

1 INTRODUCTION

2 Former and current Bureau of Prisons inmates Robin Lucas,
3 Register Number 87132-011, Valerie Mercadel, Register Number
4 08463-085, and Raquel Douthit, Register Number 15004-057, filed
5 this action on August 13, 1996 seeking damages and injunctive
6 relief from present and former Bureau of Prisons officials. On
7 or about August 13, 1996, each plaintiff also filed an
8 administrative claim for damages against the United States under
9 the Federal Torts Claim Act, 28 U.S.C. §§ 1346(b) and 2671 et
10 seq., which was denied on July 25, 1997. On October 1, 1997,
11 plaintiffs amended their complaint to add a claim for damages
12 against the United States under the Federal Tort Claims Act and
13 to add the following defendants in their official capacities
14 only: Kathleen M. Hawk, Director, BOP; Constance Reese, Warden,
15 FCI Dublin, substituting for Warden Hayes in his official
16 capacity, only; Margaret Harding, Warden, FCI-Danbury; L.R.
17 Greer, Warden, FCI Tallahassee; and Dr. Peter M. Carlson,
18 Director, Western Region, substituting for O. Ivan White in his
19 official capacity.

20 Plaintiffs allege, inter alia, that while they were in the
21 custody of the Bureau of Prisons and incarcerated at the Federal
22 Detention Center, Dublin, California and Federal Correctional
23 Institution, Dublin, California, they were subjected to a
24 "pattern and practice of sexual assaults, intimidation, physical,
25 sexual, and verbal abuse, threats of violence, sexual harassment,
26 invasions of privacy, and other violations of law," including
27 retaliation for their complaints of unlawful conduct. The
28 parties have participated in mediation since December 16, 1996;

1 it is pursuant to that process that this agreement arises. By
2 stipulation of the parties and order of the Court, defendants
3 have not answered the Complaint or the Amended Complaint pending
4 the final outcome of the mediation process.

5 I. CONDITIONS

6 A. The parties recognize that 18 U.S.C. § 3626 limits
7 prospective relief via consent decree to that necessary to
8 redress particular inmates' rights. The parties agree that this
9 settlement agreement is not a consent decree qualifying under the
10 Prison Litigation Reform Act of 1995 for judicial enforcement.

11 B. The parties agree that this settlement does not
12 constitute an admission by either the United States or the
13 individual defendants of the truth of the allegations contained
14 in the complaint.

15 C. The Bureau of Prisons' agreement to the terms in this
16 settlement is undertaken in good faith to redress plaintiffs'
17 concerns arising from certain actions alleged to have occurred at
18 FCI Dublin. This document embodies the following agreement: The
19 Bureau of Prisons promises to adopt and implement certain
20 policies and procedures designed to reduce the risk to female
21 prisoners of sexual assaults and harassment by correctional staff
22 and male prisoners and to provide appropriate programming,
23 counseling and services to female prisoners who are victims of
24 sexual assault. The United States agrees to pay damages to
25 Plaintiffs in settlement of each of their FTCA claims, as
26 described in Section IV of this agreement. In return, Plaintiffs
27 agree to dismiss the FTCA claims with prejudice, to release all
28 claims against the individual capacity defendants for damages

1 alleged to arise out of the incidents described in the complaint,
2 and to dismiss their injunctive relief claims subject to 18
3 U.S.C. § 3626(c)(2)(a), pending BOP's performance of its
4 obligations in this Agreement which are to be completed by or
5 before June 30, 1999, at which time the injunctive claims shall
6 be dismissed with prejudice.

7 D. The parties understand and agree that to the extent that
8 this Agreement requires changes in BOP policy affecting
9 bargaining unit employees, such changes are subject to
10 negotiation with the labor union representing the affected
11 employees.

12 **II. CHANGES IN BOP POLICIES AND PROCEDURES**

13 **A. Introduction And Procedures**

14 1. This agreement is not a consent decree qualifying
15 under the Prison Litigation Reform Act of 1995 for judicial
16 enforcement but is instead a private settlement agreement, as
17 described in 18 U.S.C. § 3626(c), and defined in 18 U.S.C. §
18 3626(g)(6). As such, the parties agree that the "terms of [the]
19 agreement are not subject to court enforcement other than the
20 reinstatement of the civil proceeding that [this] agreement
21 settled." 18 U.S.C. § 3626(c)(2)(A). In conformance with the
22 PLRA, the parties agree jointly to inform the Court that they
23 have entered into a "PLRA private settlement agreement" and to
24 request that the Court issue an order dismissing this action.

25 2. This agreement is undertaken in good faith to
26 resolve the concerns of Plaintiffs in respect of the effects that
27 operations at FCI Dublin will have upon other inmates at that
28 facility, and the BOP Official Capacity Defendants (hereinafter

1 "BOP") undertake in good faith to ameliorate those concerns.
2 This agreement also seeks to address the concerns of the two
3 Plaintiffs who remain in the custody of the Bureau of Prisons in
4 respect of their requests for injunctive relief.

5 **B. The J-2 Special Housing Unit At FCI Dublin**

6 1. Female inmates will not be housed in the J-2
7 Special Housing Unit of the Federal Detention Center in Dublin
8 absent circumstances which would require the Warden temporarily
9 to make such housing assignments during a correctional or law
10 enforcement emergency, natural disaster, or any other emergency
11 situation in which such assignments are approved by the Regional
12 Director.

13 2. In each report provided pursuant to paragraph IX
14 of this Agreement, BOP will indicate whether or not female
15 inmates were housed in the J-2 Special Housing Unit at FCI Dublin
16 during the period since the previous report and will indicate
17 whether male inmates were simultaneously housed in the J-2 SHU at
18 the time.

19 **C. Confidential Mechanism to Report Sexual Assaults**

20 FCI Dublin inmates, and plaintiffs Mercadel and
21 Douthit, will have the telephone number of the Office of
22 Inspector General of the Department of Justice added to their
23 Inmate Telephone monitored calling lists, without affecting their
24 currently approved lists.

25 **D. Independent Consultant for Training Purposes**

26 1. In order to assist with the review and development
27 of training programs, the BOP may consult with Andie Moss,
28 Correctional Programs Specialist, National Institute of

1 Corrections. If the BOP elects not to consult with Ms. Moss, the
2 BOP will retain an independent consultant with substantial
3 expertise regarding: (1) sexual assault and harassment against
4 female inmates; and (2) privacy concerns of female inmates. The
5 BOP will consult with plaintiffs' Counsel with regard to the
6 selection of that consultant.

7 E. Training Programs

8 1. National Training

9 A Bureau Training Program will be developed for annual
10 Refresher Training for 1998, which will address Bureau policies
11 and procedures concerning sexual assaults, sexual contacts,
12 sexual misconduct, confidential reporting, sexual harassment and
13 other issues arising out of the special needs of female
14 prisoners. BOP agrees to provide such training and information,
15 including a review of Bureau policy, to new employees as part of
16 the Introduction to Correctional Techniques training at the
17 Federal Law Enforcement Training Center at Glynco, Georgia.
18 Specialized training will also be available for staff most likely
19 to be involved in treatment or management of sexually assaulted
20 inmates.

21 With the assistance of the Consultant, BOP shall review
22 and revise its training program to assure that appropriate
23 training and information is provided to all employees who work
24 with female prisoners concerning the following topics:

25 a. BOP policies and procedures concerning sexual
26 assaults of prisoners by prisoners or BOP staff, sexual
27 contact between prisoners, sexual contact between prisoners
28 and BOP staff, sexual misconduct, confidential reporting and

1 investigation of allegations of sexual misconduct and
2 protection of inmate complainants, duty of staff to report
3 and testify concerning sexual misconduct;

4 b. Program Statement 5324.02 (and any successor
5 statements), including, but not limited to, the Staff
6 Training in Part 7.b, staff sensitivity training in Part 8,
7 and successor training provisions;

8 c. Sexual harassment, including inappropriate
9 speech, hostile environment, and verbal or non-verbal
10 propositions;

11 d. Privacy rights of female prisoners,
12 including, but not limited to, cross-gender supervision,
13 cross-gender searches, prurient viewing of females changing
14 clothes or using showers and toilet facilities; and

15 e. Special needs of female prisoners, including,
16 but not limited to, sexual and spousal abuse, menstruation,
17 pregnancy, child-rearing, medical and psychological needs.

18 2. FCI Dublin Training

19 FCI Dublin shall be responsible for devising and
20 providing specialized training to assure that all staff receive
21 training in local procedures and implementation of national BOP
22 policy on the local level. For example, staff should be trained
23 in the local Institution Supplement to Program Statement 5324.02,
24 including the identity of the Sexual Assault Coordinator and
25 local procedures.

26 3. Specialized Training

27 The BOP shall develop specialized training programs for
28 employees with particular responsibilities under Program

1 Statement 5324.02, or successor provisions of BOP policy,
2 including, but not limited to, the Sexual Assault Coordinator,
3 Medical and Psychological staff, SIS staff and employees with the
4 rank of Lieutenant or higher.

5 **4. Frequency of Training at Dublin**

6 a. All existing FCI Dublin employees shall complete
7 the revised training program no later than the end of the second
8 quarter of 1998. Employees who qualify for specialized training
9 shall, as applicable, complete the specialized training programs
10 no later than six months after this agreement becomes final.

11 b. New employees will be provided with and instructed
12 to read applicable policies during Institution Familiarization,
13 and will, subject to the physical limitations of individual
14 employees, attend Introduction to Correctional Techniques
15 training at the Federal Law Enforcement Training Center, Glynco,
16 Georgia, and will receive the local training program described
17 above within six months of beginning work at FCI Dublin.

18 **5. Refresher Training:**

19 Bureau of Prisons' staff shall provide refresher training at
20 appropriate intervals to staff, including annual local and
21 specialized refresher training.

22 **F. Inmate Orientation**

23 1. Bureau of Prisons' inmates will be provided with
24 literature on topics concerning sexual assault and harassment,
25 including recognition and reporting, during the admission and
26 orientation period following arrival at the institution. Posters
27 with similar information will be placed in the institution.

28 2. As required by Program Statement 5324.02, part 7c, BOP

1 shall develop technical assistance, training materials and
2 information for distribution to all BOP inmates concerning
3 preventing and avoiding sexual assault. These materials should
4 include information for victims of sexual assaults concerning
5 their rights under BOP policies, how to make a confidential
6 report to prison staff or the OIG Hotline and seek protection in
7 the unlikely event of a sexual assault or if they receive
8 threats, etc. BOP shall also prepare a candid and complete
9 presentation that covers the written materials, which
10 presentation shall be given as part of the HIV-AIDS discussion in
11 the Institution Admission and Orientation Program.

12 3. BOP shall also develop specialized training materials
13 and information for distribution in the Institution Admission and
14 Orientation Program to female inmates, including their rights to
15 privacy in prison.

16 **G. Psychological and Medical Services for Victims**

17 1. The Bureau of Prisons will assure that any inmate
18 who claims to be the victim of a sexual assault is promptly
19 provided with appropriate medical and psychological care in an
20 environment that meets both the inmate's safety and therapeutic
21 needs.

22 2. With regard to the provision of mental health
23 services, the following is a guideline for a suggested protocol:

24 a. Psychology Services or other mental health
25 staff should be notified immediately after the initial report by
26 an inmate of an allegation of sexual abuse/assault of an inmate.

27 b. Any alleged victim(s) will be seen, as soon
28 as possible, and preferably no later than 24 hours following such

1 notification, by a mental health clinician to provide crisis
2 intervention and to assess any immediate and subsequent treatment
3 needs.

4 c. The findings of the initial crisis/evaluation
5 session and the additional follow-up evaluation, assessment and
6 file review should be reduced to writing within one week of the
7 initial session and, once drafted, placed in the appropriate
8 treatment record, with a copy provided to the Clinical Director
9 and institution staff responsible for oversight of sexual assault
10 prevention and intervention procedures.

11 d. Additional psychological or psychiatric
12 treatment, as well as continued assessment of mental health
13 status and treatment needs, should be provided as needed and only
14 with the patient's full consent and collaboration except when
15 there is a need for immediate emergency psychiatric care of the
16 type addressed by the BOP Health Services Manual, the BOP
17 Psychology Services Manual, and by 28 C.F.R §§ 549.90 et seq.,
18 concerning psychiatric treatment and medication. Decisions
19 regarding the need for continued treatment and/or assessment will
20 be made by qualified clinicians according to established
21 professional standards, and should be made in full recognition of
22 the potential impact, in terms of immediate and delayed
23 psychiatric or emotional symptoms, commonly experienced by
24 victims of sexual abuse/assault. If the patient chooses to
25 decline further treatment services, he or she will be asked to
26 sign a statement to that effect. If the patient chooses to
27 continue to pursue treatment, the clinician will facilitate
28 referral of the patient to the appropriate treatment options.

1 This may include individual therapy, group therapy, further
2 psychological assessment, assignment to a mental health case
3 load, referral to a psychiatrist and/or other treatment options.
4 Pending referral, mental health services will continue unabated.

5 e. All additional treatment and evaluation
6 sessions will be properly documented and placed in the
7 appropriate treatment record to ensure continuity of care within,
8 between, or outside BOP facilities.

9 f. Should the patient be released from custody
10 during the course of treatment, the patient will be advised of
11 community mental health resources in his/her area.

12 H. Program Statement Revisions (National)

13 1. Subject to the APA requirements of notice and
14 comment, the Bureau of Prisons will make the following revisions
15 to Program Statement 5324.02 and its successor Program
16 Statements.

17 2. The "Purpose and Scope" section will be revised to
18 reference BOP employees as possible assailants.

19 a. The definition of "sexual assault" has been
20 revised to read as follows:

21 Definition: Inmate-on-Inmate Sexual Abuse/Assault:

22 One or more inmates engaging in, or attempting to engage in a
23 sexual act with another inmate or the use of threats,
24 intimidation, inappropriate touching, or other actions and/or
25 communications by one or more inmates aimed at coercing and/or
26 pressuring another inmate to engage in a sexual act. Sexual acts
27 or contacts between inmates, even when no objections are raised,
28 are prohibited acts.

1 Staff-on-Inmate Sexual Abuse/Assault:

2 Engaging in, or attempting to engage in a sexual act with any
3 inmate or the intentional touching of an inmate's genitalia,
4 anus, groin, breast, inner thigh, or buttocks with the intent to
5 abuse, humiliate, harass, degrade, arouse, or gratify the sexual
6 desire of any person. Sexual acts or contacts between an inmate
7 and a staff member, even when no objections are raised, are
8 always illegal.

9 3. The BOP will continue to refer allegations of staff
10 misconduct to the Department of Justice, Office of Inspector
11 General for further referral, when appropriate, to the FBI.
12 The notification procedures require that all complaints of
13 possible criminal sexual misconduct by prisoners or BOP staff be
14 reported to the Office of Internal Affairs, and that the Office
15 of Internal Affairs report in turn to the Office of Inspector
16 General, which refers such complaints, when appropriate, to the
17 FBI.

18 4. The Bureau Of Prisons will ensure that the all
19 Institution Supplements concerning Inmate Sexual Assault
20 Prevention/Intervention Programs reference Program Statement
21 1330.13 §8(d) and its successor provisions, which allows the
22 submission of Requests for Administrative Remedy concerning
23 sensitive issues directly to the appropriate Regional Director.

24 5. A new section 4(e) to all Institution Supplements
25 to Program Statement 5324.02 and its successor provisions
26 shall include the following provision:
27 Confidentiality: Information concerning the identity
28 of an inmate-victim reporting a sexual assault, and the

1 fact of the report itself, shall be limited to those
2 who have a "need to know" in order to make decisions
3 concerning the inmate-victim's welfare and for law
4 enforcement/investigative purposes.

5 **III. MONITORING AND ENFORCEMENT**

6 **A. Progress Reports**

7 Counsel for the government will provide at least three
8 reports to plaintiffs' counsel detailing BOP's progress in
9 fulfilling all obligations promised as part of this settlement
10 agreement. The first progress report will cover the period
11 between the date this agreement is signed by all parties and June
12 30, 1998. Subsequent reports will cover six month intervals.
13 Each report will be provided to plaintiffs' counsel within 45
14 days following the end of the period, with the final report
15 covering the period ending June 30, 1999. The progress reports
16 will address each issue addressed in ¶¶ II.B through II.H, above,
17 and counsel will attach copies of policies, procedures, training
18 materials or other applicable documents referenced in those
19 sections. The progress reports will be made, under penalty of
20 perjury, by counsel for the United States.

21 **B. Policies, Procedures And Training Materials**

22 To the extent that BOP has not already implemented certain
23 policies, procedures and training materials consistent with this
24 Agreement prior to the execution of this Agreement, BOP will
25 provide Plaintiffs' Counsel with drafts of policies, procedures
26 and training materials prepared in connection with this
27 settlement agreement before these documents are finalized, for
28 comments and suggestions. Plaintiffs' Counsel will provide

1 written comments no later than 30 calendar days after receipt of
2 any draft. With respect to policies, procedures and training
3 materials already in place at the time this Agreement is signed,
4 BOP will provide such materials to plaintiffs' counsel. BOP
5 agrees to consider plaintiffs' counsel's comments and suggestions
6 concerning such materials.

7 **C. Dispute Resolution And Reinstatement**

8 Pursuant to the PLRA, the only remedy available to
9 plaintiffs in the event of a breach of this agreement is to
10 reinstate the underlying action. 18 U.S.C. §3626(g)(6). The
11 parties agree that before plaintiffs request reinstatement of the
12 underlying action, they will negotiate in good faith concerning
13 the issue in dispute and may participate in a face-to-face
14 mediation session supervised by a mediator appointed by the Court
15 or otherwise agreed to by the parties. In the event that the
16 dispute is not resolved through mediation, the parties agree to
17 submit the issue to the mediator for an evaluation of the merits
18 of the parties' stance on the issue. If the United States agrees
19 that the dispute warrants face-to-face mediation, it will pay the
20 mediator's fees incurred.

21 **D. Termination**

22 The Bureau of Prisons agrees to perform all the obligations
23 contained in this agreement on or before June 30, 1999. When all
24 agreed obligations are fulfilled, counsel for the BOP will send a
25 final advisory to that effect along with the last of the three
26 progress reports it has agreed to provide to Plaintiffs' counsel,
27 under penalty of perjury. At that time, the United States will
28 seek an order dismissing the injunctive relief claims with

1 prejudice.

2 IV. DAMAGES AND DISMISSAL

3 Pursuant to 28 U.S.C. § 2677, in settlement of the
4 Plaintiffs' Federal Tort Claims Act claim and all other claims of
5 Plaintiffs against the United States and any current or former
6 employee of the Bureau of Prisons arising out of the incidents
7 alleged in the complaint, the United States agrees to pay a total
8 of \$500,000.00. The check, or Electronic Funds Transfer, shall
9 be made payable to "Rosen, Bien & Asaro Trust Account." In
10 return solely for the payment of this financial settlement
11 Plaintiffs agree to dismiss the Federal Tort Claims Act cause of
12 action with prejudice and to release all claims arising out of
13 the incidents alleged in the complaint against the defendants in
14 their individual capacities. The Request for Dismissal shall be
15 filed with the Court within two Court days of receipt of the
16 payments from the United States. Without admitting liability,
17 the United States agrees that the monetary payment made to each
18 Plaintiff is to compensate her for physical injuries and
19 resulting emotional injuries alleged in the complaint. This
20 monetary settlement is undertaken pursuant to the provisions
21 contained in 28 U.S.C. § 2672, the acceptance of which "shall
22 constitute a complete release of any claim against the United
23 States and against the employee of the government whose act or
24 omission gave rise to the claim, by reason of the same subject
25 matter." The monetary settlement shall be complete and final and
26 binding upon the receipt of the payment and the execution of the
27 dismissal with prejudice.

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V. ATTORNEYS' FEES, COSTS AND LITIGATION EXPENSES

Counsel for the parties agree that plaintiffs' counsel are entitled to apply for an award of reasonable attorneys' fees and costs in an amount to be determined. Pursuant to Local Rule 54-5 counsel will meet and confer in good faith in an attempt to resolve the amount of the award prior to filing a motion with the court.

VI. COOPERATION

The parties and their attorneys agree to use their best efforts and to act in good faith to effectuate and carry out the terms of this Agreement.

VII. COUNTERPARTS

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any of the parties may execute this Agreement by signing any such counterpart.

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Dated: 2/11/98
Dated: 2/2/98
Dated: 2/4/98

PLAINTIFFS:
Robin Lucas
Robin Lucas
Valerie Mercadel
Valerie Mercadel
Raquel Douthit
Raquel Douthit

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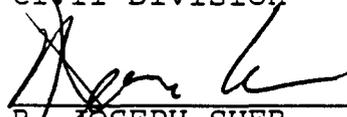
DEFENDANT UNITED STATES:

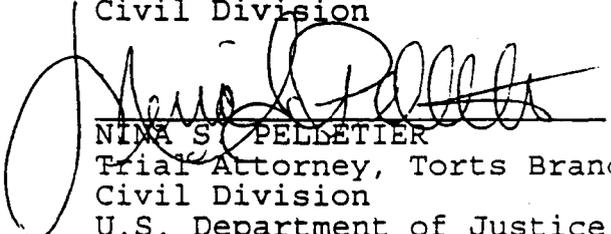
Dated: 2/24/98

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APPROVED AS TO FORM:

Dated: 2/13/98

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Michael W. Bien

Dated: 2/11/98

LAW OFFICES OF GERI L. GREEN

By: 
Geri L. Green

Attorneys for Plaintiffs