Landmark decision upholding freedom of religion by California High Court

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On Friday, October 7, the California State Court of Appeals handed down a landmark decision strongly upholding freedom of religion. By reversing a lower court decision to submit five adult Unification Church members to parental control, it spells the end for conservatorship proceedings against Church members in California. President Salonen said of the decision, "This ruling is indeed a significant event in the history of religion. The California conservatorship law has too often been used as a convenient ploy of those people, completely insensitive to the individuals involved or to any principle of religious freedom, who are bent on destroying our church by kidnapping and deprogramming adult members. I'm glad that the court has upheld our constitutional rights to freedom of belief and religious practice."

Specifically, the ruling stated that: "In examining the contentions made in support of the petition we find that the former provisions of section 1751 of the Probate Code, which the temporary conservators relied upon in these proceedings, were too vague to justify the appointment of temporary conservators of the persons as granted herein; that the former statutes did not authorize the appointments, as made by the court, under the most favorable interpretation of the evidence; and that under the circumstances of this case it was a violation of the petitioners' rights to religious freedom to appoint temporary conservators of their persons under the provision of the Probate Code."

Background

The case on appeal involved a ruling by lower court Judge Lee Vavuris giving custody of Janice Kaplan, Barbara Underwood, Leslie Brown, John Hovard, and Jacqueline Katz, to their parents after a hearing lasting several weeks and drawing national publicity.

The parents of the five had followed a now-familiar process of obtaining 30-day custody of their adult children under a loose clause in California law allowing custody over one believed to be under the influence of "artful and designing" persons. Such orders were obtained through Arizona attorneys who specialized in this service to parents who want their children removed from non-Establishment religions. Then the conservatee, who has no legal rights,. is subjected to "deprogramming" at the "Freedom of Thought Institute" in Tucson, Arizona, a ranch providing the desired isolated and confined environment for the brutalizing "deprogramming" experience and staffed by "deprogrammed" former members. The cost of parents is $10,000 to $25,000.

Judges in several California counties have been routinely granting conservatorships without seeing the victim or holding hearings. Through efforts of attorneys for the five members, Judge Vavuris granted a hearing to determine whether or not the five were · mentally competent. The hearing went on for days as parents alleged that their children were under "mind control" and their children were forced to prove their sanity. Several of the members performed original musical compositions and read poetry in an effort to convince the judge that their creativity had not been diminished since joining the Church.

On March 28, the appellate court agreed to hear an appeal of the five conservatorships. Shortly thereafter, on April 11, the appellate court stayed Judge Vavuris'!\larch 28 conservatorship ruling. Three of the five elected to stay under the conservatorship -- indicating their acceptance of the deprogramming to which they had been submitted. One, John Hovard, has resumed active membership in the Church.

The Decision

In substantiating its first contention, that the provisions of the conservatorship law "were too vague to justify the appointment of temporary conservators... ", the Court of Appeals said: "Although. the words 'likely to be deceived or imposed upon,y artful or designing persons' may have some meaning when applied to the loss of property which can be measured, they are too vague to be applied in the world of ideas. In an age of subliminal advertising, television exposure, and psychological salesmanships, everyone is exposed to artful and designing persons at every turn. It is impossible to measure the degree of likelihood that some will succumb. In the field of beliefs, and particularly religious tenets, it is difficult, if not impossible, to establish a universal truth against which deceit and imposition can be measured."

As a footnote, the Court quoted from Shakespeare:

> "Who steals my purse steals trash 'tis something, nothing;

"Twas mine, 'tis his, and has been slave to thousands;
But he that filches from me my good name
Robs me of that which not enriches him
And makes me poor indeed." (Othello, act III, scene 3)

The Court added: "The same comparison may be drawn with a theft of one's beliefs, be it by 'coercive persuasion' or summary legal action."

Concluding its first argument, the Court of Appeals said: "In view of the values involved we conclude that the provisions of section 17 51 as it read prior to July 1, 1977, were too vague to be applied in proceedings to deprive an adult of his freedom of action as proposed by the parents in this case. If there was mental deterioration, proceedings under the Welfare and Institutions Code were available. If there was duress or physical restraint criminal sanctions should have been sought."

In discussing its second point, "that the statutes did not authorize the appointments as made by the court (of conservators) under the most favorable interpretation of the evidence" the decision summarized the testimony of the original Vavuris hearing. It concluded: "We feel that the evidence was insufficient to sustain a finding that there was any emergency authorizing good cause for appointment of a temporary conservator."

Among other things, the court based its decision on the legal precedents that "on attaining majority the child is emancipated from the control of the parents," and that "even with a minor child, the parents' right to secure treatment which will involve curtailment of the child's liberty is curtailed."

The court ended its second argument: "If an adult person is less than gravely disabled we find no warrant for depriving him or her of liberty and freedom of action under either the former provision of the Probate Code, or the Welfare and Institutions Code. If there is coercive persuasion or brainwashing which requires treatment, the existence of such a mental disability and the necessity of legal control over the mentally disabled person for the purpose of treatment should be ascertained after compliance with the protection of civil liberties provided by the Welfare and Institutions Code. To do less is to license kidnapping for the purpose of thought control. We conclude that the provisions of the Probate Code could not be applied to justify the appointment of a conservator of the person on the evidence presented in this case."

After citing a number of substantiating cases, the judges concluded the decision with a resounding reinforcement of the principle of religious liberty. They argue: "Freedom of thought, which includes freedom of religious belief, is basic in a society of free man.... It embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to followers of the orthodox faiths. Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law. Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with the duty of determining whether those teachings contained false representations. The miracles of the New Testament, the Divinity of Christ, life after death, the power of prayer are deep in the religious convictions of many. If one could be sent to jail because a jury in a hostile environment found these teachings false, little indeed would be left of religious freedom. The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views. Man's relation to his God was made no concern of the state. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views. The religious views espoused by respondents might seem incredible, if not preposterous, to most people. But if those doctrines are subject to trial or falsity, then the same can be done with the religious beliefs of any sect. When the triers of fact undertake that task, they enter a forbidden domain. The First Amendment does not select any one group or any one type of religion for preferred treatment. It puts them all in that position...

"There is a distinction between interference with a person's beliefs and a person's acts. Nevertheless where does belief end and action begin? Evidence was introduced of the actions of the proposed conservatees in changing their life style. When the court is asked to determine whether that change was induced by faith or by coercive persuasion is it not in tum investigating and questioning the validity of that faith? At the same time the trier of fact is asked to adjudge the good faith and bona fideness of the beliefs of the conservatees' preceptors. If it is assumed that certain leaders were using psychological methods to proselytize and hold the allegiance of recruits to the church or cult, call it what we will, can it be said their actions were not dictated by faith merely because others who engaged in such practices have recanted? The total picture disclosed must be tested by principles applicable to the regulation of acts of religious organizations and their members."

The original hearing, Judge Vavuris' decision, and the deconversion of four of the "faithful five" received national news and editorial coverage for weeks. It is interesting to note the contrasting weight of coverage given the decision's reversal.