

# LOSING FREEDOM IN UTAH

## How the Mormon Church violates the Constitutional rights of Christians.



Part 1

By Kurt Van Gorden

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### Protecting Mormonism

Christians who are aware of persecution around the world often express disbelief when it occurs in the United States. After all, we do not normally think of Christians being arrested or threatened in a free society simply for spreading the Gospel. Jesus commissioned our God-given right to teach all nations (Matthew 28:19).

Under the First Amendment of the United States Constitution, we are also guaranteed free speech and free religious expression. This freedom cost too many patriots their lives to just throw it to the wind. If it is not maintained, then it will be lost.

The persecution I address stems from Mormon Church leaders against evangelical Christians. Mormons, who once faced persecution, now persecute Christians because they disagree with our message that Joseph Smith led them astray. They cherish the freedom to proclaim Smith's first vision and call the Christian Church false, but when we reverse the claim, stating instead that Smith was wrong, then they use oppressive power to assail our free speech. Would a Mormon police officer or security guard show religious prejudice toward a Christian? Very few do, but some do indeed. It is a subject that needs to be addressed.

This article, part one, sketches my two arrests in April 2002 and the arrest of my mission partner, Mel Heath, in Salt Lake City, Utah. National news services carried the story of the arrests to newspapers, magazines, and web sites worldwide. The television coverage in Salt Lake City lit up with the news of our arrests, which paraded

as top stories on three major networks. My next article (part two) will examine several cases of persecution in the name of Mormonism.



April 7, 2002. Mormon Church representative Stephen Chapman (top left), threatening to arrest Mel Heath (left) and Kurt Van Gorden (center). The two other men had no badges, but were introduced as police officers.

During my 25 years of mission work among the Mormons, their leaders have occasionally called the police in efforts to stop our literature distribution. Quite often the police did nothing except affirm that we were within our legal rights.

In fairness to majority of good officers in America, most police and security personnel are not willing to become a patsy of the Mormon Church or allow their own religion to interfere with their occupation. Conversely, though, prejudiced officers also exist.

A minority in Utah sees these officers as heroes—the protectors of Mormonism. This was evidenced in a videotape of a recent arrest, unrelated to ours, of a Christian from New York who was visiting Utah. A crowd of Mormon onlookers so loudly cheered and applauded the officer who arrested him, that it can be heard on the tape. In spite of this false arrest in violation of the man's civil rights, the Mormons made the officer their hero. Motivated to protect Mormonism, they sacrifice

Constitutional rights on the altar of intolerance and ignorance.

Similar to this man, several others have contacted me after my arrest was broadcasted. Each had a story, some with documentation, showing that this is not an isolated incident, but Mormon aggression against evangelical Christians is on the rise.

I have found over two dozen cases where Christians have been threatened, harassed, and/or arrested, often by Mormon police or security officers, but always with a Mormon accuser at the helm. Noteworthy is that none of these arrests have been upheld in court.

### Selling Main Street

Sell Main Street and you create problems. Salt Lake City created a Pandora's Box when they sold a block of Main Street to the Mormon Church for \$8.1 million in 1998. The sale was conditional. The Mormon Church, as owners of the property must maintain a public sidewalk easement where the former public sidewalks laid.

Initially the city and the church glamorized the program as a "public park" that was dubbed "A little bit of Paris" called "Main Street Plaza." What they dangled before the public was different from the final product, later called an "ecclesiastical park," and "The Church Plaza."

Through the back door of a City Counsel meeting, the Mormon Church insisted upon stipulations that stripped the Constitutional rights from that block of Main Street. The church agreed to maintain the public easement if the City granted them rights to prevent banners, signs, literature, broadcasting, assembly, and all of the other rights formerly enjoyed by any American citizen on Main Street.

Adding insult to injury, the city granted the church the exclusive right to conduct the activities that they barred for others. Mormons can distribute Mormon literature on the public easements, but the public, for whom the easements were created, is barred from the same. Somehow that sounds extremely fair and appealing to Mormon leaders. Against citizen outrage and protest, the City Counsel sealed the deal. The Plaza was built and American rights were sold as a commodity to the Mormon Church.

### **Arrested On April 6, 2002**

Arguments and debate followed the City's decision. A lawsuit was subsequently filed against the City. A federal judge made a controversial decision, which is being appealed in the Denver 9<sup>th</sup> Circuit Appellate Court.

Now a beautifully landscaped park replaces a block of Main Street. On each side is a granite sidewalk that remains open as an easement.

When the Winter Olympics came to Salt Lake City in February, 2002, I observed people in the Plaza freely strolling, stopping, and engaging strangers in conversation. The Mormon Church hung banners over these easements to proclaim their message. It was impossible to stroll the walkway without being confronted by the Mormon message.

Upon my return to Salt Lake City in April, 2002, I had been passing out Gospel literature on the sidewalks surrounding Temple Square. Every year for the past 26 years I have also enjoyed distribution of my Gospel tracts and talking with people on Main Street adjacent to the temple grounds. Even during the Plaza's construction we passed out literature at the Main Street location.

Saturday, April 6, 2002, was a nice day for meeting people. Enjoying the sun and slight breeze, droves of people used the Main Street Plaza easements to make their way to the semi-annual Mormon conference.

No sign was posted that restricted literature distribution and just weeks earlier the Mormon Church had used the same easement to proclaim their message from banners. I took my Gospel tracts to the easement and

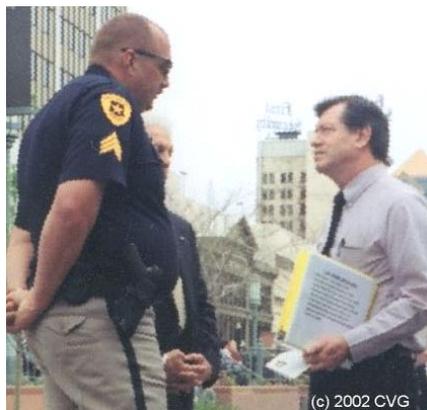
began passing them out, while walking the same path as in previous years.

A security guard for the Mormon Church approached me and told me that I needed to leave with my literature. According to him, I was not allowed to pass it out on the public easement. I asked him to cite any law that forbids it. He didn't, so I politely informed him that until there is a codified law against my actions, I plan to remain and exercise my rights that I have always enjoyed. Plain and simple, no law forbade me.

Another Mormon Church guard arrived, then another, each with the same routine. Nobody could cite a law that I was supposedly violating.

A silver-haired man, who represented the Mormon Church, approached me. He seemed polite, but firm, and introduced himself as Stephen Chapman, the head of the Mormon security. He could not cite a law that forbade me to pass out literature on a public easement, yet he insisted upon my departure.

Mr. Chapman became agitated and demanded that I leave or he would get a police officer to have me removed. I asked him how he can have me removed when I'm on a "public" easement, to which he replied that he will arrest me. I informed him of my Constitutional rights and that the Supreme Court supports literature distribution in public. Undaunted by the Constitution or the Supreme Court, he later returned with a police officer.



April 6, 2002. Mr. Chapman represents the Mormon Church in this citizen's arrest.

Throughout these encounters I continued to offer people my Gospel literature while some of the Mormon security guards threw body-blocks into

the direction where I was offering it, thus thwarting my liberties.

After the police officer introduced himself, I explained to him about the Constitution and Supreme Court decisions on literature distribution. I told him that where we were standing was a declared public easement. He claimed ignorance of the facts and relied Chapman's declaration that I was on private property. Chapman then placed me under citizen's arrest as the representative of the Mormon Church. The officer issued a citation for trespassing, based upon Chapman's arrest. My court date was in ten days.

What the news media missed is vitally important. I was not arrested by the Salt Lake City police, I was arrested by the Mormon Church. The officer accommodated their citizen's arrest by issuing a citation.

The officer noted that I was compliant and asked me to leave for now to keep peace, which I did. No time restriction was effected, so I was able to return the following day.

### **Two Arrested On April 7, 2002**

On Sunday morning, thousands of Mormons streamed through the Plaza walking to the semi-annual Mormon conference. Meanwhile, I was attending Church in American Fork, Utah. A long-time mission friend, Mel Heath, preached about the cost of discipleship--giving everything we have to Christ. He drew examples from Dietrich Bonhoeffer, who was imprisoned and killed for preaching the Gospel in Nazi Germany.

I intently listened to Mel's sermon, thinking about the irony. Here I had been arrested for evangelism in Salt Lake City, and Mel was preaching about discipleship and Bonhoeffer's persecution under Nazi Germany.

After the service, Mel and I discussed his sermon and my arrest. We decided to go to Temple Square and continue passing out Gospel tracts as we have always done. We saw no reason to back down when there was no codified law against it.

We distributed our literature on South Temple Street in the late

afternoon until we saw thousands of people were using the public easement to traverse the Plaza. We decided to take our tracts and walk along the easement asking people if they would like one. A few yards inside the Plaza, a security guard called me by name, rushing in my direction. I greeted him and thanked him for his concern. We offered to leave if we were in fact violating any law. He could cite none, so we continued our mission work.

Guards began following us—two, three, then four. A man blocked my path and identified himself as a supervisor of security representing the Mormon Church. I asked him if we were violating any law, to which he said, “It’s a policy.”

“It’s not a law, then,” I replied.

“No, it’s a policy,” he said.

I informed him that since we were not violating any laws, then we plan to exercise our Constitutional rights and distribute our literature. He shouted something to the effect that I am going to be trespassed off the property, this time, he said, for 72 hours.

In another unexpected incident, a Mormon man was walking toward Mel and me handing out Book of Mormon advertisements. He put one in my hand and then he gave one to Mel. I asked him if he would take one of our tracts too. He did and he said that he would read it. Nobody bothered this Mormon who was handing out literature. Only we were harassed, followed, and intimidated.

A while later, Stephen Chapman, the Mormon Church representative, came up from behind me and grabbed my arm, knocking me off balance and trying to pull me off the easement. I told him to let go and keep his hands off from me. He said that he wanted to talk. I told him that if he wanted to talk, then he should face me instead of assaulting me from behind. At this point he left and returned with two men in dark business suits claiming that were police officers. I asked one man for his badge, but neither he nor the other man had one.

Mr. Chapman asked us to leave or face arrest by these police officers. I presumed that he meant the two men without identification or badges. I told them that we have stayed within the

public easement and that we were not violating any law.

The unidentified officer said that I was wrong. It used to be an easement, he claimed, but it no longer was. I knew this was not true and told him so. Even Chapman corrected the officer’s statement and agreed that we were standing on a public easement. Still, he insisted upon our arrest if we don’t stop passing out our Gospel tracts. We were free to walk the easement, he said, but not free to pass out tracts.

They asked me what I planned to do. I told them that I don’t believe there is a violation of law to hand out literature on a public easement, so I plan to carry on my work. The suited man pulled out a pair of handcuffs and ordered me to turn around while he handcuffed me. I complied, but while I did so, I asked him to identify himself if he was an officer. He said his name was Askerland. I asked him for his badge number, to which he replied that it would be in his report. Then I reminded him that the law says that he must identify himself and his badge number when asked. Only after the handcuffing did he state his badge number, but he never displayed one.



April 7, 2002. The handcuffing and arrest of Kurt Van Gorden in response a citizen’s arrest by a Mormon Church representative.

I asked them if they were also going to arrest the Mormon man who was walking along the same easement passing out Book of Mormon cards. No response was given.

They asked Mel what he planned to do. When he told them that he was on a public easement and planned to distribute his literature, the other unidentified man pulled out handcuffs and arrested him as well.

We walked about half a block to a police car that was parked on North Temple Street. The men turned us over to a Salt Lake City police officer, in uniform, who took us to the county jail. There we were fingerprinted, photographed, booked for trespassing, and put in a holding tank. My wife posted my bail. When I asked for my notebook and 300 Gospel tracts, I was told that they were keeping it as evidence against us. If we broke no law, then seizing our property violates the Fourth Amendment. None of the officers read our rights to us before or after we were arrested, which raises questions about whether they ever intended to go to court.



April 7, 2002. Mel Heath (left) was handcuffed and arrested. Van Gorden is seated in the police unit.

### **The News Frenzy**

The Mormon Church and the Salt Lake Police department issued press releases containing more fabrication than truth. The Associated Press article was better written than others. It appeared on their Internet wire service and was posted on several websites dedicated to civil rights and freedom issues.

Mel was interviewed by a couple of Salt Lake City television stations and newspapers, which helped get some of the facts straight. Still, it was an uphill battle to refute the Mormon Church’s false press releases.

Two exceptions stand out. Reporter Rod Decker, of KUTV news did some investigative reporting and aired three balanced reports after looking at our documentation. Also the City Weekly, a competitive Salt Lake City newspaper, wrote a balanced

investigative report that questioned the aggression and authority of the Mormon Church in making the arrests.

## Arraignment And Dismissal

From the beginning we claimed that these false arrests were without legal foundation. Therefore, I returned to Salt Lake City on April 17 to enter my plea of “not guilty.” I arrived at the courthouse early to meet with a civil rights attorney.

We were both surprised that my name was not on the court docket that day. After several inquiries, the court clerk decided to add my name to the docket. That was the fly in the ointment for the city prosecutor. I sat before the judge waiting to be called.

Meanwhile, about 9:45 AM, the city prosecutor called the Salt Lake Tribune to issue a press statement saying that they had dismissed the charge against me. They knew I was at the courthouse, since I had called the city prosecutor’s office at 8:30, 9:30, and 10:15 AM to verify the room for the arraignment and to ask why my name was not on the docket. They never mentioned the dismissal to me that morning.

Just before my name was called, near noontime, the assistant city prosecutor turned to the galley and asked me to identify myself. She took me aside and began telling me that they had dismissed the charge. Now I knew why my name wasn’t on the docket that morning. No arraignment hearing was necessary.

She added that the trespassing charge from April 7 was never filed against Mel or me. She gave me her business card and wrote “Failure to file” on it. She said they have a year to file, which didn’t scare me. The real story is that they created a mess with the false arrest had to get out of it.

## False Arrest

Without sounding like a legal brief, it is important to outline a few points of law that make this a false arrest. American citizens are granted the Constitutional right in the Fourth Amendment to be secure in their person, which means that you cannot be arrested without probable cause. If evidence is immediately available that

shows that we were on a public easement, then there was no probable cause for our arrests. We were arrested because of what we handed out. It was their means to censure us.

The Utah Code defines trespassing in Title 76-6-206. Subsection (4) clearly addresses this public easement and prevents our prosecution. It states, “It is a defense to prosecution under this section that the: (a) property was open to the public when the actor entered or remained; and (b) actor’s conduct did not substantially interfere with the owner’s use of the property.” The place where we passed out tracts was “open to the public” as a designated “public easement,” 24 hours a day seven days a week.

I believe that UC 76-6-206(4) is the real reason why the city dismissed the first charge and never filed the second. The law prevents them from prosecuting me for trespassing under this section. It was destined for failure. The city had to ease their pain with damage control, so they called the newspapers to make news. Delighted at the dismissal, the media forgot to question the legitimacy of the arrests.

## Citizen’s Arrest By LDS Church

Most states provide the power to arrest for citizens or those who represent a property owner. Such is the provision in the Utah Code Title 77-7. A private person may arrest another only if “a public offense” or a “felony” is committed or attempted in his presence.

Neither situation applied since it is not a public offense or felony to pass out Gospel tracts on a public walkway. Others were free to distribute religious material and hang religious banners over the same walkway unhindered. These parties were not arrested.

## Unreasonable Search And Seizure

The Mormon Church security confiscated my personal property during the arrest on April 7. It was turned over to the Salt Lake City police department and has not been returned, even against my requests.

Since we did not violate any laws, then the searching and seizure of my property violates the Fourth Amendment of the Constitution.



Search and seizure. Notebook and 300 Gospel tracts were not returned.

## The Supreme Court Has Spoken

Two cases addressed First Amendment rights in circumstances more stringent than the Main Street Plaza. Both of these cases concern private property without designated public easements. The Main Street Plaza, however, was sold to the Mormon Church on the condition that it maintains a public easement.

The first is *PruneYard Shopping Center v. Robins*, 447 U.S. 74 (1980), which made it possible to distribute literature at shopping malls, since it is a place where the public is openly invited. With the Main Street Plaza, the public is openly invited because there is a “public easement.”

The second Supreme Court decision was the recent case involving Jehovah’s Witnesses who sued an Ohio town over an ordinance requiring them to register with the city prior to going door to door with literature (*Watchtower v. Stratton*, Ohio, 2002). Amazingly, the Mormon Church filed an *Amicus Curiae* in this case insisting that their missionaries need the same right! The Supreme Court ruled in favor of free speech and said that the city ordinance interfered with the First Amendment. Ironically, the same church that arrested us on a public easement insisted that the court permit their missionaries to enter private that has no public easement. Go figure.

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