



COMMANDER'S LOG

April 2015

The Need for a Religious Diet Versus the Needs of a Detention Center

QUESTION: Is providing a pork-free diet and lacto-ovo vegetarian diet sufficient to accommodate the needs of various religious groups?

ANSWER: Yes. There are legitimate penological interests in providing inmates a lacto-ovo vegetarian diet, rather than, for example a Kosher diet, in light of the attenuated costs in providing Kosher meals which, as they are to be prepared in a separate kitchen with separate utensils, are generally prepared off-site by an outside vendor.

CASE: *Joseph L. Baumgarten III v. Howard County Department of Corrections, et al.*
United States District Court for the District of Maryland, Decided February 25, 2015
(Unpublished)

The Facts: Beginning on January 18, 2013, Joseph Baumgarten was a detainee at the Howard County Detention Center (“the Detention Center”). He identified himself as member of the Jewish faith. He claimed that, on February 3, 2013, he wrote to the Howard County Department of Corrections (“the DOC”) for “repeatedly giving him non-Kosher food.” He was advised the same day that the problem would be “sorted out.” On March 29, 2013, Baumgarten again wrote to the Department of Corrections indicating that he was still not being served Kosher food. He received a response on April 8, 2013, indicating that “Due to the issues/work being done in the kitchen during this time period...everyone received bag meals. This was an unavoidable situation.” Later, on April 8, 2013, Baumgarten was served a non-Kosher meal for breakfast. Lieutenant Glover advised him that a Kosher meal was not available but that a lunch or a dinner could be substituted for a breakfast meal. Baumgarten claimed he never received the substitute meal. The problem persisted and Baumgarten claimed that he personally spoke with Director Jack Kavanagh who indicated that he would meet Baumgarten’s religious needs for Kosher meals and allegedly advised Baumgarten to stop filing grievances regarding the issue. Baumgarten claimed that he lost 30 pounds because of the Detention Center’s failure to serve him Kosher meals. He was transferred from the Detention Center to another correctional facility on May 6, 2013.

The Lawsuit and the Response: Baumgarten sued the DOC and Director Kavanagh, alleging violation of his federal constitutional rights. He sued under both 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persona Act (RLUIPA). Defendants moved for summary judgment. They provided evidence that the County provided pork-free regular diets and a lacto-ovo vegetarian diet that accommodated a broad spectrum of religious practices. Baumgarten was approved to receive Kosher meals, and throughout his incarceration, he received frozen prepackaged meals marked “Kosher” which were microwaved in the Detention Center’s kitchen’s microwave. At no time did the Detention Center run out of such meals. Also, Baumgarten’s Kosher meals were supplemented with fruits and vegetables. Other evidence established that Baumgarten had met with Detention Center officials regarding his continued complaints of not receiving Kosher meals. As a result of the meeting, it was agreed that Baumgarten’s meals would be provided on Styrofoam trays (The Styrofoam trays were used because the plastic trays which were reusable were not kept Kosher) and all items would be reviewed for the proper Kosher markings. In essence, Defendants contended that they had met all constitutional requirements and that any

lapses, including when the kitchen was closed due to a broken pipe, were isolated incidents. They believed that many of Baumgarten's complaints concerned the fact that his meals were not prepared in a Kosher kitchen, and not with the meals themselves. Finally, medical records refuted Baumgarten's claim that he had lost 30 pounds while at the Detention Center.

The Decision: The Court granted Defendants' Motion for Summary Judgment. In doing so, the court observed that inmates retain the right to reasonable opportunities for free exercise of religious beliefs without concern for the possibility of punishment. This includes the right to receive a nutritious diet in keeping with their religious beliefs. That right is not unfettered. Prison restrictions that impact on the free exercise of religion but are related to legitimate penological objectives do not run afoul of the constitution. The court also noted that the case involved the standard imposed by RLUIPA: "No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution...." RLUIPA establishes a statutory protection for the free exercise of religion that exceeds the requirements of the Free Exercise Clause of the First Amendment. Under RLUIPA, if a plaintiff establishes a substantial burden on his exercise of religion, the government must prove that the challenged policy is the least restrictive means of furthering a compelling governmental interest.

Here, although there was evidence that, on occasion, non-Kosher meals were inadvertently served to Baumgarten, correctional staff made every effort to correct the oversight, even providing pre-packaged Kosher meals prepared by an outside vendor on Styrofoam trays. In sum, Baumgarten failed to demonstrate that his ability to practice his religion was substantially burdened or restricted by the Detention Center's lack of a Kosher kitchen or occasional nondelivery of Kosher meals.

NOTE: Detention Centers are not required to have "Kosher kitchens." Setting aside a dedicated area and kitchen staff to specially prepare food for a single or a few inmates would greatly impact the operation of the kitchen, as would requiring a detention center to specially purchase utensils, cooking implements, etc., to prepare the food. Additionally, implementing special meal preparations for a few inmates would lead to additional requests for special treatment and lead to the appearance that one class of inmates was treated more favorably than others.

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