
**IN THE COURT OF APPEALS
FOR THE FIRST DISTRICT OF TEXAS AT HOUSTON**

**HARVEST HOUSE PUBLISHERS, JOHN ANKERBERG, and JOHN
WELDON**

Appellants

vs.

THE LOCAL CHURCH, LIVING STREAM MINISTRY, ET AL.

Appellees

BRIEF OF AMICI:

**USA RADIO NETWORK, POINT OF VIEW/NAT'L CENTER FOR FREEDOM
& RENEWAL, MOODY CHURCH, MIDWEST CHRISTIAN OUTREACH,
REASONING FROM THE SCRIPTURES, THE CENTERS FOR
APOLOGETICS, APOLOGIA, WATCHMAN FELLOWSHIP, ASSOCIATION
OF CHRISTIAN SCHOOLS INTERNATIONAL**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

I. Introduction 1

II. Interests of *amici curiae* 1

III. Issues addressed by *amici curiae* 4

IV. Statement of the Case..... 5

V. Statement of Relevant Facts 5

VI. Arguments..... 5

 A. TLC’s Defamation Claim is Nonjusticiable under the
 Establishment Clause of the First Amendment..... 5

 1. The trend of other jurisdictions is to dismiss
 defamation suits involving a religious party 7

 2. Mixed questions of fact and religious belief cannot
 be submitted to the trier fact 10

 B. A Media Defendant who Labels a Group as a “Cult” is Merely
 Asserting an Opinion that is Protected Speech by the First
 Amendment 17

VII. Conclusion 20

CERTIFICATE OF SERVICE 21

TABLE OF AUTHORITIES

Texas State Cases:

<i>Hardwick v. Houston Lighting & Power Co.</i> , 943 S.W.2d 183 (Tex. App. Houston [1 st Dist.] 1997, no writ)	19
<i>KTRK Television, Inc. v. Fowkes</i> , 981 S.W.2d 779 (Tex. App. Houston [1 st Dist.] 1998, writ denied)	19
<i>Newspapers, Inc. v. Matthews</i> , 161 Tex. 284 (1960)	18
<i>Pardo v. Simons</i> , 148 S.W.3d 181 (Tex. App.—Waco 2004, no writ)	16-17
<i>Randall's Food Markets, Inc. v. Johnson</i> , 891 S.W.2d 640 (Tex. 1995)	18

Federal Cases:

<i>Bose Corp. v. Consumers Union of U.S., Inc.</i> , 466 U.S. 485 (1984)	17
<i>Briggs & Stratton Corp. v. National Catholic Reporter Publishing Co.</i> , 978 F.Supp. 1195 (E.D. Wis. 1997)	9
<i>Daniel v. Waters</i> , 515 F.2d 485 (6 th Cir. 1975)	13
<i>Green v. CBS Broadcasting, Inc.</i> , 286 F.3d 281 (6 th Cir. 2002)	19
<i>Gertz v. Welsh</i> , 418 U.S. 323 (1974)	18
<i>Jones v. Wolf</i> , 443 U.S. 595 (1979)	16
<i>Klagsbrun v. Va'ad Harabonim of Greater Monsey</i> , 53 F. Supp.2d 732 (D.N.J. 1999)	7-8
<i>Serbian Eastern Orthodox Diocese for the United States and Canada v. Milivojevich</i> , 426 U.S. 696 (1976)	11

Texas Monthly, Inc. v. Bullock, 489 U.S. 1 (1989) 16

Other State Cases:

Brazauskas v. Fort Wayne-S. Bend Diocese, 714 N.E.2d 253 (Ind. Ct. App. 1999) 8

Howard v. Covenant Apostolic Church, Inc., 705 N.E.2d 385 (Ohio Ct. App. 1997) 10

Jackson Presbytery of Susquehanna Valley, 686 N.Y.S.2d 273 (N.Y. Sup. Ct. *aff'd*, N.Y. App. Div. Oct. 26, 1999) 10

Schoenhals v. Mains, 504 N.W.2d 233 (Minn. Ct. App. 1993) 9

I. Introduction

This case on appeal involves media defendants who were sued for allegedly labeling churches as a “cult.” For purposes of this brief, *amici* do not put forward an opinion as to whether the appellee churches are a cult. Indeed, since this is primarily an issue ultimately involving religious beliefs, it would be an excessive entanglement between church and state for a court to determine whether a religious organization is a cult. As such, *amici* urges the Court to find the matter nonjusticiable.

Additionally, a determination as to whether a religious organization is a cult is a matter of opinion. Allowing prolonged litigation and submission of the matter to a jury on what amounts to an opinion would have a chilling effect on the media.

II. Interests of *amici curiae*

Amicus curiae, USA Radio Network, Inc., is a satellite-delivered radio broadcast network that offers a broad line of programming content to independent radio stations. USA Radio’s programming includes news, sports, music, and general interest talk programs. Their target market consists of independent radio stations, both AM and FM, that choose not to become affiliated with the 3 major radio networks (ABC Radio, NBC, and CBS Radio Networks). USA Radio is comprised of approximately 1,200

affiliated radio stations across the nation, including affiliates in 46 of the top 50 Dominant Market Areas. Their network includes affiliates in markets that represent approximately 92% of the U.S. population. Moreover, USA Radio simultaneously broadcasts select programming over the Internet.

Amicus curiae, National Center for Freedom and Renewal, produces *Point of View* a two-hour, issues-oriented “live” talk radio program heard daily nationwide. *Point of View* covers numerous issues and current events that affect faith, family, government, education, and basic freedoms from a Christian perspective. *Point of View*'s listening audience expects the daily interviews and interaction with informative guests including authors, politicians, opinion leaders, conservative activists, and subject matter experts.

Amicus curiae, Apologia, was established in 1995. Its mission is primarily educational and includes providing timely, accurate religious research information within the field of Christian apologetics. It does this through a weekly newsletter and through AR-talk, an online forum that provides Christians and non-Christians alike the opportunity to find resources to answer spiritual questions.

Amicus curiae, Midwest Christian Outreach Apologetics, distributes books, articles, a newsletter and tapes discussing theological issues and

beliefs, often comparing religious groups' doctrines and practices to those of biblical Christianity. It has offices in Illinois, Iowa, North Carolina, Kansas, and Florida.

Amicus curiae, the Centers for Apologetics Research (CFAR), is a nonprofit organization which monitors and evaluates the beliefs and practices of new and controversial religious movements around the world, making its findings available to both Christians and the general public. In addition to its activities in North America, CFAR works in partnership with Christian agencies overseas that have similar objectives. Through its literature, web site, and other media, the CFAR serves Christians and the general public in Texas (and in all 50 states).

Amicus curiae, the Association of Christian Schools International, is a nonprofit, non-denominational, religious association providing support services to more than 3,900 Christian preschools, elementary, and secondary schools in the United States. Two-hundred seventy of these schools are located in Texas. ACSI's international office is located in Colorado Springs, Colorado. A regional office is located in Dallas, Texas.

Amicus curiae, Watchman Fellowship, is an independent Christian research and apologetics ministry which publishes a journal focusing on new religious movements, cults, the occult and the New Age. Watchman

Fellowship is headquartered in Arlington, Texas with offices in six additional states.

Amicus curiae, Reasoning from the Scriptures, publishes a bi-monthly Christian apologetic teaching and resource newsletter sent to 45 countries. Representatives from Reasoning from the Scriptures make regular appearances on radio shows broadcast throughout Texas, including, but not limited to, the following stations: USA Radio Network, KWRD, KLTY, KKHT, KIXL, KSLR, KAVX, KPXI, KBJT, KAGC, KELP, KBEC, KFYN, KHYI, KAND, KCKL, KDET, KQSI, KTFW, KNTX, KTON, KHBR, KSTA, KXCT, KBAL and internet radio in all cities throughout Texas.

Amicus curiae, Moody Church (Erwin W. Lutzer, Pastor), has as its purpose to share the message of Christ through an expanded radio ministry which includes broadcasting on 25 radio stations in Texas. Pastor Lutzer has authored more than thirty books and hosts three radio programs.

III. Issues addressed by *amici curiae*

Amici addresses two questions as follows:

Question 1: In a cause of action for defamation, can disputed issues that are a mixture of fact and belief be put before the trier of fact when one of the parties is a religious organization?

Short Answer: Under the First Amendment, disputed issues that are a mixture of fact and belief cannot be submitted to a trier of fact in a defamation cause of action involving a religious organization.

Question 2: Can a media defendant who publishes an opinion that a church is a “cult” be held liable?

Short Answer: The First Amendment protects media defendants from liability based on the publication of mere opinion.

IV. Statement of the Case

Amici adopts the statement provided by the appellant.

V. Statement of Relevant Facts

Amici adopts the statement provided by the appellant.

VI. Arguments

A. TLC’s Defamation Claim is Nonjusticiable under the Establishment Clause of the First Amendment.

Appellants John Ankerberg and John Weldon wrote an encyclopedia on cults (*Encyclopedia of Cults and New Religions*, herein “Book” or “Encyclopedia”) that was published by Appellant, Harvest House

Publishers, Inc.¹ The Introduction of the Book provides definitions, beliefs, characteristics and behaviors of what Harvest House deems are cults.

Additionally, the Introduction states that “the groups herein deserve the title [cult].” (I CR 201.) It cannot be reasonably argued that the Introduction describes cults in anything but an unflattering light.

“The Local Church” is a chapter of Book devoted to Appellees, The Local Church, et al. (“TLC”). On its face, this chapter is not defamatory.² Instead, TLC asserts that its inclusion in Book at all is defamatory as a result of the criminal and anti-social acts attributed to cults and described in the Introduction.³

The crux of TLC’s argument is that there is a factual issue as to whether TLC has engaged in the criminal and anti-social acts attributed to cults in Book’s Introduction. TLC asserts that since these are questions of fact, they should be submitted to a jury for determination. It is *amici*’s position that factual contentions that require inquiry into religious

¹ Unless individually named, the Appellants are collectively referred to by the name of the publisher, “Harvest House.”

² TLC does take issue with the content of this chapter, though. Paragraph 7 of the petition states: “The section of the Encyclopedia entitled ‘The Local Church’ grossly distorts Plaintiffs and takes out of context many statements in order to present a misleading and incorrect view of Plaintiffs.”

³ Paragraph 6 of the petition states, in pertinent part, as follows: “None of the Plaintiffs’ are a ‘cult’ and none has engaged in the type of despicable conduct that the Encyclopedia attributes to cults. Yet, by virtue of their inclusion in the book, Plaintiffs’ stand accused of such conduct and bear the stigma of the accusation.”

“discipline, faith, internal organization, or ecclesiastical rule, custom or law,”⁴ are nonjusticiable.

Stated another way, if there is a mixed question of fact and religious belief, the court lacks subject matter jurisdiction. Thus, because TLC’s defamation claims raise inherently religious issues, it would be improper for a court to entertain them. This would include allowing a jury to determine issues of fact.

1. The trend of other jurisdictions is to dismiss defamation suits involving a religious party.

Numerous courts have declined to exercise jurisdiction and submit factual issues to juries in defamation cases involving religious organizations. The reason is that it places the court in the untenable position of determining “the nature and extent of the doctrinal relevance underpinning [the] dispute.” *Klagsbrun v. Va'ad Harabonim of Greater Monsey*, 53 F. Supp.2d 732 (D.N.J. 1999).

It is the position of *amici* that this jurisdiction should follow the prudent trend of other courts in dismissing defamation causes of action involving religious organizations despite factual issues. A brief summary of

⁴ *Serbian Eastern Orthodox Diocese for the United States and Canada v. Milivojevich*, 426 U.S. 696, 713 (1976).

some of the cases in which courts have not allowed the factual issues in the religious context to be presented to a jury is instructive.

New Jersey: A husband and wife were accused of bigamy. They argued that the courts can determine the issue of fact of whether or not bigamy was committed because such factual determination does not touch upon “competing theological propositions” within the meaning of the Orthodox Jewish faith. The court rejected that argument finding that the Establishment Clause is implicated in that “the nature and extent of the doctrinal relevance underpinning [the] dispute” would need to be explored. *Klagsbrun v. Va'ad Harabonim of Greater Monsey*, 53 F. Supp.2d 732 (D.N.J. 1999).

Indiana: Church officials made statements that were published in the newspaper about an employee who was terminated by the diocese. The employee sued for defamation. One of the issues of fact was the motive for the statements. The court found that it lacked subject matter jurisdiction in the defamation action because the First Amendment prevents a court from “scrutinizing the possible interpretations of [diocese and parish official’s] statements and purported reasons for uttering them.” *Brazauskas v. Fort Wayne-S. Bend Diocese*, 714 N.E.2d 253 (Ind. Ct. App. 1999).

Wisconsin: A Catholic newspaper published alleged defamatory statements in which it chronicled layoffs at a manufacturing plant. Moreover, the newspaper discussed the moral, economic and social implications of the manufacturer's actions and noted that the company's management, who were prominent Catholics, had strayed from the tenets of the Church. The court found that, in a defamation case where a party's conduct was alleged to be inconsistent with Catholic teaching, the First Amendment prohibited the court from developing a "reasonable Catholic standard of care."⁵ *Briggs & Stratton Corp. v. National Catholic Reporter Publishing Co.*, 978 F.Supp. 1195 (E.D. Wis. 1997).

Minnesota: A factual dispute about the truth of defendant's statements cannot be submitted to a trier of fact. The First Amendment prohibits such an examination because it would require an impermissible inquiry into Church doctrine and discipline. *Schoenhals v. Mains*, 504 N.W.2d 233 (Minn. Ct. App. 1993).

⁵ Like the present case before this Court, the determination as to whether TLC is a cult is equally nonjusticiable.

New York: The court refused to exercise jurisdiction over ecclesiastical-related matters involving defamation. *Jackson Presbytery of Susquehanna Valley*, 686 N.Y.S.2d 273 (N.Y.Sup.Ct. *aff'd*, N.Y.App.Div. Oct. 26, 1999).

Ohio: A church member had been accused by church leaders of numerous bad acts one of which was “sleeping around.” The court determined that there is no cause of action for defamation in a case involving statements made by church trustees about members. *Howard v. Covenant Apostolic Church, Inc.*, 705 N.E.2d. 385 (Ohio Ct. App. 1997).

Like the cases above, to determine whether the descriptive acts of cults in the Introduction of Book apply to TLC, an inquiry into the practices and, by extension, the beliefs of TLC would need to be undertaken. In view of this, *amici* urges this Court to adopt the same reasoning of other jurisdictions and find that defamation suits involving religious organizations are not justiciable.

2. Mixed questions of fact and religious belief cannot be submitted to the trier of fact.

Harvest House asserts in the Book that a cult holds beliefs that are inconsistent with biblical teachings and may engage in inappropriate activities (e.g., criminal, antisocial, or simply unusual). TLC asserts that the

inappropriate activities (“negative attributes” (¶15 of Petition)) attributed to cults defame TLC. The reasoning is that the mere mention of TLC in Book associates TLC with these negative attributes. TLC thus seeks to submit to a jury whether it has these negative attributes.

Amici recognizes that the parties disagree as to whether Book was making reference at all to TLC. TLC asserts that this is a matter for the jury to decide. However, if the jury determined that the Book was referring to TLC in the Introduction, that would not end the inquiry. The next issue of fact would be whether TLC holds beliefs and, by extension, practices that are or are not described in the Introduction. It is this second inquiry of fact that is not justiciable because it involves belief. There is danger of excessive entanglement when judicial review of a claim requires “a searching...inquiry into church doctrine.” *Serbian Eastern Orthodox Diocese for the United States and Canada v. Milivojevich*, 426 U.S. 696, 723 (1976).

Amici takes the position that the very nature of a discussion involving cults is necessarily a mixed question of religious belief and fact. Simply put, what a cult *does* is an extension of what they *believe*. Of course, that is true of any religious entity. As such, an examination of the truth or falsity of certain statements will require some inquiry into belief. This examination is

in and of itself nonjusticiable as an excessive entanglement of the state with religion.

A review of the statements in TLC's petition demonstrates this.

Paragraph 15 of the petition states: "[T]he introduction of [Book] offers the reader a numbered list of *negative attributes* that the authors attribute to the 'cults' described in the text." (Emphasis added). These "negative attributes" include "acceptance of shamanism," "murder," "child sacrifice," "prostitution," "beat[ing] disciples," "denied followers of blood transfusions and medical access," "practiced black magic and witchcraft," "drug smuggling," "accept occult powers," "associated with idolatry," and "snake worship."

Even a cursory review of the above "negative attributes" reveals that they are a blend of practices based upon religious belief. For example, shamanism, acceptance of occult powers, black magic, witchcraft, snake worship and idolatry are unquestionably religious practices and beliefs. To determine if TLC adheres to any of these practices or beliefs, a jury or judge would need to make an inquiry into TLC's beliefs and practices.

These factual issues involving, the occult, witchcraft, idolatry, etc., unquestionably implicate theological thought. Courts have found these to be questions that fact finders associated with the state cannot undertake without

running afoul of the First Amendment. Consider, for example, a Tennessee statute which provided, in part, as follows: “The teaching of all occult or satanical beliefs of human origin is expressly excluded from this Act.”

Tennessee Code § 49-2008.

In finding the statute unconstitutional, the Court of Appeals for the Sixth Circuit opined, “[i]t would be utterly impossible for the Tennessee Textbook Commission to determine which religious theories were ‘occult’ or ‘satanical’ without seeking to resolve the theological arguments which have embroiled and frustrated theologians through the ages.” *Daniel v. Waters*, 515 F.2d 485, 491 (6th Cir. 1975). The court in the present case would have the same constitutional dilemma if the matter were submitted to a jury. In sum, the jury would have to resolve what are essentially theological arguments.

Similarly, a determination as to the truth or falsity of “negative attributes” relative to behavior fare no better than an examination of TLC’s beliefs. Taking a few of the behaviors in question demonstrates this. For example, “murder”⁶ could entail looking at TLC’s view of what constitutes moral versus immoral violence. Generally, pacifists view all killing as “murder,” whereas other people of faith have carved out numerous

⁶ ¶15 of Petition.

exceptions, e.g., capital punishment, self-defense, or killing which results in the execution of a jihad or a "just war." Indeed, within the major religions, there is a theological split among Hindus,⁷ Christians,⁸ Jews,⁹ Buddhists,¹⁰ and even Muslims¹¹ on the issue of killing. Whatever, TLC's view on this issue, said view should not be explored by a trier of fact in a court.

As to "child sacrifice,"¹² that was and is a part of religious worship (Aylward M. Blackman, "The Pharaoh's Placenta and the Moon-God Khons." *Journal of Egyptian Archaeology* 3(1916); Patrick Tierney, *The Highest Altar: The Story of Human Sacrifice*. New York: Viking, 1989, p. 177; Lloyd deMause, "The History of Child Assault." *The Journal of*

⁷James A. Aho, "The Dharma of the Kshatriya: The Celebration of Military Violence in Hinduism," *Religious Mythology and the Art of War: Comparative Religious Symbolisms of Military Violence* (Westport, CT: Greenwood Press, 1981), 60-79; Thomas Merton, "Gandhi and the One-Eyed Giant," *Gandhi on Non-Violence* (New York: New Directions, 1965), 1-20.

⁸ St. Augustine of Hippo (354-430), *The City of God*, "Against Faustus the Manichaeon"; John Dear, "Introduction" and "The Nonviolence of Jesus: Good News of Peace," *The God of Peace: Toward a Theology of Nonviolence* (Maryknoll, NY: Orbis Books, 1994), 1-4, 18-29.

⁹ Joseph Grunblatt, "Violence and Some Aspects of the Judaic Tradition," in Allan Solomonow, ed., *Roots of Jewish Nonviolence* (Nyack, NY: Jewish Peace Fellowship, 1985), 17-22; Naomi Goodman, "The Jewish Tradition of Nonviolence," *The International Journal of Nonviolence* 3 (1996), 53-59.

¹⁰ P. D. Premasiri, "The Place for a Righteous War in Buddhism" *Journal of Buddhist Ethics*, Volume 10 (2003); Luis O. Gomez, "Nonviolence and the Self in Early Buddhism," in Kenneth Kraft, *Inner Peace, World Peace: Essays on Buddhism and Nonviolence* (Albany: State University of New York Press, 1992), 31-48.

¹¹ Abdul El-Rahman Abbad, "Peace and Pacifism in Islam," *The International Journal of Nonviolence* 3 (1996), 60-70; Ayatullah Morteza Mutahhari, *Jihad, The Holy War of Islam and Its Legitimacy in the Quran*, Sepehr, Tehran, Iran (1985)

¹² ¶15 of Petition.

Psychohistory 18(1990); Balaji Mundkur, *The Cult of the Serpent*. Albany: State university of New York Press, 1983, p. 6717.¹³

Prostitution¹⁴ can involve religious beliefs and practices, particularly when discussing it within the context of cults. Obtaining sexual services by temple prostitutes has been a part of religious practices since ancient times and is still a part of worship in the Hindu religion today (Marglin, F.A., 1985, *Wives of the God-King: the Rituals of the Devadasis of Puri*, New Delhi: Oxford University). Regrettably, even pedophilia was and is a part of religious activities in certain parts of the world in which temple prostitution involves both boys and girls (Lloyd deMause, "The History of Child Abuse," *The Journal of Psychohistory* 25 (3) Winter 1998).

Moreover, the denial of blood transfusions or refusal to accept medical treatment¹⁵ is frequently grounded in theological beliefs. For example, the "denial of blood transfusions" is practiced among Jehovah's Witnesses. (Osamu Muramoto, M.D., Ph.D., "Recent Development of Medical Care of Jehovah's Witnesses," *Western Journal of Medicine* 170:297-301 (1999)). Further, certain groups that believe in faith healing may refuse medical treatment. ("Religious Groups That Reject Medical

¹⁴ ¶15 of Petition.

¹⁵ ¶15 of Petition.

Treatment In Favor Of Prayer," Ontario Consultants On Religious Tolerance (26 Feb. 2001)).

In order to make a determination as to whether TLC engages in any of the above practices *based upon their beliefs*, it would be necessary for the trier of fact to determine the beliefs of TLC. Of course, if Harvest House were to raise the affirmative defense that TLC's beliefs lead to these sorts of acts, then the unconstitutional dilemma would be before the court again.

A defamation action involving accusations of whether a religious organization is a "cult" does not involve purely secular issues that can be resolved without entanglement with matters of faith, discipline or doctrine. *Jones v. Wolf*, 443 U.S. 595, 602 (1979). Courts normally abstain from such issues because it would ensnare them in a religious controversy. *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 20 (1989). In that TLC is seeking to be vindicated for being identified as a "cult" by the Appellants, the Establishment Clause's prohibition on excessive government entanglement should preclude such an inquiry.

Finally, it must be observed that the excessive entanglement problem is even more acute when considering the right to put forward an affirmative defense of "truth." "[F]alsity is always an element of the cause of action, and truth is an absolute defense to defamation." *Pardo v. Simons*, 148

S.W.3d 181 (Tex. App.—Waco 2004, no writ). Since Harvest House has the right to present evidence that TLC is a “cult,” TLC’s religious beliefs would have to be examined. This is nonjusticiable.

B. A Media Defendant Who Labels a Group as a “Cult” is Merely Asserting an Opinion that is Protected Speech by the First Amendment.

Whether a church is a “cult” is a matter of opinion. As opinion, it is protected by the Free Speech Clause of the First Amendment. To allow litigation involving an underlying opinion to be determined by the courts, necessarily causes a “chill” on the media against its exercising rights to freedom of the press.

The underlying contention between the parties is essentially a media defendant’s labeling of a church as a “cult.” In that the First Amendment does not weigh whether an idea is true, it would be inconsistent with the Free Speech Clause to submit said idea to a jury to determine its truthfulness. “However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas.” *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 504 (1984).

Simply put, TLC’s remedy is not a lawsuit for defamation. If TLC has been unjustly accused of being a “cult” it should challenge Harvest

House in the marketplace of ideas. In sum, the remedy is more speech. In contrast, putting the question of whether TLC is a "cult" before a jury would be the type of folly that the constitution will not permit. *Gertz v. Welsh*, 418 U.S. 323, 339-340 (1974).

Furthermore, in the Introduction to the book, the authors painted with broad strokes by making sweeping generalizations about "cults," "aberrant Christian groups," and the "occult." Whether the writing style in the Introduction provides a helpful and concise panoramic view of the topic or is a clumsy oversimplification, as a matter of law there can be no cause of action for defamation based on such generalizations of groups. To do so would violate the essential premise that a statement be "of and concerning" the plaintiff. *Newspapers, Inc. v. Matthews*, 161 Tex. 284, 289-290, 339 S.W.2d 890, 893 (1960).

In like manner, TLC's assertion is that the Introduction does not distinguish between cults which engage in criminal, antisocial and strange acts, and cults which have mere "unorthodox" beliefs. As such, TLC argues that its inclusion in the book implies, to the average reader, that TLC is a cult which engages in the aberrant behaviors described in the Introduction. This is legal theory known as "libel by implication" and it has been

rejected by Texas courts. *Randall's Food Markets, Inc. v. Johnson*, 891 S.W.2d 640, 646 (Tex. 1995).

It is important to note that, in the present case on appeal, there is no assertion by either party that the behaviors in the Introduction are not true *as to some* cults. As a matter of law, literally true statements cannot be libelous regardless of any inferences that might be drawn from them. *Hardwick v. Houston Lighting & Power Co.*, 943 S.W.2d 183, 185 (Tex. App.--Houston 1997, no writ). "To hold otherwise would chill the reporting of factual news because one might always infer negative implications from an event that actually occurred." *KTRK Television, Inc. v. Fowkes*, 981 S.W.2d 779, 789 (Tex. App. Houston [1st Dist.] 1998, writ denied). (See, also, *Green v. CBS Broadcasting, Inc.*, 286 F.3d 281 (6th Cir. 2002).

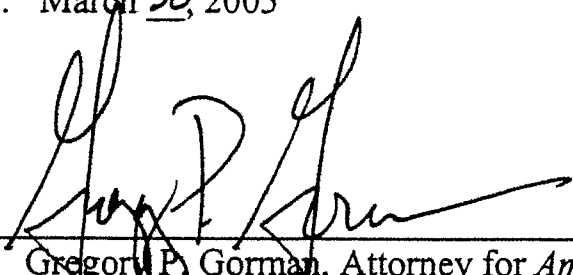
Thus, TLC's argument that it is stigmatized as a result of Harvest House not specifically identifying which cults believe what ideas and engage in what practices should be rejected. Clearly it would severely chill the speech of the media if a cause of action for defamation can be maintain for the utterance or publication of literally true statements and an opinion derived therefrom.

VII. Conclusion

In view of the foregoing, the lower court's ruling denying summary judgment should be reversed.

DATED: March 30, 2005

By: _____


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CERTIFICATE OF SERVICE

In accordance with the Texas Rules of Appellate Procedure, the undersigned hereby certifies that a true and correct copy of the above and foregoing "Amici Brief: USA RADIO NETWORK, POINT OF VIEW/NAT'L CENTER FOR FREEDOM & RENEWAL, APOLOGIA, MIDWEST CHRISTIAN OUTREACH, THE CENTERS FOR APOLOGETICS, ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL, WATCHMAN FELLOWSHIP, REASONING FROM THE SCRIPTURES, MOODY CHURCH" was served on the following counsel of record on this 1st day of April, 2005:

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