

Los Angeles

# Metropolitan News-Enterprise

EST. 1901

Law • Government • Politics • Business • Health • Other Subjects of General Interest

Vol. 89, No. 78

P.O. Box 80659, Los Angeles, 90060

Monday, April 24, 1989

Main number: (213) 628-4384

32 Pages—25 Cents

## Judge Won't Remove Pfaelzer From Scientology Case

A federal judge in Los Angeles has denied a motion to oust his colleague Mariana Pfaelzer from presiding over an action brought by the Church of Scientology against defecting members, saying the motion stems from defense counsels' "paranoia."

The defendants, who are alleged to have conspired to steal and distribute secret church courses, sought Pfaelzer's recusal based on what they viewed as an improper *ex parte* conversation with members of her old law firm, Wyman, Bautzer, Christensen, Kuchel & Silbert. Pfaelzer was portrayed as having assured the lawyers that she would not step out of the case if their firm took over representation of the church.

But U.S. District Court Judge Harry Hupp, ruling on the recusal motion, said there was no factual basis for that charge. He also rejected the contention that Pfaelzer had improperly grabbed the case back after once having disqualified herself.

Hupp's denial of the motion came in a four-page, single-spaced order which, the judge recited, he typed himself to show that the court "has read and considered the motion and considers it to be a tempest in a teapot."

A copy of the order, entered April 14, was obtained late Friday.

### Case 'Over-Litigated'

Hupp said in his order:

"This case is among the most massively over-litigated cases involving the Church of Scientology and its former members which seem to involve an inordinate call on the resources of this and other courts. It resembles the other cases in other aspects as well; the litigation is bitterly and extensively conducted, with no simple procedural step being solved by reasonable agreement, with constant and unjustified charges of fraud, perjury, and other misdeeds alleged back and forth, and with volumes and volumes of court files (at least 25 at the last count in this case) needed to contain the constant motions and other procedures filed in an attempt to conduct litigation by exhaustion and attrition. One must have the utmost sympathy for a colleague assigned the onerous responsibility to control the course of the case from start to conclusion based on the facts and the law. This case also involves what might be considered a blot on the profession if not recognized by the lawyers and dealt with professionally—the personal involvement of the lawyers in reprehensible charges and counter-charges against each other. When lawyers become so personally involved in the emotions of their clients, they not only lose perspective but also

objectivity, and tend to view the most innocuous happenings as the result of fraud, perjury, malice, or other improper occurrence. All these unfortunate results seem to be present in this case, and have led to unsubstantiated charges in this motion."

### 'Product of Paranoia'

Later in his order, Hupp declared:

"This motion has been carefully analyzed by the court, which concludes that it is the product of the 'paranoia' (meant non-medically) which affects counsel when the litigation gets out of hand, as it obviously has here. Whose fault that is is not clear from the record and it may be mutual."

This marks the second time Hupp has denied a recusal motion in the case, involving two consolidated actions. The first motion, denied March 14 of last year, was based on the past membership of Pfaelzer and her husband, Frank Rothman, in the Wyman firm.

Despite Hupp's denial of that motion, Pfaelzer 10 days later voluntarily stepped off the case—only to gain reassignment of it after the Wyman firm withdrew a week later.

The second motion was based in part on Pfaelzer's action in getting the case back. The major thrust of it, however, was the allegation, which first emerged last September, that Pfaelzer improperly engaged in a meeting with members of her former firm in February, 1988.

Those lawyers, Louis R. "Skip" Miller and Andrew M. White, were said to have secured her assurance that she would not step off the case if Wyman, Bautzer took over representation of the plaintiffs. Pfaelzer had made some favorable rulings for the plaintiffs who did not want to lose her as the judge, the motion explained.

Pfaelzer was initially confronted with the charge in open court on Sept. 19 by attorney Joseph Yanny, a former lawyer for the church now being sued by it. At the time, she declined to respond.

### Two Versions

Yanny's version of what happened is purportedly based on what Miller related to him. As Miller tells it, however, he and White merely dropped in on Pfaelzer while in the courthouse and, as a "courtesy" told her that a member of their firm was coming into the Scientology case.

The memorandum in support of the motion, drafted by attorney Jerold Fagelbaum, charged that Pfaelzer, by telling the lawyers for Wyman, Bautzer that she would not bow out of the case if they became

counsel for the plaintiffs, "prejudge[d] a motion which Mr. Miller anticipated would be brought, if the Wyman firm entered the case."

In a footnote, it was charged that Pfaelzer, to get the case back, "sent secret letters to Judge [William] Keller and Judge [A. Andrew] Hauk (to whom the consolidated cases had been transferred) indicating the Court's 'availability' to resume control over the cases."

Hupp scoffed that the allegation of an improper *ex parte* communication is based on "counsel's obvious assumptions that evil occurred without facts to support the assumption." He wrote:

"Defendants assume that Judge Pfaelzer did commit herself *ex parte* not to recuse herself if the Wyman firm entered the case and cites [sic] respectable authority to the affect [sic] that if that happened, the judge should be disqualified....There is no evidence that such an improper *ex parte* contact occurred and this motion will not be granted on the hearsay and speculative views of disaffected counsel."

### Letters Not 'Secret'

Hupp said the letters to Keller and Hauk were not "secret," noting they were read to counsel in open court. He said in his order:

"Defendants question the motives for Judge Pfaelzer in expressing willingness to take the cases back and suggest that that willingness was from some bad motive to injure the defendants in the case (just how and why is not suggested). This suggestion is preposterous, and suggests how far lack of objectivity has gone. Judge Pfaelzer gave the explanation in open court and it makes sense to any judge who has endured the pangs of conscience inherent in transferring a difficult case to an overworked colleague, especially when the judge has had the case for years and through 25 volumes of court files. That explanation was that an unnecessary transfer of the case to another judge would require massive work on the part of the new judge, perhaps redoing much of what had been done in the years of pendency of the case before Judge Pfaelzer, and would be unfair to the new judge when the reason for the recusal had vanished. That reason is so consonant with the spirit in which one treats ones [sic] colleagues on this (or any other) court, that it is accepted without question."

Hupp went on to observe:

"Judge Pfaelzer, no doubt at great cost to her mental composure to have to face the mess again, indicated that she was willing to have the cases back. This is praiseworthy, not a reason for recusal now."

Los Angeles

# Metropolitan News-Enterprise

Est. 1901

Law • Government • Politics • Business • Health • Other Subjects of General Interest

Los Angeles Metropolitan News/ May 22, 1989/ Page 1

## Ninth Circuit Asked to Recuse Judge Pfaelzer

The Ninth U.S. Circuit Court of Appeals has been asked to remove U.S. District Court Judge Mariana Pfaelzer from a Church of Scientology case based on the appearance that she and the church are "allies," it was learned Friday.

A petition for a writ of mandate was filed by the defendants, church defectors who are accused of conspiring to steal and distribute secret church courses. They are asking the appeals court to overturn the action of U.S. District Court Judge Harry Hupp, who on April 11 rejected a motion to recuse Pfaelzer and, in a strongly-worded memorandum, accused the defendants' lawyers of exhibiting "paranoia."

The defendants sought Pfaelzer's recusal based on what they viewed as an improper ex parte conversation with members of her old law firm, Wyman, Bautzer, Christensen, Kuchel & Silbert. Pfaelzer was portrayed as having assured the lawyers that she would not step out of the case if their firm took over representation of the church.

Pfaelzer had made some favorable rulings for the plaintiffs who did not want to lose her as the judge, the defendants argued.

In the petition to the Ninth Circuit, attorney Jerold Fagelbaum of Myerson & Kuhn argued:

"...Judge Pfaelzer and the Plaintiffs have created the indelible impression in the eyes of any disinterested observer that Plaintiff and the District Court are allies and, thereby, have irretrievably destroyed any appearance of impartiality by the District Court. As reluctant as the District Court may have been to allow Plaintiffs' action to dictate the result, anything but the grant of Defendants' Petition will unavoidably and substantially encroach upon the District Court's impartiality and will serve to advance the perception that Plaintiffs have succeeded in currying good favor with Judge Pfaelzer by retaining the District Court's former law firm."

Pfaelzer did recuse herself on March 24, 1988 following the entry into the case of her former law firm, to which the defendants protested. However, a week later, the Wyman firm withdrew, and Pfaelzer had the case reassigned to her.

It was later that the defendants learned of the alleged ex parte communication, and sought to disqualify Pfaelzer on that basis.

In the writ petition, filed May 12, the defendants argued:

"Neither the image that Plaintiffs can reach the Judge, nor the stigma attaching to Defendants for assuming an adversarial relationship with the District Court can be washed away by the delayed departure of the Wyman firm, especially in view of subsequent revelations of the District Court's own complicity in Wyman's entry into the case and the cover up of that complicity. A pall was cast over all subsequent proceedings in this case to the detriment of Defendants. The District Court's continuing demonstration of prejudice in favor of Plaintiffs has deepened and darkened that pall."

Fagelbaum took exception to Hupp's barb that the motion for recusal was based on counsels' "paranoia

(meant non-medically)." He pointed to an instance where, as he saw it, Hupp incorrectly stated what was contained in a footnote to an opinion, and remarked:

"[I]t does reflect a bent on mind which suggests that Defendant's motion was not analyzed as carefully as Judge Hupp says before he concluded it was the 'product of the paranoia which affects counsel.'"

The lawyer went on to remark:

"Perhaps if Judge Hupp had permitted oral argument several of his factual misstatements and omissions would have been prevented."

Los Angeles  
**Metropolitan News-Enterprise**  
Est. 1901

Law • Government • Politics • Business • Health • Other Subjects of General Interest

Vol. 89, No. 104

P.O. Box 80859, Los Angeles, 90080

Wednesday, May 31, 1989

Main number: (213) 628-4384

28 Pages—25 Cents

## Pfaelzer Again Removes Self From Scientology Case

U.S. District Court Judge Mariana Pfaelzer, for the second time, has recused herself from a controversial Church of Scientology case, it was learned yesterday.

In each instance, she stepped aside shortly after the Ninth U.S. Circuit Court of Appeals was asked to forcibly remove her.

The attorney seeking her disqualification, Jerold Fagelbaum of Myerson & Kuhn, said yesterday he thinks the judge is now permanently off the case. Fagelbaum is representing church defectors who are being sued by the church for allegedly purloining and selling secret church courses.

The first time Pfaelzer recused herself was in March of last year. She had previously shunned a request from the defendants to disqualify herself based on the law firm she had once worked for—Wyman, Bautzer, Christensen, Kuchel & Silbert—coming into the case as the plaintiff's lawyers.

After U.S. District Court Judge Harry Hupp ruled there was no basis for disqualification, the defendants sought a writ from the Ninth Circuit Court of Appeals. After the petition was filed and before there was any action on it, Pfaelzer, without explanation, voluntarily recused herself.

However, a week later, the Wyman firm withdrew, and Pfaelzer had the case reassigned to her.

Late last year, Fagelbaum asked Pfaelzer to leave the case in light of new information that she had engaged in an allegedly improper ex parte communication with two members of the Wyman firm, assuring them she would not step aside if the firm came into the case. She declined.

### History Repeated

This year, history repeated itself with Hupp ruling there was no basis for disqualification, and the defendants seeking a writ from the Ninth Circuit Court of Appeals. Again, after the petition was filed and before there was any action on it, Pfaelzer, without explanation, voluntarily recused herself.

Fagelbaum said yesterday he received notice of the action on Friday. He noted that Pfaelzer directed that the case be given to Judge James Ideman.

Ideman presently has another Church of Scientology case before him.

Pfaelzer was out of the country yesterday and was unavailable for comment.

"Plaintiffs placed the court in a very difficult

position," Fagelbaum commented. "Under the circumstances, it was right for the judge to step down."

He remarked that in light of Pfaelzer acting without giving a reason, one is left to speculate as to what it was that prompted her decision.

### Remove Doubt

Fagelbaum went on to say: "One could conclude that the court thought that this was the best way to remove any doubt" as to the impartiality of the trial.

In the petition to the Ninth Circuit, Fagelbaum had argued:

"Judge Pfaelzer and the Plaintiffs have created the indelible impression in the eyes of any disinterested observer that Plaintiff and the District Court are allies and, thereby, have irretrievably destroyed any appearance of impartiality by the District Court. As reluctant as the District Court may have been to allow Plaintiffs' action to dictate the result, anything but the grant of Defendants' Petition will unavoidably and substantially encroach upon the District Court's impartiality and will serve to advance the perception that Plaintiffs have succeeded in currying good favor with Judge Pfaelzer by retaining the District Court's former law firm."

# 'Totalist' cults prey on idealism, altruism of college students

By Evan Reid  
Contributor

Because the number of idealistic, self-sacrificing college students is particularly high, U.S. college campuses are the prime recruiting grounds for potentially dangerous cults, according to the director of the UCLA Neuropsychiatric Institute.

Louis Joylan West, who is also psychiatrist-in-chief at the UCLA Medical Center, talked about "totalist" cults and their methods of coercive persuasion last week as part of the Learn-at-Lunch series. "Totalist" cults are those that use deceptive and harmful coercive techniques to draw in new members.

Approximately 25,000 cults exist in the United States and their recruitment and coercion methods, though for the most part similar, vary in severity and intensity, West said.

Anyone is vulnerable to cults, West told his audience. They may seem "silly or amusing — that is, until you are victimized by one of them."

The belief that cult victims come from troubled homes or are pilgrims looking for spiritual significance is a misconception, West said. Most don't fall into either of these categories but instead come from relatively normal homes and are only slightly idealistic.

Students in particular may be vulnerable to cults' recruiting efforts because students are often relatively altruistic and not yet accustomed to dealing with the



Louis Joylan West

extreme pressures encountered in college and with the depression that results.

"Idealism, altruism, a willingness to make personal sacrifices and a desire to do good is the number one correlation to vulnerability," said West in a later interview.

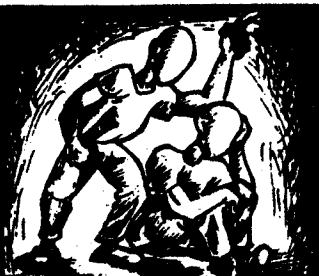
There is a difference between deceptive coercive tactics used by cults for recruitment, and harmless coercive techniques used by organizations such as the Marine Corps or the Roman Catholic church, West said.

While a Roman Catholic or Marine Corps indoctrination lays out expectations before recruiting, cults often fail to fully disclose their intentions or goals to prospective recruits.

"Totalist" cults exhibit great or excessive devotion or dedication to some person, idea or thing, and employ unethical, manipulative or coercive techniques of persuasion and con-

See CULTS, Page 14

"WEST PRESENTED A LIST OF THE COMMON METHOD OF COERCION THAT HE SAID MAY ENABLE READERS TO PROTECT THEMSELVES FROM CULTS



ISOLATION OF THE RECRUIT AND MANIPULATION OF HIS ENVIRONMENT.

CONTROL OVER CHANNELS OF COMMUNICATION AND INFORMATION.

DEBILITATION THROUGH INADEQUATE DIET AND FATIGUE.

INDUCTION OF UNCERTAINTY, FEAR, AND CONFUSION, WITH JOY AND CERTAINTY THROUGH SURRENDER TO THE GROUP AS THE GOAL.

ALTERATION OF HARSHNESS AND LENIENCY IN A CONTEXT OF DISCIPLINE.

PEER PRESSURE, OFTEN APPLIED THROUGH RITUALIZED STRUGGLE SESSIONS, GENERATING GUILT AND REQUIRING CONFESSIONS.

INSISTENCE THAT THE RECRUIT'S SURVIVAL —PHYSICAL OR SPIRITUAL—DEPENDS ON IDENTIFYING WITH THE GROUP.

ASSIGNMENT OF MONOTONOUS TASKS OR REPETITIVE ACTIVITIES, SUCH AS CHANTING OR COPYING WRITTEN MATERIALS.

## Cults

Continued from Page 8

trol," West wrote in an article on the issue.

Distinguishing between a legitimate religion and a cult, West pointed out that a "legitimate religion has as its bona fide purpose the spiritual fulfillment or salvation or benefit of its members in mind," whereas "cult ministers are crooks, con men, businessmen of the most ruthless kind."

On college campuses, cults are usually advertised as self-improvement seminars, claiming to be able to improve an individual's personality, grades or outlook on life.

Several advertise themselves as religious groups offering fellowship with peers, free dinners or freedom from drugs or disease, West said.

A cult in the guise of a religious or self-improvement group is initially difficult to distinguish from a legitimate counterpart, and thus especially dangerous for unsuspecting individuals, West said.

Any group that asks for money, stresses an exaggerated "we/they dichotomy" or asserts that it or its leader possess an exclusive insight into scripture is one to be wary of, he cautioned.

The next Learn-at-Lunch series lecture, "Plastic Surgery: What It Is And What It Is Not," will be given by Timothy M. Miller, M.D., chief of the UCLA division of plastic surgery, noon Wednesday, May 31, in the Neuropsychiatric Institute Auditorium, C8-183.

# Judge removes himself from Scientology case

By STEPHEN KOFF  
Times Staff Writer

A Pinellas judge presiding over a Scientology tax dispute has removed himself from the case because of a newspaper report that cited a real estate transaction between the judge and the Church of Scientology.

The *St. Petersburg Times* reported in December that Circuit Judge Howard P. Rives, who was presiding over a lawsuit concerning taxes on Scientology properties, sold one of those properties to the church in 1979.

Rives said in December that there was no conflict in his role because he had ruled only on tech-

**Judge Rives said he prefers to keep court proceedings and records public, but Scientology lawyer Paul B. Johnson said he favors the gag order.**

nical legal points in the case. But he acknowledged a potential for an appearance of conflict of interest, and said he would remove himself before he was asked to rule on the case's merits.

None of the parties asked for Rives' removal. Nevertheless, on Wednesday the judge signed an order removing himself so that no one would have to worry over his impartiality, Rives' office said. Rives' order cited "newspaper publicity that may reasonably be interpreted to be prejudicial."

The case now will be rotated to another judge as yet unnamed.

Rives' action comes at a time when a motion from Assistant Pinellas County Attorney Howard Bernstein is pending before the court. Acting on behalf of Jim Smith, the Pinellas property appraiser, Bernstein asked Rives last month to dissolve a 4-year-old gag order.

The order prevents officials from talking publicly about the case. At a hearing last year, Rives said he prefers to keep court proceedings and records public, but Scientology lawyer Paul B. Johnson said he favors the gag order.

Rives had scheduled a hearing

in September to review the request. That date will now probably be changed, Bernstein said. A trial date has not been set.

The gag order was part of a 1984 judicial order that spelled out terms of pretrial proceedings in a series of lawsuits between the county and the church. Pinellas County wants the church to pay \$3.4-million in taxes accruing since 1982. The Church of Scientology, with its spiritual headquarters in Clearwater, owns 12 properties in Pinellas worth more than \$21-million in assessed value. Church officials have asked for, but have been refused, exemption from taxes on Scientology properties.

One of the buildings the church wants declared tax-exempt is the old West Coast Building at 118 N Fort Harrison Ave. Rives and former law partner A.T. Cooper Jr. paid \$265,000 for the building in 1973, according to property records. They got two separate loans totaling \$513,333 to buy the building and pay for extensive renovations, public records show.

Six years later, they sold the building to the Church of Scientology for \$765,000. It was the fourth downtown property the Scientologists had bought, and the transaction prompted outcry from some Clearwater citizens. Scientologists had targeted Clearwater officials and others in blackmail and harassment campaigns, according to FBI records.

The Church of Scientology is based on the teachings of the late L. Ron Hubbard, author of *Dianetics*. Scientology has often been involved in controversy, including criminal charges against its officials and allegations of harassment from former members and critics. Scientology leaders counter that the church is a victim of religious persecution.

In a separate matter, U.S. Magistrate Paul Game Jr. has scheduled a June 14 hearing for arguments over whether four other Scientology cases should be made public. The church in 1986 settled four lawsuits in U.S. District Court in Tampa and got a judge to seal all the files. Lawyers for the plaintiffs, who claimed invasion of privacy and fraud by Scientology, objected, and the *St. Petersburg Times* last year filed a motion to make the records open to public disclosure.

# High court strikes at Scientology

## Ruling will stop tax deductions

A Tribune Staff and Wire Report

WASHINGTON — The Supreme Court ruled Monday that taxpayers can't deduct the cost of Church of Scientology courses and counseling.

In Clearwater, where the church has its headquarters and is locked in legal battles with the city and the Pinellas County Property Appraiser, local officials were encouraged by the ruling.

The 5-2 ruling written by Justice Thurgood Marshall said that money paid to the church by Scientologists for training and a form of counseling called "auditing" are more like fees for a service than donations to a church.

The church requires fixed donations of as much as \$3,000 for 12½ hours of auditing, during which a person confesses his innermost thoughts while his responses are monitored on a lie detector-type device known as the E-meter.

Scientologists believe "auditing" helps an individual achieve a higher level of "spiritual competence." The training courses study the doctrines of Scientology.

Church members have tried to deduct the amounts for the auditing and training from their taxes as charitable donations. The Internal Revenue Service disallowed them.

Marshall wrote that the payments are not contributions or gifts within the meaning of IRS rules and therefore are not tax-deductible. His opinion also held that the rule does not infringe on the First Amendment rights of Scientologists to freedom of religion.

But the Rev. Brian Anderson, vice president of the Church of Scientology in Washington, D.C., said in a statement that if the ruling is allowed to stand, it "will give license to the IRS to practice discrimination against other religions and have a disastrous effect upon the religious freedom of all Americans."

The church and several other charitable groups filed suit against the Clearwater City Commission in 1984 over an ordinance requiring any church or charity soliciting money within city limits to register with the city and provide financial statements showing how the donations are collected and spent.

Alan Zimmet, who is representing Clearwater in that lawsuit, said the decision that fixed donations to

See RULING, Page 4B.

## Ruling may not affect Pinellas lawsuit

### From Page 1B

the church in effect are a payment for services rather than a charitable donation provides support for the city's contention that the church is not a non-profit organization.

Because the church is not the only plaintiff in the lawsuit against the city, Zimmet said the Supreme Court ruling probably won't have as much impact on that case as it will on the case with the county property appraiser.

In that lawsuit, the church is challenging the property appraiser's ruling that it does not qualify for a

### religious tax exemption.

The church stopped paying taxes on its 12 parcels of property in 1982 and owes the county \$3.4 million, including \$1.16 million in interest and fees, claiming the exemption.

But county Property Appraiser Jim Smith says the church has not provided proof that it is a non-profit organization and, therefore, tax exempt.

The case, being heard in Pinellas County Circuit Court, is under a gag order.

Paul B. Johnson, a Tampa attorney representing the Church of Scientology in its lawsuit against the

property appraiser, said he doesn't think the Supreme Court ruling will have any impact on the Pinellas County case.

"It deals with the deduction of a fixed donation," he said. "It doesn't go to the question of whether the church is a religious institution."

Anderson said the ruling "not only hurts Scientologists, but also poses a threat to deductions for other religious contributions. ... The freedom to support one's religion is a constitutional right guaranteed every American. Today's decision seeks to destroy those rights and puts the Constitution in the back

seat behind the Internal Revenue Code."

The case was brought by Robert Hernandez, who claimed an income tax deduction of \$7,338 for contributions to the church in 1981. The IRS denied it and assessed him a penalty of \$2,245, a decision upheld by the 1st U.S. Circuit Court of Appeals.

Dozens of lawsuits have been filed against the church founded by Ron Hubbard by former members who have charged they were defrauded and harassed by the organization.

# Los Angeles Times

★ Tuesday, June 6, 1989 / Part I 3

## Scientologists Lose Tax Deduction Case

By DAVID G. SAVAGE, *Times Staff Writer*

WASHINGTON—The Supreme Court ruled Monday that the "fixed donations" paid by members to the Church of Scientology are not tax-deductible, charitable contributions.

In the 5-2 ruling, the high court said that money paid to the church by Scientologists for training and a form of counseling called "auditing" are more like fees for a service than donations to a church.

The church requires fixed donations of as much as \$3,000 for 12½ hours of "auditing," during which a person confesses his innermost thoughts while his responses are monitored on a lie detector-type device known as the E-meter.

For years, members of the Church of Scientology have tried to deduct

Please see SCIENTOLOGY, Page 20

## SCIENTOLOGY: Tax Ruling

Continued from Page 3

Their donations but have been rejected by the Internal Revenue Service. One of the church's major strongholds is in Los Angeles, where thousands of Scientologists flock from around the world to purchase the training at the group's sprawling blue complex on Fountain Avenue or at other local centers.

Church leaders have long argued that their sacred scriptures—written by the late Scientology founder L. Ron Hubbard—mandate the payment of fixed donations. Hubbard, under his "doctrine of exchange," contended that a person must learn to give as well as to receive.

Before the Supreme Court, lawyers for the Scientologists contended that the government had singled out the church for discrimination. They said that the Internal Revenue Service has permitted members of other religions to take tax deductions for "pew rents" and tithing, among other things.

But Justice Thurgood Marshall, writing for the majority, found otherwise. He said church members receive a service for their contributions, much like tuition at a religious school, which is not tax deductible.

"In return for their money," Marshall said, members "received an identifiable benefit, namely, auditing and training services."

In dissent, Justice Sandra Day O'Connor, joined by Justice Antonin Scalia, agreed with the church's argument that it had been discriminated against by the IRS. She said that payments deemed deductible

by the IRS for other religions were "indistinguishable" from those made by Scientologists.

Justices William Brennan and Anthony Kennedy did not take part in the ruling.

The Rev. Brian Anderson, vice president of the Church of Scientology International, said the Supreme Court decision "poses a threat" to tax deductions taken by members of all religions.

The high court's decision comes after a number of lower federal courts across the country issued conflicting opinions on whether Scientology's fixed donations were tax deductible. The case that led to the Supreme Court ruling on Monday grew out of an appellate decision in New England.

In that case, the U.S. 1st Circuit Court of Appeals upheld an IRS decision denying Scientologist Robert Hernandez a tax deduction of \$7,338 for contributions to the church in 1981. He was then assessed a penalty of more than \$2,200.

Monday's ruling is the latest in a series of legal disputes involving the church. The organization has been in and out of court for years, battling dozens of suits filed by former members who have charged that they were defrauded and harassed by Hubbard's followers.

The church, branded a "cult" by its detractors, has paid millions of dollars in out-of-court settlements to end costly and embarrassing litigation.

Times staff writers Robert W. Welkos and Joel Sappell in Los Angeles contributed to this article.

# Daily Journal

Established 1888

ation

Wednesday, June 7, 1989

210 South Spring St., Los Angeles, CA 90012

## Taxation

### Deductions Denied for Payments Made to Receive Religious Services

The *U.S. Supreme Court* has held that taxpayers could not deduct as charitable contributions payments made to the Church of Scientology in order to receive "auditing" and "training" services.

Members of the Church of Scientology believe that an immortal spirit live in each individual and that a person becomes aware of the spirit through a process called "auditing." Auditing is a one-on-one encounter between a participant and a church official. The church also offers "training" sessions to instruct participants wishing to become auditors. Fees for the sessions range from \$625 to \$4,250. The system of mandatory fixed charges is based on a central belief held by Scientologists called the "doctrine of exchange," according to which whenever a person receives something, he or she must pay something back. The proceeds from the sessions are the church's main source of income. Scientologists in this case sought to deduct those payments as charitable contributions on their tax returns. The Commissioner of Internal Revenue disallowed the deductions, and the Tax Court concurred, finding that the payments were not gifts because the participants had received consideration. Both the 1st and the 9th Circuits affirmed in these consolidated cases.

The *U.S. Supreme Court* affirmed. The Scientologists' payments for auditing and training sessions were not contributions

See Page 11 — RULINGS

### Continued from Page 1

or gifts within the meaning of Section 170 of the Internal Revenue Code. The section's legislative history indicates that Congress intended to differentiate between unrequited payments to qualified recipients, which are deductible, and payments made with the expectation of an exchange, which are not deductible. Section 170 makes no exception for payments made to guarantee access to religious services. Furthermore, Section 170 does not violate the establishment clause since it does not facially distinguish among religious sects but applies to all religious entities. The section is neutral in design and purpose and evinces no animus to religion in general or to Scientology in particular. Although disallowing the deductions imposes a burden on the Scientologists, even a substantial burden would be justified by the broad public interest in maintaining a sound tax system, free of a myriad of exceptions flowing from diverse religious beliefs.

*Hernandez v. Commissioner of Internal Revenue, U.S. Supreme Court, Nos. 87-963 and 87-1616, June 5, 1989, by Marshall, J.; O'Connor, J., dissenting, joined by Scalia, J.*

*The full text of this case appears in the Daily Appellate Report on page 7177.*

—JANICE A. BOLES