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In re:  
American Federation of Government  
Employees, Council of Prison Locals,  
Local 4052

**FMCS: 08-03493**

And

U.S. Department of Justice  
Federal Bureau of Prisons  
MDC, Guaynabo, P.R.

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The Agency's Closing Brief Regarding Damages: December 21, 2012  
The Union's Final Closing Brief: December 21, 2012  
Arbitrator's Final Opinion and Award: January 24, 2013

**FINAL OPINION**

Before responding to the principal issues and to their resolution, there are a number of preliminary matters to be decided. The first of these is the fact that Lt. Daniel Rivera, one of the principal protagonists in this case, retired in November of last year. He is no longer employed at MDC Guaynabo. What effect should that have on this final opinion and award? One possible position is that this case is moot since Lt. Rivera, whom I have held to be a serial sexual harasser, is no longer employed at MDC, and therefore no remedial action involving him can be effectuated. Analysis of whether this case should now be considered moot, should start with Arbitrator Greenbaum's 2002 award which included the following remedies:

"a. The Agency shall order that Lt. Rivera immediately cease all unprofessional conduct, harassment and intimidating behavior.

b. Lt. Rivera shall be required to attend appropriate training, including that covering sexual harassment, sensitivity and "bullying" behavior."

In the January 27, 2011 Opinion and Award there was a specific finding that the Agency had never complied with the two remedial orders, nor did it do so after the FLRA had upheld the Greenbaum Award. If Lt. Rivera had not retired, the final award in this case would have included a directive to the Agency to implement the two 2002 remedies. It should also have included, for clarification, requiring the Agency to monitor Lt. Rivera's conduct to assure faithful compliance. There would be no point to such an order after November of 2012; the Agency no longer has responsibility for his conduct. If that were all that this case encompasses, the proper decision would be to dismiss this case as moot. But that is not this case.

There remain the issues of how Agency management has dealt with sexual harassment in light of the findings of Arbitrators Greenbaum, La Penna and the present Arbitrator. As will be spelled out in detail later in this Opinion, Agency management in the case of Lt. Rivera has consistently used its authority to assure that the national policy against sex harassment was not enforced. Nor is that evidenced solely in the case of Lt. Rivera. In the sexual harassment case of Mei-Ling Burgos, FMCS 02-13441, in which I was the Arbitrator, I reached two conclusions:

"First, this grievance could have been resolved short of arbitration if the Agency's management officials had been sufficiently sensitive to grievant's claim that she had been sexually harassed and if they had acted with due diligence to assure her of the Agency's firm commitment to rectify any act of sexual harassment and then had so acted. That, the record demonstrates, was not the course of action followed by the Agency. This brings me to my second conclusion: the

manner in which Agency officials dealt with what amounted to a single act of sexual harassment was to exacerbate and extend its effects over subsequent months, creating what can only be described as hostile, abusive and retaliatory environment attributable to the filing of a sexual harassment grievance and its subsequent submission to arbitration.”(at page 2)

As later parts of the Opinion will demonstrate, Agency management in the present case consistently followed a course of action to assure that the policy of the law and the Master Agreement for dealing with sexual harassment was not enforced. There is no reason to assume that should another sexual harassment case occur, that the Agency's conduct would be different from what it has been in the past. If this case were now to be dismissed as moot, Agency management would probably conclude that their past course of action had won the day and that there was no need for them to change. That conclusion will be amply supported later in this Opinion by the evidence of how the Agency's own witnesses testified in the May 19-20, 2011 hearings.

Hence, the issue of how the Agency acted, its practices in dealing with sexual harassment cases, remain very much alive, requiring comprehensive evaluation and the determination of what would constitute appropriate remedies in light of the hearing record. There is a second reason for not dismissing this case: the Agency's noncompliance with the law and the Master Agreement caused harm to the Union and its members, harm for which there are appropriate remedies, and there is no justification for not vindicating their rights.

The second preliminary question is the categorical statement in the Agency's Closing Brief Regarding Damages at page 15: "Sexual Harassment Was Not An Issue Before the Arbitrator". That has been the Agency's position throughout the course of this case and as I have consistently found and explained, the Agency is mistaken, for two reasons. First, in the Formal Grievance Form, dated April 19, 2008, it specifically mentions that the Agency "continues to violate

the final and binding" Greenbaum and LaPenna awards. Second, and even more conclusively, in the January 27, 2011 Opinion and Interlocutory Award, there is fully spelled out how the Agency, through the testimony of its own witnesses, made sexual harassment an issue in this case, by having Lt. Rivera testify as to his innocence, which was supported by Captain Mark' testimony that he was indeed innocent, and further testifying on his "cash cow" explanation for the lack of merit in all sexual harassment cases, which I concluded was management's position, and further testifying about a recent alleged complaint of sexual harassment which had the effect of demeaning the woman involved and her testimony in rebuttal.

It was the Agency which by its own initiative made sexual harassment an issue in this case, in my opinion, the most important issue. It cannot continue to disavow its own actions and seek to brush aside the effects of the testimony of its own witnesses. True enough in the early stages of this case the allegation of retaliatory discrimination against the Union President, Jorge Rivera, appeared to be the primary issue but that changed as the case proceeded. As concluded in the January 27, 2011 Opinion and Interlocutory Award, sexual harassment clearly became the more important issue and that was the result of the Agency's own actions.

Rather than paraphrase my conclusions and analysis in the January 27, 2011 Opinion and Interlocutory Award, entitled "How Has MDC Dealt With Sexual Harassment?", I have decided to incorporate it in this Final Opinion, in the following pages.<sup>1</sup> It will be followed by comments and analysis to bring the record up to date.

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<sup>1</sup> The incorporated text from the January 27, 2011 Opinion and Interlocutory Award retains the original pagination: pages 8-24.

### **How Has MDC Dealt With Sexual Harassment?**

The captioned question has been an issue from the outset of this case. It is in fact the first issue raised in the April 23, 2008 grievance statement and at different stages it has been addressed, but never fully in all its dimensions. That can now be done because in the course of the most recent hearings on May 19 and 20 of this year, all the elements for a comprehensive analysis are now in place. These are: the Greenbaum and La Penna arbitration awards, the relevant provisions of the Master Agreement, the testimony of Lt. Daniel Rivera, the testimonies of Wardens Haynes and Martinez, the testimony of Captain Mark Foreman and the testimony of Officer Sandra Romero. The first four witnesses were called to testify at the initiative of the Agency. Officer Sandra Romero was called to testify by the Union as a rebuttal witness.

### **The Greenbaum Arbitration Opinion and Award**

Arbitrator Marcia Greenbaum's July 19, 2002 Opinion and Award is a comprehensive 143 page treatment of the law, the Master Agreement, Agency policies, factual findings and appropriate remedies in the sexual harassment case of Officer Migdalia Toro. Reading it is to be persuaded

fully that Lt. Rivera had been acting for a number of years as charged in the grievance. The Award orders eight remedies two of which are particularly pertinent, since there is nothing in the record of this case that they were ever implemented:

- a. The Agency shall order that Lt. Rivera immediately cease all unprofessional conduct, harassment and intimidating behavior.
- b. Lt. Rivera shall be required to attend appropriate training, including that covering sexual harassment, sensitivity and "bullying" behavior. (Page 142 of the Award)

The other remedies having to do with protecting Officer Toro from continuing acts of sexual harassment and a hostile working environment have ceased to have effect, since she is no longer employed by the Agency. The final remedy, an award of compensatory damages, was dully effectuated. The Greenbaum award was confirmed in all it dimensions by the Federal Labor Relations Authority. See *United States Department of Justice, Federal Bureau of Prisons, Metropolitan Detention Center, Guaynabo, PR and American Federation of Government Employees, Council of Prison Locals, Local 4052*, 59 FLRA 787, 104 LRP 14849 (2004)

The question naturally comes to mind, how could the MDC Threat Assessment Group reach such a diametrically different conclusion from that of Arbitrator Greenbaum? Without access to the record on which the Threat Assessment Group based its determination that Lt. Rivera did not constitute a threat of violence, one can only speculate. Assuming good faith on the part of the members of the Group, which I do, they had before them a more limited record and the only question which they were required to decide was the issue of possible physical violence. They could also have taken into account that the Lieutenant had no history of physical violent incidents and that appears to be the case up to the present. My own impression of him as a witness in the May 19, 2010 hearing is that he is not a person likely to act with physical violence.

Whatever weight is given to the report of the Threat Assessment Group, it cannot detract legitimacy from the arbitration award. That is because the award was rendered in accordance with the grievance and arbitration procedures of the Master Agreement and, under the terms of those

procedures, The Agency is contractually committed to accept and enforce the award. If it objected to the Greenbaum award, it of course had the right to take an appeal to the Federal Labor Relations Authority, which as noted, it did, but if the award was upheld, as it was, under the Master Agreement the Agency was obligated to enforce it.

### **The Two Awards of Arbitrator Jerome La Penna**

The first award, date February 6, 2007, resolved a joint grievance filed on June 3, 2005 by Officer Toro and Officer Jorge Rivera in which they charged that Lt. Rivera was not complying with the remedial measures required by the terms of the Greenbaum award. Arbitrator La Penna determined that Lt. Rivera had systematically violated the remedial measures ordered in the Greenbaum award, had engaged in retaliatory acts, and had so acted intentionally. In addition, his award concludes that the Agency had violated the Master Agreement, Title VII of the 1964 Civil Rights Act, Agency policies and had committed unfair practices as a consequence of its failure to comply with the Greenbaum award. Two of Arbitrator La Penna's remedial orders track what had previously been ordered by Arbitrator Greenbaum:

The Agency shall order that Lt. Rivera immediately cease and desist any and all acts of discrimination including but not limited to sexual harassment, intimidation and retaliation against employees and more particularly, female correction officers, Union officials and Union members, authorized to carry on Union business.

The Agency forthwith, require Lt. Rivera to receive professional behavior adjustment treatment and adequate training courses including but not limited to anger management, violence containment, sexual harassment and other similar and appropriate courses. See page 72 of the Award.

In the second award, dated September 7, 2008, Migdalia Toro, who was no longer employed by the Agency, was awarded \$154,000 in damages for mental stress and Officer Rivera was awarded \$15,000 for the "discrimination and retaliation he suffered at the hands of the Agency". See page 20 of the Award. Once again a Threat Assessment Group exonerated Lt. Rivera and once again the Agency failed to enforce all explicit remedial measures ordered by the arbitrator. For example, though it did not enforce the training which Arbitrator La Penna had ordered, it finally did pay both compensatory damages. What is clear is that to the

present all the remedial orders have not been enforced with consequences which can only affect negatively fulsome compliance with the Agency's official policy on eliminating sexual harassment. That is because Lt. Rivera proclaims that he has never been guilty of misconduct and points to his exoneration by Threat Assessment Groups. That was a point he made explicitly in his testimony in the May 19, 2010 hearing.

Contrary to his self proclaimed innocence are the detailed factual findings of Lt. Rivera's conduct in the La Penna award. Without repeating my prior analysis on dealing with the contradiction between the two dispute resolving methods, the same conclusion follows: the Agency is duty bound under the Master Agreement to enforce the remedial measures in the La Penna award, not partially but totally. The significance of the second award is that it demonstrates attitudes and actions of contumacious violations both by Lt. Rivera and by the Agency, violations which the Lieutenant could only commit because the Agency was not fully enforcing the award. That in turn raises the question: how to design remedies in this case which will not result in the same noncompliance as in the past? The question will be fully considered in the final sections of this Opinion.

### **The Pertinent Provisions of the Master Agreement**

Article 37 explicitly addresses and endorses the policy of preventing sexual harassment:

The Union and the Employer recognize that a positive working environment is conducive to fostering good employee morale and serves to promote staff efficiency and productivity. Both parties endorse the prevention of sexual harassment in accordance with all laws, rules and regulations.

The effect of Article 37 is to explicitly incorporate in the Master Agreement all related applicable laws and regulations. It could of course be argued that they are implicitly applicable. That is the case, but the evident purpose of Article 37 is to emphasize the parties' commitment to the goal of complete prevention of sexual harassment. That is also the goal of Article 22 guaranteeing Equal Employment Opportunity. And to repeat what has been considered earlier: the Master Agreement's provisions on processing grievances and arbitrations serve as one of the basic instruments to assure the effective implementation of Articles 22 and 37. With what has been considered to this point, the conclusion is surely

warranted that over the last ten years, in the case of MDC, there has been a large gap between officially adopted policies with regard to sexual harassment and the actual practices which have been tolerated. The nature of those practices now remains to be considered.

### **The Testimony of Lt. Daniel Rivera**

His testimony can be summed up in the following statements: he has never threatened or taken any adverse action of any kind against Officer Rivera; rather he is the innocent party and feels threatened by him; he has never been disciplined for having engaged in acts of sexual harassment nor has he ever engaged in such conduct; rather he has consistently been exonerated by Threat Assessment Groups; nor has he been disciplined on the basis of any arbitration award; he stresses that his record is clear of any misconduct; he has not read either the Greenbaum or the La Penna arbitration award because both consist of lies; were it not for the care he must provide for his invalid mother, he would transfer to another prison facility in order to be free of the stress that is caused by the harassing tactics of Officer Rivera. (Lt. Rivera's testimony is covered in the Hearing Transcript, May 19, 2010, pages 73-152).

How credible is Lt. Rivera's testimony? Obviously, a number of his statements are true and were established as true earlier, especially his having been exonerated by two Threat Assessment Groups and that he has never been disciplined for engaging in sexual harassment. Outside of such statements, my overall assessment is that his credibility is very much in doubt on critically important facts which go to the heart of this case. Most palpable about the Greenbaum award is the careful and precise weighing of all the testimonial evidence. Arbitrator Greenbaum found that he indeed did engage in sexual harassment. Yet he insists that it is a lie. Lt. Rivera testified that he never retaliated against Officer Rivera, yet the contrary was found to be true by Arbitrator La Penna. Reading the findings of fact in the two arbitration awards, and especially taking note of how careful both arbitrators were in weighing the evidence, particularly in making determinations of credibility, and then comparing Lt. Rivera's categorical statement of complete innocence, compel the conclusion that his claim of total innocence is not to be believed.

Rather, what is credible is that he engaged in sexual harassment against Officer Toro and retaliation against Officer Rivera, causing them grievous harm. This conclusion is reinforced by such matters as his claimed

memory loss of the fact that Officer Rivera had served as the Union's official assigned to assist in the presentation of Officer Toro's case. That is simply not believable. And one has to be skeptical of his account regarding the unprofessional conduct of Officer Sandra Romero. According to his testimony, he wrote a report describing her use of foul language and then put it in a drawer of his desk. After learning from Staff Investigator Mark Foreman that Officer Romero had accused him of sexual harassment, it was then that the report that he states that he had prepared earlier on Officer Romero's unacceptable conduct was turned over to Investigator Foreman. Lt. Rivera gave no credible explanation for why he had put his report in a drawer and had not forthwith submitted it to the appropriate MDC official. On these facts and within the context of his entire testimony, skepticism is surely warranted.

There is nothing in Lt. Rivera's testimony which would justify impugning the accuracy of the findings of fact, or the determinations of the violations found, or the soundness of the remedies ordered, in the Greenbaum and La Penna awards. By failing to implement all the remedies in the latter awards, different wardens enabled Lt. Rivera to hold himself out as completely innocent of all wrong doing and, more importantly, gave him a license to act as he had been doing prior to the arbitration cases. Concretely that meant that the sexual harassment and retaliation type conduct which had been the basic evidentiary material in the arbitration cases would not be considered proof of sexual harassment or of retaliation. That is the inescapable result of the Wardens' decision to not enforce completely all the remedies called for in the two arbitration awards which, in turn, has meant that there is no knowing at this time to what extent, sexual harassment has been going on in which Lt. Rivera is engaged, but for which he is not held responsible. That in turn means that there is no way of knowing how many women employees have been sexually harassed by him or what has been the overall impact on the working morale of MDC's women employees.

There is still another relevant matter which requires consideration because it involves the Agency's defense of Lt. Rivera. I requested the Agency's attorney to provide me with the two Threat Assessment reports and the evidence on which they were based in order to compare them with the two arbitration awards. My purpose was to see to what extent the evidentiary records were similar or different and to compare precisely their respective holdings. The Agency's Attorney demurred that she did not believe that she was authorized to provide me with the documents requested. I then

instructed her to consult with the appropriate Agency officials and to either provide me with the requested documents or with an official explanation of the reasons why that could not be done. To this date, I have not received either the two Threat Assessment reports or an explanation for why they have not been provided.

This conduct by the Agency is contumacious: it is in violation of its duty to be forthcoming in providing evidence required by the arbitrator under the terms of the arbitration article in the Master Agreement or to provide a legitimate reason for not complying. Within the context of this case, the Agency's contumacious conduct has an unquestionable effect: it serves to undermine its defense of Lt. Rivera. In the absence of the requested documents, it is fair to assume that the Threat Assessment Committees, on the basis of evidence before them, limited their holding to the conclusion that Lt. Rivera's conduct did not constitute a threat of physical violence and has no bearing on the issues of nonviolent sexual harassment or intimidation or reprisal. Even on that assumption, the Threat Assessments and the arbitration awards would still not be entirely consistent documents. Therefore I must assume, as I did earlier, that the evidentiary records on which the arbitrators and the assessment committees made their decisions were substantially different.

It should be noted that this type of contumacious conduct has been repeatedly committed by the Agency in different contexts of the hearings and their aftermath: a stonewalling of this arbitrator's efforts to have submitted what he considered to be relevant evidence in possession of the Agency. See, for example, the failure to honor my request to have submitted for the record the evidence which Warden Martinez took into account in deciding that Officer Rivera should be reprimanded for his conduct in the incident with Officer Jesus Hernandez.

### **The Testimonies of Warden Haynes and Martinez**

The testimonies of two Wardens are considered together because in large part they duplicate each other, which is to be expected because they represent official Agency policy. Whatever differences between them will of course be considered. The May 20, 2010 Hearing Transcript, pages 179-214 contains the testimony Warden Haynes and that of Warden Martinez is included in the May 19 Transcript at pages 154-214.

Both wardens criticized the principles for the protocol which I had proposed in the May 4, 2009 Preliminary Award and earlier in this Opinion I have acknowledged that their criticism should be taken into account in the final adoption of a Protocol. It was Warden Haynes who put into effect the protocol which assures Lt. Rivera will not supervise Officer Rivera, that both will work in different departments and have different working schedules to assure the maximum separation between them. In doing so, he obviously was implementing one of the remedial measures ordered in the La Penna award. In his testimony Warden Haynes acknowledged that there was a half hour overlap in the working schedules and that the intent to assure separation could be more completely accomplished by eliminating the overlap altogether. As his successor, Warden Martinez has maintained the same protocol. As indicated in an earlier part of this Opinion, he has filed a post hearing letter (Appendix "A") and now is of the opinion that Warden Haynes suggested amendment should be adopted.

In response to questions posed by the Union's attorney, asking why no disciplinary action had been taken against Lt. Rivera for the sexual harassment and reprisals which the Greenbaum and La Penna awards concluded that he had committed, both wardens gave the same response: that they were not empowered to do so. In their opinion, they could only discipline the Lieutenant on the basis of an Office of Internal Affairs or an Office of Inspector General report. Since the OIA and OIG reports had exonerated him of wrongdoing, they lacked the power to impose discipline and to so act would have been improper on their part. Is their position correct? In my opinion, the answer is that it depends on context.

Neither the Greenbaum nor the La Penna awards require that disciplinary measures be taken against Lt. Rivera. Both awards require the implementation of a number of remedial measures. Two of them, the requirement of complete separation of Lt. Rivera and Officer Rivera and the payment of the compensatory damages awards were implemented, but others were ignored and not put into effect. One of the principal remedial purposes of both awards is to assure that Lt. Rivera cease engaging in sexual harassment and retaliatory actions. The purpose is his rehabilitation, or at least his ceasing and desisting from continuing his wrongdoing and thus freeing women employees who come in contact with him from future acts of sexual harassment and undeserved acts of retaliation. Hence in both awards there is the order to assure that he receive sensitivity training for the purpose of changing his future conduct.

Neither Warden explained why the award remedial measures to change Lt. Rivera's conduct were never implemented.

If Warden Haynes had fully implemented both awards, as he was duty bound to do in compliance with the arbitration article in the Master Agreement, to change Lt. Rivera's pattern of wrong doing, he should have enforced all the remedial measures in both awards. At a minimum, he should have acted as follows: he should have met with Lt. Rivera and discussed with him the terms of the awards and very especially should have stressed the detailed factual findings of violations and the remedial measures which the Agency had the responsibility to effectuate, including particularly the sensitivity training ordered to change his future conduct. He should have made clear that the Agency expected that he would comply, indeed hoped that he would do so, but that if he failed to change and continued to defy the remedial requirements of the awards, that the Agency would then be obliged to take disciplinary measures to assure compliance. Discipline would only be appropriate in the face of a pattern of noncompliance.

The error committed by both wardens is their assumption that they have discretion to choose which remedial measures ordered by the two awards to adopt and implement and which to reject. The error is compounded by Warden Martinez when he testified that he only takes into account current facts and doesn't get into the details of disciplinary incidents that have occurred in the past. That may be an acceptable position with respect to ordinary past incidents of indiscipline, but is the wrong focus in dealing with the enforcement issues which may arise in arbitration awards having to do with sexual harassment and retaliatory conduct. Awards of the type in this case are the equivalent of a civil rights injunction which has a continuing effect to assure continuing implementation as long as such implementation is needed.

The Agency has not urged that the awards be dissolved on the ground that all their remedial purposes have been achieved. To succeed in such a motion, it would have to demonstrate that it had fully enforced all the remedial measures and that all the remedial purposes of the awards had been fully accomplished. From what has been considered thus far, based on the hearings, it would be impossible to prove full compliance. As noted in the last section on the testimony of Lt. Rivera, there is no way to ascertain to what extent he has reverted to the type of conduct which made up the evidentiary record in the arbitration cases.

The record in this case shows that Officer Sandra Romero did bring a recent grievance charging the Lieutenant with acts of sexual harassment, including such graphic detail as that he regularly sat in front of her with his legs wide open scratching his genitals. I understand that the Union withdrew the case when the arbitrator intimated that he would dismiss the grievance for failure to comply with his interpretation of procedural requisites. Hence, there will be no decision on the merits. Nonetheless, there is in the record of this case testimony, if found to be credible, that Lt. Rivera has resorted to the same type of sexual harassment practices which are delineated in the Greenbaum award.

### **The Testimony of Captain Mark Foreman**

Captain Mark Foreman's testimony is not mentioned at all in the Agency's closing brief and that is very strange considering that he was called as an Agency witness and that his testimony occupies a goodly portion of the hearing record, more than half of the 314 pages of the last hearing day. See May 20, 2010 Hearing Transcript, page 10-178. In contrast, the Union's closing brief evaluates Captain Foreman's testimony severely, charging him with bias as evidenced by his theory of the "money cow" as the explanation for civil rights suits, and by his assertion of the total innocence of Lt. Rivera whom he paints as the victim of fabricated sexual harassment cases. The most extreme example of his bias, according to the Union, is his testimony concerning Officer Sandra Romero's conduct in an investigative session which it characterizes as a "preposterous story".

At present Captain Foreman is stationed at the Federal Correctional Institution at Three Rivers, Texas. He was assigned to assist Attorney Tiffany Lee, the Agency's legal representative, during the three days of hearings. I assume that he was so designated because of his knowledge based on the professional services he performed in many of the investigations involved in the history of this case. As a Special Investigative Agent, assigned in the past to MDC, he was involved in the Migdalia Toro and Sandra Romero cases and the administrative investigations of the dispute between Lt. Rivera and Officer Rivera, the incident involving Officer Jesus Hernandez and Officer Rivera and the November 4<sup>th</sup>, 2009 dispute over Warden Haynes determination that Officer Rivera was AWOL. In addition, in his capacity as Special Investigative Agent he assisted the OIG in its investigation of Officer Rivera's alleged misuse of his assigned credit card. In effect, Captain

Foreman fulfilled two functions: first, he was a source of detailed information on which Attorney Lee could rely whenever needed in the course of the three days of hearing and second, he served as an Agency witness which permitted him to testify on a number of the principal disputes in the case, and as well, to present the Agency's position on the problem of sexual harassment at MDC and the prison system in general, on whether Lt. Rivera is a sexual harasser or an innocent victim of false accusations and to give an account of how he had acted as the Special Investigative Agent in the case involving Officer Sandra Romero.

The focus in what follows is on three questions: first, what bearing does Captain Foreman's thesis of the "Cash Cow" have on how MDC has dealt with the issue of sexual harassment, second, does his testimony demonstrate evident bias on the issue of the guilt or innocence of Lt. Rivera and what conclusions can be drawn from his account of his investigative interview in the case of Officer Romero?

The "Cash Cow" thesis and his conviction that Lt. Rivera is an innocent victim tend to merge in Captain Foreman's testimony:

My opinion is that Daniel Rivera, throughout the years, and every institution has one, 'cause I have been to seven institutions, he is the person—he is—there is always been a target, an easy target, I stated cash cow, a means for others to get money. OK? He had the Toro situations ...back in 2002...that opened them up to numerous other allegations...He's the easiest target to get money, because he's had a history, since 2002.

That man plans on retiring here in the near future. Upon his retirement, there's not going to be anyone left in order to draw money from. That—that—that's my honest opinion. He is a target, he is a victim, based on arbitrator opinion and award, a precedent has been set against Daniel Rivera, he's the easiest target.

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You know, it's my honest feeling that Daniel Rivera retires, and the following day, you're going to have people lined up at Caribe Federal Credit Union across the street, looking for a loan, or going to see the local—ah—bankruptcy attorney to file for bankruptcy, because that opportunity of obtaining money in an award is no longer going to be present, until a new staff member is identified.

At every institution that I've worked at, there's always one or two staff members that are either targeted by inmates...or you have staff that

are being targeted by other staff members. Inmates trying to get money from staff and staff trying to get money from staff. It's prevailing across the Bureau of Prisons, and I have seen it at the seven facilities that I've worked at.... (77-80)

From his own words, Captain Foreman stands convicted of manifest bias with respect to how he views sexual harassment cases or, for that matter, civil rights cases in general. There can be no doubt that he was unfit to carry out his duties as Special Investigative Agent in the investigations it was his responsibility to execute in the course of the history of this case. That is because he could not function with the impartial and objective state of mind which is required of Investigative Agents. He doesn't seem to understand that there are sexual harassment cases which are thoroughly proven by substantial evidence, just as there are cases which fail to satisfy the standards of proof which are required by both the judicial and arbitration adjudicatory systems.

Captain Foreman's type of analysis is essentially lawless. What counts is his understanding of what goes on in the prison system in general and the specific example he focuses on, how in his view Lt. Rivera has been victimized over the years for the benefit of those who have exploited his victimization to suck money out of the Bureau of Prisons. It is with that frame of mind that he decides that Arbitrators Greenbaum and La Penna have been taken in, in short that their judgments are simply wrong and that their awards should be disregarded. Along the same line, his reasoning is premised on not having to take into account that the policies embodied in Civil Rights Law and the express terms of the Master Agreement, including the articles on arbitration and sexual harassment, embody legal principles which must be enforced. In short, he does not understand the meaning of the rule of law.

Once the dimensions of Captain Foreman's biased and confused thinking are fully understood, do the investigative reports and recommendations he has made in the past as Special Investigative Agent merit credibility or the testimony he gave in the May 20, 2010 hearing in this case? In particular, should any weight be given to his conviction that Lt. Rivera has been victimized and is innocent of any acts of sexual harassment? In my judgment, his own words require a negative response to both questions.

This brings us to the larger question: to what extent do Captain Foreman's words reflect the views of the Agency? A definitive answer is not possible

at this time, because the Agency has yet to speak clearly. What is clear is that Captain Foreman was called as an Agency witness. He testified as the Agency's spokesman. What is not known is to what extent the Agency was aware of what would be the precise content of his testimony prior to his giving it. It is also clear that his testimony has not been disavowed by the Agency and that how Agency management officials have acted, as described in earlier sections of the Opinion, are at least in part consistent with Captain Foreman's thinking. It is for the Agency to speak forthrightly on the extent to which Captain Foreman's views represent its official position.

It should also speak and act forthrightly with respect to a concrete example of how Captain Foreman's bias affected his testimony concerning an incident which occurred during a phase of his investigation of Officer Sandra Romero's denunciation of sexual harassment by Lt. Rivera. She had made the charge to Captain Foreman in his then capacity as Staff Investigative Agent at MDC. After having received the charge, he received a complaint by Lt. Rivera against Officer Romero for using foul language in violation of professional standards of conduct. It should be recalled from the last section that the Lieutenant had testified that he had put his complaint in a drawer. Herewith is a summary of Captain Foreman's testimony on his version of what transpired and excerpts from an investigative session he held with Officer Romero, who was accompanied by Officer Rivera, followed by the version of Officer Romero who testified as a witness in refutation of Captain Foreman's testimony.

Captain Foreman stated that Officer Romero in her complaint, referring to Lt. Rivera's actions in her office, "alleged that his legs were spread wide open and that he took his hand, and placed it on his crotch area, and started rubbing his crotch area, and made the statement: 'What's wrong? you don't like this ?' OK, that's what she alleged." See May 20, 2010 Hearing Transcript, page 163. With respect to Lt. Rivera's complaint, he testified that the allegation was to the effect that in his presence Officer Romero referring to some women inmates had used the following foul language, "These female inmates appear that they hear through their pussies." (Id at 164) He then stated that he had carried out a joint OIA investigation of both complaints and that the report he made had concluded that neither of complaints had been sustained.

Captain Foreman's account of what transpired in one sequence of the investigative session which he held with Officer Romero with Officer

Rivera present is of special significance for its bearing on the issue of credibility. Referring to Officer Romero, he stated:

And she even demonstrated what she made---what she alleged. She sat there, spread her legs wide open, placed her hand on her crotch, and looked at me and said: 'what's the matter? You don't like this? This is what he did to me.' She even actually displayed the graphic nature. And I told her that she needed to refrain herself, because I didn't want to be privy to that. OK. ? (Id at171)

And then, Jorge Rivera alleged that I was creating a hostile situation, and I had to contact the Warden to have Captain Ed Serrano come in on my witness, on my behalf, so that they would not try and formulate allegations against me. (ibid)

On hearing this testimony, my comment was, "What he's testifying is that Sandra Romero acted in a way, which in effect, was sexually harassing him." (Id at172) With respect to the descriptive term "graphic nature", I took that to mean that Captain Foreman was stating that Officer Romero had exposed her sexual parts and was rubbing them. Throughout the remainder of the hearing that is how I explicitly repeated his allegations in the comments and questions which I made and which from her remarks apparently was so understood by Agency counsel.

Two excerpts from Officer Sandra Romero's testimony in refutation of Captain Foreman merit consideration for their bearing on two key credibility questions related to her complaint of sexual harassment and her behavior in the investigative interview with the Captain.

In answer to the question of what had happened on May 19, 2009:

I came to work ...about six thirty, six thirty five, around, and Mr. Danny Rivera was sitting in...in the...in my office, inside the 3 Charlie unit, and he was sitting...ah...with his hand...with his open...open...open...legs open with his hand in his private parts, and he was staring at me, and I told him the...I already told him a lot times before that I don't like those...those approach that he's doing to me, and he was keep staring at me, and...ah...and I keep telling him the...that I don't like the way he was...the...what he was doing. So, he asked me, 'Why? Because you don't like it?' Then I told him again, the...the...'Leave me alone', then I left to the...to the bathroom. I start crying, and then, I went back outside, and Mr. Santana was there, the

AW, and he ask why I was crying, and I told him. That 'later on, I will talk to him', and then, I decide to call Jay Rivera. (Id at 283)

In answer to my question to Officer Romero, "Is it your testimony that that statement of Mr. Mark Foreman made in the witness chair about how you behaved, specifically, that you showed your private parts to him...is that a lie? She replied, "It is. It is a lie." Clearly, either Captain Foreman or Officer Romero had given false testimony. In that type of situation, I thought it appropriate to have both witnesses confront each other. A short time prior to Officer Romero's appearance as a witness, Captain Foreman had left the hearing room, and when I inquired if he was on the premises so that he could again give testimony, I was informed by Agency counsel that he had left for the day. (Id at 289)

Having heard both witnesses and reflected on their respective testimonies, both on direct examination and under cross examination, I am convinced that Officer Sandra Romero's testimony is true in all of its essential parts.

In contrast, Captain Foreman's testimony has elements which defy belief. That is to be expected given the severity of his bias which prevents him from objectively investigating a sexual harassment complaint. His testimony on what transpired during his investigative session with Officer Romero transcends an act of falsehood. It is far more than being a "preposterous story", the descriptive term used in the Union's closing brief. If his account of Officer Romero exposing her private parts and rubbing them is false, as I am convinced that it is, it is more than untrue, more than simple perjury. If believed, it would have a devastating effect on her reputation, indeed, on her continuing to be an employee at MDC.

If in fact she acted as he testified, Officer Romero committed a crime and did so not only in front of Captain Foreman, but with her two Union representatives present. If it happened, she not only committed the crime of indecent exposure, she acted in a way totally contrary to Puerto Rican cultural values. Unless it is a matter of mental illness, no woman in Puerto Rico is going to expose her private parts in public or, as in this case, before three men. It is a question of how a sense of shame serves to limit conduct. I carefully observed Officer Romero's demeanor during her testimony. I found her to be a normal woman, albeit one who had endured appreciable suffering.

Turning to some of the indicia that would support a finding of false testimony, in the investigative session, Captain Foreman alleges that Officer Romero was trying to intimidate him by harassing him sexually, whereas as Officer Rivera saw it, it was the Captain who was creating a hostile situation and was harassing Officer Romero. In my opinion, the latter harassment is the more probable version of what transpired. The second piece of evidence involves a similar twist. The expression and the question which Captain Foreman stated Officer Romero used when he asserts that she was exposing and rubbing her private parts, is a close paraphrase of the words and question which she stated Lt. Rivera had used when he subjected her to sexual harassment. He transferred the Lieutenant's expressions to Officer Romero in describing how he alleges that she expressed herself.

The third fact which serves to cast doubt on Captain Foreman's credibility is his disappearance from Agency counsel's table shortly before the appearance of Officer Romero as a witness. He left the hearing shortly after Union counsel informed Agency counsel that she would be calling Officer Romero as a witness to refute Captain Foreman's testimony. During the hearings, he had always asked permission to be away from the hearing which was in progress. This time he said nothing and fled without an excuse. As I see it, the explanation is obvious: he fled because he did not have the courage to face the woman he falsely accused. Agency counsel, when asked, offered no explanation for his leaving as he did.

In final analysis, the scenario he falsely constructed is almost unimaginable. If Officer Romero had acted as he described, a responsible Investigative Agent would not feel that he was being intimidated and would not have called the Warden to have another management official present to avoid being charged himself by the person he was investigating. Under the circumstances he described, the proper response was to stop the investigation and to file charges against Officer Romero for conduct which was criminal and totally unacceptable by an employee of MDC. It is surely significant that Captain Foreman never did write up the incident he describes in his testimony. It is inconceivable to me that a responsible Investigative Agent would walk away from the incident he describes in his testimony, without doing anything to protect the institution. I am convinced that he never acted because there was no wrongdoing to report.

That does not end the matter. Simple justice requires that there be an official inquiry to determine whether Captain Foreman falsely and

maliciously testified in an arbitration proceeding with the intent of destroying the reputation of Officer Romero and, if the inquiry concludes that the findings in this Opinion are based on substantial evidence, after giving Captain Foreman a full opportunity to defend himself, the Agency should determine the appropriate disciplinary action.

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### Added Comments

Though I requested that the Agency state for the record whether Captain Foreman's theory represented the position of the Agency, or whether the Agency disavowed it the Agency has chosen to remain silent. That being the case, it is fair to conclude that his position represents the thinking of Agency management that all sexual harassment suits were without merit and that at every prison there was a "cash cow", innocent of sexual harassment, but who through fabricated cases served to enrich their false accusers. That is not a position that management would dare to express publicly. To do so would stamp them as lawless, subverting a national public policy and as failing to keep their contractual commitments.

But if we looked to how Agency management has acted in the case of Lt. Rivera, we find Agency officials utilizing internal procedures to assure favorable outcomes to resolve sexual harassment complaints brought against him, making it difficult for women who do complain, systematically refusing to fully implement arbitration awards, all the while implementing pro forma the training programs required to assure compliance with anti sexual harassment program.

There was not only no response to my question on Captain Foreman's "Cash Cow" position, the Agency responded to my analysis of all its witnesses related to sexual harassment--the testimony of Lt. Rivera, Wardens Haynes and Martinez and Captain Foreman--by not responding, as if their testimony could not and should not be taken into account. It was the Agency's position, as stated at the outset that "Sexual harassment was not an issue before the arbitrator." That is the case, according to the Agency, because sexual harassment is not explicitly mentioned in the original Formal Grievance Form, dated April 19, 2008. That is true, but is irrelevant. By the witnesses the Agency presented in the May 19-20, 2010

hearings, and their testimony, it made the ten year record of the Agency related to sexual harassment a fundamental issue in this case. Their witnesses made up two days of hearing time. As I made clear, a party can add an issue to an ongoing case, if the other party does not object. The Union did not object. By its own initiative, the Agency clarified that sexual harassment is to be treated as an issue in the case. That served to remove any doubts, since the original grievance refers to the Agency's failure to implement the Greenbaum award, but does not explicitly mention sexual harassment.

There are two remaining questions which require consideration. First, how to explain the Agency's apparent belief that the "Cash Cow" theory, the Wardens' explanation for not implementing all the remedies ordered in the Greenbaum and LaPenna award, Captain Foreman's testimony and Lt. Rivers's claim of Innocence would convince this arbitrator. The Agency evidently was convinced that its witnesses would be persuasive and would be a decisive element in winning its case. If that indeed was its true conviction it would demonstrate that Agency management has lost its capacity to see the world objectively. It apparently failed to perceive how unpersuasive its defensive narrative was.

If the latter explanation is mistaken, we come to the second question: what options were open to the Agency? It would have been hard put to defend Captain Foreman's "Cash Cow" theory, or the authority of a Warden to pick and choose which remedies in an arbitration award to implement. The better option was to deny that sexual harassment was an issue or could be made an issue in this case, in the hope that on appeal its non issue argument would convince the Federal Labor Relations Authority. I would hope that the FLRA will reject the Agency's non issue defense and opt to bringing out in the open how the Agency has systematically acted to defeat enforcement of anti sexual harassment legal and contractual norms and will respond to the pressing need for appropriate remedies. It should be remembered that since 2002 the Agency has

systematically and effectively sustained an illegal policy of protecting a serial sexual harasser. Ten years is surely enough.

**Does Grievant Jorge Rivera Have a Basis for Claiming Damages? Are Their Other Legitimate Claimants? Are There Appropriate Non Compensatory Remedies To Be Considered?**

The January 27, 2011, Interlocutory Award reached three conclusions (at pages 28-29), two decisive and a third tentative:

"The Union's claim that Officer Rivera has suffered retaliation by Lt. Rivera is denied for want of supporting evidence.

The Union's claim of a pattern of retaliatory actions by management officials against Officer Rivera is denied for want of probative evidence.

The precise terms of the Protocol to assure the separation of Lt. Rivera and Officer Rivera have still to be fixed for incorporation in the remedial measures of an award."

Between the date of the Interlocutory Award and the hearing on Damages, no additional probative evidence was presented by the Union. Hence there is no basis for modifying the first two conclusions. There is, however, a caveat which merits consideration. While there is no probative evidence of outright retaliation by the Agency, there is substantial evidence that the Agency did violate Article 6, Section b.2 of the Master Agreement: the right "the right to be treated fairly and equitable in all aspects of personnel management." As between the two principal protagonists in this case, the Agency investigated and prosecuted infractions by Officer Rivera forcefully, while at the same time taking the necessary steps to insure that Lt. Rivera would never be sanctioned for his multiple acts of sexual harassment.

With respect to the third conclusion, the Agency failed to comply with my order to submit the required Protocol, even though I had agreed that it should contain a clause to the effect that in emergency situations management's authority would be unrestrained. The result was that the Warden's schedule of complete separation was entirely at his disposition to change. As a consequence, Officer Rivera did not have the benefit of the security he would have had if Arbitrator LaPenna's award had been implemented, nor the benefits of the Protocol which I had ordered. I found Officer Rivera's testimony to be credible that the resulting insecurity caused him considerable anxiety. (See pages 18-20 in the May 4, 2009 Opinion and Preliminary Award) In my judgment, his suffering would be a basis for awarding him damages. Lt. Rivera is no longer employed at MDC, hence damages should be calculated from the LaPenna award to the date Lt. Rivera retired.

There is an additional and stronger basis for awarding damages and that is the stress and frustration Officer Rivera experienced for well over ten years in his capacity as a Union Official. In his grievance statement Officer Rivera does refer to the discrimination he suffered in his capacity as Union President, but never in the precise terms for which in my opinion he is entitled to damages. Since in the box in the grievance form it states "Any other remedy deemed appropriate.", the arbitrator is free to spell out additional grounds for awarding damages. For the better part of ten years, as Union official and President, Officer Rivera struggled unsuccessfully to have the Agency enforce the legal and contractual policy for dealing with sexual harassment cases. The frustration and the pressures must have been intense: while he was trying to implement the protections afforded by the law and the Master Agreement, management was protecting the wrongdoer making certain that all complaints against him would terminate in his being found innocent. Despite his being in the right, Officer Rivera suffered defeat after defeat. To his credit, he persisted, but in my opinion he paid a great price in emotional terms.

As he testified in the hearing on damages, Officer Rivera was affected by how the defeats in the sexual harassment cases were interpreted by the Union's members. MDC is a closed community. There can be no doubt that Union members knew of Lt. Rivera's sexual harassment practices, that he was protected and never disciplined by management, that the Union acted on complaints and submitted cases to arbitration without succeeding in putting an end to Lt. Rivera's sexual harassment. In the eyes of its members, the effect was to severely diminish the Union as an institution capable of protecting their rights under the law and the Master Agreement. The defeats also affected Officer Rivera in his capacity as Union President: as incapable of vindicating the rights of sexually harassed women. His stress and frustrations were entirely due to the fact that Agency management had decided on a course of lawless conduct against which the Union and its President were unable to prevail up to the present. Under such extreme circumstances of consistent use of management's authority to defend and protect a serial sexual harasser, extraordinary remedial relief is surely justified. That would include damages to Officer Rivera in his capacity as Union President. Citing FLRA case law, the Union's Final Closing Brief recommends compensatory damage in the amount of \$40,000. I concur with that amount, based on the reasons which I have presented.

Should extraordinary relief encompass the Union party, or its members, since both were injured by the Agency's practices in violation of the law and the Master Agreement? Herewith recounted are a number of the more grievous practices.

1. The February 28, 2012 Interlocutory Award recounts how the Agency unilaterally suspended a hearing date, refused to discuss with the Union an early rehearing date, informed the Arbitrator that the dates it had available were six months or more later and at all times acted as it were in control of the case.
2. As determined in the April 18, 2011 Interlocutory Award: "the Agency failed to fulfill its arbitration obligations, as one of the

contractual parties, to provide the Arbitrator with requested information, or an explanation for not doing so." The following are from the same Award.

3. There is reference to the Agency's motion in which "it **demands** that the Union's motion be denied and **demands** that the Arbitrator immediately render a final award." The Agency acted as if it were in control of the case which would constitute contumacious conduct if it were before a judge.

4. The protective relief ordered on behalf of Sandra Romero was not implemented. There has been a stubborn refusal to accept a balanced Protocol, to fully implement the Greenbaum and LaPenna Awards, or to have Captain Foreman's subjected to an independent investigation to determine whether his investigations while at MDC were biased and whether he defamed Sandra Romero in the May 19-20, 2010 hearings.

There can be no doubt that the Agency's actions diminished profoundly the capacity of the Union to act effectively to implement the legal and contractual rights of its members, as delineated in the analysis of how those actions affected the Union's President. Similarly for the better part of ten years Union members lived and suffered with the knowledge that their right to have access to a fair and effective arbitration process was being eviscerated on a continuing basis with no relief in sight. To endure abusive power because of a broken arbitration system, for ten or more years, with no relief, surely qualifies as harm for which there should be compensatory damages. That is the case, which is true in this case, when the Agency is responsible for having persistently and abusively failed to implement the law or comply with its contractual commitments, including very particularly the terms of Article 37 of the Master Agreement. Article 37 states: "Both parties endorse the prevention of sexual harassment in accordance with all laws, rules, and regulations."

I concur with the Union's conclusion that damages should be awarded to unit employees, although not the amounts recommended, and I would also award damages to the Union for the reasons previously analyzed. In my judgment, \$5000 per unit member who has been employed during the period 2002-2012 would be reasonable, and for those employed less than ten years, their pro rata share. In the case of the Union, it should be awarded \$500,000 to underwrite an educational program to promote understanding of what went wrong for ten years and the reforms which have been put in place.

There is a secondary reason for awarding compensatory damages: it possibly could have dissuasive effect and possibly could alert higher echelon government officials that a serious problem of failure to enforce anti sexual harassment norms exists at MDC. The key word in the latter statement is "possibly". It should be remembered that the Agency paid the compensatory damages awarded in the Greenbaum and LaPenna cases, but did not enforce the other remedies which might have put an end to Lt. Rivera's acts of sexual harassment. The lesson is clear: compensatory damages alone may be an imperfect remedy if the purpose is to insure changed conduct on the part of management in the direction of full fledged enforcement of measures to vindicate the rights of MDC employees to effective protection against sexual harassment.

The most effective remedy would be injunctive relief under the direction of a Federal District Court. That could only happen if this case is finally appealed to the courts. In that eventuality, the Court would have the authority to appoint a monitor to assure the planning and training necessary to achieve the necessary changes with regard to enforcing the law and contractual norms dealing with sexual harassment. It would be preceded by a trial, or preferably an objective investigation by the EEOC, the Justice Department's Civil Rights Division, or the Office of the Inspector General. If the investigation bore out my findings, that would lay the ground work

for the necessary reform measures. At the very least, short of the ideal solution, this Opinion and Award, should be sent to the Civil Rights Division, the EEOC and the OIG to determine whether my findings are true and, if so, to recommend remedial measures.

There are at least two additional remedies which merit acceptance. The first would be to send this Opinion and Award to Union leaders and Agency officials who engage in collective bargaining at the national level. The challenge would be for them to fashion effective reform measures. The second is a non traditional remedy: it would be for the Director of BOP to recognize, after receiving this Opinion and Award, to apologize to the Union and MDC employees for the failures of the Agency to faithfully enforce the legal and contractual norms for dealing with sexual harassment. That is a recommendation of the Union with which I concur.

I am fully aware that a number of the remedies awarded which follow are both nontraditional and extraordinary. I do so, convinced that they are required to rectify deep seated violations of legal and contractual rights which over a ten year period have become institutionalized. Rectification is the first goal, the second is taking measures to assure genuine compliance in the future with the provisions of Article 37 of the Master Agreement. Ten years of defiance of law and contractual commitments is surely enough.

### **Final Award**

1. Since Lt. Rivera is no longer employed at MDC Guaynabo, he will not figure in the terms of this Award.
2. The Union's claim that Officer Rivera has suffered retaliation by Lt. Rivera is denied for want of probative evidence.

3. The Union's claim of a pattern of retaliatory actions by management officials against Officer Rivera is denied for want of probative evidence. There is, however, substantial evidence that in his case, his right to right to be "treated fairly and equitably" was violated in the discriminatory manner in which his infractions were treated by the Agency as compared with how Lt. Rivera's sexual harassment was treated. The discrimination is one of the elements to be included in the compensatory damages he is to receive.

4. The Agency will pay Officer Rivera \$40,000 in compensatory damages for the Agency's failure to submit the Protocol ordered by the Arbitrator, for the harm he suffered in his capacity as Union official and President, and for the failure of the Agency to comply with Article 6.b.3 of the Master Agreement.

5. The Agency will pay compensatory damages of \$5,000 to each unit member who has been employed during the ten year period 2002-2012, for the reasons spelled out in the Opinion, and pro rata compensation for unit members who have been employed for less than ten years during that period.

6. The Agency will pay the Union \$500,000 for the educational purposes set forth in the Opinion.

7. The parties are directed to send copies of this Opinion and Award to the Civil Rights and Civil Liberties Complaints Office of the Inspector General, U. S. Department of Justice. In their letter of Transmittal, the parties should state that in the opinion of the Arbitrator the sexual harassment which he has found to have been committed in violation of the Master Agreement are also violations of Title VI and VII of the Civil Rights Act. The parties in their letter should also request that an investigation be undertaken to verify the accuracy of the Arbitrator's findings.

8. The parties are directed to follow the same course of action in a letter of transmittal to the Equal Employment Opportunity Commission, as stipulated in paragraph 7.

9. The same procedure should be followed with respect to informing the OIG of Captain Mark Foreman's conduct in the May 20, 2010 Hearing. The letter of transmittal should inform the OIG that in the opinion of the Arbitrator Captain Foreman's testimony involves both violations of civil rights law and professional integrity.

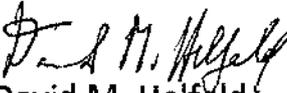
10. The Agency will send Officer Sandra Romero a letter of apology for the false and vicious attack on her reputation by the Agency's witness, Captain Mark Foreman, with copies to the Union.

11. The Director of the federal Bureau of Prisons will send a letter to all employees of MDC Guaynabo apologizing for the failure to implement Article 37 of the Master Agreement and specifically for the Agency's having protected a serial sexual harasser for ten years and will spell out the reform measures which have been put in place.

12. A copy of this Opinion and Award should be sent by the parties to their respective national officers who are responsible for collective bargaining. In the letter of transmittal, it should be indicated that the purpose is to determine whether measures of reform can be negotiated.

13. The Union's request for attorney's fees is granted, subject to submitting to the Arbitrator, within thirty days from receipt of this Award, the pertinent documentation in support of its request.

Opinion and Award by:

  
David M. Helfeld,  
Arbitrator