

“SO HELP ME GOD”

Legal Issues in Correctional Chaplaincy

Chaplains now struggle to re-build and re-create effective prison ministry amid legal obligations and legal limitations placed on traditional religious liberties.

Being a farmer from the heart of *Pennsylvania Dutch* country every summer I make a daring effort to create an inviting landscape around my home. However, several years ago I planted a Veronica type plant, knowing little about the plant, other than it was free and provided ground cover. As the seasons have come and gone, this plant has taken over every area of the garden with a hostile vengeance. The only means of removing the plant is to completely remove every particle of soil from its roots so that it has no chance of survival and spreading.

Current legal issues in correctional chaplaincy have followed a similar pattern. Once a new law or policy concerning religion in corrections is adopted it spreads viciously, invading all aspects of correctional chaplaincy. Chaplains have been overwhelmed with legal obligations and legal limitations while trying to uphold legal liberties. In many cases a supervising chaplain simply becomes a broker of religious programs that ensure that legal obligations are fulfilled.



Religious liberties were important to the immigrant diversity of America. Evidence of this idealistic freedom to worship was seen in legislation such as the Toleration Act of 1649.¹ Enforced toleration created an atmosphere of euphoric freedom for religious groups forming in America. However, the traditional understanding of Christianity as America’s religion was being challenged. All seemed harmonious until each faith group sought their own religious preeminence inside the prison. The freedom so preciously protected by the courts has become today’s albatross for the Protestant chaplain.

Correctional chaplains could no longer champion their own faith group. Their biased views became a legal liability to government agencies with millions of dollars at stake. Paralegal inmates with an abundance of time on their hands have become a “thorn in the flesh” to corrections. Only a chaplain with litigation savvy can provide appropriate responses to all faiths that will avoid litigation. Like the tendrils of a spreading Veronica plant, legal obligations strangle and intimidate every chaplain’s effort across the nation.

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The Establishment Clause

“Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; ...” (U.S. CONST., amend. I).² This clause, inspired by divine principles, serves as both the foundation and the challenge of 21st-century correctional chaplaincy. While the United States Constitution may have been a topic in high school, for correctional chaplains, it is a legal mandate that holds them accountable.

The First Amendment ensures that no national religion will be established and that all individuals are free to practice or abstain from religion. These provisions mandate that chaplains must offer equal ministry to all individuals,

regardless of their beliefs. The First Amendment and the United States Constitution are designed to protect individual citizens, not the chaplain's faith group or the institution they serve. Therefore, chaplains are directly accountable to the United States Constitution.

This First Amendment provides that there will be no national religion *established* and that all people are *free to exercise* religion or to *not* exercise religion. These mandates clearly establish that chaplains must provide equal ministry to all people who desire it, not just the people who embrace the same beliefs as the chaplain. The First Amendment and the United States Constitution are written to protect the individual citizen, not the chaplain's faith group or the institution in which he or she serves. Therefore, the chaplain is directly accountable to the United States Constitution.³

This responsibility should never be taken lightly. American men and women continue to sacrifice their lives to defend this enduring amendment. Chaplains should view these legal obligations not as a burden or threat, but as a patriotic and spiritual duty.

A chaplain's legal understanding of the First Amendment should surpass that of many in ministry. Additionally, a solid grasp of correctional law will protect them from potential manipulation by the inmate population.

Chaplains are often confronted by inmates who have decided that the chapel program is not meeting their needs and demand special privileges. Chaplains are also confronted by groups from the free world who, for one reason or another, think the chaplain is not ministering to the inmates in a proper way and insist that their ministry is what the inmates need. In these cases, chaplains must be thoroughly grounded in policy and constitutional law.⁴

Policy and Constitutional Law cannot remain a chaplain's distant memory from high school history class. A chaplain's understanding of the constitutional rights of inmates can prove either fruitful or fatal to his or her ministry. It will be a fruitful endeavor for those who adhere to and follow the law's true intent. It will be fatal for those who underestimate the First Amendment's power and influence.

Religious Freedom & Restoration Act [RFRA]

Religious Land Use and Institutional Persons Act [RLUIPA]

Historically, the Establishment Clause has provided correctional institutions with a standard for inmate treatment, and it continues to do so. The two main principles derived from the Establishment Clause are: (1) the prohibition of government establishment of religion, and (2) the protection of inmates' free exercise of religion. Efforts to avoid establishing a specific religion while allowing the free exercise of all religious beliefs have led to conflicts among administration, chaplains, and inmate requests.

A significant case in this context is *Turner v. Safley*.⁵ The decision in this case offers guidance for chaplains in responding to inmate requests in compliance with the Establishment Clause.

First, application of the *Turner* test requires "a' valid rational connection' between the prison regulation and the legitimate governmental interest put forward to justify it. [*Id.* at 89] The second relevant factor in determining the reasonableness of a prison restriction is whether there are alternative means of exercising that right that remain open to the prison inmate. [*Id.* at 90] Third, the courts must consider the impact accommodation will have on guards and other inmates, and on the allocation of prison resources in general. [*Turner*, 482 U.S. at 90] The final prong of the *Turner* analysis requires the court to look for the absence of ready alternatives available to the prison officials to allow an inmate to exercise his right. [*Id.* at 90-901]⁶

This four-pronged approach provides guidelines for correctional administrators when addressing inmate religious requests, moving away from simply denying such requests.

The Religious Freedom and Restoration Act (RFRA) was enacted to strengthen individual religious rights, compelling jails, and prison administrations to act legitimately and honestly. The RFRA balancing test allowed the government to burden a person's exercise of religion only if it demonstrated that the burden (1) furthered a compelling governmental interest, and (2) was the least restrictive means of furthering that interest. However, RFRA was later declared unconstitutional after various legal challenges in higher courts.

During this period, a compromise was established in the form of a two-pronged correctional industry standard: "a compelling state interest and the least restrictive means." First, does fulfilling the religious request burden the state's compelling interest in maintaining the safety and security of the prison or jail? Second, has the state accommodated the inmate's request for religious services in a manner that imposes the least possible restriction on the inmate's ability to practice their religion?

The intent of the Religious Freedom and Restoration Act (RFRA) was to ensure the free exercise of religion while limiting governmental control over its practice. Although this law still applies in some federal institutions, it was declared unconstitutional for typical use by the courts. This decision posed challenges not only for correctional chaplains but also for those attempting to legally define "religion." Since the enactment of RFRA, the understanding of what constitutes "religion" has evolved significantly. Amid this legal evolution, correctional chaplaincy struggled to adapt and what lies ahead for chaplains in legalities remains uncertain.

The Religious Land Use and Institutional Persons Act⁷ [RLUIPA] was enacted in 2000 in response to the legal failure of RFRA. One difference in this legislation from the previous was the theological disruption created for the wide variety of religions involved in prison chaplaincy. The courts no longer depended on traditional religious authorities legally referred to as a faith judiciary,⁸ or historically held tenets of traditional faith groups when they coined their new definition for the word "religion."

Under RLUIPA, religious exercise is defined as 'any exercise of religion, whether compelled by, or central to, a system of religious beliefs. [42 U.S.C. § 200cc-5(7)(A)] This more inclusive definition is necessary since many religious practices may not be considered mandatory, yet a denial of such practices would, in fact, result in curtailment of religious liberty. [*See id.*] In addition, the approach adopted in RLUIPA requires the courts to determine which religious practices are important to their practitioners, 'without having to determine who in the religion is authorized to lay down dogma and what the content of the dogma is,' rather than making judges arbiters of the religious law. [*See id.*] Unlike the 'central tenet' test employed by many courts under RFRA, RLUIPA encourages an effort that values religious experience, requiring that the judiciary engage in a balancing test that considers the perspective of the religious

Although the courts have moved away from historical definitions of religion and its concepts, they continue to uphold two main principles that have traditionally guided correctional chaplains: (1) maintaining the compelling interests of governments (federal, state, county, and municipal) in safely incarcerating inmates, and (2) allowing governments to use the least restrictive means to limit inmates' practice of their chosen religion.

Without a "faith judiciary" and its tenets to guide the legal system, the courts now face a new challenge: defining "religion." A "faith judiciary" refers to a religion's ruling body that has the authority to determine proper teachings and

practices. The following court cases illustrate how the legal understanding of religious practice has evolved from traditional views.

In *United States v. Seeger*, 380 U.S. 163 (1965)⁹, the courts determined that a belief in a Supreme Being, a religious organization, or any other aspects of faith is not necessary to constitute a religion. In *US v. Meyers*, 96 F.3d 1475 (10th Cir. 1996)¹⁰, the court identified several aspects to define religion: (1) it may answer fundamental questions about life, (2) it may include metaphysical aspects, (3) it may encompass a moral and ethical system, (4) its beliefs may provide fundamental answers to life, and (5) it may include unique sets of accoutrements apart from tradition.¹¹ This “new age” concept of religion has permeated almost every aspect of post-modern American society. Consequently, chaplains have become caretakers of the evolving legal landscape in corrections, where sincerity has replaced dogmatic beliefs.

This shift places the burden on chaplains to determine the sincerity of an inmate’s beliefs. Chaplains assess an inmate’s sincerity based on their daily routines and practices. According to current legal standards, if an inmate believes their religious faith and practice should be called “Judaism,” then they are considered Jewish, regardless of traditional Jewish definitions. However, it is often extremely difficult to legally determine the sincerity of an inmate’s claim of religious faith.

The standard of ‘sincerely held’ beliefs has become the key factor chaplains use when responding to inmates’ religious requests. Therefore, chaplains must first understand the intent and purpose of the phrase “sincerely held beliefs.” They must not assume that “sincerely held beliefs” means the same thing to everyone.

Not all ‘sincerely held’ beliefs stem from religion or religious tenets. Overwhelming evidence indicates that humans are not born with instinctive understandings of religious tenets or beliefs. Only through education, observation, and human experience can individuals decide what they believe, why they believe it, and how they will act upon those beliefs. All ‘sincerely held’ beliefs result from the human decision-making process. Therefore, a person can have a sincerely held belief without reference to a religious or faith-based understanding.

Historically, court rulings have described faith with statements such as, “The duty which we owe our Creator and the manner of discharging it.” Title VII of the Civil Rights Act of 1964 assumes the need for objective truth when it states, “... with the strength of traditional religious views.” Similarly, in *United States v. Seeger*, 380 U.S. 163 (1965), and *Welsh v. United States*, 398 U.S. 222 (1970), the courts imply objective religious truth by stating, “... moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.” Oregon Law ORS. 659.A030 relies on Title VII of the Civil Rights Act of 1964 (Sections 701 and 702) when stating: “A religious belief is considered to be sincerely held if the individual can demonstrate a strict adherence to the belief.”

By using the phrase “strict adherence,” legal decisions have moved away from accepted historical understandings of religious faith. Historically, statements of faith and practice upheld by a religious authority, known as a faith judiciary, provided an objective point of reference. The shift from historical understandings to personal sincerity represents a move from objective standards to subjective standards.

Recent court decisions have further complicated the understanding of faith and inmates’ religious needs by including the phrase, “even if the belief is not held to the tenets of a traditional organized faith.” Additionally, court decisions such as *U.S. v. Ballard*, 322 U.S. 78 (1944), imply that a court may not determine a religious belief to be “false.” However, the courts claim they can determine the genuineness of a person’s assertion of a sincere belief in a divine being,

even when that belief system has no connection to a historical religion. As a result, some inmates have challenged traditional faith judicatory tests.

These objective standards are critical when dealing with the new threat in corrections of gangs evidenced in a training session for dealing with the “radicalization of prisons,”¹² or in other words, how to handle inmates with extremist views. The basic concept was to have a trained, educated, and authoritative civilian leader provide instruction of the religious tenets. This limits the ability of charismatic inmate leaders to influence other inmates by twisting the tenets of established religious beliefs to gain personal advantages, and recruit followers who will submit to their leadership. Consideration of an inmate's "sincerely held belief" without consideration of any religious judicatory (traditional leadership of the religious group) opens doors to the radicalization of prisons and jails. Those who hold authority in corrections will find these legal policies could, in theory, force them to support recruitment to terroristic groups. Permitting any inmate to be the sole source of authority for his or her religion provides opportunity for radical belief.

When granting inmate requests a chaplain should do two things: (1) verify an inmate's claims of a personally held belief, and (2) demonstrate that granting an inmate's request will not create undue hardship for the institution. “Undue hardship for the institution” would be anything that jeopardizes the safe and secure operation of the prison or jail. The following questions will help to make this determination:

- (1) Is the sincerely held belief based on an existing faith judicatory?
- (2) Is the sincerely held belief based on a personally held preference?
- (3) Does acting on the sincerely held belief promote a secular/political cause?
- (4) Is the sincerely held belief based on a unique personal moral preference?
- (5) Is the sincerely held belief consistent with the inmate's current lifestyle and religious practices?
- (6) Does the sincerely held belief place an undue burden on the current religious authority provided by the DOC for religious practice and supervision, i.e., the Chaplain?

The reasoning used in recent court decisions is based on subjective reasoning and individual convictions of the inmate's personal belief system. These decisions permit inmates to create new, unreasonable, non-religious faith systems that promote their private agendas and interests.

Legal Limitations

Let's now consider one recent social change that has increased legal limitations and legal obligations for virtually all staff members providing correctional programming and treatment for inmates. These social changes overburdened the correctional system logistically, financially, and legally. We are referring to the deinstitutionalizing of state psychiatric patients that took place in the nineteen seventies.¹³ Unfortunately, many of these patients wound up in local jails on charges of vagrancy and petty theft.¹⁴ This brought a change in public perceptions of the type of person who gets incarcerated. Prison populations no longer were seen as convicts kept off the streets to protect the common citizen. Psychiatric treatment and religious rights increased in accordance with new legislation regarding the treatment and rehabilitation of inmates. An empathetic ear was given to those behind bars. This transition from punishment to treatment caused the creation of many new religious and secular programs in prisons. This growing segment of the prison population began to receive legally mandated medical treatment both prior to and after their release.¹⁵

One movie illustrated the cynical view of psychiatric institutions in, *One Flew Over the Cuckoos Nest*. In the final scene "Chief" Bromden (Will Sampson), a silent six-foot-seven-inch Native American, rips a sink from a tiled floor and throws it through a window to escape from an asylum. As the movie ends his large, lumbering body slowly disappears into the mist of the early morning. He did this so that the other patients of the asylum would think Murphy (Jack Nicholson) had escaped. The Chief wanted the other patients to believe Murphy had escaped because Murphy had challenged the other patients to attempt to escape by this "technique." What had seemed impossible became possible not because of what Murphy was able to do, but by what the Chief did. Just before his escape the Chief had smothered Murphy to death because the doctors had lobotomized him. The lobotomy left Murphy in a catatonic state. To keep hope alive for the other patients the Chief escaped, knowing that they would believe it was Murphy who had escaped.

Murphy became the hero of the movie by challenging the other patients to reach beyond the limitations of their mental illness to achieve true freedom. The institution and Nurse Ratched (Louise Fletcher) became the antagonists by enslaving the mentally ill with the limitations of their illnesses. And it was the Chief who played the protagonist by showing the audience that the mentally ill can escape from their tragic lives, often by seemingly impossible means. This classic movie was a commentary critical of asylums and their mistreatment of their patients.¹⁶

Self-Limitations

This new perspective on corrections has transformed chaplaincy. Correctional chaplains, like Murphy, have become voices of victory for the downtrodden and broken individuals in jails and prisons, instilling hope. This hope embodies the essence of chaplaincy in a system often marred by injustice and corruption. American culture is distinguished by its idealistic belief that everyone can achieve their dreams. The United States is a nation where second chances are given to those who confess their mistakes, make amends, and change their lives' direction.

Chaplains often confront societal demands for absolute punishment by becoming strong advocates for the liberties provided by our forefathers, ensuring these rights are not lost or stolen, even in prison. They must uphold our tradition of religious liberty while not abandoning the need for justice. When an inmate seeks forgiveness, redemption, and transformation, the chaplain can be their best guide.

The chaplain is often the sole voice encouraging inmates to realize they still have the freedom to change through faith. While many believe convicts do not deserve forgiveness, the chaplain demonstrates to the community that inmates can escape their tragic lives through a faith experience.

Jesus Christ left his place in the eternal kingdom to become a man. Philippians 2:6-8 states, "Who, being in very nature God, did not consider equality with God something to be used to his own advantage; rather, he made himself nothing by taking the very nature of a servant, being made in human likeness. And being found in appearance as a man, he humbled himself by becoming obedient to death—even death on a cross!" This example of self-limitation for the sake of others should serve as a model for chaplains. Chaplains should view the restrictions imposed on their ministry as part of their call to obedient service, rather than as a burden.

Self-limitation is often a struggle. Chaplains must provide opportunities for worship to every inmate of every religion. While this might initially seem liberating, it often limits what chaplains can do. From the perspective of inmates, staff, and administration, chaplains represent all religions. Consequently, chaplains are frequently labeled as liberal or, at

the very least, ecumenical. For theologically conservative chaplains, this can be frustrating, especially when they join fellow conservative clergy in fellowship, where doctrinal admonition is common.

Thus, chaplains must balance their own faith tradition with the needs of others. While they are doing this, they must not lose sight of their own convictions and religious distinctiveness. A balance of fairness and consistency is needed.

Chaplains who try to be friends with all religions by shedding the distinctiveness of their own religion will become ineffective in their role as a chaplain. Why? They will be perceived as agents of compromise by the members of a population who live in an environment where personal religious preference can make a difference between life and death. Abandoning one's faith while in prison, especially in a gang culture, is perceived as a betrayal, not a matter of religious choice. Inmates seek chaplains with personal conviction and strong faith when they want someone to lead them. They won't accept a path that consists of compromise for the sake of acceptance.

To clarify, toleration is not a compromise. Toleration is the "official acceptance by a government of religious beliefs and practices that are different from those it upholds." By a respect for all faith groups chaplains will gain respect from the inmate population. Showing respect will also open the doors to opportunity for dialogue and cooperation. Effective chaplains hold firmly to their own convictions while encouraging freedom of choice for inmates. The chaplain who won't *let go and let God*, when it comes to respecting the religious choices of inmates, will not be tolerated in the correctional setting.

Limited Speech

Due to legal considerations, chaplains must avoid proselytizing the inmate population or attempting to persuade inmates to join their own faith group.¹⁷ Generally, chaplains are permitted to preach or teach from their sacred texts and explain the tenets of their faith. However, they are often constrained by how inmates and staff perceive their message. Chaplains must be vigilant to avoid being seen as intentionally trying to convert inmates from other religions to their own and must refrain from making derogatory comments about other religions. It is crucial for chaplains to have a comprehensive understanding of what the policy means by "proselytize" and how the administration of the penal institution interprets this term.

Although many of the legal limitations mentioned are from the New Jersey Administrative Code, similar restrictions are imposed on chaplains in other local, state, and federal prisons. These rules are not intended to prohibit chaplains from preaching or teaching their particular faith. Instead, since chaplains are government agents, these rules aim to prevent them from endorsing only one religion, which could lead to litigation. Therefore, the gospel message proclaimed by a chaplain must be directly from the scriptures with minimal personal interpretation.

Despite these restrictions, there are numerous opportunities for chaplains to share the gospel with inmates while adhering to these rules—opportunities that another clergy may never experience. If correctional institutions allow chaplains to have a "pulpit" to declare the truth as they understand it, there is no need for alarm.

Chaplains are subject to governmental scrutiny in their public roles. In New Jersey, the Ethics Commission has established specific guidelines that all state employees must adhere to. These guidelines cover outside employment, attendance at public events, additional income, receiving stipends or gifts, and participation in events as a chaplain, all of which require state approval. These regulations were implemented to address issues of corruption, nepotism, and cronyism.

As members of the law enforcement community, chaplains are held to standards like those for off-duty corrections officers, maintaining ambitious standards in their private lives. This expectation should not be burdensome for chaplains.

It is crucial for correctional chaplains to distinguish between their public role as government chaplains and their role as public pastors. Careful consideration is needed when incorporating governmental information into sermons, as some clergy view this as yielding to governmental control. For chaplains, this means dedicating more time and effort to sermon preparation to remain faithful to the scriptures.

These limitations can sometimes isolate chaplains from members of their own faith tradition, who may become their most vocal critics. To stay true to their calling, chaplains must adhere to the standards set forth in 1 Corinthians 9:19-23.

Even though I am free of the demands and expectations of everyone, I have voluntarily become a servant to all to reach a wide range of people: religious, nonreligious, meticulous moralists, loose-living immoralists, the defeated, the demoralized—whoever. I didn't take on their way of life. I kept my bearings in Christ—but I entered their world and tried to experience things from their point of view. I've become just about every sort of servant there is in my attempts to lead those I meet into a God-saved life. I did all this because of the Message. I didn't just want to talk about it; I wanted to be in on it! (The Message)

Acceptance and respect for other religions is necessary for correctional chaplains. Many pastors will instantly label chaplains as liberal when helping to meet the needs of members of other religions. An example of this sort of attitude is echoed in the following statement written by Dr. Dale Pace over two decades ago.

Since the founding of this country, the Christian religion has enjoyed a privileged status. The past decade has witnessed an erosion of that privilege behind bars as courts have ruled that non-Christian religions must receive equal protection and status with the Christian religion. While each inmate has the God-given right to believe as he will (and the responsibility to take the consequences of such belief), *no godly chaplain is going to add to inmate confusion by assisting the spread of error and false teaching among the inmate population.* Instead, he will follow Paul's advice to Titus and attempt to stop the mouths of those subverting many (*see* Titus 1:11). Such action is likely to bring censure from the ecumenically oriented and possibly criticism from the administration of the institution, yet the chaplain is merely following the dictates of his conscience and faith in the same manner as one refusing to marry or serve Communion to unsuitable persons.¹⁸

Prison administrations seek chaplains who can foster a sense of fulfillment, harmony, and satisfaction of religious needs, rather than advocating for a single religious viewpoint. Ensuring equal status for all religions does not diminish the significance of the resurrection of Jesus Christ or other Christian doctrines. However, attempting to elevate Christianity above other religions is perceived as religious fanaticism by inmates, prison administrators, and judges.

Given that every American has the fundamental right to practice their chosen faith, chaplains must uphold this right without favoring one religion over another. By demonstrating appropriate tolerance for other religions, chaplains can still express their personal faith through words and testimony.

Correctional chaplains regularly encounter a society that is distancing itself from the cultural cohesion historically provided by faith in Christ and God. It is neither sacrilegious nor antireligious to assert that the government should refrain

from composing or endorsing official prayers, leaving this religious function to individuals and their chosen spiritual leaders.¹⁹

While one may empathize with dissenters like Navy Chaplain Gordon Klingenschmidt, chaplains must exercise caution in seeking attention. Klingenschmidt's dismissal from the Navy for a prayer of protest raised concerns among evangelicals. A chaplain should not justify deliberate acts of disobedience when such protests are unnecessary. Even quiet dissent, if subversive, is likely to be counterproductive.²⁰

The controversy over prayers made in the name of Christ highlights three misunderstandings among evangelicals: (1) the current cultural context, (2) the power of prayer, and (3) the civic community's expectations for prayer.

Our culture has increasingly labeled invocations and benedictions at civil events as politically incorrect and offensive. Ministers, often trained in outdated concepts, may make false assumptions about the culture they aim to reach. Ministers should no longer view America as a Christian nation and must be aware of cultural boundaries and contemporary sensitivities. Lessons in cross-cultural sensitivity from missionaries can be valuable in this regard.

As the nation moves away from its historic Christian faith, the church has also become confused about longstanding concepts and doctrines. Some Christians misinterpret scripture when teaching about the Holy Spirit's power. In Word Faith theology, the believer uses God, whereas biblical Christianity teaches that God uses the believer. The Holy Spirit is a person who enables believers to fulfill God's will, not a power to be wielded for personal desires.²¹

This mentality promotes the idea that adding the phrase, "in the name of Jesus" means more power in His name. However, is this just referring to adding a phrase to the end of our prayers? No. It is much more than that. It means that you come to the Father with the knowledge that your only right in approaching Him is that Jesus died on the cross for your sins and that He Himself has sent you to the Father. It means that you know that you are totally unworthy of receiving anything from God and that the only reason God should grant your requests is that you come in Jesus' name. It is not a magic formula, but a heart attitude.²²

Regardless of one's stance on the issue, it is important to recognize that there is no single correct answer. When we choose to pray "in the name of Jesus," our motivation should be love for those who invited us to pray, rather than a subversive act against the government.²³

Christians often express concerns about their rights being disrespected, yet they sometimes fail to respect the rights of non-believers, presuming upon them in the name of Christ. This lack of consideration is a two-way street. Just as we would not expect a non-believer to enter our sanctuaries to defile our worship, we should extend the same respect when secular culture seeks to hold civic meetings without religious influence.

Using or not using the name of Christ does not determine our faithfulness or power as Christians. We can adhere to Jesus' teachings on prayer without necessarily ending our prayers with the phrase "In Jesus' name." This flexibility allows us to choose whether to include the phrase in civic prayers, without compromising our adherence to Jesus' instructions.²⁴

Ultimately, we must remain true to our convictions regarding the use of the phrase "in the name of Christ." In a culture that is fundamentally distorted, a church filled with confused Christians cannot effectively convey the transformative message of Jesus Christ. This is particularly true in a society that believes only an all-inclusive, ecumenical religion should be dominant.

The church, once cherished by American society for its invocation of God and benedictory blessings, has now become a minority in providing “prayer leaders.” Our culture no longer expects or desires to hear from the God of Jesus Christ. We must acknowledge that Christians no longer hold a favored status in American society. Chaplains have become missionaries to a society fraught with cultural clashes, religious chaos, and pious assumptions.

Limited Relationships

Due to legal considerations, chaplains must limit their relationships with inmates. Treating an inmate as a personal friend can lead to accusations of “undue familiarity,”²⁵ creating unique challenges. For many inmates, the chaplain may be the only pastor they have ever encountered, potentially forming a pastoral relationship similar to Paul’s with Onesimus, as recorded in Philemon. Unfortunately, this relationship must end when the inmate is released, potentially severing a vital link for their continued spiritual growth.

Prohibitions against “undue familiarity” also extend to relationships with an inmate’s children, spouse, or friends. While chaplains may feel frustrated by the emotional distance this policy creates, it is necessary for security reasons. Treating an inmate as a friend can lead to perceptions of favoritism among staff and other inmates, who may covet a similar relationship. The guiding principle for chaplains is: “What you do for one inmate, you must be willing to do for all.” Favoritism or special treatment based on shared faith can significantly impact a chaplain’s career in corrections.

Chaplains must accept these policies as a condition of their role. If they are unwilling to adhere to the requirements set by prison authorities, they should consider pursuing their ministry in a different setting. Violating the law does not glorify God.

It is crucial for chaplains to avoid the social and spiritual relationships with inmates that are common in a church community. Charges of undue familiarity are often brought against compassionate chaplains. Although inmates and staff may perceive the chaplain as aloof or distant, adhering to this policy is a necessary measure.

Creating an aftercare network of trusted and trained co-laborers in faith can help continue the spiritual work started in prison and protect chaplains from unnecessary litigation. Advocating for inmates to receive local community resources after their release is the most effective support chaplains can provide.²⁶

When encountering prejudice, abuse, or indifference, chaplains are expected to advocate for decency. With prayer and practical solutions based on policy and procedure, chaplains should approach the administration with a plan to resolve issues, minimizing controversy and drama to avoid creating barriers and burning bridges.

Many chaplains fall into a pattern of advocacy that can be counterproductive in the corrections environment. Becoming a “squeaky wheel” for certain inmates can alienate others, including the inmate population. Some chaplains focus on championing the causes of oppressed inmates but neglect to champion the cause of Christ. Their mission can become blurred with social and correctional reform, making them a liability to the administration. Balance and caution are essential for effective ministry.

Finally, correctional chaplains act as a vital advocate for the inmates and liaison between the institution and the community of faith, raising awareness about the needs of the incarcerated and their families. They advise community clergy on matters pertaining to prison ministry and promote an understanding of how to assist inmates as they make the transition into the community after being confined. However, in their work with inmates and

their families, correctional chaplains must be careful not to imply advocacy in terms of lawlessness, nor may they ever give legal, medical, or psychological advice.²⁷

Raising awareness in prisons and the community without alienating staff is challenging. Often, a chaplain's integrity and character ensure their voice is heard and respected when addressing sensitive issues.

Chaplains must limit their relationships with inmates and professional peers, adhering to the Lemon Test²⁸, which mandates the separation of religious practices from non-religious activities. This separation can cause staff apprehension and chaplain frustration, as efforts to integrate chapel programs with other prison programs may be perceived as radical. Turf wars have arisen due to politically correct mandates.

Efforts to maintain the separation of church and state often lead to litigation from inmates claiming their religious rights are denied. Chaplains must embrace these challenges as part of their calling, advocating for religious freedom for all. The increasing legal pressures of the 21st century have turned chaplaincy into a balancing act between spiritual desires and legal obligations.

Administrative Requirements

Chaplains must maintain extensive records to provide potential courtroom evidence of legal compliance, relying on modern technology to manage their duties. Daily routines involve processing, answering, and filing forms, creating a paper trail for inmate grievances. Without these records, chaplains pose a liability to state-run institutions.

A significant form in the legal process is the Religious Vegetarian Diet form, in which chaplains must process to meet inmates perceived religious needs. Often, these requests are not based on genuine religious tenets, leading many chaplains to approve them to avoid litigation.

This legal necessity results in many inmates lying to obtain a vegetarian diet, placing chaplains in a position of manipulation. Some chaplains ignore these lies to build rapport with inmates, while others refuse illegitimate requests. I have found that interviewing inmates to legitimize the process provides an opportunity to discuss faith issues.

Emerging Trends in Corrections

A growing trend in corrections involves religious gang members who claim adherence to newly discovered religions. These groups, often formed within prisons, have unique tenets that may not be strictly religious. Chaplains must analyze these tenets, which often include religious objects and symbols used in ceremonies. This responsibility can be time-consuming and may hinder the chaplain's ability to perform traditional ministry duties.

Chaplains must process inmate requests fairly and consistently, based on written Internal Management Procedures, not personal beliefs. This ensures that decisions are made according to policies and laws, rather than individual theological interpretations.

Inmate request forms are the first step in a multi-layered bureaucratic process designed to establish legal claims. These layers act as safeguards, ensuring legitimate legal responses and preventing frivolous lawsuits. Inmates must follow procedures correctly for their claims to be considered valid.

A centrally located database tracks all inmate requests, providing historical evidence of complaints. This system ensures precise responses and helps avoid unnecessary litigation.

Chaplains who thoroughly analyze inmate requests gain respect for their fairness and consistency. Ignoring or mishandling requests can lead to administrative issues and undermine the chaplain's effectiveness. The administrative burden of processing forms limits the chaplain's ability to engage in true ministry, creating a conflict between legal obligations and spiritual duties.

Lessons Learned

Legal changes in America have complicated the role of chaplains. Those secure in their calling to correctional ministry, supported by their faith and the laws protecting religious freedoms, find peace and stability. Recognizing their divine authority, chaplains can better navigate the challenges of their role.

Chaplains must become the voice of freedom, ethical standards, and moral duty to our nation. They serve as a missing link between God and community, inmates, and forgiveness. They can champion faith in Christ as one of the solutions to the growing crime rate. In my opinion, the chaplain is the most important person in the prison. And if chaplains are well trained, they do a lot to reduce recidivism. As Vance Drum summarized in his speech to the American Correctional Association, the chaplain is essential to the entire process of rehabilitation and must accept the authority granted by God and the public.

To summarize, professional correctional chaplains have received specialized training to provide effective ministry in the challenging environment of corrections. They are the vital link between community volunteer resources and agency administrative personnel to ensure that the religious needs of all offenders are provided for. Using a state-supplied professional chaplain is the best guarantee of providing a constitutional program which will help to reduce litigation. The trained professional chaplain becomes a safety valve, through listening and pro social intervention, providing a calming ministry of presence in potentially explosive situations. Finally, by linking the offender population with positive community resources, and through the redemptive work of changing inmates' hearts, minds and directions, the professional chaplain helps ex-offenders to stay out of prison, thus reducing the rate of recidivism.²⁹

For the chaplain there are several lessons that need to be learned in understanding legal issues. If a chaplain does not work to understand legal issues it could prove fatal and costly for the chaplain, the inmates, and the correctional administration.

1. Legal Training. Provide good, quality training for chaplains, volunteers, prison administration and custody staff in religious legal issues, what they mean and how to respond to them.
2. Documentation. Use current technological methods for keeping chaplaincy records.
3. State Attorney General. Have a religious liaison staff member from the state attorney general's office to assist with religious decisions.
4. Coverage for government staff when legal issues and lawsuits are brought to the courts.
5. Ethical training. Provide adequate training in ethical standards for staff.
6. Policy. Review and update religious internal management procedures that include current decisions from the courts.
7. Alternatives. Always provide alternative solutions for religious requests. Avoid answering "no" unless a clear and present danger exists.

8. Consistency. Always be fair and consistent when establishing approved religious practices.
9. Networking. Seek to discover what other federal, state, and local correctional facilities are practicing.
10. Be firm, fair, and consistent in your decisions.³⁰

Of course, there are many more principles and lessons to be learned. Keeping up with changes in the law is a never-ending pattern of learning something new.

Highly trained, professionally equipped chaplains will enrich the institutions they serve, because they will make sure that all inmates and their religious needs are met. Without the influence of chaplains who have a clear understanding of religious issues attorneys for the government authority that runs the jail, or prison will be spending more time in the courts.

As Dr. Drum stated in a speech at the American Correctional Association annual event, This reaching out beyond one's own faith group to provide for ministry to the needs of all the offenders in one's institution is the essence of the constitutional mandate to provide for the "free exercise" of religion. It is an activity which is best provided by professionals compensated by the state—professionals who are not compensated for this ministry by their own faith group. Why do I say this? The constitutional requirement of "free exercise" is a state requirement, and, in my view, is one which is best ensured and safeguarded by an employee of the state. Volunteers, or specific faith chaplains who are compensated by their own faith group, provide valuable and necessary ministry. However, it is my conviction that, by virtue of their faith group-originated compensation, they would normally have a fiduciary obligation, or a contractual obligation, to especially promote the interests of their particular faith group. As we say in Texas, you dance with the one who brought you, and you look out for the one who pays you. Professional, state-supplied chaplains have no such obligation to promote the interests of one faith group over another. In fact, the obligation is the opposite—to treat all faith groups without favoritism.³¹

The 21st century chaplain needs to be professionally prepared and legally minded, or he or she will be pricked by the thorns of litigation. America and its prisons are no longer part of a Judeo-Christian nation. Self-centered understandings of chaplaincy must shift from one's personal religious bias to a cross-cultural mentality. If a chaplain is unsure of how to do this, he or she should ask a cross-cultural missionary how to bring God's message to a non-Christian culture of God's without being offensive or exclusive.

5	<p>Assigned Reading: <i>"SO HELP ME GOD"</i> <i>Legal Issues in Correctional Chaplaincy</i></p> <p>Research: Research web sites that describe the legal expectation, legal limitations, and current legal liberties of chaplains in corrections.</p> <p>Briefly research and discuss: What key legal issues do you believe are the most restrictive? Why?</p>	<p>Written Submissions: Write a brief reaction paper of 250 words or less containing what you consider to be important in So Help Me God, Legal Issues.</p> <p>Your research should provide ten differences between former legal liberties of chaplaincy and today's legal limitations that have restricted these rights.</p> <p>Respond to the discussion question with 250 words or less.</p>
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End Notes

¹ Ibid, p. 419, Part One, Article I, Section V, State Constitution of New Hampshire, p. 469, Virginia Bill of Rights, p. 627, the Biographical Review of London, reported an "absolute toleration" for the new colonies, p. 502.

² The **Establishment Clause of the First Amendment** refers to the first of several pronouncements in the [First Amendment to the United States Constitution](#), stating that "[Congress](#) shall make no [law](#) respecting an establishment of [religion](#)". Together with the [Free Exercise Clause](#), ("... or prohibiting the free exercise thereof"), these two clauses make up what are commonly known as the "religion clauses" of the First Amendment. http://en.wikipedia.org/wiki/Establishment_Clause_of_the_First_Amendment accessed October 4, 2009.

³ Naomi K. Paget & Janet R. McCormack, Janet R. [The Work of the Chaplain](#), (Valley Forge, PA: Judson Press, 2006), p. 99

⁴ John Cowart, [The Prison Minister's Handbook](#), (San Jose, CA: Resource Pub., Inc., 1996), p. 108

⁵ 482 U.S. 78 (1987)

⁶ Gower, p. 5

⁷ The Religious Land Use and Institutionalized Persons Act (RLUIPA), [Pub. L.](#) 106-274, [42 U.S.C. § 2000cc-1](#) http://en.wikipedia.org/wiki/Religious_Land_Use_and_Institutionalized_Persons_Act

⁸ Judicatory is used to mean the governing body of the faith group that defines and enforces its tenets of faith. The judicatory is often called to determine if an elected official violated the faith in a heretical fashion.

⁹ United States vs. Seeger, 380 U.S. 163 (1965), http://en.wikipedia.org/wiki/United_States_v._Seeger

¹⁰ <http://bulk.resource.org/courts.gov/c/F3/95/95.F3d.1475.95-8079.html>

¹¹ NIC p. 9

¹² <http://www.nij.gov/journals/261/Pages/prisonerradicalization.aspx>
<http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/October-2010/confronting-science-and-market-positioning>
<https://www.ncjrs.gov/pdffiles1/nij/224085.pdf>

¹³ History of the Wernersville State Hospital, <http://www.dpw.state.pa.us/PartnersProviders/MentalHealthSubstanceAbuse/StateHospitals/003670162.htm>, accessed October 4, 2009.

¹⁵ <http://www.shawshankredemption.org/>
http://en.wikipedia.org/wiki/The_Shawshank_Redemption

This most recent movie depicted the struggle in prisons of the need for reform placing control of the inmate's destiny in their ability to find value in self. The *Chicago Sun-Times* film reviewer Roger Ebert suggested that *The Shawshank Redemption* is an allegory for maintaining one's feeling of self-worth when placed in a hopeless position. Andy Dufresne's integrity is an important theme in the story line, especially in prison, where integrity is lacking. Isaac M. Morehouse suggests that the film provides a great illustration of how characters can be free, even in prison, or unfree, even in freedom, based on one's outlook on life.

¹⁶ [http://en.wikipedia.org/wiki/One_Flew_Over_the_Cuckoo's_Nest_\(film\)](http://en.wikipedia.org/wiki/One_Flew_Over_the_Cuckoo's_Nest_(film))

¹⁷ New Jersey Administrative Code § 10A:17-5.2 Religious proselytizing inmate

(a) No person shall disparage an inmate's religious beliefs or deliberately seek to persuade an inmate to change his or her religious affiliation.

(b) While under the jurisdiction of the New Jersey Department of Corrections, an inmate shall not be prevented from voluntarily changing religious preference.

(c) An inmate may change religious affiliation by contacting the chaplain who represents the faith group to which the inmate is seeking affiliation.

¹⁸ Acceptance and respect for other religions is necessary for correctional chaplains. Many pastors will instantly label chaplains as liberal when helping to meet the needs of members of other religions. An example of this sort of attitude is echoed in the following statement written by Dr. Dale Pace over two decades ago.

Since the founding of this country, the Christian religion has enjoyed a privileged status. The past decade has witnessed an erosion of that privilege behind bars as courts have ruled that non-Christian religions must receive equal protection and status with the Christian religion. While each inmate has the God-given right to believe as he will (and the responsibility to take the consequences of such belief), no godly chaplain is going to add to inmate confusion by assisting the spread of error and false teaching among the inmate population. Instead, he will follow Paul's advice to Titus and attempt to stop the mouths of those subverting many (see Titus 1:11). Such action is likely to bring censure from the ecumenically oriented and possibly criticism from the administration of the institution, yet the chaplain is merely following the dictates of his conscience and faith in the same manner as one refusing to marry or serve Communion to unsuitable persons

¹⁹ Engel, Et Al. V. Vitale Et Al., No. 02-4135, Supreme Court of the U.S., June 9, 2003, page 4 of 5.
<http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/engel.html>

²⁰ Bob DuPre', "Navy Chaplain's Dismissal and Appeal Proceeds," Firm Foundation, March 1, 2007. Official Blog of the Foundation for Moral Law.

²¹ John MacArthur, *Charismatic Chaos*, (Grand Rapids, MI : Zondervan, 1939), p. 266-67

²² David F. Reagan, "Praying in the Name of Jesus," *Learn the Bible*, 2006, p. 2 of 3.
http://www.learnthebible.org/praying_in_jesus_name.htm.

²³ Mark D. Roberts, "Should Christians Pray "In Jesus' Name in Civic Gatherings," Rev. Roberts Blog, 2008, p. 1 of 4.
<http://www.markroberts.com/htmlfiles/resources/jesusname.htm>.

²⁴ Ibid, p. 3 of 4

²⁵ [http://www.state.nj.us/corrections/VolServices/Form_450-II\(Eng\)_editable.pdf](http://www.state.nj.us/corrections/VolServices/Form_450-II(Eng)_editable.pdf), From the NJDOC Volunteer Rules and Guidelines, Number 10. I agree that I shall not indulge in undue familiarity with inmates or permit inmates to be unduly familiar with me. Ref. § 10A:17-2.8 Orientation and training of volunteers. The NJDOC policy for new hires also discusses this concept in Staff Inmate Overfamiliarity (4-24-08).

²⁶ Philemon offers a perfect example of Paul reaching out to the local church to provide the needs of Onesimus who was redeemed in the Roman prison under Paul's ministry.

²⁷ Paget, Naomi K. & McCormack, Janet R. *The Work of the Chaplain*, (Valley Forge, PA: Judson Press, 2006), p. 66

²⁸ Jim Allison, *The Lemon Test, Separation of Church, and State Home Page*,
<http://www.members.tripod.com/~candst/tnppage/eclause2.htm> The Lemon Test in essence states, "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster 'an excessive government entanglement with religion.'"

²⁹ Vance L. Drum, *Professional Correctional chaplains: Fact and Fiction*, American Correctional Association annual conference in Kansas City, Missouri, August 13, 2007. Dr. Drum is chaplain at Eastham Unit, Texas Department of Criminal Justice.

³⁰ The New Jersey Department of Corrections has a Religious Issues Committee which has high level custody, administration, chaplaincy, special investigations, attorney general and other pertinent staff who meet regularly to discuss current religious issues and to make decisions. This type of agency committee will provide a great resource or making religious decisions.

The National Institute of Corrections, *Correctional Religious Programs*. 01-P3801, (Longmont, CO: NIC Training Center, April 22-25, 2001). Some of the lessons learned were developed based on the materials included in the NIC training course for chaplains.

³¹ Vance, L. Drum, Professional Correctional chaplains: Fact or Fiction, American Correctional Association, (Kansas City, MI: ACA, August 13, 2007)