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Scientology verdict not threat to religion

The Church of Scientology's lofty claim to be the last outpost between the fragile frontier of religious freedom and the barren wasteland of religious oppression has significantly failed to rally other allegedly threatened religions to defend the embattled stockade.

To the claim by Ken Hoden, president of the Church of Scientology of Los Angeles, that "If we, one minority, one religion, are attacked, then all religions are attacked," Rodney Page, who represents 13 Christian denominations as executive director of Ecumenical Ministries of Oregon, counters, "When the church gets into business enterprises, promising and raising people's expectations for certain goods or services, they had better deliver on those promises or face the consequences."

Raising the banner of religious freedom conveniently obscures the difficult but important distinction between secular pronouncements and religious beliefs that was the keystone of the Julie Titchbourne case. The status of the Church of Scientology as a bona fide religion was never at issue in the Titchbourne trial. The issue was whether the church induced the plaintiff to part with her money on the basis of false representations of a secular nature, such as the educational and professional background of church founder L. Ron Hubbard.

The free exercise clause of the First Amendment protects a church's religious beliefs from judicial review, but since outlawing the Mormon practice of polygamy in 1879, the U.S. Supreme Court has held in general that the exercise of religion may be restricted if the activity is criminal or fraudulent. Closer to home, the Oregon Court of Appeals, in reversing the first Titchbourne verdict in 1982, ruled nevertheless that "it is clear that a religious organization, merely because it is such, is not shielded by the First Amendment from all liability for fraud," as long as the alleged fraudulence is found to be non-religious in nature.

Lawyers for Titchbourne compared the selling of courses by the Scientologists to the operation of a fictional used

car lot by the Presbyterian church. Simply because Joe's Presbyterian Car Lot is run by a religious organization, it would not be constitutionally excused for misrepresenting a clunker as a fine-running automobile.

The analogy is not as far-fetched as it may seem: first, because Scientology is one of the few religions that requires its adherents to pay a specific fee for access to the church's religious ministrations; second, because the bible prescribed by founder Hubbard for the church's salespeople is a tome called "Big League Sales" written by a car salesman.

Nor, as the Scientologists claim, is the size of the verdict a threat to the free exercise of religion, though \$39 million arguably may be far out of proportion to the actual \$3,200 worth of damages sustained by Titchbourne. As the Oregon Court of Appeals again noted in 1982, punitive damages cannot have a chilling effect on religious freedom, since in order to justify any damages at all, the false statements on which the damages are based must have been found to be non-religious in nature.

If religious groups are looking for a case that strikes to the heart of the First Amendment, they should turn not to the Scientology case, but to the clergy malpractice case decided last week in California. The family of a suicide victim sued four clergymen, who counseled their son without pay and without promise, for allegedly failing to prevent his suicide. The judge threw the case out, declaring that "any judicial effort to set standards for pastoral counseling would violate the First Amendment separation of church and state."

Unlike the Scientology case, the California case involved counseling based on the direct expression of religious belief rather than secular statements; therefore, the clergymen involved were shielded by the free exercise clause.

Indeed, it is not the Titchbourne verdict that gives the First Amendment a bad name, but religious groups that hide behind its broad protections in hopes of legitimizing fraudulent practices.