

Buddhist Practice: Within an Environment of Concrete and Steel

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Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof....

U.S. Constitution, 1st Amendment

Introduction²

Isolation, desolation, depravity, stifling, oppressive, demoralizing, dehumanizing, and barren; these terms describe one's first impressions as you walk through the sully port and enter the environment of an American correctional facility. And, yet, in this alien world, despite all its regimentation, physical and emotional cruelty there is the Buddhadharma. Buddhism may not be the most popular religion in American prisons, but its presence is apparent and its practice is protected by federal and state laws. However, that is not to say that obstacles to practice are absent.

Prisoners, contrary to popular myth, do not shed their rights afforded by the U.S. Constitution as they walk behind the cement and steel of a correctional institution. Religious freedom is a touchstone of American society and, in fact, it was through religion that the American concept of penology was first established; which only creates the irony which is religious practice in American penal institutions.

It is ironic that in recent times the incarcerated have had to go to court to seek the ability to freely exercise their religious practice within the walls of institutions first established with religious underpinnings. It was the Quakers, more than two Centuries ago, that began the reformation of American penology with the establishment of penitentiaries as the innovation of the late 18th and early 19th Century. Meant to be places of solitude and reflection, it was thought that reformation of an offender merely required enforced silence, prayer and dedicated study of the Bible and Christian teachings.

This brief paper will explore the current legal environment in which U.S. prisoners are afforded the right to practice their religion while incarcerated. After exploring the legal basis of religious freedom for offenders, societal and institutional constraints on those practices will be discussed. Finally, the author will offer some

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² The views expressed in this paper are those of the author and do not reflect the official policy or position of the Colorado Department of Corrections, the State of Colorado, the U.S. Government, or any other organization.

anecdotes from his service as a faith group volunteer and now as a volunteer chaplain within the Colorado State prison system.

Legal Right to Practice Religion

Despite its underpinnings within the religious community, American corrections has a checkered history when it comes to the accommodation of religion. It perhaps goes without saying, that the lion share of litigation involves minority faith traditions – few reported cases address discrimination against mainstream Christian traditions. To understand the religious rights of prisoners within the United States one has to begin with a brief synopsis of the law.³

Within the United States Constitution, the Founding Fathers included a list of ten fundamental rights meant to be the touchstones of what it would mean to be a citizen of the United States. They are the first ten amendments to the U.S. Constitution. These ten statements of individual and collective rights are known as the Bill of Rights. The most jealously guarded and sacred of these rights is embodied in the First Amendment, adopted in 1791.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.⁴

While offenders lose certain Constitutional rights upon conviction for a serious crime, and further rights if incarcerated, they are not stripped of all rights. Federal and state laws govern the administration of prisons as well as the rights of inmates. Although prisoners do not have full Constitutional rights, they are protected by the Constitution's prohibition of cruel and unusual punishment contained within the Eighth Amendment. Prisoners also retain rights under the Due Process provisions of the Constitution. The Equal Protection Clause of the Fourteenth Amendment extends its coverage to prisoners. Prisoners are protected against unequal treatment on the basis of race, sex, and creed. Offenders also have limited rights under the First Amendment to freedom of speech and religion.⁵

Though there are numerous First Amendment cases related to religious accommodation, a recent case evolved out of the social activism of the 1960's and the 1970's and provides a good starting point to survey the law. Involving a "free exercise" claim brought by a Buddhist prisoner, the United States Supreme Court ruled that the State of Texas had discriminated in the restrictions it placed upon a minority religion.⁶

In the *Cruz* case, the issue considered by the Court centered on the disparity in the ability to practice mainstream religions versus minority religions.

...Cruz is a Buddhist, who is in a Texas prison. While prisoners who are members of other religious sects are allowed to use the prison chapel, Cruz is not. He shared his Buddhist religious material with other prisoners and... in retaliation was placed in solitary confinement on a diet of bread and water for two weeks, without access to newspapers,

³ This essay is not meant to provide a comprehensive review of jurisprudence in the area of inmate rights and law as it relates to religion. Entire treatises address this topic. This discussion merely is meant to discuss a few watershed moments in the development of American law.

⁴ U.S. Constitution, 1st Amendment.

⁵ See generally, *Wolff v. McDonnell*, 418 U.S. 539 (1974)

⁶ *Cruz vs. Beto*, 405 U.S. 319 (1972)

magazines, or other sources of news... was prohibited from corresponding with his religious advisor in the Buddhist sect. <further> Texas encourages inmates to participate in other religious programs, providing at state expense chaplains of the Catholic, Jewish, and Protestant faiths; providing also at state expense copies of the Jewish and Christian Bibles, and conducting weekly Sunday school classes and religious services. According to the allegations, points of good merit are given prisoners as a reward for attending orthodox religious services, those points enhancing a prisoner's eligibility for desirable job assignments and early parole consideration...⁷

Lower courts had not allowed Cruz to present his suit and went on to say that security and disciplinary issues may be valid constraints on the equality of the treatment of religion.⁸ The Supreme Court found that if the allegations leveled against Texas by Cruz were proven at a hearing on the merits of the Cruz complaint, then Texas would have violated the 1st and 14th Amendments to the U.S. Constitution.

If Cruz was a Buddhist and if he was denied a reasonable opportunity of pursuing his faith comparable to the opportunity afforded fellow prisoners who adhere to conventional religious precepts, then there was palpable discrimination by the State against the Buddhist religion, established in 600 B.C., long before the Christian era. The First Amendment, applicable to the States by reason of the Fourteenth Amendment, *Torcaso v. Watkins*, 367 U. S. 488, 492-493, prohibits government from making a law "prohibiting the free exercise" of religion. If the allegations of this complaint are assumed to be true, as they must be on the motion to dismiss, Texas has violated the First and Fourteenth Amendments.⁹

The Court then went on to affirm that: "[f]ederal courts sit not to supervise prisons but to enforce the constitutional rights of all 'persons,' which include prisoners. We are not unmindful that prison officials must be accorded latitude in the administration of prison affairs, and that prisoners necessarily are subject to appropriate rules and regulations. But persons in prison, like other individuals, have the right to petition the Government for redress of grievances..."¹⁰

The next milestone in any discussion of bringing the Dharma into an American correctional institution would be the Religious Freedom and Restoration Act enacted by Congress in 1993 ("RFRA").¹¹ Section 3 of the Act provided that:

(a) **In General:** Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

(b) **Exception:** Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person--

⁷ Id. at 319.

⁸ Id at 319, citing 445 F.2d 801.

⁹ Id. at 322.

¹⁰ Id. at 322.

¹¹ 42 USC 2000bb, et. seq.

- (1) is in furtherance of a compelling governmental interest; and,
 - (2) is the least restrictive means of furthering that compelling governmental interest.
- (c) **Judicial Relief:** A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.¹²

This law was enacted with the intent that the protection it afforded would apply across the spectrum of government in the United States; federal, state and local units of government. Previously, the courts had balanced the needs of the individual with the needs of the government in administering a facility. Such a balancing test was biased in favor of any governmental interest. RFRA was meant to replace the pre-existing “balancing analysis”, which applied to religious regulation in prisons, with a “compelling governmental interest” and “least restrictive means” standard. The law was heralded by religious and civil rights groups as a landmark advance in prisoner rights. The correctional departments of the various states, however, did not share the enthusiasm.

Taken together, these two new standards meant that for the government to regulate religious practice in a custodial setting it had to prove that there was a compelling governmental interest for the imposition on the practice of religion. Then, the government would have to prove that it was addressing that interest in the least restrictive means reasonably possible. Strictly enforced, RFRA would require prison administrations to make substantial accommodations for religious practices.

RFRA was nearly immediately met with legal challenges from the states on the grounds that the federal government had over-reached and infringed on areas of law reserved to the states. In the *City of Boerne vs. Flores*, the Supreme Court ruled that RFRA was unconstitutional as applied to the states on 14th Amendment grounds.¹³ *Flores* was not a corrections case. However, its decision had state and local correctional administrators nationwide issue a collective sigh of relief. The decision did not apply to federal facilities or facilities in the U.S. territories.¹⁴ Federal and territorial governments remain subject to RFRA.¹⁵

The ruling of the Supreme Court in *Flores* became the impetus for not only state enactments of RFRA type laws, but also for the legislative creativity of Congress. Congress, determined to prohibit discrimination against individuals, houses of worship and other religious institutions on religious grounds, enacted the Religious Land Use and Institutionalized Persons Act of 2000. (“RLUIPA”)¹⁶

Using its enforcement powers under the 14th Amendment, its ability to regulate interstate commerce, and its spending clause powers, Congress tailored the RLUIPA to re-impose the strict scrutiny standards of the former RFRA. To infringe upon the exercise of religion, the government, at any level, would have to show both a compelling

¹² 42 UC 2000bb-1

¹³ *City of Boerne vs. Flores*, 521 US 507 (1997)

¹⁴ The United States, today, consists not only of the 50 states, but four federal territories – Guam, Puerto Rico, Virgin Islands and the District of Columbia. While granted some degree of autonomy and home rule, these territories are subject to federal laws without the constraints of the 14th Amendment.

¹⁵ *Gonzales v. OCentro Espirita Beneficente Uniao do Vegetal*, 546 US 418 (2006)

¹⁶ 42 USC 2000cc, et. seq.

interest for the regulation and that the regulation is the least restrictive means of achieving the compelling interest. This law has survived judicial attacks by the states.¹⁷

If RFRA made the security professionals within the correctional industry angry, RLUIPA left them squealing and wailing. Section 3(a) of the law prohibits regulations that impose a “substantial burden” on institutionalized persons who are exercising their religious tradition.

SEC. 3. PROTECTION OF RELIGIOUS EXERCISE OF INSTITUTIONALIZED PERSONS.

(a) GENERAL RULE- No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 2 of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997), even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person--

- (1) is in furtherance of a compelling governmental interest; and,
- (2) is the least restrictive means of furthering that compelling governmental interest.

(b) SCOPE OF APPLICATION- This section applies in any case in which--

- (1) the substantial burden is imposed in a program or activity that receives Federal financial assistance; or
- (2) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.

In the legislative history of the law, the comments of Senator Kennedy were directed and focused on the religious practices within correctional institutions. He noted that often times regulations prohibit inmates the ability to freely exercise their religion when such practice would not cause harm to discipline, safety, or the order of the institution. The Senator went on to discuss the strong connection between a faith, sincerely held, and rehabilitation.¹⁸

In a 2005 unanimous decision of the U.S. Supreme Court, the Court upheld Section 3 of RLUIPA as a constitutional exercise of Congress’ legislative powers.¹⁹ Justice Ginsburg, speaking for the Court in *Cutter v. Wilkerson*, held:

For more than a decade, the federal Bureau of Prisons has managed the largest correctional system in the Nation under the same heightened scrutiny standard as RLUIPA without compromising prison security, public safety, or the constitutional rights of other prisoners.” Brief for United States 24 (citation omitted). The Congress that enacted RLUIPA was aware of the Bureau’s experience. See Joint Statement S7776 (letter from Dept. of Justice to Sen. Hatch) (“[W]e do not believe

¹⁷ See generally, Gower, Kelly, *Religious Practice in Prison and the Religious Land Use and Institutional Persons Act: Strict Scrutiny Restored*, 6 Rutgers J. Law and Religion 7 (2004).

¹⁸ 146 CONG.REC. S6678-02 at 6688 (13 July 2000)

¹⁹ *Cutter v. Wilkerson*, 544 US 709 (2005)

[RLUIPA] would have an unreasonable impact on prison operations. RFRA has been in effect in the Federal prison system for six years and compliance with that statute has not been an unreasonable burden to the Federal prison system.”). We see no reason to anticipate that abusive prisoner litigation will overburden the operations of state and local institutions. The procedures mandated by the Prison Litigation Reform Act of 1995, we note, are designed to inhibit frivolous filings. Should inmate requests for religious accommodations become excessive, impose unjustified burdens on other institutionalized persons, or jeopardize the effective functioning of an institution, the facility would be free to resist the imposition. In that event, adjudication in as-applied challenges would be in order.²⁰

Under RLUIPA the standard returned to that of RFRA and is enforceable against governments at all levels. The law is enforceable by both the Department of Justice (“DOJ”) and individuals. DOJ may pursue actions for declarative judgments and injunctive relief, but not for monetary damages. These enforcement actions are pursued by the Special Litigation Section of the Civil Rights Division of DOJ. Until recently, if an individual wished to seek monetary damages for a Section 3 violation, he would bring an individual suit.

The ability of individuals to seek monetary damages for a violation of law is often critical to the victim being able to obtain legal counsel. The availability of monetary damages provides a fund from which, if successful, a lawyer may be compensated for taking on these challenging cases. In some cases, state or federal law may allow for the recovery of attorney fees in separate actions.

However, in a recent decision that may arguably be limited to only individual suits by incarcerated Plaintiffs, the Supreme Court determined monetary damages are not available against the States.²¹ Justice Thomas, writing for the Court, said, “We conclude that States, in accepting federal funding, do not consent to waive their sovereign immunity to private suits for money damages under RLUIPA because no statute expressly and unequivocally includes such a waiver.”

Of course, the Court’s decision in Sossamon leaves in place the ability of offenders to pursue individual actions to seek changes in correctional policies and practices. The Court also left open the door for Congress to amend the law to include a statutory provision which explicitly and unequivocally allows for the assessment of damages. But moreover, the ability to construct a discrimination claim, available to a monetary award, under 42 U.S.C. 1983; attorney fees claims under the Equal Access to Justice Act; or, other claims of relief are not foreclosed by the Court.

Despite the lack of monetary damages, it is important for Buddhist chaplains to recognize that the legal tools exist to seek resolution to discrimination and prejudice. While the legal system must be employed skillfully and with the proper motivation, Buddhists and the practitioners of all minority faith traditions have the ability to seek recourse for injury or impairment of their religious practice through the Courts of the United States.

Practical Constraints On Religious Practice

“So, sue me”. That particular refrain constitutes perhaps some of the most frustrating words heard when attempting to deal with religious practice and

²⁰ Id. At 726.

²¹ Sossamon vs. Texas, 563 US ____ (2011)

accommodation in correctional settings. The phrase recognizes at once the frustration of correctional administrations and the intransigent position that is often encountered when seeking to negotiate accommodations for incarcerated offenders. Contrary to the aspirational goals of correctional systems in the United States, the primary consideration, in practice, is not rehabilitation of offenders – it is the maintenance of a security environment. Prisons are operated not to foster programming and rehabilitative efforts; inmates are not viewed as “customers” and facilities are not known for their “customer service” ethos. Prisons are operated, predominately, to exercise absolute and complete control over an offender for a determinate or indeterminate period of time. Security is the first and predominant consideration in the operation of correctional facilities.

That is not said to be critical of institutions and their security function. However, there is a need to balance the sometimes contradictory aspirational goals of security and rehabilitation.

Yet, whether one comes to prison chaplaincy work as a volunteer for a particular faith group or as a chaplain for the institution, the security function has to be appreciated. The motives of offenders in “finding religion” are not always pure. While an exploration of motivation and intention are fundamental when examining the nature of conduct in Buddhist ethics; many a new volunteer neglects to judge those motivations of their offender participants – this can have dire consequences.

Further, there are the constraints of budget, time, facilities, and personnel which impact not only the chaplaincy of a prison but the entire accomplishment of its societal mission.

In an attempt to provide an “industry” standard as to the means, methods and processes involved in correctional facility operations, the American Correctional Association has promulgated standards on all aspects of correctional facility operations.

Adherence to these voluntary operational standards provide a baseline for operational decisions and requirements. Aside from training and assessment benefits, institutional adherence to ACA standards can be a strong defense to inmate legal actions. Part 5 of the Standards deal with Inmate Programs and Section F with Religious Programs. (See Appendix A for a brief synopsis of Religious Program Standards.) Generally, the institutional security function can be satisfied while these standards are implemented and executed.

Religious bias can be a constraint upon bringing the Dharma into facilities. Christianity is, in the United States, the predominate faith tradition. It is little surprise that most chaplains within the prison system are Christians. Though diversity increases across the various prison systems with each year, the predominate religious practices remain Christian (Catholic, Protestant and Evangelical denominations), Judaism and Islam. Buddhists are but 1% of the overall prisoner population.²²

A rather infamous example of that bias is alleged to have occurred in 2002. At the Donaldson Correctional Facility in Alabama, a ten day Vipassana meditation retreat was conducted. Though conducted behind the walls of a maximum security facility, this retreat was hugely successful. It was conducted by Buddhist faith group volunteers from the surrounding community.

The program was terminated in May of 2002 after the second successful retreat. According to the then director of treatment for the Alabama Department of Corrections, Dr. Ron Cavanaugh, “The chaplain... <an evangelical Christian> ... had reservations about inmates turning into Buddhists and losing his congregation.” Dr. Cavanaugh went

²² Prison Incarceration and Religious Preferences, accessed at http://www.adherents.com/misc/adh_prison.html on 9 October 2011.

on the explain that the Chaplain, "... called the commissioner; the commissioner called the warden and told the warden to shut down the program."²³

This bias occurs in other more indirect ways which are compounded by budget constraints. It cannot be discounted that religious accommodation, required under RLUIPA, can have economic consequences on the institutional budget.²⁴ In this era of decreasing tax revenues, states are increasingly turning to volunteer chaplains.²⁵

Good News Jail and Prison Ministry ("GNJPM") is representative of some of the evangelical Christian groups that have stepped up to fill the void.²⁶ While the organization encompasses within its Mission Statement a nod to other faith transitions, its predominant focus is on bringing the Gospel to inmates. "To meet the spiritual needs of both inmates and staff through ministry that includes evangelism, discipleship, and pastoral attention, while facilitating other religious faiths within the guidelines established by law and the individual correctional facility."²⁷

However, the statistics which GNJPM track are indicative that the true emphasis is placed upon evangelism, ministry to Christians and the conversion of non-Christians, rather than chaplaincy. The GNJPM model is to support correctional facilities by providing "Christian chaplains". They are either paid through GNJPM; raise their own funds for support; serve as a true volunteer; or, a combination of the systems. There is an internal conflict in mission sets between an evangelical ministry and chaplaincy, especially with volunteers or those "chaplains" supported by specific faith groups. As Rev. Randall Speer, chaplain at the Central Prison in Raleigh said, "I've never found a volunteer interested in dealing with all religions".²⁸ And, there is a world of difference in finding a qualified faith group volunteer and a qualified chaplain.

Without professional chaplaincy programs, the rights of minority faith group members may be at risk.

Volunteer religious service programs in state correctional institutions may provide a viable alternative for the constitutionally permissible exercise of prisoners' religious rights. The growth of the prison population in the past few decades has placed enormous demands on the states and their ability to safely confine offenders as well as reduce the likelihood that they will offend again in the future. The direct, personal involvement of community volunteers in the corrections system may help inmates to amend their lives and assume a productive place in society. At particular risk through voluntary provision are the rights of adherents of minority religions.²⁹

²³ Joiner, Whitney. *Staring at Death and Finding Their Bliss*, New York Times, 13 September 2007, accessed at <http://www.nytimes.com/2007/09/13/movies/13dhar.html> on 9 October 2011.

²⁴ See generally, Stout, Taylor G., *The Costs of Religious Accommodation in Prisons*, 96 Va. L. Rev 1201 (2010)

²⁵ Shimron, Yonat and Adelle M. Banks, *States Scramble to Find Prison Chaplains After Cuts*, Religion News Service, 8 August 2011, accessed at http://www.religionnews.com/index.php?rnstext/states_scramble_to_find_prison_chaplains/ on 9 October 2011.

²⁶ I have the greatest admiration for my colleagues in the faith based programs at the Colorado Territorial Correctional Facility ("CTCF") – they are chaplains affiliated with GNJPM. However, as will be discussed, there is an inherent conflict in being a chaplain and having to seek out funding and support from a specific faith tradition based organization which encourages an evangelical approach.

²⁷ Website, Good News Jail and Prison Ministry, accessed at <http://www.goodnewsjail.org/Who/Who.aspx> on 9 October 2011.

²⁸ *State May Do Away with Paid Chaplains*, Salisbury Post, 22 April 2011, accessed at <http://www.salisburypost.com/PrinterFriendly/042311-NC-prison-chaplains-qcd>.

²⁹ Kinney, Nancy T., *The Implications for Inmate Rights of the Voluntary Provision of Religious Services*, Criminal Justice Policy Review 2006 17: 188

Further, volunteer chaplains, while dedicated to their faith tradition, may not be “qualified” in a true sense of conducting chaplaincy.

ACA standard 4-4512 requires a prison chaplain to have clinical pastoral education and endorsement by an appropriate religious certifying body. In fact, the American Correctional Chaplains Association, the oldest subgroup of the American Chaplains Association, requires as a minimum for its basic level of certification 2000 hours of experience as a correctional chaplain; ordination; ecclesiastical endorsement; one unit of clinical pastoral education; twelve credit hours of counseling/psychology or pastoral care courses; and, three credit hours of religious studies.³⁰

Basically, the concept of chaplaincy is vastly different from that of an evangelical ministry. Encompassed within ministry is an element of proselytization; whereas within the construct of a chaplaincy program there is no such element. For today’s professional chaplains, proselytizing is considered a breach of ethics. No professional chaplain would even think about trying to convert a patient, inmate, or resident within a closed facility. And, evangelism is by definition the process of converting non-Christians to Christianity.

As inmates are literally a captive and vulnerable audience, proselytizing is rightfully prohibited in most prisons and is contrary to ACA standards and ACCA ethics. “Members exercise their ministry without influencing prisoners or staff to change their religious preference or faith. Members conduct their ministry without communicating derogative attitudes toward other faiths.”³¹ However, a legal prohibition and the actual practice may differ.

Inmates are regularly subjected to subtle and active forms of proselytizing by dominant faith groups. This can be as subtle as heavily focusing on certain faith programs while limiting others. All faith traditions must be honored and adherents of all faiths should be free of proselytizing pressures from others. However, some correctional systems have accepted offers of “free” chaplains from religious organizations, such as GNJPM, whose agendas are self-centered. The integrity of religious programs can be best ensured by retaining professional correctional chaplains and fully using their expertise.

A chaplain is not a Christian chaplain or a Buddhist chaplain; a chaplain is simply meant to be a Chaplain.

A Day Behind the Walls – Personal Musings

The first day you enter a correctional facility, a sense of claustrophobia easily overtakes your mind. As a Buddhist practitioner, we try not to judge the motivation and intention of others; we focus on our own. But, to survive within the walls, a religious volunteer must quickly understand that offenders come to religion or religious programs for a variety of reasons. A few of these more legitimate reasons can be:

1. Sincere continuation of the religious practices of their life;
2. Pursuit of acceptance from either a peer group or from a higher power;
3. Membership in a religious-based community, negatively viewed as a gang, that may offer the adherent physical protection within the facility;
4. Contact with the outside world;
5. Opportunity to socialize/network within the prison community;
6. Seeking respite and safety – statistically, chapels are among the safest, open access, areas within a facility. Few inmate attacks occur within chapel or in the presence of chaplains;

³⁰ Website, American Correctional Chaplains Association, accessed at <http://www.correctionalchaplains.org/> on 9 October 2011.

³¹ American Correctional Chaplain’s Association, *Code of Ethics*.

7. Obtaining material benefits – special diets, holiday treats, etc; and,
8. Programming benefits – recommendations for parole hearings.

Less legitimate motivations can have disastrous consequences for volunteers, chaplains, and the institution. Offenders play games; they are masters at manipulation. They know the rules of a facility; at most times better than the staff members themselves. Often times, offenders cite institutional violations with Regulation Number, Section and Paragraph, when discussing an issue of institutional practice or accommodation. Some offenders will attempt to compromise an unsuspecting and well-intentioned volunteer.

That said, the subtle bias against non-Christian faiths is clear. Within the chapel at Colorado Territorial Correctional Facility (“CTCF”), free Christian materials such as daily devotionals and Bibles are readily available. Prisoners have free access to the materials. However, when I place Buddhist or Islamic materials of a similar nature in the area, they are suddenly disappeared and cloistered in a locked file cabinet.

The Chapel at CTCF is decorated with banners and wall hangings professing Christian views. However, even a simple Buddhist calendar will remain posted on the wall only so long as a Buddhist chaplain is in the room. Christian faith items (i.e. crosses, religious pictures, etc.) are prominently displayed Twenty-Four Hours, Seven Days a Week, while other traditions have their symbols and faith items locked in file cabinet drawers. The Chapel is hardly an ecumenical environment in its daily operations.

Other evangelical Christian groups such as Kairos Prison Ministry International, Inc. provide multi-day programs within correctional facilities, including CTCF. The retreats routinely include excusing offenders from standard counts (out-counting) and providing food prepared outside the institution. Arranging similar activities for non-Christian groups are often times tasks of Herculean effort.

Religious materials and practice items typically must be screened by security authorities. These authorities, who make decisions as to what can be practiced or distributed within the facility, typically come from the security side of the institution. In Colorado, for example, in the State’s Department of Corrections Office of Faith and Citizen Programs, which administers the chaplaincy, there are no chaplains or management personnel with religious or pastoral counseling expertise or education. (There is no equivalent to the military’s “Chief of Chaplains”.) The faith program administrative personnel are promoted from other internal programs. The result is that those items which are different or which are not readily understood will be barred from entry into the facility. The more esoteric the materials of the faith tradition involved, the more restrictive the regulatory environment imposed. This seemingly benign ignorance of other faith traditions, and reliance on popular misconceptions, leads to an understandable and relatively innocent preference of majority faith traditions (Christianity, Judaism, Islam) over minority traditions (Buddhism, Wicca, Hinduism). However, though understandable and innocent, such preferences must be combatted to ensure that the religious freedom of inmates is preserved.

The lack of depth of understanding concerning religious studies also leads to a “one-size” fits all style of religious accommodation for minority faith traditions. Being most familiar with the diversity found in the Christian tradition, denominational based accommodations and variances are common place. However, denominational distinctions are lost in the minority traditions. Prison regulations typically will focus on a single school, in the case of Colorado and Buddhism, it is a more Zen, oddly seasoned

with a Theravadan orientation. Varjayana, Pure Land, and other schools are not understood or recognized within the regulatory construct.³²

Conclusion

Within the United States legal system there exists the tools necessary to ensure that the Dharma can be brought into correctional facilities and that when necessary religious bias and practices discriminatory to minority faith traditions can be addressed successfully. In many cases, the biases and discrimination encountered results from ignorance rather than a malicious motivation. As with all things, reflection and understanding can form the basis for true ecumenical understanding. But, in cases in which ignorance and prejudice are intransigent, resort to legal redress and litigation is available and has generally been protective of religious liberties of minority faith tradition practitioners.

Despite the impediments and constraints, the role of being a Chaplain is rewarding and challenging. Being a Chaplain, of a minority faith tradition, increases the challenges and frustrations, but reliance upon the equanimity taught by all Buddhist schools provides the solace and understanding required to meet all the challenges that interfere with the practice. Being a Chaplain and providing pastoral care across the entire spectrum of faith tradition adherents, requires a nibble mind and a compassionate focus. Buddhists are uniquely qualified to be Chaplains.

While pointing out the fundamental similarities between world religions, I do not advocate one particular religion at the expense of all others, nor do I seek a new 'world religion'. All the different religions of the world are needed to enrich human experience and world civilization. Our human minds, being of different caliber and disposition, need different approaches to peace and happiness. It is just like food. Certain people find Christianity more appealing, others prefer Buddhism because there is no creator in it and everything depends upon your own actions. We can make similar arguments for other religions as well. Thus, the point is clear: humanity needs all the world's religions to suit the ways of life, diverse spiritual needs, and inherited national traditions of individual human beings.³³

Further, the Dalai Lama has clearly and unequivocally stated that "We <Buddhists> oppose conversions by any religious tradition using various methods of enticement."³⁴ Buddhism is generally recognized as a religion that does not actively engage in proselytizing.

Bringing the Dharma to new lands, allowing the Wheel of Dharma to work for itself, is what prison chaplaincy is all about. A simple "Google" search of "Buddhist prison chaplaincy organization" will lead you on an amazing exploration of this aspect of Buddhist practice and socially engaged Buddhism.

As a faith community and a community of educators and scholars, regardless of school, we need to encourage and support those educational programs that are being developed which train both lay and ordained Buddhists in proper chaplaincy and pastoral counseling. Whether placed in prisons, hospitals, universities or the military services,

³² The Colorado Department of Corrections regulations on religious practices can be accessed at <http://www.doc.state.co.us/administrative-regulations/44>.

³³ His Holiness the Dalai Lama, *A Human Approach to World Peace*, accessed at <http://www.dalailama.com/messages/world-peace/a-human-approach-to-peace> on 12 October 2011.

³⁴ Misra, Neelesh, *Dalia Lama Criticizes Proselytizing*, 25 January 2011, accessed at <http://abcnews.go.com/International/story?id=81617&page=1> on 12 October 2011.

through chaplaincy Buddhists have the greatest potential to do real good, to bring the Dharma to new lands, and to bring true benefit to all sentient beings, regardless of faith.

APPENDIX A

ACA STANDARDS FOR ADULT CORRECTIONAL INSTITUTIONS

(From Fourth Edition; See actual publication for additional comments)

Part 5: Inmate Programs, Section F: Religious Programs

Principle: A written body of policy and procedure governs the institution's religious programs for inmates, including program coordination and supervision, opportunities to practice the requirements of one's faith, and use of community resources.

4-4512 (Ref. 3-4454) There is qualified chaplain (or chaplains) with minimum qualifications of (1) clinical pastoral education or equivalent specialized training and (2) endorsement by the appropriate religious certifying body. The chaplain assures equal status and protection for all religions.

4-4513 (Ref. 3-4455) In facilities with an average daily population of 500 or more inmates, there is a full-time chaplain (or chaplains). In facilities with less than 500 inmates, adequate religious staffing is available.

4-4514 (Ref. 3-4456) The chaplain plans, directs, and coordinates all aspects of the religious program, including approval and training of both lay and clergy volunteers from faiths represented by the inmate population. [Comment includes "ensuring that all inmates can voluntarily exercise their constitutional right to religious freedom".]

4-4515 (Ref. 3-4457) The chaplain has physical access to all areas of the institution to minister to inmates and staff.

4-4516 (Ref. 3-4458) The chaplain or designated religious staff develops and maintains close relationships with community religious resources. [Comment includes "delivery of appropriate religious services on special religious holidays or, as needed to meet the requirements of the diversity of religious faiths among inmates".]

4-4517 (Ref. 3-4459) Written policy, procedure, and practice provide that inmates have the opportunity to participate in practices of their religious faith that are deemed essential by the faith's judicatory, limited only by documentation showing threat to the safety of persons involved in such activity or that the activity itself disrupts order in the institution. [Lengthy Comment includes listing of religious practices and reference to "determining what constitutes legitimate religious practices".]

4-4518 (Ref. 3-4460) Representatives of all faith groups are available to inmates.

4-4519 (Ref. 3-4460) When a religious leader of an inmate's faith is not represented through the chaplaincy staff or volunteers, the chaplain assists the inmate in contacting a person who has the appropriate credentials from the faith judicatory. That person ministers to the inmate under the supervision of the chaplain. [Comment allows for "designated regular times, with provisions for emergency visits".]

Religious Facilities and Equipment

4-4520 (Ref. 3-4462) Written policy, procedure, and practice require that the institution provide space and equipment adequate for the conduct and administration of religious programs. The institution makes available non-inmate clerical staff for confidential material. [Comment includes “sufficient space”, etc.]

4-4521 (Ref. 3-4463) The chaplain, in cooperation with the institutional administrator or designee, develops and maintains communications with faith communities and approves donations of equipment or materials for the use in religious programs. [Comment includes “helps avoid the accumulation of duplicate or inappropriate materials”.]

Additional References to Religious Programs [bold emphasis added]:

Part 4: Institutional Services, Section F: Social Services

Principle: The institution makes available the professional services necessary to meet the identified needs of inmates. Such services may include individual and family counseling, family planning, and parent education, and programs for inmates with drug and alcohol addiction problems.

4-4429 (Ref. 3-4380-1) Written policy, procedure, and practice prohibit discrimination on the basis of disability in the provision of services, programs, and activities administered for program beneficiaries and participants. [Comment includes “**religious programs**” in services, programs and activities.]

4-4430 (Ref. 3-4381) Written policy, procedure, and practice provide that institutional staff identify at least annually the needs of the inmate population to ensure that necessary programs and services are available, including programs and services to meet the needs of inmates with specific types of problems. [Comment includes “**religious**” in programs and services.]

Reception and Orientation

4-4287 (Ref. 3-4274) There is a program for inmates during the reception period. [Comment includes “**be permitted to attend religious services**”.]

Part 1: Administration and Management, Section C: Personnel

Principle: A written body of policy and procedure establishes the institution’s staffing, recruiting, promotion, benefits, and review procedure for employees.

Staffing Requirements

4-4050 (Ref. 3-4050) The staffing requirements for all categories of personnel are determined on an ongoing basis to ensure that inmates have access to staff, programs, and services. [Comment includes “**religious programs**” in staffing requirements.]

Part 3: Institutional Programs, Access to Programs and Services

4-4277 (Ref. 3-4265) Written policy, procedure, and practice prohibit discrimination based on an inmate’s race, **religion**, national origin, sex, disability, or political views in

making administrative decisions and in providing access to programs. [Comment includes “Inmates should be assured equal opportunities to participate”.]

Part 3: Institutional Operations: Administrative Segregation/Protective Custody

4-4273 (Ref. 3-4261) Written policy, procedure, and practice provide that inmates in administrative segregation and protective custody have access to programs and services that include, but are not limited to, the following: educational services, commissary services, library services, social services, counseling services, **religious guidance**, and recreational programs.

Section C: Food Service

4-4319 (Ref. 3-4300) Written policy, procedure, and practice provide for special diets for inmates whose **religious beliefs** require the adherence to **religious dietary laws**. [Comment includes “**Religious diets** should be approved by the chaplain”.]

(Reprinted from the American Correctional Chaplains Association, http://www.correctional_chaplains.org/aca_prison_standards.pdf, accessed on 8 October 2011, which was extracted from the ACA Standards, Fourth Edition.)