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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

10

(San Jose Division) – E-FILING

11 STEVE FUNDERBURG, et al.,

12 Plaintiffs,

13 vs.

14 UNITED STATES OF AMERICA, et al.,

15 Defendants.

16

17 COUNTY OF TRINITY, etc.,

18 Plaintiff,

19 vs.

20 UNITED STATES OF AMERICA, et al.,

21 Defendants.

22

23 And related cross-actions

24

25 Defendant Trinity County hereby provides this Opposition to Plaintiffs' Motion in Limine
26 to Exclude Evidence of Charitable Contributions made by decedent Susan Booth.

27

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) CASE NO. C 02-05461 JW (RS)
) Consolidated w/ Case No. C 03-04066 JW
)
) **OPPOSITION TO PLAINTIFFS' MOTION**
) ***IN LIMINE RE CHARITABLE***
) **CONTRIBUTIONS; DECLARATION OF S.**
) **KEVEN STEINBERG; EXHIBITS**
)
) Date: September 14, 2005
) Time: 9:00 a.m.
) Ctrm: 8, Hon. James Ware
)
) Trial Date: September 21, 2005

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INTRODUCTION

Decedent Susan Booth is survived by her husband and son. During each of the last four years of her life she made very substantial contributions (between \$90,000 and \$150,000 per year) to the Church of Scientology, of which she and her husband were members. Her husband made separate contributions of his own.

Decedent’s contributions to the Church of Scientology establish a pattern of giving which can be projected into the future. Plaintiffs would like to have the Court believe that this pattern of giving would have stopped completely had she lived. In short, plaintiffs seek to present a distorted picture of what monies would have been available to decedent’s survivors. Defendants submit that evidence of decedent’s prior giving is relevant and probative on this issue and should be allowed into evidence.

ARGUMENT

A. Contributions to the Church of Scientology reduce the amount available to the plaintiffs, the same as personal consumption.

Overly v. Ingalls Shipbuilding, Inc., 74 Cal. App. 4th 164, 165 (1999) cited by plaintiffs, actually supports defendant’s position. Therein, it was held that in a wrongful death case, damages should be reduced by the amount of personal maintenance expense and the amount he or she would have spent on other things. The reason for this principle is obvious—money which would be spent on personal maintenance of the decedent and “other things” by definition would not be available to the wrongful death plaintiffs had the decedent lived, and must be considered in any calculation of damages allegedly sustained by the claimants.

It is well established that in wrongful death actions, damages must be reduced in an amount equal to the decedent's personal consumption. See, e.g., United States v. English, 521 F.2d 63, 71-72 (9th Cir. 1975)(and cases cited therein.). The measure of damages is the value of the benefits the heirs could reasonably expect to receive from the deceased if she had lived." (Allen v. Toledo (1980) 109 Cal.App.3d 415, 423 [167 Cal.Rptr. 270], internal citations omitted.). Awards for lost wages should be calculated after deductions are made for the decedent's personal consumption, expenditures and taxes. See, e.g., United States v. English, 521 F.2d at 71-72.

1 In determining damages to be assessed for the death of an adult, the California Book of
2 Approved Jury Instructions ("BAJI") contemplates consideration of, inter alia, "[t]he disposition of
3 the deceased to contribute financially to support the heirs . . . [t]he earning capacity of the deceased
4 . . . [t]he deceased's habits of industry and thrift . . . and [a]ny other facts shown by the evidence
5 indicating what benefits each heir might reasonably have been expected to receive from the
6 deceased had [he] [she] lived." BAJI No. 14.50 (West 2004). Similarly, Judicial Council of
7 California Civil Jury Instruction (CACI), 3921 provides that recoverable economic damages for the
8 wrongful death of an adult consists of the financial support, if any, the decedent would have
9 contributed to the family during either the life expectancy that decedent had before his/her death or
10 the life expectancy of the heirs, whichever is shorter.

11 Therefore and simply put, Dr. Booth's heirs cannot reasonably expect to have received
12 financial contributions from Dr. Booth that were allocated toward charities. As such, the charitable
13 contributions must be deducted as "consumption" of the decedent and are not recoverable by
14 Plaintiffs as pecuniary loss.

15 **B. The substantial contributions of the decedent to the Church of Scientology during a**
16 **period of years establish a pattern of giving which can be projected into the future.**

17 In this case, there is an established pattern to show that decedent had been giving
18 substantial sums of money to the Church of Scientology over a multi-year period. See pages 5
19 through 8 of Expert Report of Jerald Udinsky, copies of which are attached as Exhibit B. It is not
20 speculation to suggest that she would have continued to give money had she lived. Indeed, it
21 would be speculation to suggest that she would have suddenly broken this pattern and stopped
22 giving to a church which has established a pattern of obtaining six figure contributions from this
23 very decedent to the Church of Scientology, which has a reputation for obtaining very large
24 contributions from its members.

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1 **C. Whether decedent’s payments to the Church of Scientology were contributions or**
2 **were payments for “auditing” services, they were not available to her survivors.**
3 **Hence, any calculation of future losses to the beneficiaries must be adjusted to**
4 **account for projected future payments.**

5 Plaintiffs suggest that because a substantial part of decedent’s annual six figure
6 “contributions” were made for “auditing”, and that decedent had already paid for auditing above
7 the “CLEAR” level, then one should presume that she would not have made any further payments
8 for such “services”. See Declaration of David Rand and deposition testimony provided therein.
9 That suggestion is unfounded.

10 In the world of Scientology, the term “CLEAR” has a very distinct meaning. One begins as
11 a “Pre Clear” and goes through “AUDITING” to reach higher levels of awareness, and eventually
12 reaches the level of CLEAR. See “What is Scientology?”, the origins and contents of which were
13 discussed in depositions of various witnesses in this case, and portions of which are attached as
14 Exhibit “A” to the Declaration of S. Keven Steinberg. See in particular pages 165 and 552, Ex. A.
15 Scientology continues to provide auditing services for its “members” after they reach CLEAR. It is
16 stated, at page 552:

17 “Once Clear, an individual wants to continue his auditing to achieve these higher
18 spiritual states and expand his understanding and responsibility on the remaining
19 dynamics.” (Ex. A).

20 That book goes on to describe STEPS ABOVE CLEAR (page 166 *et seq.*, Ex. A) including
21 OPERATING THETAN LEVELS (page 168, Ex. A). To suggest that Scientology would let go of
22 its members’ pocket book would be to ignore reality.

23 Plaintiffs also suggest that because the specific Building Project which decedent had
24 contributed to was completed, decedent would not have made any further contributions to
25 Scientology for other building projects. Once again, such a suggestion flies in the face of reality.

26 Plaintiffs also suggest, without foundation, that the special needs of her 11 year old child
27 would have caused her to stop giving altogether. However, plaintiffs do not suggest that this
28 condition was unknown to decedent during the four years when these large donations were made,

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DECLARATION OF S. KEVEN STEINBERG

S. KEVEN STEINBERG declares as follows:

- 1. I am one of the attorneys for County of Trinity in this action.
- 2. Attached hereto as Exhibit A are selected pages from the book entitled “What is Scientology?” based on the works of L. Ron Hubbard, which provides basic information about Scientology. Portions have been marked for emphasis.
- 3. Attached hereto as Exhibit B are pages 5 through 8 of the Expert Report of Jerald Udinsky, summarizing the contributions of decedent Susan Booth to among other things, the Church of Scientology.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 30, 2005 at Santa Monica, California.

/s/
S. Keven Steinberg

Exhibit A

WHAT IS SCIENTOLOGY?



HERE YOU ARE,
STANDING IN THORNY
AND FORBIDDING GROUND.

ACROSS THE CHASM
IS A HIGHER PLATEAU WHERE
THINGS ARE FAR BETTER.

SCIENTOLOGY IS THE BRIDGE
ACROSS THAT CHASM,
FROM A LOWER TO A MUCH
HIGHER LEVEL OF EXISTENCE —
A BRIGHTER HAPPIER WORLD.

B A S E D O N T H E W O R K S O F

L. RON HUBBARD

THE SERVICES OF SCIENTOLOGY

NEW ERA DIANETICS AUDITING

The reactive mind plagues a person with the unthinking, irrational dictates of its contents and imposes anxieties, fears, unwanted sensations and feelings and a host of other undesirable effects. Freeing him from the command value such unwanted emotions exert over his volition provides new levels of self-determinism.

Initially, the reactive mind was addressed using only the techniques laid out in *Dianetics: The Modern Science of Mental Health*, also known as "Book One." But L. Ron Hubbard continued to refine the techniques. The culmination of more than a quarter of a century of research and improvement came in 1978 with New Era Dianetics and the widespread making of Clears.

The effectiveness of these New Era Dianetics techniques is nothing short of revolutionary. A 1950s Book One auditor would have been astonished to see the speed with which Dianetics results could be attained with the advent of NED. The ratio has been estimated at 100 to 1. What once could only be achieved in thousands of hours of auditing can now often be realized in only dozens of hours.

The question may arise: If one is directly addressing the reactive mind in Dianetics auditing, why then are the Scientology Grades necessary? Chronologically, Dianetics came before Scientology; and it would seem natural that one would give Dianetics to a preclear before he received Scientology auditing.

The answer lies in the fact that Scientology Grades were developed as an *undercut* to Dianetics. The preclear usually needs a lot of work on his life and his relationship to his environment before he can easily confront his reactive mind on NED. The Grades unburden a great deal of the reactive mind and environment, not to mention the fact

that they provide enormous gains in his life. And by first giving him Scientology Expanded Grades, it is then far easier for him when he moves into New Era Dianetics and when he attains the state of Clear. Instead of increasing the number of hours to reach Clear, the Scientology Grades actually can shorten it up.

New Era Dianetics auditing consists of eighteen separate steps, specific rundowns and actions which address the engrams contained in the reactive mind. The different sensations, emotions, feelings and so forth are used to trace back engrams in the reactive mind. Utilizing Dianetics auditing procedure, the preclear erases those engrams, nullifying the reactive mind's ability to control the individual unwittingly.

The NED Drug Rundown, for example, resolves the factors in the reactive mind related to drug addiction, eradicating not only the unwanted aftereffects of drugs, but even those reactive forces that initially led one to turn to drugs. The harmful effects of drugs on the mind are erased and a person is freed from the compulsion to take drugs.

Another of the NED Rundowns, entirely tailor-made to the individual, handles anything a person considers to be a disability. There is no longer any need to adjust to one's limitations when he can eradicate the cause of them in the reactive mind.

Dianetics does not cure any physical condition, but does address those spiritual and mental factors that can predispose or precipitate illness or make medicine ineffective. As a result, by handling the psychosomatic causes, one can achieve a well and happy human being and often bring a person to that burst of glory and freedom known as the state of Clear.

NED is available at Scientology churches and missions.

★ STATE OF CLEAR

The state of Clear has often been described in Dianetics and Scientology. It has always been understated. Time has revealed that Clear is far above anything one had dreamed of previously.

Here is a being who has forever vanquished his own reactive mind, the source of man's misery. He has a very high degree of personal integrity and honesty, and is living proof that man is basically good. His own basic beingness returns and his own personality flourishes. When a person becomes Clear, he loses all the fears, anxieties and irrational thoughts that were held down by pain in the reactive mind and, in short, regains himself. Without a reactive mind, an individual is much, much more himself.

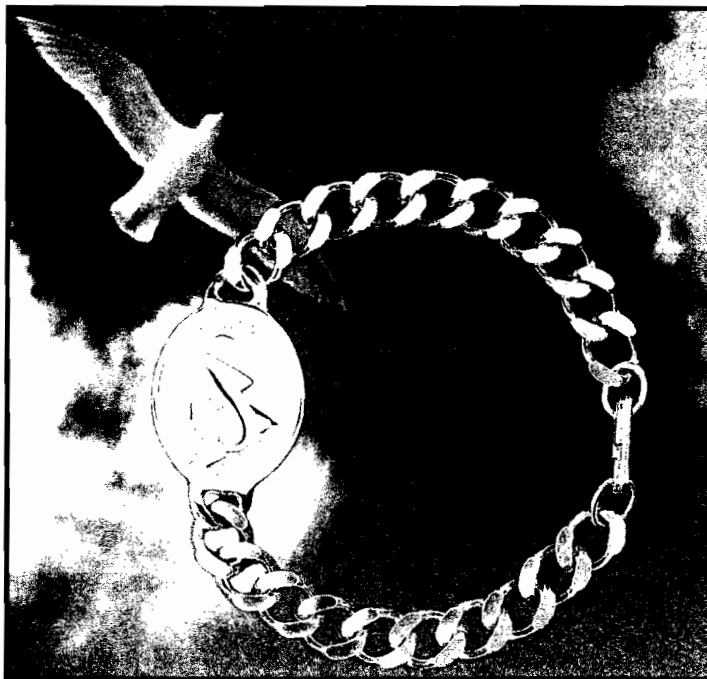
Until an individual is cleared, no matter how able he has become by virtue of earlier auditing, it is inevitable that he will sooner or later sink back into the reactive mind. That is why clearing is vital. Clear is total eradication of the individual's own reactive mind. Thus, Clear is a stable state, not subject to relapse.

Today, the state of Clear can routinely be attained in New Era Dianetics. And if a person does not achieve Clear on NED, he can attain it through the Alternate Clear Route and the Clearing Course (explained below and page 166).

The full glory of the state of Clear has no comparable description in any writings existing in our culture. The state had been long sought but was impossible to achieve without the researches and breakthroughs of L. Ron Hubbard. No matter how able a being may have been, no matter what powers he possessed, no matter his strengths, the reactive mind was still there, hidden, and eventually dragged him down again. The state of Clear does exist today and is attainable by all men. Many thousands of Scientologists all over the world are Clear, joined by more each day.

Alternate Clear Route

The amount of auditing necessary to erase the reactive mind is unique to each person. If a person does not achieve Clear on NED, he



When a person attains the state of Clear he is entitled to wear a Clear bracelet.

continues with further levels on the Grade Chart and attains it on the Clearing Course. That the state of Clear can be attained is a certainty; the only question is whether a person will attain it through NED or this alternate route. Other grades or auditing services do not result in Clear.

The auditing steps comprising the Alternate Clear Route are available only at Scientology Advanced Organizations, Saint Hill Organizations and the Flag Service Organization.

Grades V and VA Power and Power Plus

Grades V and VA are the next steps for a person who did not attain Clear on NED.

On Grade V (Power) one discovers and resolves those things that pin one to the reactive mind. And on Grade VA (Power Plus) a person tackles the beings, places and subjects he has long detested. These processes vastly increase one's abilities, potentials, intelligence and awareness, and free one from major and long-standing problems to restore previously hidden powers.

THE SERVICES OF SCIENTOLOGY

Man can seldom handle power. He retreats from it or abuses it. When he has it he often misdirects it. To have it and handle it is attained on Grades V and VA.

Available only at Scientology Advanced Organizations, Saint Hill Organizations and the Flag Service Organization.

Grade VI

This level delivers freedom from dramatizations. The theory includes four filmed lectures by Mr. Hubbard in which he reveals the fundamental anatomy of the reactive mind, and exactly why the human race reacts as it does.

Man's past is his "time track." There are three conditions concerning it. A being is first unaware he has one, then is fascinated by what he finds out about his own past and then finds what made him — and it — that way.

Some of this often shows up in lower auditing. But at this level, one comes to handle it.

At this grade, the state attained defies easy description. It is so far above common experience and totally missing in all of man's literature. It is a Grade VI Release.

Available only at Scientology Advanced Organizations and the Flag Service Organization.

Clearing Course

On this service the Grade VI Release studies the materials of the Clearing Course which include several technical films featuring lectures and Solo auditing demonstrations by Mr. Hubbard. Here, the student learns the anatomy and mechanics of the core of the reactive mind itself and then audits himself until his reactive mind — the basic cause of his decline — is vanquished and he is capable of regaining his full potential as a being at the newly attained state of Clear.

For those who do not go Clear on NED, this is the level on which they will achieve that state.

Available only at Scientology Advanced Organizations and the Flag Service Organization.

STEPS BEYOND CLEAR**Sunshine Rundown**

This short action adds extra shine to the state of Clear. By doing it, the Clear is becoming self-determined in his new state. One does this rundown immediately after achieving the state of Clear, whether he has gone Clear on New Era Dianetics or the Clearing Course. This service is provided at Class V or higher level churches.

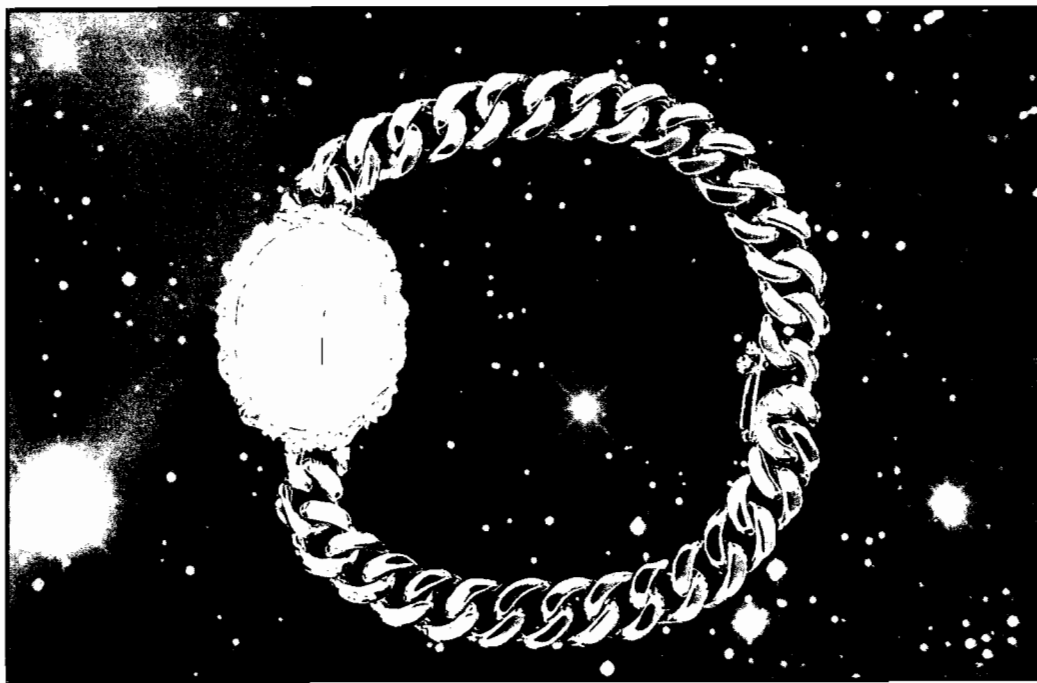
Solo Auditor Course and OT Preparations Auditing

Many of the OT levels, and certain steps of the Alternate Clear Route, require that the individual audit himself. This is called Solo auditing and requires that he learn all basic auditing skills and how to operate the E-Meter flawlessly.

The Solo Auditor Course is in two parts: On Part 1, the individual learns the fundamentals of Solo auditing and the required technical skills. This may be done at any Class V or higher church. On Part 2, one actually begins Solo auditing and becomes competent with his skills, ready to address the processes of the advanced levels. It is available only at Advanced and Saint Hill Organizations and Flag.

OT Preparations auditing varies from individual to individual according to their unique case needs. It is available from Advanced and Saint Hill Organizations and the Flag Service Org.

THE GRADE CHART: AUDITING TO HIGHER STATES OF EXISTENCE



To acknowledge one's attainment of New OT VIII, a Scientologist may wear the OT bracelet.

OPERATING THETAN LEVELS

By "operating" is meant "able to act and handle things." And by "thetan" is meant the spiritual being that is the basic self. "Theta" is Greek for thought or life or the spirit.

An Operating Thetan then is one who can handle things without having to use a body of physical means.

Basically one is oneself, can handle things and exist without physical support and assistance. This state is Operating Thetan, or OT. It doesn't mean one becomes God. It means one becomes wholly oneself.

By eradicating the reactive mind one overcomes the barriers which made it so difficult to attain total spiritual independence and serenity. Thus, once a person achieves Clear he is now able to become refamiliarized with his native capabilities. As man is basically good, a being who is Clear becomes willing to trust himself with greater and greater abilities. This is done through the OT levels.

Like any other gain in Scientology, the state of OT is attained gradually. Just as it would not be as beneficial to give someone New Era Dianetics auditing before handling the negative effects of drugs and toxins with the Purification Rundown, so it is wrong to try to move someone onto the OT levels before he is ready for them. One might as well pull a baby out of its bassinet and demand that he run. He cannot run until he has first learned to crawl and then to walk. The reactive mind thoroughly blocks the thetan from regaining and exercising his native powers. But once this block is removed, an individual can learn to operate as himself, a spiritual being.

The OT levels contain the very advanced materials of L. Ron Hubbard's researches and it is here a person achieves the ultimate realization of his own nature and his relationship to life and all the dynamics. Abilities return as he advances up through the OT levels and he recovers the entirety of his beingness. Miracles of life have been

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THE SERVICES OF SCIENTOLOGY

exposed to full view for the first time ever on the OT levels. Not the least of these miracles is knowing immortality and freedom from the cycle of birth and death.

These levels are fifteen in number, each one a complete auditing service. OT Levels I through V are ministered at Advanced Organizations and the Flag Service Organization. OT levels through VII are available at the Flag Service Organization in Clearwater. OT Level VIII, and higher OT levels when released, are available exclusively from the Flag Ship Service Organization, aboard the *Freewinds*.

ADDITIONAL SERVICES TO SPEED PROGRESS UP THE GRADE CHART

While the following steps are not done by everyone, each addresses and resolves certain difficulties a person may be encountering in his life. They can be done at various points on the Bridge.

Those who do one or more of them have found their progress up the Grade Chart greatly enhanced.

Happiness Rundown

Based on the precepts found in *The Way to Happiness*, L. Ron Hubbard's nonreligious, common-sense moral code, this powerful auditing rundown gives one the ability to create a happier, saner environment. While this code is nonreligious, its precepts are addressed spiritually in auditing. By clearing up any confusions an individual may have on the subject of morals, any transgressions against these morals and any other spiritual factors tying him to immorality, he is left with certainty that he can avoid tragedy and unhappiness and, indeed, live a happier life and achieve spiritual gain. Those who complete this rundown find they really are on the way to happiness.

The Happiness Rundown can be done at different points on the Grade Chart. One *should* get it at some point on the Bridge, ideally before the Grades. It is available at Scientology churches and missions.

False Purpose Rundown

A being who has accumulated hidden destructive purposes contrary to his own survival will operate far below his potential. This rundown slashes straight to the root of false purposes and makes them vanish. These false purposes are what hold a person back and prevent his ability to regain spiritual freedom and progress up the Bridge. Once these harmful effects are eradicated the basic goodness of the individual is restored.

This rundown can be done at almost any point on the Grade Chart, and is especially beneficial for those who experience difficulty in moving up the chart. It is even beneficial for a Clear stalled in moving up to OT, as nonsurvival postulates and considerations can stand independently of mental mass. Resolving these factors through False Purpose Rundown auditing can improve his power as a being. This rundown is available at all Scientology churches.

Expanded Dianetics

This specialized branch of Dianetics addresses the basic reasons why a person restrains himself. Included in Expanded Dianetics are more than nine separate rundowns and other auditing steps which, following a program uniquely tailored to the individual, can help him remove these barriers and regain his innate power. At its conclusion, intentions and abilities which had been submerged for lifetimes can be restored, and one can regain a truer sense of self. It is available at missions and churches.

Method One

Method One auditing can clear up all misunderstandings in every subject one has studied. The result of properly completed Method One is the recovery of one's education.

It can be done on a "co-audit" basis, where two people audit together each auditing one another in turn, once they have been trained in the procedure. The auditing directs one to

THE GRADE CHART: AUDITING TO HIGHER STATES OF EXISTENCE

misunderstood words or symbols from prior educational studies that are interfering with the ability to understand and clears these words up fully. By resolving past confusions, this can also smooth the way for more rapid auditing gains. It is available at all churches and missions.

PTS Rundown

It frequently occurs in life that one comes into contact with a suppressive person—someone who acts to invalidate and make less of him. At this point one can become “PTS,” a potential trouble source, due to the fact that this suppressive person is making one’s life difficult. L. Ron Hubbard found that the suppression that affects one the worst actually stems from connections one has had to hostile personalities before this lifetime. The PTS Rundown was developed by Mr. Hubbard to free one from the long-term spiritual effects of such suppression. It is available at Scientology churches and missions.

Suppressed Person Rundown

This is a miraculous rundown that can result in a formerly antagonistic person coming forward to the preclear with unprompted, friendly communication. It is available at Scientology churches and missions.

Interiorization Rundown

One of L. Ron Hubbard’s most remarkable achievements was to prove that man is not his body and that he can exteriorize from his body. Once a preclear exteriorizes during

processing, he may run into difficulties if auditing continues. Prior to Mr. Hubbard’s research on the Interiorization Rundown, auditors had to cease auditing preclears when they went exterior in auditing. In many cases, although the person would exteriorize once or twice it was not a stable state and the person would have difficulty exteriorizing again. As preclears often exteriorize in lower grade auditing, without solving this problem, they may have difficulty making further progress up through Clear and OT. This remarkable rundown solves this problem and permits preclears to continue up the Bridge after going exterior in auditing and makes further exteriorization possible. Available at Scientology churches and missions.

Of the higher states attainable by moving up the Grade Chart, L. Ron Hubbard wrote:

“... the way is true and plainly marked and all one needs to do is to place his feet upon the first rung of the ladder, ascend to Clear and then walk upward to and far beyond the stars.

“It is quite impossible to overstate the importance of such news. 2,500 years ago a statement similar to this and almost impossible to attain brought civilization to three-quarters of Asia.

“Yet day by day, Clears enrolled on the OT levels are walking that ladder and have already begun to reach the stars.”

From “Dianetics, Scientology and Beyond,” the full text of which can be found at page 194.

A SCIENTOLOGY CATECHISM

THE STATE OF CLEAR

What is Clear?

Clear is the name of a specific state achieved through auditing, or a person who has achieved this state. A Clear is a being who no longer has his own reactive mind, and therefore suffers none of the ill effects the reactive mind can cause.

How does one go Clear?

Simply by taking one's first step in Scientology, or by taking the next step as shown on the Classification, Gradation and Awareness Chart and then continuing up the levels set forth on this chart.

How long does it take to go Clear?

It varies from person to person, but it takes an average of anywhere from one year to two years to go from the bottom of the Grade Chart through Clear, depending on how much time one spends each week on his auditing. Those who participate in intensive auditing services and do not stop along the way progress the fastest.

If one goes Clear, will he lose his emotions?

No, on the contrary, a Clear is able to use and experience any emotion. Only the painful, reactive, uncontrolled emotions are gone from his life. Clears are very responsive beings. When one is Clear, he is more himself. The only loss is a negative—the reactive mind—which was preventing the individual from being himself.

What can you do when you are Clear?

A Clear is able to deal causatively with life rather than react to it. A Clear is rational in that he forms the best possible solutions he can with the data he has and from his own viewpoint. A Clear gets things done and accomplishes more than he could before he became Clear.

Whatever your level of ability before you go Clear, it will be greatly increased after you go Clear.

Are Clears perfect?

No, they are not perfect.

Being a Clear does not mean a person who has had no education, for example, suddenly becomes educated. It does mean that all the abilities of the individual can be brought to bear on the problems he encounters and that all the data in his analytical memory banks is available for solution to those problems.

A Clear has become the *basic individual* (himself) through auditing. The basic individual is not a buried, unknown or a different person, but an *intensity* of all that is best and most able in the person.

Do Clears get colds and get sick?

A Clear can still get sick, but this occurs much less often than before he became Clear. In other words, a Clear still has a body, and bodies are susceptible at times to various illnesses. However, no longer having his reactive mind, he is much more at cause and is not adversely affected by many of the things that would have caused psychosomatic illnesses before he went Clear.

To measure a Clear only by his health, however, would be a mistake because this state has to do with the individual as a spirit not as a body.

If Clears no longer have a reactive mind, why do they still need to participate in auditing?

There are many more states of awareness and ability that can be achieved above the state of Clear, as one is only Clear on the first dynamic. Once Clear, an individual wants to continue his auditing to achieve these higher spiritual states and expand his understanding and responsibility on the remaining dynamics.

ANSWERS TO COMMON QUESTIONS

THE STATE OF OPERATING THETAN

***What is meant by
Operating Thetan (OT)?***

Operating Thetan is a spiritual state of beingness above Clear. *Thetan* refers to the spiritual being, and *operating* means here "able to operate without dependency on things." An Operating Thetan (OT) is able to control matter, energy, space and time rather than being controlled by these things. As a result, an OT is able to be at cause over life.

There are numerous auditing steps on the Bridge called OT levels. People on these levels are progressing to the spiritual state of full OT and becoming more and more OT along the way.

***How would you describe the state of
Operating Thetan?***

The goal of Operating Thetan is to

overcome the travails of existence and regain the certainty and abilities of one's native spiritual beingness. At this level one knows that he is separate and apart from such material things as physical form or the physical universe.

OT (Operating Thetan) is a state of spiritual awareness in which an individual is able to control himself and his environment. An OT is someone who knows that he knows and can create positive and pro-survival effects on all of his dynamics. He has been fully refamiliarized with his capabilities as a thetan and can willingly and knowingly be at cause over life, thought, matter, energy, space and time.

As a being becomes more and more OT, he becomes more powerful, stable and responsible as a spiritual being.

Exhibit B

reasonable Earning Capacity of \$218,560 for Ms. Booth, based on a four-year average of her annual earnings.

We also provide an alternative calculation of Earning Capacity based on a two-year average of earnings, from 1999 and 2000. Such a calculation usually is less desirable as a representation of Earning Capacity since the Earning Capacity is used to project earnings many years into the future. However, the Finder of Fact may consider the results in the year 2000 to be representative of a higher level of sustainable earnings for the dental practice. For completeness, we have included calculations based on the assumption of a higher level of sustainable earnings for the dental practice, which are discussed in Section III-D-1.

Table 2 in Appendixes XI and XII shows an Earning Capacity estimate for Ms. Booth based on a two-year average of her earnings from 1999 to 2000 of \$243,284. The remainder of this section assumes an Earning Capacity based on a four-year average.

2. Pre-Trial Lost Support from Earnings

a. Deduction for Charitable Contributions as Personal Consumption – Mark is Fully Supported by Father

The support available to Mr. Funderburg and Mark is reduced by Ms. Booth's substantial annual charitable contributions. Because Ms. Booth contributed a substantial portion of her income to the Church of Scientology, she had less income available to support family members.

Donation receipts, tax returns and annual statements from religious organizations in Ms. Booth's name indicate that Ms. Booth contributed a majority of her income to her church. Because charitable contributions reduce the amount of money available for support of others, it is important to estimate Ms. Booth's annual level of charitable contributions.

Charitable contributions are defined by the dictionary as contributions that are "generous in giving money or other help to the needy."⁶ Since the I.R.S. allows such charitable contributions to be tax-deductible, the tax returns present a good source for determining Ms. Booth's charitable contributions. For I.R.S. purposes, contributions are tax deductible if they would be considered to have only a religious, intangible benefit. The church's annual parishioner statements identify the tax-deductible contributions as for "solely intangible, religious benefits."⁷ We therefore consider such contributions as charitable, and not as income available to support family members.

Appendix VII provides a summary of tax-deductible charitable contributions as reported in Mr. Funderburg's and Ms. Booth's Federal Income Tax Returns from 1996 through

⁶ The American Heritage Dictionary of the English Language, New College Edition, published 1976.

⁷ See, for example, Parishioner Annual Statement for Susan Booth, dated 01/03/99 (Bates Stamp 001821).

2001. For tax returns prior to 1998, we were provided Ms. Booth's Federal Income Tax Returns (1995 through 1997), and have been informed by Counsel that Mr. Funderburg's 1996 and 1997 Federal Income Tax Returns may be produced at a later date. Since production of Mr. Funderburg's Federal Income Tax Return may impact our charitable contribution analysis, we reserve the right to update this report if such returns are provided after the date of this report.

In addition, we were provided receipts and annual donation statements from charitable organizations. Appendix VIII summarizes these documents. We first explain what we mean by "annual household charitable contributions," and then explain how we estimate Ms. Booth's annual charitable contributions.

i. Annual Household Charitable Contributions

Annual household charitable contributions represent the total, normally expected contributions made by the household each year. The federal tax returns filed by Ms. Booth and Mr. Funderburg indicate that, on average, the two spent \$145,787 in tax-deductible charitable contributions each year. We assume that this amount represents future annual expenditures on charitable contributions for the household.

This assumption ignores evidence indicating that the household charitable contributions may have been more than just tax-deductible contributions.⁸ If we included non-tax deductible contributions, lost support to Mr. Funderburg would be lower. Should additional information be provided regarding both tax-deductible and non-tax deductible contributions made by the decedent or Mr. Funderburg, we reserve the right to revise our findings.

ii. Calculation of Ms. Booth's Charitable Contributions

We calculate Ms. Booth's percentage of charitable contributions as 82.9% of total annual household charitable contributions. This percentage is based on Ms. Booth's average share of total household charitable contributions from the years 1998 and 2001.⁹

Appendix VII shows \$136,000 in tax-deductible charitable contributions by Ms. Booth and \$8,400 by Mr. Funderburg reported in their separate, individual 1998 tax returns. We sum these two amounts as a proxy for household contributions. Here Ms. Booth's contributions account for 94.2% of total household charitable contributions.

⁸ Receipts and annual statements in 1998 by Susan Booth, Steve Funderburg, and Mark Booth exceed \$214,000, as shown in Appendix VIII, while Appendix VII indicates a combined total of tax-deductible charitable contributions of \$144,400, implying non-tax-deductible contributions of at least \$70,000 in 1998.

⁹ Only the tax returns from 1998 allowed an analysis of share of household contributions. For later years, jointly filed tax returns did not allow separation of individual contributions. Donation receipts and annual statements only provided reliable amounts (greater than the amount of tax-deductible contributions claimed on the Schedule A tax returns) for 1998 and 2001. See Appendixes VII and VIII.

Appendix VIII shows 2001 charitable contributions by Ms. Booth and Mr. Funderburg.¹⁰ For 2001, the receipts and annual statements indicate that Mr. Funderburg spent at least \$43,531 in charitable contributions for the entire year.¹¹ Ms. Booth contributed at least \$65,207 through August 5th, 2001, the date of death. Because Mr. Funderburg's charitable contributions represent a full year of contributions, we annualize Ms. Booth's contributions to find a contribution amount that is comparable with Mr. Funderburg's. Annualizing Ms. Booth's contributions of \$65,207 through August 5, 2001, indicates that Ms. Booth would have reasonably been expected to spend at least \$109,886 for the year 2001, if not for the incident. The combined total household contributions for 2001 are estimated to be \$153,417. Dividing Ms. Booth's annualized contributions of \$109,886 by total household contributions of \$153,417 yields a 71.6% share of household contributions.

The average of 71.6% and 94.2% is 82.9%, which is used herein as the reasonable share of charitable contributions attributable to Ms. Booth's personal consumption. Appendix VII multiplies 82.9% by total annual household contributions of \$145,787 for an annual estimate of charitable contribution by Ms. Booth of **\$120,858**. This amount assumes that Mark is fully supported by his father.

b. Deduction for Charitable Contributions as Personal Consumption – Mark is Fully Supported by Mother

If Mark is considered to be fully supported by his mother, then for purposes of conservatism, we assume that all contributions to charitable organizations made in Mark's name were made by his mother. Appendix VIII summarizes charitable contributions paid in Mark's name over a three year period, from 1998 through 2000. The average of these three annual contributions equals \$10,350.

Since these funds are charitable contributions, they would be considered support of Mark and would therefore decrease the available support for Mr. Funderburg. We decrease Ms. Booth's charitable contributions of \$120,858 (found in the previous section) by \$10,350. The remainder is **\$110,508**, which represents charitable contributions for Ms. Booth's personal benefit only.

¹⁰ We were not provided any donation receipts evidencing charitable donations made in Mark's name by either Mr. Funderburg or Ms. Booth for the year 2001. In performing our analysis, we excluded receipts that were also included on annual contribution statements to avoid double-counting of charitable contributions.

¹¹ We do not have all receipts/statements for charitable contributions (based on a comparison with reported charitable contributions from the tax returns). As a result, the sum of receipts/statements indicates a lower bound of charitable contributions. It should also be noted that Mr. Funderburg reported an income of only \$45,498 in the year 2001. See Appendix IIIB.

c. Age Earning Factor

Ms. Booth's Annual Earning Capacity of \$218,560 less Ms. Booth's annual estimated charitable contributions is adjusted by an Age Earnings Factor, which accounts for changes in earnings as a result of age. The Age Earnings Factor is derived from the Department of Commerce's *2002 Money Income in the United States*. The factor is based on changes in mean earnings of females with a Doctorate Degree.

d. Other Personal Consumption – Mark is Fully Supported by Mother

Assuming that Mark is fully supported by his mother, the *Revised Equivalence Scales* from the Bureau of Labor Statistics indicate that Ms. Booth would have consumed 30.44% of household income in the pre-trial period (before Mark turns age 18).¹² After considering all sources of personal consumption by Ms. Booth, we find pre-trial lost financial support to Mr. Funderburg and Mark Booth in this case of **\$221,506**.

e. Other Personal Consumption – Mark is Fully Supported by Father

Under the assumption that Mark is fully supported by his father, the *Revised Equivalence Scales* from the Bureau of Labor Statistics indicate that Ms. Booth would have consumed 41.18% of household income.¹³ After considering all sources of personal consumption by Ms. Booth, we find pre-trial lost financial support to Mr. Funderburg in this case of **\$137,546**.

3. Post-Trial Lost Support from Earnings

The analysis of post-trial lost financial support is similar to that of pre-trial loss, with the exception of accounting for present values. Present value calculations for Ms. Booth's earnings assume a 2% net discount rate. Table 4 in Appendixes IX and X subtract an Annual Charitable Contribution of \$120,858 if Mark is fully supported by his father or \$110,508 if Mark is fully supported by his mother, and then makes an adjustment for the Age Earnings Factor.

In the scenario where Mark is fully supported by his mother, we continue using a consumption rate of 30.44% until Mark turns age 18, at which point Ms. Booth's share of household personal consumption increases to 42.02% of total household consumption.¹⁴

¹² Percentage(s) reflect(s) an adjustment downwards of 2.4%, based on the portion of cash (including charitable) contributions to before-tax income as reported in the Consumer Expenditure Survey. The adjustment was made to avoid double-counting the impact of charitable contributions. Source: Table 36, "Consumer units of two or more persons by income before taxes: Average annual expenditures and characteristics," *Consumer Expenditure Survey, 2000-2001* conducted by the U.S. Bureau of Labor Statistics.

¹³ *Ibid.*

¹⁴ These percentages reflect an adjustment downwards of 2.4%, based on the portion of cash (including charitable) contributions to before-tax income as reported in the Consumer Expenditure Survey. The