

LOS ANGELES

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ROBERT LEVINS / Daily Journal

RESOLUTION - "I think the judge just wanted to bring an end to this case," says Graham E. Berry, right, with Gordon J. Calhoun.

Church Calls It Quits

As Scientology Backs Away From Critics, It May Be Hurt in Libel Case

By Steven Pressman
Special to the Daily Journal

For years, the Church of Scientology has been synonymous with bitter litigation battles. But the 40-year-old religious organization, long known for its aggressive legal tactics, threw in the towel recently on a federal lawsuit in Los Angeles that it had been waging against two critics.

Besides serving as a legal setback, the action in the case also may hinder Scientology's pursuit of a related libel lawsuit against Time magazine.

The turn of events in the Los Angeles case vividly illustrates the acrimony and nasty accusations that have been a feature of Scientology-related litigation. In this case, lawyers on both sides of the dispute have accused the other of abusing the judicial system while conducting the litigation.

Court documents filed in the case outline numerous allegations of dirty tricks played by Scientology lawyers and operatives that include spying on an opposing law firm, hinting at an attorney's sexual preferences and seeking crimi-

nal or State Bar charges against opposing counsel. In response, Scientology attorneys accused the opposing law firm in the case of generating an "abusive and hostile" climate that ultimately forced Scientology to abandon the lawsuit.

The swirl of charges stems from a suit filed in November 1991 by the Church of Scientology International, the Los Angeles-based "mother church" of the Scientology religion founded in the 1950s by science fiction writer L. Ron Hubbard. The lawsuit claimed that former adherent Steven Fishman and his Florida psychiatrist, Uwe Geertz, defamed Scientology in a critical article about the organization that appeared in Time magazine in June 1991.

Scientology lawyers have filed a separate \$416 million libel action against Time that is still in the discovery stage in state court in New York.

The dismissed case, *Church of Scientology International v. Fishman*, CV-91-6426, sought at least \$1 million in damages against each of the two defendants for their comments in Time. The complaint in the Fishman case alleges that Fishman and Geertz falsely claimed in the Time magazine article that Fishman was ordered by

church officials to kill the psychiatrist and then commit suicide in the wake of Fishman's 1988 arrest in a fraudulent financial scam. The complaint also alleges that Fishman, who received a five-year prison term for his role in the fraud, also alleged a Scientology connection to the scam. Scientology officials deny any connection to Fishman's crime, along with the murder and suicide charges.

In their lawsuit against Fishman and Geertz, Scientology lawyers said the group "had enjoyed a good reputation as an organization dedicated to the dissemination and promotion of the Scientology religion." The lawsuit also claimed that the two defendants were "motivated by ill-will and [a] desire to destroy the religious activities" of Scientology.

As the Fishman case proceeded to trial, Scientology lawyers successfully fought off six summary judgment motions brought by Graham E. Berry and Gordon J. Calhoun, partners at Los Angeles' Lewis, D'Amato, Brisbois & Bisgaard, who represented Geertz. (Fishman represented himself.) But in February, Scientology's lead trial lawyer abruptly filed a motion to dismiss the

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The decision to drop the case prompted Berry and Calhoun to seek sanctions, including the recovery of attorneys fees, against Scientology on the grounds of malicious prosecution. But Hupp, in an April 4 ruling, declined to punish Scientology for bringing its original lawsuit. At the same time, Hupp turned down a Scientology bid to impose similar sanctions against the Lewis D'Amato lawyers.

"Basically, I think the judge just wanted to bring an end to this case," said Berry, a New Zealand native and veteran of previous litigation battles against Scientology.

Berry believes Hupp's earlier dismissal of the case against Fishman and Geertz does not bode well for Scientology's pending libel claims against Time magazine, a case in which he is not involved. "This will cut the heart out of the claim in the Time case," said Berry. He pointed to pretrial testimony in the Los Angeles case indicating that Scientology officials considered the comments by Fishman and Geertz to be among the most damaging in the Time article, a lengthy cover story titled "Cult of Greed."

But Scientology lawyers say Hupp's action will have no effect on their New York case against Time. Instead, they say they were forced to drop the case against Fishman and Geertz in response to harassment and abuse heaped upon Scientology followers whom Berry attempted to depose during pretrial discovery.

In particular, Scientology officials were incensed when Berry arranged for six process servers to deliver deposition subpoenas to several entertainment celebrities during a Christmas party held last December at the Scientology International Celebrity Centre. Four of the celebrities — actresses Juliette Lewis and Kelly Preston Travolta, and musician-singers Isaac Hayes and Maxine Nightingale — are Scientologists whose testimony was sought by Berry to demonstrate that critical media accounts about Scientology did not adversely affect their opinions of Scientology. The fifth celebrity served with a subpoena, actor Charles Durning, is not a Scientologist but appeared at the Christmas party dressed as Santa Claus.

When the celebrities later balked at appearing for their depositions, Berry obtained a federal magistrate's order directing Scientology to make each of the witnesses available for up to two hours of testimony. Rather than require the celebrities to undergo the depositions, however,

Scientology lawyers decided to drop the defamation case against Fishman and Geertz.

The Scientology attorneys also objected to a variety of deposition questions put to other witnesses in the case that, they argued, delved improperly into religious beliefs and practices.

Scientology "always has been willing to litigate to achieve justice, but when it is told it must subject its parishioners and anybody associated with it in any way to such blatant harassment and sacrilege, [it] cannot pursue its claims," read part of Scientology's 34-page motion to dismiss its lawsuit. The motion was prepared by

case.

"I want you to treat each other professionally," Hupp told the bickering lawyers at the time, according to a transcript of the hearing. "Now, you know, the church has a bad reputation as a litigant for trying to run up people's costs. And here you're accusing them of doing the same thing to you. I don't want you to use those tactics in this case and I don't want them to use those tactics," said the judge.

Not to be outdone, Berry leveled his own accusations of improper conduct on the part of Scientology lawyers and other officials involved in the lawsuit, all of which have been denied by the Scientolo-

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Berry interpreted Scientology's decision to drop the case as a major legal defeat for the controversial organization. "Their reason for surrendering is that we made it clear that they never had a case," said Berry. He thinks the dismissal will weaken Scientology's use of litigation as a weapon against its adversaries.

Whatever the result, an even more vitriolic war of words broke out among the lawyers in the case after Hupp dismissed the underlying suit. In a motion seeking sanctions against Berry and Calhoun, Lubell accused the Lewis D'Amato attorneys of exceeding proper bounds in defending against Scientology's lawsuit. Their conduct, wrote Lubell, "was a calculated and relentless resort to false accusations, frivolous arguments, defiance of court rules and orders, and tactics designed not to defend against a claim, but to inflict needless expense and effort" upon Scientology. Lubell also claimed that Berry and Calhoun had litigated the case "with a vindictive purpose" aimed at harming Scientology's reputation.

Hupp, however, hardly seemed convinced by Lubell's arguments. In fact, the judge questioned Scientology's own courthouse reputation during a pretrial hearing last December that occurred before Scientology sought dismissal of its

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According to Berry's declaration, a male Scientology official appearing at his earlier deposition "blew me a kiss, threw a doily at me and said I might be needing it that weekend." Berry also claimed that Kendrick Moxon, a lawyer for Scientology, "made further outrageous remarks accusing me of various sexual activities . . ."

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Libel Case

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In the 1960s, Hubbard's fierce attitudes toward his enemies resulted in an edict known as the "fair game policy," which said that anyone interfering with Scientology could be "tricked, sued, lied to or destroyed" for their actions. Although Scientology officials say Hubbard quickly rescinded the policy after it was misinterpreted, Scientology critics continue to insist that fair game continues to be practiced.

In 1984, for example, Los Angeles Superior Court Judge Paul Breckinridge Jr. concluded in a decision on a Scientology lawsuit that the group, "with its 'fair game' doctrine, has harassed and abused those persons not in the church whom it perceives as enemies."

Despite its occasional setbacks in court, Scientology won its biggest legal victory last fall when the Internal Revenue Service suddenly dropped its 30-year challenge to Scientology's tax-exempt claim as a bona fide religion. The IRS' decision will allow scores of individual Scientology entities to avoid paying taxes on their incomes, a savings expected to amount to tens of millions of dollars annually.

Emboldened by its victory over the IRS, Scientology is expected by opposing attorneys to continue its aggressive legal battles against critics who view the organization as a dangerous cult and a commercial ripoff. In that sense, it's possible that the dismissal of the Fishman case is more an aberration than a trend in Scientology litigation. Indeed, if Scientology's libel lawsuit against Time does proceed to trial, the case will unfold as a critical test of the group's reputation 40 years after its establishment by Hubbard.

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Dismissed Suit Sparks Flurry Of Accusations

Scientology v. Critics

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