

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT
HOUSTON DIVISION

ALLEN L. LAMAR, ET AL
PLAINTIFFS

VS.

H. H. COFFIELD, ET AL
DEFENDANTS

UNITED STATES OF AMERICA
PLAINTIFF-INTERVENOR

CIVIL ACTION NO. 72-H-1393
CONSENT DECREE

This civil action was filed pro se on October 17, 1972 by Allen L. Lamar and Lorenzo Davis, black inmates of the Texas Department of Corrections, hereafter, TDC, under 42 U.S.C. §1983 and 28 U.S.C. §1343. On November 6, 1972 eight Spanish-speaking inmates, headed by Eduardo Salazar Mauricio¹, moved to intervene as Plaintiff-Intervenors. Leavy Campbell and O'Neal Browning, two other black inmates, moved to intervene on December 6, 1972 and December 19, 1972 respectively. Intervention by the Mauricio group, Campbell and Browning was granted by Order of the Court on January 6, 1973.

The Attorney General of the United States certified the case to be of general public importance pursuant to Section 902 of the Civil Rights Act of 1964 (42 U.S.C. §2000h-2) and on May 24, 1973 moved to intervene as a Plaintiff-Intervenor and filed a Complaint in Intervention. The United States intervention was granted by Order of July 6, 1973.

Additionally, on June 6, 1973 William Howard King and Don Adell Kalmbach, two Anglo-American inmates, moved to intervene as

¹ Besides Mauricio, the others included Ernesto R. Montana, David R. Ruiz, Raul A. Rodriguez, Isaias Lara, Salvador Gonzales, Daniel Villalpando and David Robles. Lara subsequently was dismissed by Order entered on April 29, 1974.

Defendant-Intervenors, and their motion was granted by Order of July 6, 1973. Thereafter, by Order of June 6, 1975 four black inmates (Eugene Alvarez, Nathan Cook, Robert Davis and Willie Sewell) and two Mexican-American inmates (Reynaldo de la Cruz and Richard R. Martinez) were permitted to join King and Kalmbach as Defendant-Intervenors.

In addition to the interventions mentioned, two other causes were consolidated with this action. By Order of July 26, 1974 Cause No. 73-H-1374, Enriquez, et al v. Estelle, was consolidated with this case, as was Lamar v. Coffield, et al, No. 72-H-1478, by Order of June 7, 1976. Enriquez was filed on October 4, 1973, by four Spanish-speaking inmates (Juan Rodolfo Enriquez, Patricio Avilez, Amado A. Soto and Eduardo Bermudez) and a black inmate, Melvin Payton. The second Lamar case, No. 72-H-1478, was filed on November 1, 1972, by Allen L. Lamar, one of the original Plaintiffs in this cause.

The Court has certified the case as a class action and has delineated three separate classes composed of all past, present and future inmates of TDC. These classes consist of (1) black and (2) Spanish-speaking inmates who are Plaintiffs or Plaintiff-Intervenors and (3) the mixed group of Anglo-American, black and Spanish-speaking Defendant-Intervenors. Further, the Court appointed Gerald M. Birnberg, Attorney at Law, to represent the black Plaintiff class; David T. Lopez, Attorney at Law, to represent the Spanish-speaking Plaintiff class; and G. Ernest Caldwell, Attorney at Law, to represent the Defendant-intervenor class.

A distillation of the allegations of the black and Spanish-speaking inmate Plaintiff classes shows their complaints generally charge TDC with racial or ethnic discrimination against both groups in the following particulars:

1. In assignment to the various prison units within TDC.
2. In assignment to living quarters within the various prison units.
3. In assignment to agricultural work squads and other jobs within the various prison units.

4. In the administration of inmate disciplinary procedures, both in charging minority inmates with disciplinary offenses and in assessing punishment.

5. In selection of inmates for and in the administration of academic and vocational educational programs.

6. In maintaining a predominantly Anglo-American employee staff.

7. In providing medical care.

8. In providing reasonable protection from harm within the various prison units.

9. In providing recreational facilities and activities.

10. In providing dining, showering, church and other group activities.

11. In the use by TDC staff of racial and ethnic verbal epithets and slurs.

12. In the review and inspection of in-coming publications.

13. In forbidding Spanish-speaking inmates from speaking and writing in Spanish.

The United States in its Complaint in Intervention seeks to enjoin TDC from:

1. Assigning inmates to cells, cell blocks or dormitories, on the basis of race, color, religion or national origin.

2. Failing or refusing forthwith to desegregate all TDC facilities.

3. Failing or refusing to design and implement a standard system of prisoner classification and assignment not related to race.

4. Failing or refusing to take prompt affirmative steps to correct and erase the effects of past discriminatory practices.

The King-Kalmbach Defendant-Intervenors, while denying in their Petition to Intervene that the discriminatory practices complained of exist at the Ellis Unit of TDC, have taken the position at pretrial

hearings that their primary concern is the integration of cells at TDC, fearing that this will have an adverse effect on prison security and will bring about racial conflict which thus far has been avoided by non-integration of cells.

Accordingly, based upon the above and foregoing and, in particular, on the voluminous and exhaustive discovery engaged in by the United States in this cause and in a spirit of compromising and settling this litigation, the United States and the Defendants hereby agree and stipulate that the Order to be entered as hereafter set out does not constitute a finding that the Defendants have engaged in a system-wide pattern or practice of past or present racial or ethnic discrimination or denial of equal protection of the law or due process of law to black or Spanish-speaking inmates; nor does it constitute an admission of liability on the part of Defendants. Accordingly, both the United States as Plaintiff-Intervenor and the Defendants agree and stipulate that the Court enter the Order hereafter set out and that same shall constitute a final order, enforceable, if necessary, by proper proceedings through the contempt powers of this Court upon orders to show cause and proper hearings in connection therewith. Further, if the Court affirms this Consent Decree, the United States agrees and stipulates that should this Consent Decree not be agreeable to Plaintiffs, Plaintiff-Intervenors or Defendant-Intervenors, or any of them, or their Counsel, then the United States will not participate at the trial and will remain active in this litigation only in relation to matters relating to implementation of the plan provided for hereafter.

NOW THEREFORE, upon the consent of all parties hereto, it is hereby ORDERED, ADJUDGED and DECREED:

I.

Affirmative Action Plan:

The Defendants shall proceed to prepare an Affirmative Action Plan, hereafter Plan, designed to implement the provisions of this Order as hereafter set out. The Court having been apprised by the

United States that the National Institute of Corrections has been awarded several million dollars of federal funds to provide consultants to state prison systems such as TDC, the Defendants may use the resources of said organization in securing the services of consultants who are experts in prison administration and corrections to aid them in preparing such Plan. Alternatively, the Defendants may use their own staff and resources. Said Plan shall include objectives, goals and a timetable for completion. Said Plan will also include recommendations for periodic reporting to the Court of progress made toward its implementation once the Plan is presented to and approved by the Court. The Plan shall be submitted to the Court, with copies to counsel for the parties, by November 7, 1977. Prior to adoption by the Court, the parties, through Counsel, will have 45 days to file written comments with the Court, said comments to be limited only to those matters to be encompassed by said Plan as hereafter set out and shall not include comments on claims or issues not covered by the further provisions of this Order. If necessary, the Court shall hold a hearing to resolve any matters which the parties believe are covered by this Order and not adequately provided for in such Plan.

II.

Provisions of the Plan:

The Plan shall address the following areas and follow the guidelines set forth for each area.

Inmate Housing Assignments

1. The assignment of inmates to dormitories, cell blocks, or other living quarters shall be made on the basis of rational, objective criteria and shall not be made on the basis of race, color, religion or national origin. With respect to individual cells the Plan shall provide guidelines for the exercise of discretion by the appropriate Warden or other TDC official so as to bring about the maximum possible integration of the cells consonant with the factors of security, control and rehabilitation. In no case, however, will an inmate be housed in the same cell with another inmate or inmates when such assignment would

constitute a clear danger to security, control and rehabilitation. The following additional guidelines for inmate housing assignments shall be employed:

a. Except as to inmates undergoing diagnostic or pre-release processing, the proportion of each racial or ethnic group in each prison unit shall be at least 70 percent of that group's proportion of the total TDC inmate population.

b. The racial and ethnic composition of each housing unit (excluding cells but including floors and tiers of cellblocks and dormitories) shall approximate the overall racial and ethnic composition of the unit's inmate population; provided that the proportion of each racial or ethnic group in each housing unit shall be at least 70 percent of that group's proportion in the prison unit's inmate population.

c. Inmates are not to be concentrated by race or ethnic background in any one section of any particular housing unit. Provided, however, that if the inmate population of any one ethnic or racial group in relation to the others is such that the norm set forth above can not be complied with then, in such event, a limited amount of variance shall be permissible but, further, in that event Defendants shall be prepared to justify departure from the prescribed norm for reasons of security, control or rehabilitation.

2. The Plan shall provide for the orderly integration of any inmate facilities, including floors and tiers of cellblocks and dormitories, which do not now meet the norm set forth above. It shall include an inmate classification program for each unit employing valid criteria for assignment of inmates to living quarters, including such factors as age, physical characteristics such as weight and height, seriousness of offense, violent or passive tendencies, homosexual (both active and passive) tendencies, criminal sophistication and other factors used in the field of corrections in the assignment of inmates to housing within a prison unit.

Inmate Job Assignments

1. The assignment of inmates to jobs or work squads shall not be made on the basis of race, color, religion or national origin. All inmates shall have an equal opportunity to be considered fairly for assignment to and advancement within all job or work squad assignments. To assist in insuring that this is achieved the following guidelines shall be employed:

a. The racial and ethnic composition of each job category and work squad assignment shall approximate the racial and ethnic composition within each prison unit. Provided that, wherever feasible, the proportion of each racial or ethnic group in each inmate job or work squad assignment shall be at least 70 percent of that group's proportion in the prison unit's inmate population. Further, in jobs requiring specialized skills the norm will not be required but the Defendants will be required to keep available adequate documentary justification for departure from the norm.

b. Voluntary transfers and job or work squad reassignments will only be allowed if this racial and ethnic balance can be maintained.

c. No preference shall be given in future job or work squad assignments to an inmate's previous work experience within the prison system where such preference would have a discriminatory effect. Valid applicable work experience prior to entering the prison system and any relevant form of education or training may, of course, be considered.

2. The Plan shall provide for the orderly integration of all job and work squad assignments which do not now meet the requirements set forth above.

Inmate Discipline

1. Inmates must be informed of the disciplinary rules and regulations as are prescribed by the inmate handbook. Any rules developed and implemented in individual prison units will be promulgated in writing for the information of all inmates subjected thereto. Race

or ethnic background must never be the cause of any inmate or group of inmates receiving more frequent, severe, or disparate punishment.

2. Minority personnel shall, whenever and as frequently as possible, be assigned to sit on the unit disciplinary committees.

Education

Race, color, creed, or national origin has not and shall not be a factor in the selection for or administration of any educational program offered to inmates in TDC. No educational activities shall be segregated on the basis of race, color, creed or national origin.

Medical Care

Inmates shall not be deprived of medical care because of race, color, creed, or national origin. An effort will be made on a continuing basis to hire minority civilian medical personnel. The assignment of minority inmates to work in all medical facilities shall be done as required above in the section dealing with Inmate Job Assignments and shall proceed as expeditiously as possible.

Recreational Activities

Inmates shall not be segregated or discriminated against in any inmate group recreational and/or cultural activities such as movies, gymnasium, library and church services.

Racial Epithets

Defendants shall inform their employees that the use of racial and ethnic epithets and slurs toward inmates will not be tolerated.

Discrimination Regarding Incoming Publications

Race, color or national origin shall not be a consideration in the administrative review of incoming publications.

Punishment for Speaking Spanish

Spanish-speaking inmates shall not be punished or in any way disciplined for speaking or writing Spanish.

Grievance Procedure Regarding Racial Segregation and Discrimination

All persons confined to facilities of TDC shall be informed

that they may raise complaints of discrimination through the inmate grievance procedure. In acting upon grievances which raise the issue of discrimination, the Director of TDC or unit Warden shall appoint, as their designees, persons who are sensitive to the issues of racial and ethnic equality. The Plan shall recommend a procedure for review of any final determination of any grievance grounded on allegations of discrimination and the preservation of all records of such grievances to enable adequate investigation, review and evaluation.

Staffing

To assist in the implementation of this Order and of the Plan to be formulated in compliance therewith knowledgeable participation of the staff of each prison unit and administration is necessary. Therefore, the Defendants shall inform all staff and inmates of the requirements of this Order and of all aspects of the Plan when approved and implemented. In addition, and in accord with the Plan, Defendants shall designate an affirmative action officer. One of this officer's primary functions will be to continue to recruit minority personnel and attempt to resolve equal opportunity grievances. Besides the two minority recruiting officers now employed, the Defendants shall use all other available means to assure that minority applicants are recruited for available positions and that minority personnel are assigned responsibilities and duties throughout the system.

III.

1. All relief sought in this action by the United States which is not expressly provided herein is denied.

2. The Court retains jurisdiction of the subject matter of this cause for the purpose of receiving, approving and implementing the Plan to be prepared as aforesaid through a further order of an injunctive nature and for a reasonable time thereafter for the purpose of issuing any additional orders as may be necessary or appropriate

to the enforcement of this decree and all further orders.


Done at Houston, Texas on this the 12 day of APRIL,

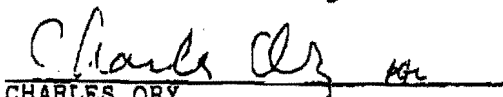
1977.

UNITED STATES DISTRICT JUDGE

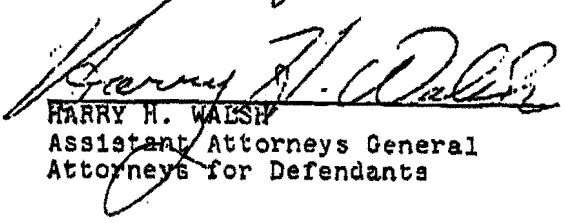
Approved as to form and substance and
recommended for adoption by the Court:


DAVID J. P. VANDERHOOF


PATRICIA G. LITTLEFIELD


CHARLES ORY
Attorneys
Department of Justice


ED IDAR, JR.


HARRY H. WALSH
Assistant Attorneys General
Attorneys for Defendants