

No. 11-1071

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

MASTON WILLIS, et al.,
Plaintiffs/Appellees,

v.

COMMISSIONER, INDIANA DEPARTMENT OF CORRECTION, et al.,
Defendants-Appellants.

On Appeal from the United States District Court
for the Southern District of Indiana

**BRIEF AMICUS CURIAE OF THE NATIONAL
JEWISH COMMISSION ON LAW AND PUBLIC AFFAIRS,
AGUDATH ISRAEL OF AMERICA, UNION OF ORTHODOX JEWISH
CONGREGATIONS OF AMERICA, NATIONAL COUNCIL OF YOUNG
ISRAEL, ALEPH INSTITUTE, AND ASSOCIATION OF KASHRUS
ORGANIZATIONS IN SUPPORT OF APPELLEES**

Of Counsel
ABBA COHEN
H. WESLEY ASHENDORF

NATHAN LEWIN
ALYZA D. LEWIN
LEWIN & LEWIN, LLP
1775 Eye Street NW, Suite 850
Washington, DC 20006
(202) 828-1000
nat@lewinlewin.com

Attorneys for Amici Curiae

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, The National Jewish Commission on Law and Public Affairs, The Union of Orthodox Jewish Congregations of America, Agudath Israel of America, The Aleph Institute, The National Council of Young Israel, and Association of Kashrus Organizations, certify that they do not have parent corporations and that no publicly-held corporation owns 10% or more of stock.

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INTEREST OF THE AMICI*

■ The National Jewish Commission on Law and Public Affairs (“COLPA”) is an organization of volunteer lawyers that advocates the position of the Orthodox Jewish community on legal issues affecting religious rights and liberties in the United States. COLPA has filed *amicus* briefs in the Supreme Court of the United States in 28 cases since 1968. It has also supported laws prohibiting misrepresentation in the sale of kosher food and was involved in early litigation over the right of Jewish prisoners to be given kosher food in federal prisons.

■ Agudath Israel of America (“Agudath Israel”), founded in 1922, is a national grassroots Orthodox Jewish organization. Agudath Israel articulates and advances the position of the Orthodox Jewish community on a broad range of legal issues affecting religious rights and liberties in the United States. Agudath Israel intervenes at all levels of government – federal, state, and local; legislative, administrative, and judicial – to advocate and protect the interests of the Orthodox Jewish community in the United States in particular, and religious liberty in general. Agudath Israel played a very active role in lobbying for the passage of the Religious Land Use and Institutionalized Persons Act, and receives requests from prisoners for assistance in ensuring that their religious observances, particularly their ability to have kosher meals, are accommodated.

*All parties have consented to the filing of this amicus brief.

■The Union of Orthodox Jewish Congregations of America (“Orthodox Union”) is the largest Orthodox Jewish umbrella organization in the United States. The Orthodox Union represents nearly 1,000 synagogues throughout the United States, which collectively represent hundreds of thousands of individual Jews. The Orthodox Union participates in various federal and state litigations, largely through the submission of amicus briefs that relate to matters of concern to the Orthodox Jewish community. The Orthodox Union is also the world’s largest non-profit agency providing supervision and certification of kosher food. The Orthodox Union’s “OU” symbol is ubiquitous, and its far reaching work in this realm has made it possible for kosher observant Jews to readily access kosher food almost anywhere in the world. From the Orthodox Union’s perspective, access to kosher food is a necessary component of a Jew’s exercise of his religious freedom - an exercise to be protected even in prison. Hence the Orthodox Union was among the broad coalition of advocacy groups that developed and led to RLUIPA’s enactment.

■The National Council of Young Israel (“NCYI”) is the umbrella organization for over 200 Young Israel branch synagogues with over 25,000 families within its membership. It is one of the premier organizations representing the Orthodox Jewish community, its challenges and needs, and is involved in issues that face the greater Jewish community in North America and Israel. NCYI

assists its branches in programming and planning through its Departments of Synagogue Services, Rabbinic Services, Women's Programming, Jewish Education, Youth Services, Publications. It participates in kosher food certification on local and national levels.

■ The Aleph Institute ("Aleph") is a national, not-for-profit 501(c)(3), publicly-supported charitable institution founded by Rabbi Sholom D. Lipskar under the direction of the Lubavitcher Rebbe, Rabbi Menachem M. Schneerson O.B.M. For over a quarter century, Aleph has been (1) providing critical social services to families in crisis; (2) addressing the pressing religious, educational, humanitarian and advocacy needs of individuals in the military and institutional environments, and (3) implementing solutions to issues relating to our criminal justice system, with an emphasis on families, faith-based rehabilitation and preventive ethics education. Over the past twenty-four years Aleph has created and implemented programs that provide alternatives to incarceration, rehabilitate prison inmates, counsel and assist their families, and provide moral and ethical education inculcating universal truths and concepts common to all of humanity. Aleph regularly provides professional services to nearly 4,000 men and women in federal and state prisons across the country and their approximately 25,000 spouses, children and parents left behind. Aleph's Center for Halacha and American Law ("CHAL") develops unique educational materials on Torah ethics and values,

implements them in classroom curricula, and distributes them to schools and to the general public.

■ The Association of Kashrus Organizations (“AKO”) was established in 1985 and has a membership of 85 kashrus (kosher certification) organizations. Its primary goal is to unite the different kashrus agencies around the globe under one umbrella, serving the Jewish community to raise and maintain the highest level of kashrus possible. To that end, the leading authorities in the world today have a medium where they can discuss the numerous situations that arise in the kashrus industry, to create a plan for emergency kashrus situations, to construct basic guidelines for mutually acceptable standards and to present a unified voice in kashrus. Both in public forums and behind closed doors, AKO has become the nucleus of international kashrus administration. While the AKO organization itself does not give any kosher endorsements, its members work together to provide the kosher community with the utmost in kosher supervision.

QUESTIONS PRESENTED

1. Whether State prison officials may terminate a program under which pre-packaged kosher meals are provided to kosher-observant inmates on the ground that it is too expensive to continue providing such meals.

2. Whether added expense is a “compelling government interest” that permits prison officials to burden the exercise of religious observance under the Religious Land Use and Institutionalized Persons Act.

3. Whether providing vegan meals prepared in non-kosher kitchen facilities qualifies under RLUIPA as the “least restrictive means” of furthering the prison officials’ asserted “compelling government interest.”

ARGUMENT

INTRODUCTION

This appeal concerns a central tenet of Jewish religious observance. The Jewish dietary laws – known as *kashrut* in Hebrew – have occupied a most prominent place in the history of the Jewish people. The *Encyclopedia Judaica* reports that in Second Temple times “Jews endangered their lives by their faithful adherence to the dietary laws” and that “[d]espite the difficulties, and even dangers, inherent in the observance of the dietary laws during subsequent periods of severe persecution, the Jews steadfastly remained faithful to *kashrut*.” 5 *Encyclopedia Judaica* 656 (2d ed. 2007) (Exhibit A). Although modern technology has made it practical for authentically kosher pre-packaged food to be provided to patients in hospitals, military personnel on bases and in the field, and inmates in prisons, Indiana’s prison officials have determined that state prisoners may be

deprived of this mandatory religious observance because it is too costly for the State of Indiana to provide it.

That judgment conflicts not only with the governing federal statute – the Religious Land Use and Institutionalized Persons Act (“RLUIPA”) – but it runs counter to the best traditions of America. Ever since the founding of the Republic, government has granted the greatest latitude to religious observance by all individuals, even at substantial financial sacrifice by the public treasury. Government has been particularly solicitous of the conscientious convictions and practices of those who are not free to fend for themselves, such as military personnel and prison inmates. The miserly attitude of Indiana’s prison officials towards a fundamental recognized religious observance by its prison population shames the Hoosier State.

I.

RELIGIOUS OBSERVANCE IS SO IMPORTANT IN AMERICA THAT GOVERNMENT INCURS SUBSTANTIAL FINANCIAL COST TO PROTECT IT

The concern over the additional cost of satisfying the *bona fide* religious observance of inmates in Indiana’s penal institutions conflicts with the fiscal generosity that has always marked this Nation’s policy towards religious observance. Although the First Amendment’s Establishment Clause has been held to prohibit certain forms of direct aid to religious institutions, the history of

America's respect for religion and government's willingness to expend public funds to protect private religious observance cannot be denied. In *Walz v. Tax Commission*, 397 U.S. 664 (1970), Chief Justice Burger reviewed the history of property-tax exemptions for religious institutions and recognized that "[g]ranting tax exemptions to churches necessarily operates to afford an indirect economic benefit" and that "[a]ll of the 50 States provide for tax exemption of places of worship, most of them doing so by constitutional guarantees." 397 U.S. at 674, 676. The total national cost of these tax exemptions is obviously immense, but Congress and all the States have borne this cost as part of the "national attitude toward religious tolerance." 397 U.S. at 678.

The Supreme Court has re-affirmed the generous financial "national attitude" of government towards an individual's observance of religion in cases such as *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002). The majority opinion in *Zelman* noted that it "was not relevant to the constitutional inquiry" to calculate "the amount of government aid channeled to religious institutions by individual aid recipients." 536 U.S. at 651. And Justice O'Connor's concurring opinion in *Zelman* particularized the substantial cost to Colorado (more than \$40 million annually), Maryland (more than \$60 million annually), Wisconsin (approximately \$122 million annually), and New Orleans, Louisiana (over \$36 million annually)

resulting from state property tax exemptions for religious institutions. 536 U.S. at 665-666.

As for the federal government, Justice O'Connor observed that "it is reported that over 60 percent of household charitable contributions go to religious charities." 536 U.S. at 666. The Congressional Joint Committee on Taxation estimated in a January 2010 Report that the total charitable-contribution deductions over the five years between 2009 and 2013 will be \$235.6 billion. Table 1, *Estimates of Federal Tax Expenditures for Fiscal Years 2009-2013*, Prepared for the House Committee on Ways and Means and the Senate Committee on Finance (Govt Printing Office 2010). On this basis, the federal government will effectively be spending \$28.3 billion per year in supporting the maintenance of churches and other religious institutions.

When contrasted with these figures, the additional costs of providing authentically kosher meals to Indiana's prison inmates is less than a drop in a full bucket. It is both unseemly and unlawful for Indiana's prison authorities to seek to save these minute amounts at the expense of prisoners' religious observance.

II.

GOVERNMENT HAS A UNIQUE CONSTITUTIONAL DUTY TO MEET RELIGIOUS NEEDS OF PRISON INMATES

In *Katcoff v. Marsh*, 755 F.2d 223 (2d Cir. 1985), the Second Circuit upheld the federal government's constitutional authority to provide and pay for chaplains in the military services. The Court of Appeals noted that it was obligatory "to make religion available to soldiers who have been moved by the Army to areas of the world where religion of their own denominations is not available to them." 755 F.2d at 234. The Court's opinion in *Abington School Dist. v. Schempp*, 374 U.S. 203, 226 n.10 (1963), referred to a "situation such as military service, where the Government regulates the temporal and geographic environment of individuals to a point that, unless it permits voluntary religious services to be conducted with the use of government facilities, military personnel would be unable to engage in the practice of their faiths." In his concurring opinion Justice Brennan compared military chaplains with chaplains in penal institutions: "Since government has deprived such persons of the opportunity to practice their faith at places of their choice . . . government may, in order to avoid infringing the free exercise guarantees, provide substitutes where it requires such persons to be." 374 U.S. at 297-298.

On this account, the Supreme Court held in *Turner v. Safley*, 482 U.S. 78 (1987), and in *O’Lone v. Estate of Shabazz*, 482 U.S. 342 (1987), that unless their restrictions are related to compelling penological objectives, prison authorities are obliged to afford prisoners an opportunity to engage in religious observance. The Indiana prison officials’ termination of prisoners’ access to authentically kosher food violated the duty owed to the prisoners by government officials.

III.

RELIGIOUS DIETARY NEEDS THAT CAN PRACTICALLY BE SATISFIED BY PRISON OFFICIALS CANNOT BE AVOIDED BECAUSE OF THEIR COST

The provisions of the Religious Land Use and Institutionalized Persons Act (“RLUIPA”) protect the religious observances of inmates in state prisons by the standards that the Supreme Court applied in *Sherbert v. Verner*, 374 U.S. 398 (1963), and the decisions that followed that landmark opinion. The District Court correctly rejected the contentions of Indiana’s prison officials that preserving *some* religious observances in prison and denying others is satisfactory compliance with RLUIPA’s provisions and that a prison’s failure to provide the diet that is religiously obligatory may be excused if the cost seems somewhat excessive. We agree with and endorse the arguments of the Brief of Appellees, pp. 29-45 on the construction of RLUIPA’s provisions and its application to this case. Cost of kosher meals is not a compelling government interest, particularly not in light of

the explicit provision in RLUIPA that “require[s] a government to incur expenses in its own operations to avoid imposing a substantial burden.” 42 U.S.C. § 2000cc-3(c).

And there are clearly less restrictive means of meeting the concerns raised by rising costs than terminating altogether the provision of authentically kosher pre-packaged meals. Exhibit B to this Brief is an affidavit by the foremost authority in the United States on the commercial availability of kosher food. Menachem Lubinsky lists various producers of rabbinically supervise pre-packaged kosher meals. The record fails to reflect exhaustion of these resources by comparison-shopping by the Indiana authorities.

Nor has there been any attempt to screen out those inmates who do not truly have a conscientious religious scruple that requires them to limit their food intake to only kosher products. The initiation of a “Catch-22” 75% pre-condition (which could not be met by the lead plaintiff because he refused to eat breakfasts that were not rabbinically certified) was obviously an inadequate method for determining who truly qualifies for religious accommodation.

Prison officials are not powerless to deal with bogus claims of religious observance, and courts will uphold legitimate determinations that have an evidentiary basis. See, *e.g.*, *Theriault v. Silber*, 453 F. Supp. 254 (W.D. Tex. 1978) (“a masquerade designed to obtain First Amendment protection”), *appeal*

dismissed, 579 F.2d 302 (5th Cir. 1978). Denying kosher food to legitimate believers because scoundrels take advantage of that right meets the proverbial description of discarding the baby with the bath-water.

IV.

VEGAN MEALS PREPARED IN A NON-KOSHER KITCHEN WITH NON-KOSHER UTENSILS FAIL TO MEET THE RELIGIOUS NEEDS OF KOSHER-OBSERVING INMATES

Indiana's prison officials arrogate religious authority to themselves when they contend that the alternative they should be permitted to offer to kosher-observant inmates are vegan meals prepared in non-kosher facilities. Rabbi Abraham Grossbaum, who is a duly educated and trained qualified expert in *kashrut*, testified that these vegan meals are unquestionably not kosher both because there is some doubt regarding ingredients and because they are prepared in non-kosher facilities and served with non-kosher utensils. The prison officials acknowledged in the District Court that the vegan meals are not kosher. Short App. 9.

Exhibit C to this Brief is the affidavit of Rabbi Menachem Genack, who heads the largest kosher-certification agency in the world – the Kashrus Division of the Orthodox Union. His opinion – as categorical as that of Rabbi Grossbaum – is that the vegan meals could not be certified as kosher by any legitimate kosher-certifying agency.

Exhibit D is the cover and table of contents of *The Law of Kashrus*, a leading contemporary authoritative treatise on the complex laws and regulations of *kashrut*. Exhibit E is the cover and relevant pages that summarize some of the details of *kashrut* in the book describing Jewish religious observance written for a general audience, Rabbi Hayim Halevy Donin's "To Be a Jew" (Basic Books 1972).

In light of these compelling authorities, the claim by the Indiana prison officials that the vegan meals should be accepted *in lieu* of rabbinically certified pre-packaged kosher meals should be given no credit whatever. Vegan meals prepared in non-kosher facilities cannot be substituted for authentically kosher meals. Permitting prison authorities to use their own personal uninformed judgment on acceptable substitutes is a dangerous first step down a slippery slope. Kosher standards may be unfamiliar to most Americans, but one can imagine how this authority might be transferred to other faiths. If prison authorities conclude that communion wafers and wine are too expensive to be used in Sunday church sacraments, may they substitute potato chips and apple juice?

CONCLUSION

Praiseworthy as thrift and frugality may be, Indiana's prison officials may not save their pennies at the cost of *bona fide* religious observance by the State's prison inmates. The lesson of *Devarim* (Deuteronomy 15:7-8) should be their guide: "Thou shalt not harden thy heart, nor shut thy hand from thy needy brother. Thou shalt surely open thy hand unto him, and shalt surely lend him sufficient for his need in that which he wanteth." The judgment of the District Court invalidating the termination of pre-packaged kosher meals should be affirmed.

April 15, 2011

Respectfully submitted,

Of Counsel
ABBA COHEN
H. WESLEY ASHENDORF

/s/ Nathan Lewin
NATHAN LEWIN
ALYZA D. LEWIN
LEWIN & LEWIN, LLP
1775 Eye Street NW, Suite 850
Washington, DC 20006
(202) 828-1000
nat@lewinlewin.com

Attorneys for Amici Curiae

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(a)(7)(c) of the Federal Rules of Appellate Procedure, I hereby certify that, by the word count of the word-processing system used to prepare this Brief, it contains 2,748 words exclusive of those portions that are excluded under Rule 32(a)(7)(B)(iii).

By /s/ Nathan Lewin

Dated: April 15, 2011

CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2011, the foregoing *Brief Amicus Curiae of the National Jewish Commission on Law and Public Affairs, Agudath Israel of America, Union of Orthodox Jewish Congregations of America, National Counsel of Young Israel, Aleph Institute, and Association of Kashrus Organizations in Support of Appellees* was served on all counsel of record by CM/ECF and by Federal Express at the addresses listed below:

Kenneth J. Falk, Esq.
Indiana Civil Liberties Union
1031 E. Washington Street
Indianapolis, IN 46202

Thomas M. Fisher, Esq.
Office of the Attorney General
5th Floor
302 W. Washington Street
Indianapolis, IN 46204-2770

By /s/ *Nathan Lewin*

EXHIBIT A



ENCYCLOPAEDIA JUDAICA

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2:6). This ensures both that no other substances have been added to the milk, and, more particularly, that no milk of an unclean animal has been added. However, since such practices are today generally forbidden by state laws, and since, furthermore, "unclean" milk is more expensive than "clean," many authorities permit the consumption of milk which has not been supervised.

The dietary laws are exceedingly complex and a great deal of material in the Talmud is devoted to them. The tractate *Hullin* deals mainly with the subject and the *Yoreh De'ah*, one of the four sections of *Jacob b. Asher's *Tur* and the *Shulhan Arukh*, deals exclusively with dietary laws.

History

IN PROPHETIC LITERATURE. The Hebrew prophets repeatedly refer to *kashrut*. *Isaiah (66:17) warned that those "eating swine's flesh and the detestable thing and the mouse, shall be consumed together." *Ezekiel (4:14), in his vision, claimed, "Ah, Lord God; behold my soul hath not been polluted, for from my youth up, even till now, have I not eaten of that which dieth of itself, or is torn of beasts; neither came there abhorred flesh into my mouth." *Daniel, together with his companions Hananiah, Mishael, and Azariah, refused to partake of the "king's food" and of the "wine which he drank" (Dan. 1:8).

THE SECOND TEMPLE TIMES. Jews endangered their lives by their faithful adherence to the dietary laws during the Syrian rule of Erez Israel, especially in the reign of *Antiochus IV Epiphanes. I Maccabees (1:62-63) records, "Many of the people of Israel adhered to the law of the Lord. They would not eat unclean things, and chose rather to die." The eating of the "unclean things" was literally equated with apostasy: "Eleazar, one of the principal scribes, a man already well stricken in years, was compelled to open his mouth and to eat swine's flesh. But he, welcoming death with renown, rather than life with pollution, advanced of his own accord to the instrument of torture" (I Macc. 6:18). During the same period, *Hannah and her seven sons chose martyrdom rather than contravene the dietary laws. "We are ready to die," they proclaimed, "rather than transgress the laws of our fathers" (*ibid.* 7:2). In the epic story of *Judith and Holofernes, Judith affirms, "I will not eat thereof, what I have brought with will be enough for me" (Judith 12:2).

The Book of *Tobit states that the dietary laws were specifically designed to set the children of Israel apart from their neighbors: "All my brethren, and those that were of my kindred, did eat of the bread of the gentiles, but I kept myself from eating of the bread of the gentiles" (Tob. 1:10-11).

Some tolerant gentile rulers not only permitted, but even facilitated, the observance of the dietary laws. Thus, in 44 B.C.E., Dolabella, the Roman governor of Syria, exempted the Jews of Ephesus from military service so that they would not be compelled to desecrate the Sabbath or eat forbidden food (Jos., Ant., 14:223-30). However, as Josephus' documentation of the barbarities committed during the Jewish revolt

reveals, such remarkable instances of Roman tolerance were unfortunately rare. The *Essenes, on the contrary, were singled out for special savagery. "They were racked and twisted, burnt and broken, and made to pass through every instrument of torture in order to induce them to blaspheme their lawgiver and to eat some forbidden thing; yet they refused to yield to either demand, nor even once did they cringe to their persecutors or shed a tear. Smiling in their agonies, mildly deriding their tormentors, they cheerfully resigned their souls, confident that they would receive them back" (Jos., Wars, 2:152-3).

IN MEDIEVAL TIMES. Despite the difficulties, and even dangers, inherent in the observance of the dietary laws during subsequent periods of severe persecution, the Jews steadfastly remained faithful to *kashrut*. A Jewish chronicler of the period of the Crusades writes: "It is fitting that I should recount the praises of those who were faithful. Whatever they ate or drank, they did at the peril of their lives. They would ritually slaughter animals for food according to Jewish tradition and remove the fat and inspect the meat in accordance with the prescription of the sages. Nor did they drink the wine of the idol worshippers" (Chronicle of Solomon b. Samson, in: A.M. Habermann, *Gezerot Ashkenaz ve-Zarefat* (1945), 57). The heroism of the medieval *Marranos in defense of the dietary laws was matched by the devotion of the *Cantonists and the inmates of the Nazi concentration camps.

Attempts to Explain the Dietary Laws

Throughout the ages, many attempts have been made to explain the dietary laws. The Pentateuch itself does not explain them, although in three separate passages in the Bible they are closely associated with the concept of "holiness." Thus, Exodus 22:30 states: "And ye shall be holy unto Me; therefore ye shall not eat any flesh that is torn of beasts in the field; ye shall cast it to the dogs." Leviticus repeats the idea: "For I am the Lord your God; sanctify yourselves therefore, and be ye holy, for I am holy; neither shall ye defile yourselves with any manner of swarming thing that moveth upon the earth" (Lev. 11:44-45). Finally, Deuteronomy 14:21 states: "Ye shall not eat of any thing that dieth of itself; thou mayest give it unto the stranger that is within thy gates, that he may eat it; or thou mayest sell it unto a foreigner; for thou art a holy people unto the Lord thy God." The Pentateuch classifies the dietary laws as *hukkim*, "divine statutes," which by definition are not explained in the text (Yoma 67b). It has been variously suggested that the underlying motivation for the dietary laws are hygienic and sanitary, aesthetic and folkloric, or ethical and psychological.

MORAL EFFECTS. In Ezekiel 33:25; the prophet equates the eating of blood with the sins of idolatry and murder. One interpretation of this verse teaches that the dietary laws are ethical in intent, since abstention from the consumption of blood tames man's instinct for violence by instilling in him a horror of bloodshed. This is the view expressed in a letter by *Aristeas, an unknown Egyptian Jew (probably of the first

century B.C.E.), who states that the dietary laws are meant to instill men with a spirit of justice, and to teach them certain moral lessons. Thus, the injunction against the consumption of birds of prey was intended to demonstrate that man should not prey on others (Arist. 142-7). *Philo, the Alexandrian Jewish philosopher, also suggests that creatures with evil instincts are forbidden lest men, too, develop these instincts (Spec. 4:118).

The rabbis of the Talmud rarely attempted to find rational explanations for the dietary laws, which they generally regarded as aids to moral conduct. "For what does the Holy One, Blessed be He, care whether a man kills an animal by the throat or by the nape of its neck. Hence its purpose is to refine man" (Gen. R. 44:1; Lev. R. 13:3). Commenting on the verse "and I have set you apart from the peoples, that ye should be mine" (Lev. 20:26), the *Sifra* (11:22), a halakhic Midrash on Leviticus, states, "Let not a man say, 'I do not like the flesh of swine.' On the contrary, he should say, 'I like it but must abstain seeing that the Torah has forbidden it.'"

EFFECTS ON THE SOUL OF MAN. Such mystics as Joseph *Gikatilla and Menahem *Recanati maintained that food affects not only the body but also the soul, clogging the heart and dulling man's finer qualities. Isaac b. Moses *Arama stated that, "The reason behind all the dietary prohibitions is not that any harm may be caused to the body, but that these foods defile and pollute the soul and blunt the intellectual powers, thus leading to confused opinions and a lust for perverse and brutish appetites which lead men to destruction, thus defeating the purpose of creation" (*Akedat Yizhak, Sha'ar Shemini*, 60-end).

Samson Raphael *Hirsch wrote, "Just as the human spirit is the instrument which God uses to make Himself known in this world, so the human body is the medium which connects the outside world with the mind of man ... Anything which gives the body too much independence or makes it too active in a carnal direction brings it nearer to the animal sphere, thereby robbing it of its primary function, to be the intermediary between the soul of man and the world outside. Bearing in mind this function of the body and also the fact that the physical structure of man is largely influenced by the kind of food he consumes, one might come to the conclusion that the vegetable food is the most preferable, as plants are the most passive substance; and indeed we find that in Jewish law all vegetables are permitted for food without discrimination" (*Horeb*, section 454, Eng. tr. by I. Gruenfeld (1962), 328).

HYGIENIC EXPLANATIONS. Maimonides (Guide, 3:48) noted that "These ordinances seek to train us in the mastery of our appetites. They accustom us to restrain both the growth of desire and disposition to consider the pleasure of eating as the end of man's existence." He also maintained, however, that all forbidden foods are unwholesome: "All the food which the Torah has forbidden us to eat have some bad and damaging effect on the body ... The principal reason why the Law for-

bids swine's flesh is to be found in the circumstances that its habits and its food are very dirty and loathsome" (*ibid.*, 3:48). He gives an explanation entirely based on hygienic considerations, for the injunction against the consumption of sacrificial fat (*helev*): "The fat of the intestines is forbidden because it fattens and destroys the abdomen and creates cold and clammy blood." Concerning the proscription of *basar be-ḥalav*, Maimonides states: "Meat boiled in milk is undoubtedly gross food, and makes a person feel overfull." He adds, however, "I think that most probably it is also prohibited because it is somehow connected with idolatry. Perhaps it was part of the ritual of certain pagan festivals. I find support for this view in the fact that two of the times the Lord mentions the prohibition, it is after the commandment concerning our festivals. 'Three times a year all your males shall appear before the Lord God' (Ex. 17:23-24; 23:17). That is to say, 'When you come before Me on your festivals, do not prepare your food in the manner in which the heathens do'" (*ibid.*, 3:48). Ancient inscriptions unearthed by archaeologists (e.g., at Ras Shamra-*Ugarit) tend to confirm that this was a fertility rite. J.G. Frazer, quoting a Karaite medieval author, writes: "There was a custom among the ancient heathens, who when they had gathered all the crop, used to boil a kid in its mother's milk" (*Folklore in the Old Testament*, 3 (1919), 117).

Abraham *Ibn Ezra maintained that the reason for the prohibition of *basar be-ḥalav* was "concealed," even from the eyes of the wise, although he added "But I believe it is a matter of cruelty to cook a kid in its mother's milk" (Commentary to Ex. 23:19; see: *Animals, Cruelty to). A contemporary interpretation, advanced by A.J. *Heschel, explains that the goat provides man with the perfect food - milk, which is the only food that can sustain the body by itself. It would, therefore, be an act of ingratitude to take the offspring of such an animal and cook it in the very milk which sustains us.

Many other scholars, however, followed in the footsteps of Maimonides. They pointed out that certain animals harbor parasites that create and spread disease. It was a fact that during the Middle Ages Jews were less prone than their neighbors to the many epidemics of the time. R. *Samuel b. Meir declared that "All cattle, wild beasts, fowl, fishes, and various kinds of locusts and reptiles which God has forbidden to Israel, are indeed loathsome and harmful to the body, and for this reason they are called 'unclean'" (Commentary to Lev. 11:3).

Commenting on the verse "Whatsoever hath fins and scales in the waters, in the seas, and in the rivers, them may ye eat" (Lev. 11:9), Nahmanides states: "Now the reason for specifying fins and scales is that fish which have fins and scales get nearer to the surface of the water and are found more generally in freshwater areas ... Those without fins and scales usually live in the lower muddy strata which are exceedingly moist and where there is no heat. They breed in musty swamps and eating them can be injurious to health." Many modern scholars give hygienic reasons for the dietary laws, since it is known that bacteria and spores of infectious diseases circulate through the blood.

EXHIBIT B

**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
WILLIS v. COMMISSIONER
No. 11-1071**

AFFIDAVIT OF MENACHEM LUBINSKY

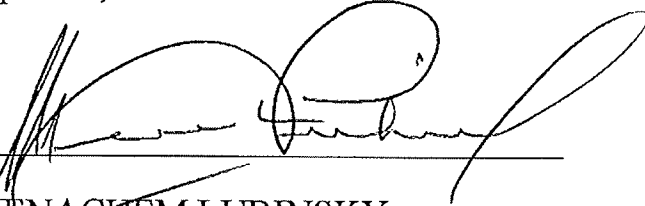
MENACHEM LUBINSKY hereby declares under penalty of perjury:

1. I am the president & chief executive officer of LUBICOM Marketing Consulting (“LUBICOM”).
2. LUBICOM is a full-service public relations, advertising and marketing, and special events management firm, specializing in kosher food products and kosher food events. It sponsors and administers “KosherFest” – the annual trade show that introduces new kosher food products from all over the world -- and publishes “Kosher Today,” a weekly trade publication.
3. I have occupied this position since 1984.
4. In this position I am very familiar with kosher supervisory organizations whose certification is generally accepted by the Kosher-consuming public.
5. These generally accepted kosher supervisory organizations include those popularly known by their respective trademarks, such as “OU,” “Kaf-K,” “Star-K,” “Triangle-K,” and others.
6. In this position I am also very familiar with shelf-stable packaged meals that have been certified by these organizations to be kosher.
7. Certified-kosher, shelf-stable packaged meals are made, are distributed, and sold commercially to the public under at least the following brands, as shown on the attached chart:
 - a. Meal Mart – 25 or more varieties
 - b. LaBriute – 8 or more varieties
 - c. Tuv Taam – 9 or more varieties
 - d. Sun Meadow
 - e. Main Menu.

Pursuant to 28 USC § 1746 I hereby declare under penalty of perjury that the foregoing is true and correct.

Brooklyn, New York

April 15, 2011

x 

MENACHEM LUBINSKY

List of Companies with Prepared Meals

Frozen

KJ Poultry
Meal Mart, Frozen List:

http://www.alleprocessing.com/alle/MealMart/hos_dinners.htm

Shelf Stable

1) Meal Mart Meals

Here is a link to order:

http://www.westsidekosher.com/institutional_foodservice_shelf_stable.html

VEGETARIAN STUFFED CABBAGE
GEFILTE
BEEF GOULASH
SPAGHETTI MEATBALL
CHICKEN BREAST WITH PASTA
TURKEY MASHED POTATO
CHEESE RAVIOLI
BONE IN CHICKEN RICE AND VEGETABLES
BONE IN CHICKEN WITH POTATO
VEGETARIAN SALISBURY STEAK
VEGETARIAN STUFFED SHELLS
VEGETARIAN HONOLULU NUGGETS WITH PINAPPLE

HUNGARIAN BEEF GOULASH
SALISBURY STEAK DICED
BUFFALO STYLE CHICKEN WINGS
FRANKS AND BEANS
EGETARIAN HAWAIIAN NUGGETS
VEGETARIAN PEPPER STEAK IN GRAVY
CHOLENT WITH BEEF (SLICED KISHKA AND KUGEL)
SLICED GEFILTE FISH IN GEL BROTH
KABBALAT SHABBAT BONE IN CHICKEN (FARFEL
CARROT TZIMMES) KABBALAT SHABBAT MINUTE
STEAK (FARFEL CARROT TZIMMES).
SLICED WHITE FISH
SLICED SALMON
CHICKEN SOUP WITH MATZA
BEEF STUFFED CABBAGE

2) LaBriute meals

Vegetarian Stuffed Shells
Beef Stew
Cheese Ravioli
Chicken Primavera
Meatballs and Spaghetti
Vegetarian Honolulu Nuggets
Vegetarian Pepper Steak
Vegetarian Stuffed Cabbage

Link to order: <http://labriutemeals.com/about.htm>

3) Tuv Taam:

www.tuvtaamonline.com/productlist.php?listid=82&cat_code=B

Beef Ravioli with Vegetable Sauce

Turkey Lasagna
Penne & Beef Sausage
Beef Moussaka
Italian Style Meatballs
Beef Meat Loaf
Beef Stuffed Shells
Cocktail Franks with Goulash Sauce
Turkey Meatballs
Beef Ravioli with Marinara Sauce

Link to order:

www.tuvtaamonline.com/productlist.php?listid=82&cat_code=B

4) Sun Meadow:

Tuna, with Mayo and Relish Packet, Fruit Cup, Apple Juice, Whole Wheat Crackers (4) Packets, Oatmeal Cookie, Nonfat Dry Milk

Salmon, Fruit Cup, Apple Juice, Saltines (2) Packets, Fortified Cereal, Raisin Packet, Nonfat Dry Milk

Link to order: <http://www.sunmeadow.com/content/46/Sun-Meadow-Kosher.aspx>

5) A & B Fish

Full line of meals under the brand Main Menu

EXHIBIT C



AFFIDAVIT

ב"ס

KASHRUTH DIVISION

STEPHEN J. SAVITSKY
President

DR. SIMCHA KATZ
Chairman

DAVID FUND
Vice Chairman

RABBI MENACHEM GENACK
Rabbinic Administrator, CEO

RABBI ALEXANDER S. ROSENBERG
Rabbinic Administrator (1950-1972)

In re Willis v. Commissioner, Indiana Dep't of Corrections

RABBI MENACHEM GENACK hereby declares under penalty of perjury:

1. I am the Chief Executive Officer and Director of the Kashrus Division of the Union of Orthodox Jewish Congregations, which represents approximately three hundred and seventy five (375) Orthodox Jewish congregations across the United States. I have occupied this position for over thirty (30) years.
2. I am also a practicing rabbi, having received ordination from Rabbi Isaac Elchanan Theological Seminary in 1974 and serving the Shomrei Emunah Congregation in Englewood, New Jersey.
3. Since 1980 I have been the director of the Kashrus Division of the Union of Orthodox Jewish Congregations. In this position I supervise the administration of the world's largest kosher-certification agency which licenses the use of the OU symbol on thousands of products world-wide.
4. I am familiar with the standards of Jewish Law ("Halacha") that are used to determine whether a food product qualifies as "kosher" so that it may be eaten by a person who is a practicing observant Jew who follows the Jewish dietary laws. I am called upon virtually every day to apply these standards to food products that seek a certification as "kosher."
5. I have reviewed pages 11 and 12 of the Brief of the Appellant in *MASTON WILLIS, et al, v. COMMISSIONER, INDIANA DEPARTMENT OF CORRECTION, et al.*, CASE No. 11-1071. These pages describe a "vegan" diet that is offer by Indiana prison officials to inmates in Indiana prisons who state that, for religious reasons, they eat only kosher food.
6. The described diet is, beyond any question, not kosher. There is no possibility that any legitimate certifying agency could characterize the described diet as "kosher." Even if all the food ingredients provided in this diet satisfied kashrut requirements because they consist entirely of vegetables, preparation of these ingredients in pots and pans that have been used for nonkosher products render the fully prepared food not kosher. In addition, some food products represented as "vegan" contain additives that are not kosher.
7. There are very many prepackaged meals that are authentically kosher and have been certified as kosher by legitimate certifying agencies. These are commercially available at a great range of prices.

Pursuant to 28 USC 1746 I hereby declare under penalty of perjury that the foregoing is true and correct.

Rabbi Menachem Genack

EXHIBIT D

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פתחי הלכה

The Laws of KASHRUS

A comprehensive exposition of their
underlying concepts and applications

Published by
Mesorah Publications, Ltd

by Rabbi Binyomin Forst

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EXHIBIT E

TO BE A
JEW

*A Guide to Jewish Observance
in Contemporary Life*

SELECTED AND COMPILED
FROM THE SHULHAN ARUKH
AND RESPONSA LITERATURE
AND PROVIDING A RATIONALE
FOR THE LAWS AND
THE TRADITIONS

RABBI HAYIM HALEVY DONIN

Basic Books, Inc., Publishers

NEW YORK

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THE DAILY WAY OF LIFE

he must be conscientious about the washing. He must also possess the butchering skill to purge or excise certain blood vessels and fat sinews that may not be eaten; this must be done before the meat is "koshered." The butcher must be relied upon to perform such responsibilities not only skillfully but honestly.

The consumer must, therefore, be assured that the kosher butchers from whom he buys are under reliable rabbinic supervision, usually guaranteed by a "Certificate of Endorsement" that ought to be prominently displayed.

☞ Frozen kosher meats or other processed meat products may be bought in general unsupervised food markets *only* if they come completely wrapped and packaged, and the package bears a legible endorsement of the kashrut of the product by a reliable rabbinic authority or kashrut board.

ON MEAT AND MILK MIXTURES

☞ From the thrice-stated commandment in Scripture that "You shall not boil a kid in its mother's milk"* (Exodus 23:19, 34:26; Deut. 14:21), the Oral Torah derived the prohibition against cooking meat and milk together, against eating such a meat and milk mixture, and against deriving any benefit from such a meat and milk mixture.

(Although milk that comes from a kosher animal is permitted, it is precisely this kosher milk which, when mixed with the meat of kosher cattle, sheep, or goats that the Torah forbids. Rabbinical ordinances were enacted as "fences" to safeguard the observance of this commandment, and these are reflected in the practices followed in a kosher household.)

☞ Although fowl was not included in the Biblical prohibition, rabbinical decree extended the prohibition of meat-milk mixing to include fowl as well. Use of the term *meat* therefore refers also to fowl in all instances.

* Onkelos, who usually keeps close to the Hebrew text, rendered this as "You shall not eat flesh and milk."

The Dietary Laws: A Diet for the Soul

☞ The terms *meat* (Yiddish: *fleishig*; Hebrew: *basar*) or *dairy* (Yiddish: *milchig*; Hebrew: *halav*), for the purpose of these religious laws refer not only to the actual meat and milk, and to products containing meat or milk ingredients, but also to meat and milk fats and products made from them.

A food product containing neither meat nor milk, nor derived from either is *neutral*. The Yiddish word *parev* (*parve*) or the Hebrew word *stam* is used to describe this third category. The neutral (*parev*) category includes (1) everything which grows from the soil: vegetables, fruits, nuts, coffee, spices, sugar, salt, (2) all kosher fish, (3) eggs, and (4) items manufactured from chemicals. *Parev* foods may be eaten or cooked with either dairy or meat products.

☞ Meat and dairy products may not be cooked or served in the same vessels even if not at the same time.

☞ Any vessel which has been used for the preparation of both meat and milk, even if not at the same time, (and has thus absorbed minute quantities of both meat and milk) is rendered non-kosher. It is therefore necessary to maintain separate cooking and eating utensils (dishes, tableware) for meat and dairy dishes. These must be properly marked or easily distinguished one from the other by color, design, form, or size.

☞ Kosher food—meat or dairy or *parev*, cooked in vessels that were used for both meat and dairy—becomes non-kosher and is prohibited.

☞ A specified time period must elapse after one has eaten meat before one may eat a dairy product. There are different opinions in the Codes as to the length of this waiting period. Acceptable practices range from a three-hour to a six-hour waiting period. (The reason for the waiting period is to allow time for deterioration of the fatty residue which clings to the palate and does not easily rinse out, and of the meat particles lodged in the crevices of the teeth.)

☞ The reverse is not necessary. After one has eaten dairy, one may rinse his mouth with water, eat some neutral solid such as bread, and then proceed to a meat meal. (The reason is that dairy products do not possess the fatty qualities of meat or become lodged between the teeth in the same manner. Should there be a dairy product of which this is not so, such as some hard cheeses, then the same waiting period after dairy is also required.)

THE DAILY WAY OF LIFE

§ A person who is ill (or a very small child) is permitted to shorten his waiting period to one hour, if necessary, provided that care is taken to cleanse the mouth and teeth thoroughly, and provided the final grace after the meat meal is said, thereby clearly designating that the second eating period is not just a continuation of the meat meal.

§ A parev food cooked in a meat vessel must be served in a meat dish and *may not* be eaten *together* with dairy. One does not, however, become fleishig with it and it is permissible to eat dairy immediately afterwards.

§ The kitchen sink (unless there are two separate ones) actually becomes a non-kosher vessel as it absorbs the remnants of both meat and dairy. Dishes—meat or dairy—should therefore not be soaked directly in the kitchen sink, or in the same basin. This may make the dishes non-kosher, even if the meat and dairy dishes are not soaked together at the same time. Separate basins that fit into sinks ought to be used for soaking dishes. Similarly, different colored plastic grills upon which to stack dishes in sinks should be used.

§ The same dishwashing machine may be used for meat and dairy dishes if one acquires another set of racks that actually hold the dishes and utensils, reserving one rack for the meat dishes and the other for the dairy dishes, and allowing the machine to run through once while empty between meat and dairy use and vice versa. The empty run does not require a full cycle; a rinse and hold cycle using a detergent is sufficient. (Other rabbinic authorities have ruled differently and do not permit the use of the same machine even under the conditions specified.)

§ It is common practice to designate towels of one color or design for the meat dishes, and towels of another color or design for the dairy dishes. This is the proper practice to follow, as it prevents a dish towel that was used for drying meat dishes from being mistakenly used the next time for dairy, and vice versa. If necessary, *any* cleanly-laundered dish towel may be used for meat or dairy.

§ Where one person is served a meat meal and the other a dairy meal at the same table, a clear-cut distinction should be made between them, such as using a tablecloth or place mat (or a different tablecloth or place mat) for one of them.

The Dietary Laws: A Diet for the Soul


§ Use of butter and milk substitutes with meat: The development of pure vegetable products which “look and taste” like the dairy products they are intended to substitute (butter, cream, ice cream or sherbet, etc.) has increased the variety possible in the preparation of kosher meals. There are no halakhic objections to their use in cooking or eating with meat meals. But since they may be mistaken for their dairy counterpart and it is important to avoid what the Sages call even “the appearance of transgression,” it is proper for purposes of identification that they be kept and served in the wrapper or container in which they come, or in any container which clearly designates the contents as parev.

§ Not all coffee creams labeled “non-dairy” are in fact non-dairy, according to the rules of kashrut. Some contain sodium caseinate, which is derived from milk, making it a dairy product which should not be used at a meat meal.

§ Glass under ordinary use has been confirmed as a non-absorbing material. Therefore, its occasional use for serving either meat or dairy is not prohibited. However, to use one set of glass dishes as a substitute for the traditional practice would be wrong and should not be permitted as a matter of policy.

§ Water glasses may be used either at dairy or meat meals.

§ Pyrex or similar glassware used for baking or cooking may not be used interchangeably for meat and dairy. (The presence of intense heat makes it susceptible to absorption.)

§ When purchasing food or preparing meals, it is important to take note of ingredients, and to be fully certain as to the kashrut of the product, and as to whether it is milchig, fleishig, or parev. Food processing has become highly sophisticated today and labeling practices may be misleading to the kosher consumer. For example, mono- and di-glycerides or emulsifiers may be manufactured from either vegetable or animal fats. They may be kosher or trefah. Lactose may be manufactured from milk or from molasses. It may therefore be dairy or parev. The word “shortening” alone almost always indicates lard or other animal fats. That is why it is increasingly important to look for a reliable kashrut endorsement. While it is not the only kashrut symbol—there are some reliable local groups too—the  symbol of the Union of Orthodox Jewish Congregations of America

THE DAILY WAY OF LIFE

is nationally the best known and easily the most recognized in the field.

MISCELLANEOUS PROHIBITIONS

§ Forbidden by Torah is the sciatic nerve, known in Hebrew as the *gid hanashe*, which runs through the hind quarter of the animal. When this sinew and its adjoining blood vessels are removed, the hind quarter of the animal may be eaten. The cutting out or purging of this sinew was done in some Jewish communities throughout history and is done in Israel today. In the United States it is not economical for the meat industry to invest many man-hours on the purging of this sinew (a time-consuming task). There are not many butchers who possess the special skills required for the task, and a vast market for non-kosher meat exists. Thus, the whole hind quarters of kosher-slaughtered animals are cut away in the packing houses and sold with non-kosher slaughtered animals. But a Jew is forbidden to eat the hind quarter of a kosher animal only when the forbidden sinew has not been removed.

§ Also forbidden by the Torah is the fat known as *helev*. (This is removed from the animal by the kosher butcher.) "You shall eat no fat of ox, of sheep, or goat" (Lev. 7:23-24). This forbidden fat surrounding the vital organs and the liver is distinguished from the permissible fat around the muscles and under the skin which is known as *shuman*. Although the Torah doesn't specify why there is this distinction between fats, it is interesting that recent bio-chemical researchers have also noted a distinction between these two kinds of fat.

§ Torah law prohibits the drinking of wine that had been used in connection with idolatry. Such wine is called *yayin neseikh*. Mere contact by an idolator with the wine at any stage of its preparation was sufficient to prohibit it. Aside from the fact that anything used for idolatrous ceremonies became prohibited to the Jew, the additional purpose of weaning the Jew away from convivial contact with non-Jews was also a factor in the prohibition.

While Jewish law today does not regard wine with which a non-Jew comes in contact as *yayin neseikh*, rabbinic ordinances extended the prohibition to ordinary non-Jewish wines, *stam yainam*. This re-

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striction is lifted, however, if the wine is pre-boiled. Wines not made from the grape, but which are fermented from various fruits or grains are not included in any of the restrictions, either Biblical or rabbinic.

KOSHER FOOD IN NON-KOSHER VESSELS: ON "EATING OUT"

§ Any kosher food item that is boiled, baked, grilled, fried, or broiled in a trefah utensil which had been used for non-kosher meat, fowl, or fish, or which had been used indiscriminately for meat and dairy is rendered non-kosher itself and may not be eaten.

§ Any kosher food, properly prepared in a kosher vessel, that is served hot in a non-kosher dish previously used for non-kosher meat, fowl, or fish, or used indiscriminately for meat and dairy is also rendered non-kosher and may not be eaten.

The basic principle of law followed in the above cases is that in the presence of heat, the kosher food absorbs traces of the absorbed forbidden food, even from an otherwise clean vessel. Though the Sages of the Talmud lived long before chemistry became a science, and before chemical theories were advanced, their ruling is today substantiated by the fact that chemical reactions and the activation and interaction of molecules of different bodies takes place only in the presence of heat.

§ The above principle of law is also the basis for the ruling that when cold kosher food comes in contact with a cold and clean non-kosher utensil, the food does not become contaminated by the prohibited substances. It remains kosher and may still be eaten. (The only exception occurs when the kosher food consists primarily of very "hot" condiments such as mustard, etc.)

§ This leniency provides eating opportunities for observant Jews who find themselves away from home or from any kosher restaurant or hotel or who may be invited to non-kosher homes. One may eat cold kosher food items that have not been boiled, baked, fried, or grilled on non-kosher utensils. These may be eaten even if served in non-kosher utensils.

(A possible menu in this category may include cold fruits, fresh vegetables, canned fruits, canned kosher fish such as tuna or salmon,

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some dairy products [milk, cream, butter], or even dry cereals that are easily available almost everywhere in the world.)

☞ Coffee, tea, and hot chocolate are also regarded as permissible by some authorities, since the coffee or the hot water is prepared and served in vessels used exclusively for that purpose.

☞ In eating places where special egg cookers are used to boil eggs the same leniency would prevail. Eggs cooked in trefah pots, however, are themselves rendered trefah. The shell of the egg is no barrier to contamination, as the shell is porous and absorbent.

☞ Care should be taken when purchasing bread. Although most European breads generally contain no trefah ingredients, just flour and water, and can therefore be relied upon in case of need or emergency, American breads are usually processed with lard, which makes them trefah. Even where lard is not actually used as an ingredient, it is often used to grease the baking pans. Or the same baking pans that are used for making products with lard are used for making those without. (White breads are often also "enriched" with milk, which would make it a dairy product and of limited use, even if the problem of the lard was eliminated.) Cakes, biscuits, and pastries are often made with lard or animal fat shortening also.

☞ In ordering fruit or vegetable salads in non-kosher establishments, care should be taken to ascertain that non-kosher sauces or oils derived from non-kosher fish have not been added.

☞ One should be aware that this constitutes the "outer limits" of what may be eaten in non-kosher places. Devout Jews often choose not to take advantage of the permissible leniencies and restrict their eating in non-kosher places even more severely. When traveling, they take along their own food. But happily, there are kosher restaurants in many major cities. Kosher meals are also provided, upon request when reservations are made, by all domestic and international airlines and on many passenger ships.

☞ The leniencies allowed should only be exercised when traveling; when visiting a private non-kosher household, Jewish or non-Jewish, or when invited to public functions of non-Jewish sponsorship. At such times and on such occasions, the individual Jew asserts his "Jewishness" and the disciplines of his faith when he limits his menu in the manner described. This is what sets him apart from those not under the terms of the Covenant.

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The leniency should not be exercised when invited to a non-kosher dinner sponsored by a Jewish organization, or by any organization whose membership is limited to Jews, or which is given by a Jewish family in celebration of some occasion. Under these circumstances the observant Jew who "settles" for a fruit salad while his less observant coreligionists eat *trefah* meats, *trefah* fowl, or *trefah* fish permits himself to be treated as a "second-class citizen" among his brethren. Among Jews, he should not have to assert his "Jewishness" by keeping the Jewish values to which they are all bound by the Covenant; nor should he be subjected to the sight of fellow Jews violating sacred commandments before his eyes. Any Jewish host organization or family which shows so little consideration for the observant invitee or is so insensitive to his feelings that they arrange things so that he cannot partake *equally* by virtue of his conscience and religious duty should expect such a guest to decline any such invitation.

METHODS OF "KASHERING"

☞ Where an error occurs and a meat vessel or utensil is unintentionally used with a dairy product or vice versa the vessel or utensil may be rendered non-kosher. This depends upon the circumstances, though it *always* is rendered non-kosher in the presence of heat, and *always* where the contact even with cold was continuous for a twenty-four-hour period. The same applies where a trefah food is unintentionally prepared in a kosher vessel or with kosher utensils.

Under such circumstances, it is sometimes possible to *kasher*, i.e., to make the vessel or utensil kosher again by various procedures.

☞ The procedures used for kashering are varied. It may be done by immersing the utensil in (or pouring over it) boiling water, passing it through a flame until it becomes red hot, by sticking it into earth, etc. It all depends on the manner of its use and how it was contaminated. Vessels used with hot liquids are purged by boiling water; vessels used over a fire without water (frying pans, baking sheets, ovens and ranges, spits) are purged by "glowing," i.e., by subjecting the vessel to the heat of fire.

☞ Most metal and wood utensils (Israeli rabbinic authorities also include plastic in this group) can be kashered. Earthenware, enamel-