



## Dothard V. Rawlinson

In *Dothard v. Rawlinson* (1977), the U.S. Supreme Court addressed how Title VII of the Civil Rights Act of 1964, which forbids sex discrimination in the workplace, applied to a state prison's employment policies regarding prison **correctional officers**. At the time, Alabama had a statute that specified that prison guards must be at least five feet, two inches tall and weigh at least 120 pounds. The plaintiff in *Dothard*, a **female** applicant for a prison **correctional officer** position within an Alabama maximum-security facility, alleged that this policy, although seemingly neutral with regard to gender, had a discriminatory impact in practice. Namely, women were far less likely than men to meet the state's minimum physical standards. The weight and height requirements in question disqualified about 40% of **female** applicants, and only 1% of male applicants. The Court held that once a plaintiff demonstrates that an employment policy has a disparate impact on the basis of sex, the burden of proof then shifts to the employer, who must show that there is a manifest relationship between the specified qualifications and the employment in question. The plaintiff would then have the opportunity to demonstrate that "other selection devices without a similar discriminatory effect would also serve the employer's legitimate interest in efficient and trustworthy workmanship."

In *Dothard v. Rawlinson*, the Court ruled that the plaintiff did indeed establish a prima facie case of sex discrimination and that the state did not demonstrate the validity of using height and weight standards to measure an applicant's ability to serve as a **correctional officer**. As a result, the minimum height and weight requirements were held to be in violation of Title VII of the Civil Rights Act of 1964. The Supreme Court thus paved the way to open up employment as **correctional officers** to **female** applicants.

### **GENDER AS A BONA FIDE OCCUPATIONAL QUALIFICATION**

During the early stages of Dothard's legal attack on Alabama's height and weight requirements, the state adopted a regulation specifying that women could not work as prison guards in maximum-security facilities where they would be in "continual close physical proximity to inmates of the institution." This regulation had the effect of screening women out of about 75% of prison guard positions. Dothard subsequently amended her claim to include the state's open use of gender as an occupational qualification. The question for the Court was whether the explicit use of gender qualifications is "reasonably necessary to the normal operation of that particular business or enterprise." Gender in this case was deemed to be a bona fide occupational qualification that would constitute a legitimate exception to Title VII's general prohibition against sex discrimination in the workplace.

The Supreme Court's ruling that gender was a legitimate factor disabling women from certain tasks on the grounds that the "environment in Alabama's penitentiaries is a peculiarly inhospitable one for human beings of whatever sex" rescued the state from a Title VII violation. The Court pointed out that no attempt was made to segregate male sex offenders from the prison's general inmate population, and hence **female** guards in such institutions would likely prove unable to function effectively. In short, given Alabama's notoriously brutal prisons, the state could legitimately prohibit women from serving as prison guards in maximum-security prisons in "contact" positions.

The Court in *Dothard* did emphasize that "Alabama's penitentiaries are evidently not typical ... [and] women guards could be used effectively and beneficially" in many maximum-security prisons. As such, one can understand the impact of *Dothard* as potentially quite narrow, since the Court took pains in this case to interpret

the claim of Alabama against the backdrop of what they themselves characterized as a prison system shot through with "rampant violence" and a "jungle atmosphere."

## **DISSENT IN *DOTHARD***

In his dissent, Justice Thurgood Marshall refused to accept that Alabama's particularly inhospitable maximum-security prisons were in any sense operating "normally." Marshall concluded that "two wrongs do not make a right," and Alabama, if indeed its prisons were in violation of the Eighth Amendment's prohibition against cruel and unusual punishment, should be required to remedy this constitutional deficiency "with all possible speed." Marshall also suggested that the conditions of Alabama's maximum-security facilities posed just as much risk to male guards as to **female** guards. Marshall then lamented that the Court majority in *Dothard* required from the state no empirical evidence of breakdowns in the "normal" operation of their prisons because of **female** prison guards. He concluded that mere speculation about what *might* happen should not be able to satisfy the stringent requirements of a bona fide occupational qualification defense.

## **DISCRIMINATION AGAINST MALE PRISON GUARDS**

In those relatively few cases involving male prison guards and **female** prisoners, the courts have been more sympathetic to the privacy rights of women inmates. An interesting companion case to *Dothard* can be found in *Torres v. Wisconsin* (1988). In this case, the superintendent of a women's maximum-security facility (Taycheeda **Correctional** Institution) decided to prohibit men from serving in **correctional officer** positions that involved a great deal of contact with prisoners. The superintendent argued that the rehabilitation of many **female** prisoners would be substantially furthered by limiting the access of male **correctional officers**. Two men filed suit after they were reassigned to positions involving less contact with prisoners, albeit they suffered no loss of pay because of the reassignment. The Seventh Circuit Court of Appeals held that the state successfully carried their burden of demonstrating a legitimate employment issue based on gender.

The court in this case was convinced that the state's goal of rehabilitating **female** prisoners at Taycheeda **Correctional** Institution, where about 60% of the inmates had been sexually abused by males in the past, was materially furthered by the superintendent's policy on gender. As in *Dothard*, the court concluded that while there was no available "objective evidence" on the harmful effects of having male prison guards in close contact with **female** prisoners with a history of sexual abuse, the "totality of the circumstances" presented in the record demonstrated to their satisfaction the legitimacy of the policy in question.

## **CONCLUSION**

The ability of prison facilities to use gender as a job requirement has been narrowed greatly since the *Dothard* ruling. The courts have tended to favor the employment rights of **female** prison guards over the privacy claims of male prisoners. Conversely, the federal courts have been more willing to limit the employment opportunities for male guards when they are dealing with **female** prisoners. The overall employment impact on male prison guards has been negligible, however, in part because the vast majority of prisoners in the United States are men.

The general trend has been for the federal courts to find that "very few prisons [were] as 'constitutionally intolerable' as Alabama's maximum-security prison" (Jurado, 1998, p. 27). Many states have no gender requirements for who may serve as a prison guard in maximum-security facilities, ostensibly because no such requirements are warranted on the basis of physical strength, security, or **correctional officers'** influence on prison conditions. Evidence suggests that **correctional officers** very rarely use physical force to carry out their job duties but rather rely on interpersonal skills such as negotiation, accommodation, and manipulation to carry out their core job functions. Available evidence also suggests that women **correctional officers** are not more likely than male **officers** to be assaulted by inmates. Finally, whether **correctional officers** are men or women does not seem to have an appreciable impact on prison conditions.

## Further Reading

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Jenne, D. and Kersting, R. *Aggression and women **correctional officers** in male prisons.* *The Prison Journal* vol. 76 pp. 442 (1996)

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Jurado, R. *The essence of her womanhood: Defining the privacy rights of women prisoners and the employment rights of women guards.* *American University Journal of Gender, Social Policy & the Law* vol. 7 pp. 1 (1998)

Parker, K. *Note and comment: **Female** inmates living in fear—Sexual abuse by **correctional officers** in the District of Columbia.* *American University Journal of Gender, Social Policy & the Law* vol. 10 pp. 443 (2002)

Pogrebin, M. and Poole, E. *The sexualized work environment: A look at women jail **officers.*** *The Prison Journal* vol. 77 pp. 41 (1997)

## Legal Cases

*Dothard v. Rawlinson* , 433 U.S. 321 (1977).

*Torres v. Wisconsin* , 859 F.2d. 1523 (1988).

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