secluded areas that are necessary for female facility operations by ensuring that supervisors conduct rounds of secluded areas at routine intervals not to exceed one hour between intervals.

D. Random Inmate Interviews By Female Programs Administrator As discussed above, the Female Programs Administrator will conduct random, periodic, confidential, and private interviews with inmates and staff, regarding, at a minimum, inappropriate staff-inmate behavior. These interviews will be documented and interview notes preserved consistent with the state's records retention schedule. Nothing in this provision shall be interpreted to mean that the Female Programs Administrator can not, in order to initiate or assist in an investigation of inappropriate staff-inmate behavior, share with ADOC investigators and management information obtained by the Administrator in random inmate and staff interviews.

E. Creation of Inappropriate Staff-Inmate Behavior Files ADOC will maintain its central data base storing information concerning inappropriate staff-inmate behavior, consisting of investigations, whether substantiated or not. The data base will continue to be searchable by, at a minimum, inmate and staff name, and by type of inappropriate staff-inmate behavior. Investigators, management and personnel officers will have access to this data base. The data base will be queried prior to accepting staff transfers or re-hires.

F. Automatic Review Of Employees Who Are The Subject Of Multiple Allegations Using the data base described in Section IX(E) above, ADOC will create a tracking system of inappropriate staff-inmate behavior allegations against staff that allows ADOC to know when a staff person has been the subject of more than two inappropriate staff-inmate behavior allegations within the past five years. ADOC will conduct a quarterly search of the data base. All staff who are shown in a quarterly review to have been the subject of more than two inappropriate staff-inmate behavior allegations within the past five years shall be the subject of a management review during which appropriate action will be taken regarding the employee, including, but not limited to, the following options: a meeting with supervisors, a referral to an employee assistance program, retraining, or reassignment to a different facility. Quarterly reviews and all action taken pursuant to this paragraph will be documented.

G. Post-Incident Management Review ADOC management will conduct semi-annual meetings, which will include the Female Programs Administrator, to discuss substantiated incidents of

inappropriate staff-inmate behavior and how they could have been avoided. Significant information resulting from such review will be considered for inclusion in ADOC training materials.

X. RESPONSE TO SUBSTANTIATED MISCONDUCT

A. Staff Discipline Staff who resign in lieu of termination during an inappropriate staff-inmate behavior investigation will not be eligible for rehire. The parties disagree as to whether ADOC has consistently in the past made such staff ineligible for rehire after two years. ADOC will continue its policy that progressive discipline will not be allowed in serious substantiated sexual misconduct cases. ADOC will continue to investigate and take disciplinary action against any staff member who had knowledge of substantiated inappropriate staff-inmate behavior and failed to report it.

B. Inmate Psychological Services ADOC will offer psychological services to any inmate involved or alleged to have been involved in inappropriate staff-inmate behavior with staff, to assist in recovering from the misconduct and to protect them from future incidents of misconduct.

XI. INMATE PRIVACY WHILE DRESSING, SHOWERING, AND TOILETING

A. Showers and Dressing At Manzanita ADOC will, in its sole discretion, at the ASPC-Tucson, Manzanita Unit, either (a) install privacy screens in the toilet and shower areas, or (b) schedule two daily fifteen-minute time periods for inmates to shower and/or dress. During these designated time periods, ADOC will make its best efforts to have only female staff monitoring the shower and dormitory areas, absent exigent circumstances, so that inmates who are concerned about showering and/or dressing when male staff are present, may have the opportunity to shower and/or dress under the supervision of female staff. Nothing in this provision shall affect equal employment opportunity rights.

B. Knock And Announce Policies ADOC will emphasize appropriate cross-gender supervision in pre-service and in-service training. Correctional officers will be trained that absent exigent circumstances and reasonable suspicion of inappropriate behavior, male officers will, in ADOC's view, as a courtesy, announce their presence into areas where inmates could be in a state of undress.

XII. SPECIAL PROTECTIONS FOR JUVENILES AND PERSONS WITH MENTAL ILLNESS OR MENTAL RETARDATION

ADOC will provide special protections for juvenile inmates and inmates with mental illness or mental retardation, including but not limited to, the following: (a) ADOC will continue its

current staffing policies regarding juvenile inmates and inmates confined in the Flamenco Mental Health Unit; (b) special emphasis on random inmate interviews by the Female Programs Administrator of such inmates; (c) training for all staff regarding the identification and particular vulnerability to inappropriate staff-inmate behavior of such inmates; and (d) the Female Programs Administrator will assess the feasibility of eliminating situations in which such inmates can be alone with staff.

XIII. SCREENING OF INMATES REGARDING PAST HISTORIES OF PHYSICAL OR SEXUAL ABUSE

ADOC will continue to have trained mental health professionals conduct adequate screening of all current and new inmates regarding pre-incarceration histories of physical and/or sexual abuse, and will ensure that such inmates are provided mental health services upon their request so that they may minimize the likelihood that they will become victims of inappropriate staff-inmate behavior.

XIV. QUALITY ASSURANCE PROGRAM

ADOC will establish a quality assurance program to assess regularly (a) the background investigation process to screen ADOC and non-ADOC employees with inmate contact; (b) inmate understanding of the rules and regulations governing inappropriate staff-inmate behavior, how to report misconduct and privacy violations, and the consequences of reporting; and (c) the competency of inappropriate staff-inmate behavior investigations, including compliance with policy. ADOC will continue to review on a quarterly basis, its pre-service and in-service training programs.

XV. MONITORING OF SETTLEMENT AGREEMENT, TIME FRAME FOR SUBSTANTIAL COMPLIANCE, AND TERMINATION OF THE LITIGATION

A. Conditional Dismissal Under Rule 41(a) Upon execution of this Settlement Agreement, the parties will jointly move the Court for entry of an Order conditionally dismissing this action, pursuant to Fed. R. Civ. P. 41(a)(2), conditional upon Defendants achieving substantial compliance with its terms, and will attach this Settlement Agreement to such motion. The motion will request that the case be placed on the Court's inactive docket, though the Court shall retain jurisdiction over the case until a final dismissal.

B. Reactivation Of Litigation If Defendants fail to achieve substantial compliance with the terms of this Settlement Agreement within the time frames and under the conditions listed below, the United States may file a motion to restore this case to the Court's active docket for purposes of litigating the

—allegations in the Complaint. However, the United States reserves the right to file a motion to restore this case to the Court's active docket for purposes of litigating the allegations in the Complaint at any time if it believes that defendants are not making a good faith effort to substantially comply with the Settlement Agreement. Plaintiff shall give defense counsel 14 calendar day written notice before the filing of such motion.

C. Monitoring And Time Frames For Compliance DOJ and a jointly agreed on expert, who must be selected and contracted with before this Settlement Agreement is executed, will have reasonable access to female inmates and staff, ADOC documents, information relating to implementation of this Settlement Agreement, and to allegations of inappropriate staff-inmate behavior for the purpose of monitoring Defendants' implementation of the Settlement Agreement. The parties will equally fund the joint expert's activities.

No more than one DOJ attorney, one ADOC attorney, and the joint expert will conduct initial on-site compliance monitoring tours of ADOC female facilities approximately three months after execution of this Settlement Agreement. Neither DOJ nor the joint expert shall add provisions or expand the scope of this Settlement Agreement in any manner. Within 30 days of the end of the initial compliance tour, the joint expert shall inform the parties in writing of his or her opinion of Defendants' compliance with each of the terms of this Settlement Agreement, including identifying any deficiencies in compliance.

No more than one DOJ attorney, one ADOC attorney, and the joint expert will conduct a second on-site compliance monitoring tour of ADOC female facilities approximately six months after execution of this Settlement Agreement. Within 30 days of the end of the second compliance tour, the joint expert shall inform the parties in writing of his or her opinion of Defendants' compliance with the terms of this Settlement Agreement, including identifying any deficiencies in compliance. If the joint expert determines that Defendants have substantially complied with each of the terms of the Settlement Agreement, the parties will file a stipulation to dismiss containing the following language: "The United States agrees that dismissal of this action is appropriate. There is no pattern or practice of Defendants violating female inmates' constitutional rights to be free from sexually inappropriate behavior and unnecessary invasions of privacy. The Arizona Department of Corrections remains committed to eliminating inappropriate staff-inmate behavior."

If necessary, no more than one DOJ attorney, one ADOC attorney, and the joint expert shall conduct a third compliance tour approximately nine months after execution of this Settlement Agreement. Within 30 days of the end of the third compliance

tour, the joint expert shall inform the parties in writing of his or her opinion of Defendants' compliance with each of the terms of this Settlement Agreement, including whether any deficiencies in compliance identified by the joint expert after the second compliance tour have been remedied. If the joint expert determines that Defendants have not substantially complied with the Settlement Agreement, DOJ may file a motion to restore the case to the Court's active docket for purposes of litigating the allegations in the Complaint, and Defendants agree not to contest such motion. Neither DOJ nor the Defendants shall file a motion or suit for specific performance of the Settlement Agreement. However, if the joint expert determines Defendants have substantially complied with the Settlement Agreement, consistent with the time lines set forth above, the parties will file a stipulation to dismiss containing the above-quoted language.

D. Substantial Compliance "Substantial compliance" with the terms of the Settlement Agreement will fully satisfy the Settlement Agreement. Isolated and unintentional incidents will not constitute noncompliance.

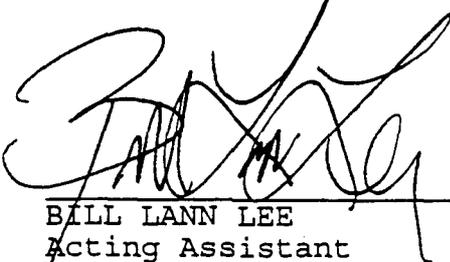
XVI. EVIDENCE

In the event this action goes to trial, nothing contained in this Settlement Agreement will be introduced as evidence.

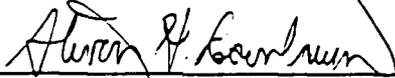
Dated: March 11, 1999

FOR THE PLAINTIFF:

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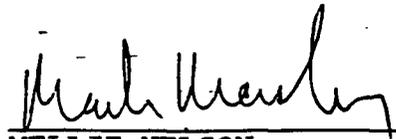


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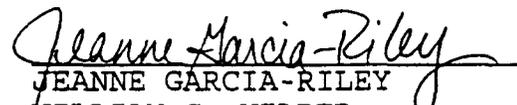
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