

Category	Magazine Article
Title	Hirschkop the Horrible: A '60s Lawyer in the '80s
Source	"Legal Times"
Author	Eleanor Kerlow
Date	July 21st, 1986

Description:

The article portrays the Ex-"Guardian's Office" attorney Philip Hirschkop.

Hirschkop the Horrible: A '60s Lawyer in the '80s

When 50-year-old Philip Hirschkop took on the defense of a former Alexandria, Va., official recently accused of sexually harrassing three women and a transsexual, he did so in his typically aggressive style: He immediately sued just about everyone who had attacked his client.

Even he admits his methods are controversial. "People say that I'm aggressive. When I get in a case, I really go after someone," he says.

Indeed, Brooklyn, N.Y.-born Hirschkop is a pugnacious and contentious litigator. "He will yell and scream and interrupt other people and act utterly without decorum in order to achieve his goals," says former Alexandria City Councilman Donald Casey, who last year filed a since-dismissed disciplinary grievance against Hirschkop alleging unethical conduct.

Hirschkop considers it a badge of honor that between 1967 and 1973, 17 disciplinary complaints were brought against him before the Virginia State Bar. Basically, says Hirschkop, the complaints charged that he made improper public statements about pending litigation. None of the charges has resulted in disciplinary action against Hirschkop, according to the Virginia State Bar.

Hirschkop, who says the only time he wears a tie is when he goes to court, is so adamantly independent that all four of the law partnerships he's formed in the last 20 years have split up. He now runs his own firm - Hirschkop & Associates - which specializes in white collar crime, product liability, personal injury, and civil rights litigation. He is the only partner among six lawyers.

He made his mark in the 1960s, when he aggressively litigated a number of large, high-profile civil rights cases, but the prestigious work was, at times, a financial strain. Today, his firm is doing an increasing amount of negligence work, but Hirschkop, who says he now draws "less than \$300,000" a year, wants to go back to litigating more pro bono and cutting-edge cases.

With an undergraduate degree in mechanical engineering from Columbia University, Hirschkop went to work at the U.S. Patent Office while he attended Georgetown University Law Center at night. He recognized early on, he says, that he was not cut out for either engineering or organizational work.

By his second year of law school, Hirschkop, under the guidance of his constitutional law professor Chester Antieau, was working on the major civil rights cases that launched his career as a political activist lawyer. In 1964, right before Hirschkop's graduation, he worked with New York civil rights litigator William Kunstler on a U.S. Court of Appeals employment discrimination case on behalf of pregnant teachers in Virginia. The two lawyers, who remain close friends, were introduced by Antieau during a 1963 civil rights demonstration in Danville, Va.

"(Hirschkop) had guts. He was smart, and he had that innate courage which you sometimes recognize," says Kunstler, now vice president of the Center for Constitutional Rights in New York.

Antieau continued to play a role in Hirschkop's career. In June, 1964, Antieau introduced Hirschkop to D.C. civil rights lawyer Bernard Cohen, who gave Hirschkop a job within his Alexandria firm, then known as Lainnof & Cohen.

Cohen hired Hirschkop primarily to assist on what became Hirschkop's first landmark Supreme court case, *Loving v. Virginia*. The 1967 case struck down laws prohibiting misogyny and interracial marriages. (Hirschkop says he has argued before the U.S. Supreme Court about six times, and has won four cases - two were 9-0.)

In 1967, Cohen and Hirschkop set up their own firm - Cohen, Hirschkop, Hall & Jackson - in order to be able to concentrate on the increasing number of civil rights cases coming their way, according to both Cohen and Hirschkop. Their partners, Robert Hall and Richard Jackson, handled general commercial work.

Before that firm split up in June 1971, Hirschkop had developed a prison reform litigation specialty. In 1968, for example, Hirschkop won one of the first cases to force state prisons to desegregate and upgrade conditions.

During this period, Hirschkop and Cohen helped organize the first American Civil Liberties Union chapter in Virginia. Among the cases Hirschkop cites as most important from this era is one he won to allow women into the University of Virginia. It was, he says, "one of my really major victories."

In the late 1960s and early 1970s, he also began to develop what he calls "an expertise in mass representation," by defending Vietnam war demonstrators, including Norman Mailer, Benjamin Spock, and Jerry Rubin.

When the firm broke up, each partner went his separate way. "It wasn't because of the civil rights work or money," says Cohen, who is now a state delegate to the Virginia House of Delegates. "We may have had a little bit of concern about Phil's being so outspoken," says Cohen, adding that Hall and Jackson had more conservative clientele. (Hall and Jackson now practice separately in Virginia.)

Hirschkop went out on his own, and in 1977 he made his associate John Grad, a litigator, a name partner. Grad, who says he "trained at (Hirschkop's) elbow," stayed with the firm until last year, when he left to open his own office. "I really got into the health-law field and (Hirschkop) is into medical malpractice," says Grad in explaining the split. He still admires his former partner. "When we were organizing a big case, he would come up with a 10-page list thinking of things that nobody else ever thought of," says Grad.

Today, Hirschkop has no partners to whom he must answer. He bills his time out at \$200 per hour, and says he works 230-240 hours a month. Twenty-five percent of his time, he says, is in pro bono matters, which would still put his yearly billable hours at more than 2000. He says his practice is 20 percent personal injury, 30 percent traditional litigation, and 50 percent individual rights.

His clients are somewhat more upscale than those he represented in the '60s. For example, he has represented the oil industry's Hunt brothers in a variety of criminal and civil matters since 1973. And he handles doctor privilege cases on behalf of a number of doctors, medical associations, and hospitals. Hirschkop says that he refuses to accept organized crime cases.

"In some ways what happened to Phil is the same as what happens to a lot of lawyers who started out in civil rights - they become very excellent lawyers," says Hirschkop's friend Kunstler.

Hirschkop admits that the nature of his practice has changed. "By the late '70s into the '80s, I found myself doing a lot of traditional work, straight litigation," he says. But he claims that this is "because there are no big, indentifiable, national movements now."

Yet, Hirschkop continues to attract controversial clients. In the last several years, he has successfully represented the Church of Scientology, challenging the legality of FBI searches; a man who was found to have been mistreated by Straight, Inc., a drug rehabilitation organization; and another man who was sued for libel by a group affiliated with Lyndon LaRouche.

"He's never waivered," says Kunstler. Last year, the two lawyers organized a campaign to assist a black lawyer from Danville, Va., against "very serious (professional) proceedings," says Kunstler. He declines to be more specific.

"Law students coming out are not the Phil Hirschkops. They're yuppies who want all the material trappings," says Kunstler. "While Phil has the material trappings, he didn't deliberately go after them."

He may not have gone after material trappings, but he has certainly courted controversy with his courtroom style. "I think Phil kind of thrives on" the fact that he's known as abrasive, says his former partner and mentor Cohen. "He considers it a compliment because that's what he intends to do - to rub on the raw nerves of the people" he opposes.

"Phil sometimes has a reputation as an attorney who pounds on the table to get his point across, and this may astound some lawyers," says Jonathan Mook, a senior associate at Hirschkop's firm. But, says Mook, the tactics work.

Hirschkop - somewhat disingenuously - disputes his reputation. "Intimidation? I've heard that a lot. You see I don't have that view of myself. I have this koala bear view of myself," Hirschkop says. "My ethics can't be so bad because the bar elected me to its governing body. I'm very frequently consulted by lawyers about ethics questions."

His biggest sin, he claims, "has been going after the establishment. That's where I caught such hell."

But if most of his recent cases are any indication - the sexual harassment matter in Alexandria and a potential landmark litigation in which he's suing a psychiatric hospital for psychotherapy malpractice - Hirschkop is not likely to choose different targets or change his tactics.

For a man who is known by his colorful language and anecdotes, Hirschkop insists he is a rather average personality. "I hope never to write a 'My Life in Court' book. The litigation would be interesting, I don't know if I would."

GRAPHIC: Illustration, no caption, Joseph Azar

Category	Magazine Article
Title	Taxing Matters
Source	"Legal Times"
Author	Aaron Freiwald
Date	September 21st, 1987

Contents:

One thing is certain about the tax lawyers for the Church of Scientology: They won't take "no" for an answer.

Six weeks ago, the U.S. Court of Appeals for the 9th Circuit upheld a 1967 decision by the Internal Revenue Service to revoke the tax-exempt status of the church. But this hardly means the end of the department's longstanding legal tangles with the Scientologists.

"It was a frustrating experience," says Steven Frahm, a former trial attorney in the department's Tax Division who argued the tax-exemption case last year. "You feel like you were fighting only the latest skirmish in a war that never ends," says Frahm, now a partner at Baltimore's Gallagher, Evelius & Jones.

In fact, the 9th Circuit case covered only the years from 1970 to 1972, leaving up in the air all other years during which the church was denied tax exemptions, says Eric Lieberman, outside tax counsel for the church and a partner at New York's Rabinowitz, Boudin, Standard & Krinsky.

"We're facing litigation over many years, in both senses of the word," says Lieberman.

For all the church's litigation, James Mann, deputy assistant attorney general for the Tax Division, says the Scientology matters "represent just a fraction of our caseload."

But an IRS lawyer familiar with the Scientology cases acknowledges that the government devotes considerable resources to fending off the church's persistent legal challenges. "They certainly are a litigious lot," says the lawyer, who asks not to be identified. "They are well-financed and prepared to do battle with us," he adds.

Michael Durney, the acting assistant attorney general for the Tax Division, has recused himself from all Scientology matters because of his prior legal work for the church as a partner at D.C.'s Hamel & Park.

The church's tax exemption case is not the only battle the Scientologists are fighting against the government.

In each of the 11 numbered federal appeals circuits, for example, the church has asserted the right of its followers to make their mandatory contributions tax-deductible. The 1st and 9th Circuits have already sided with the department; the 8th Circuit has sided with the church.

The central issues in these cases are whether the church represents a legitimate religion and whether donations made by members in return for services can be tax-exempt.

The church is also embroiled in a complicated Freedom of Information Act dispute with the IRS. The Supreme Court is scheduled to hear oral arguments on that case next month, in the first week of its 1987-88 term.

Church leaders have routinely charged that the government is out to destroy the Scientology movement.

In response, Mann points out that local chapters of the church are referred to as "franchises." He adds: "We feel we are pursuing perfectly reasonable constructions of the tax law."

Category	Magazine Article
Title	Test for the Tax Man IRS hits the Wall of Separation in Scientology Case
Source	“Legal Times”
Author	Linda Himmelstein
Date	July 16th, 1990

Contents:

The Internal Revenue Service is once again running into the thorny issue of how to balance religious freedom with its duty to catch tax cheats.

In the latest confrontation, a law enacted six years ago to bolster the separation of church and state is proving to be a roadblock for the IRS in its effort to find out whether the Church of Scientology of Boston is ripping off the government.

In the first legal test of the Church Audit Procedures Act, Judge Joseph Tauro of the U.S. District Court of Massachusetts found June 18 that the IRS failed to offer a legitimate reason for rifling through approximately 200,000 pages of the church’s financial and administrative records.

As a result, the IRS is being denied access to the documents it says it needs to determine whether the church should have been exempted from taxes between 1985 and 1987.

Other church groups are hailing the decision as a victory for religious freedom, and warn that the IRS had better think twice before sticking its nose in religious organizations’ business again.

“This decision is viewed as kind of a message to the IRS that it may not utilize its authority in an arbitrary or capricious manner, or in a way to discriminate among religious groups,” says Lee Boothby, general counsel to Americans United for Separation of Church and State and a partner of Boothby, Ziprick & Yingst, which has offices in Washington, D.C., and Berrien Springs, Mich.

Adds Forest Montgomery, D.C.-based general counsel to the National Association of Evangelicals: “The decision should deter the IRS [from further investigations], if they can read.”

But thus far, the IRS is not deterred. On July 6, the government asked Judge Tauro to reconsider his ruling, arguing that the agency has not only ample cause to gain access to confidential church books, records, and papers, but also an obligation to review them.

While neither the IRS nor Justice Department officials will comment on the case, court documents show that the IRS is concerned about whether the Boston branch of the

Church of Scientology truly operated as a not-for-profit organization between 1985 and 1987.

This latest skirmish in a longstanding feud between the IRS and the Church of Scientology began last year when the agency issued a summons, demanding access to church records.

Lawyers for the Scientologists protested vigorously, claiming that the IRS had not followed rules established under the Church Audit Procedures Act.

The statute requires the IRS to adhere to a series of special procedures when undertaking an audit of a religious organization. A high-level Treasury Department official must reasonably believe, based on written evidence, that a church “may not be exempt” from tax laws.

The act also requires written notice of an inquiry into church finances as well as an opportunity for the church to respond to the IRS auditors face to face.

Lawyers for the Church of Scientology of Boston argue that the IRS has never showed appropriate cause, and instead is motivated by a desire to harass the church.

“The IRS is not pursuing the church in good faith, but in bad faith, with the destruction of the church in mind,” accuses the church’s general counsel, Earle Cooley of Boston’s Cooley, Manion, Moore & Jones.

“The agency acts as if it can ignore the law and decide which religions are going to survive and which religions aren’t,” Cooley adds.

It was because of this implicit power over different denominations that Congress in 1984 passed a law aimed at insulating religious sects from the scrupulous eye of the IRS.

Boothby of Americans United for Separation of Church and State, who argued a number of First Amendment religious claims prior to the passage of the Church Audit Procedures Act, says the establishment of stringent guidelines was essential.

“There was a feeling that there was some need to restrict the IRS, rather than have the freewheeling approach to religious groups that were either not mainline or not within the normal or general knowledge of the IRS. It resulted in very discriminatory treatment,” says Boothby.

Questioning the Charges

Scientology officials are now using this first-round victory to buttress their claim that the government is discriminating against them.

“When the judge states that the IRS failed to provide a reason to investigate us, it adds credence to the claim of harassment,” points out church spokesman Alexander Jones. The Church of Scientology stresses personal problem-solving through self-understanding and communication.

The IRS denies the allegations of harassment.

According to documents in the Boston case, regional IRS auditors suspect that the church may have operated illegally for the benefit of private individuals, including the late church founder, L. Ron Hubbard, and his beneficiaries.

Officials also want to determine whether money flowed improperly from the church to its for-profit spinoff company, Bridge Publications Inc.

Information already obtained by the agency shows that between 1985 and 1987, the Boston branch paid \$ 287,000 to its mother organization, the Church of Scientology International, which is not tax-exempt. In the same period, \$ 719,000 went to Bridge Publications, the publisher of Scientology books and propaganda; and in 1987 alone, \$92,000 was paid out to field service personnel as commissions for bringing in new members.

The IRS wants to investigate further to determine whether these expenditures were appropriate. Should the government discover that individuals and Scientology subsidiaries profited from church operations, the Boston branch’s much-coveted tax-exempt status, which it has enjoyed since 1975, would be revoked.

“The IRS’s investigation did not single out [the Church of Scientology] because of a desire to prevent exercise of constitutional rights,” the Justice Department’s brief states.

“Indeed, the IRS would be delinquent if it did not examine [the Church of Scientology of Boston] in light of the large sums of money flowing ... to non-exempt organizations, staff members, field staff members, a for-profit corporation, and perhaps, the Estate of L. Ron Hubbard,” continues the brief, which was penned by Deborah Meland, a Tax Division trial attorney.

This kind of tension between the government and religious organizations is not new. Religious leaders have long argued that the IRS’s authority to grant or deny tax-exempt status, or even to apply undue burdens or pressures during audits, gives it an inordinate amount of power over the survival of different - and often controversial - denominations.

For example, the Rev. Dean Kelley, director for religious liberty at the liberal National Council of Churches, contends that on two occasions, the government used its tax-auditing authority to intimidate his organization.

During the 1960s, when the council was heavily involved in civil-rights activities, the IRS initiated an investigation into the council’s tax status, Kelley relates.

A second nationwide audit focused directly on activities relating to the Vietnam War. IRS auditors examined records of contributions to anti-war advocates and continued leafing through council papers, including records of baptisms, for three years.

In neither instance did the government bring tax charges against the council. Years later, as the result of a Freedom of Information Act request, Kelley found a note telling auditors to focus on anything being done by the council for the purpose of opposing the war.

This information, Kelley says, led him to fight for the Church Audit Procedures Act.

“There was a need to provide a buffer against governmental intrusion except where the state has a compelling interest that outweighs religious interests,” explains Kelley.

And now in the Boston case, the IRS must demonstrate its compelling interest to a judge for the first time. (Similar inquiries into the tax-exempt status of Scientology churches in Florida and California are ongoing.)

Lawyers expect that the battle over just what constitutes a reasonable interest will eventually be a question for the Supreme Court.

In the meantime, religious groups are reveling in this latest decision, saying that it has effectively harnessed the IRS’s power to intrude in religious affairs.

Says Montgomery of the National Association of Evangelicals: “It looks like the act is doing what it was intended to do, and that’s good.”

Category	Magazine Article
Title	Prozac: Jumping on the Lilly Pad Company to Doctors: Don't be intimidated by Smear Campaign
Source	"Legal Times"
Author	Charles F. Preuss
Date	September 2nd, 1991

Contents:

Eli Lilly and Co. has created a new twist on an old standby of pharmaceutical litigation: indemnification agreements. The company has offered to defend, indemnify, and hold harmless physicians who are sued for injuries alleged to have been caused by Lilly's anti-depressant drug Prozac.

The twist is that the usual indemnification offer from a drug manufacturer is extended to a pharmacy. In the case of an allegedly defective drug, the pharmacy that filled the prescription is frequently named as a defendant. After a simple inquiry to establish that the prescription for an appropriate dosage of the drug was filled as prescribed, the manufacturer will commonly agree to indemnify the pharmacy from any further liability on the basis that no independent fault could ever be attributed to the pharmacy.

This rationale does not generally apply in cases of responsible litigation against doctors. The reason for naming a doctor as a defendant in a pharmaceutical case is invariably because the doctor's treatment is alleged to have fallen below the standard of care in the community. This, obviously, is a basis of liability independent from any claim against the drug manufacturer - and therefore, it is not something a manufacturer would agree to defend.

Lilly's proposal is a response to an unprecedented, irrational campaign against the company's product. It contemplates suits naming physicians who did not breach the standard of care - and who, like prescribing pharmacies, engaged in no wrongdoing.

Prozac is an anti-depressant approved by the Food and Drug Administration that has gained wide acceptance within the medical community as an effective medication for treating depression since first being introduced in 1987 after 20 years of research. The drug is now used by more than four million people worldwide and is Lilly's second-leading pharmaceutical product.

As a result of this success in the marketplace, Prozac is now under siege by the Church of Scientology, which has proclaimed the medication as a "killer drug" that drives people to murder and to suicide. Seizing upon this adverse publicity in the lay press, criminal defendants and civil litigants are alleging a relationship between violent behavior and the ingestion of Prozac.

Scientology has mounted a campaign against Prozac, which includes accusatory mailings, appearances on talk shows, and extensive lobbying with Congress and the FDA to ban Prozac. Scientology has been opposed to the practice of psychiatry and psychiatric medications since its founding by the late L. Ron Hubbard.

Lilly's message in its offer to doctors is that physicians properly prescribing Prozac should not have to defend themselves at their own expense against allegations stimulated by Scientology's claims. The company's offer is based on its belief that doctors should not be intimidated from prescribing this beneficial medication out of fear of being sued.

Indeed, a recent Wall Street Journal article reports that patients are being frightened away from taking Prozac, thus depriving them of needed therapy. In its "Dear Doctor" letter, Lilly points out that the safety and efficacy of Prozac have been determined by the FDA and 50 other regulatory agencies around the world on the basis of clinical trials involving tens of thousands of individuals.

Sensible Conditions

That Lilly's offer is conditional on the absence of independent wrongdoing by the defendant doctor is the usual practice when defenses are tendered and indemnification demanded - such as in the case of the pharmacist who appropriately fills a doctor's prescription as written. Lilly will neither defend nor indemnify unless the prescription is in accordance with regulatory requirements and with all provisions in the physician's package insert for the drug.

Moreover, the offer does not apply to acts of negligence on the doctor's part. In addition, the physician must notify Lilly of the claim or suit, maintain all prescribing records, provide Lilly with a copy of the medical chart on the patient, and cooperate fully in the defense of the case.

Lilly also advises the physician to notify his or her malpractice insurance carrier that it will be providing counsel for the physician. This gives the doctor an opportunity to discover from an independent source any potential conflict that could subsequently arise after accepting Lilly's offer.

Prozac's detractors charge that Lilly's offer to physicians is a marketing device designed to restore Prozac's damaged market position by inducing doctors to continue their prescribing habits for the drug.

It is impossible to predict how Lilly's offer will affect other drug manufacturers in the handling of their own products. No other firms have had to face the intensity of Scientology's attack, which prompted Lilly to take this pro-active step.

If other companies perceive Lilly's gesture as a marketing advantage, they may follow suit, but that is unlikely, given the different theories of liability asserted against manufacturer and physician in the normal negligence case. Companies will observe

Lilly's Prozac experience in light of their own products and weigh their options on a drug-by-drug basis.

If anything is to be gained from the inordinate attention given to Prozac, it is the heightened awareness of the drug's potential benefits and side effects.

Patients and physicians will be more alert in reporting possible side effects. Lilly will be particularly diligent in reporting this information to the FDA, which in turn will examine it with more scrutiny. Controlled studies will be conducted on the drug, which will provide additional information on Prozac's properties.

Contrasted to inflammatory and unsubstantiated accusations about the drug, this type of reasoned, scientific inquiry will ultimately benefit the patient.

Category	Magazine Article
Title	Scientists taking up Tort Reform
Source	“Legal Times”
Author	
Date	October 26th, 1992

Contents:

Stung by a spate of lawsuits, the Church of Scientology is launching the Religious Coalition for Legal Reform.

Nicholas Graham of Alexandria’s Bain & Lichtenstein, a spokesman for the Scientists, says that the coalition is trying to organize other religious groups that have been sued by members claiming everything from emotional distress to negligent day care.

“What we’re trying to do is get other religions who have been affected by frivolous lawsuits to work on tort reform,” explains Graham.

Sylvia Stanard, a Scientology lobbyist who will direct the coalition, says that her group seeks to organize in numerous states and will begin by recruiting individual churches rather than denominations.

“There’s a lot of interest from individual churches who have a concern about trying to do something to make it a little bit healthier for religious groups to operate.” Stanard says. “They have the same kind of concerns about not wanting to open a day-care center in their church because they’ll get sued ... or they don’t want to have the homeless here because if somebody breaks their leg, it’s a potential liability.”

Stanard acknowledges that the Scientists are also concerned about lawsuits from former members claiming emotional or financial harm from their association with the church.

“We end up winning almost all of them” she says. “But by the time you get to the appeals court to win it, you’ve spent half a million dollars in legal fees.”

For example, Stanard points to a 1985 Oregon case in which a woman who had been a part-time member of the church for seven weeks was awarded \$ 30 million for international infliction of emotional distress. Stanard says the award was overturned, but that before the case ended, the church had spent hundreds of thousands of dollars to defend itself.

For all their criticism of plaintiffs, however, the Scientists have not been shy about taking on that role themselves. Last spring, the church filed a libel suit against Time

magazine. (Editor's note: Time-Warner Inc. is the major partner in American Lawyer Media, L.P., which owns this newspaper.)

Stanard, who says she already has won support for tort reform from some evangelical groups, adds that the religious coalition will seek a "reasonableness standard, ... a cap on awards, and a disincentive for lawyers taking big-bucks cases."

Category	Magazine Article
Title	Scientology's Suit
Source	"Legal Times"
Author	
Date	March 28th, 1994

Contents:

The Church of Scientology won a victory last week when U.S. District Judge Stanley Sporkin refused to throw out the church's \$ 14.7 million breach-of-contract suit against Hill and Knowlton Inc., Eli Lilly & Co., and others.

The suit, filed in 1992, alleges that Eli Lilly, which produces the antidepressant Prozac, pressured Hill and Knowlton to drop the church as a client after the church began a nationwide campaign critical of the drug. At the time, Eli Lilly was a client of a Hill and Knowlton affiliate.

In his March 21 decision, Sporkin declined to dismiss all but one minor count, saying that there was evidence that Hill and Knowlton had "betrayed" its client's trust and that there were issues of fact about whether Eli Lilly's actions were proper.

Says Kurt Weiland, a church director: "I think it's an excellent decision because it shows Eli Lilly can't just trample on our right of free speech and our public advocacy for the victims of Prozac."

Neither Eli Lilly's lawyers, partner Thomas Slater and of counsel R. Hewitt Pate of Richmond's Hunton & Williams, nor Hill and Knowlton's counsel, Howard Rubin of New York's Davis & Gilbert, could be reached for comment.

The trial is scheduled to begin June 13.