

## CONTROLLING LEGAL PRINCIPLES

### *Free Exercise Clause Decision – The “Contemplation of Justice” United States v. Ballard, 322 U.S. 78 (1944)*



Whatever this particular indictment might require, the First Amendment precludes such a course, as the United States seems to concede. *"The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect."* *Watson v. Jones*, 13 Wall. 679, 80 U. S. 728. **The First Amendment has a dual aspect.** *It not only "forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship,"* but also *"safeguards the free exercise of the chosen form of religion."* *Cantwell v. Connecticut*, 310 U. S. 296, 310 U. S. 303. (Emphasis added)

"Thus, the Amendment embraces two concepts -- **freedom to believe** and freedom to act. The **first is absolute** but, in the nature of things, the second cannot be."

*Id.*, pp. 310 U. S. 303-304. Freedom of thought, which includes freedom of religious belief, is basic in a society of free men. *Board of Education by Barnette*, 319 U. S. 624. 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.**

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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 those teachings false, little indeed would be left of religious freedom. The Fathers of the Constitution were not unaware of

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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 before a jury charged with finding their truth 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. *Murdock v. Pennsylvania*, 319 U. S. 105. As stated in *Davis v. Beason*, 133 U. S. 333, 133 U. S. 342:

*"With man's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with."*

The preferred position given freedom of religion by the First Amendment is not limited to any particular religious group or to any particular type of religion but applies to all. P. [322 U. S. 87](#).

**MR. CHIEF JUSTICE STONE, dissenting.**

I am not prepared to say that the constitutional guaranty of freedom of religion affords immunity from criminal prosecution for the fraudulent procurement of money by false statements as to one's religious experiences

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more than it renders polygamy or libel immune from criminal prosecution. *Davis v. Beason*, 133 U. S. 333; see *Chaplinsky v. New Hampshire*, 315 U. S. 568, 315 U. S. 572; cf. *Patterson v. Colorado*, 205 U. S. 454, 205 U. S. 462; *Near v. Minnesota*, 283 U. S. 697, 283 U. S. 715. I cannot say that freedom of thought and worship includes freedom to procure money by making knowingly false statements about one's religious experiences.

**MR. JUSTICE ROBERTS and MR. JUSTICE FRANKFURTER join in this opinion.  
MR. JUSTICE JACKSON, dissenting.**

In the first place, as a matter of either practice or philosophy, I do not see how we can separate an issue as to what is believed from considerations as to what is believable. The most convincing proof that one believes his statements is to show that they have been true in his experience.

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Likewise, that one knowingly falsified is best proved by showing that what he said happened never did happen. How can the Government prove these persons knew something to be false which it cannot prove to be false? If we try religious sincerity severed from religious verity, we isolate the dispute from the very considerations which, in common experience, provide its most reliable answer.

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