

Report to the U.S. Commission on Civil Rights
Religious Discrimination in U.S. Prison and Jails
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[In delivering this report to the USCCR, I am purposefully avoiding the use of specific names, places, dates, etc. relating to examples of religious discrimination. While that information is better saved for a time that permits fuller examination, please be assured that I am describing actual occurrences. Except for when otherwise necessary, I am also employing the generic terms 'prison' and 'prisons' in referring to all adult and juvenile correctional systems and facilities.]

It should be no surprise that various forms of religious discrimination abound in prisons. After all, these places do house Neo-Nazis, so-called 'Christian Identity' supremacists and others convicted of religion-related criminal offenses. Moreover, as it is the nature of the prison beast that inmates are often forced to ally with affinity groups for protection, inmate religious preferences are frequently entwined with ethnic, racial and other gang affiliations. Therefore, while anti-Semitism has always been a fact of prison life, Jews are certainly not the only targets of religious intolerance these days.

What will be a revelation to many, however, is that religion-related discriminatory acts against inmates are less often attributable to other inmates than to staff and outside ministries. Though these factions have somewhat differing agendas, it is most disturbing that they are increasingly working in unabashed concert to achieve their objectives.

On the staff side, there has been a paradigm shift from 'people being sent to prison as punishment' to 'people being sent to prison *for* punishment' because many prison staff members feel that they have been handed a public mandate to punish. They do so, in part, by obstructing religious practices that they perceive to be perks rather than necessity. Further exacerbating the situation are conditions of prison overcrowding and staff shortages that have resulted in only the least demanding practices being permitted for sake of convenience. This default, supported and even encouraged by some bigoted ministries, obstructs religious exercise of numerous faiths that require more than a bible and a weekly worship service in order to be properly observed.

Prison ministries – particularly those that are proselytizing bent – find prisons to be fertile turf. Though proselytizing is officially prohibited on government property, prison officials often turn a blind eye to such activity or allow it to occur under the guise of simple "sharing of one's faith". Make no mistake, however, as "spreading the Good News" by the likes of Evangelical prison ministries, their staff allies and their inmate disciples does blatantly cross the line into overt proselytizing. In addition to placing constant pressures on inmates and family members to convert to the so-called "majority faith", their tactics often include highly divisive denigration of other Christian denominations and minority faiths – most notably Muslims – that spawns physical altercations and other negative incidents.

In the midst of this mess are staff chaplains. The best of them are highly-trained professional employees who skillfully manage the religious activities of all faith groups and maintain a balance between disparate factions working the same turf. The worst of them are unqualified volunteers with their own agendas who only manage to contribute to and amplify prison problems.

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In preparing for this briefing, I solicited input from experienced professional chaplain colleagues across the country and immediately received the following two responses:

1. A staff chaplain at a large East Coast county jail wrote, "My initial thoughts are that we need to overcome our mentality that develops religious and spiritual provisions in prison

from out of a presumption of “Protestant, Christian and “American Civil Religion” (See Will Herberg, Protestant Catholic and Jew).”

2. A staff chaplain at a moderately-sized West Coast state prison wrote, “I believe there is a bias in favor of fundamentalist or evangelical Christian programming that pervades the thinking of some chaplains and prison administrators.”

Interestingly enough, both of these chaplains are of Conservative Protestant persuasion. In any case, their comments go directly to the foremost driver of religious discrimination in prisons.

While religion in prisons is largely reflective of free-world religious attitudes and conditions, there is one major difference: *Inmates are a literally captive and vulnerable population*. To comprehend this, place yourself in an inmate’s shoes. For example, if you are locked in with a cellmate who is haranguing you out of being taught in bible class that you are you going to hell if you don’t accept Jesus, you can’t simply walk away. You can’t refuse an order from your prison warden that every inmate participate in a corrections department sponsored proselytizing Evangelical event. You can’t avoid repeated showings of a passionate Christian movie on every TV monitor, its audio blasting from every speaker in your housing area. You can’t access your religious service provider whose volunteer status has been revoked on the pretext that he violated prison policy by driving a released offender to a rehab facility. You can’t properly participate in a worship service that has been relegated to a noisy prison yard area by a chaplaincy administrator who justifies it by reasoning that Orthodox Jews at the Wailing Wall in Jerusalem “appear to be focused on their prayers”. You can’t refuse to eat when a prison Special Activities Coordinator denies you a religiously acceptable diet on the warped conclusion that you are insincere in your faith because you committed new offenses while on parole. You can’t escape murderous Neo-Nazi inmates to whom you’ve been thrown by a prison Major because you questioned his authority in constantly canceling Jewish activities. And you can’t do anything about it from your grave when the prison system ‘sanctions’ that Major by moving him to another facility and promoting him to an Assistant Warden position.

Jewish Prisoner Service International’s files are deep in such well-documented abuses. They also contain instances of inmates being accorded privileges for conforming to faith dictates of their keepers. From advantageous work assignments if determined to be “of good Christian character” through to special recommendations at parole hearings for inmates participating in specific Christian programs (with no similar programs being made available for other faiths, other Christian denominations or of secular nature), preferential treatment has come to constitute the establishment of a preferred faith in America’s prisons.

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Of current concern in relation to the matter at hand are:

1. regressive chaplain requirements;
2. proliferation of ‘God Pod’ proselytizing machines;
3. the modus operandi of a burgeoning private prison industry; and
4. persecution of Muslim chaplains and inmates.

While this foursome are often found in various combinations of unholy alliance, each of them rate cause for specific examination:

Chaplain Requirements

Since the 1885 founding of the multi-faith American Correctional Chaplains Association, standards for prison chaplains have been steadily raised to the point where the majority of staff chaplains possess the formal education and training to effectively function as ecumenical managers of religious programs for all faith groups. However, as there have never been any

required corrections industry qualifications for chaplains and what little religious program standards that do exist are not included in the mandatory portion of the voluntary prison accreditation process, many prisons have gotten away with using 'chaplains' of less than desirable quality. This has most often occurred at county and local jails where chaplaincy operations are commonly placed in the hands of volunteer self-appointed 'pastors' with no more qualifications than being personal friends of sheriffs or police chiefs. Administrative and line staff shortages are also resulting in inadequate oversight of these volunteers, and in the most alarming of developments, increasing budgetary constraints are forcing reductions in numbers of professional chaplains. This is allowing well-financed proselytizing ministries to successfully prey upon prisons with offers of providing no-cost delivery of religious services. In an example of particular boldness, the largest of these ministries conspired with legislative allies to have the budget removed for staff chaplain salaries in a state prison system. The system's administrators then 'invited' the ministry to provide all of their chaplains while repeatedly 'losing' applications from clergy of other faiths seeking those positions. The ministry then went on to proclaim in a recruiting brochure for clergy of their Evangelical denomination to fill those faith-neutral positions that, "Prison chaplaincy is about changed lives – about men and women coming to trust Jesus Christ as their personal Savior." Since taking over that state's religious programs, their people have been rampantly obstructing the religious exercises of other faiths and denominations, including having the visitation clearances of our two Jewish personnel revoked on the flimsiest of pretexts. In additional insult, the ministry hatched a 'study' of their program conducted by an Evangelical university and led by a professor who also happened to be the ministry's vice-president of training. The resulting praise-filled document is now being used by the ministry as a promotional tool in lobbying other state legislatures and prisons.

God Pods

In the 1997 genesis of the 'God Pod' movement of faith-based prison living units in the U.S., the original model placed inmate participants in a separate housing unit, required them to abide by an Evangelical Christian statement of faith and immersed them in single-denomination programming. While some subsequent replications of this concept have claimed to be multi-faith, almost all of them have been operated by adherents of the same narrow religious faction and they have transparently followed the same path. For example, when the first entire faith-based prison was inaugurated in 2003, the governor of the host state lauded the program for its supposed inclusiveness of numerous faiths and without missing a beat, told attendees that, "I can't think of a better place to reflect on the awesome love of our lord Jesus than to be here at [this facility]." That clear message prompted inmates to coin the term 'fake-based', an appropriate moniker for such programs in that they are notorious for their denigration of other faiths and Christian denominations, and for their exploitation of inmate disciples to spread that divisive rhetoric. Though expansion of these programs has been somewhat slowed by court decisions – primarily over millions of dollars in public funds being illegally diverted for pervasively sectarian purposes – they are still supported by many prison administrators. Here again, the largest ministry operating God Pod programs came up with a study lauding the success of its programs. The 'creaming' methodology of that study rendered it statistically invalid because it only included those who graduated from the program by virtue of having been involved with a church and employed for six months following their release from prison. When all participants were properly included, the program actually showed a slight increase in recidivism.

Private Prisons

The world's highest incarceration rate is so overcrowding U.S. prisons that a for-profit private prison industry is experiencing unprecedented growth. Consistent with their objective of maximizing profits for their owners, private prison companies cut costs to the quick and insure that contractual conditions do not require them to comply with the regulations of the jurisdictions for which they board inmates. They have, therefore, full impunity to handle religious programs in any manner they desire and do so by justifying the lowest possible defaults with claims that they

cannot apply different standards for inmates from different prison systems. The largest of these companies set an industry precedent by “partnering” with several Evangelical ministries to provide all of their religious services, thereby producing the same kind of results as previously described in this report.

Persecution of Muslims

A substantial number of inmates, largely African American, have converted to Islam while in prison. While their chaplains have guided them into peaceful conduct and respect of other faiths, this tolerance has not been returned in kind. For example, the founder of the largest Christian prison ministry has led his missionaries into a highly vocal crusade against Islam. His oft-repeated mantra has been that, “Islam is the greatest danger to Christianity in prisons” and he has authored several articles expressing that extremist rhetoric. In one particularly egregious self-serving version that was published in a national newspaper, he accused Muslim prison chaplains of “evangelizing for evil.” Similar propaganda has been distributed to prisons by at least one ‘Messianic Jewish’ [Christian sect] ministry in the form of newsletters that have been designed to appear as though they come from the Jewish community. Often cloaked in patriotism, this fanaticism has been picked up by long-standing inmate hate groups [e.g. white supremacists] and some prison staff, thereby escalating tensions between some religious groups to explosive levels.

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RFRA and RLUIPA

While both the Religious Freedom Restoration Act [RFRA] and the Religious Land Use and Institutionalized Persons Act [RLUIPA] initially appeared to be good tools for preventing obstruction of religious exercise in prisons, they have produced mixed effectiveness and unintended consequences.

As I am not an attorney, I will not get into the legal aspects of these legislations, but will briefly comment on three items of personal concern in relation to them:

1. The definition of ‘religious exercise’ in RLUIPA (which amended the same in RFRA) is so overly broad that it has generated numerous immoral inmate abuses of religious programs that have negatively impacted inmates who are sincere in their given faiths, examples of which I will gladly provide if asked to do so. Even at the time that RLUIPA was being drafted, I had expressed concern that this might happen, but was assured by attorneys involved in the writing that the definition would be narrowed through case law. However, that has yet to happen as most RLUIPA-related challenges have focused on the constitutionality of the entire act. To the best of my knowledge, courts have not yet had the opportunity to correct this flaw.
2. While the RLUIPA related U.S. Supreme Court ruling in Cutter v. Wilkinson went to the extent of reiterating that an inmate’s religiosity/sincerity can be questioned when requesting an accommodation, the court provided little guidance on how a test of sincerity can be legally achieved. While such test(s) might be a legitimate means of stopping inmate abuses of religious programs, the legalities surrounding RLUIPA are so complex that I have been unable to find any legal authority willing to venture an attempt at resolving this quandary.
3. The U.S. Justice Department has done little toward its authorized enforcement of the institutionalized persons aspect of RLUIPA and insofar as I am aware, not a single governmental entity has yet been sanctioned for violating the Act.

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I know that I have painted a grim picture here, so I would like to close by assuring you that while they predominate, these conditions are not universal. In fact, where enough professional chaplains are employed, it can and does make a world of difference. Take, for example, the Federal Bureau of Prison [BOP] where the least problems are found. However, the BOP only accounts for less than nine percent of the inmate population in the country and even some of their policy and procedural changes over the past decade or so have been problematic.

I understand that in addition to this briefing, the USCCR is planning on sending questionnaires to selected prisons, but I seriously doubt that such self-reporting is going to produce admissions from prison officials that what I have claimed and what others here today will similarly be claiming are true. However, I can and am more than willing to produce documentation that details and verifies everything I have presented. Given the seriousness of these charges, I would ask that the USCCR urge the U.S. Justice Department and other Federal law enforcement authorities to fully investigate them and take appropriate legal and/or criminal action on their findings.

I thank you in advance for what I expect will be your continued attention to this matter.