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What Standards Apply When Freedoms Collide?

by Neal Devins

Seattle Times Company, et al.

v.

Keith Milton Rhinehart, et al.

(Docket No. 82-1721)

To be argued February 21, 1984

ISSUE

Freedom of the press is pitted against freedom of religion and access to the judicial system in *Seattle Times Company v. Rhinehart*. Although the Supreme Court will not have to determine whether any of these central constitutional values takes precedence over the other, the Court will have to determine how concrete a claim of infringement of religious liberty must be before a court can interfere with the rights of our free press. Specifically, the case questions whether and when it is constitutional for a court to prohibit publication of information learned about the Aquarian Foundation (a so-called religious cult) in the course of civil discovery. The Aquarian Foundation alleges that publishing such information will discourage its members from instituting the underlying civil action. The freedom of religion and freedom of press claims are heightened in this case because the initial civil action is a suit for slander by the Aquarian Foundation against the *Seattle Times*.

Religious organizations clearly have a right to seek both expansion of their membership and financial support. This right is central to our constitutional scheme and thus courts should be accessible to claimants seeking to protect their right to free exercise of religion. At the same time, this right does not protect such organizations from unfavorable press coverage. If our society is to function as an open marketplace, people should not be denied access to information. As far as information made available to the press through its own initiative, this "right to publish" is almost absolute. (A prime example is the "Pentagon Papers" lawsuit.) Yet, it does not seem unreasonable that this "right to publish" should be limited when the press gains information through the civil discovery process of a lawsuit in which it is a party — especially when publishing such information might ultimately make it impossible to pursue the underlying

legal action. The tough question is what standard the courts should apply in determining whether there is good cause to limit the press' right to publish. The *Seattle Times* case will help answer that question. Considering the paramount interests involved, this lawsuit is of great significance.

FACTS

The *Seattle Times* ran a series of articles about a small religious group called the Aquarian Foundation and its leader, Keith Rhinehart. Included in these news reports were allegations that Rhinehart is a "Jim Jones Guyana-like leader" of a "bizarre Seattle cult" who is "unfit to be a religious leader," that Rhinehart's public exhibitions are "consciously perpetrated frauds" and his seances a "ripoff." The reports also charged that the Foundation is, in fact, Rhinehart's "alter ego," that the Foundation uses its "wealth to buy religious converts" and that Rhinehart makes his money "by selling dimestore jewelry" for "thousands of dollars." In response to these allegations, Rhinehart and members of the Aquarian Foundation sued the *Seattle Times* for defamation.

Rhinehart's claimed damages focused on an alleged loss of membership and contributions to the Foundation. Yet, at civil discovery, Rhinehart refused to produce information concerning these allegations. Rhinehart and the Foundation claimed "that revealing the information they did have would violate a pledge of secrecy made to the donors and would violate the members' rights to privacy, freedom of religion and freedom of association." The trial court ordered the Foundation to provide this information. In response to this order, the Foundation sought a protective order to prohibit the *Seattle Times* from disseminating information it acquired through the discovery process.

The Foundation claimed that: 1) it would lose members and donors if their identities are publicized, and that potential members and donors would be deterred from joining or supporting the church, and 2) its members feared economic reprisal and [physical] harassment if the public learned of their link with the Foundation. Objecting to this motion for a protective order, the *Seattle Times* argued that the proposed order would be an unconstitutional prior restraint and that the threat to First Amendment rights was "aggravated by the fact that these orders are requested in the context of a libel action which, itself, seeks to punish the defendants for prior publications, and which has an inherent (and presu-

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mably intended) effect of chilling future exercise of First Amendment rights."

The trial court, on a motion for reconsideration, granted the protective order. The court concluded that the Foundation had shown "reasonable grounds" necessitating a protective order which prohibited publishing any information learned in discovery about the Foundation's "financial affairs" and various individuals' names and addresses. The protective order, however, was limited in that it did not extend to "the fruits of discovery [which] are made public through the judicial process [or by others independently of discovery]."

The basis of the trial court order was the belief that: "[i]f protective orders are not available, it could have a chilling effect on a party's willingness to bring his case to court ... [A]ccess to the courts [should be put] on an equal plane of importance with freedom of the press because it is through the courts that our fundamental freedoms are protected and enforced." The *Seattle Times* appealed the trial court decision to the Washington Supreme Court. Although recognizing that the order was a prior restraint on the press, a majority of the state Supreme Court upheld the order since "the interest of the judiciary in the integrity of its discovery processes is sufficient to meet the 'heavy burden' of justification" for the restraint in question.

In October 1983, the Supreme Court granted the *Seattle Times*' petition to hear the case. Since the press possesses a substantial First Amendment right to disseminate newsworthy information, the *Seattle Times* argues that the protective order should be nullified on two related grounds: 1) the protective order was based on speculative concerns unsupported by findings and thus does not justify a curb on First Amendment rights, and 2) the Court should apply a test which closely scrutinizes granting protective orders. In countering the *Seattle Times*' argument, the Aquarian Foundation does not question that the newspaper's First Amendment rights are implicated by the lawsuit. Yet, rather than applying a "close scrutiny" test, the Foundation feels that its First Amendment rights of religious freedom, association, privacy and access to the courts should be balanced against the newspaper's "free press" interest. The Foundation also argues that any First Amendment rights implicated in discovery are sufficiently protected by the good cause standards which govern issuing protective orders in Washington courts.

The issue of whether a "balancing" or "close scrutiny" test should be applied will probably be determinative to this lawsuit. The "balancing" test is premised on the notion that freedom of press cannot be preferred over any other First Amendment freedom. The Foundation argues that the balance should be struck in its favor because publication of Foundation members and contributors will discourage future participation with the Foundation and lead to physical harassment of

Foundation members. Affidavits of various Foundation members support these claims. Rather than strenuously dispute this claim, the *Seattle Times* argues that freedom of the press — as illustrated by several federal court decisions — demands heightened judicial scrutiny.

The *Seattle Times* suggests that the Court apply the "close scrutiny" test developed by the D.C. Court of Appeals in *In Re Halkin* (598 F.2d 176 (1979)). The *Halkin* test would require that this criteria be met prior to granting a protective order: "the harm posed by dissemination must be substantial and serious; the restraining order must be narrowly drawn and precise, and there must be no alternative means of protecting the public interest which intrudes less directly on expression." This test would require the Court to determine how each document or claim of information will cause concrete harm. Since most of the information sought to be restrained through the protective order will become public (and thus publishable) at the time of trial, the *Seattle Times* argues that the protective order should be quashed since it merely "permit[s] one litigant, for tactical reasons, to control the timing and manner of disclosure." The Aquarian Foundation disputes this claim. It argues that, without the protective order, it would be unable to disclose all relevant facts to facilitate the administration of justice.

The Aquarian Foundation also argues that Washington's "good cause" requirement, which governs protective orders, sufficiently protects the newspaper's First Amendment interests. In support of this contention, the Foundation suggests that "[c]ourts have inherent power to control their own proceedings in the pursuit of justice and have full power to prohibit a party ... from divulging otherwise private information divulged through the court's own processes." The *Seattle Times*, although not specifically addressing this claim, posits that "[a]bstract concepts, such as the 'integrity' of the judicial system, cannot by themselves support the drastic curb upon expression effected by the protective order."

BACKGROUND AND SIGNIFICANCE

Seattle Times is more a case of great symbolic value than a case of immediate practical significance. In all likelihood, the information covered by the protective order will be made public (and thus publishable) at trial. Consequently, neither party stands that much to gain or lose by the Supreme Court decision. The *Seattle Times* will have an opportunity to publish the information subject to the protective order at the time of trial. The Aquarian Foundation will not be able to absolutely foreclose the publication of information subject to the protective order. The case thus boils down to whether freedom of the press should be accorded such constitutional weight as to virtually eliminate protective orders, or whether access to the courts should be accorded such constitutional weight as to justify protective orders

whenever discovery will likely lead to the publication of information harmful to the interests of one of the parties in the lawsuit.

Where should the balance be struck? The right to disseminate information learned in civil litigation is rooted in the basic First Amendment "principle that debates on public issues should be uninhibited, robust and wideopen." (*New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)) Additionally, lawsuits are themselves newsworthy and frequently involve matters of public concern. In fact, the Supreme Court has recognized that civil litigation is itself a First Amendment activity. (See, e.g., *NAACP v. Button*, 371 U.S. 415, 429 (1963))

Notwithstanding the primacy of freedom of the press protections, the Aquarian Foundation also has the fundamental right to bring its grievances before the courts. In the context of *Seattle Times*, access to the courts is particularly significant since the case affects the ability of a religious group to seek members and solicit funds. Considering the unpopularity of the Foundation and its beliefs, scrupulous protection of the First Amendment rights of its members and donors is particularly important. (See, e.g., *Brown v. Dade Christian School Inc.*, 556 F.2d 310, 317 (5th Cir. 1977)) Additionally, protective orders may encourage full disclosure of relevant information and thus result in a more complete adjudication of the merits of a case.

The values of access to the courts, freedom of religion and freedom of press are all central to our constitutional scheme. *Seattle Times*, by presenting the Court with

an opportunity to adopt a standard of review for protective orders, will help determine how these First Amendment values should play against each other.

ARGUMENTS

For Rhinehart, the Aquarian Foundation, et al.

1. The protective order is justified since the First Amendment rights of Aquarian Foundation members and donors outweigh the First Amendment rights of the *Seattle Times*.
2. The protective order satisfies the "close scrutiny" test advocated by the *Seattle Times*.
3. Washington's rules of procedure governing protective orders are sufficiently comprehensive to encompass possible countervailing First Amendment concerns.

For the Seattle Times, et al.

1. The Court should adopt the "close scrutiny" test delineated in *In re Halkin* to fully recognize the First Amendment interest in dissemination and the limited government interest in protective orders.
2. The Aquarian Foundation failed to introduce sufficient evidence to justify a protective order.

AMICUS ARGUMENTS

The American Civil Liberties Union in association with various newspaper associations filed an amicus brief in support of the *Seattle Times*, with arguments identical to those made by the *Seattle Times'* brief.