

Justice served

An appellate court backs local AIDS activists, ruling that strip searches were unreasonable

by Inga Sorensen

Portland resident Michael Ambrosino recounts the moment six years ago when he was ordered to strip his clothes, bend over and spread his cheeks. As if that weren't bad enough, he was forced to do so in front of several other men, both acquaintances and total strangers.

"It was an extremely embarrassing and humiliating experience," says Ambrosino, who was 28 years old at the time and had never before been arrested. "I don't believe we had anticipated that anything quite like that was going to happen."

Catherine Smith, then in her early 40s, has her own unsettling memories: "I was told to completely undress, ordered to lift my breasts and turn around in a full circle. I don't remember if I was told to bend over."

Like Ambrosino, Smith, also of Portland, had never been arrested and had no criminal record or history of violent activity. The two were among a group of 10 activists—six men and four women—who were arrested in February 1989 during a sit-in at the Food and Drug Administration offices on Northwest Broadway in Portland. Many of those activists belonged to the then-fledgling direct action group ACT UP-Portland. They were arrested and detained at the federal courthouse, where they were strip searched by U.S. marshals and later released. The group filed a lawsuit claiming the strip searches were unreasonable under the Fourth Amendment.

Six years after that experience, the plaintiffs may finally taste the justice they've been seeking for so long. On June 22, a three-judge panel of the 9th U.S. Circuit Court of Appeals in San Francisco backed the plaintiffs' contentions by reversing earlier decisions by U.S. District Judge Malcolm F. Marsh, who had twice dismissed the charges claiming the searches were justified.

Defendants in the case include the marshal who ordered the strip search, his supervisors and the federal government. The appellate court has remanded the case back to Marsh's court for trial on the question of damages that the plaintiffs suffered from the searches.

"We knew we were right all along, so I'm not surprised by the court's ruling," says Tom Steenson, the plaintiffs' Portland attorney. "The really nice thing about this ruling is that the appellate court knocked down every single one of the arguments the federal government put forth about why they thought the strip search was justified."

"This protest had clearly been billed as a non-violent act of civil disobedience," Smith recalls. "I remember because there had been a lot of back and forth at our ACT UP meetings about how to handle this protest. We decided the best way was the nonviolent way. We even contacted the authorities prior to the action to let them know it would be nonviolent. So not only did they know this was going to happen, they knew it was going to be peaceful."

"We went to the FDA offices and some of us went inside and sat down in front of the door. We were chanting and yelling a little bit, but nothing more," continues Ambrosino. "A group of federal marshals came up to us and said they would have to arrest us if we didn't move. We didn't, but we also didn't resist arrest. They put plastic cuffs on us and took us out to the van. We were brought to federal courthouse and put in a holding cell."

Men and women, he says, were placed in separate holding tanks. The men were strip searched in plain view of other male detainees. The women were taken individually into a private room where they were strip searched by a female marshal.

In their lawsuit, all the plaintiffs claim that the searches were unreasonable under the Fourth Amendment, but the men also claim the searches were conducted in an unreasonable manner because they occurred in front of other detainees. All 10 plaintiffs are seeking compensatory damages from the federal government on the ground that the searches constituted the tort of invasion of privacy under Oregon law.

According to the U.S. Marshals Service's written policy, strip searches are prohibited unless "there is reason to believe that the prisoner may be carrying contraband or is considered suicidal or an escape risk."

The appellate panel rejected each of the government's arguments that the searches were justified. Among those arguments: the tire of a prisoner transport van had been slashed, the activists were wearing winter clothing, and the activists were confrontational.

According to court documents, Deputy Robert Oliverio, the marshal who ordered the strip searches, testified that he thought the tires of one of the vans had been slashed, and thus thought the activists posed a security threat.

"We were in handcuffs," says Smith. "You tell me how that could have happened."

According to the judges' ruling, "Deputy

Oliverio, by his own admission, had no actual knowledge about the plaintiffs' conduct at the demonstration, had no knowledge whether the plaintiffs had at any time been near the van with the allegedly slashed tires, and made no inquiries to determine whether the plaintiffs may have been involved in the alleged slashing.

"Had he made any inquiries," continues the panel, "he might have learned that the detainees—who were escorted to the vans while flex-cuffed—did not and could not have punctured the tires of the van. Despite the fact that Deputy Oliverio could have learned about the conduct of the demonstrators simply by asking one of the other deputies who had been present at the demonstration and arrests, Deputy Oliverio made no such inquiries."

As for the defendants' claims that the searches were warranted because the activists were wearing winter clothing, the court writes: "We reject the argument that wearing winter clothing alone could give rise to a reasonable suspicion that the wearer of those clothes may be concealing contraband. The argument appears to have no limiting principle."

According to court papers, the marshals also claimed the search was warranted because plaintiffs had been chanting slogans such as "Aren't you afraid of us?" "You've got blood on your hands," and "Mark Hatfield is gay." The panel, however, said, "[N]othing in the slogan seems to indicate that the plaintiffs were likely to be concealing or carrying any weapons or other contraband. Rather, the singing and chanting appear to be simply elements of the disruptive version of civil disobedience in which members of ACT UP were engaged."

According to Steenson, the defendants have 45 days from the panel's June 22 decision to petition to have the entire appellate court hear the case. He is hopeful, however, that his clients and the defendants will reach a settlement.

"Most strip searches are unconstitutional, including this one. The panel was very clear in its ruling," he says.

Ambrosino adds, "There was no reason for this search to occur. It was clearly designed to intimidate and disempower us. That was the sole purpose of these searches."



PHOTO BY JAY BROWN

Wayne Harris at the 1989 ACT UP zap of the FDA office in Portland

Smith says, "If the marshals had really been concerned that we were carrying contraband, they would have checked us before they put us in the van. They didn't do any of that. They just took us into the cells and told us to take all our clothes off."

Some could speculate this incident is reflective of a more broad-based hostility the government has towards AIDS and gay rights activists. In response to a request under the Freedom of Information Act, the Federal Bureau of Investigation recently released documents showing the agency had kept files on ACT UP chapters, as well as the Gay Men's Health Crisis in New York. And just last month, Secret Service agents donned blue rubber gloves when a group of gay and lesbian elected officials visited the White House. The action was viewed by many across the nation as an outrageous insult.

"I certainly think [these episodes] are reflective of a certain mentality some in the government may hold [toward gay people and AIDS activists]," says Steenson. "One could view it as a pattern."

Smith adds, "During the protest six years ago, we wore pink rubber gloves to parody the authorities, who often wore rubber gloves. I thought maybe we had made a little progress over the years, but sometimes I wonder."

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