

Court Must Reconsider Scientology Tape Privilege

By William Vogeler
Daily Journal Staff Reporter

Helping judges determine when to permit an exception to the attorney-client privilege, the U.S. Supreme Court ruled Wednesday that judges may conduct *in camera* reviews of attorney communications to their clients — if the judges reasonably believe the clients sought advice to commit a crime or fraud.

Reversing a decision of the 9th U.S. Circuit Court of Appeals, the justices ordered the appeals court to reconsider whether a trial court judge properly refused to listen to tapes the Internal Revenue Service obtained from the Los

Angeles-based Church of Scientology, which allegedly preserved conversations about an illegal scheme. The trial court judge refused to hear the tapes, concluding they were protected by the attorney-client privilege.

"We hold that *in camera* review may be used to determine whether allegedly privileged attorney-client communications fall within the crime-fraud exception," Justice Harry Blackmun wrote in *United States v. Zolin*, 88-40.

"We further hold, however, that before a district court may engage in *in camera* review at the request of the party opposing the privilege, that party must

present evidence sufficient to support a reasonable belief that *in camera* review may yield evidence that establishes the exception's applicability."

Partial Victory

At the same time, the high court handed the church a partial victory in its ongoing fight with the IRS, ruling that the tax agency could not pass to other government agencies certain documents it obtained from the church.

The case arose from an IRS investigation of Scientology founder L. Ron Hubbard's tax returns. In 1984, the IRS served an administrative summons on Frank S. Zolin, clerk of the Los Angeles

Superior Court, requesting certain documents and two tapes: All had been sealed in a separate case involving the church.

Hubbard's widow and the church intervened in the case and opposed the summons. Zolin produced all but 12 documents and the tapes.

U.S. District Court Judge Harry Hupp ruled that seven of the 12 documents and the tapes did not have to be produced because they were irrelevant, privileged or both. However, he allowed the IRS to obtain copies of five of the documents on condition they not deliver them to any other government agency unless criminal tax prosecution was sought or a court order was obtained.

Attorneys for Zolin, Mrs. Hubbard and the church appealed to the 9th Circuit, and the IRS cross-appealed. The court affirmed the district judge's rulings.

The Supreme Court affirmed the 9th Circuit's decision upholding the judge's order that required the IRS to keep confidential the information it obtained from the church. However, the high court remanded the case and provided a standard for determining by *in camera* review when the "crime-fraud" exception applies to attorney-client privilege.

"Before engaging in *in camera* review to determine the applicability of the crime-fraud exception, 'the judge should require a showing of a factual basis adequate to support a good faith belief by a reasonable person,' *Caldwell v. District Court*, 644 P. 2d (Colo. 1982), that *in camera* review of the materials may reveal evidence to establish the claim that the crime-fraud exception applies," Blackmun wrote.

The justices said that once the judge has a reasonable belief that an *in camera* review might show that the exception could apply, the judge has discretion whether to conduct the review.

Daily Journal

Established 1888