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Religion on Trial: George v. International Society of Krishna Consciousness

Wilbert Lee Taylor

George v. International Soci

On June 17, 1983, a California superior court jury returned a verdict against a group of Hare Krishna devotees and found in favor of a former sect disciple and her mother, awarding the plaintiffs an amount over $32 million in damages.[1] Robin George, the co-plaintiff, was fourteen years old in 1974 when she ran away from home to join a Laguna Beach, California Krishna Temple. Thereafter Miss George was shuffled among temples in Louisana, New York and Canada, allegedly to prevent her parents from learning of her whereabouts. Miss George's father suffered a fatal stroke one year after the unsuccessful attempts to locate her. Subsequently, Miss George recanted the Krishna faith and joined by her mother, instituted suit against the various temples which had harbored her and, in particular, against the leaders of the Laguna Beach and New Orleans temples. The jury awarded damages upon causes of action that alleged false imprisonment, intentional infliction of emotional distress, wrongful death, and libel.[2]

The decision is significant for two reasons: first, the award easily surpassed the previous record California verdict against a religious organization (a $1.7 million judgment in 1981 against Synanon,[3] another unpopular alternative religious society); second, it provides an opportunity to analyze various state-protected individual interests, reflected in the causes of action, against the interests protected under the First Amendment Clauses.[4] Those clauses, functioning together,[5] have been interpreted as protecting the individual exercise of freedom of religion from undue interference, preference or establishment of a particular set of religious beliefs to the exclusion of less popular beliefs,[6] such as the Krishna sect holds.[7] It is the thesis of this article that extreme punitive awards, as in the *George* case, are a form of punishment for religious beliefs and religiously-motivated behavior, if left intact after judicial review. Therefore, actions involving a recanting plaintiff who disavows his consent should be disfavored as infringing upon the constitutional rights of a religious society defendant. This article will examine the history of the Religion Clauses and their application to cases involving alternative religions. It will include an examination of the specific causes of action upon which the *George* verdict rested, and concludes that excessive punitive damage awards are a form of jury bias against unpopular religious beliefs in violation of the First Amendment Religion Clauses.

Wilbert Lee Taylor *is a recent graduate of the University of Baltimore School of Law.*

In the period preceding 1791, in Europe, the norm was a system of civil government encompassing a sanctioned set of religious principles. The establishment of a religion was typified by the designation of a state church, with rights and privileges arrogated to the church and its members. These attributes included: 1) official recognition and protection by the sovereign; 2) the right to compel religious orthodoxy under threat of fine or imprisonment; 3) the ability to finance the church through taxes upon the general community; 4) the sole ability to conduct public worship; and 5) the sole ability to perform valid marriages, burials and other solemn rites.[8]

While it might have been surmised that the American colonial response to religious repression of dissidents in Europe would have been a greater showing of religious tolerance, prior to the Bill of Rights, the initial response of the colonies was to establish their own favored religions and to civilly suppress dissenters as heretics.[9] The earliest state constitutional safeguards of civil and political rights from religious discrimination were enacted in 1776, fifteen years prior to the ratification of the First Amendment.[10]

A process of disestablishment, aimed at eliminating the rights and privileges of establishment (as earlier enumerated),[11] and progress toward religious freedom was gradual.[12] For example, in 1776, Virginia was the first state to enact a guarantee against religious discrimination;[13] however, its dissenting sects were still struggling for equality before the law as late as 1785.[14] It was not until 1798 that all the laws preventing self-regulation of dissenting religious societies in that state were repealed and state-granted lands to the established church were confiscated.[15] Virginia's experience of maintaining incidences of an established religion was not unique among the states.[16] The available evidence points to the conclusion that most states were content with their own internal efforts at disestablishment and primarily amended the Constitution by adding the Religion Clauses in order to preempt the federal government from establishing a church of its own.[17]

After ratification of the First Amendment Religion Clauses, the states continued disestablishment at their deliberate pace and early Supreme Court decisions reflected the Court's attitude that the right of free exercise and the prohibition against establishment were inapplicable to state practices.[18] A series of decisions, however, resulted in a gradual disintegration of this attitude. The first of such decisions was the ratification of the Fourteenth Amendment in 1868.[19] Then, in 1878, the Supreme Court decided *Reynolds v. U.S.*[20] which involved a Mormon who appealed his conviction under a Congressional statute outlawing bigamy in territories under federal control. In affirming the conviction, the Court considered the history of the First Amendment and decided that its purpose was to build "a wall of separation between church and State."[21] Further, the Court advanced a dichotomy between religious beliefs and religiously-motivated actions—the First Amendment was meant to deprive Congress of all power to legislate regarding the former, in which legislation would constitute an establishment, but not the latter when such legislation legitimately sought to preserve secular duties and good public order.[22] Applying that dichotomy to the situation before it, the *Reynolds* Court reasoned that marriage was a relationship created and protected by civil authority; therefore, subject to legitimate civil regulation in the public interest.[23] Thus, the Court enunciated standards for First Amendment challenges based upon alleged violations of the establishment prohibition[24] and the protected free exercise right, and established a balancing test whereby individual actions taken in pursuance of the free exercise right would be weighed against legitimate governmental action taken in the public interest. Finally, the attitude of inapplicability of the Religion Clauses to the states was reversed in the Supreme Court

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decision of *Cantwell v. Connecticut.*[25] In this landmark decision, the Supreme Court applied the Fourteenth Amendment so as to incorporate the First Amendment's religion protections as against the states.

Cantwell, a Jehovah's Witness who was convicted of inciting a breach of the peace, had presented no clear and present threat to public peace;[26] however his street-corner ministering had included a bitter attack upon other organized religions, particularly Roman Catholicism. On that basis the Court, applying the balancing test employed in *Reynolds*, reversed the conviction, holding that upon the facts of the case, the colorable public interest did not outweigh Cantwell's protected free exercise interest.

The Supreme Court has refined its approach to challenges to governmental action based upon violations of protected Religion Clauses rights since the 1940 *Cantwell* decision. The need for further refinement is evident, however, when one examines the increasing litigation regarding alternative religious societies. It has been held that a religion does not have to envision a supreme being to be entitled to First Amendment protection.[27] Despite this constitutional protection, alternative religious societies are being forced to defend suits initiated by former devotees alleging tortious conduct suffered at the defendant church's hands. The results thus far have been mixed—federal claims against the churches have failed primarily because of jurisdictional or evidentiary shortcomings; however, state-based tort claims have survived preliminary motions.[28] Issues of consent of a non-adult and of prejudice or bias against an unpopular alternative religion have not been addressed directly,[29] although the trend in litigation involving alternative religions appears to be against these unpopular organizations,[30] as is manifested in *George v. ISKC.*

Factual determinations are crucial in

determining whether a verdict implicating a Religion Clauses violation, such as in the *George* case,[31] will withstand the scrutiny of judicial review.[32] The threshold factual determination appears to be that of consent of the purported tort victim, for a valid consent[33] would form an absolute defense to the claims upon which such a verdict rested.[34]

While the co-plaintiff, Robin George, was approximately fourteen-years-old at the time she ran away from home and joined a Krishna temple, the mere fact of infancy should not foreclose the consent issue automatically.[35] The question becomes one of the emancipated status of the minor child,[36] for state law generally holds that, as between parent and child, such emancipated status leaves the minor unbenefitted by the parental obligation of support for care, maintenance and necessaries and consequently unburdened by the need for parental consent.[37] Furthermore, to determine emancipation of unmarried minor children[38] facts and circumstances are considered,[39] including the intention of the parents,[40] although it is recognized that emancipation may result despite the parents' intentions.[41] California, the *George* case jurisdiction, has a law against emancipation based solely upon the actions of the child;[42] however, the state's appellate courts have ruled this statute to be merely presumptive.[43] There are strong indications that the parents in *George* did not acquiesce in their daughter's running away from home and thus had no intention of emancipating her by implication.[44] This, however, begs the larger constitutional issues of whether a fourteen-year-old child may be competent to formulate a religious consent sufficient to effect a partial emancipation for that purpose,[45] and whether the Religion Clause would protect, the child's rights, as well as the religious society's rights arising from its reasonable belief of the child's competence to consent.[46]

Objective determinations based upon empirical studies of capacity to formulate religious consent show that upon reaching the mental age of fourteen, a child does have such capacity[47] and indeed reaches the age of greatest religious potentiality[48] during an adolescence roughly stretching from ages twelve to sixteen.[49] To go beyond this objective determination of religious capacity, however, and to attempt to gauge the sincerity of an individual plaintiff's religious position would violate the free exercise and establishment rights of a religious society. In *U.S. v. Ballard*,[50] the Supreme Court held that absent an imposing and legitimate threat to society, the individual mode of expression and the motivation of joiners of a religious group are not subject to judicial determination.[51] Consequently, practices such as relocating devotees from coast to coast and characterizing a devotee's parents as "meat-eating demons"[52] without more, would be protected indoctrination.

To attempt to guage the sincerity of an individual plaintiff's religious position would violate the free exercise and establishment rights of a religious society.

The state causes of action in *George* were false imprisonment, intentional infliction of emotional distress, wrongful death, and libel. The largest single monetary award was $1.5 million in compensatory and $15 million in punitive damages to the co-plaintiff, Robin George, for false imprisonment.[53] The elements of the tort of false imprisonment are a nonconsensual, intentional[54] confinement of a person without lawful privilege for an appreciable length of time.[55] Three elements of the action should be suspect in relation to a bona fide religious society such as the Krishnas: consent, intent and privilege.[56] Absent a statutory presumption, a civil plaintiff has a heavy burden of proving lack of consent[57] to an exercise of the right of conscience in matters of personal faith.[58] Although the precise issues of plaintiff's lack of consent and possible prejudice against a defendant alternative religious society have not been reached by an appellate court,[59] it has been held that the consent of a fourteen-year-old minor is relevant to a prosecution for that minor's alleged false imprisonment[60] and, further, that the good faith, motive and intent of the defendant should affect liability[61] as well as the measure of damages, particularly punitive damages.[62]

Intentional infliction of emotional distress results from the unprivileged outrageous conduct of the defendant who, with intention to cause severe emotional distress, actually and proximately causes such harm to the plaintiff.[63] Severe emotional distress is defined as distress so substantial that no reasonable person in a civilized society should be expected to endure it.[64] There is no fixed or absolute standard by which to compute the monetary value of the claimed emotional distress, and recovery by one person for the severe emotional distress suffered by another has been allowed.[65] Under this cause of action, co-plaintiff Robin George was awarded $250,000 and her mother was awarded $1.5 million in compensatory damages,[66] plus $12.25 million in punitive damages was awarded to the pair.[67]

The state acts unconstitutionally when it allows a hostile public to inflict crippling punishment upon constitutionally protected, though admittedly unpopular, religious beliefs.

However, the elements of consent, privilege and intent should be presumed against the plaintiff, and a favorable jury verdict thereon should be suspect where a competent plaintiff recants a defendant religious society.[68] A further troublesome element of the offense would be the necessity of outrageous conduct by the defendant; here again, the Religion Clauses would seem to allow great latitude in unorthodox behavior by a defendant religious institution before finding malicious intent to engage in outrageous conduct.[69]

Wrongful death actions, unknown at common law,[70] are regulated in each state.[71] Co-plaintiff Robin George was awarded $75,000[72] and her mother received nothing for the wrongful death of Mr. George, who died of a stroke approximately one year after an unsuc-

cessful search for his daughter.[73] Questions of direct and proximate causality are raised upon the apparent facts of the case, although the facts are not known completely. The relatively modest award undoubtedly is a reflection of the fact that California only allows punitive damages in wrongful death actions under limited circumstances[74] absent from this case. The analysis regarding consent, privilege and intent[75] would be equally valid with respect to a wrongful death action.[76]

A cause of action in libel requires an unprivileged, false and malicious publication whereby a plaintiff is exposed to public scorn, hatred, contempt, or ridicule.[77] Although the details of the alleged publication by the Krishnas against the plaintiffs, Robin George and her mother, are not known,[78] the elements of privilege by consent and intent[79] would have to favor a protected religious society over a recanting plaintiff as religious freedom is within the scope of the constitutional protections. Similarly, the offending publication would have to be removed from religious opinion to lose the protection of first amendment free speech.[80] Plaintiff daughter was awarded $2,500 and her mother $10,000 in compensatory damages for the libel, in addition to sharing $2 million in punitive damages,[81] a punitive award so excessive when compared to the compensatory award as to suggest jury bias.[82]

The punitive damages in the *George* case exceeded $29 million of a $32 million total award;[83] thus, it is proper to inquire whether the jury is attempting to punish the religious society for its unpopular beliefs. Not only are first amendment religious rights as incorporated into the due process concept involved, but also the award implicates fourteenth amendment equal protection rights,[84] with judicial enforcement and review of jury actions providing the necessary state action to initiate a consitutional claim.[85] State law requires a reasonable relationship between actual and punitive damages,[86] even though no fixed ratio exists.[87] All relevant factors are to be weighed in determining the amount of punitive damages,[88] and a disproportionate ratio of damages raises a presumption of prejudice or passion.[89] Favored by such a damage presumption, an unpopular religious society, such as the Krishnas, should appeal an inordinate punitive award; to fail to do so would allow public bias to have its intended chilling effect upon the constitutional rights of the minority.

The Religion Clauses face another turning point in their interpretation and application with the increasing controversy surrounding new alternative religions, most of which are viewed with suspicion, contempt and hostility. In some cases, where the colorable religion has proven to be a dangerous cult, the suspicion and hostility of society have proven to be natural defensive reactions to a palpable evil. Nevertheless, the society's instinct's are not unerring, and our constitutional rights provide the most effective safeguards against the tyranny of the majority. The secular interests of the state in the well-being of minor children are not challenged nor are the constitutionally protected religious interests of competent persons who opt for belief in an alternative religion. It is in the balancing of these substantial interests when they conflict that the courts are called upon to insure that neither interest is disregarded totally. The state court acts within the realm of reasonableness perhaps, when it draws the line of permissible religiously-motivated behavior at harboring a minor child of questionable competence from his parents, even where there is a good faith belief in the competent consent of the child; the state acts unconstitutionally, however, when it allows a hostile public to inflict crippling punishment upon constitutionally-protected, though admittedly unpopular religious beliefs.

All relevant factors are to be weighed in determining the amount of punitive damages, and a disproportionate ratio of damages raises a presumption of prejudice or passion.

Notes

1 Baltimore Sun, June 19, 1983, at A3, col. 1 [Hereinafter referred to in the text as *George*].
2 *Id., generally.*
3 *Id.*, at col. 2-3.
4 U.S. Const. Amend. I, cl. 1 & 2 provide that: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."
5 *See* A. Stokes & L. Pfeffer, *Church and State in the United States*, 93, (Rev. one-vol. ed., 1964), (All of the First Amend. clauses are interrelated and important to religious freedom), [hereinafter cited as Stokes]; J. Nowak, R. Rotunda & J. Young, *Constitutional Law*, 849, (1978 & Supp. 1982) [hereinafter cited as *Nowak*].
6 Cantwell v. Connecticutt, 310 U.S. 296 (1940); Everson v. Board of Education, 330 U.S. 1 (1947).
7 Local alternative religion spokespersons have estimated that the full-time and part-time membership of the Unification Church in Baltimore numbers less than seventy persons, while the approximate 30,000-strong Hindu community of the Washington/Baltimore area forms the basis of support for the local Societies for Krishna Consciousness. State Line television broadcast, *Religion or Cult?*, Md. Center for Pub. Broadcasting, Nov. 13, 1983. It should be noted that actual membership in the Krishna sect in this area is certainly a rather small percentage of the larger Hindu community.
8 C. Antieau, A. Downey & E. Roberts, FREEDOM FROM FEDERAL ESTABLISHMENT 1-2 (1964) [hereinafter cited as Downey]; CONSTITUTIONAL PROBLEMS IN CHURCH-STATE RELATIONS 4-5 nn. 22 & 23 (L. Levy ed. 1971) [hereinafter cited as Levy]; W. Torpey, JUDICIAL DOCTRINES OF RELIGIOUS RIGHTS IN AMERICA 8-9 (1948) [hereinafter cited as Torpey].
9 *See, e.g.*, C. Antieau, P. Carroll & T. Burke, RELIGION UNDER THE STATE CONSTITUTION 100 (1965) [hereinafter cited as Antieau]; Torpey, *supra* note 16, at 4, 9: Downey, *supra* note 18 at 1-29, 204.
10 Antieau, *supra* note 9, at 10. (N.J. given the dubious honor); *Cf.*, text accompanying notes 14 & 15 *infra.*
11 Downey, *supra* note 8, at 31; See text accompanying note 8 *supra.*
12 Torpey, *supra* note 8, at 12.
13 Downey, *supra* note 8, at 43-44; Moehlman, The Wall of Separation Between Church and State 78 (1951) [hereinafter cited as Moehlman]; *See generally* Torpey, *supra* note 8, at 15-17 and Stokes, *supra* note 5, at 81, both citing the compilations of Sanford Cobb as to religious qualifications for Colonial citizenship and office-holders.
14 *Reprinted in* Walz v. Tax Commission, 397 U.S. 664, 719-27 (1970) (Douglas, J., dissenting, app. II) *and in* Everson v. Board of Education, 330 U.S. 1, 63-72 (1947) (Rutledge, J., dissenting, app.).
15 Antieau, *supra* note 9, at 100-19.
16 *Id., Moehlman, supra* note 13, at 75-84; Torpey, *supra* note 8, at 15-17; Stokes, *supra* note 5, at 64-82.
17 Levy, *supra* note 8, at 5-12; Stokes, *supra* note 5, at 93-100.
18 *E.g.*, Terrett v. Taylor, 13 U.S. (9 Cranch) 43 (1915); Permouli v. First Municipality, 44 U.S. (3 How.) 589 (1845).
19 As part of the "Civil War Amendments", the Fourteenth Amendment was probably never intended to address the religious

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[54] Morris v. State, 11 Md. App. 18, 272 A.2d 663 (1971).
[55] 284 Md. 588, 399 A.2d 578 (1979), *cert. denied*, 450 U.S. 960 (1981).
[56] *Id.*, 284 Md. at 593-594, 399 A.2d at 581-82.
[57] *Id.*, 284 Md. at 594, 399 A.2d at 582.
[58] For a thorough discussion, *see* Singer, *The Imposition of the Insanity Defense on an Unwilling Defendant*, 41 OHIO ST. L.J. 637 (1980).
[59] United States v. Robertson, 430 F. Supp 444, 446-47 (D.D.C. 1977); Whalem v. United States, 346 F.2d 812, 818 (D.C. Cir. 1965), *cert. denied*, 382 U.S. 862 (1965).
[60] *See* ABA STANDARDS, Standards 5.1, 5.2; *accord*, Frendak v. United States, 408 A.2d 364, 376-79 (D.C.Ct.App. 1979).
[61] 369 U.S. 705 (1962).
[62] D.C. CODE ANN. 24-301(d) (1959).
[63] *Lynch v. Overholser, 369 U.S. at 719.*
[64] *Id.* 369 U.S. at 711.
[65] 18 Md. App. 578, 308 A.2d 455 (1973); *vacated as moot*, 271 Md. 367, 316 A.2d 824 (1974).
[66] *Id.*, 18 Md. App. at 586-587, 308 A.2d at 460.
[67] *Id.*, 18 Md. App. at 585, 308 A.2d at 459; White v. State, 17 Md. App. at 61-62, 299 A. 2d at 875.
[68] List v. State, 271 Md. 367, 316 A.2d 824 (1974).
[69] White v. State, 17 Md. App. at 58, 299 A.2d at 873.
[70] *Id.*
[71] Md. R. 4-242(f).
[72] Walker v. State, 21 Md. App. 666, 671, 321 A.2d 170, 174 (1974).
[73] *Id.*
[74] Riggleman v. State, 33 Md. App. 344, 363 A.2d 1159, (1976).
[75] MD. [HEALTH GEN.] CODE ANN. §10-615 (1982).
[76] *Id.* at §10-622.
[77] 441 U.S. 418 (1979).
[78] *Id.* at 433; *see* Dorsey v. Solomon, 604 F.2d 271, 276-77 (4th Cir. 1979)(applying *Addington* to Maryland's criminal commitment system); *see also* Coard v. State, 288 Md. 523, 419 A.2d 383, (1980).
[79] MD. [HEALTH GEN.] CODE ANN. §12-111 (1984).
[80] ___ U.S. ___, 103 S.Ct. 3043 (1983).
[81] *Id.*, ___ U.S. ___, 103 S.Ct. 3051.
[82] MD. [HEALTH GEN.] CODE ANN. §12-111(a) (1984).
[83] *Id.* at §12-114(a).
[84] *Id.* at §12-118(a).
[85] *See id.* at §§12-113(b),(c).
[86] *Id.* at §12-113(d).
[87] Jones v. United States, ___ U.S. at ___, 103 S.Ct. at 3052.
[88] *See* ABA STANDARDS, Standard 4-5.2(a)(i).
[89] *See id.* at Standard 4-5.2(b).
[90] For a thorough discussion, *see* Chernoff & Schaeffer, *Defending the Mentally Ill: Ethical Quicksand*, 10 AM. CRIM. L. REV. 505 (1972).
[91] MODEL CODE OF PROFESSIONAL RESPONSIBILITY Canon 7 (1979).
[92] *Id.* at Canon 4.
[93] *See* n.89, *supra; see also* ABA STANDARDS, Standards 1-1.1-8.6.
[94] *See* MODEL CODE OF PROFESSIONAL RESPONSIBILITY EC6-4, EC7-6, DR6-101(3) (1979); *see also* ABA STANDARDS, Standards 4-1.1-8.6
[95] *See e.g.*, People v. Gonzalez, 20 N.Y.2d 289, 294, 282 N.Y.S. 538, 542, 229 N.E.2d 220, 223 (1967); *see also* List v. State, 18 Md. App. at 586-87, 308 A.2d at 459-60.
[96] 18 Md.App. 578, 308 A.2d 455 (1973), *vacated as moot*, 271 Md. 367, 316 A.2d 824 (1974).
[97] ___ U.S. ___, 104 S.Ct. 2039 (1984).
[98] ___ U.S. ___, 104 S.Ct. 2052 (1984).
[99] *Id.*
[100] *Id.* at 2065.
[101] ABA STANDARDS, *supra.*
[102] Strickland v. Washington, ___ U.S. ___, 104 S.Ct. 2065 (1984).
[103] ABA STANDARDS, Standard 4-5.2(a)(i).
[104] *See* United States v. Cronic, ___ U.S. ___, 104 S.Ct. 2039 (1984); *see also* Strickland v. Washington, ___ U.S. ___, 104 S.Ct. 2052 (1984).
[105] Kennedy v. Maggio, 34 Crim. L. Rptr. 2430 (5th Cir. February 21, 1984).
[106] Strickland v. Washington, 104 S.Ct. at 2068.
[107] *See* MD. [HEALTH GEN.] CODE ANN. §12-108 (1984).
[108] *See generally, id.* at §§12-108-21.
[109] *See id.* at §12-113; *see also* Jones v. United States, ___ U.S. at ___, 103 S.Ct. 3052.
[110] MD. [HEALTH GEN.] CODE ANN. §§12-101-120 (1984).
[111] *Id.* at §12-109(b), §12-113(d).
[112] Jones v. United States, ___ U.S. at ___, 103 S.Ct. 3052.
[113] Pouncey v. State, 297 Md. 269, 465 A.2d 478; Langworthy v. State, 284 Md. at 599 n.12, 399 A.2d 584.
[114] MD. [HEALTH GEN.] CODE ANN. §12-113(b), (c) (1984).

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rights of any persons except former slaves. *See* Nowak, *supra* note 5 at 540-48.
[20] 98 U.S. 145 (1878).
[21] *Id.* at 164.
[22] *Id.* at 164, 166.
[23] *Id.* at 164-66.
[24] For an analysis of the further refinement of Supreme Court standards in this area *see* Nowak, *supra* note 5, at 849-94.
[25] 310 U.S. 296 (1940).
[26] For an analysis of the application of free speech concepts by analogy to many of the early religion cases, *see* Nowak, *supra* note 5, at 728-40, 809, 849, 873-74.
[27] Malnak v. Yogi, 440 F. Supp. 1284 (D. N.J. 1977) (Transcendental Meditation).
[28] *E.g.*, Turner v. Unif. Church, 473 F. Supp. 367 (D.R.I. 1978), *aff'd*, 602 F.2d, 458 (1979); Van Schaick v. Church of Scientology, 535 F. Supp. 1125 (D. Mass. 1982).
[29] *Cf.* People v. Patrick, 126 Cal. App. 3d at 960-61, 179 Cal. Rptr. at 282 (consent and prejudice issues raised but not reached).
[30] For example, see the nisi opinion in Turner v. Unif. Church, 473 F. Supp. 367 (D.R.I. 1978). *See also* Unif. Church v. Rosenfeld, 458 N.Y.S.2d 920 (App. Div. 1983)(church's deceit justifying denial of special use permit).
[31] *See, supra* note 1.
[32] *See* text accompanying notes 20 *et seq.*
[33] An estoppel based upon a reasonable belief that consent was valid could also be argued. *See* text accompanying notes 36-46 *infra; contra*, RESTATEMENT OF TORTS § 61 (1934)(invalid consent of "invalid personality").
[34] Technically, the defense would be valid only as against the victim which would arguably privilege the religious society to engage in the activities upon which third party claims such as those of the parents in *George* were based.
[35] *See, supra* note 1; *Cf.* Note, *Role of the Child's Wishes in Custody Proceedings*, 6 U.C. DAVIS L. REV. 332, 337 (1973)(fourteen years old as a reference age).
[36] *See*, Note, *Abduction, Religious Sects and the Free Exercise Guarantee*, 25 SYRACUSE

L. Rev. 623, 637-39 (1974).

[37] *Id.*

[38] For an analysis of cases and circumstances regarding emancipation due to acts of the minor *see* Annot., 32 A.L.R. 3d 1055 (1970).

[39] *E.g.*, Martinez v. So. Pac. Co., 45 Cal. 2d 244, 288 P. 2d 868 (1955); Shoaf v. Shoaf, 282 N.C. 287, 192 S.E. 2d 299 (1972).

[40] Slater v. Cal. St. Auto. Assn., 200 Cal. App. 2d 375, 19 Cal. Rptr. 290 (1962)(intent of parents to renunciate rights to child's car).

[41] Joliceur v. Mihaly, 5 Cal. 3d 565, 488 P. 2d 1, 96 Cal. Rptr. 697 (1971) (separate residence); *See, supra* note 38.

[42] Cal. Civ. Code § 244 (West).

[43] *See, supra* note 100.

[44] *See, supra* note 1.

[45] *See, e.g., supra* notes 33-42.

[46] *See,* Wisconsin v. Yoder, 406 U.S. 205, 241 (1972).

[47] *Id.* at 113.

[48] *Id.* at 136.

[49] *Id.* at 63-66, 108-36, 210-11.

[50] 322 U.S. 78, 64 S.Ct. 882, 88 L. Ed. 1148 (1944).

[51] *Id.* at 28; Query: how elastic is society's moral fabric vis-a-vis religion?

[52] *See, supra* note 1.

[53] *See, supra* note 1.

[54] People v. Sipelt, 234 Cal. App. 2d 862, 44 Cal. Rptr. 846 (1965), *cert. den'd*, 384 U.S. 1015 (1965); People v. Hernon, 106 Cal. App. 2d 638, 235 P. 2d 614 (1951); City of Newport Beach v. Sasse, 9 Cal. App. 3d 803, 88 Cal. Rptr. 476 (1970).

[55] Cal. Pen. Code § 236 (West); City of Newpt. Beach v. Sasse, 9 Cal. App. 3d 803, 88 Cal. Rptr. 476 (1970).

[56] *See* text accompanying notes 33-34 *supra.*

[57] *See* text accompanying notes 33-52 *supra.*

[58] *See,* Stokes, *supra* note 5, at 4.

[59] *But see, supra* note 29.

[60] People v. Buscemi, 391 N.Y.S. 2d 343, (Civ. Ct. N.Y. 1977).

[61] *See, supra* note 54.

[62] Leggett v. DiGiorgio Corp., 276 Cal. App. 2d 306, 80 Cal. Rptr. 697 (1969); *See also* text accompanying notes 83-89 *infra.*

[63] Girard v. Ball, 125 Cal. App. 3d 772, 178 Cal. Rptr. 406 (1981).

[64] *Id.;* Ricard v. Pac. Indem. Co., 132 Cal. App. 3d 886, 183 Cal. Rptr. 502 (1982). Query: whether a standard of distress based upon "civilized society" is really an objective one?

[65] Merlov. Std. Life & Acc. Ins. Co., 59 Cal. App. 3d 5, 130 Cal. Rptr. 416 (1976); *See generally,* Wercheck, *Unmeasurable Damages and a Yardstick,* 17 Hastings L.J. 263 (1965).

[66] It is highly likely that this relatively large award to Miss George and her mother is a jury attempt to compensate for the limited award made by virture of Mr. George's wrongful death due to which the mother also suffered but for which she could not recover. *See* text accompanying notes 68-74 *infra.*

[67] *See, supra* note 1.

[68] *See,* Taylor v. Gilmartin, 686 F. 2d 1346 (10th Cir. 1982) (Claims of discrimination by alternative religions entitled to strict scrutiny).

[69] *See* text accompanying notes 50-62 *supra; Cf.* Davidson v. City of Westminster, 32 Cal. 3d 197, 649 P.3d 894, 185 Cal. Rptr. 252 (1982)(no malicious intent to injure by defendant police who were surveilling plaintiff's assailants but failed to act to prevent same).

[70] *See* McClelland & Truett, *Survival of Punitive Damages in Wrongful Death Cases,* 8 U.S.F. L. Rev. 585 (1974).

[71] *See* Cal. Civ. Proc. Code § 377 (West).

[72] *See* text accompanying note 65 *supra.*

[73] *See, supra* note 1.

[74] Cal. Prob. Code § 573 (West); Grimshaw v. Ford Mtr. Co., 119 Cal. App. 3d 757, 174 Cal. Rptr. 348 (1981); *see, supra* note 70.

[75] *See* text accompanying notes 44-62, 56-62 *supra.*

[76] *See generally,* Prosser, Torts §§ 902-3 (4th Ed. 1971).

[77] *See* Cal. Civ. Code § 45 (West).

[78] *See supra.* note 1.

[79] *See* text accompanying notes 57-62 *supra.*

[80] *See, e.g.,* Lovell v. Griffin, 303 U.S. 814 (1938); Cantwell v. Conn., 310 U.S. 296 (1940); Martin v. City of Struthers, 319 U.S. 141 (1943); *Cf.* Chaplinsky v. New Hampshire, 315 U.S. 568 (1942) (cursing held not related to religious exercise).

[81] *See, supra* note 1.

[82] *See* text accompanying notes 68-74 *supra* and notes 83-89 *infra.*

[83] *See, supra* note 1.

[84] *Id.* (prior record award against Synanon).

[85] *See e.g.,* Sniadach v. Fam. Fin. Corp., 395 U.S. 337 (1969) (due process); Shelley v. Kraemer, 334 U.S. 1 (1948) (equal protection); Barrows v. Jackson, 346 U.S. 249 (1953) (equal protection).

[86] Liodas v. Sahadi, 19 Cal.3d 278, 562 P.2d 316, 137 Cal. Rptr. 635 (1977); Hasson v. Ford Mtr. Co., 32 Cal.3d 388, 650 P.2d 1171, 185 Cal. Rptr. 654 (1982).

[87] *Id.; cf.* Werchick, *Unmeasurable Damages, supra* note 65 *with Note, Analysis of Egan v. Mutual of Omaha,* 13 U. Calif. tax laws re: punitive damages.

[88] Grimshaw v. F.M.C., 119 Cal. App. 3d 757, 174 Cal. Rptr. 348 (1981).

[89] *See* Rosener v. Sears Roeb. & Co., 110 Cal. App. 3d 740, 168 Cal. Rptr. 237 (1980), appeal dismissed, 450 U.S. 1051 (1980). *See also* note 82 *supra.*

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[21] R Neely, How Courts Govern America 18 (1981).

[22] Quilici v. Morton Grove, 695 F.2d 261, 270 n. 8 (7th Cir. 1982).

[23] State v. Kessler, 289 Or. 359, ____, 614 P.2d 94, 95 (1980).