



Alabama Law Scholarly Commons

Articles

Faculty Scholarship

1984

When Religious Exercise Is Not Free: Deprogramming and the Constitutional Status of Coercively Induced Belief

Richard Delgado

University of Alabama - School of Law, rdelgado@law.ua.edu

Follow this and additional works at: https://scholarship.law.ua.edu/fac_articles

Recommended Citation

Richard Delgado, *When Religious Exercise Is Not Free: Deprogramming and the Constitutional Status of Coercively Induced Belief*, 37 *Vand. L. Rev.* 1071 (1984).

Available at: https://scholarship.law.ua.edu/fac_articles/401

This Article is brought to you for free and open access by the Faculty Scholarship at Alabama Law Scholarly Commons. It has been accepted for inclusion in Articles by an authorized administrator of Alabama Law Scholarly Commons.

When Religious Exercise Is Not Free: Deprogramming and the Constitutional Status of Coercively Induced Belief

Richard Delgado*

I.	INTRODUCTION	1072
II.	JUSTIFICATION FOR DEPROGRAMMING	1078
	A. <i>Cults and Autonomy</i>	1078
	B. <i>The "Freeze-Frame" Approach</i>	1082
	C. <i>An Alternative Approach—Return to Informed Consent</i>	1085
III.	DEPROGRAMMING—CONSTITUTIONAL LIMITATIONS	1087
	A. <i>Deprogramming—Constitutional Effects</i>	1088
	1. Potential Loss of Belief	1088
	2. Criticism of Practices	1089
	3. Criticism of Beliefs	1090
	B. <i>Interpreting the Free Exercise Clause</i>	1091
	1. The Language of "Free Exercise"	1091
	2. Free Exercise—Historical Background	1092
	3. Policies Underlying Free Exercise	1093
	4. The Special Protection for Religion and Religious Exercise	1097
	C. <i>Deprogramming and First Amendment Criteria</i>	1099
	1. Neutrality	1099
	2. Secular Purpose	1100
	3. Secular Effect	1101

* Visiting Professor of Law, University of Pennsylvania; Professor of Law, University of California, Los Angeles; J.D., 1974 University of California, Berkeley (Boalt Hall). An earlier version of this Article was presented at a Legal Studies Workshop at the University of Pennsylvania Law School in January 1984. I am grateful to the participants of the workshop for many helpful comments and criticisms. I also acknowledge the many persons with first-hand experience of cult problems, whose contributions and insights made this Article possible.

4. Excessive Entanglement	1101
5. Minimal Intrusion/Least Restrictive Alternative	1103
IV. THEORIES OF DEPROGRAMMING	1103
A. <i>How Deprogramming Works—The Procult Perspectives</i>	1104
1. The Assertion that Deprogramming Is a Form of Brainwashing	1106
2. The Assertion that Cults Do Not Brainwash	1107
B. <i>How Deprogramming Works—Anticult Perspectives</i>	1108
1. Abreactive Therapy	1108
2. The Discursive Approach	1109
V. OBJECTIONS TO DEPROGRAMMING	1112
VI. CONCLUSION	1114

I. INTRODUCTION

A previous article by this author, *Religious Totalism: Gentle and Ungentle Persuasion Under the First Amendment*,¹ showed that recruitment into many of the new religious cults² may be, and

1. 51 S. CAL. L. REV. 1 (1977).

2. This Article does not use the term "cult" pejoratively, but uses it in its dictionary sense: "a system of religious worship or ritual [with] . . . devoted attachment to, or extravagant admiration for, a person, principle, . . . [by] a group of followers; sect." WEBSTER'S NEW WORLD DICTIONARY 358 (college ed. 1968). Many cults are religious or spiritual in nature, see, e.g., A. J. RUDIN & M. RUDIN, PRISON OR PARADISE: THE NEW RELIGIOUS CULTS 31-97 (1980); C. STONER & J. PARKE, ALL GODS CHILDREN (1977) (describing most large religious cults, including Children of God, Unification Church, Hare Krishna, and Scientology), while others are secular, e.g., flying saucer cults; the Symbionese Liberation Army (SLA), Trial Transcript of United States v. Hearst, 412 F. Supp. 873 (N.D. Cal. 1976) [hereinafter cited as Hearst]; and the Manson cult, V. BUGLIOSI & C. GENTRY, HELTER SKELTER (1st ed. 1974) [hereinafter cited as HELTER SKELTER].

Religious cults are found worldwide. See, e.g., CHARITY FUNDS BUREAU, FINAL REP. ON THE ACTIVITIES OF THE CHILDREN OF GOD TO HON. LOUIS J. LEFKOWITZ ATTY GEN. OF THE STATE OF NEW YORK 3 (1974) (Children of God sect has more than 100 communes throughout world) [hereinafter cited as LEFKOWITZ REPORT]; *The Darker Side of Sun Moon*, TIME, June 14, 1976, at 48 [hereinafter cited as TIME]; Beckford, *A Korean Evangelistic Movement in the West*, in ACTS OF THE 12TH INTERNATIONAL CONFERENCE FOR THE SOCIOLOGY OF RELIGION 319, 321-23 (1973) (Unification Church has branches throughout the world). The number of members of religious cult groups is large, but difficult to estimate with any exactitude, see Delgado, *supra* note 1, at 6 n.25 (up to 3,000,000 American members of 200 to 1000 religious cults), and growing, Lanier, *America's Cults Gaining Ground Again*, U.S. NEWS AND WORLD REPORT, July 5, 1982, at 37, 39; see also J. MACCOLLAM, CARNIVAL OF SOULS 13 (1979). For a psychohistorical explanation of this growth, see West & Delgado, *Psyching Out the Cults' Collective Mania*, L.A. Times, Nov. 26, 1978, pt. VII, at 1, col. 1

often is, nonconsensual.³ Cult recruiters disguise that they are proselytizing for a religious group,⁴ conceal the identity of the group,⁵ and withhold from the prospective cultist the nature of the commitment expected, the procedures to be undergone, and the practices to be engaged in.⁶ This deception effectively destroys the possibility of a recruit's giving *informed consent*⁷ to induction into the movement because the recruit lacks the knowledge necessary for an intelligent choice whether to join.

After an initial period, the recruit's knowledge of the cult's nature and practices gradually increases, but informed consent is still not obtained. Although information increases, the capacity to choose decreases:⁸ by a process of coercive persuasion,⁹ sometimes

(cults grow fastest in periods of rapid social change). Not all cults subject their members to coercive persuasion or other destructive psychological techniques. For an attempted definition of the term "destructive cult," see J. CLARK, M. LANGONE, R. SCHECTER & R. DALY, *DESTRUCTIVE CULT CONVERSION: THEORY, RESEARCH AND TREATMENT* (1981) [hereinafter cited as J. CLARK & M. LANGONE]. For other attempts at definitions, see C. STONER & J. PARKE, *supra*, at 4 (nine criteria for determining cults); Rudin, *The Cult Phenomenon: Fad or Fact?*, 9 N.Y.U. REV. L. & SOC. CHANGE 17, 24-30 (1980) (14 criteria).

3. Delgado, *supra* note 1, at 49-62.

4. *Vermont Senate Comm. for the Investigation of Alleged, Deceptive, Fraudulent and Criminal Practices of Various Organizations in the State* 16 (Aug. 18, 1976) [hereinafter cited as *Vermont Hearings*]; C. STONER & J. PARKE, *supra* note 2, at 167; TIME, *supra* note 2, at 48-49 (candidates lured by ads seeking persons interested in ecology, discussions of contemporary morality or "interested in the betterment of mankind"); NATIONAL AD HOC COMMITTEE, *THE UNIFICATION CHURCH: ITS ACTIVITIES AND PRACTICES*, A Meeting of Concerned Parents, *A Day of Affirmation and Protest*, Feb. 18, 1976, pt. 1 (transcript of informational hearing held by United States Senator Dole), at 11 (improvement of world ecology), pt. 2 (letters of testimony), at 16 (charitable service group), pt. 2, at 24 (community action group) [hereinafter cited as *Meeting Report*]; J. MACCOLLAM, *supra* note 2, at 55-56 (Christian Peace Corps).

5. *E.g.*, C. STONER & J. PARKE, *supra* note 2, at 27; LEFKOWITZ REPORT, *supra* note 2, at 59-60; *Meeting Report*, *supra* note 4, pt. 2, at 11, 12, 16, 21, 24.

6. *E.g.*, C. STONER & J. PARKE, *supra* note 2, at 6, 7, 30; R. ENROTH, *YOUTH, BRAIN-WASHING AND THE EXTREMIST CULTS* 102 (1977); Rofes, *I was Brainwashed by the Followers of Rev. Sun Myung Moon (But I Wised Up)*, HARV. CRIMSON, Sept. 30, 1976, at 3, col. 1.

7. Informed consent, as developed in medicine and experimentation with human subjects, requires that the physician or experimenter explain the proposed treatment in advance and obtain the subject's agreement. *See, e.g.*, *Canterbury v. Spence*, 464 F.2d 772 (D.C. Cir.), *cert. denied*, 409 U.S. 1064 (1972); *Cobbs v. Grant*, 8 Cal. 3d 229, 244, 502 P.2d 1, 10, 104 Cal. Rptr. 505, 514 (1972); J. KATZ, *EXPERIMENTATION WITH HUMAN BEINGS* 540-608 (1972). The doctrine generally requires that the doctor explain to the patient all material information about the proposed treatment which the patient likely would need to make an intelligent decision to undergo or forgo the treatment. Typically, courts have held this to include the diagnosis, prognosis, alternative treatments, and the costs, risks, and possible benefits of each of the proposed treatments. For discussion of the doctrine of informed consent as it has been applied to religious proselytizing, see Delgado, *supra* note 1, at 49-62; Delgado, *Cults and Conversion: The Case for Informed Consent*, 16 GA. L. REV. 533 (1982).

8. For a discussion of the inverse relationship between *information* and *capacity*, the

called "thought reform" or "brainwashing,"¹⁰ religious cults deprive inductees of the ability to make an independent assessment of their cult membership. Cults discourage critical thought and

two key ingredients of consent, in cult joining, see Delgado, *supra* note 1, at 54-56 ("Manipulation of Knowledge and Capacity," "Segmentation of the Joining Process"). See also Delgado, *supra* note 7, at 551-52 (section entitled: *Unique Elements in Cult Conversion*).

9. Social scientists use the term "coercive persuasion" to describe an intensive process aimed at radically changing behavior and belief. The term apparently was first used by Massachusetts Institute of Technology social psychologist Edward Schein, E. SCHEIN, COERCIVE PERSUASION (1961), and Yale Medical School psychiatrist Robert Lifton, R. LIFTON, THOUGHT REFORM AND THE PSYCHOLOGY OF TOTALISM: A STUDY OF "BRAINWASHING" IN CHINA (Norton ed. 1961). See J. CLARK & M. LANGONE, *supra* note 2; J. MEERLO, RAPE OF THE MIND (1956); W. SARGANT, BATTLE FOR THE MIND (1957); J. SEGAL, LONG-TERM PSYCHOLOGICAL AND PHYSICAL EFFECTS OF THE POW EXPERIENCE: A REVIEW OF THE LITERATURE (1973); P. ZIMBARDO & R. VALLONE, PERSUASION, COERCION, INDOCTRINATION AND MIND CONTROL (1983); Bettelheim, *Individual and Mass Behavior in Extreme Situations*, 38 J. ABNORMAL PSYCHOLOGY 417 (1943); Farber, Harlow & West, *Brainwashing, Conditioning and DDD (Debility, Dependency, and Dread)*, 20 SOCIOLOGY 271 (1957); Strassman, Thaler & Schein, *A Prisoner of War Syndrome: Apathy as a Reaction to Severe Stress*, 112 AM. J. PSYCHIATRY 998 (1956).

The principal contexts in which coercive persuasion has been studied include closed, high demand religious cults, see, e.g., Peterson v. Sorlien, 299 N.W.2d 123 (Minn. 1980), *cert. denied*, 450 U.S. 1031 (1981); J. CLARK & M. LANGONE, *supra* note 2, studies of prisoners of war, see, e.g., J. SEGAL, *supra*; Lifton, *Home by Ship: Reaction Patterns of American Prisoners of War Repatriated from North Korea*, 110 AM. J. PSYCHIATRY 732 (1954); Note, *Misconduct in the Prison Camp: A Survey of the Law and an Analysis of the Korean Cases*, 56 COLUM. L. REV. 709 (1956), Chinese "re-education" camps, see, e.g., R. LIFTON, *supra*, and small renegade groups like the SLA, see, e.g., Hearst, *supra* note 2, and the Manson cult, see, e.g., HELTER SKELTER, *supra* note 2.

Although theorists disagree to some extent over the model that should be used to explain the changes observed in these settings, see, e.g., R. LIFTON, *supra* (a psychoanalytic model); W. SARGANT, *supra* (a neurophysiological model); E. SCHEIN, *supra* (a social-psychological model), there is general agreement that the following techniques are used: isolation of the victim from outside influences and former friends; control over the channels of communication and information; physical and physiological depletion through overwork, insufficient hours of sleep, and an inadequate diet; instillation and magnification of guilt and anxiety; threats of physical or spiritual annihilation if the individual does not join the group; degradation and attacks on the former self and identity; intense peer pressure, often applied through group scrutiny or "struggle" sessions; alternation of harshness and leniency; and required performance of symbolic acts that betray former norms and values. See Peterson v. Sorlien, 299 N.W.2d at 126; R. LIFTON, *supra*; Delgado, *Ascription of Criminal States of Mind: Toward a Defense Theory for the Coercively Persuaded ("Brainwashed") Defendant*, 63 MINN. L. REV. 1, 2-3 (1978).

10. R. LIFTON, *supra* note 9, (describing experience of Western and Chinese victims of Chinese "thought reform" universities and offering psychoanalytically based model to explain observed changes); see also United States v. Fleming, 19 C.M.R. 438 (A.C.M.R. 1954), *aff'd*, 7 C.M.A. 543, 23 C.M.R. 7 (1957); United States v. Olson, 20 C.M.R. 461 (A.C.M.R. 1955) (court martials arising out of incarceration of American servicemen in North Korean POW camps, raising issue of whether "brainwashing" defense is available in military law); N.Y. Times, Apr. 28, 1954, at 16, col. 3 (disciplinary action not taken against Col. Schwable because of finding that intense pressure applied during captivity rendered collaboration with the enemy justifiable).

choice,¹¹ and bring to bear a variety of physical,¹² physiological,¹³ and psychological¹⁴ techniques to induce conformity to a hierarchical system,¹⁵ acceptance of a complex ideology,¹⁶ and submission to an authoritarian leader.¹⁷ Because of this structuring of the socialization process, *knowledge* of the nature and effects of the religious cult, and *capacity* for free choice—requisites for informed consent—are never present simultaneously.¹⁸ At the outset when capacity is present, knowledge is lacking; sometime after induction,

11. See Delgado, *supra* note 7, at 548-49 (Cults use isolation, deny privacy and opportunity for reflection, and discourage questions and expressions of doubt.); STAFF REPORT, INVESTIGATIVE GROUP TO THE COMM. ON FOREIGN AFFAIRS, U.S. HOUSE OF REPRESENTATIVES, THE ASSASSINATION OF REPRESENTATIVE LEO J. RYAN AND THE JONESTOWN, GUYANA TRAGEDY, 96th Cong., 1st Sess. 17-19 (1979) [hereinafter cited as JONESTOWN REPORT]; C. STONER & J. PARKE, *supra* note 2, at 159. See generally R. LIFTON, *supra* note 9, at 66-83 (repression of doubt).

12. LEFKOWITZ REPORT, *supra* note 2, at 35-36; Meeting Report, *supra* note 4, pt. 2, at 21 (remote setting, no means of return). For discussion of physical and physiological techniques to produce attitudinal change and behavioral compliance, see generally GROUP FOR THE ADVANCEMENT OF PSYCHIATRY, SYMPOSIUM No. 3: FACTORS USED TO INCREASE THE SUSCEPTIBILITY OF INDIVIDUALS TO FORCEFUL INDOCTRINATION 90-93, 103, 122, 123 (1956) [hereinafter cited as GROUP FOR THE ADVANCEMENT OF PSYCHIATRY]; Chodoff, *Effects of Extreme, Coercive and Oppressive Forces*, in 3 AMERICAN HANDBOOK OF PSYCHIATRY 384 (S. Arieti ed. 1966).

13. Hearst, *supra* note 2, at 256-57 (sensory overload, continuous tapes, chanting, frenetic activity); R. ENROTH, *supra* note 6, at 49, 59, 64 (inculcation of fear and dread); *Vermont Hearings*, *supra* note 4, at 63; Meeting Report, *supra* note 4, pt. 2, at 24 (inadequate diet and sleep); F. CONWAY & J. SIEGELMAN, SNAPPING 56-57, 133, 153 (1979) (induction of state of narrowed awareness in which brain's information processing mechanisms are impaired).

14. R. ENROTH, *supra* note 6, at 59 (inculcation of fear and dread); Conway & Siegelman, *Information Disease: Have Cults Created a New Mental Illness?*, SCI. DIG., Jan. 1982, at 86 (staged emotional experiences, suggestion, deceptive, and distorted language). For discussion of psychological techniques to induce thought reform and behavioral change, see R. LIFTON, *supra* note 9; GROUP FOR THE ADVANCEMENT OF PSYCHIATRY, *supra* note 12; P. ZIMBARDO & R. VALLONE, PERSUASION, COERCION, INDOCTRINATION AND MIND CONTROL (1983); Chodoff, *supra* note 12.

15. Delgado, *supra* note 1, at 24-25; LEFKOWITZ REPORT, *supra* note 2, at 7, 33; C. STONER & J. PARKE, *supra* note 2, at 113. See generally JONESTOWN REPORT, *supra* note 11.

16. Delgado, *supra* note 1, at 31-32 (we-they world view; indifference to society's norms; willingness to lie and cheat in fundraising and recruiting because cult's mission overrides man's law), at 32-34 (potential for violence); see Hearst, *supra* note 2 (wealthy newspaper heiress abducted by political extremist group that promoted violent overthrow of American government). See generally JONESTOWN REPORT, *supra* note 11 (describing People's Temple world view, including extreme punishment, even obligatory suicide for transgressions); R. ENROTH, *supra* note 6, at 178-79 (self-mortification required in Unification Church); C. STONER & J. PARKE, *supra* note 2, at 106-07 (citing Seattle Post-Intelligencer, Jan. 24, 1972, at A-3, col. 5 (cult preached that inhalation of toluene, an industrial solvent, was required to attain spiritual highs; two deaths resulted)).

17. Delgado, *supra* note 1, at 29-31 (regimentation; elders assign marital partners, supervise training and discipline of children, forbid outside contacts).

18. See *supra* text accompanying notes 3-8; Delgado, *supra* note 1, at 54-56.

when knowledge is present, capacity is lacking.

Nonconsensual induction of young people into any high-demand group is manifestly a matter of social concern.¹⁹ Involuntary recruitment into a religious movement is no less troubling; our society regards freedom of choice in religious matters as a precious right.²⁰ *Religious Totalism*, therefore, proposed a range of measures aimed at protecting informed religious decisionmaking²¹ and argued that these measures were morally and constitutionally valid.²² This part of my thesis proved relatively uncontroversial.

I also noted that *after* induction into a cult, the range of remedies available to protect adherents is more restricted than before induction, consisting essentially of various types of legal or extralegal deprogramming.²³ Without offering any elaborate theory of jus-

19. See *Wisconsin v. Yoder*, 406 U.S. 205, 213, 221 (1972) (state's interest in protecting children against religiously motivated developmental injury); *Reynolds v. United States*, 98 U.S. 145, 166-67 (1878) (state's interest in protecting citizens from religious despotism); *Leary v. United States*, 383 F.2d 851, 861-62 (5th Cir. 1967), *rev'd on other grounds*, 395 U.S. 6 (1969) (state's interest in protecting citizens from psychological harm resulting from religiously motivated drug ingestion). These and other social interests implicated in a decision to tolerate or regulate religious cultism are discussed in Delgado, *supra* note 1, at 10-36.

20. U.S. CONST. amend. I (protecting free exercise of religion, forbidding the government from establishing a religion).

21. Delgado, *supra* note 1, at 73-78 (discussing "preventive" remedies: requirement of identification; cooling-off period; public education; prohibition of proselytizing by certain groups; licensing of proselytizers; and requests for rescue).

22. *Id.* at 10-73.

23. *Id.* at 78-92. Deprogramming is a form of confrontational therapy in which the therapist, often an ex-cultist, attempts to neutralize the effects of cultic conditioning and restore the individual's freedom of thought. The first modern deprogrammer, Ted Patrick, describes his experiences and techniques in T. PATRICK, *LET OUR CHILDREN GO!* (1976). In deprogramming, the deprogrammer challenges the cultist's dependence on and trust in the cult and its leaders and attempts to demonstrate that he or she has been cheated and duped. The deprogrammer may present facts about the cult or its leader that the member may not know—for example that the leader has a prison record, or lives in luxury. He or she may point out inconsistencies in the cult's teachings, or between its teachings and facts in the real world, such as that the cultist's parents hate and reject her when they in fact care deeply for her.

Frequently, the deprogramme responds passively or hysterically. See, e.g., *Peterson v. Sorlien*, 299 N.W.2d 123, 127 (Minn. 1980), *cert. denied*, 450 U.S. 1031 (1981). Typically, however, the cultist will enter into exchanges with the deprogrammer. Once this happens, deprogramming often proceeds rapidly, as programmed psychological mechanisms and beliefs are cast aside. Often, there comes a "breaking point," at which the cultist cries, laughs, or embraces the deprogrammer. In these instances the deprogramme normally will express gratitude over having been rescued from the cult and indignation over the loss of liberty, dignity, and property suffered while with the group. Delgado, *supra* note 1, at 78-80.

For purposes of legal analysis, there are three types of deprogramming: Voluntary deprogramming; forcible deprogramming; and deprogramming carried out with a court's sanction, usually in the form of an order of conservatorship. Voluntary deprogramming is not illegal and will not be discussed further in this Article. See C. STONER & J. PARKE, *supra*

tification, I suggested that involuntary deprogramming of cultists in a condition of thought reform would be constitutional if carried out under judicial supervision²⁴ following a hearing at which it were found that no less intrusive means of restoring the cultist to full functionality existed.²⁵ This part of the thesis proved highly controversial.²⁶ Anticult organizations and some academic writers praised it and the leading state court decision on deprogramming, *Peterson v. Sorlien*,²⁷ cited it with approval. But it drew equally strong criticism from writers who attacked my deprogramming

note 2, at 234; Delgado, *supra* note 1, at 91-92. Forcible deprogramming is illegal, although possibly subject to the defense of necessity or choice-of-evils defense. See Note, *Cults, Deprogrammers and the Necessity Defense*, 80 MICH. L. REV. 271 (1982). Illegal deprogramming will not be discussed further in this Article. This Article focuses exclusively on deprogramming carried out by a court order. The aim of this Article is to show that such deprogramming is constitutionally and morally valid when certain criteria of coercive persuasion are present and when deprogramming is confined within specified limits.

24. For descriptions of deprogrammings, see T. PATRICK, *supra* note 23. Judicial conservatorship effects court ordered deprogramming. Conservatorship permits a family member or other interested party to take legal control of an incompetent person. Provisions for conservatorship or guardianship exist in every state. Often a statute will also provide for temporary or emergency conservatorship or guardianship, typically for a 20 or 30 day period, following a brief hearing at which the moving party establishes a need for protection of the proposed conservatee. For a more complete discussion, see Delgado, *supra* note 1, at 88-91. Recently, a number of special conservatorship statutes have been proposed to deal expressly with the cult situation, although apparently none have been enacted. See, e.g., Aronin, *Cults, Deprogramming, and Guardianship: A Model Legislative Proposal*, 17 COLUM. J.L. & Soc. PROBS. 163, 201 n.258 (1982).

25. Delgado, *supra* note 1, at 85-92.

26. The legal analysis of deprogramming is more difficult than the analysis of preinduction remedies, such as disclosure or informed consent. Deprogramming occurs after belief in the cult is fixed and hence confronts the constitutional prohibition of regulation of religious belief. See *infra* notes 94-153 and accompanying text. Moreover, many Americans understand and approve of the idea of informed consent, but are skeptical of the possibility of "brainwashing," see Reich, *Brainwashing, Psychiatry, and the Law*, 39 PSYCHOLOGY 400 (1976); Szasz, *Patty Hearst's Conversion: Some Call it Brainwashing*, THE NEW REPUBLIC, Mar. 6, 1976, at 10-12, perhaps because the idea raises internal resistance and calls up vulnerabilities we would rather not confront. At the same time, the urgency of the deprogramming task is lightened by two considerations. First, some evidence suggests that cults may be gradually beginning to improve in the informed consent-disclosure area—in part because of the criticism their practices have drawn from commentators and the public. Interview with John Lofland, Ph.D., Professor of Sociology, University of California, Davis, at Hutchins Center for the Study of Democratic Institutions, Santa Barbara, California, (June 27, 1983). But see C. EDWARDS, CRAZY FOR GOD 13 (1979); 122 Cong. Rec. 8083 (1976) (use of front groups with innocuous sounding names continues). Second, an increase in the number of voluntary deprogrammings, or "mutual reassessments" appears to be underway, as more knowledgeable parents act promptly after learning that their son or daughter has entered a cult. See Delgado, *supra* note 1, at 91-92. Voluntary deprogramming generally is effective only in the early stages of cult engagement. *Id.* at 92.

27. 299 N.W.2d 123, 128-29 (Minn. 1980).

suggestion on moral, conceptual, or constitutional grounds.²⁸

The most rigorous of the critics is Robert Shapiro, whose article, "*Mind Control*" or *Intensity of Faith*, argues that deprogramming cannot be justified merely by showing that an individual was once subjected to thought reform; it must also appear that he or she is currently in a nonautonomous, thought-controlled state.²⁹ A second, recently published article expands on this suggestion.³⁰

The present Article offers a defense of deprogramming and a reply to its critics, particularly Shapiro.³¹ Part II reviews what happens in many instances of cult joining and offers a conceptual account that justifies deprogramming of cult members who are unable to comprehend or surmount the coercive and deceptive influences that led to their commitment. Part III addresses constitutional problems that are triggered in the event that deprogramming should affect religious belief—an event that is by no means inevitable. Part IV discusses deprogramming and whether some variant of it is capable of remedying the type of situation addressed in part II without violating the constitutional strictures identified in part III. The Article concludes with an analysis of objections to my thesis and answers to those objections.

II. JUSTIFICATION FOR DEPROGRAMMING

A. *Cults and Autonomy*

Certain paradigms are associated commonly with deprivation of human autonomy or freedom: *A* keeps *B* imprisoned in a locked room; *A* places a dagger in *B*'s hand and moves *B*'s arm in order to plunge the dagger into *C*'s chest; *A* holds a gun to *B*'s head and

28. A. SHUPE & D. BROMLEY, *THE NEW VIGILANTES: DEPROGRAMMERS, ANTICULTISTS, AND THE NEW RELIGIONS*, 224 (1980); Anthony & Robbins, *Legitimizing Repression*, *TRANSACTION/Soc'y*, Mar. 1980, at 39; Gutman, *Extemporaneous Remarks*, 9 *N.Y.U. REV. L. & SOC. CHANGE* 69 (1979); LeMoult, *Deprogramming Members of Religious Sects*, 46 *FORDHAM L. REV.* 599 (1978); Robbins, *Religious Movements, the State, and the Law: Reconceptualizing "The Cult Problem,"* 9 *N.Y.U. REV. L. & SOC. CHANGE* 33 (1979); Shapiro, *Of Robots, Persons, and the Protection of Religious Beliefs*, 56 *S. CAL. L. REV.* 1277 (1983); Shupe, Spielmann & Stigall, *Deprogramming: The New Exorcism*, 20 *AM. BEHAV. SCIENTIST* 941 (1977); Note, *Conservatorships and Religious Cults: Divining A Theory of Free Exercise*, 53 *N.Y.U. L. REV.* 1247 (1978); Comment, *To Keep Them Out of Harm's Way? Temporary Conservatorships and Religious Sects*, 66 *CALIF. L. REV.* 845 (1978); Comment, "*Mind Control*" or *Intensity of Faith: The Constitutional Protection of Religious Beliefs*, 13 *HARV. C.R.-C.L. L. REV.* 751 (1978) [hereinafter cited as Comment, "*Mind Control*"].

29. Comment, "*Mind Control*," *supra* note 28, at 785, 793.

30. Shapiro, *supra* note 28.

31. Shapiro's critique is singled out, for the reasons mentioned above, although much of the discussion will apply to other authors as well.

forces her to confess. These are all cases of physical coercion or of a threat of physical injury sufficient to prevent the resulting action or inaction from being freely or autonomously chosen.

Some forms of volitional impairment, however, do not fit these models. Deception or informational deprivation is an example. When *A* substitutes arsenic for salt in *B*'s salt shaker, *B* does not autonomously or voluntarily opt for suicide when he sprinkles arsenic on his food, thinking it to be salt.³² Since the will translates information into action, manipulation of the will also can inhibit autonomy.³³ Hypnotism is one example of manipulation,³⁴ but more intrusive and powerful techniques have been devised. Physicians can implant "stimoceivers" into human brains and, through remote monitoring, modify or prevent behavior that would otherwise occur.³⁵ Physicians and others can use drugs in a variety of ways to influence thoughts, volition and action by heightening or dulling emotions.³⁶

Recruiting practices of new religious cults include elements of both types. The cruder forms of physical manipulation are not unknown,³⁷ but informational deprivation and assaults on decision-making capacity are more common. A youth can go from a "dinner" or "rap session" to a "weekend retreat"³⁸ without being informed that he or she is dealing with a religious movement or entering upon the first steps of what the recruiters intend to be a

32. In this case, *B* does not intend to commit suicide, but only to season his food. *B*'s suicide thus is not autonomous. The criminal law makes a similar distinction. See W. LAFAVE & A. SCOTT, *HANDBOOK ON CRIMINAL LAW* 356-60 (1972).

33. When *B* performs an act without *willing* to perform it, we do not attribute the act to *B*'s autonomous agency. See, e.g., W. LAFAVE & A. SCOTT, *supra* note 32, at 337-41 (automatism, epilepsy, sleepwalking, unconsciousness, hypnosis).

34. Delgado, *supra* note 9, at 13-14 (comparing brainwashing and hypnotism); see also *People v. Marsh*, 170 Cal. App. 2d 284, 338 P.2d 495 (1959) (expert testimony on hypnosis allowed; courtroom demonstration denied).

35. Delgado, *supra* note 9, at 11-12, 17; Delgado, *Organically Induced Behavioral Change in Correctional Institutions: Release Decisions and the "New Man" Phenomenon*, 50 S. CAL. L. REV. 215, 227-32 (1977).

36. Delgado, *supra* note 35, at 232-238; Shapiro, *Legislating the Control of Behavior Control: Autonomy and the Coercive Use of Organic Therapies*, 47 S. CAL. L. REV. 237 (1974).

37. See, e.g., JONESTOWN REPORT, *supra* note 11, at 1-6, 17-19 (coercive environment present in People's Temple commune in Guyana); *Vermont Hearings*, *supra* note 4, at 59-60; F. CONWAY & J. SIEGELMAN, *supra* note 13, at 88 ("physical punishment, reported by approximately one in five respondents, included beatings, starvation, physical bondage"); R. ENROTH, *supra* note 6, at 59; Rofes, *supra* note 6, at 4, col. 1 (cult brother threatened to break both his legs if that was necessary to prevent Harvard student from leaving cult).

38. *Vermont Hearings*, *supra* note 4, at 78; Meeting Report, *supra* note 4, pt. 2, at 11, 12, 16, 21, 24; Delgado, *supra* note 1, at 38-40, 54-55.

lifetime commitment. For most recruits, the knowledge of what lies ahead—complete submission to a rigid doctrine, hierarchical system and authoritarian leader,³⁹ isolation from friends and family who are not members of the group,⁴⁰ self-mortification rituals,⁴¹ eighteen hour workdays soliciting contributions for nonexistent social programs,⁴² and abandonment of ordinary personal, career, and marriage plans⁴³—would make them no more inclined to go to the “dinner” or “weekend retreat” than would someone not suicidally inclined to eat arsenic.

Informational deprivation plays a decreasing role as the new recruit is drawn gradually into the web of cult initiation. Cult leaders disclose details of hierarchy, lifestyle, doctrine and submission, but only after they perceive that the individual, as a result of an intense and carefully orchestrated process of psychological manipulation, has lost the capacity to assess their significance.⁴⁴ The components of that process vary somewhat from cult to cult, but many similarities exist. A few cults use drugs⁴⁵ or other esoteric means,⁴⁶ but most of the techniques are relatively ordinary—their efficacy results from the combination and intensity with which they are applied.⁴⁷ Physical techniques employed by cultists include stress,⁴⁸ overwork,⁴⁹ sleep deprivation,⁵⁰ isolation from the

39. Delgado, *supra* note 1, at 13, 21-25; Delgado, *supra* note 7, at 549-50, and sources cited therein, e.g., Meeting Report, *supra* note 4, pt. 2, at 27, 34, 62; R. ENROTH, *supra* note 6, at 72, 121; LEFKOWITZ REPORT, *supra* note 2, at 11. See generally JONESTOWN REPORT, *supra* note 11.

40. Delgado, *supra* note 1, at 40, 50-51, 54; see Vermont Hearings, *supra* note 4, at 79; Meeting Report, *supra* note 4, pt. 2, at 7, 21, 66; LEFKOWITZ REPORT, *supra* note 2, at 35-37.

41. R. ENROTH, *supra* note 6, at 178-79; C. STONER & J. PARKE, *supra* note 2, at 106-07.

42. C. STONER & J. PARKE, *supra* note 2, at 5-31, 121-33; see Meeting Report, *supra* note 4, pt. 1, at 24, pt. 2, at 11, 14, 24, 36, 38; R. ENROTH, *supra* note 6, at 49, 64.

43. Delgado, *supra* note 1, at 14.

44. VERMONT SENATE JUDICIARY COMM., TRANSCRIPT, Mar. 10, 1976, at 22-23 [hereinafter cited as VERMONT SENATE JUDICIARY COMM.]; C. STONER & J. PARKE, *supra* note 2, at 6-8.

45. C. STONER & J. PARKE, *supra* note 2, at 106-07; Seattle Post-Intelligencer, Jan. 24, 1972, at A3, col. 5 (sect members found dead after inhaling toluene).

46. For charges that cult leaders employ something akin to hypnotism, see T. PATRICK, *supra* note 23, at 38.

47. Delgado, *supra* note 1, at 63-69.

48. C. EDWARDS, *supra* note 26, at 157-58; R. ENROTH, *supra* note 6, at 49, 59, 64; C. STONER & J. PARKE, *supra* note 2, at 10, 122-23; Delgado, *supra* note 1, at 16-17, 55.

49. Delgado, *supra* note 1, at 19; see Meeting Report, *supra* note 4, pt. 1, at 24, pt. 2, at 11, 14, 24, 36, 38.

50. Vermont Hearings, *supra* note 4, at 56; LEFKOWITZ REPORT, *supra* note 2, at 38; see Meeting Report, *supra* note 4, pt. 1, at 25, pt. 2, at 7, 12, 41, 74; C. EDWARDS, *supra* note 26, at 162; cf. J. SEGAL, *supra* note 9, at 8-27.

rest of society,⁵¹ and in some cases abuse or threats.⁵² Physiological techniques include sensory bombardment of various forms⁵³ and inadequate diet.⁵⁴ Among the psychological techniques cults use are emotional isolation from friends and family,⁵⁵ "love bombing,"⁵⁶ deprivation of privacy,⁵⁷ repetitious chanting and lectures,⁵⁸ instillation of guilt,⁵⁹ submissiveness,⁶⁰ and dependency.⁶¹

These techniques combine to produce an individual who has neither the opportunity nor capacity to assess critically his or her engagement with the religious group nor to consult outsiders who may introduce an unwanted skepticism.⁶² Although the recruit seemingly has committed himself or herself to the cult, the organization's recruiting tactics progressively have undermined the individual's capacity to make a free and open choice. Against this background of questionable influences and pressures, of which the recruit is generally only dimly aware, the recruit's final commitment could seldom be characterized as an expression of free choice

51. See sources cited *supra* note 12; see also *Communist Interrogation, Indoctrination and Exploitation of Am. Military and Civilian Prisoners: Hearings Before the Permanent Subcomm. on Investigations of the Senate Comm. on Gov't Operation*, 84th Cong., 2d Sess. 16-17 (1956).

52. R. ENROTH, *supra* note 6, at 178-79 (mandatory self-mortification); Delgado, *supra* note 1, at 50-51 and sources cited therein.

53. JONESTOWN REPORT, *supra* note 11, at 17; Meeting Report, *supra* note 4, pt. 2, at 12, 14; R. ENROTH, *supra* note 6, at 39-40, 59; see, e.g., Hearst, *supra* note 2, at 256-57 (expert testifies on auditory overstimulation as technique of coercive persuasion).

54. *Vermont Hearings*, *supra* note 4, at 63; R. ENROTH, *supra* note 6, at 160; C. STONER & J. PARKE, *supra* note 2, at 106-07, 138; see Meeting Report, *supra* note 4, pt. 2, at 7, 12, 24, 66, 74; cf. J. SEGAL, *supra* note 9 (POW studies).

55. LEFKOWITZ REPORT, *supra* note 2, at 36-39; Meeting Report, *supra* note 4, pt. 2, at 25, 33.

56. Delgado, *supra* note 1, at 40 (describing "lovebombing"—pretended affection by trained veterans to convince recruit that organization cares deeply about him or her); see C. EDWARDS, *supra* note 26, at 128 (same).

57. R. ENROTH, *supra* note 6, at 39-40, 59; Delgado, *supra* note 1, at 41.

58. Meeting Report, *supra* note 4, pt. 2, at 12, 14, 24; W. PETERSON, *THOSE CURIOUS NEW CULTS* 130 (1973); C. STONER & J. PARKE, *supra* note 2, at 5-8.

59. LEFKOWITZ REPORT, *supra* note 2, at 36; Meeting Report, *supra* note 4, pt. 2, at 7, 14, 57, 71; C. STONER & J. PARKE, *supra* note 2, at 279-80.

60. Meeting Report, *supra* note 4, pt. 2, at 14, 18, 34, 57, 62, 64; see LEFKOWITZ REPORT, *supra* note 2, at 11; Rofes, *supra* note 6, at 34, col. 1.

61. Meeting Report, *supra* note 4, pt. 2, at 7, 9, 21, 65; R. ENROTH, *supra* note 6, at 12, 183; Beckford, *supra* note 2, at 321, 324, 332 (1973).

62. R. ENROTH, *supra* note 6, at 119, 121-24; Rice, *Messiah From Korea: Honor Thy Father Moon*, *PSYCHOLOGY TODAY*, Jan. 1976, at 36, 39 (quotations of Reverend Moon: "What I wish must be your wish." "The time will come . . . when my words will almost serve as law. If I ask a certain thing it will be done."); see also Meeting Report, *supra* note 4, pt. 2, at 7, 9, 21, 37; R. LIFTON, *supra* note 9 (identity change under pressure); Hearst, *supra* note 2, at 157-58 (same).

or individual autonomy.

B. *The "Freeze-Frame" Approach*

Assuming that a new religious group has induced an individual to join it by using recruiting tactics similar to those just described, this Article will examine the legal remedies available to a parent, spouse, or other person who would like to extricate the individual from cult control and see him or her return to his or her precult freedom. The most well-known remedy is removal of the individual from the cult, followed by some form of counterconditioning, or deprogramming, aimed at restoring the person's freedom of choice. Theories of deprogramming are discussed in part IV of this Article.

Critics of deprogramming reject all of these approaches. Their across-the-board rejection is based on the following argument, best articulated by Shapiro: (1) in determining whether deprogramming is justifiable in an individual case, the relevant state of mind of the cult adherent is the one he or she has at the time deprogramming is sought;⁶³ (2) even though a cult might originally have deceived or coercively persuaded an individual to accept a particular belief, he or she subsequently may have embraced that belief on the basis of an autonomous preference;⁶⁴ (3) if an individual is able to "affirm and adopt" a religious belief, that belief should not be subjected to the potentially destructive influences of deprogramming;⁶⁵ (4) as long as the cult adherent is a person rather than a robot or a zombie, the person is able to form and adopt a belief and a court should not permit involuntary deprogramming.⁶⁶

The first and second points contain important insights. A standard justification for deprogramming is that the cult has brainwashed the devotee into adherence and thus the individual never freely has accepted the group or its beliefs.⁶⁷ Deprogramming is seen as restoring the individual to freedom of thought and association.⁶⁸ The second point reminds us that the current mental state of a cult devotee may be independent of his or her original brainwashing. Just as one might be taken against one's will to a

63. Shapiro, *supra* note 28, at 1288-89.

64. *Id.* at 1292-93.

65. *Id.* at 1300, 1309.

66. *Id.* at 1309.

67. *E.g.*, A. J. RUDIN & M. RUDIN, *supra* note 2, at 127-28; Delgado, *supra* note 1, at 81-82, 85-88.

68. A. J. RUDIN & M. RUDIN, *supra* note 2, at 122-23, 125; Delgado, *supra* note 1, at 81-82.

place where it turns out that one wants to spend the rest of one's life (as in the story of Shangri-La), the cult adherent may make a perfectly free commitment to the group and its beliefs subsequent to his or her brainwashing. The court is dealing with the individual as he is now, and not as he was when brainwashed, thus it must respect his subsequent autonomous commitment and refuse to permit deprogramming.

Although these are valid points, they are interwoven in the critics' views with an analysis that should be rejected: the "freeze-frame" approach. This requires that courts evaluate a proposed deprogramme only as he presents himself at the hearing—that is, without taking into account the personal, historical process that led to the individual's joining the cult or adopting the beliefs.⁶⁹ The "freeze-frame" analysis is spelled out in the third and fourth points: if the individual present at the hearing is a person seemingly able to "affirm and adopt" religious beliefs, that is the end of the matter.⁷⁰ The court will deem cult commitment voluntary and deprogramming forbidden.

The tactical effect of this analysis is to stack the deck against advocates of deprogramming. The concerned parent or spouse must show that the cult adherent is a nonperson—a "robot"⁷¹ who is unable to "affirm and adopt"⁷² religious beliefs. The extreme difficulty in proving either of these claims suggests the "freeze-frame" approach would be fatal to attempts to obtain court ordered deprogramming.

Advocates of deprogramming should not have to deny that the

69. See *supra* note 62. Some hearings on short term, or emergency, conservatorships are *ex parte*, that is, only the moving party appears; he or she makes the case for conservatorship based on depositions and other evidence. Delgado, *supra* note 1, at 88-91. Except in emergency situations, this approach would seem to violate due process, as has been argued by Aronin, *supra* note 24, at 223-28.

70. Shapiro, *supra* note 28, at 1300, 1309.

71. *Id.* Shapiro's argument is curious. He derives his conclusion about personhood from highly selective philosophical sources, *id.* at 1283-85, while it is by no means universally agreed in the philosophical literature that human beings who are severely volitionally and cognitively impaired, as are cult victims, should be regarded as persons. See, e.g., R. DESCARTES, *MEDITATIONS ON FIRST PHILOSOPHY* (1641), Meditation II (man essentially a thinking being); R. RORTY, *CONSEQUENCES OF PRAGMATISM* 10 (1982) (personhood involves a "complex interlocked set of beliefs and desires").

72. Shapiro, *supra* note 28, at 1300, 1309. Here Shapiro abandons his philosophical account of personhood and adopts a behavioral one—an individual is a person if he or she acts like one. This account is not accepted by philosophers, nor within the law. See Stone, *Should Trees Have Standing?—Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450, 450-54 (1972) (to deem an individual a person is to make a normative or moral judgment that the individual is to be included among those accorded respect and rights).

cult adherent is a person. What must be shown is that the adherent is a brainwashed person who has yet to overcome his or her brainwashing. Nor need it be argued that the cult adherent lacks the ability to "affirm and adopt" religious beliefs. It must appear only that the commitments formed by the devotee have not been adopted freely but induced by a brainwashing process that he has yet fully to understand or surmount.

The main defect in the "freeze-frame" approach is not the criteria it employs but what it leaves out. The approach, by ignoring the thought control to which the individual has been subjected⁷³ and any account of how the individual has dealt with it, distorts relevant legal presumptions and makes it impossible to render a discriminating judgment on whether deprogramming is permissible in any particular case. Consent to remain with the cult that appears to be freely given will be presumed voluntary on a "freeze-frame" approach⁷⁴ but once evidence of brainwashing and nonconsensual induction is introduced, that presumption should disappear, if not be reversed. A court may more reasonably presume the *continuity* of the individual's brainwashed mental state,⁷⁵ unless it can be shown that the individual has in some way been able to escape the effects of the brainwashing and give a truly voluntary consent.⁷⁶

In determining whether an individual has surmounted his or her coercive persuasion, the following questions are relevant: Does the individual understand the forces that the cult brought to bear

73. Coercive persuasion of a person could be proved in two ways: Indirectly by showing that he or she has been subjected to intensive thought reform, *see supra* notes 36-61 and accompanying text, and directly by psychological examination, *see Delgado, supra* note 1, at 70-71 (criteria of cult indoctrinee syndrome); COMMITTEE ON NOMENCLATURE AND STATISTICS, AM. PSYCHIATRIC ASSOC., DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, disorder 300.15, at 260 (3d ed. 1980) ("persons who have been subjected to periods of prolonged and intense coercive persuasion . . . while the captive of terrorists or cultists") (DSMMD-III); R. LIFTON, *supra* note 9 (post-thought reform syndromes); *see also* J. CLARK & M. LANGONE, *supra* note 2; J. MEERLO, *supra* note 9; RUDIN, *supra* note 2; A. J. RUDIN & M. RUDIN, *supra* note 2; E. SCHEIN, *supra* note 9; J. SEGAL, *supra* note 9; C. STONER & J. PARKE, *supra* note 2; P. ZIMBARDO & R. VALLONE, *supra* note 9.

74. Voluntariness is ordinarily presumed, both in criminal and civil law, unless unusual situations exist that justify an opposite presumption. *See, e.g.,* *Miranda v. Arizona*, 384 U.S. 436 (1966) (presumption reversed in custodial questioning of suspects).

75. Evidence law generally favors an inference of continuity on the part of mental states. *See* D. McCORMICK, HANDBOOK OF THE LAW OF EVIDENCE 695-96 (2d ed. 1972) (mental conditions, once established, presumed to continue unless contrary evidence is shown).

76. The analysis offered in this Article expressly provides for this possibility. *See infra* notes 83-84 and accompanying text.

on her, especially the coercive persuasion or brainwashing employed? Does she know that the cult deceived her and reduced her to a state of dependency? Does she understand the range of life possibilities within the cult compared to those available outside the cult? If the cult adherent can respond coherently to these questions,⁷⁷ current affiliation is, indeed, a product of a free choice in spite of the brainwashing undergone. In this case deprogramming is inappropriate and the individual should be allowed to remain with the cult.⁷⁸ If no such understanding has been achieved, however, then the current consent is probably no more free and voluntary than the original brainwashed commitment.⁷⁹ The "freeze-frame" approach fails to raise any of these issues. It looks at only nominal consent without examining the processes underlying it.⁸⁰

C. *An Alternative Approach—Return to Informed Consent*

A better approach to evaluating when deprogramming is permissible requires a return to the criterion of informed consent. As previously mentioned, the requirement of informed consent led to "truth-in-proselytizing" and similar constraints on cult solicitation during the preinduction stage.⁸¹ Informed consent is no less relevant to the deprogramming issue and its postinduction context.

Deprogramming is not justified when the brainwashed individual has surmounted his coercive persuasion and made a voluntary

77. Examination is not limited to these questions. These are merely examples of questions that a court could use to probe a cultist's mental state. The questions must be flexible enough to detect programmed-in responses. Boilerplate questioning invites the cults to program their followers to respond in predesignated ways to the anticipated questions. See *Treatment of Children by Cults: Hearings Before N.Y. Assembly Comm. on Child Care*, pt. 2, at 262 (Aug. 9, 1979) [hereinafter cited as *N.Y. Hearings*]; C. STONER & J. PARKE, *supra* note 2, at 91-92 (cults train members in techniques of resisting deprogramming, e.g., by chanting or "closing the mind").

78. This writer once suggested that the cultist must appear to understand these matters *from our perspective*—from that of the outsider, rather than that of the cultist. Delgado, *supra* note 1, at 59-60. This criterion seems, in retrospect, to be too easily manipulated and is accordingly dropped.

79. See *infra* notes 83-88 and accompanying text.

80. In other words, a deprogramme may pass Shapiro's test too easily: both the free cultist and the one under thought control will answer the question, "Do you choose to remain in the cult?" the same way—the former because he in fact so chooses, the latter because he has been so programmed. Follow-up questioning can expose the abnormal quality of the latter's response.

81. Delgado, *supra* note 1, at 73-78 (preinduction or preventive remedies); Delgado, *supra* note 7, at 533.

choice to remain with the cult.⁸² In that case, the individual's subsequent autonomous preference sustains his commitment to the group despite his earlier induction by coercive persuasion. The principal difficulty with this lies in formulating an adequate legal criterion for determining whether an autonomous preference exists.

A special adaptation of informed consent can be used for this purpose. If the cult devotee can appreciate the nature of the forces she has been subjected to, knows that the cult has deceived and manipulated her, but nevertheless prefers to remain with the cult and adhere to its beliefs and practices, it is reasonable to suppose that she has made a free and voluntary rather than a brainwashed commitment. When the cult adherent possesses the information necessary for informed consent, and the original recruiting tactics no longer impair or impede her volitional capacity,⁸³ a court should give full credence to the cultist's consent.⁸⁴ Therefore, deprogramming is justifiable only if the individual adherent lacks either an informed understanding of the processes that led to her cult commitment or the volitional capacity to give autonomous consent to it.⁸⁵

This conceptual constraint on permissible deprogramming suggests the following consequences. First, deprogramming should aim at providing the relevant information and restoring the volitional capacity necessary for informed consent. As soon as the deprogramme comprehends and has the capacity to choose, involuntary deprogramming is no longer justified. The deprogrammed individual may then evaluate his own position and make his own choices. This may include returning to the family, returning to the cult, or indeed some further possibility.⁸⁶ Second, deprogramming should be deemed successful if it restores the capacity for informed

82. Cf. J. CALAMARI & J. PERILLO, *CONTRACTS* 235 (2nd ed. 1977) (contracts unenforceable because of minority later ratifiable by the child on reaching majority).

83. See *supra* notes 44-61 and accompanying text.

84. Cf. S. FREUD, *INTRODUCTORY LECTURES ON PSYCHOANALYSIS* 501-17 (Penguin ed. 1974) (Lecture 28) (psychoanalytic cure achieved by patient's remembering and bringing to consciousness factors underlying his problem); see also *Peterson v. Sorlien*, 299 N.W.2d 123 (Minn. 1980), *cert. denied*, 450 U.S. 1031 (1981) (court gave legal effect to cultist's postdeprogramming desires because these represented her real self); Dworkin, *Autonomy and Behavior Control*, *HASTINGS CENTER REP.*, Feb. 1976, at 23, 25-27.

85. These two requirements are not independent. Volitional capacity flows from informed understanding, and an individual probably cannot possess the former without the latter.

86. See, e.g., A. PAVLOS, *THE CULT EXPERIENCE* 149 (1982) (individual abandoned Unification Church after deprogramming; went in search of a more rewarding cult).

consent. The possibility that an individual might then return to the cult does not make the deprogramming unsuccessful.⁸⁷ Deprogramming is only unsuccessful when the deprogramme continues to lack the relevant knowledge and volitional capacity to make his own choices. Third, as previously explained, deprogramming is an impermissible response to cult brainwashing if the devotee has surmounted her own brainwashing and made an autonomous commitment to the group and its beliefs. In this case the individual already has achieved the goal of deprogramming—the comprehension and volition necessary to overcome brainwashing. Thus, self-deprogramming precludes involuntary deprogramming.⁸⁸

III. DEPROGRAMMING—CONSTITUTIONAL LIMITATIONS

Under the test outlined in part II, some cultists will be deprogrammed. The framework will allow for the deprogramming of individuals who have been nonconsensually brainwashed into cult adherence and are unable to surmount that influence without outside assistance. A proponent can seek to justify state engagement in deprogramming by reason of the state's traditional interest in the health and welfare of citizens.⁸⁹

Several writers, however, have argued that deprogramming is unconstitutional because it infringes upon religious belief and practice.⁹⁰ The infringement occurs because some cultists will abandon their cult beliefs and affiliation following a successful deprogramming.⁹¹ Some have argued that since the degree of pro-

87. A number of deprogrammers speak of deprogramming as "successful" if the cultist remains with the parents and does not wish further contact with the cult. *See, e.g.,* T. PATRICK, *supra* note 23, at 37. *But see id.* at 75-77. This Article rejects that definition; the only correct purpose of deprogramming is to restore personal choice. *See* J. MACCOLLAM, *supra* note 2, at 117.

88. A number of writers consider deprogramming an evil made necessary because of cult brainwashing. *See, e.g.,* Rudin, *Remarks in Panel Discussion*, 9 N.Y.U. REV. L. & SOC. CHANGE 106 (1980). But deprogramming is also necessary because in many cases cults do not allow individuals the opportunity to self-deprogram.

89. The state's police power often has been invoked to justify interference with religiously motivated action. *See* *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Reynolds v. United States*, 98 U.S. 145, 166-67 (1878); *Leary v. United States*, 383 F.2d 851, 861-62 (5th Cir. 1967), *rev'd on other grounds*, 395 U.S. 6 (1969); *United States v. Kuch*, 288 F. Supp. 439, 446-47 (D.D.C. 1968).

90. *See, e.g.,* Gutman, *Extemporaneous Remarks*, 9 N.Y.U. REV. L. & SOC. CHANGE 69 (1979); LeMoult, *Deprogramming Members of Religious Sects*, 46 FORDHAM L. REV. 599 (1978); Shapiro, *supra* note 28, at 1305-11; Note, *Conservatorship and Religious Cults: Diving a Theory of Free Exercise*, 53 N.Y.U. L. REV. 1247 (1978).

91. Note, however, that this is not part of the definition of a successful deprogramming. *See supra* text accompanying note 80. A deprogramming is successful if it restores

tection afforded religious belief is absolute, the pragmatic "police power" concerns mentioned above cannot outweigh such an interest.⁹² Section A will examine the manner in which deprogramming impinges upon religious belief; in section B the language, history, and policy of the free exercise clause will be applied to the deprogramming controversy; and section C will assess deprogramming in light of criteria employed in recent religion cases decided by the United States Supreme Court.⁹³

A. *Deprogramming—Constitutional Effects*

It is uncertain precisely how deprogramming infringes upon a constitutionally protected area. Deprogramming carried on within the framework of part I is aimed neither at the destruction of an existing belief, nor at conversion to a more conventional religion, but rather at restoration of free and informed choice in religious affiliation and belief. Three possibilities remain: State-supported deprogramming is unconstitutional because it (1) causes a potential loss of religious belief; (2) entails criticism of religious practices; or (3) constitutes criticism of religious beliefs.

1. Potential Loss of Belief

Deprogramming can lead to abandonment of religious belief.⁹⁴ This does not necessarily mean, however, that state-supported deprogramming violates the first amendment. Teaching the theory of evolution in state schools has the potential to cause students to relinquish previously held religious beliefs in favor of scientific atheism.⁹⁵ Similarly, exposure to the "big-bang" cosmological theory⁹⁶ might influence some to adopt monotheism rather than athe-

freedom of thought for a cultist who had lost that faculty as a result of brainwashing. The cultist subsequently may rejoin the cult or a different group. This action does not count against the success of the deprogramming.

92. See *infra* notes 111-45 and accompanying text (discussing status of programmed religious belief).

93. This Article concentrates on the first amendment implications of deprogramming. More general constitutional due process concerns are not dealt with. For a discussion of the latter issues, see Aronin, *supra* note 24.

94. See *supra* notes 90-91 and accompanying text; T. PATRICK, *supra* note 23, at 37 (describing successful deprogrammings); Delgado, *supra* note 1, at 80.

95. Darwin's *Origins of Species* and *Descent of Man* had a devastating impact on Biblical literalism, particularly on the theory of Divine Creation—according to which God created the world and man about three thousand years ago.

96. This is the cosmological theory that the universe originated, more or less simultaneously, in a colossal explosion millions of years ago. See F. HOYLE, *THE NATURE OF THE UNIVERSE* (rev. ed. 1960); F. HOYLE, *ASTRONOMY AND COSMOLOGY: A MODERN COURSE* (1975).

ism or polytheism. Nevertheless, teaching evolution or the "big-bang" theory in a state school is neither a violation of free exercise nor an establishment of religion.⁹⁷ The potential of state-supported practice to affect religious belief does not itself make that practice constitutionally suspect. If the deprogrammees herself freely chooses to give up cultic adherence and beliefs based on information given and discussion sparked during a deprogramming, then that would seem no more constitutionally objectionable than for a student to give up monotheism on the basis of the theory of evolution or return to it on the basis of the "big-bang" theory. These changes of belief or adherence are instances of free exercise, not violations of it.

2. Criticism of Practices

Case law suggests it is not constitutionally suspect for the state to support criticism of an allegedly religious practice of brainwashing. The deprogrammer typically will attempt to expose and criticize the coercive persuasion that the deprogrammees has undergone.⁹⁸ The cult might well attempt to justify its particular mode of conversion as an essential part of its religion.⁹⁹ But the state through the legislature and the courts may criticize racial discrimination, even though some groups claim to practice it on religious grounds.¹⁰⁰ The facts and the opinion in *Bob Jones University v.*

97. See *Epperson v. Arkansas*, 393 U.S. 97 (1968).

98. T. PATRICK, *supra* note 23, at 25-26, 32, 67, 78; VERMONT SENATE JUDICIARY COMM., *supra* note 44, at 25-26.

99. One cult justifies deception of the public to win converts on the basis of a doctrine known as "heavenly deception." R. ENROTH, *supra* note 6, at 115; Delgado, *supra* note 1, at 41. Since the candidates initially are under the influence of Satanical forces and their own ignorance, and thus will not turn to the cult on their own, only trickery and deceit can win them over. See *International Soc'y for Krishna Consciousness, Inc. v. Barber*, 506 F. Supp. 147 (N.D.N.Y.), *rev'd*, 650 F.2d 430 (2d Cir. 1980), *cert. denied*, 451 U.S. 971 (1981), for a description of the Krishna doctrine of "Sankirtan," or aggressive proselytizing. The court found that the Krishnas, imbued by this doctrine, raised funds at a New York State fair by violating their agreement with the fair officials to wear identification badges, slurring the word "Krishna" to make it sound like "Christian," wearing disguises, such as Santa Claus, inventing fake programs and purposes, telling couples they had been selected the best looking couple at the fair and would win a prize, and miscounting change by folding bills in half. They preyed on the handicapped, servicemen, and others deemed specially vulnerable, and sold records with photographs of leading musical groups on the cover even though the actual records contained only Krishna chants and wails. 506 F. Supp. at 158-63. "Sankirtan" justified these practices on the premise that the public is diseased and ignorant and will not donate to Krishna on its own. *Id.* at 153, 158.

100. *Bob Jones University v. United States*, 103 S. Ct. 2017 (1983).

*United States*¹⁰¹ provide a recent affirmation of this principle. Government attitudes towards polygamy,¹⁰² child labor,¹⁰³ blood transfusions,¹⁰⁴ and controlled substances¹⁰⁵ also indicate that the state may criticize or even outlaw practices asserted to be religious without constitutional violation. Thus, the incidental criticism of religious practices in order to cure the psychological and physical dangers of coercive persuasion is not unconstitutional.

3. Criticism of Beliefs

Critical discussion of the tenets of the cultist's faith does not appear to violate the free exercise clause. The deprogrammer sometimes will attempt¹⁰⁶ to engage the cultist in a critical discussion of the cult's belief system.¹⁰⁷ Typically this is defended as necessary to reawaken the adherent's rational faculties so that a genuine assessment of her relationship to the group is possible.¹⁰⁸ The point is that the dialectic-serving values of the first amendment¹⁰⁹ are served better by deprogramming carried out within the concep-

101. In the *Bob Jones University* case, the Supreme Court denied a tax exemption to a religiously affiliated university because it enforced segregation in student dating and marriage.

102. *Reynolds v. United States*, 98 U.S. 145 (1878).

103. *Prince v. Massachusetts*, 321 U.S. 158 (1944).

104. *In re President & Directors of Georgetown College, Inc.*, 331 F.2d 1000 (D.C. Cir. 1963), *cert. denied*, 377 U.S. 978 (1964); *Raleigh Fitkin-Paul Morgan Mem. Hosp. v. Anderson*, 42 N.J. 421, 201 A.2d 537, *cert. denied*, 377 U.S. 985 (1964).

105. *Leary v. United States*, 383 F.2d 851 (5th Cir. 1967), *rev'd on other grounds*, 395 U.S. 6 (1969); *United States v. Kuch*, 288 F. Supp. 439 (D.D.C. 1968); *State v. Bullard*, 267 N.C. 599, 148 S.E.2d 565 (1966), *cert. denied*, 386 U.S. 917 (1967).

106. See *supra* text accompanying notes 32-88.

107. T. PATRICK, *supra* note 23, at 25-26, 32, 67, 78; Shapiro, *Destructive Cultism*, 15 AM. FAM. PHYS. 80, 81 (1977); see Gunther, *Brainwashing: Persuasion by Propaganda*, TODAY'S HEALTH, Feb. 1976, at 16-17.

108. See VERMONT SENATE JUDICIARY COMM., *supra* note 44, at 25, 26 (deprogrammer shows cultist how cult has manipulated and deceived him); R. ENROTH, *supra* note 6, at 79-80 (deprogrammer shows cult teachings inconsistent with facts in real world); T. PATRICK, *supra* note 23, at 31-32 (deprogrammer shows cultist unpalatable facts about the cult, the leader, or his personal or financial conduct), 25-26, 32, 67, 78 (deprogrammer shows inconsistency among cult teachings).

Moreover, there are the free speech rights of the deprogrammer to be considered, *Weiss v. Patrick*, 453 F. Supp. 717 (D.R.I.), *aff'd mem.*, 588 F.2d 818 (1st Cir. 1978), *cert. denied*, 442 U.S. 929 (1979), but these are significantly weakened by the cultist's being a "captive audience," *Lehman v. City of Shaker Heights*, 418 U.S. 298, 307 (1974) (Douglas J., concurring); *Mailloux v. Kiley*, 323 F. Supp. 1387, 1392 (D. Mass. 1970). See L. TRIBE, AMERICAN CONSTITUTIONAL LAW § 12-21, at 692 (1980).

109. The first amendment values of freedom of speech, religion, and thought are each, in large part, dialectic-serving because they facilitate debate, challenge, and change in ideas, beliefs, and theories. See *infra* text accompanying notes 120-53; L. TRIBE, *supra* note 108, § 10-1, at 476-77, § 14-3, at 816-17, § 15-6, at 902-03.

tual framework of part I than an opposite approach that leaves brainwashed cult members untreated or indirectly encourages extralegal deprogramming with its potential excesses.¹¹⁰ A related objection, that the deprogramming impermissibly inquires into the truth or falsity of religious belief, is examined in the next section.

B. *Interpreting the Free Exercise Clause*

One difficulty in assessing the constitutional status of deprogramming is the extent to which the first amendment protects religious belief. The Supreme Court has yet to decide or even extensively comment on this issue since its free exercise cases have concerned conduct or action rather than belief.¹¹¹ The Court has said, and commentators have repeated, that belief, unlike action, receives absolute protection under the first amendment,¹¹² but this still has the status of dictum.¹¹³ Although it is far from certain that properly conducted deprogramming would infringe religious values at all,¹¹⁴ a careful interpretation of the free exercise clause respecting belief may well clarify both this issue and the extent of constitutional protection of belief. This inquiry requires an examination of the language of the free exercise clause, its historical background, and the policies underlying free exercise.

1. The Language of "Free Exercise"

The language of the first amendment does not support absolute protection for all religious belief. The amendment provides that "Congress shall make no law . . . prohibiting the free exercise

110. The excesses include middle-of-the-night forcible abductions, high speed chases, confrontational deprogrammings carried out under lock and key with little or no neutral supervision, and serious risk of legal jeopardy for those concerned. See T. PATRICK, *supra* note 23; Delgado, *supra* note 1, at 78-82; see also ACLU CONFERENCE ON RELIGIOUS DEPROGRAMMING, DEPROGRAMMING: DOCUMENTING THE ISSUE (1977) [hereinafter cited as ACLU].

A related objection that deprogramming entails inquiry into the truth or falsity of religious belief is addressed in the next section.

111. The dictum about a twin standard of protection has been repeated in a number of cases, all of which concern religiously motivated conduct. See *Sherbert v. Verner*, 374 U.S. 398, 402-03 (1963); *Braunfeld v. Brown*, 366 U.S. 599, 603 (1961); *Cantwell v. Connecticut*, 310 U.S. 296, 303-04 (1940); *Reynolds v. United States*, 98 U.S. 145, 166 (1878).

112. See cases cited *supra* note 111; Giannella, *Religious Liberty, Nonestablishment, and Doctrinal Development. Part I. The Religious Liberty Guarantee*, 80 HARV. L. REV. 1381, 1387 (1967); Comment, "Mind Control," *supra* note 28, at 751-52 (belief protected absolutely, but this principle due to be tested soon); Note, *supra* note 28, at 1258-59.

113. See *supra* note 112.

114. See *supra* text accompanying notes 89-113; *infra* text accompanying notes 115-82.

[of religion]."¹¹⁵ Assuming belief to be part of exercise, logically the amendment protects freely held religious belief, rather than religious belief simpliciter.

The consequences of this assumption for the deprogramming issue are highly significant: deprogramming may endanger the religious beliefs of the cultist, but often these will not be freely held beliefs.¹¹⁶ Deprogramming is constitutionally suspect only if the first amendment protects *all* religious belief. To suppose that the Constitution protects all religious belief—including coerced beliefs—from state interference is to make the "free" in "free exercise" unnecessary and, indeed, misleading. In order to give the word "free" in the text of the amendment its rightful weight it must be assumed that the clause protects only freely chosen or uncoerced religious belief and action. Thus, deprogramming is not unconstitutional because it endangers only what the first amendment does not protect: unfree religious belief and conduct. If deprogramming is carried out within the constraints laid down in part I, there is no free exercise value to be balanced against the state's health and welfare justification for deprogramming.

This interpretation of the language of the first amendment is consistent with the dicta calling for absolute protection of religious belief. The United States Supreme Court has not dealt with free exercise cases that have concerned coerced religious belief or conduct. In the Court's free exercise cases, the beliefs in question were freely held and the conduct freely engaged in.¹¹⁷ The dicta calling for absolute protection of religious belief should be confined to freely held religious beliefs. A broader interpretation is unnecessary and out of harmony with the language of the first amendment.

2. Free Exercise—Historical Background

The known history of the first amendment also supports the interpretation proposed above. Two of the important figures behind the adoption of the Bill of Rights in general and the first

115. U.S. CONST. amend. I.

116. See *supra* text accompanying notes 32-88 (cult values and attachment inculcated by process of coercive persuasion). One could even attribute the beliefs so acquired to the brainwasher rather than the brainwashee. Cf. Delgado, *supra* note 9 (making similar argument in criminal law context).

117. See cases cited *supra* note 112. In *Wisconsin v. Yoder*, 406 U.S. 205 (1972), for example, the Amish apparently freely embraced their custom of educating their own children. In *Cantwell v. Connecticut*, 310 U.S. 296, 308-11 (1940), Cantwell seems to have freely adopted and acted upon his belief in aggressive public proselytizing.

amendment in particular saw religious freedom as a value intimately related to mental freedom. Thomas Jefferson viewed freedom of religion as equivalent to freedom of mind,¹¹⁸ and James Madison wrote, in defending free exercise, of society's interest in every individual's possessing freedom of thought.¹¹⁹

This historical perspective suggests that deprogramming promotes rather than destroys constitutional values. Religious belief that is the product of coercion or brainwashing rather than free choice would hardly merit constitutional protection in the eyes of those who saw free exercise as protecting freedom of thought; successful deprogramming that restores freedom of thought and choice to a previously brainwashed individual might well have met with their approval.

3. Policies Underlying Free Exercise

A constitutional guarantee of free exercise of religion furthers a number of policy goals apart from the freedom of thought emphasized by the Framers. These underlying values include strife avoidance,¹²⁰ self-definition,¹²¹ the marketplace of ideas,¹²² and freedom from inquiry.¹²³

Deprogramming carried out within a legal framework should

118. J. BLAU, CORNERSTONES OF RELIGIOUS FREEDOM IN AMERICA 74-75, 78-79 (1949); D. MALONE, JEFFERSON AND THE RIGHTS OF MAN 110 (1951); T. JEFFERSON, *A Bill for Establishing Religious Freedom*, in 2 THE PAPERS OF THOMAS JEFFERSON 545 (J. Boyd ed. 1950) ("Almighty God hath created the mind free, and manifested his supreme will that free it shall remain . . .") (italicized words deleted from original 1779 draft prior to adoption by Virginia General Assembly in 1786. *Id.* at 547, 552 n.2).

119. See L. PFEFFER, CHURCH, STATE AND FREEDOM 610 (1967); W. SWEET, RELIGION IN COLONIAL AMERICA 338-39 (1942); see also *Everson v. Board of Educ.*, 330 U.S. 1, 10-13 (1946).

120. *Committee for Pub. Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756, 794 (1973); *Lemon v. Kurtzman*, 403 U.S. 602 (1971); L. TRIBE, *supra* note 108, § 14-12, at 868.

121. See L. TRIBE, *supra* note 108, § 14-4, at 821-23; Freeman, *A Remonstrance for Conscience*, 106 U. PA. L. REV. 806 (1958) (freedom of religion protects values individuals care deeply about and by which they define themselves); see also *Welsh v. United States*, 398 U.S. 333, 340-341 (1970) (religion defined as central core of a person's beliefs); *United States v. Seeger*, 380 U.S. 163 (1965).

122. See, e.g., *Zorach v. Clauson*, 343 U.S. 306, 313 (1952); L. PFEFFER, CREEDS IN COMPETITION (1958); L. TRIBE, *supra* note 108, § 14-3, at 816, § 14-7, at 834; 2 THE WRITINGS OF JAMES MADISON 183-91 (G. Hunt ed. 1901). Numerous religious freedom cases were also decided on free speech or free expression grounds. See, e.g., *Wooley v. Maynard* 430 U.S. 705 (1977); *Torcaso v. Watkins*, 367 U.S. 488 (1961); *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

123. See *United States v. Ballard*, 322 U.S. 78 (1944) (verity of religious doctrine or belief may not be inquired into by state in prosecution for mail fraud); L. TRIBE, *supra* note 108, §§ 14-6, 14-11 to -12.

further the goal of strife avoidance because it will reduce the likelihood of parental or spousal resort to the disruptive and dangerous tactic of extralegal deprogramming.¹²⁴ The alternative *laissez-faire* approach¹²⁵ only encourages self-help on the part of one or the other party.¹²⁶ A *laissez-faire* attitude does not avoid strife between cults and anticult movements¹²⁷ but merely ignores the existing strife without offering any solution or mediating mechanism.

Legal deprogramming also promotes the value of self-definition implicit in the free exercise clause.¹²⁸ A brainwashed cult adherent has not defined himself by his membership in the group; he has been defined in terms of the cult through sophisticated techniques of coercive persuasion. An individual can only achieve self-definition once he understands and surmounts the effects of the brainwashing, either by self-deprogramming or deprogramming commenced by others.¹²⁹

Deprogramming promotes rather than impairs the marketplace of ideas.¹³⁰ A brainwashed individual has been taken out of

124. See *supra* note 110 and accompanying text.

125. See *supra* notes 109-10 and accompanying text.

126. For example, cults concerned with the possibility that the parents of a member are planning his or her abduction and deprogramming may move the member to another city or country. VERMONT SENATE JUDICIARY COMMITTEE, *supra* note 44, at 31; R. ENROTH, *supra* note 6, at 28-32; Meeting Report, *supra* note 4, pt. 2, at 33, 51, 53; LEFKOWITZ REPORT, *supra* note 2, at 5, 16-17.

127. The anticult movement is a loosely organized group of private membership organizations of parents and ex-members. The main organizations are, Free Our Children From the Children of God (FREECOG), Citizens Freedom Foundation, American Family Foundation, Return to Personal Choice, and Citizens Engaged in Freeing Minds.

128. See *supra* note 121.

129. Self-definition concerns may have been partly responsible for the decision in *Peterson v. Sorlien*, 299 N.W.2d 123 (Minn. 1980), *cert. denied*, 450 U.S. 1031 (1981). In *Sorlien*, a young cultist was tricked into leaving the cult and subjected to involuntary extralegal deprogramming. At first she resisted strenuously, but then spent several days in the company of her parents and the deprogramming team, shopping and engaging in recreational activities. 299 N.W.2d at 127. During this time, she had many opportunities to escape and rejoin the cult but did not do so. Later, she met with her fiancé, a cult member, but following the meeting she rejoined the cult, and filed suit against her parents and the deprogrammers.

The Minnesota Supreme Court upheld the parents' defense of consent. See Aronin, *supra* note 24, at 195; Delgado, *supra* note 7, at 561-62. The court recognized the reality of religious coercion. Coercive persuasion, 299 N.W.2d at 129, and weighed the validity of the young woman's professions at the three times in question—before entry into the cult, during her stay in the cult, and after deprogramming (when she returned to her pre-existing identity). *Id.* at 128-29. Judging that her pre-cult self was her real self, the court gave effect to her statements and intentions after deprogramming and thus upheld the defense of consent. *Id.* at 129. For further analysis of *Sorlien*, see Delgado, *supra* note 7, at 561-62.

130. Freedom of religion has sometimes been linked to the marketplace-of-ideas notion associated with freedom of speech. See *supra* note 122.

the marketplace of ideas and subjected to a particular monopoly of ideas. She is coerced into adopting the religious ideas of the cult and discouraged from making any critical comparison or assessment.¹³¹ Only by reawakening critical thought processes can the adherent re-enter the marketplace of ideas and make her own choice for or against the ideas of the group.

Another value associated with free exercise is freedom from inquiry. The state may not inquire into the truth or falsity of a religious belief or demand that an individual defend that belief before a court or other governmental body.¹³² There are two ways in which deprogramming arguably conflicts with freedom from inquiry: first, the deprogramming process itself might constitute an inquiry into religion; second, the finding of brainwashing necessary to permit deprogramming¹³³ might constitute an inquiry into religion.¹³⁴

The deprogrammer should be concerned only with inquiring into the mode of attachment of the individual to his religion and with revealing this mode of attachment to the individual.¹³⁵ The deprogrammer must avoid any attack on the truth value of the adherent's religion.¹³⁶ Although the deprogrammer may challenge the adherent to examine his belief with a critical eye as a means to reverse the effects of brainwashing, the questioning ordinarily does not approach a constitutionally forbidden inquiry into the truth or falsity of religious beliefs. When questioning does occur, it seems to be limited to the internal consistency of the tenets of the faith, the manner in which the higher leaders of the organization abide or do not abide by them in their daily lives, and their ability to account for well-known truths about the external world.¹³⁷

131. See *supra* notes 8-18 & 37-62 and accompanying text.

132. See *supra* note 123.

133. See generally *supra* text accompanying notes 32-88 (when deprogramming permissible).

134. The position of the ACLU on cults seems to be that religious practice, short of crime, should be above official scrutiny. See ACLU, *supra* note 110, at 5-8, 134, 208-16; Gutman, *supra* note 90, at 70-71.

135. See *supra* text accompanying notes 32-88 (when deprogramming morally and constitutionally permissible).

136. See sources cited *supra* note 123 (truth or falsity of religious claim may not be inquired into). Moreover, most deprogrammers currently active do not do so, in part because it is ineffective—who could *prove* to a young Moonie that Reverend Moon is not the Lord of the Third Advent, or to a Scientologist that reincarnation does not occur?—and increases resistance. Indeed, deprogramming does not seem to work if the deprogrammer conveys an attitude of hostility toward all religion or fails to take seriously the search for religious truth that drove the deprogramme to the sect. Delgado, *supra* note 1, at 79 n.398.

137. See *supra* notes 23 & 107-08 and accompanying text; see also R. ENROTH, *supra*

The second argument that an investigation concerning whether brainwashing occurred violates freedom from inquiry is more important because it calls into question the very possibility of deprogramming. In *Katz v. Superior Court*¹³⁸ a California appellate court explained: "When the court is asked to determine whether [a] change [of lifestyle] was induced by faith or by coercive persuasion, is it not . . . investigating and questioning the validity of that faith?"¹³⁹ If a court is constitutionally forbidden from determining whether an individual has been coercively persuaded into religious adherence, the evidentiary burden necessary to justify deprogramming would never be satisfied.

The correct response to the question raised by the *Katz* court is no: an inquiry into brainwashing or coercive persuasion is not an investigation into the truth, falsity, or validity of a faith, but rather into the mode of attachment of an individual to it. Nothing in the description of the brainwashing process in part II implicated the issue of the verity, validity, or theological status of the resulting religious beliefs. Moreover, a finding of coercive persuasion is compatible with the truth of the religious beliefs so inculcated; to determine that an individual has been brainwashed into a religious belief is not to determine, directly or indirectly, that the belief is false.

Opponents of deprogramming could respond that freedom from inquiry extends beyond scrutiny of the content of beliefs to encompass inquiry into mode of attachment.¹⁴⁰ If this were the case, the evidentiary base for deprogramming would again be unobtainable for constitutional reasons.

The problem with this response is that the United States Supreme Court already has placed its constitutional imprimatur on inquiry into mode of attachment in two lines of precedent. When an individual requests exemption on the ground of his religious belief from regulations that would otherwise apply, the government is permitted to inquire into both the *sincerity*¹⁴¹ and *centrality*¹⁴² of

note 6, at 12, 34 (deprogrammers showed deprogramme proof that methods and teachings were similar from cult to cult); Harayda, *I Was a Robot for Sun Myung Moon*, *GLAMOUR*, Apr. 1976, at 216, 260 (deprogrammer played NBC documentary on cult's leader).

138. 73 Cal. App. 3d 952, 141 Cal. Rptr. 234 (1977).

139. *Id.* at 987, 141 Cal. Rptr. at 255.

140. *See supra* note 134 and accompanying text (raising question whether inquiring into way belief was formed might be impermissible inquiry into religion).

141. *Wisconsin v. Yoder*, 406 U.S. 205, 235-36 (1972); *Welsh v. United States*, 398 U.S. 333, 337 (1970); *United States v. Seeger*, 380 U.S. 163, 185 (1965); *People v. Woody*, 61 Cal. 2d 716, 726-27, 394 P.2d 813, 820-21, 40 Cal. Rptr. 69, 76-77 (1964).

the belief. A belief that is insincerely held or merely peripheral to the individual's religious system is not accorded the same respect as a sincerely held and central belief.¹⁴³

The Court has yet to consider the permissibility of inquiry into religious thought reform, but it seems to have drawn a sharp line between inquiry into truth or falsity and inquiry into mode of attachment. To investigate the brainwashing issue seems no more inquisitorial or intrusive than an inquiry into centrality or sincerity.¹⁴⁴ It would be ironic if the first amendment value of religious liberty precluded a court from reviewing coercive practices endangering that very same religious liberty. It seems better to restrict judicial inquiry into the verity of religious beliefs, a restriction that poses no problems for the advocate of deprogramming.¹⁴⁵

4. The Special Protection for Religion and Religious Exercise

Themes drawn from the preceding subsections suggest a possible independent justification for denying programmed-in religious belief full constitutional respect. Religion's history, its recognition in the text of the Constitution, and an unbroken line of case law indicate that religion has a special place in our scheme of political and legal values.¹⁴⁶ Actions, affiliations, and beliefs that are religious in nature receive greater judicial deference than they would have if their nature had been secular—political, economic, or prudential, for example.¹⁴⁷ Cult groups know this; indeed, evidence suggests that certain groups, which began as secular self-help/therapeutic organizations, adopted the trappings of religion to reduce official scrutiny of their practices.¹⁴⁸

142. 61 Cal. 2d at 720-26, 394 P.2d at 817-20, 40 Cal. Rptr. at 73-76; *see also* *Murdock v. Pennsylvania*, 319 U.S. 105, 109 (1943); *Leary v. United States*, 383 F.2d 851, 860 (5th Cir. 1967), *rev'd on other grounds*, 395 U.S. 6 (1969).

143. *See* cases cited *supra* notes 141-42; L. TRIBE, *supra* note 108, § 14-11.

144. This approach merely applies to belief a mode of analysis the courts now apply to action. When allegedly religiously motivated action is challenged, courts look to its sources to see if it in fact issues from religious beliefs. When religious belief is put in question, a court similarly should be able to look to the sources of the belief to see whether they contain anything that puts them, or their genuineness, in question. Like insincerity or noncentrality, brainwashing should be one of those factors.

145. *See supra* notes 132-37 and accompanying text.

146. *See supra* notes 111-34 and accompanying text; *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 231 n.28 (1977); *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

147. *See* *United States v. Seeger*, 380 U.S. 163, 184 (1965); *see also* *Welsh v. United States*, 398 U.S. 333, 341 (1970).

148. *Founding Church of Scientology v. United States*, 409 F.2d 1146, 1152 (D.C. Cir.), *cert. denied*, 396 U.S. 963 (1969); Delgado, *supra* note 1, at 42 n.242.

Regardless of whether a cult that uses thought reform cynically adopted the mantle of religion, the fungibility of the doctrine taught suggests it should receive reduced protection. Once a convert has been weakened physically by sleep deprivation, inadequate food, and constant activity, and psychologically by mind numbing rituals, chants, and inadequate privacy and opportunity for reflection, she will accept whatever form of doctrine is thrust on her by the leaders.¹⁴⁹ The only requirements are that the body of principles be large, complex, vaguely inspiring and depict the organization as arrayed against outside forces of darkness.¹⁵⁰

If a religious system just as easily could have been nonreligious at the time of its inculcation into a believer, does this deprive the system of its special quality under the Constitution? An indication that this might be so is supplied by conscientious objector cases, such as *United States v. Seeger*.¹⁵¹ In *Seeger*, the Supreme Court upheld the claim for conscientious objector status of a registrant who held unconventional beliefs and seemingly was not a member of any church.¹⁵² Because Seeger's beliefs played a part in his life parallel to that played by the orthodox beliefs of a religious person clearly entitled to exemption, the Court held that Seeger must also be exempted from military service.¹⁵³ The inverse of the *Seeger* proposition is also arguably true; if an ostensibly *religious* system plays a part in the life of the holder parallel to the part played by a *nonreligious* system in the life of a person *not* entitled to an exemption, then the beliefs could be treated as nonspecial. *Seeger* thus suggests a two-plane view of belief: Religious beliefs occupy a higher plane, and all others a second, lower plane. Functional interchangeability defines the location of a particular belief on one or the other plane. When a court finds that the principal use of a set of beliefs is to *control* adherents and perceives that a set of secular beliefs could have served this purpose just as easily, the court will

149. The doctrine's actual content is relatively unimportant. E. HEFTMANN, *DARK SIDE OF THE MOONIES* 251 (1982).

150. Patty Hearst's captors used a Maoist political theory; Reverend Moon uses Divine Principle, a mixture of Christian and Eastern theology and numerology; Scientology uses a mixture of science fiction, personal therapy, and spiritual transmigration. See generally A. J. RUDIN & M. RUDIN, *supra* note 2, at 31-96 (for descriptions of the beliefs and practices of the most popular cult groups, including those named herein); C. STONER & J. PARKE, *supra* note 2, at 33-51.

151. 380 U.S. 163, 184 (1965); see also *Welsh v. United States*, 398 U.S. 333, 341 (1970).

152. 380 U.S. at 186-87.

153. *Id.* at 176, 187.

be entitled to find the system of beliefs nonreligious under the extended *Seeger* test proposed here.

C. *Deprogramming and First Amendment Criteria*

The Supreme Court has developed a number of criteria for assessing the constitutional status of laws or regulations that may affect religious conduct or belief. These first amendment criteria include the following:¹⁵⁴ (1) neutrality, (2) secular purpose, (3) secular effect, (4) excessive entanglement, and (5) minimal intrusiveness or least restrictive alternative. This section will examine the proposed state supported practice of deprogramming in light of these constitutional criteria.

1. Neutrality

The Supreme Court has sometimes suggested that state action is not constitutional unless it is neutral in its treatment of religions.¹⁵⁵ Deprogramming does not fail this test, despite the assertions of some cult defenders.¹⁵⁶ As explained in part II,¹⁵⁷ deprogramming is a response not to the content of coercively persuaded beliefs or the identity of the persuader, but to the coercive persuasion itself. A state-supported practice of deprogramming would distinguish between recent cults and the older mainstream religions only insofar as the former and not the latter use the deceptive and coercive techniques already outlined.¹⁵⁸ If a mainstream religion brainwashed its adherents in the same way cults do, deprogramming similarly should be available.

The argument that brainwashing is a "necessary stage" that all religions go through, so that a prohibition against brainwashing in effect discriminates in favor of old, established religions, is implausible.¹⁵⁹ Although new religions are typically evangelistic, this

154. These criteria are drawn from both free exercise and establishment clause cases. While the two religion clauses are analytically distinct, they are, in practice, difficult to untangle. Thus, the following analysis incorporates the first amendment concerns of both clauses.

155. See, e.g., *Presbyterian Church v. Hull Church*, 393 U.S. 440, 449 (1969) (civil courts must decide disputes over church property without resolving doctrinal controversies), *cert. denied*, 396 U.S. 1041 (1970).

156. A number of critics of deprogramming and other forms of intervention make this criticism. Gutman, *supra* note 90, at 71; Kelley, *Deprogramming and Religious Liberty*, *Civ. Lib. Rev.*, July-Aug. 1977, at 23, 30; LeMoult, *supra* note 90, at 599, 640.

157. See *supra* notes 82-88 and accompanying text.

158. See *supra* notes 4-18 & 37-62 and accompanying text.

159. Cf. *Larson v. Valente*, 456 U.S. 228, 246 n.23 (1982) (Minnesota requirement that

is very different from using deception and thought reform. The early Christians, for example, were vocal and open about their faiths; no one could become a member without knowing it.¹⁶⁰

2. Secular Purpose

The requirement that a state-supported practice have a secular purpose¹⁶¹ is also met by deprogramming carried out within the framework of part I. The purpose of deprogramming is to restore freedom of thought to individuals deprived of it by coercive persuasion. Freedom of thought and religious belief are clearly secular values implied by the first amendment.¹⁶² The deprogrammer may not, of course, attempt to instill a religion into the deprogramme, otherwise deprogramming would have a nonsecular or religious

religious organizations which raise more than 50% of their funds from nonmembers obtain permit, held unconstitutional because it unfairly burdens small, new sects that have few members and thus necessarily must fundraise among the nonmember public). *Larson* does not reach the situation under discussion. Unlike fundraising, deception and coercive persuasion are not essential and socially innocuous activities of church organizations. Coercive persuasion does not, as noted in the text, mark the beginning stages of every, or even most, religions, and does not necessarily correlate with small size or newness of a cult or sect. Hare Krishna claims to be a descendant of Hinduism and to be over 1200 years old. International Soc'y for Krishna Consciousness, Inc. v. Barber, 506 F. Supp. 147, 151-53 (N.D.N.Y. 1980) (ancient historical antecedents of Krishna movement), *rev'd*, 650 F.2d 430 (2d Cir.), *cert. denied*, 451 U.S. 971 (1981). Scientology, a relatively new cult, is large and powerful. A. J. RUDIN & M. RUDIN, *supra* note 2, at 22 n.28.

160. The early Christian proselytizers were joyous, open, and aboveboard ("Have you heard the good news?").

The neutrality of the deprogramming option should extend even further to cases of brainwashing by nonreligious groups. Armed Forces psychiatrists and psychologists used a type of mild deprogramming (called "debriefing" or "re-entry therapy") with returning POWs after the Korean and Vietnam wars. *See, e.g.,* Lifton, *Home by Ship: Reaction Patterns of American Prisoners of War Repatriated from North Korea*, 110 AM. J. PSYCHIATRY 732 (1954); Schein, *The Chinese Indoctrination Program for Prisoners of War*, 19 PSYCHIATRY 149 (1956); J. SEGAL, THERAPEUTIC CONSIDERATIONS IN PLANNING THE RETURN OF AMERICAN PRISONERS OF WAR TO CONTINENTAL UNITED STATES, U.S. NAVY REP. No. 72-37 (1973). Deprogramming could also be used on members or hostages of terrorist political groups such as the SLA or the Manson cult. *See* Delgado, *supra* note 9, at 31-32 (discussing deprogramming as a dispositional option when defendant found not guilty by reason of brainwashing).

Since deprogramming is justified as a restoration of autonomy and personal choice to brainwashed individuals, it should be available whatever the content of the improperly inculcated belief. *See supra* notes 33-61 & 81-88 and accompanying text.

161. *See* *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971) (establishment clause requires that statute have a secular purpose); *see also* L. TRIBE, *supra* note 108, § 14-8.

162. *Kaimowitz v. Department of Mental Health*, Civ. No. 73-19434-AW (Mich. Cir. Ct., Wayne County, July 10, 1973) (freedom of thought protected as aspect of freedom of expression); Shapiro, *supra* note 36, at 253-58 (1974) (freedom of "mentation" derived from first amendment). *See generally* L. TRIBE, *supra* note 108, §§ 15-7 to -8 (1978) (freedom of the mind).

purpose in contravention of the first amendment.¹⁶³

3. Secular Effect

The Court also has required that state action have a secular effect and that any nonsecular effect be indirect or incidental.¹⁶⁴ The direct secular effect of deprogramming is to restore freedom of thought and association to deprived individuals. Providing the deprogrammer does not attempt to destroy or change religious belief, it is unclear what would be the nonsecular effect of state-supported deprogramming. Religious groups found by courts to brainwash their adherents might consider this a stigma and change their behavior to avoid a repetition of such a finding. They might instruct their proselytizers to give full disclosure, and substitute standard methods of teaching and conversion for their former coercive and deceptive tactics. But these effects are secular and highly desirable. Moreover, they do not flow from the deprogramming but from the judicial finding that justifies the deprogramming.

4. Excessive Entanglement

The Supreme Court has also required that a state regulation or practice not result in excessive entanglement of government in religious affairs.¹⁶⁵ Aimed at promoting both free exercise and nonestablishment values, the rule against entanglement is designed to keep religious and state authorities from interfering with each other's proper spheres of influence.¹⁶⁶ The type of entanglement that would be alleged in connection with state-sponsored deprogramming would be "administrative entanglement."¹⁶⁷ Administrative entanglement occurs when government surveillance or

163. See *Campbell v. Cauthron*, 623 F.2d 503, 509 (8th Cir. 1980) (forced inculcation of religious values unconstitutional); see also *Torcaso v. Watkins*, 367 U.S. 488, 495 (1961) (a state cannot constitutionally force person to profess religious belief).

164. See *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971); see also *L. TRIBE*, *supra* note 108, § 14-9.

165. See, e.g., *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713 (1976) (first amendment prohibits civil court from inquiring into procedural or substantial ecclesiastical law); *Presbyterian Church v. Hull Church*, 224 Ga. 61 (1968), *rev'd*, 393 U.S. 440, 449 (1969) (first amendment limits the role of civil courts in church property disputes); *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94, 107-08 (1952) (a state cannot regulate church operation and appointments of clergy by requiring conformity to church law).

166. See, e.g., *L. TRIBE*, *supra* note 108, § 14-12, at 865 (1978) (The rule against excessive entanglement is "born of a desire to minimize government intrusion into the religious realm" and to ensure that secular and religious authorities do not "interfere excessively with one another's respective spheres of choice and influence . . .").

167. See *id.* § 14-12, at 869-71.

oversight intrudes too deeply or continuously into matters of the spirit.¹⁶⁸ Impermissible entanglement is likely to be found when government carries out "substantive evaluations" of religious practices,¹⁶⁹ engages in "extensive . . . investigation into church operations and finances,"¹⁷⁰ purports to make "difficult classifications of what is or is not religious,"¹⁷¹ or attempts to resolve internal church disputes about property or theology.¹⁷²

Judicially authorized deprogramming as proposed in this Article should not violate the prohibition against excessive entanglement. The court will, of course, have to supervise the actual deprogramming, in person or through a representative,¹⁷³ but deprogramming is a secular, not a religious, activity.¹⁷⁴ The required supervision should no more offend the entanglement rule than would court-supervised medical treatment of a minor or incompetent person.

Although judicial engagement in deprogramming should not constitute entanglement, it might be urged that the judicial factfinding necessary to authorize deprogramming would draw the court impermissibly into matters of religious belief and governance.¹⁷⁵ But the judicial examination that would precede court-ordered deprogramming would probe neither deeply nor protractedly into matters of religion. To win approval for deprogramming, the moving party would need to show that the proposed deprogramme was subjected to techniques of coercive persuasion—sleep deprivation, guilt manipulation, isolation,¹⁷⁶—but these are scarcely core religious practices. They are, rather, secular techniques that cult groups have adopted because they have found that they work—they help retain recruits.¹⁷⁷ Moreover, the judicial factfinding is a one-time-only event, limited to the individual

168. See, e.g., L. TRIBE, *supra* note 108, § 14-12, at 866.

169. See, e.g., *Walz v. Tax Comm'n*, 397 U.S. 664, 674 (1970) (rejecting "governmental evaluation" of church social service programs in decision to grant tax-exempt status).

170. *Id.* at 691 (Brennan, J., concurring).

171. *Id.* at 698 (Harlan, J., concurring).

172. See *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713 (1976); *Presbyterian Church v. Hull Church*, 393 U.S. 440, 449 (1969).

173. See generally *Aronin*, *supra* note 24, at 233-73 (legislative proposal); *Delgado*, *supra* note 1, at 86-88 (measures to control abuses in court-ordered deprogramming).

174. See *supra* notes 94-145 & 161-64 and accompanying text.

175. Governmental intrusion into such matters is forbidden by the anti-entanglement doctrine. See *supra* notes 165-72 and accompanying text.

176. See *supra* notes 10-15 & 34-61 and accompanying text.

177. See *Delgado*, *supra* note 1, at 46-47 (arguing that coercive thought reform techniques are not central to any religion).

before the court, and does not entail any continuing monitoring of the group's activities. The hearing occurs at the initiative of a private party, usually a family member. No government agency is created or other form of long-term scrutiny established. When cults cease to use thought reform techniques, deprogramming and judicial scrutiny will cease.

5. Minimal Intrusion/Least Restrictive Alternative

When state regulation does affect religious conduct or belief the Court has typically required that the state intervene in a minimally intrusive way.¹⁷⁸ No less intrusive means than state-supported deprogramming is available to cure the brainwashing problem. The government could legislate and enforce informed consent requirements,¹⁷⁹ or other preinduction remedies.¹⁸⁰ But these tactics aim at preventing cult brainwashing, not at solving the problem of individuals who have already been brainwashed. Deprogramming will be necessary so long as less intrusive preventive remedies are unavailable or operate imperfectly. Since anything short of total surveillance will allow some determined cult groups to brainwash members of the public, deprogramming would seem to be a necessary back-up measure to restore religious liberty and freedom of thought after coercive persuasion has deprived an individual of these rights. The health and welfare values mentioned earlier¹⁸¹ and the restoration of freedom of thought and religion¹⁸² justify this minimal intrusion.

IV. THEORIES OF DEPROGRAMMING

Many, perhaps most, procult writers take the position that all forms of involuntary deprogramming are unconstitutional. Accord-

178. *Thomas v. Review Bd. of Indep. Employment Sec. Div.*, 450 U.S. 707, 718 (1981) (state action that interferes with free exercise rights must constitute least restrictive alternative for promoting compelling state interest).

179. See, e.g., Delgado, *supra* note 1, at 73 (proposing requirement of disclosure). See generally Delgado, *supra* note 7 (informed consent requirement would be feasible and would survive constitutional objections).

180. See Delgado, *supra* note 1, at 73-78 (discussing range of "preventive" or before-the-fact remedies).

181. See *supra* notes 89-90 and accompanying text.

182. Arguably, in these circumstances, it is not necessary to balance individual interests against state interests because the Court only requires balancing when state action infringes an individual's free exercise rights. Here, state action does not infringe a free exercise right because cultic coercive persuasion has destroyed the individual's ability to exercise that right. Deprogramming restores that ability.

ing to these writers it is not necessary to articulate a theory of deprogramming or understand precisely how it works. For anticult writers, deprogramming is a necessary corrective for the coercive persuasion cultists may be subjected to by the new religious groups.¹⁸³ Since procult advocates reject the claim of cult brainwashing,¹⁸⁴ they see deprogramming as a solution without a problem, an unconstitutional invasion of religious liberty rather than a restoration of it.¹⁸⁵ Given these fundamentally different appraisals of what deprogramming achieves, it is not surprising that little agreement exists on how deprogramming works. Even within the respective movements, no single picture has emerged of how deprogramming operates to achieve its ends.

This part will attempt to throw some needed light on these issues. Section A examines and assesses procult perspectives on deprogramming; section B explores anticult perspectives on the operation of deprogramming and constructs a theory on the basis of reports of actual deprogrammings by participants and investigators.

A. *How Deprogramming Works—The Procult Perspectives*

Procult advocates describe deprogramming in a variety of ways. Some supporters see it as a form of brainwashing in which the deprogrammer coercively persuades the cultist to abandon her freely chosen religious adherence.¹⁸⁶ Others analogize deprogramming to exorcism¹⁸⁷—cult ideas are likened to devils that must be exorcised from the individual before she can return to society. A related view maintains that the main point of deprogramming is to convince cultists that they were the victims of cult brainwashing.¹⁸⁸ This myth facilitates the individual's transfer from the cult family to his biological family and the rest of noncult society. Hence, family, relatives, and friends do not have to deal with the individual's cult adherence at face value, or, as a freely chosen commitment to values and goals radically different from those of "straight" soci-

183. See, e.g., Delgado, *supra* note 1, at 85-91; T. PATRICK, *supra* note 23; A. J. RUDIN & M. RUDIN, *supra* note 2.

184. See sources cited *supra* note 156.

185. See sources cited *supra* note 156.

186. See sources cited *supra* note 156; see also ACLU, *supra* note 110.

187. A. SHUPE & D. BROMLEY, *THE NEW VIGILANTES: DEPROGRAMMERS, ANTI-CULTISTS, AND THE NEW RELIGIONS* 75-78 (1980); Shupe, Spielmann & Stigall, *Deprogramming: The New Exorcism*, 20 AM. BEHAV. SCIENTIST 941, 947-51 (1977).

188. See, e.g., Richardson, *Conversion, Brainwashing, and Deprogramming*, CENTER MAG., Mar.—Apr. 1982, at 18, 24.

ety. The proclutists argue that the anticlutists pass off this commitment as "coercive persuasion" and conveniently characterize the individual as a victim of evil cults.¹⁸⁹

This resocialization idea is implicit in the account of those who view deprogramming as a social construction of subjective reality.¹⁹⁰ In this "subjective" reality the hypothesis of mind control by cults provides a plausible justification for deprogrammers to restore conventional ideologies, such as orthodox Christianity or Judaism, to cult adherents.¹⁹¹

A final proclut viewpoint emphasizes the role of family power in explaining the success of deprogramming.¹⁹² Family members prepared to go to desperate lengths in involuntary deprogramming¹⁹³ solely out of love or concern for the cult adherent will create a powerful impression on him. Proclutists maintain that such extremism is difficult to resist and may convince the cult adherent that he is now with those who truly love him and have his best interest at heart. This demonstration facilitates a return to the family and a repudiation of the cult.¹⁹⁴

Underlying this collection of ideas are two themes: Deprogramming includes brainwashing; and cults do not brainwash their inductees into cult adherence. Rejection of either of these hypotheses considerably weakens the proclut perspectives on how deprogramming works. If deprogrammers do not brainwash but simply engage in freewheeling critical discussions about cult methods and beliefs as a result of which deprogrammees voluntarily repudiate their cult adherence, the remains of the resocialization hypothesis are too trivial or innocent for the cult defender's purposes. Similarly, talk of exorcism or subjective construction of reality depends upon the idea that cult brainwashing is a myth. Providing, however, that the belief in cult brainwashing is true, the extreme

189. See, e.g., A. SHUPE & D. BROMLEY, *supra* note 187, at 152; A. SHUPE & D. BROMLEY, *STRANGE GODS: THE GREAT AMERICAN CULT SCARE* 193 (1981).

190. See Kim, *Religious Deprogramming and Subjective Reality*, 40 *SOC. ANALYSIS* 197, 197 (1979) (relying on the work of P. BERGER & J. LUCKMANN, *THE SOCIAL CONSTRUCTION OF REALITY* (1967)).

191. See Kim, *supra* note 190, at 198.

192. A. SHUPE & D. BROMLEY, *supra* note 187, at 149-50.

193. Involuntary deprogramming entails considerable expense and risk. Professional deprogrammers charge up to \$15,000 for their services. Moreover, the parent incurs legal jeopardy if the deprogramming is not carried out pursuant to a court order. The parent may be charged with unlawful imprisonment, kidnaping, and violation of the child's civil rights. See Delgado, *supra* note 1, at 83-85; Note, *supra* note 23, at 296.

194. See A. SHUPE & D. BROMLEY, *supra* note 187, at 152; A. SHUPE & D. BROMLEY, *supra* note 189, at 196-99.

measures some families take are understandable.

1. The Assertion that Deprogramming Is a Form of Brainwashing

The assertion that deprogrammers brainwash cult adherents into repudiating their religious affiliations does not withstand analysis. Although limited similarities exist between involuntary deprogramming and cult conversion—for instance, the use of initial coercion and confinement¹⁹⁵—important distinctions set the two activities apart. The deprogrammer aims at engaging the cult adherent in a dialogue or exchange of viewpoints¹⁹⁶—even some procult writers admit that this is an important step in the deprogramming process — whereas cultic conditioning aims at producing an uncritical listener who absorbs and repeats what is said.¹⁹⁷ Deprogrammers attempt to encourage critical thought and assessment;¹⁹⁸ cults prefer for their inductees to take dogma as given and attempt to counter critical thought with peer pressure, distractive emotions, or mindless meditation and chants.¹⁹⁹ If critical or questioning comments are brought to the surface, they are answered with a repetition of dogma, or put off until later and never answered.²⁰⁰ Thus, the give and take of a legitimate deprogramming session differs radically from the techniques used to produce compliance and mental uniformity in cult organizations.

If deprogramming constitutes brainwashing it is unclear what activities would not count as brainwashing. Dialogue and exchange of ideas are not brainwashing. Perhaps what the procult advocate finds objectionable about deprogramming is not the method but the result. The belief that cults brainwash their members and de-

195. For an example of the type of techniques used by one deprogrammer, see Delgado, *supra* note 1, at 85 n.444.

196. *See id.*; *see also* A. SHUPE & D. BROMLEY, *supra* note 189, at 189.

197. *See* R. ENROTH, *supra* note 6, at 72, 121 (cultists taught to pray, “[m]ake us robots for God”; cultist “couldn’t think . . . [i]t was like all those communication circuits in my brain were just fractured”); Meeting Report, *supra* note 4, pt. 2, at 62 (“zombie-like” mental state), 14, 18, 27, 32, 45, 62, 64 (stereotyped, programmed responses); Rofes, *supra* note 6, at 3, col. 1 (reporter for campus newspaper decided, after one week’s stay with the cult, to “give up the complexities of Harvard, [his] thesis and Gen[eral] Ed[ucation] requirements and live [the] life of [a cult member]”).

198. *See supra* notes 23-24, 84-88 & 134-38 and accompanying text.

199. *See supra* notes 9-14 & 44-61 and accompanying text.

200. *See* JONESTOWN REPORT, *supra* note 11, at 17; C. EDWARDS, *supra* note 26, at 93; *see also supra* note 11; R. LIFTON, *supra* note 9, at 66-83 (prisoners taught to feel guilty, to repress doubts).

prive their members of freedom of thought is inconvenient for cult apologists. Therefore, the apologists suggest that those who hold that belief have been brainwashed into accepting it.²⁰¹ The fallacy of this argument has been exposed earlier:²⁰² a brainwashing hypothesis does not relate to the content of a belief but to the way in which it is induced and held. Little evidence suggests that the techniques employed by most deprogrammers approach the dangers posed by coercive persuasion.

2. The Assertion that Cults Do Not Brainwash

There are significant evidentiary difficulties with the claim made by cult apologists that cults do not brainwash inductees. The main difficulty for procult advocates is that they must reject completely a large number of detailed accounts given by ex-cultists of their cult experience.²⁰³ Cult apologists categorize these accounts as "horror stories,"²⁰⁴ implying that they are fictional rather than factual. The striking similarity among these accounts is explained as the product of deprogramming or as after the fact explanations invented to dissipate anxiety, guilt, and responsibility.²⁰⁵

It is true that deprogrammers sometimes prompt deprogrammees to describe themselves as "brainwashed." As already noted,²⁰⁶ the concept of brainwashing is to some extent esoteric and outside the vocabulary of most Americans. But just because the deprogrammer prompts the admission does not mean it is not true. The details of cult life that deprogrammees reveal—deception, confinement, high pressure proselytization and indoctrination tactics, lack of privacy, threats, pressures to conform and not to criticize, emotional manipulation—constitute coercive persuasion even

201. Sociologists and attorneys who have links to cults, like parents, may tend to reject what is inconvenient for them to believe—namely that the accounts of life in the cults given by deprogrammed ex-members may be quite accurate. *See, e.g., supra* notes 186-88 and accompanying text (procult view that unflattering depictions of cult life and methods offered by ex-members are untrue, implanted in them by deprogrammers and family members for extrinsic reasons).

202. *See supra* notes 87-88 & 134-35 and accompanying text.

203. Most of the descriptions of cult practices and cult life cited in the footnotes of this Article are first person accounts by ex-members. *See, e.g.,* sources cited *supra* notes 9-17 & 37-62.

204. *See* A. SHUPE & D. BROMLEY, *supra* note 187, at 154 (atrocious stories); A. SHUPE & D. BROMLEY, *supra* note 189, at 198-201 (horrific stories).

205. *See, e.g.,* sources cited *supra* note 194; Anthony, *Regulation of Alternative Religions by Law or Private Action: Can and Should We Regulate?*, 9 N.Y.U. Rev. L. & Soc. Change 120, 120-21 (1979).

206. *See* sources cited *supra* note 26.

if the individual would not use that term unprompted.

Thus, the cult defender must reject not only the deprogrammer's hypothesis of cultic thought reform but all the claims made by the ex-cultists in the "horror stories." A sympathetic sociologist researching a cult as participant-observer or a lawyer defending it may be content with this blanket rejection, but a court of law should not acquiesce so readily. A court will consider the credibility of individual witnesses and the extent to which their evidence is corroborated by other witnesses or hard evidence. In the case of the new religious cults a wide range of evidence both from ex-cultists and independent investigators provides a basis for an account of the physical, psychological, and physiological tactics used by cults to induce conversion.²⁰⁷ The sophisticated techniques employed by cults fit the models of brainwashing developed well before the new cults were here.²⁰⁸

B. *How Deprogramming Works—Anticult Perspectives*

Deprogramming advocates present two distinct accounts of the manner in which deprogramming works: An abreactive theory according to which the deprogrammer achieves his ends by creating an intense emotional state in the deprogramme, and a discursive account according to which a successful outcome depends upon engaging the deprogramme in a critique and evaluation of the mode and content of her religious adherence.

1. Abreactive Therapy

According to the abreactive account:

Recently implanted abnormal patterns of behavior which were produced by stress and strain can be broken up by producing a state of severe emotional excitement, especially great anger and aggression or intense fear and anxiety. Dramatic relief occurs when an intense abreactive experience is followed by a phase of collapse, which may be followed by smiles or tears.²⁰⁹

A related account²¹⁰ considers a successful deprogramming one that induces a sudden change in the cultist, or a "snapping" back to the precult personality. This "snapping" is an analogous reversal of the sudden change of personality often present in conversion to cults.²¹¹

207. See *supra* notes 10-17 & 37-61 and accompanying text.

208. The various models of coercive persuasion are set out *supra* note 9.

209. Shapiro, *Destructive Cultism*, 15 AM. FAM. PHYSICIAN 80, 81 (Feb. 1977).

210. F. CONWAY & J. SIEGELMAN, *supra* note 13, at 68.

211. *Id.*

Several difficulties attend the abreactive and snapping accounts of deprogramming. First, the sudden change postulated by both theories often does not occur. Even advocates refer to cases in which deprogrammees change by way of a smooth progression rather than sudden reversal.²¹² Second, both "snapping" and abreaction resemble some of the more dubious cult conversion techniques, such as deliberate induction of carefully staged emotional states as a substitute for critical thought, or alternation of guilt and euphoria as a means of producing emotional collapse.²¹³ Third, abreaction or snapping by themselves do not yield the cultist any understanding of his cult adherence, thus leaving him vulnerable to reconversion to the cult.²¹⁴ Fourth, the abreactive approach may be constitutionally impermissible: nonconsensual induction of intense emotional states is difficult to square with the emerging right of mental privacy.²¹⁵

2. The Discursive Approach

A wide range of participants in and investigators of the deprogramming process emphasize the central role of conversational exchange in deprogramming.²¹⁶ The deprogrammer attempts to engage the cultist in a discussion that requires him to go beyond the programmed responses instilled by cult conversion.²¹⁷ Although many deprogrammers begin with a subject that is sure to be com-

212. *Id.* at 150.

213. Meeting Report, *supra* note 4, at 6, 14, 57, 67, 70 (guilt and anxiety); Boyes, *Inside the Frightening World of Fanatical "Brainwashing" Moon Sect*, 122 CONG. REC. 1391 (1976) (induced excitement and euphoria achieved through "tortuous regimen of chanting, singing, shouting, praying and relentless brainwashing"); R. ENROTH, *supra* note 6, at 102 (emotions "choreographed"); Delgado, *supra* note 1, at 40 n.226 ("lovebombing"); Harayda, *I Was a Robot for Sun Myung Moon*, GLAMOUR, at 256 (Apr. 1976) (mountaintop experience).

214. See W. APPEL, *CULTS IN AMERICA: PROGRAMMED FOR PARADISE* 148-49 (1983); see also Anthony, *The Fact Pattern Behind the Deprogramming Controversy: An Analysis and an Alternative*, 9 N.Y.U. REV. L. & SOC. CHANGE 73, 86 (1979) (deprogramming does not produce insight).

215. See M. Shapiro, *supra* note 36 (extended argument for protection of mentation—right of thought—under first amendment); see also *Kaimowitz v. Department of Mental Health*, No. 73-19434-AW (Wayne County, Mich., Cir. Ct., July 10, 1973).

216. Procult writers describe the discussion as harsh and scathing; anticult writers describe it as calm and sympathetic, but probing. Compare ACLU, *supra* note 110, with F. CONWAY & J. SIEGELMAN, *supra* note 13, at 64-68; T. PATRICK, *supra* note 23.

217. See, e.g., F. CONWAY & J. SIEGELMAN, *supra* note 13, at 65-66 (parents initially soften with questions and arguments); T. PATRICK, *supra* note 23, at 78 (concentrating on questions to which no programmed response exists); see also sources cited *supra* notes 23 & 83-84.

mon ground—the teachings or practices of the cult—virtually any subject will do.²¹⁸ The aims of conversational exchange are to reintroduce the cultist to critical discussion and, later, to provide the informational background necessary for the cultist to make an informed choice of religious affiliation.²¹⁹

One of the more successful deprogrammers has analogized the discursive process to recharging a car battery.²²⁰ A more human centered analogy would be physical therapy. Bedridden patients require physical exercise if they are to regain the complete use of limbs long unused.²²¹ Manipulation by the therapist and gradually increasing use by the patient may eventually lead to a restoration of normal use and functioning.²²² As in a conversation, both patient and therapist are significant actors in this process. Analogously, the deprogrammer activates unused “muscles” necessary for the deprogrammees’ exercise of free and critical thought; once gradually exercised, the deprogrammees use those abilities to evaluate his own situation.

Some critics have suggested that the conversational model of deprogramming is inconsistent with the cult thought reform hypothesis that is used to justify it:

[U]ltimately even those who claim that cult members are brainwashed must communicate with them in terms of reason, logic, and ideas. *These are the very things that cult members are supposed to be unable to deal with!* . . . Thus the very logic of deprogramming and why it should work is hopelessly inconsistent, contradictory, and illogical. . . . [D]eprogrammers rely on the very reasoning capabilities of cult members, which they claim in the same breath cannot exist. . . .²²³

The above argument can be expressed in the following dilemma: If cultists can reason, deprogramming is unnecessary; if cultists cannot reason, deprogramming is futile; either way deprogramming cannot be justified. An analogy to physical therapy reveals the fallacy of this argument: if patients can use their leg muscles, physical therapy is unnecessary; if they cannot use their leg muscles, physical therapy is futile; either way physical therapy is unjustified. The point is that there are intermediate cases be-

218. See, e.g., J. CLARK & M. LANGONE, *supra* note 2, at 73-74 (discussion of war in Afghanistan).

219. See *supra* text accompanying notes 32-88 (when deprogramming permissible).

220. T. PATRICK, *supra* note 23, at 36; see F. CONWAY & J. SIEGELMAN, *supra* note 13, at 66 (opens up a mind snapped shut).

221. REHABILITATION MEDICINE 12 (P. Nichols 2d ed. 1980) (physiotherapists concerned with early mobilization and short term rehabilitation after illness or injury).

222. *Id.* at 17-23 (emphasis in original) (manipulation and exercise therapy).

223. A. SHUPE & D. BROMLEY, *supra* note 189, at 185.

tween the normal leg user and the paraplegic,²²⁴ or between the normal reasoner and a zombie who lacks all reasoning power. The physical therapist and the deprogrammer strengthen a potentiality that has become weakened through lack of use. The potentiality is not completely absent, but neither is it at normal strength. It cannot be fully and freely exercised without therapeutic intervention.

The physical therapy analogy also helps explain the phenomenon of "floating,"²²⁵ in which after a seemingly successful deprogramming the cultist relapses and returns to the cult.²²⁶ An initial therapeutic success may not, by itself, be sufficient to strengthen the potential for free thought weakened by lack of use. A gradual process of building up the strength of the patient/deprogramme will often be necessary.

The discursive model probably does not tell the whole story of successful deprogramming. Simple absence from the cult environment in which thought reform is reinforced may well be important. The presence of parents or spouses may also have an influencing effect.²²⁷ The peak emotional states pointed to by abreaction theorists will sometimes result as a byproduct of the discursive process that the deprogramme is engaged in, and may facilitate an otherwise difficult transition from cultist to ex-cultist.²²⁸

The discursive model also avoids the defects of the proclt or

224. Note that paraplegics and quadriplegics still require physical therapy, but this is not aimed at the reutilization of paralyzed limbs. See REHABILITATION MEDICINE, *supra* note 221, at 224-25 (paraplegics and quadriplegics taught to use parts of body which remain functional, to compensate for those that are paralyzed).

225. "Floating" is a period of ambivalence and mood swings. See T. PATRICK, *supra* note 23, at 36; Robins, *Our Son's New "Heavenly Father,"* 251 SATURDAY EVENING POST, Sept. 1976, at 37, 117.

226. "Floating" may also be an exercise of an ex-cultist's faculty of free choice, which has been restored through deprogramming. To follow the physical therapy analogy, this is similar to the case of an athlete, injured in competition, whose muscle function is restored through therapy, following which the athlete chooses to re-enter athletic competition once again with all its attendant risks.

227. R. ENROTH, *supra* note 6, at 79-80 (demonstration of parental love and devotion pivotal in some deprogrammings); T. PATRICK, *supra* note 23, at 26-28, 72 (parental love and concern critical elements of kidnapping); Remsberg & Remsberg, *The Rescue of Alison Cardais*, GOOD HOUSEKEEPING, Apr. 11, 1976, at 109, 141.

228. See *supra* note 205 and accompanying text. An internally generated abreactive experience seems less problematic than one intentionally induced as a means of changing an individual. When I experience an emotional response to an insight or life event, the response is *mine*—I undergo it. But if another induces a response in me for his or her instrumental reasons, then it is something that happens to me—it is not genuine. On finding out that the other induced it, I might experience shock, mortification, betrayal, or a sense of having been manipulated. On learning about the causation of the first event, I likely would have no such response.

abreaction models. It does not depend upon false empirical assumptions as the procult models do,²²⁹ nor does it suffer from the constitutional infirmities of the abreaction account.²³⁰ Providing the deprogrammer does not attempt to preach a new religion²³¹ or force emotions on the cultist,²³² no constitutional difficulties would seem to arise. Discursive evaluation is the most direct and successful path to the goals of deprogramming within the conceptual framework of part II: a restoration of freedom of thought by which the cultist can make a free and informed choice of religious affiliation.²³³

V. OBJECTIONS TO DEPROGRAMMING

In addition to those discussed earlier, a few additional objections have been leveled against deprogramming. One objection to deprogramming compares the high pressure tactics used by many religious and social institutions to brainwashing. It also questions the basis for the line drawn between those who are and those who are not to be subject to deprogramming. Advocates of this objection maintain that society discriminates against "cult" groups because they are new and different.²³⁴

Most conventional religions, however, do not deceive their recruits as flagrantly or pressure them as forcefully as the recent cults do. Nor are the consequences of membership in conventional religions so severe as they are with the cults.²³⁵ Moreover, most members of mainstream churches and other social institutions have significant contact with the outside world and are able to deprogram themselves out of coercive influences by discussing their situation with friends.²³⁶ Furthermore, the argument for deprogramming is general and not limited to new or peripheral groups. If mainstream religious or social institutions employed the

229. See *supra* text accompanying notes 211-14.

230. See *supra* text accompanying note 214.

231. See *supra* notes 134-37 and accompanying text.

232. See *supra* notes 197-200 and accompanying text.

233. See *supra* notes 84-88 and accompanying text.

234. See generally Gutman, *supra* note 90, at 69; A. SHUPP & D. BROMLEY, *supra* note 187, at 241-42.

235. See *supra* notes 4-18 & 36-61 and accompanying text (cult indoctrination practices and consequences described); Delgado, *supra* note 1, at 63-69 (section entitled: ON DRAWING THE LINE).

236. See *supra* notes 11, 37, 38, 40, 50, 51, 55 & 61 and accompanying text (confinement, isolation, lack of opportunity for reflection or self-deprogramming); Delgado, *supra* note 1, at 63-69.

same range of coercive tactics as the cults, deprogramming would be equally justified.

A second objection to deprogramming relies on the premise that all religions were once cults. Thus, deprogramming of cultists would prevent new religions from becoming established.²³⁷ Admittedly, most religions have been intensely evangelical at their outset and may even have qualified as cults. But they have not brainwashed their members through sleep deprivation, drugs, emotional manipulation, confinement, and invasion of privacy,²³⁸ nor concealed their own nature as religions.²³⁹ The only effect the existence of deprogramming need have on those new religions that do use thought reform methods is a modification of their proselytization and conversion techniques so that the strategies employed are less coercive and deceptive. Deprogramming is not necessary when religious conversion is voluntary and based on informed consent.²⁴⁰

A third objection is that intervention should be reserved for cases in which the cultist is either civilly committable or insane.²⁴¹ Insanity certainly would justify a court order of conservatorship and, if it were warranted, deprogramming. But judicial intervention need not be limited to such extreme cases. The law recognizes many degrees of mental impairment short of insanity: diminished capacity,²⁴² irresistible impulse,²⁴³ senility sufficient to trigger traditional conservatorships,²⁴⁴ automatism,²⁴⁵ and epilepsy.²⁴⁶ There is no reason not to allow limited intervention in novel situations such as cult brainwashing, especially when the objective is to render the mind freer than before. The law does not respect civil liberties by pretending that those liberties cannot be taken away by the determined actions of nongovernmental groups. A government that truly respects these liberties will act to protect cult victims from thought reform and to restore lost freedoms.

237. For a discussion of the view that all religions were originally cults, see A. J. RUDIN & M. RUDIN, *supra* note 2, at 19-26.

238. See *supra* text accompanying notes 32-88 (cults' coercive persuasion practices); Delgado, *supra* note 1, at 64-65 (cult practices rejected by mainstream churches).

239. See sources cited *supra* note 161.

240. See *supra* notes 81-88 and accompanying text (criteria for permissible programming).

241. See Shapiro, *supra* note 28, at 1291 n.53, 1311.

242. W. LAFAVE & A. SCOTT, *supra* note 32, at 325-32.

243. *Id.* at 283-86.

244. AMERICAN BAR FOUNDATION, *THE MENTALLY DISABLED AND THE LAW* 250-302 (S. Brakel & R. Rock eds. 1971).

245. W. LAFAVE & A. SCOTT, *supra* note 32, at 337-41.

246. *Id.* at 337.

Deprogramming attempts to achieve these ends.²⁴⁷

A final objection is that deprogramming would be subject to vague tests and rules, and therefore be open to abuse.²⁴⁸ Judicial supervision will be required to prevent abuses of deprogramming. There is no reason, however, to suppose that courts, legislatures, and commentators cannot frame clear, straightforward, and comprehensive rules covering both substance and procedure. Recent scholarship has already made a start toward the provision of a scheme of rules.²⁴⁹

VI. CONCLUSION

The deprogramming of a religious cultist is morally and constitutionally permissible if a court finds that the cultist lacks an informed understanding of his situation or the volitional capacity to consent to it. "Informed understanding of his situation" includes awareness of the forces and pressures that a cult has brought to bear on the cultist to induce conversion. A cultist who has gained this knowledge and possesses the capacity to make a choice has already achieved the aims of deprogramming and will not be subject to that process. If a court finds that a cultist lacks either the requisite knowledge or capacity, it may order the cultist deprogrammed.

Deprogramming should aim at providing the cultist with the relevant information and restoring her volitional capacity for rendering informed consent. It should not aim at providing a substitute religion or lifestyle. Although deprogramming of this limited variety may result in abandonment of former belief and affiliation, this does not render deprogramming unconstitutional. The cultist's former beliefs are not chosen freely; the new beliefs are chosen freely and thus deserve constitutional primacy. Deprogramming carried out under the "discursive model" meets the constitutional criteria outlined and is capable of being defended against a num-

247. A related objection is that solutions like deprogramming reinforce a view of human beings as incapable of decisionmaking or freedom of the will. Hargrove, *Evil Eyes and Religious Choices*, 17 Soc'y 20, 24 (Mar.-Apr. 1980). This objection ignores that deprogramming requires a court to find that cult brainwashing deprives cultists of their free will and also that deprogramming restores this faculty. Thus, the helief in deprogramming is compatible with the belief that human beings are capable of exercising free will; it simply reflects the possibility of the loss of that faculty. What deprogramming does not do is reinforce the myth that free will is an indestructible metaphysical gift that once given can never be taken away.

248. Note, *supra* note 28, at 1280-83; see, e.g., Comment, *supra* note 28, at 854-56.

249. Aronin, *supra* note 24.

ber of common objections, including the charge that deprogramming would discriminate against new or minority religions, and disparage religious belief or doctrine.

