

# PRISON

## Legal News

VOL. 21 No. 9

ISSN 1075-7678

*Dedicated to Protecting Human Rights*

September 2010

### Thou Shalt Not: Sexual Misconduct by Prison and Jail Chaplains

*by David M. Reutter*

Traditionally, the role of a chaplain in the correctional setting is to serve as a spiritual advisor to prisoners and help them meet the requirements of their religious faiths. Equally traditionally, chaplains have generally been from conservative mainstream Christian faiths and often proselytize among prisoners for those faiths.

There is some debate as to whether it is proper to have government-paid chaplains at prisons and jails, based on the premise that such arrangements violate the principle of separation of church and state. There is also dispute concerning whether chaplains – who are overwhelmingly Christian – can adequately address

the religious needs of prisoners with many diverse faiths, including Islam, Judaism, Native American beliefs, Hinduism and Buddhism, among others, to say nothing of agnostics and atheists.

However, there is universal agreement that prison and jail chaplains should not abuse their role as spiritual leaders and use their positions of authority to fulfill their own deviant sexual desires. Such abuses do occur, albeit not with the frequency that other correctional staff victimize prisoners. [See, e.g.: *PLN*, May 2009, p.1].

While incidents involving sexual misconduct by chaplains are not common, they are indicative of a somber incongruity between the need to provide religious services for prisoners and the exploitation of those prisoners by abusive prison and jail clergy.

#### Sexual Abuse by Jail Chaplains

Former Henrico County, Virginia jail chaplain Toney Leon McDonald, 42, was arrested on May 17, 2006 and charged with engaging in sexual misconduct with two female prisoners.

According to one of the indictments, McDonald, a member of the Good News Jail and Prison Ministry, engaged in oral sex with prisoner Ashley Baskerville. Jail authorities recorded a conversation between the two; according to Sheriff Mike Wade, it “was obviously not the type of conversation that a chaplain ... should have.” McDonald was acquitted of sexual misconduct charges in New Kent County, but on October 12, 2006 he entered an Alford plea to similar charges in Henrico County. He received a 12-month jail sentence, which was suspended, plus 100 hours of community service. [See: *PLN*, Feb. 2007, p.36].

Before becoming the chaplain at the jail, McDonald had worked as a sheriff's deputy until he was arrested in 1991 and charged with possession of cocaine with intent to distribute and attempting to smuggle marijuana to a prisoner. He served one year of a six-year sentence in that case.

In April 2004, King County, Washington jail prisoner Terry Shanklin filed suit alleging that he had been sexually assaulted by Regional Justice Center Chaplain Warren Ungles, who coerced him into having oral sex and masturbating in exchange for help with his release plans.

Ungles claimed he was part of a church that believed God allowed male sex with preachers. Shanklin passed a polygraph test related to seven sexual assaults involving the chaplain; his lawsuit stated that he had suffered a divorce and mental breakdowns due to the emotional trauma of engaging in sex acts with Ungles.

Shanklin reportedly settled the case for \$7,500 in damages and \$1,435.92 in costs. See: *Shanklin v. King County*, King County Superior Court (WA), Case No. 04-2-10003-8 SEA.

In Texas, the chaplain at the Lubbock County Jail, Gilbert Herrera, 55, was indicted on sexual misconduct charges on July 28, 1999, two days after being fired for insubordination because he refused to cooperate with an internal investigation.

According to news reports, Chaplain Herrera had previously suffered from drug addiction and served time for burglary; he received a pardon from then-Texas governor Dolph Briscoe in 1978.

“This is just a very unfortunate inci-

### Inside

Nation of Islam Suit	11
From the Editor	12
Women Give Birth in Chains	14
Killer Keller Sanctioned	20
PLN BOP Records Suit Continues	21
Oregon Food Scandal Update	24
Crack Sentencing Disparity Law	26
Pay To Stay Jails Fail in Ohio	30
USSC Attorney Fee Ruling	33
Tacoma Jail Litigation Update	38
Arizona Prison Sell Off	42
USSC Rejects BOP Good Time Suit	46
News in Brief	50

**Jus talk**  
COMMUNICATIONS

**Make Collect Calls to Cellular Phones.**  
...make it easy to stay in touch  
...and save up to 50%

**Loved ones can try JustTalk for FREE.**

**866-315-2121**

**www.JustTalk.biz/FreeCall**

# PRISONLEGALNEWS.org

**Dedicated to Protecting Human Rights** >>FREE Data Search |

Decisions Investigations Audits Publications Cases Verdicts Settlements

**If you need to know about prisons and jails or are litigating a detention facility case, you can't afford not to subscribe to our website!**

**Online subscribers get unlimited, 24-hour a day access to the website and its content!**

**Sign up for PLN's FREE listserv to receive prison and jail news and court rulings by e-mail.**

- ▶ PLN's website offers all issues of PLN in both searchable database and PDF formats. Issues are indexed and posted as soon as they go to press.
- ▶ Publications section has numerous downloadable government reports, audits and investigations from around the country.
- ▶ Full text decisions of thousands of court cases, published and unpublished.
- ▶ All content is easy to print for downloading and mailing to prisoners.
- ▶ Most complete collection of prison and jail related verdicts and settlements anywhere.
- ▶ Order books, print subscriptions and make donations on line.

- ▶ Brief bank with a wide assortment of winning motions, briefs, complaints and settlements.
- ▶ Links to thousands of prison, jail, criminal justice and legal websites around the world.
- ▶ Thousands of articles and cases, all fully indexed by more than 500 subjects, searchable by case name, case year, state of origin, court, author, location, case outcome, PLN issue and key word search.
- ▶ Search free, pay only if you find it!
- ▶ The highest quality, most comprehensive prison litigation news and research site in the world.

**Affordable rates to meet your budget**  
**\$19.95 per month • \$149.95 per year**

**Subscribe to Prison Legal News Online! <http://www.prisonlegalnews.org>**

PUBLISHER

**Rollin Wright**

EDITOR

**Paul Wright**

ASSOCIATE EDITOR

**Alex Friedmann**

COLUMNISTS

**Michael Cohen, Mumia Abu Jamal,**

**Daniel E. Manville, Kent Russell**

CONTRIBUTING WRITERS

**Mike Brodheim, Matthew Clarke,**

**John Dannenberg, Gary Hunter,**

**David Reutter, Mike Rigby,**

**Brandon Sample, Jimmy Franks,**

**Mark Wilson**

RESEARCH ASSOCIATE

**Sam Rutherford**

ADVERTISING DIRECTOR

**Susan Schwartzkopf**

LAYOUT

**Lance Scott/**

**Catalytic Communications**

HRDC GENERAL COUNSEL

**Adam Cook**

### **PLN is a Monthly Publication**

A one year subscription is \$24 for prisoners, \$30 for individuals, and \$80 for lawyers and institutions. Prisoner donations of less than \$24 will be pro-rated at \$2.00/issue. Do not send less than \$12.00 at a time. All foreign subscriptions are \$100 sent via airmail. *PLN* accepts Visa and Mastercard orders by phone. New subscribers please allow four to six weeks for the delivery of your first issue. Confirmation of receipt of donations cannot be made without an SASE. *PLN* is a section 501 (c)(3) non-profit organization. Donations are tax deductible. Send contributions to:

**Prison Legal News**

**P.O. Box 2420**

**West Brattleboro, VT 05303**

**802-257-1342**

**info@prisonlegalnews.org**

**www.prisonlegalnews.org**

Please do not mail *PLN* paperwork for an ongoing case or request legal advice. *PLN* is not a legal service provider and cannot give legal advice. *PLN* reports on legal cases and news stories related to prisoner rights and prison conditions of confinement. *PLN* welcomes all news clippings, legal summaries and leads on people to contact related to those issues.

Article submissions should be sent to - **The Editor** - at the above address. We cannot return submissions without a SASE. Check our website or send a SASE for writers guidelines.

Advertising offers are void where prohibited by law and constitutional detention facility rules.

*PLN* is indexed by the *Alternative Press Index*, *Criminal Justice Periodicals Index* and the *Department of Justice Index*.

## **Chaplain Sexual Misconduct (cont.)**

dent not only for the sheriff's office but also for the Christian community as well," said Lubbock County Sheriff David Gutierrez. It was also presumably unfortunate for the female prisoner whom Herrera was accused of sexually assaulting.

On June 28, 2000, the former chaplain pleaded no contest to a misdemeanor charge of violating the prisoner's civil rights; he was sentenced to two years' probation. Despite pleading to the charge, Herrera maintained his innocence and said the accusations were politically motivated.

"We'll just leave it at that," his lawyer stated. Herrera had served as a jail chaplain for 10 years.

*PLN* previously reported on sexual abuse by jail chaplains in Florida and Indiana, both involving sex acts with female prisoners. [See: *PLN*, May 2007, p.34].

Paul L. Pierce, 61, the former senior chaplain at the Pinellas County Jail in Clearwater, Florida, apparently confused his missionary role at the facility with the missionary position when he had a three-year adulterous relationship with a prisoner from 2003 until 2006. Pierce reportedly had a love affair with Karleen Doris Bonow, a convicted prostitute.

"He's the chaplain of the jail; I always thought he would be there for me. It turned into he wanted sex, and I didn't know how to say no. I didn't want to lose his love," said Bonow. "And I played out the scenario [he] is going to leave his wife and he is going to marry me, and I'm going to live happily ever after and someone is really going to love me."

However, things changed dramatically when Bonow became pregnant. Chaplain Pierce told Bonow to "get rid of it" when he learned about her condition. "It crushed me. It devastated me when he told me about getting an abortion and I saw what kind of monster he could be," Bonow said.

Pierce resigned as chaplain at the jail on October 2, 2006 and was placed on administrative leave, pending investigation, from his chaplaincy position with the Largo Fire Department. The jail's internal investigation was closed after Pierce quit.

Homer Henderson, a chaplain at the Morgan County Jail in Indiana, also was accused of engaging in sexual misconduct with a prisoner. Susan L. Robbins

said Henderson had coerced her into performing oral sex on him in February 2006, when the chaplain escorted her and another prisoner to a local high school to take GED tests. In exchange for the sex act, Henderson allowed Robbins to visit her boyfriend and family members and go to a Taco Bell.

The chaplain tried to get Robbins to perform oral sex on him again the following day, but instead she opted to escape and was recaptured five months later. In addition to serving as a jail chaplain, Henderson was also the chaplain for the Indiana State Police. He resigned from both positions but was not criminally charged.

### **Prison Clergy Abuse Their Positions**

Vincent Inametti, 48, a Roman Catholic priest, was employed as a chaplain by the U.S. Bureau of Prisons at the Federal Medical Center (FMC) in Carswell, Texas from August 2000 until September 2007 – when he was charged with engaging in sexual acts with female prisoners.

"Unfortunately, it was the wrong place and the wrong time," said Michael Heiskell, Inametti's attorney, who downplayed his client's gross misconduct by referring to it as a "lapse of judgment."

Inametti pleaded guilty on November 14, 2007 to sexually abusing two female prisoners at Carswell. [See: *PLN*, Feb. 2008, p.42]. Although he claimed the encounters were consensual, one of his victims disagreed, stating that Inametti had threatened to kill her if she told anyone about their trysts. The sex acts reportedly occurred in the prison's chapel.

"His role as a chaplain was one of trust," said attorney Tahira Khan Merritt, who represented one of Inametti's victims. "He was supposed to provide emotional and spiritual sanctuary for these women. He violated that trust."

Following Inametti's guilty plea, prison officials at Carswell remodeled the chaplain's offices, adding glass windows in all of the doors and installing a new video surveillance system in an effort to curtail future sexual misconduct.

On May 5, 2008, Inametti was sentenced to four years in federal prison and fined \$3,000. He remains incarcerated with a release date of October 2011. See: *United States v. Inametti*, U.S.D.C. (N.D. Texas), Case No. 4:07-cr-00171-Y.

Doris Jean Dykes, one of the prisoners victimized by the former chaplain, filed suit against the federal government for

## Chaplain Sexual Misconduct (cont.)

failing to protect her from his sexual advances. She alleged in her complaint that she had been sexually abused by Inametti “on multiple occasions,” that he “had an impulsive sexual disorder which caused him to prey on vulnerable women,” and that he had reportedly said “Who’s your Daddy? I’m your Daddy” during sermons at the prison.

The parties agreed to dismiss the suit under undisclosed terms in December 2008. See: *Dykes v. United States*, U.S.D.C. (N.D. Texas), Case No. 4:08-cv-00111-A.

Previously at FMC Carswell, Daryl Desjardin, a supervisory chaplain, was charged in April 1997 with sexual misconduct involving female prisoners. He pleaded guilty to one count of a sex act with a person under peripheral supervision and was sentenced to six months in federal prison, one year on supervised release and a \$5,000 fine.

Desjardin’s attorney, James R. Claunch, who also represented an FMC Carswell staff counselor charged with sexual abuse, said his clients had pleaded guilty “because they were.” See: *United States v. Desjardin*, U.S.D.C. (N.D. Texas), Case No. 4:97-cr-00047-BE.

An incident at SCI-Cresson, a Pennsylvania state prison, leaves one wondering who the victim was in the case. Under a contract with his Franciscan order, the

Third Order Regular of St. Francis, the Rev. Gerard Majella Connolly was hired on March 16, 2006 as the chaplain at SCI-Cresson.

From September 2006 through January 2007, Connolly, 66, had multiple sexual encounters with prisoner William Victor during counseling sessions. However, to keep the liaisons quiet, Victor in turn extorted \$7,600 in hush money from the chaplain. The illicit trysts came to light when prison officials questioned Victor about a money order he had received.

A subsequent investigation resulted in Connolly being charged with 12 counts of institutional sexual assault and five counts of introducing contraband – allegedly alcohol – into the prison. He was placed on probation for 23 months, after which his criminal record can be expunged.

Victor received two years’ probation, to be served upon completion of his prison sentence, after pleading guilty to extorting hush money from the chaplain. He also filed a lawsuit against Connolly due to their sexual encounters; a settlement for an undisclosed amount was reached in April 2009. See: *Victor v. Connolly*, U.S.D.C. (W.D. Penn.), Case No. 3:07-cv-00292-KAP.

In Kentucky, state prison officials confirmed they did not receive a report from Corrections Corporation of America (CCA) regarding sexual misconduct by Randy Hagans, the chaplain at CCA’s Otter Creek Correctional Center, which at the time housed female prisoners from Hawaii and Kentucky.

Hagans, 49, was charged with third-degree sexual abuse, a Class B misdemeanor, for having sex with a prisoner in 2008. He was scheduled to go to trial in Floyd County District Court on November 16, 2010.

The chaplain is one of six CCA employees to be charged with sexual abuse or rape at Otter Creek. [See: *PLN*, Oct. 2009, p.40]. Both Hawaii and Kentucky have since removed their female prisoners from the facility.

According to a lawsuit filed in June 2003 by former juvenile offenders who

served time at Oregon’s state-run MacLaren Youth Correctional Facility, sexual abuse of prisoners by chaplains had occurred over a lengthy period of time.

The former prisoners alleged that while incarcerated at MacLaren as teenagers in the 1970s, they were sexually abused by the Rev. Michael Sprauer. They accused Sprauer, a Roman Catholic priest, of grooming them to engage in oral sex and mutual masturbation. Sprauer had served as a chaplain at MacLaren from 1972 to 1975, and later as the director of religious services for the Oregon Department of Corrections before retiring in 1999.

A total of 15 men eventually joined in the lawsuit against Sprauer, who tried to invoke doctor-patient and clergy-penitent confidentiality to avoid answering questions related to any treatment he had received for “sexual disorders or deviant behavior.” The former chaplain admitted in a videotaped deposition that he had engaged in anonymous oral sex with men in restrooms in the 1970s and 1980s.

Sprauer was also accused of smuggling drugs into the Oregon State Correctional Institution and engaging in a consensual sexual relationship with state prisoner Thomas Ha. Ha claimed that he and the chaplain had sex in a bathroom in the prison chapel. “He said he loved me and would take care of me,” Ha testified in the civil suit.

Although Sprauer denied that he had ever molested any juvenile offenders, a Multnomah County Circuit Court jury disagreed. On May 16, 2007, the jury entered a verdict in favor of two of the former prisoners, finding that Rev. Sprauer had sexually abused them when they were incarcerated at MacLaren, which was then known as the MacLaren School for Boys, and that the State of Oregon was negligent in failing to protect them.

The jury awarded almost \$1.4 million in damages – \$695,000 to Robert Paul, Jr., and \$690,000 to Randy Sloan. “I proved that he was a child molester,” said Paul. “I proved that I was not lying. The truth came out, and that’s what I wanted.”

## Prison Legal News Has Moved!

Effective immediately  
please direct all  
communications  
to PLN at:

**Prison Legal News**  
**P.O. Box 2420**  
**West Brattleboro,**  
**VT 05303**  
**802 257-1342**  
**prisonlegalnews.org**

**Put Our Experience  
To Work For You**

- Post Conviction Litigation
- Appeals
- Motions & Case Evaluation

Visit Us At  
**postconviction.com**  
To Learn More

**The Law Offices of Walter Reaves**  
504 Austin Avenue  
Waco, Texas 76701  
(254) 296-0020

**Request Our  
FREE eBook!**

**“10 Things You Must Know About  
Habeas Corpus & The Post-Conviction System”**

“The jury [verdict], finally, will give my clients some justice, and, hopefully, some closure,” said attorney Daniel Gatti, who represented the plaintiffs. See: *Sloan v. Sprauer*, Multnomah County Circuit Court (OR), Case No. 0311-12724.

At the Pendleton Juvenile Correctional Facility, a maximum-security prison run by the Indiana Department of Corrections, chaplain Billie Jo Pena was charged with performing oral sex on a 17-year-old prisoner. She was fired, pleaded guilty to sexual misconduct in March 2003, and was sentenced to three years’ probation and ordered to complete a sex offender treatment program.

“Any kind of sexual contact between offenders, coerced or uncoerced, between offenders and staff, is against the law,” noted Doug Garrison, Communications Chief for Indiana’s prison system.

Also, in one case, a prison chaplain engaged in nonconsensual abusive conduct involving another staff member. In October 2005, a female California prison worker who was sexually harassed by a Muslim chaplain prevailed in a lawsuit filed against state prison officials.

Sallie Mae Bradley, a licensed clinical social worker at Corcoran State Prison from August 2000 to October 2000, was employed by National Medical Registry, Inc., which provided temporary contract services to the California Department of Corrections and Rehabilitation (CDCR). Bradley was assigned to the Substance Abuse Treatment Facility (SATF) at Corcoran, where she evaluated prisoners, prepared treatment plans and provided therapy.

On September 13, 2000, Bradley complained to prison officials that Omar Shakir, 48, a CDCR Muslim chaplain, “was stalking her at home and staring at her at work.” She stated that even after

she made it clear that she had no interest in a romantic relationship with him, he engaged in a pattern of inappropriate behavior and harassment that included “knocking on [her] door at 4:00 a.m., making sexually suggestive comments, groping her, and leering at her in a way that made her extremely uncomfortable.”

Soon after filing a complaint, Bradley was terminated from her position at SATF. Bradley then sued Shakir and CDCR officials in state court. In October 2005, a jury found in her favor on sexual harassment and retaliation claims, awarding \$439,000 in damages.

The superior court granted the defendants’ motion for judgment notwithstanding the verdict on Bradley’s retaliation claim and vacated the \$50,000 award for that claim, for a net verdict of \$389,000. She was also awarded \$305,000 in attorney’s fees. See: *Bradley v. Shakir*, Superior Court of Kings County (CA), Case No. 01-C-2235.

On January 17, 2008, the California Court of Appeal for the Fifth District upheld the jury’s verdict and reinstated the award for the retaliation claim, finding that “Shakir was engaged in classic stalking behavior, terrorizing, intimidating and humiliating Bradley and taking full advantage of his free access to her at work to accomplish his inappropriate goals,” and that the CDCR did nothing to stop his sexual harassment.

The appellate court noted that Shakir had been fired from the CDCR on June 13, 2001 after he threatened a warden and other prison officials; there was also evidence that “Shakir had prior criminal convictions known to [CDCR] when they hired him and that he had been disciplined on several occasions for providing contraband to the inmates, for being rude to an officer, and for failing

to inform his supervisor of his location.” See: *Bradley v. California Dept. of Corrections and Rehabilitation*, 158 Cal. App.4th 1612, 71 Cal.Rptr.3d 222 (Cal. App. 5 Dist. 2008).

### Some Accusations Lead to Acquittals

Sometimes, despite credible allegations of sexual abuse involving prison and jail chaplains, criminal charges result in acquittals or overturned convictions. Factors that contribute to such outcomes include jurors not crediting the testimony of prisoners due to their criminal records, the belief that clergymen would not engage in such egregious sexual misconduct, and legal technicalities.

Such was the case with jail chaplains in Texas and New Hampshire.

On April 30, 1999, Freddie E. Wier, 61, the head chaplain of the jail in Harris

**CONVERT YOUR  
POSTAGE STAMPS**  
to MONEY ORDERS, WIRE  
TRANSFERS, PACKAGES

**WE PAY THE HIGHEST  
REIMBURSEMENT RATES**

**COMPLETE OR PARTIAL  
BOOKS, STRIPS, OR SHEETS  
SINGLE STAMPS ACCEPTED  
24-HOUR TURNAROUND**

**See Our Ad on Back Cover  
CLN, Box 687, Walnut CA 91788**

**or Visit Our WEBSITE:  
cash4urStamps.com**

## EXECUTIVE CLEMENCY

**For Info. On Sentence Reduction through  
Executive Clemency:**

**NATIONAL CLEMENCY PROJECT  
8624 CAMP COLUMBUS ROAD  
HIXSON, TENNESSEE, 37343  
(423) 843-2235**



**(35-Years of Clemency & Parole Assistance)  
(Transfers Under The Int’l Prisoner Treaty)**

## INMATE E-MAIL AND INTERNET SERVICE

\*\*\*\*\*  
Finally an affordable service designed for inmates to be able to communicate with the outside world electronically and request info from the Internet.

**E-MAIL SERVICE FEE:**

**\$15.00 A MONTH / \$30.00 FOR 3 MONTHS**

**INTERNET FEE: up to 100 pages \$10.00**

**Send a S.A.S.E. for a copy of our Outline of Services  
and Application to:**

**Leonard’s Mom Enterprises LLC  
PO Box 5415, Apache Junction, AZ 85178**

## Chaplain Sexual Misconduct (cont.)

County, Texas, was charged with official oppression and illegal sexual contact. He was accused of fondling, digitally penetrating and performing oral sex on a female prisoner in 1997. [See: *PLN*, July 2002, p.15; Nov. 1999, p.26].

According to a federal lawsuit filed by jail prisoner Olga Lydia Paz, Wier had encouraged her to engage in sexual acts in exchange for buying gifts for her son. Paz accused the chaplain of fondling her breasts and inserting his fingers into her vagina while she wrapped the gifts. She said she was "very confused by what Chaplain Wier had done to me. I had looked to him for the spiritual help I needed and he took advantage of my confusion and vulnerable position."

Court documents stated that "[b]oth Paz and Wier were given polygraph examinations regarding the events that transpired in the summer of 1997. Paz's polygraph test result indicated that she was 'Strongly NDI [No Deception Indicated],' while Wier's indicated that deception was 'strongly indicated.'"

During an investigation into the accusations against Wier, jail officials found that "prior Personnel Affairs/Internal Affairs cases involving complaints of sexual misconduct against Chaplain Freddie Wier" had been voiced by three other female prisoners – Mary Bernard, Villette Rochford and Diana Rocha. They alleged sexual acts that included being fondled by the chaplain and performing oral sex on him. Another Harris County prisoner, Bridget Storm, later came forward and claimed she had been sexually abused by Wier, too.

Wier's first trial on the sexual misconduct charges ended in a mistrial. He was acquitted at a second trial in July 2000, after his attorney told the jury that even if they believed "the convict" who said she had been sexually abused by Wier, they could not find him guilty because he was an independent contractor at the jail and not a public employee. Charges were not filed in regard to Wier's alleged sexual misconduct with other female prisoners, as the statute of limitations had expired.

Paz's federal civil suit went to a jury trial in July 2001, which found in favor of both Wier and Harris County, and she

was ordered to pay \$1,718.68 in the defendants' costs. See: *Paz v. Wier*, U.S.D.C. (S.D. Texas), Case No. 4:99-cv-01645.

In New Hampshire, Chaplain Ralph Flodin was hired in July 2006 as a part-time spiritual services coordinator for the Strafford County Jail. In that capacity it was his duty to coordinate and oversee religious activities at the facility, administer to the spiritual needs of prisoners and staff, and conduct services such as Bible study groups.

After a jail guard saw a 24-year-old female prisoner crying because she was upset about being in a car accident that killed her friend, she was referred to one-on-one counseling with Flodin.

At their first meeting, Flodin discerned the prisoner was "very frail-looking and shaken." He told her, "I got a feeling that you're hurting very deeply." Because Flodin, 72, appeared to "really care" about her and talking to him made her "feel good," the woman met with the chaplain from 20 to 25 times over a nine-month period.

During the course of their meetings, Flodin and the prisoner allegedly "engaged in sexual acts with one another." Flodin admitted to deputies in a recorded confession that he had sexually touched the woman and kissed her, which was "wrong."

The chaplain was indicted, and a jury found him guilty of two counts of sexual assault and aggravated felonious sexual assault. At sentencing, Flodin claimed the prisoner was the aggressor and the deputies had coerced him into confessing.

His attorney, Stephen Brown, said Flodin was not the kind of person who deserved to serve time. "Is this the type of man that needs to go to state prison with those type of people?" Brown asked the court.

The prosecutor apparently thought so. "Sadly, what we have is another instance when someone within the jail community has used his or her authority to coerce sexual favor," stated County Attorney Tom Velardi.

The trial court sentenced Flodin to 2-10 years in prison on September 5, 2008. [See: *PLN*, May 2009, p.1]. However, the New Hampshire Supreme Court reversed his conviction in November 2009, as there was no evidence that the chaplain was providing "therapy" to the female prisoner at the time the sexual abuse occurred, as required by the elements of the criminal statute.

## Prisoner Rights Attorney CHARLES CARBONE, ESQ.

*"Every case I take is given compassionate, thorough and vigorous representation with one goal in mind – Justice for the Incarcerated."*

- Charles Carbone

*Personally and professionally dedicated to fighting for prisoner rights and human rights for California prisoners and their families.*

Charles represents prisoners in California's worst prisons on conditions of their confinement, including (but not limited to):

- ❖ Parole Lifer Hearings
- ❖ En banc & Rescission Lifer Hearings
- ❖ State & Federal Appeals of Parole Denials
- ❖ State & Federal Appeals of Criminal Convictions
- ❖ Indeterminate Gang Validations for SHU Prisoners
- ❖ Appeals of CDC 115s

15 years of experience in prison law  
(California cases ONLY)

For life inmate subscriptions to Quarterly  
**Parole Matters Newsletter**  
Please send \$15/year for inmates or  
\$25/year for family members

PO Box 2809  
San Francisco, CA 94126  
(415) 981-9773  
[www.prisonerattorney.com](http://www.prisonerattorney.com)

“However inappropriate the sexual conduct may have been, the charged sexual acts did not occur within the context of a ‘therapy’ relationship” as required by the law under which Flodin was convicted, the Supreme Court wrote. See: *New Hampshire v. Flodin*, 159 N.H. 358, 986 A.2d 470 (N.H. 2009).

### Prisons a Dumping Ground for Abusive Clergy?

In recent years there have been a number of high-profile cases involving sexual abuse by religious officials, particularly in the Catholic Church. The evidence in those cases found that church leaders who knew about accusations of sexual misconduct by priests would often move them from one parish to another as allegations arose.

There is also anecdotal evidence that abusive clergy were sent to prison – not to serve time, but to serve as chaplains. Presumably this was done so they could no longer molest members of their congregations. After all, the typical adult male correctional population does not allow many opportunities for sexual misconduct involving women or children, who were frequently the preferred victims of abusive church officials.

For example, on August 8, 2002, the Rev. John P. Blankenship, 65, retired from his position as chaplain at the Federal Correctional Complex in Petersburg, Virginia after his involvement in child sexual abuse decades earlier became known.

According to a diocese spokesman, Blankenship had “sexual encounters” with a 14-year-old male parishioner in

1982; he acknowledged his wrongdoing, apologized to the victim and subsequently paid for the boy’s college education and counseling.

Blankenship became a prison chaplain in 1983 – the year after the sexual abuse occurred. The church reportedly allowed Blankenship to continue working at the prison because he “had no contact with minors” in that position, according to an article in the *Richmond Times Dispatch*.

Blankenship pleaded guilty in January 2003 to four counts of sodomy for sexually abusing his 14-year-old victim two decades previously; he admitted he had “made a tragic mistake,” and was placed on indefinite supervised probation. He will not spend any time in prison – beyond the time he served as a prison chaplain, that is.

His victim, Robert G. Presson, who agreed to make his identity public, supported the plea agreement. “Mr. Blankenship’s acceptance of his responsibility for the crimes he perpetrated some 20 years ago was a necessary step enabling me to go forward with my life,” he said.

In October 2005, the Rev. James E. Jacobson, 80, a Jesuit priest

who had served as a prison chaplain in Oregon for 25 years, was accused in a lawsuit of sexually assaulting two women when he worked in remote Eskimo villages in Alaska decades earlier. One of his victims was allegedly assaulted in 1965, and the church removed Jacobson from her village after she became pregnant. Another of his victims was sexually abused in 1974-75 and also became pregnant.

In a deposition, Jacobson admitted that he had had sex with at least seven women when he served as a priest in Alaska in the 1960s and 1970s; he also said he used church funds to pay for prostitutes and knew of two other children he had fathered.

The lawsuit was filed by one of the women he had impregnated and two men

PRISON INMATES.COM

Prison Pen Pal Service

---

SATISFACTION Since 2000 GUARANTEED

All the Services Everyone Else Provides  
Plus The One's They Don't.

<p><b>More Profile For Your Money:</b> 300 Word Profile 2 Photos Included Pen Pal Addresses sent twice a month</p> <p><b>Keep Readers Coming Back:</b> Post 150 word blogs as often as you like for \$5 each to keep people coming back to read your page.</p> <p><b>Shoutouts to Cheer You Up:</b> Messages of goodwill sent to you along with your potential pen pal addresses.</p> <p><b>Get A Free Brochure:</b> Send a self addressed stamped Legal Size envelope (Size #10) to the address below. We cannot send brochures to STATE inmates in FL, MO, or PA.</p>	<p><b>Still the Same Affordable Price:</b> \$40 - 1 Year Annual Ad \$30 - Annual Ad Renewal \$25 - 1/2 Year Ad</p> <p><b>Got Corrlinks or your own Email!:</b> We email all the potential pen pal addresses and Shoutouts that you receive usually the the same day as we receive them.</p> <p><b>Quote From A Member:</b> "I've been on almost every pen pal site since 1995 and I believe that your website is by far the best. I get 6-7 letters every day I get way more mail from Prisonmates than any other website I have been on." Christopher M. Lewisburg PA</p>
---	--

Prisoninmates.com - PO BOX 6560 - Pahrump NV 89041-6560

### Support Prison Legal News with these beautiful gifts!

CALL **802-257-1342**, MAIL ORDER OR USE WEB FORM  
[HTTP://WWW.PRISONLEGALNEWS.ORG/](http://www.prisonlegalnews.org/)



### Hand Embroidered Greeting Cards

Made by women prisoners in Cochabamba, Bolivia. Each card is individually made, no two are identical. The prisoners are paid a fair wage for each card and keep 100% of the pay to support themselves and their families. Local fair trade non-profits in Bolivia supply the materials for the cards. **\$6.**

**Hand Made Hemp Tote Bag** All natural hemp tote bag hand made in Vermont with the Prison Legal News logo on both sides, in red and black. Great for carrying books, groceries, and more! Stamped on the inside that no sweatshop, prison or child labor was used in its manufacture. **\$12.**

\$6 shipping and handling for orders under \$50.

## Chaplain Sexual Misconduct (cont.)

who said Jacobson was their father based on DNA paternity tests. They requested damages for back child support, emotional distress, loss of self-esteem and other injuries. Jacobson sought to dismiss the suit, arguing that his vow of poverty prevented the plaintiffs from collecting compensation from him.

A second lawsuit was filed in 2006 by a woman who accused Jacobson of raping her three times in 1967 when she was 16 years old. That victim said the priest told her that having sex with him would bring her closer to God.

The claims against Jacobson, 11 other priests and three church volunteers accused of sexual abuse, involving a total of 110 plaintiffs, all Alaskan natives, were resolved by the Society of Jesus, Oregon Province in November 2007 with a \$50 million global settlement. See: *Doe v. Jacobson*, Superior Court of Bethel (Alaska), Case No. 4BE 05345-CI.

Jacobson had previously received the Chaplain of the Year Award from the Salvation Army in 2003 and the American Catholic Correctional Chaplain Association's Maximilian Kolbe Award. He was sent to Oregon and assigned to be a prison chaplain after leaving Alaska; he retired from his chaplaincy position in 2005.

"We are saddened that one of our members has failed to live the life he promised, and we hope that we might find a way to reconcile with those whose lives have been affected by this tragic failure," stated the Rev. John D. Whitney, a supervisory church official in Portland, Oregon.

Another priest who committed acts of sexual abuse and was then assigned to work as a prison chaplain was Thomas Harkins. Harkins was accused of molesting two young girls in the 1980s, one while he was assigned to the St. Anthony of Padua Church in Hammononton, New Jersey. The church paid a total of \$195,000 to settle lawsuits in both abuse cases.

In 1993, Harkins was sent to the Cathedral of the Immaculate Conception in Camden, New Jersey; according to a report in the *Philadelphia Inquirer*, "the parish apparently was chosen because it had few families." The church then assigned Harkins to work as a prison chaplain in 2000.

"He should not have been returned to

ministry," acknowledged Camden Diocese spokesman Andrew Walton. "Law enforcement should have been notified. This would be a serious and inexcusable failure on the part of the diocesan administration to fulfill its obligation to the community." While the church thought that Harkins was unsuitable to minister to members of the public, he was evidently suitable for prisoners.

In California, Matthew Bleecker, 25, sued the dioceses of San Bernardino and San Diego in October 2004, claiming he had been sexually molested as a child by the Rev. Michael Bucaro, a Catholic priest. According to the lawsuit, the abuse began when Bleecker was about five years old.

Since 1983, Rev. Bucaro, 52, had been assigned as a prison chaplain at the California Institute for Men, a state prison in Chino. Bucaro countersued Bleecker, who was himself in prison serving a two-year sentence, claiming slander. The slander suit was condemned as "vicious and un-Christian legal hardball tactics" by a victims' advocacy group.

"Victims already have enormous feelings to overcome: guilt, shame and blame," noted Mary Grant, a regional director for Survivors Network for those Abused by Priests (SNAP). "For victims who may be thinking of taking that courageous step of reporting a crime to law enforcement or exposing their perpetrator, this can scare them back into silence."

Bucaro resigned from his prison chaplain position, saying he was concerned for his safety. The church settled Bleecker's lawsuit in January 2008 as part of a global settlement involving other cases. See: *Doe v. Roman Catholic Bishop*, Superior Court of San Bernardino (CA), Case No. SCVCC119080.

Also in California, the Rev. Anthony Ross, 56, who oversaw the Santa Rosa diocese's detention ministry, which included both adult and juvenile prisoners, was suspended and banned from ministering at local correctional facilities in April 2002.

Ross' suspension occurred after he was accused of molesting a 15-year-old boy twenty years earlier when he served as a priest at the Cathedral of St. Raymond in Joliet, Illinois. He apologized to his victim in a written statement, saying, "I have caused pain to the young man from Illinois and his family because of my actions in the early 1980s, for which I am profoundly sorry."

Ross had reportedly sent letters to his victim, including a valentine with the message "For a special boy," and requests for nude photos, after he entered a treatment facility for priests who engaged in child sexual abuse, according to a lawsuit filed against Ross and the Roman Catholic Diocese of Joliet.

When Bishop Joseph Imesch was confronted with Ross' sexual misconduct in 1993, he transferred Ross to Santa Rosa to serve in the jail ministry. The lawsuit against Ross and the Diocese was voluntarily dismissed in December 2006 under undisclosed terms. See: *Doe v. Imesch*, Will County Circuit Court (IL), Case No. 2006L-135.

A prison chaplain with the Nevada Department of Corrections, James F. Kelly, 70, retired in February 2003 after being placed on leave by the Catholic Church when he was implicated in a lawsuit alleging sexual abuse at Father Flanagan's Boys' Home, where he had worked in the 1970s.

According to the suit, filed by Arizona resident James Duffy, Kelly was one of two church members who molested him at the Boys' Home when he was a child. Kelly was not named as a defendant in the lawsuit, which was eventually dismissed in January 2006.

Kelly said he "absolutely, vehemently" denied the sexual abuse accusations, and had decided to retire because he did not want to remain on leave.

According to the *Associated Press*, Kelly previously had been accused of sexual misconduct when he was a priest in New York in 1983 and 1984. The church investigated and determined that Kelly's conduct did not constitute sexual abuse; however, he was ordered to participate in therapy. He later went to work for the Nevada prison system, where he served as a chaplain for seven years.

Lastly, Pastor Alan R. Sienkiewicz, 60, worked as a volunteer chaplain at the Schuylkill County Prison in Pottsville, Pennsylvania for almost a decade, until he was arrested in October 2008 and charged with multiple felony counts of indecent assault. He was accused of repeatedly molesting a 14-year-old girl.

The sexual abuse allegedly occurred at Sienkiewicz's home, at a church parsonage and in a truck that he owned. The chaplain was released on bail and suspended from his position at the prison. He never went to trial on the charges, though, as he died on July 4, 2009.



## Conclusion

Sexual abuse of prisoners by members of the clergy can only occur in situations where silence and secrecy are allowed to prevail, and where insufficient safeguards are provided by prison and jail officials. It is tragic when religious leaders responsible for guiding prisoners to the light of their faith instead misuse their positions for their own dark sexual desires. It is also tragic when church officials use prisons and jails as dumping grounds for clergymen who engage in sexual misconduct.

“This kind of behavior profoundly diminishes the ability of chaplains to help create prisons and jails that are humane, lift people out of crime and preserve a person’s right to freely worship while

incarcerated,” stated Rev. Dwight Cuff and Tom O’Connor, Ph.D., with the International Prison Chaplains’ Association.

Hopefully, with the introduction of new standards for the prevention of sexual abuse in correctional facilities under the Prison Rape Elimination Act (PREA), there will be fewer incidents of sexual victimization by prison and jail chaplains. As of August 2010, however, the PREA standards had not been promulgated by the U.S. Attorney’s Office, it does not appear they will be in the near future [See: *PLN*, March 2010, p.22] and the standards were significantly watered down after opposition from prison officials.

In the meantime, prison and jail chaplains who are inclined to prey on prisoners rather than pray with them should ask

themselves, “what would Jesus do?” The answer should be obvious: Thou shalt not rape or sexually abuse members of your incarcerated congregation. Or anyone else, for that matter. 🙏

Sources: *The Oregonian*, *Tribune-Democrat*, *WTSP-TV*, *The Telegraph*, *Herald-Leader*, *www.fosters.com*, *Dallas Morning News*, *Associated Press*, <http://lubbockonline.com>, *www.firstcoastnews.com*, *The Daily Item*, *www.justdetention.org*, *Fort Worth Weekly*, *Statesman Journal*, *www.mcall.com*, *Richmond Times Dispatch*, *Las Vegas Review-Journal*, *Spokane Review*, *www.adn.com*, *Philadelphia Inquirer*, *The Press-Enterprise*, *San Bernardino Sun*, *www.bishop-accountability.org*, *Chicago Tribune*, *www.pressdemocrat.com*, *www.news-miner.com*

### LAW OFFICES OF ROBERT E. YOUNG

SANTA BARBARA OFFICE 7127 Hollister Ave, Suite 25A-332 Santa Barbara, CA 93117-2317  
Phone: (805) 968-1814 Fax: (805) 968-1814 lawofficesrey@gmail.com

California State and Federal law practice. Law firm with attorneys and criminal law specialist with over one hundred years of combined experience, including a former Assistant U.S. Attorney, publisher of California Resource Manual (1994), "For The Prisoner" Newsletter, and involved in over forty-eight (48) combined published cases, on the cutting edge of criminal law, appellate law, parole law, civil rights and prisoner rights litigation. Expertise in AEDPA, ADA, PLRA, RLUIPA, TRANSFERS, DISCIPLINARY, PRISON CONDITIONS, PAROLE BOARD [BPH & USPC], CDCR, FBOP, MEDICAL AND APPELLATE/WRIT REPRESENTATION.

Contact us for information on our retainers. We work for our clients and do NOT ignore them. Payment plans available. We will work with you and in some cases allow you to pay as we go to insure you get what you pay for. Hourly fees and costs for appearances billed accurately monthly. You will receive a signed retainer agreement setting forth exactly what we will do for you, a specific timeline for filing, a monthly statement and no hidden costs or fees not fully explained in our retainer agreement.

Retainer amounts can vary depending on complexity of case

- \$1000 MOTION FOR APPOINTMENT OF COUNSEL TO RESEARCH MOTION FOR DNA TEST [PC § 1405]
- \$3000 MOTION FOR DNA TESTING AFTER INVESTIGATION
- \$3000 MOTION FOR POST CONVICTION DISCOVERY [PC 1054.9] [LWOP's ONLY]
- \$5000 SINGLE ISSUE PETITIONS FOR WRIT OF HABEAS CORPUS [PC §1473, et. seq.]
- \$10000 MULTIPLE ISSUE PETITIONS FOR WRIT OF HABEAS CORPUS [PC §1473, et. seq.]
- \$7500 BPH PAROLE DENIAL PETITION FOR WRITS OF HABEAS CORPUS SUPERIOR COURT
- \$10000 BPH PAROLE DENIAL PETITION FOR WRITS OF HABEAS CORPUS [THRU CA SUPREME COURT]
- \$10000 FEDERAL DISTRICT COURT PETITION FOR WRIT OF HABEAS CORPUS [28 U. S.C. §2254]
- \$5000 CDCR SINGLE ISSUE WRITS [DISCIPLINARY - CONDITIONS-TRANSFER-MEDICAL]
- \$5000 FBOP & CDCR WRIT CHALLENGES TO SENTENCE CALCULATIONS
- \$5000 CDCR PETITION FOR WRIT OF MANDATE TO SUPERIOR COURT
- \$5000 CDCR DENIAL OF VISITATION WITH CHILD CHALLENGES [MANDATE OR JUVENILE COURT]
- \$3000 FBOP & CDCR TRANSFER REQUEST WITH AGENCIES
- \$1000FBOP FOIA FORMAL REQUESTS FOR RECORDS FEDERAL AGENCIES
- \$1000 CDCR CALIFORNIA PUBLIC INFORMATION ACT REQUESTS FOR STATE RECORDS
- \$5000 FBOP & CDCR MEDICAL REQUESTS FOR EXAMINATION-TREATMENT-OUTSIDE DOCTOR
- \$3000 PAROLE APPLICATIONS TO BPH DETAILING REASONS TO GRANT [FILED PRE-HEARING]
- \$7500 REPRESENTATION AT PAROLE HEARINGS WITH PAROLE APPLICATION INCLUDED
- \$10000 STATE OR FEDERAL CIVIL RIGHTS ACTIONS [42 U.S.C. §1983]
- \$10000 RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT COMPLAINT [42 USC 2000ec]
- \$15000 APPEALS TO THE CALIFORNIA COURTS OF APPEAL [DIRECT APPEAL AVERAGE SIZE RECORD]
- \$25000 COMBINED DIRECT CALIFORNIA APPEAL WITH CONSOLIDATED HABEAS CORPUS PETITION
- \$5000 PETITION FOR REVIEW TO THE CALIFORNIA SUPREME COURT
- \$15000 APPEALS TO NINTH CIRCUIT COURT OF APPEALS
- \$15000 PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

# Clergy Who Advocate for Prisoners Barred from Prisons and Jails

As described in this month's cover story, prison and jail chaplains accused of sexual misconduct often resign, retire, are fired or are sometimes prosecuted. In other cases, though, well-meaning clergy members who seek to help prisoners have been locked out of jails and prisons by staff who don't appreciate their advocacy efforts.

Such was the case with Gail Hanson, a volunteer chaplain for eight years at the Cameron County Jail in Brownsville, Texas. Hanson, 61, complained about conditions at the facility for women prisoners – such as poor food, cold temperatures and lengthy pre-trial detention. In response, instead of addressing those issues, in March 2008 Cameron County Sheriff Omar Lucio prohibited the chaplain from visiting the jail.

Chief Deputy Gus Reyna, Jr. later told a local newspaper that Hanson's complaints on behalf of prisoners might "even rise to the level of threatened security breach," stating, "While spiritual guidance may be helpful, personal involvement and advocacy for inmates is not within the acceptable limits of spiritual guidance and counseling, and may foment unnecessary and counter-productive unrest among the jail population."

Some chaplains, however, including Hanson, realize that it is insufficient to address prisoners' spiritual needs if their physical needs remain unmet. For example, Hanson would complain when women prisoners did not have sufficient toilet paper, sanitary napkins and underwear, or had to sleep on the floor; she helped them communicate with their families and even took one prisoner into her home who needed a place to stay as a condition of her release.

Some would describe Hanson's actions as living her faith; Cameron County jail officials deemed her advocacy efforts a potential security problem.

"Preventing someone from volunteering their time to help rehabilitate prisoners because she was critical of the county is outrageous," said Scott Medlock, director of the Prisoners' Rights Program of the Texas Civil Rights Project (TCRP). "Mrs. Hanson should be commended for her dedication to ministering to the women held in the jail, not punished for speaking the truth about what she saw behind prison bars."

With representation by the TCRP,

attorney Edward A. Stapleton and the law firm of King and Spaulding, Hanson sued Cameron County on First Amendment grounds, seeking to overturn the sheriff's ban that prevented her from ministering to prisoners. She is not seeking monetary damages.

"This is an important test case," said Medlock, "both because of its free-speech implications and also because not many like this have been litigated. And that is because most sheriffs are not abusing their power the way Sheriff Lucio is. This case tests the power of a sheriff to retaliate against those who speak out."

Hanson's lawsuit, filed in state court and later removed to federal court, is still pending. On January 1, 2010, the district court denied the county's motion to dismiss her complaint. See: *Hanson v. Lucio*, U.S.D.C. (S.D. Tex.), Case No. 1:09-cv-00202.

In a similar incident in 2006, volunteer chaplain Lance Voorhees was barred from the Taylor County, Texas jail after he complained about mistreatment of prisoners. He filed a complaint with the Texas Commission on Jail Standards to no avail. According to Adam Munoz, the Commission's executive director, sheriffs can ban volunteer chaplains at their discretion.

In Iowa, the Rev. Val Peter, a former executive director of Boys' Town (formerly Father Flanagan's Boys' Home), was barred from visiting the Iowa Correctional Institution for Women. His offense? While visiting a prisoner in October 2009, the 75-year-old priest took written notes during the meeting, as was his usual practice. As he was leaving a prison guard demanded that he surrender the notes because he had written down another guard's name; instead, Peter tore off the note with the name, put it in his mouth and ate it – an act that he described as "a prophetic gesture," citing Ezekiel 3.

His visitation privileges were suspended for a year, a decision that was upheld by prison officials. "Keep in mind that visiting is a privilege, and it can be terminated for good cause at any time," remarked Iowa Dept. of Corrections spokesman Fred Scaletta.

In July 2010, the Rev. A.J. Guyton, 73, a Baptist pastor, was banned from the Peoria County Jail in Illinois. Sheriff Mike McCoy confirmed that Guyton was not welcome at the facility, at least on a temporary basis, after the pastor made

uncomplimentary remarks about guards during a sermon and encouraged prisoners to write petitions expressing their concerns. Guyton had ministered at the jail for more than 25 years.

"We felt some of the reverend's comments were not religious in orientation or nature and do not follow his charge, which is to preach the gospel and help inmates with their religion," said Sheriff McCoy.

Rev. William B. Pickard, 63, a Catholic priest, has been barred from visiting prisoner Nicholas Pinto, who was the victim of a vicious assault by another prisoner at the Lackawanna County Prison in Pennsylvania in August 2010. Four months earlier Pickard, an advocate for prisoners at the facility, had informed members of the prison board that Pinto previously had been assaulted and was "a likely target" for future attacks.

Rev. Pickard was not allowed to visit Pinto after he was hospitalized in critical condition, because guards claimed he had pushed them. Pickard said he merely brushed by them. "It would be better if he didn't come" to visit prisoners, said Warden Janine Donate. The assault on Pinto, which occurred in the jail's protective custody unit, resulted in attempted murder charges against another prisoner.

Lastly, the *Associated Press* reported on July 21, 2010 that when part-time pastor Gerald Otahal arrived at the Kentucky State Penitentiary to pray with a prisoner on death row, he was turned away. Kentucky prison officials had decided to strictly adhere to a policy that limits visits by members of the clergy.

Referring to the prisoner he ministered to, Otahal said, "He has no outlet now. He has no one to pray with. No one to talk to him about the hereafter. Good grief. I'm just astounded they took this away."

The Kentucky Department of Corrections moved to enforce the policy after a pastor wanted to minister to more than one death row prisoner. Religious advisors now have to be one of three people on a prisoner's visitation list before they are allowed to visit.

"You have a right over their life," Otahal said of prison authorities. "You don't have a right over their soul." He also noted that pastors should be welcomed in state prisons, so they can "talk to [prisoners] about how to live a better life."

Apparently, though, when it comes to allowing members of the clergy to

visit with and minister to prisoners, there is no higher power than prison and jail officials. ■

Sources: *Texas Observer*, [www.wishtv.com](http://www.wishtv.com), [www.omaha.com](http://www.omaha.com), [www.texascivilright-project.org](http://www.texascivilright-project.org), *Brownsville Herald*, [www.chicagotribune.com](http://www.chicagotribune.com), [www.pjstar.com](http://www.pjstar.com), *Associated Press*, [www.thetimes-tribune.com](http://www.thetimes-tribune.com), [www.citizensvoice.com](http://www.citizensvoice.com)

## Federal Court Finds Nation of Islam Publication Not Racially Inflammatory

by David M. Reutter

On March 31, 2010, a Louisiana U.S. District Court held that the denial of access to a religious publication based solely on the inclusion of a section called "The Muslim Program" was a violation of the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA).

The court's ruling came in a lawsuit filed by Louisiana prisoner Henry Leonard, who was incarcerated at the David Wade Correctional Center (DWCC). Leonard had been a member of the Nation of Islam (NOI) since 1985. He subscribed to *The Final Call*, the NOI's official publication, and first began receiving it at DWCC in October 2005.

Beginning on June 14, 2006, DWCC started rejecting *The Final Call* because it contained racially inflammatory material that was considered a threat to security. Of greatest concern to prison officials was "The Muslim Program" on the last page of each issue, which includes statements about "What Muslims Want" and "What Muslims Believe." Leonard filed suit over the DWCC's censorship policy.

The district court held that Leonard's claims were very similar to those raised in *Walker v. Blackwell*, 411 F.2d 23 (5<sup>th</sup> Cir.

1969). At issue in that case was *Muhammad Speaks*, an NOI publication that was the precursor to *The Final Call*. "The Muslim Program" had appeared in both publications since 1965. In *Walker*, the Fifth Circuit found that writing "arguably much more controversial than 'The Muslim Program'" was not racially inflammatory.

As such, the district court said it must find likewise in Leonard's case. It did so while applying the four-prong test in *Turner v. Safley*, 482 U.S. 78 (1987). The court held that DWCC's policy requiring rejection of publications that contain racially inflammatory material did not itself violate the Constitution, but its implementation as applied to Leonard was in conflict with the First Amendment.

DWCC was unable to provide an example of violence or unrest in an institutional setting that could be attributed to *The Final Call*, and the court found that the "wholesale prohibition of the publication is simply too broad when balanced with the Plaintiff's right to the free exercise of his religion."

There was no alternative means for Leonard to practice his religious beliefs, as DWCC does not provide NOI materials and *The Final Call* is the "primary organ

to propagate [the NOI] religion."

As Leonard had received the publication in the past with no negative impact on guards or other prisoners, the court found there would be minimal impact by allowing him to continue receiving it. Finally, DWCC policy already requires staff to review *The Final Call*. Continuing to review the publication for inflammatory material other than "The Muslim Program" was a ready alternative that "is not an enormous administrative burden when compared with the Plaintiff's ability to practice and grow in his religion of choice."

Accordingly, the district court found the censorship policy at DWCC, as applied, violated Leonard's First Amendment rights. The court also held that the policy violated RLUIPA because it was not the least restrictive means to further a legitimate governmental interest. Leonard's motion for summary judgment was therefore granted and prison officials were ordered to let him receive future issues of *The Final Call*.

Leonard was represented by Shreveport attorney Nelson W. Cameron and the ACLU of Louisiana. See: *Leonard v. State of Louisiana*, U.S.D.C. (W.D. Louisiana), Case No. 5:07-cv-00813-DEW-MLH; 2010 WL 1285447. ■

### To all inmate workers involved in the Gulf Oil Spill Clean-up.

Loevy & Loevy, a civil rights law firm, would like to pursue claims on behalf of inmate workers involved in shore protection and oil clean-up work. For a free initial evaluation, please send a detailed statement of your work hours, the conditions of work, wages (if any), name of company to which you are assigned to, training provided, etc. for us to evaluate your case. All information received will be kept confidential. Send your statement to:

Attorney Michael Kanovitz  
Re: Oil Spill Clean-up Efforts  
312 North May Street, Suite 100  
Chicago, IL 60607  
email: [loevylaw@loevy.com](mailto:loevylaw@loevy.com)  
telephone: 312-243-5900

This is an advertisement for legal services.

### PRISONER ASSISTANT

REHABILITATION AND REENTRY PLANNING  
Your concierge service

#### Banking for Prisoners Program

Become a client by opening a personal checking account today and take advantage of the full range of services we offer. **If it can be done, we will do it.**

Prisoner Assistant  
482 Summit Wind Drive  
PO Box 704  
Lake Harmony, PA  
18624-0704  
[prisonerassistant.com](http://prisonerassistant.com)

#### Most Requested Services

Money orders, savings accounts, CDs, credit development, UPS mailboxes, Go phones, internet purchases: books, magazines, flowers, gifts etc... internet research, email, social networks, people locator, Powerball, Photo reprints, resume & logo creation, parole preparation, etc..

#### Send a SASE for a brochure

OR

**Send \$4.50 for an Application Package**  
Includes introduction letter, applications, agreements, brochure and full color 24 + page catalog/ magazine, frequently asked questions, information and directions, POA, request forms, price list and newsletter.

Send money order, bank, cashier or institutional check made payable to Prisoner Assistant with your request.