



1969

Religion - Constitutional Law - Freedom of Religion

Henry F. Rompage

Follow this and additional works at: <https://commons.und.edu/ndlr>



Part of the [Law Commons](#)

Recommended Citation

Rompage, Henry F. (1969) "Religion - Constitutional Law - Freedom of Religion," *North Dakota Law Review*. Vol. 46 : No. 2 , Article 8.

Available at: <https://commons.und.edu/ndlr/vol46/iss2/8>

This Case Comment is brought to you for free and open access by the School of Law at UND Scholarly Commons. It has been accepted for inclusion in North Dakota Law Review by an authorized editor of UND Scholarly Commons. For more information, please contact und.common@library.und.edu.

obscenity statutes, but any attempt at curtailing or limiting obscenity must take effect only after a true judicial determination of that issue. To require an adversary hearing prior to seizure of an allegedly obscene movie, and then compel the holder of that movie to supply his prosecutor with a copy of it on the grounds that the hearing need not be a fully matured action at law, is merely to substitute the concept of "supplying" for the act of seizing; in the opinion of this writer, this constitutes a prior restraint on publications condemned by the First Amendment to the Constitution.

DWIGHT F. KALASH

RELIGION — CONSTITUTIONAL LAW — FREEDOM OF RELIGION—

The defendants are members of the Founding Church of Scientology, a group which professes the ability to rid one of mental and emotional disturbances, primarily by a process termed "auditing", using a device known as an E-meter. The Government seized the defendant's E-meters and attempted to link their use with certain statements found in Scientology literature, which were alleged to be false or misleading.¹ The Government attempted to establish that these statements were "labeling" of the type prohibited under the Food, Drug and Cosmetics Act "False or misleading label" clause,² in that they were "written, printed or graphic matter . . . accompanying such article."³ The defendants appealed from a judgment and decree of condemnation and destruction of the E-meters and certain large quantities of literature.

The United States Court of Appeals for the District of Columbia found that much of the literature the Government used to show false or misleading "labeling" was not such within the meaning of the statute, in view of First Amendment protections, and reversed the judgment. *Founding Church of Scientology v. United States*, 409 F.2d 1146 (D.C. Cir. 1969).

The United States Court of Appeals, District of Columbia Circuit, found that the Founding Church of Scientology was incorporated in the District of Columbia as a religious organization, and that the defendants had presented a prima facie case that the church was a religion. The court further found that most of the literature relied

1. *Founding Church of Scientology v. United States*, 409 F.2d 1146, 1159 (D.C. Cir. 1969), the court mentions the following as an example: "Cancer has been eradicated by auditing out conception and mitosis". L. HUBBARD, *SCIENTOLOGY: A HISTORY OF MAN* 21 (4th ed. 1961).

2. Federal Food, Drug, and Cosmetics Act, 52 Stat. 1040 (1938), 21 U.S.C. § 321(m) (1964).

3. *Id.*; *United States v. Urbuteit*, 335 U.S. 355 (1948); *V.E. Irons, Inc. v. United States*, 244 F.2d 34 (1st Cir. 1957).

on by the government contained the doctrine of the religion and that "auditing" was an integral part of the religious practice and doctrine.

The court relied on *U.S. v Ballard*,⁴ in which the defendants were convicted of using the mails to defraud because they made representations involving religious doctrines known to be false. At that trial the only issue submitted to the jury was whether the defendants believed the representations to be true. In reversing the jury trial conviction the United States Supreme Court held that under the First Amendment a religion's doctrines could not be examined in court as to their validity. To allow such would be to destroy the religious freedom guaranteed in the Constitution.⁵

In *Founding Church*, the Government was faced with a problem of evidence, because the method used to prove the "misleading labeling" was to go into the writings of Scientology. The court held these writings reflected the religion's doctrine which could not be examined as to validity, applying the *Ballard* reasoning.⁶

The question of what types of evidence must be presented and proved in order to enable the court to hold that statements of a religion's writings are not its doctrine, or that an organization is not a religion of the type guaranteed protection under the First Amendment, while certainly an important question in the case, is one not treated within the scope of this paper.

On appeal, the Government's case failed because it did not raise the question as to whether or not the Founding Church of Scientology was a religion, or whether or not the literature in question was immune from the Food, Drug and Cosmetic Act. It did not rebut the defendant's prima facie evidence of religion, or show that the defendant's acts had gone beyond the protection of the First Amendment.

While Scientology may continue unchecked because of its religious overtones, doing an act motivated by religious belief does not immunize one from criminal liability.⁷ It has been pointed out by the United States Supreme Court that certain religious practices can be condemned, if they are such as to be a danger to public health, morals, or safety,⁸ and that not every organization claiming to be a religion can demand the protection of the Constitution.⁹

Generally, it will be helpful to examine what is allowed under the name of religion. The Constitution¹⁰ has guaranteed that every-

4. 322 U.S. 78 (1944).

5. *Id.* at 87.

6. *United States v. Ballard*, 322 U.S. 78 (1944).

7. *Holdridge v. United States*, 282 F.2d 302 (8th Cir. 1960).

8. *Davis v. Beason*, 133 U.S. 333 (1890).

9. *Founding Church of Scientology v. United States*, 409 F.2d 1146 (D.C. Cir. 1969).

10. U.S. CONST. amend. I.

one has an absolute right to believe, but only a limited right to act on that belief.¹¹ One has the right, under the freedom of religion, to do or not do any act because of religious beliefs, so long as it does not endanger public safety, health, morals, property, or the personal rights of others.¹² When this guideline is exceeded the government can stop the activity without infringing on freedom of religion, because the religious belief cannot be used to justify conduct which is punishable by law. The reasoning behind this idea is that to allow such would be to place religious doctrine above the law, and one could defend any act by saying it was done pursuant to a religious belief.¹³

In *Davis v. Beason*,¹⁴ the defendant, a member of the Mormon Church which sanctions polygamy, was convicted of bigamy. The United States Supreme Court upheld the conviction, and said: "However free the exercise of religion may be, it must be subordinate to the criminal laws of the country, passed with reference to actions regarded by general consent as properly the subjects of punitive legislation."¹⁵

The Supreme Court of California has held certain religious practices not subordinate to the criminal law. In *People v. Woody*¹⁶ that court dealt with the use of peyote by members of the Native American Church. The court said that to forbid the use of peyote would be a burden on free exercise of religion, and likened its use in their ceremonies to the use of bread and wine in a Christian church ceremony. Peyote plays a central role in the ceremonies of the Native American Church, and is in itself an object of worship. The court felt this use of peyote was not the grave and immediate danger to the public health, safety, and morals that the statute was directed at, and that the members held this belief honestly and in good faith. The laws of California prohibit the use of peyote, implying that it is dangerous to public health, safety, and morals.¹⁷ The California Supreme Court fails to distinguish and explain why marijuana is forbidden under any circumstances, but peyote used in this manner is exempted. The court does, however, compare the use of peyote to that of bread and wine, a use not prohibited by law. Even when the use of wine was so prohibited,¹⁸ an exception was included in the Act which allowed the use of wine for sacramental

11. *Mitchell v. Pilgrim Holiness Church Corp.*, 210 F.2d 879 (7th Cir. 1954).

12. *Gobitis v. Minersville School Dist.*, 21 F. Supp. 581 (E.D. Pa. 1937).

13. *United States v. Kirne*, 188 F.2d 677 (7th Cir. 1951); see also *Leary v. United States*, 383 F.2d 851 (5th Cir. 1967).

14. 133 U.S. 333 (1890).

15. *Id.* at 342.

16. 61 Cal.2d 716, 394 P.2d 813, 40 Cal. Rptr. 69 (1964).

17. CAL. HEALTH & SAFETY CODE §§ 11001, 11540 (West 1964).

18. Act of Oct. 28, 1919, ch. 85, 41 Stat. 305.

purposes.¹⁹ Also, in *U.S. v. Kuch*,²⁰ the United States District Court for the District of Columbia pointed out that the Commissioner of Food and Drugs had exempted peyote when used by the Native American Church.

The courts have also been faced with the question of just what is religion. The general view is that it consists of man's relation to divinity, and Webster defines religion as the service and adoration of God, expressed in forms of worship; in obedience to divine commands; the awareness of a supreme being.²¹ In the constitutional sense religion refers to ". . . one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will."²² A broader view has held that belief in God, a Supreme Being, or deity, was not a necessary factor in defining religion,²³ and that the word "religious" did not require a belief in a deity.²⁴ This would be important to the Scientologists since they do not mention the existence of a deity in their religion. It has also been held that individuals have a right to believe what is heresy to the orthodox faiths, and cannot be charged with proving religious doctrines or beliefs.²⁵ The United States Supreme Court has additionally held that public officials and officers cannot determine whether an individual's views, sincerely held on religious grounds, are in fact based on religious convictions except in the valid exercise of police power, and public officers cannot interfere with the rights of conscience.²⁶ These holdings will make the government's case much harder to prove, if it attempts to attack Scientology on religious grounds.

Is the Founding Church of Scientology a religious society? A religious society is a group that meets for religious, as opposed to secular, purposes.²⁷ The purpose of Scientology seems to be more secular than religious, but evidently the court did not rule that Scientology was not a religion because a defendant need not prove that his religious beliefs are true or valid.²⁸ Since the government failed to question that Scientology was a religion, the assumption that it is a religion must stand, at least for now.

Many people have suffered mental, physical and financial breakdowns as a result of Scientology's "auditing" process.²⁹ They seek

19. Act of Oct. 23, 1919, ch. 85, § 3, 41 Stat. 305.

20. 288 F. Supp. 439, 449 (D. D.C. 1968).

21. WEBSTER'S NEW INT'L DICTIONARY 2105 (2d ed. 1947).

22. *Davis v. Beason*, 133 U.S. 333, 342' (1890).

23. *Fellowship of Humanity v. County of Alameda*, 153 Cal. App.2d 673, 315 P.2d 394 (1957).

24. *United States v. Kauten*, 133 F.2d 703 (2d Cir. 1943).

25. *United States v. Ballard*, 322 U.S. 78 (1944).

26. *Gobitis v. Minersville School Dist.*, 21 F. Supp. 581 (E.D. Pa. 1937).

27. See generally, 76 C.J.S. *Religious Societies* § I (1952).

28. *Fowler v. Rhode Island*, 345 U.S. 67 (1953).

29. Smith, *Scientology—Menace to Mental Health*, TODAY'S HEALTH Dec. 1968, at 34.

freedom from daily frustrations by this process, whereby "auditors," using E-meters, (an inexpensive skin galvanometer) determine if the subject is holding anything back when answering questions. By the use of the E-meter and certain questions, the theory is that the auditor can determine the source of the subject's frustrations and help free him of them. Bankruptcy and divorce are some of the freedoms gained by devoted followers of L. Ronald Hubbard's plan for mental health.³⁰

The Government, in seizing the E-meters, was trying to prevent harm to the public through the use of a misbranded device. There is evidence that individuals have been harmed by going through the process of auditing.³¹ If the government can present this evidence, then the seizure of the E-meters would seem to be a valid exercise of the police power, treating auditing as an inherently dangerous process.

In order to have a valid exercise of the police power there must be a clear and present danger to interests which the government may lawfully protect to allow a curtailing of religious freedom.³² The practice of medicine without a license is a danger to the public and an interest the government may protect, and the Scientologists may be considered to be practicing medicine without a license. Of course there is an exception to this law, in that faith healing is permitted to be practiced without a license,³³ if it is legitimate, and the determination of legitimacy is a question of fact.³⁴

The Scientologists cannot claim their practice is faith healing. One who heals by faith and prayer does not have to obtain a license, but the profession and practice of religion, using prayer alone, must be the only means used to cure.³⁵ Can the Scientologists claim faith healing when they use a device and not prayer in attempting such healing, or do they have a defense in that the device is used solely for diagnostic purposes, not curative purposes? Keep in mind that the primary purpose of Scientology is to audit subjects to mental health using an E-meter, and that a monetary charge is made for this "service".

Scientology could have come under government attack from more than one direction, such as proving that it is not a religion, or that it is practicing medicine illegally. It would seem that a successful attack would have only required more and better evidence

30. *Id.*

31. *Id.*

32. *Board of Education v. Barnette*, 319 U.S. 624 (1943).

33. *Cawley, Criminal Liability in Faith Healing*, 39 MINN. L. REV. 48 (1964).

34. *People v. Estep*, 36 Ill. App. 132, 104 N.E.2d 562 (1952).

35. *People v. Vogelgesang*, 221 N.Y. 290, 116 N.E. 977 (1917).

than was presented in the instant case, to establish that the Founding Church of Scientology is involved in certain religious practices that are contrary to law, and beyond the protection of the First Amendment.

HENRY F. ROMPAGE