

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

**FILED**

OCT 20 2003

DENNIS EARL FULBRIGHT )  
Plaintiff, )  
)  
vs. )  
)  
RON WARD, Director )  
Defendant. )

Case No. ROBERT D. DENNIS, CLERK  
CIV-03-99-A U.S. DIST. COURT, WESTERN DIST. OF OKLA. DEPUTY  
(consolidated with)  
CIV-03-125-A

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

COMES NOW, Plaintiff Fulbright and moves for Preliminary Injunction and Order of this Court directing the Defendant and the Oklahoma Department of Corrections to provide the Plaintiff with kosher meals.

1. Plaintiff asserts that he is a sincere practitioner of Orthodox Judaism [See attached Affidavit, CIV-03-125-A Exhibits "D" and "E"; See also Werner v. McCotter, 49 F.3d 1476 (10<sup>th</sup> 1995)], that keeping kosher is a central tenet of Judaism, that eating non-kosher food is harmful to his body and his soul, and that he cannot be made whole by any alternative as there is no alternative to kosher. Ashelman v. Wawnzaszek, 111 F.3d 674, 675 and n.2; Beerheide v. Zavaras, 997 F.Supp 1405 (D.Colo 1998); Beerheide v. Zavaras, 82 F.Supp 1190 (2000) as upheld by Beerheide v. Suthers, 286 F.3d 1179 (10<sup>th</sup> 2002); see also 42 USC 2000cc 5(7) (A)2000
2. Plaintiff asserts that the harm being done to his body and soul out weighs any financial concerns Defendant my have where the cost of providing this Plaintiff with a kosher meals will

have a minimum impact where the facility Food Service budget exceeds \$1 Million and the state corrections budget nears \$400Million. Further, Plaintiff cannot be forced to bear the cost of feeding himself, in whole or in part. Beerheide v. Zavaras, 997 F.Supp 1405 (D.Colo 1998); Beerheide v. Zavaras, 82 F.Supp 1190 (2000) as upheld by Beerheide v. Suthers, 286 F.3d 1179 (10<sup>th</sup> 2002).


3. Plaintiff asserts that the harm being done to his body and soul out weighs any facility security or operational concerns where Defendant's mere allegation does not substantiate adverse effects Beerheide v. Zavaras, 997 F.Supp 1405 (D.Colo 1998); Beerheide v. Zavaras, 82 F.Supp 1190 (2000) as upheld by Beerheide v. Suthers, 286 F.3d 1179 (10<sup>th</sup> 2002).
4. Plaintiff asserts that providing him with a kosher meals is not in conflict with public interest in that enforcement of the First Amendment Right to free exercise of religion is in the public interest where religion equates to rehabilitation (Mushlin, *Rights of Prisoners* 3<sup>rd</sup>, Vol.1, p. 674) as this is the very premise under which penitentiaries were first established in the United States, and where the financial burden to the tax payer is *de minimus* compared to the overall corrections budget.
5. Plaintiff asserts a substantial likelihood of success in light of the enactment of 42 USC 2000cc (2000) and rulings in Beerheide v. Zavaras, 997 F.Supp 1405 (D.Colo 1998); Beerheide

v. Zavaras, 82 F.Supp 1190 (2000) as upheld by Beerheide v. Suthers, 286 F.3d 1179 (10<sup>th</sup> 2002).

6. Plaintiff asserts that he is entitled to immediate relief in that Defendant and the Oklahoma Department of Corrections has been aware of *Beerheide* and 42 USC 2000cc (2000) for at least two years and has had this time to prepare and comply with these standards (See also CIV-03-125-A, Exhibit "G".)

WHEREFORE, premises considered, Plaintiff **Fulbright** prays this Honorable Court grant him Preliminary Injunctive Relief by Ordering the Defendant and the Oklahoma Department of Corrections to begin providing the Plaintiff with kosher meals, immediately, along with any other and further relief the Court deems fit and proper.

Respectfully Submitted,

  
Dennis E. Fulbright 186054  
JHCC E-2-113  
Rt. 1, Box 548  
Lexington, OK 73051-0548



Prophets) I was at Dick Connors Correctional Center (DCCC). What I had read did not match up with what the preachers or Bible studies had been teaching me so I began to question the Christian and Jewish prisoners trying to sort out the truth. I stayed about six months at DCCC and then was transferred to Joseph Harp Correctional Center (JHCC), where I have been for nearly five years as of this writing.

I wanted to learn more about the laws that God said are for all generations because, the best I can tell, even Jesus said to follow the law. Beside that, I had a hard time believing the virgin birth, the God/man thing, not to mention the fact that those laws seemed to be on my mind all too often. I kept remembering the vow that I had made to God when I asked for knowledge and guidance, saying that I would do what he showed me to do.

I met Inmate Billy Jones who was doing what I believed at the time to be Jewish practices. I started attending what was called Messianic Jewish Services. I really enjoyed worshiping with these men because they believed a lot of the same things I believed, like the laws in the Bible were very important and that Jesus was only a man. I was with this group for about three years but I separated myself from them after watching a video with them of a man preaching and making prophecies of things that he predicted were going to happen. The problem was that the video was old and the time period had already passed for the prediction and none of the things he predicted had come about. I had already learned in the Bible that if a man claims to be a prophet and even if one thing he predicts does not come true, then I must separate myself from him. It was a very bitter break because the men in that community I thought were my friends. But when I decided to leave, I learned the truth about most of them.

I didn't know where to go from here because I certainly wasn't a Christian, I wasn't going to be a part of something that goes against the laws of God, there was dissension between the group I was with and the Orthodox Jewish Community, but I still had developed a great love of the law (Torah), God, and the new me that I was becoming. It was time to move on, but I didn't know where to move on to.

By this time I had been in three or four years, and my mother came to see me. I had not seen my mother in seven or eight years. We discussed many things about the past and present but then I asked her if we had any Jewish blood in us. She looked at me perplexed and asked why I had asked. I began to tell her about some of the things that I was doing religiously. She asked me how I liked the things I was doing. I told her that it made the most sense to me and that I was making it a part

of my life. She told me, "We are German, Indian, and, yes, we are Jewish." I was elated and I couldn't believe what I was hearing. I asked, "Who? I looked up every name that I knew trying to make a Jewish connection, but to no avail." She smiled and said, "My mother is a Jewess." I asked my Grandmother's maiden name and my mother told me it was "Adams." I have not seen my mother since that visit.

I decided to go to the Orthodox Jewish service just to see what it was about. I also believed, based on my discoveries at visit with my mother, it was where I was supposed to be. After I started attending the Orthodox service regularly, the leader of the other group approached me and told me that if I continued to go to the Orthodox Jewish service, that I wasn't his brother but I was his enemy. I was utterly torn to hear him say those words, but I could never go back to a lie and what the Bible says is an abomination.

I have now been with the Orthodox Jewish Community a little over two years. I never knew how profound, knowledgeable and wise the Jewish sages and rabbis of old were. I come to have a much deeper understanding of the prophets, writings and stories in the Bible. I also realized that, although what I believed to be Jewish turned out not to be so, it was a wonderful stepping stone for me to get where I am now.

One of the most important things I have learned in my study of Torah, God's law, is that not only is my physical self at risk when I don't follow the Law (Oral and Written)) but my spirit is at risk and harmed if I don't follow all of the laws. I now know and believe with all my heart that if I eat foods that are not kosher, I am separating myself from God because this is His spirit that HE gave to me to take care of His way.

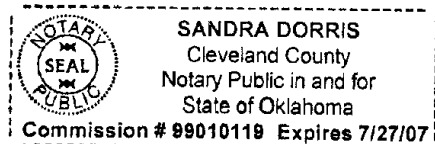
I have come a long way with God's help, but I am not finished. I believe it is wrong for Oklahoma DOC to deny me the right to practice Orthodox Judaism on God's terms.

The above Affidavit was sworn to and subscribed before me this 16<sup>th</sup> day of October, 2003

NOTARY PUBLIC Sandra Dorris

My Commission Expires: 7-27-07

Dennis E. Fulbright  
Dennis E. Fulbright  
JHCC E-2-113  
Rt.. 1, Box 548  
Lexington, Ok 73051



CERTIFICATE OF MAILING

On this 17 day of Oct, 2003, a true and correct copy of the foregoing attached document (instrument), specifically, \_\_\_\_\_

Motion for Preliminary Injunction

was mailed, postage prepaid, by placing the above document (instrument) with the Joseph Harp Correctional Center's, Box 548, Lexington, Oklahoma. 73051-0548, Mail room personnel to be mailed to the below listed individuals;

Stefan K. Daughy

Attorney for the Defendant

3545 N. Lincoln Blvd. Ste 260

Okc Ok 73105-3498

\_\_\_\_\_  
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Respectfully submitted,

/s/ Kevin Fulbright

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

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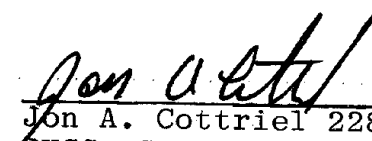
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Respectfully Submitted,

  
\_\_\_\_\_  
Jon A. Cottriel 228378  
JHCC G-2-250  
Rt. 1, Box 548  
Lexington, OK 73051-0548

AFFIDAVIT

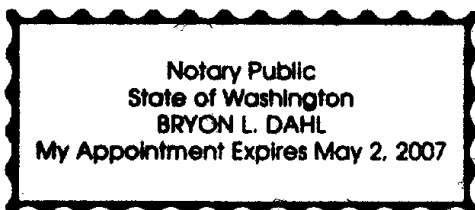
STATE OF WASHINGTON )  
 )  
COUNTY OF Thurston ) SS

I, Marlene L. Cottriel, being of lawful age,  
having been duly sworn upon my oath, hereby depose and state:

I am the mother of Jon Andrew Cottriel

My mother's name was Leila M. Gadd

My mother was a Jewess



Marlene L. Cottriel  
Signature of Affiant

825 Gregory Way S.E.  
Olympia, Wa. 98503

The above Affidavit was sworn to and subscribed before me  
this 9th Day of September, 2003

NOTARY [Signature]

My Commission Expires: May 2, 2007

AFFIDAVIT

STATE OF OKLAHOMA     )  
                                  )     ss  
COUNTY OF CLEVELAND )

I, Jon Andrew Cottriel, being of lawful age, and having been duly sworn upon my oath, hereby depose and state that:

Both of my grandmothers were Jewish and they both married Christians. I was raised as a Christian. I was brought up with the understanding that there are only two ways to view the Bible: either it is the Word of G-d and it is 100% true, or it is not. I decided to figure out which it was. After much in depth study I found portions of the New Testament which I could not resolve due to it being in direct conflict with my understanding of the rest of the Bible. Consequently in the early 1990's I had to rethink my view of religion. This eventually drew me towards Judaism. Since then I have found that the closer I follow Judaism the less complicated my life becomes. With each *Mitzvah* (Biblical Command, Ordinance or Decree) that I internalize I feel that I build another connection to my Creator, and what my Creator expects of me as his creation. Keeping kosher is one of the ways I internalize these *Mitzvos*.

I started consciously following the laws of *kashrus* (Jewish Dietary Law) to the best of my knowledge and ability in the mid to late 1990's because I have come to truly believe that since the food and beverages that I consume becomes blood, tissue and energy, food that is not kosher can only defile me mentally, physically and spiritually, and alienate me from *Yiddishkeit* (Judaism) and, subsequently, separate me from G-d. Only kosher food can nourish me mentally, physically and spiritually in a manner that will not defile me.

The day after I arrived at Joseph Harp Correctional Center (JHCC), I received a change of diet form (JHCC-070202-03 attachment) from inmate John Mosier. I filled it out as "Non-pork (Common Fare)." I gave this form back to Inmate Mosier who promptly turned it in to the chapel. It was approved by Chaplain Grant and sent to the food service manager, Byron Brown. It was then given to the kitchen clerk, who updated the common fare diet list. Although no DOC staff member ever questioned my religious sincerity, I was questioned about my lineage by inmate Russell Calhoun #105073, who, at that time, was the leader of the "Common Fare Community."

I continually had difficulties with various members of the common fare community over combining meat and dairy in the same meal and/or in the same pot, which is strictly prohibited by *kashrus*. In order to avoid defiling my meals (and my soul) in this manner, I filled out another change of diet form requesting "Vegetarian (Common Fare)" diet. This was approved via the same ways and means as the previous diet request.

I applied for a job in the kitchen as "Common Fare Cook", in

June of 2001. After being briefed on procedure (which to my disappointment was, in many instances, contrary to the *Shulchan Aruck* (Jewish Code of Law) by inmate Calhoun, and passing a medical examination...I was given the position of "Common Fare Cook".

My job was to prepare lunch and dinner 5-6 days per week (the other meals were prepared by other members of the "Common Fare Community"). As much as possible the individual products of each meal were supposed to resemble the "Main Line's" menu. To prepare our meals we had our own cups, cutting boards, glasses, mixer, pans, pots, plates, spice cupboard, stand-up "Hot Boxes", table, thermometer, and utensils. We used a stove, tilt-skillet, and vat that were supposed to be allocated to "Common Fare", "Diet Line", and "Non-Pork" only. I washed, salted, drained, washed, and cooked our meats (in spite of the meat not actually being "kosher" to begin with). I washed, prepped and cooked our raw vegetables or used canned items (reallocating any excess to the "Non-Pork" line or the "Main" line if they weren't serving Pork for that meal). I made and baked our own bread and pastries (unless they were already made by a member of the community).

The Common Fare diet was available at JHCC from Thanksgiving of 1997 until it was closed down on April 28, 2002.

When they closed down Common Fare, in addition to my new job, I continued to work in the kitchen as a "Volunteer" in order to be able to eat one meal per day. When the kitchen ceased to allow volunteers to work in the kitchen, I could no longer eat food in the kitchen because I could no longer be certain about whether the food was *Treifa* (inedible) according to the laws of *Kashrus* (Jewish dietary laws). It has now been over a year since I have eaten in the kitchen (although occasionally someone brings me an apple, banana or an orange).

During the weekdays: In the morning I thank the living and Eternal King for restoring my soul to me. I put on my *Yarmulke* and perform my morning ablutions, then as recite the appropriate prayers as I wash my hands, don My *Tzitzis* and *Tefillin* (Phylacteries), etc. Last month (the Jewish month of Elul) I blew my rams horn after my morning prayers in hopes of awakening any Jews that are in a spiritual slumber to awake and realize that it was nearly time for Rosh Hashana. Then I go to work. When the time is appropriate I prepare my lunch which generally consists of noodles and vegetable soup. When it is time to eat I pronounce the appropriate blessings. After the meal if there are any Jews that have sat at my table I lead the "Grace after Meal". After work on Mondays I attend "Incarcerated Veterans of America" meetings. After work on Tuesdays I go to the "Jewish" locker in the chapel, I sign the log stating what items I am removing or returning from the "Jewish" locker (the only people authorized in this locker are inmate Fulbright #186054, and myself) and get out audio and/or video tapes, books, *Dreidles*, *Menorah*, candlestick holders, etc., for the class I teach on *Yiddishkeit* (Judaism). During the class we read from the *Tanach* discuss *Ethics of the Fathers*, discuss *Tanya*, discuss various *Halacha* (Jewish laws), etc. After class I return the materials to the "Jewish" locker. In the evenings I prepare

dinner which is often similar to lunch except that I will add cheese or egg, or fish, or peanut butter and crackers. When it is time to eat I pronounce the appropriate blessings. After the meal if there are any Jews that have sat at my table I lead the Grace after Meal. After dinner I read from the Torah, psalms, and Tanya; then I say my bedtime Sh'ma and go to sleep.

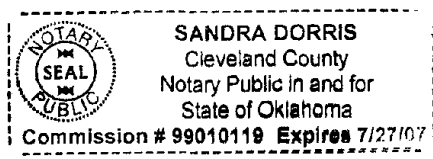
On the weekend: On Fridays I go to a conference room where we conduct services and read the same weekly portion of the Torah as Jews through-out the world. Then I pronounce a blessing and we have a small meal (usually consisting of crackers and grape drink). After the meal I lead Grace after Meal, then we go back to our respective units. On Saturday morning I have the same basic routine as other mornings except that I don a Tallis (Large Prayer Shawl) but I do not don my Tefillin. Then I go to the conference room where we have a small meal that usually consists of bread and grape drink. After the meal I lead Grace after Meal, then we study Midrash for the weekly portion. We meet again in the afternoon to have a pot luck meal consisting of bread, grape drink, pasta, beans, fish, and vegetables when we can afford them. After the meal I lead Grace after Meal. Then we read Ethics of the Fathers and Week in Review, a study guide from The Aleph Institute. In the evening we meet again in a conference room, read from the prophets or writings (Bible) then we conduct a Conclusion of the Shabbas service, then we have a small meal that usually consists of bread and grape drink. I lead Grace after Meal. Then we go back to our respective units.

As the current Chazan (Leader/Reader) of the "Orthodox Jewish Community", I have submitted many change of diet forms to the Chaplain on behalf of various members of the Orthodox Jewish Community and, to date, no one has ever been refused. In response to the September 11, 2001 events, Chaplain Ron Grant requested that I, "as a representative of the Jewish Community," speak publicly to the population of JHCC. Chaplain Grant has also come to me for elucidation of various Halacha (explanation of Jewish Laws) such as shaatnez (the prohibition against wearing garments that are made of the mixture of both wool and linen). When the new Ops concerning religion were brought into effect, Chaplain Grant invited the leaders of the various religions at JHCC to his office to have the new Ops and their ramifications explained. I was invited to represent the Jewish Community.

Jon A. Cottriel  
Jon A. Cottriel  
JHCC G-2-250  
Rt.1, Box 548  
Lexington, OK 73051

The above Affidavit was sworn to and  
subscribed before me this 8<sup>th</sup> day of  
October, 2003.

Notary Public Sandra Dorris  
My Commission Expires: 7-27-07



CERTIFICATE OF MAILING

On this 17 day of OCTOBER, 2003, a true and correct copy of the foregoing attached document (instrument), specifically, \_\_\_\_\_

\_\_\_\_\_ Motion for Preliminary Injunction \_\_\_\_\_

was mailed, postage prepaid, by placing the above document (instrument) with the Joseph Harp Correctional Center's, Box 548, Lexington, Oklahoma. 73051-0548, Mail room personnel to be mailed to the below listed individuals;

STEFAN K. DOUGHTY

~~Attorney for the Defendant~~

4545 NORTH LINCOLN BLVD, SUITE 260  
OKLAHOMA CITY, OK. 73105-3498

\_\_\_\_\_  
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Respectfully submitted,

/s/ Jon A. Attel