

## Aranda v. Lynaugh

United States District Court for the Southern District of Texas, Houston Division

July 22, 1993, Decided ; July 27, 1993, Entered

CIVIL ACTION NO. H-89-277 Consolidated with G-88-398, H-89-1370, H-89-2139, H-89-2239, H-89-4116, H-89-4135, H-90-1075, H-90-1977, H-90-3423 and H-91-79

**Reporter:** 1993 U.S. Dist. LEXIS 21424

ALBERT ARANDA, et al., Plaintiffs VS. JAMES A. LYNAUGH, Defendant.

**Disposition:** [\*1] Court entered judgment in favor of Plaintiffs. All other relief sought by Plaintiffs not granted in this judgment denied.

**Counsel:** For ALBERT ARANDA, WILLIAM E SPAULDING, III, M J FAUBION, J MONROE, DAVID C JOHNSON, JOE S CONNEL, FRANK BUCKLEY, DONALD ATKINS, WILLIAM E MIDDLETON, ARTHUR N MURLEY, LEOPOLD LEE PEDRAZA, MICHAEL W COUNTZ, JIMMY PIPPIN, RONNIE ARNOLD, G A TURNER, FORREST CURRY, L A JONES, J DUPREE, GARY THOMAS, 15 JOHN DOES, DAVID BEAGLE, ROBERT HENDERSON, GREGG SCOTT, MICHAEL MCKEE, KEITH BROCK WILEY, ANTOINE DOMINO, RAY CHARLES SMITH, MELVIN SMITH, JR, D L MYERS, D J DRAKE, SHIPPER, SHARP, C OLDHAM, SGT. COPELAND, OFFICER PARKER, OFFICER COLLINS, OFFICER MARQUEZ, OFFICER COSTILLO, OFFICER WALKER, OFFICER RYAN, OFFICER RICE, DONNIE GENE ARPS, R WAYNE JOHNSON, DAVID R RUIZ, FRANK GONZOLAS, J KIRK BROWN, JACK M. GARNER, ALVIN LEE HARRISON, ANGELO NAPOLEON ANSLEY, WILLIE CHARLES WILLIAMS, PAUL D MONTGOMERY, SIDNEY HILL, CHARLES ROMAINE, ALFRED GILSON, EDDIE J JOHNSON, LIONEL WOLF, BILLY FRANK LEE, EARL K TAYLOR, SCOTTIE GREER, CHARLES RAY JOHNSON, DONALD LEE MURPHY, JOHNNIE LEE GOLDSMITH, JOHN MATHEWS, TYRONNY L ROSS, OTHER NAMED AND UNNAMED INMATES, JAMES W WILLIAMS, PERCY JOHNSON, CHARLES T TERREL, KEITH PRICE, A MAXWELL, [\*2] C ANDERSON, S PALASOTA, A AROL, P DAILEY, W WOOTEN, L MCDONALD, W C HUGHES, M MAYFIELD, H HIGGINS, FREDDIE CHARLES CUNNINGHAM, GARY LYNN KARL, SR., S DUNAHOO, STEPHEN EDWARD OATES, KIRK K VENTERS, TOMMY D CROW, TAMMY KOONCE, B MILES, LOUIS CHARLES CARR, LAWRENCE E. THOMPSON, DONALD EARL ODOMS, ROBERT LEWIS BARRETT, plaintiffs (89-CV-277): Harry H Walsh, III, Attorney at Law, Trinity, TX.

OTHER NAMED AND UNNAMED INMATES, plaintiff (89-CV-277), Pro se.

For LAWRENCE E. THOMPSON, plaintiff (89-CV-277): Lawrence Tompson, Huntsville, TX.

For JAMES A. LYNAUGH, defendant (89-CV-277): Ann Kraatz, Office of Texas Attorney General, Karen Burdett Ray, Office of the Attorney General, Austin, TX.

For WILLIAM TUCKER, movant (89-CV-277): William Tucker, Rosharon, Tx.

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MICHAEL WALKER CROUCH, movant (89-CV-277), Pro se, Richmond, Tx.

LONLESO HOWARD, movant (89-CV-277), Pro se, Richmond, Tx.

**Judges:** NORMAN W. BLACK, CHIEF JUDGE.

**Opinion by:** NORMAN W. BLACK

### Opinion

#### MEMORANDUM AND ORDER

Following a bench trial and, after hearing witnesses and examining [\*3] exhibits, the Court makes the following:

#### *Findings of Fact*

1. This law suit was filed on January 19, 1989 by Albert Aranda and almost one hundred other inmates of what is now the Texas Department of Criminal Justice, Institutional Division, (TDCJ) against James A. Lynaugh, Director of the TDCJ. The basis of Plaintiffs' allegations was that their civil rights were violated because they were being "strip searched" by female correctional officers (COs).

2. Over time additional law suits were filed in this and other judicial districts involving substantially the same

allegations, and all have been consolidated under civil action number H-89-277.

3. When the Court concluded that multiple cases were being filed by inmates making the same or similar allegations concerning strip searches in the male-only units of the TDCJ, the Court determined that it was appropriate to appoint counsel for the inmates. Having a great deal of confidence in his ability and experience in dealing with inmate litigation, the Court appointed Mr. Harry Walsh III of Huntsville, Texas as counsel for Plaintiffs on April 15, 1991.

4. Cases continued to be filed after Mr. Walsh's appointment, and they were consolidated [\*4] with H-89-277.

5. The Court set the case for trial for October, 1991, but the setting was cancelled at the request of counsel to permit Defendant to file a motion for summary judgment and an order certifying a class.

6. Cases continued to be filed and consolidated, and motions to intervene were filed by a number of inmates. The Court determined that the *only* way that the issues raised could be addressed was to refuse to consider motions filed in the case unless filed by counsel. That was ordered.

7. The allegations of the class are substantially as follows:

- a. Strip searches by female COs violates the inmates' right to privacy;
- b. Defendant is not following the consent decree in *K.K. Coble and Donna S. Beneze Riggs v. Texas Department of Corrections, et al.*, Civil Action Number H-77-707; and
- c. Having female guards in male units poses an extraordinary risk both to the guards and to the inmates who need protection.

8. On April 3, 1992, the Court certified a class "for prospective, injunctive relief only, consisting of all present and future male inmates of the Texas Department of Criminal Justice--Institutional Division who are or will be assigned to a unit designated [\*5] to house male inmates."

9. On February 10, 1993, the Court granted Defendant's motion for partial summary judgment and to dismiss the claims of Plaintiffs that strip searches by female guards violated Plaintiffs' right to privacy. *Letcher v. Turner*, 968 F.2d 508 (5th Cir. 1992). The Court set the remaining issues for possible equitable relief for July 7, 1993 at the Criminal Justice Center in Huntsville, Texas. That location

was chosen to give the parties and witnesses easy access to the proceeding.

10. In the *Coble* case, the Parties joined in a consent decree on February 20, 1987, which ended the long-standing policy of the then Texas Department of Corrections to refuse to hire females as correctional officers in all-male units of the Department. Plaintiff Coble had filed her first EEOC complaint in 1975, and the consent decree awarded damages and required the TDC to hire females in "non-contact positions."

11. On January 20, 1988, the *Coble* consent decree was modified by agreement of the parties and order of the Court to eliminate the limitation that females would be hired only to non-contact positions. Thereafter gender was not to be considered in the [\*6] hiring and assignment of persons in the all-male units of TDC, and all jobs were to be open to women on an equal basis with men.

12. The effect of the *Coble* rulings was to recognize and enforce the right of women to work in any job which they choose and are willing and able to perform.

13. As soon as the original decree was published in 1987, resistance to female guards in all-male units began from certain inmates and a number of male guards. That resistance increased in 1988 when all gender restrictions were removed from job assignments; however, the presence of female COs in all-male units has slowly developed into a definite asset in the institutions. Inmates prone to violence toward male COs often calm down in the presence of female COs and many even put themselves at risk by "protecting" females from the violence of other male inmates.

14. The greatest advantage to the TDCJ from being able to hire females as COs is that it has substantially increased the hiring pool. As of June 30, 1993, the TDCJ has fifty separate units housing inmates and only three are all female. As of May 31, 1993, the TDCJ has 14,060 correctional service employees on male units and 2,817 are females. [\*7] There has been a 150% increase of females employed on male units since March of 1988. There are now under construction 11 additional units for the TDCJ with a need for an additional 3,654 security officers.

15. Females are performing as well as male COs, and a number have reached the higher ranks of Sergeant, Lieutenant, Captain, and Major with at least one woman serving in the highest rank, Warden, of an all-male institution.

15. Throughout the history of the Texas prison system, some inmates have attempted to conceal on their persons

what the system considers "contraband." The most dangerous contraband consists of drugs and weapons. Drugs are usually obtained by inmates when they have been outside the units where they are housed, and weapons are usually constructed by the inmates from materials they obtain in their various work assignments. Drugs and weapons are a threat to the security of the institutions because of possible harm to the inmate with the contraband, to other inmates, or to TDCJ personnel. Nearly all cases of possession of contraband involve male inmates.

16. While the TDCJ has experimented with other security devices such as magnetometers, it has found that there [\*8] is no way to protect the inmates and TDCJ personnel that is as effective and painless as the strip search. Those searches take the following forms:

- a. A "pat-down" search where the CO merely feels the clothing on the inmate's body;
- b. A "modified" strip search where the inmate removes all clothing except underwear;
- c. A "full" strip search where the inmate removes all clothing; exposes all surfaces of the body to visual examination; and the clothing is carefully examined by hand; and
- d. A body cavity search.

17. Strip searches are effective only if done under the following conditions:

- a. They must be done when inmates move from an area where contraband may be collected back to housing units;
- b. They must be done in a random fashion to keep inmates from knowing exactly when they may be searched; and
- c. They must take place at the exact moment *any* CO suspects contraband without that CO having to wait for another CO to be called.

18. All inmates, male and female, are subject to all forms of search, but only medical personnel may perform cavity searches. A CO may not actually touch an inmate except during a pat-down or strip search unless the inmate tries to assault [\*9] the officer.

19. The TDCJ, at all times material to this case, has had written rules concerning all aspects of strip searches of inmates, and the rules and techniques are taught during the initial training of all COs and are reinforced by periodic training sessions.

20. Inmates are made aware of strip search policies and procedures and very few complain of the procedure itself. The TDCJ has an elaborate grievance procedure consisting of three steps: step 1 grievances are resolved by the unit warden; step 2 by a regional director; and step 3 by a deputy director. There have been very few grievances concerning females performing strip searches among the nearly one million grievances filed by inmates since records were kept beginning in 1984.

21. An inmate who has adopted the Muslim religion complains that he is not permitted by his religion to be seen by a female other than his wife; however, the Deputy Director who testified has never seen a complaint from Muslim inmates other than over pork-free diet, wearing caps, or having prayer rugs available.

22. Of the approximately 62,000 inmates in the TDCJ, 287 have filed 87% of all grievances and only 20 inmates are multiple filers.

[\*10] 23. Of the inmate witnesses who testified at trial, a disproportionate number are incarcerated for sex offenses, especially sexual assault against females.

24. It is TDCJ's policy that strip searches are to be performed in a "professional" manner and, where possible, same gender COs are to perform the search. Only "if circumstances dictate" may strip searches be conducted by COs of the opposite sex.

25. The necessity for the TDCJ to continue to disregard gender in hiring, assigning, and promoting correctional officers is required by the Constitution of the United States and the laws of Congress regarding equal employment opportunity. The strip search policy of the TDCJ is reasonable and, when applied as written, does not violate the Constitutional rights of inmates.

26. The TDCJ has modified its strip search policies following complaints by inmates of the application of that policy, and the filing of the first of the inmate law suits challenging the policy and practice encouraged those changes.

27. Because of the large number of correctional officers employed by the TDCJ; the turnover of employees; the continuous operation of training academies; and the complaints by inmates in [\*11] this case; the Court finds that the training program needs improvement in the area of the relationship between female COs and male inmates.

#### *Conclusions of Law*

1. Defendant will promulgate additional training procedures and practices to assure that its policy

concerning pat-down and strip searches by officers not of the same sex as the inmate will be emphasized regularly.

2. Plaintiffs' law suits have caused the TDCJ to change and improve its policies regarding strip searches and, to that limited extent, Plaintiffs are partially-successful parties entitled to some attorney's fees.

3. Plaintiffs are not entitled to any relief except that set out in the last two paragraphs above.

Signed this 22nd day of July, 1993 at Houston, Texas.

NORMAN W. BLACK

CHIEF JUDGE

*FINAL JUDGMENT*

Pursuant to the Memorandum and Order signed by the Court, it is the judgment of the Court:

That the Director of the Texas Department of Criminal Justice--Institutional Division revise and improve the training program of the Department to emphasize the policy regarding strip searches of male inmates by female correctional officers;

That the Court be furnished annually a copy of the training program [\*12] showing what is being taught and the time devoted to such training;

That the Director furnish the Court an annual report showing the frequency of training, any changes to the training curriculum, and number of correctional officers trained during that year;

That the Director cause to be published in the newsletter to inmates the strip-search policy;

That the Director pay to the attorney for Plaintiff class, Mr. Harry Walsh III the sum of \$ 5,000.00 as attorneys' fees; and

That all other relief sought by Plaintiffs which is not granted in this judgment is DENIED.

This is a FINAL JUDGMENT.

Signed this 23rd day of July, 1993 at Houston, Texas.

NORMAN W. BLACK

CHIEF JUDGE