

Janet E. Traut, Senior Deputy Attorney General  
Nevada State Attorney General's Office  
100 N. Carson St.  
Carson City, NV 89702

Re: Michael S. Spencer v. Glen Whorton, et al.  
USDC Case No. 3:07-cv-00635-LRH-VPC

I just received this on Friday, March 14<sup>th</sup>, so to respond by March 18<sup>th</sup>, as specified in the instructions that accompanied this lawsuit, is not reasonable. My job includes lots of crisis work, death notices, dealing with inmates and families who have severe medical and social issues. I have to take care of those issues on a priority basis when they arise, which is often.

My response to this case, which involves the Asatru/Odinist religious group of practitioners at Nevada State Prison (NSP), is similar to the issues named in the case of McGee v. Whorton, which involves the same religious group trying to practice their religion at the same prison with the same principles involved. I'm not clear why these two cases are not combined as a class action suit.

To respond to the plaintiff's first statement, the defendants Warden Bill Donat, AWP James Baca and others did indeed "willfully" act to deprive the plaintiff and other practitioners of the same religious group of their ability to practice the "free exercise of (their) religion." Whether it was with malice I cannot say. It does seem that their right to due process was overridden.

I know nothing about whether plaintiff, or any other Asatru practitioners, were punished for attempting to practice their religion, but they were prohibited and ~~inhibited in the practice of~~ their religion. The facts are indisputable.

As stated in my response to McGee v. Whorton, I did my best to research the Asatru/Odinist religion, given the time restraints put upon me with the numerous job duties that I carried when I was "Supervising Chaplain" for the Nevada Department of Corrections (NDOC). I typically worked a 60+ hour workweek, while being paid the same as all other Chaplains that had only one institution to attend to. I did research on the Internet, read books on European pagan religions, attended a Conference on Religions from around the world, exchanged information with other heads of state corrections religious activities, and got feedback from a local pagan practitioner in the Las Vegas area. The sum total of what I learned from all that effort was that: 1) Asatru/ Odinisists typically do worship outdoors, and cook meals as part of their worship, which are cooked on fires outdoors; 2) they typically do grow herbs which are used both for seasoning food and also are part of their worship rituals; 3) it is not a universal practice to have saunas or sweat lodges and "plunge pools," although it is done by some branches; the main holy days that are the most important to them are the two solstices and two equinoxes that occur each year—the dates of which change slightly each year; 4) they usually participate in both group worship and solitary time; 5) they do have various religious

symbols that represent forces of nature, and Thor is one of their main gods, but there are many others they can use.

There are various ways that Asatru followers can worship, with various types of altars, symbols, etc. They can adapt to the restricted circumstances of prisons by using what is available and still have adequate worship practice if they are allowed space and time and both are respected by staff. NDOC has a policy of not serving any pork, thus avoiding possible conflicts with eating habits of Jews and Muslims. It would be reasonable for pagans to adapt to using whatever meats are available through the prison culinaries. They do not have to have pork. That is a preference, not a requirement. They do not need to have the Thor symbol for their worship; since it is used as a gang symbol for white supremacist groups and could cause trouble on a prison yard. Common sense dictates that the Thor symbol not be allowed.

Since the culinary has to feed all prisoners three meals a day anyway, it is not unreasonable for the culinary to provide the raw food products to pagan groups on their day of worship so that they can cook it themselves. This practice would/does not involve any extra food, expense or effort on the part of culinary or Correctional Officer Staff.

All inmates may purchase baby oil at the prison canteens, and they are allowed to use that oil for religious purposes of anointing. All they have to do is bless it by their own religious rites and it will fulfill their purposes. Being a clergy person myself who frequently uses blessed oils for anointing the sick and the seekers, I see this as adequate practice for prisoners.

I see no good reason why the European-based pagan religions cannot be practiced in Nevada prisons by allowing them to use the outdoor lands they have used for some decades, to allow them to have their small herb gardens, build paths and altars, and have a space to cook and a space to worship as a group. That is what they had for some time and it worked well, without any incidents of abuse or misuse reported in the entire system. In some of the prisons, some of the staff members seem to have a prejudice against the European-based pagan groups, and do not want to treat them with equal respect as they do for other religious groups such as Christians, Jews, Muslims, LDS, and Jehovah's Witnesses.

It is true that there is no line item in the NDOC budget for purchase or provision of religious items for any of the religious groups. That is a serious oversight, but it is a fact. All religious items that are provided to inmates for their worship or study are donated by a wide variety of prison ministry groups, both national and local. That includes all books, pamphlets, CD's for music, rosaries, prayer shawls, prayer beads, etc. for all religions and denominations. It is up to the Administration of NDOC to put in a request for a line item in the budget for the Chaplains to have funds to use at each institution, and for the State Legislature to pass such a budget item. That is a lack in the system that has always been there. NDOC does not even provide a Chaplain for each prison, let alone a budget for religious materials for each Chapel at each institution that serves all approved religions. Inmates can ask friends and family to donate religious materials for them and their religious group, and there are strict regulations how that describe how that can be done. If prisoners have money on their books, they can purchase allowed items for themselves or their religious group. Otherwise, all other religious

items are donated by large, established religious organizations, many of whom specialize in providing just such materials for the purposes of prison ministry.

If and when the authorities at NSP stopped the Asatrus from practicing their religious worship, if they bulldozed, razed or deconstructed their "land, grills, brick ovens, fire pits, altars, and ordered forfeiture of sacred statues," that would seem to me to be entirely uncalled for, if not illegal to do so. Federal laws do protect inmates' rights to practice their religions, within the confines and necessary restrictions of prison settings, security and safety of staff and inmates. Some of the staff of NDOC, and especially at NSP, do not seem to understand or accept that fact, and think that they have a right to do whatever they want to demean, or even threaten, inmates and restrict their personal behavior, even when they are behaving within the bounds of the law. It is up to the Courts of the United States to determine if NDOC practices in this instance have violated the rights of prisoners to practice their religion as provided by RLUIPA and other legislation and U.S. Supreme Court decisions. If there have been transfers, beatings and administrative disciplinary actions, such as sending prisoners to do hard time in segregation units, loss of good time and work time credits, loss of good work assignments, denial of participation in educational and rehabilitational programs, level reduction, loss of personal property, etc., as retaliatory measures against inmates for practicing their religions, then this would certainly be a violation of the laws that have been legislated in order to protect prisoners' rights to practice their religions. It is up to the courts to decide if this would qualify as "cruel and unusual punishment."

In the four years that I served as the Institutional Chaplain at Nevada State Prison, I did observe that there were occasional acts concerning the treatment of the European-based pagan groups (Wiccans, Druids, Asatru/Odinists) that were discriminatory and retaliatory. It seemed that one of the Christian volunteers had a bias against these groups—their beliefs and practices, and exercised undue influence over some of the decisions by the wardens towards those groups. They were not given equal treatment or protection.

It is true that most prisoners have gotten themselves into prison by their own misdeeds. Many of them came from abusive homes and did not benefit from a healthy, nurturing, training home life. None the less, they did acts that society has deemed unacceptable. Therefore, when they get themselves to prison by their own choices and actions, they have to understand that part of the punishment, aside from having their freedom temporarily taken away, is to live in a restricted environment. They can not expect all the luxuries that individuals may have on the outside who work for a living and provide for themselves and their families by honest work. However, a prison environment ideally provides an atmosphere that encourages positive change. That would include the opportunity for prisoners to learn more about themselves and society, why they became drug and/or alcohol addicts and how to get control over their addictions, what constitutes healthy living and relational habits, and encouragement to improve themselves. Opportunities that can help and encourage prisoners to change to a positive attitude and lifestyle would include education including literacy, psychological counseling and group therapy, training in life skills, ability time and space to practice their religions, and positive ways to otherwise spend their time such as reading, arts and crafts, hobbies that involve skill building, gardening, and athletic activities. Both staff and outside volunteers can provide some of the positive encouragement and development of the

personalities and mentalities of prisoners through personal contact, counseling, feedback, etc.

Since most prisoners have excess time on their hands, and numerous studies by Criminologists, Psychologists and Sociologists over the past decades have shown that if people have something positive to do, they develop in a healthier way; and if they do not have positive attention and activities, they tend to turn toward negative behavior and activities, it makes sense for all prison systems to emphasize keeping prisoners as busy as possible with positive activities, which includes all those areas names above. When prisoners do not have their excess time taken up with positive activities, the incidents of violence, sexual abuse and drug abuse increase in prisons. And the opposite is true: when you keep them positively employed, not only do the drugs, sex abuse and violence decrease, but people are more likely to change into more healthy, responsible, people with a healthy self-esteem and confidence which better equips them to make a successful transition to society when they are paroled.

Within the Nevada Department of Corrections (NDOC), there is an unstated pressure for staff to always find in favor of the Department when grievances or law suits are filed against it. As an ordained Minister of a well recognized mainline Christian denomination, I cannot bend the truth one way or the other. I have tried to behave in an ethical and fair way toward all staff and inmates, and to weigh the interests and needs of NDOC versus the rights of prisoners. I have tried to service the needs fairly of all the religious groups recognized as legitimate by NDOC. Some people do not seem to understand that prisoners do not forfeit all their civil rights when they are sentenced to a prison term as a felon. They still maintain certain civil rights, and one of those is the right to practice their religion as long as it is a legitimate religion and they do not abuse the privileges that accompany that practice. They also have been found to have the right to be fed a minimum level of nutritional diet; to receive decent medical care; to not be tortured; to have due process with any charges against them; and in general, to be treated as human beings. They do not have a right to luxurious living or to do harm to one another or the staff.

As a Minister of God, I believe that, at least theoretically, there is the possibility for the salvation of every soul; that all prisoners have a right to be treated with respect and dignity; and that they should be given the opportunity to recover from whatever childhood traumas they might have suffered and to receive rehabilitative treatment. As a Criminologist, I know that the great majority of prisoners respond better to positive opportunities and treatment than to negative, degrading and punitive treatment, and that they will be more capable and likely to make a successful, positive transition to society when they leave a prison if they have experienced rehabilitative and humane treatment than if they have had a negative, degrading and harsh experience. So it is to Society's best interest to run a prison system with strong, humane, enlightened and productive leadership than to allow the abuse and degradation of prisoners. Society will pay the price in the long run if prisons are run in a retrograde manner, with further and escalated criminal behavior and the return of ex-prisoners to prisons, with the continuing costs of running a counter-productive system.

I write this response to the current law suit as a public response. It is not to be considered a confidential document. The law suit is public and so are my responses, to this and all law suits in which I have been named am a respondent. I will not respond to pressures from NDOC Administration or the Attorney General's Office to bend the truth to protect illegal or harmful practices. This is an honest accounting and assessment of what I know and have observed, both as a Minister of God and as a Criminologist.

Very truly yours,

The Rev Jane Foraker-Thompson  
NDOC Chaplain

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Dear Janet,

I did not remember that the name of the plaintiff in the case about which I wrote the letter to DAG Ed McGraw in 2006 was "Chernetzky." And since it had been blacked out, I had no way of knowing. I have responded to so many similar cases. There have been three cases this year already, and it is only March of 2008.

What I wrote to you in an email recently still stands. I had been visited and questioned by representatives of the three European-based pagan groups at NSP on a weekly basis for months, as they were trying to get something they could use against me in a grievance or lawsuit. I told them my positions on the various questions they raised. In particular, I told them I did help re-write the 2004 version of AR-810, but I did not agree with some of the executive/wardens decisions that followed as to its implementation: namely, to do away with cooking rights, or restricting use of the pagan grounds to once a week. I did try to re-establish their rights to ritual fires four times a year at the two equinoxes and two solstices. I didn't agree with the pagan groups that they needed to have a sweat lodge or plunge pool; and the Asatrus did not need to use the symbol of Thor, since it is used by many white supremacist gangs as their gang symbol of power.

If my memory serves me correctly, I did give them a copy of the letter to DAG McGraw. It is a response to a public lawsuit and it is meant to be a public document. There is no basis to maintain that it is a confidential document. It is part of the public domain, or should be. I see no need to keep it out of the Court as evidence, as it was written in response to a request from the Attorney General's Office for information pertinent to the case, and it is meant to serve as honest and factual information toward the cases involved. Surely the Courts can handle the Truth! Surely that is what both you and I are about in our positions of Public Service?

Attached is my response to the lawsuit of Spencer v. Whorton.

Rev. Jane

The Rev. Dr. Jane Foraker-Thompson

NDOC Chaplain

PO Box 7000

Carson City, NV 89702

775-887-9287

Dear Mr. Skolnik,

I received this information from a family member of someone they have living at Ely State Prison. Why are inmates being denied access to either their reading glasses or their glasses to see with? This is a lawsuit waiting to happen. You need to change Ely's policy now and give back their glasses.

Additionally, if you take a person's reading glasses and they working on their appeal, you may be violating their Due Process which would lead to other lawsuits.

As for myself, I wear glasses to see with. If I don't have my glasses it makes me physically ill from not wearing them.

This is a prime example why we need an Oversight Committee.

Tonja Brown

"Ely State Prison

First Level Grievance:

I had reading glasses and seeing glasses I see with. The cops took my seeing glasses so I can no longer see two feet in front of me. I need my seeing glasses back.

Response (signed by Caseworker R. Chambliss)

Per O.P. 625 no inmate will be allowed to retain two pair (sic) of eyeglasses under any circumstances.

Second Level Grievance:

I had a prescription for reading glasses and a prescription for seeing glasses. I now only have reading glasses, so by taking my glasses you have made me blind. I need my glasses to see. What is wrong with this prison? You take a person's glasses so he can't see and change the rules without letting inmates know of this change and now the eye doctor will not see me because they say I have a pair of glasses. Sure I do. For reading, not seeing! Are you people crazy or what? I can't see and I want my glasses back.

Response from E.K. McDaniel

No inmate will be allowed to retain (sic) two pair (sic) of eye glasses under any circumstances.

Final Grievance Response (NDOC) Signed by James Cox

The response you received at your informal and first level grievance was correct. OP 625 states, (sic) that no inmate will be allowed to retain two (2) pair (sic) of eye glasses under any circumstances."



# State of Nevada Department of Corrections

## INMATE GRIEVANCE REPORT

ISSUE ID# 20062731207

INMATE NAME	NDOC ID	ISSUE TYPE	ISSUE REASON
EGBERTO, RICKEY	20632	GRIEVANCE	PROPERTY
LEVEL	DATE RECEIVED	DATE RETURNED	FINDING
IF	05/28/2008	05/30/2008	DENIED
ASSIGNED TO			
CHAMBLISS, ROBERT			
NDOC RESPONSE			
Per OP 625, no inmate will be allowed to retain two pair of eye glasses under any circumstances.			

### GRIEVANCE RESPONDER

INMATE NAME	NDOC ID	ISSUE TYPE	ISSUE REASON
EGBERTO, RICKEY	20632	GRIEVANCE	PROPERTY
LEVEL	DATE RECEIVED	DATE RETURNED	FINDING
1	05/28/2008	06/12/2008	DENIED
ASSIGNED TO			
CHAMBLISS, ROBERT			
NDOC RESPONSE			
You were advised, that per OP 625, no inmate will be allowed to retain tow (2) pair of eyeglasses under any circumstances.			

### GRIEVANCE RESPONDER

INMATE NAME	NDOC ID	ISSUE TYPE	ISSUE REASON
EGBERTO, RICKEY	20632	GRIEVANCE	PROPERTY
LEVEL	DATE RECEIVED	DATE RETURNED	FINDING
2	05/28/2008	06/30/2008	DENIED
ASSIGNED TO			
COX, GREG			
NDOC RESPONSE			
<p>GRIEVANCE ISSUE:</p> <p>Property took away 2 pair of my glasses. I need reading and seeing glasses and they took both pair. I am 52 years old and need both pair.</p> <p>GRIEVANCE RESPONSE:</p> <p>The response that you received at your Informal and 1st. Levels was correct. OP 625 states, that no inmate will be allowed to retain two (2) pair of eye glasses under any circumstances.</p>			

GRIEVANCE RESPONDER

RECEIVED NSP

JUL 09 2008

AWP'S OFFICE

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Reference Name: NOTIS-RPT-OR-0080  
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