Religion in Prison

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Nashville, Tennessee
April 9 and 16, 2019
Introduction

- Don’t shoot the messenger
- This is not legal advice or a legal opinion
- Staff members MUST follow policy
Federal Courts of Appeals
Cases

* 2000 – 2014  83 cases  5.5/year

* 2015 – 2018  42 cases  10/year

* 2019 (Jan./Mar.)  9 cases  36/year
Topics

1. Why is religion in prison so hot?
2. Legal protection
3. Processing religious requests
4. Federal Court system
5. Recent cases
6. Where are we headed?
7. Suggestions
Why is Religion in Prison So Hot?

- History
- Inmate population and diversity
- Legal protection
History

- Why did early settlers come to the new world?

- One reason - religious freedom
  
  * No government-sponsored religion
  
  * Free to worship
Inmate Population 1925-2015

Trends in U.S. Corrections


Source: Bureau of Justice Statistics Prisoners Series
Religious Diversity – TN 2015

- Christian - Protestant
- Christian - Catholic
- Muslim – Nation of Islam
- Muslim - Traditional
- Rastafarian
- Native American
- Wiccan
- Jewish
- Jehovah’s Witnesses
- Bahai
- Buddhist
- Christian Identity
- Christian Science
- Greek Orthodox
- Hebrew Israelite
- Hindu
Legal Protection of Inmates’ Religious Rights

1. The First Amendment
3. Court cases
4. Policies & procedures
The First Amendment (1791)

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...”
ACTS OF CONGRESS

* 1990-2005

* Congress v. Supreme Court

* Why?
1990 - The Supreme Court made it hard for inmates to win religious lawsuits. 


1991-93 – Congress didn’t like that / held hearings / found “arbitrary and capricious” barriers to religion

1993 – Congress passed the Religious Freedom Restoration Act (RFRA)
Goal of RFRA – to undo the 1990 Supreme Ct decision and strengthen religious rights of all

Supported by liberals & conservatives

Co sponsored by Senators Kennedy & Hatch
The...pioneers who founded America came here...to practice their faiths free from government interference...convinced...of the need to assure for all Americans for all time the right to practice their religion unencumbered...

Senator Ted Kennedy
September 18, 1992
(this law) is important for the preservation of...religious freedom...(of) all American people, especially for those whose religious beliefs and practices differ from the majority...

Senator Orrin Hatch
September 18, 1992
* RFRA was opposed by Commissioners and Secretaries of Corrections in all 50 states

* 1993 - Congress passed RFRA

* 1997 – Sup. Ct. held RFRA only applies to feds
2000 – Congress didn’t like that / passed Religious Land Use & Institutionalized Persons Act (RLUIPA)

2005 – Sup Ct held RLUIPA constitutional

2015 – Sup Ct explained RLUIPA (Holt)
RFRA & RLUIPA
IN PLAIN ENGLISH

1. Before we limit an inmate’s religious practice (i.e., diet) we need a very good reason.

2. We must limit religion in the least restrictive way.

3. Religious practices are protected even if not required by the faith.
RLUIPA Section 2000 cc-1(a)

“No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution...unless the government demonstrates that imposition of the burden on that person

(1) is in furtherance of a compelling governmental interest, and

(2) is the least restrictive means of furthering that compelling governmental interest.”
“This chapter shall be construed in favor of a broad protection of religious exercise...”
…this chapter may require a government to incur expenses… to avoid imposing a substantial burden on religious exercise.”
“The term ‘religious exercise’ includes any exercise of religion \textit{whether or not compelled} by, or central to, a system of religious belief.”
Religious Request Process

1. Does the request relate to **religion**?
2. Is the inmate **sincere**?
3. Have we **substantially burdened it**?
4. If so, we **must approve it**
5. **Even if not required by the faith**
6. **Unless** we can show a **very good reason** to deny it, and
7. We must limit it **as little** as possible
Safety and Security

* Safety and security is a very good reason to limit religious exercise --- it is a compelling governmental interest.

* But we must be sincere.

* And we have to impose the limit in the least restrictive way.
Request: Sweat lodge

1. Does the request relate to religion?
2. Is the inmate sincere?
3. Have we substantially burdened it?
4. If so, we must approve it
5. Even if not required by the faith
6. Unless we can show a very good reason to deny it, and
7. We must limit it as little as possible
Court Cases
1. 2005 – RLUIPA is constitutional

2. 2011 – monetary damages not allowed

3. 2015 – detailed discussion of RLUIPA

4. 2019 – chaplain in execution chamber
Holt v. Hobbs
2015

* MUSLIM INMATE – ½ INCH BEARD – REL.

* POLICY: ¼ INCH - MEDICAL REASONS

* REQUEST DENIED – HE FILED SUIT
TRIAL COURT FOUND:

A. PRAYER RUG

B. CORRESPONDED WITH REL. ADVISOR

C. RELIGIOUS DIET

D. OBSERVED RELIGIOUS HOLIDAYS
TRIAL COURT ALSO FOUND:

1. THE POLICY HELPED PREVENT CONTRABAND

2. INMATE WITH A BEARD COULD CHANGE HIS APPEARANCE BY SHAVING

3. SPECIAL PRIVILEGES COULD RESULT IN RETALIATION BY OTHER INMATES

4. THE POLICY HELPED MAINTAIN SAFETY AND SEC.
* THE TRIAL COURT: NO BEARD

* 8TH CIRCUIT: NO BEARD

* US SUPREME COURT: BEARD OK
Holt v. Hobbs

1. The Supreme Ct. allowed the beard (9-0)

2. Important decision.

3. What did the Supreme Court say?
1. The goal of RLUIPA – “broad protection of religious liberty.”
Holt v. Hobbs

2. Religious liberty includes:

“Any exercise of religion **whether or not compelled** by a system of religious belief.”
3. “...RLUIPA may require a government to incur expenses ...to avoid imposing a substantial burden on religious exercise.”
4. His religious exercise was substantially burdened - he had to choose:

(i) Engage in conduct that seriously violates his religious beliefs, OR

(ii) be punished.
5. Being allowed to practice his religion in the other ways does NOT matter.

The question under RLUIPA is whether prohibiting the beard is a substantial burden on his religious exercise.
Holt v. Hobbs

6. The government has a **compelling interest** in stopping contraband

But the argument that security would be seriously compromised by allowing a ½ inch beard is “hard to take seriously.”
* It is hard to see why an inmate would hide contraband in a ½ inch beard rather than the hair on his head.

* The lower courts thought they had to defer to the Dept.'s assertion that the beard would undermine security.
RLUIPA does not permit such unquestioning deference to the Department.

The Dept. must prove that denying the beard is the least restrictive means of stopping contraband.
Holt v. Hobbs

7. If a less restrictive way to stop contraband is available, the Government **must** use it.

There are **less restrictive** ways to stop contraband:
Holt v. Hobbs

a. **Search** the inmate’s beard.

b. Have the **inmate** run a **comb** through his beard.

c. **Photograph** inmates before and after.
Holt v. Hobbs

* Half inch beards and quarter inch beards pose similar risks.

* The vast majority of states and the feds permit half inch beards.

* Contraband can be hidden in clothing, shoes, and hair on the head.
Holt v. Hobbs

We reject the argument that

“If I make an exception for you, I’ll have to make an exception for everybody.”
Holt v. Hobbs

8. RLUIPA gives prison officials other ways to maintain safety and security:

a. **Withdraw the religious exercise if** the inmate abuses it and undermines safety and security.
Holt v. Hobbs

b. Appropriately question whether the inmate’s religiosity is authentic.

c. Courts should always remember they are dealing with a prison setting.
Where are we going?

Congress
The First Step Act of 2018

- Senate (87-12) House (356-36) President
- Federal prisons only
- Funded through 2023

- GOAL: Reduce recidivism
  1. Assess inmate’s risk of recidivism
  2. Housing and programming
The First Step Act of 2018

a. Max 500 miles from home
b. Prerelease help with ID
c. Elderly early release
d. Mentors for youth
e. Pregnant – no restraints
Where are we going?

Recent Court Cases
Dunn v. Ray
US Sup Ct – February 2019

- 1995 - inmate in AL sentenced to death
- 2006 – became devout Muslim
- 2018 – execution date set for 2-7-19
Dunn v. Ray  
US Sup Ct – February 2019

- 1-23-19 inmate learned his imam could not attend – only the prison’s Christian chaplain could attend

- 1-28-19 inmate filed Motion to Stay Exec

- 1-31-19 Motion denied (filed too late)
Dunn v. Ray
US Sup Ct – February 2019

- 2-6-19 11th Cir Ct of App reversed the trial court and stayed the execution

- 2-7-19 US Sup Ct (5 to 4) vacated the stay because motion was filed too late

- 2-8-19 Inmate executed
Dunn v. Ray
US Sup Ct – February 2019

- Justices Roberts, Alito, Thomas, Gorsuch, Kavanaugh (5)


(More details)
Dunn v. Ray
US Sup Ct – February 2019

- In 1995 he murdered 2 teenage brothers
- Then convicted and sentenced to death
- For robbing, raping and murdering a 15 year old girl
Murphy v. Collier
7th Circuit Court of Appeals
March 2019
Murphy v. Collier
7th Circuit – March 2019

- 2000 – inmate in TX sentenced to death
- 2018 – execution date set for 3-28-19
- Inmate wanted his Buddhist spiritual advisor present
Policy only allowed state chaplains (Christians or Muslims)

3-20-19 inmate petitioned TX Ct of Crim Appeals for Writ of Prohibition

3-25-19 petition denied – filed too late
Murphy v. Collier
7th Circuit – March 2019

- 3-26-19 – inmate filed Motion to Stay the Execution in federal trial court

Motion Denied – filed too late

3-27-19 Inmate appealed to 5th Cir C/A
Murphy v. Collier
7th Circuit – March 2019

- 3-27-19 Stay of Exec denied by 5th Cir: Filed too late
- 3-28-19 Inmate executed

(More details)
In 2000 inmate murdered a police officer

Email was sent to inmate’s attorney on 3-5-19 telling him of the policy but he waited until 3-20-19
Murphy v. Collier
7th Circuit – March 2019

- Inmate’s attorney had a reputation for filing late motions

- He had been barred from practicing for a year in one TX court for filing late motions in another case
Where are we going?

- 2000 - Congress (inmate)
- 2005 – Supreme Court (inmate)
- 2015 – Supreme Court (inmate)
- 2018 – Congress (inmate)
- 2019 – Supreme Court (state)
My Predictions

• Congress will not amend RLUIPA
• Congress will not repeal RLUIPA
• Supreme Court – 2020 election
Conclusion to Staff

* What if we disagree or think a request is silly?

* As state employees we must respect it

* But never jeopardize safety and security
AMEN