

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DAVID DONHAUSER,

Plaintiff,

vs

9:01-CV-1535

GLENN S. GOORD, Commissioner, NY DOCS;
MARTHA E. YOURTH, CSW Guidance Specialist;
DOMINIC MARTINELLI, Sex Offender Program
Counselor; and S. CARTER, S.C.C., Oneida
Corr. Facility,

Defendants.

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

MAY 13 2008

LAWRENCE K. BAERMAN, Clerk
UTICA

APPEARANCES:

OF COUNSEL:

DAVID DONHAUSER

Plaintiff, Pro Se

05-B-3138

Great Meadows Correctional Facility

P.O. Box 51

Comstock, NY 12821-0051

ROBERT N. ISSEKS, ESQ.

Attorney for Plaintiff

6 North Street

Middletown, NY 10940

HON. ELIOT SPITZER

Attorney General of the

State of New York

Attorney for Defendants

Department of Law

The Capitol

Albany, New York 12224

DOUGLAS J. GOGLIA, ESQ.

Asst. Attorney General

DAVID N. HURD

United States District Judge

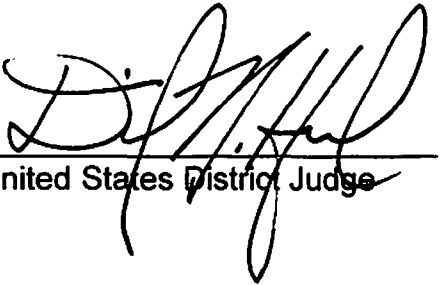
ORDER

The attached Notice with the proposed Settlement Agreement attached is
approved.

DOCS will post the Notice in all facility law libraries, general libraries, inmate housing areas, and all Sex Offender Counseling and Treatment Program areas. Additionally, each facility Inmate Liaison Committee and Inmate Grievance Resolution Committee will be provided with a copy of the Notice.

The above must be completed no later than May 30, 2008.

IT IS SO ORDERED.



United States District Judge

Dated: May 13, 2008
Utica, New York.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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DAVID DONHAUSER,

Plaintiff,

-against-

GLENN S. GOORD, Commissioner, New
York State Department of Correctional
Services; MARTHA E. YOURTH, DSW,
Guidance Specialist; DOMINIC MARTINELLI,
Sex Offender Program Counselor; and
S. CARTER, S.C.C., Oneida Correctional Facility,

Defendants.
-----X

1535
9:01-CV-525

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

MAY 13 2008

LAWRENCE K. BAERMAN, Clerk
UTICA

**NOTICE TO ALL PRISONERS HOUSED IN FACILITIES OPERATED
BY THE N.Y.S. DEPARTMENT OF CORRECTIONAL SERVICES**

The plaintiffs' and the defendants' attorneys have agreed to settle this class action lawsuit pending in the United States District Court for the Northern District of New York, which challenges the manner in which the New York State Department of Correctional Services (DOCS) operates its Sex Offender Counseling Program.

This Notice provides class members with information about the proposed settlement and how they can contact the attorneys for the class and/or the Court to ask questions or to make objections about the settlement.

The class action was filed by David Donhauser ("plaintiff") on October 10, 2001, seeking various forms of relief for alleged violations of his rights under the Fifth Amendment to the United States Constitution. Plaintiff has alleged that DOCS officials

violated his right against self-incrimination by threatening to deny him good time based on his refusal to participate in DOCS' Sex Offender Counseling Program (SOCP), a therapeutic program for sex offenders that requires participants to discuss their history of sexually offending behavior. Plaintiff has alleged that if he refused to divulge such information in connection with the SOCP, he would automatically lose his good time credits.

On February 15, 2005, plaintiff's motion for class certification was granted. The class is made up of all "current or former New York State prisoners who have lost or been denied good time credits or have been threatened with the loss or denial of good time credits because of a refusal to admit guilt to criminal sexual conduct as part of the Sexual Offender Counseling Program."

Attached to this Notice is a copy of the Settlement Agreement that is being proposed by the attorneys. It provides that during the life of the Settlement Agreement DOCS shall, upon admission of any inmate into any DOCS SOCP, provide to each participant a "Limits of Confidentiality, Partial waiver of Confidentiality and Acknowledgment" form ("the form") to be signed by the inmate. The form shall set forth the program policy with respect to confidentiality and reporting requirements and shall include the following provisions:

I understand that the primary purpose of the program is to reduce the likelihood of reoffending by assisting me to control my chain of behaviors that lead to sexual offending. I also understand that I am not required to admit the commission of a particular crime, whether it resulted in the present commitment or not.

Rather, for successful program participation, I may discuss my behavior in general terms without providing the full names of victims, without disclosing the exact dates, times, and places of various sexual offending behavior, and without admitting to any specific crime or the violation of any specific section of the Penal Law. Nonetheless, I must openly and honestly discuss the behavior that resulted in my incarceration and referral to the program, demonstrate acceptance of responsibility for the conduct that resulted in my criminal conviction and demonstrate an understanding of my sexual offending behavior and cycle of abuse.

I have been advised that no written or oral statement made by me in conjunction with treatment services rendered in connection with the Sex Offender Counseling and Treatment Program may be used against me in a subsequent criminal proceeding.

I have further been advised that I may not reveal in any subsequent criminal proceeding any information disclosed by another inmate in a group therapy session or otherwise disclosed in conjunction with treatment services rendered as part of the Sex Offender Counseling and Treatment Program.

While the contents and layout of the form may be subject to change, the provisions set forth above shall not be changed during the term of the Settlement Agreement absent a change in the law or a court order prohibiting DOCS from continuing to grant such immunity or upon agreement by counsel for the parties.

The settlement of this lawsuit will not become final until the members of the plaintiff class have had an opportunity to object to the Settlement Agreement if they choose to do so. After that, the Settlement Agreement must be approved by the Court. If it is approved, the Court will then issue an order dismissing the lawsuit with prejudice and the Settlement Agreement will remain in effect in accordance with its terms for a period of two (2) years. The terms of the Settlement Agreement shall be binding on the parties, their successors, agents, employees and all persons acting in concert with them. After the

two (2) year term, the terms and conditions of this Settlement Agreement shall automatically cease to be binding.

The Settlement Agreement has been submitted as a settlement of all claims asserted in this lawsuit. It is a “private settlement agreement” as that term is used in the Prison Litigation Reform Act (PLRA), 18 USCA 362(c). If any provision of the Settlement Agreement is declared invalid, illegal or unenforceable in any respect, the remaining provisions shall remain in full force and effect, unaffected and unimpaired.

If you are a member of the class, you have the right to object to the proposed settlement and to submit any supporting materials. You may do so on your own or through an attorney of your choice. You may object to any aspect of the proposed settlement. **To make sure your objections are received by the Court and considered at the hearing you must follow these instructions:**

1. Make your objections in writing. If you are unable to write you may request inmate legal assistance in accordance with Directive # 4483 entitled “Law Libraries & Inmate Legal Assistance and Notary Public Services.”

2. Mail your written objections on or before ^{July 15,} 2008 addressed to:

Clerk of Court
U.S. District Court
Northern District of New York.
Alexander Pirnie Federal Building
10 Broad Street
Utica, New York 13501

Re: *Donhauser v. Goord* (01-CV-1535)

3. On the top of the first page of your objections, write the name and

number of the lawsuit: "*Donhauser v. Goord* (01-CV-1535)"

The Hon. David N. Hurd, USDCJ, will hold a hearing on July 29,
2008, at 10:00 a.m. at the United State District Court for the Northern District of
New York at Alexander Pirnic Federal Building, 10 Broad Street, Utica, New York
13501, to decide if the settlement of the lawsuit on behalf of the class members is fair,
reasonable and adequate and should be approved. Any objections mailed after **July 15,**
2008, will not be considered.

Any class member who wishes to obtain additional information may contact the
attorneys for the plaintiff class:

Robert N. Isseks
6 North Street
Middletown, NY 10940
(845) 344-4322

DECLARATION OF SERVICE BY CM/ECF

DOUGLAS J. GOGLIA, does hereby declare under penalty of perjury, that the foregoing is being filed with the Clerk of the District Court using the CM/ECF system, which is sending notification of such filing to:

Robert N. Isseks, Esq.
6 North Street
Middletown, NY 10940

I certify under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct. Executed on May 1, 2008.

s/ Douglas J. Goglia
DOUGLAS J. GOGLIA
Assistant Attorney General
Bar Roll No. 302406