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**CHURCH OF SCIENTOLOGY AND 128 MEMBERS V SWEDEN**  
**(ADM. DEC. ON APPL. NR. 8282/78)**

**SYNOPSIS OF DECISION**

This case derived from a verbal attack on the Church of Scientology by a university lecturer, which was reported in a newspaper. The Church submitted a penal complaint about this attack to the Chancellor of Justice, claiming that it constituted "agitation against a minority group", but the Chancellor decided not to instigate criminal proceedings. The Church then brought a civil action for damages against the lecturer, on the basis of the alleged breaches of the criminal law. This action was dismissed on technical legal grounds.

Before the European Commission of Human Rights ("the Commission"), the Church claimed that the absence of effective criminal and civil legal redress violated, in particular, the right to freedom of religion, and constituted discrimination; and that Swedish law did not accord them an effective remedy against these violations of the Convention.

The Commission, in its decision on the admissibility of the case, first recalled that, in its earlier decision of X and Scientology v Sweden, it "recognised the competence of a church [in casu, the Church of Scientology] to lodge an application in its own capacity". It went on, however, to find that it is not an element of the concept of freedom of religion, as set forth in Art. 9 of the European Convention on Human Rights (ECHR), that religious bodies or their individual members should be able to bring proceedings of the kind sought by the Applicant. While the Commission held that particular creeds or confessions do not have a right to be free from criticism, they nonetheless expressly did "not exclude the possibility of criticism or 'agitation' against a church or religious group reaching such a level that it might endanger freedom of religion and where a tolerance of such behaviour by the authorities could engage State responsibility." However, such a level had not been reached in the case at hand.

As in the earlier case, the Commission clearly dealt with the case on the basis that the Church of Scientology was entitled, as a religious group, to the protection of Articles 9 and 14 of the Convention, guaranteeing freedom of thought, conscience and religion and freedom from discrimination, respectively. Its ruling that the freedom of religion, guaranteed under Art. 9, did not include a right to criminal or civil legal redress of the kind sought by the Church, was a general ruling, applicable to all religions alike. It emphasised that, apart from the Church of Scientology, "the legal remedies open to any other church body or its members in respect of the offence of 'agitation' ... are exactly the same"; and that "it has not been shown that any discrimination exists as between different religious groups or their members". The Commission therefore clearly recognised and treated the Church of Scientology as a religion under the ECHR, entitled to the same protection as other churches or religious groups.

COUNCIL OF EUROPE

EUROPEAN COMMISSION OF HUMAN RIGHTS

DECISION OF THE COMMISSION

AS TO THE ADMISSIBILITY

Application No. 8282/78  
by Church of Scientology and 128 named applicants  
against Sweden

The European Commission of Human Rights sitting in private on  
9 and 14 July 1980, the following members being present:

MM. J. E. S. FAWCETT, President  
G. SPERDUTI  
C. A. NØRGAARD  
F. ERMACORA  
M. A. TRIANTAFYLIDIS  
E. BUSUTTI  
L. KELLBERG  
B. DAVER  
T. OPSAHL  
C. H. F. POLAK  
J. A. PROWEIN  
R. J. DUPUY  
G. TENEKIDES  
S. TRECHSEL  
B. KIERNAN  
N. KLECKER  
J. SAMPAIO  
J. A. CARRILLO

Mr. H. C. KRUGER, Secretary to the Commission

Having regard to Art. 25 of the Convention for the Protection of  
Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 26 June 1978 by the  
Church of Scientology and 128 named applicants against Sweden and registered  
on 26 June 1978 under file No. 8282/78;

Having regard to the report provided for in Rule 40 of the Rules of  
Procedure of the Commission and the observations of the respondent  
Government submitted on 14 January 1980 and the applicants' observations  
in reply dated 28 March 1980;

Having deliberated;

Decides as follows:

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### THE FACTS

The application is brought by the Church of Scientology in its own capacity and by 128 of its members whose names are annexed to the petition.

On 14 November 1975 a local newspaper Kristianstadsbladet published an article in which various statements made by an assistant professor of theology, Mr. Åke V. Ström, were quoted. Professor Ström was reported to have said in a lecture that "scientology is the most lying movement there is. It is the cholera of the spiritual life. That is how dangerous it is."

On 10 May 1976 the Swedish Church of Scientology, in accordance with the Rules of Criminal Procedure, requested the Chancellor of Justice to initiate criminal proceedings in respect of the above article, which, in its view, was punishable as being the offence of "agitation against a group" on grounds of religious affiliation (1).

On 24 May 1976 the Chancellor of Justice refused the request, pointing out that a request to the Public Prosecutor for the institution of criminal proceedings must be submitted to the competent Public Prosecutor within a reasonable time before the period of limitation (in this case six months) expires. In the present case, however, the request was submitted only four days before that period expired, which meant that there was not time for the Chancellor of Justice to deal with the matter. In his decision, the Chancellor of Justice added that even if he had proceeded to an examination of the substance of the case, he would not have been likely to find reasons for taking action against the newspaper.

On 13 August 1976 the Church of Scientology, invoking Chapter 7, Section 4 of the Freedom of the Press (1940) Act as amended, and Chapter 16 Section 8 of the Penal Code (1962) as amended (1971) brought a civil action for damages based on alleged breaches of the criminal law against Mr. Lennart Hjelmsedt, the publisher of the newspaper Kristianstadsbladet.

The relevant criminal provisions on which the civil action was founded are as follows:

(1) "hets mot folkgrupp" means literally "agitation against a minority group or section of the population"

"Penal Code 16:8 If a person publicly or otherwise in a statement or other communication which is spread among the public threatens or expresses contempt for a group of a certain race, skin colour, national or ethnic origin or religious creed, he shall be sentenced to imprisonment for at most two years or, if the crime is petty, to pay a fine.

"Freedom of the Press Act 7:4 Having due regard for the purpose of freedom of the press as stated in Chapter 1, statements in printed matter shall be considered unlawful when they include representations generally punishable according to law as amounting to: ---.---.---.---.---.---. 12. threats, slander or libel against groups of people because of their origin or religion.---.---.---.---.---.---."

At first instance before the District Court the defendant claimed that the Church of Scientology was not competent to sue and requested that the action be dismissed. On 22 November 1976 the District Court of Kristianstad considered that it was competent to sue for damages. This view was upheld by the Skåne and Blekinge Court of Appeal on 11 January 1977. However, the Supreme Court dismissed the action on 2 January 1978. The Court held that "the protection of a certain group - and indirectly the protection of its members - lies in the duty of the prosecutor to prosecute when an offence has taken place. ... Consequently, the Church of Scientology has no right to bring an action for damages based on the alleged unlawful activity ..."

In a concurring judgment, Justice Bengtsson of the Supreme Court stated as follows:

"...From the travaux préparatoires of the previous provision of chapter 11, section 7, of the Penal Code (present chapter 16, section 8, of the Penal Code), it appears that the reason for making agitation against a minority group a criminal offence was "a social interest of order and decency" (Nytt Juridiskt Arkiv II 1948 page 359). Moreover, the provision has been placed among offences against public order. Although, in connection with the adoption of the law, some weight was of course also attached to the suffering which may be inflicted on individual persons as a result of the offence in question, the intention was apparently not to give such persons any direct protection in the sense that either an individual person, or an association of individual persons, would be allowed to proceed to private prosecution or to an action for damages based on the offence."

On 30 June 1978 the Church of Scientology applied for a re-opening of the proceedings (Resning) in the present case, claiming that the decision of the Supreme Court on 2 January 1978 was based on a manifestly incorrect application of the law. This application was rejected by the Supreme Court on 19 October 1978.

### COMPLAINTS

The applicants submit that the decision of the Supreme Court of Sweden dismissing the action of the Church of Scientology violates Arts. 9, 13 and 14 of the Convention, all taken together. The following submissions are made:

1. Arts. 9 and 14

In the present case it is submitted that the members of the Church of Scientology have been discriminated against in the enjoyment of the freedom to manifest one's religion, guaranteed under Art. 9, because the decision of the Supreme Court to dismiss the action means that the Kingdom of Sweden tolerates agitation against a particular religious group, in spite of the freedom to manifest religion to which members of the Church of Scientology are entitled under Art. 9. It is stated that freedom of religion has thus been subjected to other limitations than those allowed under paragraph 2 of Art. 9 i.e., "such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others".

2. Art. 13

It is submitted that the Supreme Court's decision renders the protection of the Church of Scientology's freedom from "agitation or incitement to hatred" by a newspaper totally dependent upon the decision of the Office of Public Prosecutions. The Swedish position, it is submitted, seems to be that the individual can take no action at all when being discriminated against, except by informing the prosecutor, awaiting his investigation and final decision as to the merits of the individual's case. The individual whose rights were violated could not begin litigation on his own or vindicate his right to manifest his religion unhampered by adverse discrimination.

It is further submitted that even if the Supreme Court had accepted that individual members of an injured group could bring an action before the courts, the requirement in Art. 13 that the

remedy shall be effective would not be satisfied. For the remedy to be effective a right of action would have to reside in the group rather than in an individual. At present under Swedish rules of procedure, it was claimed, it would not be open to individuals who commenced litigation to seek a joinder of their actions since the legal facts which would be invoked in each claim would not be the same. Under these circumstances it was not possible to call an individual vindication of a right an "effective remedy" to rectify a wrong to a group. Consequently it was submitted that the interpretation given by the Supreme Court was wrong and at variance with Art. 13 of the Convention.

#### SUBMISSIONS OF THE PARTIES

The Respondent Government: The relevant domestic law in Sweden

According to the Swedish criminal procedure, criminal proceedings against an alleged offender are normally instituted by a Public Prosecutor. If a person considers that an offence has been committed he should normally draw the attention of the competent Public Prosecutor to the matter and request him to institute proceedings. Should the Public Prosecutor decide not to institute criminal proceedings, for example - because he considers that no offence has been committed or that there is not sufficient evidence to convict the offender - it is possible to appeal against his decision.

When the alleged offence consists of a statement made in a printed publication such as a newspaper or book, the Chancellor of Justice (justitiekanslern) is alone competent to institute criminal proceedings.

If the competent Public Prosecutor decides not to prosecute, criminal proceedings may be instituted by the victim of the alleged offence in a private prosecution. The Code of Judicial Procedure (Chapter 20, Section 8) refers to the 'injured party' who is defined as being 'a person against whom the offence was directed, or who was harmed or suffered damages as a result of the offence'. The right to private prosecution can only be exercised if the offence concerned involves an injured party as defined above.

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If the injured party has suffered damage as a result of a criminal offence, he may claim compensation in connection with criminal proceedings or in separate civil proceedings.

"Agitation against a group" ("hets mot folkgrupp")

An offence entitled "hets mot folkgrupp" was included in the Swedish Penal Code in 1948. The Section dealing with the offence was revised in 1970 to conform to the requirements of the International Convention on the Elimination of All Forms of Racial Discrimination ratified by Sweden in 1971. The provision appears in Chapter 6, Section 8 of the Penal Code. It follows from the Freedom of the Press Act (Chapter 7, Section 4, Point 8, which corresponds to Point 12 before 1 January 1979) that this offence is punishable when committed by means of a written statement in a printed publication.

The offence dealt with in Chapter 16, Section 8 of the Penal Code is directed against a group of people but not against individuals. Threats or expressions of contempt directed against individuals are punishable under other provisions of the Penal Code, in particular under those dealing with 'unlawful threat' (Chapter 4, Section 5), 'slander' (Chapter 5, Sections 1 and 2) and 'insulting conduct' (Chapter 5, Section 3).

The legal problem for the Swedish Courts in the present case was whether the Church of Scientology in Sweden could be considered an injured party in respect of the alleged offence under Chapter 16, Section 8 of the Penal Code. The offence entitled "hets mot folkgrupp" is considered to be directed against the group as such, but not against individual members. The question arose in the context of this case as to whether the association of members of the group in question would be competent ratione personae to act as an 'injured party' and to claim damages on behalf of the group.

Discussions in the Swedish Parliament

The respondent Government point out that the legal issues involved in the present case have recently been raised in a Private Member's Bill in the Swedish Parliament. A Member of Parliament proposed an addition to Chapter 16 of the Penal Code which would make it possible for an organisation representing a group of people to act as an injured party. The organisation would then be entitled to institute a private prosecution or bring an action for damages. The Parliamentary Legal Standing Committee proposed, in a report dated 22 November 1979, that the Private Member's Bill should be rejected. It stated as follows:

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"... Nor, in the opinion of the Standing Committee, is it easy to conceive of a different system. The punishable act, which is an offence against public order, is directed against a group of people as such, and not against individual persons or organisations. As was pointed out by one of the authorities whose views were requested, a provision of the kind envisaged by the member who tabled the Bill would entail considerable difficulties in its practical application, for instance if a foreign State or several competing organisations wished at the same time to represent an ethnic group or immigrants of a certain nationality. It should also be borne in mind, in the view of the Standing Committee, that it is a fundamental principle of Swedish law as regards penal law enforcement that a Public Prosecutor should bring criminal proceedings when an offence - such as "hets mot folkgrupp" has been committed. And on this point it should be emphasised that any person, including organisations representing, for instance, minority groups, has the right to address a petition to the Police or a Public Prosecutor, requesting the institution of criminal proceedings in respect of an offence. In this context it is also appropriate to recall that the decision of a Public Prosecutor in regard to prosecution is subject to appeal to a superior Public Prosecutor, in the last resort to the Chief Public Prosecutor."

On 5 December 1979 the Private Member's Bill was rejected by Parliament.

As to Admissibility

Articles 9 and 14

The respondent Government point out the legal remedy available in Swedish law as regards alleged violations of Chapter 16, Section 8, of the Penal Code ("hets mot folkgrupp") is a request to the Public Prosecutor for the institution of criminal proceedings. When the alleged offence has been committed by means of an article in a printed publication, the competent Public Prosecutor is the Chancellor of Justice. The Church of Scientology submitted such a request to the Chancellor of Justice on 10 May 1976, i.e. four days before the expiry of the period of limitation in respect of the offence on 14 May 1976. The Chancellor of Justice therefore rejected the request on the grounds that it was not possible for him in practice to deal with the request before the expiry of the period of limitation.

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It is submitted from these facts, that the applicant did not exhaust his domestic remedies as required by Art. 26 of the Convention in respect of these complaints, since he did not submit the request to the Chancellor of Justice in sufficient time for an examination to be carried out before the period of limitation expired.

In the alternative, it is submitted that the article published in Kristianstadsbladet merely contained a factual account of certain statements, highly critical of the Church of Scientology, made in a lecture by a theologian. It is submitted that this cannot be regarded as an interference with the right to freedom of religion. This freedom does not protect the religious sect against criticism or negative comments. It guarantees the right of the members of the sect to worship and to manifest their religion, but critical remarks from outside observers do not in any way restrict or interfere with this right to freedom of religion.

As regards the alleged discrimination, the respondent Government state that neither Swedish law nor its application in the present case contains any element which is discriminatory against the Church of Scientology. The protection afforded by Chapter 16, Section 8, of the Penal Code is the same for all religious groups. The legal remedies available in the case of alleged breaches of that Section are also the same for all religious groups. Accordingly, it is submitted that the applicant's complaints concerning alleged violations of Arts. 9 and 14 of the Convention are manifestly ill-founded.

#### Article 13

It is submitted that Art. 13 does not specify any particular type of remedy. It merely requires the remedy to be effective. Under Swedish law, the normal remedy is to request the Public Prosecutor to institute criminal proceedings. Such a request is examined by the Public Prosecutor, who decides to prosecute where he considers that an offence has been committed and that there is sufficient evidence to convict any particular person of the offence. It is submitted that this legal remedy is effective and sufficient under Art. 13 and that the applicant's complaint relating to that Article should therefore be regarded as manifestly ill-founded.

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Article 6

The respondent Government state that the question which arises in this application is whether the claim of the Church of Scientology concerns the determination of "civil rights". The claim concerns financial compensation for damages suffered as a result of the publication of the article in Kristianstadsbladet. This claim is based both on the allegation that the publication constituted a criminal offence under the Penal Code and under the Freedom of the Press Act, and on the assertion that the Church of Scientology was the injured party. However, the Supreme Court decided that the offence "hets mot folkgrupp" is an offence directed against a group of people and that neither an individual belonging to such a group nor an association of such individuals is to be regarded as an injured party that is competent to claim damages. The conclusion of the Supreme Court was that the applicant's rights were not at issue since the case concerned an offence which, under the Swedish Penal Code, is an offence against public order but not an offence against individual persons or groups of individuals.

In the light of the construction and the purpose of the offence "hets mot folkgrupp", it is submitted that the offence does not affect the civil rights of any individual person or religious community within the meaning of Art. 6 of the Convention. Accordingly, Art. 6 is not applicable.

In the alternative, it is submitted that, even if the applicant's "civil rights" were involved, there would be no violation in the present case since the applicant was not denied access to the Swedish courts. It is true that the Supreme Court dismissed the claim of the Church of Scientology as being inadmissible ratione personae, but its ruling is based on a thorough examination of the question as to whether or not the Church of Scientology suffered damage as a result of the alleged offence and whether or not it had the status of an 'injured party'. The fact that the Supreme Court looked into these issues fully warrants the conclusion that the applicant was not denied access to a tribunal. Accordingly, it is submitted that the complaint under Art. 6 of the Convention is either incompatible ratione materiae or manifestly ill-founded.

The applicants

Art. 26

With regard to the argument that the applicants had not exhausted their domestic remedy because their request to the Chancellor of Justice was made too late, it is submitted that it would have been possible for the Public Prosecutor to act with speed. It is pointed out

in this regard that on 30 January 1976 the Public Prosecutor ordered the arrest of Mr Ingmar Bergman on the very stage of a Stockholm theatre because the limitation period was about to expire in connection with a tax offence. It is submitted that the freedom of religion is an issue which is at least as important as the interest of the Swedish Government to collect taxes.

#### Art. 6

The issue in the application could be summed up in the latin phrase ubi actor ibi ius. To what extent is the existence of a civil right dependent upon the possibility to prosecute the violation of the right? Alternatively, if a nolle prosequi by a Public Prosecutor "wipes out" a civil right so that nothing remains that can have been violated, or if the civil right has an autonomous existence, its violation may only be avoided by permitting the interested party to bring a private prosecution or an action for damages. It is pointed out that a similar issue arose in the United Kingdom in the case of Mr. John Gouriet who sought before the English courts to bring a private action for an injunction to restrain a breach of the criminal law by trade unions involving a mail boycott against South Africa. The Attorney General had refused his consent to relator proceedings and Mr. Gouriet sought to bring his own proceedings.

The applicants state that the question of whether or not a particular right is a 'civil right' is not to be determined by referring, as the respondent Government did, to the characterisation of the right in question under national law. In this regard, reliance is placed on the Commission's statement in Application 1931/63 (15 Collection of Decisions 8)

"qu'en effet la notion de 'droits et contestations de caractère civil', employée à l'article 6, §1, de la Convention, ne saurait être interprétée comme simple renvoi au droit interne de la Haute Partie Contractante mise en cause, mais qu'il s'agit bien au contraire, d'une notion autonome qu'il faut interpréter indépendamment des droits internes des Hautes Parties Contractantes même si les principes généraux du droit interne des Hautes Parties Contractantes doivent nécessaire être pris en considération lors d'une telle interprétation."

Article 9

The "heart" of the matter is the decision of the Swedish Supreme Court to deny to the Church of Scientology the status of "injured party" in relation to the violation of the freedom of religion by the article in the paper Kristianstadsbladet. This decision blocks every possible remedy even a remedy in tort and cannot be compatible with the Convention. The applicants rely in this regard on the Commission's statement in Application 7805/77

"... is now of the opinion that the above distinction between the Church and its members under Art. 9(1) is essentially artificial. When a Church body lodges an application under the Convention, it does so in reality, on behalf of its members. It should therefore be accepted that a church body is capable of possessing and exercising the rights contained in Art. 9(1) in its own capacity as a representative of its members. This interpretation is in part supported from the first paragraph of Art. 10 which, through its reference to 'enterprises', foresees that a non-governmental organization like the applicant Church is capable of having and exercising the right to freedom of expression."

If a church body capable of possessing and exercising the right contained in Art. 9(1) in its own capacity as a representative of its members, it is difficult to understand how an interference with Art. 9(1) can be "ignored" by judicial interpretation to the effect that the issue "concerned an offence which under Swedish Penal Code is an offence against public order but not an offence against individual members or groups of individuals".

It is submitted that the only guarantees in Sweden of freedom of religion are to be found in the Penal Code, Chapter 16, Section 8, and the Freedom of the Press Act, Chapter 7, Section 4, Point 12. Its limitation as a guarantee is underlined by a statement by Dr. Gustaf Petrén Justice of the Supreme Administrative Court:

"... the lasting defect in our system stems from the persistent refusal of the Government authorities to provide the citizens with some kind of device by which they can exact those rights that they are given by the Constitution." ("Vägen till en svensk rättighetskatalog", in Skrifter till minnet av Halvar G. F. Sundberg, Institutet för offentlig och internationell rätt No. 40 (1978) p.31).

Finally, it is pointed out that the motion to amend the law rejected by Parliament on 5 December 1979 has been reintroduced in an amended form on 25 January 1980.

THE LAW

1. The Commission notes first of all, that this application is brought by two applicants, namely the Church of Scientology on the one hand, and 128 named applicants, on the other. The Commission recalls that in Application No. 7805/77 (Jansson and Scientology v. Sweden, 16 D & R, p. 68) it recognised the competence of a church body to lodge an application in its own capacity.

Article 9

2. The applicants complain of the decision of the Swedish Supreme Court to the effect that the Church of Scientology had no competence to bring either civil or criminal proceedings in respect of alleged "agitation" against it contrary to Chapter 16 Section 8 of the Penal Code and Chapter 7, Section 4 of the Freedom of the Press Act.

3. Art. 9 of the Convention secures the right to "freedom of thought, conscience and religion". It further states that "this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance."

4. The Commission does not consider that it is an element of the concept of freedom of religion, as set forth in this provision that the Church of Scientology or its individual members should be able to bring civil or criminal proceedings based on alleged 'agitation' against it as a group contrary to provisions of the Swedish Criminal law. It considers that this provision seeks to protect the manifestation of religious beliefs in worship, teaching, practice and observance and the freedom to change one's religion.

5. The Commission is not of the opinion that a particular creed or confession can derive from the concept of freedom of religion a right to be free from criticism. Nevertheless the Commission does not exclude the possibility of criticism or 'agitation' against a church or religious group reaching such a level that it might endanger freedom of religion and where a tolerance of such behaviour by the authorities could engage State responsibility. However, the Commission does not consider that such an issue arises on the facts of the present case. In reaching this conclusion it notes that the remarks reported in the newspaper article were made in the course of an academic lecture by a professor of theology and not in a context which could render the remarks

inflammatory. Moreover, it has not been shown that either the Church of Scientology or its members have been prevented in any way as a consequence of these published remarks from "manifesting their beliefs" in the ways enumerated by this provision.

6. Accordingly, this complaint must be rejected as manifestly ill-founded under Art. 27 (2) of the Convention.

#### Article 14

7. The applicants also allege that they have been discriminated against in the enjoyment of their freedom to manifest their religion as a consequence of the Supreme Court's decision and the resultant tolerance by the State of 'agitation' directed against them. In this respect, they have invoked Art. 14 in conjunction with Art. 9 of the Convention.

8. Art. 14 reads as follows:

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

9. However, the Commission observes that the legal remedies open to any other church body or its members in respect of the offence of 'agitation', as defined under Swedish criminal law, are exactly the same. As a consequence of the decision of the Supreme Court, it would have no competence to initiate civil or criminal proceedings directly in respect of the alleged 'agitation' and it would have to request the Chancellor of Justice or Public Prosecutor to initiate criminal proceedings.

10. Accordingly, since it has not been shown that any discrimination exists as between different religious groups or their members, this complaint must also be rejected as manifestly ill-founded under Art. 27(2) of the Convention.

#### Article 13

11. The applicants have also complained under Art. 13 of the Convention which states that:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

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12. It is submitted by the applicants that the Church of Scientology, whose rights were violated could not, under present Swedish law, bring an action to vindicate its religious rights and is thus denied an effective remedy within the meaning of Art. 13.

13. The respondent Government contend that Art. 13 merely requires the remedy to be effective and does not specify any particular type of remedy. Further, it is submitted that an effective remedy is provided under Swedish law by the possibility of requesting the Public Prosecutor to institute criminal proceedings.

14. The Commission notes that an "effective remedy" under Art. 13 need not necessarily be a remedy before a judicial authority (see Eur. Court H.R., Case of Klass and others, judgment of 6 September 1978, p. 30, para. 67). The only remedy available to the applicants in respect of the claim that the rights of the Church of Scientology had been infringed was to request the Chancellor of Justice to institute criminal proceedings.

15. In accordance with this procedure, it is entrusted to the Chancellor of Justice to examine whether or not an offence has been committed and whether there is sufficient evidence to convict any particular person of the offence. It emerges from the facts of the present case that the applicants are not complaining that the State has directly interfered with their freedom of religion but rather that the State's responsibility is engaged under this provision by its alleged failure to protect the right from infringement by a third party either by not instituting proceedings or by its tolerance of offensive 'agitation'. In such a situation, the Commission considers that the requirement of an "effective remedy" under Art. 13 is satisfied by the possibility for the aggrieved party to submit the matter complained of to an impartial Public Prosecutor with a request that he initiate criminal proceedings.

It follows that this complaint must also be dismissed as manifestly ill-founded under Art. 27 (2) of the Convention.

#### Article 6

16. The applicants have also complained that the inability of the applicant Church of Scientology to institute "civil" proceedings for damages in the present case raises an issue of "access to court" under Art. 6 (1) of the Convention.

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17. Art. 6 (1) provides inter alia that

"In the determination of his civil rights and obligations of of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

However, the question arises whether or not the proceedings the applicant sought to bring involved the determination of "civil rights" within the meaning of this provision.

18. The Commission notes that the European Court of Human Rights in the König case reaffirmed the autonomous nature of the concept of "civil rights" and obligations. However, the Court attached certain weight to the status and character of the right in question under national law. It stated as follows:

"... it nevertheless does not consider that, in this context, the legislation of the State concerned is without importance. Whether or not a right is to be regarded as civil within the meaning of this expression in the Convention must be determined by reference to the substantive content and effects of the right - and not its legal classification - under the domestic law of the State concerned. In the exercise of its supervisory function, the Court must also take account of the object and purpose of the Convention and of the national legal system of the other Contracting States ..." (Judgment of 21 June 1978, p. 24 at para. 89).

19. The right, whose vindication is sought, in the present case concerns the protection of a group from "expressions of contempt" or protection of the reputation of the group. The Commission notes that national legislation and the Swedish Supreme Court does not recognise such a 'right' entitling the group to seek damages in civil proceedings before national courts. Although the Commission has held on several occasions that the right of an individual to protect his reputation can be regarded as a 'civil right' within the meaning of Art. 6 (1), (See e.g. Application No 7116/75, D & R 7, p. 90) it must attach importance to the characterisation of the right of the group under Swedish law. Moreover, in the exercise of its supervisory jurisdiction, the Commission sees no reason to conclude otherwise. Accordingly, it does not consider that the right of the group in the present case to protect its reputation can be considered a 'civil right' under Art. 6 (1).

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20. Finally, insofar as this complaint concerns the right of the named individuals in the application to bring proceedings, the Commission notes that under Swedish law it would have been open to them to bring an action for defamation as distinct from the civil proceedings actually instituted on the grounds that the remarks against the Church of Scientology adversely affected their reputation. This it could not be claimed that they were denied access to court.

21. It follows therefore that this part of the application must be rejected as incompatible ratione materiae with the provisions of the Convention, and in respect of the individual applicants, manifestly ill-founded, both under Art. 27 (2).

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE

Secretary to the Commission

President of the Commission

(H. C. KRUGER)

(J. E. S. FAWCETT)

2.2.3 It would be helpful if we were provided with:

- (b) a summary of the application to the US Internal Revenue Service, including the questions asked by the IRS, and confirmation that there would be no objection if we were to forward this to the IRS for verification.

Most of this information was included in the materials the Church's representatives provided the Commission on September 27, 1994 in the form of separate memoranda, each addressing a particular issue that was before the Internal Revenue Service ("IRS") and summarizing the questions the IRS asked with respect to the particular issue and the information the Church provided in response to such questions. For the sake of completeness, additional copies of these memoranda are included with this submission as follows:

"Church of Scientology Organizational Structure"  
(Exhibit I-H)

"Tax Exemption Issues -- Church and Religious Status"  
(Exhibit I-I)

"Inurement" (Exhibit I-J)

"Operation for a Commercial Purpose" (Exhibit I-K)

"Public Policy" (Exhibit I-L)

"Financial Integrity" (Exhibit I-M)

"Tax Exemption -- The Procedural Background"  
(Exhibit I-N)

Also attached as Exhibit I-O is a list of the specific questions the IRS raised during the extensive proceedings. Finally, we understand that the Charity Commission has asked for verification directly from the IRS and that the IRS will provide whatever information the Commission seeks.

## CHURCH OF SCIENTOLOGY ORGANIZATIONAL STRUCTURE

On October 1, 1993, the IRS issued ruling letters to 25 individual Scientology churches and related charitable and educational organizations recognizing their exempt status under section 501(c)(3) of the United States Internal Revenue Code, which accords tax exemption to organizations organized and operated exclusively for religious, charitable or educational purposes. In addition, the IRS issued "group" ruling letters to 5 individual "parent" churches and charitable organizations authorizing them to extend their section 501(c)(3) exempt status to their subordinate churches and charitable organizations in the United States. (Non U.S. organizations are not eligible for inclusion under a group exemption). All told, more than 150 Scientology churches and related charitable organizations now have tax-exempt status as a result of this action.

The IRS's action was wide-ranging, and it affects every Scientology organization in the world, not just those in the United States. The Church of Scientology is a hierarchical church, and all of the senior-most churches of the ecclesiastical hierarchy are located in the United States. These churches and the other related organizations which received tax exempt status are described below along with an explanation of how they fit within the hierarchical structure.

### A. Uppermost Scientology Churches

Two churches -- Church of Scientology International and Religious Technology Center -- stand at the apex of the Scientology religion. Each serves a specific purpose with respect to the practice of the faith, both now and for the future. The IRS has issued letters recognizing that each of these two churches is a tax-exempt church under section 501(c)(3) of the Internal Revenue Code.

Church of Scientology International ("CSI") is a California nonprofit corporation that serves as the Mother Church of the Scientology faith. As discussed below, CSI guides, supports and coordinates the activities of Scientology churches, missions and related organizations throughout the world on matters relating to the ministration of religious services, training of clergy, dissemination and propagation of the faith, ecclesiastical administration and social-betterment activities.

Religious Technology Center ("RTC") is a California nonprofit religious corporation that owns the Scientology religious marks and the rights to use the advanced technology. RTC's specific purpose is to ensure the orthodox practice of the Scientology faith. RTC accomplishes its purpose by authorizing churches in the Scientology religious hierarchy to use the

advanced technology and religious marks and then by supervising their activities to ensure compliance with Scriptural requirements.

Another church, Church of Spiritual Technology ("CST") stands outside the hierarchy to serve a unique and essential role. CST is a California nonprofit corporation formed for the specific purpose of preserving the Scientology Scripture. In furtherance of its religious purpose, CST conducts an extensive program of preservation activities to protect the Scientology Scripture against all exigencies, whether natural or man-made. CST also owns all copyrights to the Scientology Scripture and patents to the E-Meter.

Since CST neither ministers religious services to individual Scientologists (other than to its own staff) nor is involved in the supervision or management of other church or religious organizations in the ecclesiastical hierarchy, it is not viewed as operating within the Scientology ecclesiastical hierarchy. The IRS has issued a ruling letter recognizing CST as a tax-exempt church under Section 501(c)(3).

CSI, the Mother Church of the Scientology religion, is the largest of the three senior churches of Scientology. CSI's primary function is to coordinate the activities of all churches of Scientology and their related organizations located throughout the world to ensure they are working in harmony and in accordance with Scientology Scripture. CSI carries out this function by providing ecclesiastical guidance and program support to the various churches of Scientology and their related organizations.

For example, CSI oversees the ministration of Scientology religious services to ensure orthodoxy. It organizes and produces the written and spoken Scientology Scriptural materials into books, recordings, transcripts, course materials and other usable forms and disseminates them where needed. It translates these religious materials into languages other than English such as French, Italian, German, Spanish, Danish, Hebrew, Swedish, Portuguese, Russian, Chinese, Japanese, Hungarian, Greek and Dutch. CSI helps establish and staff new churches and expand existing ones. It helps train staff in Scientology religious technology and ecclesiastical administration. It provides needed assistance on financial planning and management and on capital acquisitions and development. It provides direct financial assistance when necessary. It also directs broad-scale proselytization campaigns throughout the world on television and radio and in magazines. CSI organizes community service programs, missionary programs and social reform programs for Churches of Scientology and related organizations to carry out. In short, CSI is the one entity to which Scientology

organizations throughout the world can look to for advice, guidance and support.

Specific examples of a few of the many forms of assistance CSI provides other churches include:

Technical Bulletins of Scientology: CSI compiled all of the technical bulletins and other technical issues by L. Ron Hubbard -- a total of over 2,600 issues -- into an encyclopedia of the Scientology religious technology. The full set includes 13 chronological volumes, four subject volumes and a master index for a total of 18 volumes. This information is invaluable to churches of Scientology, individual Scientology ministers and all Scientologists in having the full Scriptural materials of Mr. Hubbard readily available and easy to reference.

Organization Executive Course ("OEC"): CSI compiled the OEC course volumes, comprising the encyclopedia of Scientology administrative technology, including all of the policy letters written by L. Ron Hubbard. The set includes over 2,000 policy letters for a total of over 10,000 pages in twelve volumes.

Technical Course Materials: Over the last several years, CSI has researched, compiled and published new textual materials for religious training courses containing issues that have been confirmed as Mr. Hubbard's original writings. These materials include the full Saint Hill Special Briefing Course, the most comprehensive religious training course in Scientology.

Staff Training Courses: CSI compiles course materials to train staff of churches of Scientology in the exact policies and other materials Mr. Hubbard wrote on the administrative policy that applies to their respective duties.

Tape Series: L. Ron Hubbard gave nearly 3,000 lectures on Dianetics and Scientology. CSI is producing a substantial number of these tape recordings on cassette (along with full transcripts), making much of this original material by Mr. Hubbard available to the public for the first time.

Technical Training Films: CSI produces training films which are used intensively in technical courses to teach correct application of Scientology religious technology. These films were written and, in many cases, directed and narrated by L. Ron Hubbard, and cover specific technical aspects and their application in auditing.

E-meters: CSI produces E-meters which are used in the ministrations of Scientology religious services and made available to Scientologists throughout the world.

Translated Books and Course Materials: Over the past few years, a large number of books and course materials containing the technology of Dianetics and Scientology have been translated into four languages (German, French, Spanish and Italian); Dianetics, the Modern Scientology of Mental Health is now available in 22 different languages.

Film Translations: Films that disseminate basic tenets and practices of Scientology through a medium anyone can grasp have been produced by CSI in several languages. For example, the film Dianetics: The Dynamics of Life, which shows the true story of how Mr. Hubbard discovered Scientology, has been produced in Danish, Dutch, French, German, Hebrew, Italian, Japanese, Norwegian, Portuguese, Spanish and Swedish. All of the technical training films are also being translated into different languages.

Audio/Visual and Radio Programs Disseminating Scientology: CSI developed these programs for broadscale dissemination of Scientology through the television and radio. These programs benefit all Scientology churches because they will attract new members to the religion.

International Scientology News: A periodic newsletter that CSI publishes to inform Scientologists about news and other current developments at various churches of Scientology located throughout the world.

What is Scientology?: CSI compiled this 833 page encyclopedic book which serves as the definitive reference work on the Scientology and its uses and organizations. This book has also been translated by CSI into German, French, Spanish and Italian.

Scientology Handbook: This book compiled by CSI consists of 968 pages and over 800 photos and illustrations that cover the basic principles of Scientology for direct application in life. It gives the data necessary for the application of Scientology and getting it into use. Each of the 19 chapters of this book have also been produced as individual booklets for broader dissemination. This book and each of its 19 booklets have been translated by CSI into German, French, Spanish and Italian.

Plans and Programs: CSI develops planning and programs for the international Church hierarchy to carry out to forward

the Church's goals as well as programs for such areas as community services and social reform activities and the Church's missionary activities. CSI gets such programs out to local Churches or coordinates them with social betterment organizations, sees that they are implemented and supervises their execution.

#### B. The Scientology Religious Hierarchy

To the extent possible under the laws of the country in which they operate, churches of Scientology are organized as nonprofit religious corporations. All United States churches are housed within such corporations, as are churches in countries such as, for example, France, Germany, Italy, Spain, Denmark, Holland, Sweden, Belgium, Switzerland and the United Kingdom.

The Scientology churches that provide religious services to parishioners are arranged in a hierarchy that reflects the gradient nature of the religion's spiritual levels. As discussed below, the lowest levels of religious services are ministered by independent ministers and by missions of Scientology; intermediate levels by Class V churches; high levels by Saint Hill organizations and Advanced Organizations; higher levels by Church of Scientology Flag Service Organization; and the highest level by Church of Scientology Flag Ship Service Organization.

All Scientology churches at the higher levels of the religious hierarchy are staffed by Scientologists who have joined the Sea Organization, the religious order of the Scientology faith. As discussed in detail further below, Scientologists who are members of the Sea Organization have made a total commitment to the Scientology faith by dedicating their lives to the service of their religion. Sea Organization personnel are subject to a strict code of moral conduct, generally live a communal existence, and receive a nominal weekly allowance and occasional modest bonuses for their service.

##### 1. Field Ministers

At the lowest level of the Scientology religious hierarchy are the individual ministers of Scientology who do not serve on the regular staff of a church or a mission. Under Scientology ecclesiastical policy, individual Scientology ministers may minister introductory religious services up through New Era Dianetics. They may not train clergy.

CSI interacts with individual field ministers through an intervening ecclesiastical management entity, International Hubbard Ecclesiastical League of Pastors ("IHHELP"). IHHELP is a nonprofit religious corporation that was formed in November 1982

to serve as an integrated auxiliary of CSI by functioning as the Mother Church of field ministers. IHELP's purpose is to propagate the Scientology religion throughout the world by assisting individual ministers of the faith. IHELP accomplishes its purpose by encouraging Scientology laity to become ministers and by ensuring that their ministries are orthodox and comport with Scientology Scriptures.

CSI furnishes IHELP with ecclesiastical advice, programs and guidance, staff training and general coordination of activities with other organizations and churches in the hierarchy. IHELP, in turn, provides similar assistance and support to independent Scientology ministers who do not serve on the staff of a Scientology church or mission.

The IRS has issued a ruling letter recognizing that IHELP is a tax-exempt religious organization under section 501(c)(3).

## 2. Missions

At the next level of the Scientology religious hierarchy are the missions of Scientology. A Scientology mission is a regularly-organized church and congregation that is authorized to minister introductory Scientology religious services. Missions are primarily a dissemination activity to attract new members to the religion and do not have the authority to train or ordain Scientology ministers.

Often missions are formed in parts of the world that are new to Scientology. When a mission grows to sufficient size, it usually becomes a Class V church. At present there are 170 missions located throughout the world.

CSI interacts with missions through an intervening ecclesiastical management entity, Scientology Missions International ("SMI"), a California nonprofit religious corporation that serves as the Mother Church for missions. SMI's specific ecclesiastical responsibility is to proselytize the religion by helping to form new missions and by assisting existing missions to grow. SMI's religious program of activities is very similar to IHELP's -- it encourages Scientology ministers to form new missions and then ensures that their ministries are orthodox and comport with Scientology Scripture.

CSI provides SMI with ecclesiastical advice, programs and guidance, staff training, and general coordination with respect to the activities of other churches and organizations in the hierarchy. SMI, in turn, provides similar support to Scientology missions throughout the world and assists existing and



newly-formed missions to expand their congregations and to maintain orthodoxy.

In recent years SMI has actively sought to bring Scientology to developing countries, including many where western-style religions are in the minority. SMI's efforts have been extraordinarily successful, and missions are forming or operating in such disparate countries as Russia, Hungary, Brazil, Pakistan, Ghana, India, Turkey and Malaysia. SMI often encourages a missionary to visit such developing areas for the purpose of either forming a mission or finding someone else to do so.

The IRS has issued a ruling letter recognizing that SMI is a tax-exempt church under section 501(c)(3). In addition to SMI's own exemption ruling, the IRS has issued SMI a "group exemption ruling" under section 501(c)(3). This ruling authorizes SMI to extend its tax-exempt status to all Missions subject to its supervision. At present, approximately 50 U.S. Missions have tax-exempt status under SMI's group ruling.

### 3. Class V Churches

At the next level of the Scientology hierarchy are Class V churches, which provide religious services at the lower and intermediate levels (through Clear Certainty Rundown and Sunshine Rundown). Class V churches also have the authority to train and ordain ministers (the "Class V" designation relates to the highest level of auditor training provided by such churches). Class V churches do not minister Scientology's advanced technology. At present, there are 155 Class V churches throughout the world.

CSI provides Class V churches with ecclesiastical advice, programs and guidance, staff training and general coordination of activities with other organizations and churches in the hierarchy. CSI provides Class V churches these ecclesiastical support services either directly or indirectly through its "Continental Liaison Offices," which are ecclesiastical management bodies located in local churches in key continental areas. These Continental Liaison Offices function as local representation of CSI with respect to routine ecclesiastical matters. At present, Continental Liaison Organizations in Europe are located in Denmark, Italy, and the United Kingdom, as follows:

Continental Liaison Office Europe, The Church of Scientology  
Advanced Organization Saint Hill Europe and Africa,  
Copenhagen

Continental Liaison Office Italy, National Church of  
Scientology of Italy, Milan

Continental Liaison Office United Kingdom, Church of  
Scientology Religious Education College, Inc.

Class V churches are required to adopt organizational documents that dedicate their activities and assets exclusively to Scientology religious purposes. To the extent permitted by local law, each Class V church is governed by a board of directors elected by a board of trustees, and both directors and trustees must be ministers of Scientology in good standing with CSI in order to be eligible to continue to serve as director or trustee.

In addition to CSI's own exemption ruling, the IRS has issued CSI a group exemption ruling under section 501(c)(3). This ruling authorizes CSI to extend its tax-exempt status to all Class V churches subject to its supervision. At present, 10 U.S. Class V churches have tax-exempt status under CSI's group ruling. Another 14 have individual exemption letters, most of which date back to the 1970s, wholly separate from CSI's group ruling letter.

#### 4. Celebrity Centres

Certain Class V churches called "Celebrity Centres" specialize in proselytizing and disseminating Scientology among artists, professionals, businessmen and other community leaders, though they also are open to all members of the public.

Each Celebrity Centre is organized and operated either as a Class V church or as a local parish under the guidance of Church of Scientology Celebrity Centre International, a California nonprofit religious corporation that oversees the activities and development of Celebrity Centres throughout the world. Celebrity Centres operate just like other Scientology churches except that their congregations include many local community leaders, artists and other celebrities. At present, there are fifteen Celebrity Centres, 6 of which are local parishes and 9 of which are Class V churches. There are six Celebrity Centres in Europe. Those located in London and Munich are parishes, while those located in Vienna, Paris, Dusseldorf and Hamburg are Class V churches.

Church of Scientology Celebrity Centre International is recognized as a tax-exempt church under CSI's group exemption ruling.

#### 5. Saint Hill and Advanced Organizations

At the higher levels of the Scientology religious hierarchy are Saint Hill Organizations and Advanced Organizations.

Saint Hill churches are so named because the original Saint Hill church was located at Mr. Hubbard's home, Saint Hill Manor in East Grinstead, Sussex, England, where Mr. Hubbard delivered the original Saint Hill Special Briefing Course, the most extensive auditor training course in all of Scientology. Saint Hill churches specialize in advanced auditor training and are located in central locations so they can minister to parishioners from wide geographic areas.

The Advanced Organizations offer advanced auditing and training, with an emphasis on auditing through the Operating Thetan levels to the completion of New OT Section V. Like the Saint Hill churches, the Advanced Organizations minister to parishioners from a wide geographic area as they become more spiritually advanced and therefore are centrally located.

At present, there are four Saint Hill and Advanced Organizations throughout the world. They are located in the United Kingdom (Church of Scientology Religious Education College), Denmark (Church of Scientology Advanced Organization Saint Hill Europe and Africa), Australia (Church of Scientology, Inc.), and the United States (Church of Scientology Western United States).

The IRS has issued a ruling letter recognizing that the Saint Hill and Advanced Organizations located in the United States, which are both housed within the corporation Church of Scientology Western United States, are tax-exempt churches under section 501(c)(3).

#### 6. Church of Scientology Flag Service Org.

At the next higher level of the Scientology religious hierarchy is Church of Scientology Flag Service Organization, Inc., ("CSFSO"), a Florida nonprofit corporation located in Clearwater, Florida. CSFSO ministers the highest levels of auditor training through Class XII and auditing through New OT VII.

CSFSO serves as the spiritual headquarters for Scientologists from all over the world who travel there to receive the religious services it ministers; approximately one-half of CSFSO's parishioners come from outside of the Western Hemisphere. CSFSO has approximately 750 staff, many of whom are fluent in several languages in order to minister to CSFSO's international congregation.

The IRS has issued a ruling letter recognizing that CSFSO is a tax-exempt church under section 501(c)(3).

7. Foundation Church of Scientology  
Flag Ship Service Organization

At the next level is Foundation Church of Scientology Flag Ship Service Organization ("CSFSSO"), a Netherlands Antilles religious foundation. CSFSSO ministers the highest level of Scientology auditing (New OT VIII) as well as special Scientology religious courses unavailable elsewhere.

CSFSSO is unique among Scientology churches in that it conducts its services aboard the M.V. Freewinds, a 7056-ton, 440-foot ship based in the Caribbean. The Freewinds serves as an ideal religious retreat where parishioners can devote their full attention to spiritual advancement.

Although CSFSSO is organized outside the United States, the IRS has issued a ruling letter recognizing that it is exempt from United States taxation as a church under section 501(c)(3).

C. Publications and Film Organizations

The Scientology religion is based on the research, writings, and recorded lectures of L. Ron Hubbard, which collectively constitute the Scripture of the religion. An international network of publishing organizations operated exclusively for Scientology religious purposes ensures that the Scripture and E-Meters used in the ministration of Scientology religious services always are available to Scientologists throughout the world.

The three primary organizations performing this religious function are Bridge Publications, Inc. ("Bridge"), a California corporation which publishes books and other written Scriptural materials in the United States and Canada; New Era Publications ApS ("New Era"), a Danish corporation which publishes books and other written Scriptural materials in other countries; and an internal division of CSI called Golden Era Productions ("Gold"), which produces Scriptural tape recordings, motion pictures and E-Meters for dissemination worldwide as well as various translations of the Scripture.

Gold also produces booklets, brochures and posters, including still photography and artwork for the religion. It produces radio and television spots and feature-length programs for use in proselytizing the faith. Musicians on Gold's staff compose, arrange, record and mix hymns for the religion and provide music soundtracks for films, videos, and radio programs.

ZUCKERT SCOUT & RASENBERGER

Gold also provides the technical personnel, videos and music to stage internationally televised events on major Scientology holidays.

The IRS has issued ruling letters to New Era and to Bridge recognizing that they are tax-exempt religious organizations under section 501(c)(3). Gold, as a division of CSI, is tax exempt under CSI's exemption ruling.

As noted above, Church of Spiritual Technology ("CST"), a tax-exempt California corporation, owns all the Scientology Scripture and religious material, including books, audio recordings, film and E-Meters. CST also owns all of Mr. Hubbard's non-religious work. CST received these properties from Mr. Hubbard, who bequeathed them to CST along with the bulk of his estate.

CST permits the hierarchical Church of Scientology to publish and produce the Scientology Scripture and religious materials through licensing arrangements it has with New Era, Bridge and Gold. CST also licenses the right to publish Mr. Hubbard's non-religious writings to New Era and Bridge.

For the most part, New Era and Bridge contract out the actual manufacture of their books as well as cassette tapes for their "books on tape," though they do publish some religious training material in-house for use by churches. Gold produces its own films, audio tapes and E-Meters but contracts out the manufacture of its video-cassettes.

All staff of the Scientology publishing organizations who work on the publication or production of Scientology Scripture and religious material do so under the direct supervision of CSI staff personnel responsible for disseminating the Scripture throughout the world. CSI closely supervises all aspects of their work including content, form and pricing. For example, pricing for Scriptural material and E-Meters is set by CSI to ensure prices are affordable to a broad segment of the general public yet are sufficient to enable the church (or publisher) to remain operational so it can continue to perform its particular role within the ecclesiastical hierarchy.

CSI and its staff do not supervise any activity of New Era or Bridge concerning the publication of Mr. Hubbard's non-religious writings. Rather, CST performs these activities indirectly through its wholly-owned subsidiary, Author Services Inc. In this way all activities concerning the publication of non-religious material are carried on outside of the hierarchical church. (Churches do not carry Mr. Hubbard's non-religious

writings in their bookstores.) This permits the churches to focus exclusively on their religious ministry.

As a general rule New Era, Bridge and Gold sell the Scripture and other religious material they publish and produce directly to Scientology churches and missions throughout the world. Individual churches and missions of Scientology maintain bookstores where their parishioners can obtain copies of the Scripture and E-Meters. All three publishing organizations sell their material to members of the general public who call or write for specific items, but these sales are minimal.

New Era and Bridge supply commercial retailers introductory Scriptural texts such as Dianetics: The Modern Science of Mental Health and Scientology: Fundamentals of Thought and a limited number of audio and video cassettes on religious topics to more broadly disseminate the Scripture to the general public. New Era and Bridge also sell Mr. Hubbard's non-religious texts to commercial bookdealers. As noted above, churches do not carry any non-religious material in their bookstores.

New Era has formed subsidiaries in several countries so its activities there can be conducted by local corporations. These subsidiaries are:

New Era Publications UK, Ltd. (United Kingdom);  
New Era Publications Italia, S.r.l (Italy);  
New Era Publications Deutschland, GmbH (Germany);  
New Era Publications France;  
SARL New Era Publications Japan, Inc.;  
New Era Publications Espana S.A. (Spain);  
New Era Publications Australia Pty. Ltd.;  
New Era Publications Group (Russia);  
Era Dinamica Editores S.A. de C.V. (Mexico);  
Importaciones y Exportaciones Nueva Civilizacion S.A. de C.V. (Mexico);  
Continental Publications (Pty) Ltd. (South Africa); and  
New Era Publications Israel.

With the exception of the Mexican and South African organizations, each of these subsidiaries is a wholly-owned subsidiary of New Era. Due to local legal requirements, all stock in the Mexican and South African corporations are held for the exclusive benefit of New Era. New Era Publications Israel is dormant.

#### D. Social Betterment Organizations

Though Mr. Hubbard is best known for founding the religion of Scientology, he also authored very effective technologies for

handling society's ills and bettering the lot of mankind as a whole. Over time, these technologies have developed into four general social-betterment programs, each addressing a specific area of current social concern: Narconon, a drug rehabilitation program; Applied Scholastics, an educational program; Criminon, a criminal rehabilitation program; and a program for improving public morality in general based on a nonreligious moral code called "The Way To Happiness." The public has come to associate the four names Narconon, Applied Scholastics, Criminon and The Way To Happiness with highly effective and successful programs to better society.

For many years, CSI and other churches of Scientology have conducted highly-successful social reform programs based on Mr. Hubbard's technologies. They conducted these programs either directly or in close conjunction with charitable and educational organizations formed to help them bring Mr. Hubbard's technologies to the secular world. In addition, churches of Scientology support and work closely with several other charitable organizations that are active in various fields of public interest, particularly combating psychiatric abuse and governmental corruption.

1. Association for Better Living and Education

The bulk of CSI's social betterment program is carried out under the supervision and direction of Association for Better Living and Education ("ABLE"), a California nonprofit public benefit corporation.

ABLE's sole purpose is to improve society through the application of Mr. Hubbard's social betterment technologies. In general, ABLE promotes, funds and provides assistance to organizations that use L. Ron Hubbard's technologies in education, in rehabilitating drug abusers and criminals, and in raising public morality in general.

ABLE accomplishes its goals primarily by providing technical and financial assistance and general promotional support to the international social-betterment organizations that work in ABLE's four areas of concern: Narconon International (drug rehabilitation); Applied Scholastics (education); The Way To Happiness Foundation (public morality); and, though not yet incorporated, Criminon (criminal rehabilitation). These four international organizations, in turn, assist organizations that work in their respective fields at the local level.

ABLE is responsible for ensuring that the programs that use the names referring to Mr. Hubbard's social-betterment technologies -- Narconon, Applied Scholastics, The Way To

Happiness and Criminon -- meet the high standards of quality with which they have come to be associated. ABLE discharges this responsibility by permitting the international social-betterment organizations and local organizations to use the names subject to ABLE's ultimate supervision.

ABLE assists social-betterment organizations in other ways. It provides technical assistance when necessary to help them to better achieve their program goals. It helps raise funding to support their charitable programs. It promotes their programs throughout society through the printed media as well as radio and television. It also will provide social-betterment organizations the physical facilities necessary to house their charitable and educational programs.

The IRS has issued a ruling letter recognizing that ABLE is a tax-exempt charitable organization under section 501(c)(3).

a. Narconon International

Narconon -- meaning "non-narcosis" or "no drugs" -- started in the mid-1960s when a prisoner in the Arizona State Penitentiary applied principles expounded in one of Mr. Hubbard's books to solve his drug problem as well as the drug problems of many of his fellow inmates. This one-man crusade flourished into a grassroots movement that eventually moved from penal institutions out into society as a whole.

Today, the Narconon program has developed into a two-pronged assault on the world's drug problem: it encompasses an extraordinarily effective residential rehabilitation program as well as an objective, hardhitting public education program. At present, there are 33 residential Narconon centers in various countries, including the United States, Canada, Spain, Italy, Switzerland, France, Germany, Holland, Sweden, Denmark, and the United Kingdom. Current plans are to establish a Narconon center near each of the 100 largest cities in the world.

Narconon International is a nonprofit California charitable corporation formed in 1970 to formalize what was then a loose, grassroots movement, to give overall guidance and technical assistance and support to local organizations that use Mr. Hubbard's technology to rehabilitate drug users. Narconon helps establish Narconon programs throughout the world, and provides local centers the same sort of guidance and technical assistance and support that ABLE provides it. Narconon International also permits local centers to use the name Narconon.

The IRS has issued a ruling letter recognizing that Narconon International is a tax-exempt charitable organization described



in section 501(c)(3). In addition to Narconon International's own exemption ruling, the IRS has issued a group exemption letter authorizing it to extend its tax exemption to all local Narconon organizations that are subject to its supervision. At present, there are 6 local Narconon centers in the U.S. that are tax-exempt under Narconon's group ruling.

b. Applied Scholastics, Inc.

Applied Scholastics has overall responsibility for furthering the application of Mr. Hubbard's educational technology throughout society as a whole. This technology consists of a number of very basic yet powerful principles of learning that Mr. Hubbard developed into a methodology for grasping any subject of study. This technology already is bringing about remarkable results throughout the world in improving the ability of individuals to learn and to apply what they learn. The technology is in use in schools and by tutors the United States, Canada, Russia, China, Pakistan, Australia, South Africa, Latin America and much of Europe. More than 30 schools ranging from pre-school to high school are using this technology in the United States.

The IRS has issued a ruling letter recognizing that Applied Scholastics is a tax-exempt educational organization under section 501(c)(3). The IRS also has issued a group exemption ruling authorizing Applied Scholastics to extend its exemption to local schools subject to its supervision. At present, 3 schools are exempt under Applied Scholastic's group exemption letter. More than 20 other schools are exempt with separate rulings.

c. The Way to Happiness Foundation

The Way To Happiness Foundation takes its name from Mr. Hubbard's book, The Way To Happiness, a very basic, non-religious moral code of fundamental principles and values for living an ethical and happy life. Since it was first published in 1981, tens of millions of copies of The Way To Happiness have been distributed throughout the world, and it has served as the genesis of thousands of community and school programs to combat moral decline and juvenile delinquency.

The IRS has issued a ruling letter recognizing that the Foundation is a tax-exempt charitable organization under 501(c)(3).

d. Criminon

Criminon (meaning "no crime") is a social betterment program using Mr. Hubbard's technologies to rehabilitate criminals in the

penal system. It currently consists of a system of several independent and supervised courses and drills, including an extension course based on The Way To Happiness, that have been carried out as special projects between Narconon International and interested volunteers. As Criminon programs become better established, they will work within the penal system to provide needed assistance and help bring about necessary reforms and also will work closely with Narconon programs to address drug use in prisons, a major problem in criminal rehabilitation. However, no separate Criminon organization has been formed as of this date.

## **2. Citizen's Commission on Human Rights**

Citizen's Commission on Human Rights ("CCHR") is a research and educational organization dedicated to investigating, publicizing and eradicating violations of human rights committed through the guise of psychiatric "treatments" and to recommending viable alternatives to such practices through an extensive program of objective educational and outreach activities. It works in close liaison with a social reform program sponsored by Scientology churches and serves as a clearinghouse and coordinating body for the many local CCHR chapters that are forming throughout the world.

The IRS has issued a ruling letter recognizing that CCHR is a tax-exempt charitable organization under section 501(c)(3). The IRS also has issued a group exemption ruling that authorizes CCHR to extend its exemption to its subordinate CCHR chapters. At present, 4 local CCHR chapters in the U.S. are exempt under CCHR's group ruling letter.

## **3. National Commission on Law Enforcement and Social Justice**

National Commission on Law Enforcement and Social Justice ("NCLE") is a nonprofit corporation that operates exclusively for the purpose of guarding against and correcting abuses resulting from corruption in law enforcement and other governmental agencies that violate the United States Constitution or the Universal Declaration of Human Rights. NCLE accomplishes its purpose by conducting research, investigating potential instances of corruption and publishing its findings.

The IRS has issued a ruling letter recognizing that NCLE is a tax-exempt charitable organization under section 501(c)(3).

## **4. Churches of Scientology**

In addition to the social-betterment activities carried out under the auspices of ABLE, CCHR and other organizations formed

for this purpose, as described above, Scientology churches and individual Scientologists also conduct community projects and social reform actions directly. For example, CSI publishes a periodical magazine in order to bring to public attention areas of society in need of reform. Scientology churches have united other groups in their communities in "Say No To Drugs" campaigns, promoting anti-drug slogans through concerts, marches and distribution of promotional materials. Other community outreach activities in which Scientologists and Scientology churches are active include campaigns to improve the environment and to assist children, the elderly and other neglected individuals.

#### **E. Membership Organizations**

Over the years, the religion of Scientology has had several different membership programs. At present, there are two. One, the Sea Organization, is a Scientology religious order and is composed of Scientologists who have dedicated their lives to the religion. The other, International Association of Scientologists, is a membership program open to clergy and laity alike, serving as an expression of its members' desire to propagate the faith.

##### **1. The Sea Organization**

The Sea Organization (or "Sea Org") is a religious order of the Scientology faith. It is made up of men and women who have pledged their lives to the Scientology religion. Members of the Sea Organization also generally serve on the staff of Scientology churches and related organizations. There are approximately 5,000 Sea Org members around the world who serve on staff of Scientology churches.

Initially, the Sea Organization consisted of a small group of Scientologists who were accompanying Mr. Hubbard in the mid-1960s while he researched the upper levels of spiritual awareness aboard a sea-going ship. In 1969, members of the Sea Organization left the ship and established Scientology churches in the United Kingdom and the United States to minister the higher levels of Scientology religious services. At present, all churches of Scientology that minister religious services above the level of a Class V church are staffed primarily, if not entirely, by members of the Sea Organization.

In order to join the Sea Organization, Scientologists must sign a Sea Organization contract dedicating their lives to the Scientology religion for the next billion years. They then must activate that contract by successfully completing a vigorous training program.

There are marked differences between church staff who are members of the Sea Organization and staff who are not members. In addition to their eternal commitment to the religion, Sea Org members share tradition and lifestyle. They wear maritime uniforms when on duty and have a merit-based maritime rank and rating system and etiquette. Sea Org members live communally in church-provided berthing and eat in common dining halls. They generally receive a small weekly allowance (currently \$50 per week) and occasional small performance bonuses plus uniforms and medical, dental and child care and education for their children. In some instances, Sea Org members serving in secular corporations receive minimum wage as required by law -- in which case they pay for their own living expenses.

The Sea Org has no organizational existence apart from the corporate and ecclesiastical hierarchy of the Scientology religion. While rank is an honor and is accorded prestige and respect with the Sea Organization, it is separate and distinct from the level of authority one has in the Church hierarchy. Relationships where a person holding a lower rank is in a senior capacity to one holding a higher rank are not uncommon in the Church hierarchy.

## 2. International Association of Scientologists

Since 1984, CSI has recognized International Association of Scientologists ("IAS") as the membership organization for all individual Scientologists. IAS is an unincorporated religious membership association composed of individuals, churches of Scientology and national associations of Scientology. Its purposes are to assure the continued practice and expansion of Scientology throughout the world, to assist churches of Scientology when needed, and to maintain communication with Scientologists on matters of common concern. It is supported entirely by contributions from Scientologists throughout the world.

The IRS has issued a ruling letter recognizing that IAS is a tax-exempt religious organization under section 501(c)(3). However, since IAS is not organized in the United States, contributions to it do not qualify for the charitable contribution deduction against federal income taxes even though it is exempt from tax on its income from United States sources. In order to secure tax deductible funding from United States residents, IAS has established a separate charitable trust in the United States, United States Member's Trust, to raise such funding. The IRS has issued a ruling letter recognizing that United States Member's Trust is a tax-exempt religious organization under section 501(c)(3) and qualified to receive tax-deductible charitable contributions.

## **F. Miscellaneous Organizations**

The Church of Scientology maintains two corporations that serve a special function for the ecclesiastical hierarchy with respect to the interests of individual Scientologists who operate their own businesses and who would like to utilize organizational management techniques that Mr. Hubbard developed in their businesses. The Church has grouped all activities relating to these interests in two secular organizations. In this way, Scientology Churches and their related religious organizations are able to focus their activities exclusively on their religious ministry.

### **1. World Institute of Scientology Enterprises**

World Institute of Scientology Enterprises ("WISE") is a California nonprofit religious corporation. It is a membership organization comprised of businessmen, businesswomen and other professionals in many fields who recognize that the principles of organizational management and administration developed by Mr. Hubbard for use in churches of Scientology has a broad application to any group -- be it a social club, a business or a government body. WISE members share a common goal of improving both their own organizations and society at large through the application of Scientology administrative and ethics technologies.

In addition to its fellowship activities, WISE also performs several essential support functions for the hierarchical church with respect to the Church's relationships with privately-owned businesses that wish to use Mr. Hubbard's organizational technology or the marks associated with this technology. Because WISE deals directly with these outside companies, the churches and other organizations in the ecclesiastical hierarchy can better focus on their ministries.

For example, WISE ensures that Scientologists who operate commercial enterprises do not interfere with church activities by conducting or soliciting business on church premises or hiring church staff members. WISE also licenses organizations offering secular services on organizational management that wish to use the marks associated with the administrative technology, or secular works derived from Mr. Hubbard's copyrighted works in their business. WISE actively supervises their relevant activities to ensure their usage does not violate Scientology Scriptures or pose problems to the hierarchical church. Church of Scientology International exercises supervisory authority over WISE to ensure it also is in compliance with Scientology Scripture.

WISE also sponsors local Charter Committees which assist other members to quickly and equitably settle business disputes utilizing Scientology ethics and justice procedures.

## 2. Hubbard College of Administration

The Hubbard College of Administration (the "College") is a California nonprofit public benefit corporation formed for the purpose of educating interested members of the general public in theories and techniques of administration based on principles developed by L. Ron Hubbard concerning the structure, management and administration of organizations (the "administrative technology").

The College's program of educational activities consists of providing courses, workshops and seminars to the general public in the administrative technology, teaching individuals how to educate others about the administrative technology, establishing other Hubbard Colleges of Administration throughout the World that will conduct similar activities on a local level, and compiling publications and course materials on organizational administration and management.

The College also has assisted in the establishment of Hubbard Colleges of Administration in other cities in the United States and abroad. These colleges duplicate the College's activities on a more local or regional level. There currently are 19 such local Colleges located in the United States and abroad.

The IRS has issued a ruling letter recognizing that the College is a tax-exempt educational organization under section 501(c)(3). The IRS also has issued the College a group ruling letter authorizing it to extend its exemption to all local colleges subject to its supervision. At present, 2 local colleges are tax-exempt under the College's group exemption letter.

**TAX EXEMPTION ISSUES -- CHURCH AND RELIGIOUS STATUS**

The religious character of Scientology has long been recognized in cases both in the United States and abroad.<sup>1</sup> In many of these cases, expert witnesses in theology and comparative religion have testified that Scientology more than satisfies any applicable academic or philosophic definition of religion. After more than 40 years of history as a distinct religious denomination, there is no legitimate issue as to the "religiosity" of Scientology.

The recent IRS exemption rulings are specifically based on the IRS' determinations that the various Scientology organizations are organized and operate exclusively for Scientology religious purposes and that these purposes are consistent with the definition of religion under section 501(c)(3) of the United States Internal Revenue Code ("Code"). In these rulings, the IRS also specifically recognized that a number of these Scientology organizations qualified as "churches" under the Code: RTC, CSI and its subordinate churches, SMI and its subordinate missions, CSFSSO, CSFSSO, CSWUS and CST. The IRS had previously recognized other Scientology churches as tax exempt churches continuously since the late 1970s.

"Church" status under the Code confers a number of special privileges. See, e.g., Code § 170(b)(1)(A)(i) (deduction for charitable donations to churches), § 508(c)(1)(A) (churches not required to apply to IRS for recognition of exemption), and § 3121(w) (churches may elect to be excluded from Social Security). Although every church under the Code is a religious organization, not every religious organization is a church. Church status is limited to those religious organizations that demonstrate certain denominational and associational elements.

The IRS and the courts employ a fourteen-factor "facts and circumstances" test in determining whether a religious organization should be classified as a church.<sup>2</sup> While a religious organization need not need not satisfy all or even most of these fourteen criteria, the record before the IRS established that CSI and the other Scientology organizations the IRS recognized as churches satisfied substantially all of them:

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<sup>1</sup> The numerous judicial recognitions of Scientology as a bona fide religion are described at the end of this summary.

<sup>2</sup> Internal Revenue Manual 7(10)69, Exempt Organizations Examination Guidelines Handbook, §321.3(3) (Apr. 3, 1982). In addition, the Service will consider "[a]ny other facts and circumstances which may bear upon the organization's claim for church status." Id., §321.3(3)(c).

1. Separate Existence:

All churches of Scientology are separately incorporated.

2. Own Religious Creed and Form of Worship:

Scientology has its own religious creed, which is contained in the Scripture and is set forth in the articles or bylaws of every Scientology church and mission. Scientology also has a recognized form of worship: its core sacramental and sacerdotal services -- auditing and training -- are distinct from those of any other religious denomination.

3. Its Own Definite and Distinct Ecclesiastical Government:

Scientology has a definite and distinct ecclesiastical government under the ecclesiastical authority of CSI, the Mother Church, and RTC, which owns and supervises Scientology's religious technologies and marks. Ecclesiastical governance is set forth in published Scientology administrative policy and through written covenants by which subordinate churches are allowed to use the Scientology marks and in essence to call themselves Churches or Missions of Scientology.

4. Formal Code of Doctrine and Discipline:

Scientology doctrine is set forth in the research, writings and recorded lectures of its Founder, L. Ron Hubbard, which collectively constitute its Scripture. These Scriptures are the sole source of all doctrines, tenets, sacraments, rituals and policies of the Scientology faith and encompass more than 500,000 pages of writings, nearly 3,000 taped lectures and over 100 films. Scientology doctrine also includes a code of social conduct, generally referred to as the Scientology System of Ethics, enunciated throughout Scientology Scripture both in general principle and actual application. The guidelines and rules of Scientology ethical conduct influence all aspects of Scientologist's existence. Scientologists are expected to apply these to themselves through self-discipline help them lead ethical and productive lives.

5. Distinct Religious History:



Scientology was formed in the early 1950s as the research of its founder, L. Ron Hubbard, revealed the human spirit. Although Scientology possesses certain structural aspects similar to Buddhism, Hinduism and other Eastern religions, its core beliefs and practices are unique. Scientology is not in any way an outgrowth or continuation of any other religion. CSI was formed at a time in the development of Scientology where Church management determined it necessary to align its legal structure with its ecclesiastical structure to place functions that belong at different levels of the hierarchy in separate organizations and to separate organizations holding ecclesiastical management functions from organizations directly ministering religious services. The new structure also was necessary to enable the orthodox practice of Scientology to continue and grow following the death of its founder, L. Ron Hubbard.

6. Membership Not Associated with Any Other Church or Denomination:

Although the Church of Scientology does not require members to renounce other religious beliefs or membership in other churches or religious orders, as a practical matter, most Scientologists become fully involved with Scientology to the exclusion of any other faith. Scientology is not in any way an ecumenical or pantheistic organization that seeks to bring together people of different faiths to celebrate their commonalities. It is a unique faith, and members must accept and embrace Scientology as such to progress through Scientology's path to spiritual enlightenment.

7. Organization of Ordained Ministers.

Scientology has no organization of ordained ministers. It does have a religious order, the Sea Organization. Membership in the Sea Org order represents an individual's spiritual commitment to serve the Scientology faith in this life and subsequent lives for the next billion years.

8. Ordained Ministers Selected After Completing Prescribed Studies:

Scientology ordains its ministers only after completion of prescribed studies, as set forth in its Scriptures. To qualify for ordination a minister must be in good standing with CSI as the Mother Church and must have completed seminary training which includes: the study of the basic tenets and doctrines of the Scientology religion; study of the ministry of Scientology religious technology to assist the sick or injured; study of counseling people with marital, familial or other problems; study and conduct of Scientology religious ceremonies, including naming ceremonies (i.e., baptisms), marriages and funerals; and study of religion in general, including the history and basic tenets of the major religions of the world.

9. A Literature of Its Own:

Scientology's Scriptures -- the religious writings, recorded lectures and films of its founder, L. Ron Hubbard -- represent a religious literature unique to Scientology.

10. Established Places of Worship:

All Scientology churches maintain established places of worship within their premises in which they minister Scientology's fundamental religious services -- auditing and training -- to their parishioners.

11. Regular Congregation:

All Scientology churches have regular congregations since they have a membership to whom they regularly minister auditing and training religious services.

12. Regular Religious Services:

All Scientology churches have regular religious services. Churches minister auditing and training to the public generally from 9:00 AM to late at night (often 10:30 PM) each day, every day of the week. Parishioners receive auditing as appropriate during these periods and often participate in religious training during periods when they are not receiving auditing. Churches of Scientology also hold weekly services (usually on Sunday) for parishioners where a minister speaks concerning some aspect of the

Scientology religious technology. Finally, Churches also have other regular gatherings at which members discuss their beliefs and their progress through Scientology's path to spiritual enlightenment.

13. Religious Instruction of The Young:

Study of the Scientology Scripture is available to any person of any age so long as he or she is able to comprehend the information contained in the Scripture. CSI has published much Scriptural material specifically for children in order to make the information more accessible at an early age. Thus religious instruction of children is available at any church of Scientology as soon as the particular child has a suitable level of comprehension. Many individual churches provide more formal arrangements for the religious instruction of members' children.

14. Schools for Preparation of Ministers:

Every Church of Scientology offers courses in the religion for the preparation of its ministers and has the ecclesiastical authority to ordain qualified ministers. As discussed above under Factor 8, ministerial training is formal in that there are specific things all clergy must learn before ordination.

Recent decisions in the United States Tax Court also adopt a fifteenth factor -- that an organization "serve an associational role in accomplishing its religious purpose in order to qualify as a church." Church of Eternal Life and Liberty v. Commissioner, 86 T.C. 916, 924 (1986). The associational role need not be primary, but it must be more than incidental. Foundation of Human Understanding, 88 T.C. 1341, 1360-61 (1987).

The administrative record developed by the IRS in CSI's exemption proceeding, also establishes that Scientology serves the necessary "associational" role to qualify as a church. Churches of Scientology have distinct, coherent groups of members who join together within the aegis of their churches to practice their mutual religious beliefs. They come together to receive auditing and training in the Scientology Scripture, to celebrate Scientology religious holidays, and as a weekly gathering every Sunday. The record the Church provided the IRS unequivocally established to the IRS's satisfaction that this associational role is not incidental to other purposes but is a primary characteristic and principal activity of the Church.

In determining whether an organization is exempt from tax under Code section 501(c)(3) as a "religious" organization, the IRS does not evaluate or question the religiosity of professed religious beliefs. It determines whether the professed beliefs are sincerely held and whether they fill the same role in adherents' lives as do the beliefs of traditional religious denominations commonly recognized as such. In applying either multi-factor test described above, the IRS necessarily must examine how the professed beliefs are implemented in the organization's structure and operations. The IRS could not have concluded that any Scientology organization qualifies as a church without substantively accepting the religious character of Scientology. In so doing, they were in the company of many courts that have ruled that Scientology is a religion in all respects.

#### Official Recognition of Scientology as a Religion

Courts and various governmental agencies in the United States, Europe and other countries have repeatedly determined that Scientology is a bona fide religion. The following are examples of some of the court rulings and agency determinations concerning Scientology's religiosity:

After reviewing the judicial precedents concerning the religiosity of Scientology, the United States Eleventh Circuit Court of Appeals in Church of Scientology Flag Services Organization v. City of Clearwater, September 30, 1993, stated:

The history, organization, doctrine and practices of Scientology have been thoroughly recounted in numerous judicial decisions. We need not reiterate this background because the district court found that no genuine factual issues existed to dispute Scientology's claim of being a bona fide religion.

In another decision by the Oregon Court of Appeals on May 1, 1982 on Christofferson v. Church of Scientology of Portland, the court stated:

We have found that it is established in this case that the mission is a religious organization and that Scientology is a religion.... These facts may be highly persuasive evidence of the contention that the courses and auditing plaintiff received were religious in nature and that the statements made regarding their nature and efficacy were religious statements.

On January 19, 1983, in Founding Church of Scientology of DC v. Director, Federal Bureau of Investigation, the United States District Court, District of Columbia, ruled:

The Church of Scientology must be treated the same as any established religion or denominational sect within the United States, Catholic, Protestant or other.

On October 27, 1983, the High Court of Australia, in Church of the New Faith v. the Commissioner for Payroll Tax, found:

The conclusion that it [the Church of Scientology] is a religious institution entitled to the tax exemption is irresistible.

On February 27, 1984 the United States District Court, Central District of California, in Peterson v. Church of California, ruled:

This court finds that the Church of Scientology is a religion within the meaning of the First Amendment. The beliefs and ideas of Scientology address ultimate concerns--the nature of the person and the individual's relationship to the universe. The theories of Scientology involve a comprehensive belief system. Additional indicia of the religious status of Scientology include the following: a) Scientology has ordained ministers and ceremonial functions; b) it is incorporated as a tax-exempt religious organization; and c) it characterizes itself as a church.

On January 30, 1985, in In Re Karl-Friedrich Mung, the Stuttgart District Court ruled:

[The Church of Scientology's] purpose in this world is considered to help man in his striving for spiritual freedom and to completely free him from problems and burdens to reach total freedom in order to recognize himself as a spiritual being and experience the existence of a Supreme Being. . . .

In Hernandez v. Commissioner of Internal Revenue, on June 5, 1989, the United States Supreme Court, found as follows:

Scientology was founded in the 1950's by L. Ron Hubbard. It is propagated today by a mother church in California and by numerous branch churches around the world. The mother church instructs laity, trains and ordains ministers, and creates new congregations... Scientologists believe that an immortal spiritual being exists in every person. A person

becomes aware of this spiritual dimension through a process known as auditing.... The Church also offers members doctrinal courses known as training. Participants in these sessions study the tenets of Scientology and seek to attain the qualifications necessary to serve as auditors.... Scientologists are taught that spiritual gains result from participation in such courses.

And in Italy, in the case of State v. Eight Defendants, Trento C., the court made the following finding:

Scientology ... has the target to achieve an inner and outer freedom, one that transcends the human, one that belongs to the field of spiritual things, and that moves up to infinity; indeed, the progress toward realization of the eighth dynamic force - concerning Infinity and God - actually is the characteristic that describes Scientology a religion and as a church.

In the Supreme Court of the State of New York, on January 31, 1994, in the case of Jo Ann Scrivano v. The Hubbard Dianetics Research Foundation Inc., et al., the court ruled:

Assuming the church to be a religion, the adjudication of the tortious conduct alleged in the complaint necessarily involves an adjudication regarding the merits of the practice of auditing, a spiritual precept of the religion. Accordingly, the Court finds that the complaint must be dismissed as defendant enjoys a First Amendment immunity.

Scientology is treated as a religion with respect to all facets of its activities by courts and agencies at all levels of government. A number of court decisions in Germany dealing with taxes, solicitation, dissemination practices and other issues have all found that Scientology is a religion. In Canada, the United States, Australia and in other countries, Scientology ministers are officially recognized as ministers of religion allowing them to perform marriages. Churches of Scientology are registered in countries throughout the world as religious organizations, including former communist countries such as Hungary and Russia. Churches of Scientology are recognized as exempt from value added tax in several European countries, including Holland, Belgium and Denmark.

In the United States alone, each of the following decisions has recognized Scientology as a religion:

Hernandez v. C.I.R., 490 U.S. 680, 109 S.Ct. 2136, 2141-2142 (1989) (Stipulation with Internal Revenue Service); Religious Technology Center v. Scott, 660 F.Supp. 515, 517-518 (C.D. Cal.

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1987); Religious Technology Center v. Wollersheim, 796 F.2d 1076, 1077 (9th Cir. 1986) cert denied (1987) 479 U.S. 1103; Founding Church of Scientology v. United States, 409 F.2d 1146, 1160, (D.C. Cir. 1969); Christofferson v. Church of Scientology of Portland, 57 Or.App. 203, 244; 644 P.2d 577, 601 (1982); cert denied (1982) 459 U.S. 1206, 1227; Siegleman v. Church of Scientology of New York, 475 F.Supp. 950, 953; Barr v. Weise (2d Cir. 1969) 412 F.2d 338, 340 (S.D.N.Y. 1979); Founding Church of Scientology v. United States, 412 F.2d 1197 (D.C. Cir. 1969); Church of Scientology of Hawaii v. United States, 485 F.2d 313, 314 (9th. Cir. 1973); Brown v. Commissioner of Internal Revenue 62 T.C. 62 (1974); Church of Scientology of California v. Laurel Sullivan, et al., United States District Court Central District of California, Case No. CV 85-3075-R; Church of Scientology of California v. Gerald Armstrong, et al., Superior Court of the State of California, County of Los Angeles, Case No. C 420153; Donald Bear v. Church of Scientology of New York, Church of Scientology, Mission of East Manhattan, Celebrity Center, Inc.; Church of Scientology, Mission of Fifth Avenue, Church of Scientology of California, United States District Court Southern District of New York, Case No. 81 Civ. 6864 (MJL); Peggy Bear v. Church of Scientology of New York, Church of Scientology, Mission of East Manhattan, Celebrity Center Inc.; Church of Scientology of California, United States District Court Southern District of New York, Case No. 81 Civ. 4688 (MJL); Carol A. Garrity and Paul Garrity v. Church of Scientology of California, et al., United States District Court Central District of California, No. CV 81-3260 CBM (Kx); Howard D. Schomer v. L. Ron Hubbard, Author Services, Inc., David Miscavige and Pat Brooker, United States District Court Central District of California, Case No. CV 84-8335-JSL (Kx); Thomas Jefferson v. Church of Scientology of California, et al., United States District Court Central District of California, No. CV 81-3261 CBM (Kx); Dana Lockwood v. Church of Scientology of California, et al., United States District Court Central District of California, No. CV 81-4109-CBM (Kx); Jane Lee Peterson and Richard J. Peterson v. Church of Scientology of California, et al., United States District Court Central District of California, No. CV 81-3259-CBM (Kx); Tonia C. Burden v. Church of Scientology of California, et al., United States District Court Middle District of Florida, Case No. 80-501-Civ-T-17; Gabriel Cazares and Margaret Cazares v. Church of Scientology of California, Merrell Vannier, Francine Vannier, Mary Sue Hubbard, L. Ron Hubbard and Joe Lisa, a/k/a Peter Joseph Lisa, United States District Court Middle District of Florida, Case No. 82-886-Civ-T-15; John G. Clark, Jr. MD. v. Norman F. Starkey, as Executor for the Estate of L. Ron Hubbard, United States District Court for the District of Massachusetts, Civil Action No. 85-356-MC; Church of Scientology of Boston, Inc. v. Michael J. Flynn, Commonwealth of Massachusetts, Suffolk, ss. Superior Court, Civil Action No. 79231; Earle Cooley v. Michael

J. Flynn, Commonwealth of Massachusetts, Suffolk, ss. Superior Court, Civil Action No. 81420; Paulette Cooper v. Church of Scientology of Boston, et al., United States District Court for the District of Massachusetts, Civil Action No. 81-681-MC; Church of Scientology of California, v. Paulette Cooper, Superior Court of the State of California for the County of Los Angeles, Case No. 78-2053-RMT; Bent Corydon v. Church of Scientology International, et al., Superior Court of the State of California for the County of Los Angeles, Case No. C 694401; Heber Jentzsch v. Bent Corydon, Superior Court of the State California for the County of Los Angeles, Case No. NVC 14274; John Carmichael v. Bent Corydon, Superior Court of the State of California for the County of Riverside, Case No. NVC 189 414; Roxanne Friend v. Church of Scientology International, et al., Superior Court of the State of California for the County of Los Angeles, Case No. BC 018003; Mary Sue Hubbard v. Ronald E. DeWolf, Michael J. Flynn, et al., Superior Court of the State of California for the County of Los Angeles, Case No. C 474 789; Michael J. Flynn v. Church of Scientology International, et al., United States District Court, Central District of California, Case No. CV 85-4853; Nancy McLean and John McLean v. The Church of Scientology of California, et al., United States District Court Middle District of Florida, Case No. 81-174-Civ-T-08; Church of Scientology of Nevada, et al. v. Eddie Walters, Ernest Hartwell, Mary Adell Hartwell, et al. and Ernest Hartwell, and Mary Adell Hartwell v. Church of Scientology of Nevada, et al., Eighth Judicial District Court of the State of Nevada in and for the County of Clark, Case No. A196800; Church of Scientology of California v. Michael J. Flynn, United States District Court, Central District of California, Case No. 83-5052, United States Court of Appeals in the Ninth Circuit V.A. No. 85-6305; LaVenda Van Schaick v. Church of Scientology of California, et al., United States District Court for the District of Massachusetts, Civil Action No. 79-2491-G; Julie Christofferson-Titchbourne v. Church of Scientology Mission of Davis, et al., Circuit Court of the State of Oregon for the County of Multnomah, Case No. A7704-05184; Martin Samuels v. Lafayette Ronald Hubbard, Circuit Court of the State of Oregon for the County of Multnomah, Case No. A8311-07227; Margery Wakefield v. The Church of Scientology of California, United States District Court Middle District of Florida, Case No. 82-1313-Civ-T-10. Hutchinson v. Church of Scientology of Georgia, Civ. Action No. D90315 (Superior Ct. of Fulton County, Georgia (April 5, 1993)).

These are cases from the United States. Numerous courts and other bodies outside the United States have made similar findings concerning the religiosity of Scientology. Some are described below.



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CANADA:

In Board Decision dated May 1, 1990, relating to property taxes, the Church of Scientology of Vancouver, B.C. was ruled to be a religious organization. (Province of British Columbia, Assessment Appeal Board in the Matter of the Appeal of Church of Scientology of British Columbia v. Assessor of Area #09.)

Church of Scientology of Alberta has been recognized as religious by the Province and has been accepted under the Marriage Act which allows Church members in Alberta to perform marriages. (Letter from Acting Director of Alberta Division of Vital Statistics, Edmonton, Alberta, Canada, October 17, 1990.)

The Provincial government of Quebec granted the Church of Scientology of Quebec the status of being a church. (Letter from Inspector General of Financial Institutions, Quebec, December 21, 1993.)

DENMARK:

In a letter dated June 18, 1986 the Danish Value Added Tax Board ruled that Scientology is a religion and exempt from VAT.

FRANCE:

On November 20, 1986, the Head of the Social Security Department in Paris issued a decision ruling that the relationship between Church staff and the Church is purely religious.

GERMANY:

The Stuttgart District Court issued a decision finding that the Church is a religious community which offers teachings based on religious tenets. (Decision of the Stuttgart District Court, No. 13 C 3687/76, December 8, 1976, Hans Peter Fuger v. Stuttgart Church.)

On January 7, 1993, the Regional Court in Munich found that Scientology is a religious belief that cannot be scientifically assessed and the services are of a religious nature. (Regional Court of Munich I, 6th Chamber for Civil Matters. No. 6 O 5709/82, 6 O 6 6895/82, January 7, 1993, Kager v. SKD, Extl v. SKD.)

On May 20, 1985, the District Court of Stuttgart ruled that the Church's dissemination activities are part of the pursuit of its religion. (District Court of Stuttgart, No. 33 OWI 13691/84, May 20, 1985.)

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On February 17, 1988, the Superior Court of Hamburg ruled that Scientology is a bona fide religion and an association that is not only united for ideological purposes but also pursues a transcendental purpose. (Superior Court of Hamburg, No. 71 T 79/85, February 17, 1988).

A similar ruling was made on October 12, 1988 by the Administrative Court of Berlin, ruling that the Church is philosophically active and the promotion of its tenets is protected under Article 4 of the Constitution. (Administrative Court of Berlin, No. VG 1 A 73.86, October 12 1988, Scientology-Kirche Berlin v. the State of Berlin.)

On September 4, 1990, the Administrative Court of Frankfurt determined that the Church of Scientology is a religious and ideological association. The Court's reasoning included finding that three characteristics of a religion could be established: 1) it must be a voluntary association of not less than two persons with a minimum of organizational structure that does not depend on legal or civil status as per public or civil law and does not depend on its numerical strength or social relevance. 2) There must be some consensus of the purpose of human existence (origin, purpose, goal, transcendence) as well as basic principles of individual conduct. It is not required that this consensus can be inferred from a dogmatically fixated, systematically conclusive creed or ideological denomination. 3) A religious or ideological community strives for and practices its purposes and dogma (consensus) and this is visible to the outside world. The Church of Scientology fulfills these requirements. (Administrative Court of Frankfurt/Main, No. IV/2 E 2234/86, September 4, 1990, Scientology Mission of Frankfurt v. City of Frankfurt.)

On May 27, 1992, the 4th Civil Section of Regional Court of Frankfurt, found that there is no evidence of profiteering by the Church and the value of the services cannot be measured by mark value as they are spiritual services aimed by the plaintiffs to fulfill their own personal spiritual needs. 4th Civil Court of Regional Court of Frankfurt, No. 2/4076/92, May 27, 1992, Gebauer v. Church of Scientology of Frankfurt.)

The Stuttgart District Court ruled on December 9, 1992, that auditing is a religious activity, and it is the focus of the religious practice of the Church. (Stuttgart District Court, No. 27 O 417/92, December 9, 1992, Graf v. Dianetics Center Stuttgart.)

On February 24, 1993, the Regional Court of Frankfurt ruled that the delivery of the services are part of a religious and life-philosophical character and based on the principle of free

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religious practice. (Regional Court of Frankfurt/Main, No. 2/4 0 235/92, February 24, 1993, Koch v. Church of Scientology of Frankfurt.)

HUNGARY:

The Registration document from the Court of the City Capital, in Hungary, dated July 17, 1991, states that the Church of Scientology of Hungary is a recognized and registered religious organization.

ITALY:

The Magistrate of the Lower Court of Novara ruled on March 15, 1985 that Church staff perform voluntary services for religious and community purposes which fall outside the purview of employer/employee relationships.

On March 27, 1990, the Tax Court of First Instance of Monza ruled that the nature of activities carried out by the Church are aimed at the dissemination of doctrinal and also religious principles. (Appeal of Luciano De Marchi.)

On March 27, 1990, the Trento Court of Appeals Criminal Division, ruled that Scientology has the purpose to achieve an inner and outer freedom, that transcends the human and belongs to the field of spiritual things moving up to infinity; the progress towards realization of the force concerning infinity and God is the characteristic that describes Scientology as a religion and as a Church.

The Tax Court of First Instance of Torino, ruled on September 20, 1990 that the various practices of Dianetics and Scientology when applied to Church parishioners are the Church's road to salvation. (Tax Court of First Instance of Torino, No. 0734.)

On February 21, 1991, the Tax Court of First Instance of Como - Sixth Section, ruled that the Association "Dianetics & Scientology Institute" is of a religious nature. (Tax Court of First Instance of Como.)

On April 15, 1991, the Tax Court of First Instance of Milano, ruled that the National Association of the Church of Scientology of Italy is a religious association. (Tax Court of First Instance of Milano, No. 12580 12581/1988.)

On April 19, 1991, the Tax Court of First Instance of Lecco, determined that the activity of the Scientology association essentially consists of the propagation of its religious

philosophy by means of courses and books sold and their pursuit of a philosophical and religious purpose. (Tax Court of First Instance of Lecco, No. 948/91.)

On December 11, 1991, the Tax Court of First Instance of Novara, ruled that when applied to followers of the creed, the practices of Scientology are its chosen way to salvation. (Tax Court of First Instance of Novara, in Decision No. 1910/91.)

On May 14, 1992, the Tax Court of First Instance of Verona, ruled that it was undisputed that the books and courses of Scientology concern the in-depth development of the Scientology religion as founded by L. Ron Hubbard. The books present a philosophical theory and religious background that has expanded into many countries with millions of followers. (Tax Court of First Instance of Verona, No. 165/4/92.)

On February 25, 1992, the Tax Court of First Instance of Monza, ruled that the Church of Scientology Monza is a religious establishment which has the purpose to spread the principles contained in the works of Lafayette Ronald Hubbard. (Tax Court of First Instance of Monza, No. 597.)

#### **SOUTH AFRICA:**

In a letter from the Department of Finance Controller of Customs and Excise, Johannesburg, dated April 28, 1993, it was acknowledged that the Church of Scientology of South Africa is a religious body and exempt from importation tax.

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Scientology is a religion. The Church's purposes and all its activities are exclusively religious and always have been, a fact the courts have found time and again. The Church of Scientology and its religious and charitable organizations have qualified for tax exemption since they were originally formed, starting 40 years ago. With their determination letters of October 1, 1993, the IRS has now acknowledged that fact.

## INUREMENT

A fundamental requirement for an organization to qualify for exemption under section 501(c)(3) is that no part of its net earnings inure to the benefit of any private individual. Section 501(c)(3), Treasury Regulations section 1.501(c)(3)-1(c)(2). The prohibition against inurement is strictly applied with respect to an organization's "insiders": no part of an organization's earnings can be used to benefit any person who has a personal interest in the organization, specifically including the organization's trustees, directors, officers, employees, members and contributors. Treasury Regulation 1.501(c)(3)-1(c)(2); 1.501(a)-1(c); IRS Internal Revenue Manual - Administration, pt. 7751 (IRS Exempt Organizations Guide) 332.

The rule against inurement is absolute. Individuals may not personally benefit from an organization's earnings, no matter how small the amount involved may be. Even an amount as insignificant as \$825.00 that is used to benefit a private individual will result in loss of tax-exempt status. See Spokane Motorcycle Club v. United States, 222 F.Supp. 151, 152 (E.D. Wash. 1963).

An important exception to this rule necessarily exists to permit an organization to provide compensation to insiders as well as third parties for any services (and goods) they may render to the organization that are necessary for accomplishing its exempt purpose. World Family Corp. v. Commissioner, 81 T.C. 958, 968 (1983); Broadway Theatre League of Lynchburg, Va. v. United States, 293 F.Supp. 346, 355 (W.D. Va. 1968). However, this exception is strictly construed, and any compensation paid must be reasonable in light of the services actually performed or goods supplied. Senior Citizens of Missouri, Inc. v. Commissioner, 56 T.C.M. (CCH) 479, 482 (1988). This means that the compensation must be reasonable both in amount and in the manner in which it is determined. If the compensation in question is excessive in light of the services performed, or if it is not determined pursuant to some objective standard by the organization as a whole (rather than the interested individual), then the payment must be treated as inurement.

The IRS undertook an extensive examination of the Church's system of compensation for both staff and third parties to ensure that neither inurement nor the potential for inurement existed. As an initial matter, the IRS asked numerous questions to identify every individual "with fiduciary responsibility to prevent asset diversion" and "who would be most likely to benefit if, in fact, inurement exists." In response to the IRS's questions, the Church provided the IRS with a complete description of the Church's ecclesiastical management structure, including all planned changes for the next five years, and the

names of all individuals holding high positions in ecclesiastical management and finance. It provided the IRS with the identity of individuals authorized to appoint members of the Church's highest management committees. It also provided the IRS with a complete description of the workings of the Sea Organization, Scientology's religious order, as well as its internal system of ranking and the identity of those individuals holding the ten highest positions.

The IRS extensively focused on the various forms of compensation, the amounts and values involved, and the manner in which each was determined. In response to the IRS's questions, the Church described all forms of compensation provided to staff (whether taxable or not), including pay and non-monetary benefits, and whether and how this compensation was reported to the IRS.

The Church identified the 20 individuals with the highest level of compensation on an aggregate basis from all Scientology organizations for the prior three years, including their spouses, and the amounts paid and a description of the services rendered. It gave the total compensation on an aggregate basis from all Scientology organizations for the most senior executives in the ecclesiastical hierarchy (22 specified individuals), including their spouses and, for the highest officials, their extended families, for the prior three years.

The Church provided the IRS with copies of all federal tax forms that had been filed in the prior three years to report compensation paid to these individuals, as well as the same tax forms that had been filed by its most senior organizations, Church of Scientology International and Religious Technology Center and another important organization, Church of Spiritual Technology, for their personnel for specific years. In addition, the Church informed the IRS how much compensation had been paid for during prior three years to the officers, directors and trustees of every one of the 25 organizations that received an exemption ruling letter.

The IRS specifically inquired into the different methods for determining the various forms of staff compensation in addition to the basic \$30 to \$50 weekly allowance provided to members of the Sea Org (who compose most, if not all, of the staff personnel of the senior Scientology organizations).

In response, the Church provided the IRS with the details of the procedure by which compensation (as well as all other expenditures) is approved through the workings of the two management committees that authorize every expenditure of an organization's funds -- its Advisory Council and its Executive

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Council. The Church provided the IRS with the formula used to compute the nominal bonuses staff are paid for performance, length of service, and recognition of certain religious holidays. It provided actual documentation to verify specific expenditures for meals, lodging, training, healthcare and staff events. Individual IRS officials even inspected meal and berthing facilities for Church personnel.

The IRS conducted a similar inquiry into the compensation paid to third party vendors, such as contractors and professionals, and compensation to non-staff Church fundraisers, who are paid on a commission basis for their services (generally 10 to 15 percent of funds raised).

In response to IRS questions concerning third-party vendors, the Church provided the identity of the five highest paid vendors on an aggregate basis from all Scientology organizations for the prior three years, including the amounts paid, a description of the services rendered, and copies of all federal tax forms filed with the IRS to report the compensation in question. The Church also confirmed that there were no relationships between any third-party vendor and Church officials.

The IRS asked numerous, detailed questions concerning the Church's fundraising practices and method of compensating outside fundraisers. In response, the Church provided the IRS with copies of all Church policy concerning the compensation of fundraisers and information confirming that they must pay their own expenses. The church described the flow of funds raised and confirmed that no funds raised were deposited in the fundraiser's own bank account.

Finally, the IRS asked extensive questions concerning the Church's internal financial controls to verify that no opportunity exists for an individual to convert Church funds to his or her personal benefit. In response to these questions, the Church described the internal control procedures it had in place to guard against embezzlement at lower churches. It explained who would detect such an embezzlement if it ever occurred and how it would be detected. It also assured the IRS as to what action it would take against anyone who might make any such attempt.

The Church provided the IRS with a detailed description of the procedure for disbursing funds from the Church's central reserves, both to third parties and to other Churches. It provided the identity of the individuals with authority to approve disbursements, copies of actual approvals, representative samples of internal reporting systems concerning reserves, and the current status and balance of all reserve accounts.

Conclusion

The IRS thoroughly examined the Church's structure, the relationship between its various organizations and the flow of money among them. The IRS toured Church facilities and interviewed Church staff members. The IRS examined the Church's record-keeping system and looked at the actual records and asked questions concerning and was provided responses that detailed the Church's financial controls. The IRS looked at the amounts of compensation paid to Church staff and the forms of benefits provided to staff. The IRS inquired concerning and was provided extensive information concerning Church reserve accounts.

After an exhaustive review of the above factors, on October 1, 1993 the IRS ruled that CSI and other churches and organizations of Scientology qualify for tax exemption, thereby finding that there was no inurement or operation for the private benefit of any individual.



## OPERATION FOR A COMMERCIAL PURPOSE

A fundamental requirement for tax exemption under section 501(c)(3) of the Internal Revenue Code is that the organization not operate for a commercial purpose, which would be inconsistent with the statutory language that the organization operate "exclusively" for specified exemption related purposes (i.e., religious, charitable, educational). Essentially, this requirement prohibits a tax-exempt organization from functioning as a regular for-profit business enterprise. It complements the other fundamental statutory requirement that the organization's net earnings not inure to the benefit of private individuals.

Thus, an organization cannot conduct its affairs in a way that it simply is generating net profits that are diverted to private individuals (inurement) or that are accumulated simply to amass profits (commercial purpose). Rather, there must be some exemption-related reason for all net profits the organization receives and for all excess funds the organization has on hand or the organization cannot qualify for exemption.

Over the years the IRS and the courts have developed a multi-factor test for determining whether an organization is operating for a commercial purpose. These factors include (1) the existence of commercial competitors, (2) pricing of goods and services to maximize profits, (3) the accumulation of unreasonable amounts of reserves, and (4) the employment of commercial-like advertising methods. Four of these factors, commercial competitors, pricing and unreasonable reserves are the most important indicia of commercial purpose. Presbyterian & Reformed Publishing Co. v. Commissioner, 743 F.2d 148, 157 (3d Cir. 1984); Church of Scientology of California v. Commissioner, 83 T.C. 381, 475, 490 (1984), aff'd on other grounds, 823 F.2d 1310 (9th Cir. 1987); B.S.W. Group v. Commissioner, 70 T.C. 352, 358-60 (1978).

The IRS formally addressed commercial purpose twice during the past ten years. The first time was in an initial adverse ruling the IRS issued to CSI in January 1986 asserting that the Church operated for a commercial purpose because it allegedly (1) set contribution rates for services and prices for Scientology Scripture and other religious material at amounts designed to "maximize profits," (2) had accumulated an unreasonable amount of reserves for non-exemption-related purpose, (3) employed commercial-like methods of advertising, and (4) used commercial-like fundraising techniques. Note that the IRS did not raise the factor of commercial competitors because there are none -- a bona fide church has no commercial competition in propagating its religious beliefs.

The Church responded in July of 1986 and August of 1987 by providing the IRS with two extensive submissions, a Protest to the initial adverse letter and a supplement addressed specifically to the commercial purpose issue (the "Commercialism Submission"). The Commercialism Submission consisted of more than 4,300 pages of detailed financial and other factual information, expert affidavits and samples concerning its fundraising practices, promotional practices, pricing policies, extent of United States reserves, specific planned uses of its reserves, and reserves management in general. After the IRS reviewed the Commercialism Submission, it notified the Church that it was "fully satisfied" on the issue and that it had no further questions.

Subsequently, during the 1991-1993 negotiations leading up to recognition of the Church's exemption, the IRS once again formally addressed commercial purpose. However, this time the IRS limited its inquiry to Church reserves asking for current information concerning the amount of reserves, reserves management and planned expenditures from reserves. (The IRS was satisfied with respect to the other indicia of commercial purpose since all relevant Church practices had been discussed in the Commercialism Submission.) Once again the Church provided the IRS with up-to-date details of its reserves, reserves management and planned expenditures. As requested by the IRS, the Church expanded the information provided to include the relevant details of all Church reserves, including reserves held by Church organizations located both within and without the United States.

The Church also provided the IRS with extensive information relevant to the commercial purpose issue in litigation relating to the tax deductibility of fixed contributions made to the Church by its parishioners. In this litigation, the Church's fixed contribution structure, methods of promotion of its religious services, methods of setting contribution amounts and the relationship of such contributions to the Church's exempt goals were all thoroughly examined, as were comparable features in other religions, including the Jewish, Mormon, Roman Catholic, and certain Protestant faiths and eastern religions such as Buddhism and Hinduism. The information provided in this litigation, separately discussed below, was also directly relevant to the IRS's consideration of the pricing and advertising factors under the commercial purpose issue. This litigation was settled in October of 1993 with the IRS acknowledging that the fixed contributions made by the Church's parishioners are qualified for deduction as charitable contributions. (See separate discussion below).

The October 1, 1993 exemption rulings represent the IRS's conclusions as to commercial purpose: The Church has none, but

instead operates exclusively for tax-exempt religious purposes. Thus, after examining the Church's practices with respect to pricing, reserves, fundraising and advertising, the IRS concluded that all were consistent with the concepts of charity and religion under section 501(c)(3) and therefore qualified for exempt status. The breadth of the financial and other information on which the IRS based its conclusion encompasses all the specific factors the IRS addressed.

#### Advertising

With respect to the factor of commercial-like advertising, the Church provided the IRS with numerous representative samples of its media campaigns, both in print and on radio and television. It provided the IRS with extensive evidence of comparable advertising practices and material used by other religions, such as the Episcopal, Catholic, Mormon, Baptist and other Protestant faiths. It also established that its advertisements are truthful in nature.

In the litigation concerning deductibility of contributions by Church parishioners (separately discussed below) the Church obtained reports and testimony from experts on various religions concerning the use of fixed amounts for religious services in each of these faiths, including examples of their means of advertising such services. Close to 20 boxes of promotional and membership material from other religions was provided to the court and the IRS. This material showed examples of promotion of discounts, use of credit cards, availability of refunds and other commercial-like methods of promotion.

#### Fundraising

With respect to the IRS's concerns as to the Church's fundraising practices, the Church demonstrated that the commission basis on which it compensated fundraisers produced no conflict between serving the personal interests of the individual fundraisers and maximizing the extent to which its activities served exempt purposes, that sufficient controls existed to guard against the diversion of assets, that the percentage rates used were well within the percentages permitted under state law for fundraising commissions paid by charitable organizations, and that numerous other charitable organizations and religions compensated their fundraisers on a similar basis.

#### Pricing To Maximize Profits

As to pricing to maximize profits, the Church provided the IRS with extensive factual information in the Commercialism Submission showing that all matters concerning pricing are

determined pursuant to strict Scientology policy that seeks to accomplish its exemption-related goals, not to generate profits. This included detailed information concerning the way the Church established prices and the marked reduction in prices over the years, as well as expert affidavits analyzing the way prices for specific Scientology books and other religious material were set, the amount of the resulting return to the Church, and the allocation of receipts among the various Scientology organizations involved.

These materials showed the IRS that the Church's policy for setting prices for Scientology books and other religious material was to set prices at an amount sufficient to cover the costs of producing the books and material and to provide a sufficient return to enable the church organizations involved to remain viable so they can continue to meet the needs of Scientology parishioners. As to setting contribution rates for Scientology religious services, the Church showed the IRS that its policy was to set rates to make all religious services affordable to the average person, to encourage parishioners to receive training in the Scripture rather than simply to receive auditing since training results in greater spiritual gain, and to provide a sufficient return to enable the churches involved to continue to meet the needs of their growing congregations.

The Church's submission also explained in detail the procedures it followed in setting prices and contribution rates, including specific formulas, where appropriate. The Church identified the particular staff positions and committees involved in each step of the process, and the specific responsibilities of each such staff member and committee.

The IRS had asked CSI to demonstrate the specific formula employed to set prices for a representative book, E-Meter, and Scientology insignia, including the specific costs involved. In the Commercialism Submission CSI responded by providing the IRS with the requested information relevant to the Mark VII E-Meter, which is the most widely-used E-Meter today; a bracelet signifying that the wearer has attained the Scientology spiritual level of Clear and specific books representative of the three general price categories of the religious books that it publishes.

For each of these items CSI provided the IRS all relevant costs involved in its publication and sale, including direct costs such as plant and manufacturing, and indirect costs such as overhead, royalties, freight and sales commissions. CSI showed the specific amounts from each sale allocable to the two entities involved, Bridge Publications, Inc. ("Bridge") as publisher, and the individual church that sells the item to parishioners. This

analysis provided the IRS with precise amounts concerning all associated costs and net returns for the items selected.

In addition to this financial information, CSI also provided the IRS with affidavits executed under penalties of perjury by five experts attesting to the reasonableness of the costs, prices and returns applicable to each item. Two of the experts analyzed the three books, two analyzed the E-Meter, and one analyzed the bracelet. Each of the five experts enjoys the highest reputation throughout the country as among the best in his particular field of specialty. All five experts confirmed that prices for these items were reasonable and not set in a way to maximize profit.

For example, one of the experts who reviewed the Church's pricing of the three books, Glen Ruh, analyzed the prices by two different methods -- by profitability to Bridge, the publisher, and by the return on investment method ("ROI"), which is the most common method of analyzing profits in the publishing industry. Mr. Ruh computed profitability to Bridge as its profit on a percentage of the list prices of the books; he computed ROI by dividing net operating profits per copy by the total costs per copy.

Mr. Ruh found that Bridge's profit of nine percent on the inexpensive book was "reasonable and consistent with publishing industry standards," but that its profit of five percent on the moderately-priced book and seven percent of the higher priced book "are reasonable but at the low end of the average net operating profit for the textbook segment of the for-profit and nonprofit publishing industries." Under the ROI method, Mr. Ruh found that Bridge's ROI of three percent for the inexpensive book, four percent for the moderately priced book and seven percent for the higher priced book are "very reasonable" and in fact below the price that would be set if Bridge were seeking the industry's minimum standard of return on investment, "which is ten percent." Mr. Ruh concluded that prices would have to be raised "by a significant amount" to maximize profits, and even then prices would "still fit well within reasonable industry prices."

The second expert on book prices, Stephen Conlan, took a different approach and analyzed prices in term of Bridge's profit as a percentage of its net return on sales. He found that Bridge's profit as a percentage of net sales of the inexpensive book, which was 12.3 percent, to be "within the range of average publishing industry profits for best-selling mass market paperbacks." He also found that Bridge's profit as a percentage of net sales of the moderately priced and higher priced books, which are 12.5 and 17.3 percent respectively, "also are consistent with average profits for textbooks in the publishing

industry and are not excessive." Like Mr. Ruh, Mr. Conlan concluded that the prices and profits of the books "are reasonable in light of the general practices and standards of the publishing industry" and that "the prices of these books are not set at an amount designed to maximize profits from their sales."

These two experts were eminently qualified to give an opinion about the reasonableness of the Church's pricing policies. They have been in the publishing industry for many years and are intimately familiar with the pricing policies employed by nonprofit publishers. Mr. Ruh, for example, had worked closely with nonprofit tax-exempt publishers for over 20 years at the time he prepared his affidavit. During his career he worked for two publishers that are tax-exempt under section 501(c)(3), the Naval Institute Press and the Smithsonian Institute. While at the Naval Institute Press, Mr. Ruh was responsible for acquiring and editing textbooks, reference books, and scholarly and special-interest books; for preparing detailed financial budgets for the Institute; and for proposing suggested prices for books. At the Smithsonian Mr. Ruh served as the Director of Smithsonian Books for the Institute's Direct Mail Division, which distributed high quality books at the upper ranges of book prices. Mr. Ruh directed all aspects of the Smithsonian's direct-mail book program, including production and marketing, and had complete responsibility for establishing prices for the books.

At the time Mr. Conlan prepared his affidavit he was Vice-President of Moseley Associates, one of the country's leading management consulting companies in the publishing industry, and had 30 years of experience in publishing. Mr. Conlan was particularly qualified to pass on the Church's pricing policies because of his extensive experience in advising numerous individual publishing companies on their value, profitability and marketing policies. Mr. Conlan was widely known as an expert in appraising books, and had been retained by the IRS itself to prepare 197 appraisal reports of various books and to testify as an expert witness on behalf of the IRS in five federal tax court cases involving the value and profitability of specific books.

The other three experts, expressed similar opinions with respect to the Church's pricing of E-meters and jewelry.

During CSI's exemption proceeding the IRS also pointed to two lists of contribution rates for religious services indicating that rates for certain religious services doubled between 1982 and 1984. The IRS asserted that this trend showed that the Church was attempting to "maximize profits" by increasing contribution rates.

CSI responded to this allegation in the Commercialism Submission and demonstrated that the IRS's conclusion was incorrect and that the two lists actually were unrepresentative samples taken during a period when rates fluctuated widely. The reason for this fluctuation was that the Church had kept contribution rates for most Scientology religious services constant for more than a decade before 1976. In 1976 the Church instituted gradual increases to bring contribution rates for services into line with the high rate of inflation that had occurred since the mid-1960s, which was 75.4 percent just for the period from 1976 to 1984 alone. Consequently, between 1976 and 1984 contribution rates were increased and decreased as attempts were made to find the correct level consistent with Scientology Scripture, the needs of the Church, and the needs of the parishioners. CSI showed that at the time the first list was published contribution rates had been sharply reduced for a short period, and CSI determined that the rates were not consistent with Scientology Scripture so it gradually increased them. Finally, after a comprehensive review of rates in mid-1984, CSI set them at the levels given in the second list.

CSI provided the IRS with the rates set for the same services on the two lists prior to the period covered by these two lists. Once complete information was assembled, it showed that the contribution rates increased from April 1980 to the Fall of 1984 at the average rate of only 5 percent, but that if inflation were factored in, the actual average rate for the period decreased by almost 25 percent. Moreover, CSI showed that contribution rates between April 1980 and the date the Commercialism Submission was filed actually declined by 26 percent in absolute terms, or by 66 percent if inflation were factored in.

This information established to the satisfaction of the IRS that CSI was not attempting to maximize profits by setting high contribution rates. If it were, it would not have permitted rates to decrease so substantially over this seven-year period.

(See also the separate discussion below of the litigation and settlement of issues relating to the tax deductibility of contributions by Church parishioners. In that litigation the IRS reviewed in detail the Church's fixed contribution system and comparative information concerning a number of other religions and concluded that such amounts qualify as charitable contributions in support of the Church's religious goals.)

#### Accumulation of Substantial Reserves

Probably the single most important indicia of commercial purpose is the existence of substantial reserves that have been

accumulated for no purpose related to exemption. Easter House v. United States, 12 Cl. Ct. 476, 485-86 (1987). The IRS has examined this factor in connection with religious organizations that sell religious books and related material. See Presbyterian and Reformed Publishing, 743 F.2d at 156-58, and Church of Scientology of California v. Commissioner, 83 T.C. at 489-90.

This rule does not mean that section 501(c)(3) organizations may not make more money than is necessary to sustain operations. Rather, there must be an exempt purpose for any accumulation of funds. According to the IRS, the amount of an organization's accumulated reserves must be reasonable to its anticipated needs and there must be some concrete plan for specific uses of these reserves.

Over the course of CSI's exemption proceedings the IRS asked numerous questions concerning the size, management and planned uses of the Church's reserves. These questions were addressed on four occasions: first, in CSI's Protest to its initial adverse letter; second in a separate submission by Church of Spiritual Technology; third, in the Commercialism Submission; and fourth, in the negotiations culminating in the October 1, 1993 exemption ruling letters.

The information the Church provided the IRS on these occasions established to the IRS's satisfaction that the Church manages reserves on a daily basis, that it ensures that all reserves expenditure are for purposes that further Scientology's religious purposes, that there is a specific religious use planned for every penny of reserves, and that the amount of Church reserves is very reasonable in light of the Church's existing program of religious activities and anticipated needs.

CSI maintains and manages central reserves for churches and other religious organizations within the ecclesiastical hierarchy. CST does not operate within the hierarchical Church and therefore does not participate in the Church's central reserves system. Rather, CST maintains and manages its own reserves, which it expends solely to support its own program of religious and preservation activities. CST satisfied the IRS's concerns with respect to its reserves with the financial information contained in the separate submission it provided to the IRS in 1987.

In its separate submission CST described in detail the preservation activities it currently was conducting as well as specific activities it planned to undertake in the future. As appropriate, CST noted the costs it expected to incur in carrying out the specific future projects that it described. As discussed in CST's submission, these projects included preserving written



materials by (1) copying them on acid-free paper and (2) etching them on stainless steel plates and then storing the originals and copies in sealed titanium capsules filed with inert gas, preserving tape recordings and films on special laser discs, constructing long-term storage vaults, and researching more advanced preservation media and techniques.

Although CSI had submitted information concerning several factors relevant to commercial purpose throughout its exemption proceeding, the Commercialism Submission that it filed on August 3, 1987 represents the first time any church of Scientology ever directly addressed the commercialism issue and its indicia. The Commercialism Submission necessarily dealt at length with reserves since it is the primary indicia of commercial purpose. As discussed above, the extensive information CSI provided the IRS in this submission "fully satisfied" them on the issue.

The Commercialism Submission described in great detail how the Church's central reserves system operates. It described the system in general, it identified the United States Scientology churches that participate in the central reserves, it described the reserves accounts each participant maintains and identified their location, and it described how the participants fund their accounts.

The Commercialism Submission then described how reserves are managed. It described the principal ecclesiastical body responsible for managing reserves, CSI's Reserves Committee, giving its function and method of operation on a daily basis, the division of authority between it and the corporate officers of the participants in reserves, its relationship with the Church's finance network and finance staff in general, and the identity of the individual members of the Reserves Committee and their respective authority, functions and responsibilities.

The Commercialism Submission also described how the Reserves Committee authorizes expenditures from reserves accounts. It described their monthly, weekly, and daily deliberations. It described how proposals for expenditures are made, the criteria proposals must meet, and the resulting budgetary process for expenditures that are approved. And it described how the Reserves Committee maintains the progress of projects that are funded from reserves.

The Commercialism Submission also provided the IRS with a consolidated balance sheet reflecting the combined assets, liabilities and net worth of all Scientology churches and religious organizations in the United States that participate in the Church's central reserves system. This consolidated balance sheet gave aggregate balances for cash, investments, real and

tangible property, accounts and loans receivable, loans payable, mortgages and net worth. This information was particularly significant in that it was the first time in its dealings with the Church that the IRS had an overall perspective of the extent of the Church's financial resources.

Finally, the Commercialism Submission described specific, planned uses of Church reserves that were under the Reserves Committee's authority at that time. These proposed uses were to fund projects that fell into seven main categories: (1) needed funds to cover current operations in case of unforeseen emergencies, (2) dissemination of Scientology Scripture and the religion in general, (3) legal defense of the religion, (4) acquisition, construction and renovation of Church real estate, (5) acquisition of equipment needed to carry out religious functions, (6) funding for large-scale Church public relations activities and publications, and (7) the purchase of uniforms for Church staff.

The Commercialism Submission described specific projects under each of these general categories, giving the status of the project, what remained to be done, and the amount of reserve funding necessary to complete the project. At the time CSI filed the Commercialism Submission, the amounts to be expended from reserves to fund these projects already had been approved by the Reserves Committee, and it was either making expenditures through the monthly budget process or awaiting sufficient funds.

CSI provided the IRS with much more than a general description of these projects. In addition to the Commercialism Submission itself, the IRS was provided with numerous exhibit packages to substantiate the degree to which the planned reserves uses had been put into effect. Each exhibit package consisted of a longer, more detailed description of the project, including financial planning and classified budgets, as well as tangible proof of the project's status such as photographs, slides, books, audio and video cassettes tapes, blueprints and the like. This hard evidence established that the proposed uses were all religious, bona fide and concrete.

During the negotiations that culminated in the October 1, 1993 exemption rulings, the IRS asked the Church to broaden its discussion of reserves to include Scientology churches and religious organizations throughout the world, not just those in the United States, to identify all relevant bank accounts and their balances, to document specific reserves expenditures, and to develop in more detail the various financial and administrative controls with respect to reserves management. According to the IRS, "the amount of reserves needs to be established and updated to ensure that the amount, and rate of

growth, of the reserves is not excessive in relation to the religious purposes of the Church" and to ensure that "no inurement has occurred, or is likely to occur in the future."

In response to the IRS's specific requests, CSI updated the consolidated balance sheet contained in the Commercialism Submission to include financial data for 1989 and 1990; to include all Scientology churches and related organizations in the United States, regardless of whether or not they participated in the Church's central reserves system; to identify those entities included as well as those not included; to explain the methods employed to value property that included in the consolidated balance sheet; and to explain the treatment of mortgages (including mortgages between Scientology organizations) and of contributions from parishioners.

CSI provided the IRS with the value of all assets under the jurisdiction of the Reserves Committee (both directly and indirectly through other organizations) as of December 31, 1989 and March 31, 1992. It described assets other than funds deposited in bank accounts and gave their fair market value on the appropriate days. It listed every bank account under the Reserves Committee's jurisdiction, including for each account the name and location of the bank, the identity of the individuals with signatory authority over the account, the identity of the particular church or organization that owned the account, the account balances on the two specified dates, and a statement as to whether the balances given were fairly reflective of the account's average balance for the year and if not, the actual average balances.

CSI also provided the IRS with detailed information concerning the receipt and expenditure of funds from the Church's reserves. CSI submitted a classified statement of receipts and deposits to central reserves for 1989, 1990 and 1991. CSI listed every expenditure from central reserves during 1990 in excess of \$10,000 to any individual or organization (aggregating all expenditures to any one recipient during the year to see if the \$10,000 threshold was met), including the date of the expenditure, the identity of the recipient, the owner of the account from which the funds were disbursed, and the purpose of the expenditure. CSI reported all expenditures of whatever nature, including grants, purchases and other transfers.

CSI provided the IRS with very extensive documentation concerning these expenditures. CSI described how the Reserves Committee approves expenditures only for specific projects that have been documented in detailed, written proposals that specify the purpose of the requested expenditures and how it aligns with the purpose of the religion and that include all necessary

financial information to document projected costs, such as budgets and individual purchase orders. CSI described how the Reserves Committee reviews and approves (often with modification) the proposals for expenditure and how it disburses the funds either to the particular church organization submitting the request or to third-party suppliers. CSI also described all review steps and financial controls with respect to the approval and disbursement of funds and provided the IRS with a copy of the Reserves Committee's written action approving expenditures from reserves for a representative week in 1990. Finally, CSI provided the IRS with copies of representative requests for expenditures from reserves for each of 1989 and 1990, including all supporting documentation.

Although the Church had previously provided the IRS with extensive information concerning its planned uses of reserves six years earlier with the Commercialism Submission, during the negotiations the IRS asked to be provided this information again showing the Church's plans for the next five years. They also asked for a report showing to what extent the planned expenditures described in the Commercialism Submission had been carried out. In response to the request for the Church's planned expenditures for the next five years, the Church showed how, in addition to its need for reserve funds to cover operating expenses in the event of unforeseeable emergencies, the Church had definite and specific plans requiring far more than the amount of cash in Church reserves -- over \$432 million in funds over the five-year period. These plans fell into five general categories: (1) planned dissemination of Scientology Scripture and the religion in general, (2) planned acquisition of new and renovation of existing church facilities, (3) planned production of previously unreleased Scientology Scripture and currently available Scripture in a new format, (4) planned activities to preserve the Scientology Scripture in various imperishable formats, and (5) miscellaneous plans for computerization, social betterment activities and defending the religion against unwarranted attacks.

In response to the IRS's request, the Church provided a followup report as to the status of the planned reserves expenditures that it had described six years earlier in the Commercialism Submission. This report identified each of the specific planned uses of reserves that CSI had described at that time and then analyzed the amounts actually expended from reserves for those purposes over the period in question. Although in some cases plans changed or the predicted expenditure occurred later than expected, the total funds actually expended turned out to be within ten percent of the original projection.

This report confirmed that the information the Church had been providing the IRS was concrete, realistic, and bona fide in all respects and that the IRS had good reason to rely on the Church's representations as to its future financial plans.

#### Deductibility of Fixed Contributions

Under United States income tax laws, individuals who contribute money to their churches generally are permitted to deduct the donation from their gross income with a resulting reduction in the amount of tax the individuals pay. The rationale for the deduction is the benefit to society as a whole through the advancement of religion in general. If a simple commercial exchange is at the heart of the transaction, however, there is no donation and no entitlement to a deduction to the extent the payment represents a quid pro quo for the thing received in exchange.

For example, a payment to purchase an item of property at a church rummage sale is not deductible unless the payor can establish that the purchase price exceeded the fair market value of the item. If the payor can establish this, then he or she is entitled to deduct the excess amount of the payment over the item's value as a charitable contribution under the "dual payment doctrine," which divides such payments into two separate payments: (1) a quid pro quo payment for the item, and (2) a charitable contribution equal to the excess of the amount paid over the item's value.

In 1978, the IRS perceived that contributions by Scientologists to their churches for Scientology religious services were no different than the purchase of items of material value, and it ruled that the contributions therefore were nondeductible. See Revenue Ruling 78-189, 1978-1 C.B. 69.

In the IRS's view at that time, the relation between a Scientologist and his or her Church was no different from that of consumer and commercial service provider in which the consumer purchases something of value equal to its price, and the service provider makes a profit. The ruling portrayed the two parties as independent and completely self-interested, dealing at arms' length with one another. The ruling failed to recognize that ministering to a congregation is part of a church's religious program and that without the support of the Church's adherents, there is no church. This ruling also relied heavily on the authorities disallowing charitable contribution deductions for parochial school tuition and wrongly analogized the benefit of Scientology religious services to the secular benefit of parochial school education. In fact the benefits received by adherents of Scientology from auditing and training are religious

and spiritual, and thus benefit society as a whole. In recognizing the Church of Scientology's exempt status on October 1, 1993, the IRS also has expressly retired the 1978 ruling.

Individual Scientologists challenged the IRS's 1978 interpretation of the Church's fundraising practices, and appealed the IRS decision all the way to the Supreme Court.

In its 1989 decision in Hernandez v. Commissioner, 490 U.S. 680, reh'g denied, 492 U.S. 933 (1989), the Supreme Court held that the quid pro quo test under section 170(c) applies to intangible religious benefits received in exchange for a payment to a church. The Supreme Court found no statutory basis for treating religious benefits differently under the quid pro quo test and suggested that a special exception for religious benefits would raise serious concerns under the Establishment Clause of the United States Constitution.

The Supreme Court's decision in Hernandez, however, specifically left open three key legal issues. First, the Court specifically noted that it did not have to address the dual payment issue since the parties had not submitted any evidence concerning the value of the services. Second, the Court specifically declined to address the claim that the IRS has treated Church of Scientology fixed donations more harshly than comparable payments in other religions, on the ground the parties also failed to submit any evidence regarding the IRS's treatment of other religions. The Court noted, however, that all religions must be treated the same by the IRS. Finally, the Court also declined to address the argument that Church of Scientology fixed donations should be deductible because Congress has acquiesced in the Service's administrative practice of allowing full deductions for comparable payments to other religions, even though the contributors also received religious services in exchange, which services had to have some value under the Hernandez decision.

Following the Hernandez decision, several individual Scientologists went back to court to litigate the three issues the Supreme Court had left open. In the case Garrison v. Commissioner, U.S. Tax Court Docket No. 18956-89, these Scientologists were able to introduce the facts necessary to resolve these issues in their favor in a three-week trial conducted before the United States Tax Court in April 1992. First they submitted actual evidence regarding the structure and character of Scientology fixed donations which established that both the IRS and the Hernandez court had an inaccurate perception of the facts surrounding their fundraising practices and that Scientologists should be entitled to a deduction under the normal rules for deductibility. Second, they submitted actual evidence establishing that the structure and character of fixed

contribution arrangements in other religions were not different from that in Scientology in any material respect, thereby entitling Scientologists to a deduction as relief from the IRS's discriminatory enforcement of the tax laws. Finally, they submitted actual evidence establishing the "fair market value" of Scientology religious services (which, under established tax law, must be equal to the cost to the churches of ministering the services) so that Scientology parishioners would be entitled to deduct their excess payments under the "dual payment" doctrine.

The evidence before the Tax Court in Garrison included testimony from several of the individual Scientologists who were parties to the case as well as expert testimony from a senior CSI minister regarding the structure and character of Scientology fundraising practices. This expert demonstrated that Scientology's system of fixed contribution practices reflects the one-to-one nature of many of its religious services in that the Churches seek support from those who are actively using their resources. Put differently, the fixed donation system is what the Church has determined to be the only method of securing support from its parishioners that is both fair and equitable and consistent with fundamental theological beliefs. Moreover, as a young religion, Scientology has no endowment to draw upon, so it must meet all its financial needs from current parishioner donations.

The evidence in Garrison also established that the Hernandez decision and record contain material inaccuracies concerning the actual structure and operation of the Church of Scientology's system of fixed contributions in several key respects. First, the evidence showed that the assumption in Hernandez that Churches of Scientology "calibrated particular prices to auditing or training sessions of particular lengths and levels of sophistication" is incorrect. Second, the evidence showed that contrary to the implications of Hernandez, parishioner advance donations are not freely refundable, and that the consequence of seeking and accepting a refund (which churches are obligated to give) is that the parishioner must disassociate himself or herself from the Scientology faith. For this reason, the amount of refunds actually is very small, as shown in the Garrison record. Finally, the evidence in Garrison established that Scientology fixed donations do not have the mandatory character ascribed to them in the Hernandez opinion and that religious services may be received without making a monetary donation. These significant factual differences from the Hernandez record demonstrated that Church of Scientology fixed donations in connection with auditing and training are not structured as quid pro quo exchanges under the standards of Hernandez and therefore are fully deductible under section 170 as applied by the IRS to other religions.

The evidence in Garrison also included extensive expert testimony offered both by the individual Scientologists and the IRS concerning the character and structure of fundraising practices in churches other than Scientology, fundraising practices the IRS has routinely held to be deductible as charitable contributions. The expert witnesses included one of the twelve highest officials of the Church of Jesus Christ of Latter Day Saints ("Mormon Church") and an official representative of the National Council of Catholic Bishops and the United States Catholic Conference.

In summary, the Garrison record established that there are no material differences between Church of Scientology fixed donations and other religious fundraising practices that the IRS treats as fully deductible -- Catholic Mass offerings, Jewish Synagogue membership dues and High Holy Day tickets, and tithing to the Mormon Church and to the Worldwide Church of God (and certain other fundamentalist Protestant sects). Indeed, focusing on mandatoriness, the most significant Hernandez quid pro quo factor, the Garrison record shows that in Scientology, payment for services is less mandatory than in Catholic, Jewish, Mormon and certain fundamentalist Christian denominations, in which the only exceptions to payment are financial. Scientology "fixed donations" certainly are less mandatory than fixed payments to Hindu and Zen Buddhist churches, which appear to have no exceptions at all to the requirement of payment.

Finally, as an alternative to full deductibility under their first two positions, the evidence in Garrison also established that the cost to Scientology churches of ministering religious services was substantially less than parishioners' fixed contributions, so that at a minimum the taxpayers would be entitled to deduct a significant portion of their fixed contributions under the "dual payment" doctrine. In fact, the information the Church submitted to the IRS in the settlement negotiations established that the cost to Churches of ministering services religious services was minimal in relation to the amount of the fixed donations.

Although dual payment had not been directly at issue in the Hernandez litigation, the Supreme Court's decision nevertheless provided guidance on its applicability to Church of Scientology fixed donations. In Hernandez, the taxpayers argued that applying general quid pro quo principles to payments to churches for purely intangible religious benefits would require the IRS to determine the fair market value of those religious benefits to apply the dual payment doctrine, and that requiring or permitting the IRS to place a monetary value on such benefits would violate entanglement principles of the religious freedom guaranteed under the First Amendment to the U.S. constitution. In rejecting the



taxpayers' argument, the Supreme Court specifically endorsed the IRS's use of the cost of providing the return benefit in the parochial school cases, where fair market value is elusive, and found that permitting the IRS to review a church's costs was not likely to engender any entanglement prohibited by the First Amendment.

The settlement negotiations that resulted in exemption for CSI and other churches of Scientology had already begun before Garrison was tried. In January of 1993, following the filing of the taxpayers' brief on the merits in Garrison, CSI and the IRS agreed that the charitable contribution issue should be included in the settlement negotiations, and this issue ultimately was resolved through direct negotiations with the IRS rather than the Tax Court. All pending parishioner Tax Court litigation concerning the deductibility of their fixed donations was settled on a no-change basis (i.e., full deductibility) and the IRS issued guidance to its field offices to close any pending examinations on a similar basis. Finally, to formalize its actions, the IRS declared the Scientology revenue ruling, Revenue Ruling 78-189, to be obsolete and of no further effect or consequence.

### Conclusion

Over the past ten years the IRS requested and was provided extensive information addressing each of the factors that are considered to be indicia of a non-exempt commercial purpose: the existence of commercial competitors; pricing of goods and services to maximize profits; the accumulation of unreasonable amounts of reserves; and the employment of commercial-like advertising methods. The information that was provided directly addressed the IRS's concerns with detailed responses and tangible evidence supporting the responses provided. By their recognition of exemption to CSI and other Scientology organizations on October 1, 1993, the IRS acknowledged that this information fully satisfied all of their concerns relating to the commercial purpose issue and that these organizations operate exclusively for religious and charitable purposes.

The ultimate resolution of the parishioner charitable contribution issue leads to a number of significant conclusions. First, it reinforces the IRS's repudiation of its prior view of Scientology as a commercial enterprise. More significantly, this settlement also repudiates the Service's prior view of Scientology parishioners support of their churches through fixed contributions as a commercial transaction.

Finally, and most importantly, the IRS now agrees that Scientology fixed contributions are not materially different from

recognized fixed payment fundraising practices in traditional religious denominations and that the IRS cannot treat Scientologists differently from parishioners of other churches without violating American laws forbidding such discriminatory treatment. The IRS's concessions on charitable contributions reenforce its acknowledgement that Scientology is a religion in all relevant meanings of that term and entitled to be treated the same as other religions under the United States tax laws.

## PUBLIC POLICY

Among the factors reviewed by the IRS in making its determination of the Church's exempt status was whether acts by the Church or its members constituted violations of public policy such that exemption should be denied. The IRS conducted a thorough inquiry in this area, including many of the common allegations raised in the past by apostates and other Church detractors and concluded that there was no bar to exemption due to alleged violations of public policy.

### Legal Standards

Under traditional concepts of charitability, an entity that engages in activities which violate criminal law or other laws of general application or that are otherwise against fundamental public policy is not a "charitable" entity. Because section 501(c)(3) of the United States Internal Revenue Code ("Code") draws on these principles, an organization otherwise qualifying under the express statutory requirements will be denied exemption if its exemption-related activities violate applicable nontax laws or fundamental public policy.

The public policy limitation has two related but separate components -- whether the organization generally is in compliance with criminal and civil laws of general applicability and whether the organization's exempt purpose activities themselves are consistent with fundamental public policy. Under the second component, the strong protection of religious liberty under the U.S. Constitution would not insulate a church's religious practices from challenge as contrary to public policy.

### The Guardian Office

In the Tax Court decision in Church of Scientology of California v. Commissioner ("CSC"), the IRS argued, and the Tax Court found, that CSC and its senior leaders had violated public policy during the middle 1970s by violating civil and criminal laws of general applicability in seeking to impede the IRS's examination of and collection of taxes from Church of Scientology entities. The Tax Court's conclusion on the "public policy" question was a separate basis for revoking CSC's tax exemption, which the Court of Appeals specifically declined to address in sustaining the Tax Court's decision.

The linchpin of the "public policy" violation the Tax Court found in the CSC case was the activities of the old Guardian Office ("GO"), culminating in the criminal prosecution of eleven