

FDA v. Free Exercise

On January 4, 1963 agents of the United States Government smashed into a Washington, D.C. church, disrupted ministries which were going on at the time, and confiscated religious books and artifacts. Eight years later the case is still in court and headed for another trial. The church in question is a small one. (The government never takes after big churches.) Furthermore, its unorthodox beliefs and practices have made it unpopular in some quarters. The church involved in this unusual controversy is the Church of Scientology, whose Founding Church is located in Washington, D.C.

The Food and Drug Administration set up the raid on the ground that the artifacts and books in question were harmful to public health. Having seized these materials, the FDA has been seeking clearance ever since to burn them. It contends that they are detrimental. The Church of Scientology lost its case in the lower court, won it on appeal. Now, under reconsideration, it has been sent back for yet another trial. The strain imposed on the church by nearly a decade of costly litigation has been considerable. A less sturdy congregation might have given up and quit, as they were apparently supposed to do. Instead, the Scientologists keep battling away and many think they are bound to win their case eventually. They are almost like the Dickens character who was expecting a judgment—on the Day of Judgment.

The case bears the notation *U.S. v. Hubbard E-Meter*, which reflects the FDA strategy of not citing the church as defendant but only a device used by the church. It was the E-Meter and the literature relating to it which aroused the FDA interest. FDA charged that Scientology was making false claims for the E-Meter. The church countered by asserting that it had never made any therapeutic claims whatever for the E-Meter. As a matter of fact, the Meter bears a label specifically disavowing any healing claims for the device.

The Meter, says the church, is a counseling aid only. Something like a lie detector, it is designed to indicate to an "auditor" when an area of stress has been encountered in the person being counseled. This, church officials say, is a useful device in their spiritual therapy. They assert that they do indeed make claims for the success of their sacraments and services but never for the E-Meter as such.

U.S. marshals invaded the church without exhibiting a warrant and with no previous warning to the congregation or its ministers. They proceeded at the behest of the FDA whose paid informant had succeeded in establishing himself in the ministry of the church. The raiders searched worshippers and ministers and confiscated books and artifacts as noted. All this was done with careful advance briefing for the press as to all the alleged evils of the church's program. The press enjoyed a field day at the church's expense.

The government has consistently sought to avoid a confrontation on the religious issue, but this has proved impossible. The church is contending that this is a "free exercise" case, pure and simple, that the government is seeking not merely to eliminate some phase of a church's religious practice which it deems inimical to human welfare, but to root out and destroy the church itself.

The free exercise of religion is not total under our system. There are occasions when government has to step in and curb it in the interest of a higher good. But this can be done only under the gravest provocation. In order to justify its action in the current case the government would have to show that Scientology constitutes a "clear and present danger" to the health and welfare of the American people. Possibly it would have to bring to the stand persons who would testify that they had suffered irreparable damage from the auditing procedures of Scientology. The government must necessarily carry a heavy burden in such a case when its constitution specifically forbids it to do anything which would interfere with the free exercise of religion.

The mere fact that a church is small or that it is disliked or considered "off beat" by some can provide no justification for forays like the one carried out against Scientology. The First Amendment guarantee of "free exercise" of religion means what it says. Government is restrained from interfering with religion in any way, shape or form—unless dire necessity compels it to do so. All religious groups will be watching this case closely. They will want to know what kind of story the FDA will tell and what effects this case will have on free exercise for adherents to other faiths.



U.S. marshals seizing E-Meters and publications from Scientology church in Washington, D. C., Jan. 4, 1963.