B. CONVERSION

The objective and culmination of *evangelism* is *conversion*—the decision of the evangelized to turn from whatever their former faith (or lack of faith) had been to the faith offered by the evangelizer. That transition often involves the abandonment of former ways, style of life and associations. It is sometimes wrenching for the convert and for the convert's family and friends, who may feel themselves rejected and their own religion and mode of life demeaned. In some cultures, conversion may actually be dangerous to evangelizer and convert, and can result in ostracism, exile, persecution or death, despite the assurances of the Universal Declaration of Human Rights:

> Article 18. Everyone has the right to freedom of thought, conscience and religion; this freedom includes *freedom to change his religion or belief*, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.[1]

In American law, which is older than, but consistent with, this norm, the free exercise of religion includes the right to change one's religion without interference from the state. The First Amendment of the United States Constitution, however, limits only *state* action, not the action of private individuals, who may seek by various means to prevent, hinder, punish or reverse conversions of which they do not approve. Though their actions may be contrary to the spirit of Article 18 and the First Amendment, they may not be actionable at law unless they implicate the state in some way or involve torts (harms) that can be reached by the civil law, as will become apparent in what follows.

Whatever the ideals of the Universal Declaration of Human Rights and the First Amendment may be, conversion remains a source of distress to many people. To them, it is bad enough that someone should abandon their faith for another, but it is even worse that organized efforts should deliberately be made to procure such conversion. That is nowhere clearer than in a case dealing explicitly with conversion.

1. *Application of the Conversion Center* (1957)

In 1957 the Supreme Court of Pennsylvania had occasion to consider the application of an organization devoted expressly not only to conversion, but to the

1. Universal Declaration of Human Rights, Article 18, adopted by the United Nations, 1948, emphasis added.

conversion of a particular religious group. The case came to it on appeal from the denial of an application to incorporate "The Conversion Center"—an undertaking by five named sponsors who sought incorporation of an undertaking that had already been in operation for six years. Within its proposed articles of incorporation appeared the following statement of purpose:

> Third: The purpose of this corporation shall be to promote the Gospel of Our Lord and Savior, Jesus Christ; to foster, promote and encourage understanding and good will among members of all religious faiths, and to discourage the use of violence, boycotts and sanctions by adherents of one religion against adherents of another by holding religious meetings and conferences; by radio and television broadcasting; by the imprinting of Gospel messages on records and transcriptions; by producing and distributing Gospel motion pictures; by printing and publishing religious literature [etc.]....
>
> *This corporation will place particular emphasis on the evangelization and conversion of adherents of the Roman Catholic faith, providing spiritual, temporal and financial assistance, especially to their converted clergy.*[2]

The court below had denied the application on the basis of the sentence emphasized above. It found nothing wrong with the general objective of the proposed corporation, but could not approve the intention to target a specific religious group for conversion. The Supreme Court of Pennsylvania, in an opinion for six of the seven justices announced by Justice Chidsey, wrestled with whether the courts had to approve the views of would-be incorporators as expressed in their purposes, or whether their duty was in essence magisterial—simply determining whether the application met the procedural requirements for incorporation. That issue turned on the interpretation of the provision in the state's Nonprofit Corporation Law that the court should approve the applications presented to it if they were in proper form and if "the purpose or purposes given in the articles...be lawful and *not injurious to the community* [emphasis added]." The court below, after extensive inquiry, had concluded that the offending sentence was potentially injurious to the community and denied the application. The state supreme court reasoned as follows:

> The court does not state that the purposes of the incorporators are unlawful or injurious to the public. Indeed to the contrary it states that it agrees "* * * that the privilege of one religious group to proselyte among members of other religious or non-religious groups, to win converts to its religious beliefs, stand inviolate under the law and cannot and should not be impinged by any restriction or limitation statutory or otherwise.* * *" It also indicated at the hearings and in its opinion that it would approve the charter if the second paragraph of the purposes set forth in the application

2. *Application for Charter of the Conversion Center*, 130 A.2d 107 (1957), quoting the application (emphasis added).

> therefore were deleted, and that the incorporators would lose nothing by its exclusion.... The court's position in effect was that the proposed incorporation could concentrate its efforts toward conversion of adherents of the Roman Catholic Church but that it should not say so in its charter. Certainly a true and frank statement of the purposes of incorporation is desirable and contemplated by the Act....
>
> * * *
>
> Not only is a citizen of this country entitled to the free expression of his religious beliefs, but he may by peaceful persuasion endeavor to convert others thereto, and we are aware of no bar to individuals organizing to effectuate their guaranteed rights in this regard.... It appears from the testimony at the hearings... that many organizations exist for the purpose of converting members of one particular religious faith to another, amongst others St. Paul's Guild, incorporated in New York, whose primary purpose is the conversion of Protestant ministers to Catholicism.... We cannot agree with the court below that the second paragraph set forth in the purpose clause of the charter is "repugnant" to the manner in which the incorporators propose to conduct their activities, as set forth in the first paragraph. The second paragraph merely states that it will particularly direct its activities toward adherents of the Roman Catholic faith and in no way contradicts the peaceful methods or means to be used in obtaining the proposed corporation's objectives.
>
> The group applying for the charter had engaged in such activities, including the conversion of Roman Catholics, for some time prior to the making of its application for incorporation and there was no evidence that any "unrest" occurred "in the community" as the result thereof. The court's potential conclusion that the incorporation of the group "might" create "unrest" is not a sufficient reason for refusing the charter.... If the activities [of the corporation] engendered reaction resulting in a breach of the peace, the sanctions of the law are available, for the State may safeguard the peace without unconstitutionally infringing upon the liberties protected by the Federal and State Constitutions. But an interdiction based on nothing more than the possibility of some future transgression of the law is a violation of the applicable constitutional guarantees.... [T]herefore the charter should be granted.[3]

This opinion evoked an impassioned dissent from Justice Musmanno, who saw the matter in a very different light.

> If there is one thing that the world needs less than anything else it is religious controversy; if there is one thing that the United States symbolizes more than any other thing it is religious freedom; if there is one thing that the judiciary of this country should frown upon, it is any attempt to obtain the approval of the Courts to stir up strife, discord, wrangling and violence over creed, dogma and doctrine. Yet this Court is

3. Ibid.

> doing that very thing by ordering the Court of Common Pleas... to grant a charter to an organization whose incorporators are intent on unleashing the winds of intolerance, the gales of prejudice, and the forces of hate and ignorance.
>
> * * *
>
> No one, of course, with the slightest respect for the Constitution, would for a moment deny to the incorporators the right to make peaceful overtures to members of any organized religious organization to leave their church and join whatever organization the incorporators hold out as the salvation of the world....
>
> However,... they cannot do this in the name of the government; they cannot do this under the aegis of the Courts; they cannot do this under the flag of the United States. For government to authorize an organization or a group of individuals to solicit, persuade, or threaten members of any church to repudiate that church is a violation of the most basic principle of our whole American Commonwealth, namely, that the State and Church shall forever be separate....
>
> The incorporators of the Conversion Center apparently doubted they had sufficient talents in the arts of persuasion to achieve the fulfillment of their proselytizing desires, so they turned to the Court of Common Pleas of Delaware County to assist them in the realization of their plans....
>
> I am... astonished that my colleagues see nothing wrong or strange about the request of these five men that they be authorized to proclaim to the world that their program of aggressive evangelization has the imprimatur of this Court.[4]

The gravamen of the dissent seemed to turn on whether incorporation by authority of the state represented *endorsement* by the state of the content of the corporation's purposes—a point not directly or clearly addressed by the majority, though it implied that approval of the application merely indicated the absence of purposes unlawful or injurious to the community—a far cry from endorsement. But the majority did not forthrightly say that the state approves the incorporation of hundreds or thousands of organizations in order to provide a legal vehicle for their operations without personal liability attaching to individual directors or operators; that many of those corporations have mutually contradictory objectives, and the state could not possibly take responsibility for the variety of human aims thus enabled; and that *incorporation therefore does not constitute state endorsement of the purposes of the incorporators*. This line of reasoning, however, was not fully articulated at the time and did not begin to emerge until such cases as *Widmar v. Vincent*,[5] followed by Justice Sandra Day O'Connor's suggestion that state

4. *Application of Conversion Center, supra,* Musmanno dissent.

5. 450 U.S. 909 (1981), holding that the University of Missouri, in permitting many extracurricular student clubs to flourish on campus, was not endorsing any of them; discussed at IIIE3b.

"endorsement" was a key element in understanding the thrust of the Establishment Clause.[6]

Justice Mussmano seemed very uneasy at the prospect of *targeted* evangelism, and found it downright un-American, though he admitted its right to exist, albeit without any governmental encouragement, which he considered incorporation to be.

Although conversion has been a zone of social turbulence over the years, it has not generated a large body of case law until recently, brought about by focused and organized efforts directed *against* conversion.

2. "Cults" and the Anti-"cult" Cult

Beginning in the early 1970s, the turbulence accompanying conversion was amplified by the emergence of an organized, dedicated, and articulate movement designed to counter virtually any and all efforts at conversion and to curtail or dismember new religious groups whose energies focused upon evangelism and conversion. It is often referred to as the "anticult" movement, and—as is often the case in social polarizations—it has tended to take on many of the attributes of what it opposes. This intense struggle during the past two decades has produced a voluminous literature, which even to list would take many pages. For our purposes it will suffice barely to sketch the main elements of the struggle, often referred to as the "cult wars."[7]

The anticult movement began in 1972 with the founding of the "first formal anti-cult association in the United States, `The Parents' Committee to Free Our Sons and Daughters from the Children of God Organization,' later shortened to `Free the Children of God'... (FREECOG)." It was aimed at the "Children of God," a communal offshoot of the Jesus Movement of the late 1960s. Similar groups came into being independently in other parts of the country in reaction to other conversionist religious movements. They included Citizens Freedom Foundation (organized in Denver, 1974), and American Family Foundation. A more recent emergent is the Cult Awareness Network (CAN), headquartered in Chicago. These organizations seem to have made alliances with some mental health agencies and to have tapped foundation and other sources for the development of publications

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6. First expressed in *Lynch v. Donnelly*, 465 U.S. 668 (1984), discussed at VE2d, and embraced by the majority in *Allegheny County v. ACLU*, 492 U.S. 573 (1989), discussed at VE2i.

7. Readers wishing to pursue the matter further are referred to what this author considers the most reliable authorities, and the sources listed therein: Anson Shupe, Jr. and David Bromley, *The New Vigilantes: Deprogrammers, Anti-cultists, and the New Religions* (Beverly Hills: Sage Publications, 1980); Bromley and Shupe, *Strange Gods: The Great American Cult Scare* (Boston: Beacon Press, 1981); J. Gordon Melton and Robert L. Moore, *The Cult Experience* (New York: Pilgrim Press, 1982); Thomas Robbins and Dick Anthony, eds., *In Gods We Trust: New Patterns of Religious Pluralism in America* (New Brunswick, N.J.: Transaction Books, 1981); David G. Bromley and James T. Richardson, eds., *The Brainwashing/Deprogramming Controversy* (New York: Edwin Mellen Press, 1983); Eileen Barker, *New Religious Movements* (London: Her Majesty's Stationery Office, 1989).

designed to warn the public about the supposed dangers of "destructive cults" and to provide resources for parents distressed by their offsprings' conversion to such "cults"—a perfectly legitimate exercise of freedom of speech, but one that can have alarmist results, as suggested below.

The anticult movement, despite its internal diversity and regional dispersion, was composed largely of parents of cult members and of apostate former cult members, who appeared to share considerable unanimity about the problems they saw themselves confronting. These were said to be sinister organizations masquerading as religions that were engaged in recruitment of unsuspecting young people to serve the purposes of the organization and its leader(s). These organizations were characterized as "cults," or "destructive cults," and their (imputed) ability to captivate, indoctrinate, dominate and exploit young people was vigorously denounced. At the heart of the anticult movement was an assumption about what makes human beings tick: they believed that the human will can be, and in the instances of young people who have been caught up in such cults, has been, subjugated by outside forces. To their way of thinking, the cults were able to exert some kind of "mind control" over at least some persons, to make and keep them members of the group.

Many opponents of cults have seized upon the metaphor of *brainwashing* to explain what the cults supposedly are doing. Current cult leaders were believed to have mastered techniques of enslaving helpless young people. These techniques were said to include sleep-deprivation, undernourishment, rhythmic chanting, intense and prolonged activity (leaving no time or energy for reflection), peer pressures, emotional dependency, even drugs and hypnosis. From these wiles there was no deliverance except by forceful intervention from outside.

Some opponents of cults viewed the victim as having gotten "sucked in" to the cult because of various life-experience deficits such as lack of vocational objectives, aimlessness, disillusionment with affluent materialism or with achievement-oriented competitiveness, or because of misguided idealism. In this vein, the mainline churches were often criticized for not having provided young people with suitable life goals and a sense of worth and meaningful endeavor that would fill the void that left them vulnerable to the spurious attractions of the cults.

According to this view, what churches ought to provide should not be anything that would distract young people from, or leave them discontented with, the upwardly mobile competitive career path envisioned by their families, or call them to more than peripheral interest in religion, lest the churches be subject to the same criticism as the cults. What apparently was wanted was an attenuated dose of religion sufficient to immunize them against making any foolish and upsetting commitments to give their lives in total service to God. And that was exactly what mainline churches had been trying to provide for generations—a nondisruptive, avocational version of religion—which was obviously not sufficient for some of the brightest and most idealistic young people when weighed against the high-demand invitation of the cults.

Whether viewed as "zombie" or "zealot," the convert was seen as essentially a *victim*; that is, the anticult movement assumed that the young person would never freely and knowingly have joined such a group, and must be helped to leave it, either forcibly or gently. What the anticult movement could not bring itself to contemplate was: (a) that the cult might be a legitimate religion; and (b) that someone could experience a genuine *conversion* to it.[8]

The anticult movement often insisted that cults are not entitled to freedom of religion because they are only *pseudo*-religions, and "conversions" to them, therefore, are not entitled to respect because they are only "pseudoconversions."[9] Since the cult has duped, hoodwinked or "brainwashed" the victim ("programmed" him or her), the solution chosen by the "possession" wing of the anticult movement was to *reverse* the process and "*de-program*" the victim, a process—in their view—not of "doing" but of "undoing." This has produced the "deprogrammer," whose specialty is physically abducting and *unconverting* persons whose attachment to religious or other groups or lifestyles is unacceptable to someone willing to pay the fee, which can run into tens of thousands of dollars, plus expenses.

The two new wrinkles in the age-old scene of hostility to new religious groups, then, were the (more or less) organized anticult movement, with its own creed, scriptures, rites and gurus, and the tactic of deprogramming, or forcible deconversion.[10] While not all members of the movement favor violent intervention, they do not always clearly differentiate themselves from those who do. There is no legal or constitutional problem (other than possible action for defamation) posed by merely attempting to *persuade* people to leave a "cult," or by denouncing the "cult" (or all "cults") to anyone who will listen. Such attempts at prophylaxis may not make for harmonious ecumenical relations, but relations between newer and older religions have never been very harmonious. When violence enters in, or when the power of the state is sought to be employed against conversion, the law of church and state is affected.

3. "Deprogramming"

The first (modern?) practitioner of deprogramming—the forcible reversal of conversion—was Ted Patrick, who claimed to have been responsible for over 1,600

8. This does not foreclose the possibility that some cults may be illegitimate or some conversions manipulated, but those should be viewed as exceptions to be demonstrated rather than the rule to be automatically presumed unles *dis*proven.

9. West, W., "In defense of deprogramming" (Arlington, Texas: International Foundation for Individual Freedom [pamphlet], 1975), p. 2, cited in Shupe and Bromley, *The New Vigilantes*, *supra*, p. 75.

10. This tactic may not be so new; Thomas Aquinas' parents forcibly removed him from the Dominican order and locked him up with a prostitute to try to change his religious commitments. Patrick, Ted, and Tom Dulack, *Let Our Children Go!* (New York: E.P. Dutton, 1976), p. 82, n. 16.

such undertakings.[11] Since he began this work in 1971, Patrick has gained many proteges and imitators, often persons he had "rescued" from the cults. By the early 1980s there were not only several dozen deprogrammers busily at work around the country but several "halfway houses" or reorientation centers[12] where deprogrammees could be "rested" under careful observation for weeks or months following deprogramming to insure that they didn't relapse. Several of the deprogrammers made their entire livelihood—and sometimes a very good one[13]—from deprogramming; others worked at it part-time, often "on call" from the more intensively employed practitioners. Few had any professional training other than apprenticeship to Patrick or other predecessors in the field—or having undergone deprogramming themselves.[14] A few mental health practitioners have aided and abetted the deprogramming enterprise by lending a seeming scholarly cachet to what would otherwise be crude vigilantism.

The praxis of deprogramming usually included some or all of the following elements (as garnered from the works of Ted Patrick and the descriptions by numerous victims[15]):

1. Parents or other relatives of a young person who has joined a cult would contact a deprogrammer and employ him or her to "rescue" the convert.

2. The convert would be located (sometimes the hardest part of the job, partly because some widely dispersed religious movements don't keep very close track of where their various members are, or seek to give that impression, and sometimes the convert does not wish to be located by relatives[16]) and the situation would be scouted to determine times and places of vulnerability to seizure.

3. A plan of action would be formulated, helpers called in and briefed (sometimes part-time practitioners or relatives of the convert or both), and the routes and means of transportation and place or places of detention arranged.

4. Gaining control of the person of the convert (kidnapping) was often brought about by a ruse—if there was still any relationship between the convert and relatives—such as taking the convert out to lunch or home for a visit or to the hospital to see an ailing parent (said to be recovering from a seizure brought on by the convert's absence); if deception was not practical, reliance had to be placed on surprise and/or superior force.

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11. Shupe and Bromley, *supra*, p. 125. See Patrick and Dulack, *supra*, for an autobiographical apologia for, and description of, deprogramming.

12. Such as "Unbound" in Iowa City, Iowa, and the "Enrichment Center" operated by Carla Pfeiffer in Norfolk, Nebraska. Legislation was proposed in Nebraska to protect such center(s), and reference to Unbound may be found in *Dovydenas v. The Bible Speaks* at § B6p below.

13. Report in author's files from persons subjected to deprogramming who escaped and reported that their captors had commented that they were well paid and that they were perplexed about how to report that income on their income tax.

14. Shupe and Bromley, *supra*, p. 138.

15. Accounts in author's files.

16. See the case of *George v. ISKCON* at § 6l below.

5. At some point, in any event, deception was replaced by force (assault). The convert was seized, often by several strong men, bundled into a car or van, and transported (often across state lines) to a place where he or she could be kept in isolation for an extended period of time: a motel, a relative's home, a deprogramming center, an isolated cabin, or a combination of the above.

6. Keeping the convert under control (unlawful imprisonment) was the next problem. Often the place of confinement was an impromptu prison with windows boarded up, furnishings removed except for a bed and a chair or two, doors locked, guards outside, isolated from outsiders. Sometimes the victim was tied or handcuffed to the bed. He or she was seldom left alone, even when using the toilet, and was usually told that this detention would continue as long as necessary to attain the desired result: "freedom of choice"—freedom, that is, to leave the cult, of course.

7. The main activity during this detention was intensive counterindoctrination (which frequently involved menacing, intimidation, assault, etc.). Various techniques were used, including the following:

a. Essential to the process was getting and retaining the victim's attention, which might require knocking hands away from covering the ears, gripping the cheeks to prevent turning the head away, twisting the arm, tying in a sitting position, shouting, shining a bright light in the eyes, etc.

b. A second tactic was removing any vestiges of cult-identification (to instill a feeling of isolation and weaken the will to resist) by taking away cultic garb, prayer-beads, amulets, literature, cutting off cultic hair-style, etc., stripping the victim down to underwear (which also inhibited escape and intensified a sense of vulnerability), disrupting prayers or chanting.

c. A major effort was devoted to “overloading” the victim with the deprogrammers' messages so that other thoughts, memories and messages are crowded out: the victim would be subjected to a continuous barrage of round-the-clock argument, reproach, berating, cajolery and abuse by “helpers” who worked in shifts, keeping the victim awake as long as possible to prevent leisure for reflection or regaining composure, keeping the victim perpetually “off balance,” as it were: denunciation alternating with pleading, kindness with harshness, accusations with entreaties by tearful parents, etc.

d. Attacks on the victim's new religion were a central ingredient in the process and included ridicule of the cult's teachings and practices, atrocity stories about the cult, exposes by apostates (often former members of the same cult), defacing of cult scriptures, symbols or pictures of its leader(s), and never-ending argumentation from the Bible and other sources to “prove” the convert's religion false.

e. The victim would be pointed to “the (only) way out,” the new doctrine to be accepted in place of the (not very) old. Sometimes videotapes were shown of the “breaking” of other deprogrammees—the capitulation, the reconciliation with parents, the expressions of gratitude for being “rescued” from the cult. The

"explanation" was provided of "how the cults work," which also provided a formula of exoneration if the victim would only accept it: "They tricked you; you were duped; they just wanted to *use* you for their own ends; but now you're free to make up your own mind (to leave the cult, of course); soon you will be able to help rescue other victims of mind-control," etc. These efforts continued until the victim gave in, escaped, or was rescued from the "rescuers" by the police, the cult or other third parties—or the parents' money for paying the deprogrammers gave out.

8. In a "successful" deprogramming, the victim eventually would "break," be reunited with the family, and the battle would be over. But sometimes the victim would feign capitulation, since the cults had their own self-defense programs of anti-anti-cult-awareness training that recommended pretending to "break," in order to turn off the pressure, so the process would often culminate in a final phase: "floating."

9. After capitulation or deconversion (or frequently reconversion to a new, anticult faith), the deprogrammed person would be kept under close observation for several weeks or months (during which he or she was said to be "floating") to prevent reversion to the cult, often in one of the several "halfway houses." Notwithstanding these precautions, many victims eventually did go back to their chosen faith-group anyway.[17]

It is instructive that this methodology of forcible deconversion resembled in many respects precisely the same techniques the anticult movement accused the cults of using: deception, coercion, sensory overload, sleep deprivation, repetitive indoctrination, emotional pressure, etc. Whether or not the cults used these methods as diabolically as their accusers claimed, there is no doubt that the *deprogrammers* did—by their own admission.[18] Perhaps it was another instance of "fighting fire with fire," which often produces remarkable resemblances between the supposedly benevolent and the allegedly malevolent, so that it is sometimes hard to tell which is which. The most striking likeness, however, is that both sides relied upon the most penetrating reagent in human relations: intense, protracted, one-on-one attention such as few people experience except for a few minutes at a time, and that rarely. Whether it be "love-bombing" or "reproach-bombing" may be less significant than that it is close, protracted, interpersonal saturation "attention-bombing" that can go on for hours, days, even weeks. Very few people can resist that influence, though— like the physical coercion of Chinese "brainwashing" described by Lifton and Schein[19]—once it ceases, the effect can quickly wear off; therefore, the long period of decompression.

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17. See examples that follow and descriptions of deprogramming efforts in *Peterson v. Sorlien* and *Eilers v. Coy* at §§ 5c(5) and 5c(6) below.

18. See Patrick and Dulack, *supra*.

19. These authors' reports on U.S. soldiers held as prisoners of war by the Chinese and Korean Communists provided the empirical foundation claimed by proponents of the "brainwashing" theory:

This deprogramming scenario has been acted out hundreds, perhaps thousands, of times since 1971, with over 100 such documented attacks on members of one religious group alone—the Unification Church. Since it is understandably a largely clandestine traffic, complete statistics and frequency of "success" are not known, but estimates are that over a third of deprogrammings may ultimately be failures—for which, however, the fees are not refunded.

Deprogrammings are not limited to "cults," however that term may be defined (and there are widely different definitions used even within the anticult movement). Consider the following episodes, directed at mature adults who were not involved with organizations the anticult movement itself usually describes as "cults":

1. Deborah Dudgeon, 23, a convert to Roman Catholicism, was kidnapped from Canada in 1974 and taken to San Diego, California, but was not de-converted.[20]
2. Walter Taylor, 21, a monk of the Old Catholic Church, was kidnapped from a monastery in Oklahoma City and taken to Akron, Ohio, and then to Phoenix, Arizona, where he escaped on July 31, 1976.[21]
3. Dan Voll, 20 (as well as three other members of the New Testament Missionary Fellowship, a "house church" near the Columbia University campus), was sought to be kidnapped in 1973 by Ted Patrick, but Patrick "flubbed" it and was apprehended and tried for unlawful imprisonment.[22]
4. Peter Willis, 28, a member of the booming "charismatic" Episcopal Church of the Redeemer in Houston (1977).[23]
5. Susan Wirth, 35, an English teacher at a California Community College, was abducted in 1980 and held for thirty-one days in an effort to disabuse her of her attachment to what her mother considered "radical" political causes.[24]
6. Janet Cannefax, 31, was kidnapped in 1979 in Salem, Oregon, because her mother thought her fiancé (now her husband) was "exercising mind control" over her.[25]
7. In Denver, five young women had moved away from their strict Greek Orthodox homes, gotten jobs, and shared an apartment; their families hired Ted Patrick to straighten them out; he abducted only two of them, Dena Thomas, 21, and Kathy Markis, 23, and did not succeed with them, since they were not involved with *any* religious group (at that time; they later discovered and joined

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Lifton, R., *Thought Reform and the Psychology of Totalism* (New York: Norton, 1961), and Schein, E.I., et al., *Coercive Persuasion* (New York: Norton, 1961).

20. Published statement by Dudgeon in author's files; see also Washington (D.C.) *Star*, Dec. 18, 1976.

21. Washington *Star*, Dec., 18, 1976; see *Taylor v. Gilmartin*, § 5c(7) below.

22. Patrick and Dulack, *supra*, pp. 82 ff.; see § 4b(1) below for details.

23. Houston *Chronicle*, May 7, 1977.

24. Philadelphia *Inquirer*, Aug. 17, 1980.

25. Salem, Ore., *Capital Journal*, Jan. 16, 1979.

the Seventh-day Adventist Church); Patrick was apprehended, tried, convicted, and sentenced to jail.[26]

8. Bill Eilers and his wife Sandy were kidnapped in Winona, Minnesota, and held at a nearby Catholic college for a week in an effort to break their affiliation with a fundamentalist Christian group called "Disciples of the Lord Jesus Christ" in Wisconsin; the attempt was successful with the woman, but Bill Eilers escaped and sued the deprogrammers.[27]

9. Two young women, Betsy and Whitney Chase, daughters of a prominent Washington, D.C., attorney, while visiting their mother (their parents were divorced) in Detroit, were held prisoner in an effort to correct their attraction to the Assemblies of God (a Pentecostal denomination dating back to the turn of the century).[28]

10. Stephanie Riethmiller was kidnapped in 1982 and held for a week to reverse her lesbian attachment to another woman, during which time she was subjected to sexual assaults by her male captor.[29]

These were some of the "unsuccessful" abductions; the "successful" ones "unconvert" the victim, so there is no one to raise a complaint afterward. Apparently deprogramming had become a general service industry available to anyone willing to pay the tab for a coterie of more-or-less amateur or self-taught "guns for hire." There seems to be little evidence that deprogrammers used firearms, drugs or torture against their victims, though they did occasionally strike them, push them around, sit on them, keep them handcuffed to the bed and handle them roughly, especially during capture. In most instances, deprogramming was not the "friendly dialogue" that its apologists claim it to be.

Before proceeding to the legal implications of deprogramming, a few collateral comments should be made. It is ironic that so much money should be expended and such risks incurred to attain an end so uncertain of success, so predicated upon misconceptions and so largely unnecessary. The misconceptions are that there is such a thing as mind control, and that it is available to cult leaders. Since sorcerers and tyrants have been seeking a way to control people's wills (without using direct physical coercion) for centuries without success, it seem inherently unlikely that the secret (if there is such a thing) has come into the possession of the likes of Sun Myung Moon or L. Ron Hubbard or Swami Prabhupada or Victor Paul Wierwille,[30] and that if it has, they have made no more effective use of it.

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26. *Liberty* Magazine, March/April, 1975, pp. 8-13; see also LeMoult, John, "Deprogramming Members of Religious Sects," *Fordham Law Review* 46 (1978):599-634.

27. Author's experience, including being called as an expert witness at trial. See *Eilers v. Coy* at § 5c(6) below.

28. Washington *Post*, Jan. 4, 1983.

29. *Time* Magazine, May 3, 1982.

30. Founders of four of the more notorious "cults" in the United States: Unification Church, Scientology, Krishna Consciousness, and The Way, International, respectively.

The unnecessary aspect of deprogramming derives from the fact that there is a huge natural turnover in such groups without outside intervention: "In fact, members of new religions were likely to join such groups for periods of time typically ranging from a few months to, at most, a few years during young adulthood. Within two or three years of joining, the attrition rates for given cohorts became substantial."[31] Of course, the likelihood that a convert son or daughter would probably drift out of a cult in a few months is of little immediate consolation to distraught parents whose minds are filled with atrocity tales spread by apostates and amplified by anticultists and deprogrammers.[32] The alarmist character of such self-serving anticult mythology was summarized in the introduction to Bromley and Shupe, *Strange Gods: The Great American Cult Scare*:

> THE CULT HOAX
>
> In this book we insist, on the basis of hard, reliable evidence, that much of the controversy over so-called cults is a hoax, a "scare" in the truest sense of the word. *There is no avalanche of rapidly growing cults*. In fact, there probably are no more such groups existing today than there have been at any other time in our recent history. Furthermore, the size of these groups has been grossly exaggerated and almost all have long since passed their peak periods of growth. Much of the "cult explosion" has been pure media hype. *There is no mysterious brainwashing process used to trap and enslave millions of young Americans*. Few young adults have found these new religions attractive enough even to experiment with membership, and the vast majority of those who have tried them have walked away after only a brief stay. *There is no convincing evidence that all new religions are out merely to rip off every available dollar from the American public*. Some have shown relatively little interest in accumulating large sums of money or in being the recipients of public donations. *There is no compelling reason to believe that all modern gurus and spiritual leaders are complete charlatans*. Finally, *there is no bona fide mental health therapy called deprogramming that works as its practitioners and promoters claim*. If anything, the logic behind deprogramming smacks of the medieval thinking behind the seventeenth-century Salem witch trials in colonial America.[33]

In fairness, the authors added:

> Yet this cult hoax is not the result of hallucination. Nor is it sheer fabrication by the people who have been most anxious to promote it. It is not a deliberate fraud, but it *is* a deliberate attempt to horrify and anger us. Stories are spread by a number of Americans who sincerely believe them and genuinely feel they have been victimized. At least some of their

31. Shupe and Bromley, *supra*, p. 108.

32. See discussion of apostates and atrocity tales and their self-vindicating function in ibid., pp. 150 ff.

33. Bromley and Shupe, *Strange Gods*, 1981, pp. 3-4, emphasis in original.

> complaints are not groundless. These new religions are at odds with the values, lifestyles, and aspirations of the majority of contemporary Americans. Virtually all of the groups do condemn and reject the way most of us live. They do seek to recruit and reshape anyone who will listen to them. In general, they do show limited concern for individual members' past ties and obligations to families, friends, and personal careers. Many of the new religions do act unscrupulously and do treat us with some mixture of pity and contempt. Like other zealots, they presume they know what is best for us better than we ourselves do. New religions do take advantage of laws and constitutional protections to further their own ends. These facts are naturally disquieting since most of these groups, if successful, would create worlds in which few of us would wish to live.

Of course, in these respects, the *new* religions are very much like most *old* religions were when *they* were new, and their disjuncture from the culture does not necessarily mean that they are wrong. Their efforts to attract converts to another and ostensibly better mode of life is exactly what *religion*, at its best and most evocative, is *supposed* to do. Of course, most people do not usually *follow* such injunctions, and when they *do*, all sorts of tensions and turbulences are unleashed between them and their former circumstances. Not all of the effects of conversion to such groups are bad; quite the contrary. Some cult members have given credit to the cult for rescuing them from drug-addiction.[34] Three psychological studies have given grudging tribute to the effects on the lives of converts:

1. "These religions, as fatuous and as reprehensible as most people may find them, are improving the personal lives of many of their members."[35]
2. "Conversion apparently provided considerable and sustained relief from neurotic distress."[36]
3. A person who joined a religious movement, made its work his life, and eventually rose through its hierarchy to an elite position probably gained "a better experience than those who never experience this phenomenon at all."[37]

But whether the effects of conversion are thought by outside observers to be meritorious or not is of secondary concern. Every person should have the right to follow whatever religion seems valid, and to change from one religion to another when that seems the right thing to do, without being subjected to outside interference by vigilante groups or by the state. Interference by the state can violate the Free Exercise Clause; interference by private parties does not (unless it implicates the state in some

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34. Author's interviews.

35. Levine, S.V. and N.E. Salter, "Youth and Contemporary Religious Movements: Psychosocial Findings," *Canadian Psychiatric Association Journal*, 21 (6):418 (1976).

36. Galanter, Marc, "The `Moonies,' a psychological study," Presented to 131st Annual Meeting of the American Psychiatric Assn., Atlanta, Ga., 1978, p. 10. See also that author's work, *Cults: Faith, Healing and Coercion* (New York: Oxford Univ. Press, 1989).

37. Ungerleider, J.T., *The New Religions* (New York: Merck, Sharp & Dohme, 1979), pp. 15-16.

way[38]). But religious freedom presumes that the law will protect people from antireligious vigilantism as from other private captivities and assaults. Nonviolent persuasion of voluntary listeners to procure or induce either conversion or deconversion is another issue altogether; it is not the subject of what follows.

A final observation pertains to the charge that, since the charismatic leader of a cult is believed by its opponents to be insincere and exploiting converts for his or her own benefit, the protections of free exercise of religion do not apply. That might be true with reference to the leader—if indeed a charlatan (which is all too readily imputed by outside critics)—but not to sincere followers, who may be following a vision offered by the leader irrespective of whether the leader believes it. To exasperated outsiders that may seem delusional conduct, worthy to be corrected by a course of reality testing. They are certainly free to offer to enlighten the supposedly deluded one, but may not force their enlightenment upon an unwilling adult without running afoul of the law. Delusional conduct can justify forcible restraint in some rare instances, where the deluded one is adjudged subject to civil commitment because posing an actual danger to self or others, but that is not an undertaking for private parties volunteering their services as amateur mental health practitioners. The following sections will explore some of the thrusts and counterthrusts along this front.

4. Legal Rationale(s) for Invalidation of Conversion

Vigilante efforts to reverse objectionable conversions have understandably run into difficulties with the law, not to mention the Constitution, though not as many as one might expect. However, certain legal justifications, rationales and defenses have been offered, some of them quite sophisticated, for efforts to reverse, prevent or regulate conversions deemed suspect.

a. Richard Delgado. The leading exponent of such theory is Richard Delgado, who contended that "conversions" are valid only in the instance of "informed consent" (a concept borrowed from medical ethics, being what a patient or guardian gives for a hazardous operation), and that "conversions" to certain cults are invalid because they lack the two necessary ingredients of "informed consent": *knowledge* and *capacity*.[39] According to his view, when the prospective member first encounters the "cult," he is not informed of its true nature or identity. Only later, after his will has been weakened by deficient diet and lack of sleep, overexertion and nervous exhaustion, does he become fully aware of the implications of membership.

> The process by which an individual becomes a member of certain cults appears arranged in such a way that knowledge and capacity, the classic ingredients of an informed consent, are maintained in an inverse

38. See §§ 5c(2), (3) and (7) below for examples.

39. Delgado, R., "Religious Totalism: Gentle and Ungentle Persuasion under the First Amendment," *Southern California Law Review*, 51:1-100 (1977).

> relationship: when capacity is high, the recruit's knowledge of its practices is low; when knowledge is high, capacity is reduced.[40]

Since the convert's adherence has not been genuinely consensual, it is not, in Delgado's view, entitled to constitutional protection.

> There appear to be no insuperable constitutional, moral or public policy obstacles in the way of state or federal action designed to curb the abuses of religious groups that utilize high-pressure, harmful and deceptive tactics in recruiting and indoctrinating young members. So long as remedies comport with the least restrictive alternative requirements... and provide adequate due process procedures and judicial oversight, measures aimed at regulating the private use of mind control by religious or pseudoreligious groups appear to be fully permissible.[41]

In a more recent work, Delgado discovered another and simpler basis for state regulation of conversion activities. Various cult practices, he contended, violate the prohibitions of the Thirteenth Amendment against slavery. Restricted mobility, isolated living conditions, rigid authoritarian control, unremunerated labor, etc., seem to be conditions tantamount to slavery, at least sufficient to give rise to "a compelling interest in their abatement." This approach avoided the need for medical or psychiatric testimony and the issue of voluntariness, since motivation became irrelevant, and the objective state of affairs was dispositive.[42] The Supreme Court has since rejected this contention when advanced by the U.S. government to justify prosecuting a farmer who held in subjection two mentally retarded men to provide cheap labor on his farm. The court interpreted the key concept—"involuntary servitude"—to mean "the use or threatened use of physical or legal coercion." Without such coercion, there is no "slavery."[43]

In order to correct the failure to secure "informed consent" in conversions, Delgado suggested that the state could take certain preventive measures: require religious recruiters to identify themselves truthfully to prospective recruits; require them to give advance warning of the conditions of membership; require a mandatory "cooling-off period" during which the new member would leave the group for a specified period; prohibit proselytization entirely; etc.[44]

Before proceeding further, it may be useful to reflect on Delgado's "reasonable" proposals for preventive measures to be taken by the state. Truthful identification on the part of "religious recruiters" or an accurate description of the requirements of membership would be desirable at some point early in the conversion process.

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40. Delgado, R., "Limits to Proselytizing," *Society*, 17:28 (Mar./Apr. 1980).

41. Ibid., p. 33.

42. Delgado, R., "Religious Totalism as Slavery," *N.Y.U. Review of Law and Social Change*, 9:51-68 (1979-1980).

43. *U.S. v. Kozminski*, 487 U.S. 931 (1988), discussed at § 6o(1) below.

44. Delgado, "Gentle and Ungentle Persuasion," *supra*.

Delgado seemed to intend more than a threshold description of membership requirements, however; he envisioned a description of various hardships and deprivations to be encountered after joining. But in what other area of life's decisions does the state *require by law* that prospective entrants be presented with a parade of possible adverse experience beforehand: marriage? occupation? parenthood? And with respect to religion, the prospect of suffering, privation and sacrifice creates a higher demand, a greater challenge, and often therefore becomes an added attraction, contrary to Delgado's supposition. But is the *state* to require by *law* that a religious group conjure up an array of all the bad things that might happen to anyone who joins and recite them to prospective members—a sort of religious "Miranda"[45] warning? And is the state then to *check up* through the years to *verify* that any bad things that do happen to those members were forewarned of in advance? That would be "excessive entanglement" indeed!

A "cooling-off period" is a concept borrowed from consumer protection law, designed to give customers of door-to-door salesmen time to think. Its application in the area of religion could raise some interesting theological questions. Some religious groups look upon conversion as the first, principal or essential step to salvation. Having won a soul away from the devil, are they to risk letting it slip back by having the novice return to his former haunts and unconverted companions, deliberately falling in the way of temptations from which he had so lately been preserved? How long should the "cooling-off period" be? An hour? A day? A week? Until he gets completely "cooled out" and isn't interested in the religious group any more?

One might have expected that greater emphasis would have been placed upon a prohibition against recruiting minors without parental consent, but in actuality the problem of supposedly deceptive recruitment and involuntary consent, etc., rarely arises with minors, because most of the larger religious movements do not knowingly accept minors without written parental consent (though, like the Marines, they sometimes get a recruit who lied about his age). Virtually all of the cases discussed in the next section and most of those listed earlier[46] involved persons well over age twenty-one.[47] The outright prohibition of proselytization would be such an utter affront to the free exercise of religion that it can hardly be taken seriously.

Curiously, Delgado's work shows no acquaintance with the nineteenth-century line of cases seeking distribution of the assets of the Shakers and other collectivist religious communities, since those cases involved complaints of deception, diminished capacity, autocracy (what Delgado would call "totalism") and other now-

45. The reference is to the requirement that a person cannot be subjected to custodial interrogation by law-enforcement officers without being apprised by them of his right not to answer and his right to have legal counsel before answering. *Miranda v. Arizona* 384 U.S. 436.

46. At notes 16-25 above.

47. One exception was Dan Voll, who was just a few weeks short of his twenty-first birthday when he was sought to be abducted by Ted Patrick in 1973 (see Patrick and Dulack, *supra*). Another was Robin George, who was fifteen when she joined the Krishna movement (see § 6l below).

typical anticult complaints. In no instance were the highest state and federal appellate courts to which those cases were carried persuaded by those complaints to rule against the accused religious bodies.[48]

b. The Defense of Necessity. A second rationale appeared in the cases where deprogrammers were charged with kidnapping or false imprisonment.[49] The defendants often concede that what they did was against the law, but offer the defense of justification or necessity, i.e., that they were seeking *to prevent a worse evil*. The worse evils alleged to have been impending often refer to the supposed nature of the religious group itself.[50] Thus the defendant is given a chance to bring in apostates and other witnesses to testify about how horrible the religious group is, in effect putting *it* on trial in place of the abductors! Some courts have declined to entertain this defense as inapplicable: "for the `choice of evils' defense to be available there must be an imminent public or private injury about to occur which requires emergency action.... Here there was no evidence of such a situation."[51]

Whether explicit or recognized by a court, the defense of necessity is usually implicit when deprogramming is attempted; the family turns to illegal methods when they feel they have no other recourse to counter a supposed crisis.

(1) *People v. Patrick* (1981). A California court dealt with a Patrick plea of "necessity" in 1981:

> First, although the exact confines of the necessity defense remain clouded, a well-established central element involves the emergency nature of the situation, i.e., the imminence of the greater harm which the illegal act seeks to prevent.... Here, virtually all of the [parents'] information about the alleged cult was obtained four or five years before the kidnapping. The most recent contact by two of the family members... convinced them she was no longer a cult member. Moreover, there was no evidence suggesting any particular harm which was likely to befall Roberta in March, 1980. After some seven years of alleged cult membership, any imminent harm threatening Roberta, if it existed at all, was of a character not justifying the violent action taken....
>
> Secondly, we note some discomfort with Patrick's failure to present any evidence demonstrating a danger of imminent *physical* harm to Roberta. The offer of proof focused on psychological harm, personality change and unorthodox morality. We do not dispute the fact that individuals may suffer harm of other than a physical nature.... But... the *problem* with such an approach here lies in attempting to find an objective definition of "psychological harm" where the victim consents to being "harmed."

48. See cases discussed at IA2.

49. See §§ (1), (2) and (3) below.

50. See account of Ted Patrick's 1974 trial in Manhattan at § (1) below.

51. Colorado conviction of Ted Patrick cited in LeMoult, *supra*. See also *Eilers v. Coy*, further discussion at § 5c(6).

> Finally, Patrick assumes that if the [parents'] subjective belief in the danger to their daughter was objectively justifiable then he, acting as their agent, is entitled to assert the necessity defense. We do not agree. For any person to successfully invoke the defense of necessity, he must personally possess a reasonable belief in the justifiability of his actions.... Patrick points to no actions that he took to independently assure himself that Roberta was a member of a cult or that forcible abduction and deprogramming was the only reasonable alternative available.[52]

(2) *Eilers v. Coy* (1984). Another variation of that defense was offered in the *Eilers* case,[53] where the deprogrammers maintained that they had taken the law into their own hands because the plaintiff's family had feared that he would commit suicide if left to his own devices. The trial court rejected that claim on the basis that the defense is valid only for the time required to put the situation in the hands of the proper authorities. Rather than calling in the authorities, however, the deprogrammers had continued their self-help methods for almost a week, while sedulously avoiding the authorities, thus invalidating the defense of necessity.

(3) *Colorado v. Brandyberry and Whelan* (1990). The Colorado Court of Appeals had occasion in 1990 to consider the applicability of the necessity defense in a case involving the charge of kidnapping against two deprogrammers for the "forcible seizure and asportation" of a twenty-nine-year-old member of the Unification Church. The trial court allowed the defense to be advanced, and the deprogrammers were acquitted. Although it would not affect the acquitted defendants, the prosecution appealed the pretrial ruling admitting that defense in the hope of preventing its use in future such cases. The state appellate court responded as follows, per Judge Claus J. Hume:

> [T]he effect of the [trial] court's ruling was to allow defendants broad latitude in presenting evidence to the jury that focused upon the methods allegedly used by the church to overcome the victim's free will and her ability to exercise her freedom of choice..., the church's fraudulent recruiting practices, its methods of securing unquestioning obedience in its members, and its fund-raising and political activities.... The presentation of such evidence thus extended an invitation ot the jury to consider the morality and desirability of church doctrine and practices rather than whether in fact the victim was threatened by the prospect of a grave imminent injury....
>
> [B]efore offering their evidence to the jury, defendants should have been required to present some credible evidence to the court demonstrating that an immediately impending injury was about to happen to the victim, and

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52. *People v. Patrick*, Court of Appeal, Fourth Appellate District, Division One, Docket No. 4 Crim. 11954, Wiener, Actg. P.J., Work, J., Levitt, J., Dec. 18, 1981, slip op., pp. 8,9,10,11; citations omitted, emphasis in original.

53. *Eilers v. Coy*, 582 F.Supp. 1093 (D.Minn. 1984), discussed at § 5c(6) below.

that their conduct was necessary to avoid its occurrence. Our review of the record convinces us that they failed to do so.

Defendants proferred no evidence that the victim here had suffered or was about to suffer any bodily injury or impairment resulting from her church affiliation. Nor did the evidence demonstrate that the victim was suffering from any psychiatric disease or mental disorder of sufficient gravity to warrant defendants' immediate intervention.

The evidence reflects that, when the abduction was planned and perpetrated, the victim, despite having been a member of the church for more than six years, was apparently physically and mentally healthy. At best, the proffered evidence suggested only that the victim might suffer some future emotional, psychological, sociological, or economic harm if she continued as a member of the church....

Evidence of a generalized fear of future injury is not sufficient to warrant invocation of a choice of evils defense.... Furthermore, if a reasonable legal alternative was available to defendants as a means to avoid the threatened injury, they properly may be foreclosed from asserting a choice of evils defense.... In addition, a defendant who seeks to offer a choice of evils defense must offer evidence that his conduct did not exceed that reasonably necessary to avoid the impending injury. [citations omitted]

Here, even if we were to assume that defendants rationally perceived that the victim's membership in the church posed a threat of imminent injury to her, they failed to show that the remedy they elected to pursue (knowing violation of criminal laws) was the least harmful option available to them for avoiding the threatened injury.

Moreover, there is no evidence that defendants sought assistance or alternative remedies from law enforcement officials or the courts, either prior to or after kidnapping the victim. Rather, defendants planned the abduction with the victim's parents without benefit of legal advice about what reasonable legal alternatives might be available to avoid any supposed injury to the victim other than the remedy they chose by violating the law. They did not, for example, explore or attempt to pursue guardianship or involuntary commitment proceedings on behalf of the victim as an incapacitated or incompetent person. And, after the victim was seized, the defendants actively concealed her whereabouts from police authorities, continued their unauthorized custody and deprogramming efforts, and moved the victim repeatedly to avoid governmental or other outside interference with their activities.

We conclude that the evidence proffered by defendants was legally insufficient to warrant its submission to the jury and that the trial court erred in ruling otherwise.[54]

54. *Colorado v. Brandyberry and Whelan*, Div. IV, Colo. Ct. of Appeals, 812 P.2d 674 (Nov. 23, 1990).

5. Litigation Arising from Conversion: Against Deprogrammers

In view of the intense antagonisms conversion often evokes, it is not surprising that it has led to extensive litigation. At least two kinds of cases are prominent: those against deprogrammers and those against religious groups.

a. Hybrid Cases. Two of the earliest cases belong in a way to both categories.

(1) *People v. Murphy* (1977). A young woman sought to bring charges against her mother and a private detective who had held her captive for four days. The accusation came before a Queens, New York, grand jury, which also heard testimony from the mother that she had only been trying to reverse a "mental kidnapping" of her daughter by the International Society for Krishna Consciousness (the "Hare Krishna" movement, or ISKCON). The grand jury refused to indict the mother or the detective and turned its attention instead upon the religious group, handing down indictments against ISKCON and two of its leaders for unlawful imprisonment! When the matter came to trial, Judge John J. Leahy of Queens Supreme Court stated the issue as follows: "The entire crux of the argument propounded by the People is that through "mind control," "brainwashing" and/or "manipulation of mental processes" the defendant destroyed the free will of the alleged victims, obtaining over them mind control to the point of absolute domination and thereby coming within the purview of the issue of unlawful imprisonment."

The judge noted that no evidence had been adduced to show that the ISKCON members had been subjected either to physical constraint or to deception. Like other converts, they had chosen this new mode of life of their own free will. He rejected the prosecution's contention that daily ritual chanting and other communal activities of the Krishna group were a form of intimidation or restraint. He indicated sympathy for parents whose children had abandoned worldly possessions, promising careers and Western culture for a seemingly bizarre Eastern religion, but affirmed the right of adult individuals to choose their own path to salvation. "Religious proselytizing and the recruitment of and maintenance of belief through a strict regimen, meditation, chanting, self-denial and the communication of other religious teachings cannot under our laws—as presently enacted—be construed as criminal in nature and serve as a basis for a criminal indictment."[55]

(2) *Katz v. Superior Court* (1977). The next case was on the West Coast, a case that also does not fit in either of the categories that have emerged, since it developed out of an attempt to obtain conservatorship orders to allow a legalized deprogramming of five young members of the Unification Church. The parents went into court to gain an order under a California statute designed to conserve the property of a person not competent to look after it, usually elderly persons, characterized by the statute as "likely to be deceived or imposed upon by artful or designing persons." Courts were empowered by the statute to appoint someone to

55. *People v. Murphy*, summarized in Le Moult, *supra*, pp. 243-244.

act as guardian or conservator in such instances, and the parents sought to use the statute to gain temporary control over their adult offspring to deprogram them.

In this case, unlike many other such efforts, the offspring were given advance notice and allowed to present evidence and argument in opposition, which they did in a hearing that continued for eleven days. During the hearing both sides presented "expert" testimony. A clinical psychologist employed by the parents examined the young people and testified that what she had observed "did not fit into any class under headings offered in a standard psychiatric and psychological diagnostic and statistical manual,"[56] but that members of the Unification Church were objects of coercive persuasion by the church. Another clinical psychologist employed by the church testified that the five prospective conservatees were normal on the basis of the tests he had conducted, which would have shown symptoms of mental coercion found in prisoners of war, but showed no such symptoms in the subjects he had examined.

Despite this standoff between the experts, the judge was in no doubt as to the solution. Judge Lee Vavuris granted the conservatorship order, adding the following classic comments:

> [W]e're talking about the very essence of life here, mother, father and children.... This is the essence of civilization. The family unit is a micro-civilization. That's what it is. A great civilization is made up of many, many great families, and that's what's before this Court.
>
> One of the reasons that I made this decision, I could see the love here of a parent for his child, and I don't even have to go beyond that.
>
> The child is the child even though a parent may be 90 and the child 60.[57]

Sharon Worthing has appropriately termed this dictum the doctrine of "perpetual religious infancy."[58]

The court of appeals, however, needed a bit more than that. It acted quickly on an appeal brought against the Superior Court, reversing the conservatorship order with the comment, "The lower court's orders following the hearing...contain no findings of fact which would disclose the ground or grounds on which the orders were based." The court below had not determined that the conservatees were insane, incompetent or unable to manage their property, which were the only statutory grounds on which guardians could be appointed. The appellate court held that the orders should not have been granted even if the evidence were interpreted in the light most favorable to the parents' contentions, since the language of the statute was too vague to justify depriving an adult of personal freedom on the evidence presented.

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56. The court's characterization of her testimony. LeMoult, *supra*, p. 254.

57. Ibid., p. 254.

58. Worthing, Sharon, "The Use of Legal Process for De-Conversion," in Kelley, D.M., ed., *Government Intervention in Religious Affairs* (New York: Pilgrim Press, 1982), p. 166.

> Although the words "likely to be deceived or imposed upon by artful and designing persons" may have some meaning when applied to the loss of property which can be measured, they are too vague to be applied in the world of ideas. In an age of subliminal advertising, television exposure, and psychological salesmanships, everyone is exposed to artful and designing persons at every turn. It is impossible to measure the degree of likelihood that some will succumb. In the field of beliefs, and particularly religious tenets, it is difficult, if not impossible, to establish a universal truth against which deceit and imposition can be measured.[59]

The court held that such conservatorship orders interfered with the conservatee's constitutional right to religious freedom and that courts have no competence to judge the validity of anyone's chosen religion or the process by which anyone chooses a religion. "We conclude that in the absence of such actions as render the adult believer himself gravely disabled..., the processes of this state cannot be used to deprive the believer of his freedom of action and to subject him to involuntary treatment."[60]

But the damage had already been done. Although the appellate court had immediately ordered that no deprogramming take place until it could review the case, deprogramming had begun as soon as the conservatorship order had been granted, and the day after the appellate court reversed it, three of the five conservatees renounced their membership in the Unification Church.[61]

b. Criminal Prosecutions of Deprogrammers. To some people, the activities of deprogrammers would seem to be clearly criminal and deserving of prosecution for assault and battery, kidnapping, false imprisonment, etc. Yet to others these felonies, while admitted, are thought to be less serious than the (supposed) harms they are designed to prevent: mind control, economic exploitation, infantilization, etc. Prosecutors are under cross-pressures from both sides, and often the prodeprogramming (or anticult) party is the more articulate, numerous, "respectable" and powerful, while the other party is often not locally based and/or is identified (rightly or wrongly) with the "pariah" religious groups that have been stigmatized as "cults." It takes a courageous prosecutor to go against this tide, and some of those who try may not succeed.

(1) Patrick's Manhattan Trial (1974). In 1973, Ted Patrick discovered the New Testament Missionary Fellowship (NTMF), a "house-church" near the Columbia University campus. It was a small, zealous group of fundamentalist Christians that focused its zeal on students at Yale and Columbia. At Yale it was known as the "God Squad." It also maintained a missionary outpost in Bogota, Colombia, where some of the members sought to convert people to their brand of

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59. *Katz v. Superior Court*, 73 Cal.App.3d 952, 970 (1st Dist. 1977).

60. *Katz v. Superior Court*, 141 Cal. Rep. 234, 256 (1977).

61. Aronin, Douglas, "Cults, Deprogramming and Guardianship," 17 *Col. J. Law & Soc. Problems* 163, 189 (1982).

faith. The leader of the group was Hannah Lowe, and two of the elders of the group were John McCandlish Phillips, for many years a reporter on the *N.Y. Times*, and Calvin Burrows, a bright, clean-cut young man who had been a premed student at Yale until his conversion, whereupon he became a full-time "minister" for the group.[62]

Patrick was hired to deprogram one of the members of the NTMF, Wes Lockwood, which he did "successfully" in 1973.[63] Lockwood urged Patrick to "rescue" his former Yale roommate, Dan Voll, who was also a member of the group. Patrick recounted in his book the story of that abortive attempt, in the course of which Dan's left ring finger was broken, a crowd of onlookers tried to interfere with the abduction and the police arrived in time to apprehend Patrick and Voll's parents.

Patrick went to trial in 1974 before Judge Bruce Wright, who allowed Patrick to plead the defense of justification. The judge instructed the jury:

> [I]f you find that the defendant believed Daniel Voll was threatened by his membership and indoctrination in the dogmatics of the New Testament Missionary Fellowship, and if you find that his parents and the defendant were justified in their belief that such indoctrination and domination by the Fellowship elders was of a greater injury to Daniel than the conduct of the defendant and Daniel's parents, in taking Daniel from the public streets and attempting to have him deprogrammed by the defendant, then you may excuse the conduct of the defendant as it has been described to you.[64]

This approach had the effect of putting the New Testament Missionary Fellowship on trial instead of Ted Patrick. John Le Moult commented in a law review article:

> The trial judge allowed the jury to get deeply involved in value judgments about the rightness or wrongness of Voll's religion. The result was a trial of Voll's religion rather than of Ted Patrick. The defense was permitted to introduce wide-ranging evidence in an attempt to ridicule the devoutly held beliefs of Voll's evangelical Protestant fellowship. No evidence was offered to show that this group was engaged in anything unlawful or even mildly improper.[65]

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62. In the late 1960s, the author testified to Burrows' draft board in Brookline, Mass., that Burrows was entitled to a ministerial deferment if anyone was; although he was not ordained and had not been to seminary, he put in 80-100 hours of work per week as an "elder" for his religious group. The draft board denied the deferment, but the author personally discussed the case with Gen. Hershey, then head of Selective Service, who advised the draft board to reconsider its decision, which it did, and granted the deferment.

63. See Patrick and Dulack, *supra*, pp. 82 ff., 123-126, 154 ff., 167-168 for a dramatic account of this event.

64. Ibid., pp. 167-168.

65. LeMoult, *supra*, p. 249.

The court also ruled that Voll was still a minor (because he lacked two weeks of being 21 at the time he was abducted), although he was clearly an "emancipated minor" under New York law, since he was living apart from his parents and supporting himself by his own efforts. This ruling placed him under the second justification in the New York Penal Law § 35.10 (1), which permits a parent of a minor to use physical force he believes necessary for the discipline or welfare of the minor. The court also held this clause to apply to the parents' agent, Patrick. Since the justification defense under New York law must be *disproved* by the prosecution "beyond a reasonable doubt," "extraordinary latitude was given to hired assailants" if they are held to be the agents of the parents and entitled to the parental defense.[66]

The prosecution tried to disarm some of the jury's antipathy toward the religious group by calling Dan's employer, Dr. William J. McGill, President of Columbia University, who testified that he had talked with Dan a dozen times and knew something about the Fellowship and other Columbia students who belonged to it. He had never attended any of the Fellowship's services, but said he would not use force to remove his own child from such a group because of his belief in religious liberty.[67]

The prosecution also called this author to testify about the nature of "high demand" religions such as NTMF, which are encountered infrequently because they are new and small, but whose religious behavior may be no less "normal" than that seen in larger and more conventional religious bodies. The judge reviewed the testimony:

> Reverend Kelley told us that he believes it is a blunt offense against religious liberty to use force in seeking to remove a young person from a group such as the Fellowship, even if done by parents of one of its young members.
>
> He concluded by declining to answer the hypothetical question of whether he would forcefully intervene to rescue his own daughter from membership in a religious cult which believed in handling deadly poisonous snakes....[68]

Despite the eloquence of these two prosecution witnesses, the jury acquitted Patrick.

(2) Federal Kidnapping Statute. In the only federal criminal prosecution to date of a deprogrammer,[69] a federal district judge in the state of Washington dismissed kidnapping charges against Ted Patrick. This case was not a full exploration of the legality of deprogramming, since no evidence was presented. Prosecution and defense agreed on a stipulation of the facts, and the only questions before the court were those of law. Patrick admitted having kidnapped Kathy

66. Ibid.
67. Patrick and Dulack, *supra*, quoting Judge Wright's summation, p. 170.
68. Ibid.
69. *U.S. v. Patrick*, 532 F.2d 142 (1976).

Crampton from the "Love Israel Family,"[70] but he claimed his actions were justified by her parents' belief that she was in imminent danger. The U.S. Attorney pointed out that if the court did not accept this defense, there would be no case to try, since Patrick admitted the actions charged, while if the court accepted the defense of necessity, there would still be no case to try because the government conceded that her parents believed her to be in some sort of danger. What the court needed to decide was: (1) was the necessity defense to be accepted? (2) was it transferable from the parents to their agent? and (3) is the belief of the parents sufficient, or must there be some objective justification for that belief? The court accepted this narrow stipulation of the issues and ruled as follows:

> One, may a parent legally justify kidnapping an adult child upon necessity grounds here alleged?
>
> My answer to that is in the affirmative, that there is such a common law defense and I so find.
>
> Does the availability of the defense turn upon the parents' mere belief that a set of circumstances exist, or, rather, must it be demonstrated that the circumstances in fact exist?
>
> My answer to that question is that the availability of the defense turns upon the parents' reasonable cause to, and that they do in fact have sufficient belief to consider that the child, Kathy Crampton, was in imminent danger....
>
> If a parent may avail himself of such a defense, is it available to an agent of the parent?
>
> * * *
>
> Where parents are, as here, of the reasonable and intelligent belief that they were alone not physically capable of recapturing their daughter from existing, imminent danger, then the defense of necessity transfers or transposes to the constituted agent, the person who acts upon their behalf under such conditions. Here that agent is the Defendant....
>
> The Clerk will make an entry of judgment of not guilty and the Defendant will stand discharged.[71]

The government appealed, but the Circuit Court of Appeals held that the government could not appeal an acquittal because the double jeopardy clause of the U.S. Constitution prohibits retrial of a defendant who has been acquitted.[72] This dismissal seems to have discouraged the federal authorities from any further prosecutions of this kind.

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70. Patrick could hardly deny having done so, since the action was shown on Walter Cronkite's CBS Evening News on August 13, 1973. "Love Israel Family" was the group to which Steve Allen's son belonged; see Allen, *Beloved Son* (Indianapolis: Bobbs-Merrill, 1982), in which the father explicitly rejected any effort to compel his adult son by force to leave the group.

71. *U.S. v. Patrick*, *supra*.

72. Ibid.

The federal kidnapping law is fairly broad: "Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward *or otherwise* any person, except in the case of a minor by the parent thereof, when: (1) the person is wilfully transported in interstate or foreign commerce...."[73] The phrase "or otherwise" indicates that kidnappings for purposes other than ransom are included in the federal ban. And since most victims of deprogramming are not minors, the exception for parents is not applicable (unless Judge Vavuris' dicta of perpetual religious infancy should be thought to apply[74]). Getting the FBI to enforce the statute against deprogrammers, however, was another matter entirely. The FBI consistently took the position that state and local law-enforcement agencies could handle such problems, which in its view were primarily "family matters" not involving criminal elements.

But in one instance, at least, the FBI responded alertly—the exception that proves the rule. When Whitney and Betsy Chase were held for deprogramming in Oakland, Michigan, by their mother and step-father, their father, Anthony Chase, an attorney in Washington, D.C., received a phone call (collect) from a man who identified himself as "Larry," an armed guard keeping watch over his daughters. He said that if Chase wanted to see them again he should send $5,000 to an address in Minneapolis. Chase called the FBI. They arrested a woman at the Minneapolis address, closed in on the Michigan location where the girls were being held, freed them—and their captors, except for Larry Iron Moccasin, brother of the Minneapolis woman, who was held on a federal charge of extortion! The moral of the story seems to be: It's all right to kidnap people as long as you don't try to collect ransom. (Compare the FBI's relaxed view of deprogramming with its zeal in the Great Church Raid.[75])

(3) Some Criminal Convictions. Although there have been a number of instances in which grand juries refused to indict deprogrammers (as in *People v. Murphy*, *supra*) or petit juries refused to convict (as in *People v. Patrick*, *supra*), or judges dismissed charges or acquitted (as in *U.S. v. Patrick*, *supra*), there have been a number of instances in which convictions were secured. Ted Patrick, for instance, was convicted in May 1975 in North Orange County, California, of kidnapping and false imprisonment and served sixty days in prison. The next year he was convicted for false imprisonment (of the two young women described above[76]) in Denver, Colorado, and sentenced to a week in prison with the remainder of a year's imprisonment suspended during good behavior; he was later required to serve the full term because of breach of probation. In August 1980 he was convicted in his hometown, San Diego, California, for kidnapping, sentenced to one year in prison

73. 18 U.S.C. 1201, emphasis added.
74. See text at note 57 above.
75. See IG7.
76. See text at note 27 above.

and a fine of $5,000 plus an additional five years' probation, which the district attorney moved to have revoked because of a subsequent indictment for kidnapping.

Other deprogrammers have been apprehended, charged with false imprisonment or kidnapping or both, and sometimes convicted. In fact, *The Chief of Police*, official publication of the National Association of Chiefs of Police, ran a special report in its March/April 1993 issue on "The Rise and Fall of Deprogramming." The author, Gerald Arenberg, noted that "As outrage from religious and legal organizations grew, police and criminal courts became more willing to arrest and prosecute deprogrammers." He mentioned that "One of the first established organizations to take a stand against deprogramming was the National Council of Churches."

> In a stinging denunciation issued on February 28, 1974, the Council noted "...that religious liberty is one of the most precious rights of humankind, which is grossly violated by forcible abduction and protracted efforts to change a person's religious commitments by duress. Kidnapping for ransom is a heinous crime indeed, but kidnapping to compel religious deconversion is equally criminal."

The article was pegged to a case then concluding in Alexandria, Virginia, in which Galen Kelly, a deprogrammer, plotted with millionaire Edgar Newbold Smith, one of the DuPont heirs, to abduct his thirty-four-year-old son and compel him to abandon his allegiance to the political organization of Lyndon LaRouche. The defendants were acquitted because they never agreed on a final plot. The judge of the federal district court, T.S. Ellis III, addressed a stern warning to Kelly: "[T]his trial ought to be a clear message to you that under no circumstances is it ever justified to snatch, lift, or pull anybody off the street against their will however wacky you may think their views are, what activities they may be doing.... One man's cult is another man's community, however wacky you or I think that is."

That warning apparently did not register with Kelly, because in a few weeks he was back before the same judge again, convicted of kidnapping a woman in Washington, D.C. With the help of several confederates, he seized her off the street, forced her into a van and transported her across state lines to Leesburg, Virginia. There he met the woman who had employed him to abduct her daughter, and she announced that the person he had kidnapped was not her daughter! (It was her daughter's roommate, who was driving her daughter's car.) Kelly returned his victim to the place where he had seized her, but she was not mollified by that courtesy, and identified him in a complaint to the police. Kelly was sentenced to eighty-seven months in prison, plus three years of supervised release.[77]

c. Civil Actions Against Deprogrammers. In the absence or failure of criminal prosecution, victims of deprogramming can seek a civil remedy. In fact, Richard C. Thornburgh, then Assistant Attorney General, Criminal Division of the U.S.

77. *U.S. v. Kelly*, 35 F.3d 929 (4th Cir. 1994).

Department of Justice, wrote in a letter of March 2, 1977: "An aggrieved individual in this situation can pursue civil remedies against his parents to obtain money damages or other relief. This is probably preferable to placing the controversy in the Federal criminal justice system."[78] Of course, such advice assumes (a) that the victim can afford to employ legal counsel (in lieu of the public prosecutor) to handle the suit or can find an attorney who will do it on a contingent fee basis, and—more importantly—(b) that enforcement of the criminal law can and should be left to private parties to "fight it out" in civil court. One significant difference, however, is that if the victim wins, he or she may be able to collect money damages, whereas after a criminal conviction the state may collect a fine, but the victim usually receives no financial reparation. Another significant difference is that no criminal stigma attaches to the civil offender, which is one important effect of prosecution and conviction under criminal law.

At the time Thornburgh wrote, however, the civil route did not offer much promise. William C. Shepherd commented on the legal situation as follows:

> Decisions of courts at all levels throughout the seventies were negative about claims of deprogrammed plaintiffs against parents and deprogrammers. Parents were not punished for kidnapping, and deprogrammers generally were let off with token payment of either compensatory or punitive damages (deprogrammers also fared well in criminal proceedings by reliance on the defense of necessity or justification). The problem for those who have suffered pain and injury at the hands of deprogrammers is to fashion a cause of action that courts will recognize as a constitutional ground on which to justify punishment of deprogramming-style vigilante justice. [But r]ecently, in cases from 1978 to 1981, a broad new advance in defense of religious freedom has been forged.[79]

The cause of action found was the so-called Ku Klux Klan Act of the Civil Rights Act of 1871, which provided a remedy against concerted private action. Section 1985(c) stated that two or more people cannot conspire to deprive any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or injure another in person or property, or deprive him of having and exercising any right or privilege of a citizen.[80] An earlier section, 1983, provided a remedy against similar action taken "under color of state law."

In 1977 the U.S. Supreme Court revitalized the long-dormant Klan Act as a remedy for private vendettas against members of a despised class, in that case

78. FOIA Document, March 1, 1977, RLT:ERB:ALH:AFN:mac, FO1 DJ No. 236380-4-1.

79. Shepherd, Wm. C., "Constitutional Law and Marginal Religions," in Bromley, David and James Richardson, eds., *The Brainwashing/Deprogramming Controversy* (New York: Edwin Mellen Press, 1983), p. 258.

80. Ibid.

because of their *race*.[81] The plaintiff must prove (1) a conspiracy, (2) intended to deprive anyone of equal protection or equal privileges and immunities, (3) an overt act in furtherance of the conspiracy, (4) an actual injury to another or deprivation of any of a citizen's rights or privileges and (5) plaintiff's membership in a despised group. On this last point the court said: "The language requiring intent to deprive of *equal* protection, or *equal* privileges and immunities, means that there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action, so plaintiffs must also show that they are members of a group or class so abhorred by the conspirators that such animus motivates the conspiracy."[82]

In the case of *racial* animus, Congress' power to adopt this law was grounded in the Thirteenth Amendment's authorization of enforcement of the prohibition of slavery, but that authority was not applicable to animus against a class despised because of *religion*. But *Griffin v. Breckenridge* also found authority for this congressional act in any denial of the constitutional right to *travel* from one state to another. Therefore, a plaintiff must also prove (6) interference with his or her right to interstate travel (which deprogramming by its very nature involves—not that the victim may not get to do quite a bit of interstate travel, but not on an itinerary of the victim's choosing).

(1) *Baer v. Baer* (1978). Laurence Baer, an adult member of the Unification Church, sued his parents and the Freedom of Thought Foundation of Phoenix, Arizona, in federal court in California. The court concluded that the Foundation's participation in the conspiracy was actuated not so much by concern about the plaintiff as an individual as it was "because of his status as a member of such a religious group.... The court is satisfied the complaint alleges sufficient facts to establish that a class-based animus existed in this case."

The next question was "whether a *religious* group may be deemed a class for purposes of Section 1985." Looking again to *Griffin*, the court quoted a passage in that decision taken from the floor debate on the Civil Rights Act of 1871, in which Senator Edmunds, Republican of Maine, explained the reach of a related provision: "We do not undertake in this bill to interfere with what might be called a private conspiracy growing out of a neighborhood feud of one man or set of men against another..., but, if in a case like this, it should appear that this conspiracy was formed against this man because he was a Democrat, if you please, or because he was a Catholic, or because he was a Methodist,...then this section could reach it."

The court concluded that Congress had contemplated religious as well as racial groups as coming under the section in question. Noting that other lower courts since *Griffin* had reached similar conclusions, the court commented:

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81. *Griffin v. Breckenridge*, 403 U.S. 88 (1977).
82. Ibid., at 202.

> While religious status may differ from racial status because it is not a congenital and inalterable trait, membership in a minority religious group, like membership in a minority racial group, has often excited the fear, hatred and irrationality of the majority. Two thousand years of human history compellingly prove that no easier road to martyrdom is found than in adherence to an unpopular religious faith. For these reasons, and because the legislative history does not indicate otherwise, this court concludes that religious discrimination may be encompassed by the terms of Section 1985(c).[83]

Judge Spencer Williams seemed to be ready to grant the plaintiff's desired relief. But there was one more hurdle to surmount: "The court must observe the teachings of *Griffin* and identify a source of congressional power to reach the private conspiracy so alleged." Two such sources were cited in *Griffin*, the Thirteenth Amendment and the right of interstate travel. Not being black, Lawrence Baer could not claim the benefit of Congress' Thirteenth Amendment power to eliminate the "badges of slavery," and the court concluded that "No such basis for invocation of the power to protect the right of interstate travel exists in this case." Though he had been seized on the streets of Sausalito and claimed he was thereby deprived of his right to travel freely, that "does not establish that [he] was engaging in or intended to engage in interstate travel at the time.... Therefore, plaintiff has failed to allege he has suffered from tortious conduct which Congress may reach under its power to protect the right of interstate travel."[84] Consequently, Baer had no remedy in the federal courts.

Two subsequent federal appeals court decisions likewise recognized that Section 1985(c) could apply to religious as well as racial class-based animus, but went beyond *Baer* in recognizing a claim to interference with interstate travel.

(2) *Rankin v. Howard* (1980). Marcus Rankin was an adult member of the Unification Church whose father obtained a conservatorship order from a judge in Kansas under which he transported Marcus to Phoenix, Arizona, to be deprogrammed by the Freedom of Thought Foundation. The conservatorship order may have been invalid because the victim was not a resident of the county where the court granting the order had jurisdiction. On defendants' motion to dismiss, the trial court ruled: (1) that, because of judicial immunity, no Section 1983 complaint would lie against the Kansas judge; (2) that Rankin had effectively invoked Section 1985(c) because of allegations of conspiracy, overt acts and deprivation of rights; (3) that a religious group could be an object of class-based animus as well as a racial one; and (4) that he was deprived of his right freely to travel interstate. On appeal, the Ninth Circuit Court of Appeals affirmed the Section 1985(c) holding but gave Rankin an

83. *Baer v. Baer*, 450 F.Supp. 481 (1978), at 491.
84. Ibid. at 492.

additional victory by reinstating the Section 1983 cause of action against the state court since the Kansas judge might not be covered by judicial immunity if he was aware that he lacked jurisdiction over a nonresident at the time he signed the conservatorship order.[85]

(3) *Ward v. Connor* (1981). Another adult Unification Church member was denied a Section 1985(c) cause of action by a federal district court in Norfolk, Virginia, because, the judge declared, (1) his church membership did not qualify as a class for purposes of that section, (2) the defendants' benevolent concern for his welfare was the opposite of the requisite discriminatory animus and (3) alleged interference with his right to travel failed to reach a congressional source of power that would enable the court to act.

The Fourth Circuit Court of Appeals reversed on all points. It observed that "the lower federal courts have, almost without exception, extended the coverage of the statute to religious groups," and concluded that "the plaintiff and other members of the Unification Church constitute a class which is entitled to invoke the statutory remedy."

On the matter of congressional powers to reach private acts, the court explained:

> [T]he complaint clearly charges that a purpose of the conspiracy was to prevent Ward from traveling from state to state and that the conspirators did, in fact, interfere with Ward's constitutional right, and this is sufficient to support his cause of action. In dismissing the Section 1985 count, the district court observed that the gravamen of the complaint was not the deprivation of the plaintiff's right to interstate travel, "but rather interference with his First Amendment rights of freedom of religious association." This may be true. Nevertheless, as we have noted, the complaint specifically alleges that interference with the plaintiff's right to travel was one of the objects of the conspiracy and the fact that the conspiracy had other objectives is immaterial.[86]

The court may have been helped to reach this conclusion by the fact—cited in its initial description of events in the case—that Ward had been seized "while en route to an airport to begin a trip from Virginia to New York," but the court's conclusions do not refer to that fact nor seem, as *Baer* did, to limit the interference-with-interstate-travel element to people actually engaged in, or about to embark upon, interstate travel.

Finally, the court disposed of the third ground for dismissal.

> The district court also concluded that since the parents of the plaintiff were motivated to act by their concern for the well-being of their son, the requisite discriminatory class bias was absent. While we do not quarrel with the court's assumption in regard to such parental concern, the

85. *Rankin v. Howard*, 457 F. Supp. 70, and 633 F.2d 844 (CA9 1980).
86. *Ward v. Connor*, 657 F.2d 45 (CA4 1981), citing *Rankin* and *Baer*.

> complaint sufficiently charges that the defendants were motivated to act as they did not only because they found the plaintiff's religious beliefs intolerable, but also because of their animosity towards the members of the Unification Church. This, in our opinion, stated a discriminatory motive sufficient to support a claim under the statute.[87]

(4) *Helander v. Patrick* (1976). An early deprogramming case involved Wendy Helander, a member of the Unification Church, who was abducted by Ted Patrick at the behest of her parents. She was kept captive for several weeks, transported from place to place, and subjected to continual browbeating by Patrick. She eventually pretended to have been persuaded to abandon her faith and was allowed to return to her parents' home in Connecticut, where she made her escape and returned to the church. She sued in Superior Court of Fairfield County, Connecticut. The court found in her favor, remarking:

> That the defendant played a major role in the above-outlined coercion, intimidation, seizure, and confinement of the plaintiff is crystal clear according to the evidence offered at the trial. The modus operandi adopted by the defendant and his associates — luring the plaintiff away from Unification Church premises by deception, attempting to "deprogram" her by crude, callous, and brow-beating tactics, shifting her from place to place and confining her against her will — smacks more of a fictional television melodrama, rather than a real-life incident.
>
> While the parents of the plaintiff encouraged the deprogramming procedure . . . out of good faith and with apparently good intentions and with the interests of their daughter in mind, there was no legal justification for her being seized, restrained, and subjected to the frightful experiences occasioned by the conduct of the defendant and others. It is equally crystal clear to the court that the plaintiff's constitutional rights were invaded unscrupulously. . . .
>
> The court is satisfied that the defendant was instrumental in promulgating the horrendously frightful experiences which the plaintiff has undergone.
>
> The plaintiff may recover $5,000.00 from the defendant Theodore Patrick, Jr.[88]

A very different outcome was reached in the Supreme Court of Minnesota a few years later.

(5) *Peterson v. Sorlien* (1980). Susan Jungclaus Peterson was an adult attending Moorhead State College when she became involved with a religious group known as The Way (related to The Way, International, with headquarters in New Knoxville, Ohio). It absorbed more and more of her time and energy, and by the end of her

87. Ibid., *cert.* denied, 455 U.S. 907.

88. *Helander v. Patrick*, Slip Opinion by Judge Grillo, Civ. Act. No. 15-90-62, Conn. Superior Ct., Fairfield County (Bridgeport), Sept. 8, 1976, at 2-3.

junior year in college, her parents "grew increasingly alarmed by the personality changes they witnessed in their daughter";

> overly tired, unusually pale, distraught and irritable, she exhibited an increasing alienation from family, diminished interest in education and decline in academic performance. The Jungclauses, versed in the literature of youth cults and based on conversations with former members of The Way, concluded that through a calculated process of manipulation and exploitation Susan had been reduced to a condition of psychological bondage.[89]

(Enter the anti-cult movement, its "literature" and attendant excult members. The court, too, had become "versed in the literature of youth cults.")

> [T]his case marks the emergence of a new cultural phenomenon: youth-oriented religious or pseudo-religious groups which seize the techniques of what has been termed "coercive persuasion" or "mind control" to cultivate an uncritical and devoted following.... Coercive persuasion is fostered through the creation of a controlled environment that heightens the susceptibility of a subject to suggestion and manipulation through sensory deprivation, physiological depletion, peer pressure, and a clear assertion of authority and dominion. The aftermath of indoctrination is a severe impairment of autonomy and the ability to think independently, which induces a subject's unyielding compliance and the rupture of past connections, affiliations and associations.[90]

Susan's father, on May 24, 1976, went to Moorhead at the end of the school year and picked her up, but instead of taking her to the family home in Bird Island, Minnesota, he drove to Minneapolis, where he handed her over to a "self-styled professional deprogrammer," Kathy Mills, in whose home she remained for the next sixteen days. There she was subjected to deprogramming which the court described as follows:

> The avowed purpose of deprogramming is to break the hold of the cult over the individual through reason and confrontation. Initially, Susan was unwilling to discuss her involvement; she lay curled in a fetal position, in the downstairs bedroom where she first stayed, plugging her ears and crying, while her father pleaded with her to listen to what was being said. This behavior persisted for two days during which she intermittently engaged in conversation, at one point screaming hysterically and flailing at her father. But by Wednesday Susan's demeanor had changed

89. *Peterson v. Sorlien*, Minn. 299 N.W.2d 123 at 127 (1980).

90. Ibid., at 126, citing the Delgado article, "Religious Totalism...," *supra*, for legal justification of anti-cult measures, discussed at § 3a above.

> completely; she was friendly and vivacious and that night slept in an upstairs bedroom.[91]

Following this change she was allowed greater freedom, going rollerskating on Saturday and playing softball at a nearby park. The next week she spent in Columbus, Ohio, "flying there with a former cult member who had shared with her the experiences of the previous week." She returned to Minneapolis on June 9.

> [H]er parents asked that she sign an agreement releasing them from liability for their past weeks' actions. Refusing to do so, Susan stepped outside the Norgel residence with the puppy she had purchased in Ohio, motioned to a passing police car and shortly thereafter was reunited with her fiance in the Minneapolis headquarters of The Way.

She then sued her parents and others involved in the abduction for false imprisonment.

> The jury, instructed that an informed and reasoned consent is a defense to an allegation of false imprisonment and that a nonconsensual detention could be deemed consensual if one's behavior so indicated, exonerated defendants with respect to the false imprisonment claim.

She asked the court to grant a judgment notwithstanding the verdict, and when it refused, she appealed to the state Supreme Court, which decided the case *en banc*. The court noted that she had been in alleged "captivity" for sixteen days, during thirteen of which she "willingly remained in the company of defendants."

> Had Susan desired, manifold opportunities existed for her to alert the authorities of her allegedly unlawful detention; in Minneapolis, two police officers observed at close range the softball game in which she engaged; en route to Ohio, she passed through the security areas of the Twin Cities and Columbus airports in the presence of...uniformed police; in Columbus she transacted business at a bank, went for walks in solitude and was interviewed by an F.B.I. agent who sought assurances of her safety... If one is aware of a reasonable means of escape that does not present a danger of bodily or material harm, a restriction is not total and complete and does not constitute unlawful imprisonment. Damages may not be assessed for any period of detention to which one freely consents.

But how about the first three days? The jury had construed her later acquiescence as in effect a waiver of any lack of consent during the first period. The appellate court upheld this finding also on the basis of its understanding of the situation acquired from Delgado, *et al*.

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91. Ibid., at 127.

> Because, it is argued, the cult conditioning process induces dramatic and non-consensual change giving rise to a new temporary identity on the part of the individuals whose consent is under examination, Susan's volitional capacity prior to treatment may well have been impaired. Following her readjustment, the evidence suggests that Susan was a different person, "like her old self." As such, the question of Susan's consent becomes a function of time. We therefore deem Susan's subsequent affirmation of defendants' actions dispositive.

The court's logic on this point seems obscure. Which "subsequent affirmation"? If her apparent acquiescence on the fourth day cancelled her resistance on the first three days, why then did her sub-subsequent change on the sixteenth day after her "treatment" and "readjustment"—when she decamped and instituted the suit against her captors—not cancel the acquiescence? Apparently, the process only works one way. Coming out of the cult wipes the slate clean, but going back in doesn't.

Not content simply to affirm the jury's verdict, the court expatiated upon society's interest in thwarting "cult indoctrination."

> Although carried out under colorably religious auspices, the method of cult indoctrination is predicated on a strategy of coercive persuasion that undermines the capacity for informed consent. While we acknowledge that other social institutions may utilize a degree of coercion in promoting their objectives, none do so to the same extent or intend the same consequences.

One wonders what might be the court's source of empirical evidence for this assertion, since most scholars in the field are sharply critical of the anticult movement's contentions to this effect. Apparently the court had not studied up on the contrary point of view expressed by Bromley, Shupe, Melton, Moore, Richardson, Robbins, Shepherd (cited above) and many others. The immediate next sentence after that just quoted reads as follows:

> Society, therefore, has a compelling interest favoring intervention. The facts in this case support the conclusion that plaintiff only regained her volitional capacity to consent after engaging in the first three days of the deprogramming process.

The justification of deprogramming because society has a "compelling interest" in (forcibly) intervening in "cult indoctrination" seemed inadequately prepared, and—if generally accepted—could just as readily result in state action to the same end. The court's penultimate warning against "self-help" in the continuing paragraph suggested an obligation in the state to set up deprogramming institutes to accomplish this "compelling interest."

> As such, we hold that when parents, or their agents, acting under the conviction that the judgmental capacity of their adult child is impaired, seek to extricate that child from what they reasonably believe to be a religious or pseudo-religious cult, and the child at some juncture assents to the actions in question, limitations upon the child's mobility do not constitute meaningful deprivations of personal liberty sufficient to support a judgment of false imprisonment. But owing to the threat that deprogramming poses to public order, we do not endorse self-help as a preferred alternative. In fashioning a remedy, the First Amendment requires resort to the least restrictive alternative so as not to impinge upon religious belief.

The foregoing manifesto for deprogramming as a public service of "compelling interest" to society did not go unchallenged. Two members of the bench filed vehement dissents. Justice Wahl stated:

> In every generation, parents have viewed their children's religious and political beliefs with alarm and dismay if...different from their own. Under the First Amendment, however, adults in our society enjoy freedom of association and belief. In my view, it is unwise to tamper with those freedoms and with longstanding principles of tort law out of sympathy for parents seeking to help their "misguided" offspring, however well-intentioned and loving their acts may be....
>
> Any imprisonment "which is not legally justifiable" is false imprisonment,... therefore, the fact that the tortfeasor acted in good faith is no defense to a charge of false imprisonment.
>
> Certainly, parents who disapprove of or disagree with the religious beliefs of their adult offspring are free to exercise their own First Amendment rights in an attempt, by speech and persuasion without physical restraints, to change their adult children's minds. But parents who engage in tortious conduct in their "deprogramming" attempts do so at the risk that the deprogramming will be unsuccessful and the adult children will pursue tort remedies against the parents. To allow parents' "conviction that the judgmental capacity of their [adult] child is impaired [by her religious indoctrination]" to excuse their tortious conduct sets a dangerous precedent.[92]

Justice Otis agreed with Justice Wahl and added his own dissent:

> I...particularly take issue with a rule which authorizes what is euphemistically described as "limitations upon the adult child's mobility," whenever a parent, or indeed a stranger acting for a parent, subjectively decides, without the benefit of a professional opinion or judicial intervention, that the adult child's "judgmental capacity" is impaired and

92. Ibid. p. 133, Wahl dissent, brackets in original.

> that she should be "extricated" from what is deemed to be a religious or pseudo-religious cult....
>
> We furnish no guidelines or criteria for what constitutes "impaired judgmental capacity" other than the fact that the adult child has embraced an unorthodox doctrine with a zeal which has given the intervenor cause for alarm, a concern which may be well-founded, ill-founded or unfounded.
>
> Nor do we specify whether the "cult" must be for a benign or malevolent purpose. It is enough that the intervenor has reason to believe it is a cult, i.e., "an unorthodox system of belief" and that at some juncture during the adult child's involuntary confinement, she "assents," that is to say, yields or surrenders, possibly from exhaustion or fatigue, and possibly for a period only long enough to regain her composure.
>
> If there is any constitutional protection we should be slow to erode, it is the right of serious-minded people, young or old, to search for religious or philosophical fulfillment in their own way and in their own time without the interference of meddling friends or relatives, however well-intentioned they may be.
>
> At age 21, a daughter is no longer a child. She is an adult. Susan Peterson was not only an adult in 1976 but she was a bright, well-educated adult. For whatever reason, she was experiencing a period of restlessness and insecurity which is by no means uncommon in students of that age. But to hold that for seeking companionship and identity in a group whose proselytizing tactics may well be suspect, she must endure without remedy the degrading and humiliating treatment she received at the hands of her parents is, in my opinion, totally at odds with the basic rights of young people to think unorthodox thoughts, join unorthodox groups, and proclaim unorthodox views.[93]

Of the several opinions in this case, majority and dissents, which seems most in harmony with the traditions of religious freedom and the First Amendment? Which most consonant with the true, long-term needs and interests of religious bodies? A federal district judge in Minnesota, when confronted with a similar case in 1984, having *Peterson v. Sorlien* as the leading decision in the "forum" state, was reported to have remarked in chambers during the trial that he considered *Peterson* to be unconstitutional and would not enforce it in his courtroom.[94] That case follows.

(6) *Eilers v. Coy* (1984). Bill Eilers, age twenty-four, and his wife, Sandy, twenty-three, lived in a rural area of Wisconsin near Galesville. They had been married for a year, and she was seven months pregnant. While in Winona, Minnesota, for a scheduled prenatal checkup on August 16, 1982, the two were seized on the clinic's parkinglot by several men and thrust into two vans. They were taken to Tau Center in Winona, which is on the campus of the College of Saint Teresa, though not part of the college itself. The center and college are owned and

93. Ibid. Otis dissent.

94. Interview with Lee Boothby, counsel for the plaintiff in the *Eilers* case, *infra*, June 27, 1984.

operated by a Roman Catholic religious order, the Sisters of Saint Francis. Here they were kept prisoner in separate rooms for six days, while efforts were made continually to break their adherence to a small, fundamentalist Protestant group called "Disciples of the Lord Jesus Christ," led by a convert from Hinduism, Rama Behera, which was viewed by the Eilers' families as a "cult."

The week before this occurred, Bill had broken his arm, and it was still in a cast; at one point the cast was ripped off. When he tried to get away one day, several men held him down, one of them twisting his recently broken arm. He was kept handcuffed to a bed in a third-floor room with windows boarded up and one or more guards at the door. He was periodically roughed up when he refused to listen to deprogrammers explaining the evils of cults or playing for him tape recordings of Jim Jones' last speech at Jonestown, Guyana.

On the sixth day, he decided that the only way out was to feign deconversion. The deprogrammers then decided to take him and his wife to a retention center in Iowa City. As they were being put in a car, Bill broke free and ran to a nearby house, shouting for help (the car ran over his foot in the process). The lady of the house took him in and called the police, who caught several of the perpetrators and charged them with false imprisonment,[95] but the grand jury declined to indict them.[96]

With the failure of the criminal law to provide a remedy, Bill Eilers filed a civil suit against the deprogrammers in federal court in Minneapolis,[97] which in due course came on to be heard in February 1984 before Judge Harry H. MacLaughlin. After a jury trial of several days,[98] the judge took an unusual step on March 6, 1984, granting a directed verdict finding the defendants guilty of false imprisonment (the first directed verdict he had ever issued in his years on the bench, he said). The judge's reasoning is of special interest in light of the cases reviewed above.

To begin with, he did not permit the focus of the trial to be shifted: "[T]he beliefs and practices of The Disciples of the Lord Jesus Christ should not be, and are not, on trial in this case." He noted that three weeks before the abduction, Eilers' family had asked authorities in Trempealeau County, Wisconsin, to have him subjected to civil commitment, but after a social worker interviewed him in person, the county authorities told the relatives that, since he was not a danger to himself or others, no legal grounds existed in Wisconsin for confining him.

Judge MacLaughlin then dealt with the charge of false imprisonment.

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95. *Winona Daily News*, Winona, Minn., Aug. 18, 19, 20, 21, 23, 24, 25, 27, 30, Sept. 1, 3, 1982, and conversations with Bill Eilers and John Steenlage, his mentor and former teacher, subsequently a farmer on whose land the Eilers were living.

96. Interview with Lee Boothby, Eilers' attorney, June 27, 1984.

97. When it appeared that this suit might fail for lack of funds for private investigators to locate the defendants and serve process on them, this author was able to secure initial funding from various sources until Americans United for Separation of Church and State decided to take on the case.

98. In which the author was called by the plaintiff as an expert witness.

> The evidence in this case has established each of the elements of false imprisonment. By their own admission, the defendants intended to confine the plaintiff for at least one week. While the defendants maintain that their purpose was to help the plaintiff, it is not a defense to false imprisonment that the defendants may have acted with good motives.

He reviewed the *Peterson v. Sorlien* precedent. The defendants had contended that there was no actual confinement because the plaintiff, at least by the fourth day, had consented to the defendants' actions.

> Many people would feign consent under similar circumstances, whether out of fear of their captors or as a means of making an escape. But in this case, unlike the *Peterson* case relied on by the defendants,[99] it is undisputed that the plaintiff was at no time free to leave the Tau Center during the week in question, nor were any reasonable means of escape available to him. Under these circumstances, the Court finds, in agreement with many other authorities, that the plaintiff's apparent consent is not a defense to false imprisonment.[100] The Court therefore holds, as a matter of law, that the plaintiff has proven the necessary elements of false imprisonment.

Next the judge considered the second major question, the defense of "necessity."

> They claim that the confinement and attempted deprogramming of the plaintiff was necessary to prevent him from committing suicide or from otherwise harming himself or others.
>
> The defense of necessity has three elements. The first element is that the defendants must have acted under the belief that there was a danger of imminent physical injury to the plaintiff or to others. [citations omitted]
>
> It is not clear that such danger existed on August 16, 1982.... Nevertheless, viewing the evidence in the light most favorable to the defendants, the court will assume for the purposes of this motion, that the plaintiff was in imminent danger of causing physical injury to himself or to others.
>
> The second and third elements of the necessity defense are intertwined. The second element is that the right to confine a person in order to prevent harm to that person lasts only as long as is necessary to get that person to the proper lawful authorities.... The third element is that the actor must use the least restrictive means of preventing the apprehended harm. [citations omitted]
>
> In this case, the defendants' conduct fails to satisfy either of these elements of the necessity defense. Once having gained control of the

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99. At this point the court added a footnote quoting extensively from *Peterson v. Sorlien*, to recite the evidence that the plaintiff in that case seemed to have had many opportunities to escape, yet had not done so.

100. Citing 32 Am. Jur. 2d False Imprisonment [Section] 15 (1982); Restatement (Second) of Torts [Section] 36 (1965).

> plaintiff, the defendants had several legal options available to them. They could have:
>
> 1) turned the plaintiff over to the police;
>
> 2) sought to initiate civil commitment proceedings against the plaintiff...;
>
> 3) sought professional psychiatric or psychological help for the plaintiff with the possibility of emergency hospitalization if necessary....
>
> At no time did the defendants attempt, or even consider attempting, any of these lawful alternatives during the five and one-half days they held the plaintiff, the first five of which were business days. Instead, they took the plaintiff to a secluded location with boarded-up windows, held him incommunicado, and proceeded to inflict their own crude methods of "therapy" upon him—methods which even the defendants' own expert witness has condemned. Well aware that the police were searching for the plaintiff, the defendants deliberately concealed the plaintiff's location from the police.... Accordingly, the Court rules—as a matter of law—that the plaintiff was falsely imprisoned without justification.[101]

The amount of damages was left to the jury to determine, and they awarded the plaintiff a mere $10,000. (Fortunately, he had already collected over $50,000 in out-of-court settlements from the two families and the Sisters of St. Francis.)

The last paragraph of the *Eilers* opinion is a commentary on the judge's feeling about the case:

> This will not be a popular decision. Being the father of two college-aged sons, the Court has substantial sympathy for the feelings and reactions of the parents of Bill and Sandy Eilers. However, this Court is sworn to uphold the Constitution of the United States. *If the basic constitutional rights of an American citizen are not recognized in a federal court by a federal judge, where will they be recognized?*[102]

(7) *Taylor v. Gilmartin* (1982). The availability of civil recourse against deprogrammers in the federal courts was modified by a decision of the U.S. Supreme Court in July 1983 in a holding in *Carpenters v. Scott* that "an alleged conspiracy to infringe First Amendment rights is not a violation of Section 1985(3) unless it is proved that the state is involved in the conspiracy or that the aim of the conspiracy is to influence the activity of the state."[103]

Taylor v. Gilmartin arose in an incident referred to in the list of deprogrammings above.[104] Walter Taylor was a twenty-one-year-old monk of the Old Catholic Church, one of the bodies that split off from the Roman Catholic Church following the promulgation of the doctrine of papal infallibility at the (first) Vatican Council in

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101 . *Eilers v. Coy*, 582 F.Supp. 1093 (D.Minn. 1984).

102 . Ibid., emphasis in original.

103 . *United Brotherhood of Carpenters and Joiners, Local 610, AFL-CIO v. Scott*, 463 U.S. 825, (1983).

104 . No. 2, at note 22 above.

1870. In July of 1976, Taylor's parents employed the Freedom of Thought Foundation in Phoenix, Arizona, to which reference has already been made,[105] to seize and deprogram their son. Michael Trauscht and Wayne Howard, attorneys for the Foundation, approached a Judge Benson in Oklahoma City and persuaded him to consider a petition for guardianship. Judge Benson arranged with the probate judge who would ordinarily hear such a case to hear it himself, and only then was the petition filed.

> Judge Benson ordered the temporary guardian of plaintiff's person be appointed in order to determine whether plaintiff was under the influence of a religious cult. Judge Benson said that he wanted the plaintiff taken into custody "so that (plaintiff) could be given notice of a [permanent] guardianship hearing." Plaintiff was at the monastery when the [sheriff's] deputies came for him. He offered no resistance. The hearing occurred before Judge Benson as soon as Taylor was brought into court. Although Judge Benson found him to be normal, he formally entered an "order appointing Taylor's father as Temporary Guardian of the Person." The reason for the Judge's action was
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> "...the right of [Plaintiff's] father and...family to know [Plaintiff] decided...to spend the rest of [his] life away from them secluded in a monastery...probably overrides any individual right [Plaintiff] might possibly have on a temporary basis...to be free from...custody...."[106]

Following issuance of the temporary guardianship order, Walter Taylor was flown to Akron, Ohio, and held there for a week under constant guard in a motel while his captors attempted to deprogram him. This process, which its proponents often describe as a gentle, respectful and considerate process of reasoning together, was described by the court (citing plaintiff's claims) as follows:

1. The defendants yelled at him constantly.
2. The deprogrammers worked in shifts or crews.
3. They said they would have him tracked down by the state patrol if he escaped; that they would have him thrown in jail and deprogrammed in jail.
4. The deprogrammers threatened to have the police close down plaintiff's monastery; to have the temporary guardianship made permanent and to have the deprogramming continue indefinitely, to have plaintiff committed to a mental institution and to beat him.
5. He was deprived of sleep and was told that he would be subject to shock treatment. He suffered severe gastritis, diarrhea and abdominal cramping and when he complained, the deprogramming seemed to intensify.
6. They threw cold water on him, shined a light in his eyes, tore his clothing off, cut his hair and beard[,] and they told him they called friends and religious leaders

105 . See § c(2) above.

106 . *Taylor v. Gilmartin*, 686 F.2d 1346, 1349 (1982).

> from a list plaintiff had given them of people who would vouch for him, and they stated that the friends reported his religion was not legitimate. The deprogrammers indicated the pressure would cease if plaintiff would renounce his religion.

After a week of this, Walter Taylor was taken from Akron to Phoenix, where he was to be held for "rehabilitation" by the Foundation, but he escaped on July 31, 1976, and returned to his monastery, whereupon he filed suit against his captors. The case was tried in the federal court for the Eastern District of Oklahoma. The trial judge dismissed the plaintiff's claim of deprivation of civil rights under color of state law (Section 1983) on the ground that the Oklahoma judge and police were not conspiring with defendants because they did not share common goals and had not been charged as defendants. The judge also dismissed the claim under Section 1985(c) because he considered that "Congress did not have the power to reach a private conspiracy to violate rights protected under the fourteenth amendment."[107] The claim for intentional infliction of emotional distress was disposed of by directed verdict, in which the court said that reasonable minds could not differ that defendants' conduct was not so extreme and outrageous as to call for recovery. (One wonders what further mistreatment would have been necessary to impress the court as extreme or outrageous.) The claim for false imprisonment also led to a directed verdict for the defendants because the court order of guardianship was held to be proper. The jury was permitted to decide only one issue: whether the plaintiff had been subjected to assault and battery, and the jury found against him and in favor of his captors!

The Tenth Circuit Court of Appeals agreed with the trial court on only one of its rulings: that Section 1983 was not applicable because there had been no element of action "under color of law," which is "part and parcel of Section 1983."

> It is impossible to say that the use of the court as part of the scheme...is enough to constitute state action. The court was not a part of the conspiracy. At most the conspirators made use of the court in an effort to obtain some official appearance. The court allowed itself to be used without fully realizing the results which would follow.... The judge is not a defendant, nor is any state officer, nor can it be said that the judge was a conspirator. Section 1983 just does not apply.[108]

Perhaps the court was a bit overgenerous to a fellow jurist, and perhaps the plaintiff was a bit forebearing in not joining him as a defendant, because the court's own description of events suggests that Judge Benson was privily prevailed upon to persuade the probate judge to let him hear the case, to fashion a remedy unprecedented in Oklahoma law, and to issue an order that seemed clearly to contemplate at least some of what was to follow:

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107 . Ibid., characterization by the Tenth Circuit.

108 . Ibid., p. 1355.

> 3. The Temporary Guardian of the Person shall have power to: (a) take said proposed ward into Petitioner's personal custody[;] to have proposed ward counselled, examined, and *treated* by persons including, but not limited to physicians, psychiatrists, psychologists, social workers and *lay persons*; (b) to keep said ward in Petitioner's custody, even in the event said ward wishes to leave said custody....[109]

Only an unusually obtuse and naive judge would not have some idea of what was going to happen under that order, and in view of what the Tenth Circuit had to say about the validity of the order itself, it is disappointing that the judge did not come in for at least a portion of retribution.

The Tenth Circuit disagreed with the trial court on its disposition of the claim under Section 1985(c). It agreed that the first, third and fourth elements described in *Griffin v. Breckenridge* were present,[110] but then addressed the troublesome second element:

> Is there a class-based invidious discrimination...? It should be emphasized that these defendants are professionals. They perform this service for money and they spend a significant amount of time on it. The record shows that and certainly their conduct is odious and has the effect of depriving the victim of important rights—his liberty, his freedom, his right to practice his religion, among other rights.[111]

As evidence of class-based animus, the trial court cited an excerpt from the Foundation's application for tax exemption explaining its area of public interest or concern: "The illegal and immoral techniques used by so-called Religious Cults to induce mind-control and brainwashing of young adults." The Court of Appeals agreed.

> We conclude as did the trial court that there is adequate evidence of the type of class-based, invidiously discriminatory animus envisioned in *Griffin* to overcome a motion for summary judgment. Whether the defendants were in fact motivated by the alleged animus against religious minorities is, of course, a question for the jury.

(It was on that question that the jurors in *Eilers* found in favor of the deprogrammers.[112])

The remaining question regarding Section 1985(c) was even more troublesome: the *source of congressional power to reach private conspiracies* (with which *Griffin* had wrestled and which *Scott* was to address the next year). The Tenth Circuit found the

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109 . Ibid., p. 1349, emphasis added.

110 . Cf. text at n. 84 above.

111 . Ibid., p. 1357.

112 . See text at note 114 above.

two sources cited in *Griffin* inapplicable. There was no race discrimination alleged by Taylor such as would have relied upon the Thirteenth Amendment (he and his captors were white), nor had he alleged in this complaint that he had been deprived of his right to travel interstate, though he sought to do so on appeal, but the Tenth Circuit concluded that "the facts do not lend themselves to a claim of interference with this right," thus apparently rejecting the idea accepted in *Rankin*[113] and other cases that *forcing* someone to travel across state lines is interference with their right to travel.

Because the plaintiff had alleged violation of his right to the free exercise of his religion and other rights guaranteed by the First Amendment and made applicable to the states through the Fourteenth, the Court of Appeals for the Tenth Circuit looked more closely for indications of state involvement in what would otherwise be only a private conspiracy, and it found that "there is no dearth of state involvement as a result of the cooperation of the judges and the sheriff's officers."

> [T]he allegations extend beyond the private deprivation of constitutional rights. The contention is that the defendants formed a conspiracy to *cause the state to participate and deprive the plaintiff* of his liberty without due process and to interfere with his first amendment freedom of association and religion due to their hatred of minority religions....
>
> * * *
>
> We believe that Section 5 of the fourteenth amendment is the source of congressional power. This is the provision which authorizes Congress to provide a remedy where private parties conspire to induce the state to deprive an individual of his constitutional rights.
>
> * * *
>
> The activity here brought the state into a position which was tainted. The purpose was not to help Taylor, the allegedly sick man, by treating him or showing concern for him, but rather to participate in coercing a change in this adult's religious beliefs....[114]

Therefore it reinstated the count under Section 1985(c).

This reversal was secondary, however, to the court's key finding, that contrary to the trial court's view, the order of temporary guardianship, on which the whole affair turned, was invalid.

> The Oklahoma law is very specific regarding the appointment of guardians.... [A] guardian may be appointed only after a full hearing where it appears to the judge that the alleged incompetent is incapable of "taking care of himself and managing his property...." [A]t the temporary guardianship hearing no evidence was adduced from Dr. Taylor that

113 . See text at note 91 above.

114 . *Taylor v. Gilmartin, supra*, pp. 1358, 1360, with a footnote quoting a law review article on *Griffin*: "The state is not the generator of the wrong perpetrated but is the mechanism used to carry it out." (n.5)

> Walter was unable to take care of himself or his property or that he had any property that others could by trick or deceit remove from his control. Indeed [he] testified that the monastery took none of his assets.
>
> In the absence of full compliance [with the law] the court lacks jurisdiction and the order is void.... There is no Oklahoma law to be found allowing a temporary guardianship of an adult such as was carried out by Judge Benson. The section [on guardianship] requires five days notice [but no notice was given]. That is just one of the problems with it.... [T]he real issue is the inadequacy of the hearing and the temporary order that was issued. The only conclusion to be drawn is that Judge Benson's action was beyond the statutes and was void from the very beginning. The court, as we view it, acquired no jurisdiction to hear this proceeding...until the five days notice had lapsed.
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> * * *
>
> Apparently the judge fashioned this order to suit something that was not even provided for in any statute.... The judge considered the guardianship order to be for the purpose of determining whether Taylor had been brainwashed in the monastery, not whether he was mentally ill and should be hospitalized, an objective which, of course, is not provided for in any Oklahoma statute.[115]

Since the order was invalid, the trial court was not justified in directing a verdict in favor of those whose defense against the charge of false imprisonment was that they were acting pursuant to a valid court order, so the Tenth Circuit reinstated the charge of false imprisonment. The case was remanded to the district court for a new trial to a jury. The U.S. Supreme Court denied *certiorari* on the day after the *Scott* decision was handed down.[116]

The preceding array of cases, by no means all of those involving deprogrammers, has served to show the wide variety of facts, charges, defenses, and dispositions arising in this novel area of litigation as the law is emerging in the lower courts on a case-by-case basis. Shaped at first largely by the diverse instincts and inclinations of individual judges and juries with little precedent to guide them, a background of uneasiness about forcible abduction designed to reverse conversions to unpopular religious groups began to take form. Until the Supreme Court finds a case of this genre that seems "ripe" enough for review to interest four members of the court, the state of the law in this area is typified by the material presented here, in which—interestingly enough—there is no diversity among the federal circuit courts of appeals. The Fourth Circuit, in *Ward v. Connor*,[117] the Ninth Circuit, in *Rankin v.*

115 . Ibid., pp. 1350-1352.

116 . *Cert. denied sub nom. Howard v. Taylor*, 463U.S. 1229 (1983), *rehearing denied,* 463 U.S. 1249 (1983).

117 . 657 F.2d 45 (1981).

Howard,[118] and the Tenth Circuit, in *Taylor v. Gilmartin*,[119] have all held against the deprogrammers. Three years after *Taylor*, a fourth circuit court considered the issue.

(8) *Colombrito v. Kelly* (1985). Anthony Colombrito, a member of the Unification Church, brought suit against Galen Kelly, a private detective and deprogrammer, involved in *People v. Murphy* (1977) above,[120] and convicted of kidnapping in 1993,[121] as a result of an unsuccessful attempt at deprogramming him in 1979. When the defendant subpoenaed the founder of the Unification Church, Sun Myung Moon, and proceeded to badger him on the witness stand, Colombrito withdrew his suit rather than cause Moon further embarrassment. Judge Richard Owen thereupon ordered the plaintiff to pay Kelly $84,067.81 in attorneys fees and costs, plus interest. Colombrito appealed this judgment to the Second Circuit Court of Appeals, which reviewed the trial court's conclusion that attorney's fees could be assessed because the litigation was "vexatious, meritless" and "for the purpose of harassing Kelly."[122] The Circuit Court found that the suit was not frivolous.

> Colombrito's...action cannot be judged groundless. Indeed, he stood a reasonable chance of inducing a court to find that Kelly's actions were based on an anti-religious animus directed at the Unification Church [as required by Section 1985(3) of the Civil Rights Act]. Colombrito's mother had obtained a New Jersey state court guardianship order without complying with clear statutory prerequisites for such an order. Kelly and his cohorts, working in cooperation with Colombrito's father, had forcibly abducted the 27-year-old. They held him against his will and made efforts to "deprogram" him, i.e., to induce him to abandon his religious beliefs, after displaying the New Jersey state order [although Colombrito was not within the jurisdiction of the New Jersey court], which was represented to Colombrito as entitling Kelly to keep him in custody for up to 30 days. As one court said of such "deprogrammers" using such tactics, "[C]ertainly their conduct is odious and has the effect of depriving the victim of important rights—his liberty, his freedom, his right to practice his religion, among other rights." *Taylor v. Gilmartin*....
>
> The district court, however, concluded that, since Colombrito acknowledged in his testimony that his parents believed they were acting in his best interests in hiring Kelly to deprogram him and that Kelly was carrying out their wishes, the anti-religious animus or discriminatory intent required by Section 1985(3) could not be established. But parental concern and a class-based animus may co-exist or indeed sometimes merge. It could reasonably be inferred from the present record that although the parents acted out of concern for their son's well-being they simultaneously were motivated by an intense animosity toward the

118 . 633 F.2d 844 (1980).
119 . 686 F. 2d 1346 (1982).
120 . See § 5a(1) above.
121 . See § 5b(3) above.
122 . *Colombrito v. Kelly*, 764 F.2d 122 (CA2, 1985).

> Unification Church, to which he had been converted, and toward its beliefs and practices. In their view it was the Church's teachings and practices that had been their son's undoing. Whether or not their appraisal of the Church's beliefs was sincere and shared by others, this gave them no right to seek out and combine with Kelly forcibly to deprive their 27-year-old adult son (not shown in any way to be mentally incompetent) of the right freely to move about, to adopt his own life-style, and to practice the religion he chose, however abhorrent it might be to them. His right to do so is the very core of the First and Fourteenth Amendments. Even if we assumed *arguendo* that the Church's alleged "brainwashing" methods used to convert Colombrito were unlawful (e.g., constant proselytizing, fraud, chanting, preaching, self-denial, fund-raising, placement in an isolated or imprisoning abode), this would not justify or provide a defense to use of unlawful measures to "counterconvert" him by abduction, unlawful restraint, physical assault, and enforced behavior modification.
>
> Nor was the evidence with respect to Kelly's participation in the kidnapping and attempted "deprogramming" of Colombrito inconsistent with a finding that Kelly conspired with the parents and others out of a religious-based animus. His concession that perhaps 50% of his deprogramming cases were directed toward persons converted by the Unification Church, combined with his colorful description of the need to disabuse such persons of its beliefs and practices, provided the basis for a reasonable inference, despite Kelly's denial of hostility toward the Church, that he acted for the purpose of trying to prevent people from choosing that religion for themselves. Against this background it was clearly erroneous to label Colombrito's...claim groundless, frivolous or meritless....[123]

Therefore, the circuit court reversed the district court's award of fees to Kelly, so both parties took nothing, each paying its own costs.

Colombrito represents a fourth circuit court of appeals' finding against deprogrammers (with respect to reachability of deprogramming under the Ku Klux Klan Act),[124] though in this instance the Second Circuit merely held that such a claim was not frivolous. Still, its dicta (above) suggest a distinct dearth of sympathy for Kelly and his ilk, referring to their tactics as "unlawful."

6. Litigation Arising from Conversion: Against Religious Groups

The second category of litigation arising from conversion is that directed against the religious group to which an individual has been converted. The *Murphy* case

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123 . *Colombrito, supra*.

124 . 42 U.S.C. § 1985(3), discussed in items c(1), c(2) and c(3) above. The other three circuit court decisions were *Rankin v. Howard*, 633 F.2d 844 (CA9, 1980), discussed at (2) above; *Ward v. Connor*, 657 F.2d 45 (CA4, 1981), discussed at (3) above; and *Taylor v. Gilmartin*, 686 F. 2d 1346 (CA 10, 1982, discussed at (7) above.

became one of these although it started out as a complaint against deprogrammers; the grand jury declined to indict them and instead indicted the local leader of the Hare Krishna group,[125] but the judge dismissed the case.

More recently several civil suits have been undertaken against religious groups, usually by converts who have been deprogrammed and then sued the group to which they once belonged for fraud, outrageous conduct, etc. The bellwether of this growing genre is probably *Christofferson v. Church of Scientology of Portland, et al.*, instituted in 1977. Similar suits have since been launched elsewhere as a strategem of the anticult movement. Before turning to these cases, however, it is necessary to fill in important background provided by federal prosecutions directed against religious groups.

a. ***U.S. v. Ballard* (1944).** The first of these was the conviction of Guy Ballard and his wife Edna and son Donald for mail fraud. Ballard was the founder of the "I Am" movement, who claimed to have been trained by certain "ascended masters" and to be himself created by them a divine messenger, "Saint Germain," who bore their teachings to the human race, and as a result of this divine character was able to heal (or inflict) all kinds of ailments and diseases, including those considered incurable by human physicians. On the strength of these assertions, Ballard—and after his death, his wife and son—induced many persons to contribute money and property to the movement in return for the benefit of the Ballards' claimed healing influence. The Ballards defended against prosecution by arguing that they were being punished for their religious beliefs. The trial court ruled that the truth or falsity of the Ballards' religious teachings was not at issue, but only their sincerity: "Did these defendants honestly and in good faith believe those things? If they did, they should be acquitted.... If [they] did not believe those things...that they wrote, the things that they preached, but used the mail for the purpose of getting money, the jury should find them guilty."[126] The jury did find them guilty.

The U.S. Supreme Court took the case and held that the trial court had properly refused to let the jury decide the truth or falsity of the defendants' religious beliefs. Justice Douglas wrote the opinion of the Court; Chief Justice Stone dissented, joined by Justices Roberts and Frankfurter. Justice Jackson wrote a dissent that has proved at least as durable as the majority opinion.[127] For the majority Justice Douglas made an important assertion about the inviolability of religious beliefs—one of the few Supreme Court decisions to deal with belief as such—which has often been quoted:

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125. See § B5a(1) above.

126. *U.S. v. Ballard*, 322 U.S. 78 (1944).

127. See, for example, the discussion of the Jackson position in Tribe, L., *American Constitutional Law* § 14-11, 1st ed. (Mineola, N.Y.: Fndn. Press, 1978), pp. 860-862; § 14-12, 2d ed. (Fndn. Press, 1988), p. 1245; and comments in Miller, R.T. and Flowers, R.B., *Toward Benevolent Neutrality*, 3d ed., (Waco, TX: Baylor Univ. Press, 1987), p. 10.

> Freedom of thought, which includes freedom of religious belief, is basic in a society of free men.... It embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to followers of the orthodox faiths. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they may be made suspect before the law. Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with the duty of determining whether those teachings contained false representations. The miracles of the New Testament, the Divinity of Christ, life after death, the power of prayer are deep in the religious convictions of many. If one could be sent to jail because a jury in a hostile environment found these teachings false, little indeed would be left of religious freedom. The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views. Man's relation to his God was made no concern of the state. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views. The religious views espoused by respondents might seem incredible, if not preposterous, to most people. But if those doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sect. When the triers of fact undertake that task, they enter a forbidden domain. The First Amendment does not select any one group or any one type of religion for preferred treatment. It puts them all in that position.[128]

Chief Justice Stone dissented on the grounds that some aspects of truth or falsity pertaining to the Ballards' claims could have been assessed by the jury. "To go no further, if it were shown that a defendant in this case had asserted as a part of the alleged fraudulent scheme, that he had physically shaken hands with St. Germain in San Francisco on a day named..., I should not doubt that it would be open to the Government to submit to the jury proof that he had never been in San Francisco...."[129] In actuality, some such facially "neutral" proofs were offered at trial. "[T]he prosecutor stressed that the defendants had composed form-letter testimonials from non-existent persons claiming to have been healed and noted that the defendants had failed even to call their system a "religion" until they were placed on trial."[130] The Stone dissent would have left the conviction undisturbed.

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128 . *U.S. v. Ballard*, *supra*, pp. 86-87.

129 . Ibid., Stone dissent.

130 . Tribe, *supra*, § 14-12, 2d ed., p.1246, citing trial record.

Justice Jackson wrote a dissent that is quoted here—almost in its entirety—because of its acute insights into religious behavior and its trenchant and memorable exposition.

> I find it difficult to reconcile [the trial court's] conclusion with our traditional religious freedoms.
>
> In the first place, I do not see how we can separate an issue as to what is believed from considerations as to what is believable.... How can the Government prove these persons knew something to be false which it cannot prove to be false? If we try religious sincerity severed from religious verity, we isolate the dispute from the very considerations which in common experience provide its most reliable answer.

Thus far he seemed to be saying that assessments of factuality are inextricable from assessments of credibility, even of religious beliefs, which might seem to be tending toward allowing juries to determine truth as well as sincerity of religious belief. But instead he reached the opposite conclusion.

> In the second place, any inquiry into intellectual honesty in religion raises profound psychological problems. William James, who wrote on these matters as a scientist, reminds us that it is not theology and ceremonies which keep religion going. Its vitality is in the religious experiences of many people. "If you ask what these experiences are, they are conversations with the unseen, voices and visions, responses to prayer, changes of heart, deliverances from fear, inflowings of help, assurances of support, whenever certain persons set their own internal attitude in certain appropriate ways." If religious liberty includes, as it must, the right to communicate such experiences to others, it seems to me an impossible task for juries to separate fancied ones from real ones, dreams from happenings, and hallucinations from true clairvoyance. Such experiences, like some tones and colors, have existence for one, but none at all for another. They cannot be verified to the minds of those whose field of consciousness does not include religious insight. When one comes to trial which turns on any aspect of religious belief or representation, unbelievers among his judges are likely not to understand him and are almost certain not to believe him.
>
> And then I do not know what degree of skepticism or disbelief in a religious representation amounts to actionable fraud. James points out that "Faith means belief in something concerning which doubt is still theoretically possible." Belief in what one may demonstrate to the senses is not faith. All schools of religious thought make enormous assumptions, generally on the basis of revelations authenticated by some sign or miracle. The appeal in such matters is to a very different plane of credulity than is invoked by representations of secular fact in commerce. Some who profess belief in the Bible read literally what others read as allegory or metaphor, as they read Aesop's fables. Religious symbolism is even used by some with the same mental reservations one has in teaching of Santa

> Claus or Uncle Sam or Easter bunnies or dispassionate judges. It is hard in matters so mystical to say how literally one is bound to believe the doctrine he teaches and even more difficult to say how far it is reliance upon a teacher's literal belief which induces followers to give him money.
>
> There appear to be persons—let us hope not many—who find refreshment and courage in the teachings of the "I Am" cult. If the members of the sect get comfort from the celestial guidance of their "Saint Germain," however doubtful it seems to me, it is hard to say that they do not get what they pay for. Scores of sects flourish in this country by teaching what to me are queer notions. It is plain that there is a wide variety in American religious taste. The Ballards are not alone in catering to it with a pretty dubious product.
>
> The chief wrong which false prophets do to their following is not financial. The collections aggregate a tempting total, but individual payments are not ruinous. I doubt if the vigilance of the law is equal to making money stick by overcredulous people. But the real harm is on the mental and spiritual plane. There are those who hunger and thirst after higher values which they feel wanting in their humdrum lives. They live in mental confusion or moral anarchy and seek vaguely for truth and beauty and moral support. When they are deluded and then disillusioned, cynicism and confusion follow. The wrong of these things as I see it, is not in the money the victims part with half so much as in the mental and spiritual poison they get. But that is precisely the thing the constitution put beyond the reach of the prosecutor, for the price of freedom of religion or of speech or of the press is that we must put up with, and even pay for, a good deal of rubbish.
>
> Prosecutions of this character easily could degenerate into religious persecutions. I do not doubt that religious leaders may be convicted of fraud for making false representations on matters other than faith or experience, as for example if one represents that funds are being used to construct a church when in fact they are being used for personal purposes. But that is not this case, which reaches into wholly dangerous ground. When does less than full belief in a professed credo become actionable fraud if one is soliciting gifts or legacies? Such inquiries may discomfort orthodox as well as unconventional religious teachers, for even the most regular of them are sometimes accused of taking their orthodoxy with a grain of salt.
>
> I would dismiss the indictment and have done with this business of judicially examining other people's faiths.[131]

At least one court has since interpreted *Ballard* to say that "the District Court ruled properly when it withheld from the jury all questions concerning the *truth or falsity* of the religious beliefs or doctrines" of the Ballards, but that case "did *not* address the question of the propriety of submitting the issue of [their] *sincerity* to the

131 . *U.S. v. Ballard, supra*, pp. 92 ff.

jury."[132] If the question of testing even a defendant's sincerity in court is still open, then Justice Jackson may have prevailed to some extent after all.[133]

b. *Founding Church of Scientology v. U.S.* (1969). Another important federal proceeding was not a prosecution but a seizure by the Food and Drug Administration of a number of "electrical instruments and a large quantity of literature" from the Founding Church of Scientology in Washington, D.C. They were confiscated as "devices" with accompanying "false and misleading labeling" subject to condemnation under the Food, Drug and Cosmetic Act, and after a jury trial resulting in a verdict favorable to the government, a decree of condemnation was issued by Judge John Sirica.

On appeal, the District of Columbia Circuit Court of Appeals reversed in an opinion by Judge Skelly Wright that set the stage for many later Scientology cases.[134] He described the origin of "Scientology" in the works of L. Ron Hubbard, which first appeared under the title of "Dianetics" in science fiction magazines, to which he was also a prolific contributor of fiction. The essence of Dianetics and Scientology was that every person is the current embodiment of an eternal being called a "thetan" (from the Greek letter *theta*). As this being moves through successive embodiments, its progress is impeded by "engrams" or "patterns imprinted on the nervous system in moments of pain, stress or unconsciousness." These "engrams" can be removed by a process called "auditing."

"Auditing" was the central activity of Scientology and was carried on by "auditors" who were trained through Scientology to perform this function. Numerous persons came to the Church for this service and paid for it at substantial rates, many of them eventually moving on up the "Bridge" or course of study to become auditors themselves. The process was carried out with the help of an Electronic Meter or E-Meter, a simple Wheatstone bridge, consisting of two metal poles that the auditee holds, one in each hand, joined to a gauge whose needle fluctuates according to the degree of galvanic conductivity of the subject's skin, supposedly indicating variations in emotion in the same way that a lie detector or polygraph does, one of whose "graphs" or measurements is provided by a similar device. It was E-meters that were seized by the federal agents in the instant case. In the subsequent court proceeding, the government contended that the device was being sold for therapeutic functions it was unable to fulfill. Religion had nothing to do with it.

> Thus both parties have viewed the religious issue as a simple one. In the Government's view, religion is simply irrelevant—appellants have engaged in "action" and henced stripped themselves of any First

132. *Christofferson v. Church of Scientology*, Oregon Ct. of Appeals, May 3, 1982, slip op., p. 58, discussed at § d below; emphasis added.

133. See also to this effect *Van Schaick v. Church of Scientology*, 533 F. Supp. 1125, 1142, n. 16 (1982), discussed at § g below.

134. See *Christofferson v. Church of Scientology* at § d below.

> Amendment protection. In appellants' view, religion is dispositive—auditing is part of the practice of their faith and hence the free exercise clause protects it from all secular regulation. In our view, the religious issue is more complex than either of the parties has maintained....
>
> The principles enunicated in *Cantwell, Barnette* and *Sherbert* at least raise a constitutional doubt concerning the condemnation of instruments and literature apparently central to the practice of religion. That doubt becomes more serious when we turn to the decision of the Supreme Court in *United States v. Ballard*....
>
> [T]he holding of [that] case seems to be that regulation of religious action which involves testing in court the truth or falsity of religious belief is barred by the First Amendment.
>
> The relevance of *Ballard* to the case before us is obvious. Here the E-meter has been condemned, not because it is itself harmful, but because the representations made concerning it are "false or misleading".... Thus...a finding that the seized literature misrepresents the benefits from auditing is a finding that their religious doctrines are false. To construe the Food, Drug and Cosmetic Act to permit such a finding would, in the light of *Ballard*, present the gravest constitutional difficulties.[135]

Most of the government's contention about "mislabeling" was based on material from the general literature of Scientology, such as the claim in Hubbard's *Scientology: A History of Man* ("perhaps the most obscure and impenetrable of the books," the court remarked): "Cancer has been eradicated by auditing out conception and mitosis."

> These, however, are the books which set forth the doctrines of Scientology. If that movement is a religion, as...the government has not denied, these books are its scriptures.... Many will find these doctrines... absurd or incoherent. But the *Ballard* case makes suspect the legal inquisition of such doctrines where they are held as religious tenets.
>
> Were the literature here introduced clearly secular, we might well conclude that under existing law it constituted "labeling" for purposes of the Act.... However, such broad readings are not favored when they impinge upon constitutionally sensitive areas, especially in the absence of a showing of legislative intent to regulate these areas. Nothing in the history or interpretation of the Act indicates that it was meant to deal with the special problem of religious healing, a problem often given legislative treatment separate from that imposed upon the general area of public health and medical practice.[136]

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135 . *Founding Church of Scientology v. U.S.*, 409 F.2d 1146, 1154-6 (CADC, 1969).

136 . Ibid., 1158. Note 42 at the end of this quotation cited the exemption from the medical licensing laws in the D.C. Code of "persons treating human ailments by prayer or spiritual means as an exercise or enjoyment of religious freedom," and noted the exemption of Christian Scientists from many health regulations.

At last the court turned to the central question that determined all the rest: *Is Scientology a religion*?

> On the record as a whole, we find that appellants have made out a *prima facie* case that the Founding Church of Scientology is a religion.... Its fundamental writings contain a general account of man and his nature comparable in scope, if not in content, to those of some recognized religions. The fact that it postulates no deity in the conventional sense does not preclude its status as a religion.
>
> The Government might have chosen to contest the claim that the Founding church was in fact a religion. Not every enterprise cloaking itself in the name of religion can claim the constitutional protection conferred by that status.... Though litigation of the question whether a given group or set of beliefs is or is not religious is a delicate business, our legal system sometimes requires it so that secular enterprises may not unjustly enjoy the immunities granted to the sacred.... Since the government chose not to contest appellants' claim to religious status, and since in our view appellants have made a *prima facie* case for such status, we conclude that for purposes of review of the judgment before us they are entitled to the protection of the free exercise clause....
>
> [The Government] has not tried to argue or prove, for instance, that even if Scientology as practiced here is a religion, auditing services have been peddled to the general public on the basis of wholly non-religious pseudo-scientific representations. We cannot assume as a matter of law that all theories describing curative techniques or powers are medical and therefore not religious. Established religions claim for their practices the power to treat or prevent disease, or include within their hagiologies accounts of miraculous cures. In the circumstances of this case we must conclude that the literature setting forth the theory of auditing, including the claims for curative efficacy contained therein, is religious doctrine of Scientology and hence as a matter of law is not "labeling" for the purposes of the Act....
>
> We have found that, under *Ballard*, these theories are not properly subject to courtroom evaluation as to truth or falsity.
>
> Since the jury's general verdict may have rested in whole or in part on a finding that this literature was false or misleading labeling of the E-meter, that verdict must be set aside.[137]

c. *U.S. v. Article or Device* (1971). The government pursued its case against the insidious E-meter in the district court, and in 1971 Judge Gerhard Gesell delivered his decision on the subject, which represents the final outcome of the litigation just described. The judge clearly had little enthusiasm for the subject-matter. In his first

137 . Ibid., 1159-1161.

sentence he referred to the object on trial[138] as a "gadget" and its promoter as follows: "Hubbard...is a facile, prolific author and his quackery flourished throughout the United States and in various parts of the world."

> Hubbard and his fellow Scientologists developed the notion of using an E-meter to aid auditing. Substantial fees were charged for the meter and for auditing sessions using the meter.... An individual processed with the aid of the E-meter was said to reach the intended goal of "clear" and was led to believe there was reliable scientific proof that once cleared many, indeed most illnesses would automatically be cured. Auditing was guaranteed to be successful. All this was and is false—in short, a fraud. Contrary to representations made, there is absolutely no scientific or medical basis in fact for the claimed cures attributed to E-meter audition.
>
> Unfortunately the Government did not move to stop the practice of Scientology and a related "science" known as Dianetics when these activities first appeared and were gaining public acceptance. Had it done so, this tedious litigation would not have been necessary. The Government did not sue to condemn the E-meter until the early 1960's, by which time a religious cult known as the Founding Church of Scientology had appeared. This religion, formally organized in 1955, existed side-by-side with the secular practice of Scientology....
>
> In 1962, when the Government seized the E-meters involved in the present controversy, it took them from the premises of the Church, confiscating some E-meters which were actually then being used primarily by ministers of the Church to audit adherents or to train auditors for subsequent church activity. Thus the Government put itself in the delicate position of moving against not only secular uses of the E-meter but other uses purporting to be religious.

Central to the court's reasoning in this case was the understanding—presumably correct—that much of the use of the E-meter was not religious, and indeed originally all such use was secular. "At the time this action was commenced, E-meters—perhaps as many as one-third the total supply—were being used by members of the public without any religious control or supervision."

> Viewed as a whole the thrust of the writings is secular, not religious. The writings [of Hubbard] are labeling within the meaning of the Act. Thus the E-meter is misbranded and its secular use must be condemned along with secular use of the offensive literature as labeling.... On the basis of these findings, the Government is entitled to some relief. It is only when the Court confronts the question of appropriate remedy that serious difficulties arise.[139]

* * *

138. In a proceeding *in rem*, the government was seeking a condemnation of an inanimate object, referred to as an "Article or Device... Hubbard Electrometer...."

139. *U.S. v. Article or Device*, 333 F. Supp. 357 (1971).

> The positions of the two parties are so completely different that neither even deigns to recognize any merit in the other. The briefs and findings proposed by each side pass like two ships at night with not even a port or starboard light showing. Yet the truth is not as absolute as either side contends....
>
> * * *
>
> Since the bona fides of the religion remain unquestioned on this record, the Government's position is an oversimplification. Here is a pseudo-science that has been adopted and adapted for religious purposes. The literature held to make false representations, while in itself non-religious, nevertheless comprises for some, part of the writings, teachings and history of a religion.... What the layman reads as straight science fiction becomes to the believer a bit of early imperfect scripture....

The court therefore rejected the government's contention that it could condemn the E-meters and accompanying literature without interfering with religion.

> Serious interference indeed results if the Church is entirely prohibited from using the E-meter by condemnation or if the Court orders the Food and Drug Administration to oversee a general rewriting of all the Church purveys....
>
> For these reasons, the Church may not be wholly prevented from practicing its faith or seeking new adherents....
>
> A decree of condemnation will therefore be entered, but the Church and others who base their use upon religious belief will be allowed to continue auditing practices upon specific conditions which allow the Food and Drug Administration as little discretion as possible to interfere in future activities of the religion.
>
> All E-meters are condemned together with all writings seized. The Government shall have its costs.
>
> The device and writings condemned shall be returned to the owners, upon execution of an appropriate bond, to be destroyed or brought into compliance with the...Act. An E-meter shall be deemed to comply with the Act if and only if it is used, sold or distributed...for use in bona fide religious counselling....
>
> The device should bear a prominent, clearly visible notice warning that any person using it for auditing or counselling of any kind is forbidden by law to represent that there is any medical or scientific basis for believing or asserting that the device is useful in the diagnosis, treatment or prevention of any disease.[140]

Similarly, all literature referring to the E-meter or to auditing was ordered to bear a warning to the same effect. Thus ended the long-running Saga of the Insidious Artifact, with neither the government nor the church getting the settlement it wanted.

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140 . Ibid., pp. 363-364.

d. *Christofferson v. Church of Scientology* (1982). Julie Christofferson moved to Portland, Oregon, from Montana in July 1975 and became interested in Scientology through a friend. She applied to take an entry-level course in communications; as part of the registration, she applied for membership in the Church of Scientology. Since she was not yet eighteen years of age, she was required to have parental permission, so she telephoned her mother in Montana and dictated a letter of consent, which her mother typed, signed and returned.

She then took the communications course (after payment of a $50 fee) and thereafter took several additional courses. In September 1975 she applied for a position on the staff of the Delphian Foundation, a nonprofit educational institution related to the Church of Scientology, informing her parents that she had decided not to enter college that fall as previously planned. She moved to Sheridan, Oregon, in October and worked at Delphian there until December, when "she was asked to leave Delphian until she could convince her mother to stop opposing her involvement in Scientology." She moved back to Portland and worked as a waitress while trying to persuade her mother to accept her interest in Scientology. In April, 1976, she made a trip back to Montana to try to "handle" her parents or else to "disconnect" from them. When she reached her parents' home, she was locked in the house and "deprogrammed." She turned against Scientology as a result, helping to deprogram others, and the next year filed suit against the Church of Scientology of Portland, the Delphian Foundation, the (Scientology) Mission of Davis, and Martin Samuels, an ordained minister of the Church of Scientology and president of the Mission and of Delphian, who had been instrumental in forming Miss Christofferson's relationship with Scientology. The jury awarded her damages totalling $2,000,000.

The Court of Appeals for the State of Oregon reversed as to all defendants, dismissed the Church of Scientology of Portland and the Delphian Foundation, and remanded for a new trial with regard to the Mission and Martin Samuels. It did so on the following basis:

a. "Outrageous conduct." The plaintiff had advanced two charges of outrageous conduct, (i) A scheme to gain control of her mind and to force her into a life of servitude; (ii) A course of action since her departure designed to threaten, humiliate, intimidate and punish her for her defection.

After reviewing the plaintiff's allegations and the trial record at great length (fifteen pages), the court concluded with reference to Count I:

> Whether viewed as individual acts or taken together as a "scheme," we find nothing in this record which constitutes conduct which is "beyond the limits of social toleration." There is no evidence that plaintiff was threatened or forced to remain involved in Scientology. To the contrary, she maintained many contacts with non-Scientologists.... Plaintiff became involved and maintained her involvement because she desired to do so. If misrepresentations were made regarding the benefits or the nature of

> Scientology which gave rise to that desire, her remedy would be for fraud, not outrageous conduct.
>
> Plaintiff was recruited and indoctrinated into the Church of Scientology. That recruitment and indoctrination, as far as this record discloses, were not so very different than might be used by any number of organizations. She joined the group voluntarily, albeit, as she claims, on the basis of misrepresentations made to her. However, she continued to participate and maintained her involvement for whatever reason without actionable threats or coercion by defendants.
>
> The drills plaintiff was subjected to as part of the communication course...were not in themselves outrageous. Plaintiff studied the theory behind each drill before participating in it. She returned day after day to participate in the course, although she had daily contact with non-Scientologists in her job and at her apartment with her non-Scientologist roommate. The most that can be said is that plaintiff was convinced by defendants to accept what they were teaching; unless the means involved more than persuasion, that is not outrageous.

Count II of outrageous conduct referred to Christofferson's experience after she left the Church of Scientology. The specific allegations were that the church had filed suit against her for libel, had declared her to be a "suppressive person" subject to their "fair game" policy [supposedly authorizing members of the church to take retributive actions against her]; had forbidden church members to communicate with her; sent materials to her through the mail despite her request that such mailings cease. With respect to these specifics, the court noted that the record did not indicate that the libel suit was without foundation, and quoted a recent Oregon decision to the effect that "it would be a rare case in which the bringing of a lawsuit would fit the definition of outrageous conduct." Likewise, there was no evidence that defendants had designated her a "suppressive person" subject to retaliation, or had so informed her or knew or intended that she be so informed. Her information to that effect had all come by way of third parties, i.e., hearsay.

There was written evidence that church members had been directed not to communicate with her—a memo to "all staff" issued June 7, 1976. This followed by one day receipt of a letter from an attorney representing Christofferson that advised church leaders that she had been deprogrammed and would pursue legal assistance "should you make any effort to induce [her] back into the cult.... Therefore you are hereby on notice that any attempt to contact them, or to interfere with them in any manner, will result in most grave consequences to you." Said the court in a mild understatement: "Following, as the directive had, the letter from plaintiff's attorney demanding that defendants not contact plaintiff in any way, the orders [by the Church] that [her] demand be met can in no way be considered outrageous conduct."

b. "Fraud." The court then reviewed the charge of fraud, which listed a long array of claims made about the excellence of Scientology courses, the status and credentials of its leaders, the improvements that "auditing" [E-meter counselling] would make in

one's life, etc., with the allegations that these were false representations and known to be false by those who made them.

The court weighed the contentions by the defendant Church of Scientology of Portland and defendant Delphian Foundation that such representations—whether true or not—had not been made by any agents or employees of theirs, nor had they received any money as a result of such representations (both elements in fraud). The court concluded that the plaintiff had not shown any direct connection between those representations, made by the Mission of Davis and its staff, and the two other defendants sufficient to create any liability in the latter for the alleged misdeeds of the former. The court therefore dismissed the Portland Church and the Delphian Foundation as defendants for fraud.

That left only two defendants in the case, the Mission of Davis and Martin Samuels, which did appear from the evidence to have some knowledge of and responsibility for the alleged fraudulent misrepresentations. Their chief defense was that their actions were religious and therefore could not be adjudged by a civil court as to their validity or sincerity, and the court turned ponderously to that issue. "A defense based on the Free Exercise Clause presents particular difficulties in an action for fraud. To establish fraud, a plaintiff must ordinarily prove that the representations made were false.... However, when religious beliefs and doctrines are involved, the truth or falsity of such religious beliefs or doctrines may not be submitted for determination by a jury." At this point the court cited *U.S. v. Ballard*, quoted even more of the majority opinion than is excerpted in section (a) above and concluded:

> The fundamental qualification for protection based on the Free Exercise Clause of the First Amendment is that that which is sought to be protected must be "religious...." The Mission claims that Scientology is a religion and that statements regarding its beliefs and practices are protected. Plaintiff does not claim that Scientology is *not* a religion, but instead concentrates on the particular representations at issue. She contends that those representations are not religious statements, no matter what the status of Scientology, and that the statements are therefore not protected by the First Amendment.
>
> Plaintiff's approach to this case has been to treat the alleged statements by defendant *in vacuo*, but we do not believe that it is constitutionally permissible to approach them that way.... Statements made by religious bodies must be viewed in the light of the doctrines of that religion. Courts may not sift through the teachings of a religion and pick out individual statements for scrutiny deciding whether each standing alone is religious.

The court found that the question of whether allegedly fraudulent statements were protected by the First Amendment resolved itself into several questions: (1) Was the organization religious? (2) Did the statements relate to the religious beliefs and

practices of a religious organization? (3) Were the statements themselves made for a religious purpose?

> (1) Without attempting an "unprecedented definition of religion...," we draw guidance from the case law. We find that, while beliefs relating to the existence of, and man's relationship to, a God are certainly religious, belief in a traditional, or any, "god" is not a prerequisite to a finding that a belief is religious.... Neither does the fact that Scientology is of relatively recent origin mean that it is not entitled to the protection of the First Amendment.... On the other hand, "[a] way of life, however virtuous and admirable, [is not entitled to First Amendment protection] if based on purely secular considerations"....
>
> Courts may not, of course, judge the "truth" or "falsity" of the beliefs espoused by a group in determining its status as a religion; the inquiry here is simply whether the teachings of Scientology are of the *type* that qualify for the protection of the Free Exercise Clause. The record in this case demonstrates indisputably that they are.... It seems clear that if defendants sought to teach Scientology in the public schools in this country, they would be prohibited from doing so by reason of the Establishment Clause of the First Amendment.... The theories of Hubbard are interrelated and involve a theory of the nature of the person and of the individual's relationship with the universe....
>
> The Mission is incorporated as a tax-exempt religious organization; it has ordained ministers and characterizes itself as a church. It has a system of beliefs, or creed, which encompasses beliefs which are religious in character. We conclude that Scientology is a religion and that the Mission is a religious organization entitled to invoke the protection of the Free Exercise Clause.
>
> (2) It is clear that a religious organization, merely because it is such, is not shielded by the First Amendment from all liability for fraud.... If the statements involved here do not concern the religious beliefs and practices of the Mission, the Free Exercise Clause provides no defense to plaintiff's action. Defendant presented evidence that the courses and auditing in which plaintiff participated, and about which the alleged misrepresentations were made, were part of the religious beliefs and practices of Scientology. Plaintiff did not, and does not, contest that fact.
>
> (3) [P]laintiff did present evidence that the courses and auditing she received were offered to her on an entirely secular basis for self-improvement..., that she was told that the term "religion" and "church" were used only for public relations purposes.

On the other hand, the court said, there was evidence that she was informed that "the courses and practices were religious in nature," and that the materials she read

contained printed statements that "Scientology is a religion, that auditing is a religious practice and that the E-meter is a religious artifact."[141]

The court recalled that in *U.S. v. Article or Device*[142] it was determined that "Scientology services were offered on both a religious and a secular basis and that the E-meter was misbranded because much of the literature explaining its use and expounding its value was presented in an entirely non-religious context."[143] Since the E-meter was used by secular organizations as well, the *Article or Device* court prohibited secular use, but permitted it to be used only in bona fide religious counselling.

> The court did not consider whether use *by the Church* could be on a secular as well as on a religious basis. We believe such a possibility exists.
>
> There are certainly ideas which may only be classified as religious. Statements regarding the nature of a supreme being, the value of prayer and worship are such statements. There are also, however, statements which are religious only because those espousing them make them for a religious purpose. The statements which are alleged by plaintiff to be misrepresentations in this case are not of the type which must always and in every context be considered religious as a matter of law.
>
> * * *
>
> In the situation presented here, it is difficult to determine *whose* sincerity or good faith the jury could be asked to determine. Is the religious organization to be held liable if one of its ministers is less than a true believer? Or is it to be saved from liability if the individual who makes the statement truly believes, but others in the church do not?
>
> * * *
>
> As we have indicated, defendants could be held liable if the jury found that the courses and services offered by the Mission to plaintiff were offered for a wholly secular purpose. *A wholly secular purpose means that....the statements were made for a purpose other than inducing plaintiff to join or participate in defendants' religion. A wholly secular purpose*, in this regard, would include, but not be limited to, *the intention solely to obtain money from plaintiff*. On this record it would have been proper to instruct the jury that it is possible to find that the services were offered on a wholly secular basis notwithstanding the fact that plaintiff was required to join the Church of Scientology in order to participate and that the materials she was given to read stated that Scientology is a religion. A jury could find that the courses and services were offered on a secular basis and that a religious

141 . *Christofferson, supra*, quotations are the court's wording, not necessarily those of the sources referred to.

142 . 333 F.Supp. 363, discussed immediately above.

143 . *Christofferson, supra*, the wording is that of the Oregon court.

> designation had been merely "tacked on." Phrasing the issue as one of good faith was therefore misleading and erroneous.[144]

The court thus reversed the conviction of fraud, held that only the Mission and Martin Samuels could be liable, and that their liability could be determined only on retrial with proper jury instructions on the Free Exercise defense.

The crux of the decision may be worth analyzing for its unexamined assumptions. The imputation of a "wholly secular purpose" to statements made by a religious organization or its agents which may have either a "religious" or a "secular" significance, or both, is not an unreasonable proposal, since it is far from inconceivable that religion might be used as a sham or cover for nonreligious activities. Indeed, that has sometimes been the case, though not nearly as often as alleged. It is one of the standard charges made against new religious movements that they are "not really religious," but merely tax shelters or commercial enterprises or political machinations masquerading as religions for the legal protections afforded by the First Amendment, and that charge has been hurled at L. Ron Hubbard and the Church of Scientology since the latter's inception. It might be all too easy for a jury instructed in the manner recommended by the Court of Appeals to fall in with the endemic suspicion of new religions and to impute to the defendants the "wholly secular purpose" (suggested by the court as possible) in the utterance of even the most religious statements, not to mention ambiguous ones. What sort of guidance did the court offer in this hazardous assignment of discerning "wholly secular purpose" in statements claimed by those making them to be religious?

The court identified specimens at both ends of the spectrum. On the clearly religious end, it considered statements "regarding the nature of a supreme being, the value of prayer and worship" to be unambiguously religious, though it did not exclude the possibility that even these could be mouthed for "wholly secular purpose"; it just said that the statements at issue in this case were not of that sort, but would ordinarily be considered secular except for the allegedly religious purpose of those making them. Even more solidly placed on the religious end were those statements—whether in *content* religious or secular or mixed— whose *purpose* was religious. How were they to be recognized? By *not* being made "for a purpose *other* than inducing [persons] to join or participate in defendant's religion." When the double negatives are removed, it appears that in the court's view *the one unalloyed religious purpose recognized is to win converts or adherents for the religion—evangelism.*

At the other end of the spectrum an example is given of a "wholly secular purpose": "solely to obtain money from plaintiff." (The court made clear that there were other possible secular purposes as well.)

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144. Ibid. The quotation is from *Founding Church of Scientology v. U.S.*, 409 F.2d at 1165. Emphasis added.

In between are an infinity of purposes, many of which might be considered by the great historic religious traditions to be quintessentially religious: to seek justice, to defend the weak, to succor the oppressed, to help lost souls find God (whether they join the speaker's church or not), to develop human potential to its fullest constructive fruition, to witness to what God is doing in history, etc. To be sure, most religious proponents seek, expect or imply that their hearers will be attracted to the particular way that they themselves have found, but that is not an indispensible and indisseverable element of religious purpose. On the other hand, seeking contributions for the advancement of the faith is an indisputably religious purpose—as will be seen in the next section[145]—yet a jury instructed as the court suggests might well view any statement that resulted in the transfer of money from hearers to the religious group as "solely to obtain money from plaintiff."

How are these intermediate purposes, which the court did not explicitly identify, to be assessed? They are, according to the court, to be considered "wholly secular purpose[s]," since they are "*other* than inducing [persons] to join or participate in defendant's religion." Thus, the court explicitly stated that the *only* purpose that is *not* potentially "wholly secular" is *winning members or participants to the speaker's religion*—an incredible assertion that surely goes beyond what the court—or any reasonable person aware of the scope and potential of religion—could seriously intend.

This case has been dealt with at some length, not only because it is the leading case in a line that promises to grow longer, but because it represents a major threat to all religion and particularly to the validity and sanctity (in a legal as well as a religious sense) of conversion. If converts—or members—can leave a religion and then turn around and sue it for fraud and collect damages because it did not deliver on the promises the member perceived to have been made, what religion is safe? Every religion offers hopes and expectations—express or implied—that life will be better, the future will be brighter, things will turn out all right, for those who hear and believe and belong. And if that does not prove to be the case within one year, is the convert entitled to collect on failure of warranty? Is it a defense that the convert did not have adequate faith or did not follow prescribed rites with sufficient accuracy or fervor? (Oddly enough, that distinctively religious defense was not asserted in *Christofferson*.) Failure to follow directions is usually a defense in breach of warranty. Are the courts then to be asked to determine whether the convert's faith was adequate or whether prayers and fasting were properly performed or whether the convert was truly repentant at conversion?

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145. See § C below. See also the Supreme Court's recognition of this fact in *Murdock v. Pennsylvania*, at § A2i above, and its recognition in *Village of Schaumberg v. Citizens for a Better Environment*, 444 U.S. 620 (1980), for recognition that even secular solicitations can have an important ideological component that is protected by the First Amendment.

Christofferson seems to represent an appellate court's conscientious effort to rectify a trial result that looked appalling in the cold light of day, and in doing so it waded courageously but perhaps improvidently out into a quagmire that could prove disastrous for courts and religion alike. It might have been better for both to follow the teaching of Justice Jackson in *Ballard* and "*have done with this business of judically examining other people's faiths*."[146] Julie Christofferson freely invested $3,000 and several months of her late adolescence in an involvement with Scientology that she seemed to find worth the investment until her affiliation was broken by the forcible intervention of her parents, whereupon she followed the course of suing the object of her former adherence. Viewed objectively, she neither alleged nor proved any serious harm done by her experience with Scientology to match the claim of $2,000,000. It might have been better for all concerned, since this litigation had already run for seven years and might well end in defeat for her and her attorneys, if the church's original defense had been accepted by the courts: that the free exercise of religion is a sufficient defense in a civil suit charging fraud and outrageous conduct arising solely from religious speech.

That supposition is not meant to indicate approval—or disapproval—of the practices of Scientology, specifically what may or may not have been done in the Mission of Davis with reference to Ms. Christofferson, nor is it meant to imply that there are not gross, secular frauds practiced in the name of religion, such as those that even Justice Jackson (as well as Chief Justice Stone) admitted the criminal law could reach. "I do not doubt that religious leaders may be convicted for fraud for making false representations on matters other than faith and experience, as for example if one represents that funds are being used to construct a church when in fact they are being used for personal purposes."[147]

(In an another place a superficially similar but essentially very different phenomenon is discussed: religious scams designed to avoid taxes—called "mail order ministries" or "tax protesters" by the Internal Revenue Service[148]—which should be prosecuted to the fullest extent of the law.)

The suggestion here is that civil proceedings under the law of torts may not be a promising course for redress of supposed, at least partly spiritual, harms and may indeed create far more problems than it resolves.

e. *Christofferson II* (1985). Eventually the case was tried again in Portland, Oregon. The Church of Scientology held daily rallies during the trial, starring some currently popular performing artists, to protest what they viewed as a witch-hunt. Nevertheless the plaintiff's attorney used every rhetorical device to play upon the jury's anxieties and sympathies, with the result that they awarded Julie Christofferson Tichbourne damages in the amount of $39,000,000! But—after a few

146 . *U.S. v. Ballard*, *supra*, Jackson dissent, quoted in § a above.

147 . *U.S. v. Ballard*, *supra*.

148 . See PSEUDO-CHURCHES discussed at VC6c(12).

days' reflection—the judge declared a mistrial because of prejudicial and improper statements made by her attorney in argument to the jury.[149]

f. *Turner v. Unification Church* (1978). Another case in the same genre involved the Unification Church of Sun Myung Moon, which was sued by a disgruntled former member, Shelley Anne Turner, in federal court in Rhode Island, charging that she had been held in involuntary servitude to the church, working long hours with no compensation. She sought the federal forum under the Civil Rights Acts, Sections 1983 and 1985(c)—an interesting switch on the cases against deprogrammers discussed above.[150] Chief Judge Pettine dismissed the Section 1983 claim because "None of the defendants possess the slightest tinge of state color or action,"[151] and the Section 1985(c) claim because the plaintiff "fails to allege that the defendants' conspiracy [against her] was motivated by any class-based discriminatory animus, be it racial, sexual or religious."

The plaintiff also prayed the court to find civil causes of action in several federal criminal statutes against peonage, involuntary servitude, and failure to file with the IRS a statement of her earnings and to make employer's Social Security payments on her behalf. The court noted that "peonage" requires a showing of bondage arising from indebtedness of the peon to the master, and the plaintiff had made no allegation that her alleged subjugation was based upon any indebtedness. "Involuntary servitude," on the other hand, "usually includes both elements of physical restraint and complete psychological domination." The court held that she had not clearly alleged those elements, and even if she had, "there is no indication that Congress intended to create a civil cause of action under this criminal statute," nor under the peonage one. The same was said of the tax provisions, in addition to which the court found that with respect to them she had never been an "employee" of the church. The court therefore concluded that none of the claims advanced by Ms. Turner stated a cause of action under which relief could be granted, and so dismissed them all.

g. *Van Schaick v. Church of Scientology* (1982). A few years later, a federal district court in Massachusetts dealt with a similar suit against the Church of Scientology filed by a disaffected former member, La Venda Van Schaick, who in addition to the usual charges of intentional infliction of emotional distress, breach of contract and violation of fair labor standards added a new wrinkle, violation of the Racketeer Influenced Corrupt Organizations Act (RICO). The pertinent parts of that act afforded treble damages to anyone "injured in his business or property" by any enterprise conducting its affairs through a "pattern of racketeering activity," which was defined as "the commission of two or more specific criminal acts, including extortion and mail fraud, within a ten-year period."[152]

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149 . Ore. Cir. Ct., Multnomah County, July 19, 1985.

150 . Cf. discussion of Civil Rights Act under *Baer, Ward, Eilers*, etc., at § 5c above.

151 . *Turner v. Unification Church*, 473 F. Supp. 367 at 372 (1978).

152 . 18 U.S.C. §§ 1964(c), 1962(c), as characterized by the court in *Van Schaick v. Church of Scientology*, 535 F.Supp. 1125 (1982).

The court found RICO inapplicable and so dismissed the RICO counts. Even if it had not dismissed them for that reason, the court remarked, "these counts would encounter further objection if the court should find Scientology entitled to protection as a religion."

> In order not to risk abridging rights which the First Amendment protects, courts generally interpret regulatory statutes narrowly to prevent their application to religious organizations. At times, they will require "a clear expresson of Congress' intent" before subjecting religious organizations to regulatory laws pertaining to other entities.[153] Even where clear proof of such intent exists, courts have sometimes construed statutes to exclude religious groups from coverage to avoid "an encroachment by the State into an area of religious freedom which it is forbidden to enter by the principles of the free exercise clause of the First Amendment."[154]

The plaintiff had charged the church with "intentional infliction of emotional distress," and one of the respects in which that was said to have been brought about was that

> [t]he Church exhorted her to sever family and marital ties and to depend solely on the Church for emotional support.... [T]hese alleged courses of conduct [do not constitute] the kind of extreme and outrageous action which will support a claim for intentional infliction of emotional distress.... *They are similar to the demands for single-minded loyalty and purpose that have characterized numerous religious, political, military and social movements over the ages*.[155]

The emphasized sentence is a mode of judicial assessment employed all too infrequently when examining charges against religious behavior that to the mind unacquainted with history may seem bizarre or extreme. Some might fault the judge for relying upon "facts not in evidence" in the case record, and indeed the court did take "judicial notice" of empirical data not introduced by either party. But one of the most commendable qualities of the most respected jurists is their ability to place contested acts, events, utterances or attitudes in perspective with the whole rich tapestry of human endeavors—an attribute that is not conferred merely by being elevated to the bench but by attaining a certain rare degree of knowledge, culture, insight and wisdom that should be one of the primary desiderata in the purview of the committees that recommend or evaluate candidates for judicial office.

Van Schaick alleged fraud with respect to several representations the Church had made that the court found to be secular in nature but not with sufficient specificity of time, place and content to be actionable, so the court gave leave to amend the

153 . Citing *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979), discussed at ID3a.
154 . Citing *McClure v. Salvation Army*, 460 F.2d 553 (CA5 1972), discussed at ID2b.
155 . *Van Schaick, supra*, at 1139, emphasis added.

complaint in such a way as would repair those defects. The remaining counts of the complaint, alleging fraud, posed possible First Amendment problems *if* "the Church of Scientology is entitled to First Amendment protections."

> A claim for relief based upon fraud must include proof that defendant knowingly made a false statement. Proof of those elements—that the statement was false and that defendant knew of its falsity—becomes problematic when the statement relates to religious belief or doctrine[156].... Whether the First Amendment immunizes those statements from judicial scrutiny depends, however, on whether the statements relate to religion or religious belief. "Only beliefs rooted in religion are protected by the Free Exercise Clause, which by its terms, gives special protection to the exercise of religion."[157] We must first determine whether defendant is entitled to the constitutional protections reserved for religious institutions and beliefs.

The court recalled that the Founding Church of Scientology had been held to be entitled to such protection in the Food and Drug Administration's E-meter seizure because it had made a *prima facie* case that it was a religion, which the government did not contest. In effect, Van Schaick was challenging that assertion.

> If this case involved an established religion, the Court could, of course, accord it treatment as such without further inquiry.... Although...the Free Exercise clause protects all religions, old and new, alike once its protection attaches, in determining whether that protection applies courts may require a newer faith to demonstrate that it is, in fact, entitled to protection as a religion.... Scientology is not an established religion whose tenets, doctrines and policies are generally known. The court may not, therefore, by judicial notice identify it as a religion.[158]

What might ultimately have been the outcome of this litigation is unknown, since the parties reached a settlement out of court.

h. ***Meroni v. Holy Spirit Association*** **(1986).** In the neighboring state of New York a suit charging wrongful death and other torts was brought against the Unification Church by the father of a young man who was involved for a month in its Collegiate Association for the Research of Principles (CARP) while a student at Columbia University. Several months after returning home, the young man committed suicide on January 9, 1978, and his father attributed responsibility for his death to the Unification Church. Several of his causes of action were dismissed by the state court, and the remaining counts were appealed to the Appellate Division of Supreme Court, where a unanimous decision for a panel of four judges was delivered by Justice Niehoff on September 2, 1986.

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156. Citing *U.S. v. Ballard, supra*.
157. Quotation is from *Thomas v. Review Board*, 450 U.S. 707, 713 (1981), discussed at IVA5l.
158. *Van Schaick, supra*, p. 1144.

The court dealt first with the allegation that the church had intentionally inflicted severe emotional distress upon son and father, as that tort is ordinarily defined.

> Although we sympathize with the plaintiff for the loss of his son, we find that his...complaint...as a matter of law, fail[s] to allege conduct so outrageous in character and so extreme in degree, as to be regarded as atrocious, and utterly intolerable in a civilized community.
>
> In his amended complaint, the plaintiff alleges that the defendant Unification Church subjected the decedent to "highly programmed behavioral control techniques in a controlled environment thereby narrowing his attention and causing him to go into a trance. He was subject to an intense fasting from food and beverages...," [whereby] defendant church sought and succeeded in exercising a "form of hypnotic control, sometimes called `brainwashing'." The plaintiff claims that as a direct result of this "intensive program," the decedent suffered an "emotional breakdown."
>
> The bill of particulars further describes the "intense, heavy and protracted" program of exercises as including long hikes and group exercises. The form of information control exercised over the decedent consisted of isolating [him] from "all information about himself or others which would cause him to question the activities of the Unification Church. This would include access to printed, aural and visual media, access to any area or people outside the training camp, and limited or monitored access to friends and family through telephone calls." The plaintiff's bill of particulars also makes reference to confessions, lectures, and highly structured work and study schedules.
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> * * *
>
> [T]he United States Constitution guarantees that a church may practice its religious beliefs without judicial interference, provided, of course, that in so doing it does not commit tortious conduct. From the record before us it is clear that one of the beliefs of the Unification Church is that its recruits should undergo a rigorous program of physical and mental training. Assuming all of the allegations in the plaintiff's complaint to be true, the conduct of the Unification Church described therein, which the church utilizes in carrying out that belief, does not give rise to liability for intentional infliction of emotional distress.
>
> [The church's conduct,] which the plaintiff seeks to classify as tortious, constitutes common and accepted religious proselytizing practices, e.g., fasting, chanting, physical exercises, cloistered living, confessions, lectures, and a highly structured work and study schedule. To the extent that the plaintiff alleges that the decedent was "brainwashed" as a result of the church's program, this claim must be viewed in the context of the situation as a whole, i.e., as a method of religious indoctrination that is neither extreme nor outrageous when it is considered that the subjects of the so-called "brainwashing" are voluntarily participating in the program, and the various activities mentioned above, which allegedly induced the

> "mind control," are not considered by our society to be beyond all possible bounds of decency.
>
> [The fact that the decedent was "emotionally disturbed"] does not make the proselytizing conduct of the appellant any more extreme or outrageous, for it is not uncommon for those who are confused and depressed to seek guidance from a religion, and to submit themselves to the dictates of that religion in an effort to solve their problems.
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> * * *
>
> Like the plaintiffs in the *Molko* case,[159] the plaintiff's son, who was not gravely disabled, had the personal and individual right to determine for himself whether to associate with the defendant church, and neither he nor his distributees may recover damages because, in an effort to solve his emotional problems, he chose to subject himself to the church's discipline, which included accepted practices designed to persuade him to adopt the church's religious beliefs.[160]

Observing that there had been no allegations of deception, of forcible restraint or threat of force, the court looked with some skepticism upon the shrill claims of the anti-cult activists—which the plaintiff's papers quite typically reflect—that a religious group is somehow engaged in nefarious conduct when it is simply following the rather ordinary patterns of zealous proselytizing and disciplined devotion often characteristic of high-demand, high-energy religious organizations through the centuries. All the great religions began with energetic intensity (though they have subsequently "matured" to a more relaxed condition). *Conduct that produced the religions that we know best can hardly be "outrageous."* Remarking matter-of-factly that the conduct complained of in this case "constitutes common and accepted religious proselytizing practices" and thus was not actionable, the *Merino* court introduced a much-needed breath of common sense into the highly charged anticult climate, indicating an awareness of the historical range of religious practice that the anticultists seem to lack. The court concluded that the church could not be held responsible for Charles Meroni's "wrongful" death because it had not been shown to have done anything wrong.

i. *Molko and Leal v. Unification Church* (1983). In San Francisco a Superior Court judge decided a similar case involving the Unification Church. Affidavits were introduced which included lengthy declarations by "expert" witnesses such as Dr. Margaret Singer designed to substantiate the plaintiffs' claims to having been subjected to "mind control" by the church. Tracy Leal and David Molko were members of the Unification Church for four and six months, respectively, until they were forcibly abducted by professional kidnappers and deprogrammed. Thereafter they sued the church for false imprisonment, fraud and intentional infliction of emotional distress, contending that they had been recruited under false pretences by

159 . Decided shortly before by the trial court in San Francisco, discussed immediately below.

160 . *Meroni v. Holy Spirit Association*, 506 N.Y.S.2d 174 (1986).

persons who concealed their connection with the Unification Church, and that by the time they learned the true identity of the group they had joined, they were under such social constraint as to be incapable of leaving.[161]

> Dr. Singer, a clinical psychologist who claims to have interviewed 260 persons who either were or had been connected with the Unification Church, states she has found a striking resemblance between the methods of recruitment and control used by "the cults" and those used on some of the prisoners of war returned from Korea she had interviewed. She further states that Unification Church recruiters engage in systematic manipulation of the social influences surrounding the potential recruit to the extent that he loses the capacity to exercise his own free will and judgment. Dr. Singer then states that she examined both Plaintiffs and found that their ability to judge for themselves was greatly diminished by the methods employed, and that Plaintiffs were incapable of responding to the information that they had been deceptively recruited by Moonies, with whom they would not otherwise have freely associated. Dr. Singer states she found that as a result of the systematic manipulation of social influences performed by the Unification Church recruiters, both Plaintiffs were deprived of the judgment capacity to dissociate themselves from the Church and its members. Dr. Singer does not specify what information gleaned from her examination of the Plaintiffs led her to reach these conclusions.[162]

There are some curious elements in this summary, and it is not clear whether they are attributable to Dr. Singer or the court. The finding that "Plaintiffs were incapable of responding to the information that they had been deceptively recruited by Moonies, with whom they would not otherwise have freely associated" raises all kinds of questions. At what point were plaintiffs "incapable of responding"? Who supplied the "information," and when? During "deprogramming"? What kind of response would Dr. Singer have thought appropriate? Outrage? How did she know they "would not otherwise have freely associated" with "Moonies"? It sounds as though the deprogrammers had a hard time convincing plaintiffs that they had been "deceptively recruited." The finding that plaintiffs' "ability to judge for themselves was greatly diminished by the methods employed" is presumably meant by Dr. Singer to refer to the methods of the "cult," but one wonders if it could not be as readily attributed to the deprogramming experience the plaintiffs had even more recently undergone.

The court dealt as follows with the counts alleging false imprisonment:

> False imprisonment is defined as "the unlawful violation of the personal liberty of another." Penal Code Section 236. The tort requires direct

161 . The Delgado thesis, described at B4a above.

162 . *Leal and Molko v. Holy Spirit Association for the Unification of World Christianity*, slip. op. p. 9.

> restraint of the person for some appreciable length of time compelling him to stay or go somewhere against his will, although the restraint can be by apprehension of force resulting from words, gestures or acts....
>
> From the uncontroverted facts in this record, it is clear that neither Plaintiff was falsely imprisoned as conventionally understood. Contrary to the apparent meaning of the allegations of their complaint, both Plaintiffs have acknowledged that they were never physically seized or restrained by the Defendants. At no time were they held by force of any kind; nor were their family members [or] others prevented from gaining access to them. To the contrary, both Plaintiffs acknowledge that they could have left at any time as they observed others doing, had they desired to do so, and that they spoke with their parents and rejected their pleas to depart. Indeed, during the period of his alleged "imprisonment," Mr. Molko commuted back and forth to San Francisco to prepare for and then to take the examination for admission to the California State Bar.
>
> Similarly, Plaintiffs have acknowledged that Defendants made no threats of force or of other unlawful conduct. Plaintiffs do state that they were subjected to threats of harm, but the tendered evidence makes plain that these were entirely threats of divine retribution.... Plaintiffs also suggest that they were prevented from leaving by their fear of disappointing the other Church members.... But threats of social ostracism are not impermissible and, indeed, are constitutionally protected.[163]

Thus, the evidence provided no "triable issue of facts with respect to false imprisonment." But the Plaintiffs contended that their consent to remain with the group had been "obtained when they were mentally incapable of exercising independent judgment to leave." The court considered that the evidence was not sufficient to create a triable issue for at least two reasons:

> First, it does not appear that such "coercive persuasion," conducted without the use of force or the threat of force or other unlawful conduct, suffices to give rise to false imprisonment under the common law of this State.... And, whatever arguments can be made for expanding the definition of this tort to encompass insidious forms of mind control, such expansion under the facts of this case would pose serious Constitutional questions, which is the second reason for which the expert testimony fails to preserve Plaintiffs' claim.
>
> If "coercive persuasion" were sufficient to impose liability upon the Unification Church for false imprisonment, such liability would infringe upon the constitutional protection of free association and freedom of religion. The decision of the First District Court of Appeal arising out of a similar factual background in *Katz v. Superior Court*...[164] provides particular guidance in this matter.

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163 . Citing *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982), and *Van Schaick*, discussed at § f above.

164 . See discussion of *Katz* at B4a(2) above.

In *Katz*, the same experts on whom Plaintiffs rely gave remarkably similar testimony on behalf of the parents of members of the Unification Church seeking to impose conservatorships upon their adult children....

In *Katz*, the Court of Appeal held that if an adult is less than gravely disabled...the strong interest in protecting the individual's liberty and freedom of action precludes [appointment of] a conservator for that person.... Alternatively, the Court held that the individual's rights to freedom of religion and association under the federal and state constitutions compel the same conclusion "in the absence of such actions as render the adult believer himself gravely disabled as defined in the law of this state...."

Here the proffered expert testimony, virtually identical to that given in *Katz*, similarly fails to suggest any such grave disability....

If the Church were subject to liability for damages whenever it were determined retrospectively that its attempts to influence a non-gravely disabled individual to join its faith—not by force or by threat of force or other unlawful conduct—had been so successful that the individual had lost his ability to decline, a substantial restraint would be placed on the ability of the Church and its present and prospective adherents to practice their religion. The testimony proffered by Plaintiffs does not identify any objective conduct engaged in by the Church which in itself is unlawful, or any conduct engaged in by the Plaintiffs which would have alerted Defendants to the fact that Plaintiffs' consent to remain with the Church was no longer being freely given....

The decision in *Katz* rests on the principle that an adult who is not shown to be gravely disabled must have the personal and individual right to determine for himself or herself whether to associate with a religious group. Despite the possibility of coercive persuasion, or "brainwashing," the right of the individual to make such choices is so important that it cannot be removed absent a showing of grave disability. In *Katz*, it was recognized that permitting the appointment of a guardian of the person absent such a showing would impermissibly infringe upon that right. So too would rendering that person's consent subject to repudiation if it were later determined that, although neither force nor threats of force or other unlawful conduct were utilized, the consent did not reflect the exercise of the individual's free will and judgment. If that could be done, in order to avoid potential liability, neither the Church nor any other association could ever rely upon a person's agreement to join, and the individual's ability to consent to join would be severely compromised.

Moreover, regulation of religious activity is particularly suspect if that regulation involves an evaluation of the underlying religious beliefs....[165] Imposition of liability for false imprisonment, even if upon a religious order, does not threaten to intrude into such an evaluation of beliefs when the individual is restrained either by force or by threats of force or other

165. Citing *Ballard, Founding Church of Scientology*, and *Van Schaick*, discussed at §§ 6a, b and g above.

> unlawful conduct. When, however, the claim is that the restraint was imposed by "persuasive coercion," the situation is very different. The declarations of Dr. Singer and Dr. Benson [a psychiatrist] reveal that both doctors rest their opinions in large part upon the view that Defendants' recruitment techniques involve "systematic manipulation of social influences" which, both doctors conclude, lead Plaintiffs to make choices they would not have made in the "free exercise of (their) own will and intellect." But these are not statements which are either true or false; they are veiled value judgments concerning the entire outlook of the Unification Church. What is "systematic manipulation" to some may be the only true outlook to others.... Under the admitted facts of this case, the trial of Plaintiffs' claim of false imprisonment would become a trial of the entire system of worship of the Unification Church.[166]

The court's insight into the problems posed for religious groups if members can retroactively repudiate their vows is particularly significant. Members have the right to leave a religious group when they wish,[167] and if they are not permitted to leave (by force or threats of force, etc.), they have a cause of action for unlawful imprisonment. But, if members can claim *after* leaving that they really wanted to leave sooner but couldn't—that their entire adherence had been compelled rather than voluntary—such a claim not only impugns the validity of all membership choices but introduces a concept of the unfree will that is philosophically and theologically a radical departure from the assumptions on which Western democracy is based. Of course, new psychological discoveries may prove the prevailing assumptions wrong—and that seems to be what Margaret Singer et al. were claiming—but they have not yet persuaded their colleagues to that conclusion.[168] As one psychiatrist has explained, to suppose that an outside influence could control the mind to the extent of bringing about complex actions not intended by the person is physiologically impossible. Coordinating from outside the myriad of synapses upon which motor action is based would be like trying to push a rope of sand uphill. That can be done only from "inside," by the "owner," through the exercise of an incredibly complex series of processes tediously learned over many years that are glibly sloganized as the exercise of the will.[169] A person may *consent* to exercise his or her will as another wishes (and that is probably what the anti-cult psychologists and behaviorists are talking about), but the threshold of *consent* must be crossed, and it remains in an ultimately irreducible sense *voluntary*.

Many stratagems have been developed for inducing that consent, from the crudest uses of force to the subtlest kinds of subliminal advertising, but even more numerous

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166. *Leal and Molko, supra*.

167. See discussion of *Guinn* case at IC5c.

168. See discussion of the nonacceptance of "mind-control" theories by the American Psychological Association and the American Sociological Association in *U.S. v. Fishman* at § B6o(3) below.

169. Coleman, Lee, *Psychiatry the Faithbreaker* (1982).

and resourceful are the stratagems that have been used to resist such inducements, from "underground" rebellion to patient and silent obduracy that feigns consent until escape is possible—exactly the problem deprogrammers confront in trying to impose *their* will on their victims. Civilization should be very slow to accept the contention that freedom of the will is an illusion without far more evidence than has been advanced by R. J. Lifton, B.F. Skinner, M. Singer et al. Much of the supposed evidence to that end can be explained by saying that many people are *willing* to be induced to consent to what others urge upon them—they have a *low threshold of consent*—but that is very different from saying that there is *no* threshold or that it can be crossed by some arcane technique of engineering of consent that cannot be resisted.

Returning to the Superior Court for the city and county of San Francisco, we may note how Judge Stuart Pollak dealt with the counts alleging fraud.

> Plaintiffs allege that they were induced to stay with the church by misrepresentations concerning the Defendants' identity and affiliations.... Unquestionably, there is evidence that for the first two or three weeks of the association of each Plaintiff with the group, Church members were less than candid about their connections with the Unification Church....
>
> Nonetheless, the evidence which has been tendered also establishes that the asserted misrepresentations and failure to disclose cannot be deemed material or to have induced either Plaintiff to have relied upon them. Plaintiffs' own testimony eliminates any triable issue of fact in this regard....
>
> By their own admissions, Plaintiffs agreed to join the group because their association satisfied personal concerns and anxieties both were experiencing.... Ms. Leal found the relinquishing of individual responsibility and the acceptance of a group identity to be akin to the "joy of childhood".... [She] was aware that other recruits, who could not adjust to the group's schedule, had either left of their own volition or been asked to leave. She, however, decided not to leave, and firmly withstood her family's efforts to change her mind. Mr. Molko...stayed because he was enjoying rewarding one-on-one personal relationships with members of the group whom he respected and admired....
>
> Thus, both Plaintiffs have acknowledged that they joined the group for reasons which were not dependent upon the group's exact affiliation. And, unquestionably, when they learned the group was part of the Unification Church, they did not leave or attempt to leave, although they knew they might have done so....
>
> Were the Plaintiffs nonetheless to be permitted to avoid the consequences of their decision, based upon the opinion of the two experts that their actions did not reflect the exercise of their own free will and judgment, many of the same problems as discussed above would arise. Inquiry into whether otherwise healthy adults "freely" chose to associate with a religious body—the bona fides of which have not been questioned—necessarily would entail a judgmental evaluation of the

> beliefs and practices of that body. For reasons discussed above, such an inquiry is constitutionally impermissible.

The last count the court dealt with was a claim for restitution of a gift of $6,000 that Mr. Molko had made to the Church "when he admittedly was fully aware of its identity and connection with Reverend Moon."

> The Complaint alleges that the gift was made following "use of threats, deprivation of sleep, excessively long hours of work and other activities, and psychological manipulation," as the result of "undue influence" and "while Plaintiff was under the domination and control of Defendants."
>
> In the Court's view, this Cause of Action comes closest to presenting a triable issue of fact. Nonetheless, careful review of Mr. Molko's deposition testimony negates the conclusory allegations contained in the complaint and establishes that Mr. Molko's condition at the time he made the gift was such that no inference can be drawn that the gift reflected the decision of anyone other than himself.

Elements contributing to that conclusion were the Plaintiff's own testimony that one of the Church members in whom he had the greatest confidence advised him to do what he thought best about the gift, and that at the time he made the gift he still had several thousand dollars left, "the existence of which he did not disclose to the Defendants." Also pertinent was the fact that the Church had paid his tuition for the review course he took to prepare himself for the California bar examination, and that the plaintiff had accepted the idea that "you gave God money and then God used your money rather than you using your money, and it worked better that way...; that way, the spiritual world can work for you."

In his conclusion, the judge granted summary judgment in favor of the religious group.

> "Brainwashing" and "mind control" admittedly are frightening concepts. As our understanding of psychology expands, legal principles undoubtedly will expand commensurately to provide protection against unacceptable assaults on the integrity of the human psyche. Nonetheless, when dealing with the practice of religion, important constitutional considerations require the utmost of caution. Here, Plaintiffs have made no challenge to the bona fides of the religious beliefs of the Unification Church. Both Plaintiffs were adults when first approached by church members. They have admitted that they were never subjected to physical restraints, or to threats of violence or of unlawful conduct. Soon after their arrival, they knew full well with whom they were associating. Although they also knew that they could leave, they decided to remain. To absolve Plaintiffs of responsibility for their own decisions, and to permit them to impose liability upon the Church for having prevailed upon them to stay, is neither authorized by the current state of the law nor consistent with the constitutional protection afforded all religious groups in our society.

The role of expert testimony in this case is worthy of comment. One gains the impression that it was not entirely helpful to the plaintiffs. In fact, the judge seemed almost to be "rubbed the wrong way" by it, since he remarked twice upon the similarity of the same experts' testimony in another case involving other persons and a different religious group. But in footnotes 5 and 6, attached to the observation that the experts' testimony contained "veiled value judgments" about the Unification Church, the court made some even more critical comments. "5. Both doctors examined the Plaintiffs long after the events in question. They did not reach their opinions concerning Plaintiffs' state of mind based upon a contemporaneous examination independent of their views of Unification Church methods, but seem to have reasoned backwards from their disapproval of those methods to the conclusion that Plaintiffs were not thinking freely because they were persuaded by them." Though mildly stated, this comment indicated that the court simply rejected the validity of the entire expert testimony, which had been introduced to make the exact point thus rejected. It totally failed to achieve its purpose. "6. The danger of relying upon value judgments disguised as expert psychiatric opinion has been recognized in various contexts.... It has also been suggested that opinions in this area are not sufficiently beyond common experience to warrant expert testimony."

It must be recognized that this was a "paper" trial; there was no "live" testimony, no witnesses heard, seen, or cross-examined to probe their credibility. The finder of fact based his conclusions on documents submitted by both sides containing depositions and proffers of evidence. The result might have been different if tried by a jury, especially if the plaintiffs' parents were put on the stand to express their distress at their offsprings' plight. It is an unhappy commentary upon the prevalence of religious prejudice and the unconscious resistance of lay members of the public to granting religious liberty to unpopular faiths that jury trials often go the other way, as in *Christofferson*,[170] *Peterson*,[171] and *George*.[172]

j. *Molko and Leal: Appellate Review* (1988). The Court of Appeal, First District, Division Two eventually reviewed Judge Pollack's decision and unanimously affirmed it.[173] The Supreme Court of California subsequently reviewed the *Molko* case and ruled on it in an opinion by Justice Stanley Mosk on behalf of six of the justices of the court. After a lengthy recitation of the "facts"—or at least the appellants' version of them (which is not inappropriate when the appellant is challenging an adverse summary judgment, provided the asserted facts are supported by the record)—the court dealt with the claim of fraud.

170 . See § d above.

171 . See § 5c(5) above.

172 . See § l below.

173 . *Molko & Leal v. Holy Spirit Assn.*, 179 Cal. App. 3d 450, 224 Cal. Rptr. 817 (1986).

> The Church contends that because Molko and Leal learned the Church's true identity prior to becoming formal members, [any] misrepresentations were "cured"[,] and Molko and Leal could not have justifiably relied on them in deciding to join the church....
>
> Molko and Leal admit they were aware of the Church's identity at the time they formally joined. However, they contend that by the time the Church disclosed its true identity, the Church's agents had rendered them incapable of deciding *not* to join the Church, by subjecting them, without their knowledge or consent, to an intense program of coercive persuasion or mind control. They contend, in other words, that the Church deceived them into a setting in which in which they could be "brainwashed," and that the Church could not then "cure" the deception by telling them the truth after their involuntary indoctrination was accomplished. Molko and Leal therefore contend that a triable issue of fact remains as to whether the Church brainwashed them prior to disclosing its identity.[174]

The court noted that "the brainwashing concept is controversial," borrowing a description of it from the Minnesota Supreme Court's highly dubious decision, *Peterson v. Sorlien*,[175] concluding: "We need not resolve the controversy; we need only conclude that the existence of...differing views compels the conclusion that Molko and Leal's theory indeed raises a factual question—viz., whether [they] were brainwashed—which, if not prohibited by other considerations, precludes a grant of summary judgment for the Church." The court evaluated the trial court's rejection of the "expert" testimony of Drs. Singer and Benson.

> The trial court and Court of Appeal ruled the Singer and Benson declarations inadmissible on the grounds that (1) the doctors' testimony conflicted with that of Molko and Leal and (2) introducing the declarations would raise inquiries forbidden by the free exercise clause of the First Amendment. We disagree with both conclusions.
>
> The courts below found a conflict between (1) plaintiffs' statements that they joined the Church because it satisfied "personal concerns and anxieties" and (2) Singer's and Benson's statements that it was plaintiffs' unawareness of the Church's identity that caused them to stay. We perceive no such conflict. First, the very theory of coercive persuasion is that it operates, in part, by first amplifying the subject's personal concerns and anxieties and then providing a means of satisfying them.[176] Second, the mere fact that the Church addressed plaintiffs' personal concerns and anxieties does not conclusively or necessarily establish that Molko and Leal would have chosen to associate with the Church had they known its identity. Thus, viewed in the light most favorable to Molko and Leal, both

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174. *Molko and Leal v. Holy Spirit Assn.*, 46 Cal. 3d 1092, 762 P. 2d 46 (1988), *cert.* denied, 109 S.Ct. 2110 (1989).

175. 299 N.W.2d 123 (1981), discussed above at § B5c(5).

176. Citing "Schein, Coercive Persuasion, [1961] at pp. 117-258."

> sets of statements are consistent with the contention that they were deceived into a situation where they were brainwashed....
>
> The courts below also held that the Singer and Benson declarations raised questions not allowable under the free exercise clause of the First Amendment to the United States Constitution.
>
> * * *
>
> While the Unification Church's standing as a church is not at issue, Molko and Leal contend the Church's misrepresentations were "entirely secular" and therefore not protected by the religion clauses. We disagree. Molko and Leal themselves claim the Church made its misrepresentations because of a belief in what they describe as "Heavenly Deception." According to Molko and Leal, that doctrine holds, in essence, that it is acceptable to lie to someone in order to give him the opportunity to hear Reverend Moon's teachings.[177] As alleged by the plaintiffs, the Church's deceptions, although secular on the surface, are clearly "rooted in religious belief." While this does not mean such Church misrepresentations are immune from government regulation, it does mean such regulation must survive constitutional scrutiny.

The lower courts had relied on an earlier and pivotal California case—*Katz v. Superior Court*[178]—in ruling that plaintiffs' charges about recruiting methods of the Unification Church could not be entertained without questioning the religious beliefs of the church--a constitutionally forbidden inquiry. Although *Katz* was not before the state supreme court, its evaluation of that decision's argument was potentially fateful, since to slight it would be to shake one of the pillars of "settled law" in this area.

> Like the present case, *Katz* involved allegations of brainwashing against the Unification Church. The plaintiffs in *Katz*, however, were not former Church members but parents of current Church members. Claiming their adult children had been brainwashed, the parents sought and received orders from the Superior Court appointing them temporary conservators of the persons of their children. The parents' objective was to have their children deprogrammed and their children's association with the Unification Church terminated.
>
> The Court of Appeal in *Katz* overturned the conservatorship orders, holding that in the absence of actions rendering the adult believers "gravely disabled," the processes of the state could not "be used to deprive the believer of his freedom of action and to subject him to involuntary treatment." The court declared the conservatorship orders violated the Church members' free exercise rights because the orders were based on a judgment regarding the truth or falsity of their beliefs. Likening the Church members' radical changes of lifestyle to the refusal of the Amish in *[Wisconsin v.] Yoder*[179] to send their children to high school, the

177 . Footnote: "At oral argument, the Church disavowed any such belief."

178 . 73 Cal.App.3d 952 (1977), discussed at § B5a(2) above.

179 . 406 U.S. 205 (1972), discussed at IIIB2.

court found the situation one in which conduct could not be separated from beliefs. It queried, "When the court is asked to determine whether that change [in lifestyle] was induced by faith or by coercive persuasion, is it not in turn investigating and questioning the validity of that faith?"

The *Katz* court, of course, faced circumstances substantially different from those before us. The conservatorship orders, if allowed to stand, would have directly and severely burdened the Church members' absolute right to believe in the teachings of the Unification Church. Not only would the orders have allowed the parents to remove their adult children from the religious community they claimed to desire; the orders would further have allowed the parents to subject those individuals, against their will, to a program specifically intended to eradicate their current religious beliefs. Thus the *Katz* court was correct—as in *Yoder*, the burden on the Church members' conduct was inseparable from the burden on their beliefs.

In sharp contrast, liability for fraud in the case at bar would burden no one's right to believe and no one's right to remain part of his religious community, nor would it subject anyone to involuntary deprogramming: the plaintiffs here are the former Church members themselves. It might, of course, somewhat burden the Church's efforts to recruit new members by deceptive means.

* * *

The Court of Appeal [in *Molko*] held that although *Katz* was different in certain ways, its analysis compelled the conclusion that to consider plaintiffs' fraud claims would require "questioning the authority and the force" of the Church's teachings. We disagree. The challenge here, as we have stated, is not to the Church's teachings or to the validity of a religious conversion. The challenge is to the Church's practice of misrepresenting or concealing its identity in order to bring unsuspecting outsiders into its highly structured environment. That practice is not itself *belief*—it is *conduct* "subject to regulation for the protection of society."[180]

Our next inquiry, then, is whether the state's interest in allowing tort liability for the Church's deceptive practices is important enough to outweigh any burden such liability would impose on the Church.

We turn first to the question whether tort liability for fraudulent recruiting practices imposes any burden on the free exercise of the Unification Church's religion. We think it does. While such liability does not impair the Church's right to believe in recruiting through deception, its very purpose is to discourage the Church from putting such belief into practice by subjecting the Church to possible monetary loss for doing so....

Yet these burdens, while real, are not substantial. Being subject to liability for fraud does not in any way or degree prevent or inhibit Church members from operating their religious communities, worshipping as they see fit, freely associating with one another, selling or distributing

180. Citing *Cantwell v. Connecticut*, 310 U.S. 296 (1940), discussed at § A4c above, where it is pointed out that the essential teaching of that case is that the "the power to regulate must be so exercised as not... to infringe the protected freedom."

> literature, proselytizing on the street, soliciting funds, or generally spreading Reverend Moon's message among the population.... At most, it potentialy closes one questionable avenue for bringing new members into the Church.
>
> We must next consider whether a compelling state interest justifies the marginal burden such liability imposes on the Church's free exercise rights. We have no difficulty in finding such an interest in the "substantial threat to public safety, peace or order" the Church's allegedly fraudulent conduct poses. For it is one thing when a person knowingly and voluntarily submits to a process involving coercive influence, as a novice does on entering a monastery or a seminary. But it is quite another when a person is subjected to coercive persuasion without his knowledge or consent. While some individuals who experience coercive persuasion emerge unscathed, many others develop serious and sometimes irreversible physical and psychiatric disorders, up to and including schizophrenia, self-mutilation, and suicide.[181] The state clearly has a compelling interest in preventing its citizens from being deceived into submitting unknowingly to such a potentially dangerous process.
>
> The state has an equally compelling interest in protecting the family institution.... Since the family almost invariably suffers great stress and sometimes incurs significant financial loss when one of its members is unknowingly subjected to coercive persuasion,[182] the state has a compelling interest in protecting families from suffering such impairments as a result of fraud and deception.
>
> We conclude, therefore, that although liability for deceptive recruitment practices imposes a marginal burden on the Church's free exercise of religion, the burden is justified by the compelling state interest in protecting individuals and families from the substantial threat to public safety, peace and order posed by the fraudulent induction of unconsenting individuals into an atmosphere of coercive persuasion.[183]

Here the Supreme Court of California voiced the "gospel" of the anticult movement in the same uncritical way that the Supreme Court of Minnesota did in *Peterson v. Sorlien*,[184] which the California court quoted approvingly in this opinion. The Minnesota court had discovered a compelling state interest "favoring intervention" in cult indoctrination predicated on the supposition of a strategy of coercive persuasion that undermined the capacity for informed consent, and that announcement had since become the manifesto of those who would justify forcible deprogramming. The California court likewise now discerned a compelling state interest in protecting individuals and families from the substantial threat to public

181. Citing Delgado, "Gentle and Ungentle Persuasion...," *supra*, and sources cited therein. See discussion of Delgado at § B4a above.

182. Citing "Enroth, Youth, Brainwashing, and the Extremist Cults (1977) pp. 199-201."

183. *Molko & Leal v. Holy Spirit Assn.*, *supra*, (1988).

184. 299 N.W.2d 123 (1981), discussed at § B5c(5) above.

safety, peace and order by the fraudulent induction of unconsenting individuals into an atmosphere of coercive persuasion.

One can sense in this characterization of the situation some judicial presumptions or conclusions drawn from evidence that was yet to be adduced at trial. Ostensibly the highest appellate tribunal in the most populous state in the country—taking at face value the allegations of the party appealing a dismissal or summary judgment—was merely holding that there were issues of fact at stake that could and should be determined at trial. So all of its verbiage was predicated upon the proviso "*if the appellants' allegations are substantiated by the finder of fact...*"—which, of course, had not yet happened. But the court seemed to be caught up—beyond the reach of the evidence in the record—with the enormity of the alleged misconduct and the reality of the supposed powers of "mind control" or "coercive persuasion," whose very "atmosphere" could pose a peril justifying a compelling state interest in opposing it.

The court's solicitude for the travails of the family likewise resonates with the plaint of the anticult movement, composed largely of distressed relatives of (adult) converts to the despised cults. The court sought to shore up the state's compelling interest in protecting the family institution by citation of several Supreme Court decisions,[185] none of which seemed particularly apposite to the efforts of parents to correct by force their *adult* offspring's religious choices, however misguided the parents might suppose them to be.

The court's further amplification—"Since the family almost invariably suffers great stress and sometimes incurs significant financial loss"—seemed less than persuasive in view of the facts commonly recognized in social science literature on this subject (though never admitted by the anticult movement because they would undermine its crusade), viz., (1) that many families do not feel obliged to view their offspring's conversion to such groups as cause for "great stress" or the occasion for "significant financial loss" (presumably for the employment of deprogrammers); (2) that many prospects for conversion are not attracted by the blandishments of the Unification Church or other evangelistic groups; and (3) that— of those who are—most "drop out" of the church of their own choice within a few months or years without outside intervention.[186]

It is when parents are stampeded by anticult hysteria into hiring deprogrammers to "rescue" their (adult) children that they are likely to experience the "great stress" and "significant financial loss" reported by the plaintiffs Molko and Leal (both of whom had been deprogrammed by their parents). These harms complained of by

185. *Reynolds v. United States*, 98 U.S. 145, 165-166 (1878) (outlawing polygamy), discussed at IVA2a; *Meyer v. Nebraska*, 262 U.S. 390, 399-403 (1923) (right of parents to employ teachers of German language), discussed at IIIB1a; *Pierce v. Society of Sisters*, 268 U.S. 510, 534-535 (1925) (right of parents to send their (minor) children to private schools) discussed at IIIB1b.

186. See, e.g., Melton, J. Gordon, and Robert L. Moore, *The Cult Experience: Responding to the New Religious Pluralism*, (New York: Pilgrim Press, 1982), esp. ch. 2.

some families, then, are to some degree self-inflicted, and as such do not necessarily create the compelling state interest conjured up by the court. The fact that some people are upset by the religious choices of their adult children does not impose an obligation upon the state to indemnify them at the expense of the religious groups that had attracted their offspring, at least absent a showing of illegal or reprehensible conduct on the part of the religious group—which was the precise point to be determined at trial. And whether that conduct—if it had indeed occurred—was corrected or waived by subsequent events was another element to be determined at trial.

Yet the court assumed that there *is* such a thing as "coercive persuasion" that can override the will of those subjected to it, nullifying the effect of any subsequent correction or waiver, which would have occurred after the plaintiffs had already been tricked into the "atmosphere" of "coercive persuasion" and thus had lost the capacity to refuse to join. That is a scenario scripted by Richard Delgado in his influential law review article (cited by the court) that has been enthusiastically embraced by the anticult movement as though it were a factual description—and the only possible description—of what happens in *conversion*, a process that lawyers and courts are not particularly well equipped to analyze. These were matters yet to be sorted out by the trier of fact in a trial yet to be held, but the court came close to anticipating the outcome of that trial in the assumptions that appeared to underlie its reasoning.

The court continued that reasoning with some ruminations on less intrusive means of achieving the supposed compelling state interest.

> A government action burdening free exercise, even though justified by a compelling state interest, is impermissible if any action imposing a lesser burden on religion would satisfy that interest. After careful consideration, we perceive no such less restrictive alternative available. It has been suggested, for example, that brainwashing be criminalized.[187] This approach, which would invoke the coercive power of the state and could result in the jailing of church members, would clearly impose a greater burden on religion than would civil tort liability for fraud. It has also been suggested that the law should authorize involuntary deprogramming of brainwashed individuals by their friends and families.[188] But the potentially severe burdens on religion inherent in this approach are evident from our discussion of *Katz, supra*. Lastly, it has been proposed that proselytizers be required to obtain informed consent prior to attempting to initiate religious conversions.[189] To the extent such an

187. Citing "Lucksted & Martell, Cults: A Conflict Between Religious Liberty and Involuntary Servitude? (June 1982) F.B.I. Law Enforcement Bull. at 21."

188. Citing "Aronin, *Cults, Deprogramming, and Guardianship: A Model Legislative Proposal* (1982) 17 Colum. J. L. & Soc. Probs. 163, 183-216."

189. Citing "Delgado, *Cults and Conversion: The Case for Informed Consent*, (1982) 16 Ga. L. Rev. 533."

> approach would require the active dissemination of specific information about a religion's nature, activities and lifestyle, however, it would also burden religion to a greater extent than would simple passive liability for fraud.

The upshot of the court's lengthy opinion, only a small portion of which is reproduced here, was to uphold summary judgment in favor of the church on the count of false imprisonment, but to reverse summary judgment and remand for trial on the issues of fraud, intentional infliction of emotional distress and restitution of Molko's gift of $6,000 to the church—all on the basis of the triability of the question of fact on the church's alleged use of deception in recruiting members.

k. *Molko and Leal*: The Dissent. Not everyone on the court was persuaded, however. One of the justices of the California Supreme Court was unavailable for participation in this decision, and his place was taken by Carl West Anderson, Jr., Presiding Justice of the California Court of Appeal, First Appellate District, Division Four, sitting by assignment. Viewed by many as a crusty conservative, he was not swept away by the "activist" bench of the Supreme Court.

> I am strongly persuaded that the imposition of tort liability for "heavenly deception" in proselytizing and for its ensuing "systematic manipulation of social influences" (religious persuasion) runs counter to established legal precedents and the free exercise clause of the First Amendment. Furthermore, imposition of liability in such cases constitutes bad legal policy, since it unnecessarily projects the court into the arena of divining the truth or falsity of religious beliefs. I respectfully suggest that the trial court's thorough analysis and the Court of Appeal's well reasoned affirmance thereof correctly apply the law.
>
> * * *
>
> [C]ontrary to the conclusion reached by the majority, I find appellants' fraud cause of action fatally defective for two fundamental reasons: (1) the record fails to show that the initial fraud committed by the proselytizers was relied upon by appellants at the crucial time of joining the church; and (2) the immediate cause of appellants' damages was not the incipient fraud but rather the ensuing indoctrination and conversion (dubbed by the majority as "brainwashing"). However, the indoctrination achieved by persuasion absent physical force or violence is not unlawful; religious conversion is simply not subject to judicial review. It follows that neither of these questions create a triable issue of fact which defeats the grant of summary judgment [for the Church].
>
> In granting summary judgment on the fraud cause of action, the trial court found that appellants, by their own admissions, joined the Church because that "[a]ssociation satisfied personal concerns and anxieties both were experiencing;" it did not find they joined in reliance on the initial misrepresentations of the recruiters. This finding of the trial court is well supported by the record.

Judge Anderson reviewed material in the plaintiffs' own depositions that attested to their having remained with the Unification Church after they learned of its true identity for reasons of their own (such as were noted by the trial court in paragraphs excerpted above).

> Despite these undisputed facts the majority maintains that appellants' behavior following the initial fraud did not negate the element of reliance (i.e., the initial fraud was not "cured"); they conclude that as a result of the Church's initial "heavenly deception" (i.e., fraudulent conduct), appellants were placed in a situation where they were "brainwashed" and thereby deprived of their independent judgment. The majority predicated this "brainwashing" theory primarily upon appellants' declarations that due to the rigid indoctrination, psychological and emotional pressure, they lost their ability to freely decide to stay with the group and, instead, they acted in a robot-like manner. Such conclusion fails to withstand critical analysis.
>
> Under the widely adopted view, the fact that the religious belief does not originate in a voluntary choice does not, as a rule, raise a presumption of incapacity to affirm the belief as one's own.[190]

Indeed, that is the way most people acquire their religious beliefs—by osmosis from parents, teachers and peers before they reach the "age of discretion" or conscious choice.

> To the contrary, it has been said that "An intentional deception should not justify impinging upon a convert's ideas as long as the convert has the ability to affirm his faith after the deception is realized. If he retains his personhood (i.e., the capacity to evaluate the commitment) he can still adopt or ratify his belief as his own."[191] By illustration, Mr. Saphiro [*sic*] points out that if the proselytizer had offered merely a self-improvement course and the subsequent banquet and lectures in fact had aimed at converting the recruit to a religion, the deceptiveness of the introduction would be immaterial as long as the convert would be still capable of adopting or affirming his belief.
>
> The evidence before us, including appellants' depositions, clearly indicated that the Church's indoctrination did not render appellants mindless puppets or robot-like creatures. Instead, it shows that both before and after the disclosure of the group's true identity, both appellants retained their ability to think, to evaluate the events and to exercise their independent judgment....
>
> * * *
>
> In view of this sworn testimony, the unsupported allegations of brainwashing in appellants' pleadings and declarations should not be

190. Citing "Saphiro [Shapiro], *"Mind Control" or Intensity of Faith: The Constitutional Protection of Religious Beliefs* (1978) 13 Harvard Civ. Liberties L. Rev. 751,789."

191. Citing "Saphiro [*sic*], *Of Robots, Persons and Protection of Religious Beliefs* (1982-1983) 56 So. Cal. L. Rev. 1277, 1295."

deemed sufficient to raise that triable issue of material fact which requires reversal of the grant of summary judgment.

* * *

I respectfully disagree with the majority's suggestion that the primary assertion here, as opposed to *Katz*, is the initial fraud in recruiting, and is therefore conduct which can be judicially scrutinized. From their language, however, it clearly appears that the wrongful conduct which is at the core of the controversy is the fraudulently induced brainwashing. However, as the majority admits, the first part of the issue (i.e., the knowing misrepresentation of the Church's identity and the intent to induce appellants to participate in the Church's activities) is conceded by the Church. The remaining triable issue of fact is therefore limited to the alleged "brainwashing" which resulted in appellants' conversion and their joining the Church. What fact is it that the majority remands to be determined at trial? The same fact that *Katz* found immune from judicial scrutiny, i.e., was the conversion (or "brainwashing") induced by coercive indoctrination or by religious persuasion? That such question is not for mortal courts to resolve is unequivocally answered by *Katz*: No such proof or judicial inquiry is possible without questioning the person's underlying faith—an inquiry which is absolutely forbidden by the First Amendment....

The teaching of *Katz* that "brainwashing" and religious conversion are not really distinguishable; that the methods used in each are either identical or very similar; and that proof of the existence of each is virtually identical are well illustrated by the present case. The expert testimony here was offered to show that the brainwashing of appellants was achieved by "a systematic manipulation of social influences" which consisted mainly of the following: (1) control over the social and physical environment; (2) separation of the recruits from the outside world (including friends and family members); (3) influencing individual behavior through rewards, punishments and experiences; (4) oppression of criticism of the Church; and (5) attainment of a special uniform state of mind. However, as demonstrated below, all of these methods are used by the more widely accepted and/or tolerated churches in effecting religious conversion.

The effect of conversion, generally speaking, is spiritual rebirth—that is, attainment of a new life. The first step in that direction is a separation from the previous environment to a place where one can meditate and contemplate without distraction. Our world's numerous monasteries and convents demonstrate how retreat and isolation can promote single-minded devotion to God. The separation from friends and family members may be an important step in achieving this goal. Jesus Christ is quoted as saying: "He who loves father or mother more than me is not worthy of me." (Matthew 10:34-38.) The Mennonites likewise teach that true Christians must be prepared to take upon themselves the cross of Christ, and forsake father, mother, husband, wife, children, possessions and the self, for the sake of the testimony of His Holy Word when the

honor and praise of God require it.[192] Although transcending one's family may be traumatic and painful, it is sometimes an essential element in the pilgrimage of faith. The guilt and awareness of sin also may be an important factor leading to conversion. The promise of salvation and the threat of damnation are the very foundation of the life of the devout. Ascetic, regulated life, hard work, fasting and giving up earthly pleasures are also parts of many religious teachings aimed at spiritual purity and pleasing God. The dogmatic approach and intolerance of criticism are not uncommon with established religions which profess that divine truth is revealed in holy Scripture, church dogmas and in *ex cathedra* declarations of anointed leaders (e.g., papal infallibility in the Catholic Church) which is not to be questioned by faithful followers. Finally, the introverted view forsaking interest in the outside world necessarily flows from the religious teaching that one must separate himself or herself from the world dominated by Satan and his evil forces in order to join and serve God's kingdom.

Indeed, what this expert evidence characterizes as indicia of brainwashing or mind control, might well be equated with the more popularly accepted symbols of genuine religious conversion. Religious behavioral change induced by the mystery of faith cannot be proved or disproved by secular science, which limits its scope of inquiry to tangible, rational and logical phenomena, comprehensible and explainable by human reason. As Mr. Saphiro [*sic*] states in his essay: "Religious beliefs—whether held by adherents to new sects or by 'mainstream' believers—may not be dictated by societal norms. Such norms can easily encourage labels that transform religious beliefs into illnesses. `A religion becomes a cult; proselytization becomes brainwashing; persuasion becomes propaganda; missionaries becomes subversive agents; retreats, monasteries, and convents become prisons; holy ritual becomes bizarre conduct; religious observance becomes aberrant behavior; devotion and meditation become psychopathic trances.'"[193]

* * *

The Church's Conduct Is Not So "Outrageous" as to be Subject to Governmental Regulation

Case law teaches that overt acts or conduct connected with the exercise of religion are subject to governmental interference only if the conduct poses *substantial* threat to the public safety, peace or order....[194]

The majority opinion rests on a theory of fraudulently induced brainwashing. However, the conduct of "brainwashing" is not actionable because that method is commonly employed by religious groups, and it fails to constitute the outrageous conduct which goes beyond the limits of social toleration. Thus, the critical issue is whether the act of brainwashing

192 . Citing "J. Wenger, *Glimpses of Mennonite History and Doctrine* (2d ed. 1947."

193 . Citing "Saphiro [*sic*], *Of Robots, Persons and Protections of Religious Beliefs*, *supra*."

194 . Quoting *Sherbert v. Verner*, 374 U.S. 398 (1963), discussed at IVA7c; *Wisconsin v. Yoder*, 496 U.S. 205 (1972), discussed at IIIB2; and *Thomas v. Review Board*, 450 U.S. 707 (1981), discussed at IVA5l.

becomes tortious because it was preceded by the wrongful act of "heavenly deception" employed in recruiting.

It bears emphasis, and indeed the majority concedes, that the claimed deceptions, although secular on the surface, are clearly "rooted in religious belief." It is settled that the Constitution guarantees not only the free exercise of religion but also protects certain acts undertaken in furtherance of these religious beliefs. Included among these acts are the proselytizing and indoctrination activities of religious organizations. As explained in *McDaniel v. Paty*: "The right to free exercise of religion unquestionably encompasses the right to preach, proselyte and perform other similar functions."[195]

Thus, a persuasive argument can be made that the principal wrong here claimed (i.e., "heavenly deception" in recruiting) is not subject to government intervention at all, because it includes doctrinal matters rather than operational activities. But even if we may assume that such matters are purely "secular" in nature and may properly be regulated by government, they fail to amount to an abuse of such magnitude that would justify government interference under the strict balancing test prescribed by law. This is so because the First Amendment ensures wide protection for religious persuasion which may encompass not only exaggeration, but also outright falsehood. As stated in *Cantwell v. Connecticut*, "*In the realm of religious faith*, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. *To persuade others to his own point of view, the pleader*, as we know, at times *resorts to exaggeration*, to vilification of men who have been, or are, prominent in church or state, *and even to false statement*. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of citizens of a democracy." (emphasis added.)[196]

In sum, I am firmly convinced that since "heavenly deception" and its ensuing "brainwashing" fail to constitute those gravest abuses, this court is powerless to impose tort sanctions thereon.

Finally, I find an additional reason for holding that imposition of tort sanctions is particularly inappropriate in the present instance. Case law emphasizes that only a compelling governmental interest supported by *ample evidence* can justify state regulation of religious practices.[197] In the case at bench, the State of California has made no claim that such governmental interest exists, nor has it enacted any statute or regulation purporting to restrict the practices at issue. When scrutinizing conduct which is ostensibly subject to constitutional protection and which can be regulated only by showing a compelling state interest, the judiciary should tread cautiously in independently *creating* such governmental interest

195 . 435 U.S. 618, 626 (1978), discussed at § E4k below.

196 . 310 U.S. 296 (1940), discussed at § A2c above. Emphasis added by Judge Anderson.

197 . *Wisconsin v. Yoder*, *supra*, at 224-225.

> without any prior consideration by the Legislature. The Legislature is far better equipped than this court to undertake the factual investigation and to formulate the social policies which justify restrictions on exercising religious freedoms. Indeed, in the overwhelming majority of cases courts have merely *upheld* state regulations curbing religious conduct rather than *creating* such regulation. The majority's creation of this new tort liability in such a historically heretofore sensitive area, without either legislative initiative or guidance, constitutes judicial activism of the first degree.[198]

With this parting reproach before returning to his lower-court office, Chief Justice Anderson of the First Appellate District, Division Four, delivered his most telling blow against the exalted bench of the Supreme Court of the state. Four of the justices on that bench, including Chief Justice Malcolm Lucas, had recently been appointed by a conservative governor, George Deukmejian, with a view to correct what was widely viewed—both by friends and foes—as the activist bent of an earlier court headed by Chief Justice Rose Bird. That court had been criticized in some quarters for creating new causes of action in tort faster than the lawbooks could record them. So it was a goad in a sensitive spot for the Lucas court to be accused of inventing yet another new tort without any legislative indication of need for it, and to be called "activist" in the same sense as its predecessor!

But the majority opinion still prevailed as the law of the case, and the matter was remanded to the trial court for further proceedings, which seemed likely to follow the appalling course of the *George* and *Wollersheim* jury trials, discussed below. Perhaps despairing of being able to overcome the adverse tilt of public opinion manifest in California juries, the defendant religious group settled out of court rather than go to trial.

l. *George v. ISKCON* (1989). While the *Molko* case, *supra*, was wending its way through the California courts, two similar cases were right behind it. They involved two other new religious movements charged with sundry torts involving alleged "brainwashing" brought by disaffected former members, but unlike *Molko*, these two cases had gone to trial and resulted in enormous awards of damages against the religious groups. Even though the damage awards were subsequently reduced, they still posed immense costs to the religious groups. These three cases in the California courts were:

- *Molko and Leal v. Unification Church* (discussed above), settled out of court for an undisclosed amount;
- *George v. International Society for Krishna Consciousness*, jury awarded $32,587,500, reduced by trial court to $9,237,500;
- *Wollersheim v. Church of Scientology* (see § l below), jury awarded $30,000,000, reduced by trial court to $2,500,000.

198. *Molko & Leal* (1988), *supra*, Anderson dissent.

A common thread ran through all three cases (and many similar ones): that the plaintiffs had been "brainwashed" by the religious groups into affiliations and activities they otherwise would never have entertained. Margaret Singer and other "expert witnesses" had offered their testimony in each case to this effect and—in the two jury trials—may have contributed to the jury's setting of heavy punitive damages in addition to compensatory damages. In *George* the jury awarded $3,337,500 compensatory damages as against $29,250,000 punitive, and in *Wollersheim* $5,000,000 compensatory, $25,000,000 punitive.

The fact-situation in *George* was reviewed by the appellate court in some detail, favoring the version in the record that appeared to have been accepted by the jury in deciding for the prevailing party. Unlike some courts, it did not indicate, even by footnoting, the (many) instances in which the evidence adduced by the plaintiffs was contested by the defendants.

In 1974 Robin George, then age fourteen, a bright and active student who had just completed ninth grade, was invited to accompany her best friend, Caron Dempsey (two years older than Robin), on a visit to the Hare Krishna temple in Laguna Beach, which the older girl had visited before. A week later, Caron came to Robin's house "dressed like a Hare Krishna" and told Robin she had decided to join the religion. During the following weeks, Robin occasionally visited the temple and became increasingly interested in the Krishna movement. (During this period, Robin's mother occasionally accompanied her to the temple, although the court's narrative does not make this clear, other than to mention that in September 1974 Marcia pointed out to the president of the temple, Rsabadeva, that Robin was "at a very susceptible age.")

By October of that year Robin had begun to adopt the practices of the Krishna faith, braiding her hair and wearing a sari. She erected an altar to Krishna in her bedroom and arose at 2:30 AM every day to chant and pray. This was understandably perplexing to her parents, and they told her to dismantle her altar, cease chanting and praying before dawn and abandon her vegetarian diet. When Robin consulted her mentors at the temple, they told her that her parents were demons who were trying to pull her away from Krishna. The temple leader, Rsabadeva, assured her that if the time came when she had to choose between her faith and her family, the Krishna movement would provide a haven.

A few weeks later Robin left home and went with Caron Dempsey to the temple at Laguna Beach, from whence they were provided airline tickets to New Orleans, where they took up residence in the Krishna temple there. The Georges were distraught at her disappearance and tried to trace her through the Krishna movement, but they were informed by Rsabadeva and others that no one knew where she was. The Georges circularized the police forces in every city in which a Krishna temple was located. The police in New Orleans came to the temple looking for her, but the devotees spirited her out through a rear window. After the police left, the temple president said that she should call her parents and ask permission to stay at the temple. She did, but her parents refused consent, and her father flew to New Orleans

to retrieve her. On the flight home Robin began to chant. Her father told her to stop, and when she persisted, he slapped her across the face. When they reached home, she tried again to run away, but was caught. For several nights she was tied by a long chain attached to the base of the toilet so that she could sleep in bed and use the toilet, but could not leave those two rooms.

In May Robin again escaped from her home and returned to the Krishna temple. This time she was sent to Buffalo, New York, where she stayed at the Buffalo temple for a week. Then she was transported to Ottawa, Canada, where she took up residence at the Krishna temple. The Georges again approached the Krishna leadership, who promised to try to find Robin, although they reproached the Georges for mistreating Robin while she was at home. Becoming increasingly frustrated, the Georges and several friends picketed the temples in Laguna Beach, Los Angeles and San Diego.

The Krishnas arranged for Robin to write to her parents saying she was no longer with the Krishna movement but was traveling with a group of musicians in Mexico. This letter was mailed from the Krishna temple in Mexico City. When the Georges saw it, they concluded that it was designed to throw them off the track of the Krishnas and persisted in their efforts to trace her.

In late summer of 1975 Caron Dempsey left the New Orleans Krishna temple and returned home. She informed the Georges that Robin was in the Ottawa temple. Her father notified the police and then set out for Ottawa to retrieve her. Accompanied by Canadian authorities he went to the Ottawa temple on October 28, 1975, but the Krishnas had been warned of their coming and had spirited Robin away to a farmhouse in the country. In California the police learned from Caron Dempsey of the elaborate ruses employed by the Krishna movement to conceal Robin. The police gave the Krishna leadership twenty-four hours to produce Robin or face prosecution. The next morning she was in Los Angeles. While the Krishnas were notifying the police, Robin ran away again, taking the bus to a friend's home, where she called Caron Dempsey. Caron came to her and they talked all night. The next day Robin returned home.

Four months later Robin's father suffered a heart attack, followed by a series of strokes that kept him in the hospital until he died on September 4, 1976. Robin and her mother, Marcia, became active in the anticult movement. When she was scheduled to give a press conference about the Krishna movement, the Krishna movement issued its own press release explaining that its actions toward her were motivated by sympathy in response to her complaints of parental abuse.

In October 1977 Robin and Marcia George sued the Krishna movement and several of its leaders, charging them with false imprisonment (of Robin), intentional infliction of emotional distress (both), libel (of both by the Krishna's press release), and wrongful death (of Robin's father; Marcia's claim on that count had lapsed under the one-year statute of limitations, which did not toll for Robin because she was a minor). The jury awarded a total of $3,337,500 in compensatory damages and

$29,250,000 in punitive damages to the Georges, which the trial judge reduced to a total of $9,237,500. In due time this outcome was reviewed by an appellate court in California, which appraised each claim as follows:

> I FALSE IMPRISONMENT
>
> The centerpiece of this case both in terms of the evidentiary presentation at trial and the amount of damages awarded was Robin George's claim that she had been falsely imprisoned by defendants during the approximately one year she was a member of the Krishna faith.... "The tort requires *direct restraint* of the person for some appreciable length of time, however short, compelling him to stay or go somewhere against his will."[199]... This is not to say, however, that the plaintiff must in fact be physically restrained; the threat of physical restraint may be sufficient.
>
> At trial, even the Georges recognized this was not a prototypical case of false imprisonment. Robin admitted she was never physically restrained by the defendants and that her residence in various Krishna temples was not against her will. To counter these facts, plaintiffs introduced expert testimony from Drs. Margaret Singer and Sydney Smith to the effect that defendants "brainwashed" Robin into joining the Krishna movement. In particular, Dr. Singer testified Robin's "will had been overborne" by late October 1974 such that her decision to run away from home on November 16 was not a product of her own free will. Both Dr. Singer and Dr. Smith identified several features of the Krishna faith which, they argued, contributed to rendering Robin incapable of exercising freedom of choice including a low-carbohydrate vegetarian diet, reduced amounts of sleep and chanting as a means of religious ritual.
>
> Defendants fervently assert that the evidence at trial, even when viewed in a light most favorable to the plaintiff's claims, is simply insufficient to support liability on a false imprisonment theory. They argue that false imprisonment requires at a minimum direct physical restraint of the plaintiff by force or threat of force, neither of which was present in this case.
>
> * * *
>
> Perhaps based in part on a recognition of the difficulties of defining "brainwashing" and differentiating it from constitutionally protected proselytization,[200] Robin attempts to deflect First Amendment concerns by focusing on her status as a minor. She argues that "[I]f someone entices, or permits, or forces a child to stay anywhere except in the custody of her parents, without the parents' consent (express or implied), that person has falsely imprisoned the child..." [W]e have no difficulty with the sufficiency of the evidence... that the defendants enticed and encouraged her to run away from home and thereafter conspired to hide her from her parents at various locations in the United States and Canada. What remains is a legal

199 . Citing "5 Witkin, Summary of Cal. Law (8th ed. 1988) Torts, §378, p. 463, italics in original."
200 . Citing *Katz v. Superior Court*, 73 Cal.App.3d 952 (1977), discussed at § 4a(2) above.

question: Do such acts constitute false imprisonment? On the facts of this case, we conclude that they do not.

* * *

[T]here can be no hard-and-fast rule as to the age at which a minor attains the capacity of consent.... [C]ase and statutory law is replete with examples of situations in which a child over the age of 14 is deemed to have the mental capacity of an adult. In California, minors of that age are capable of committing and being held responsible for a crime, obtaining an abortion or birth control devices, consenting to certain types of medical and mental health treatment and being emancipated.

Particularly significant in this regard is the United States Supreme Court decision in *Chatwin v. United States* (1946)[201] which overturned a defendant's conviction on federal kidnapping charges. The case is noteworthy not only because it involves the capacity of a girl Robin's age to consent to a kidnapping, but also because the defendant was a member of a minority religious sect. Chatwin was a 68-year-old Mormon fundamentalist who converted the 15-year-old victim, whom he employed as a housekeeper, to believe in the doctrine of "celestial" or plural marriage. They fled to Mexico where a wedding ceremony was performed and lived thereafter in Arizona. The Supreme Court held that the girl's consent to the transportation and marriage barred the kidnapping charges.... In language particularly appropriate to this case, the court added that "the broadness of the statutory language [in the Federal Kidnapping Act] does not permit us to tear the words out of their context, using the magic of lexigraphy to apply them to *unattractive or immoral situations lacking the involuntariness of seizure and detention which is the very essence of the crime of kidnapping*." (...italics added.)

Here, Robin was 15 at the time she decided to run away from home.... No doubt her decisions in these matters were in part the product of the "rebelliousness of youth" but that is hardly a trait which evaporates at age 18. We seriously question whether a minor who by statutory definition is capable of committing a crime can at the same time be incapable of consenting to what would otherwise be a tort.... The evidence here, far from establishing incapacity, demonstrated quite the opposite.... [While] the defendants' principal conduct in concealing Robin from her parents constituted a tragic civil wrong against Jim and Marcia George [,] it was not a tort against Robin.

Finally, Robin argues that the "force or threat of force" and "lack of consent" requirements for the tort of false imprisonment may be satisfied by a showing that the plaintiff was subjected to coercive persuasion. She asserts it makes no functional difference whether her will was overcome by force or threats of force or by systematic brainwashing techniques. In either event, she suggests, the tort was committed because she effectively was confined against her will.

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201 . 326 U.S. 455 (1946).

The California Supreme Court recently had occasion to consider the subject of "coercive persuasion" in the context of claims by former members of the Unification Church that they had been brainwashed into joining the Church. In *Molko v. Holy Spirit Assn.*[202]... the court rejected one plaintiff's assertion that she had been falsely imprisoned at the retreat, noting she admitted she was "theoretically free to depart at any time" and "was not physically restrained, subjected to threats of physical force, or subjectively afraid of physical force." The plaintiff argued she had in fact been threatened because the Church asserted she and her family would be "damned to Hell forever" if she left. The Supreme Court quickly dispatched this argument, concluding that it sought "to make the Church liable for threatening divine retribution.... [S]uch threats are protected religious speech... and cannot provide the basis for tort liability."

Robin seeks to distinguish *Molko* on the ground that the plaintiff's claim there was based solely on "protected religious speech." In contrast, she asserts, her brainwashing claim involved more than simple threats of divine retribution.

We decline Robin's invitation to extend what we believe are the clear limits of *Molko*. To begin with, we read *Molko* as a reaffirmation that physical force or the threat of it is a necessary element of a false imprisonment cause of action even in the context of a brainwashing claim....

Robin is, or course, correct that the brainwashing theory expounded by Drs. Singer and Smith focused on more than threats of divine retribution. The results, however, are the same. Tort liability based on dietary restrictions, methods of worship, and communal living arrangements and schedules is just as surely inimical to the free exercise of religious liberty as that based on threats of divine retribution....

Here, Robin presented no evidence of fraud as to her nor did the evidence at trial so much as suggest that the schedules, practices and duties required of her differed from those of any other Krishna devotee. Absent such evidence, Robin's brainwashing theory of false imprisonment is no more than an attempt to premise tort liability on religious practices the Georges find objectionable. Such a result is simply inconsistent with the First Amendment.

II INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AS TO ROBIN

For reasons similar to those expressed in the preceding..., we conclude that Robin's claim for damages based on the intentional infliction of emotional distress is also fatally flawed. Many of the acts relied on by Robin as "outrageous" are hardly uncommon among cloistered religious groups. Moreover, there is a dearth of evidence suggesting that any of these acts were performed by defendants with the intention of inflicting emotional distress on Robin or even in reckless disregard of that possibility.... Robin's religious duties and living conditions were identical

202 . 46 Cal.3d 1092 (1988), discussed above.

> to all the other Krishna devotees who voluntarily chose the Krishna lifestyle.

In the margin the court set forth the list of supposed atrocities visited upon Robin by the Krishnas[203] and added a sagacious summary comment:

> It should be noted that plaintiffs' use of the word "forced" on several occasions in this passage are clearly characterizations rather than objective statements of fact. Although she was instructed to do certain things by her superiors in the Krishna faith, there is no evidence Robin was ever threatened with physical force if she failed to comply. Apart from the metaphysical question of brainwashing, there was every objective indication that Robin actively sought defendants' assistance and fully cooperated with their efforts to hide her from her parents.[204]

With these perceptive paragraphs the court disposed of the most questionable aspects of the *George* case, the "metaphysical question of brainwashing" and the idea that practices "hardly uncommon among cloistered religious groups" were so outrageous as to incur tort liability. As a result of its conclusions, the court reversed the judgments awarding Robin $1,500,000 in compensatory damages for false imprisonment and $5,000,000 in punitive damages (already reduced by the trial court from $15,000,000), as well as the $250,000 awarded Robin for intentional infliction of emotional distress—a total reduction of $6,750,000 on those two counts. The court affirmed the trial court's determination that a further trial was required to distinguish what portion of the joint punitive damages was attributable to Robin so that it too could be revoked.

Both parties appealed to the United States Supreme Court. The Georges sought reinstatement of the damages awarded by the jury and denied by the lower courts. Admitting that they had been culpable in several respects, the Krishnas did not appeal the compensatory damages but only the punitive ones. The Supreme Court did not act on the petition(s) for certiorari for many months, evidently holding the *George* case and the *Wollersheim* case (discussed below) while it decided another case (having no religious aspect) pertaining to the size of awards of punitive damages,

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203 . 24.... The record is replete with accounts of Robin's arduous life with defendants:
— Robin was made to work grueling hours with very little in the way of sleep or sustenance.
— All of her possessions were taken away; she was forced to plead for such common items as shoes, clothing and health care.
— She was required to do menial labor and forced to beg for money.
— Robin was deprived of any meaningful contact with the outside world. She was separated from the nurturing influence of family and friends, she was not even allowed to correspond.
— Robin was deprived of the simple joys of life. She was not permitted to read books or newspapers, view television or even listen to the radio.
— Most important, Robin was moved from place-to-place without regard for her personal wishes....

204 . *Robin George v. International Society for Krishna Consciousness* (ISKCON), 213 Cal.App.3d 729 (1989).

Pacific Mutual v. Haslip.[205] After that case was decided, the Supreme Court remanded *George* and *Wollersheim* to the California courts for further proceedings in the light of *Haslip*, with results to be related following discussion of *Wollersheim*.

m. *Wollersheim v. Church of Scientology* (1989). The third tort suit against a new religious group arising in California exhibited a similar set of assumptions regarding "brainwashing" and a similar cast of "expert" witnesses to advance those assumptions. Larry Wollersheim, in the words of the California Court of Appeal, "was an incipient manic-depressive for most of his life." He took some courses at the Church of Scientology of San Francisco in 1969, removed to Wisconsin for two years, and resumed his connection with Scientology in Los Angeles in 1972, continuing until 1979. In 1974 he reluctantly consented to participate in auditing aboard a ship operated by Scientology.

> At another stage Scientology auditors convinced him to "disconnect" from his wife and his parents and other family members because they had expressed concerns about Scientology and Wollersheim's continued membership....
>
> During his years with Scientology Wollersheim also started and operated several businesses. The most successful was the last, a service which took and printed photographic portraits. Most of the employees and many of the customers of this business were Scientologists.
>
> By 1979, Wollersheim's mental condition worsened to the point he actively contemplated suicide. [He] began experiencing personality changes and pain. When the Church learned of Wollersheim's condition, [he] was sent to the Flag Land Base for "repair."
>
> During auditing at Flag Land Base, Wollersheim's mental state deteriorated further. He fled the base and wandered the streets. A guardian later arranged to meet [him and told him] he was prohibited from ever speaking of his problems with a priest, a doctor or a psychiatrist.
>
> Ultimately Wollersheim became so convinced auditing was causing him psychiatric problems he was willing to risk becoming a target of "freeloader debt" and "fair game".... "[F]air game" was a practice of retribution Scientology threatened to inflict on "suppressives," which included people who left the organization or anyone who could pose a threat to the organization. Once someone was identified as a "suppresive," all scientologists were authorized to do anything to "neutralize" that individual—economically, politically, and psychologically.
>
> After Wollersheim left the organization Scientology leaders initiated a "fair game" campaign which among other things was calculated to destroy Wollersheim's photography enterprise. They instructed some Scientology members to leave Wollersheim's employ, told others not to place any new orders with him and to renege on bills they owed on previous purchases from the business. This strategy shortly drove

205 . *Pacific Mutual Life Insurance Co. v. Haslip*, 499 U.S. 1, (1991), discussed at § n below.

> Wollersheim's photography business into bankruptcy. His mental condition deteriorated further and he ended up under psychiatric care.[206]

Later Wollersheim filed suit against the Church of Scientology, charging fraud, intentional infliction of emotional injury and negligent infliction of emotional injury. The trial court ruled that Scientology is a religion and that auditing is a religious practice of that religion. After hearing testimony from Wollersheim's star witness, Margaret Singer, who contended that auditing was a form of "thought reform" that subjugated the victim, the jury awarded Wollersheim $5 million in compensatory damages and $25 million in punitive damages on the intentional and negligent infliction of emotional injury charges (the court had dismissed the fraud count).

This view of the facts—construed most favorably to the judgment—was vigorously contested by the church on appeal. It pointed out that there was no evidence—and the plaintiff never claimed—that he participated in auditing because of physical coercion or secular threats of retribution by the church, actual or implied. It contended that he willingly underwent auditing because he believed the church's teaching that "a person is trapped forever in a spiritual vacuum unless he or she is released through the spiritual practice of auditing," and that a religion is entitled to ask its members to shun a person who is antagonistic to its faith. Thus, in the church's view, the actions complained of were matters of faith and spiritual discipline protected by the Free Exercise Clause of the First Amendment.

The Court of Appeal for the Second Appellate District, Division Seven, concluded that there was substantial evidence to support Wollersheim's claim for intentional infliction of emotional distress. It parsed the elements of the tort as follows: (1) outrageous conduct by the defendant; (2) an intention by the defendant to cause emotional distress (or reckless disregard of the likelihood of causing such distress); (3) severe emotional distress; and (4) actual or proximate causation of the distress by defendant. "Outrageous conduct" it defined as activity by the defendant that (a) abuses a relationship or position that gives the defendant power to damage the plaintiff's interest; (b) evidences knowledge that the plaintiff is susceptible to injuries through mental distress; or (c) is carried on intentionally or unreasonably with the recognition that the acts are likely to result in illness through mental distress.[207]

> There is substantial evidence to support the jury's finding on this theory. First, the Church's conduct was manifestly outrageous. Using its position as his religious leader, the Church and its agents coerced Wollersheim into continuing "auditing" although his sanity was repeatedly threatened by this practice. Wollersheim was compelled to abandon his wife and family through the policy of disconnect. When his mental illness reached such a level he actively planned his suicide, he was forbidden to seek professional

206 . *Wollersheim v. Church of Scientology*, 212 Cal.App.3d 872, 260 Cal.Rptr.331 (1989).
207 . Citing *Agarwal v. Johnson*, 25 Cal.3d 932, 946 (1979).

> help. Finally, when Wollersheim was able to leave the Church, it subjected him to financial ruin through its policy of "fair game."
>
> Any one of these acts exceeds the "bounds usually tolerated by a decent society," so as to constitute outrageous conduct. In aggregate, there can be no question this conduct warrants liability *unless it is privileged as constitutionally protected religious activity*.
>
> Second, the Church's actions, if not wholly calculated to cause emotional distress, unquestionably constituted reckless disregard for the likelihood of causing emotional distress. The policy of fair game, by its nature, was intended to punish the person who dared to leave the Church. Here, the Church actively encouraged its members to destroy Wollersheim's business.
>
> Further, by physically restraining Wollersheim from leaving the Church's ship, and subjecting him to further auditing despite his protests, the Church ignored Wollersheim's emotional state and callously compelled him to continue in a practice known to cause him emotional distress....

Finding that Wollersheim had indeed suffered such distress and that the church's conduct had proximately caused it, the court turned to the constitutional question: whether such conduct was privileged under the First Amendment. After a lengthy review of what it took to be First Amendment jurisprudence, the court arrived at its own formulation of the appropriate test of free exercise:

> To be entitled to constitutional protections under the Freedom of Religion clauses any course of conduct must satisfy three requirements. First, the system of thought to which the course of conduct relates must qualify as a "religion" not a philosophy or science or personal preference.... Secondly, the course of conduct must qualify as an expression of that religion and not just an activity that religious people happen to be doing. Thus, driving a Sunday School bus does not constitute a religious practice merely because the bus is owned by a religion, the driver is an ordained minister of the religion, and the bus is taking church members to a religious ceremony.... And, thirdly, the religious expression must not inflict so much harm that there is a compelling state interest in discouraging the practice which outweighs the values served by freedom of religion....
>
> This means we must first ask three questions as to each of the four courses of conduct Wollersheim alleged against Scientology. (1) Does Scientology qualify as a religion? (2) If so, is the course of conduct at issue an expression of the religion of Scientology? (3) If it is, does the public nevertheless have a compelling secular interest in discouraging this course of conduct even though it qualifies as a religious expression of the Scientology religion? After answering these three questions, however, the special circumstances of this case require us to ask a fourth. Did Wollersheim participate in this course of conduct voluntarily or did Scientology coerce his continued participation through the threat of serious sanctions if he left the religion?

> The threshold question for all four courses of conduct is whether Scientology qualifies as a religion.... [A]t the law-and-motion stage, a judge granted summary adjudication on this issue. That court ruled Scientology indeed was a religion. And at the trial stage, another judge reinforced this ruling by submitting the case to the jury with an instruction that Scientology is a religion.
>
> As a result of the law-and-motion judge's decision on this question, evidence was not introduced at trial on the specific issue of whether Scientology is a religion. Given that vacuum of information, it would be presumptuous of this court to attempt a definitive decision on this vital question. We note other appellate courts have observed this remains a very live and interesting question.[208] However, we have no occasion to go beyond a review of the summary adjudication decision the trial court reached at the law-and-motion stage. In reviewing this decision, we find that on the evidence before the court the judge properly ruled Scientology qualifies as a religion within the meaning of the Freedom of Religion Clauses of the United States and California Constitutions.
>
> * * *
>
> As we have seen, not every religious expression is worthy of constitutional protection. To illustrate, centuries ago the inquisition was one of the core religious practices of the Christian religion in Europe. This religious practice involved torture and execution of heretics and miscreants. Yet should any church seek to resurrect the inquisition in this country under a claim of free religious expression, can anyone doubt the constitutional authority of an American government to halt the torture and executions? And can anyone seriously question the right of the victims of our hypothetical modern day inquisition to sue their tormentors for any injuries— physical or psychological—they sustained?
>
> We do not mean to suggest Scientology's retributive program as described in the evidence of this case represented a full-scale modern day "inquisition." Nevertheless, there are some parallels in purpose and effect. "Fair game" like the "inquisition" targeted "heretics" who threatened the dogma and institutional integrity of the mother church. Once "proven" to be a "heretic," an individual was to be neutralized. In medieval times neutralization often meant incarceration, torture, and death.[209] As described in the evidence at this trial the "fair game" policy neutralized the "heretic" by stripping this person of his or her economic, political and psychological power....
>
> Appellants argue these "fair game" practices are protected religious expressions. They cite to a recent Ninth Circuit case upholding the

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208. Citing *Founding Church of Scientology v. U.S.*, 409 F.2d 1146, 1160-1 (CADC 1969), discussed at § 6b above, and *Founding Church of Scientology v. Webster*, 802 F.2d 1448, 1451 (CADC 1986).

209. Citing "Peters, *Inquisition* (1988), and Lea, *The Inquisition of the Middle Ages* (1961)." Despite these learned citations, the court has perhaps oversimplified its analogy. The tortures and executions carried out in the Middle Ages in Europe were technically not carried out by the church but by the "civil arm"—the government.

constitutional right of the Jehovah's Witness Church and its members to "shun" heretics from that religion even though the heretics suffer emotional injury as a result.[210]

* * *

We first note another appellate court has taken the opposite view on the constitutionality of "shunning." In [*Bear v. Reformed Mennonite Church*[211]] the Pennsylvania Supreme Court [held that] "the `shunning' practice...may be an excessive interference within areas of `paramount state concern'...which the courts of this Commonwealth *may* have authority to regulate..."

We observe that the California Supreme Court has cited with apparent approval the viewpoint on "shunning" expressed in *Bear v. Mennonite Church*... rather than the one adopted in *Paul v Watchtower Bible & Tract Soc.* But even were *Paul*... the law of this jurisdiction it would not support a constitutional shield for Scientology's retribution program. In the instant case Scientology went far beyond the social "shunning" of its heretic, Wollersheim. Substantial evidence supports the conclusion Scientology leaders made the deliberate decision to ruin Wollersheim economically and possibly psychologically. Unlike the plaintiff in *Paul*..., Wollersheim did not suffer his economic harm as an unintended byproduct of his former religionists' practice of refusing to socialize with him any more. Instead he was bankrupted by a campaign his former religionists carefully designed with the specific intent to bankrupt him. Nor was this campaign limited to means which are arguably legal such as refusing to continue working at Wollersheim's business or to purchase his services or products. Instead the campaign featured a concerted practice of refusing to honor legal obligations Scientologists owed Wollersheim for services and products they already had purchased.

If the Biblical commandment to render unto Caesar what is Caesar's and to render unto God what is God's has any meaning in the modern day it is here. Nothing in *Paul*... or any other case we have been able to locate even implies a religion is entitled to constitutional protection for a campaign deliberately designed to financially ruin anyone—whether a member or non-member of that religion. Nor have we found any case suggesting the free exercise clause can justify a refusal to honor financial obligations the state considers binding and legally enforceable. One can only imagine the utter chaos that could overtake our economy if people who owed money to others were entitled to assert a freedom of religion defense to repayment of those debts. It is not unlikely the courts would soon be flooded with debtors who claimed their religion prohibited them from paying money they owed to others.

We are not certain a deliberate campaign to financially ruin a former member or the dishonoring of debts owed that member qualify as "religious practices" of Scientology. But if they do, we have no problem

210 . *Paul v. Watchtower Bible and Tract Society*, 819 F.2d 895 (1987), discussed at IC5a(2).

211 . 462 Pa. 330, 341 A.2d 105 (1975), discussed at IC5a(1).

> concluding the state has a compelling secular interest in discouraging these practices. Accordingly, we hold the Freedom of Religion guarantees of the U.S. and California Constitutions do not immunize these practices from civil liability for any injuries they cause to "targets" such as Wollersheim.

The court turned to an analysis of the practice of "auditing." It had noted that the lower court had held Scientology to be a religion and auditing a religious practice thereof, and it did not dispute those conclusions. It observed that there was substantial evidence that the practice of auditing had produced psychological harm in Wollersheim and that those carrying on the auditing were aware of this effect but continued the practice notwithstanding.

> None of this, however, means auditing represents such a threat of harm to society that the state has a compelling interest in awarding compensation which overcomes the values served by the religious expression guarantees of the constitution.
>
> To better understand why we conclude *voluntary* auditing may be entitled to immunity from liability for the emotional injuries it causes, consider some analogies. Assume Wollersheim were not a former Scientologist, but a former follower of one of the scores of Christian denominations. Further assume he sued on grounds a preacher's sermons filled him with such feelings of inferiority and guilt his manic-depressive condition was aggravated to the same degree Wollersheim contends auditing aggravated his mental illness in this case. Or assume another Wollersheim sued another church for a similar emotional injury on grounds his mental illness had been triggered by what a cleric told him about his sins during a confession—or series of confessions. It is one of the functions of many religions to "afflict the comfortable"—to deliberately generate deep psychological discomfort as a means of motivating "sinners" to stop "sinning." Whether by "hell fire and damnation" preaching, "speaking in tongues," private chastising, or a host of subtle and not so subtle techniques religion seeks to make us better people.
>
> Many of these techniques are capable of inflicting emotional distress severe enough that it is foreseeable some with psychiatric problems will "crack" or be driven into a deep depression. But the constitution values the good religion does for the many more than the psychological injury it may inflict on the few. Thus, it cannot tolerate lawsuits which might chill religious practices—such as auditing, "hell fire and damnation" preaching, confessions, and the like—where the only harm which occurs is emotional injury to the psychologically weak.
>
> There is an element present in the instant case, however, that reduces the religious value of the "auditing" practices on Wollersheim and increases its harm to the community. This is the element of coercion. Scientology, unlike most other religions or organizations claiming a religious purpose, uses various sanctions and the threat of sanctions to induce continued membership in the Church and observance of its

practices. These sanctions include "fair game," "freeloader debt" and even physical restraint. There was nothing in the evidence presented at this trial suggesting new recruits and members undergoing lower-level "auditing" were subject to sanctions if they decided to leave. Nor was there evidence these recruits or "lower level" auditors would be aware any program of sanctions even existed and thus might be intimidated by it. But there was evidence others, like Wollersheim, who rose to higher levels of auditing and especially those, like Wollersheim, who became staff members—the rough equivalent of becoming a neophyte priest or minister—were aware of these sanctions and what awaited them if they chose to "defect." Thus, their continued participation in "auditing" and the other practices of Scientology was not necessarily voluntary.

* * *

Wollersheim feared "fair game" would be practiced against him if he refused further auditing and left the Church of Scientology. As described in the previous section, those fears proved to be accurate. Scientology leaders indeed became very upset by his defection and retaliated against his business.... Scientology also used a tactic called "freeloader debt" as a means of coercing Wollersheim's continued participation in the church and obedience to its practices. "Freeloader debt" was devised by Scientology founder L. Ron Hubbard as a means of punishing members who, inter alia, chose to leave the Church or refused to disconnect with a suppressive person.

"Freeloader debt" was accumulated when a staff member received Church courses, training or auditing at a reduced rate. The Church maintained separate records which listed the discounts allowed. If the member later chose to leave, he or she was presented with a bill for the difference between the full price normally charged to the public and the price originally charged to the member. A person who stayed in the Church for five years could easily accumulate a "freeloader debt" of between $10,000 and $50,000. Wollersheim was familiar with the "freeloader debt" policy as well as the "fair game" policy. He also knew the Church was recording the courses and auditing sessions he was receiving at the discounted rate. The threat of facing that amount of debt represented a powerful economic sanction acting to coerce continued participation in auditing as the core religious practice of the Church of Scientology.

There also was evidence Wollersheim accepted some of his auditing under threat of *physical* coercion. In 1974, despite his repeated objections, Wollersheim was induced to participate in auditing aboard a ship Scientology maintained as part of its Rehabilitation Project Task Force. The Church obtained Wollersheim's attendance by using a technique dubbed ""bait and badger." As the name suggests, this tactic deployed any number of Church members against a recalcitrant member who was resisting a Church order. They would alternately promise the "bait" of some reward and "badger" him with verbal scare tactics. In the instant case, five Scientologists "baited and badgered" Wollersheim continuously

for three weeks before he finally gave in and agreed to attend the Rehabilitation Project Force.

But these verbal threats and psychological pressure tactics were only the beginning of Wollersheim's ordeal. While on the ship, [he] was forced to undergo a strenuous regime which began around 6:00 A.M. and continued until 1:00 the next morning. The regime included mornings of menial and repetitive cleaning of the ship followed by an afternoon of study or co-auditing. The evenings were spent working and attending meetings or conferences. Wollersheim and others were forced to sleep in the ship's hole [hold?]. A total of thirty people were stacked nine high in this hole without proper ventilation. During his six weeks under those conditions, Wollersheim lost 15 pounds.

Ultimately, Wollersheim felt he could bear the regime no longer. He attempted to escape from the ship because as he testified later: "I was dying and losing my mind." But his escape effort was discovered. Several Scientology members seized Wollersheim and held him captive. They released him only when he agreed to remain and continue with the auditing and other "religious practices" taking place on the vessel.... [F]ollowing this incident, Wollersheim felt the Church "broke him." In any event, this episode demonstrated the Church was willing to physically coerce Wollersheim into continuing his auditing.... Not only was the particular series of auditing sessions on the ship conducted under threat of physical compulsion, but the demonstrated willingness to use physical coercion infected later auditing sessions....

A religious practice which takes place in the context of this level of coercion has less religious value than one the recipient engages in voluntarily. Even more significantly, it poses a greater threat to society to have coerced religious practices inflicted on its citizens.

* * *

It is not only the acts of coercion themselves—the sabotage of Wollersheim's business and the episode of captivity on the ship—which are actionable. These acts of coercion and the threat of like acts make the Church's other harmful conduct actionable as well. No longer is Wollersheim's continued participation in auditing (or for that matter, his compliance with the "disconnect" order) merely his *voluntary* participation in Scientology's religious practices. The evidence establishes Wollersheim was coerced into remaining a member of Scientology and continuing with the auditing process. Constitutional guarantees of religious freedom do not shield such conduct from civil liability. We hold the state has a compelling interest in allowing its citizens to recover for serious emotional injuries they suffer through religious practices they are coerced into accepting. Such conduct is too outrageous to be protected under the constitution and too unworthy to be privileged under the law of torts.

We further conclude this compelling interest outweighs any burden such liability would impose on the practice of auditing....

The court cited the recent *Molko* decision of the California Supreme Court as confirming its view that the recruiting and retention tactics of a religious group were actionable.[212]

The next claim against the Church of Scientology was that it had used private information divulged by Wollersheim during the course of auditing to plan and implement a "fair game" campaign against him. The church claimed in defense that this information was shared among higher level Scientologists only to gain more experienced advice on Wollersheim's problems. The court held that the jury was entitled to disregard that explanation if it found the plaintiff's explanation more credible.

> The intentional and improper disclosure of information obtained during auditing sessions for non-religious purposes can hardly qualify as "religious expression." To clarify the point, we turn once again to a hypothetical situation which presents a rough analogy under a traditional religion. Imagine a stockbroker had confessed to a cleric in a confessional that he had engaged in "insider trading." Sometime later this same stockbroker leaves the church and begins criticizing it and its leadership publicly. To discredit this critic, the church discloses the stockbroker has confessed he is an inside trader. This disclosure might be said to advance the interests of the cleric's religion in the sense it would tend to discourage former members from criticizing the church. But to characterize this violation of religious confidentiality as "religious expression" would distort the meaning of the English language as well as the United States Constitution. This same conclusion applies to Scientology's disclosures of Wollersheim's confidences in the instant case. And, since these disclosures do not qualify as "religious expression" they do not qualify for protection under the freedom of religion guarantees of the constitution.

After disposing of several other disputes over procedural matters, the court reached the question of the amount of the damages awarded.

> [I]t is manifest the jury's award here is excessive since it is so grossly disproportionate to the evidence concerning Wollersheim's damages.
>
> Wollersheim's psychological injury although permanent and severe is not totally disabling. Moreover, even Wollersheim admits Scientology's conduct only aggravated a pre-existing psychological condition; Scientology did not create the condition. While the jury awarded Wollersheim $5 million in compensatory damages, we determine the evidence only justifies an award of $500,000....
>
> In reviewing a punitive damages award, the appellate court applies a standard similar to that used in reviewing compensatory damages, i.e., whether, after reviewing the entire record in the light most favorable to the judgment, the award was the result of passion or prejudice.... However,

212 . *Molko v. Holy Spirit Assn.*, 46 Cal.3d 1092,1117 (1988), discussed at §§ i, j and k above.

> the test here is somewhat more refined, employing three factors to evaluate the propriety of the award.
>
> The first factor is the degree of reprehensibility of the defendant's conduct.
>
> The second factor is the relationship between the amount of the award and the actual harm suffered. This analysis focuses upon the ratio of compensatory damages to punitive damages; the greater the disparity between the two awards, the more likely the punitive damages award is suspect.
>
> Finally, a reviewing court will consider the relationship of punitive damages to the defendant's net worth....
>
> The evidence admitted at trial supported the finding the appellant church had a net worth of $16 million at the time of trial. Accepting these figures as true, the jury awarded Wollersheim *150 percent* of appellant's net worth in punitive damages alone—195 percent if compensatory damages are included. This appears not just excessive but preposterous.[213] We find it especially excessive given the nature of the "outrageous conduct" in this particular case. Accordingly we reduce the punitive damages award to $2 million.[214]

This opinion, delivered by Thompson, J., was concurred in by Mildred Lillie, P.J., and Fred Woods, J. A month later, the court issued an order modifying this opinion and denying rehearing. The modifications were largely editorial in nature except for the last two. The first of these replaced the sentence characterizing the award as "preposterous" with the pallid statement, "This ratio is well outside the permissible range established in other appellate cases." The second replaced the next sentence with a similarly lackluster comment: "Respondent asserts appellant's true net worth approaches $250 million not $16 million and thus the punitive damage award is not excessive. However, respondent failed to prove the higher net worth figure at trial." On October 26, 1989, the Supreme Court of California denied both parties' petitions for review, and both parties appealed to the Supreme Court of the United States.

n. The *Haslip* Hitch. On February 23, 1990, the Church of Scientology filed a petition for *certiorari* with the Supreme Court of the United States in the case of *Church of Scientology v. Wollersheim* challenging, among other things, the awarding of punitive damages for providing religious services to a parishioner. On the same date, Lawrence Wollersheim cross-petitioned in the case of *Wollersheim v. Church of Scientology* seeking restoration of the full award of damages that had been reduced by the California appellate court.

Six days later the International Society of Krishna Consciousness filed a petition for *certiorari* with the U.S. Supreme Court in the case of *ISKCON v. George* challenging, among other things, the award of punitive damages that would result in

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213. Citations followed to numerous cases in which punitive damages had been reduced because excessive. Note revision of this sentence in subsequent order of the court (below).

214. *Wollersheim v. Church of Scientology, supra* (1989).

the virtual extirpation of the religious group. On the same date, Robin and Marcia George cross-petitioned in the case of *George v. ISKCON* seeking restoration of the full award of damages that had been reduced by the California courts.[215] On April 16, 1990, the Supreme Court stayed further proceedings in execution of judgment in *George* pending its decision whether to grant the petition.[216] On May 14, 1990, three briefs *amicus curiae* were filed on behalf of the World Hindu Assembly of North America, the National Association of Evangelicals et al., and the National Council of Churches et al., in support of the religious body in *George*. On that same day, the Supreme Court denied *certiorari* in the case of *George v. ISKCON*, but took no action on *ISKCON v. George*. On that day it also denied Wollersheim's petition but took no action on the Church of Scientology's petition.[217] Thus the court retained the religious bodies' appeals but rejected the plaintiffs' requests for restoration of disallowed damages.

Word was abroad that the court was holding *George* and *Wollersheim* until it could review the subject of punitive damages in general, and indeed those two cases remained in limbo, the writ being neither granted nor denied, for nearly a year. In October 1990 the court heard argument in *Pacific Mutual Life Insurance Company v. Haslip*, a case having nothing to do with religion or the First Amendment. Nevertheless, it was apparently the vehicle for the court's consideration of punitive damage standards, so the National Council of Churches and other religious bodies entered a brief *amicus curiae* urging the court not to reach a determination in *Haslip* that would jeopardize the religious liberty interests at stake in *George* and *Wollersheim*.

Notwithstanding this advice, the court announced its decision on March 4, 1991, in runic terms that did not greatly advance anyone's understanding of punitive damages. Seven justices agreed that the award of punitive damages in the case at bar did not violate the Due Process Clause of the Fourteenth Amendment. Five justices subscribed to the reasoning of Justice Harry Blackmun, who announced the opinion of the court. He stated that the common-law method for assessing punitive damages had been in use for a long time; every court, state and federal, that had considered the matter had held that it did not violate due process; nevertheless, judges and juries in determining the amount of such damages should be guided by principles of fairness and reasonableness (without saying what limits those laudable norms imposed); and any abuses would be subject to the "full panoply of legal protections"—jury instructions urging care in setting such amounts, post-trial review of the verdict using norms found in case law, and appellate review as well. Justices Antonin Scalia and Anthony Kennedy each wrote separately to suggest that historical usage for over two centuries suggested that considerations of "fairness" and "reasonableness" were

215. 58 LW 3634, 3635.
216. 58 LW 3657.
217. 58 LW 3723.

unnecessary. Only Justice O'Connor dissented, insisting that the standards referred to by Justice Blackmun were so nebulous as to be void for vagueness.

Two weeks later the court dealt with *George* and *Wollersheim* in summary dispositions of petitions for *certiorari*. Its order in each instance was identical, and matched the wording of orders in three other cases that had nothing to do with religion:

> Ch. of Scientology of California v. Wollersheim [and Intl. Soc. of Krishna v. George]. The petition for a writ of certiorari is granted. The judgment is vacated and the case is remanded to the Court of Appeal of California, Second Appellate District [Fourth Appellate District], for further consideration in light of *Pacific Mutual Life Insurance Company v. Haslip*, 499 U.S. 1 (1991).

The only problem was that *Haslip* didn't give much light. Was the lower court to conclude that it had been oversolicitous in reducing the punitive damages awarded in the case, or was it to harken to the advice to apply fairness and reasonableness in the review process? If the latter, had it already done so? If it had done so, why did the Supreme Court remand it for further consideration? Did the fact that the First Amendment was implicated change the canons of fairness and reasonableness to be applied? The Supreme Court had made no reference to the First Amendment in its opinion in *Haslip*, nor had any of the concurring or dissenting justices. This remand was difficult to interpret. Some pundits averred that the Supreme Court was merely tossing the ball back to the states to set some intelligible standards for punitive damages, but if that was indeed the court's intention, it was oversubtle in imparting it, for the states would have a hard time decoding that message from the wordy effusions of the *Haslip* opinions.[218]

o. Further Developments on the Subject of "Brainwashing." There have been some interesting developments in the judicial understanding of the proliferating allegations of "brainwashing," including the attempted use of that hypothesis by the United States.

(1) *U.S. v. Kozminski* (1988). The United States government employed a "brainwashing" allegation in a case brought against the Kozminskis, proprietors of a dairy farm in Michigan, where two mentally retarded men were found being held to labor in squalid conditions, poor health and relative isolation from the rest of society. The government charged the Kozminskis with holding the men in involuntary servitude.

> In attempting to persuade the jury that the Kozminskis held their victims in involuntary servitude, the Government did not rely solely on evidence regarding their use or threatened use of force or the threat of

218. Upon remand, *George* was settled out of court, as *Molko* had been. *Wollersheim* was left unmodified by the California courts, so presumably the defendants paid the judgment.

> institutionalization. Rather, the Government argued that the Kozminskis had used various coercive measures— including denial of pay, subjection to substandard living conditions, and isolation from others—to cause the victims to believe they had no alternative but to work on the farm. The Government argued that Fulmer and Molitoris were "psychological hostages" whom the Kozminskis had "brainwashed" into serving them.[219]

The Supreme Court of the United States, in an opinion delivered by Justice Sandra Day O'Connor for five justices, ruled that "involuntary servitude" required a showing of the "use or threat of physical restraint or physical injury, or the use or threat of coercion through law or the legal process." Justice William Brennan, joined by Justice Thurgood Marshall, concurred in the judgment that the case must be retried under narrower instructions to the jury, but he would have expanded the definition of "involuntary servitude" to include conditions beyond use or threat of physical force or restraint or legal process that sufficed to produce a condition of "involuntary servitude." But Justice Brennan made clear that such conditions would not include bona fide religious proselytizing.

> For example, [the statute] would not encompass a claim that a regime of religious indoctrination psychologically coerced adherents to work for the church unless it could also be shown that the adherents worked in a slave-like condition of servitude and (given the intent requirement) that the religious indoctrination was not motivated by a desire to spread sincerely held religious beliefs but rather by the intent to coerce adherents to labor in a slave-like condition of servitude.[220]

Justice John Paul Stevens, joined by Justice Blackmun, concurred in the judgment, but did not agree with Justice Brennan that the phrase "slave-like condition" was needed to amplify the concept of "involuntary servitude." All of the justices seemed to feel that the defendants would still be convicted under the narrower jury instructions.

(2) *Kropinski v. World Plan Executive Council—US* (1988). One Robert Kropinski sued two promulgators of Transcendental Meditation—World Plan Executive Council—U.S. and Maharishi International University, charging fraud, negligence and intentional tort that had caused him financial, physical and psychological harm. The case was tried to a jury and damages were awarded. On appeal, the U.S. Court of Appeals for the District of Columbia Circuit, per James Buckley, J., reversed on some issues and remanded for retrial on others. One of the contentions on appeal was that the trial court should not have admitted Kropinski's expert witness's testimony that he was subjected to "thought reform" that prevented his leaving the meditation regime for several years despite his failure to experience the

219 . *U.S. v. Kozminski*, 56 LW 4910 (1988).
220 . Ibid., Brennan concurrence.

benefits that had been promised him. He even taught transcendental meditation for a while, but his complaints of bad experiences were allayed by assurances that "something good was happening" that would become evident in the future. He charged that he had incurred injuries to his foot, leg and back as a result of practicing "Sidhi," a practice of levitation, which the court described as "apparently involv[ing] hopping on the floor with legs crossed in the lotus position."

The defendants challenged the testimony on thought reform by Dr. Margaret Singer on the ground that it was not "generally accepted" in the scientific community. The court noted that the *Frye*[221] standard of admissibility was appropriate for criminal cases, but that a less rigorous standard of admissibility of expert testimony might apply in civil cases, such as "substantial acceptability."

> Kropinski, however, has failed to provide any evidence that Dr. Singer's particular theory, namely that techniques of thought reform may be effective in the absence of physical threats or coercion, has a significant following in the scientific community, let alone general acceptance.... Defendants' expert, psychiatrist Dr. Melvin Prosen, testified that... her theory of thought reform found virtually no support among others in the field.
>
> Because of the uncertainty about the acceptability of Dr. Singer's thought reform thesis, we cannot sustain the trial court's decision to admit her testimony. On the record before us, however, we are unable to conclude that her views are not accepted. If, on retrial, the plaintiff wishes to present Dr. Singer's thought reform theory, the trial judge must be satisfied of its scientific acceptability....[222]

(3) *U.S. v. Fishman* (1990). In 1990 the federal district court for the Northern District of California dealt with a motion by the United States to exclude certain expert testimony offered by one Stephen Fishman, on trial for eleven counts of mail fraud. He wanted to introduce testimony by Margaret Singer and Richard Ofshe to the effect that he was not culpable of the alleged offenses because he had been "brainwashed" by the Church of Scientology, of which he had been a member since 1979. Judge D. Lowell Jensen ruled on the government's motion to exclude that testimony as follows:

> Dr. Margaret Singer is a well known and highly regarded forensic psychologist.... [She] is expected to testify that defendant's delusional view of the world at the time he committed the alleged fraud supports her opinion that he was legally insane....
>
> Dr. Richard Ofshe is a social psychologist who holds a Ph.D. degree in sociology.... [He] would testify to his opinion that, by controlling certain social influence variables, Scientology can induce a person to believe that

221 . From *Frye v. U.S.*, 293 F. 1013 (CADC 1923).

222 . *Kropinski v. World Plan Executive Council—U.S.*, 853 F.2d 948 (CADC 1988).

> he or she has acquired and can currently utilize superhuman powers.... [He] would further opine that for nearly ten years following the defendant's recruitment, the Church manipulated him and carefully monitored his every step in furtherance of the organization's fraud scheme.[223]

The government challenged the proffered testimony on the ground that the theories regarding thought reform advanced by the two "experts" were not generally accepted within the applicable scientific community. The court gave a useful review of the development of the theory of thought reform:

> Thought reform theory is not new; it derives from studies of American prisoners of war during the Korean conflict in the 1950s. Seeking to explain why some POWs appeared to adopt the belief system of their captors, journalist and CIA operative Edward Hunter formulated a theory that the free will and judgment of these prisoners had been overborne by sophisticated techniques of mind control or "brainwashing."[224] The term brainwashing continues to be used to describe a mind control process involving
>
> > ...the creation of a controlled environment that heightens the susceptibility of a subject to suggestion and manipulation through sensory deprivation, physiological depletion, cognitive dissonance, peer pressure, and a clear assertion of authority and dominion. The aftermath of [this] indoctrination is a severe impairment of autonomy and [of] the ability to think independently, which induces a subject's unyielding compliance and the rupture of past connections, affiliations, and associations.[225]
>
> Shortly after Edward Hunter observed what he called "brainwashing" of American POWs, Dr. Robert Lifton and Dr. Edgar Schein produced the foundational scientific scholarship on thought reform theory. Relying as Hunter did on the experience of American POW's in China, Dr. Lifton and Dr. Schein concluded that brainwashing, or "coercive persuasion," exists and is remarkably effective.[226] In what has since led to substantial controversy, however, Dr. Lifton and Dr. Schein did not confine their model of coercive persuasion to the prisoner-of-war setting. Instead, their seminal work found coercive persuasion "applicable to all instances of persuasion or influence in which the person is constrained by physical, social or psychological forces from leaving the influencing situation."[227]
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> * * *

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223. *U.S. v. Fishman*, 743 F.Supp. 713 (N.D.CA 1990).

224. Citing Hunter, E., *Brainwashing in Red China* (1951).

225. Citing *Molko v. Holy Spirit Assn.*, 46 Cal.3d 1092, 1109 (1988) quoting *Peterson v. Sorlien*, 299 N.W.2d 123,126 (Minn. 1981).

226. Citing Lifton, R.J., *Thought Reform and the Psychology of Totalism* (1961); Schein, E., *Coercive Persuasion* (1961).

227. Schein, *supra*, p. 269.

The application of the concept of coercive persuasion to religious cults by persons such as Dr. Singer and Dr. Ofshe is a relatively recent development. This extension of Lifton and Schein's theories has met resistance from members of the scientific community who believe that legitimate thought reform theory is necessarily limited to persuasion accompanied by physical restraint or mistreatment. Although the record before the Court is replete with declarations, affidavits and letters from reputable psychologists and sociologists who concur with the thought reform theories propounded by Dr. Singer and Dr. Ofshe, the government has submitted an equal number of declarations, affidavits and letters from reputable psychologists and sociologists who disagree with their theories....

A more significant barometer of prevailing views within the scientific community is provided by professionsl organizations such as the American Psychological Association ("APA") and American Sociological Association ("ASA"). The evidence before the Court...shows that neither the APA nor the ASA has endorsed the views of Dr. Singer and Dr. Ofshe on thought reform.

The APA considered the scientific merit of the Singer-Ofshe position on coercive persuasion in the mid-1980s. Specifically, the APA commissioned a task force to study and prepare a report on deceptive and indirect methods of persuasion and control. The APA named Dr. Singer to chair the task force. Before Dr. Singer's task force had completed its report, however, the APA publicly endorsed a position on coercive persuasion contrary to Dr. Singer's. In early 1987, the APA joined with certain behavioral and social scientists in submitting an *amicus* brief for a case where two individuals alleged they had been coerced into joining and maintaining membership in a religious cult. The case, *Molko v. Holy Spirit Association*..., was at that time pending before the California Supreme Court. The APA brief argued that the trial court in the *Molko* case had properly excluded the proffered expert testimony of Dr. Singer because her coercive persuasion theory did not represent a meaningful scientific concept.

Shortly after the *amicus* brief was submitted to the California Supreme Court, the APA withdrew its name as a signatory. While defendant here contends that the APA's withdrawal from its participation in the *Molko* case signified a repudiation of the brief's criticism of Dr. Singer's theories, in truth the withdrawal occurred for procedural and not substantive reasons. The record before the Court firmly establishes that the APA decided to wait for the report from Dr. Singer's task force before endorsing any position on coercive persuasion. Indeed, the APA's motion to withdraw as a signatory expressly stated that by its action, the APA did not mean to suggest endorsement of any views opposed to those set forth in the *amicus* brief, nor that it would not ultimately be able to subscribe to the views expressed in the brief. Significantly, the APA ultimately rejected the Singer task force report on coercive persuasion when it was submitted for consideration in October 1988. The APA found that Dr. Singer's report

> lacked scientific merit and that the studies supporting its findings lacked methodological rigor.
>
> * * *
>
> As chronicled above, the record in this case establishes that the scientific community has resisted the Singer-Ofshe thesis applying coercive persuasion to religious cults. The thesis that these cults overcome the free will of their members is controversial. But in determining the admissibility of expert testimony, the Court recognizes that the general acceptance standard enunciated in *Frye* [*v. U.S.*] allows for some controversy. *Frye* holds that "while courts will go a long way in admitting expert testimony deduced from well recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field in which it belongs."[228] The issue of whether or not the proffered testimony in this case satisfied the test is not one of first impression among the federal courts. In *Kropinsky v. World Plan Execution Council – U.S.*, the Court of Appeals unanimously reversed the trial court for permitting Dr. Singer to testify on coercive persuasion.[229]...
>
> Accordingly, the Court finds that defendant has not met its burden...of showing that Dr. Singer's and Dr. Ofshe's theories of thought reform are generally accepted in their fields.... The Court therefore excludes defendant's proferred testimony.[230]

The California court condensed into a few pages a recital of several years of intense controversy over Margaret Singer's advocacy of the concept of brainwashing and the resistance of the academic communities of psychology and sociology to that concept. Turmoil within the two professional organizations was prolonged and acerbic.[231] The reversal by the two groups of their endorsement of the "scholars' brief" was ignominious at best (the reversal by the ASA was similar to that of the APA), and has been used by Singer's supporters as though the two organizations had repudiated the content of the *amicus* briefs, which—as the court pointed out—was not the case. But the recognition by several courts that the brainwashing theory was not generally accepted in the scientific community has taken some of the wind out of the anticult sails, at least so far as the law of church and state is concerned. It certainly was not welcomed by the would-be expert witnesses.

(4) *Singer and Ofshe v. American Psychological Association et al.* (1993, 1994). The displeasure of Singer and Ofshe was evidenced by a lawsuit they brought against the American Psychological Association, the American Sociological Association, and sundry individual defendants—officers and members of the

228 . *Frye v. U.S.*, 293 F. 1013, 1014 (CADC 1923).

229 . See discussion immediately above.

230 . *U.S. v. Fishman*, *supra*.

231 . The struggle was recounted by Dr. William D'Antonio, executive secretary of the American Sociology Association, at a conference of the Association for Sociology of Religion, Dupont Hotel, Washington, D.C., as part of a panel on which the author was a participant, August 9, 1990.

offending organizations who had organized or assisted in the crafting of the *amicus* briefs referred to above—for having deprived the plaintiffs of "substantial portions of their income [derived] from serving as consultants and expert witnesses in litigation concerned with coercive persuasion." Their suit was first brought in the Southern District of New York under the Racketeer Influenced and Corrupt Organization statute. The court dismissed the case on the ground that no economic motivation on defendants' part had been shown that would qualify as an "enterprise" under the statute.[232] Shortly thereafter, they brought the same suit under state law in Oakland, California, adding additional plaintiffs as well. That suit was likewise dismissed with a brief order stating:

> This case, which involves claims of defamation, fraud, aiding and abetting and conspiracy, clearly constitutes a dispute over the application of the First Amendment to a public debate over matters both academic and professional. The disputants may fairly be described as the opposing camps in a longstanding debate over certain theories in the field of psychology.
>
> The speech of which the plaintiff's [*sic*] complain... would clearly have been protected as comment on a public issue[,] whether or not the statements were made in the contest [context?] of legal briefs.[233]

This terse comment is reminiscent of the proconsul Gallo's remark about Jewish accusations against Paul the apostle: "`[I]f it be a question of words and names..., I will be no judge of such matters.' And he drave them from the tribunal."[234]

p. *Dovydenas v. The Bible Speaks* (1989). This case involved an effort by a disenchanted adherent to recover large gifts made to a religious body, driving it into bankruptcy. It focused on "undue influence" rather than "mind control," but was another facet of the litigation against a religious group arising from the phenomenon of conversion.

Elizabeth Dayton Dovydenas was an heiress of the Dayton-Hudson fortune, with an estate in her own name of $19,000,000. At twenty-five years of age, she married Jonas Dovydenas, a photographer, and with him moved from Minnesota to Lenox, Massachusetts, where they began to attend a church called The Bible Speaks (TBS), led by Carl Stevens, its founder and pastor. By 1987 that congregation had grown to 1,300 members. It had a K-12 Christian school and a radio and television ministry and operated a missionary boat in the Caribbean. It had 100 affiliated churches abroad numbering some 17,000 members.

Elizabeth became increasingly involved in The Bible Speaks, and "Jonas' activity in TBS decreased as [her] activity increased."[235] She took classes in the Stevens

232 . *Singer v. APA*, No. 92-CIV-6082-LMM, 1993 WL 307782 (S.D.N.Y. Aug. 9, 1993).

233 . Superior Court, Alameda County, Case No. 730012-8, June 17, 1994 (unreported).

234 . Acts 18:15-16, AV.

235 . *Dovydenas v. The Bible Speaks*, 869 F.2d 628 (CA1 1989).

School of the Bible taught by Carl Stevens, and even organized a women's seminar in 1984. She occasionally accompanied Stevens on his weekly trips to Framingham, where he preached at an affiliated church. (The Second Circuit noted that "There has never been any suggestion that Stevens' and [her] relationship was anything but platonic."[236]) Stevens was planning to marry a young woman who had become good friends with Elizabeth. The bride-to-be suffered from serious migraine headaches, and Elizabeth was afraid that this disability would mar the marriage. In 1984, shortly before the wedding, she informed Stevens that she had decided to give $1,000,000 to TBS, and that she believed that gift would cure the headaches. The wedding occurred on November 24, 1984, and a few weeks later the gift came through in the form of Dayton-Hudson stock worth $1,001,031. She recalled that she was apprised that the bride's headaches had ceased, though that was not true. The evidence was conflicting on whether that fact was kept from her.

The next year, Elizabeth told Stevens that God had advised her to give $5,000,000 to TBS. In April, she went with Jonas to Florida for her mother's birthday. Just before she left, Stevens' wife called to tell her that Ben Turkia, a TBS missionary, had been detained in Romania, and that she should pray for his release. She called Stevens from Florida, saying that she was sending the $5,000,000 right away in the hope that it would effectuate Turkia's release. Stevens said her gifts would hold off the devil, but he did not tell her that Turkia had already been released. Elizabeth's father learned of the gift from the family's financial advisers who handled their stock holdings. He called her, but she was able to mollify him, and the gift came through in May 1985, conveying to TBS Dayton-Hudson stock worth $ 5,000,325. She rented a post office box to which all correspondence about the stock transfer was to be sent so that Jonas would not know about it. She also signed a will leaving most of her property to TBS. In the latter part of 1985, she gave TBS an additional $80,000 in five separate checks, plus $10,000 in cash as a personal gift to Stevens. At the end of the year, she gave $500,000 to TBS for new radio and television broadcasting equipment. She gave it in a cashier's check so that it would be anonymous.

By the end of 1985, Elizabeth's family decided something must be done to "bring her to her senses." They invited her to come to Minnesota for a surprise birthday party for her father. After the party, Elizabeth was told that they wanted her to talk to some people who would tell her things she needed to know about what she was getting into.

> After initial resistance, [she] began to accept the treatment, which consisted of talking to her family and the two exit counsellors and of viewing videotapes about cults and mind control groups.... No one threatened [her] with the loss of her children or an incompetency hearing if she refused exit counselling. Nor did anyone force [her] to remain in Minnesota.... After a week with her family, [she]...went to Unbound, an

236 . Ibid., n. 4.

> Iowa program, for more exit counselling before returning to Lenox. During this time, [she] drafted a new will and consented to a temporary conservatorship.[237]

In mid-1986 Elizabeth brought suit against The Bible Speaks for rescission of gifts she had made during 1985 because of undue influence and fraud. TBS sought protection of the bankruptcy court, and it accordingly took charge of administering TBS's estate while it reorganized under Chapter 11. After a three-weeks' trial, the bankruptcy court awarded her restitution of her gifts in the amount of $6,581,356.25, and the district court affirmed. On appeal, the First Circuit Court of Appeals reviewed the case in an opinion by Judge Hugh H. Bownes for a panel that included Judge Stephen Breyer, later to be elevated to the Supreme Court.

The court used a standard of review that upheld the findings of the bankruptcy court if they were not "clearly erroneous" because of the weight to be accorded a trial court's assessment of the credibility of witnesses. Under that standard, the appellate court upheld some of the lower court's determinations, noting, "The bankruptcy court found the testimony of plaintiff and her husband `forthright and credible' and the testimony of defendant's witnesses `evasive and lacking in credibility.'"

Before consulting the court's opinion on the merits, it may be pertinent to consider what was thought to be at stake in this situation as it was viewed by other religious bodies having no connection with or solicitude for The Bible Speaks or its founder/pastor. The National Council of Churches and the Council on Religious Freedom[238] entered a brief *amicus curiae* in the First Circuit opposing the rescission of gifts.

> The matters [Elizabeth Dovydenas] would have the courts regulate, solicitations for contribution to religious bodies and the contributions themselves, are inextricably intertwined with religious doctrine and are essential both to the existence of churches and to the individual's involvement in religion.
>
> *Amici* are appalled at the prospect that disgruntled members of any religious body could assert a cause of action that transforms the attractiveness a religious body once had for an adherent into a claim of undue influence, in order to permit that adherent to recover contributions the adherent made to that group. To permit such a claim to persist would be to place in jeopardy a religious body's ability to rely upon funds contributed to it, without which that body would be unable to pursue its religious activities.... How would a religious body protect itself against such a threat, short of putting all its contributed income in perpetual escrow, against the possibility that someday it might have to return those contributions to disaffected members?

237 . Ibid., pp. 35-36, text at n. 16.

238 . A small foundation financed mainly by a gift from a Seventh-day Adventist, John Hedrick.

The "facts" in this case, as found by the district and bankruptcy courts, are seen through two lenses that evidence some possible distortion. The first is the claimant's retrospective recollection of what happened to her, remembered in the light of her subsequent deprogramming, which involves a protracted and traumatic ordeal of intense "faith-breaking" (what may be a more tortious transaction than anything alleged against appellants, except that, being "successful," the victim has succumbed to the pressure and accepted the faith-breakers' and her family's definition of the situation, including their understandable animosity toward The Bible Speaks and its leaders). The second is the trial judge's apparent bias *against* the religious group and *for* the claimant, which may have led the judge to perceive the witnesses' "demeanor" as forthright and respectable in the case of the "wronged" claimant, and "evasive" and perplexing in the case of appellants. These possible distortions reflect the constitutionally problematic nature of permitting an ex-adherent of a faith to recover contributions made as a member of that faith.

The reasons for contributing to a faith are complex and individual, and the appellee's claim of "undue influence," with its implication that courts can assess what influence is or is not due in the religious sphere, is an unconstitutional attempt to regulate religion....

Examining the nature of The Bible Speaks['] activities, *amici* can see a "typical" high-demand, high-energy faith-group that was very effective in attracting adherents and involving them in intense religious activity. Such an organization might well appear demanding, dominating, even "fanatical," to a finder of fact not previously acquainted with that level of intensity in religious behavior. Religious movements begin at just such an all-consuming high-energy level and then subside over decades and centuries to the mild and avocational level with which most people are acquainted. Because beginning religious movements (such as The Bible Speaks) are relatively small and infrequently encountered, compared to the large and more relaxed bodies they become in time, they are often perceived as atypical or abnormal, whereas they are just as "normal," or at least as authentic, religious behavior as that seen at the church on the corner, perhaps more so.

The finder of fact in this instance may well have been put off by the seemingly voracious behavior of the religious groups in question, not realizing that it is the very nature of an intense, high-energy new religious group to try to absorb all of its adherents' available interest, time, energy, and resources for the advancement of its cause. This does not, of course, justify deliberate deception or other unscrupulous tactics, but the discreditable conduct alleged in this instance— to the degree that it actually occurred—was primarily an excess of zeal rather than an effort to "rip off" the heiress for personal aggrandizement.

It is clear, even from the facts as found by the trial court—doubly distorted as they may be—that the claimant was enthusiastically caught up in the work of The Bible Speaks at the time she made the two largest donations whose restitution this appeal contests. She decided to give

$1,000,000 and later $5,000,000 to the work of The Bible Speaks on her own motion, without coercion or duress, while she was in complete control of her faculties. In the latter instance she was a thousand miles away from the church, with abundant opportunity to obtain independent advice, some of which was indeed vouchsafed to her by her husband, her financial advisers, her uncle, and her father, but which she deliberately and freely declined to follow. She gave these gifts because she *wanted* to give them. The migraine headaches and the missionary's release may have been the occasion—even the pretext—for the gifts, but her main motivation was to help the movement that had come to mean so much to her. And the money she gave was indeed used for that purpose.

Her decision may not have been thought by her family or the finder of fact to have been wise, "prudent," or to have afforded the greatest possible tax advantage; but those considerations did not weigh heavily with her, as indeed they often do not—perhaps *should* not—with people caught up in a consuming concern about the salvation of their souls or the coming of the Kingdom of God.

Indeed, it is one of the common concerns of religion to free people from precisely such "prudent" pre-occupations with material possessions in order to open themselves to spiritual growth. The Gospel preached and supposedly believed by Christians has some radical advice about such matters:

> Do not lay up for yourselves treasures on earth, where moth and rust consume and where thieves break in and steal, but lay up for yourselves treasures in heaven, where neither moth nor rust consumes and where thieves do not break in and steal. For where your treasure is, there will your heart be also.
> Matthew 6:19-21, R.S.V.
>
> Therefore I tell you, do not be anxious about your life, what you shall eat or what you shall drink, nor about your body, what you shall put on. Is not life more than food and the body more than clothing?... For the Gentiles seek all these things; and your heavenly Father knows that you need them all. But seek first his kingdom and his righteousness, and all these things shall be yours as well.
> Matthew 6:25, 32-33, R.S.V.
>
> The kingdom of heaven is like treasure hidden in a field, which a man found and covered up; then in his joy he goes and sells all that he has and buys that field.
> Again, the kingdom of heaven is like a merchant in search of fine pearls, who on finding one pearl of great value, went and sold all that he had and bought it.
> Matthew 13:44-45, R.S.V.
>
> And a ruler asked him, "[G]ood teacher, what shall I do to inherit eternal life?"... And when Jesus heard it, he said to him, "One thing you still lack. Sell all that you have and distribute to the poor, and you will have treasure in heaven; and come, follow me." But when he heard this

> he became sad, for he was very rich. Jesus looking at him said, "How hard it is for those who have riches to enter the kingdom of God!"
> Luke 18:18, 22-24, R.S.V.
> Come now, you rich, weep and howl for the miseries that are coming upon you. Your riches have rotted and your garments are moth-eaten. Your gold and silver have rusted, and their rust will be evidence against you and will eat your flesh like fire.
> James 5:1-3, R.S.V.

There is abundant incentive in these passages for a person trying to be a faithful Christian to seek ways of giving excess possessions to advance the kingdom without additional considerations of curing migraine headaches or freeing captive missionaries.

It may well be that claimant's underlying motivation at the time or her gifts was not just to benefit The Bible Speaks or to respond to the blandishments of its leaders but to deliver her own soul, to *give* rather than to *get* for the sake of her own spiritual health. And when she did take a few faltering but earnest steps in that direction by giving away a third of her inherited fortune, her family became "greatly disturbed" and took forcible steps to bring her "to her senses," as the finder of fact so revealingly phrased it. They succeeded to the degree that she apparently came to regret her having strayed from the path of "prudence" and joined in the effort to obtain restitution of her "imprudent" gifts.

Discerning whether Mrs. Dovydenas made donations to The Bible Speaks because of Pastor Stevens' "undue influence" requires the court to determine, in the religious domain, what influence is or is not "due." To make such an assessment, the court must become involved in adjudicating the religious validity of church member's statements. The court, however, cannot adjudicate the validity of the church member's statements without impermissibly evaluating religious doctrine and thus the validity of religious beliefs themselves.

* * *

Harvard Law School Professor Laurence Tribe has explained that the First Amendment [limits such intrusion]:

> Once it is conceded that first amendment values are unacceptably compromised when civil courts undertake to settle religious issues, it becomes clear that allowing a legal determination about property or some other secular matter to turn on a court's answer to a religious question represents a path fraught with peril: the path is one along which unsatisfied former believers could drag the civil courts into the theological thicket by the simple expedient of suing for a refund of their prior donations to a religious organization....
> The existence of dissidents is a pervasive fact of religious life; their role within religious organizations can be the healthy one of spurring continuing introspection and re-examination of doctrine. But it is not hard to imagine what would occur if each potential dissenter were told: contributing to a religious organization—your own or indeed that of a group you reject—will give you a judicial platform from which to air

> your religious differences with others and potentially win a favorable verdict; all you need do in order to overcome the normal bar to civil adjudication of ecclesiastical matters is sue for a refund! Not only would such an invitation declare open season on churches and their followers; it could at the same time make at least some religious groups resist the very attempt to solicit donations, while inducing others—those too desperate for resources to refrain from financial appeals—to rigidify their doctrines and freeze or at least conceal their own evolution for fear that doctrinal change, ordinarily immune from censorship, could trigger refund-seeking litigation.[239]

Permitting liability to be imposed in this case imposes on religious associations a stifling chill on their absolute First Amendment rights to teach their doctrine to, and receive contributions from, their membership without fear that these basic exercises of freedom of religion will subject them to trial in a court of law— where the religious association will be forced to satisfy a group of non-members as to the "truthfulness," "prudence" or orthodoxy of its doctrine. The inevitable result of such a chill is ministerial self-censorship and prior restraint—concepts which are contrary to the protections granted by the First Amendment.

This threat to activities protected by the First Amendment might be said to be avoidable if the religious body refrained from the conduct alleged in this case to have been "undue influence" on the part of the leaders of The Bible Speaks. But that is an after-the-fact assurance that does not necessarily reassure. It is the "business" of a religious body to preach its gospel to all who will hear, to attract adherents, to make converts, to enlist them in whole-hearted obedience to its precepts, to warn them against temptations and evil influences, and to elicit the most generous support possible from them for the advancement of its work. In so doing, it may well act in ways that could be characterized—in resentful retrospect—as the appellant's activities have been characterized by the claimant in this case.

A retrieved reformation, as in this case, with its intervention by euphemistically titled "exit counselors," its reconstruction of past events with the help of self-justifying anti-cult animus, and its demand for the return of contributions freely given out of commitment then sincerely held and since abandoned— contributions subsequently expended for the donor's intended purpose—if enforceable by the courts, would represent a threat to the validity of adherence, the financial stability of organizations heavily dependent upon voluntary contributions, and the very meaning of "voluntary" itself.

* * *

Western civilization and its legal tradition are based upon the presumption that a mature adult, not gravely disabled and not subjected to fraud, force or threat of force, must be taken to mean what he or she says and to be bound by his or her decisions (to join, to contribute) upon

239 . L. Tribe, *supra*, § 14-11, 2d ed. (1988), pp. 1235-1236.

> which others have placed reliance. For a court to permit such a responsible adult to repudiate a past decision and recover a contribution, sincerely intended at the time made[,] on the plea of "undue influence"—given a wholly unprecedented application—would be to place in jeopardy the validity of all gifts to all religious (and other) organizations which might likewise be subsequently repudiated on similar unprecedented grounds. And when, as here, such restitution effectively demolishes the religious organization, the threat is not just ominous for religious liberty, but devastating.[240]

The court applied the forum state's standard of "undue influence" to the claimant's charge: "(1) a person who can be influenced, (2) the fact of deception practiced or improper influence exerted, [and] (3) submission to the overmastering effect of such unlawful conduct.... [U]nfair persuasion in the context of a confidential relationship constitutes undue influence in Massachusetts."[241]

> It is important to point out that we have decided this case assuming that there is *no presumption* of undue influence in such circumstances. We have assumed no more than that one in a confidential position has a duty to disclose facts which should be disclosed in light of the confidential relationship. This is a principle that would apply to religious and nonreligious circumstances alike.
>
> Massachusetts has never directly addressed the question of whether a pastor-communicant relationship is *per se* a confidential one when undue influence is alleged. We need not decide [that question since] we have found such a relationship on the basis of *other* factors alone such as the close contact between the parties,... knowledge by the recipient that the donor trusted or depended upon him, and requests by the donor for the recipient's advice or help [citations omitted]....
>
> Two other factors are also important under Massachusetts case law.... [T]he continuation of former relationships and the availability of independent counsel may help in counteracting an inference that undue influence played a role in the transactions.
>
> * * *
>
> At trial, TBS stipulated that [Elizabeth] was "susceptible," *i.e.*, a person who could be influenced, thus conceding the first prong of the Massachusetts undue influence test. Our discussion, therefore, will focus on the second and third prongs of the test: deception practiced or improper influence exerted and submission to the unlawful conduct.[242]

With reference to the first gift, $1,000,000, the court found no undue influence.

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240. Brief *Amicus Curiae* of the National Council of Churches and the Council on Religious Freedom.

241. *Dovydenas v. The Bible Speaks, supra*, text at n. 17; citations omitted.

242. Ibid., "III. Massachusetts Law on Undue Influence," *passim*.

> There is no evidence that making the gift was suggested by anyone at TBS or that anyone at TBS told [Elizabeth] that she should give money in order to cure Baum's headaches. That notion... originated with [Elizabeth]....
>
> There is no doubt that Stevens stood in a confidential relationship with respect to [her]. But a confidential relationship even when combined with the opportunity to unduly influence a person does not prove undue influence.... General statements by Stevens and others that [she] should give to TBS and that such gifts would do great works are too amorphous to show undue influence.
>
> * * *
>
> Here, [Elizabeth] received advice from both Jonas and [her brokerage] and she chose to ignore the advice. [She] was in her thirties, in good health, and a college graduate.... We hold that the courts below erred in finding that this gift was the result of undue influence.

The situation was deemed to be different with the second gift, in the amount of $5,000,000.

> Although the thought of making this gift originated with [Elizabeth], her decision to make it earlier than had been planned was determined by four factors, all of which were fashioned by TBS' agents. The first was the deliberate fostering by Stevens, Baum and Hill of [her] belief that her gift of $1,000,000 had cured Baum's headaches. The fact was that the headaches continued[,] and all three knew it.... The second factor was Stevens' influencing [her] not to tell her husband or family about the gift.... The third factor was the deliberate misrepresentation by Baum and Stevens that Turkia was being held in Rumania at great danger to his life. [Elizabeth] told Stevens in April that she wanted to give TBS the $5,000,000 immediately instead of in June as she had planned in order to effectuate Turkia's release. Stevens encouraged this and did not tell that Turkia had already been released and was in no danger. The fourth factor was the letter Stevens prevailed upon [her] to write stating that the gift was prompted by God, and that no one from TBS asked her to make the gift or knew that she was going to make it. This last part was false. Stevens and Baum knew about the gift before it was made and accelerated its delivery.
>
> These facts lead inexorably to a finding of undue influence. If [Elizabeth] had been told that Baum's headaches had not been cured by her first gift..., she may not have made the second gift at all. If she had not been influenced to keep the gift a secret from husband and family, she may not have gone through with it. If she had been told that Turkia was in no danger, she probably would not have accelerated the gift. And the letter composed by Stevens, dictated by Hill and written by [Elizabeth] is damning evidence that Stevens and Hill knew they were engaging in improper conduct.

In this paragraph, the court indulged in a concatenation of conjecture. It had no way of knowing whether she would have made the gifts or not if the court's

hypotheticals were actual. And "accelerating" a gift already committed to be given is hardly a gross offense. In each of these instances, the defendants offered what seem like reasonable explanations— at least as reasonable as the plaintiff's (and the court's narrative—unlike most statements of facts, which are usually the version offered by the prevailing party—summarized the defendant's version also), but the trial court found the plaintiff's testimony more credible than the defendant's.

Her third gift was for $500,000.

> While her husband was abroad and Kathleen Hill was staying at [her] home, Hill told [her] that she overheard a conversation between two TBS officials that $500,000 was needed for television equipment. [Elizabeth] was greatly concerned about her marriage and decided to give the money in an attempt to resolve her marital problems—having already been convinced that her gifts could effectuate such wishes. Rather than make the gift directly and openly, Hill prevailed upon [her] to make it anonymously and without other advice. We agree with the lower court that this gift was the result of undue influence.... The gift was made without outside advice at a time when [Elizabeth] was isolated from her non-TBS friends and relatives and when her husband was away.

Several small gifts totaling $80,000 had been made later in the year. Because no evidence was submitted to show the circumstances of these gifts or whether undue influence was exercised with respect to them, the court reversed the lower courts' conclusion that they must be returned to her.

The Bible Speaks had defended on the basis of the First Amendment.

> TBS makes two arguments.... The first is that the statements and/or actions of Stevens and others that influenced [Elizabeth] to make the gifts are protected by the free exercise clause.... This argument invokes the protection of the free exercise clause for TBS. The second argument, by contrast, seeks the protection of the free exercise clause for... the donor of the gifts. TBS argue that at the time the gifts were made, the only influence [the donor] was under was that of God and [her] religious beliefs or that even if the gifts were in part caused by improper influence by TBS agents, they were also the result of [her] own sincerely held religious beliefs. In either case, the courts are precluded from inquiring into [her] reasons for making the gifts.
>
> We first determine whether the first amendment shields the acts of TBS agents from inquiry and attack.... In *Cantwell v. Connecticut*, the Court... stated: "Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public."[243]... The clause does not allow purely secular statements of fact to be shielded from legal action merely because they are made by officials of a religious organization....

243 . *Cantwell v. Connecticut*, 310 U.S. 296, 306 (1940), discussed at § A2c above.

> The findings and rulings [in this case] rest solely on secular statements and actions. The facts relied upon have not been derived from an inquiry into the religious principles of TBS or the truth and sincerity of its adherents' beliefs. There has been no inquiry as to whether Stevens and the other TBS adherents were acting in accord with what they perceived to be the commands of their faith. Those who run TBS may freely exercise their religion, but they cannot use the cloak of religion to exert undue influence of a non-religious nature with impunity. The five million dollar gift and the half million dollar gift might have had their seeds in the religious beliefs of [Elizabeth] but they were both nurtured and brought to fruition by misstatements and distortions of facts that had no basis either in the religious tenets of TBS or [Elizabeth's] religious beliefs....
>
> The second argument... fails... [because] TBS may raise only its [own] free exercise claims, not those of the plaintiff....
>
> We find, as did the courts below, that the free exercise clause to the first amendment is not implicated.[244]

Among other issues raised by TBS that the court evidently held "do not merit discussion" was the fact that Elizabeth Dovydenas had claimed a federal income tax deduction for her gifts to TBS as charitable contributions. One of the conditions for claiming such deductions is that they must be *irrevocable*. A taxpayer cannot claim a deduction for contributions that she later attempts to recover. By claiming the charitable deduction, she was defining the transaction as one that cannot be reversed. That contention was at the heart of the concern of other religious bodies, as expressed in the *amicus* brief quoted above, whose ability to retain contributions they receive could be adversely affected by the court's decision. The court listed that *amicus* brief as part of the record, but evidenced no other direct cognizance of its concerns.

The court recognized that the two gifts it ordered returned to her—one for $5,000,000 and one for $500,000—"might have had their seeds in the religious beliefs" of the donor, but concluded that those gifts were "nurtured and brought to fruition by misstatements and distortions of facts that had no basis either in the religious tenets of TBS or [her] religious beliefs." The court took a large step in moving from the first to the second statements. If the gifts were rooted in the donor's religious beliefs, the nurturing and encouragement by others is of secondary importance for religious liberty. The conclusion that the latter activities "had no basis... in the tenets of TBS" is dubious on two counts. It is inappropriate for a civil court to try to parse the "tenets" of a religious body, and "tenets" are a shallow, intellectualistic characterization of what matters in religion anyway. Neither Elizabeth nor the leaders of TBS were primarily guided in their relationships by "tenets" or doctrines so much as by shared plans and hopes for their work together to advance the movement of which they were part. In that relationship, all parties

244. *Dovydenas v. The Bible Speaks*, 869 F.2d 628 (CA1 1989). Emphasis in original throughout excerpts.

may have been working empathetically toward common goals, and the representations by Stevens and others may well have been of peripheral importance at the time, to them and to Elizabeth. In her resentful retrospect, she saw them in a different light than she did at the time and injected into the situation ulterior or manipulative motives that may not have been present—or important—at the time. The essential vice of this type of litigation is the court's allowing an aggrieved donor to redefine the transaction as colored by her self-blame and her self-justification for her defection. Even if the court decided this case rightly, how are other religious bodies to protect themselves from similar retrospective revenges for real or fancied wrongs? Professor Tribe was correct to warn against offering potential dissidents a "judicial platform" to air their religious differences and possibly to get back their contributions.[245]

Perhaps apprehensive of some such outcome, Pastor Stevens and some of his followers had moved to Maryland, leaving behind only the realty they could not take with them. That was duly auctioned off in settlement of the judgment of $5,500,000, but there were such inadequate bids that the Daytons/Dovydenases placed the highest bid themselves to retain the realty for development. It seemed a sorry end to a saga that wiped out a thriving religious movement because it was blessed with the favor of a rich donor who was then turned against it and demanded back her gifts that had already been spent for the purposes she had designated. If the religious group overreached in its zeal to cultivate her generosity, the outcome illustrates the spiritual difficulties of coping with wealth.

7. Legislation Designed to Control Conversion

As the preceding pages have shown, efforts to prevent, punish or gain redress for violent attempts to reverse conversions were difficult to launch and uncertain of success. Still they were a source of risk to deprogrammers, and the anticult movement made a number of efforts to legalize these forcible attacks on conversion.

In 1979 a bill was introduced in the Massachusetts legislature that would authorize appointment of a guardian of the person and estate of one "of diminished mental capacity who lacks the present ability to reason or to make rational judgment as a result of mental illness, physical injury or the use of mind altering agents," verified by affidavit of one physician.[246] In 1981 a bill of thirty lines was introduced in the Connecticut legislature having the unabashed purpose "to creat a judicial proceeding through which the parent, grandparent, spouse of guardian of a `cult' member may obtain a court order to remove the member from the cult."[247]

In 1981 a bill was introduced in the Minnesota legislature to create a civil cause of action for money damages against groups gaining converts by deceptive means, but it

245 . Interestingly, Tribe was listed as a member of Mrs. Dovydenas's legal team on appeal.
246 . S. 802 (1979), Mass. Gen. Ct.
247 . Bill no.951, Jan. sess. (1981), Conn. legislature.

was never reported out of committee. It explicitly targeted conversion.[248] In the same year, a bill was proposed to the legislature of Delaware that would have added to the criminal code a new kidnapping offense that "attempted to subject [the victim] to any mental or physical procedure or activity with the intent of undermining or attempting to destroy or change such individual's religious, political, ideological or any other beliefs." Although aimed at "cults," this bill would seem to apply equally to degrogrammers, but it was never enacted.[249]

In 1983 the legislature of Nevada was offered a bill by one Sen. Hernstadt, who had had his daughter deprogrammed from the Church of Scientology and recovered a large sum of money from that organization in a subsequent lawsuit.[250] His bill would have permitted "any person who is a member of a cult" to bring civil action against the cult or any of its practitioners for treble damages if it "held itself out as providing psychological benefits," but did not have "a licensed psychologist or psychiatrist... available to provide those benefits" and charged a fee prior to the obtaining of such benefits. It was not enacted.[251]

Commissions to study the cult problem were proposed in Pennsylvania,[252] Maryland,[253] and Nebraska, the last-named designed to determine "what legislation is needed... [to] protect parents and deprogrammers from lawsuits from cults and cult members?"[254] None was enacted.

The high-water mark for such efforts was the "Lasher Bill," named for its sponsor, Assemblyman Howard Lasher, which twice passed both houses of the New York legislature but was vetoed twice by Governor Hugh Carey, one of whose aides told the state PTA (which supported it) that the veto was due to opposition by the churches of the state. Also called the "anticult" bill by some legislators, it was really an *anticonversion* bill, which was why the churches opposed it wherever it appeared—in New Jersey, Kansas and several other states. It would have authorized a court to grant an order of temporary guardianship over the person and property of someone who had been converted to a religion unsatisfactory to the relative seeking the order.

Of course, the bill did not state its objective so baldly, but used the elaborate litany of supposedly objective, secular tests advanced by the anticult movement. The court could recognize the proposed conservatee's need of guardianship by his or her having "undergone a substantial behavioral change and [showing lack of] capacity to make independent and informed decisions or to understand or control his conduct."

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248. MF No. 293 (2/9/1981), Minnesota legislature.

249. DL SB 263 (5/28/1981).

250. Beller, Miles, "Bill Targets Cults That Fail to Save Souls," *Los Angeles Herald Exam.* (2/5/83), p. A5.

251. NV SB 108 (1983).

252. House Bill 406 (2/3/81).

253. House Jt. Res. 67, "Cults in Maryland" (2/13/81).

254. Legis. Res. 108 (1983).

The court could discern such change by such marks as "Abrupt and drastic alteration of basic values and lifestyle...; Blunted emotional responses; Regression to child-like levels of behavior; Physical changes [such as] drastic weight [loss]; cessation of menstruation; diminished rate of facial hair growth; cessation of perspiration; Reduction of decisional capacity," etc.

These marks could be attributed to the prospective conservatee's having been subjected to a "systematic course of coercive persuasion that undermines a person's capacity to make informed or independent judgments" [i.e., to leave the cult], consisting of such elements as "Manipulation and control of the environment; Isolation from family and friends; Control over information and channels of communication; Physical debilitation through such means as sleep deprivation, inadequate diet, unreasonably long work hours, inadequate medical care; and Reduction of decisional capacity through performance of repititious tasks, lack of physical and mental privacy, and intense peer pressure to induce feelings of guilt and anxiety, fear of outside world, child-like dependency, renunciation of self, family, and presently-held values, and simplistic, polarized view of reality."[255]

Critics of the bills included the New York State Council of Churches and the Committee on Civil Rights of the Association of the Bar of the City of New York (among others), who contended (among other things) that its description could fit persons undergoing boot camp, med school or other rigorously structured forms of higher education.

It was thus void for vagueness as well as unconstitutional in its design to subject conservatees to "mental health treatment" that would reverse unacceptable religious conversion.

Because none of these ingenious efforts reached fruition in law, they need not be individually analyzed or critiqued. Suffice it to say that extensive efforts were made by the anticult movement in the early 1980s to secure laws that would smooth the path for counterconversion projects, but that none of them succeeded in being enacted into law.

From the preceding pages it should be apparent that *conversion* is an activity of religious groups that has proved a fertile source of litigation, and the end is not in sight. Some of the lines of law are beginning to be drawn, but the specter of "brainwashing" continues to haunt the scene and has not yet been laid to rest, nor has the force of *pistaphobia*—the fear of faith—been allayed.

SUMMARY of § B: Conversion

The importance of conversion in religious life has been described, with the recognition of the right to "change religion" found in the Universal Declaration of Human Rights.

255 . A-7912-A (1981); numeration omitted.

In *Application of the Conversion Center*, the Supreme Court of Pennsylvania held that a charter of incorporation could not be denied to an organization whose purposes included conversion of Roman Catholics to Protestantism.

"Deprogramming"—a system for forcible reversal of conversion—was described and a wide variety of victims identified.

Several legal rationales for invalidation of conversion were discussed, mainly the theories of Richard Delgado and the various forms of the necessity defense.

In the long roll of litigation arising from conversion, a series of cases have involved actions against deprogrammers:

People v. Murphy began as an effort to obtain an indictment against deprogrammers, but the grand jury instead indicted the religious group involved; the judge dismissed it.

Katz v. Superior Court was a landmark decision resulting from a lower court's granting an order of conservatorship for the express purpose of deprogramming five members of the Unification Church. The appellate court held that "in the absence of such actions as render the adult believer himself gravely disabled..., the processes of this state cannot be used to deprive the believer of his freedom of action and to subject him to involuntary treatment."

Civil actions against deprogrammers under civil rights statutes were listed:

Baer v. Baer failed because defendants were not shown to have interfered with the victim's right to travel.

Rankin v. Howard (Ninth Circuit) upheld a cause of action against deprogrammers under both § 1985(c) and § 1983 of the Civil Rights Act of 1871.

Ward v. Connor (Fourth Circuit) reached the same conclusion.

Taylor v. Gilmartin (Tenth Circuit) likewise.

Colombrito v. Kelly (Second Circuit) rejected payment of attorney's fees to defendant since the §1985(c) claim was not frivolous and terming his actions "unlawful."

Peterson v. Sorlien was a case in which the supreme court of Minnesota denied damages to a victim of deprogramming, holding that society has a compelling interest in (forcible) intervention in "cult indoctrination."

Ellers v. Coy was a federal case in Minnesota awarding damages for deprogramming despite the holding in *Peterson v. Sorlien*.

An even more fertile field of litigation arising from conversion is that of lawsuits against religious groups:

U.S. v. Ballard was a prosecution of Guy Ballard and the "I Am" movement for mail fraud that produced a holding that defendants could not be put to the proof of their religious beliefs in court; whether they could be judged on their sincerity remains a subject of dispute. Justice Jackson's dissent insisted that courts could not even test their sincerity.

Founding Church of Scientology v. U.S. held that seizure of the "E-meter" for "false labeling" could not stand with respect to any uses of the device that were for religious purposes. In a subsequent trial, *U.S. v. Article or Device*, the court held that use of the E-meter would not violate the Food and Drug law if used for religious purposes only.

Christofferson v. Church of Scientology engendered the idea that religious services could be actionable if offered for *secular* purposes; a second trial ended in a mistrial.

Van Schaick v. Church of Scientology marked an effort to use the RICO statute against a religious group, but was rejected by the court; exhortations by the group for plaintiff to sever ties to family were not "outrageous" but similar to "demands for single-minded loyalty... that have characterized numerous religious, political, military and social movements over the ages."

Meroni v. Unification Church was an action for wrongful death by the father of a young man who committed suicide shortly after leaving the religous group. The court held that the church had not done anything wrong, saying the conduct complained of "constitutes common and accepted religious proselytizing practices."

Molko and Leal v. Unification Church produced important insights at lower-court levels to the effect that a church could not be put on trial for failing to realize that a member wanted to resign when the member gave no such indication at the time. But the Supreme Court of California rejected that holding and remanded the case for trial because the state was held to have a compelling interest in protecting its citizens from "fraudulent induction of unconsenting individuals into an atmosphere of coercive persuasion." The parties settled out of court.

George v. ISKCON was another California case in which large damages were awarded against the religious group for secreting a minor from her parents, but allegations of brainwashing were rejected.

Wollersheim v. Church of Scientology was a third California case in which large damages were awarded against the religious group for physically confining the plaintiff and causing him economic ruin.

U.S. v. Kozminski was an effort by the United States to gain a conviction for "involuntary servitude" based on supposed mind control (no religious element present); the Supreme Court concluded that involuntary servitude required use of force or threat of force or use of legal process of ceorcion.

Kropinski v. World Plan Executive Council—U.S. was a suit against the promulgators of transcendental meditation that involved a claim of mind control as the reason for tolling the statute of limitations; the District of Columbia Circuit remanded for retrial requiring that any expert testimony about mind control be shown to be substantially accepted in the pertinent scientific field.

U.S. v. Fishman was a criminal case whose main feature was the court's refusal (after extensive analysis) to admit expert testimony on mind control (as an exonerating factor in mail fraud) because it was not generally accepted in psychology or sociology.

Singer and Ofshe v. American Psychological Association was a lawsuit brought in two courts designed to obtain damages for loss of income as expert witnesses on mind control from scholars and professional organizations alleged to have contributed to the outcome in *Fishman, supra*. Both suits were dismissed.

Dovydenas v. The Bible Speaks was a lawsuit by a disaffected member of a fundamentalist Christian sect seeking to recover $6,581,000 in contributions allegedly obtained through fraud and/or undue influence. The First Circuit held that two of the gifts, totaling $5,500,000 were obtained through undue influence and must be returned to the donor, while the other gifts were not. The religious group took bankruptcy and left the jurisdiction.

Legislation designed to control conversion was discussed, with brief analysis of the Lasher bill in New York and reference to other efforts in other states, none of which became law.