

AGREEMENT

This agreement is entered into between the National Prison Project of the ACLU Foundation (hereinafter called "claimant") and the Sheriff of Arlington, Virginia, Thomas N. Faust, in his official capacity. This agreement is part of the consideration for a settlement of certain claims against the sheriff and his deputies, employees, officers, and agents.

Preamble

Whereas differences have arisen between the parties and between the sheriff and eight certain former inmates at the Arlington County Detention Facility (ACDF), giving rise to certain claims, which the parties and these certain inmates have now resolved to their mutual satisfaction, and the parties wish to memorialize the terms of their resolution of their former differences, and

Whereas the parties agree that this settlement does not constitute an admission by the sheriff or and his deputies, employees, officers, and agents of the truth of any allegations, and that the sheriff is entering into this agreement freely in order to facilitate the continuing proper management of the ACDF of which he is keeper under Virginia law, and

Whereas the claimant agrees to settle all claims against the sheriff and any of his deputies, agents, servants and/or employees, which the claimant or the claimant's inmate clients have previously asserted in a proposed federal lawsuit, by separate releases and settlement agreements, incorporated herein by reference,

National Prison Project & Arlington, VA Jail



JC-VA-008-001

Now therefore, and in consideration therefor and of the promises herein, it is hereby agreed as follows:

A. Definitions

1. Inmate: Any person in custody at the jail.

2. Sexual Misconduct: Any and all sexually-oriented or romantically-oriented behavior and action, whether verbal, written, or physical, involving an inmate and an employee of the jail. Sexual misconduct includes, without limitation, all forms of sexually-oriented or romantic contact, and writing or speech, regardless of "consent" of, initiation by, or failure to respond by, an inmate. Sexual misconduct includes attempted actions as well as completed actions of the sort here described. For purposes of this agreement, sexual misconduct also includes any adverse action, or threat to take adverse action, against an inmate because of that inmate's involvement as a complainant or witness in a report of sexual misconduct. The above notwithstanding, actions taken in good faith pursuant to express or implied authorization consistent with any policy mandated pursuant to §B(8) below are not sexual misconduct.

B. Recognition of Need: The parties recognize the need for the elaboration and continuation of effective jail policies and procedures that contain appropriate:

1. Definitions of sexual misconduct consistent with the definitions in §A(2);

2. Procedures for handling reports or allegations of sexual misconduct, including:

(a) a confidential reporting mechanism by which prisoners can make complaints;

(b) instruction to inmates regarding the need to make complaints of sexual misconduct on inmate grievance forms;

(c) mandatory reporting requirements for all sheriff's department personnel of: (i) all written inmate complaints of alleged sexual misconduct and (ii) all observations of sexual misconduct; and,

(d) provisions that if a complainant subsequently declines to cooperate, the investigator must determine whether the complainant has been the target of retaliation, and whether the investigation should proceed without her cooperation.

3. Guidelines for investigations of sexual misconduct, including at a minimum:

(a) provisions to protect complainants' confidentiality during the investigation;

(b) conduct of investigations in a professional manner by trained staff;

(c) initiation of formal investigation promptly after receipt of a written complaint, as referenced above, to be completed in an expeditious manner;

(d) inclusion of an appeal procedure;

(e) provision for reassignment, transfer, or suspension of a staff member while an investigation against him/her is pending; and

(f) provision of appropriate counseling and/or medical treatment to complainants, if warranted;

4. Procedures to safeguard complainants alleging sexual misconduct;

5. Procedures intended to prevent retaliation against complainants or obstruction of investigations;

6. Procedures for prompt disciplinary action;

7. Procedures for taking disciplinary action against Sheriff's Office employees who, while not having engaged in sexual misconduct, fail to report it promptly on learning of its existence;

8. Policies and procedures governing permissible searches and surveillance of female inmates.

C. Review of Policies by Sheriff

1. Within ninety days of the date of this agreement, the Sheriff will promulgate and enforce such reasonable and appropriate modifications and additions to his current policies and protocols regarding prevention and remedying of sexual misconduct against female inmates as necessary to bring said policies and protocols into compliance with the terms of section B ("Recognition of Need") of this agreement.

2. Within ninety days of the date of this agreement, the Sheriff will submit said policies and training programs for review and comment to the Director of the National Prison Project ("NPP") of the American Civil Liberties Foundation, 1875 Connecticut Ave., N.W., Suite 410, Washington, D.C. 20009.

3. At the Sheriff's request, NPP will arrange for free technical assistance from its own office or another appropriate agency, including, if possible, the National Institute of Corrections, to assist the Sheriff to revise his policies and procedures to achieve compliance with section B of this agreement.

4. The Sheriff will not, without reasonable cause, reject a policy or procedure recommended by NPP or any consultant referenced in C(3).

5. The Sheriff will maintain the policies and procedures referenced in paragraph c(1) in place during his tenure.

D. Sexual Misconduct Policies and Training

1. The Sheriff has designated a training supervisor who is responsible on an ongoing basis to develop and implement policies, procedures and training programs relating to issues of sexual misconduct. The Sheriff will provide the training supervisor with sufficient support to implement and enforce same in an effective manner.

2. The training supervisor will provide all employees of the Sheriff's office with appropriate training at the time the referenced policies and procedures are adopted; and will provide all new hires working with female inmates with such training within a reasonable period of time after assignment. Appropriate refresher training will be provided on an annual basis to all staff who work with female inmates. Training will be provided by

a person or entity approved by the Sheriff. Training will be in at least the following subject areas:

a. Policies and procedures concerning sexual misconduct, confidential reporting, investigation of complaints and protection of inmate complainants, and staff's duty to report and testify regarding alleged incidents of sexual misconduct;

b. Sexual harassment, including abusive speech, hostile sexual environment, and verbal or non-verbal sexual propositions;

c. Female inmates' privacy rights, including, inmates' rights with respect to cross-gender supervision, cross-gender searches, and prurient viewing of women changing clothes or using the shower or toilet facilities;

E. Female Inmate Orientation:

1. All female inmates admitted to the ACDF will be provided during the orientation period with an appropriate written summary of jail policies and procedures, including those concerning sexual misconduct and confidential reporting of same.

2. The sheriff will permanently post in the female residential common areas an appropriate notice of their rights to file a written grievance as set forth in the inmate handbook, which notice will provide the name and address of the NPP as one source for assistance with sexual misconduct concerns.

F. Notice to NPP

During the first ten days of January 2000-2004, and upon written request from the director of the NPP, the sheriff shall provide the NPP with the names of all female inmates then resident in the ACDF. The sheriff will facilitate confidential conferences between selected female inmates and the NPP as the NPP may request. In the event the NPP learns of a potential problem regarding sexual misconduct at the ACDF, the NPP will bring this privately to the sheriff's attention and attempt to achieve a mutually agreeable, non-adversarial resolution of same before initiating any legal action.

G. General

1. This agreement is governed by Virginia law. It states the entire agreement between the parties regarding all the matters addressed herein. It cannot be modified except in writing.

2. The sheriff will provide his successor with a copy of this agreement; however this agreement does not bind the Sheriff's successor.

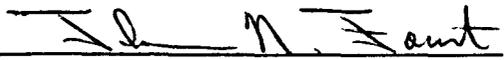
3. For notice purposes, NPP will act through:

Elizabeth Alexander, Director
National Prison Project
1875 Connecticut Avenue, N.W., #410
Washington, DC 20009
(202) 234-4830
Fax: 234-4890

4. The date of this agreement is the date that it is signed by the last signatory hereto.

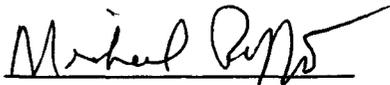
5. This agreement will become final when each of the eight former inmate plaintiffs executes her settlement agreement and release referenced in the preamble to this agreement.

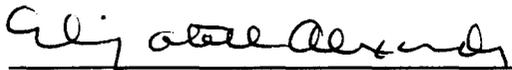
In witness whereof, we have executed this agreement in quadruple originals, or counterparts, on the date(s) stated below:



Thomas N. Faust,
Sheriff of Arlington

Dated: February 1, 1999

Witness: 



Elizabeth Alexander, Director
National Prison Project

Dated: February 1, 1999

Witness: 

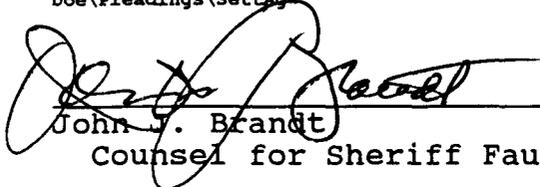
Approved as to form:



Victor M. Glasberg
Jeanne Goldberg
Counsel for the
National Prison Project

Dated: February 1, 1999

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John J. Brandt
Counsel for Sheriff Faust

Dated: February 1, 1999