

Report to Summer Sessions 2019 on the Green Haven Prison Preparative Meeting Lawsuit

At Summer Sessions 2018, Friends approved a minute (2018-7-46) “to support any legal action initiated by individual members of the Green Haven [Prison] worship group against the NY [Department Of Corrections and Community Supervision] [“DOCCS”] in pursuit of their religious rights under the Religious Land Use and Institutionalized Persons Act.” [“RLUIPA”]

BACKGROUND

Friends will recall from prior reports that Green Haven Prison Preparative Meeting (“Green Haven Meeting”) is under the care of Poughkeepsie Monthly Meeting and is part of Nine Partners Quarterly Meeting. For approximately 35 years, Friends in Nine Partners Quarter held Quarterly Meetings in Green Haven CF. These gatherings generally took place on Saturdays from around 10 am to 3 pm, and included worship, program, business, food and fellowship.

Every year DOCCS publishes its annual “Religious Holy Day Calendar”, which is applicable to all of DOCCS’s correctional facilities. The page for the Religious Society of Friends states that “The one Protestant Family Event is Pentecost.” Beginning in 2014, Green Haven Meeting through inmate Thaddeus Davis, New York Yearly Meeting and NYYM’s Prisons Committee asked DOCCS to correct that listing by replacing “Pentecost” with “Quarterly Meeting”. DOCCS refused, and argued that the correction was unnecessary because an individual correctional facility can schedule special events which are not listed in the system-wide Calendar.

Shortly thereafter, Green Haven CF officials terminated the Quarterly Meetings that had been held there for over 30 years. Efforts to have them reinstated were rebuffed by DOCCS.

For many years, Green Haven Meeting met three times a week: once for worship; once for

a study group; and once for meeting for worship with a concern for business. In July 2018, DOCCS terminated their meetings for worship with a concern for business.

THE LAWSUIT

The lawsuit was filed in the United States District Court for the Southern District of New York (White Plains branch) on September 18, 2018. The defendants consist of DOCCS and DOCCS officials in Albany and at Green Haven CF who were involved in the refusal to correct to Religious Holy Day Calendar or the terminations of Quarterly Meetings and meetings for worship with a concern for business. The lawsuit asks the Court to order DOCCS to reinstate Quarterly Meetings and meetings for worship with a concern for business at Green Haven CF on the same terms as previously existed. We base this request principally on Friends' rights to practice our faith under the First Amendment to the United States Constitution and under the Religious Land Use and Institutionalized Persons Act, which Congress passed to provide broad protection to the religious freedom of prisoners.

MOTION FOR PRELIMINARY INJUNCTION

In December, the attorneys met with the Judge - Kenneth M. Karas - to discuss the first steps in the litigation. Defendants' counsel had requested permission to make a motion to dismiss the case, but he withdrew or postponed the request when we met with the Judge. We asked Judge Karas for permission to make a motion for a preliminary injunction, which would reinstate Quarterly Meetings and meetings for worship with a concern for business immediately if granted by the Court. Judge Karas gave us permission to make the motion.

On March 29, 2019, we filed the motion for a preliminary injunction, including a 32-page brief or memorandum of law, affirmations by seven Friends (Donald Badgley, Mary Foster

Cadbury, Frederick Dettmer, Frederick Doneit, Yohannes (“Knowledge”) Johnson, Rachel Ruth and Christopher Sammond); and 25 exhibits. The brief and the affirmations will be available on the Yearly Meeting’s website.

Defendants filed their papers in opposition to our motion on May 31, 2019. Among other things, DOCCS argues that (1) they did not cancel Quarterly Meetings at Green Haven CF, but merely moved them to Friday evenings; (2) the terminations of Green Haven Meeting’s programs did not cause a “substantial burden” because they can use their other meeting times to conduct business or a truncated Quarterly Meeting; (3) the termination of Quarterly Meetings was justified by security concerns, in particular, an attempt by a Correction Officer to smuggle marijuana into Green Haven CF, the break out at Clinton CF and a few attempts by non-Quaker visitors to bring “contraband” into the facility; (4) the termination of meeting for worship with a concern for business was justified because it was not a religious program and because of meeting space constraints; and (5) the inmate Friends failed to use and to exhaust DOCCS’s administrative grievance procedure, which may be a prerequisite for them to bring a lawsuit.

On July 12, 2019, we filed reply papers in further support of our motion for a preliminary injunction. These papers consist of supplemental affirmations by Donald Badgley, Frederick Dettmer and Yohannes (“Knowledge”) Johnson; an additional seven (7) exhibits; and a reply brief. The reply brief and the supplemental affirmations will be available on the YM’s website.

We now wait to hear from the Judge. He is likely to call us into court for oral argument of the preliminary injunction motion. Thereafter, he probably will either ask us to present live testimony on any important contested issues or may simply issue a decision on the motion if there are no material disputed issues requiring live testimony.

SETTLEMENT DISCUSSIONS

In March, defendants made a settlement offer. As subsequently revised, they offered to permit Quarterly Meetings on a week night, with food permitted for one Quarterly Meeting a year, where they previously had been held on Saturdays during the day, and to permit Green Haven Prison Worship Group to meet once a month on a weeknight for meetings for worship with a concern for business, where they previously had been meeting every week on Saturdays. My “liaison and oversight committee” for the lawsuit - a group of 20+ Friends and the incarcerated participants in Green Haven Meeting - grappled with how to respond to this settlement offer in a series of conference calls and meetings among the participants in Green Haven Meeting.

Out of this process of discernment came two revelations that I want to share with you, one of the group and one that is personal.

FRIENDS’ DISCERNMENT

As Friends addressed the Department of Corrections’ settlement offer, a pattern to the discernment emerged. Friends at the outset would acknowledge the reasonableness of some element of the settlement offer; the reasons why the change in our practice being proposed by DOCCS might be helpful to DOCCS; and the reasons why we might be able to carry on without that part of our former practice, or with the practice changed to meet DOCCS’s preferences or needs. For example, holding quarterly meetings on weekdays, rather than Saturdays.

As the discernment went deeper, Friends explored how each proposed change in our practice would affect our and the inmates’ experience. That led Friends to consider afresh the reasons for the practice terminated or changed by DOCCS. Out of that re-examination of our practices, time after time, Friends found unity in the discernment that we followed these practices

for good and valid reasons, and that those good and valid reasons continue to be applicable today.

For example, Quarterly Meetings are held on Saturdays because that affords us sufficient time to have a fulsome gathering, including fellowship over food, and because it better enables participation by Friends with jobs or children or who have to travel a long distance to the remote location of Green Haven CF or who are not comfortable or able to drive at night. Green Haven Meeting needs to hold meeting for worship with a concern for business more often than we do, that is weekly rather than monthly, because incarcerated Friends do not have the luxury we enjoy to conduct temporal and spiritual business whenever we have the inclination - if we can overcome the scheduling challenges. They can't call a special meeting for business on short notice. They can't gather in committees or working groups to season business between monthly sessions. They can't hold conference calls.

We can thank the Department of Corrections for forcing us to look anew at why we do some things in our prison ministry the way we do. That reconsideration produced a reaffirmation of the continuing vitality of these practices.

Perhaps even more important, Friends found renewed faith in our practice, in the words of *Faith and Practice* (page 31), "*to speak the truth as we know it, honestly and forthrightly, speaking plainly from our own lives.*" Whether we could carry on under the system proposed by DOCCS isn't the right question. *Faith and Practice* (at page 30) counsels that "*We are called to a genuineness of life and speech that leaves no room for deceit or artificiality.*" If we are to be faithful, we can not pursue a typical litigation settlement negotiation. We can only speak our truth as we know it, test it and reaffirm it.

If, as we like to say, "*This I know experimentally,*" (*Faith and Practice*, page 32) then it

is entirely right that we deeply re-examine the continuing validity of our prison ministry practices at the prompting of the Department of Corrections. And having done so, it is also right that we “*act from the truth of our lives*” (*Faith and Practice*, Page 31); that we tell DOCCS - with “*openness, honesty, and careful speech*” (*Faith and Practice*, page 30) - what we expect and why, subject, of course, to possible new revelations growing out of our continuing experience.

Through this process of discernment, it also became clear that what we really want and will insist upon is a relationship with DOCCS. More than winning any particular order by the Court dictating what DOCCS must allow us, Friends seek dialogue and a common way forward. An active prison ministry requires an active, dynamic working relationship with the corrections system, and at bottom that is what we seek.

This is not a typical settlement approach. So rather than making a traditional settlement “counteroffer”, I invited DOCCS’s attorney to lunch. When we met, I conveyed to him Friends’ appreciation for DOCCS’s reaching out in the hope of finding common ground and a sense of the deep, sustained discernment Friends gave to DOCCS’s settlement offer. I also explained to him that, more than prevailing in court, Friends want to (1) understand DOCCS’s perspective, goals and needs, (2) have DOCCS understand Friends’ (incarcerated and not) perspective, goals and needs, and (3) find common ground with DOCCS that permits us to move forward collaboratively to further both sides’ goals, while respecting both sides’ perspectives and needs. In short, our settlement position or offer is that we want to establish a long-term, close working relationship with DOCCS in Albany and at the correctional facilities which host Friends Worship Groups.

PERSONAL REFLECTION

Prison ministry has been a central part of the practice of the Religious Society of Friends nearly since our founding. (*Faith and Practice* at 52) Indeed, in the words of Wikipedia, “[t]he word ‘penitentiary’ came from the Pennsylvania Quakers’ belief in penitence and self-examination as a means to salvation.” Friends developed the Walnut Street Prison in Pennsylvania in the 1770s; and founded the New York correctional system in the 1790s with Newgate Prison in Greenwich Village and a “progressive” criminal punishment code. Prison Ministry is in our blood.

Prison ministry, however, is exhausting work. DOCCS is supremely arrogant, arbitrary, amoral and unbounded by the law. It can grind you down and it WILL grind you down. Burn out is inevitable. Friend after Friend shared with me their experiences with DOCCS’s arbitrariness and arrogance, and how their prison work was cut off by DOCCS for inadvertent, inconsequential transgressions.

And so I come to you with a message: our prison ministry is in need of support if it is to survive. Green Haven Prison Meeting needs the active care of outside Friends if it is to survive and flourish. If we insist that DOCCS permit Green Haven Meeting to hold weekly meetings for worship with a concern for business, we must also commit ourselves to guide and support those incarcerated seekers, and to participate in their sessions consistently and robustly. If we insist on Quarterly Meetings held over 5-6 hours on a Saturday, we must commit ourselves to prepare for and to participate in them consistently and robustly. We owe that to the inmates, to DOCCS and to ourselves to support, to bolster, to expand the ranks of Friends laboring with this ministry.

One inmate who was deeply involved in the operations of the Green Haven Prison Meeting and had a direct role in the events involved in the lawsuit, Thaddeus Davis, was transferred to

Eastern Correctional Facility. He got there shortly after we laid down the prison worship group at Eastern CF, so he has had no place to worship with Friends since he got there. The Yearly Meeting office tells me that there are 6 or 7 other inmates at Eastern CF who were members of Quaker Prison Worship Groups before being transferred to Eastern CF and now have no way to hold corporate worship in the manner of Friends. My heart cries to think of these “penitents,” these seekers who found Friends in other correction facilities and now have no way to worship together because of the absence of a prison worship group at Eastern CF.

Faith and Practice (at page 52) makes special note of our concern for those held in prison. It states: “*Many Friends encourage and support meetings for worship among prisoners, teach prisoners and staff, work with and counsel lawyers and offenders, and help released prisoners to find work and to build new lives.*” We must find new ways to assist and support these Friends, to reinvigorate our prison ministry, if we want to be able to make this same statement in future revisions of our Book of Discipline. Otherwise, DOCCS surely will grind us down; and I would say in closing, Quakers are not given to being deterred by antagonism of the powers that be.