

DECLARATION OF GERALD ARMSTRONG

I, Gerald Armstrong, declare:

1. I am over the age of eighteen. I have personal knowledge of the facts stated herein, and if called upon to testify to the same I can do so competently.

2. Appended hereto as Exhibit A is a true and correct copy of the Memorandum of Intended Decision issued June 20, 1984 by Judge Paul G. Breckenridge, Jr., and filed June 22, 1984, following a one-month bench trial in the case of Church of Scientology of California v. Gerald Armstrong, California Superior Court, County of Los Angeles, Case No. C 420153. This Memorandum of Intended Decision became the Decision in the case, and subsequently the Judgment in the case in August, 1984.

3. Appended hereto as Exhibit B is a true and correct copy of the opinion of the California Court of Appeal, Second District, Division 3, Scientology v. Armstrong (1991) 283 Cal. Rptr. 917, 232 Cal.App.3d 1060, affirming the 1984 Decision and Judgment.

I declare under the penalty of perjury under the laws of the United States and Canada that the foregoing is true and correct.

Executed at Chilliwack, B.C., Canada on September 14, 1998.

GERALD ARMSTRONG



FILED

JUN 22 1984
Clerk of Court

Chas. M. Hall
BY ERIC M. HALL, CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF CALIFORNIA,
Plaintiff,
vs.
GERALD ARMSTRONG,
Defendant.

No. C 20153
MEMORANDUM OF
DEFERRED DECISION

MARY SUE HUBBARD,
Intervenor.

In this matter heretofore taken under submission, the Court announces its intended decision as follows:

As to the tort causes of action, plaintiff, and plaintiff in intervention are to take nothing, and defendant is entitled to Judgment and costs.

As to the equitable actions, the court finds that neither plaintiff has clean hands, and that at least as of this time, are not entitled to the immediate return of any document or objects presently retained by the court clerk. All exhibits

1 received in evidence or marked for identification, unless
2 specifically ordered sealed, are matters of public record and
3 shall be available for public inspection or use to the same
4 extent that any such exhibit would be available in any other
5 lawsuit. In other words they are to be treated henceforth no
6 differently than similar exhibits in other cases in Superior
7 Court. Furthermore, the "inventory list and description," of
8 materials turned over by Armstrong's attorneys to the court,
9 shall not be considered or deemed to be confidential, private,
10 or under seal.

11 All other documents or objects presently in the possession
12 of the clerk (not marked herein as court exhibits) shall be
13 retained by the clerk, subject to the same orders as are
14 presently in effect as to sealing and inspection, until such
15 time as trial court proceedings are concluded as to the severed
16 cross complaint. For the purposes of this Judgment, conclusion
17 will occur when any motion for a new trial has been denied, or
18 the time within such a motion must be brought has expired
19 without such a motion being made. At that time, all documents
20 neither received in evidence, nor marked for identification
21 only, shall be released by the clerk to plaintiff's
22 representatives. Notwithstanding this order, the parties may
23

24
25 1. Exhibits in evidence No. 500-40; JJJ; KKK; LLL; MMM;
26 NNN; OOO; PPP; QQQ; RRR; and 500-QQQQ.

27 Exhibits for identification only No. JJJJ; Series
28 500-DDDD, EEEE, FFFF, GGGG, HHHH, IIII, NNNN-1, OOOO, ZZZZ,
CCCCC, GGGGG, IIIII, KKKKK, LLLLL, OOOOO, PPPPP, QQQQQ, BBBBBB,
OOOOOO, BBBBBB.

1 at any time by written stipulation filed with the clerk obtain
2 release of any or all such unused materials.

3 Defendant and his counsel are free to speak or communicate
4 upon any of Defendant Armstrong's recollections of his life as
5 a Scientologist or the contents of any exhibit received in
6 evidence or marked for identification and not specifically
7 ordered sealed. As to all documents, and other materials held
8 under seal by the clerk, counsel and the defendant shall remain
9 subject to the same injunctions as presently exist, at least
10 until the conclusion of the proceedings on the cross complaint.
11 However, in any other legal proceedings in which defense
12 counsel, or any of them, is of record, such counsel shall have
13 the right to discuss exhibits under seal, or their contents, if
14 such is reasonably necessary and incidental to the proper
15 representation of his or her client.

16 Further, if any court of competent jurisdiction orders
17 defendant or his attorney to testify concerning the fact of any
18 such exhibit, document, object, or its contents, such testimony
19 shall be given, and no violation of this order will occur.
20 Likewise, defendant and his counsel may discuss the contents of
21 any documents under seal or of any matters as to which this
22 court has found to be privileged as between the parties hereto,
23 with any duly constituted Governmental Law Enforcement Agency
24 or submit any exhibits or declarations thereto concerning such
25 document or materials, without violating any order of this
26 court.

27 ///

28 ///

1 This court will retain jurisdiction to enforce, modify,
2 alter, or terminate any injunction included within the
3 Judgment.

4 Counsel for defendant is ordered to prepare, serve, and
5 file a Judgment on the Complaint and Complaint in Intervention,
6 and Statement of Decision if timely and properly requested,
7 consistent with the court's intended decision.
8

9 Discussion

10 The court has found the facts essentially as set forth in
11 defendant's trial brief, which as modified, is attached as an
12 appendix to this memorandum. In addition the court finds that
13 while working for L.R. Hubbard (hereinafter referred to as
14 LRH), the defendant also had an informal employer-employee
15 relationship with plaintiff Church, but had permission and
16 authority from plaintiffs and LRH to provide Omar Garrison with
17 every document or object that was made available to Mr.
18 Garrison, and further, had permission from Omar Garrison to
19 take and deliver to his attorneys the documents and materials
20 which were subsequently delivered to them and thenceforth into
21 the custody of the County Clerk.

22 Plaintiff Church has made out a prima facie case of
23 conversion (as bailee of the materials), breach of fiduciary
24 duty, and breach of confidence (as the former employer who
25 provided confidential materials to its then employee for
26 certain specific purposes, which the employee later used for
27 other purposes to plaintiff's detriment). Plaintiff Mary Jane
28 Hubbard has likewise made out a prima facie case of conversion

1 and invasion of privacy (misuse by a person of private matters
2 entrusted to him for certain specific purposes only).

3 While defendant has asserted various theories of defense,
4 the basic thrust of his testimony is that he did what he did,
5 because he believed that his life, physical and mental well
6 being, as well as that of his wife were threatened because the
7 organization was aware of what he knew about the life of LRH,
8 the secret machinations and financial activities of the Church,
9 and his dedication to the truth. He believed that the only way
10 he could defend himself, physically as well as from harassing
11 lawsuits, was to take from Omar Garrison those materials which
12 would support and corroborate everything that he had been
13 saying within the Church about LRH and the Church, or refute
14 the allegations made against him in the April 22 Suppressive
15 Person Declare. He believed that the only way he could be sure
16 that the documents would remain secure for his future use was
17 to send them to his attorneys, and that to protect himself, he
18 had to go public so as to minimize the risk that LRH, the
19 Church, or any of their agents would do him physical harm.

20 This conduct if reasonably believed in by defendant and
21 engaged in by him in good faith, finds support as a defense to
22 the plaintiff's charges in the Restatements of Agency, Torts,
23 and case law.

24 Restatement of Agency, Second, provides:

25 "Section 395f: An agent is privileged to reveal
26 information confidentially acquired by him in the course
27 of his agency in the protection of a superior interest of
28 himself or a third person.

1 "Section 418: An agent is privileged to protect
2 interests of his own which are superior to those of the
3 principal, even though he does so at the expense of the
4 principal's interest or in disobedience to his orders."

5 Restatement of torts, Second, section 271:

6 "One is privileged to commit an act which would
7 otherwise be a trespass to or a conversion of a chattel in
8 the possession of another, for the purpose of defending
9 himself or a third person against the other, under the
10 same conditions which would afford a privilege to inflict
11 harmful or offensive contact upon the other for the same
12 purpose."

13 The Restatement of Torts, Second, section 652a, as well as
14 case law, make it clear that not all invasions of privacy are
15 unlawful or tortious. It is only when the invasion is
16 unreasonable that it becomes actionable. Hence, the trier of
17 fact must engage in a balancing test, weighing the nature and
18 extent of the invasion, as against the purported justification
19 therefore to determine whether in a given case, the particular
20 invasion or intrusion was unreasonable.

21 In addition the defendant has asserted as a defense the
22 principal involved in the case of Willig v. Gold, 75
23 Cal.App.2d, 809, 814, which holds that an agent has a right or
24 privilege to disclose his principal's dishonest acts to the
25 party prejudicially affected by them.

26 Plaintiff Church has asserted and obviously has certain
27 rights arising out of the First Amendment. Thus, the court
28 cannot, and has not, inquired into or attempted to evaluate the

1 merits, accuracy, or truthfulness of Scientology or any of its
2 precepts as a religion. First Amendment rights, however,
3 cannot be utilized by the Church or its members, as a sword to
4 preclude the defendant, whom the Church is suing, from
5 defending himself. Therefore, the actual practices of the
6 Church or its members, as it relates to the reasonableness of
7 the defendant's conduct and his state of mind are relevant,
8 admissible, and have been considered by the court.

9 As indicated by its factual findings, the court finds the
10 testimony of Gerald and Jocelyn Armstrong, Laurel Sullivan,
11 Nancy Dincalcis, Edward Walters, Omar Garrison, Kima Douglas,
12 and Howard Schomer to be credible, extremely persuasive, and
13 the defense of privilege or justification established and
14 corroborated by this evidence. Obviously, there are some
15 discrepancies or variations in recollections, but these are the
16 normal problems which arise from lapse of time, or from
17 different people viewing matters or events from different
18 perspectives. In all critical and important matters, their
19 testimony was precise, accurate, and rang true. The picture
20 painted by these former dedicated Scientologists, all of whom
21 were intimately involved with LRH, or Mary Jane Hubbard, or of
22 the Scientology Organization, is on the one hand pathetic, and
23 on the other, outrageous. Each of these persons literally gave
24 years of his or her respective life in support of a man, LRH,
25 and his ideas. Each has manifested a waste and loss or
26 frustration which is incapable of description. Each has broken
27 with the movement for a variety of reasons, but at the same
28 time, each is, still bound by the knowledge that the Church has

1 in its possession his or her most inner thoughts and
2 confessions, all recorded in "pre-clear (P.C.) folders" or
3 other security files of the organization, and that the Church
4 or its minions is fully capable of intimidation or other
5 physical or psychological abuse if it suits their ends. The
6 record is replete with evidence of such abuse.

7 In 1970 a police agency of the French Government conducted
8 an investigation into Scientology and concluded, "this sect,
9 under the pretext of 'freeing humans' is nothing in reality but
10 a vast enterprise to extract the maximum amount of money from
11 its adepts by (use of) pseudo-scientific theories, by (use of)
12 'auditions' and 'stage settings' (lit. to create a theatrical
13 scene') pushed to extremes (a machine to detect lies, its own
14 particular phraseology . . .), to estrange adepts from their
15 families and to exercise a kind of blackmail against persons
16 who do not wish to continue with this sect."² From the
17 evidence presented to this court in 1984, at the very least,
18 similar conclusions can be drawn. In addition to violating and
19 abusing its own members civil rights, the organization over the
20 years with its "Fair Game" doctrine has harassed and abused
21 those persons not in the Church whom it perceives as enemies.
22 The organization clearly is schizophrenic and paranoid, and
23 this bizarre combination seems to be a reflection of its
24 founder LRH. The evidence portrays a man who has been
25 virtually a pathological liar when it comes to his history,
26
27

28 2. Exhibit 500-HHHHH.

1 background, and achievements. The writings and documents in
2 evidence additionally reflect his egoism, greed, avarice, lust
3 for power, and vindictiveness and aggressiveness against
4 persons perceived by him to be disloyal or hostile. At the
5 same time it appears that he is charismatic and highly capable
6 of motivating, organizing, controlling, manipulating, and
7 inspiring his adherents. He has been referred to during the
8 trial as a "genius," a "revered person," a man who was "viewed
9 by his followers in awe." Obviously, he is and has been a very
10 complex person, and that complexity is further reflected in his
11 alter ego, the Church of Scientology. Notwithstanding
12 protestations to the contrary, this court is satisfied that LRH
13 runs the Church in all ways through the Sea Organization, his
14 role of Commodore, and the Commodore's Messengers.³ He has, of
15 course, chosen to go into "seclusion," but he maintains contact
16 and control through the top messengers. Seclusion has its
17 light and dark side too. It adds to his mystique, and yet
18 shields him from accountability and subpoena or service of
19 summons.

20 LRH's wife, Mary Sue Hubbard is also a plaintiff herein.
21 On the one hand she certainly appeared to be a pathetic
22 individual. She was forced from her post as Controller,
23 convicted and imprisoned as a felon, and deserted by her
24 husband. On the other hand her credibility leaves much to be
25 desired. She struck the familiar pose of not seeing, hearing,
26

27 3. See Exhibit K: Flag Order 3729 - 15 September 1978
28 "Commodore's Messengers."

1 or knowing any evil. Yet she was the head of the Guardian
2 Office for years and among other things, authored the infamous
3 order "GO 121669"⁴ which directed culling of supposedly
4 confidential P.C. files/folders for purposes of internal
5 security. In her testimony she expressed the feeling that
6 defendant by delivering the documents, writings, letters to his
7 attorneys, subjected her to mental rape. The evidence is clear
8 and the court finds that defendant and Omar Garrison had
9 permission to utilize these documents for the purpose of
10 Garrison's proposed biography. The only other persons who were
11 shown any of the documents were defendant's attorneys, the
12 Douglasses, the Dincalcis, and apparently some documents
13 specifically affecting LRH's son "Nibs," were shown to "Nibs."
14 The Douglasses and Dincalcises were disaffected Scientologists
15 who had a concern for their own safety and mental security, and
16 were much in the same situation as defendant. They had not
17 been declared as suppressive, but Scientology had their P.C.
18 folders, as well as other confessions, and they were extremely
19 apprehensive. They did not see very many of the documents, and
20 it is not entirely clear which they saw. At any rate Mary Sue
21 Hubbard did not appear to be so much distressed by this fact,
22 as by the fact that Armstrong had given the documents to
23 Michael Flynn, whom the Church considered its foremost
24
25
26
27

28 4. Exhibit AAA.


1 lawyer-enemy.⁵ However, just as the plaintiffs have First
2 Amendment rights, the defendant has a Constitutional right to
3 an attorney of his own choosing. In legal contemplation the
4 fact that defendant selected Mr. Flynn rather than some other
5 lawyer cannot by itself be tortious. In determining whether
6 the defendant unreasonably invaded Mrs. Hubbard's privacy, the
7 court is satisfied the invasion was slight, and the reasons and
8 justification for defendant's conduct manifest. Defendant was
9 told by Scientology to get an attorney. He was declared an
10 enemy by the Church. He believed, reasonably, that he was
11 subject to "fair game." The only way he could defend himself,
12 his integrity, and his wife was to take that which was
13 available to him and place it in a safe harbor, to wit, his
14 lawyer's custody. He may have engaged in overkill, in the
15 sense that he took voluminous materials, some of which appear
16 only marginally relevant to his defense. But he was not a
17 lawyer and cannot be held to that precise standard of judgment.
18 Further, at the time that he was accumulating the material, he
19 was terrified and undergoing severe emotional turmoil. The
20 court is satisfied that he did not unreasonably intrude upon
21 Mrs. Hubbard's privacy under the circumstances by in effect
22 simply making his knowledge that of his attorneys. It is, of
23 course, rather ironic that the person who authorized G.O. order
24 121669 should complain about an invasion of privacy. The
25

26 5. "No, I think my emotional distress and upset is the
27 fact that someone took papers and materials without my
28 authorization and then gave them to your Mr. Flynn."
Reporter's Transcript, p. 1006.

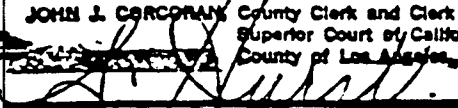
1 practice of culling supposedly confidential "P.C. folders or
2 files" to obtain information for purposes of intimidation
3 and/or harassment is repugnant and outrageous. The Guardian's
4 Office, which plaintiff headed, was no respecter of anyone's
5 civil rights, particularly that of privacy. Plaintiff Mary Sue
6 Hubbard's cause of action for conversion must fail for the same
7 reason as plaintiff Church. The documents were all together in
8 Omar Garrison's possession. There was no rational way the
9 defendant could make any distinction.

10 Insofar as the return of documents is concerned, matters
11 which are still under seal may have evidentiary value in the
12 trial of the cross complaint or in other third party
13 litigation. By the time that proceedings on the cross
14 complaint are concluded, the court's present feeling is that
15 those documents or objects not used by that time should be
16 returned to plaintiff. However, the court will reserve
17 jurisdiction to reconsider that should circumstances warrant.

18 Dated: June 10, 1984

19
20 
21 PAUL G. BRECKENRIDGE, JR.
22 Judge of the Superior Court

23
24 THE DOCUMENT TO WHICH THIS CERTIFICATE IS AT-
25 TACHED IS A FULL TRUE AND CORRECT COPY OF THE
26 ORIGINAL ON FILE AND OF RECORD IN MY OFFICE.

27 ATTEST AUG 8 1984 19
28 JOHN J. CORCORAN County Clerk and Clerk of the
Superior Court of California,
County of Los Angeles.
BY  DEPUTY

S. HURST

1
2 Appendix

3 Defendant Armstrong was involved with Scientology from
4 1969 through 1981, a period spanning 12 years. During that
5 time he was a dedicated and devoted member who revered the
6 founder, L. Ron Hubbard. There was little that Defendant
7 Armstrong would not do for Hubbard or the Organization. He
8 gave up formal education, one-third of his life, money and
9 anything he could give in order to further the goals of
10 Scientology, goals he believed were based upon the truth,
11 honesty, integrity of Hubbard and the Organization.

12 From 1971 through 1981, Defendant Armstrong was a member
13 of the Sea Organization, a group of highly trained
14 scientologists who were considered the upper echelon of the
15 Scientology organization. During those years he was placed in
16 various locations, but it was never made clear to him exactly
17 which Scientology corporation he was working for. Defendant
18 Armstrong understood that, ultimately, he was working for L.
19 Ron Hubbard, who controlled all Scientology finances,
20 personnel, and operations while Defendant was in the Sea
21 Organization.

22 Beginning in 1979 Defendant Armstrong resided at Gilman
23 Hot Springs, California, in Hubbard's "Household Unit." The
24 Household Unit took care of the personal wishes and needs of
25 Hubbard at many levels. Defendant Armstrong acted as the L.
26 Ron Hubbard Renovations In-Charge and was responsible for
27 renovations, decoration, and maintenance of Hubbard's home and
28 office at Gilman Hot Springs.

///

1 In January of 1980 there was an announcement of a possible
2 raid to be made by the FBI or other law enforcement agencies of
3 the property. Everyone on the property was required by
4 Hubbard's representatives, the Commodore's Messengers, to go
5 through all documents located on the property and "vet" or
6 destroy anything which showed that Hubbard controlled
7 Scientology organizations, retained financial control, or was
8 issuing orders to people at Gilman Hot Springs.

9 A commercial paper shredder was rented and operated day
10 and night for two weeks to destroy hundreds of thousands of
11 pages of documents.

12 During the period of shredding, Brenda Black, the
13 individual responsible for storage of Hubbard's personal
14 belongings at Gilman Hot Springs, came to Defendant Armstrong
15 with a box of documents and asked whether they were to be
16 shredded. Defendant Armstrong reviewed the documents and found
17 that they consisted of a wide variety of documents including
18 Hubbard's personal papers, diaries, and other writings from a
19 time before he started Dianetics in 1950, together with
20 documents belonging to third persons which had apparently been
21 stolen by Hubbard or his agents. Defendant Armstrong took the
22 documents from Ms. Black and placed them in a safe location on
23 the property. He then searched for and located another twenty
24 or more boxes containing similar materials, which were poorly
25 maintained.

26 On January 8, 1980, Defendant Armstrong wrote a petition
27 to Hubbard requesting his permission to perform the research
28 for a biography to be done about his life. The petition states

1 that Defendant Armstrong had located the subject materials and
2 lists of a number of activities he wished to perform in
3 connection with the biography research.

4 Hubbard approved the petition, and Defendant Armstrong
5 became the L. Ron Hubbard Personal Relations Officer Researcher
6 (PPRO Res). Defendant claims that this petition and its
7 approval forms the basis for a contract between Defendant and
8 Hubbard. Defendant Armstrong's supervisor was then Laurel
9 Sullivan, L. Ron Hubbard's Personal Public Relations Officer.

10 During the first part of 1980, Defendant Armstrong moved
11 all of the L. Ron Hubbard Archives materials he had located at
12 Gilman Hot Springs to an office in the Church of Scientology
13 Cedars Complex in Los Angeles. These materials comprised
14 approximately six file cabinets. Defendant Armstrong had
15 located himself in the Cedars Complex, because he was also
16 involved in "Mission Corporate Category Sort-Out," a mission to
17 work out legal strategy. Defendant Armstrong was involved with
18 this mission until June of 1980.

19 It was also during this early part of 1980 that Hubbard
20 left the location in Gilman Hot Springs, California, and went
21 into hiding. Although Defendant Armstrong was advised by
22 Laurel Sullivan that no one could communicate with Hubbard,
23 Defendant Armstrong knew that the ability for communication
24 existed, because he had forwarded materials to Hubbard at his
25 request in mid-1980.

26 Because of this purported inability to communicate with
27 Hubbard, Defendant Armstrong's request to purchase biographical
28 materials of Hubbard from people who offered them for sale went

1 to the Commodore's Messenger Organization, the personal
2 representatives of Hubbard.

3 In June of 1980 Defendant Armstrong became involved in the
4 selection of a writer for the Hubbard biography. Defendant
5 Armstrong learned that Hubbard had approved of a biography
6 proposal prepared by Omar Garrison, a writer who was not a
7 member of Scientology. Defendant Armstrong had meetings with
8 Mr. Garrison regarding the writing of the biography and what
9 documentation and assistance would be made available to him.
10 As understood by Mr. Garrison, Defendant Armstrong represented
11 Hubbard in these discussions.

12 Mr. Garrison was advised that the research material he
13 would have at his disposal were Hubbard's personal archives.
14 Mr. Garrison would only undertake a writing of the biography if
15 the materials provided to him were from Hubbard's personal
16 archives, and only if his manuscript was subject to the
17 approval of Hubbard himself.

18 In October of 1980 Mr. Garrison came to Los Angeles and
19 was toured through the Hubbard archives materials that
20 Defendant Armstrong had assembled up to that time. This was an
21 important "selling point" in obtaining Mr. Garrison's agreement
22 to write the biography. On October 30, 1980, an agreement was
23 entered into between Ralston-Pilot, ncv. F/S/O Omar V.
24 Garrison, and AOSH DK Publications of Copenhagen, Denmark, for
25 the writing of a biography of Hubbard.

26 Paragraph 10B of the agreement states that:

27 "Publisher shall use its best efforts to provide
28 Author with an office, an officer assistant and/or

1 research assistant, office supplies and any needed
2 archival and interview materials in connection with
3 the writing of the Work."

4 The "research assistant" provided to Mr. Garrison was
5 Defendant Armstrong.

6 During 1980 Defendant Armstrong exchanged correspondence
7 with Intervenor regarding the biography project. Following his
8 approval by Hubbard as biography researcher, Defendant
9 Armstrong wrote to Intervenor on February 5, 1980, advising her
10 of the scope of the project. In the letter Defendant stated
11 that he had found documents which included Hubbard's diary from
12 his Orient trip, poems, essays from his youth, and several
13 personal letters, as well as other things.

14 By letter of February 11, 1980, Intervenor responded to
15 Defendant, acknowledging that he would be carrying out the
16 duties of Biography Researcher.

17 On October 14, 1980, Defendant Armstrong again wrote to
18 Intervenor, updating her on "Archives materials" and proposing
19 certain guidelines for the handling of those materials.

20 It was Intervenor who, in early 1981, ordered certain
21 biographical materials from "Controller Archives" to be
22 delivered to Defendant Armstrong. These materials consisted of
23 several letters written by Hubbard in the 1920's and 1930's,
24 Hubbard's Boy Scout books and materials, several old Hubbard
25 family photographs, a diary kept by Hubbard in his youth, and
26 several other items.

27 Defendant Armstrong received these materials upon the
28 order of Intervenor, following his letter of October 15, 1980,

1 to her in which Defendant stated, at page 7, that there were
2 materials in the "Controller Archives" that would be helpful to
3 him in the biography research.

4 After these materials were delivered to Defendant
5 Armstrong, Intervenor was removed from her Scientology position
6 of Controller in 1981, presumably because of her conviction for
7 the felony of obstruction of justice in connection with the
8 theft of Scientology documents from various government offices
9 and agencies in Washington, D.C.

10 During the time Defendant Armstrong worked on the
11 biography project and acted as Hubbard Archivist, there was
12 never any mention that he was not to be dealing with Hubbard's
13 personal documents or that the delivery of those documents to
14 Mr. Garrison was not authorized.

15 For the first year or more of the Hubbard biography and
16 archive project, funding came from Hubbard's personal staff
17 unit at Gilman Hot Springs, California. In early 1981,
18 however, Defendant Armstrong's supervisor, Laurel Sullivan,
19 ordered him to request that funding come from what was known as
20 SEA Org Reserves. Approval for this change in funding came
21 from the SEA Org Reserves Chief and Watch Dog Committee, the
22 top Commodores Messenger Organization unit, who were Hubbard's
23 personal representatives.

24 From November of 1980 through 1981, Defendant Armstrong
25 worked closely with Mr. Garrison, assembling Hubbard's archives
26 into logical categories, copying them and arranging the copies
27 of the Archives materials into bound volumes. Defendant
28 Armstrong made two copies of almost all documents copied for

1 Mr. Garrison - one for Mr. Garrison and the other to remain in
2 Hubbard Archives for reference or recopying. Defendant
3 Armstrong created approximately 400 binders of documents. The
4 vast majority of the documents for Mr. Garrison came from
5 Hubbard's personal Archives, of which Defendant Armstrong was
6 in charge. Materials which came from other Archives, such as
7 the Controller Archives, were provided to Defendant Armstrong
8 by Scientology staff members who had these documents in their
9 care.

10 It was not until late 1981 that Plaintiff was to provide a
11 person to assist on the biography project by providing Mr.
12 Garrison with "Guardian Office" materials, otherwise described
13 as technical materials relating to the operation of
14 Scientology. The individual appointed for this task was Vaughn
15 Young. Controller Archives and Guardian Office Archives had no
16 connection to the Hubbard Archives, which Defendant Armstrong
17 created and maintained as Hubbard's personal materials.

18 In addition to the assemblage of Hubbard's Archives,
19 Defendant Armstrong worked continually on researching and
20 assembling materials concerning Hubbard by interviewing dozens
21 of individuals, including Hubbard's living aunt, uncle, and
22 four cousins. Defendant Armstrong did a geneology study of
23 Hubbard's family and collected, assembled, and read hundreds of
24 thousands of pages of documentation in Hubbard's Archives.

25 During 1980 Defendant Armstrong remained convinced of
26 Hubbard's honesty and integrity and believed that the
27 representations he had made about himself in various
28 publications were truthful. Defendant Armstrong was devoted to

1 Hubbard and was convinced that any information which he
2 discovered to be unflattering of Hubbard or contradictory to
3 what Hubbard has said about himself, was a lie being spread by
4 Hubbard's enemies. Even when Defendant Armstrong located
5 documents in Hubbard's Archives which indicated that
6 representations made by Hubbard and the Organization were
7 untrue, Defendant Armstrong would find some means to "explain
8 away" the contradictory information.

9 Slowly, however, throughout 1981, Defendant Armstrong
10 began to see that Hubbard and the Organization had continuously
11 lied about Hubbard's past, his credentials, and his
12 accomplishments. Defendant Armstrong believed, in good faith,
13 that the only means by which Scientology could succeed in what
14 Defendant Armstrong believed was its goal of creating an
15 ethical environment on earth, and the only way Hubbard could be
16 free of his critics, would be for Hubbard and the Organization
17 to discontinue the lies about Hubbard's past, his credentials,
18 and accomplishments. Defendant Armstrong resisted any public
19 relations piece or announcement about Hubbard which the L. Ron
20 Hubbard Public Relations Bureau proposed for publication which
21 was not factual. Defendant Armstrong attempted to change and
22 make accurate the various "about the author" sections in
23 Scientology books, and further, Defendant rewrote or critiqued
24 several of these and other publications for the L. Ron Hubbard
25 Public Relations Bureau and various Scientology Organizations.
26 Defendant Armstrong believed and desired that the Scientology
27 Organization and its leader discontinue the perpetration of the

28 ///

1 massive fraud upon the innocent followers of Scientology, and
2 the public at large.

3 Because of Defendant Armstrong's actions, in late November
4 of 1981, Defendant was requested to come to Gilman Hot Springs
5 by Commodore Messenger Organization Executive, Cirrus Slevin.
6 Defendant Armstrong was ordered to undergo a "security check,"
7 which involved Defendant Armstrong's interrogation while
8 connected to a crude Scientology lie detector machine called an
9 E-meter.

10 The Organization wished to determine what materials
11 Defendant Armstrong had provided to Omar Garrison. Defendant
12 Armstrong was struck by the realization that the Organization
13 would not work with him to correct the numerous fraudulent
14 representations made to followers of Scientology and the public
15 about L. Ron Hubbard and the Organization itself. Defendant
16 Armstrong, who, for twelve years of his life, had placed his
17 complete and full trust in Mr. and Mrs. Hubbard and the
18 Scientology Organization, saw that his trust had no meaning and
19 that the massive frauds perpetrated about Hubbard's past,
20 credentials, and accomplishments would continue to be spread.

21 Less than three weeks before Defendant Armstrong left
22 Scientology, he wrote a letter to Cirrus Slevin on November 25,
23 1981, in which it is clear that his intentions in airing the
24 inaccuracies, falsehoods, and frauds regarding Hubbard were
25 done in good faith. In his letter he stated as follows:

26 "If we present inaccuracies, hyperbole
27 or downright lies as fact or truth, it
28 doesn't matter what slant we give them, if

1 disproved the man will look, to outsiders
2 at least, like a charlatan. This is what
3 I'm trying to prevent and what I've been
4 working on the past year and a half.

5 . . .

6 "and that is why I said to Norman that
7 it is up to us to insure that everything
8 which goes out about LRH is one hundred
9 percent accurate. That is not to say that
10 opinions can't be voiced, they can. And
11 they can contain all the hype you want.
12 But they should not be construed as facts.
13 And anything stated as a fact should be
14 documentable.

15 "we are in a period when
16 'investigative reporting' is popular, and
17 when there is relatively easy access to
18 documentation on a person. We can't delude
19 ourselves I believe, if we want to gain
20 public acceptance and cause some betterment
21 in society, that we can get away with
22 statements, the validity of which we don't
23 know.

24 "The real disservice to LRH, and the
25 ultimate make-wrong is to go on assuming
26 that everything he's ever written or said
27 is one hundred percent accurate and publish
28 it as such without verifying it. I'm

1 talking here about biographical or
2 non-technical writings. This only leads,
3 should any of his statements turn out to be
4 inaccurate, to a make-wrong of him, and
5 consequently his technology.

6 "That's what I'm trying to remedy and
7 prevent.

8 . . .

9 "To say that LRH is not capable of
10 hype, errors or lies is certainly [^]sic; not
11 granting him much of a beingness. To
12 continue on with the line that he has never
13 erred nor lied is counterproductive. It is
14 an unreal attitude and too far removed from
15 both the reality and people in general that
16 it would widen public unacceptance.

17 . . .

18 ". . . That is why I feel the
19 falsities must be corrected, and why we
20 must verify our facts and present them in a
21 favorable light."

22
23 The remainder of the letter contains examples of facts
24 about Hubbard which Defendant Armstrong found to be wholly
25 untrue or inaccurate and which were represented as true by the
26 Hubbards and the Scientology Organization.

27 In December of 1981 Defendant Armstrong made the decision
28 to leave the Church of Scientology. In order to continue in

1 his commitment to Hubbard and Mr. Garrison in the biography
2 project, he copied a large quantity of documents, which Mr.
3 Garrison had requested or which would be useful to him for the
4 biography. Defendant Armstrong delivered all of this material
5 to Mr. Garrison the date he left the SEA Organization and kept
6 nothing in his possession.

7 Thereafter, Defendant Armstrong maintained friendly
8 relations with Hubbard's representatives by returning to the
9 Archives office and discussing the various categories of
10 materials. In fact on February 24, 1982, Defendant Armstrong
11 wrote to Vaughn Young, regarding certain materials Mr. Young
12 was unable to locate for Omar Garrison.

13 After this letter was written, Defendant Armstrong went to
14 the Archives office and located certain materials Mr. Garrison
15 had wanted which Hubbard representatives claimed they could not
16 locate.

17 At the time Defendant Armstrong left the SEA Organization,
18 he was disappointed with Scientology and Hubbard, and also felt
19 deceived by them. However, Defendant Armstrong felt he had no
20 enemies and felt no ill will toward anyone in the Organization
21 or Hubbard, but still believed that a truthful biography should
22 be written.

23 After leaving the SEA Organization, Defendant Armstrong
24 continued to assist Mr. Garrison with the Hubbard biography
25 project. In the spring of 1982, Defendant Armstrong at Mr.
26 Garrison's request, transcribed some of his interview tapes,
27 copied some of the documentation he had, and assembled several
28 more binders of copied materials. Defendant Armstrong also set

1 up shelves for Mr. Garrison for all the biography research
2 materials, worked on a cross-reference systems, and continued
3 to do library research for the biography.

4 On February 18, 1982, the Church of Scientology
5 International issued a "Suppressive Person Declare Gerry
6 Armstrong," which is an official Scientology document issued
7 against individuals who are considered as enemies of the
8 Organization. Said Suppressive Person Declare charged that
9 Defendant Armstrong had taken an unauthorized leave and that he
10 was spreading destructive rumors about Senior Scientologists.

11 Defendant Armstrong was unaware of said Suppressive Person
12 Declare until April of 1982. At that time a revised Declare
13 was issued on April 22, 1982. Said Declare charged Defendant
14 Armstrong with 18 different "Crimes and High Crimes and
15 Suppressive Acts Against the Church." The charges included
16 theft, juggling accounts, obtaining loans on money under false
17 pretenses, promulgating false information about the Church,
18 its founder, and members, and other untruthful allegations
19 designed to make Defendant Armstrong an appropriate subject of
20 the Scientology "Fair Game Doctrine." Said Doctrine allows any
21 suppressive person to be "tricked, cheated, lied to, sued, or
22 destroyed."

23 The second declare was issued shortly after Defendant
24 Armstrong attempted to sell photographs of his wedding on board
25 Hubbard's ship (in which Hubbard appears), and photographs
26 belonging to some of his friends, which also included photos of
27 L.R. Hubbard while in seclusion. Although Defendant Armstrong
28 delivered the photographs to a Virgil Wilhite for sale, he

1 never received payment or return of his friend's photographs.
2 When he became aware that the Church had these photographs, he
3 went to the Organization to request their return. A loud and
4 boisterous argument ensued, and he eventually was told to leave
5 the premises and get an attorney.

6 From his extensive knowledge of the covert and
7 intelligence operations carried out by the Church of
8 Scientology of California against its enemies (suppressive
9 persons), Defendant Armstrong became terrified and feared that
10 his life and the life of his wife were in danger, and he also
11 feared he would be the target of costly and harassing lawsuits.
12 In addition, Mr. Garrison became afraid for the security of the
13 documents and believed that the intelligence network of the
14 Church of Scientology would break and enter his home to
15 retrieve them. Thus, Defendant Armstrong made copies of
16 certain documents for Mr. Garrison and maintained them in a
17 separate location.

18 It was thereafter, in the summer of 1982, that Defendant
19 Armstrong asked Mr. Garrison for copies of documents to use in
20 his defense and sent the documents to his attorneys, Michael
21 Flynn and Contos & Bunch.

22 After the within suit was filed on August 2, 1982,
23 Defendant Armstrong was the subject of harassment, including
24 being followed and surveilled by individuals who admitted
25 employment by Plaintiff; being assaulted by one of these
26 individuals; being struck bodily by a car driven by one of
27 these individuals; having two attempts made by said individuals
28 apparently to involve Defendant Armstrong in a freeway

1 automobile accident; having said individuals come onto
2 Defendant Armstrong's property, spy in his windows, create
3 disturbances, and upset his neighbors. During trial when it
4 appeared that Howard Schomer (a former Scientologist) might be
5 called as a defense witness, the Church engaged in a somewhat
6 sophisticated effort to suppress his testimony. It is not
7 clear how the Church became aware of defense intentions to call
8 Mr. Schomer as a witness, but it is abundantly clear they
9 sought to entice him back into the fold and prevent his
10 testimony.
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

232 Cal.App.3d 1060

CHURCH OF SCIENTOLOGY v. ARMSTRONG

917

Cite as 283 Cal.Rptr. 917 (Cal.App. 2 Dist. 1991)

232 Cal.App.3d 1060

Los Angeles CHURCH OF SCIENTOLOGY OF CALIFORNIA, et al., Plaintiffs and Appellants.

v.

Gerald ARMSTRONG, Defendant and Respondent.

Nos. B025920, B038975.

Court of Appeal, Second District, Division 3.

July 29, 1991.

Review Denied Oct. 17, 1991.

Church sued former church worker alleging he converted confidential archive materials and disseminated materials to unauthorized persons, in breach of his fiduciary duty. Former church worker cross-complained seeking damages for fraud, intentional infliction of emotional distress, libel, breach of contract and tortious interference with contract. The Superior Court, Los Angeles County, Paul G. Breckenridge, Jr., and Bruce R. Geernaert, JJ., dismissed complaint, later settled and dismissed cross action, and ordered documents returned to the church and the records sealed. Church appealed. The Court of Appeal, Danielson, J., held that: (1) successor judge's order unsealing record more than five years after order was sealed by his predecessor exceeded judge's authority, and (2) under application of conditional privilege doctrine, sufficient evidence supported finding that church worker's conversion of church documents was justified by his reasonable belief that church intended to cause him harm and that he could prevent the harm only by taking the documents.

Affirmed.

1. Appeal and Error ⇨105

An order dismissing conversion action with prejudice, rather than an interlocutory order captioned "judgment" which ordered that conversion plaintiffs take nothing by their complaint but did not resolve cross complaint, was the appealable judgment in the action.

2. Appeal and Error ⇨837(9)

Claim that opponent's testimony was impeached by testimony given in other proceeding subsequent to judgment appealed from was not cognizable on appeal.

3. Judges ⇨32

Successor judge's order on his own motion vacating predecessor judge's order sealing court records in document conversion dispute between church and former church member exceeded successor judge's authority where vacating order was entered long after time for reconsideration of sealing order had expired, and no showing was made other than that supporting motion for access to record by nonparty who was also involved with litigation with church. West's Ann.Cal.C.C.P. §§ 473, 1008.

4. Records ⇨32

Persons seeking sealing of record on appeal had to make more particularized showing of need than a mere request that their pursuit of an action for conversion of confidential church documents, brought primarily to protect privacy interests in the documents converted, should not cause disclosure of the information they sought to protect, without any limitation to any particular portions of voluminous record of trial court proceedings.

5. Torts ⇨27

Trover and Conversion ⇨40(1)

Sufficient evidence supported finding that church worker's alleged conversion of confidential church archive materials when worker delivered documents to his attorney was motivated by worker's reasonable belief that he and his wife were in danger because the church was aware of what he knew about the life of its founder, the secret machinations and financial activities of the church, and worker's dedication to the truth, and thus did not subject worker to liability for conversion and invasion of privacy under the conditional privilege doctrine.

6. Religious Societies ⇨31(5)

Trial ⇨54(1)

Trial court did not abuse its discretion in admitting documentary and testimonial

evidence concerning history of church worker's relationship with church and church practices in relation to its members, former members or critics, where record indicated court recognized that the statements were admitted for the limited purpose of proving reasonableness of worker's belief that church intended to harm him when he converted church's documents.

7. Trial \Rightarrow 387(1)

Trial court's statement of decision in church document conversion case merely reflected court's findings on elements of justification defense asserted by church worker and did not result in miscarriage of justice.

1063 Rabinowitz, Boudin, Standard, Krinsky & Lieberman, Bowles & Moxon, Eric M. Lieberman, Timothy Bowles, Kendrick L. Moxon and Michael Lee Hertzberg, for plaintiffs and appellants.

Gerald Armstrong, In Pro. Per.

Toby L. Plevin, Paul Morantz and Michael L. Walton, for defendant and respondent.

Lawrence Wollersheim, amicus curiae, on behalf of respondent.

DANIELSON, Associate Justice.

In consolidated appeals, the Church of Scientology (the Church) and Mary Sue Hubbard (hereafter collectively "plaintiffs") appeal from an order after appealable judgment unsealing the file in Church of Scientology of California v. Gerald Armstrong (B038975), and from the judgment entered in the case (B025920). We vacate the order and affirm the judgment.

FACTS AND PROCEDURAL HISTORY

In the underlying action, the Church sued Armstrong, a former Church worker, alleging he converted to his own use confidential archive materials and disseminated the same to unauthorized persons, thereby breaching his fiduciary duty to the Church,

1. The "judgment" of August 10, 1984, is not included in the present record on appeal. However, it is included in the petition of plaintiffs

which sought return of the documents, injunctive relief against further dissemination of the information contained therein, imposition of a constructive trust over the property and any profits Armstrong might realize from his use of the materials, as well as damages. Mary Sue Hubbard (Hubbard), wife of Church founder L. Ron Hubbard, intervened in the action, alleging causes of action for conversion, invasion of privacy, possession of personal property [*sic*], and declaratory and injunctive relief. Armstrong cross-complained, seeking damages for fraud, intentional infliction of emotional distress, libel, breach of contract, and tortious interference with contract.

With respect to the complaint and complaint-in-intervention, the trial court found the Church had made out a prima facie case of conversion, breach of fiduciary duty, and breach of confidence, and that Mary Sue Hubbard had made out a prima facie case of conversion and invasion of privacy. However, the court also determined that Armstrong's conduct was 1064 justified, in that he believed the Church threatened harm to himself and his wife, and that he could prevent such harm by taking and keeping the documents.

Following those determinations the court made and entered an order, entitled "Judgment," on August 10, 1984,¹ ordering and adjudging that plaintiffs take nothing by their complaint and complaint-in-intervention, and that defendant Armstrong have and recover his costs and disbursements. Plaintiffs filed notice of appeal from that order.

[1] We dismissed the appeal (B005912) because that "judgment" was not a final judgment and was not appealable; Armstrong's cross-complaint had not yet been resolved and further judicial action was essential to the final determination of the rights of the parties. (*Lyon v. Goss* (1942) 19 Cal.2d 659, 670, 123 P.2d 11.)

Armstrong's cross-action was then settled and dismissed, the subject documents

and appellants for review by our Supreme Court of our decision (B005912) in this case, filed December 18, 1986.

CHURCH OF SCIENTOLOGY v. ARMSTRONG

919

232 Cal.App.3d 1065

Cite as 283 Cal.Rptr. 917 (Cal.App. 2 Dist. 1991)

were ordered returned to the Church, and the record was sealed by Judge Breckenridge pursuant to stipulation of the parties. The dismissal of Armstrong's cross-action was a final determination of the rights of the parties, and constituted a final judgment, permitting appellate review of the court's interlocutory order captioned "judgment" filed August 10, 1984.

Plaintiffs then timely filed a new notice of appeal (B025920), from the orders entitled "Order for Return of Exhibits and Sealed Documents" and "Order Dismissing Action With Prejudice," both filed December 11, 1986, and from the "Judgment" filed August 10, 1984, stating that the appeal was "only from so much of those orders and judgment which denied damages to plaintiff and plaintiff-intervenor" on their complaints. We rule that the Order Dismissing Action With Prejudice is the appealable judgment in B025920.²

The Unsealing Order After Judgment (B038975)

On October 11, 1988, Bent Corydon, who is a party to other litigation against the Church, moved to unseal the record in this case for the purpose of preparing for trial of his cases. He sought only private disclosure. Judge ¹¹⁰⁶⁵Breckenridge having retired, Corydon's motion was heard by Judge Geernaert, who made an order dated November 9, 1988, which he clarified by another order dated November 30, 1988, which opened the record not only to Corydon but also to the general public, thus vacating the earlier order made by Judge Breckenridge.

On December 19, 1988, plaintiffs Church and Hubbard filed a timely notice of appeal from those orders made after appealable judgment. That appeal, B038975, is the other of the current consolidated appeals.

2. We later granted the motion of appellant Church to deem the record on appeal in B005912 to be the record on appeal in B025920, which is one of the current consolidated appeals; we also take judicial notice of the entire record in B005912. Consequently the reporters' transcript, the appendices of the parties on appeal, and the parties' briefs in case No. B005912

On December 22, 1988, Division Four of this court issued an order staying Judge Geernaert's orders (1) unsealing the record and (2) denying a motion for reconsideration of the unsealing order, to the extent those orders unsealed the record as to the general public and permitted review by any person other than Corydon and his counsel of record. On December 29, 1988, Division Four modified this stay order by adding to it a protective order prohibiting Corydon and his counsel from disseminating copies of or disclosing the content of any documents found in the file to the public or any third party, except to the extent necessary to litigate the actions to which Corydon and the Church were parties. Corydon and his counsel were also required to make good faith efforts in Corydon's litigation to submit under seal any documents they found in the file of this case.

On this appeal, Corydon argues in favor of the trial court's order unsealing the record, as he wishes to be free of the protective orders contained in the modified stay order issued by Division Four.

The "Judgment" of August 10, 1984 (B025920)

[2] Armstrong's taking of the documents is undisputed. The evidence relating to his claim of justification, which was found credible by the trial court,³ established that Armstrong was a dedicated member of the Church for a period of twelve years. For ten of those years, he was a member of the Sea Organization, an elite group of Scientologists working directly under Church founder L. Ron Hubbard. In 1979, Armstrong became a part of L. Ron Hubbard's "Household Unit" at Gilman Hot Springs, California.

In January 1980, fearing a raid by law enforcement agencies, Hubbard's representatives ordered the shredding of all doc-

are part of the record on appeal in B025920. The parties have also filed briefs in B025928.

3. Plaintiffs' contention that certain testimony was impeached by testimony given in other proceedings subsequent to the judgment herein is, of course, not cognizable on this appeal.

uments showing that Hubbard controlled Scientology organizations, finances, personnel, or the 11066 property at Gilman Hot Springs. In a two-week period, approximately one million pages were shredded pursuant to this order.

In the course of the inspection of documents for potential shredding, Armstrong reviewed a box containing Hubbard's early personal letters, diaries, and other writings, which Armstrong preserved.

Thereafter, Armstrong petitioned for permission to conduct research for a planned biography of Hubbard, using his discovery of the boxed materials. Hubbard approved the petition, and Armstrong, who had discovered and preserved approximately 16 more boxes of similar materials, became the Senior Personal Relations Officer Researcher. He subsequently moved the materials to the Church of Scientology Cedars Complex in Los Angeles.

Hubbard selected one Omar Garrison to write his biography. Armstrong became Garrison's research assistant, copying documents and delivering the copies to him, traveling with him, arranging interviews for him, and generally consulting with him about the project. Armstrong also conducted a genealogical study of Hubbard's family, and organized the materials he had gathered into bound volumes for Garrison's use, retaining a copy for the Church archives. The number of documents obtained by Armstrong ultimately reached 500,000 to 600,000. Within a week after commencing the biography project, Armstrong and Garrison began to note discrepancies between the information set forth in the documents and representations previously made concerning Hubbard. Then Armstrong was summoned to Gilman Hot Springs, where he was ordered to undergo a "security check" consisting of interrogation while connected to a crude lie-detector called an E-meter, to determine what materials he had delivered to Garrison and to meet charges that he was speaking out against Hubbard.

In November 1981, Armstrong wrote a report urging the importance of ensuring the accuracy of all materials published con-

cerning L. Ron Hubbard, and relating examples of factual inaccuracies in previous publications. In December 1981, Armstrong and his wife left the Church, surreptitiously moving their possessions from the Church premises because they knew that persons attempting to leave were locked up, subjected to security checks, and forced to sign promissory notes to the Church, confessions of "blackmailable" material obtained from their personal files, and incriminating documents, and they were afraid that they would be forced to do the same. Before leaving, Armstrong and his wife copied a number of documents which he delivered to Garrison for his work on the Hubbard biography. After leaving, Armstrong cooperated with his successor, assisting him in locating documents and other items.

[11067 Commencing in February 1982, the international Church of Scientology issued a series of "suppressive person declares" in effect labelling Armstrong an enemy of the Church and charging that he had taken an unauthorized leave, was spreading destructive rumors about senior Church officials, and secretly planned to leave the Church. These "declares" subjected Armstrong to the "Fair Game Doctrine" of the Church, which permits a suppressive person to be "tricked, sued or lied to or destroyed ... [or] deprived of property or injured by any means by any Scientologist...."

At around the same time, the Church confiscated photographs of Hubbard and others that Armstrong had arranged to sell to one Virgil Wilhite. When Armstrong met with Church members and demanded the return of the photographs, he was ordered from the Church property and told to get an attorney. Thereafter, he received a letter from Church counsel threatening him with a lawsuit. In early May 1982, he became aware of private investigators watching his house and following him.

These events caused Armstrong to fear that his life and that of his wife were in danger, and that he would be made the target of costly and harassing lawsuits. The author, Garrison, feared that his home would be burglarized by Church personnel

seeking to retrieve the documents in his possession.

For these reasons, Armstrong took a number of documents from Garrison and sent them to his attorney.

Following commencement of the instant action, Armstrong was pushed or shoved by one of the Church's investigators. In a later incident his elbow was struck by an investigator's vehicle; still later, the same investigator pulled in front of Armstrong on a freeway and slammed on his brakes. This investigator's vehicle also crossed a lane line as if to push Armstrong off of the road. Plaintiffs' position is that the investigators were hired solely for the purpose of regaining the documents taken by Armstrong.

Trial of the complaint and the complaint-in-intervention was by the court sitting without a jury. On August 10, 1984, the court made its order, captioned "Judgment," ordering that plaintiff Church and plaintiff in intervention Hubbard, take nothing by their complaint and complaint-in-intervention and that defendant Armstrong have and recover from each of them his costs and disbursements.

1,068 DISCUSSION

The Order Unsealing The Record Must Be Reversed

[3] "Although the California Public Records Act (Gov.Code. §§ 6250 [et seq.]) does not apply to court records (see § 6252, subd. (a)), there can be no doubt that court records are public records, available to the public in general ... unless a specific exception makes specific records nonpublic. (See *Craemer v. Superior Court* (1968) 265 Cal.App.2d 216, 220-222 [71 Cal.Rptr. 193]....) To prevent secrecy in public affairs public policy makes public records and documents available for public inspection by ... members of the general public.... [Citations.] Statutory exceptions exist [citations], as do judicially created exceptions, generally temporary in nature, exemplified by such cases as *Craemer, supra*, and *Rosato v. Superior Court* (1975) 51 Cal. App.3d 190 [124 Cal.Rptr. 427] ..., which

involved temporary sealing of grand jury transcripts during criminal trials to protect defendant's right to a fair trial free from adverse advance publicity. Clearly, a court has inherent power to control its own records to protect rights of litigants before it, but 'where there is no contrary statute or countervailing public policy, the right to inspect public records must be freely allowed.' (*Craemer, supra*, 265 Cal.App.2d at p. 222 [71 Cal.Rptr. 193]) The court in *Craemer* suggested that countervailing public policy might come into play as a result of events that tend to undermine individual security, personal liberty, or private property, or that injure the public or the public good." (*Estate of Hearst*, (1977), 67 Cal.App.3d 777, 782-783, 136 Cal. Rptr. 821.)

"If public court business is conducted in private, it becomes impossible to expose corruption, incompetence, inefficiency, prejudice, and favoritism. For this reason traditional Anglo-American jurisprudence distrusts secrecy in judicial proceedings and favors a policy of maximum public access to proceedings and records of judicial tribunals. Thus in *Sheppard v. Maxwell* (1966) 384 U.S. 333, 350 [86 S.Ct. 1507, 1515, 16 L.Ed.2d 600, 613], the court said it is a vital function of the press to subject the judicial process to 'extensive public scrutiny and criticism.' And the California Supreme Court has said, 'it is a first principle that the people have the right to know what is done in their courts.' (*In re Shortridge* (1893) 99 Cal. 526, 530 [34 P. 227]....) Absent strong countervailing reasons, the public has a legitimate interest and right of general access to court records...." (*Estate of Hearst, supra*, 67 Cal.App.3d at p. 784, 136 Cal.Rptr. 821.)

We are unaware of any showing made before Judge Breckenridge, other than the parties' stipulation, justifying sealing by the trial court of the record in this case. However, inasmuch as the parties agreed to the sealing in December of 1986, and no third party intervened at that time to seek 1,069 reconsideration or review of the court's order, the order became final long before Corydon intervened in the action almost two years later.

In *Greene v. State Farm Fire & Casualty Co.* (1990) 224 Cal.App.3d 1583, 274 Cal. Rptr. 736, the court stated at page 1588, 274 Cal.Rptr. 736: "The power of one judge to vacate an order duly made by another judge is limited. In *Fallon v. Superior Court* (1939) 33 Cal.App.2d 48, 52 [90 P.2d 858] ... we issued a writ of prohibition restraining a successor law and motion judge from vacating an order of his predecessor, stating, 'Except in the manner prescribed by statute a superior court may not set aside an order regularly made.' In *Sheldon v. Superior Court* (1941) 42 Cal. App.2d 406, 408 [108 P.2d 945] ... the Court of Appeal, Second Appellate District annulled the order of one probate judge which vacated the previously made order of another probate judge appointing an administrator, stating 'that a valid order made *ex parte* may be vacated only after a showing of cause for the making of the latter order, that is, that in the making of the original order there was (1) inadvertence, (2) mistake, or (3) fraud.' Even more on point, in *Wyoming Pacific Oil Co. v. Preston* (1958) 50 Cal.2d 736, 739 [329 P.2d 489] ... the California Supreme Court reversed the order of a second judge dismissing an action under former [Code of Civil Procedure] section 581a for failure to make service of process within three years, after a first judge had found as a fact that the affected defendant was concealing himself to avoid service of process, quoting *Sheldon*. [Citation.]" (Fn. omitted.)

In *Greene, supra*, Alameda County Superior Court Judge Donald McCullum issued general order 3.30, in which he found it impracticable, futile, or impossible to bring certain cases, including *Greene*, to

trial within the applicable five-year limitation period (Code Civ.Proc., § 583, subd. (b)), and extended the deadline for bringing those cases to trial. Thereafter, Judge Richard Bartalini, to whom the case was assigned for trial, dismissed the action, on motion of the defendants, for failure to bring it to trial within five years. The court stated, "[D]efendants were, in effect, asking Judge Bartalini to focus on the particular facts of the case and, in light of those facts, to rethink Judge McCullum's order and to see whether he agreed with it. No statutory authority exists for such a request, and Judge Bartalini erred in granting it. [Citations.] General order 3.30 could not be set aside simply because "the court concludes differently than it has upon its first decision." [Citations.]" (*Greene v. State Farm Fire & Casualty Co., supra*, 224 Cal.App.3d at p. 1589, 274 Cal. Rptr. 736.)

In our case, Corydon intervened in the action between plaintiffs and Armstrong, seeking access to the sealed record for the limited purpose of preparing his own cases involving the Church. Judge Geernaert, on his own motion, vacated Judge Breckenridge's order sealing the record. The time ~~1970~~ had long since expired for reconsideration of Judge Breckenridge's order (Code Civ.Proc., § 1008), or relief therefrom pursuant to Code of Civil Procedure section 473, and the parties had the right to rely on the sealing order. No showing was made other than that supporting Corydon's motion for access to the record.⁴ We hold Judge Geernaert exceeded his authority in vacating Judge Breckenridge's order sealing the record.⁵

4. Plaintiffs do not challenge Corydon's access to the record, stating in their brief: "Corydon's access must continue to be limited by the conditions imposed thus far by this court's Modified Temporary Stay Order.... He sought access only for use in private litigation against the Church; this court's order, which permits him to use the information he obtains only in said litigations and only after making a good faith effort to have it introduced under seal, is appropriately tailored to meet his asserted need without unnecessarily invading appellants' privacy." Pursuant to the stay order issued by Division Four, Corydon has had the desired access since December 22, 1988, and the issue is moot as to

him. He now seeks in this court more than he sought by his motion in the trial court.

5. Armstrong, who did not participate in the hearing on the motion below, has filed a brief claiming the record should be unsealed because the Church has failed to comply with the terms of its settlement agreement with him. His declarations to the latter effect are not properly before us on this appeal, as they were not considered by the trial court. We therefore consider neither the meaning of the portions of the settlement agreement to which he refers nor the question whether the Church has complied therewith.

CHURCH OF SCIENTOLOGY v. ARMSTRONG

923

232 Cal.App.3d 1071

Cite as 283 Cal.Rptr. 917 (Cal.App. 2 Dist. 1991)

The Record On Appeal Is Not Sealed

There remains a question as to the effect of this appeal upon the sealing order. The brief filed by the plaintiffs apparently assumes continued effectiveness of the order on appeal.

In *Champion v. Superior Court* (1988) 201 Cal.App.3d 777, 247 Cal.Rptr. 624, the court referred to "an increasing trend by litigants to assume that when the parties stipulate below or convince the trial court of the need for confidentiality, no showing of need must be made in this court." (*Id.* at p. 785, 247 Cal.Rptr. 624.) The *Champion* court determined to the contrary, stating "that a party seeking to lodge or file a document under seal bears a heavy burden of showing the appellate court that the interest of the party in confidentiality outweighs the public policy in favor of open court records. The law favors maximum public access to judicial proceedings and court records. [Citations.] Judicial records are historically and presumptively open to the public and there is an important right of access which should not be closed except for compelling countervailing reasons." [*Citation.*]" (*Id.* at p. 788, 247 Cal.Rptr. 624.)

Plaintiffs cite *Champion*, claiming, inter alia, that the appellate court, in granting the motion to seal in that case, stated it was "influenced by the parties' agreement to the procedure and by the lower court's sealing of its records." The quoted language appears at page 786, 247 Cal.Rptr. 624 of the decision, and refers to the court's initial response to requests to seal received in connection with the petition, opposition, and amici curiae requests. Later, after receiving "rebuttal briefs, rebuttal declarations, reply to amici, declarations in reply to amici, and supplemental declarations," (*Champion v. Superior Court, supra*, 201 Cal.App.3d at p. 786, 247 Cal.Rptr. 624) resulting in a file containing "some sealed documents, some public documents, and many documents not yet designated as sealed or public." (*ibid.*) most of which

We are also in receipt of an amicus curiae brief of Lawrence Wollersheim, who urges unsealing of the record based on reasons of public policy. Wollersheim's argument is directed pri-

blended together discussions of confidential and public materials, as well as requests to seal all of the documents without any explanation of why any of the documents deserved such treatment (*ibid.*), the court stated, at page 787, 247 Cal.Rptr. 624, "it is apparent that we acted precipitously in granting the earliest, unsupported, requests to seal documents lodged or filed in this matter." While the court did ultimately grant the application to seal the entire file, it did so because of the confusion and undue complication and delay that would be caused by return of the documents for segregation into public and confidential portions. (*Id.* at pp. 789-790, 247 Cal.Rptr. 624.)

[4] In our case, plaintiffs have not formally requested sealing of the record on appeal. They argue, in seeking reversal of Judge Geernaert's order vacating the sealing order made in the trial court, that their pursuit of an action brought primarily for the purpose of protecting their respective privacy interests in the documents converted by Armstrong should not cause disclosure of the very information they sought to protect, through references in the record to such information. The argument is not limited to any particular portion or portions of the voluminous record of the trial court proceedings. Should plaintiffs move to seal the record on appeal, we would require a much more particularized showing.

The Defense of Justification Applies To The Causes Of Action Alleged Against Armstrong; The Judgment Is Affirmed

"One who invades the right of privacy of another is subject to liability for the resulting harm to the interests of the other." (Rest.2d Torts, § 652A(1).) "The right of privacy is invaded by [¶] (a) unreasonable intrusion upon the seclusion of another, . . . or . . . (c) unreasonable publicity given to the other's private life. . . ." (Rest.2d Torts, § 652A(2).) "The rules on conditional privileges to publish defamatory matter

marily to the documentary exhibits lodged in the underlying case. Those documents have been returned to the Church in accordance with the terms of the settlement agreement.

stated in §§ 594 to 598A, and on the special privileges stated in §§ 611 and 612, apply to the publication of any matter that is an invasion of privacy." (Rest.2d Torts, § 652G.) Under section 594 of the Restatement "[a]n occasion makes a publication conditionally privileged if the circumstances induce a correct or reasonable belief that (a) there is information that affects a sufficiently ¹¹⁰⁷²important interest of the publisher, and (b) the recipient's knowledge of the defamatory matter will be of service in the lawful protection of the interest."

"Unless otherwise agreed, an agent is subject to a duty to the principal not to use or to communicate information confidentially given him by the principal or acquired by him during the course of or on account of his agency or in violation of his duties as agent, in competition with or to the injury of the principal, on his own account or on behalf of another, although such information does not relate to the transaction in which he is then employed, unless the information is a matter of general knowledge." (Res.2d Agency, § 395.) However, "[a]n agent is privileged to protect interests of his own which are superior to those of the principal, even though he does so at the expense of the principal's interests or

6. No purpose would be served by our engaging in an exhaustive discussion of each of the points asserted by plaintiffs.

For example, plaintiffs misconstrue the decision in *Dietemann v. Time, Inc.* (9th Cir.1971) 449 F.2d 245. The *Dietemann* court stated: "Privilege concepts developed in defamation cases and to some extent in privacy actions in which publication is an essential component are not relevant in determining liability for intrusive conduct antedating publication." (*Id.* at pp. 249-250.) The question in that case was whether the defendant, whose employees gained entrance to plaintiff's home by subterfuge and there photographed him and recorded his conversation without his consent, was insulated from liability by the First Amendment because its employees did these acts for the purpose of gathering material for a magazine story which was thereafter published. The case has nothing to do with the justification asserted herein. *Pearson v. Dodd* (D.C.Cir.1969) 410 F.2d 701, is similarly inapposite.

Discussing the privilege of an agent set forth in section 418 of the Restatement, plaintiffs point to the last sentence of comment b, which reads: "So, too, if the agent acquires things in

in disobedience to his orders." (Res.2d Agency, § 418.)

With respect to plaintiffs' causes of action for conversion, "[o]ne is privileged to commit an act which would otherwise be a trespass to or a conversion of a chattel in the possession of another, for the purpose of defending himself or a third person against the other, under the same conditions which would afford a privilege to inflict a harmful or offensive contact upon the other for the same purpose." (Res.2d Torts, § 261.) "For the purpose of defending his own person, an actor is privileged to make intentional invasions of another's interests or personality when the actor reasonably believes that such other person intends to cause a confinement or a harmful or offensive contact to the actor, or that such invasion of his interests is reasonably probable, and the actor reasonably believes that the apprehended harm can be safely prevented only by the infliction of such harm upon the other. (See § 63.) A similar privilege is afforded an actor for the protection of certain third persons. (See § 76.)" (Res.2d Torts, § 261, com.)

We find no California case, and the parties cite none, holding that the above described privileges apply in this state.⁶ We

violation of his duty of loyalty, he is subject to liability for a failure to use them for the benefit of the principal." This language has reference to the initial sentence of the comment: "If the conflict of interests is created through a breach of duty by the agent, the agent is subject to liability if he does not prefer his principal's interests." In the present case, the conflict was created by the plaintiffs, who threatened Armstrong with harm.

Referring to comment b to section 396 of the Restatement Second of Agency, which has to do with the use of customer lists in unfair competition, plaintiffs urge that even if Armstrong was privileged to verbally report to others information he gained in his capacity as an agent of the Church, he would not be privileged under any circumstances to retain or disseminate Church documents. They also urge, based on cases which are inapposite to that at bench, that the justification defense applies only in emergency situations requiring immediate action to avert danger, or where the agent believes that the principal's documents are the fruits or instrumentalities of crime or fraud. The court found, on substantial evidence, that Armstrong was under a reasonable apprehension of danger when

CHURCH OF SCIENTOLOGY v. ARMSTRONG

925

232 Cal.App.3d 1074

Cite as 283 Cal.Rptr. 917 (Cal.App. 2 Dist. 1991)

believe the trial court appropriately adopted the Restatement approach respecting conditional privilege. (See 5 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 278, p. 360; *Gilmore v. Superior Court* (1991) 230 Cal.App.3d 416, 421, 281 Cal. Rptr. 343.)

[5] In its statement of decision the court found Armstrong delivered the documents in question to his attorney "... because he believed that his life, physical and mental well-being, as well as that of his wife, were threatened because the organization was aware of what he knew about the life of L. Ron Hubbard, the secret machinations and financial activities of the Church, and his dedication to the truth. He believed that the only way he could defend himself, physically as well as from harassing lawsuits, was to take from Omar Garrison those materials which would support and corroborate everything that he had been saying within the Church about L. Ron Hubbard and the Church, or refute the allegations made against him in the April 22 Suppressive Person Declare. He believed that the only way he could be sure that the documents would remain secure for his future use was to send them to his attorneys, and that to protect himself, he had to go public so as to minimize the risk that L. Ron Hubbard, the Church, or any of their agents would do him physical harm." The court's findings were substantially supported by the evidence adduced at trial.

Admission of Documentary and Testimonial Evidence Over Appellants' Objections Did Not Result In A Miscarriage of Justice

Armstrong's defense was predicated on his claim that he reasonably believed the Church intended to cause him harm, and that he could prevent the apprehended harm only by taking the documents, even though the taking resulted in harm to the Church.

[6] 1991 Plaintiffs complain of the trial court's admission of documentary and testimonial evidence concerning the history of

he delivered the documents to his attorney.

Armstrong's relationship with the Church, and certain practices of the Church in relation to its members, as well as its former members and/or critics. The record is replete with statements of the court's recognition of the limited purpose for which the complained of statements were properly admitted, i.e., to prove Armstrong's state of mind when he converted the Church's documents. These statements are referenced in Armstrong's briefs, and acknowledged by plaintiffs.

Plaintiffs complain that certain testimony of defense witnesses was irrelevant, as there was no showing that Armstrong was aware of the facts to which the witnesses testified. The testimony in question was largely corroborative of Armstrong's testimony with respect to Church practices affecting his state of mind, and was relevant to the issue of the reasonableness of his belief that the Church intended to cause him harm.

[7] Plaintiffs complain, finally, that the trial court's statement of decision shows the court improperly considered the evidence admitted for the limited purpose of establishing Armstrong's state of mind. We are satisfied the complained of comments reflect the court's findings on the elements of the justification defense asserted by Armstrong, and that neither the admission of the evidence nor the court's comments resulted in a miscarriage of justice. (Cal. Const., art. VI, § 13.)

DECISION

The judgment is affirmed. The order vacating the order sealing the record in the trial court is reversed. Each party to bear its own costs on this appeal.

KLEIN, P.J., and HINZ, J., concur.



More was not required.