

KeyCite Yellow Flag - Negative Treatment  
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2000 WL 744357

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Superior Court of Massachusetts.

Randall Shield Wolf TRAPP, et al, Plaintiffs,  
v.  
Lawrence DUBOIS, et al, Defendants.  
No. CIV.A. 95-0779B. | May 8, 2000.

Opinion

MEMORANDUM OF DECISION UPON  
COMPLAINT

TOOMEY.

INTRODUCTION

\*1 Plaintiffs, members of the Native American Spiritual Awareness Council and inmates at the North Central Correctional Institution at Gardner (NCCI, Gardner), have brought this suit seeking, *inter alia*, the opportunity to engage in religious activities within purification lodges (Lodges).<sup>1</sup> Defendants have resisted plaintiffs’ claims, asserting, in the main, that security concerns justify their reluctance to permit the construction and employment of a lodge on the premises of NCCI, Gardner.

A bench trial commenced on December 14, 1999 in the Worcester Superior Court. Testimony was offered, documentary evidence was received and memoranda of law were, in lieu of closing arguments, solicited from counsel. The memoranda were received on January 14, 2000 (plaintiffs) and March 2, 2000 (defendants). The matter is now ripe for decision.

FINDINGS OF FACT

1. The parties having stipulated to the sincerity of defendants’ commitment to the spiritual and salutary properties of purification lodge rites, this Court accepts the *bona fides* and religiosity of plaintiffs’ belief system.
2. The rites commonly engaged in a purification lodge

result in a mental and emotional cleansing of participants who occasionally experience a sense of, as they express it, rebirth.

3. A similar, though less spiritually elevating, experience is available in other ceremonials, such as “prayer circles,” “smudging,” meditation and pipe smoking, which involve community-focused spirituality, inhalation of sweet grasses and communications. Those ceremonials provide the participants with revelations of truth, a measure of spiritual healing and introspection, and an opportunity for bonding with others similarly situated. Defendants have not impeded the attendance at “circles” and other ceremonials and have provided some of the items (sweet grasses, sage, herbs, *etc.*) employed in such rites. At present, NCCI, Gardner permits regular smudgings, circles, Winter and Spring solstice feasts and the wearing of religious artifacts that do not possess “gang” significance.

4. A purification lodge is generally twelve feet in diameter; its frame is composed of bent willow poles; its outer skin is composed of material (blankets and tarpaulins) that is non-porous as befits a structure intended to avoid out-leaks of heat and smoke. There are no windows in the lodge and the activities within are wholly unobservable by those without.

5. The usual ceremony in a lodge requires that stones be heated to 200°> F at a wood-fed fire pit a short distance from the entrance and transported, by metal rakes and shovels, into the lodge. The rocks glow to a bright red hue and heat the interior of the purification lodge to about 150°> F, thus accounting for its less elegant sobriquet, “sweat lodge.” The ceremonial activities within the lodge may occupy up to four to five hours. The extreme heat and smoke inhalation enable the participants in the ceremony “to move into other worlds” and “to follow the path.”

\*2 6. Although defendants had, in the past, limited inmate membership in the Council to those who could demonstrate their Native American heritage, no such institutional limitations are now in force because, since 1991, the Council ceased discrimination and has welcomed all inmates, regardless of ethnicity, to membership. Thus, the exclusionism that concerned defendants is now a thing of the past and defendants no longer seek to cull the Council’s rolls.

7. NCCI, Gardner was originally designed and built as a State Hospital. Its construct was not intended to provide security and its metamorphosis into a correctional institution has required adjustments which do not provide optimum assurance that the traditional objectives of a maximum security facility can be appropriately

maintained at Gardner. Accordingly, although the inmate population of NCCI, Gardner, is regarded as one presenting “security risks,” the facility possesses certain physical deficits that are not compatible with the character of the population.<sup>2</sup>

### **DISCUSSION**

Because many of the disputes that prompted claims in the Complaint have been resolved by pre-trial injunctive relief, waivers and agreements between the parties, there remains for resolution only the dispute over the defendants’ refusal to permit plaintiffs to employ a purification lodge, and its usual rituals, in the practice of their religion. The contest implicates provisions of both the United States Constitution and the Massachusetts Constitution. The former bars impingement upon an inmate’s exercise of his or her religion unless the restriction is “reasonably related to legitimate penological interests.” *Turner v. Safley*, 482 U.S. 78, 89 (1987). See also *Employment Div. v. Smith*, 494 U.S. 872 (1990); *O’Lone v. Estate of Shabazz*, 482 U.S. 342 (1987). The latter protects an inmate’s religious observations unless the state’s burdening of his or her practices is justified by “compelling interests” and is “tailored narrowly” to accomplish those interests. *Attorney General v. Desilets*, 418 Mass. 316, 320-321 (1994). Under neither constitutional theory, however, may the instant plaintiffs prevail. On the facts found at bar, there is indeed a reasonable relation between the defendants’ prohibition of purification lodge activities and legitimate penological interests, and the prohibition is both justified by cogent governmental imperatives and crafted to impact only those practices which threaten that interest.

This Court is persuaded that the Commonwealth has a surpassing interest in diminishing the opportunities for mischief that abound in purification lodge ceremonies where heated rocks and metal implements are employed out of view of correctional officers. And, if we factor into the analysis the likely disorienting effects of inhalants that permit the participants to “move into other worlds,” there is little doubt that, were the institutional authorities to allow such ceremonies, the potential for disruption of the orderly conduct of institutional business would become reality.<sup>3</sup> When assayed by both the “reasonable relation” test-pursuant to which First Amendment challenges are addressed-and the more plaintiff-friendly “furtherance of a compelling governmental interest” and “least restrictive alternative” litmus-to which Massachusetts freedom of religion constitutional disputes are subjected-the plaintiffs’ cause does not succeed.

\*3 Doubtless there is a reasonable nexus, on the facts at bar, between the prohibition of ceremonial uses of

purification lodges and the legitimate penological objective of internal security. So too, the prohibition plainly advances the Commonwealth’s compelling interest in avoiding threats to orderly management and the integrity of the institution and does so in a manner that is, in the circumstances, minimally burdensome upon plaintiffs’ religious rights. To itemize the properties of the purification lodge rite-red hot stones, metal rakes and shovels, activities unobservable for four to five hours-is to demonstrate its patent incongruity with accepted notions of institutional security and safety. And, conceding that the alternatives permitted by defendants-to wit, prayer circles, smudging, meditation, pipe smoking, *et cetera*-are not as spiritually efficacious as is the purification lodge rite, defendants’ preclusion of lodge ceremonies remains a reasonable, narrowly conceived effort to serve the Commonwealth’s transcendent interest in the effectiveness of its correctional programs, the safety of its inmates and the common good that is, at bottom, the objective of all social initiatives.

In sum, this Court determines that, although plaintiffs’ identification with their cultural heritage and their devotion to their religious belief system is indisputably sincere and affords them the opportunity for salutary, spiritual achievement, defendants’ preclusion, at NCCI, Gardner, of purification lodges and the ceremonies conducted therein survives plaintiffs’ protests brought under the United States and Commonwealth Constitutions. Given the extraordinary risks posed by the purification lodge rites and noting the alternative forms of religious expression available to plaintiffs, the Court is persuaded that the preclusion at bar is reasonably related to the legitimate objectives of defendants’ authority, is justified by the Commonwealth’s interests in penological security and does not unduly burden plaintiffs’ constitutional rights to practice their religion.

### **CONCLUSION**

With respect to the several prayers for relief presented by plaintiff’s complaint, the Court concludes that:

- A. Judgment shall enter, upon Prayers 1, 2 and 3, in accordance with the injunctive relief heretofore granted by the Court;
- B. Judgment shall enter, upon Prayers 4, 5, 6, 9 and 10, for defendants for the reasons stated *supra*;
- C. Judgment shall enter, upon Prayers 7 and 8, in accordance with injunctive relief heretofore granted by this Court.

Footnotes

- 1 Plaintiffs also sought relief with respect to their possession of certain religious articles, in eliminating criteria for membership in their Council and in obtaining compensatory damages and costs. Their demand for the right to employ ceremonial items was satisfied by the issuance of preliminary injunctions, their concerns in connection with defendants' limitation of membership in the Council were relieved by agreement between the parties and, for the reasons stated *infra*, damages and costs will not be awarded. The parties have agreed that the sole issue remaining centers upon the lawfulness of defendants' refusal to permit members of the Council to construct and use a lodge within NCCI, Gardner.
- 2 NCCI, Gardner is a "Level 4" institution. By comparison, the security levels of MCI, Cedar Junction, and MCI, Souza-Baranowski-both of which are regarded as the most secure facilities in the Commonwealth-are rated as "Level 6."
- 3 The Court is aware that evidence was presented by plaintiffs to the effect that purification lodge ceremonies have been permitted without untoward results in other jurisdictions. Such evidence is not compelling, however, because, in each of the foreign instances cited by plaintiffs, the circumstances were significantly unlike those that obtain at bar. That is, the NCCI, Gardner, circumstances-maximum security population, "gang" organizations present, physical plant not designed to serve as a correctional facility, *et cetera*-were not replicated in the cited instances and, accordingly, those references possess little, if any, probative value for the resolution of the instant matter.