

FOLLOW-UP TO AUTODIDACTIC v. STATE SPONSORED EDUCATION

In my prior post, "Autodidactic v. State Sponsored....," I wrote about my battle with the prison system for an eTablet in order to help fulfill my mission as a Buddhist & National Lawyers Guild member. I ended this piece with a vow to continue this fight until we all have access to this vast database of knowledge.

This is an update on how I upped the ante in this struggle by instituting a federal lawsuit with the filing of the following complaint. [pp. 2-3 list some of the other activities I've been working on to transform prisoners, see post: **TRANSFORMING PRISONERS INTO PEACE AMBASSADORS.**]

After the complaint is the latest motion I filed (**Motion to Amend Defendants**) in order to replace one of the defendants, who has left the system, with his replacement. At the moment, the case is on hold until the second defendant is served. Note the slight change in the Case no., from the one on the complaint. This is a result of the warden refusing to have the case heard before a magistrate judge; thus, the new number reflects the case now being in front of a district judge.

Stay posted for future updates.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MAURICE L. HARRIS		Case No. C 17-3269 MEJ (PR)
Plaintiff,		
		AMENDED COMPLAINT
v.		
RON DAVIS, et al.,		
Defendants.		

I. Plaintiff

1. Plaintiff, Maurice L. Harris, is and was at all times mentioned herein a prisoner of the State of California in the custody of the California Department of Corrections and Rehabilitation ("CDCR"). He is currently confined in San Quentin State Prison ("S.Q.S.P."), in San Quentin, CA.

II. DEFENDANTS

2. Defendant, Kelly Harrington, is the Director, Division of

Adult Institution ("DAI") of the CDCR. He/she has the power to institute prison policy.

3. Defendant, Ron Davis, is the Warden of S.Q.S.P. He is legally responsible for the operation of S.Q.S.P. and for the welfare of all the inmates in that prison.

III. FACTS

4. Plaintiff arrived on San Quentin's death row, as a pro se litigant, in 1996; Plaintiff has remained an active member of his defense team throughout his incarceration.

5. Plaintiff is a member/practitioner of Soka Gakkai International ("SGI"), a Nichiren Buddhism organization. A main tenet of Plaintiff's practice is the study of a wide-array of texts, for acquiring and dispensing knowledge, and interfaith activities.¹ Under this precept, Plaintiff has:

-
- a. facilitated Buddhist services for all condemned inmates (Exh. A);
 - b. used his typewriter to disseminate Buddhist principles to interested elements of the condemned population (Exh. B), and to society at large, via his blog: <http://betweenthebars.org/blogs/8439/>;
 - c. facilitated Jewish services for his yard group and actively study Jewish doctrines (Exh. C);
 - d. through SGI's interrelationship with Native Americans,

became the American Indian ("AMI") secretary for his yard group (Exh. D);

e. enrolled in college through the Voluntary Education Program ("VEP") (Exh. E); whereby, Plaintiff currently has an Office of Correctional Education ("OCE") **loaner eReader.**

6. Plaintiff is also enrolled in a paralegal course (Exh. F).

7. All of the above-mentioned activities require the study of diverse texts, and at times, the cross-referencing of various texts.

1. SGI pres. Daisaku Ikeda:

"It is in this spirit that the SGI Charter calls for dialogue and cooperation among people of different faiths toward the resolution of the fundamental issues facing humankind.... It is our determination to continue to develop and expand a people's movement of peace, education and culture into the coming millennia, in accordance with the vision of Nichiren, the founder of the school of Buddhism we practice." (excerpt from: A New Humanism: The University Addresses of Daisaku Ikeda, pp. 250-51)

The import of education to SGI adherents can be

found in its original title, Soka Kyoiku Gakkai
(Translation: Value-Creating Education Society).

8. The California Code of Regulations Title 15 ("Tit. 15") is the CDCR's quasi-legislative rules which govern the acquisition of personal and religious property. From the beginning of his incarceration, as a Grade A inmate, Plaintiff has been able to procure newer technological appliances, once approved by the CDCR; i.e., he was able to go from Sony Walkman to CD Player; analog TV to flat-screen digital TV; and, acquire a 7k typewriter, in which this complaint is typewritten. 9/11/13, Assoc. Warden J.M. Robertson ensured that "The Tit. 15 does and will continue to apply to all CDCR inmates equally regardless of their custody designation." (Exh. G)

9. 8/21/15, Def. Davis and CDCR's OCE implemented an Operational Procedure, which authorized eReaders for inmates enrolled in college programs. (Exh. K, @ 12).

10. 10/12/15, Def. Harrington implemented an eReader policy for Level I and II Males, and all Female inmates. (Exh. K, @ 10) Subsequently, these tablets became available for Level III and IV inmates, as well. (Exh. H) CDCR has no level higher than IV.

11. 1/21/16, Plaintiff filed an administrative grievance for a Religious Accommodation Request to purchase a CDCR-approved eReader for the benefit of his religious studies,² and legal research, per the Religious Land Use and Institutionalized

Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc-1; and Tit. 15, §§ 3190³, 3210.⁴ 3/17/16, this request was summarily denied by Def. Davis, without a compelling governmental interest, or referral to the Religious Review Committee ("RRC"). 7/15/16, Def. Davis' denial was upheld by the CDCR's Third Level Review. (Exh. K, @ 1).

2. [Other facilities are using eReaders for "faith-based studies." (Exh. O)] Under Def. Harrington's policy, qualified Christian inmates are able to augment their personal religious library with the Union Supply eReader's 32GB of book memory-their book distributor contain over "a million books" (Exh. I); and, Plaintiff counted at least 44 Christian themed titles, along with a "Christian/Gospel" audio section (pp. 147-50), in their 2016 Media Catalog. Plus, JPay's eReader comes equipped with 1000 books, including a Bible, along with books from a "religion" genre. (Exh. J)
3. Tit. 15, § 3190(j)(2) provides that "There shall be no 'Approved Vendor Lists' for any legal publications. Inmates may receive legal publications from any publisher, book store or book distributor that does mail order business; § 3190(j)(7) states the exact same thing for "All publications," which would include religious books

(SGI also publishes and distributes eBooks for Buddhist study [Exh. L]). It is also Plaintiff's contention that: (1) "All publications" include eBooks; and, (2) Union Supply and JPay has become "book store[s] or book distributor[s] that does mail order business," therefore denying access to these publications also creates an undue substantial burden.

4. § 3210 is CDCR's policy for Religious Accommodations: "(d) A request for a religious accommodation that requires a ... item(s) not otherwise authorized, will be referred to a Religious Review Committee (RRC) for review and consideration. The RRC shall be comprised of designated chaplains, and a correctional captain or their designee. Accommodation for religious services that are not granted, shall be for reason(s) which would impact facility/unit safety and security, and orderly day to day operations of the institution." (RLUIPA is stated as an authority cited.)

Prior to Plaintiff's eReader request, all previous request were processed by a RRC member, such as accommodations for religious meals, Buddhist scroll and beads (Exh. M); and for

Buddhist services (Exh. A).

12. To date, Def. Harrington has not proffered a compelling governmental interest for the non-inclusive eReader policy, nor has Def. Davis for the denial of the Religious Accommodation.

13. Without the benefit of an eReader, Plaintiff will continue to face the burden of choosing between furthering his religious studies or risk discipline from violating CDCR's property restrictions. (Exh. N)

14. Jan. 2017, Plaintiff delivered to prison chaplain Father G. Williams proposed declarations (Exh. P), in an effort to receive a direct response from a RRC member. He returned them, two weeks later, stating that cooperating would place him in conflict with Def. Davis.

IV LEGAL CLAIMS

15. In each claim, Plaintiff reallege and incorporate by reference all the aforementioned facts of this petition.

16. By instituting and enforcing an eReader policy that allows Christian inmates the opportunity to study volumes of religious texts, while denying Plaintiff Harris the same reasonable opportunity for religious study, Defendants Harrington and Davis are placing a substantial burden on Plaintiff's religious exercise, thus violated and continues to violate Plaintiff's rights under RLUIPA, the Equal Protection Clause, and the First

Amendment.

17. By allowing eReaders for all Female inmates, including the condemned, while denying Plaintiff Harris access to this same important benefit because of his gender, Defendants Harrington and Davis are placing a substantial burden on Plaintiff's religious exercise, thus violated and continues to violate his rights under RLUIPA and the Equal Protection Clause.

18. Def. Davis' denial of Plaintiff Harris Religious Accommodation Request, per RLUIPA, & Tit. 15, § 3120, created a substantial burden on Plaintiff's religious practice, under RLUIPA.

19. By not referring Plaintiff Harris' Religious Accommodation Request to the Religious Review Committee, Def. Davis contravened Tit. 15, § 3120, thus violated Plaintiff's Fourteenth Amendment rights (Due Process).

20. Defendants Harrington's and Davis' contravention of Tit. 15, § 3190 prevents Plaintiff from acquiring religious and legal books "from any publisher, book store or book distributor that does mail order business," thus violates Plaintiff's rights under RLUIPA, the First and Fourteenth Amendments (Due Process).

21. Def. Davis' allowance of eReaders for VEP studies, while simultaneously denying Plaintiff this benefit for his religious studies, violates Plaintiff's rights to religious practice under RLUIPA, and his rights under the Equal Protection Clause ("similarly situated")

V. PRAYERS FOR RELIEF

22. WHEREFORE, Plaintiff respectfully prays that this Court enter judgment granting Plaintiff:

23. A declaration that the acts and omissions described herein violated Plaintiff's rights under the Constitution, laws and statutes of the United States;

24. An injunction ordering Defendants Kelly Harrington and Ron Davis to grant Plaintiff's Religious Accommodation;

25. An evidentiary hearing at which proof may be offered concerning the allegations in this petition;

26. The authority to obtain subpoenas in forma pauperis for witnesses and documents necessary to prove the facts alleged in this petition;

~~27. The authority to conduct discovery, including the right to take depositions, request admissions, and propound interrogatories, as well as the means to preserve the testimony of witnesses;~~

28. Permission to amend this petition, if necessary;

29. An order for Defendants to pay all Plaintiff's costs in this suit, including, but not limited to, filing, copying, and attorney expenses, if applicable; and,

30. Any additional relief this Court deems just, proper, and equitable.

Dated: November 2, 2017

Respectfully submitted,

Maurice L. Harris

K-35200

San Quentin State Prison

San Quentin, CA 94964

VERIFICATION

I have read the foregoing complaint and hereby verify that the matters therein are true, except as to matters alleged on information and belief, and, as to those, I believe them to be true. I certify under penalty of perjury that the foregoing is true and correct.

Executed at San Quentin, CA, on November 2, 2017

A handwritten signature in black ink, appearing to be 'M. L. Harris', written in a cursive style.

MAURICE L. HARRIS

EXHIBITS

- A. Memo, 5/28/15, Def. R. Davis, for Buddhist Services
- B. Plaintiff's Religious Essays:
 - 1. "How Buddhism Developed From Hinduism";
 - 2. "My World Tribune."
- C. - Plaintiff's note to Rabbi Shleffar facilitating Jewish Services;
 - Two Chronos re Plaintiff's Jewish studies
- D. Michael Strand, "First District on Navajo Nation," World Tribune, 9/18/09;
 - American Indian Spiritual Group card
- E. - VEP card
 - Coastline Community College, Honor's List letter, Aug., 2017

- ~~F. Grade Reports form Blackstone Career Institute~~
- G. Memo, 9/11/13, Assoc. Warden, J.M. Robertson, re Title 15 applied equally to all CDCR inmates.
- H. Walkenhort's Fall 2015 Catalog, p. 134
- I. R. Malik Harris, "New Policy Allows Prisoner to Purchase Tablets," San Quentin News, Jan. 2016
- J. "JPay eReader," info, downloaded, 7/30/17;
 - Jerry Gearin, "Prison officials provide tablets to reduce violence," San Quentin News, June 2017, p.6;
 - Salvador Solorio, "Free Learning Software For JPay

Tablets," San Quentin News, July 2016, p.15

K. Plaintiff's Administration Appeal, & Responses

L. "E-BOOKS: Re-Kindle Your Buddhist Study," World Tribune,
6/17/16

M. Religious Review Committee accommodations:

- Religious Diet Card

- Memo, Jewish Chaplain Hyman, re Buddhist scroll and beads;

- Letter from SGI to Chaplain Hyman, with her signature acknowledging the opening of scroll and beads in the presence of Assoc. Warden Cota;

- Chrono for scroll, beads, and altar

N. Memo, 11/15/06, Lt. Robinson and Capt. Fox, re property restrictions;

- OP 608 listing physical book limits and space limitation for Correspondence books;

- Memo, Lt. Taylor, 6/20/12, re removal of excess property

O. Matt Clarke, "Company Offers Educational Tablets to Prisoners, with Mixed Results," Prison Legal News, Nov. 2016, p.52; re tablets for faith-based studies

P. Proposed declarations, submitted to Father Williams

MAURICE L. HARRIS
IN PRO SE
K-35200
San Quentin, CA 94974

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MAURICE L. HARRIS
Plaintiff,

V.
Ron Davis, et al.,
Defendants.

Case No. 17-cv-03269-HSG

PLAINTIFF'S NOTICE OF MOTION TO AMEND
DEFENDANTS

Judge: The Honorable Haywood
S. Gilliam, Jr.
Action Filed: June 6, 2017

TO THE HONORABLE COURT AND DEFENDANT RON DAVIS:

PLEASE TAKE NOTICE that, under Rules 15(c)(1)(C), 19(a), 20(a)(2), & 21 of the Fed. R. Civ. P., Plaintiff respectfully moves this Court for an amendment to drop former California Department of Corrections and

Rehabilitation (CDCR) Director, Division of Adult Institutions (DAI), Kelly Harrington as a defendant, and add current CDCR Dir., DAI, Kathleen Allison as a joint defendant, in her "official capacity," in this matter. Upon information and belief, since Def. Harrington is no longer a CDCR employee, he/she is not in a position to provide Plaintiff any injunctive relief in this matter; and, that Ms. Allison, as current Dir., DAI, is in such a position to provide the relief being sought.

WHEREFORE, Plaintiff, based on this notice of motion and motion, the attached declaration & memorandum, and the pleadings, orders, and exhibits on file in this case, respectfully prays that this Court grant an amendment allowing for Def. K. Harrington to be dropped from this matter, and CDCR Dir., DAI, Kathleen Allison to be added as a joint defendant, and/or any additional relief this Court deems just, proper, and equitable.

Dated: August 9, 2018

Respectfully submitted



Maurice L. Harris

In Pro Se

MAURICE L. HARRIS
IN PRO SE
K-35200
San Quentin, CA 94974

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MAURICE L. HARRIS
Plaintiff,

V.

Ron Davis, et al.,
Defendants.

Case No. 17-cv-03269-HSG

PLAINTIFF'S DECLARATION IN SUPPORT OF
MOTION TO AMEND DEFENDANTS

Judge: The Honorable Haywood
S. Gilliam, Jr.
Action Filed: June 6, 2017

Maurice L. Harris, in Pro Se, hereby declares:

1. I am only seeking declaratory and injunctive relief in this matter.
2. On Oct. 12, 2015, in his/her "official capacity" as Dir., Div. of Adult Institutions, Def. Kelly Harrington implemented the Tablet Memorandum at issue in this lawsuit. (Exh. K, @ p.10)
3. Def. Harrington is no longer employed with the CDCR. See Dkt. No. 26, fn. 1.
4. On Aug. 2, 2018, Plaintiff asked San Quentin's law clerk, Mr.

Gabriel, to run a search for the current Dir., DAI.

5. Mr. Gabriel's search yielded Ms. Kathleen Allison as CDCR's current Dir, DAI. (Att. A)

6. Dir. Allison is listed as one of the original people that was provided a copy of the contested, above-mentioned, Oct. 12, 2015, Memorandum in this action. (Exh. K, @ p.11)

7. Upon information & belief, Ms. Allison, in her official capacity, is in a position to provide Plaintiff the adequate injunctive relief he seeks.

I declare under penalty of perjury that the foregoing is true and correct. Executed at San Quentin, CA, on August 9, 2018.



Maurice L. Harris

In Pro Se

MAURICE L. HARRIS
IN PRO SE
K-35200
San Quentin, CA 94974

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MAURICE L. HARRIS
Plaintiff,

V.

Ron Davis, et al.,
Defendants.

Case No. 17-cv-03269-HSG

MEMORANDUM OF LAW IN SUPPORT OF MOTION
TO AMEND DEFENDANTS

Judge: The Honorable Haywood
S. Gilliam, Jr.
Action Filed: June 6, 2017

MEMORANDUM OF LAW

I. A Joinder is Required for a Just Adjudication

Being made a joinder to this suit, CDCR Dir. Kathleen Allison can provide the injunctive relief sought in this controversy. Consequently, under Rules 15(c)(1)(C), 19(a), 20(a)(2), and 21 of the Fed. R. Civ. Proc., justice allows for Dir. Allison to be added as a joint defendant, in her official

capacity. See Steven H. Gifis, "joinder: compulsory joinder," **Law Dictionary** 110 (1975) ("mandatory coupling of a certain person who must be made a party with others in an action under certain circumstances because his participation is necessary for a just adjudication of the controversy. Fed. R. Civ. Proc. 19(a).").

II. The Joinder Will Not Result In Any Prejudice

Due to the early stage of these proceedings, Dir. Allison, nor Def. R. Davis, will be prejudiced by having Dir. Allison joined to this lawsuit. De Malherbe v. International Union of Elevator Constructors, (1977, ND Cal) 438 F. Supp. 1121 (Plaintiff may be permitted to add parties before responsive pleading is served, because plaintiff has complete freedom to name parties when commencing action and interest of defendant will not be substantially prejudiced in early stage of lawsuit by delay in adding parties.)

III. Conclusion

Based on this Memorandum, equity provides for an amendment as a remedy for a mistaken misjoinder; and, that such a remedy will not prejudice the defendants in this action.

Dated: August 9, 2018

Respectfully submitted



Maurice L. Harris

In Pro Se