

PRO BOND SURVEY
HOW THE RICHEST FIRMS
STACK UP

SECOND CLASS

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The **TWO** **Faces** of



The old guard: Combative Boston litigator Earle Cooley



The new guard: Gerald Feffer of Williams & Connolly

SCIENTOLOGY

The Church of Scientology uses private detectives and bulldog litigators to pursue its numerous detractors. It also hires low-key establishment lawyers who work quietly within the system. So who is directing the \$416 million libel suit against *Time*?

On April 27, 1992, lawyers for the Church of Scientology International filed a \$416 million libel action in federal court in New York against Time Warner, Inc.,* Time Inc. Magazine Company, and writer Richard Behar for Behar's scathing portrayal of the church in *Time* magazine's May 6, 1991, cover story, "Scientology: The Cult of Greed." Behar characterized the church as a "hugely profitable global racket" that has "shielded itself exquisitely behind the First Amendment as well as a battery of high-priced criminal lawyers and shady private detectives."

For those who have read Behar's piece and know something of Scientology's litigious history, the suit, filed a week before the statute of limitations for a libel action tolled, does not come as a surprise. After all, in the preceding year church entities had filed defamation actions in the U.S. against five of Behar's sources and sued Behar—and *Reader's Digest*, which excerpted and reprinted the article last fall—for defamation in Paris. (The Paris suit was dismissed in April.)

In fact, the church has a reputation for hiring bulldog lawyers like Earle Cooley, the gravelly voiced name partner of Boston's 18-lawyer Cooley, Manion, Moore & Jones (and a Scientologist himself), to bring suits against, and defend suits filed by, the church's numerous detractors—most of them former members. The lawyers also regularly sue the federal government: The church today has approximately 100 suits pending against the Internal Revenue Service alone, according to Justice Department spokesperson Melissa Burns.

These lawyers have tended to pursue cases with

*Time Warner is a partner in American Lawyer Media, L.P.

a zealotry that harkens back to the church's paranoid past, a past that includes, among other things, the conviction of 11 of its leaders, nine in 1979 and two in 1980, for burglarizing the offices of the IRS, the Justice Department, and other government agencies. Church opponents ascribe such zealotry to Scientology's most damning legacy—"fair game," a doctrine written by church founder L. Ron Hubbard in October 1967 (and supposedly rescinded a year later) that specified that Scientologists can use any means necessary to destroy enemies of the church [see sidebar, "What Is Scientology?" page 76].

In particular, Los Angeles's 14-lawyer Bowles & Moxon, which does more of the church's work than any other law firm and acts as Scientology's de facto in-house department, now seems to apply a sort of restrained fair game both inside and outside the legal arena. For instance, the firm—where all four partners are themselves Scientologists—uses detectives to investigate, thoroughly and sometimes intrusively, "anyone the church has a bone to pick with," according to one detective who has done a substantial amount of work for the church.

This is the face the public is most familiar with, that of a church ready to sue at the drop of a hat, and to use the legal system to harass opponents into submission or silence.

But there is another side, another face, to Scientology's legal machinations. At least one claim in the *Time* suit, for example, does raise a serious question about the accuracy and use of an important fact cited by *Time*. Behar's premise that the church is a "hugely profitable" business seems to be based in large part on one piece of financial data: that "in a

By William W. Horne

court filing" one church entity, the Church of Spiritual Technology, "listed \$503 million in income just for 1987." But there is evidence that Behar may have misinterpreted the court filing and confused cash inflows with income. According to a CST tax filing for fiscal year 1987—which was provided to *The American Lawyer* by church tax lawyer Monique Yingling of Washington, D.C.'s Zuckert, Scout & Rasenberger, who says it was also filed in the court records and was therefore available to Behar prior to publication of his article—that entity earned only \$4 million in actual income that year. "The court records show that the article falsely inflated the annual income figure by almost a half billion dollars," the church alleges in its complaint.

(Behar stands by his figure. "The [court] filing . . . plainly and clearly shows income of five hundred three million dollars flowing into CST during that year," he says. Citing the ongoing litigation, he declines to comment on whether he saw the \$4 million tax filing in the court records but notes that, given the refusal of CST to cooperate with the IRS in the past, "I don't think the 1987 [tax form] can or should be taken at face value.")

Scientology's longtime libel counsel, Jonathan Lubell of New York's Morrison Cohen Singer & Weinstein, who filed the *Time* suit, says such an action is unusual for the church—and, in this instance, entirely warranted. "The church hadn't sued any media organization in the U.S. for libel for over ten years" prior to the spate of suits that followed Behar's article, he says.

Lubell is just one of a stable of reputable lawyers the church has hired over the last decade, who range from Yingling to criminal tax expert Gerald Feffer of D.C.'s I33-lawyer Williams & Connolly (Yingling's husband) to the church's general counsel, William Drescher, a former partner of L.A.'s now-defunct Wyman, Bautzer, Kuchel & Silbert.

These lawyers give credence to church leaders' assertions that while a small group of Scientologists ran amok in the 1970s, the church has since cleaned house. The leaders say the allegations of brainwashing, harassment, and other "fair game" tactics that civil plaintiffs cite today in tort claims for intentional infliction of emotional distress—and the similar allegations in Behar's article—are baseless attacks on First Amendment protected religious practices.

The question is, with such lawyers as Cooley and Bowles & Moxon on one side, and Feffer and Lubell on the other, which is the real face of Scientology?

AM I BEING FOLLOWED?

Sitting in a small café in San Anselmo, California, Gerry Armstrong, 45, draws looks from the sundry weekend diners—bicyclists, hikers, and San Francisco day-trippers—who pop in for a sparkling water and an avocado sandwich. A tiny, fit man in a black T-shirt and jeans, he has lustrous belt-length chestnut hair with a matching beard and mustache that gives him a Christ-like appearance. He is the founder of his own church, which he says has no name. But he is also a former Scientologist who has himself launched or helped others launch more than a dozen legal attacks against the

What Is Scientology?

According to church official Michael Rinder, members of the Church of Scientology believe that through training and spiritual counseling based upon the writings of Scientology's founder, the late L. Ron Hubbard, a person can achieve greater intelligence, happiness, and the ability to better handle one's life. Hubbard, a science fiction writer, founded Scientology in the early 1950s, basing his teachings loosely on his turgid best-selling self-help book, *Dianetics: The Modern Science of Mental Health*.

More specifically, Scientologists believe that everyone is reincarnated. Each of us is a spiritual being whom Hubbard called a "Thetan," who is basically good and is perpetuated through the millennia. But in each incarnation we are handicapped by the existence in us of "engrams"—spiritual pain or upset. Those engrams have to be erased or "cleared" by a process Hubbard developed called "auditing."

Auditing is a form of spiritual counseling in which the subject of the counseling answers exact questions posed by another Scientologist (the auditor) while holding on to an "E-meter"—an electrical device courts have referred to as a "crude lie detector" but that Rinder says measures mental energy. Auditors use the "E-meter" to locate and rid Scientologists of engrams.

Until the engrams are removed, the Thetan cannot operate optimally, and the Scientologist is known as a "pre-clear." After they are removed the Scientologist is "clear" and becomes an "Operating Thetan." As he progresses, he achieves "case gain"—physical and spiritual improvement—and moves "up the Bridge of Freedom." Operating Thetans progress through eight stages, from OT1 to OT8, to achieve the full rehabilitation of their

spiritual abilities.

To ascend the Bridge, a Scientologist must take an increasingly complex and expensive series of auditing and training courses based upon copyrighted church scriptures. For example, the "Hubbard Qualified Scientologist Course" (the duration of which varies, depending upon the individual student), is an introductory training course. The "requested donation" is \$350 for the public and \$280 for a member of the International Association of Scientologists, according to Rinder; "Intensive Auditing," a twelve-and-a-half-hour course, costs \$4,000 for nonmembers and \$3,200 for members. (Joining the IAS—which is open to Scientologists and non-Scientologists alike—costs \$300 for a one-year membership or \$2,000 for a lifetime membership.) These course fees can be reduced and in some cases eliminated if one becomes a staff member or otherwise becomes more actively involved—for instance, by becoming an auditor.

Still, the relatively high donations charged for church services are at the crux of many of the church's disputes with the IRS and others who ask: Is Scientology a business or is it a religion? Courts have ruled both ways.

In 1989, for example, the U.S. Supreme Court ruled in a 5-to-2 decision that the fixed donations could not be declared as charitable contributions. But church lawyers argued persuasively that these donations are no different than "pew rents" charged by the Catholic church or the tithing required of Mormons, both of which are tax-deductible. The church won a strong dissent from Justices Antonin Scalia and Sandra Day O'Connor, who found the donations "indistinguishable" from payments made by other religions.

church since leaving in late 1981.

"I've said all they need to do is settle publicly and honestly and repudiate 'fair game,'" he says, his bushy eyebrows knit together in concentration.

In 1986, according to both Armstrong and papers recently filed in federal district court, Armstrong received an \$800,000 settlement from the church in a suit charging that he had been harassed and had suffered emotional distress. He currently is fighting a suit by the church that seeks to compel him to abide by the settlement provisions, which require him to refrain from abetting any suits against the church or discussing either the terms of the settlement or the church itself with other than family members. (He now works as a paralegal for San Anselmo-based solo practitioner Ford Greene, who has represented approximately ten plaintiffs against the church.) As Armstrong leaves the café, he points out a middle-aged man across the street holding a camera. "That's one of them," he says excitedly as we walk away. "Watch this."

Sure enough, just before we round a corner, the man swings his camera in our direction. When Armstrong trots back and confronts him, the man appears befuddled, denying he is a detective and explaining that he is taking pictures for a photography class. Armstrong isn't convinced. "I'm sure he

works for the organization," Armstrong later says (refusing, as he always does, to call Scientology a church).

The photographer may have been innocent (Armstrong is, after all, an intriguing photography subject); he may have been an investigator. But what is certain is that Armstrong's fears are symptomatic of the paranoia displayed on all sides by most of the 65 lawyers, judges, and litigants interviewed for this article. While opposing counsel and litigants see Scientology behind every untoward occurrence in their lives, from near misses on the freeway to hangup phone calls, church leaders and their lawyers tie every criticism and legal attack into a massive conspiracy supposedly aimed at toppling the church.

The evidence on both sides is often as inconclusive as Armstrong's charges against the photographer. Still, when it comes to the legal arena, Scientologists often end up on the losing end.

"In addition to violating and abusing its own members' civil rights, the organization over the years with its 'fair game' doctrine has harassed and abused those persons not in the church whom it perceives as enemies," wrote Los Angeles County Superior Court judge Paul Breckenridge, Jr., in a June 1984 ruling in Gerry Armstrong's first case, where a church suit against him seeking return of church-related doc-

uments backfired. After gratuitously labeling the church leaders "schizophrenic and paranoid," Breckenridge concluded that Armstrong, who had obtained the documents after he left the church in December 1981 as what he called a hedge against retaliatory action by the church for leaving, had been followed and surveilled by individuals working for the church who had also assaulted him, trespassed on his property, spied in his windows, created disturbances, and upset his neighbors. The judge upheld Armstrong's justification defense, dismissed the church's charges, and awarded judgment and costs to Armstrong.

Breckenridge's ruling pumped new life into a host of other civil suits against the church that followed on the heels of the convictions in 1979 and 1980 of the 11 church leaders for infiltrating federal offices. Civil complaints were based upon church materials the FBI had seized—and that were entered into the record in the criminal prosecution—that indicated a pattern of harassment and covert operations by the church's intelligence unit, the Guardian's Office, against its enemies, many of them former church members.

Plaintiffs charges in the nearly three dozen suits ranged from unlawful imprisonment to negligence. Several attacked the church practice of "auditing"—a kind of one-on-one confessional made by a Scientologist in response to questions from another church member while being monitored by an "E-meter," a sort of modified lie detector—as intentional infliction of emotional distress.

Many early church lawyers—primarily civil liberties lawyers, including the late First Amendment star Leonard Boudin—defended the civil suits on religious freedom grounds. But some of these civil libertarians and other lawyers (such as the late L.A. solo practitioner John Peterson, the church's first de facto general counsel) pursued more questionable tactics: flooding dockets with motions, suing those who had sued the church in multiple jurisdictions, and even suing the plaintiffs' lawyers. Boston personal injury lawyer Michael Flynn, for example, who at one time represented more than two dozen plaintiffs against the church, was sued by the church more than a dozen times in four jurisdictions for everything from contempt of court to defamation. All the suits were eventually dropped or dismissed. (Flynn declined comment pursuant to the terms of a settlement he received from the church in 1986.)

In addition, the church wrote nine letters of complaint to the Massachusetts Board of Bar Overseers about Flynn alleging unethical conduct—one complaint based upon drafts of documents church detectives found by rummaging through Flynn's trash. Outside trial lawyer Earle Cooley, who joined the church's legal team two years after the last complaint was filed, defends the church's method of gathering information: "Trash retrieval has been [upheld] by the Supreme Court of the United States."

Cooley insists that at least one complaint against Flynn was justified. "Flynn had a corporation called FAMCO in which shares were sold to lawyers throughout the country to participate in a nationwide program of civil litigation against the church!" he exclaims. Drafts of a plan for FAMCO (purportedly found in Flynn's trash) were provided to *The American Law-*



Former Scientologist Gerry Armstrong (right), who has played a part in more than a dozen suits against the church, with San Anselmo, California, solo practitioner Ford Greene, who has represented approximately ten plaintiffs against the church

yer by Cooley, who says he "assumes" it became operative. Regardless, according to a spokesperson for the Massachusetts Board of Bar Overseers, Flynn has never been the subject of a disciplinary action.

Plaintiffs lawyer Charles O'Reilly claims he became a target for retaliation after he won a \$30 million jury verdict against the church on behalf of former Scientologist Larry Wollersheim in 1986 in California superior court. (The verdict was reduced to \$2.5 million and finally affirmed on appeal this March; the church petitioned the California Supreme Court for review on May 29.) Wollersheim had alleged that the church's fair game harassment tactics and coercive religious practices, such as auditing, exacerbated an existing mental illness. O'Reilly contends that, in the years following the verdict, he was questioned by the California state bar for substance abuse (the inquiry was eventually dropped), by the IRS (an investigation is ongoing), and by the state franchise tax board (no charges were ever brought). The evidence of church involvement in these matters is circumstantial—and thin. O'Reilly points to documents filed in federal court by church lawyers during

"They [should] settle publicly and honestly and repudiate 'fair game,' " says Armstrong.

the *Wollersheim* case seeking records from substance abuse treatment centers relating to him. "I've never been in any of those facilities," he says. O'Reilly presents no other proof of church involvement.

California superior court judge Ronald Swearingner, who presided over the *Wollersheim* trial, describes the case itself as anything but normal: Church trial lawyer Cooley and his co-counsel, the late John Peterson, filed a number of unsuccessful "writs and motions" throughout the trial in an attempt to halt it, according to Judge Swearingner. Three days into the trial, the judge says, they moved for his disqualification, based on "some secret conversation I'd had with someone I'd never heard of." They also filed a Section 1983 federal civil rights action against both him and the judge who sat on the case

prior to him, says Swearingner, on the theory that by allowing the case to go to trial, the judges were denying the church its civil rights. (Cooley confirms that the Section 1983 action and the disqualification motion were filed.)

But Swearingner's recollections of the oddities of the *Wollersheim* case go beyond court filings: "I was followed [at various times] throughout the trial . . . and during the motions for a new trial," the judge claims. "All kinds of things were done to intimidate me, and there were a number of unusual occurrences during that trial. My car tires were slashed. My collie drowned in my pool. But there was nothing overtly threatening, and I didn't pay attention to the funny stuff."

Church official Kurt Weiland strenuously denies Swearingner's assertions: "The allegations that the church had

anything to do with it are completely outrageous."

Civil liberties lawyer Eric Lieberman, a partner at New York's 12-lawyer Rabinowitz, Boudin, Standard, Krinsky & Lieberman who worked on the appeal of *Wollersheim* and has represented the church for 14 years, claims Swearingner's charges are yet another example of the judicial bias with which the church must contend. "That is highly, highly improper!" he shouts. "Even if [the judge's assertions are] true, it was the height of impropriety for him to continue sitting [on the case]."

UNCIVIL WARS

Earle Cooley, a bright, well-regarded Boston trial lawyer who left a partnership at Hale and Dorr in 1984 to open Cooley, Manion, may be the church's most public lawyer. A large man with a fringe of light red hair, he bears an uncanny resemblance to the church's late founder, L. Ron Hubbard. Indeed, Cooley, 60, who joined the church in the late eighties, brings an almost religious fervor to an interview performance.

"I find the church is being harassed with fictitious allegations designed to extort money," he growls, angrily pop-

ping up from his seat and beginning to pace the length of a conference room. "The strident propaganda fostered by civil plaintiffs and their counsel are repetitive time and time again on matters of such ancient history as have no relevance at the present time."

Cooley was first hired by the church in late 1984 and, a few months later, played a key role defending the church at an Oregon trial against charges by former Scientologist Julie Christofferson-Titchbourne that, among other things, she had been subjected to fair game tactics that resulted in intentional infliction of emotional distress—the centerpiece allegation of most of the civil suits against the church. Cooley's goal, in part, was to show that his client's alleged tortious activities were protected First Amendment religious practices. One of his tactics: bludgeoning opposing witnesses.

New York civil liberties and criminal defense lawyer Sanford M. Katz—who was representing the church on other unrelated cases at the time—says he was sent out by church executives to observe the Titchbourne trial. He recalls how he watched as Cooley "battered and berated" Gerry Armstrong, who appeared as a plaintiff's witness, to the point of tears. "It was obvious that the jury was thoroughly sympathetic to the witness," Katz says. "It was also obvious that Cooley was pandering to the client. [Church leaders] hated Armstrong. When Cooley, Katz, and the church's representatives retired to their hotel later that day, Katz recalls, the clients were all 'slapping Cooley on the back and telling him what a marvelous job he did."

"But I could tell they would lose and told them they should do it differently," asserts Katz. "Because this was a conservative Oregon jury and I knew there was an identical case, an even stronger case, in Los Angeles."

Cooley has a different explanation for his roughshod cross-examination of Armstrong. "It was not done to placate or make the client happy," he says, pointing out that Katz wasn't there for the whole trial. "When the plaintiff put on her case, vicious, terrible things were said about the church that had no relation to the case. It was my judgment that there had to be a vigorous cross-examination of Armstrong that got to his credibility."

Nonetheless, Katz's prediction proved prophetic: The jury hit the church with a \$39 million verdict. "It wouldn't be the first time I've misread a jury and probably won't be the last," says Cooley. Still, two months later Cooley secured a mistrial ruling from the trial judge, based on an impermissibly inflammatory summation by the plaintiff's counsel and improper jury instructions. The church responded by promoting Cooley to "national trial counsel" in July 1985. Titchbourne eventually settled with the church for what Cooley calls a "derisory amount"—\$100,000, according to a copy of the settlement agreement.

The "stronger case" Katz referred to, however, was right around the corner: *Wollersheim*. Among other things, Larry Wollersheim claimed that he had been coerced by church members into "disconnecting"—a church practice requiring a member to cut off contact with certain people—from his wife, parents, and other family members who disapproved of Scientology. At the trial Scientologists packed the courtroom and hallways of the courthouse and regu-

larly interrupted the proceedings by protesting against alleged religious discrimination.

"I'd let the jury out, let the [protesters] blab on, and then let the jury back in," says Judge Swearinger. "It didn't bother me." Swearinger says he thought Cooley's histrionics were "comical" rather than effective, and that he often caught the jury "rolling their eyes" at Cooley's "loud talk and hostility to opposing counsel and witnesses." The jury returned a \$30 million verdict in July 1986: \$5 million in compensatory damages and \$25 million in punitives.

That verdict apparently prompted a change in strategy for the church: In August 1986 the church settled four multimillion-dollar suits pending against it in Florida, and four months later the church

official Mark Rathbun, who is not a lawyer, was forcibly ejected by the marshals when he refused to obey Letts's order to sit down.) The church lost the recusal motion and eventually appealed the decision up to the U.S. Supreme Court, which declined to grant *certiorari*.

On April 17 of this year Cooley, church general counsel William Drescher, and Bowles & Moxon name partner Kendrick Moxon were among a team of church lawyers soundly rebuked in a federal court ruling for their willingness to "literally flout court orders and defy the authority of the courts." In his opinion Los Angeles federal special master James Kolts criticized the church's noncompliance with several discovery orders in a trade secrets and copyright infringement action the

"The church is being harassed with fictitious allegations designed to extort money," growls Cooley, who derides the "propaganda" of plaintiffs.

settled with 11 plaintiffs and others with claims against the church (who had not yet filed suit) for \$2.8 million, according to a recent court filing. That's when Armstrong got his \$800,000. All the parties agreed to turn over their Scientology-related documents and never speak to the press or participate in any actions against the church (a provision Armstrong has repeatedly ignored, claiming it is void).

Still, Cooley has remained the church's trial lawyer of choice, and his tactics haven't changed much. Just last fall Cooley was brought in to argue the church's motion to recuse Los Angeles federal judge James Ideman, who was sitting on three cases involving Scientology, based on the judge's supposed bias towards the church. The primary evidence? A framed cover of Behar's exposé on Scientology in *Time* that allegedly hung in the judge's chambers. (For the purposes of the hearing, Judge J. Spencer Letts, who ruled on the motion, assumed the cover did hang there. Judge Ideman declines to comment on the matter.)

Cooley's conduct quickly put him at odds with Judge Letts, according to a transcript of the hearing. Despite having been admonished not to raise issues covered in the briefs—which included the *Time* cover—Cooley jumped right in.

"I'd like to address that *Time* magazine article, Your Honor, because I think it's crucial," he told Judge Letts.

The judge disagreed, but apparently that didn't deter Cooley. When Cooley continued to bellow over the ringing of the judge's gavel, Letts summoned the marshals. According to an opposing lawyer, Cooley scurried out of the courtroom moments before two marshals arrived to eject him. (Cooley's pugna-cious bent may reflect that of at least some of his clients: Several minutes after he left the courtroom, church of-

church had filed but then allowed to languish for seven years at the preliminary discovery stage. Dismissing the case, Kolts called the church's tactics a "cynical and unfair use of the judicial system."

"WOG" LAWYERS?

Just as the civil litigation against the church was peaking in 1985, the IRS recommended that the Justice Department convene a grand jury to determine whether criminal tax charges should be brought against L. Ron Hubbard and other Scientology executives for conspiracy to defraud the IRS. That's when church leader David Miscavige, 32, and his lieutenant, Lyman Spurlock, tapped Gerry Feffer of Williams & Connolly.

A former deputy assistant attorney general in the tax division of the Justice Department, Feffer—who charges \$350 an hour for his time—has a completely different style and demeanor than Cooley. Calm, genial, and restrained, Feffer quickly disposed of the nascent criminal tax investigation in November 1986. "We went to the Department of Justice and they decided not to even authorize a grand jury," he says simply.

Feffer's role as a criminal tax lawyer for the church ended then, but he continues to advise Miscavige and the church on "special projects," as he terms it. "If Miscavige had a plane and a big car, I would have lost interest," says Feffer, 50. "But these guys work around the clock and eat in a cafeteria." (Through Feffer, Miscavige declined to comment for this article.)

For instance, Feffer negotiated the terms of Miscavige's February 14 appearance on ABC's *Nightline*—Miscavige's first television interview ever, according to Feffer. "The church wanted to work out a mechanism to ensure a fair and balanced presentation, given the *Time* piece," Feffer

explains. The initial taped segment of the program was a highly unflattering portrait of the church, but thanks to the "discussions" Feffer says he had with *Nightline* producer Richard Harris, Miscavige had a rare one-on-one session with Ted Koppel and was given plenty of time for comment. (The interview went a half hour longer than the allotted time so that Miscavige could respond to specific criticisms of the church.)

Feffer and several church officials (including Rathbun) say they were on the whole pleased with the outcome. In fact the church has not sued detractors that spoke against it in the taped segment (except Behar) and recently settled a suit one of those critics had pending against the church. "It worked out pretty well," says Feffer.

Feffer says Miscavige has also relied on him to help select new lawyers—a reliance that has brought a marked gentrification of the church's legal ranks since 1985. The church already had a few establishment lawyers, such as intellectual property specialist Thomas Small, until recently a partner at Baker & McKenzie and now at L.A.'s three-lawyer Small, Larkin & Kiddé. But Feffer's picks significantly bolstered the ranks of those church lawyers who could work smoothly within the system to resolve the church's legal and political problems.

In 1985, for example, Feffer brought in D.C.-based exempt organizations specialist Thomas Spring, a solo practitioner, to assist with the civil aspects of the criminal tax case against the church, and in 1987 Feffer tapped Monique Yingling, his wife and a partner at the D.C. tax boutique Zuckert, Scoutt & Rasenberger, to work with Spring in trying to unravel the church's long-standing civil tax problems with the IRS. According to Yingling, 14 church entities now enjoy tax-exempt status; she is in the midst of tax court litigation over whether Scientologists can claim deductions for the "requested donations" they make for the church's services, such as auditing.

Feffer has also found outside counsel in eight European countries to handle the church's tax and corporate legal work there. "It's not a very old organization, and they're growing very quickly . . . so they were not terribly sophisticated about those things," says Feffer.

For all of Feffer's image-burnishing, though, he is not the one in charge of the church's legal affairs—nor even, apparently, that influential. Instead, a nonlawyer on the Church of Scientology International's five-member board of directors, Kurt Weiland, based in Los Angeles, is responsible for setting the church's legal strategy. (CSI is the "mother church" of the Scientology religion, says Weiland, providing administrative and management help to local Scientology churches, as well as licensing those churches to use Scientology "technology," or scriptures.) According to Weiland, all outside counsel report to specific nonlawyer staff members of the church's Department of Special Affairs, which has representatives in all the major Scientology churches around the world. Major legal decisions filter down to these representatives from Weiland and the rest of the board.

And these church leaders still send much of their work to longtime counsel like Eric Lieberman of Rabinowitz,



Scientology's longtime libel counsel Jonathan Lubell of New York's Morrison Cohen Singer & Weinstein, who filed the *Time* suit

Lubell says the *Time* litigation is the church's first U.S. libel action against the media in ten years.

Boudin, whose affiliations go back to the defense of church leaders for infiltrating government offices in the late 1970s. Much of the other work goes to lawyers like Cooley and Rick Moxon of Bowles & Moxon, who are themselves Scientologists. Indeed, at least two other lawyers say they were encouraged to join the church. "They wanted counsel more actively involved in the religion and [once] asked me to participate in religious practices," says Donald Randolph of L.A.'s Randolph & Levanas, who quit representing the church in 1985 after six years as one of its civil litigators. "I didn't want to."

"Church staffers felt that non-Scientologists, who they called 'wog lawyers' behind their backs, didn't fight tooth and nail for the church," asserts former church in-house paralegal Marilyn Anderson. ("Wog" is a pejorative term L. Ron Hubbard coined for non-Scientologists, according to *L. Ron Hubbard: Messiah or Madman?*, a book published in 1987 by former Scientologist Bent Corydon.) CSI director Weiland denies Anderson's assertions. Still, another church official, Michael Rinder, admits a preference for parishioner-lawyers: "Scientologists are the most ethical people in the world,

therefore yes, we prefer to work with lawyers who are Scientologists."

In any event, most of the church lawyers interviewed for this article, including Feffer, Yingling, and Lieberman, say they have never been pressured—or even asked—to join the church.

IN-HOUSE AT BOWLES & MOXON

In 1988, says Feffer, he advised the church to hire a reputable Los Angeles firm. "I said, 'You should have one firm that would provide you with counsel like a general counsel,'" says Feffer. The church settled on Wyman, Bautzer, Kuchel & Silbert. Two years later, when that firm dissolved, Wy-

man, Bautzer litigation partner William Drescher became the church's general counsel.

It is unclear, though, how much control Drescher—who is paid \$540,000 a year by the church, according to a recent deposition he gave—exerts over the church's legal work. In an interview Drescher, a pudgy, conservatively dressed 39-year-old, is friendly but somewhat evasive. He says he coordinates and participates as co-counsel in some of the church's litigation, but he displays a marked ignorance about several ongoing cases on which he is queried. "I don't know anything about those cases," he says, referring to a spate of recent suits by the church against the Cult Awareness Network, a Chicago-based

group that calls itself a nonprofit educational organization, but that church officials term a "religious hate group."

The center of the church's legal activity seems to be L.A.'s Bowles & Moxon, which has played an increasing role as the church's de facto in-house department. "[Drescher] doesn't oversee our work," says Rick Moxon flatly. Seventy percent of the firm's revenues are derived from church work, he says, noting that the firm's 14 lawyers bill out at an average hourly rate of \$220. The firm has responsibility for most of the church's general corporate and government assignments, as well as civil litigation, he says.

Bowles & Moxon was formed in 1987 with two lawyers, Moxon and name partner Timothy Bowles, and opened an office later that year in the church's Hollywood headquarters complex. Today seven of the firm's lawyers are Scientologists, including all four partners. Moxon, for example, has a long history with the church. In the late 1970s he served a stint as the "District of Columbia Assistant Guardian for the Legal Bureau," working in the very office where massive covert operations against the government were being run at the time, according to a stipulation of evidence



Name partner Kendrick Moxon of L.A.'s Bowles & Moxon began doing legal work for the church as a paralegal in the 1970s.

that was agreed to by all parties in the 1979 federal criminal case against nine of the church leaders.

"It's true that I was there doing legal work as a paralegal," says Moxon, 42, who received his J.D. from George Mason University School of Law in 1983. But he denies knowledge of the criminal operations being run out of the office: "I wasn't aware of it."

In addition to straight legal work, Moxon admits his firm does hire detectives for some of its church assignments. "We may use them in a personal injury kind of context . . . or to serve subpoenas," he says. Two detectives who have done work for the church say that while they didn't deal with lawyers, their paychecks were drawn on a Bowles & Moxon account. (That way, notes former church official Richard Aznaran, who has a \$70 million civil suit pending against the church alleging infliction of severe emotional distress and unlawful imprisonment, the church can protect the information gathered as attorney-client work product.)

However, one of the detectives who drew his pay from the firm says that many times "I was told to do thorough investigations on people" involved in cases other than personal injury cases—investigations that included "trying to find dirt." (Three of the four detectives

interviewed for this article requested anonymity. "[Scientists] are] terribly vindictive and can cause you [any] amount of trouble," one investigator says. Private investigator Alan Clow, based in Newport Beach, California, provided written answers to questions submitted by *The American Lawyer* that he concedes were reviewed and modified by the church. "I don't want any lawsuits coming down on me," he explains.)

Three of the investigators say their work for the church included surveillance, as well as interviews with their subject's friends, family, and neighbors. Robert Lobsinger, an Oklahoma newspaper publisher, has been a vocal opponent of a project by Narconon, a substance abuse treatment organization that is funded by the church, to license a

treatment center on an Oklahoma Indian reservation. Lobsinger says two of the church's L.A.-based detectives came to his office in Oklahoma in 1990 and urged him to "cease and desist" his editorial attacks. "They told me, 'We're working for Bowles & Moxon,'" Lobsinger says.

Tim Bowles, who is one of Narconon's lead lawyers on the proposed Oklahoma center, concedes that the investigators worked for Bowles & Moxon. "The purpose for them talking to [Lobsinger] was to open up a channel of communication," he explains.

These inquiries are perfectly legal. Still, if opposing counsel and judges are investigated, as one detective claims, it does raise ethical concerns. Rick Moxon strongly denies those claims. "What possible good would it do us to have

judges followed in a case in which we are involved?" he demands.

FROM THE CULT AWARENESS NETWORK TO THE IRS

Sometimes the church's alleged overzealousness is difficult to assess. For example, over the last year the church has mounted an all-out war against the Cult Awareness Network. According to CAN executive director Cynthia Kisser, there are nine suits pending against CAN by individual Scientologists and church entities in five different jurisdictions, with charges ranging from discrimination—alleging that CAN's refusal to permit Scientologists to join as members constitutes religious discrimination—to fraud and deceit. "They're trying to bankrupt CAN," claims one lawyer involved in the litigation. "It's as simple as that."

In this dispute, it's hard to take issue with hardball tactics against an organization that has labeled Scientology "a destructive cult."

The church's recent dealings with the IRS, however, are another matter: Despite the headway Feffer, Yingling, and others have made in resolving the church's tax problems, church leaders insist on regularly pursuing Freedom of Information Act suits and other litigation against the IRS. According to a Justice Department spokesperson, there are approximately 100 suits by Scientology and its related entities pending against the IRS, many of which are FOIA-related.

The FOIA effort—coordinated by Moxon of Bowles & Moxon and William Walsh of D.C.'s Bisceglie & Walsh—is viewed by the church leaders as a success. Documents recently obtained from the IRS and the FBI (and provided to *The American Lawyer* by church lawyers) seem to vindicate some of the paranoia of the church leaders in the late 1970s, apparently showing that the church was improperly targeted by several government agencies for special investigations.

But suing a federal agency with which the church is trying to mend relations—in an effort to make excuses for prior criminal behavior and to rehabilitate past acts by former leaders who current leaders admit were out of control—seems shortsighted.

Equally shortsighted, perhaps, is a \$120 million suit the church filed against the IRS last August. The suit, which charges that 17 current and former IRS officials have conspired to discriminate against the church since 1983 by, for instance, targeting church entities for audits and other investigations, may sound to some less like an effort at vindication and more like an exercise in retaliation—shades of "fair game." (The government's motion to dismiss is pending.)

Church tax lawyer Yingling says she was consulted prior to filing the suit and favored bringing it. (Feffer declines to comment on the suit.) Her name, however, does not appear on the complaint. (Nor does Feffer's.) Coolsey's, Drescher's, and Moxon's do.

TIME OUT

The latest legal contretemps, concerning Behar's *Time* article, has a detailed history involving both sides of the church's legal arsenal. Before the article appeared last May, church leaders refused to be interviewed by Behar, because of a critical article he had written

Much of the church's work goes to lawyers like Earle Cooley and Rick Moxon, who are themselves Scientologists.

on Scientology for *Forbes* in 1986. Earle Cooley, the original bull in the china shop, contacted *Time* editors and the magazine's counsel in an attempt to address perceived inaccuracies in the story—even though it hadn't come out yet and the church hadn't seen it. "I visited *Time* and showed documents to their counsel to show how off-the-wall [some of Behar's allegations were]," says Cooley.

Cooley, for example, provided information that supposedly documented the unreliability of one of Behar's sources, former Scientologist Steven Fishman. (Now serving a five-year sentence in a federal penitentiary after pleading guilty in 1990 to 11 counts of mail fraud, Fishman told Behar, according to the article, that after he was arrested, he "was ordered by the church to kill [his psychiatrist, Uwe] Geertz, and then do an 'EOC,' or end of cycle, which is church jargon for suicide." Although Behar clearly noted Fishman's criminal history in his piece, the inclusion of Fishman's allegation in the *Time* story is one of the church's seven major grounds for the libel suit.)

While Cooley says the meeting with Time Warner Publishing associate

general counsel Robert Marshall was civil, it is not surprising, given Cooley's somewhat abrasive manner, that he failed to convince *Time* to change reporters or alter the article. "[Marshall] told me he would look into it," Cooley recalls. "But later he wrote me," says Cooley, and stated that the magazine was standing by Behar's story.

A few days after the story came out, libel lawyer Lubell and Gerry Feffer approached *Time*'s lawyers. "We attempted to get them to listen to several items we thought were so obviously wrong, and then get them to do something about it," says Lubell.

Recalls *Time* Inc. general counsel

Harry Johnston: "It was basically a diatribe, with Lubell threatening us with massive litigation if we didn't listen to them. We did, and he tried to convince us the article was all wrong. We ended up not agreeing."

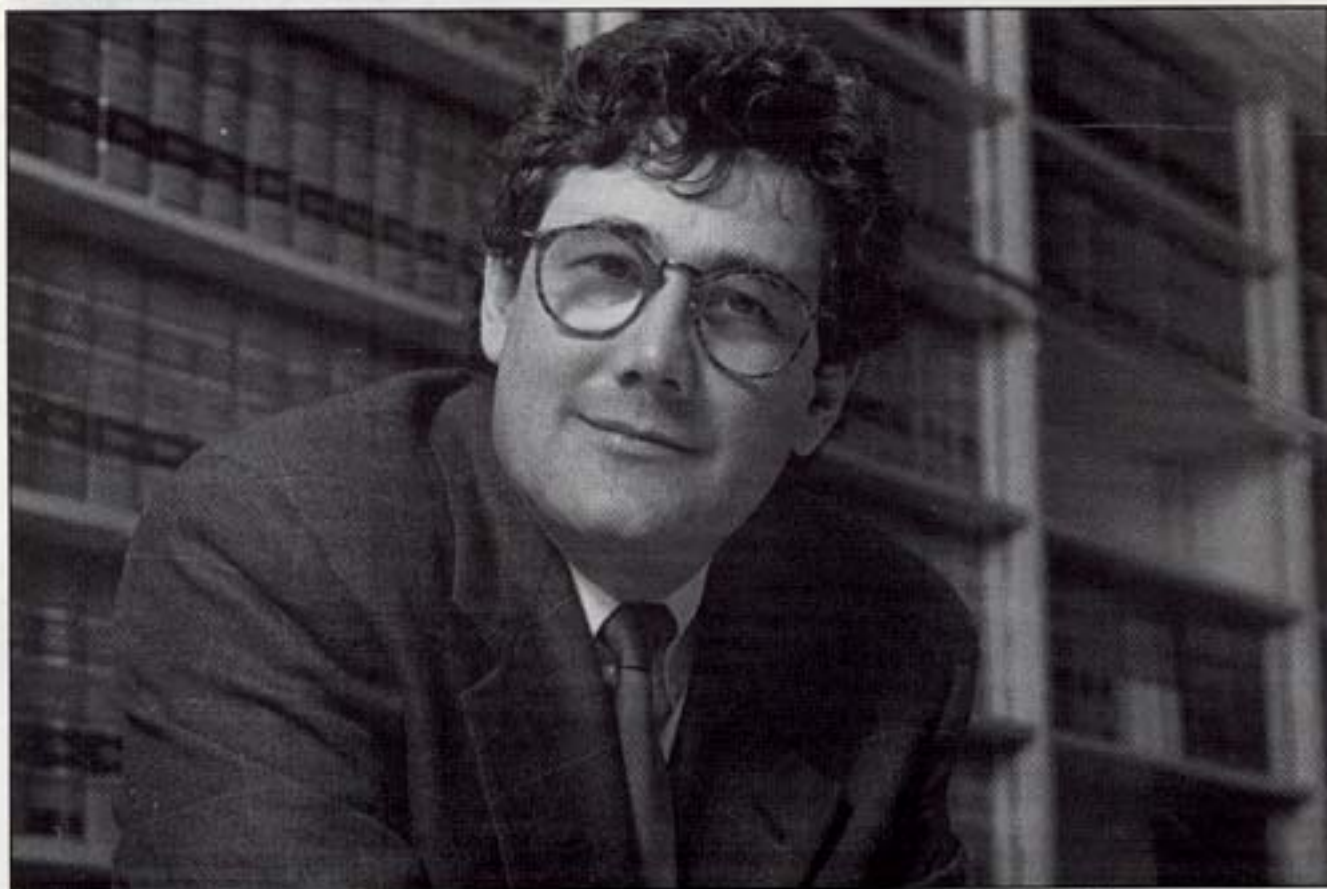
When that effort failed, the church immediately mounted a massive advertising campaign designed to refute Behar's allegations. "In every situation like this the church has tried to see if it could correct the situation without a lawsuit," asserts Lubell. The church finally determined, however, that the ads were not sufficient to correct the damage done by Behar's article, he says.

The first phase of the litigation com-

While Feffer didn't sign the \$120 million complaint against the IRS, Cooley, Drescher, and Moxon did.



Scientology general counsel William Drescher



Eric Lieberman of New York's Rabinowitz, Boudin has represented the church for 14 years.

menced last September. The church, using local lawyers, attempted to restrain *Reader's Digest*, which excerpted the *Time* story, from publishing the article overseas by filing for injunctions in Germany, France, Italy, and the Netherlands, and by filing for an injunction and a libel suit against the *Digest* in Switzerland. (Lubell notes that he plays no role for the church outside the United States.)

All these attempts failed, according to *Reader's Digest* vice-president and general counsel Charles Barnett. "We won the litigation and thwarted the church's attempt to get prepublication injunctions in four countries," he says. The church did obtain a temporary restraining order in Lausanne, Switzerland, but *Reader's Digest* ignored it. "We distributed anyway," says Barnett, who notes that the TRO was later lifted by an appeals court. (The Swiss libel suit is pending.)

Last November the church filed defamation actions in the U.S. against five of Behar's sources, including Pittsburgh lawyer Peter Georgiades, who has advised several former members in litigation against the church's management consulting affiliate, Sterling Management Systems. "This suit was filed to harass and silence me so I won't represent plaintiffs against Sterling," he asserts. One suit against Georgiades, in Los Angeles, was dismissed on February 24 for lack of jurisdiction; a second suit was later filed in Pennsylvania, where it is pending. Suits against the other four sources are all pending.

In December the church sued Behar and *Reader's Digest* for defamation in Paris. ("The general rubric is that it's easier to prove libel outside the United States," says Lubell. Church official Kurt Weiland says Scientology's Paris church independently made the decision to file that defamation action.) That suit was dismissed in April.

Meanwhile, Lubell says that starting late last fall church leaders, including David Miscavige, approached *Time* at the "highest corporate levels," and

Lubell claims that before he sued *Time* for defamation, the church tried "to resolve [its] differences . . . in a manner other than litigation."

again tried "to resolve our differences with *Time* in a manner other than litigation." Over the next six months the church exhausted all alternatives, claims Lubell, including suggesting that *Time* carry a paid advertorial by the church or run an article on the church's "indisputably positive" community activities.

Time general counsel Johnston agrees that the church proposed several alternatives but says none of them were acceptable. The advertorial, for example, "was full of venom toward *Time* and Rich Behar and sang the praises of Scientology," says Johnston. "That 'opportunity' was also declined."

TRADING CHARGES

The Church of Scientology International finally sued Behar, *Time*, and Time Warner in April for defamation in New York federal court, claiming that *Time* knowingly assigned a biased reporter to write about the church, published false and defamatory statements, and then refused to publish any corrections.

Included in the complaint as one of the six specific charges is the allegation that Behar—with "considerable experience investigating financial matters"—and *Time* knew the \$503 million in income attributed to church affiliate CST in 1987 was "false and published with reckless disregard of [its] falsity." Church tax lawyer Monique Yingling says that Be-

har took his figure from accountants' work papers filed with the court of claims in connection with litigation with the IRS over CST's tax-exempt status. (The court recently ruled that CST is not exempt; the church has filed a motion for reconsideration.) "That number involved interaccount transfers [and] rollover CDs but not real revenues or receipts," she contends. "[Behar] didn't bother checking other papers in the file, including [that entity's] form 990." According to a copy of that form (which Yingling gave *The American Lawyer*), the entity reported to the IRS that it had income of approximately \$4 million that year.

Still, there are two sides to the story. "Under the advice of my attorney, I cannot get into the details of what I knew and when I knew it," says Behar. "I did see materials beyond the work papers but can't get into the details. . . . I know they're saying [the income is] four million dollars, but I also know what I saw and what the [*Los Angeles Times*] also saw." (The *Times* published the \$503 million figure in a series on the church the newspaper ran in mid-1990.)

"I'm confident there is nothing libelous in the *Time* article and that this lawsuit is just another effort by the church to stifle criticism and punish its critics," says *Time*'s counsel, First Amendment expert Floyd Abrams of New York's Cahill Gordon & Reindel. (Abrams has represented American

Lawyer Media, L.P., in the past.)

According to Abrams, Behar had the accountants' work papers prior to publishing the \$503 million income figure, and "the figure appeared more than once" in those papers. "At the very least there was a good-faith basis for using those figures," says Abrams. Of the discrepancy between the numbers in those papers and on the 990 form, Abrams asserts: "The church has a lot of explaining to do to reconcile its own figures and financials."

Additionally, says Abrams, it is not defamatory to say someone made a lot of money. "It doesn't hold them up to ridicule or shame or obloquy," he argues.

But Abrams says that *Time*'s chief defenses to all the charges—truth and the lack of actual malice—require extensive discovery, which he and his client want to avoid. So at press time he was on the verge of filing a motion to dismiss Scientology's suit on two grounds. The first is that the article is not "of and concerning" the plaintiff, the Church of Scientology International—as opposed to Scientology or individual Scientologists. (And Abrams says they can't sue, either. "Our view is that this is nothing more than group libel," he explains. "And groups cannot bring suits because individuals in a group feel vilified. The First Amendment bans libel suits with respect to articles that are critical of a movement, cause, or religion.")

Lubell responds that the issue of whether the article is "of and concerning" CSI is a question of fact that must be determined through discovery and an airing in open court. "We have substantial factual evidence that the reading public took the statements in the article to refer to CSI," he argues.

The second ground for *Time*'s motion to dismiss is more provocative: "Our second ground is that the Church of Scientology is 'libel-proof,'" says Abrams. "The church has so often been held to commit evil and despicable acts by courts and so often [been] written about in an extremely critical manner by others that it has no reputation for libel laws to defend or rehabilitate." Abrams concedes that this argument is "not common" but notes it has been "recognized in our circuit in a few cases."

Lubell counters that this ground is also a question of fact that can only be determined at trial. In addition, he notes, "I think the U.S. Supreme Court disapproves of [the libel-proof] theory." His strategy, he says, will be to dispose of this motion and move on to discovery as quickly as possible: "We would like to move through the courts and get to trial."

Whether Abrams's dismissal motion is granted, it seems certain that his opening salvo—which involves putting into the court record the myriad damning rulings against the church in such cases as *Wollersheim*, *Christofferson-Tuchbourne*, and *Armstrong*—will immediately subject the church and its lawyers to judicial and public scrutiny. Can the church put its best face on for what may be a very public courtroom showdown? Bowles & Moxon does appear as one of the church's counsel of record on Scientology's complaint. Lubell, however, is quick to note that they are involved only because of their proximity to the church's Los Angeles headquarters. "I'm the lead attorney," he says. □