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# RELIGIOUS TOTALISM: GENTLE AND UNGENTLE PERSUASION UNDER THE FIRST AMENDMENT\*

RICHARD DELGADO\*\*

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Throughout this Article, reference to confidential sources has been indicated by omitting names or reducing names to initials. Other sources containing confidential information have been retained on file with the author. For the protection and privacy of the individuals concerned, the author assumes sole responsibility for the content of interviews granted and letters sent or forwarded to the author and other confidential material on file with the author.

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Charges that religious or pseudo-religious organizations abuse mind control techniques have become increasingly insistent in recent years. If behavior-control technology is powerful enough, when applied by the state, to raise constitutional "right to treatment"<sup>1</sup> and "right against treatment"<sup>2</sup> issues in cases involving prisoners and mental patients, it is not surprising that these same techniques, which have also proven of interest to criminal and extremist groups and to belligerents during wartime, generate similar controversy when utilized by these latter groups.<sup>3</sup>

"Brainwashing" has been asserted as a defense to charges of violations of the Uniform Code of Military Justice by American prisoners of war following the Korean conflict.<sup>4</sup> In the last few years, it has also made its

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1. Cf. *Knecht v. Gillman*, 488 F.2d 1136, 1140-41 (8th Cir. 1973) (setting out procedures under which inmates may consent to aversion type therapy (drug-induced vomiting)); CAL. PENAL CODE §§ 2670-2680 (West Supp. 1977) (setting forth conditions under which prisoners and other institutionalized persons may consent to organic treatments); CAL. WELF. & INST. CODE §§ 5325-5326 (West Supp. 1977) (same); Shapiro, *Legislating the Control of Behavior Control: Autonomy and the Coercive Use of Organic Therapies*, 47 S. CAL. L. REV. 237, 311-15, 326 n.309 (1974) (examining the concept of capacity necessary for informed consent and discussing the right to treatment) [hereinafter cited as Shapiro, *Legislating Control*]. The right to treatment has been derived from a number of constitutional rights, including autonomy and freedom of mentation, *id.* at 255-76, the eighth amendment, *Martinez v. Mancusi*, 443 F.2d 921, 923 (2d Cir. 1970), and due process or equal protection, *see Rouse v. Cameron*, 373 F.2d 451, 453 (D.C. Cir. 1966); Comment, *A Jam in the Revolving Door: A Prisoner's Right to Rehabilitation*, 60 GEO. L.J. 225, 237-43 (1971). For those statutes relating to the goals of particular institutions, *see id.* at 236 n.76. Cf. National Comm'n for the Protection of Human Subjects of Biomedical and Behavioral Research, *Research Involving Prisoners: Report and Recommendations 9* (draft, June 23, 1976) (prisoners may consent to or refuse medical treatment).

2. *See, e.g.*, CAL. PENAL CODE § 2670 (West Supp. 1977); Shapiro, *Legislating Control*, *supra* note 1, at 316-20; Wexler, *Reflections on the Legal Regulation of Behavior Modification in Institutional Settings*, 17 ARIZ. L. REV. 132 (1975); cf. *Kaimowitz v. Department of Mental Health*, No. 73-19434-AW (Wayne County, Mich., Cir. Ct. July 10, 1973) ("involuntarily detained mental patients cannot give informed and adequate consent to experimental psychosurgical procedures on the brain"). *See generally* Gobert, *Psychosurgery, Conditioning, and the Prisoner's Right To Refuse "Rehabilitation,"* 61 VA. L. REV. 155, 179-96 (1975).

3. This Article focuses on the problems posed by extremist religious sects not engaged in activity clearly criminal; a future Article will treat the problem of the criminal defendant who seeks to interpose the defense of brainwashing. Since many of the underlying psychological mechanisms used to bring about compliance behavior are similar, if not identical, in these two cases, *see* notes 354-56 and accompanying text *infra*, many of the legal and moral problems raised in one context have correlates in the other. Compare, *e.g.*, discussion of consent, notes 272-323 and accompanying text *infra* with discussion of legal responsibility, cases cited notes 5-6 *infra*; notes 324-26 and accompanying text *infra* (drawing-the-line problem) with Reich, *Brainwashing, Psychiatry, and the Law*, 39 PSYCH. 400 (1976) and Szasz, *Patty Hearst's Conversion: Some Call it Brainwashing*, THE NEW REPUBLIC, March 6, 1976, at 10-12. The principal difference between the two inquiries is that the problem of religious mind control centers on the harmfulness of the techniques used, while that of the criminal defense focuses on the effect of the techniques on responsibility.

4. *See United States v. Olson*, 20 C.M.R. 46 (1955), *aff'd*, 22 C.M.R. 250 (1957); *United States v. Batchelor*, 19 C.M.R. 452 (1955), *aff'd*, 22 C.M.R. 144 (1956); *United States v.*

appearance in two highly publicized criminal trials, *People v. Manson*<sup>5</sup> and *United States v. Hearst*.<sup>6</sup> Both trials involved outlaw gangs that had succeeded in capturing or captivating female victims and converting them, by a process that included fear, isolation, charisma, and physiological stress,<sup>7</sup> into willing confederates in a variety of criminal ventures.<sup>8</sup>

In the *Manson* trial, some of the young women who had fallen under the influence of the cult<sup>9</sup> leader, Charles Manson, sought to introduce evidence of that influence in mitigation of sentence.<sup>10</sup> At the *Hearst* trial, a defense team led by F. Lee Bailey presented expert psychiatric testimony to the effect that Patricia Hearst, member of a powerful newspaper publishing family, had undergone coercive persuasion similar to that experienced by American POW's during the Korean conflict and by Chinese and Western intellectuals at Chinese revolutionary universities in the 1950's.<sup>11</sup> Although both defenses were unsuccessful,<sup>12</sup> the court in each case permitted the

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Fleming, 19 C.M.R. 438 (1955), *aff'd*, 23 C.M.R. 7 (1957). See also N.Y. Times, Apr. 28, 1954, at 16, col. 3 (evidence introduced to indicate the pressures brought to bear during captivity); Note, *Misconduct in the Prison Camp: A Survey of the Law and an Analysis of the Korean Cases*, 56 COLUM. L. REV. 709, 768-70 (1956). For psychological studies of the American POW experience, see GROUP FOR THE ADVANCEMENT OF PSYCHIATRY, SYMPOSIUM NO. 3: FACTORS USED TO INCREASE THE SUSCEPTIBILITY OF INDIVIDUALS TO FORCEFUL INDOCTRINATION: OBSERVATIONS AND EXPERIMENTS (1956); Segal, *Therapeutic Considerations in Planning the Return of American POWs to Continental United States*, 138 MIL. MED. 73 (1973).

5. No. A-253156 (Los Angeles (Cal.) Super. Ct. Jan. 25, 1971), *reprinted in part in* V. BUGLIOSI & C. GENTRY, *HELTER SKELTER* 310-455 (1st ed. 1974) [hereinafter cited as BUGLIOSI].

6. No. 74-364 (N.D. Cal. Feb. 5, 1976), *reprinted in* THE TRIAL OF PATTY HEARST (1976) [hereinafter cited as HEARST].

7. See BUGLIOSI, *supra* note 5, at 173-75, 234-38, 258, 278, 484; *accord*, HEARST, *supra* note 6, at 253, 256-61, 315, 319-23 (all factors except charisma).

8. See BUGLIOSI, *supra* note 5, at 176-80, 268-69 (Tate-LaBianca murders); HEARST, *supra* note 6, at 1-4 (armed bank robbery).

9. "Cult" is used here, and throughout this Article, in its dictionary sense: "a system of religious worship or ritual . . . devoted attachment to, or extravagant admiration for, a person, principle, etc. . . . a group of followers; sect." WEBSTER'S NEW WORLD DICTIONARY 358 (college ed. 1959). It is not intended to have pejorative overtones. Various definitions of the term "destructive cult" have been attempted, *see, e.g.*, C. STONER & J. PARKE, *ALL GODS CHILDREN* 221-22 (1977) (citing Dr. John G. Clark, Jr., psychiatrist) [hereinafter cited as *ALL GODS CHILDREN*]. This Article makes no use of such definitions.

10. BUGLIOSI, *supra* note 5, at 437-46.

11. HEARST, *supra* note 6, at 248-63, 314-23. Although it is far from certain that coercive persuasion was argued in the *Hearst* trial to establish a new criminal defense, rather than to defeat an evidentiary presumption of voluntariness raised by afteroccurring conduct, *compare* Delgado, *Coercive Persuasion*, in M. SHAPIRO, *CASES & MATERIALS ON BIOTECHNOLOGY & THE LAW* (to be published in 1978 by West Publishing Co.) with HEARST, *supra* note 6, at 509-10, commentators and the public have often treated the trial as an attempt to establish a criminal defense of "brainwashing," *e.g.*, Reich, *supra* note 3, at 400.

12. A jury convicted Manson and other members of his cult of first degree murder. BUGLIOSI, *supra* note 5, at 455. Hearst was convicted of armed bank robbery and the use of a weapon during the commission of a felony. HEARST, *supra* note 6, at 1, 602.

introduction of evidence concerning brainwashing. As a result, the proposition that thought control that falls short of inducing insanity is at least relevant to the question of criminal liability appears to be established.<sup>13</sup>

In a noncriminal context, claims of coercive persuasion or mind control have been raised with increasing frequency in connection with the activities of certain extremist, youth-oriented religious organizations, such as the Unification Church, the Children of God, the Hare Krishna, and the Love Family. These groups have come under fire from parents,<sup>14</sup> church groups,<sup>15</sup> and government officials<sup>16</sup> for recruiting young persons by deceptive means,<sup>17</sup> making them dependent on the cult for emotional support,<sup>18</sup> and

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13. HEARST, *supra* note 6, at 509-10 (colloquy among defense, prosecution, and judge regarding jury instructions), 599 (jury instructions on coercion and duress).

14. One nonsectarian group, Citizens Engaged in Reuniting Families, Inc., is centered in White Plains, New York, and contains over 600 families. Another group, Return to Personal Choice, Inc., is centered in the Boston area. Other organizations are active in California, Texas, Arizona, and Pennsylvania. See generally R. ENROTH, *YOUTH, BRAINWASHING, AND THE EXTREMIST CULTS* 190 (1977).

Responding to a petition from 14,000 Kansans and other states' citizens to investigate the Unification Church, Sen. Robert Dole of Kansas, assisted by Sen. James L. Buckley of New York and Rep. George M. O'Brien of Illinois, presided over an informal meeting of approximately 400 persons from 32 states and a panel of federal officials on Feb. 18, 1976, in the Senate Caucus Room; an ad hoc national committee, created by Citizens Engaged in Reuniting Families, Inc., organized the meeting and subsequently compiled a transcript (part 1) and copies of letters from parents and ex-cult members (part 2). National Ad Hoc Committee, *The Unification Church: Its Activities and Practices, A Meeting of Concerned Parents, A Day of Affirmation and Protest* (Apr. 20, 1976) [hereinafter cited as *Meeting Report*].

15. See, e.g., Waters, *Tammy Doesn't Live Here Anymore*, BOSTON MAGAZINE, Nov. 1975, at 64, 67 (Moon's organization rejected by Korean National Council of Churches, termed "a pseudoreligion more evil than Satan"); New Haven Advocate, Sept. 10, 1975, at 1, col. 2 (some religious leaders consider the Unification Church and other cults to be engaged in "spiritual fascism"); Wash. Post, June 29, 1975, at A-13, col. 1 (New York Council of Churches denies admission to Unification Church); *Meeting Report*, *supra* note 14, pt. 1, at 35 (New York City Council of Churches has denied membership to Unification Church; "no Christian church in Korea or in the U.S.A. has accepted it into membership"). See also sources cited note 326 *infra*.

16. See, e.g., NEW YORK ATTORNEY GENERAL, FINAL REPORT ON THE ACTIVITIES OF THE CHILDREN OF GOD (1974) [hereinafter cited as LEFKOWITZ REPORT]; *California Senate Select Comm. on Children and Youth: Hearing on the Impact of Cults on Today's Youth* (1974) [hereinafter cited as *Dymally Hearing*]; *Hearings, Vermont Senate Comm. for the Investigation of Alleged, Deceptive, Fraudulent and Criminal Practices of Various Organizations in the State* (Aug. 18, 1976) [hereinafter cited as *Vermont Hearings*]; *Hearings* of Sept. 22, 1976 [hereinafter cited as *Vermont Hearings II*]; Letter from Robert N. Giaimo, M.C., 42 other Members of Congress, and U.S. Senator S.I. Hayakawa to Griffin Bell, U.S. Attorney General (Feb. 18, 1977) (requesting Justice Department action on allegations of brainwashing by religious cults and requesting meeting of Attorney General with the author and Dr. Robert Jay Lifton), cited in *Seattle Times*, Feb. 25, 1977, at B8, col. 1; Letter from Robert N. Giaimo, Member of Congress, and 22 other members of the House of Representatives to Edward H. Levi, U.S. Attorney General (Aug. 30, 1976) (same).

17. See text accompanying notes 220-33 *infra*.

18. See notes 57-73, 88, 99-104, 136-40 and accompanying text *infra*.

gradually conditioning them to accept a completely controlled, highly restricted lifestyle<sup>19</sup> and a world view drastically at odds with that of the prevailing society.<sup>20</sup> Critics charge that religious cults recruit young persons when they are especially vulnerable<sup>21</sup> and entrap them by a sophisticated process that exploits known human weaknesses and propensities.<sup>22</sup> Cult leaders respond that they are bringing religious values to spiritually starved youths and that they are doing nothing that is not done by other highly regimented organizations, such as established religious orders or military academies.<sup>23</sup> It was recently estimated that one to three million Americans, mostly in their 20's or late teens, are members of these 200 to 1,000 religious cults.<sup>24</sup> Although this figure is probably an overestimate,<sup>25</sup> the

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19. See text accompanying notes 72-78, 100-04, 135-52 *infra*.

20. See text accompanying notes 157-206 *infra*.

21. *Vermont Hearings*, *supra* note 16, at 13 (unsworn statement of Dr. Peter Laqueur, psychiatrist), 17 (written statement of Dr. John G. Clark, Jr., psychiatrist); see Gunther, *Brainwashing: Persuasion by Propaganda*, TODAY'S HEALTH, Feb. 1976, at 16, 55. See generally W. CLARK, THE PSYCHOLOGY OF RELIGION 112, 121, 207-09 (1958).

22. E.g., *Cultism and the Young*, ROCHE REPORT: FRONTIERS OF PSYCH., Sept. 1, 1976, at 1, 2, 7 [hereinafter cited as FRONTIERS OF PSYCH.]; *Vermont Hearings*, *supra* note 16; Letter from Dr. Stanley H. Cath, psychiatrist, to author (Apr. 16, 1976); Open letter from Jean Merritt, psychiatric social worker (Aug. 3, 1975).

23. See, e.g., *Dymally Hearing*, *supra* note 16, at 51 (testimony of Rev. Damien Simpson); *Religious Cults: Newest Magnet for Youth*, U.S. NEWS & WORLD REP., June 14, 1976, at 54 (federal investigator cited as stymied by drawing-the-line problem) [hereinafter cited as *Religious Cults*]; Cox, *Playing the Devil's Advocate As it Were*, N.Y. TIMES, Feb. 16, 1977, at A-25, col. 1 (new-age cults viewed as alternative religious institution for youth); Letter from Stephen Kafka, Alliance for the Preservation of Religious Liberty, to Members of the Judiciary Committee—Vermont State Senate (Jan. 27, 1977) (urging that proposed statutory remedy for religious mind control would be equally applicable to adult males who are mesmerized by television or elderly gentlemen who succumb to temptation to buy a new automobile) (on file with author).

24. *Religious Cults*, *supra* note 23, at 52. The movement is worldwide. See, e.g., LEFKOWITZ REPORT, *supra* note 16, at 3 (Children of God has 120 communes throughout the world); Beckford, *A Korean Evangelistic Movement in the West*, in ACTS OF THE 12TH INTERNATIONAL CONFERENCE FOR THE SOCIOLOGY OF RELIGION 319, 321-23 (1973) (Moon's Church has "branches or connections in all European countries" and has a large following in Korea and Japan); Davis & Richardson, *A More Honest and Objective Look at the Children of God*, in SOC'Y FOR THE SCIENTIFIC STUDY OF RELIGION, ANNUAL MEETING 1 (1975) (Children of God operates in over 65 countries); *The Darker Side of Sun Moon*, TIME, June 14, 1976, at 49 (Moon influence in France, West Germany, Japan); *El Tiempo* (Bogota, Colombia), May 1, 1975, at 1, col. 4 (legal battle over American mother's attempt to retrieve daughters from local colony of New Testament Missionary Fellowship, a New York-area based cult); *New Haven Advocate*, Sept. 17, 1975, at 6, col. 3 (Moon has training centers in all 50 states); Address by Paul B. Rose, Member of Parliament, Official Record (Oct. 22, 1975) (growing concern over Unification Church's activities in England) [hereinafter cited as Rose]; Transcript of NBC News show "Weekend" 9 (May 17, 1975) (Moon's organization active in more than 40 countries) [hereinafter cited as Weekend].

25. The actual number is probably on the order of 300,000 to 750,000. Precise estimates are made difficult by the tendency of both cult and anticult sources to distort the figures according to their own purposes.

number is manifestly substantial.<sup>26</sup>

Because many jurisdictions deny prospective relief, parents have resorted to hiring lay "deprogrammers," such as Ted Patrick, who physically abduct cult members from street corners and religious communes and attempt to reverse the cult's influence in encounter-style therapy carried out in locked motel rooms.<sup>27</sup> Although many youths appear to have been successfully deprogrammed,<sup>28</sup> and have subsequently expressed fervent gratitude at being freed,<sup>29</sup> deprogramming methods have resulted in violence,<sup>30</sup> bitter criticism,<sup>31</sup> and criminal prosecutions of deprogrammers.<sup>32</sup>

This Article considers a number of the legal and social issues posed by the recruiting and indoctrinating activities of religious cults, particularly those raised by the prospect of state intervention. The Article consists of four parts. Since religious values are implicated—values that are ordinarily afforded substantial protection—a balancing test must be applied. There thus arises the important threshold issue of the harmfulness of the techniques used in obtaining and exercising control over members. The first part accordingly reviews the psychiatric and medical literature relating to religiously motivated thought reform and the hazards associated with it.<sup>33</sup> The proper weight to be assigned the sect's interest in carrying out thought

26. Cf. Briggs, *New Spiritual Organizations Considered Likely to Last*, N.Y. Times, June 22, 1977, at A15, col. 1 (Gallup poll suggests six million Americans have some involvement with transcendental meditation, three million with charismatic renewal, three million with mysticism, and two million with "Oriental religions").

27. See notes 393-428 *infra*. Ted Patrick's career is described in T. PATRICK, *LET OUR CHILDREN GO!* (1976).

28. Patrick claims to be responsible for over 1,000 deprogrammings over the last few years. T. PATRICK, *supra* note 27, at 37. Joe Alexander, another deprogrammer, claims to have deprogrammed about 600 individuals during the last 5 years. L.A. Times, Jan. 3, 1977, pt. I, at 1, col. 1. Alexander often works in concert with a clinical psychologist and refers to deprogramming as "reality-inducing therapy." *Id.* at 3, col. 2.

29. E.g., R. ENROTH, *supra* note 14, at 54-55; T. PATRICK, *supra* note 27, at 73, 79; Letter from Larry Spencer, former Hare Krishna member and the subject of a conservatorship order, to Judge Harelson (July 8, 1977) ("[T]hank you, as from one human being to another, for giving me a chance to live freely . . . to be my own person with my own thoughts").

30. Brief for Respondents at 1-3, *People v. Sacks*, No. AP-1946 (Orange County (Cal.) App. Div. Mar. 26, 1976) (complaining witness testified that she was threatened, held against her will, and had her religious beads forcibly removed by deprogrammers); T. PATRICK, *supra* note 27, at 165-66.

31. Brief for Respondents at 3, *People v. Sacks*, No. AP-1946 (Orange County (Cal.) App. Div. Mar. 26, 1976) (jury found defendant-deprogrammers guilty of false imprisonment); New Haven Advocate, Sept. 10, 1975, at 1, col. 2, at 7, cols. 3, 4 (calling deprogramming "the most horrible thing in the whole world. Constant yelling, humiliation"); see notes 414-18 and accompanying text *infra* (additional critical review of deprogramming).

32. See notes 436-37 *infra* and text accompanying notes 429-39 *infra*.

33. See text accompanying notes 45-210 *infra*.

reform is then considered.<sup>34</sup> First amendment cases have upheld limitations on religion-based behavior where it has been shown that the behavior was socially harmful, not essential to the group's system of religious belief, and motivated by political or economic, rather than religious, concerns.<sup>35</sup> The degree to which cults meet these criteria is explored.<sup>36</sup>

Concluding that a showing of physical and psychological harm sufficient to override a cult's interest in practicing thought control can be made, the Article then raises a further question: Might the harm be considered consensual? Because our legal system is reluctant to impose limits on the self-regarding actions of competent adults, the voluntariness of the joining process becomes critical. Accordingly, the next section considers the process by which young persons are drawn into, and induced to remain in, religious cults.<sup>37</sup> It is seen that this process involves features that seriously erode the voluntary quality of their choice. These include coercion, deception, and conscious manipulation of knowledge and capacity in such a way that the convert's knowledge of the cult and his future role in it is increased only as his capacity to act intelligently and independently on that knowledge diminishes. A related problem is the segmentation of the joining process into a succession of stages, with the ultimate objective concealed from view.

If there is harm of sufficient gravity to trigger scrutiny despite the protection ordinarily afforded religious conduct, and if this harm is not consensual, an additional question arises and is examined in the next section: Is it possible to distinguish—to “draw the line”—between illegitimate uses of control technology and those we normally accept?<sup>38</sup> Our society has traditionally tolerated certain areas and degrees of relative restrictions on freedom; accordingly, it is necessary to ask whether it is possible to distinguish the mind control techniques practiced by religious cults from those utilized, for example, in military training institutions, established religious orders, or advertising. Although the mind- and behavior-altering processes carried out by religious cults share certain elements in common with those that appear elsewhere, they are distinguishable by reason of the intensity and the pervasiveness with which they are applied. In assessing the intensity and pervasiveness of brainwashing processes, a scale of “ideological totalitarian,” derived from the work of psychiatric and psychological theorists, enables distinctions to be drawn between mild and extreme degrees of coercive persuasion.

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34. See text accompanying notes 211-71 *infra*.

35. Text accompanying notes 218-19, 241, 256-58, 268-69 *infra*.

36. See text accompanying notes 211-71 *infra*.

37. See text accompanying notes 272-323 *infra*.

38. See text accompanying notes 326-58 *infra*.

A final question concerning choice of remedy is discussed in the next section.<sup>39</sup> Assuming that society may, consistently with the first amendment, impose limitations on privately imposed psychological bondage, and that meaningful distinctions may be drawn among the various degrees of influence, how are these limits to be enforced? It is proposed that the various stages in the brainwashing process call for differing legal solutions in order that the remedy encroach as little as possible on religious practice and belief. At early stages preventive remedies, such as a requirement of disclosure, might be imposed in order to ensure that potential converts are aware of the possible risks of proceeding to membership in the cult. After induction, when the conditioning process has progressed further and it appears that the member's choice to join has not been freely made, more drastic remedies may be appropriate. Some of the remedies that have been developed or proposed are set out and evaluated under relevant first amendment doctrine. These include conservatorship proceedings, tort actions by parents and ex-members, consumer protection legislation, and self-help, including abduction and deprogramming.

Postinduction remedies that risk overriding competent objection require consideration of the possibility of error.<sup>40</sup> Since no set of screening procedures designed to diagnose mind control can work perfectly, errors of two types may result. Type I error consists of overriding decisions to join that have been freely and voluntarily made. Type II error consists of withholding relief in cases when the individual's decision to join has resulted from illegitimate pressure and coercive influence. Since both types of error can result in serious losses of personal autonomy, it is essential that the consequences of both types of error be weighed in order that the resulting criteria be as risk-free as possible. Existing methods for diagnosing brainwashing are discussed, and recommendations are made concerning judicial mechanisms that might be used to assure that these procedures are applied fairly and that the right to make a competent decision to refuse treatment is protected.

## I. REGULATION OF RELIGION-BASED PROSELYTIZING: FIRST AMENDMENT LIMITATIONS

While religious belief is protected absolutely,<sup>41</sup> religiously motivated conduct is subject to a balancing analysis in which the interest of the religious group is weighed against the state's legitimate interest in regulating or

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39. See text accompanying notes 372-521 *infra*.

40. See text accompanying notes 359-71 *infra*.

41. U.S. CONST. amend. I.

forbidding the activity.<sup>42</sup> In addition, the religious group's interest is given less weight if it appears that the belief giving rise to the conduct is insincerely held,<sup>43</sup> or if the practice is not central to the group's system of belief.<sup>44</sup>

### A. THE STATE'S INTEREST

The state's interest in regulating the recruiting and indoctrinating practices of extremist religious groups varies according to the harmfulness of these practices.<sup>45</sup> A review of legislative hearings, reports of attorneys general, lower court opinions, and the writings of clinical psychologists and psychiatrists suggests that the harms can be classified into several categories. These include harm to the individual and harm to certain societal groups and institutions.

#### 1. *Harms to the Individual*

a. *Precipitation of psychiatric and physical disorders:* (i) *Psychiatric disorders:*<sup>46</sup> The pressure, anxiety, and intense guilt manipulation characteristic of the cult induction process have been found to induce mental and emotional disorders in relatively well-adjusted youths. Individuals who have more severe personality problems at the beginning of the induction process may become acutely ill or suffer psychotic breakdowns.

At a recent Vermont Senate hearing,<sup>47</sup> a number of psychologists and psychiatrists testified about the mental health implications of cult membership. A Harvard University assistant professor of psychiatry testified that the dangers, which he found generally to be "extreme,"<sup>48</sup> vary according to

42. See *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Sherbert v. Verner*, 374 U.S. 398 (1963).

43. See text accompanying notes 218-55 *infra*.

44. See text accompanying notes 256-61 *infra*.

45. Courts that have considered limitations on religious practice have done so in light of the harmfulness of such practice to individuals or institutions. See, e.g., *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (refusal to send children to public or private schools); *Prince v. Massachusetts*, 321 U.S. 158 (1944) (child labor); *Reynolds v. United States*, 98 U.S. 145 (1878) (polygamy); *United States v. Kuch*, 288 F. Supp. 439 (D.D.C. 1968) (possession of illegal drugs).

46. For discussion of the state's interest in protecting mental health against religiously motivated behavior, see, e.g., *Leary v. United States*, 383 F.2d 851, 861-62 (5th Cir. 1967) (marijuana use) *rev'd on other grounds*, 395 U.S. 6 (1969); *United States v. Kuch*, 288 F. Supp. 439, 446-47 (D.D.C. 1968) (LSD use); *State v. Ballard*, 267 N.C. 599, 604, 148 S.E.2d 565, 569 (1966) (peyote ingestion), *cert. denied*, 386 U.S. 917 (1967).

47. *Vermont Hearings*, *supra* note 16.

48. *Id.* at 17 (written statement of Dr. John G. Clark, Jr., psychiatrist). John G. Clark, Jr., a psychiatrist associated with Harvard Medical School and the Massachusetts General Hospital, R. ENROTH, *supra* note 14, at 155, has had extensive experience in examining and treating cult victims and has testified in a number of legislative and judicial hearings on the cult problem.

whether the convert's decision to remain with the group is an expression of "restitutive" or "adaptive" forces.<sup>49</sup> The restitutive group is composed of persons who are, at the outset, borderline personalities. These individuals tend to be "seekers." They are uncomfortable with themselves and with reality, and are attempting to restore themselves by finding a place in a different reality.<sup>50</sup> In this respect, their effort is like that of schizophrenics who create a new, simplified world and style of thinking in place of the complex world they wish to leave. Approximately half of the cult inductees the psychiatrist examined fell into this group.<sup>51</sup> A second group, the adaptive individuals, were relatively free from pathology at the start. These were normal, developing young people, frequently college students, who were going through ordinary postadolescent difficulties or crises at the time they were inducted into the cult.<sup>52</sup>

The psychiatrist found that individuals in the restitutive group are "very much at risk," since the victim's tendency to find refuge in an unreal, fixed thought system is accelerated by living with a group whose thought, speech, and behavior patterns encourage these traits.<sup>53</sup> He compared the diminishing chances of members of this group to regain a relationship with outer reality with those of schizophrenics of past years whose condition deteriorated, as a result of confinement to the back wards of mental hospitals, to the point where they could no longer think or act effectively.<sup>54</sup>

Individuals from the adaptive group present a somewhat different picture. Relatively normal at the outset,<sup>55</sup> these youths join a cult as a result of the combination of opportunity—a momentary state of discouragement or depression—and contact with a recruiter.<sup>56</sup> Lured into the cult by false representations and enticed to remain through the initial stages of indoctrina-

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49. *Vermont Hearings*, *supra* note 16, at 17.

50. *Id.*

51. *Id.*

52. *Id.*; see notes 220, 225 *infra*; Shapiro, *Destructive Cultism*, 15 AM. FAM. PHYSICIAN 80, 81, 83 (1977).

53. *Vermont Hearings*, *supra* note 16, at 17. See generally notes 142-47 *infra* and sources cited therein.

54. *Vermont Hearings*, *supra* note 16, at 17.

55. R. ENROTH, *supra* note 14, at 154-56. One psychologist cited qualities of naiveté, idealism, and a desire to improve the world as predisposing factors. *Vermont Hearings*, *supra* note 16, at 64-65; see Melvold, *Phases of a "Moonie"—Three Years with the Unification Church*, Arizona Republic, May 7, 1977, at C-1, col. 2 ("The Church seduces you by your own ideals"). See also FRONTIERS OF PSYCH., *supra* note 22, at 2 (strong superego as predisposing influence, since this can create anxiety in the youth over apparent inconsistency between ideals and world as it really is).

56. *Vermont Hearings*, *supra* note 16, at 17; see, e.g., ALL GODS CHILDREN, *supra* note 9, at 80-81. See also R. ENROTH, *supra* note 14, at 154; Shapiro, *supra* note 52, at 83.

tion by flattery, offers of friendship, and peer pressure, members of this group find themselves confronted with a series of problems posed by the demands of cult membership.<sup>57</sup> Desiring to preserve the psychic rewards of membership, these individuals respond to the challenges the cult presents to them by undergoing social, physiological, and psychological changes which, while not so blatantly pathological as those of the restitutive group, are nevertheless alarming and, if not interrupted, potentially irreversible.<sup>58</sup>

The unceasing sensory barrage,<sup>59</sup> physiological depletion,<sup>60</sup> absence of mental privacy,<sup>61</sup> and lack of opportunity for reality testing<sup>62</sup> combine to

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57. *Vermont Hearings*, *supra* note 16, at 17. See also Shapiro, *supra* note 52, at 80-81.

58. *Vermont Hearings*, *supra* note 16, at 17; see note 467 *infra*. The changes are especially difficult to resist since they proceed largely without the victim's conscious awareness. See, e.g., Vermont Senate Judiciary Committee Transcript, Mar. 10, 1976, at 18-19 (unsworn testimony of former Unification Church member) [hereinafter cited as Vermont Senate Judiciary Committee].

59. *Vermont Hearings*, *supra* note 16, at 17; Vermont Senate Judiciary Committee, *supra* note 58, at 19 (unsworn testimony of former Unification Church member); R. ENROTH, *supra* note 14, at 159; W. PETERSEN, *THOSE CURIOUS NEW CULTS* 130 (1973) (blaring loudspeakers, "constant bombardment of Bible" verses at Children of God training camp); ALL GODS CHILDREN, *supra* note 9, at 5-8 ("hours of non-stop activity"); Shapiro, *supra* note 52, at 81 ("assaults on the nervous system"); Meeting Report, *supra* note 14, pt. 2, at 6 ("intense pace"), 12 ("repetitious lectures that never ceased"), 14 ("constant singing"), 24 ("constantly drilled with the philosophy of the Principle"); Letter from Jean Merritt, psychiatric social worker, to the Honorable Harry Hupp, Los Angeles, Cal. Super. Ct. (Jan. 12, 1976) (indoctrination carried out through unceasing sensory barrage) (Jean Merritt is the head of a Boston-based group of medical professionals that is studying the cult problem and has had extensive experience in working with cult victims and their families); Transcript of NBC News show "Weekend" (June 4, 1977) (continual playing of tape recorded message at Hare Krishna temple); cf. HEARST, *supra* note 6, at 256-57 ("auditory overstimulation produced by the constant playing of the radio and by . . . prolonged and terrifying interrogation" used to convert victim into political/criminal confederate), 291 ("sometimes they'd have two radios and the television on at the same time").

60. *Vermont Hearings*, *supra* note 16, at 17; Vermont Senate Judiciary Committee, *supra* note 58, at 19; R. ENROTH, *supra* note 14, at 160; Unification Church, 120-Day International Training Center (Barrytown, N.Y.) Workshop Manual 63, 74, 75 (undated, on file with author) (fasting, sickness in Unification Church) [hereinafter cited as Manual]; cf. sources cited note 128 *infra* (prisoner of war, disaster survivor syndrome). See also notes 107-08, 128, 142, 228 *infra*.

61. *Vermont Hearings*, *supra* note 16, at 17; R. ENROTH, *supra* note 14, at 39-40, 59 (recruit is never allowed to be alone); Jaffe & Nafsinger, *Constant Pressure Almost Wins Recruit*, U. of Ore. Daily Emerald, May 2, 1977, at 5, col. 3 ("only five minutes of relaxation from the structured activities"); cf. note 143 *infra* (POW, Chinese re-education studies). See also note 228 *infra*.

62. *Vermont Hearings*, *supra* note 16, at 17; R. ENROTH, *supra* note 14, at 159; LEFKOWITZ REPORT, *supra* note 16, at 36-39; Smith, *Inside a Moonie Camp: A Weekend at Boonville Training Center*, S.F. Chronicle, Dec. 11, 1975, at 1, col. 1 (trainees never left alone); Galper, *Indoctrination Methods of the Unification Church* 6 (Mar. 13, 1977) (paper presented at Annual Meeting, Calif. State Psych. Ass'n) ("[A] high level of affective arousal is generated and maintained. The highly structured program permits no leisure or private time to engage in

produce in these individuals a state of narrowed attention and heightened suggestibility that one psychiatrist compared to a trance.<sup>63</sup> Once in this condition, the victims are compelled to reorganize their past lives and relationships into stereotyped patterns of right and wrong, good and evil.<sup>64</sup> The victims are compelled to sever all attachments to friends and family,<sup>65</sup> a decision which becomes easier by virtue of the remote setting in which indoctrination is carried out.<sup>66</sup> This forced rejection of the past, together with the intense focus on the present, makes it progressively more difficult for the recruit to identify with or reconstruct, in his imagination, his past

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personal reflection. Thus the newcomer has minimal opportunity to evaluate or integrate his experiences within the context of his previously established frame of reference"); Meeting Report, *supra* note 14, pt. 2 at 25, 33.

63. *Vermont Hearings*, *supra* note 16, at 17; see ALL GODS CHILDREN, *supra* note 9, at 159 ("altered states of consciousness"); J. MINDSZENTY, MEMOIRS 105, 110, 112-14 (1974) (confusion, indifference, inability to distinguish lies and distortions from reality), 117 (amnesia during fourth week of ordeal: "I lived in a kind of twilight state"); cf. Shapiro, *supra* note 52, at 83; Galper, *supra* note 62, at 1 ("an ongoing trance . . . emerged as the most salient feature"); HEARST, *supra* note 6, at 253 (confusion, poor concentration, patchy memory); Farber, Harlow, & West, *Brainwashing, Conditioning and DDD (Debility, Dependency, and Dread)*, 20 SOCIOLOGY 271 (1957) (susceptibility of Communist prisoners to retraining resulting from psychic conditioning). See also Lilly, *Effects of Physical Restraint and of Reduction of Ordinary Levels of Physical Stimuli on Intact, Healthy Persons, Illustrative Strategies for Research on Psychopathology in Mental Health*, Group for the Advancement of Psychiatry Symposium No. 2, at 13, 14, 18 (1956) (isolation, sensory limitation causes increase in suggestibility; produces borderline mental state between sleep and wakefulness).

64. *Vermont Hearings*, *supra* note 16, at 17; J. LOFLAND, DOOMSDAY CULT 197 (1966) (anything that helps the cult is Godly, all else is Satanic); LEFKOWITZ REPORT, *supra* note 16, at 28-30, 34-35; Weekend, *supra* note 24, at 12-13 (Unification Church training stresses division of world forces into "good versus evil," "God against Satan"; training continues for "18 to 20 hours a day"); Meeting Report, *supra* note 14, pt. 2 at 14, 25; cf. R. LIFTON, THOUGHT REFORM AND THE PSYCHOLOGY OF TOTALISM: A STUDY OF "BRAINWASHING" IN CHINA (Norton ed. 1961) (classic exposition of totalistic impulse, the psychic need to see world in black-and-white terms) HEARST, *supra* note 6, at 257, 317 (this black-and-white view used to justify illegal and deceptive practices); notes 183-206 *infra* (same).

65. *Vermont Hearings*, *supra* note 16, at 17; R. ENROTH, *supra* note 14, at 162; see notes 157-60 *infra*; cf. R. LIFTON, *supra* note 64, at 67-70 (prisoners subjected to constant denunciation of friends and colleagues); HEARST, *supra* note 6, at 288, 317-18 (victim subjected to "coercive persuasion" by captors; denounces peers and family).

66. *Vermont Hearings*, *supra* note 16, at 17; Vermont Senate Judiciary Committee, *supra* note 58, at 19-20 (unsworn testimony of former Unification Church member); see *Vermont Hearings*, *supra* note 16, at 79 (isolated setting, 65-70 miles from town, no return transportation provided); note 143 *infra*; Jaffe & Nafsinger, *supra* note 61, at 5, col. 2 (Unification Church training carried out on small island in Puget Sound); Meeting Report, *supra* note 14, pt. 2, at 7, 21 (Unification Church retreat "several hundred miles" away from recruit's home); cf. R. LIFTON, *supra* note 64, at 420-25 (milieu control, especially control of communication and movement, as essential ingredient of coercive persuasion); E. SCHEIN, COERCIVE PERSUASION 139 (1961) (degree of physical or psychological confinement as distinguishing feature of the brainwashing process); HEARST, *supra* note 6, at 317 (control of communication as "the basis for the whole [mind reform] process").

life.<sup>67</sup> The only reality becomes the present, with its intense preoccupation with the supernatural,<sup>68</sup> cosmic struggles between good and evil and with the convert's growing dependence on the group for a framework in which to resolve these frightening problems.

The victim's dependence on the group and the thought structures it offers results in gradual changes in the language base in which discourse and thought are carried out.<sup>69</sup> Old, emotion-laden words are given new, rigid, simplified meanings.<sup>70</sup> The new vocabulary is at once literal, magical, and task-oriented. Converts' speech patterns demonstrate a lack of humor<sup>71</sup> and an inability to appreciate and use metaphor.<sup>72</sup> Critical thinking and the asking of questions is discouraged; converts are taught to feel rather than think.<sup>73</sup>

When this adaptation process has progressed through a period lasting from a few days to several weeks, the convert may be judged by the elders as ready to assume the duties of full-fledged membership. These include proselytizing, money-raising on street corners, and scavenging for edible garbage.<sup>74</sup> At this stage, complex rational thought, a career, and ordinary love relationships become impossible.<sup>75</sup> The member appears simplistic in his thought processes, stereotyped in his responses to questions,<sup>76</sup> and unable to make even simple decisions. The recruit's impaired intellectual functioning appears to reflect a loss of many I.Q. points,<sup>77</sup> the possibilities

67. *Vermont Hearings*, *supra* note 16, at 17; *cf.* HEARST, *supra* note 6, at 288 (dissociative mechanisms used to keep herself from thinking about the past or the future), 298 (dissociation—victim "forgets" who she really is), 318-19 (traumatic neurosis, and survivor syndrome). *See also* E. SCHEIN, *supra* note 66, at 131-33.

68. *Vermont Hearings*, *supra* note 16, at 17; *see* ALL GODS CHILDREN, *supra* note 9, at 175; Waters, *supra* note 15, at 98-99.

69. *Vermont Hearings*, *supra* note 16, at 17; Meeting Report, *supra* note 14, pt. 1, at 32; *see* R. ENROTH, *supra* note 14, at 159 (teaching of "thought-terminating clichés"); Enroth, *The Seduction of the Searchers*, Evangelical Newsletter, Sept. 24, 1976, at 1, col. 2 [hereinafter cited as *Seduction of the Searchers*].

70. *Vermont Hearings*, *supra* note 16, at 17.

71. *Id.*

72. *Id.* *See also* sources cited note 102 *infra*.

73. *Vermont Hearings*, *supra* note 16, at 17; *see* Dymally Hearing, *supra* note 16, at 57-58; LEFKOWITZ REPORT, *supra* note 16, at 32; note 229 *infra*; *cf.* R. LIFTON, *supra* note 64, at 66-83 (prisoners learn to "feel" guilty; fear and self-betrayal lead to uncritical acceptance of captor's demands); HEARST, *supra* note 6, at 257-58, 300 (trauma and fear of death at the hands of the captors increase dependence on captors and result in unquestioned compliance with their demands).

74. ALL GODS CHILDREN, *supra* note 9, at 5-31 (recruiting), 121-33 (fundraising); Meeting Report, *supra* note 14, pt. 2, at 62 (eating from garbage can). *See also* notes 107-10 *infra*.

75. *See* *Vermont Hearings*, *supra* note 16, at 17.

76. *Id.*

77. *Id.*; *cf.* Klonoff, McDougall, Clark, Kramer, & Horgan, *The Neuropsychological, Psychiatric, and Physical Effects of Prolonged & Severe Stress: 30 Years Later*, 163 J. NERVOUS & MENTAL DISEASE 246, 248 (1976) (long-term loss of intellectual functioning reported in prison camp survivors).

of human intimacy are impaired, and the victim's judgment about events in the world is damaged because of a constricted ability to perform ordinary reality testing functions.<sup>78</sup>

In addition to these impairments of mental and emotional functioning, the final stage for both groups is often accompanied by classic psychotic or neurotic symptoms.<sup>79</sup> A psychiatric social worker with extensive experience in treating cult members implied at a meeting convened by a United States Senator that half of the individuals suffered from "schizophrenia or borderline psychosis" as a result of the cult experience.<sup>80</sup> Many had suicidal impulses; others required hospitalization.<sup>81</sup> Recovery was believed to require a year or more, which the social worker compared to the length of time required by brainwashed prisoners of war to return to normalcy.<sup>82</sup>

Courts deciding cases involving conservatorship, habeas corpus, and child custody have considered the varieties and extent of psychiatric harm resulting from cult membership. A psychiatric deposition introduced in a conservatorship hearing spoke of the victim's "altered mental state, in which normal thought processes are obstructed by the presence of a structured and induced delusional system."<sup>83</sup> The victim showed "characteristic manifestations" of cult-induced psychic alteration: "a perpetual, quizzical smile; a mood of false euphoria; a . . . glassy-eyed stare; and clipped, repetitive speech patterns."<sup>84</sup> The psychiatrist found the young person "fixated—almost hypnotically—with a perception of all people and things cast in a fierce conflict between 'good' and 'evil.'"<sup>85</sup> The implantation of these ideas "has resulted in a drastic and harmful disruption of Mr. —'s reality testing," and "memory of his past human interaction with the ordinary world has been re-molded into a conception of guilt and self-worthlessness."<sup>86</sup> The victim had suffered loss of ego boundaries and impaired reality testing to the extent that he demonstrated "intense confu-

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78. *Vermont Hearings*, *supra* note 16, at 17.

79. R. ENROTH, *supra* note 14, at 119 (visions, hallucinations, hearing voices), 121 ("cognitive processes were scrambled"); see notes 80, 83-87, 92, 100-02, 130-41 *infra*.

80. N.Y. Times, Feb. 19, 1976, at 18, col. 1; Meeting Report, *supra* note 14, pt. 1, at 33.

81. Open letter from Merritt, *supra* note 22.

82. ALL GODS CHILDREN, *supra* note 9, at 275-77 (readjustment problems of ex-cult member), 279, 282, 285; Open letter from Merritt, *supra* note 22.

83. Deposition of Dr. Stanley H. Cath, psychiatrist, in Middlesex, Mass. 3 (Jan. 23, 1976).

84. *Id.* at 3-4.

85. *Id.* at 4; cf. Williams, *Acquittal Given Due to Insanity*, Hartford Courant, June 25, 1976, at 16, col. 1 ("disciple" of Unification Church acquitted of murder by reason of insanity, following testimony of psychiatrist that defendant's religious experiences in the organization had "made him think that he could feel evil vibrations from others").

86. Deposition of Cath, *supra* note 83, at 4-5.

sion and consequent helplessness to differentiate between reality and fantasy."<sup>87</sup>

These findings, which are illustrative of the psychiatric and psychological evidence relating to the effects of cult membership, suggest that the State can demonstrate a substantial case, based on the risk to mental health, for interference with the cult functions that result in such effects.

(ii) *Guilt, suicide, and self-mutilation*: Cults have been found to utilize intensive exploitation of guilt to induce compliance, enhance their control over converts, and facilitate a break with the past.<sup>88</sup> Ex-cult members also may experience personal guilt for having lied to their friends and family, or for having assisted in recruiting new members into the sect. Aftereffects related to guilt include terrifying dreams,<sup>89</sup> often of suffering an illness or accident as punishment for having left the cult.<sup>90</sup>

While in the cult, the forced preoccupation with guilt and damnation drives some members to engage in self-mutilative behavior,<sup>91</sup> sometimes as demonstrations of faith. One youth committed suicide by lying down on the tracks in the path of an oncoming train after running away from a Unification Church training center.<sup>92</sup> Physicians and residents of Dutchess County,

87. *Id.* at 6.

88. See, e.g., R. ENROTH, *supra* note 14, at 160-61, 172; LEFKOWITZ REPORT, *supra* note 16, at 36; *Dymally Hearing*, *supra* note 16, at 90-91, 120; *Vermont Hearings*, *supra* note 16, at 17; Meeting Report, *supra* note 14, pt. 2, at 7, 14, 57, 71. For an account of a Kansas State University student's "struggle session" in a Unification Church training center, see New Haven Advocate, Sept. 10, 1975, at 6, col. 1. For 5-6 hours she was faced by a group of leaders demanding that she "[t]ell us what you are thinking." She complied, even to the point of lying, in order to satisfy them. The demands of cult life finally "drove her close to mental breakdown or suicide." She protested to the leaders that one member was not being treated as a human being. The reply was, "That's not a valid statement. There's nothing in the *Principles* (Moon's Bible) about human beings." See also Letter from Kevin Gilmartin, court psychologist, Pima County, Ariz. (July 22, 1976) (isolation combines with pressure to confess past sinful life in the "flesh world"; the confession process facilitates an individual's dependence on the group for a value system that condemns past behavior and associations and recognizes the validity of nothing but cult activities, beliefs, and relationships); E. SCHEIN, *supra* note 66, at 140-56; HEARST, *supra* note 6, at 319-21 (use of guilt as control technique); note 358 and accompanying text *infra* (guilt manipulation by cults differentiable from psychotherapy, education, and other behavior-modifying experiences which also deal, in part, with feelings of right and wrong and the need to change one's behavior).

89. See ALL GODS CHILDREN, *supra* note 9, at 279, 280.

90. See, e.g., LEFKOWITZ REPORT, *supra* note 16, at 36; New Haven Advocate, Sept. 10, 1975, at 6, col. 2 (ex-member was told that if he left cult God would punish him; other members had been told that if they left the cult they would be killed or sent to a mental institution within a year; one member feared riding in trains or planes after release because her superiors had specifically mentioned the likelihood of a crash); Meeting Report, *supra* note 14, pt. 2, at 2.

91. See notes 95-97 and accompanying text *infra*.

92. Weekend, *supra* note 24, at 18.

New York, site of one of Reverend Moon's training centers, have noted the large number of trauma cases and suicide attempts seen in local hospitals.<sup>93</sup> Activities at the center were reported to be under investigation by the county's district attorney.<sup>94</sup>

The Unification Church teaches that the individual must "pay indemnity" for his sins, which include thinking evil thoughts. An individual who discovers himself to owe indemnity is required to do something painful,<sup>95</sup> such as forfeit a night's sleep. One who wishes to become a core member of the Unification Church must fast at least 7 days.<sup>96</sup> Psychiatrists who have dealt clinically with ex-cult members find that the feelings of guilt and worthlessness induced by the cult experience are often long-lasting and can contribute to depression, feelings of impending doom, and apathy toward one's surroundings months after release.<sup>97</sup>

(iii) *Maturational arrest*.<sup>98</sup> The limitations placed on language, thought, and experience; the loss of ego functioning; physical stress; and the forced acquiescence in the will of the leaders gradually reduce the decision-making ability of cult members to such a degree that their behavior comes to resemble that of much younger persons.<sup>99</sup> As the developmental process ceases, the cult maintains the individual in a regressed state by "recapitula-

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93. Waters, *supra* note 15, at 100; N.Y. Times, Sept. 30, 1975, at 41, col. 7; see Waters, *supra* note 15, at 100 (physical injuries at Barrytown and one suicide by decapitation of nude Moon follower on train tracks near Barrytown).

94. N.Y. Times, Sept. 30, 1975, at 41, col. 7.

95. See, e.g., R. ENROTH, *supra* note 14, at 74 (fasting for 5 days to crucify the flesh), 114; Waters, *supra* note 15, at 99 ("Some kids shoved their hands into the snow until they couldn't feel any longer"); Manual, *supra* note 60, at 74, 75, 336; Meeting Report, *supra* note 14, pt. 2, at 6, 13; cf. *Vermont Hearings*, *supra* note 16, at 71-72 (Jewish members told the murder of six million Jews in Nazi Germany was indemnity for Jews' role in crucifixion of Christ); Meeting Report, *supra* note 14, pt. 1, at 37 (same), 54.

96. Manual, *supra* note 60, at 63.

97. See, e.g., *Vermont Hearings*, *supra* note 16, at 17.

98. For discussion of the state's interest in protecting children against developmental injury, see *Wisconsin v. Yoder*, 406 U.S. 205, 213, 221 (1972); *Prince v. Massachusetts*, 321 U.S. 158, 168-70 (1944); *Pierce v. Society of Sisters*, 268 U.S. 510, 534 (1925).

99. *Vermont Hearings*, *supra* note 16, at 13 (unsworn testimony of Dr. Peter Laqueur, psychiatrist); see R. ENROTH, *supra* note 14, at 163-64 ("changes in voice, posture, mannerisms, and even handwriting," loss of reading and simple arithmetic skills in extreme cases); *FRONTIERS OF PSYCH.*, *supra* note 22, at 2; Sage, *The War on Cults*, *HUMAN BEHAVIOR*, Oct. 1976, at 47; Letter from Dr. H.G. Moeller, psychiatrist, to H.C. (Sept. 23, 1976) (on file with author); cf. R. LIFTON, *supra* note 64, at 67 (refusal to allow Communist prisoner to reassert his adult status); HEARST, *supra* note 6, at 256 (regression of victim to state of "childish dependency"); Bartemeier, Kubie, Menninger, Romano, & Whitehorn, *Combat Exhaustion*, 104 J. NERVOUS & MENTAL DISEASE 358, 370 (1946) (combat soldiers experience emotional breakdown when cohesion of their group is disrupted); Bettelheim, *Individual and Mass Behavior in Extreme Situations*, 38 J. ABNORMAL & SOC. PSYCH. 417, 444-47 (1943) (prisoners regressed to infantile behavior); Farber, Harlow, & West, *supra* note 63, at 275 (creation of regressed state).

tion of themes" from early stages of life.<sup>100</sup> In this condition the possibilities for individual growth and development are severely impaired.<sup>101</sup> Once-bright university scholars have written letters of childlike simplicity to their siblings or parents.<sup>102</sup> Parents who have visited their offspring while in the cult have found them unable to make simple decisions.<sup>103</sup> A psychohistorically oriented physician has likened the processes involved to those exploited by a totalitarian society.<sup>104</sup> Other psychiatrists believe some youths unconsciously use cult membership as a means to escape the responsibilities of adulthood.<sup>105</sup> Unaware of their own motivation, these youths became ensnared in an unreal world from which their "escape from freedom" is very difficult.<sup>106</sup>

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100. J. Andrews, *Children of the Second Advent: A Study of Conversion Patterns in Sun Myung Moon's Unification Church* 55 (April 27, 1976) (unpublished senior essay, Yale University); see Galper, *supra* note 62, at 6 (induced "vulnerability to primitive wishes in the psyche of the recruit group" and manipulation of "archaic desires for interpersonal merger or fusion"); Robins, *Our Son's New "Heavenly Father,"* SATURDAY EVENING POST, Sept. 1976, at 80; FRONTIERS OF PSYCH., *supra* note 22, at 2, col. 4; cf. Shapiro, *supra* note 52, at 80-81 (assurances that all one's needs will be met).

101. See *Vermont Hearings*, *supra* note 16, at 13 (unsworn testimony of Dr. Peter Laqueur, psychiatrist), 17 (sworn statement of Dr. John G. Clark, Jr., psychiatrist); Interview with Dr. John G. Clark, Jr., psychiatrist, in Boston, Mass. (May 2, 1976) (on file with author).

102. See, e.g., Letter from H.C. (Nov. 13, 1976) (quoting letter from H.C.'s daughter, a member of a West Coast sect).

Hi,

School is going all the time for me and the kids. We all get better together. Animals are our present focus. We count, name, spell names, draw, tell stories, and act out animals.

We have animal books, puppets, animal friends. We like animals and are not afraid of animals.

I really like them as a focus for everything because everyone is interested in them, especially me . . . .

Sincerely yours,

*Id.* The young woman had been designated as mentally gifted in high school and had earned a state scholarship. The parent compared the letter to letters the daughter had written at age nine or ten. See ALL GODS CHILDREN, *supra* note 9, at 218 ("We observed a variety of highly entertaining and creative letters written by young people to their parents before they met the cults. In later correspondence . . . many of those who had written the most amusing, ironic and questioning letters . . . wrote robot-like brief notes full of cliches").

103. Interview with Dr. John G. Clark, Jr., *supra* note 101; see R. ENROTH, *supra* note 14, at 164; Letter from Merritt, *supra* note 22 ("The ego appears to work like a muscle; if not exercised it atrophies").

104. Shapiro, *supra* note 52, at 81.

105. Gunther, *supra* note 21, at 55; FRONTIERS OF PSYCH., *supra* note 22, at 7; Open letter from Dr. John G. Clark, Jr., (Aug. 4, 1975); see Cox, *Eastern Cults and Western Culture: Why Young Americans Are Buying Oriental Religions*, PSYCH. TODAY, July 1977, at 36, 40 (Harvard Professor of Divinity expresses concern that some young people turn toward neo-Oriental religions in the search for easy answers that will enable them to postpone maturity and avoid "the discomfort of making decisions").

106. See Vermont Senate Judiciary Committee, *supra* note 58, at 25, 43 (unsworn testimony of former Unification Church members). Without outside help, self-extraction is rare.

(iv) *Physical disease and injury*: The health-threatening effects of a low-protein and very high-carbohydrate diet,<sup>107</sup> insufficient amount of sleep,<sup>108</sup> overwork,<sup>109</sup> and substandard, cramped living conditions<sup>110</sup> are compounded by the belief, common to most cults, that medical science is useless and that illness is a sign of spiritual shortcomings.<sup>111</sup> In addition, a number of cults, including the Unification Church, encourage self-mortification as a means of purging the self of sin.<sup>112</sup> Members of one cult ingest dangerous substances in order to attain spiritual insights.<sup>113</sup>

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See *Vermont Hearings*, *supra* note 16, at 67-68 (sworn testimony of Dr. George Swope, psychiatrist); Galper, *supra* note 62, at 3 (participants who attended Unification Church meetings estimate that 80-95% of recruits who attended weekend workshop remained for the additional week of training; of this latter group, 90-95% became full-time members); Rofes, *I Was Brainwashed by the Followers of Rev. Sun Myung Moon (But I Wised Up)*, Harvard Crimson, Sept. 30, 1975, at 3, col. 1 (of 70 recruits, after 2 weeks author was only one to leave; "Many are still there"); Letter from Dr. John G. Clark, Jr. (Jan. 14, 1976) (on file with author) (cult membership tends to continue for very long periods because cult patterns become self-reinforcing); cf. HEARST, *supra* note 6, at 250-51 (testimony of Dr. Louis Joloy West, psychiatrist) (efficacy of Korean and Chinese re-education techniques). See also note 467 *infra*; Cornell, *Those "Guru" Cults—Religion or Exploitation?*, READER'S DIG., Feb. 1976, at 96, 100 (dropout rate in all cults estimated at 10-15%).

107. See, e.g., *Vermont Hearings*, *supra* note 16, at 63; R. ENROTH, *supra* note 14, at 160; ALL GODS CHILDREN, *supra* note 9, at 106-07 (starving cult members during cold weather told by Love Israel "to meditate and concentrate on each grain of rice"; one member who lost 40 pounds in her 6 months with the group stated: "I think drugs got us through that winter"), 138; Letter from Gilmartin, *supra* note 88; Meeting Report, *supra* note 14, pt. 2, at 7, 12, 24, 66, 74.

108. *Vermont Hearings*, *supra* note 16, at 56; R. ENROTH, *supra* note 14, at 75, 160; LEFKOWITZ REPORT, *supra* note 16, at 38; Rice, *The Pull of Sun Moon*, N.Y. Times, May 30, 1976 (Magazine), 8, 23; see Letter from Gilmartin, *supra* note 88; Meeting Report, *supra* note 14, pt. 1, at 25, pt. 2, at 7, 12, 41, 74.

109. R. ENROTH, *supra* note 14, at 49, 64; Rice, *supra* note 108, at 23-24; Meeting Report, *supra* note 14, pt. 1, at 24 (raised funds 18 hours a day), pt. 2, at 11 (12 to 16 hours per day begging on the streets), 14 (raised funds 14 to 16 hours a day), 24, 36 (soliciting and peddling up to 18 hours a day), 38.

110. See, e.g., *Dymally Hearing*, *supra* note 16, at 30, 59; R. ENROTH, *supra* note 14, at 63-64 (80-100 living in a 4-room mouse-infested, unheated house—but "these discomforts were the trials and tribulations that we were going through to make us strong"); Shapiro, *supra* note 52, at 82 (possible parasitic disorders); L.A. Times, Apr. 7, 1976, pt. II, at 1, cols. 1, 4.

111. *Dymally Hearing*, *supra* note 16, at 57; R. ENROTH, *supra* note 14, at 48, 95; ALL GODS CHILDREN, *supra* note 9, at 138; Meeting Report, *supra* note 14, pt. 2, at 11, 24, 54.

112. R. ENROTH, *supra* note 14, at 178-79.

113. ALL GODS CHILDREN, *supra* note 9, at 106-07; Seattle Post-Intelligencer, Jan. 24, 1972, at A-3, col. 5 (two deaths in Love Family cult from inhaling toluene, an industrial solvent); Letter from Brooks P. Russell, Chief Criminal Investigator, Law Enforcement Assistance Section, Office of the Attorney General, Seattle, Wash., to Charles A. Vanik, Member of Congress (Aug. 13, 1974) (Love Family cult suffered three deaths, two by toluene inhalation, one by fall from a tree).

From our first experiences with the supervised inhalation of tell-u-all [toluene], in the spring of 1971, we discovered that this chemical had strong potential for helping people free themselves from the common lies of the world: belief in sickness such as colds or cancer, negative habits such as smoking and alcoholism, physical and mental disorders, and the fears of death.

At a recent meeting convened by a United States Senator, statements were made concerning: an untreated eye condition<sup>114</sup> (the young woman had been told her torn retina was an indemnity she must pay because her ancestor "was a peeping Tom"); an improperly set broken limb<sup>115</sup> (the cult did not believe in doctors, so the boy's broken arm was set by other cult members); and an account of a young woman who suffered from an ovarian cyst so large that she appeared to be pregnant.<sup>116</sup> Other cult members suffered loss of feeling in their feet and toes from long hours of standing on street corners while fundraising or proselytizing.<sup>117</sup> One Hare Krishna follower, just after working in the streets, fainted in the presence of her visiting mother. On reviving, she told her mother that her body consisted of nothing but stool and urine and was of no concern to her.<sup>118</sup> Many members lost large amounts of weight,<sup>119</sup> often accelerated by ritual fasting.<sup>120</sup> One colony was afflicted with hepatitis, which went untreated because Satan, not germs, was thought to cause illness.<sup>121</sup> Women ceased having menstrual cycles;<sup>122</sup> men suffered a slowing of facial hair growth<sup>123</sup> and loss of sexual interest.<sup>124</sup> One cult, until stopped apparently by publicity resulting from a

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Letter from Church of Armageddon (undated but issued by Love Israel following publicity of the two toluene-related deaths, R. ENROTH, *supra* note 14, at 87); see R. ENROTH, *supra* note 14, at 28 (Hare Krishna devotees considered it an honor to drink liquid containing a small amount of cow's urine that had been used to bathe Krishna idols). But see ALL GODS CHILDREN, *supra* note 9, at 9 (Guru Maharaj Ji's Divine Light Mission encourages abstention from drugs).

114. Meeting Report, *supra* note 14, pt. 2, at 11.

115. *Id.* at 61.

116. *Id.* at 54.

117. *Id.* at 15; *id.*, pt. 1, at 25; see R. ENROTH, *supra* note 14, at 112 (female member, exhausted from long hours of fundraising, with an immobile leg, requested a fireman to lean her against wall, hallucinated for a few hours, and blacked out).

118. People v. Florence, No. 8699, People v. Patrick, No. 8688, People v. Sacks, No. 8686, Court Transcript, at 27 (Fullerton (Cal.) Mun. Ct. May 6, 1975) (offer of proof of defendant-parents).

119. See R. ENROTH, *supra* note 14, at 64; L.A. Times, April 7, 1976, pt. II, at 1, col. 1, at 3, col. 1 (Hare Krishna cult member lost 24 pounds and became anemic because of lack of protein); Letter to J.A., attorney (May 19, 1976) (on file with author) (letter writer's sister lost 80 pounds, now weighed 80 pounds, evidenced blunted affect, and was "basically a nonpersonality"); Meeting Report, *supra* note 14, pt. 2, at 24.

120. Meeting Report, *supra* note 14, pt. 1, at 25.

121. Vermont Hearings, *supra* note 16, at 43-45. See also R. ENROTH, *supra* note 14, at 95.

122. Vermont Hearings, *supra* note 16, at 45; R. ENROTH, *supra* note 14, at 183 (no menstrual periods for 2 years—considered "unclean" to have a menstrual period); ALL GODS CHILDREN, *supra* note 9, at 109; cf. J. SEGAL, LONG-TERM PSYCHOLOGICAL AND PHYSICAL EFFECTS OF THE POW EXPERIENCE: A REVIEW OF THE LITERATURE 23-24 (1973) ("disappearance of the menstrual period and of the ovarian function in the case of the majority of women, with later untoward gynecological effects"); Meeting Report, *supra* note 14, pt. 2, at 15.

123. Vermont Hearings, *supra* note 16, at 45; Interview with Clark, *supra* note 101.

124. Interview with Clark, *supra* note 101; Meeting Report, *supra* note 14, pt. 2, at 18.

number of deaths, ritualized the inhalation of the industrial solvent toluene, which they called "tell-u-all," in attempts to produce states of enlightenment.<sup>125</sup>

Children born to cult members often suffer from neglect and inadequate medical attention. During a hearing conducted by a California legislative subcommittee, the runaway daughter of the leaders of the Alamo cult told of a case of a boy who died of malnutrition, colitis, and dysentery; medical advice had not been sought.<sup>126</sup> Another report described children with fevers of 104 to 105 degrees who were not permitted to be taken to the hospital and babies who were denied medication needed to combat disease.<sup>127</sup> Chronic vitamin deficiency and protein deprivation are common.<sup>128</sup>

b. *Impairment of autonomy*:<sup>129</sup> One of the most striking outcomes of the cult indoctrination process, observed by psychiatrists, family members, and ex-cult members alike, is a severe impairment of autonomy and the

125. See R. ENROTH, *supra* note 14, at 87-88; note 113 *supra*. See also R. ENROTH, *supra* note 14, at 88-89 (alleged daily use of hashish; 3-day "trips" from flower-based hallucinogen; electric current from wall socket transmitted among circle of members holding hands); ALL GODS CHILDREN, *supra* note 9, at 106-07 (drugs allegedly mixed with food).

126. *Dymally Hearing*, *supra* note 16, at 71.

127. *Id.* at 76.

128. See, e.g., Vermont Senate Judiciary Committee, *supra* note 58, at 31 (protein deprivation) (unsworn testimony); Shapiro, *supra* note 52, at 82; L. A. Times, April 7, 1976, pt. II, at 1, col. 1, at 3, col. 1; Meeting Report, *supra* note 14, pt. 2, at 24, 32.

Compare physiological depletion experienced by cult members with that reported in POW and concentration camp victim studies. See, e.g., J. SEGAL, *supra* note 122, at 8-27 (loss of menstrual function, premature aging, "robotization of emotions," suicide, ultramasochism, increase in incidence of neurological and psychiatric disorders); Chodoff, *Effects of Extreme Coercive, and Oppressive Forces*, in 3 AM. HANDBOOK OF PSYCH. 384 (1966); Coke, *Late Effects of Starvation*, 17 MED. SERVICES J. CAN. 313 (1961); Klonoff, McDougall, Clark, Kramer, & Horgan, *supra* note 77. See also Sargant & Shorvon, *Acute War Neurosis*, 54 ARCHIVES OF NEUROLOGY AND PSYCH. 231, 236 (1945) (state following extreme combat stress similar to that produced by traumatic religious experience); Swank, *Combat Exhaustion*, 109 J. NERVOUS & MENTAL DISEASE 475, 506 (1949) (psychological reactions to prolonged stress).

129. The interest in protecting citizens from religious despotism received constitutional protection in *Reynolds v. United States*, 98 U.S. 145, 166-67 (1878). The state's interest in autonomy can also be grounded on the right of personal privacy, see *Stanley v. Georgia*, 394 U.S. 557 (1969) (first and fourteenth amendments); *Katz v. United States*, 389 U.S. 347 (1967) (fourth amendment); Fried, *Privacy*, 77 YALE L.J. 475 (1968); Comment, *Asexual Reproduction and Genetic Engineering: A Constitutional Assessment of the Technology of Cloning*, 47 S. CAL. L. REV. 476, 512-16 (1974) (fourteenth amendment), the thirteenth amendment's prohibition of slavery and involuntary servitude, cf. *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 440-44 (1968) (amendment empowers Congress to eliminate restraints upon fundamental civil freedoms); *Pierce v. United States*, 146 F.2d 84 (5th Cir. 1944) (civil rights statute prohibiting peonage held broad enough to include intimidation of women into prostitution), *cert. denied*, 324 U.S. 873 (1945), or on common law doctrines such as undue influence or duress, e.g., 1 W. PAGE, ON THE LAW OF WILLS §§ 15.7-12, at 732-43 (Bowe-Parker eds. 1960).

ability to think independently.<sup>130</sup> A typical observation is that of an Arizona court psychologist that physiological debilitation, guilt, and anxiety "gradually reduce the decision-making process, the ego functioning, till the person almost becomes 'autisticlike.' He doesn't go outside his little self-encapsulated beliefs," but instead accepts automatically the views and commands of the leaders.<sup>131</sup> Other observers have recounted that long-term cult members appear "zombie-like,"<sup>132</sup> or "programmed."<sup>133</sup> Others described qualities such as a "glassy-eye stare," a "fixed facial smile," and stereotyped, robotlike responses.<sup>134</sup>

130. See, e.g., R. ENROTH, *supra* note 14, at 121 ("I couldn't think. It was like all those communication circuits in my brain were just fractured"—observation of an ex-Moon follower); Harayda, *I Was a Robot for Sun Myung Moon*, GLAMOUR, April 1976, at 216 ("The cult completely ripped off my mind and my free will"); Sage, *supra* note 99, at 40, 47 (psychologist Kevin Gilmartin compares cult indoctrination to mental kidnapping; cult members are "held against their will because the cognitive and volitional state known as will is removed from the individual"); *Seduction of the Searchers*, *supra* note 69, at 1 ("Many ex-cult members report feeling 'washed out' or being in a state of mind where rational thought was impossible because of the regimen of round-the-clock activities, including lengthy indoctrination sessions"); Rofes, *supra* note 106, at 3, col. 1 ("I had been programmed into not thinking"); Open letter from Clark, *supra* note 105 ("[M]embers . . . give up . . . free choice as well as their individual reality-testing functions . . . Individual thought or independent action are rendered impossible").

131. Sage, *supra* note 99, at 47 (citing interview with Kevin Gilmartin, court psychologist, Pima County, Arizona); see Letter from Gilmartin, *supra* note 88 (cults use a third and final stage of "platitude conditioning," in which the potential member responds in terms of black-and-white categories and recitation of catch phrases. Repetition of phrases is often accompanied by singing or rocking back and forth, activities which "generate an inward orientation as opposed to an external, reality-oriented" one); cf. R. ENROTH, *supra* note 14, at 72 (Alamo Foundation leader prayed in presence of members: "Make us mudpie puppets of God," "Make us robots for God").

132. Meeting Report, *supra* note 14, pt. 2, at 62; S.F. Examiner, Nov. 30, 1975, at 1, col. 1 (parents complained that children have been "turned into zombies and tricked into performing . . . slave labor that permits Moon to live like a pharaoh").

133. Meeting Report, *supra* note 14, pt. 2, at 27, 34; Galper, *The Cult Indoctrinee: A New Clinical Syndrome* (June 24, 1976) (abstract of paper presented at meeting of Tampa-St. Petersburg-Clearwater Psychiatric Society) (on file with author) (cult members appear cognitively inflexible, with blunted affect and shallow "programmed-in" responses); cf. *Communist Interrogation, Indoctrination and Exploitation of American Military & Civilian Prisoners, Hearings before the Permanent Subcomm. on Investigations of the Senate Comm. on Government Operations*, 84th Cong., 2d Sess. 25 (1956) (induced dullness, fatigue, loss of mental and emotional clarity) [hereinafter cited as *Communist Interrogation Hearings*]; HEARST, *supra* note 6, at 318 ("canned phrase of thought reform," even after release from Chinese prison). See also LEFKOWITZ REPORT, *supra* note 16, at 11 (virtually every parent testified that his or her child appeared "not to be himself," "drugged," "in a trance," or in a "hypnotic state" after joining Children of God); Weekend, *supra* note 24, at 14 (ex-member of Reverend Moon's Unification Church, while in cult, felt that "they're trying to take over, not let me think, made me feel that I shouldn't think . . . in other words, you should be a robot"); Meeting Report, *supra* note 14, pt. 2, at 14, 18 ("glassy-eye stare"), 57 ("robot like . . . trance-like state"), 64 ("like a robot or a retarded person").

134. Meeting Report, *supra* note 14, pt. 2, at 14, 18, 27, 32, 45, 62, 64.

Ex-members have likened the loss of autonomy and decisionmaking ability to what one psychologist labels "psychological kidnapping."<sup>135</sup> In a recent account in the *Harvard Crimson*, a university undergraduate described the manner in which a week's stay with a group of Reverend Moon's disciples posed the most severe challenge to his independence he had ever faced.<sup>136</sup> After a week he was ready to join, to "give up the complexities of Harvard, my thesis and my Gen[eral] Ed[ucation] requirements and live [the] life of [a cult member]."<sup>137</sup> When he announced after the first few days that he was considering leaving the cult, his "spiritual brother" threatened to break both his legs, if that was what was necessary to win the student over to the family.<sup>138</sup> He was told that the devil was in him, and that he was damning himself and his ancestors by leaving.<sup>139</sup> Although by this time he "believed [this] and felt ashamed," he still managed to extricate himself

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135. Sage, *supra* note 99, at 46; see R. ENROTH, *supra* note 14, at 156-57 ("brainwashing" is equivalent to "psychological kidnapping"); Harayda, *supra* note 130, at 216 (ex-Moon follower claimed that the "cult completely ripped off my mind and my free will"); Melvold, *supra* note 55, at C-1, col. 1 (Moon victims released pursuant to San Francisco conservatorship proceedings charged that cult indoctrination involves "domination of one's mind, leading to an almost complete breakdown of one's logical faculties . . . part of your brain ceases to function"; creative abilities and spontaneity are lost); Student Ass'n of State U. of N.Y. at Albany, Executive Branch Memorandum (May 22, 1975) (copy on file with author) (Moon front group denied campus status among other reasons because it engages in activities that result in "superseding of free choice") [hereinafter cited as SUNY Memo]; Rose, *supra* note 24 (Unification Church indoctrination practices result in enslavement of the emotionally vulnerable); cf. Borowitz, *Psychological Kidnaping in Italy: The Case of Aldo Braibanti*, 57 A.B.A.J. 990, 990 (1971) (defendant sentenced by Court of Assize of Rome to 9 years of imprisonment "because with physical and psychological means . . . he brought Pier Carlo Toscani and Giovanni Sanfratello under his own power, in such a way as to reduce them to a total state of subjection").

136. Rofes, *supra* note 106, at 3, col. 1. See also Boyes, *Inside the Frightening World of Fanatical "Brainwashing" Moon Sect*, reprinted in CONG. REC. H. 440 (daily ed. Jan. 28, 1976) (An article was entered into the Congressional Record at the request of Rep. Charles H. Wilson, describing a reporter's experiences inside the Moon cult. After 3 days and nights of "the most intense indoctrination—a tortuous regimen of chanting, singing, shouting, praying and relentless brainwashing by the fanatical Moon sect," the reporter was forced to struggle to maintain a grip on his own sanity "under an unceasing bombardment of absolutely absurd religious and historical mumbo jumbo." The account describes the unceasingly smiling, hyperactive recruiters, short hours of sleep, singing, chanting, and the "whirlwind" of events designed to make critical thinking impossible. When the reporter attempted to ask questions, he was met with polite smiles and the answer "perhaps we'll have time for questions later." They never did. The short stay in the commune created such anxiety in the correspondent that he was forced to call his editor and request to be relieved from the assignment); cf. Melvold, *supra* note 55 ("[W]hen you ask any probing type of questions, you're told that they will be covered in the next lecture").

137. Rofes, *supra* note 106, at 3, col. 2, at 4, col. 1.

138. *Id.* at 4, col. 1.

139. *Id.*

from the cult.<sup>140</sup> Even after leaving the cult, he reported impaired mental functioning; he recoiled at sexual references, "couldn't converse sensibly, and was basically a zombie. In two weeks I had been programmed into not thinking, just believing."<sup>141</sup>

Psychological submission is an essential step in preparing a recruit for membership since the cult requires him to subordinate his will to that of the leaders in virtually every aspect of life.<sup>142</sup> Members live in the commune, where their mail and telephone calls are monitored.<sup>143</sup> Some may not receive visitors or speak with their parents unless an elder is present.<sup>144</sup> Marriages are arranged by the leaders,<sup>145</sup> who also assign members to daily tasks.<sup>146</sup> Life consists of an unvarying routine of fundraising on the streets, proselytizing for new members, and carrying out household chores.<sup>147</sup> New converts are required to donate all their possessions to the elders;<sup>148</sup> they may

140. *Id.*

141. *Id.*

142. See, e.g., R. ENROTH, *supra* note 14, at 12, 183. See also Beckford, *supra* note 24, at 321, 324, 332 (rigid schedule, autocratic control, group marriages with partners selected by leaders; all activities carried out under control of leader who "supervises every single aspect" of group's activities); Meeting Report, *supra* note 14, pt. 2, at 7, 9 (no questions to be answered without coaching), 21, 27, 37 ("24-hour obeisance [*sic*]"), 65 ("complete control"); Manual, *supra* note 60, at 68 (submission includes willingness to be sent by leaders to North Pole, to South Pole, to preach on the streets overnight, or to be made into a ground meat sandwich); Weekend, *supra* note 24, at 9 (followers must obey commands of Moon and his wife without questioning); note 175 *infra* (female subjugation).

143. See, e.g., LEFKOWITZ REPORT, *supra* note 16, at 32, 41-42; ALL GODS CHILDREN, *supra* note 9, at 112; Meeting Report, *supra* note 14, pt. 2, at 18, 33; cf. HEARST, *supra* note 6, at 256-57, 317 (isolation, "control of all communication in the environment"); R. LIFTON, *supra* note 64, at 70-73 (role of milieu control, including sensory limitation and control of communication channels); Communist Interrogation Hearings, *supra* note 133 (isolation, lack of privacy as state police methods of interrogation and indoctrination).

144. See, e.g., *Dymally Hearing*, *supra* note 16, at 25; LEFKOWITZ REPORT, *supra* note 16, at 37; ALL GODS CHILDREN, *supra* note 9, at 216-17; Meeting Report, *supra* note 14, pt. 2, at 33.

145. Chandler, *By the Light of the Saviourly Moon*, 18 CHRISTIANITY TODAY 671 (1974); Rice, *Messiah from Korea: Honor Thy Father Moon*, PSYCH. TODAY, Jan. 1976, at 36, 41 (recruits cannot marry until they have been members for 7 years; partners are selected by church officers; following marriage couple must remain celibate for a period of 40 days to 3 years, until they have reached a stage of "spiritual perfection"); Waters, *supra* note 15, at 96 (marriage partners might not know each other beforehand).

146. See note 142 *supra*.

147. See Vermont Senate Judiciary Committee, *supra* note 58, at 20; Beckford, *supra* note 24, at 332 (rigid schedule, division of labor).

148. See, e.g., L. A. Times, April 7, 1976, pt. II, at 1, col. 1 (Hare Krishna donate all money and possessions; one new 50-year-old member donated life savings of \$50,000); Church of Armageddon, Charter 11 (1971) (Love Family sect requires that "members of the Church of Armageddon (Love Family cult) will give all they possess to the Church upon joining . . .") (on file with author); Letter from Russell, *supra* note 113 (Love Family requires new members to donate possessions to the cult; leaders live in luxurious surroundings); Meeting Report, *supra* note 14, pt. 2, at 24, 44, 54, 56.

also be required to make a will in favor of the cult and sign a power of attorney authorizing the cult leaders to act for them in legal matters.<sup>149</sup> The new member is taught that obedience to the elders is God's will and that leaving the cult or being disobedient will result in terrible punishment.<sup>150</sup>

This obedience in the physical sphere is carried over into the mental life of the new convert. As his external world becomes regimented and his actions become like those of the other members, his inner life ceases to be his own, and the cult's leaders gain control of the new member's thoughts. Questioning or critical thinking is seen as evidence of Satanic influences.<sup>151</sup> The member is taught to permit the leaders to do his thinking. Phrases such as "I am your brain" recur frequently in cult literature and teaching.<sup>152</sup>

## 2. Societal Harms

Apart from the dangers that cult membership poses for the well-being and autonomy of the individuals involved, cult recruitment and indoctrination practices threaten certain societal institutions. These dangers include: harm

149. LEFKOWITZ REPORT, *supra* note 16, at 10 (each new member of the Children of God signs written agreement to give all future income and goods to Church). An example of a cult-drawn will is as follows:

I \_\_\_\_\_ hereby bequeath all my worldly assets to the Church of Armageddon, The Commonwealth of Israel, and Hereby Further Decree that the Church has full power of attorney concerning my old name . . . . The Church elders and authorities have permission to sign my old name in all matters of past life.

(signed)

(notary)

Church of Armageddon, Last Will & Testament (undated form on file with author).

150. See, e.g., R. ENROTH, *supra* note 14, at 59 (will become insane, turned into a homosexual, or turned over to a reprobate's mind); Meeting Report, *supra* note 14, pt. 2, at 6, 35, 67 (fear of hell), 70 (fear of death).

151. R. ENROTH, *supra* note 14, at 78 (the mind equated with the Devil); see J. LOFLAND, *supra* note 64, at 266 (one cult follower so afraid of spirits he slept with lights on and copy of religious book folded over his chest; dust under bed was feared since it might attract evil spirits). See also R. ENROTH, *supra* note 14, at 21, 23-24 (no speech or thought other than "that connected with the teachings of Krsna [Krishna] Consciousness or with the execution of duties" allowed in Hare Krishna group; such speech considered a forbidden "luxury" or "mental speculation"); ALL GODS CHILDREN, *supra* note 9, at 234 (clergyman claimed: "Moonies are asked to hold their objections and to drop them behind them. Pretty soon, if they ever turned around, there would be a huge pile of questions sitting there unanswered").

152. T. PATRICK, *supra* note 27, at 129; see, e.g., Rice, *supra* note 145, at 39; TIME, Sept. 30, 1974, at 68 (quoting Reverend Moon); Weekend, *supra* note 24, at 14. Other statements of Reverend Moon in the same vein are:

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.

The whole world is in my hand, and I will conquer and subjugate the world.

Rice, *supra* note 145, at 39.

to the family relationship;<sup>153</sup> the espousal of illegal and harmful practices;<sup>154</sup> a potential for violence,<sup>155</sup> and the social impact of the aftereffects of the cult experience.

a. *Harm to the family as an institution*:<sup>156</sup> Cult membership is almost invariably followed by abrupt withdrawal from and limited communication

153. Text accompanying notes 156-82 *infra*.

154. See text accompanying notes 183-95, 268-71 *infra*.

155. See text accompanying notes 195-206 *infra*.

156. Since as far back as the mid-19th century, the United States Supreme Court has held that protection of the family institution overrides a religious group's interest in adult behavior that threatens the institution of the family (*e.g.*, plural marriages). *Reynolds v. United States*, 98 U.S. 145, 165-66 (1878). Since then, the family has received legal protection in a variety of other contexts. See, *e.g.*, *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925) (family privacy overrides state interest in compelling educational choices); *Meyer v. Nebraska*, 262 U.S. 390, 399-400 (1923). The law of torts in some jurisdictions affords protection to the family unit from interference by outsiders. See, *e.g.*, *Pickle v. Page*, 252 N.Y. 474, 481-83, 169 N.E. 650, 653 (1930) (family members entitled to damages for emotional injury arising from abduction of a child); W. PROSSER, *HANDBOOK OF THE LAW OF TORTS*, § 124-25, at 873-97 (4th ed. 1971). This protection has been extended to a minor, who was permitted to recover against a defendant who enticed the mother away from the home. *Miller v. Monsen*, 228 Minn. 400, 402-03, 37 N.W.2d 543, 545 (1949). A parent's right to the custody and companionship of his children has been described by the Supreme Court as "more precious . . . than property rights," *May v. Anderson*, 345 U.S. 528, 533 (1953), and these rights have been held protected by the due process clause against state interference, *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *cf. Mesite v. Kirchenstein*, 109 Conn. 77, 84, 145 A. 753, 755 (1929) (allowing action by child against parent would disrupt family unit); *Mannion v. Mannion*, 3 N.J. Misc. 68, 70, 129 A. 431, 431-32 (Cir. Ct., Hudson Co. 1925) (same). See also *In re President & Directors of Georgetown College, Inc.*, 331 F.2d 1000, 1008 (D.C. Cir.) (protection of family unit upheld against religiously based interest of mother in refusing medical treatment), *cert. denied*, 377 U.S. 978 (1964).

Although mores and attitudes toward marriage and the family have changed since the 1878 *Reynolds* decision, and the family interest may be somewhat less protected than before, see, *e.g.*, *Planned Parenthood v. Danforth*, 428 U.S. 52, 75 (1976) (right to an abortion overrides colorable interest in protection of family harmony and "authority" of parents); Davis, *Plural Marriages & Religious Freedom: The Impact of Reynolds v. United States*, 15 ARIZ. L. REV. 287, 302-03 (1973), society's interest still appears to be entitled to some weight. This would appear particularly true where the group's interest in enticing the child away from the family unit is insincere, see text accompanying notes 218-55 *infra*, the child's choice to leave the family unit is not freely and voluntarily made, see text accompanying notes 272-323 *infra*, and the processes by which recruitment is effected are psychologically and physically harmful, see text accompanying notes 45-152 *supra*.

Some have mistakenly urged that the state has no interest in preserving family stability once children attain the age of majority. This is incorrect. *Reynolds* involved adult behavior that threatened the marital relationship; the fate of children—minor or otherwise—played no part in the opinion. The law of torts generally provides remedies for wrongful interference with the marital relationship without regard to the ages of the parties involved. W. PROSSER, *supra* § 124, at 874. The protection afforded the parent-child relationship ends at adulthood, however, in jurisdictions that retain the "entitlement to services" rationale. *Id.* at 886.

with the family,<sup>157</sup> apart from periodic efforts to obtain monetary donations or to convert siblings still at home.<sup>158</sup> Parents, particularly if they show concern or attempt to persuade the young person to leave the sect, are said to be agents of Satan.<sup>159</sup> If the cult believes a parent is contemplating legal action to remove the new member, it will often hide the convert or send him to a remote colony.<sup>160</sup> Passages from Scripture, particularly *Matthew* 10:36 ("A man's enemies will be the members of his own household"), are utilized to justify these practices.<sup>161</sup> One member justified his rejection of his parents by declaring "You [his parents] are no longer part of my life. I have a new family—the Unification Church. Reverend Moon and his wife are now my true heavenly parents."<sup>162</sup> Words such as "father," "mother,"

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157. See, e.g., R. ENROTH, *supra* note 14, at 41, 174-75; Gunther, *supra* note 21, at 15; Vermont Senate Judiciary Committee, *supra* note 58, at 22, 30, 31; LEFKOWITZ REPORT, *supra* note 16, at 5, 20-24; *Seduction of the Searchers*, *supra* note 69, at 1 (religious writer and sociologist expresses concern over cults' teaching of rejection of the natural family and its replacement with a "new and superior" spiritual family. Writer cites example of Love Family cult, which permits recent converts to "write one letter home informing his parents of his decision and the fact that they will no longer be hearing from him"); Meeting Report, *supra* note 14, pt. 2, at 14, 33, 74; Moses David, *One Wife* (1973) (on file with author) (Children of God instructional pamphlet urging that God may have to break up many "little families" to unite young persons with their real family). This pamphlet states: "We haven't hesitated to break up worldly families by ripping off their kids for God's Family," *id.* par. 7, and "God is in the business of breaking up families—little private families," *id.* par. 11. Although some cult children come from broken or troubled families, ALL GODS CHILDREN, *supra* note 9, at 215, 236, the majority come from families that are intact, normal, and reasonably happy, Interview with Jean Merritt, psychiatric social worker, in Boston (May 2, 1976) (on file with author). But see Simmons, *Deprogramming: The Wrong Answer for Concerned Parents*, reprinted in ACLU CONFERENCE ON RELIGIOUS DEPROGRAMMING, DEPROGRAMMING: DOCUMENTING THE ISSUE 201-07 (1977) (asserting that it is parents' failure that drives children to cults) [hereinafter cited as ACLU DEPROGRAMMING CONFERENCE].

158. See, e.g., *Dymally Hearing*, *supra* note 16, at 92; R. ENROTH, *supra* note 14, at 41; Ericson & MacPherson, *The Deceptions of the Children of God*, 17 CHRISTIANITY TODAY 1090 (1973); Tampa Tribune, Feb. 7, 1976, at 3, col. 1 (Children of God permitted one member to visit home at Christmas only if her parents had money to exploit and if parents "might come around to COG values"); Meeting Report, *supra* note 14, pt. 1, at 12 (family lost three daughters to Unification Church).

159. See, e.g., R. ENROTH, *supra* note 14, at 60-61, 174-75 (family as threat to group norms, solidarity); Vermont Senate Judiciary Committee, *supra* note 58, at 6-7; Letter from Spencer, *supra* note 29 (Krishna member told that his parents were "influenced by the demonic [*sic*]," were "demons"); Rose, *supra* note 24 (Unification Church's equation of the family with sin); Meeting Report, *supra* note 14, pt. 1, at 17, 20.

160. Vermont Senate Judiciary Committee, *supra* note 58, at 31; R. ENROTH, *supra* note 14, at 28-32; LEFKOWITZ REPORT, *supra* note 16, at 5, 16-17; Meeting Report, *supra* note 14, pt. 2, at 33, 51, 53.

161. LEFKOWITZ REPORT, *supra* note 16, at 20 (Luke 14:26 and Matthew 10:36 used by Children of God to alienate devotees from their parents), 33 (Ephesians 6:1 used to justify estrangement from one's parents and their replacement with "parents in the Lord"); W. PETERSEN, *supra* note 59, at 131.

162. See Robins, *supra* note 100, at 37.

"love," and "family" are given new meanings.<sup>163</sup> In Reverend Moon's organization, for example, "Father" means Reverend Moon and "Mother" means Moon's wife.<sup>164</sup>

Although most cults now exercise at least some care to ensure that only persons who have attained the age of majority are admitted to full-time membership, many still accept minors;<sup>165</sup> others proselytize actively among high school and even junior high school age youths.<sup>166</sup> When a seemingly happy, well-adjusted son or daughter abruptly disappears and refuses to communicate with his parents, the emotional shock the parents experience is often intense.<sup>167</sup> High-achieving, popular, well-adjusted youths<sup>168</sup> disappear without notice or explanation; if the parents succeed in locating the child, he may behave like a stranger.<sup>169</sup> As one parent has observed, there is in reality a double trauma: grief at seeing the son or daughter disappear, and shock at realizing that often little can be done about it.<sup>170</sup> Parents have donated large

163. South Bay Daily Breeze, Aug. 19, 1973, at 1, col. 1 ("mother" an abomination in Love Family cult); Meeting Report, *supra* note 14, pt. 1, at 32.

164. Vermont Senate Judiciary Committee, *supra* note 58, at 22; Manual, *supra* note 60, at 9, 61.

165. See, e.g., R. ENROTH, *supra* note 14, at 20 (14-year-old in Hare Krishna sect); LEFKOWITZ REPORT, *supra* note 16, at 57 (Children of God leader expelled from Expo 69 exposition in Montreal for trying to convince 9-year-old youth to leave home and join the sect). See also Vermont Hearings, *supra* note 16, at 75 (high school group that introduces students to Moon's ideas to facilitate their joining when they attain the age of majority).

166. Vermont Senate Judiciary Committee, *supra* note 58, at 2, 34 (solicitation of under-age youths by Unification Church); Shapiro, *supra* note 52, at 81.

167. See, e.g., ALL GODS CHILDREN, *supra* note 9, at 227-29 (parent's responses are "often in this order: shock, confusion, anger and guilt, and helplessness"); Letter to editor: Messiah From Korea, Honor Thy Father Moon, PSYCH. TODAY, May 1976, at 8, 11 (distracted father expresses concern over loss of son in "that vicious circle" (Moon's group)); Robins, *supra* note 100, at 37 (mother told, "Mom, you've got to accept it. I have to give up everything I love for Reverend Moon and his Divine Principle. My art . . . my girl friend . . . You are no longer part of my life"), 80 (parent was "physically and emotionally exhausted by experience of seeing daughter abandon family for cult, began to suffer chest pains and required hospitalization"); N.Y. Times, Dec. 29, 1976, at 14, cols. 4, 5 (an executive director of the National Council of Churches of Christ expressed concern that Unification Church poses grave threat to families: "I have a bulging file of painful letters, very thoughtful letters, written by anguished parents . . ."); New Haven Register, Sept. 10, 1976, at 1, col. 1 (ex-member of New Testament Missionary Fellowship writes that her parents were "frantic" when they lost contact with her, had no idea of where she was; later they learned the cult had sent her to Latin America to live on cult's ranch). See generally Shapiro, *supra* note 52, at 81; R. ENROTH, *supra* note 14, at 11, 184-201.

168. Rice, *supra* note 108, at 8 (bright youth, who had finished high school in 3½ years and was a cheerleader, left to join Moon's group); Rofes, *supra* note 106 (author found many Moon followers to be well educated, with graduate degrees); Meeting Report, *supra* note 14, pt. 2, at 43 (honors student), 51 (nurse). Many cults seek out such children, hoping thereby to increase their economic and political potential. See notes 244-47 and accompanying text *infra*.

169. See, e.g., Robins, *supra* note 100, at 37 ("You are no longer part of my life"). See also note 157 *supra*.

170. Letter from E.M. (June 12, 1976) (on file with author).

sums of money in unavailing efforts to induce cults to release their children, or have expended thousands of dollars in attempting to have them "deprogrammed."<sup>171</sup> Others have suffered mental and physical illnesses as a result of the stress of forced separation from and concern over the welfare of a loved child.<sup>172</sup>

Within the cult, the relationships that replace those that are destroyed display some unusual characteristics. Cult elders select and marry, often at mass ceremonies, couples who possibly have not met before the ceremony. These marriages often are performed without legal sanction, while remarriages take place without a prior legal dissolution or divorce.<sup>173</sup> Sex is rigidly regulated.<sup>174</sup> In some cults women are treated as inferiors, taught to be subservient, and relegated to the performance of domestic tasks.<sup>175</sup> Infants are raised communally and are not considered to belong to their biological mothers.<sup>176</sup> Their training and discipline are carried out in rigidly

171. See, e.g., R. ENROTH, *supra* note 14, at 199-200 (deprogramming fees range from \$1,500 to \$2,000; total cost may approach \$10,000 and more if the youth requires psychiatric hospitalization); Waters, *supra* note 15, at 100, 102 (parent spent \$30,000 in unsuccessful efforts to retrieve daughter; mortgaged home; suffered nervous breakdown).

172. See, e.g., R. ENROTH, *supra* note 14, at 201; Robins, *supra* note 100, at 37, 80; Shapiro, *supra* note 52, at 81 (confusion and depression similar to that accompanying a child's death).

173. See, e.g., R. ENROTH, *supra* note 14, at 46-47 (marriage "simply defined as sleeping with somebody or having intercourse with somebody"), 91-92 ("bonding" by cult leader); LEFKOWITZ REPORT, *supra* note 16, at 48-50; ALL GODS CHILDREN, *supra* note 9, at 145, 149.

174. See, e.g., J. ROTHCHILD & S. WOLF, *THE CHILDREN OF THE COUNTERCULTURE* 136 (1976) (Krishna couples don't believe in intercourse except to have children); ALL GODS CHILDREN, *supra* note 9, at 23 (14-year old girl repeatedly raped by members of Children of God sect to "increase the tribe"), 148 (sex regulated for purposes of Krishna cult); Rice, *supra* note 108, at 23; Rofes, *supra* note 106, at 3 (Moon officials decide who marries whom, and the partners remain celibate for first forty days of marriage; the wife then becomes a "baby machine").

175. R. ENROTH, *supra* note 14, at 25 (female subservience in Krishna cult); W. PETERSEN, *supra* note 59, at 141 (1973); ALL GODS CHILDREN, *supra* note 9, at 14 (mistreatment of women in Hare Krishna sect); Wax, *Raise Your Hand if You're an Eternal Spirit Soul*, HARPER'S, Dec. 1974, at 29-30 (Krishna cult arranges marriages, believes 15 the ideal age for women to marry; women are trained to be submissive and obey the husband); Letter from H.C. (Sept. 18, 1976) (on file with author) (describing incident in which bystanders attempted to intervene on behalf of Krishna woman, obviously ill, carrying a heavy load of books. A Krishna male rejected their expressions of concern, stated "I own her," and refused offers of medical treatment for woman); Weekend, *supra* note 24, at 10 (Unification Church teaches, "[w]hen you are blessed in marriage, you women must be absolutely obedient to your husbands"). See also Rofes, *supra* note 106, at 2 (wife as "baby machine").

176. See, e.g., J. ROTHCHILD & S. WOLF, *supra* note 174, at 136-45 (Krishna children); Interview with M.G. by Aaron Klein, attorney in Tampa, Fla. 49 (Dec. 15, 1972) (on file with author) (tapescript) (Children of God consider children not to "belong" to their biological mothers); Written statement of S.F. (Dec. 25, 1972) (on file with author) (Love Family sect encourages children at age 3 to realize that they belong to the Family and that the mother has no special claims on them). See also Wordley, *Hare Krishna: Scandal in the Castle*, PIX/PEOPLE

regimented fashion, with harsh punishment for behavior that impinges on the adult business, prayer, or consciousness.<sup>177</sup> Babies are born without the benefit of medical care.<sup>178</sup> Children rarely receive inoculations, dental care, or pediatric examination.<sup>179</sup> In some cults children of school age are not permitted to attend public schools since this might expose them to improper thoughts and ideas. Instead, they attend a school organized by the cult and

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(Australia), Jan. 1977, at 7 (former cult member speaks of instances in which children were taken or abducted on false papers from Germany to Hare Krishna school in Texas); ALL GODS CHILDREN, *supra* note 9, at 109.

177. R. ENROTH, *supra* note 14, at 52 (one Children of God group disciplined young children as "young adults"); J. ROTHCHILD & S. WOLF, *supra* note 174, at 139-40; Wax, *supra* note 175, at 24, 26 (Krishna children trained to be independent of biological parents; trained for one of four Hindu-inspired castes, according to their "propensities"); Statement of S.F. (Feb. 1973) (on file with author) (Love Family sect expects children to behave according to adult standards since children, like adults, are creatures of God). Misbehavior is seen as evidence of Satan operating within the child, and is cause for harsh punishment. Babies who cried were put in closets or punished with sticks, R. ENROTH, *supra* note 14, at 89-90 (Love Family sect). One child who wet the bed was made to sleep on the floor and in a locked closet without clothing during the winter. ALL GODS CHILDREN, *supra* note 9, at 109.

In Statement of S.F., *supra*, there is a description of a Love Family feeding ritual observed during the visit. A 10-month-old child, who was described as "ravenous," was placed in a high chair for his meal. The child was required to sit motionless while the adult slowly dipped the spoon into the dish. The child was seen to struggle visibly to control his crying as he awaited the food. Finally, his lower jaw trembled slightly, and he whimpered and squirmed. The adult replaced the spoon, removed the child from the high chair, and spanked him soundly. Then the child was replaced in the high chair and the ritual repeated. The child "kept making feeble reaching motions toward the food," and when this happened the adult sat motionless until the child stopped. If the child showed distress, or cried, he was spanked. While the witness watched, the child was removed from the high chair for spanking approximately 10 times. He received no more than three bites of food. "Finally no amount of . . . spanking could quiet the child so [the adult] got up abruptly and carried [the baby] into the empty bedroom." The purpose of the ritual is to teach the children not to "want." See R. ENROTH, *supra* note 14, at 90 (similar incident described). See also Moses David, *Beauty for Ashes Coloring Book* (1973) (on file with author) (Children of God coloring book explaining that children must be beaten and punished to make them virtuous and godly).

178. See, e.g., *Dymally Hearing*, *supra* note 16, at 57.

179. *Dymally Hearing*, *supra* note 16, at 76; Statement of S.F., *supra* note 177 (child had untreated lumpy rash for 2 months; cult would not seek medical help since all illness was regarded as unreal); cf. J. ROTHCHILD & S. WOLF, *supra* note 174, at 143 (Krishna child sick, lying amidst garbage on linoleum floor; sick children forced to attend class, for if they missed class they would become spiritually ill. Spiritual sickness is worse than physical sickness). The harmfulness of cult life has also been recognized in a number of divorce and child custody proceedings. See, e.g., *Coberly v. Coberly*, No. D-75876 (King County (Seattle, Wash.) Super. Ct. July 16, 1976); *Buck v. Buck*, No. D-55690 (King County (Seattle, Wash.) Super. Ct. Mar. 4, 1974); *Rockefeller v. Rockefeller*, No. D-47423 (King County (Seattle, Wash.) Super. Ct. Aug. 20, 1973). *Rockefeller* and *Buck* were child custody cases in which the court ordered removal of the child to the custody of the parent outside the sect, based on the likelihood of harm to the child if he were to remain in the sect. *Coberly* ordered visitation rights to the outside spouse, specifying his authority to obtain needed medical treatment for the child.

are educated according to a highly restricted curriculum.<sup>180</sup> Although not enough time has elapsed for the results of these approaches to childrearing<sup>181</sup> to be fully evaluated, physicians familiar with the processes involved are concerned that the rigidity, lack of emotional support, and inattention to ordinary developmental needs may well portend severe personality distortions, if not overt psychoses, later in life.<sup>182</sup>

b. *Conflict with social and legal norms*: Other aspects of cult indoctrination and organization pose additional conflicts with societal norms and rules. Cramped quarters, inadequate plumbing and ventilation, and communal living, necessary to provide the continual reinforcement essential to the maintenance of group solidarity, cause friction with public health and zoning authorities.<sup>183</sup> The sickness that often results<sup>184</sup> is aggravated by the cult's belief that illness is a sign of sinfulness, and that the remedy lies in prayer, chanting, or self-mortification, rather than in medical attention.<sup>185</sup> Education, like medical science, is scorned since it can only help perfect "animal propensities."<sup>186</sup> Gainful employment outside the cult is forbidden.<sup>187</sup>

The view that the outside world represents the forces of evil creates a "we-they" attitude that permits dealings with persons outside the cult to be carried out according to ethical standards lower than those adhered to within

180. See, e.g., T. PATRICK, *supra* note 27, at 183-84; J. ROTHCHILD & S. WOLF, *supra* note 174, at 134-46 (description of Krishna's international school for children in Texas); Wax, *supra* note 175, at 26-27 (Krishna children trained for one of four Hindu-inspired castes, "according to their propensities"); Statement of S.F., *supra* note 177 (description of Love Family's approach to childrearing).

181. The Divine Light Mission's Unity School in Denver reportedly offers a "progressive" elementary education. ALL GODS CHILDREN, *supra* note 9, at 152.

182. Interview with Clark, *supra* note 101; Interview with Dr. Stanley Cath, psychiatrist, in Boston (May 2, 1976) (on file with author); see ALL GODS CHILDREN, *supra* note 9, at 112 (Child Protective Service of one state announced involvement of Love Family cult in one case of child abuse).

183. See *Vermont Hearings*, *supra* note 16, at 44 (West Virginia Krishna commune suffered epidemic of infectious hepatitis, lice); L. A. Times, Apr. 7, 1976, pt. II, at 1, col. 1 (30 members living in a rat- and cockroach-infested building with poor plumbing and heating); Meeting Report, *supra* note 14, pt. 1, at 23 (30 people living in a one-family dwelling).

184. See text accompanying notes 107-28 *supra*.

185. See text accompanying notes 111-16, 118-22 *supra*.

186. *People v. Florence*, No. 8699, *People v. Patrick*, No. 8688, *People v. Sacks*, No. 8686, Court Transcript, at 32 (Fullerton (Cal.) Mun. Ct. May 6, 1975); see Meeting Report, *supra* note 14, pt. 2, at 7. See generally LEFKOWITZ REPORT, *supra* note 16, at 26-27 (Children of God attitude toward education); J. ROTHCHILD & S. WOLF, *supra* note 174, at 134-46 (education of Krishna children).

187. See R. ENROTH, *supra* note 14, at 48 (Children of God). But see ALL GODS CHILDREN, *supra* note 9, at 12 (most Church of Scientology members work outside cult); Meeting Report, *supra* note 14, pt. 2, at 7.

the group.<sup>188</sup> Because the world outside the cult is Satan's realm, it is permissible for cult members to employ deceptive means to forward the goals of the sect.<sup>189</sup> These may include fundraising by deceptive means,<sup>190</sup> avoidance of military and selective service obligations,<sup>191</sup> defaulting on education loans,<sup>192</sup> failure to pay utility and rent bills when due,<sup>193</sup> driving

188. See, e.g., *Vermont Hearings*, *supra* note 16, at 81-82; R. ENROTH, *supra* note 14, at 40 (anyone not with Children of God considered a servant of Satan); Galper, *supra* note 62, at 3 ("‘Heavenly Deception’ . . . is based on the view that the community at large is dominated by Satan"); LEFKOWITZ REPORT, *supra* note 16, at 24-25, 30 ("ripping off" the system is good, since the system belongs to Satan); Oakland Tribune, Jan. 9, 1977, at 2-SC, col. 2; *id.*, Nov. 6, 1977, at 1, col. 3; *id.*, Nov. 7, 1977, at 5, col. 1; *id.*, Nov. 8, 1977, at 7, col. 1; Meeting Report, *supra* note 14, pt. 1, at 32 (fraudulent and deceptive practices in fundraising and recruiting redefined as "loving them").

189. See note 188 *supra*; R. ENROTH, *supra* note 14, at 27 (for the "Bicentennial Committee"; for "feeding people in India"—Hare Krishna), 49 ("Any change for kids?"—Children of God), 51 (for a young people's drug program—Children of God), 113 ("camp . . . for rehabilitating young people"—Unification Church), 115 (disclaiming affiliation with their sect when asked by potential donors).

190. See, e.g., Vermont Senate Judiciary Committee, *supra* note 58, at 7 (fraudulent solicitation of money on the streets by the Unification Church); ALL GODS CHILDREN, *supra* note 9, at 123-27 (concealment of identity of Unification Church); Robins, *supra* note 100, at 37, 117 ("[W]e were told to say it's for a 'drug facility'"); Wordley, *supra* note 176, at 6-7 (German police "freeze" large sums of German and foreign money collected by Hare Krishna sect under false pretenses. Prosecutor plans to petition court to appoint a public agency to distribute the money for the purposes for which it was alleged to have been collected, principally to aid starving children in India); L.A. Times, Apr. 7, 1976, pt. II, at 1, col. 1, at 3, col. 1 (Krishna members told to tell the public they are collecting for a "world relief program"); N.Y. Times, Dec. 29, 1976, at 14, col. 4 (Unification Church's use of "Tel Aviv Quartet" concert to solicit donations from members of Jewish community "enraged" Jews when they discovered group was a Moon front; organization had conveyed impression that event was sponsored by a Jewish charity); J. Andrews, *supra* note 100, at 8 (former black member reported he collected \$53,000 from black communities for a nonexistent sickle-cell anemia program); Letter from M. Oriel, New York Deputy Attorney General (Dec. 2, 1976) (on file with author) (Krishnas collecting donations dressed as Santa Clauses in imitation of Salvation Army collectors); Weekend, *supra* note 24, at 20-24 (Moon fundraisers told to say they are soliciting for a [nonexistent] youth center, for a drug program, etc.); cf. ALL GODS CHILDREN, *supra* note 9, at 22 ("young women [Children of God] followers are encouraged to use their sexual charms to secure followers"); Tampa Tribune, Feb. 7, 1976, at 3, col. 1 (taught to use words like "missionary," "youth," "Christian" to get donations); Meeting Report, *supra* note 14, pt. 1, at 23-24 (young women taught to sell Moon's products to men by using their "fallen nature" (charms)).

191. LEFKOWITZ REPORT, *supra* note 16, at 18-19 (draft evasion by Children of God); Interview with Sara Berg by Aaron Klein, attorney, in Tampa, Fla. (Dec. 16, 1972) (on file with author) (Children of God forged draft cards); Letter from E.M., *supra* note 170 (Children of God forming cells within Armed Forces); Letter from G.G.W. to Commander C. (Oct. 11, 1975) (youth had fallen behind on Reserve meeting obligations, requested to be excused because of "lay missionary work") (on file with author); Letter from M.N. (Oct. 9, 1976) (Hare Krishna recruited soldiers from base in Panama, encouraged them to move off base in order to facilitate cult activities) (on file with author).

192. Meeting Report, *supra* note 14, pt. 2, at 32.

193. *Id.* at 8 (switching delinquent telephone bills, accounts to new members whose credit was still good), 11 (taught to practice nonpayment of bills and parking tickets as aspect of

without a license,<sup>194</sup> and failure to comply with municipal zoning and peddling ordinances.<sup>195</sup>

c. *Potential for violence*: Ex-cult members report that while in the group their state of induced obedience was so absolute that they would have willingly killed their parents or others if commanded by their leaders to do so.<sup>196</sup> One member told a prospect who was determined to leave that he would break both the prospect's legs if that would change his mind.<sup>197</sup> Some members have expressed the view that the struggle between the forces of Satan and the forces of God may soon break out into physical warfare; if it comes, they are prepared to fight and die as "heavenly bullets" for their cause.<sup>198</sup> A tract from the leader of the Children of God sect, "The American Way," described in a recent California hearing, implies that the cult could demoralize America through acts of sabotage, poisoning water

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"heavenly deception"); *Vermont Hearings*, *supra* note 16, at 82 (cult threw away unpaid parking tickets, intentionally defaulted on rent and telephone bills); *cf.* The Oregonian, May 16, 1977, at 2, col. 1 (Moon members took sick member to a hospital for treatment as an indigent, "though they had \$7,000 in their van").

194. *Vermont Hearings*, *supra* note 16, at 81 ("Well, that doesn't make any difference; you're on the Lord's work . . . so you can go out and drive without a license." Member had no depth perception because of eye problem, had been told by leaders that God would take care of her); *cf.* The Oregonian, May 16, 1977, at 2, col. 1 ("we were in a lot of car accidents because people were so tired. . . . They were always because somebody fell asleep").

195. *See, e.g.*, Vermont Senate Judiciary Committee, *supra* note 58, at 21 (recruiting in college dorms in violation of rules); Wordley, *supra* note 176, at 7 (German authorities expect to indict 73 followers of Hare Krishna cult; allegations include child abduction, tax evasion, illegal collection of money, possession of weapons and ammunition in violation of law, and falsification of passports); Letter from M.M. Auerbach, Director, Louisville, Ky. Department of Consumer Affairs (Feb. 9, 1976) (on file with author) (Unification Church cheated on solicitation permits, continued panhandling even after citation); Meeting Report, *supra* note 14, pt. 1, at 23, 25-26 (peddling and soliciting in violation of ordinance); *cf.* The Oregonian, May 16, 1977, at 2, col. 1 (ex-member's journal contains list of 18 ways that members routinely broke the law, including failing to report traffic accidents, lying on welfare applications, and driving without insurance).

196. Dallas Morning News, Oct. 19, 1975, at 34A, col. 1 ("I would have killed for [Moon]"); Letter from Spencer, *supra* note 29 ("If you killed someone for Krishna at a convenient time you would be doing a good for that person"); Letter from Richard S. Feiden, Lt. Col. USAF, to Hon. Abraham Mazen, United States House of Representatives (July 1, 1975) (on file with author) (daughter reported she would gladly have killed if commanded by Moon leaders and that anyone who is Satanic "should be killed"); Meeting Report, *supra* note 14, pt. 2, at 29 ("if my family proved to be a threat to 'the mission of the Messiah,' I would murder them"); *see* Wash. Post, Aug. 20, 1975, at C-1, col. 4, at C-4, col. 1 (psychiatrist testified former cult members have stated that they could easily kill if ordered to by the church).

197. Rofes, *supra* note 106, at 4.

198. Harayda, *supra* note 130, at 260 ("[The Unification Church] told us that we were 'heavenly bullets' who should kill for God if necessary, and I *would* have" (emphasis in original)); Meeting Report, *supra* note 14, pt. 2, at 27; Weekend, *supra* note 24, at 30 (Moon urges his followers to train "for the war to come").

supplies, posting snipers on rooftops, and destroying gasoline supplies.<sup>199</sup> Some cults, including Reverend Moon's organization and the Hare Krishna, reportedly have set aside stockpiles of firearms for "self-defense."<sup>200</sup> Members of one cult are known to have kept records with the names of those they would punish when the spiritual tide turns in their favor.<sup>201</sup>

While it is difficult to assess the seriousness of these threats,<sup>202</sup> it is clear that cult leaders have absolute control over their followers, who would willingly carry out any order, legal or otherwise. It is also evident that acts of violence have occurred. Members who have succeeded in leaving the cult have been threatened and harassed.<sup>203</sup> Parents attempting to visit their children have been beaten.<sup>204</sup> Others who have expressed an interest in

199. *Dymally Hearing*, *supra* note 16, at 92-93.

200. Wordley, *supra* note 176, at 6 (West German police found "a small arsenal" of weapons hidden in a German castle rented by Krishna sect as headquarters); New Haven Advocate, Jan. 7, 1976, at 3, col. 2 (visitors to Unification Church training camp in Barrytown describe "security measures" that include guard houses, walkie-talkies, and shotguns); Interview with M.G., *supra* note 176 (armed guards at Children of God centers; members taught they had right to shoot to kill); Interview with Berg, *supra* note 191 (on file with author) (wife of cult leader reports Children of God began setting up security measures in 1970); Statement of V.S. (Feb. 1973) (on file with author) (Love Family cult has array of knives, bows and arrows, slings, etc. for use on enemies, disobedient members); see ALL GODS CHILDREN, *supra* note 9, at 112.

201. J. LOFLAND, *supra* note 64, at 210-11.

202. For the view that such aggressive threats must sometimes be taken seriously, see Deposition of Cath, *supra* note 83.

Mr. ———'s acceptance of his mentor's assignation of evil characteristics to various targets, i.e., family and non-believers, relieves him of responsibility for his own feelings of aggressions and conflict. In this way, these targets can be justifiably hated, ripped off financially and emotionally, and even physically abused. They are despised for their weaknesses. All of this thinly disguised hatred was expressed in detail, both in letters to his family and in direct discussion with me while Mr. ——— verbalized thoughts of "love" and "peace."

*Id.* at 10.

The intense confusion within Mr. ——— and his consequent helplessness to differentiate between reality and fantasy were in abundant evidence . . . While he repeatedly expressed his deep conviction that he had found only love and peace in the leader of this cult, he ignored the documentation of this man's criminal record, and his responsibility for criminal events [*sic*] occurring within the cult's activities, such as the "last will and testament" fraud. According to . . . the family, Mr. ——— was indifferent to the widely-publicized deaths of two young cult members who had inhaled toluene vapors by enclosing their heads with plastic bags soaked with the substance as part of the cult's "rite of breathing" . . . This attitude goes far beyond psychological tunnel vision.

*Id.* at 6-7.

203. *E.g.*, *Dymally Hearing*, *supra* note 16, at 67 (threat to runaway daughter of Alamo leaders to "find you and bury you . . . we are going to throw acid in your face. It is better that the children would be dead than to be living with a reprobate"); Letter from S.K. (Oct. 22, 1976) (on file with author) (letter writer told how ex-member of Moon sect was harassed for 14 months with telephone calls, threatening notes); Meeting Report, *supra* note 14, pt. 2, at 44; see *Allard v. Church of Scientology*, 58 Cal. App. 3d 439, 129 Cal. Rptr. 797 (1976), *cert. denied*, 97 S. Ct. 1101 (1977).

204. See, *e.g.*, R. ENROTH, *supra* note 14, at 188 (mother beaten when she visited premises and threatened that beating was just a "warning"; father beaten at Hare Krishna temple); N.Y.

removing their children from the cult have been told that, if they persisted, they would never see their child again or that the child would be hidden or would commit suicide.<sup>205</sup> Professionals and others who actively oppose the cults have been threatened with death.<sup>206</sup>

d. *Aftereffects of the cult experience—social impact*: A final concern is that the habits of obedience to authority and simplistic black-and-white thinking forged within cult groups will have effects on individuals long after they have left the organizations and returned to the outside world.<sup>207</sup> Some social observers have expressed the fear that such persons will prove ready prey for other totalistic movements.<sup>208</sup> This concern is supported by the writings of psychoanalytically oriented historians such as Erich Fromm, who see mankind as possessing an impulse to “escape from freedom”—an impulse which they see as explaining the rise of such regimes as that of Nazi Germany.<sup>209</sup> Robert Lifton has written of well-educated Western academics, physicians, and priests who underwent “re-education” in Chinese thought-reform camps in the early 1950’s and returned as dedicated Communists. Other returnees appeared “deeply confused,” and a number of others apologized for the acts of the regime that had treated them so brutally, explaining that these were necessary for their own progress.<sup>210</sup>

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Times, Oct. 2, 1975, at 43, col. 4 (father allegedly beaten); Interview with Walter McLaughlin, Jr., attorney, in New Haven, Conn. (Mar. 31, 1975) (on file with author) (father who went to Alaska in hopes of retrieving son met by rifleman who refused him permission to enter compound).

205. Interview with M.R., in New Haven, Conn. (May 18, 1976) (on file with author); cf. Letter from E.C. to Joel Lipomi (Aug. 18, 1976) (on file with author) (child instructed to commit suicide rather than undergo deprogramming).

206. *Vermont Hearings*, *supra* note 16, at 6 (psychiatrist threatened with “trouble for your house and your wife” if he did not cooperate by handing over tapes of conversations with ex-members); Letter from Cath, *supra* note 22; Telephone interview with Paul MacPherson (Apr. 26, 1976) (on file with author) (MacPherson, college professor and Canadian leader of group of parents opposed to Children of God, had been told members of that sect were having “a difficult time keeping him alive”); see ALL GODS CHILDREN, *supra* note 9, at xv (undocumented claims of unexplained murder of American reporter in Thailand); Wordley, *supra* note 176, at 6 (German prosecutor investigating abuses of Hare Krishna cult found documents showing that the cult had hired investigators to check on the personal lives of individuals who “threatened their exposure”); Philadelphia Daily News, Apr. 22, 1977, at 6, col. 3 (Connecticut woman, active in anticult movement and with daughter in religious cult, received threatening telephone calls and a threat that false criminal charges of childbeating would be filed against her).

207. Interview with Rabbi Maurice Davis, in White Plains, N.Y. (May 4, 1977) (on file with author) (suggesting that such persons will emerge “softened up” for other totalistic groups).

208. Meeting Report, *supra* note 14, pt. 1, at 40 (statement of Rabbi Maurice Davis) (comparing cult movements with what he witnessed in Nazi Germany); Interview with Davis, *supra* note 207; cf. R. LIFTON, *supra* note 64, at 218-19 (suggesting some individuals may have developed long-term habit of seeking out totalism in all its forms); E. SCHEIN, *supra* note 66, at 85 (released victim of brainwashing may long to return to the simple world of the prison).

209. See generally E. FROMM, *ESCAPE FROM FREEDOM* 141-79, 207-39 (1941).

210. R. LIFTON, *supra* note 64, at 5-7, 86-132 (patterns of response), 237.

While the fear that dropouts from religious cults will retain the imprint of their conditioning to such an extent that they will again seek closed, totalistic systems of belief is consistent with earlier human experience and the theoretical writings of psychohistorians, it is difficult to evaluate fully the likelihood of such an effect. Too few members have actually left cult groups; too few followup studies have been performed; and too little time has elapsed for a pattern to become visible.

## B. THE CULT'S INTEREST

Although the state has a number of demonstrable interests in restricting the use of psychologically and physically harmful indoctrination techniques, defenders of religious cults have urged that these are insufficient to overcome the constitutional interest of these groups in practicing their religions.<sup>211</sup>

Traditionally, protection of freedom of religion, along with that of other first amendment rights, has been deemed absolutely essential to our constitutional form of government.<sup>212</sup> The individual's freedom to believe what he wishes is, and always has been, absolute.<sup>213</sup> Moreover, the definition of religious belief is very broad.<sup>214</sup> A religious faith need not be based

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211. *E.g.*, Brief for Respondents, *People v. Sacks*, *supra* note 30 (urging that deprogramming constitutes an infringement on personal freedoms); Greater Philadelphia Branch, ACLU, Memorandum on Ted Patrick and Religious Cults (July 1976) *reprinted in part in* ACLU DEPROGRAMMING CONFERENCE, *supra* note 157.

212. *See* U.S. CONST. amend. I; *Aboud v. Detroit Bd. of Educ.*, 431 U.S. 209, 231 (1977); *West Virginia Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943); Note, *Abduction, Religious Sects and the Free Exercise Guarantee*, 25 SYRACUSE L. REV. 623, 627 (1974).

213. *Sherbert v. Verner*, 374 U.S. 398, 402 (1963); *Braunfeld v. Brown*, 366 U.S. 599, 603 (1961); *West Virginia Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943); *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940).

214. Opponents of cults have urged that cults be treated as nonreligious on the grounds that they constitute nothing more than personal enrichment schemes, but this approach seems questionable. The Supreme Court's present definition of religion is very broad, *United States v. Seeger*, 380 U.S. 163, 184 (1965); *see* *Welsh v. United States*, 398 U.S. 333, 341 (1970), and courts have generally been reluctant to "define away" religious liberty, *United States v. Ballard*, 322 U.S. 78 (1944); *Washington Ethical Soc'y v. District of Columbia*, 249 F.2d 127 (D.C. Cir. 1957); *see generally* Boyan, *Defining Religion in Operational and Institutional Terms*, 116 U. PA. L. REV. 479 (1968). Judges tend to take parties at their word when they assert that their behavior is religiously motivated. *E.g.*, *Smilow v. United States*, 465 F.2d 802 (2d Cir. 1972). Still, the state must have the power to determine what is religious in particular cases; otherwise, any group could qualify for the benefits of religious status. Boyan, *supra* at 479-81; Comment, *Defining Religion: Of God, The Constitution, and the D.A.R.*, 32 U. CHI. L. REV. 533, 533-35 (1964). Thus, courts may inquire not into the content of particular belief systems, *United States v. Ballard*, 322 U.S. 78 (1944), but rather into the role the belief system plays in the life of the believer, *United States v. Seeger*, 380 U.S. 163, 184 (1965). Excluded from constitutional protection are groups whose assertion of religious status is a "mockery" or a "sham." *Theriault v. Carlson*, 495 F.2d 390, 395 (5th Cir. 1974); *Theriault v. Silber*, 391 F.

on belief in a supreme being or involve conventional forms of worship or church attendance.<sup>215</sup> Thus, religious cults may not be excluded from constitutional status merely because they are different or because their practices and beliefs appear heretical and strange.<sup>216</sup> Indeed, if constitutional guarantees of religious freedom mean anything, they must include the protection of newly established and unpopular groups, who will ordinarily lack allies in government and in the established churches, and will thus be in special need of judicial protection.<sup>217</sup>

Because religious thought and practice historically have been afforded great deference under our scheme of government, it could be argued that noninterference is the only position that is consistent with American constitutional and political traditions. Where religion-motivated conduct is involved, however, courts have afforded a lesser standard of protection where the underlying belief was found to be insincere or only incidentally religious. These and other factors weaken the degree of protection that should be afforded to a cult's use of mind control techniques in expanding its size and its political and financial power.

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Supp. 578, 580 (W.D. Tex. 1975). The group must also hold itself out explicitly as a religion in order to avoid a finding that, with respect to particular practices involving the public, it is engaged in deceptive commercial acts. *Founding Church of Scientology v. United States*, 409 F.2d 1146 (D.C. Cir.), cert. denied, 396 U.S. 963 (1969). Thus, although defining whether or not a particular group or claimant is religious is "a delicate business, our legal system sometimes requires it." *Id.* at 1160 (footnote omitted). See generally Fernandez, *The Free Exercise of Religion*, 36 S. CAL. L. REV. 546 (1963).

215. *United States v. Seeger*, 380 U.S. 163, 196 (1965). For a comprehensive discussion of modern U.S. Supreme Court definitions of religion, see Hollingsworth, *Constitutional Religious Protection: Antiquated Oddity or Vital Reality?*, 34 OHIO ST. L.J. 15 (1973); Pfeffer, *The Supremacy of Free Exercise*, 61 GEO. L.J. 1115 (1973).

216. *E.g.*, *United States v. Ballard*, 322 U.S. 78 (1944).

217. See, *e.g.*, *Dymally Hearing*, *supra* note 16, at 12-17 (president of Southern California Society for Psychical Research suggests that efforts to curb fringe groups may inhibit discoveries relating to the spiritual realm, mind control, telekinesis, and control of pain), 51 ("[R]eligion has always been a programming thing and probably always will be a programming"); *Religious Cults*, *supra* note 23, at 54 (federal investigator stated: "Some people would maintain that any form of religion involves brainwashing. Who is the Government to say that one religion is more valid than another?"); *Bronx News*, Feb. 11, 1976, at 9, col. 2 (Unification Church spokesman responds to charge of brainwashing by stating that the cult uses "standard educational techniques and for the most part, we are similar to any other evangelical religion"); *Children of God*, Response to Report of the New York Attorney General 2 (Oct. 31, 1974) (on file with author) (Lefkowitz Report characterized as a warning to other religious groups of impending persecution); Letter from J.M. Dougan, Director, Community Psychiatric Hospital, Guelph, Ont. (July 30, 1976) (on file with author) (mind control does exist and is harmful, but intervention invites abuse of legitimate organizations because of the difficulty of drawing the line); cf. Statement, Religious Liberty for Young People Too (adopted by the Governing Board of the National Council of Churches Feb. 28, 1974), reprinted in ACLU DEPROGRAMMING CONFERENCE, *supra* note 157, at 185-86 (opposing kidnapping young persons as a means of changing religious beliefs). But see note 326 *infra*. See also note 264 and accompanying text *infra*.

### 1. *Honesty and Sincerity*

Conscientious objection and other religious exemption cases establish that religious practices are entitled to constitutional protection only to the extent that the beliefs underlying them are sincerely held.<sup>218</sup> To the extent that a practice involves fraud or deception, or is an expression of predominantly secular interests,<sup>219</sup> it will receive a lesser degree of protection, notwithstanding that the practice may tend to benefit a given religious group or sect.

a. *Deception in the recruitment process*: Deception enters the recruiting process at several stages. It is often particularly flagrant during the initial recruitment period. Except in the rare case in which the recruiter perceives that the victim is extraordinarily receptive to being converted,<sup>220</sup> the recruiter neither informs the individual that he is being asked to attend a function of a religious organization, nor advises him that the purpose of the meeting is to initiate a process that will change the prospect's mental processes and his relationship with the rest of the world.<sup>221</sup> Some cults utilize front groups

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218. *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); see *United States v. Ballard*, 322 U.S. 78, 84 (1944) (religious mail fraud); *People v. Woody*, 61 Cal. 2d 716, 721-22, 394 P.2d 813, 820-21, 40 Cal. Rptr. 69, 76-77 (1964) (sincere belief in religious value of peyote ingestion as aid to spiritual experience).

219. *Wisconsin v. Yoder*, 406 U.S. 205, 216 (1972); *Welsh v. United States*, 398 U.S. 333, 342-44 (1970); *United States v. Seeger*, 380 U.S. 163, 165-66 (1965); *Founding Church of Scientology v. United States*, 409 F.2d 1146 (D.C. Cir.) (religious group engaged in marketing "E-meters" as religious devices must, to qualify for constitutional protection and escape regulations, expressly hold out a religious rather than secular purpose for the device in dealings with the public), *cert. denied*, 396 U.S. 963 (1969). Compare *Leary v. United States*, 383 F.2d 851 (5th Cir. 1967), *rev'd on other grounds*, 395 U.S. 6 (1969) with *People v. Woody*, 61 Cal. 2d 716, 394 P.2d 813, 40 Cal. Rptr. 69 (1964).

220. Cult recruiters become proficient in identifying victims who are lonely, depressed, or otherwise vulnerable. See *Vermont Hearings*, *supra* note 16, at 13, 64; *FRONTIERS OF PSYCH.*, *supra* note 22, at 1; Meeting Report, *supra* note 14, pt. 2, at 35 (youth recruited during period of disillusionment); *The Way, The "How" of Door to Door Witnessing* (undated) (on file with author) (urging recruiters to concentrate on "the hungry"; techniques suggested include, "Compliment him—reinforce his good points . . . be zealous in your building up"); note 225 and accompanying text *infra*. In a few cases, this vulnerability becomes extreme. In these cases, the need for concealment of the recruiter's objective disappears; the recruit virtually invites the solicitation.

221. *E.g.*, *Vermont Hearings*, *supra* note 16, at 78; *R. ENROTH*, *supra* note 14, at 158; *ALL GODS CHILDREN*, *supra* note 9, at 167; *TIME*, June 14, 1976, at 48-49 (candidates lured by ads seeking persons "interested in the betterment of mankind," or by discussions of ecology, contemporary morality); Meeting Report, *supra* note 14, pt. 2, at 11 (ecological improvement of the world), 12, 16 (charitable service group), 21, 24 (community action plan), 37, 40; see *Rice*, *supra* note 108, at 23 ("Moon" not mentioned at first contact; recruiters usually say they are just a youth group or use a front name); Letter from Dr. Robert Lifton, psychiatrist, to Walter H. McLaughlin, Jr., attorney (Feb. 9, 1976) (on file with author) ("I would emphasize that these coercive psychological and physical methods tend to be accompanied by various forms of

with innocuous-sounding names in order to allay the possible suspicion of potential converts that the organization might have overtones of religious totalitarianism.<sup>222</sup> Frequently, potential converts are told that the group is concerned only with "making the world a better place,"<sup>223</sup> or addressing the problems of disease, poverty, war, drug addiction, immorality, or racism.<sup>224</sup> Another practice that evidences an attempt on the part of cults to bypass the rational processes of their victims is the selection of potential converts. Recruiting guides include instructions to concentrate on "the hungry" and on those individuals whose resistance is temporarily lowered because of loneliness, worry over exams, or other adolescent crises.<sup>225</sup>

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deception concerning the purposes of the cult, which the disciple is at first unaware of and later unable to confront because of his loss of critical judgment and autonomy").

The Unification Church is probably the worst offender in this respect. See ALL GODS CHILDREN, *supra* note 9, at 27. Other groups, e.g., Hare Krishna, may not conceal their religious nature at the outset; still, they rarely reveal the more onerous conditions of membership until the recruit has passed through the initial stages of membership.

222. E.g., LEFKOWITZ REPORT, *supra* note 16, at 58-59 (cloaking of identity of Children of God under shadow organizations; leader encouraged deception among Catholics—"play along with them . . . go through their little childish motions . . ."—including staging a false papal blessing); Rice, *supra* note 108, at 23 (use of front groups); N.Y. Times, Dec. 29, 1976, at 14, col. 4 (County Coordinator of the Office of Communications of the Catholic Archdiocese of New York produces list of 62 front groups used by Unification Church); Letter from ex-cult member Cynthia Slaughter to Concerned Parents & Friends (undated) (on file with author) (Moon group held itself out as the Peace Corps); Meeting Report, *supra* note 14, pt. 2, at 11, 12, 16, 21, 24, 37, 40.

223. ALL GODS CHILDREN, *supra* note 9, at 6, 27 (concealment of group's identity); TIME, June 14, 1976, at 48-49; Letter from Helen Burton (Apr. 27, 1976) (on file with author) (college senior recruited by ad: "Pioneers—seeking creative . . . young men and women to pioneer paths toward the betterment of mankind. Call . . .") (on file with author); Meeting Report, *supra* note 14, pt. 2, at 11, 17 ("dedicated to the ideals of world peace").

224. TIME, June 14, 1976, at 48-49 (work for the "betterment of mankind . . . ecology . . . morality"); Salina J., Apr. 20, 1975, at 1, col. 1 (combat disease, poverty, drugs, racism).

225. E.g., ALL GODS CHILDREN, *supra* note 9, at 6, 21 (concentration on the lonely); The Way, The "How" of Door to Door Witnessing (undated) (on file with author); Interview with Dr. Margaret Thales Singer, psychologist, in Washington, D.C. (May 18, 1977) (on file with author); note 220 *supra*. Dr. Singer stated that the Unification Church stations an experienced recruiter at the gates of its training facility in Northern California to meet incoming candidates. The recruiter's job is to "separate the sheep from the goats." Recruits who appear self-confident, street-wise, or skeptical are designated "goats" and are directed into one group, while those who appear submissive, middle-class, and deferential are considered "sheep" and are led off into another area. The "goats" are quickly returned to the city in buses, while the "sheep" are permitted to continue with the training. Interview with Singer, *supra*. See also R. ENROTH, *supra* note 14, at 158 (recruiters developed "uncanny" knack for identifying vulnerable youth), 159 (Children of God recruiters frequented university counseling center in order to prey on troubled youths; Unification Church recruiters concentrated on university freshmen and seniors in belief that these groups were more prone to anxieties and uncertainties); Waters, *supra* note 15, at 98; Manual, *supra* note 60, at 330, 333-34, 352, 358 (concentration on the vulnerable; tailoring recruiting messages to state of mind of the recruit).

Deception continues after the youth has been attracted into accepting his first contact with the group. At the first meeting, he finds himself surrounded by smiling, friendly young persons, very much like himself, who look him sincerely in the eye and who appear to demonstrate great interest in him, his studies, and his ideas.<sup>226</sup> The initial picture the recruit receives is that of a group of happy young people primarily involved in secular aims and ideals. The first lectures tend to be little more than denunciations of the impersonality and immorality of modern life. There is little reference to religion; topics such as the spirit world, the apocalypse, and salvation, as well as the role of the cult's inessiah, are introduced in a carefully staged sequence, when the recruit is perceived to be "ready" for them,<sup>227</sup> and in physical circumstances designed to lessen the probability that he will withdraw.<sup>228</sup> If the candidate asks questions or expresses doubts, he is encouraged to suspend these and told that they will be answered during later lectures.<sup>229</sup>

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226. R. ENROTH, *supra* note 14, at 102 ("We had the whole thing choreographed . . . . The whole purpose was to put the hook in, to discover what would grab them emotionally"); Galper, *supra* note 62, at 4 ("Unification members relate to the target individual in an extremely warm and interested manner, and convey the misperception that their motivation is primarily social"); ALL GODS CHILDREN, *supra* note 9, at 6, 7, 30; Harayda, *supra* note 130, at 217; *Religious Cults*, *supra* note 23, at 52; Jaffe & Nafsinger, *Priest Concerned About "Moonie" Church*, U. of Ore. Daily Emerald, Apr. 27, 1977, at 3, col. 2 ("lovebombing"); Rofes, *supra* note 106, at 3; Smith, *supra* note 62, at 10, col. 1 (Unification Church members' use of "lovebombing" as a technique to win members—cynical use of flattery ("I was told I looked intelligent, had a happy face, my sweater was beautiful, my shoes were nice and I was unique"), pretended interest, affection, smiles, handholding); Manual, *supra* note 60, at 338 ("love-bomb[ing]").

227. Galper, *supra* note 62, at 4-7; Harayda, *supra* note 130, at 256 (sequencing); Rasmussen, *The Moon Treatment*, HARPER'S WEEKLY, Dec. 1, 1975, at 3, col. 1 (sequencing); Smith, *supra* note 62, at 11, cols. 2-3.

228. These include physical isolation, e.g., Rose, *supra* note 24 (citing house rule of Moon leaders—"Students may not leave the property during free time or without authorised permission"); Meeting Report, *supra* note 14, pt. 2, at 7, lack of sleep, Meeting Report, *supra* note 14, pt. 2, at 7, 11, 12, 22, 41, and an absence of privacy or opportunity for reflection, *id.* at 7, 21, 66; *Vermont Hearings*, *supra* note 16, at 56-61 (inhibited from seeking medical care); R. ENROTH, *supra* note 14, at 39-40, 59. See also note 66 *supra* (isolation, restricted communication with outside, lack of opportunity for reality testing).

229. Smith, *supra* note 62, at 10, col. 2. See also note 73 *supra*. If doubts persist, the doubter can be subject to an intensive "struggle session." E.g., Harayda, *supra* note 130, at 256 ("[W]hen I tried to leave, people came after me to try to talk me into staying. They put me in a room and wouldn't let me leave until they had talked me into staying. They completely overpowered you"); Rasmussen, *supra* note 227, at 3, col. 1, at 18, col. 1 (Moon recruits required to write "reflections"—statements confessing doubts—which are then examined by Divine Light "counselors"); New Haven Advocate, Sept. 10, 1975, at 6, col. 1 (struggle session—"[t]ell us what you are thinking"—lasting 5 to 6 hours).

These practices are justified by the group as "heavenly deception."<sup>230</sup> The cults contend that candidates are, at the start, under the influence of evil forces, and may thus have a negative attitude toward religion in general or the cult in particular. For these reasons, the cults believe that concealment and deception are excusable.<sup>231</sup> When the individual learns about the group's nature, he is often unable to confront this knowledge because of impaired judgment resulting from lack of sleep, isolation, peer pressure, and guilt.<sup>232</sup>

The final act of commitment is made at a time when the individual is exhausted, surrounded by young persons who press him fervently to make a commitment, and as the culmination of a series of carefully staged peak experiences designed to reduce objectivity and generate a state of induced excitement and guilt.<sup>233</sup> Thus, deception is utilized at the outset to attract potential converts to participate in a process that they would not otherwise be likely to choose. From this point, techniques that bypass reflection and rational thinking are utilized to consolidate membership. All of these factors militate in favor of reduced first amendment protection.

b. *Deception in other areas:* Although not directly related to the indoctrination process, cults regularly practice dishonesty or deception in dealing with creditors,<sup>234</sup> immigration<sup>235</sup> and military authorities,<sup>236</sup> par-

230. See Galper, *supra* note 62, at 3 (since "the community at large is dominated by Satan . . . , God must rely on deception in winning souls"); note 188 *supra*. See also R. ENROTH, *supra* note 14, at 115.

231. See note 230 *supra*.

232. E.g., *Vermont Hearings*, *supra* note 16, at 56-58; Written statement of Dr. Robert J. Lifton, psychiatrist (Feb. 9, 1976) (on file with author). For discussion of factors used to weaken ability of members to make intelligent decisions, see, e.g., Meeting Report, *supra* note 14, pt. 2, at 11, 12, 24, 32, 62 (inadequate diet); *id.* at 7, 11, 12, 22, 24, 41 (deprivation of sleep); *id.* at 12, 21 (verbal and sensory barrage); *id.* at 6, 14, 35, 57, 67, 70 (guilt manipulation and fear); *id.* at 7, 21, 66 (lack of privacy and opportunity for reflection); *id.* at 11, 24, 35, 36, 38 (overwork, exhaustion). For assessment of effect these factors have on freedom of choice, see notes 272-323 and accompanying text *infra*.

233. See note 227 *supra*. The Moon cult seems to have a particular fondness for mountain-sides. E.g., Harayda, *supra* note 130, at 256 (name of messiah revealed on mountaintop).

234. Note 193 *supra*.

235. E.g., Rice, *supra* note 108, at 18 (the Immigration & Naturalization Service (INS) has ordered deportation of 600 Moon followers who were present in the United States on visas granted for "religious education and training." INS found their training consisted primarily of solicitation of funds and selling items on the streets); N.Y. Times, Apr. 24, 1977, at 25, col. 1 (INS deportation proceedings against 178 Japanese members of Moon's church); *cf.* Meeting Report, *supra* note 14, pt. 1, at 18 (implying that Unification Church uses mass marriages as means for bringing aliens into United States for fundraising purposes); Wordley, *supra* note 176, at 6 (German authorities expect to prosecute 73 Hare Krishna followers on charges that include falsification of passports, as well as child abduction, fraudulent collection of money, and possession of firearms).

236. Note 191 *supra*.

ents,<sup>237</sup> the news media,<sup>238</sup> and local merchants.<sup>239</sup> These practices, a number of which have already been described in greater detail, are mentioned here only to illustrate that "we-they" absolutism facilitates a double ethical standard in which one set of moral laws governs relationships within the group, while another, lower standard is observed in dealings with individuals and institutions outside the sect.<sup>240</sup> Deception in the recruiting process is thus only one aspect of a world view that encourages cheating, lying, stealing, and other dubious or illegal practices if they are helpful to the cult in achieving its mission of spiritual hegemony.

c. *Insincerity arising from an admixture of secular and religious aims*: Draft and tax exemption cases demonstrate that ostensibly religious conduct will be considered insincere if the underlying motivation is dominantly secular, rather than religious. Particularly suspect is activity motivated by political or pecuniary considerations.<sup>241</sup>

(i) *Political objectives*: Although some religious cults are wholly apolitical and show little interest in national and civic affairs, others are intensely active in lobbying and other attempts to affect the political process.<sup>242</sup> Moon's organization, with its recently publicized ties to a foreign

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237. See, e.g., *Dymally Hearing*, *supra* note 16, at 125 (parent told that if he did not sell everything he owned and join cult he would never see his daughter again); Vermont Senate Judiciary Committee, *supra* note 58, at 17, 31 (moving children in order to hide them from parents); LEFKOWITZ REPORT, *supra* note 16, at 16-17, 23; Tampa Tribune, Feb. 7, 1976, at 3 (visit home at Christmas permitted one member only if parents had money to exploit and parents "might come around to COG [Children of God] values").

238. E.g., R. ENROTH, *supra* note 14, at 73-74 (media and visitors given "showcase" treatment); LEFKOWITZ REPORT, *supra* note 16, at 56 (Children of God have catalogue of evasive answers to be given to the press); Ericson & MacPherson, *supra* note 158, at 1086, 1090 (lists of typical questions and prescribed answers are provided to subordinates).

239. E.g., LEFKOWITZ REPORT, *supra* note 16, at 12 (Children of God deceptive practices).

240. See notes 188-95 *supra*.

241. E.g., *Welsh v. United States*, 398 U.S. 333, 342-44 (1970); *United States v. Seeger*, 380 U.S. 163, 165-66 (1965); *Washington Ethical Soc'y v. District of Columbia*, 249 F.2d 127 (D.C. Cir. 1957); see *Founding Church of Scientology v. United States*, 409 F.2d 1146, 1160 (D.C. Cir.), *cert. denied*, 396 U.S. 963 (1969).

242. S.F. Examiner, Nov. 30, 1975, at 1, col. 2 (citing reports that Moon chose the United States for his operations because its guaranteed religious freedoms afforded widest scope for Unification Church's economic and political ventures; Moon uses attractive young females to cultivate friendship with senators); see *Activities of the Korean Central Intelligence Agency in the United States: Hearings Before the Subcomm. on International Organizations of the House Comm. on International Relations*, 94th Cong., 2d Sess., pt. 2, at 36 (1976) ("Since a church is the safest and most recognized form of social organization, Mr. Moon founded the church in 1954 to have the greatest freedom of action"); Children of God, "Mo Letter" (June 12, 1976) (urging cult members to work for named presidential candidate); Meeting Report, *supra* note 14, pt. 1, at 8-10 (political aspirations of Moon, including: "If teams of 40 members each are stationed in each of the 50 states . . . we can do anything with senators and congressmen; we

government and possible involvement in covert intelligence operations, is a prime example.<sup>243</sup> Its political interest is tied to a belief that the world, to be saved, must become a theocracy under the leadership of the cult's messiah.<sup>244</sup> The Unification Church utilizes, as do other cults, the services of hard-working young people, particularly females, to gain the ear of Congressmen, especially those with positions on prominent committees.<sup>245</sup> In their recruiting, cult organizations often seek out individuals they know will be able to perform these roles. They also recruit actively among the families of persons who are believed to possess political power, such as business leaders, elected officials, and high-ranking military officers.<sup>246</sup> Apart from

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can influence them . . . . We must have an autocratic theocracy . . . to rule the world. . . . The separation of religion and politics is what Satan likes most . . . . The present U.N. must be annihilated by *our* power. . . We must make a new U.N. Then, I must be able to make out of you world-renowned personages" (emphasis in original), pt. 2, at 3 (Moon followers ordered to meet Congressmen and Senators on list, invite them to Hilton Hotel for dinner, films, talk), 5 (maneuvering to obtain invitation of Moon to Nixon's prayer breakfast at White House); Transcript of ABC News Closeup: *New Religions—Holiness or Heresy?* 17 (Sept. 2, 1976) (concluding that "what appears to be a religious group full of freshly-scrubbed dedicated young people, looking for some kind of salvation, apparently is far more. It's a political organization, contributing to the personal wealth and power of its leader. And . . . promoting his personal and political philosophy").

243. *E.g.*, N.Y. Times, May 25, 1976, at 1, col. 6, at 16, col. 2 (ties with South Korean government, Korean CIA, ultrarightist Japanese power brokers implicated in Lockheed scandal; cultivation of many through favors, etc.); Seattle Post-Intelligencer, May 10, 1977, at A-5, cols. 1-4 (House investigators established tie between Korean CIA, Reverend Sun Myung Moon, and Radio Free Asia; Colonel Bo Hi Pak, Moon's second-in-command, implicated in activities of Korean Cultural and Freedom Foundation, including possible bribery of U.S. political figures); N.Y. Times, Aug. 5, 1977, at A9, col. 1 (Fraser Subcommittee, in a list of "tentative findings," suggested that Reverend Moon has maintained "operational ties" with the Korean CIA, that South Korean government may have been involved in Moon's efforts to mobilize public opinion against President Nixon's impeachment); Transcript of ABC News Closeup, *supra* note 242, at 14-17 (Unification Church ties with Col. Pak, Korean CIA, Korean Cultural and Freedom Foundation, cover group for Asian lobby). See generally ALL GODS CHILDREN, *supra* note 9, at 177-200.

244. Rasmussen, *supra* note 227, at 3, col. 1, at 18, col. 4 (Moon teaching that Satan has until 1977 to win the world and place it under Communist yoke and that, if they succeed in resisting Communism, the messiah will come in 1981); Waters, *supra* note 15, at 97; Minutes of Project Watergate Regional Meeting 1-2 (Dec. 29, 1973) (materials on file with author) (purpose of Unification Church meeting: "To bring new life to the archangel, Nixon"; the mission described as "a direct priority from Master"); Manual, *supra* note 60, at 158 (Divine Principle will become the country's constitution); Weekend, *supra* note 24, at 31 (Moon aims at an "autocratic theocracy to rule the world. The separation between religion and politics is what Satan likes most"); cf. Vermont Senate Judiciary Committee, *supra* note 58, at 20 (Moon's disciples taught they must build the ideal world by 1981, and to do this "we have to get money because it takes money to build the ideal world").

245. ALL GODS CHILDREN, *supra* note 9, at 186-87; S.F. Examiner, Nov. 30, 1975, at 2; note 242 *supra*.

246. Vermont Hearings, *supra* note 16, at 71 (many cults urge recruiters to recruit victims who are "better than you"); Citizens Engaged in Freeing Minds, Memorandum (Oct. 20, 1976)

these special cases, cults generally concentrate on recruiting young, upper-class youths, both for the financial gain they represent for the cult and for the hope of increasing their access to and acceptance by persons in high political offices.<sup>247</sup>

(ii) *Economic aims*: Despite the monastic simplicity in which rank-and-file members live,<sup>248</sup> cults such as the Love Family sect, Hare Krishna, the Children of God, and Reverend Moon's organization demonstrate great interest in amassing material wealth.<sup>249</sup> Because new members are often required to donate all material possessions to the organization,<sup>250</sup> each new

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(on file with author) (citing reports that Moon missionaries were trying to recruit cadets at military academies, including Annapolis, since these will be future military and governmental leaders); Manual, *supra* note 60, at 327, 360 ("Father said we should always look . . . for a leader").

247. *E.g.*, Vermont Senate Judiciary Committee, *supra* note 58, at 21 (recruiting among college students); R. ENROTH, *supra* note 14, at 149 (middle or upper-middle class); Harayda, *supra* note 130, at 216 (most Moon followers are middle or upper-middle class college students or graduates); Rofes, *supra* note 106, at 3, col. 1 (mostly middle class well educated); note 246 *supra*.

248. See notes 107, 118 and accompanying text *supra* (inadequate diet); notes 110, 183 and accompanying text *supra* (substandard living conditions).

249. See LEFKOWITZ REPORT, *supra* note 16, at 10-12, 28 (financial orientation of Children of God sect); Rice, *supra* note 108, at 19, 21 (Moon's industrial empire utilizes "voluntary" labor of Korean followers; Moon owns 25-room mansion overlooking Hudson, a 50-foot cabin cruiser); Waters, *supra* note 15, at 94 (Unification Church had spent \$10 million in property purchases by 1975 and may have spent equivalent amount in 1975; it owns Christian Brothers seminary in Barrytown, N.Y., former Seagram estate, \$625,000 Maidenform estate, Columbia Club in New York City, and would like to buy the Empire State Building); TIME, June 14, 1976, at 50 (Unification Church considering purchase of Empire State Building); N.Y. Times, May 25, 1976, at 16, col. 7 (Moon's income from all sources amounted to \$60 million in previous year; Unification Church spent more than \$5 million in purchase of New Yorker Hotel as U.S. headquarters); Meeting Report, *supra* note 14, pt. 2, at 7 (former Unification Church book-keeper reported cheating on books to report less than gross), 35 (fundraising grossed \$3000 in 3 days and nights), 45, 57 (Scientology training course costs members \$5,000 to \$20,000), 70 (Hare Krishna cult fundraisers berated for raising only \$150 per day). A recent report detailed the "freezing" by West German police of large sums of money collected by the Hare Krishna sect in Germany as well as foreign currency pending further investigation. An inspector claimed the movement had recently collected as much as 100 million deutschmarks (the equivalent of approximately \$35 million) in Germany, under false pretenses. A German prosecutor planned to

ask the court to supervise the use of the money for the purpose it was given. It was begged publicly in the streets by Krishna followers who told the givers that the money was to feed starving children . . . None of this was true. I will ask the court to select an agency to distribute the money or use it to help feed the hungry children of India, many of whom have perished since this money was falsely collected by Krishna devotees in Germany.

Wordley, *supra* note 176, at 6-7.

250. R. ENROTH, *supra* note 14, at 39; Church of Armageddon, Charter (1971) (on file with author) ("Members of the Church of Armageddon will give all they possess to the Church upon joining . . ."). See also note 148 *supra*.

member potentially represents a sizable increase in the cult's treasury.<sup>251</sup> Heirs and children believed to be likely future recipients of family wealth are especially cultivated and recruited.<sup>252</sup>

Apart from the resources they represent at the time of joining, each new recruit represents a valuable resource through his anticipated future income. By selling flowers, trinkets, or literature on street corners, or soliciting donations for nonexistent social programs, cult fundraisers average \$100 to \$300 during a 12- to 14-hour day, with figures up to \$1,000 not uncommon.<sup>253</sup> The individual fundraiser does not retain any of this money;<sup>254</sup> instead, it is funneled immediately to the elders. At the top levels, the leaders live in luxury, surrounded by servants, Persian carpets, antique furniture, and limousines.<sup>255</sup> The obvious economic orientation of much cult activity, including proselytizing, renders the cults' religious claims vulnerable to charges of insincerity.

251. *E.g.*, *Dymally Hearing*, *supra* note 16, at 56-57 (Ted Patrick's statement that one convert supposedly donated house, three cars, new truck, furniture; cult sold 235 automobiles donated by members); Waters, *supra* note 15, at 99 (members gave up watches, stereos, and other personal possessions; one woman relinquished \$300,000 legacy in stocks and bonds); L.A. Times, Apr. 7, 1976, pt. II, at 1, col. 1, at 3, col. 1 (Hare Krishna members donate all money and possessions; one 50-year-old convert donated \$60,000 in money and valuables).

252. *E.g.*, *Rockefeller v. Rockefeller*, No. D-47423 (King County (Seattle, Wash.) Super. Ct. Aug. 20, 1973) (divorce action involving member of Rockefeller clan precipitated by wife's joining Love Family cult; cult reportedly has also successfully recruited two young heirs apparent to the fortunes of a second powerful American industrial family); *Dymally Hearing*, *supra* note 16, at 64 (Ted Patrick's statement that cult members supposedly visited families shortly after the death of a family member in an effort to obtain donations); *St. Mary's Quadriplegic Sues The Way, the Wierwilles*, Wapakoneta News, Dec. 28, 1976, at 1, col. 1 (accident victim claimed defendants contracted to transfer portion of his insurance settlement in return for use of religious powers, which would enable him to walk within 1 year); Manual, *supra* note 60, at 360 ("Father [Rev. Moon] said we should always look for a millionaire").

253. Rice, *supra* note 108, at 24 (Moon cultists average \$50 to \$200 daily, up to \$500; if they fail to make their quota, they spend the evening in prayer); Dallas Morning News, Oct. 19, 1975, at 34-A (Unification Church member reported raising \$350 per day; members who were more experienced could bring in \$1,000 per day); TIME, June 14, 1976, at 50 (\$3,000 in 5 weeks for Reverend Moon); Oakland Tribune, Nov. 9, 1977, at 5, col. 2 (cultist reported to have admitted to fundraising "for a youth center 'in whichever town was next down the road'"); The Oregonian, May 16, 1977, at 1, col. 1 (member of "San Francisco Five" Unification Church group raised a quarter of a million dollars during 4 years in sect); Letter from Michael E. Trauscht, Special Deputy Attorney, Pima County, Arizona (June 9, 1976) (on file with author) (ex-cult members report that Unification Church takes in \$1 million per week in street-corner fundraising; average Moon cultist collects in excess of \$100 per day); Meeting Report, *supra* note 14, pt. 1, at 24 (averaged "\$150 to \$200 per day . . . for nonexistent drug centers and programs for under-privileged children"), 38 ("\$100 [to] \$500 a day"); see note 190 *supra*; note 271 *infra*.

254. *E.g.*, R. ENROTH, *supra* note 14, at 27, 64.

255. *E.g.*, *Religious Cults*, *supra* note 23, at 54 (IRS reported to be investigating Moon's Church for improper diversion of funds to personal use); Letter from Russell, *supra* note 113 (Love Family leader, Love Israel, lives in Swiss chalet with Persian rugs, silver, crystal,

## 2. Centrality—The Requirement of a Core Belief

Religious practices offensive to social norms, such as the ritual ingestion of peyote<sup>256</sup> or the refusal to send children to school after they attain a certain age,<sup>257</sup> may be tolerated if they are essential to the practice of the religious group involved. But where the nonconforming practice represents only an optional or minor aspect of the belief system, the practice is likely to be denied complete first amendment protection.<sup>258</sup>

Under this test, cults' use of deception and intensive mind control techniques to attract and indoctrinate new members falls outside the perimeter of first amendment coverage.<sup>259</sup> Refusing to allow a cult to use these techniques does not prevent it from continuing to adhere to its belief system, engaging in ceremonies and rituals of its own choosing, or maintaining communal living arrangements. It simply denies the cult one very efficient means of expanding the circle of adherents;<sup>260</sup> ordinary methods of persua-

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servants); Weekend, *supra* note 24, at 11 (Moon has mansion worth \$600,000, two limousines, two yachts); Letter from H.C., *supra* note 102 (Unification Church follower told author that Reverend Moon's purchase of an expensive yacht was justified, since Moon's fishing expeditions symbolized his mission on earth to search for lost souls); see Manual, *supra* note 60, at 72 (Unification Church members are told that dollar bills are crying and won't be happy unless they come to Reverend Moon), 72-73 (Moon accepted limousine as a gift, even though he never asked for it, because the car came "with a speed of 200 miles per hour and said if Father [Moon] didn't receive it, it would kill him"), 153 (Moon's words are "more precious . . . more fantastic . . . better than the Ten Commandments," hence, when he orders, "'Pray, make money,' . . . 'Witness, make money,' [t]his is revelation"). See also R. ENROTH, *supra* note 14, at 62, 65; The Oregonian, May 16, 1977, at 1, col. 1 (a Unification Church team leader said he once took \$21,000 from the salaries of restaurant and maintenance cult workers and bought a metallic blue Mercedes for Onni Durst, a church leader. Her only reaction, he said, was "why this color?").

256. *People v. Woody*, 61 Cal. 2d 716, 720-21, 394 P.2d 813, 817-18, 40 Cal. Rptr. 69, 73-74 (1964) (peyote viewed as a sacramental symbol similar to bread and wine in certain Christian churches. Peyote enables the participant to experience the Deity); cf. *Leary v. United States*, 383 F.2d 851, 860 (5th Cir. 1967) (marijuana not a necessary requirement to the practice of Hinduism and therefore not constitutionally protected), *rev'd on other grounds*, 395 U.S. 6 (1969).

257. *Wisconsin v. Yoder*, 406 U.S. 205, 215-19 (1972).

258. *People v. Woody*, 61 Cal. 2d 716, 720-25, 394 P.2d 813, 817-20, 40 Cal. Rptr. 69, 76 (1964); see *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); *In re President and Directors of Georgetown College, Inc.*, 331 F.2d 1000, 1009 (D.C. Cir.), *cert. denied*, 377 U.S. 978 (1964) (patient's religion barred only consent to operation, not the operation itself). See generally Dodge, *The Free Exercise of Religion: A Sociological Approach*, 67 MICH. L. REV. 679 (1969).

259. When religious practice conflicts with societal norms and laws, the practices are subject to a balancing test. The group's interest is entitled to less weight in the balancing process if the practice is insincere or not essential to the maintenance of a core belief. Notes 42-44 and accompanying text *supra*.

260. Mainstream religious groups seem to experience little trouble in drawing lines between their own proselytizing methods and those of religious cults, and have, indeed, been

sion, education, and propagandizing remain available, as they are to other religious denominations that wish to increase their memberships.<sup>261</sup> It seems unlikely that the interest of any religious group in utilizing extraordinary methods of assuring membership growth can be shown to be so central to its belief system that it warrants first amendment protection.

### 3. *Promotion of Values Fundamental to the First Amendment*

An analytically related approach asks whether protection of mind control techniques in connection with religious proselytizing promotes or frustrates the fundamental values sought to be protected by the first amendment. Since legal norms are ordinarily applied in light of the purposes or interests they are designed to serve, it becomes necessary to ask whether extending constitutional coverage to coercive persuasion utilized by religious groups as a membership-increasing device is consistent with the values sought to be forwarded by the religious liberty clause.

There exist a number of views concerning the objectives of the religious liberty clause. According to one view, a central purpose is the protection of the individual's right of privacy in making fundamental decisions concerning the conduct of his personal life.<sup>262</sup> In this view, it seems unlikely that protection would be extended to mind control techniques, since these diminish, rather than increase, the ability of the victim to make private decisions about his life.<sup>263</sup>

According to another view, the protection of religious liberty is designed to prevent oppression of small, struggling minorities, who might suffer intolerant treatment at the hands of the majority.<sup>264</sup> But this norm

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quick to disavow deceptive and forceful methods of indoctrination. Note 326 and accompanying text *infra*.

261. Thus, nothing would prevent a cult from using advertising, revivals, leafletting, or door-to-door canvassing, so long as these were pursued without deception and did not involve psychological enslavement by means of such suspect devices as physiological depletion, confinement in an isolated setting, and sensory barrage. Notes 59-68 and accompanying text *supra*.

262. See *Prince v. Massachusetts*, 321 U.S. 158, 170 (1944); Fernandez, *The Free Exercise of Religion*, 36 S. CAL. L. REV. 546, 548 (1963). See also Dodge, *supra* note 258, at 683.

263. Vermont Senate Judiciary Committee, *supra* note 58, at 19 (member had wanted to explore other religions, but found this impossible in controlled environment of Unification Church center); R. ENROTH, *supra* note 14, at 42 (refusal to permit expression of religious doubts); *Seduction of the Searchers*, *supra* note 69, at 1 (cult victims report rational thought was impossible because of around-the-clock activities and lengthy indoctrination sessions); see notes 130-52 and accompanying text *supra*.

264. E.g., *Walz v. Tax Comm'n*, 397 U.S. 664, 680 (1970) (Brennan, J., concurring) (promotion of pluralism in American society); L. PFEFFER, *CHURCH, STATE AND FREEDOM* 497-571 (1953); see Cox, *supra* note 23, at A-25, col. 1 (opposition to cults seen as threat to pluralism).

seems aimed at preventing the extinction of such groups, rather than affording them a right to become more powerful relative to other groups. Hence, this theory likewise offers little support for the defense of mind control practices by religious cults.

A final view sees religious freedom as an aspect of freedom of the mind. Thomas Jefferson, for example, viewed freedom of religion as equivalent to freedom of the mind.<sup>265</sup> Since the end result of the process of persuasion utilized by cults is a diminution of the scope of the mental processes, it appears unlikely that the practices that facilitate this result are strong candidates for protection under the Jeffersonian view of religious toleration. This view is echoed by leaders of established religious organizations who view Moon's organization in particular, and most cults in general, as "spiritual fascists" bent on depriving their members of the ability to make free, individual decisions in religious matters.<sup>266</sup> This view is also espoused by ex-cult members who state that they were denied freedom of thought and choice while within the cult, and were made to adhere to every detail of the official theology on pain of spiritual—and sometimes physical—punishment.<sup>267</sup>

#### 4. *Correspondence with Societal Norms*

Although not often articulated, one consideration affecting the determination of whether to afford constitutional protection to religious practices is the extent to which the religious group's impact on society is seen as beneficial or detrimental.<sup>268</sup> Where the group's influence is seen as essentially positive, courts show a tendency to overlook borderline deviations with regard

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265. D. MALONE, *JEFFERSON AND THE RIGHTS OF MAN* 110 (1951); cf. 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 . . ." (italics in original) (italicized words deleted from original 1779 draft prior to adoption by Virginia General Assembly in 1786, *id.* at 547, 552)).

266. New Haven Advocate, Sept. 10, 1975, at 1, col. 1; see note 328 *infra*.

267. Vermont Senate Judiciary Committee, *supra* note 58, at 19 (no time to explore other religions); S.F. Chronicle, Dec. 9, 1975, at 1, col. 1, at 22, col. 4 (college student found her individual spiritual life crippled while within cult, since she was constantly submerged in group processes with no chance for a private life); see *Vermont Hearings*, *supra* note 16, at 4 (unsworn testimony of psychiatrist that "they build a fence between themselves and . . . others"); cf. W. CLARK, *supra* note 21, at 256-57 (a mature religion is one that encourages adherents to continue to grow and to expand search for deeper levels of spiritual truth. Such a religion is creative, not "mere repetition" of the views of others).

268. See *Wisconsin v. Yoder*, 406 U.S. 205, 227 (1972) (Amish had demonstrated 300 years of good citizenship; therefore, state would be held to strong showing in order to justify interference with group's educational practices); *Sherbert v. Verner*, 374 U.S. 398, 406 (1963) (impact of group's behavior on society as a whole); cf. *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942) (doubting that extremely antisocial acts could constitute religious behavior at all).

to particular laws or ordinances. But where a group's overall effect on society is seen as detrimental, the willingness to afford protection decreases.<sup>269</sup> This test thus requires an assessment of the broad convergence or divergence of a group's practices with societal norms. Many areas in which cults have generated controversy—including drug usage, tax and welfare chiseling, fraudulent fundraising, and violation of immigration and draft laws—while not intrinsic to the assessment of mind control and forceful indoctrination practices, are nevertheless relevant to a determination of the degree of toleration to be allowed.<sup>270</sup> Because many of the activities cults engage in are deviant and have a negative impact on society, and since cults seldom, if ever, offer any socially useful programs,<sup>271</sup> it is unlikely that the degree of toleration would be great, particularly if it appears that the practices in question are not demonstrably essential to the groups' survival.

## II. PATERNALISM AND CONSENT—LIMITATIONS ON THE DECISION TO JOIN BASED ON VOLUNTARINESS

The earlier discussion of state versus private interests suggests that the balance tips toward state intervention. The harms appear substantial, while the interests of the religious groups appear to be seriously weakened by such factors as their lack of centrality and an admixture of secular concerns. Some of the harms, particularly those affecting only the individual convert rather than society at large, are themselves subject, however, to a further limitation. If it were to appear that the individual harms caused by the induction and conversion process were harms incurred freely and voluntarily by competent adults, the case for intervention would be much weaker.<sup>272</sup>

269. See *Chaplinsky v. New Hampshire*, 315 U.S. at 568.

270. See generally notes 189-95, 234-40 and accompanying text *supra*.

271. See Vermont Senate Judiciary Committee, *supra* note 58, at 20-21 (primary activities are panhandling and seeking new members); Rice, *supra* note 108, at 18 (Immigration & Naturalization Service ordered 600 Moon followers deported who had entered U.S. on visas granted for "religious education and training." INS found their activities consisted exclusively of "soliciting funds and selling some items"); ALL GODS CHILDREN, *supra* note 9, at 220; notes 186-87 and accompanying text *supra* (in some cults outside work is forbidden); cf. R. ENROTH, *supra* note 14, at 48 (Children of God members do not work outside the cult). Some defenders of religious cults have suggested that they have been successful in helping young members stop using drugs. This claim, however, has been disputed. ALL GODS CHILDREN, *supra* note 9, at 283 (stories of members' pre-cult pasts greatly exaggerated in order to present favorable before-and-after comparison).

272. The classic statement of the antipaternalistic bias that informs our legal and moral systems is Mill's ON LIBERTY, which argues:

[T]he sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is [that of] self-protection . . . [T]he only purpose for which power can be rightfully exercised over any member

Accordingly, it becomes necessary to examine the claim, made by defenders of religious cults, that decisions to join are made freely by competent adults and are thus entitled to the respect we normally afford such decisions.<sup>273</sup>

### A. TRADITIONAL FACTORS

Coercion, deception, physical or mental weakness, and abuse of a fiduciary capacity traditionally have been held to militate against a finding of voluntary choice in a variety of contexts, ranging from consent to medical procedures to waiver of constitutional rights.

#### 1. *Coercion and Duress*

Coercion sufficient to override the will of an individual is generally recognized as a factor negating his free choice,<sup>274</sup> although other requirements, such as the duty of reasonable resistance, vary from one context to another.<sup>275</sup> Coercion may be based on the actual use of power to subordinate the will of another, or on a reasonable fear that the individual in the superior position will use that power to harm the other.<sup>276</sup>

The cult indoctrination process may at times involve the threat of physical harm, particularly if the individual, after the cult begins to feel an investment in his membership, threatens to leave.<sup>277</sup> The isolated setting in

of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.

J.S. MILL, ON LIBERTY, in THE ENGLISH PHILOSOPHERS FROM BACON TO MILL 956 (E. Burt ed. 1939). A corollary to the antipaternalistic principle is the law's reluctance to label as "harm" an action that the individual affected does not regard as harmful (*volenti non fit injuria*).

273. In setting out characteristics of the cult-joining process that support the conclusion that cult membership is not freely entered into, it is not suggested that the state need, or should, become involved in certifying the motives with which the average citizen joins organizations, whether these be churches, private clubs, or the PTA. In the usual case, such choices will be free ones, and individuals should be indulged the presumption that they exercise their associational rights freely and voluntarily. Indeed, it may even be difficult to give meaning to the notion of a totally free religious decision. See S. FREUD, THE FUTURE OF AN ILLUSION (Liveright ed. 1953). It is far simpler to recognize choices that are not free than to certify a given choice as devoid of internal or external compulsion. Thus, it is consistent to assert that: (1) individuals ought not in general to be required to defend their beliefs or associational choices; and (2) certain methods of inculcating beliefs or procuring affiliation are suspect and deserve state scrutiny. See notes 214-17 and accompanying text *supra*.

274. *E.g.*, Rhode Island Recreation Center v. Aetna Cas. & Sur. Co., 177 F.2d 603, 605 (1st Cir. 1949) (defense of coercion in criminal cases); see Meints v. Huntington, 276 F. 245 (8th Cir. 1921) (duress in law of torts); Capps v. Georgia Pac. Corp., 253 Or. 248, 453 P.2d 935 (1969) (duress in law of contract); 1 W. PAGE, *supra* note 129, § 15.14, at 744; W. PROSSER, *supra* note 156, § 18, at 105-07; R. PERKINS, CRIMINAL LAW 951-53 (2d ed. 1969).

275. *E.g.*, Commonwealth v. Reffitt, 149 Ky. 300, 303-04, 148 S.W. 48, 50 (1912) ("person of ordinary firmness").

276. *Id.* ("violence or threats").

277. *E.g.*, Dymally Hearing, *supra* note 16, at 26-27 (brother testified that sister who joined Alamo cult was told she could not leave, and that if she did "your head will be severed

which indoctrination is carried out makes resistance more difficult.<sup>278</sup> More frequently, however, the pressure to join, although intense,<sup>279</sup> takes less physical forms. The candidate is told that his salvation depends upon remaining with the group and that leaving will result in spiritual punishment.<sup>280</sup> He is warned that leaving the cult may cause him to be struck down with cancer, become insane, or suffer a fatal accident within a year;<sup>281</sup> cult members are told that their loved ones may fall ill and suffer a lingering death.<sup>282</sup>

Apart from a few cases involving witchcraft and voodoo,<sup>283</sup> there are few decisions concerning the legal effect of a threat of spiritual or physical

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from your shoulders"), 67 (runaway daughter of Alamo cult leaders testified that cult threatened her life and those of her children, and sent messages: "We are going to find you and bury you and your children alive"), 96 (runaways hunted down, brought back to cult, and locked up); Harayda, *supra* note 130, at 216, 256 (Unification Church members put recruit in a room; would not let her leave the room until she agreed to stay in the cult. "They completely overpowered you."); Rofes, *supra* note 106, at 4, col. 1 (Unification Church member informed by his spiritual brother that if the brother thought that by breaking both the member's legs he could win him over to the family, he would do so); J. Andrews, *supra* note 100, at 30 (threats of violence, locking in closet); Interview by Aaron Klein, attorney, with J.A.S., in Kingston, N.Y. (on file with author) (member coerced physically to remain with cult, held, pulled to meetings, guarded, prevented from leaving).

278. See, e.g., *Vermont Hearings*, *supra* note 16, at 79; LEFKOWITZ REPORT, *supra* note 16, at 35-36; Meeting Report, *supra* note 14, pt. 2, at 21. Most training centers are located in remote rural areas, and candidates are not permitted to drive there in cars; the cult transports them in busses and vans. Frequently, there is no public transportation available in the event the member desires to return home, and thus he may be reliant on the cult for a return trip. See also note 66 *supra*.

279. E.g., *Seduction of the Searchers*, *supra* note 69, at 1 ("compared to the 'Moonies' and the COG [Children of God], Jehovah's Witnesses come across more like energetic encyclopedia salesmen. While Mormons and Jehovah's Witnesses remain a part of the larger society and lead more-or-less conventional lives, the new cultists represent a totalistic lifestyle and require a world view change so radical that the convert literally assumes a new identity").

280. E.g., *Vermont Hearings*, *supra* note 16, at 59-60 (member told if she called her father or left cult, she would doom herself, her brothers and sisters, and her parents, and she would be "responsible for 15 generations to get them out of hell"); Shapiro, *supra* note 52, at 81; Melvold, *supra* note 55 (Unification Church victims released pursuant to San Francisco conservatorship proceeding reported that "the sect's mind control techniques induce the 'most incredibly intense' fear and guilt to anyone considering leaving"); Weekend, *supra* note 24, at 13, 14 ("We had a little meeting with around 8 or 9 of their leaders . . . [We were told y]ou might be killed if you go back! Satan is going to attack you"). See also notes 88-97 and accompanying text *supra*.

281. R. ENROTH, *supra* note 14, at 59 (would become insane, turned into a homosexual, or "turned over to a reprobate mind"); LEFKOWITZ REPORT, *supra* note 16, at 28 (indoctrinee of Children of God told that God would strike him dead if he left).

282. Interview with Merritt, *supra* note 157; see *Vermont Hearings*, *supra* note 16, at 59-60; Meeting Report, *supra* note 14, pt. 2, at 6 (indemnity punishment on parents).

283. Regina v. Machekequonabe, 28 Ont. 309 (1897) (Indian who killed another, believing him to be an evil spirit, held improperly convicted of manslaughter); Kato, *Functional Psycho-sis and Witchcraft Fears: Excuses to Criminal Responsibility in East Africa*, 4 L. & Soc'y REV.

sanctions which are inherently unlikely but known to be believed by the victim. Cases turning on undue influence hold that when a spiritual or religious advisor convinces a believer that failure to make a gift to the advisor will result in spiritual penalties—even though these may be inherently improbable—the victim's act will be set aside.<sup>284</sup> Since the cult is responsible for the content of the victim's unreasonable belief as well as for the erosion of his mental processes leading to his believing the threat, it seems reasonable to deny the persons responsible the argument against setting aside the victim's act that he acted voluntarily and freely in acquiescing to the pressures brought to bear on him.<sup>285</sup> Of course, when physical pressures accompany the spiritual threats, the likelihood that a court would find consent invalid increases in proportion to the strength and immediacy of the threat.<sup>286</sup>

## 2. Deception

Deception vitiates consent, since an individual cannot be said to have consented to an act when he has been deceived as to the essential nature of that act.<sup>287</sup> The use of front groups,<sup>288</sup> concealment of the identity and purpose of the organization to newcomers,<sup>289</sup> and various techniques to ensure that trainees do not have an opportunity for reality testing<sup>290</sup> all

385, 394-98 (1969) (East African courts have accepted as provocation or self-defense pleas that the victim was engaged in harming them through witchcraft).

284. Conner v. Stanley, 72 Cal. 556, 14 P. 306 (1887) (antenuptial agreement predicated on belief in spiritualism); Caspari v. First German Church of the New Jerusalem, 82 Mo. 649 (1884), *aff'g* 12 Mo. App. 293 (1882); Corrigan v. Pironi, 48 N.J. Eq. 607, 23 A. 355 (1891); Nelson v. Dodge, 76 R.I. 1, 68 A.2d 51 (1949) (threat of damnation); *see* Gilmore v. Lec, 237 Ill. 402, 86 N.E. 568 (1908) (reciting general rule but finding no undue influence); Brown v. Father Divine, 173 Misc. 1029, 18 N.Y.S.2d 544, *aff'd*, 260 App. Div. 443, 23 N.Y.S.2d 116, *reh. denied*, 260 App. Div. 1006, 24 N.Y.S.2d 991 (1940).

285. Apart from undue influence cases, there are other areas in which courts have sought to protect persons from the possibility of overreaching religious influence. *See, e.g.*, Abington School Dist. v. Schempp, 374 U.S. 203, 228-29 (1963) (Douglas, J., concurring) (coerced prayer); *id.* at 288-90 (Brennan, J., concurring); Watchtower Bible & Tract Soc'y v. Metropolitan Life Ins. Co., 297 N.Y. 339, 79 N.E.2d 433 (1948). *See also* United States v. Ballard, 322 U.S. 78 (1944) (religious fraud).

286. Notes 274-75 and accompanying text *supra*.

287. Hobbs v. Kizer, 236 F. 681 (8th Cir. 1916) (consent to medical procedure obtained by fraud); Bartell v. State, 106 Wis. 342, 82 N.W. 142 (1900) (lack of consent to "indecent liberties" because patient believed fraudulent statement that they were part of medical treatment); W. PROSSER, *supra* note 156, § 18, at 105.

288. Notes 222-24 and accompanying text *supra*.

289. Notes 221-23, 227 and accompanying text *supra*.

290. Notes 232-33 and accompanying text *supra*. Even flattery, such as telling the object, "We think you are better than you actually think you are," when accompanied by deceit or solicitation, has been held to invalidate wills because of undue influence. 1 W. PAGE, *supra* note 129, § 15.7, at 733; *cf.* use of flattery described in notes 57, 226 and accompanying text *supra* (to induce present cultist to remain).

combine to make it highly likely that the recruiting and indoctrinating process will be found nonconsensual<sup>291</sup> because of concealment of material elements from the potential convert.<sup>292</sup>

### 3. *Physical and Mental Debilitation*

Courts have found in a number of contexts that mental or physical debility, particularly where known and exploited by one who receives the benefit of an action, is an important element militating against voluntariness.<sup>293</sup> Because, as has been seen, cults systematically maintain conditions designed to weaken resistance and induce a state of physiological and psychic depletion in new members,<sup>294</sup> the victim's choice to cooperate with the cult's processes becomes open to scrutiny.

### 4. *Abuse of a Fiduciary Capacity*

Gifts to doctors, nurses, and religious advisers have been regarded with skepticism by courts when it appeared that the gift was initiated or solicited

291. Text accompanying notes 220-21 *supra*.

292. A cult might conceivably concede that its recruiting and indoctrinating practices short-circuit autonomy and free choice, but argue that it is under no duty to make disclosure or obtain consent. There are three arguments the cult might advance: (1) By analogy to the medical therapeutic privilege, *see* 2 D. LOUISELL & H. WILLIAMS, *MEDICAL MALPRACTICE* § 22.02 (rev. ed. 1976), it could argue that disclosure is unnecessary since informing the potential convert of the risks of membership could cause him to forego conversion ("treatment"); (2) It could also argue by analogy to the therapeutic privilege that it need not inform the victim since full information could cause him to worry unnecessarily, *see id.*; (3) It could argue that disclosure should not be required since it would violate the organization's right to preserve religious secrets, or mysteries, which according to its practice are only revealed to adherents who have attained a required level of enlightenment.

Although these arguments might be entitled to some weight in a discussion of remedies, *see* text accompanying notes 372-522 *infra*, at this stage they are inapposite since they assume the matter at issue. Each of the arguments assumes that the cult's practice of inducting members without consent is privileged by reason of the religious nature of the enterprise. At this stage, however, the issue is whether the proselytizing process is, in fact, protected by the first amendment. This involves a balancing of the harms caused by that process against the strength of the cult's religious interest in carrying out the practices that result in such harms.

293. *E.g.*, *Methodist Mission Home v. N—A—B—*, 451 S.W.2d 539, 544 (Tex. Civ. App. 1970). The court found undue influence in the case of a resident of a home for unwed mothers who had been subjected to an intense 5-day campaign designed to induce her to give her baby up for adoption. The woman was weak, was deprived of sleep, and was misled by the authorities concerning her right to keep the child. The court found the above conditions constituted a "direct assault on plaintiff's will," *see McDonald v. Hewlett*, 102 Cal. App. 2d 680, 228 P.2d 83 (1951) (gift to attorney from client who suffered organic brain condition); *Warren v. Pfeil*, 346 Ill. 344, 178 N.E. 894 (1931) (gift to nurse by mentally ill patient); *Caspari v. First German Church of the New Jerusalem*, 82 Mo. 649 (1884) (gift to religious advisor from infirm follower), *aff'd* 12 Mo. App. 293 (1882); *W. PROSSER, supra* note 156, § 18, at 102-05 (intentional exploitation of weakness or mistake negating consent); White, *The Intentional Exploitation of Man's Known Weaknesses*, 9 HOUS. L. REV. 889 (1972).

294. Notes 63, 98-106, 130-34 and accompanying text *supra*.

by the beneficiary, and when that person occupied a position of special trust with respect to the giver.<sup>295</sup> Because cult leaders, at the time they solicit a commitment to membership, pose as and perhaps may be regarded as spiritual advisers, it seems likely that they will be held to the high standard of integrity and fair dealing developed by courts in these cases. As a result, any finding of insincerity, a pecuniary motive, or exploitation will cause the "gift" of the new member's resources and energies to be set aside.

## B. FACTORS PECULIAR TO RELIGIOUS CULTS

### 1. *Manipulation of Knowledge and Capacity*

The process by which an individual becomes a member of a cult is arranged in such a way that knowledge and capacity, the classic ingredients of an informed consent, are maintained in an inverse relationship: when capacity is high, the recruit's knowledge of the cult and its practices is low; when knowledge is high, capacity is reduced.<sup>296</sup>

When the newcomer attends his first meeting, his capacity to make rational choices is relatively unimpaired. He may be experiencing a momentary state of depression or suggestibility;<sup>297</sup> nevertheless, his rational faculties are relatively intact, and it could be expected that were he to be given full information about the cult and his future life in it should he choose to join, he would react by leaving.<sup>298</sup> For this reason, the cult keeps secret its identity as a religious organization, the name of its leader or messiah, and the more onerous conditions of membership until it perceives that the victim is "ready" to receive this information.<sup>299</sup> These details are parceled out

295. See note 293 *supra*.

296. E.g., ALL GODS CHILDREN, *supra* note 9, at 167-72; Wash. Post, Aug. 24, 1975, at A-1, col. 4, at A-14, col. 2 (former cult member stated, "For me the indoctrination started with truth—with friendship, with things that aren't easily debatable. Then they mix in a little that's false, and it's clouded. But you say, 'Well, the rest of it is truth,' and you trust them, so you say, 'Well, I'll accept that.' Then they shove a little more in"); see J. Andrews, *supra* note 100, at 12 (knowledge of unpalatable or bizarre details postponed until end of indoctrination session; by then "the candidate's suspension of disbelief is normally near total, to the point of taking even the Church's known lies to him calmly in stride . . .").

297. E.g., notes 56, 225 and accompanying text *supra*.

298. See note 378 *infra*.

299. R. ENROTH, *supra* note 14, at 42-43, 100-01; notes 220-33 and accompanying text *supra*; note 301 *infra*. See also Galper, *supra* note 62, at 4 ("The target individual . . . generally has no awareness that he is participating in training activities of an aggressive proselytizing religious organization until the conclusion of the weekend rural camp experience. He is not overtly presented with . . . options for conscious reflection and deliberation. . . . There are no signs in the exterior building facade or on the interior walls that identify the center as property of the Unification Church").

gradually as the newcomer, as a result of physiological debilitation, guilt manipulation, isolation, and peer pressure, loses the capacity to evaluate them in his ordinary frames of reference.<sup>300</sup> The recruit thus never has full capacity and full knowledge at any given time. One or the other is always impaired to some degree by cult design.

## 2. *Segmentation of the Joining Process*

Related to this manipulation of capacity and consent is the intentional segmentation of the joining process into a series of steps or stages, whereby the convert's assent is obtained before proceeding to the next step, but the final stage or end result is concealed from view.<sup>301</sup> Thus, the individual at the end of the initial meeting is pressured to join the group at their 3-day retreat; at the end of the retreat, he is urged to commit himself to attend a longer, 7-day training session. At the end of this session, he is encouraged to agree to attend an even longer training camp, generally of 1 to 2 months' duration. At each step, the intensity of the indoctrination and guilt manipulation increases, together with the pressure to make a permanent commitment to the group.

What is distinctive about this process is that, although the potential convert may be given a general idea of the activities and teachings that will be offered at the next stage, at no point early in the process is he given an opportunity to elect to embark on the entire journey. The consequences of the final step are thus concealed until the victim reaches the penultimate stage, at which time he has been "softened up" to such a degree that committing his life and fortune to the cult seems but a small step.<sup>302</sup> The

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300. Notes 63-73, 130-41 and accompanying text *supra*; see Galper, *supra* note 62, at 4-5; Smith, *supra* note 62, at 11, col. 1 (staging of unpalatable information; "That afternoon we learned for the first time that we could expect a new messiah soon. No one said it would be Moon, but we were assured that if we would just stay another week we would hear more lectures that would make everything fall into place").

301. The "staged" aspect of the conversion process is best seen in accounts of the Unification Church's process. *E.g.*, Vermont Senate Judiciary Committee, *supra* note 58, at 22-23; Galper, *supra* note 62, at 2 ("The potential recruit is invited to attend a dinner. . . . At the conclusion of the . . . dinner he is invited to participate in a weekend experience in an isolated rural setting. . . . At the conclusion of the weekend experience recruits are invited to stay on at the camp for a week-long training session"), 4-7 (information parcelled out as training proceeds); ALL GODS CHILDREN, *supra* note 9, at 6-8; Harayda, *supra* note 130, at 217; Rasmussen, *supra* note 227, at 3, col. 1, at 18, col. 4; Rice, *supra* note 108, at 23 (pressure to join the movement comes suddenly after one week of religious training; recruit reaches this moment "worn out from lack of sleep, numbed by endless lectures, cut off from family or friends, and softened up by the embracing warmth of the group"); Waters, *supra* note 15, at 97-99; Jaffe & Nafsinger, *supra* note 226, at 3, col. 2.

302. *E.g.*, Rice, *supra* note 108, at 23 ("[E]verybody was reinforcing each other all the time, and you just began to feel high. After seven days of fatiguing your body and manipulating your mind, they hook you, and you stay on").

process could be compared to a hypothetical one in which a patient visits a physician for treatment of an abscess. The physician first obtains the patient's agreement to disinfect and examine the affected area. Next, the physician obtains the patient's consent to administer a local anesthetic, then to make a small incision. By stages, the physician proceeds until he has amputated the patient's limb—his undisclosed objective since the inception of treatment.<sup>303</sup>

This example, outrageous in the context of the ethical standards we require in the physician-patient relationship, is certainly no less offensive when the relationship is that of pastoral trust and confidence,<sup>304</sup> nor is the betrayal of confidence any less extreme. If, under the circumstances described, the law protects the patient from the harm of an unconsented-to invasion of his body, it seems equally likely that the law should protect the cult victim or potential recruit when the invasion is an invasion of his mind and psychic autonomy.<sup>305</sup>

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303. Cf. *Wall v. Brim*, 138 F.2d 478 (5th Cir. 1943) (surgeon operated on patient for small cyst. During operation physician discovered cyst was larger than expected and extended down to facial nerve. Without awakening patient and obtaining additional consent for more risky operation, and in absence of emergency situation, physician carried out the more risky procedure. Held—doctor was under duty to have obtained patient's consent before embarking on operation that exceeded initial degree of expected risk), *cert. denied*, 324 U.S. 857 (1945). See also *Tabor v. Scobee*, 254 S.W.2d 474 (Ky. 1951).

304. The fiduciary relationship between religious advisers and their followers, as well as that between physicians and their patients, implies a higher standard of disclosure and honesty than the usual arm's-length market transaction. Text accompanying note 295 *supra*. See also A. HOLDER, *MEDICAL MALPRACTICE* 225 (1975). The requirement of disclosure has been extended to psychotherapists. *E.g.*, *Woods v. Brumlop*, 71 N.M. 221, 377 P.2d 520 (1962); Morse, *The Tort Liability of the Psychiatrist*, 18 SYRACUSE L. REV. 691 (1967).

305. Consent and disclosure requirements are strict in proportion to the risk to the individual, see A. HOLDER, *supra* note 304, at 226, or the extent to which the right endangered is fundamental, *e.g.*, *Miranda v. Arizona*, 384 U.S. 436 (1966) (waiver of privilege against self-incrimination).

Concerning segmentation of the joining process, see *Canterbury v. Spence*, 464 F.2d 772, 787 (D.C. Cir. 1969) (physician must divulge all risks patient would deem material "either singly or in combination with other risks"), *cert. denied*, 409 U.S. 1064 (1972); *Zelesnik v. Jewish Chronic Disease Hosp.*, 47 App. Div. 2d 199, 206, 366 N.Y.S.2d 163, 170 (1975) (duty to inform encompasses risks that "singly or in combination" will materially affect the patient's decision whether to proceed). Cf. *Post v. American Cleaning Equip. Corp.*, 437 S.W.2d 516, 520 (Ky. 1968) (warning to stay off grass would not suffice to warn of dangerous snakes); Szasz, Address to Annual Convention of American Trial Lawyers Ass'n (Aug. 4, 1970), *cited in Note, Conditioning & Other Technologies Used to "Treat?", "Rehabilitate?", "Demolish?" Prisoners and Mental Patients*, 45 S. CAL. L. REV. 616, 669-70 (1972) (warning that individuals who consent to voluntary mental hospitalization may, unknowingly, be taking a "first fateful step" along the road to permanent incarceration or other unknown consequences). In *Mackey v. Procunier*, 477 F.2d 877 (9th Cir. 1973), an inmate challenged the use by institutional authorities of succinylcholine, a paralysis-inducing drug used in a program of behavior conditioning. The medical authorities sought to justify the use of the drug as an aversive conditioner by pointing out that it

### C. ASSESSING VOLUNTARINESS: IDENTITY CHANGE AND THE ACQUIESCENT INDOCTRINEE

The presence of deceptive, coercive, and manipulative elements suggests that the indoctrination process carried out by cults is not fully consensual. Accordingly, the scope of permissible state intervention should be relatively great. Nevertheless, the conclusion that the harm is nonconsensual is complicated by a further circumstance peculiar to situations involving mind control: the very factors of stress, coercion, and psychic bombardment that cast doubt on the validity of consent can also give rise to a new, if temporary, identity on the part of the individuals whose consent is under examination. Further, the new individual, if asked, may state—with apparent sincerity—that he acquiesces in the changes that have been wrought in him. If by personal identity we mean that which is uniquely characteristic of an individual—his values, his life plan, and his sense of himself as an entity enduring over time—then the cult conditioning process may be said, in many cases, to induce dramatic and often nonconsensual changes from which a new identity emerges.<sup>306</sup>

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had been used in connection with electroshock therapy (to prevent injury to bones and muscles during contractions) for many years and that the patients who brought the claim had consented to its use in connection with electroconvulsive therapy. The court rejected the physicians' part-whole argument, found that consent was inadequate, and concluded that use of the drug raised issues of "impermissible tinkering with the mental processes." *Id.* at 878.

306. Vermont Senate Judiciary Committee, *supra* note 58, at 43 (radical alteration); *Vermont Hearings*, *supra* note 16, at 17 ("Before this final state cult members seem to experience two forms of personality: the original and the imposed"); R. ENROTH, *supra* note 14, at 12, 83-84, 161-63; Gunther, *supra* note 21, at 15, 17 (youths seem to become "somebody else"); *Seduction of the Searchers*, *supra* note 69, at 1, col. 1 ("change so radical that the convert literally assumes a new identity"); Meeting Report, *supra* note 14, pt. 2, at 16 (radical change), 30 ("totally changed person"), 39 (personality transformation), 40 ("marked change"), 43 ("complete reversal"), 66 ("completely alienated"), 68 ("radical change . . . a totally different person—dehumanized"); cf. R. LIFTON, *supra* note 64, at 5, 11, 66, 83 (rebirth, molding of new identity); HEARST, *supra* note 6, at 298 (testimony of Dr. Martin Orne, psychiatrist) (one forgets who one really is; dissociation occurs), 317-35 (testimony of Dr. Robert Lifton, psychiatrist) (assault on identity in *Hearst* case). See also Lifton, *Psychiatric Aspects of Chinese Communist Thought Reform*, in GROUP FOR THE ADVANCEMENT OF PSYCHIATRY SYMPOSIUM NO. 4, METHODS OF FORCEFUL INDOCTRINATION: OBSERVATIONS & INTERVIEWS 238, 247-48 (1957) (changes in belief and self-definition with Communist regime so as to warrant characterization as "a shift in identity"); note 309 *infra* ("restorative" language used by rescued individuals to describe experience of being freed of imposed identity and thought structures).

Some medical specialists have suggested that the observed personality alteration may be attributable to physical changes in the central nervous systems of the members. *E.g.*, Interview with Cath, *supra* note 182 (cult regimen establishes triggering mechanisms by which brain areas responsible for critical thinking are rendered less active, areas responsible for emotional, automatic responses are strengthened); cf. Shapiro, *supra* note 52, at 81 (excitatory assaults on the nervous system, combined with inducing insoluble mental conflicts, result in sudden changes in faith and beliefs); Letter from Gilmartin, *supra* note 88 (isolation, physiological

Cult members who have been deprogrammed or have left the cult of their own accord report that the events that took place during their period in the cult seemed to happen to a different person.<sup>307</sup> While with the group, their previous life seemed to recede and become unreal, as though the pre-cult individual had ceased to exist.<sup>308</sup> Previous values and goals are disavowed, and the individual's disaffiliation with his previous self, his family, roles, career, and studies may be strikingly complete.<sup>309</sup>

For purposes of assessing the voluntariness of consent, this disaffiliation presents a unique problem: the individual's acquiescence or nonacquiescence in his present role becomes a function of time and of his exposure or lack of exposure to deprogramming or other restorative psychiatric treatment.<sup>310</sup>

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depletion combine with chanting and "platitude conditioning" to produce a closed biofeedback system in which several related organic processes such as blood pressure, brain activity, and respiration are altered); Letter from Dr. William J. Winter (Jan. 19, 1977) (on file with author) (pathologist stated that "the problem is one in which the individual becomes a subject of controlled emotional and intellectual behavior at a [*sic*] limbic-hypothalamic-reticular activating system levels to the inhibition of much of the neocortical discriminatory and cognitive activity"). At the time of this writing, the physiologically-based explanation seems to be a minority view among psychologists and psychiatrists familiar with the cult phenomenon.

307. Cf., e.g., *Vermont Hearings*, *supra* note 16, at 17 ("imposed" personality and mental world substituted for member's "original" personality and mental world); R. LIFTON, *supra* note 64, at 67, 83-85, 94-95, 466-67 (coercive processes resulting in changed identity in captive populations); note 67 *supra* (dissociation reaction). See also R. ENROTH, *supra* note 14, at 38 ("like a fog . . . It's almost like a dream").

308. E.g., *Vermont Hearings*, *supra* note 16, at 17.

309. Note 306 *supra*. Restoration language is frequently used by ex-cult members to describe their release from a condition of mind control. ALL GODS CHILDREN, *supra* note 9, at 108 (indoctrinee stated she "died to herself," after which she "adopted a new identity"; "Our pasts were dead"; members were not permitted to speak about the past); Harayda, *supra* note 130, at 216 (ex-member reports she was under mind control in cult and expresses thanks to parents and deprogrammers for releasing her from state of psychological control by cult elders); cf. W. SARGANT, *THE MIND POSSESSED* 12 (1973) (great stresses of war or disasters often result in new, "diametrically opposed" rapid transformations of behavior patterns); HEARST, *supra* note 6, at 258, 260, 288 (forced adoption of an alternate personality); Coniment, *The Limits of State Intervention: Personal Identity and Ultra-Risky Actions*, 85 YALE L.J. 826, 837 & n.51 (1976) (citing studies showing that trauma and disaster victims tend to disidentify with their earlier selves). See also Lifton, *supra* note 306, at 247-48 (Chinese brainwashing aimed at bringing about a shift in identity).

310. Interview with Dan Watkins, office of Kansas Attorney General (Apr. 13, 1976) (on file with author) (difficulty of justifying intervention because victims, when in the cult, say they are not brainwashed); cf. R. ENROTH, *supra* note 14, at 73 (apparent enthusiasm of members when questioned about cult life attributable to mind control and peer pressure: "every day is such an ordeal—the work, the prayer, the reading. You just [anticipate] the opportunity to be the center of anything. The minute you get any opportunity to speak . . . [a]ll that pent-up energy comes out and you feel a definite glow, because the rest of your life is so miserable . . . Also, the group peer pressure in that kind of a situation is really powerful. You know that everyone around you is expecting you to perform . . .").

Where the individual has been rendered mentally disordered as a result of his brainwashing experience, the problem has a simple solution—he can be declared incompetent. But if the deceptive or coercive processes have produced—even nonconsensually—a stable, enduring personality who resists returning to his former identity and refuses to characterize the acts that have been done to him as harms, then the case for intervention becomes more difficult. On the one hand, the legal system has been traditionally reluctant to protect individuals from harms they have incurred freely, or do not see as harms. On the other hand, the individual's perception of himself as unharmed may itself appear "programmed in."<sup>311</sup> Should society intervene when it appears that substantial numbers of individuals are in danger of undergoing nonconsensual changes—which in many cases include harmful components—from which they will not willingly return because the very preference rationales that would formerly have labelled the changes as harms have themselves been changed?

The refusal of treatment by an indoctrinee may be overridden, consistently with traditional notions of liberty and nonsubstitution of judgment, if it appears that the indoctrinee is incapable of fully understanding the conditions to which he has been subjected that account for his recent change of outlook.<sup>312</sup> These conditions would include the conditions under which the change took place, the recruit's possible vulnerability at the beginning of the recruitment process, and the psychological dynamics of the conversion itself. The indoctrinee's understanding of the change that has occurred should be tested by societal standards, rather than by those of the group with whose values he now identifies.<sup>313</sup> If, viewing the processes from the

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311. See Dworkin, *Autonomy and Behavior Control*, THE HASTINGS CENTER REP., Feb. 1976, at 23, 25-27; Shapiro, *Legislating Control*, *supra* note 1, at 301-07 (choice-theoretic model of behavior-altering therapies); cf. Ervin, *Preface* to STAFF OF THE SENATE SUBCOMM. ON CONSTITUTIONAL RIGHTS OF THE COMM. ON THE JUDICIARY, INDIVIDUAL RIGHTS AND THE FEDERAL ROLE IN BEHAVIOR MODIFICATION, 93D CONG., 2D SESS., iii (Comm. Print 1974) (expressing concern that governmental use of behavior modification may permit "one man to impose his views and values on another. In our democratic society, values such as political and religious preferences are expressly left to individual choice").

312. Dworkin, *supra* note 311, at 23-25 (suggesting that a person could still be said to be acting autonomously despite behavioral influences if (1) he understands what those influences are, and (2) accepts them).

313. This limitation was suggested by my colleague, William Powers, Professor of Law, University of Washington. Its purpose is to avoid the dilemma posed by the following hypothetical exchange:

Psychiatrist: "Do you understand that you have been subjected to influences A, B, and C?"

Victim: "Yes, but they really were not a form of brainwashing; they were simply educational experiences that were necessary to aid me in seeing the light."

Psychiatrist: "No, they really were quite different from ordinary educational experiences, since . . ."

Victim: "For me, they were simply new learning experiences."

perspective of an outsider, the indoctrinee demonstrates that he understands the forces that have been brought to bear upon him, yet desires to remain with those who have brought him to his present condition, it then seems reasonable to allow him to remain where he is.<sup>314</sup> Since most cult indoctrinees who have been willing to submit to psychiatric examination lack this insight,<sup>315</sup> this rationale suggests that their present preference may be ignored. If so, the only factors relevant to assessing voluntariness or consent are the standard tests of duress, deception, and manipulation discussed earlier. Since each of these figures prominently in the recruitment and indoctrination process, it is expected that any harms resulting from that process would be found to be nonconsensual.

But if a cult indoctrinee, sharing our view of events, admits that he was subjected to coercive influence, but desires to remain with those who are responsible for his present condition, we may conclude he should be permitted to remain with the cult, since the present individual would seem to have surmounted his brainwashing and acquiesced in it.<sup>316</sup>

Aside from the view that cult recruits rarely choose membership freely, an argument can be made that such choices should not be honored because doing so rewards cults for engaging in brainwashing. Brainwashing enables

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314. Dworkin would view this individual's desire as autonomous since he understands the forces that have acted on him and accepts them. Dworkin, *supra* note 311, at 23. In Dworkin's neodeterminist view, this is the greatest degree of freedom the human condition allows. Compare Hospers, *What Means This Freedom?*, in DETERMINISM AND FREEDOM IN THE AGE OF MODERN SCIENCE 113, 119 (S. Hook ed. 1958) (expressing view that an individual acts freely to the extent that his behavior is free of unconscious or neurotic motivations and is capable of being changed by reason) with Freudian view that man overcomes his unconscious motivations, and therefore becomes free, through a psychoanalytical process by which unconscious causes are brought to light. See also P. RIEFF, *FREUD: THE MIND OF THE MORALIST* 37-38, 42, 47 (Viking ed. 1959) (citing 11 THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD 17 (standard ed. 1953)).

315. Interview with Clark, *supra* note 101. Relatively few cult members have permitted themselves to be subjected to psychological or psychiatric assessment. But prisoner-of-war studies and expert testimony in the *Hearst* trial suggest that a common response is to recast one's own indoctrination in unreal, or even favorable, terms. Lifton, for example, describes Western victims of Chinese re-education camps who expressed gratitude to their captors for helping them realize their own complicity in complex imperialistic schemes; others emerged simply confused about their own position and unable to understand fully what had been done to them. R. LIFTON, *supra* note 64, at 33-35, 86-117. Patricia Hearst, immediately after her release, evidenced some of the same confusion and a tendency to recast her own experiences in benign language which distorted the reality of her own treatment, HEARST, *supra* note 6, at 331; see R. LIFTON, *supra* note 64, at 5-20 (Western ex-captives, including priests and missionaries, made lurid confessions, returned to the West deeply confused about their true beliefs); E. SCHEIN, *supra* note 66, at 15-16 ("[B]efore I was arrested in my heart I knew that I was guilty of being a spy, but I wouldn't have admitted it." "The People's Government took care of us so well! . . . [W]e had no pressure put on us").

316. See note 314 *supra*.

cults to create individuals who will choose to repudiate their pasts for a present that is more restricted and that contains extraordinary physical and psychological risks. It could be argued that society has an interest in preventing the unconsented-to severing of the continuous thread of memories, roles, and expectations that are central to accepted notions of human personality. While a full discussion of these matters is beyond the scope of this Article, major components can be sketched of an argument for rejecting programs of forceful persuasion that result in sharp, discontinuous personality changes.<sup>317</sup>

(1) Many social roles rely on the existence of continuous, although gradually developing, personalities in order to make reliance on role functioning possible. Thus, sudden personality changes can be resisted because they disrupt the reliance that the rest of society requires in performing such roles as father, mother, creditor, friend, and teacher.<sup>318</sup>

(2) In order to plan their futures, individuals themselves need the reassurance that they will not be subjected to sudden, unconsented-to change.<sup>319</sup>

(3) The right to resist such changes—on behalf of both the individual involved and society—increases when the new role appears intrinsically inferior to the old. Such might be the case if the new personality appears less autonomous<sup>320</sup> than the old, or more likely to incur physical and psychic damage.<sup>321</sup>

317. For a discussion of the interest in preserving personal identity, see Comment, *supra* note 309.

318. See generally Powers, *Autonomy and the Legal Control of Self-Regarding Conduct*, 51 WASH. L. REV. 33, 51-52 (1975).

319. Cf. RESTATEMENT OF TORTS § 61 (1934).

Where it is a crime to inflict a particular invasion of an interest of personality upon a particular class of persons, irrespective of their assent, and the policy of the law is primarily to protect the interests of such a class of persons from their inability to appreciate the consequences of such an invasion, and it is not solely to protect the interests of the public, the assent of such a person to such an invasion is not a consent thereto.

*Id.*

320. See notes 130-52 and accompanying text *supra*.

321. See notes 47-129 and accompanying text *supra*. See also *Penney v. Municipal Court*, 312 F. Supp. 938 (D.N.J. 1970); *Everhardt v. City of New Orleans*, 253 La. 285, 217 So. 2d 400 (1968); Note, *Motorcycle Helmets and the Constitutionality of Self-Protective Legislation*, 30 OHIO ST. L.J. 355 (1969) (state's interest in protecting motorcycle drivers from injuring themselves in accidents as justification for compelling the wearing of helmets); Comment, *The Punishment of Suicide—A Need for Change*, 14 VILL. L. REV. 463 (1969) (societal prohibition against suicide); cf. J. RAWLS, A THEORY OF JUSTICE 248-50 (1971) (arguing that a just society would be authorized and sometimes required to exercise paternalistic intervention on behalf of individuals who behave irrationally).

(4) The concepts advanced above are essentially utilitarian in nature. In addition to them, reasons based on standards of justice could be advanced for refusing to permit nonconsensual identity changes, *i.e.*, it is simply unjust to the victim, and to others, to permit sudden, discontinuous changes that amount to the destruction of the former self and the creation of a new one in its place.<sup>322</sup>

A review of both traditional and nontraditional factors involved in the thought-control process thus suggests that these processes, as carried out by religious cults, are not fully consensual<sup>323</sup> and that any harms that result from these processes are assessable to those who inflict them, rather than to the individuals who "elect" to undergo them.

### III. THE BOUNDS OF INTERVENTION—PRINCIPLES OF EXCLUSION AND INCLUSION

Assuming that intervention is both permissible and desirable, it remains to determine the outer and inner boundaries within which intervention should be carried out. This involves two inquiries. One concerns the conceptual

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322. See text accompanying notes 129-52 *supra*.

323. A final argument that cult membership is consensual is the "psychohistorical" argument. See *Vermont Hearings II*, *supra* note 16, at 128-30; ALL GODS CHILDREN, *supra* note 9, at 223 ("cyclical" view of religious history). See generally RELIGIOUS MOVEMENTS IN CONTEMPORARY AMERICA (I. Zaretsky & M. Leone eds. 1974). The psychohistorical argument can be summarized as involving the propositions that: (1) at certain times in history, fundamentalist religious cults have flourished; (2) these periods coincide with times of social dislocation and rapid change; (3) the rise of religious cults is thus simply an expression of large social and historical forces; (4) therefore, the organizations that develop in response to these forces are not responsible for their actions in accommodating individuals who are propelled into their midst by such forces.

To the extent that the argument is an attempt to justify nonintervention into the affairs of cults such as those described earlier, at least two responses seem possible:

(1) The legal system, in order to justify intervention, need not assign blame; it is enough that the practices cause demonstrable harm. *Cf.* *Jacobson v. Massachusetts*, 197 U.S. 11 (1905) (religious group not responsible for epidemic nevertheless held obligated to cooperate with public health authorities engaged in preventive measures). Society frequently intervenes in situations where, retribution aside, its interest is jeopardized by impersonal forces, such as floods, fires, epidemics, etc.

(2) That a more global solution to a given problem may be conceivable does not preclude utilizing more limited, interim measures aimed at ameliorating part of the problem. An ultimate solution to the cult problem might involve: (a) restoring the family as a viable institution; (b) solving the problem of intergenerational conflict; (c) providing legitimate outlets for the needs of the young for adventure, for moral commitment, etc.; (d) offering creative alternatives to monetary acquisition as a way of life; (e) solving the problems of racism, war, and unequal distribution of the world's resources.

It seems manifestly untenable to insist that the state is powerless to adopt more limited, or interim, measures designed to minimize the numbers of young persons likely to be entrapped in destructive cults while broad-based reforms are (optimistically) being carried out.

problem of differentiating between those forms of mind control that are so extreme and so harmful that we should not tolerate them, and those milder forms that we are prepared to accept. This is, of course, the familiar "drawing-the-line" problem that defenders of cults that utilize mind control have often raised.<sup>324</sup> How can one condemn the forceful persuasion practices of Reverend Moon's Unification Church, for example, while overlooking the "brainwashing" of an advertising campaign, a military school, or a Jesuit seminary?

Even assuming that one has succeeded in delineating a point beyond which coercive persuasion is no longer tolerable, and proving that a given cult's practices fall outside the tolerable region, a second practical question remains: How can one distinguish the individual who stays in the cult as a result of mind control from one who is there because of freely adopted religious conviction? In the selection of a remedy, it will be desirable to utilize procedures that trench as little as possible upon religious belief,<sup>325</sup> hence, the remedy selected should be narrowly tailored so as to affect only those individuals whose membership in the organization is the result of illegitimate, deceptive, or manipulative practices that "short-circuit" the autonomy of the victims. This requires an analysis of the types of error that may arise and of the results of erroneous decisions to intervene or not to intervene.

#### A. ON DRAWING THE LINE<sup>326</sup>

The argument that meaningful distinctions cannot be drawn between the coercive persuasion practiced by religious cults and the practices of other,

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324. See note 217 *supra*.

325. State action that trenches on religious belief or practice must adopt the least restrictive alternative means of accomplishing its legitimate objective(s). *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972); *Sherbert v. Verner*, 374 U.S. 398, 407 (1963).

326. It is significant that the drawing-the-line argument, together with its "chilling effect" corollary, while often advanced by defenders of religious cults, e.g., note 217 *supra*, is rarely heard from representatives of mainstream religious denominations. These generally have had no difficulty in perceiving fundamental differences between their practices and those of cults. *N.Y. Times*, Dec. 29, 1976, at 14, col. 4 (panel of Roman Catholic, Protestant, and Jewish leaders condemned Unification Church as anti-Jewish and anti-Christian in its teachings and heretical in the eyes of the Catholic Church; Américan Jewish Committee director alleged that Unification Church theological writings contain over 125 anti-Jewish teachings, including the claim that the Jews were responsible for Jesus' crucifixion, and that the Nazi holocaust, in which six million Jews died, was their punishment for the crucifixion); *New Haven Advocate*, Sept. 10, 1975, at 1, 6-7 (some label Unification Church in particular, and cults in general, spiritual fascists who seek to enslave their converts and deny them religious choice); see R. ENROTH, *supra* note 14, at 13 (sociologist and evangelical Christian writer terms Hare Krishna, Children of God, Alamo Christian Foundation, Love Family, Unification Church, The Way, and Divine Light Mission cults "spiritual counterfeits"); W. PETERSEN, *supra* note 59, at 125-26

societally accepted institutions<sup>327</sup> proceeds by observing that each element or practice utilized in cult-related mind control is also found elsewhere. Religious orders often impose a high degree of isolation or cloistering. Military recruiters, Madison Avenue copywriters, and campaigning politicians use exaggeration, concealment, and "puffing" to make their product appear more attractive. Revivalists use guilt manipulation. Officer training schools, Outward Bound, and executive training institutes sometimes cause psychological and physical casualties. Thus, the thought-control processes engaged in by religious cults, it could be argued, are indistinguishable from those of these other groups.

There are two responses to this argument. The first is that religious cults expose their indoctrinees to a greater variety<sup>328</sup> of classic mind control

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(Jesus Movement members hostile to Children of God); Waters, *supra* note 15, at 67 (Moon's organization, called a "pseudoreligion more evil than Satan," has been rejected by Korean churchmen); Kansas State Collegian, Mar. 24, 1975, at 1, cols. 1-3 (director of religious activities at state university criticizes cult's use of misleading "come-ons" and indoctrination of individuals who are weak, dependent, and burdened with personal problems). Meeting Report, *supra* note 14, pt. 1, at 7-8 (minister implies it is possible to draw line between cults and other religious groups), 36 (Baptist minister states Moon's Church has not been accepted by any body of Christian churches, and would not be accepted by any reputable Christian theologian), 37-40 (rabbi questions whether Unification Church is a religion at all), pt. 2, at 13 (obedience and discipline are found elsewhere "but they are not so all-encompassing so as to lower the quality of human life below the minimal standards which allow for questioning and reason"). *But see* Statement, Religious Liberty for Young People Too (adopted by the Governing Board of the National Council of Churches, Feb. 28, 1974), *reprinted in* ACLU DEPROGRAMMING CONFERENCE, *supra* note 157, at 185-86 (opposing kidnapping young persons as a means of changing religious beliefs).

327. *See* note 23 *supra*. Of course, opponents of religious cults have their own version of the drawing-the-line argument. It consists of pointing out similarities between cultist indoctrination practices and those of Nazi torturers, Chinese POW camp interrogators, and the like—practices so extreme that we would obviously not permit them to exist in a free society, even under the guise of religion. Both arguments are to a degree valid, and to a degree specious. The coercive persuasion carried out by cults is not identical with that perpetrated on prisoners of war or by Chinese interrogators, either in quality or intensity. But it is certainly more than what goes on in television advertising campaigns or military prep schools, and it is certainly harmful to those who undergo it. When it is seen that cult practices lie along a continuum and share features of both very mild and very extreme processes, the temptation to resort to simplistic line-drawing arguments that dismiss the problem as though it did not exist should cease in favor of addressing a more complex and troubling dilemma: what should be done about this case?

The drawing-the-line argument, as advanced by certain procult advocates, has additional disturbing overtones. In suggesting that state intervention would pose problems in other areas, it invites the conclusion that human lives may properly be sacrificed to retain an artificial conceptual simplicity in our notions about persuasion and influence. This violates the injunction that human beings should be treated as ends in themselves, rather than as means. If, as the evidence suggests, minds are being damaged and lives blighted as a result of nonconsensual cult indoctrination practices, a refusal to intervene because of the possibility that other difficult, or borderline, cases may arise is simply inhumane.

328. Coercive persuasion does not consist of a single technique or set of techniques, *e.g.*, HEARST, *supra* note 6, at 317-18, 327-28 (testimony of Dr. Robert J. Lifton, psychiatrist); rather

techniques than other groups do, and apply these techniques with greater intensity.<sup>329</sup> Jesuit and other religious training institutions may isolate the seminarian from the rest of the world at various stages of the training period, but the training does not involve physiological depletion,<sup>330</sup> nor does the order deceive the candidate concerning the duties required of members. Most religious orders are careful to set out the obligations and vows of priesthood in advance, closely examining the convictions of the candidate to determine whether the priesthood is best for him and for the church.<sup>331</sup> Nor do the major denominations concentrate, as do religious cults, on the weak, the depressed, or the psychologically vulnerable.<sup>332</sup> A number of orders, in fact, utilize psychiatric screening to eliminate those whose interest is an expression of psychiatric or emotional problems.<sup>333</sup> Others require a waiting or "cooling-off" period.<sup>334</sup>

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its peculiar forcefulness derives from a pattern of events, experiences, and processes, *id.* See generally R. LIFTON, *supra* note 64. While guilt, self betrayal, etc. are all found in ordinary life, it is the peculiar combination and the intensive concentration on "life or death coercion" that constitutes thought control. HEARST, *supra* note 6, at 327-28; cf. Shapiro, *Therapeutic Justifications for Intervention into Mentation & Behavior*, 13 DUQ. L. REV. 673, 730-31 (1975) (arguing that autonomy—brainwashing's opposite—is a polythetic or "cluster" concept incapable of being defined by reference to a determinate set of properties). See also *id.* at 695 (further discussion of polythetic concepts).

329. Richardson, Harder, & Simmonds, *Thought Reform and the Jesus Movement*, YOUTH & SOC'Y, Dec. 1972, 185, 197-200; see *Seduction of the Searchers*, *supra* note 69, at 1 ("Compared to the 'Moonies' and the COG [Children of God], Jehovah's Witnesses come across more like energetic encyclopedia salesmen," citing use of high-pressure tactics, coercion, deception, and shifts of the language base).

330. Interview with Father John Lawlor, Society of Jesus (Jesuits), Seattle U., in Seattle, Wash. (Feb. 25, 1977) (on file with author) (seminarians afforded adequate opportunities for rest, reflection, and recreation; they eat well, "at times too well"). Compare *Seduction of the Searchers*, *supra* note 69, at 1 (religious writer disapproves of physiologically depleting regimens used by cult training institutions as means of accelerating conversion) with ALL GODS CHILDREN, *supra* note 9, at 24-25 (distinguishing religious orders from Moon's training institutions).

331. Interview with Lawlor, *supra* note 330; see Bier, *Selection of Seminarians*, in SEMINARY EDUCATION IN A TIME OF CHANGE 173-75, 191-92 (J. Lee & L. Putz, eds. 1965) (searching interview procedure for potential seminarians); Whealon, *Judging the Character of a Seminarian*, in National Catholic Educ. Ass'n, Proceedings & Addresses, 59th Annual Meeting 103 (1961). See also ALL GODS CHILDREN, *supra* note 9, at 24 (membership for Roman Catholicism convert).

332. E.g., ALL GODS CHILDREN, *supra* note 9, at 24.

333. Bier, *supra* note 331, at 179-204; Hagmaier, *Today's Religious Candidate: Psychological & Emotional Considerations*, in National Catholic Educ. Ass'n, Proceedings & Addresses, 59th Annual Meeting 111, 115, 117 (1961); Scheuerman, *The Use of the Bernreuter Personality Inventory in a Seminary Program of Personality Appraisal & Guidance*, in National Catholic Educ. Ass'n, Proceedings & Addresses, 56th Annual Meeting 93 (1958).

334. Interview with Lawlor, *supra* note 330 (long application process, many stages, extended process of "sifting" applicants by interviews and review at various levels before individual's application is accepted); see Bier, *supra* note 331, at 192. Often, candidates are urged to attend a seminary for 1 or 2 weeks as a "try-out" period in order to gain a realistic

Executive training programs, Outward Bound, and military officer training all use peer pressure to induce the individual to adopt new patterns of thinking and behavior,<sup>335</sup> but they rarely, if ever, seek to facilitate this process by prolonged physiological depletion.<sup>336</sup> Nor do they deliberately stir up feelings of dread, doom, guilt, and sinfulness to make the trainee more receptive to a new view of the world.<sup>337</sup>

Private military schools enroll youths at an early age when it might be expected that the students are more vulnerable to forceful indoctrination and less able to resist pressure to change. Even here, however, the set of means employed is not so extensive and pervasive as that utilized by cults. The students are normally sent home for holidays and vacations.<sup>338</sup> State requirements ensure that diet, hours of sleep, and living conditions are adequate to maintain health.<sup>339</sup> Although peer pressure may be exploited to promote conformity to the school's goals, such pressure is generally applied on a simple reward-punishment basis, rather than by means of sophisticated psychological techniques aimed at tapping subconscious fears, anxieties, and guilt feelings.<sup>340</sup>

Thus, few, if any, other societal institutions approach either the intensity, sophistication, or completeness of the cult conditioning process.<sup>341</sup> A

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impression of the cloistered life. They then leave the seminary, reflect on what they have seen, and decide whether or not to persevere with their application. Interview with Father John Lawlor, *supra* note 330.

335. E.g., Louis, *They're Striking Some Strange Bargains at Diamond Shamrock*, *FORTUNE*, Jan. 1976, at 142, 143 (executive training program); *TIME*, Dec. 16, 1974, at 36 (Outward Bound executive training program); Fort Lewis ROTC Headquarters, Advanced Camp 9-10 (1976) (peer review system in evaluating officer fitness).

336. Louis, *supra* note 335, at 152 (recreation allowed); *TIME*, Dec. 16, 1974, at 36 (adequate food and opportunity for rest and reflection); see *SPORTS ILLUSTRATED*, Feb. 16, 1976, at 35 (opportunity in sports training program for rest and reflection).

337. Cf. Louis, *supra* note 335, at 146, 148-49 (trainees required to reveal managerial weaknesses and submit to group criticism, but exercise not carried out in order to reduce individual to state of dependency or self-rejection).

338. Gignilliat, *Military Schools in America*, in *TYPES OF SCHOOLS FOR BOYS* 74 (M. O'Shea ed. 1971).

339. *Id.* at 67, 69, 74-75.

340. *Id.* at 64, 92-96, 110-12 (demerit system).

341. See Wash. Post, June 29, 1975, at A-13, col. 1 (New York Council of Churches rejects Unification Church's request for membership, citing treatment of new converts and particular concern at alleged "brainwashing" practices); Interview with Dr. Lance Wright, psychiatrist, in Marion Station, Pa. (Nov. 24, 1976) (on file with author) (cults' use of persuasion is distinguishable from that of other organizations because of their greater use of physical isolation, concealment, and psychological and physical restraint); Open letter from Clark, *supra* note 105 ("It is not difficult to differentiate the dangerous cults from accepted religious orders which do not enslave members' minds by such sophisticated techniques or deliberately isolate and alienate subjects from family, law, country, or reality. Such tactics are direct

decision to intervene to prevent abuses in this area thus does not by its own logic require intervention in other areas where the abuses are milder and more easily resisted.

The second answer considers the end-state, or result, of religious mind control. If it should appear that the harm brought about to individuals and societal institutions is more extreme and less consensual in nature than changes produced by everyday communications such as advertising, then the case for intervention remains intact even though there might be some incidental overlap in the means utilized. The legislative and judicial findings summarized in the first section of this Article, first-person accounts by ex-cult members, and case studies by psychiatrists and psychologists<sup>342</sup> dispel any possibility of equating the effects of cult brainwashing with those of other groups and institutions. Television commercials may induce ennui and torpor, but they rarely cause mental breakdowns; Jesuit training rarely results in broken bones, scabies, or suicide. Even military training, with its emphasis on replacing civilian values and thought processes with those of the military,<sup>343</sup> does not begin to approximate the far-reaching changes induced by a lengthy stay in a Unification Church or Hare Krishna training environment.

Useful approaches to distinguishing among the varying degrees of "ideological totalism" have been developed by Dr. Robert J. Lifton, professor of psychiatry at Yale Medical School. In a classic study of Chinese brainwashing,<sup>344</sup> Dr. Lifton identifies a series of elements critical to coercive persuasion, which have been adopted with varying degrees of modification by other students of the subject.<sup>345</sup> These elements form a

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assaults on sanity which can seriously restrict future personality development"); SUNY Memo, *supra* note 135 ("We know of no other organization, even considering analogies to universities, the military, and religions . . . that affect a person's thoughts and most basic beliefs like CARP [Collegiate Association for the Research of Principles, a Unification Church front group] does") (Finding No. 4); *cf.* W. CLARK, *supra* note 21, at 256-57 (1958) (criteria for a "mature" religion include social effectiveness, freedom from magical thinking, creativeness (as opposed to encouraging mere repetition of views of others), and tendency of the belief system to encourage personal growth).

342. Notes 47-152 and accompanying text *supra*.

343. See U.S. ARMY, WEST POINT: FREQUENTLY ASKED QUESTIONS 1 (1977); U.S. Army, Senior ROTC Program—Organization, Administration & Training 1 (AR 145-1, Jan. 15, 1975). See also Nash, A Study of the Stated Aims & Purposes of Military Science & Tactics and Physical Education in the Land-Grant Colleges of the United States 49-86 (Teachers College, Columbia University, Contributions to Education No. 614 (1934)).

344. R. LIFTON, *supra* note 64.

345. *E.g.*, E. SCHEIN, *supra* note 66. In a much-cited, "eclectic" study of coercive persuasion, Dr. Schein, professor of psychology at Massachusetts Institute of Technology, acknowledges the profession's debt to Dr. Lifton's analysis, *id.* at 221-22, and constructs a model that involves stages of unfreezing, change, and refreezing, *id.* at 254-56; see *id.* at 195.

threefold matrix, the first part of which consists of eight "themes" that are characteristic of brainwashing, and that serve to distinguish it from other processes that also produce mentational and behavioral alterations.<sup>346</sup> These themes include milieu control (which Dr. Lifton believes to be the key ingredient in coercive persuasion); mystical manipulation; a demand for purity; insistence on confession ("there is no emotional bondage greater than that of the man whose entire guilt potential—neurotic and existential—has become the property of ideological totalists"<sup>347</sup>); inculcation of belief in a "sacred science"; use of cliches and thought-terminating phrases to capture the vehicles of thought and communication; "doctrine over reality" (which includes the rewriting of history and reinterpretation of one's past); and dispensation of existence—by which the victim comes to believe that the totalist controls his very destiny and existence.<sup>348</sup>

Dr. Lifton also has described a series of steps that the subject of coercive persuasion typically undergoes, beginning with assault on identity, and continuing with establishment of guilt, self-betrayal, arrival at a "breaking point," leniency and opportunity, compulsion to confess, reinterpretation of the past, re-education, acceptance and reward, final confession, and rebirth.<sup>349</sup> After traversing these steps the individual who emerges carries elements of the old self, but the imposed thought-reform elements dominate the new combination.<sup>350</sup> This confluence of identities constitutes a "rebirth," or basic modification of the former self,<sup>351</sup> in which the victim "reinterprets his thought and behavior, shifts his values, [and] recodes his sense of reality."<sup>352</sup> He "identifies with his captors, and is happy in his faith."<sup>353</sup>

The final element of the matrix looks at the coercive persuasion process, not from the viewpoint of the subject, but from that of the individuals who are striving to induce the changes; it consists of a series of psychological techniques, including degradation, sleep and other physiological deprivation, and guilt manipulation, which are utilized to precipitate movement from step to step on the path toward value and identity change.<sup>354</sup>

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Some of the mechanisms Dr. Schein discusses, which are used to facilitate conversion, are psycho-physiological stress, *id.* at 199-205, guilt and social conformity, *id.* at 195, cognitive dissonance and identity consistency, *id.* at 227-40, and peer pressure, *id.* at 241-52.

346. See ALL GODS CHILDREN, *supra* note 9, at 171-76.

347. R. LIFTON, *supra* note 64, at 425.

348. HEARST, *supra* note 6, at 257.

349. *Id.* at 67-84.

350. *Id.* at 83.

351. *Id.*

352. *Id.* at 83-84.

353. *Id.* at 84.

354. *Id.* at 20-85.

Later commentators have noted the striking correspondence between Dr. Lifton's model and thought-reform as carried out by religious cults.<sup>355</sup> Dr. Lifton himself has stated that he finds many similarities between them.<sup>356</sup>

Although exact quantification and sharply drawn lines will probably forever remain unattainable,<sup>357</sup> Dr. Lifton's criteria appear to offer a means by which extreme totalistic environments may be distinguished from those that also involve the use of influence, but are nevertheless within tolerable limits. Dr. Lifton has utilized his model to differentiate in convincing fashion between brainwashing and education, psychotherapy, and self-actualization—processes that are also aimed at producing changes in values and beliefs.<sup>358</sup>

#### B. THE CULT INDOCTRINE SYNDROME: TYPE I AND TYPE II ERROR

If investigation reveals that a given cult utilizes thought-control practices so harmful that societal intervention appears warranted, it remains to select the most appropriate remedy. First amendment constraints dictate that the remedy selected be the least onerous available with respect to its impact on religious belief and practice.<sup>359</sup> One aspect of this requirement is that the remedy be tailored so that, insofar as possible, it reaches only practices that may justifiably be curbed<sup>360</sup> and individuals who may justifiably be subject to external evaluation. Thus, if a parent comes into court alleging that his child is being held in a remote religious commune, that the child is unable to exercise his own will, and that the child is in danger of both physical and mental harm, it becomes essential that diagnostic procedures exist for determining the validity of the parent's claims. If the victim is, indeed, being held pursuant to mind control and is in danger of suffering physical and mental damage, then the parent should have a remedy. But, it is also

355. *E.g.*, R. ENROTH, *supra* note 14, at 157-59, 161; ALL GODS CHILDREN, *supra* note 9, at 169-76; Richardson, Harder, & Simmonds, *supra* note 329, at 185, 187.

356. HEARST, *supra* note 6, at 314; Interview with Dr. Robert J. Lifton, psychiatrist, in New Haven, Conn. (Apr. 29, 1976) (on file with author); Letter from Lifton *supra* note 221; Open letter from Dr. Robert J. Lifton (May 28, 1975) (on file with author) (finding patterns that "bore considerable resemblance to the totalistic currents I had encountered in my study of Chinese 'thought reform'"); *cf.* G. BISHOP, WITNESS TO EVIL 318 (1971) (Charles Manson reportedly favorably impressed by the precepts of the Church of Scientology). For other views on psychological mechanisms by which cults induct and indoctrinate members, see notes 47-82, 99-106, 130-52 *supra*.

357. See note 328 *supra*; *cf.* ALL GODS CHILDREN, *supra* note 9, at 161 (mistakenly attributing to the author of this Article the view that quantification is possible).

358. R. LIFTON, *supra* note 64, at 440-46.

359. Note 325 *supra*.

360. See *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972); *Sherbert v. Verner*, 374 U.S. 398, 407 (1963); *Covington v. Harris*, 419 F.2d 617, 623 (D.C. Cir. 1969).

possible that the young person joined the cult of his own free will and incurred any restrictions on his health and freedom willingly. If so, a different set of moral considerations would be presented, and intervention might well appear inappropriate.<sup>361</sup> Psychologists, psychiatrists, and psychiatric social workers have suggested factors that indicate a cult indoctrination syndrome.<sup>362</sup> These include:<sup>363</sup>

(1) Sudden, drastic alteration of the individual's value hierarchy, including abandonment of previous academic and career goals. The changes are sudden and catastrophic, rather than the gradual ones that result from maturation or education.

(2) Reduction of cognitive flexibility and adaptability. The victim answers questions mechanically, substituting stereotyped cult responses for his own.

(3) Narrowing and blunting of affect. Love feelings are repressed. The victim appears emotionally flat and lifeless.

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361. The only remaining justifications would appear to be prevention of self-harm and prevention of indirect harm to society and the cult member's family by his withdrawal. See notes 318-22 and accompanying text *supra*. These interests are clearly weaker than those that appear when the individual's membership is not voluntary.

362. Psychiatric expertise in recognizing and treating the brainwashing victim has been aided by studies of POW returnees and survivors of mass disasters, e.g., note 4 *supra*; see HEARST, *supra* note 6, at 319. The *Hearst* trial included evidence of psychological tests, such as the Wechsler-Bellevue Personality Test, which has the built-in capability to distinguish between the genuine victim and the liar. *Id.* at 297 (testimony of Dr. Martin T. Orne stating that simulation would require coordinated cheating on many separate interlocking sub-tests and implying that it would be virtually impossible); N.Y. Post, Feb. 24, 1976, at 1, col. 2 (expert witness in *Hearst* trial reported psychological tests showed Patricia Hearst's mental and emotional processes affected by her experiences in captivity: (a) her I.Q. dropped 21 points; (b) in a test involving matching a story with simple pictures she appeared "dutiful, compliant, and fearful of the wrath and punishment of others"; (c) story themes were sad, hopeless, with overtones of nostalgia; (d) on a sentence completion test her answers were like those of a small child or a person suffering a shattered sense of self-esteem; (e) her Rorschach test showed simplified answers and suggestibility to external forces and influences). See generally Bettelheim, *supra* note 99 (Dachau and Buchenwald experiences); Lifton, *Home by Ship: Reaction Patterns of American Prisoners of War Repatriated from North Korea*, 110 AM. J. PSYCH. 732 (1954); Strassman, Thaler, & Schein, *A Prisoner of War Syndrome: Apathy as a Reaction to Severe Stress*, 112 AM. J. PSYCH. 998 (1956); Farber, Harlow, & West, *supra* note 63; Group for the Advancement of Psych., Symposium No. 4: Methods of Forceful Indoctrination: Observations & Interviews (1957). See also Reilly v. State, 32 Conn. Supp. 349, 355 A.2d 324, 336-37 (1976) (psychological test results showed criminal defendant's personality made him susceptible to influence by persons in authority, resulting in untrustworthy confession; new trial ordered).

363. See *Vermont Hearings*, *supra* note 16, at 17; HEARST, *supra* note 6, at 298; Shapiro, *supra* note 52, at 83 (personality change, loss of personal identity, a change in mannerisms, and intense psychological fear are noted as the specific characteristics of the cult indoctrination syndrome); text accompanying notes 99-103 *supra*.

(4) Regression of behavior to childlike levels. The victim becomes dependent on the cult leaders and desires that they make all decisions for him.

(5) Physical changes including weight loss and deterioration in the victim's physical appearance and expression.

(6) Possible pathological symptoms, including dissociation, delusional thinking, and various other types of thought disorder.<sup>364</sup>

As the previous discussion suggests, many of these changes are so dramatic and unmistakable that a medical judgment is not required to discern that something is wrong; they are readily apparent to lay persons who have known the victim in his earlier life.<sup>365</sup> In these cases there is little likelihood of error.<sup>366</sup>

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364. In addition to the above-mentioned criteria, an examination of the individual's immediate past history can supply additional evidence strengthening a diagnosis of a state of mind control. Open letter from Clark, *supra* note 105.

(1) The person or group involved in recruitment will often show a record of a "need" to exercise totalistic control over followers;

(2) The individual will often be found to have been passing through a difficult developmental period. Highly sensitive, creative people are among the most vulnerable;

(3) There will be evidence of severe dietary and sleep deprivation;

(4) There will be [an] unwillingness or inability to endure even brief separation from the group, even [by] individuals who, until the encounter with the cult, had demonstrated independence in their daily lives.

*Id.*

365. *E.g.*, *Dymally Hearing*, *supra* note 16, at 29-31; Meeting Report, *supra* note 14, pt. 2, at 23-24 (physical and personality changes noted by parents).

366. The problem of developing reliable procedures for detecting mind-controlled cult indoctrinees is simpler than the comparable problem posed by the criminal defendant who wishes to assert his own brainwashing as a defense. Cult indoctrinees have been exposed to milieu that have been studied and that are known to involve thought-control techniques. *See generally* LEFKOWITZ REPORT, *supra* note 16 (detailing use of mind-reform techniques by Children of God). By contrast, the criminal defendant's history may be less well known and he may complain of mistreatment by a group about which little is known. Thus, resistance to accepting possibly imperfect procedures might be expected to be greater in the criminal context. Additionally, differences in the historical attitudes affecting the two contexts may color the outcome.

The criminal law assumes, initially, that persons act freely; a defendant must therefore show that coercive persuasion has been sufficient to render him nonresponsible. To justify intervention in the civil context, on the other hand, only requires a showing of harm—presumably a considerably lower burden of proof. Finally, the criminal law has traditionally been reluctant to recognize new defenses, in part because they reduce the certainty and *in terrorem* effect of criminal punishment. *Compare* *United States v. Alexander*, 471 F.2d 923, 963-64 (D.C. Cir.) (Bazelon, C.J.) (considering the implications of judicially-imposed reprogramming on a criminal defendant who invoked the defense of nonresponsibility) *cert. denied*, 409 U.S. 1044 (1972) with Reich, *Brainwashing, Psychiatry, and the Law*, N.Y. Times, May 29, 1976, at 23, col. 1 (brainwashing would constitute a major rent in the legal fabric of free will).

Nevertheless, mistaken diagnoses are possible. The pathology may be borderline; the examiner may be inexperienced with thought control.<sup>367</sup> The parent may be attempting to regain control for reasons unrelated to the welfare of the child, whose conversion may be genuine.

Such cases raise the problem of accommodating the risks of the two types of possible errors. In Type I error, a competent individual is treated as though he is incompetent.<sup>368</sup> Depending upon the remedy, he may be confined and subjected to therapeutic treatment designed to cure a problem that does not exist. Although he will presumably be discharged eventually, in the meantime he suffers a loss of personal liberty and is compelled to speak with or listen to psychiatrists or psychologists who will ask him questions about his most private thoughts and feelings.

In Type II error, an incompetent individual is presumed to be competent, and his refusal of treatment is respected.<sup>369</sup> As a result, no measures are taken to bring about his release, and the individual's stay with the cult will continue, perhaps indefinitely. The longer he remains with the group, the more entrenched the cult's control over his psyche will become and the lower the probability will be that he will be able to leave of his own accord. Since the risks of continued membership by an unconsenting individual appear to exceed those of treatment, and the time period during which those risks will operate is far longer, it appears reasonable to accept small numbers of Type I error if this is necessary in order to minimize consigning large numbers of unconsenting individuals to lives that they have not freely chosen (Type II error).<sup>370</sup> The risk-averseness that we ordinarily afford to decisions to impose treatment on possibly competent objecting adults is

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367. Other psychologists and psychiatrists may be wary of reporting a finding of mental impairment for fear of seeming to participate in an attack on religious belief. Interview with Cath, *supra* note 182 (some psychiatrists would refuse to label thoughts and behavior aberrant, even in the face of clear, severe pathology, if the individual expressed a claim that these were part of a religious system); Letter from Dougan, *supra* note 217 (expressing belief that religious thought control exists but must be tolerated even though it is harmful, since intervention would open the way to interference in the affairs of legitimate organizations). Analytically oriented therapists may believe, following Freud, that all religious belief is pathological, and, hence, that meaningful distinctions cannot be drawn among the various religious practices and beliefs. Finally, a group of psychiatrists known as the "antipsychiatry school" may distrust diagnoses of brainwashing because they believe all psychiatric judgments are political. *E.g.*, Szasz, *supra* note 3, at 11 (brainwashing is personal influence of a kind that we disapprove of; psychiatrists testify "for whoever pays them").

368. See Shapiro, *supra* note 328, at 729-30.

369. See *id.* at 730.

370. See *id.*; cf. *In re Winship*, 397 U.S. 358, 363 (1970) (proof-beyond-a-reasonable-doubt standard in criminal cases is designed to reduce the risk of erroneous convictions).

overborne by consideration of the greater risk of withholding treatment.<sup>371</sup> This conclusion, of course, assumes that relatively mild, noninvasive remedies are possible, a question which must now be addressed.

#### IV. REMEDIES

The foregoing analysis suggests that the cult brainwashing experience is harmful, that society has compelling interests favoring intervention, and that these exceed the interest of the religious groups in continuing such practices. Moreover, the harm produced is not consensual and is capable of being differentiated from that caused by other societal institutions that utilize some degree of coercive influence in promoting their objectives. It has been suggested that nonintrusive individualized remedies should be applied only to individuals whose need for them is demonstrable. While errors may occur, the cost of such errors can be kept within acceptable bounds by adopting appropriate procedures for diagnosis and judicial review.

In the following discussion of remedies, two assumptions are made. First, it is assumed that the appropriate remedy varies with the stage of the process at which it is aimed.<sup>372</sup> Second, it is assumed that first amendment constraints require that the remedy utilized at each stage be that which is least harmful in its impact on individuals in the religious group.<sup>373</sup>

##### A. PREVENTIVE REMEDIES

###### 1. Identification

Perhaps the least onerous remedy is a requirement that cult proselytizers identify themselves at an early stage and outline to the candidate what his life will be like should he join the cult, including a description of the duties to be performed and the benefits he will receive from membership. Such a requirement would be analogous to and consistent with consumer protection rulings that require door-to-door salesmen to identify themselves and give their affiliation,<sup>374</sup> in addition to obtaining a permit.<sup>375</sup> There is, in fact,

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371. The standard of proof required for imposing restrictions on personal liberty—a principal determinant of the "risk quotient" of any remedy—responds largely to considerations of the gravity of the effect of an erroneous determination. *In re Winship*, 397 U.S. 358, 362, 364 (1970); see Shapiro, *supra* note 328, at 730.

372. In general, milder remedies are available at earlier stages of the mind-control process; later stages require more drastic intervention.

373. Notes 325, 360 *supra*.

374. *Encyclopaedia Britannica, Inc.*, 87 F.T.C. 421, 516, 524-26, 531 (Mar. 9, 1976) (final order to cease and desist) (encyclopedia salesmen ordered to present to homeowners, at time of initial contact, a 3 x 5 in. card containing name of the corporation, name of the salesman, and the statement, "The purpose of this representative's call is to solicit the sale of encyclopedias." The corporation had utilized deceptive practices in the past, including a standardized sales

evidence that the Unification Church abides by this requirement when soliciting funds in places that have such requirements.<sup>376</sup> There is no evidence, however, that they feel under a similar duty of disclosure when proselytizing for new members. It would appear a simple matter to amend existing statutes to require the same disclosure by cults when they are recruiting new members as is required when they are fundraising.

## 2. "Cooling-off" Period

Other preventive remedies might include a mandatory "cooling-off"<sup>377</sup> period in which prospective members are required to leave the group. During this time they could reconsider their situation, seek advice, and decide whether to return for additional indoctrination.<sup>378</sup> Such a requirement would be more onerous in its effect on religious cults that practice thought control since it interrupts the continuity of the process. Still, it is intrusive only in that it affords an opportunity to leave to individuals who do not truly wish to join. Further, such a requirement is aimed at a group of individuals whose progress toward a condition of psychic servitude has proceeded further than that of individuals who are at the point of first contact with a recruiter. Hence, a slightly more intrusive remedy seems justified.

## 3. Public Education

Another preventive remedy the state could employ is public education, an approach urged by a recent New York State Attorney General report on the

approach in which customers were encouraged to believe the representative's purpose was to conduct a marketing survey or give away free books).

375. See, e.g., *Vermont Senate Judiciary Committee*, *supra* note 58, at 12 (possibility of passing identification ordinance); Letter from M. Oriel, *supra* note 190 (licensing requirement of solicitation ordinance); Meeting Report, *supra* note 14, pt. 2, at 23, 26-27 (violations of peddling, charitable soliciting statutes).

376. Interview with Carol Stoner, in Philadelphia, Pa. (Dec. 28, 1976) (on file with author) (Unification Church panhandlers in certain East Coast cities now wear badges identifying themselves as members of the church).

377. For cases and materials on "cooling-off" periods in a commercial setting, see P. KEETON & M. SHAPO, *PRODUCTS AND THE CONSUMER: DECEPTIVE PRACTICES* 454-61 (1972); Sandoval, *A Critical Analysis of the Cooling-Off Period for Door to Door Sales*, 3 *CHICANO L. REV.* 110 (1976). As with the self-identification requirement, see *supra* note 374, this requirement could be limited to organizations that had been shown to engage in deceptive or high-pressure tactics.

378. See *Dymally Hearing*, *supra* note 16, at 120-21 (need for cooling-off remedy); Smith, *supra* note 62 (one youth, after spending a weekend at the camp, managed to be alone for several hours and decided not to return. "As soon as . . . I had a chance to think, to analyze what had happened and how everything was controlled, I felt free and alive again—it was like a spell was broken"); Tampa Tribune, Feb. 7, 1976, at 3, col. 1 (ex-member reported that, with the help of her family and a deprogrammer, she realized she "was disillusioned and struck by the absurdity of it all").

Children of God.<sup>379</sup> Health authorities could launch educational campaigns designed to acquaint school-age children with the risks of associating with cults that utilize thought-reform methods. Such campaigns may be compared to present efforts by the state to discourage young people from smoking, drinking, and using addictive drugs.<sup>380</sup>

#### 4. *Prohibition of Proselytizing by Certain Groups*

An additional preventive remedy which is clearly more onerous is a flat prohibition of proselytizing by groups that utilize intensive psychological indoctrination of their members. This seems to be the theory upon which university organizations have acted in expelling Reverend Moon's cover groups from certain campuses.<sup>381</sup> Such a remedy would permit the groups to continue to exist at their present levels, but it would deprive them of an opportunity to solicit new members so long as they continued to utilize mind control techniques. Such rules may be compared to existing quarantine statutes,<sup>382</sup> under which the state acts to prevent contamination of outsiders by those known to have infectious diseases. Such a ban would also be similar in rationale to "snake cases"<sup>383</sup> and others which have upheld a

379. Cf. N.Y. Times, Oct. 14, 1974, at 37, col. 1 (Attorney General Lefkowitz asserts that alerting the public is one of the anticipated benefits of the Final Report on the Activities of the Children of God, LEFKOWITZ REPORT, *supra* note 16); note 334 *supra* (Jesuit seminary candidates encouraged to attend school for brief "try-out" period; they then leave the seminary, reflect, and consider whether to return).

380. For the opinion that simple disclosure would prove helpful, see *Vermont Hearings*, *supra* note 16, at 77-78 (college guidance professor and clergyman testified that "[i]f they told these young people the first time they saw them what it was all about, 99% would never go in. They would say that is a lot of hogwash"); Vermont Senate Judiciary Committee, *supra* note 58, at 212 (comments on consideration of an ordinance requiring members of the Unification Church to wear identifying badges); cf. *United States v. An Article or Device . . . "Hubbard Electrometer,"* 333 F. Supp. 357, 364-65 (D.D.C. 1971) (requiring labeling of Scientology E-Meter equipment to protect public from unqualified scientific claims).

Note that, while there is a constitutional issue of free exercise of religion in each of the enumerated remedies, here there is also an establishment-of-religion issue. The same considerations of least onerous remedy apply to both issues.

381. E.g., U. of R.I. Daily, Apr. 14, 1975, at 1 (reporting student senate vote to deny oncampus status to Collegiate Ass'n for the Research of Principles, a Unification Church front group, since this would not be "in the best interests of the students"); SUNY Memo, *supra* note 135 (denying campus status to Moon Group, and recommending that it "must never be granted S.A. [Student Association] recognition or any opportunity to function on campus" since it was considered "harmful to students").

382. E.g., CAL. HEALTH & SAFETY CODE §§ 3050-3051 (West 1970); MICH. COMP. LAWS §§ 329.1-3 (1970).

383. E.g., *State ex rel. Swann v. Pack*, 527 S.W.2d 99, 112 (Tenn. 1975), *cert. denied*, 424 U.S. 954 (1976). See also *Harden v. State*, 188 Tenn. 17, 216 S.W.2d 708 (1948) (based on statute, rather than public nuisance rationale). Although *Swann* has been criticized as overvaluing a questionable state interest, 1976 WASH. U.L.Q. 353, 362-65 (arguing that snake bites are less dangerous than the court assumed), and as failing to explore less restrictive alternatives, *id.*

public nuisance rationale to prevent exposing the public to harmful influences. Alternatively, the state's power to regulate in the interest of public health<sup>384</sup> could be exercised to deny cults access to physically harmful or debilitating techniques used to facilitate mind control, while tolerating their use of purely psychological procedures such as guilt manipulation, isolation, deception, and fear.

### 5. *Licensing*

Another approach would utilize not outright prohibition, but the licensing power to forbid unqualified individuals from engaging in psychologically intrusive practices.<sup>385</sup> Such practices could be considered examples of the illegitimate use of behavior modification techniques by persons who are not qualified psychologists or psychiatrists. Failure to abide by these restrictions would be punishable as practicing psychiatry or psychology without a license. Many states have such statutes,<sup>386</sup> and at least one State Board of Psychology was reported to be developing rules relating to private use of behavior modification, intended to be applicable to religious mind control.<sup>387</sup> Because of the widespread concern over the proliferation of unlicensed encounter group leaders and lay therapists,<sup>388</sup> such an application appears feasible.

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at 362, 365 (use of cages, prohibition of attendance by children and outsiders), these criticisms would not be applicable here if the state's interest in preventing harm is adequately substantiated, *see* notes 46-206 and accompanying text *supra*, and the remedy selected represents the least onerous available, *see* notes 372-73 and accompanying text *supra*.

384. The state has the power to regulate activity in the interest of the physical health and well-being of its citizenry. *See* *Prince v. Massachusetts*, 321 U.S. 158, 166-67, *rehearing denied*, 321 U.S. 804 (1944); *Jacobson v. Massachusetts*, 197 U.S. 11, 25-26 (1905).

385. *See Vermont Hearings*, *supra* note 16, at 34 (suggesting such practices be in the hands of the medical profession under the aegis of the law). *See generally* notes 48-119 *supra*.

386. Licensing statutes, and their varying coverages, are discussed in Comment, *Standard of Care in Administering Non-Traditional Psychotherapy*, 7 U. CAL. D.L. REV. 56, 77-81 (1974). These statutes fall into two principal groups: licensing acts, which ban the unlicensed practice of psychology, and certification acts, which proscribe the use of certain titles or words in describing the services offered by unlicensed individuals. Licensing statutes generally include a comprehensive definition of the practice and forbid unlicensed persons from engaging in the activities falling under the definition. *Id.* at 77-78. For this reason, licensing statutes would constitute more effective bars to the unauthorized practice of behavior modification by cults. Twenty states and the District of Columbia presently have statutes of this type. *Id.* at 78 & n.148. In some of these states, practicing psychology without a license is a misdemeanor, and the unlicensed practitioner is held to the same standard of skill and care as one who is qualified to practice under the statute. *Id.* at 78-79. In other states, the unlicensed practitioner is conclusively presumed to be negligent and is not given the opportunity to show that the professional standard of care was met. *Id.* at 79.

387. Letter from David D. Blyth, President, Ohio State Board of Psychology, (Feb. 27, 1975) (on file with author). Ohio has a licensing-type statute, *see* note 386 *supra*. OHIO REV. CODE ANN. § 4732.21 (Page 1971).

388. *E.g.*, Comment, *supra* note 386, at 62-67; Hearings on Abuses by Unregulated

## 6. *Request for Rescue*

A final prospective remedy or device, reminiscent of a "living will,"<sup>389</sup> consists of a statement in which the individual expresses a desire to be rescued should he come under the influence of a religious cult, together with a recitation that membership in any such group would be contrary to his wishes. This technique is sometimes used in connection with individuals who have recently left religious cults and are afraid that they might be tempted to rejoin the group in a moment of psychological weakness.<sup>390</sup>

Although it could be argued that this approach simply shifts the problem of ascertaining an individual's wishes to a more remote point—the moment when he signed the document—the procedure has the advantage that, properly used, it can avoid the problem of the deliberately altered personality whose profession of loyalty is itself programmed in. When used by ex-members, such "living wills" can give courts an indication of what the signer's wishes were at a time when both knowledge and capacity were presumably unaffected by others.<sup>391</sup>

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Therapists in the Mental Health Field, before Louis J. Lefkowitz, Attorney General of the State of New York (Dec. 15, 1972).

389. Compare CAL. HEALTH & SAFETY CODE § 7185-7195 (West Supp. 1977) (permitting withdrawal of medical care when adult patient has directed, in advance, in writing, that he desires this be done) with Kutner, *Due Process of Euthanasia: The Living Will, A Proposal*, 44 IND. L.J. 539, 550-54 (1968).

A model instrument, prepared by a parents' organization, reads as follows:

Know all men by these presents, that I, \_\_\_\_\_, — years old, reside at \_\_\_\_\_, am employed/am studying at \_\_\_\_\_, being duly sworn depose and say that I was psychologically attracted by \_\_\_\_\_ through what I now know and understand to be fraudulent methods and reasons. My free will was impaired by the group, and I was conditioned not to use my mind. I was led to believe that whatever was told to me, or ordered of me by my leaders was of God, and was taught to believe I should carry out the orders or wishes of the leaders without question.

I was living constantly under psychological control and at such time was not aware of said control.

On \_\_\_\_\_ I was rescued . . . For the first time in \_\_\_\_\_ I am able to think for myself and rationalize on my own. It is now my wish and desire to live the rest of my life without being denied by anyone the right to exercise my God-given right of freedom of choice. I love my family and am interested in mankind. I once again feel like a useful member of society. If in any event the \_\_\_\_\_ or any other cult psychologically or physically kidnaps me or takes me back, I am requesting immediate action by [sic] the authorities to come in and physically remove me from this cult as regardless of what I may say or do, I will not be acting of my own free will.

(signature)

(date)

SWORN TO AND SUBSCRIBED BEFORE ME ON THIS — th DAY OF \_\_\_\_.

(notary seal)

Sworn statement of \_\_\_\_\_, April 8, 1976. See also Tampa Tribune, Feb. 7, 1976, at 3, col. 1.

390. E.g., New Haven Advocate, Sept. 10, 1975, at 1, 6; Tampa Tribune, Feb. 7, 1976, at 3, col. 1; The Jewish Post, Apr. 11, 1975.

391. For discussion of manipulation of knowledge and capacity in cult joining process, see notes 296-305 and accompanying text *supra*.

Of course, nothing prevents cult leaders from requiring their followers to sign similar statements indicating that membership in the group is an individual's free decision, resulting in a potential "battle of the forms." Still, if it should appear to the court that the first document, unlike the second, was signed at a time when the individual was under no pressure and was making a free choice, the decision expressed by this document should be respected. This conclusion expresses an intuition that individuals should be permitted personal choices among possible futures and that these choices are entitled to legal protection against influences that can reverse such choices by making the individual less autonomous.<sup>392</sup>

### B. POST-INDUCTION REMEDIES

Once the victim is inside the cult, extrication generally requires forcible intervention, by either the state or a private individual, and the remedies accordingly become more onerous. These may include self-help remedies, as well as actions in which various types of judicial assistance are sought.

#### 1. *Self-Help and Deprogramming*

Prior to the development of conservatorship proceedings to remove cult victims from the group, the main remedy available to a parent or friend was self-help. This remedy is still used in jurisdictions where conservatorship and similar remedies are not available.

In self-help, the parents of a cult youth abduct the member from the cult residence or from a street corner, usually by force, and transport him to a home or motel room for "deprogramming," a form of marathon encounter therapy designed to neutralize the effects of cult conditioning and restore the victim's mental independence.<sup>393</sup> The deprogrammer, who may himself be an ex-cult member,<sup>394</sup> typically challenges the basis of the adherent's dependence upon and trust in the cult leaders and attempts to show him that he has been manipulated and duped.<sup>395</sup> He may demonstrate that the cult

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392. See also notes 316-22 and accompanying text *supra*.

393. See generally T. PATRICK, *supra* note 27 (descriptions of deprogramming); Gunther, *supra* note 21, at 16-17; Harayda, *supra* note 130, at 260; Robins, *supra* note 100, at 37, 80; L.A. Times, Jan. 3, 1977, pt. 1, at 1, col. 1, at 3, col. 6.

394. E.g., R. ENROTH, *supra* note 14, at 197; Danvers Herald, June 3, 1976, reprinted in ACLU DEPROGRAMMING CONFERENCE, *supra* note 157, at 43, 87-88 (citing number of deprogrammed cult members who have joined deprogramming teams); L.A. Times, Jan. 3, 1977, pt. 1, at 1, col. 1, at 3, col. 3. Some deprogrammers are priests or ministers, e.g., Jaffe & Nafsinger, *supra* note 226, at 3, col. 1.

395. See Vermont Senate Judiciary Committee, *supra* note 58, at 25-26; Clearwater Sun, Sept. 28, 1976, at 1-A, col. 1, reprinted in ACLU DEPROGRAMMING CONFERENCE, *supra* note 157, at 103-04; L.A. Times, Jan. 3, 1977, pt. 1, at 1, col. 1.

leaders live in luxury—a fact some members do not know—while the member's own standard of living and that of the rank and file members has been extremely austere.<sup>396</sup> He may point out inconsistencies in the cult's theological beliefs or attempt to show that they are contradicted by Biblical passages.<sup>397</sup> He may also attempt to show that certain of the cult's teachings are false, such as that the young person's parents hate and reject him.<sup>398</sup> Some deprogrammers adopt an abrasive and confrontational tone,<sup>399</sup> although use of physical force appears to be rare. During the deprogramming the individual is not free to leave the room, except for sleeping and attending to personal needs.<sup>400</sup>

The typical cult member at first responds passively, by chanting, or pretending not to hear what the deprogrammer is saying.<sup>401</sup> Generally, however, the deprogrammer will succeed in engaging the individual's attention and will manage to draw him into an exchange—often an angry one.<sup>402</sup> Once the person "opens up," the deprogramming proceeds rapidly, as layers of false beliefs and programmed-in responses are peeled away.<sup>403</sup> Soon there comes a "breaking point," often a highly emotional scene during which the individual may laugh, weep, embrace the deprogrammer, or request to see his parents.<sup>404</sup> At this point, the individual often expresses

396. *E.g.*, R. ENROTH, *supra* note 14, at 79; T. PATRICK, *supra* note 27, at 32.

397. T. PATRICK, *supra* note 27, at 25-26, 32, 67, 78; Gunther, *supra* note 21, at 16-17; Shapiro, *supra* note 52, at 81; Tampa Tribune, Feb. 7, 1976, at 3, col. 1 (reading of complete texts of Biblical passages that had been presented out of context).

398. R. ENROTH, *supra* note 14, at 79-80 (parental love and communication as critical factors of deprogramming); Rensberg & Rensberg, *The Rescue of Alison Cardais*, GOOD HOUSEKEEPING, Apr. 11, 1976, at 109, 141 (critical aspect of deprogramming was parents' display of love); Clearwater Sun, Sept. 28, 1976, at 1-A, col. 1, *reprinted in* ACLU DEPROGRAMMING CONFERENCE, *supra* note 157, at 105; Interview with Cath, *supra* note 182 (importance of emphasizing love, and acceptance of youth's spiritual quest that prompted cult experience); *see* T. PATRICK, *supra* note 27, at 34-36, 78-79 (parental love and affection is the critical point of the return process).

399. *E.g.*, T. PATRICK, *supra* note 27, at 75, 78-79; TIME, June 14, 1976, at 50; New Haven Advocate, Sept. 10, 1975, at 1, col. 2, at 6, col. 2 (Patrick speaks loudly, but "all he does is try to get you to use your own mind" (statement of parent)).

400. *E.g.*, T. PATRICK, *supra* note 27, at 68, 71-72, 97 (security arrangements during deprogramming).

401. *E.g.*, *id.* at 8-9.

402. *E.g.*, *id.* at 60-61, 72; Gunther, *supra* note 21, at 17 (cult member finally began to ask questions and argue with her parents; "[t]hat's when I knew we had her back").

403. *E.g.*, T. PATRICK, *supra* note 27, at 35, 79, 209. One technique deprogrammers may use is to play recordings and videotapes designed to show the victim more about the cults or cult leaders. *E.g.*, Harayda, *supra* note 130, at 260 (deprogrammer played NBC documentary on Moon); *see* R. ENROTH, *supra* note 14, at 12, 34 (similarities among cults). *But see* Galper, *supra* note 62, at 2 (existence of a continuum of techniques applied and degree of isolation from previously established social support systems accomplished among various cults).

404. *See* Shapiro, *supra* note 52, at 81-82 (medical professor describes process as "abreactive techniques" used to reinstate normal emotional and cognitive functioning).

indignation at the cult for the theft of his mind and personality.<sup>405</sup> After a successful deprogramming there usually follows a period of several months during which the individual undergoes a painful readjustment to life outside the cult.<sup>406</sup> Until full integration occurs, the individual may experience moods of introspection and depression, during which he is again susceptible to an approach by the cult.<sup>407</sup> Ex-members frequently band together in discussion groups to aid each other's progress toward self-insight and readjustment to life in the community.<sup>408</sup>

Although accurate estimates are difficult to obtain, it appears that approximately 1,000 deprogrammings have been attempted in the last few years, a majority of them successful.<sup>409</sup> Perhaps partly because of their success, deprogrammers have been severely criticized by religious cults, who have filed both civil and criminal actions against parents and deprogrammers in several parts of the country.<sup>410</sup> Law enforcement authorities frequently decline to proceed with charges on the ground that these are "family matters" best resolved outside the courts.<sup>411</sup> In some cases, grand juries have refused to indict,<sup>412</sup> and in one case, after hearing the evidence, a

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405. See R. ENROTH, *supra* note 14, at 121 ("It's wonderful to be able to wake up in the morning and say, 'Thank God, I can do what I want today'"); T. PATRICK, *supra* note 27, at 79 (like waking up from a nightmare); Robins, *supra* note 100, at 37, 117 (thankful for his "freedom"); TIME, June 14, 1976, at 50 ("felt as though a light had been turned on in the room and a burden lifted from my shoulders. I really was free"); Chicago Tribune, Aug. 11, 1975, § 3 (Tempo), at 1, col. 2, at 3, col. 4 ("[I]t was like coming out of prison . . . My life had been totally taken away. I was a robot. What a fantastic joy it was to be a person again").

406. Robins, *supra* note 100, at 37, 117 ("floating" period following deprogramming); Open letter from Merritt, *supra* note 22 (recovery process lasts up to one year; many are sick, suicidal, or must be hospitalized; weaning process must be gradual until normal ego functions resume); Open letter from Clark, *supra* note 105 (most ex-cult members experience psychotic symptoms and depression lasting 6 to 12 months; as time passes their emotional responses begin to normalize as reality testing reinstates itself).

407. Open letter from Clark, *supra* note 105.

408. Interview with Cath, *supra* note 182.

409. T. PATRICK, *supra* note 27, at 37 (claiming over 1,000 deprogrammings); ACLU DEPROGRAMMING CONFERENCE, *supra* note 157, at 86-89 (majority of Hare Krishna deprogrammings listed were successful); Waters, *supra* note 15, at 100 (vast majority of more than 1,000 deprogrammings in recent years were successful); see ALL GODS CHILDREN, *supra* note 9, at 243, 252-74, 287; ACLU DEPROGRAMMING CONFERENCE, *supra* note 157, at 63-127.

410. E.g., United States v. Patrick, No. CR-74-320-S (W.D. Wash. Dec. 11, 1974) (deprogrammer acquitted, defense of necessity upheld); Leal v. Trauscht, No. 484579-9 (Alameda County (Cal.) Super. Ct., filed Aug. 20, 1976) (civil complaint for false imprisonment); People v. Florence, No. 8699 (Fullerton (Cal.) Mun. Ct. May 6, 1975) (deprogrammer convicted, parents fined).

411. T. PATRICK, *supra* note 27, at 99, 192 (incidents where police took such an attitude); Telephone interview with MacPherson, *supra* note 206 (on file with author) (Canadian police take a hands-off attitude toward deprogrammer's work; even assist in locating cult victims).

412. Interview with Patrick Wall, attorney, in New York, N.Y. (Apr. 5, 1976) (on file with author) (grand juries frequently refuse to indict).

grand jury decided instead to proceed with an indictment against the cult leaders for maintaining the youths in a state of unlawful imprisonment by psychological means.<sup>413</sup>

Critics of deprogramming argue that these methods amount to nothing less than an attack on freedom of religion,<sup>414</sup> that they in themselves constitute a brainwash,<sup>415</sup> and that they promote violence<sup>416</sup> as well as distrust between cult children and their parents.<sup>417</sup> Finally, some consider deprogramming to be simply a tool by which some parents seek to reassert their influence over children who reject them and their values.<sup>418</sup>

Defenders counter that strong measures are necessary to counteract the effects of months or years of conditioning,<sup>419</sup> and that virtually all those who complete deprogramming subsequently praise it and declare that without it their freedom would have been impossible.<sup>420</sup> Deprogrammers assert that

413. Interview with Michael Schwed, Assistant District Attorney, in Queens, N.Y. (Dec. 29, 1976) (on file with author); see notes 509-16 and accompanying text *infra*.

414. *Vermont Hearings*, *supra* note 16, at 123, 129, 137, 139, 153; Editorial: *Deprogramming and Religious Liberty*, 29 CHURCH & STATE 212 (conceding that cults may utilize unfair, high-pressure recruitment and indoctrination tactics, but arguing that the cure—deprogramming—is worse than the disease).

415. ACLU DEPROGRAMMING CONFERENCE, *supra* note 157, at 5-8, 136, 138 (labelling Patrick's style as Inquisition-like).

416. See Letter from Michael Pancer, ACLU attorney, to H.C. (Sept. 7, 1973). But see *The Oregonian*, May 17, 1977, at 4, col. 1 (stories of violence in deprogramming described as cult propaganda to terrorize own members).

417. E.g., ACLU DEPROGRAMMING CONFERENCE, *supra* note 157, at 100 (attempted rescue caused conflict, breakdown in communications between cult youth and family); see ALL GODS CHILDREN, *supra* note 9, at 266 (deprogramming, if unsuccessful, can damage family relationships).

418. Brief for Respondents, *People v. Sacks*, *supra* note 30; *Christian Sci. Monitor*, Feb. 9, 1977, at 7, cols. 1, 2 (attorney states central issue of deprogramming is "the right to go to the church you want and not the church your momma wants you to"). See generally ACLU DEPROGRAMMING CONFERENCE, *supra* note 157, at 194, 201-07 ("The parents' desperation opens them to the deprogrammers' persuasions and any blame or guilt is shifted to whatever group the son or daughter may have joined. . . . 'Parents want to believe in brainwashing so badly because otherwise they have to admit to themselves that the kid they devoted 15 or 20 years to has rejected them and their values. That's a bitter thing for a parent to have to admit.'—Dr. Thomas Szasz").

419. E.g., L.A. Herald-Examiner, Sept. 11, 1976, at A7, col. 2 (psychologist defends marathon technique as essential since cult indoctrinees "can hypnotize themselves by reciting chants or mantras," thereby destroying progress made in deprogramming). See also *Vermont Hearings*, *supra* note 16, at 2; R. ENROTH, *supra* note 14, at 79; Interview with Clark, *supra* note 101; note 467 *infra* (infrequency of voluntary departure from religious cults).

420. Note 405 *supra*. Of course, it can be argued that the praise is itself the product of the deprogramming. But an adequate response to this objection is that: (1) the deprogrammed individual understands his own deprogramming and can discuss intelligently and with full understanding the procedures used, notes 306-16 and accompanying text *supra*; (2) the procedures are aimed at reinforcing, not bypassing or weakening, the individual's rational faculties, notes 99-103, 129-52 *supra*; (3) the individual views his present (deprogrammed) condition as the "natural" state, i.e., as a return to the way he thought and felt formerly, see Shapiro, *Legislating Control*, *supra* note 1, at 255, 284, 303. See generally R. ENROTH, *supra* note 14, at

their methods do not seek to destroy religious belief, pointing out that many ex-cult members remain devout, although they may well reject the programmed-in values and catch phrases learned from the cult.<sup>421</sup> Deprogramming, they argue, seeks instead to release the individual from a state of psychological bondage which has nothing to do with true religious belief or practice.<sup>422</sup> In response to the argument that deprogramming is simply a "second brainwash," they point out that deprogramming only attempts to return the individual to his former condition; it does not seek to implant new values, impose a new set of loyalties, or compel the young person to become a compliant son or daughter.<sup>423</sup>

Psychiatrists and psychologists are divided on the subject of forceful deprogramming carried out by lay personnel. Many, while mindful of the dangers of stressful approaches, believe deprogramming offers the only effective therapy for cases of hardened, long-term indoctrination.<sup>424</sup> Others feel that a more gradual approach is preferable—one in which the deprogrammer does not press for an immediate breakthrough and accepts the legitimacy of the spiritual quest that prompted the young person's journey.<sup>425</sup> All agree that an attempt to utilize the therapeutic encounter to force the subject to accept his parents' control or values is illegitimate.<sup>426</sup> A minority believe that encounter-type therapy may be unnecessary and that simple supportive therapy conducted in a neutral environment will permit the victim's personality to reassert itself in time.<sup>427</sup> All agree that deprogramming must never include an attack on all religion or religious belief.<sup>428</sup>

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95-96 ("I would never have left on my own . . . No way"), 120 ("I would have never left by myself").

421. R. ENROTH, *supra* note 14, at 80; T. PATRICK, *supra* note 27, at 77; ALL GODS CHILDREN, *supra* note 9, at 250-51, 289. *But see* R. ENROTH, *supra* note 14, at 34 (ex-cult member who did not undergo deprogramming, now is not concerned about religion—"I've had an overdose").

422. The Oregonian, May 17, 1977, at 4, col. 1 (statement of Margaret Singer, psychologist, that ex-cult members continue to be "deeply religious").

423. R. ENROTH, *supra* note 14, at 195 (asserting that deprogramming is not a second brainwashing; deprogrammers do not use same techniques as cults; purpose of deprogramming is to "neutralize" coercive persuasion techniques and their effects). *See also* note 448 *infra*.

424. Interview with Clark, *supra* note 101. *See also* ALL GODS CHILDREN, *supra* note 9, at 240 (dangers of unqualified deprogrammers who "dabble in the sanity of . . . young people"), 269.

425. Letter from Cath, *supra* note 22 (suggesting that placing individuals in neutral atmosphere is designed to protect them from cult contact and domination).

426. Interview with Cath, *supra* note 182; Interview with Clark, *supra* note 101; Interview with Merritt, *supra* note 157.

427. Stoner & Parke, *How to Rescue Your Child from a Cult*, Oakland Tribune, June 19, 1977 (Magazine), at 18, col. 1. *But see* ALL GODS CHILDREN, *supra* note 9, at 250.

428. *E.g.*, Interview with Cath, *supra* note 182; Interview with Clark, *supra* note 101;

a. *The defense of necessity*: Many of these claims and counterclaims have been tested in cases where an unsuccessful deprogramming attempt has resulted in criminal charges being lodged against the deprogrammer, his assistants, or the parents.<sup>429</sup> The charges, which may range from unlawful imprisonment to kidnaping, are often answered by a defense of justification or necessity. Sometimes called the "choice of evils" defense, necessity is recognized by the Model Penal Code<sup>430</sup> and has been adopted, either statutorily or by judicial act, in about one-half of the American jurisdictions.<sup>431</sup>

To be successfully asserted, the defense of necessity requires that the rescuer act under a belief that his intervention is necessary to avoid an evil greater than that likely to result from inaction.<sup>432</sup> The purpose of the defense is to prevent individuals from being forced to make a Hobson's choice:

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Interview with Merritt, *supra* note 157; cf. T. PATRICK, *supra* note 27, at 82 (distinguishing cults and traditional religion, implying that the latter is not being attacked).

429. *E.g.*, United States v. Patrick, No. CR-74-320-S (W.D. Wash. Dec. 11, 1974) (defense of necessity upheld); People v. Patrick, N-320-778 (N.Y. Crim. Ct. Mar. 30, 1973); N.Y. Times, July 24, 1973, at 42, col. 1, noted in T. PATRICK, *supra* note 27, at 179-80. With respect to unlawful imprisonment charges, the judge instructed the jury as follows:

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

People v. Patrick, N-320-778 (N.Y. Crim. Ct. Mar. 30, 1973), transcript at 4. The judge enumerated a number of considerations relevant to the jury's determination of a condition of necessity that would warrant the parents' acts. These included domination by the elders of the youth's mental processes, severing of relationships with the world outside the cult, including the boy's parents, and instilling of fear of demons and guilt over past sins. *Id.* at 4A, 5. The defense of necessity has been rejected in a number of cases on various grounds. *E.g.*, People v. Patrick, 541 P.2d 320 (Colo. 1975) (lower court refused to instruct jury on choice-of-evils defense because it is believed that, while there existed danger to the young woman, there was no evidence of an imminent public or private injury on the day the action was carried out, Interview with John Smith, attorney, in Boulder, Colo. (July 2, 1976) (on file with author)); People v. Florence, No. 8699, People v. Patrick, No. 8688, People v. Sacks, No. 8686, Court Transcript (Fullerton (Cal.) Mun. Ct. May 6, 1975) (judge refused to permit defense of necessity, since doing so would infringe religious freedom and since the court would be unable to "draw the line" between cult's beliefs and practices and those of other groups).

430. MODEL PENAL CODE § 3.02 (Proposed Official Draft, 1962).

431. See statutes and cases collected in Arnolds & Garland, *The Defense of Necessity in Criminal Law: The Right to Choose the Lesser Evil*, 65 J. CRIM. L. & CRIMINOLOGY 289 (1974).

432. MODEL PENAL CODE § 3.02(1) (Proposed Official Draft, 1962) ("conduct which the actor believes to be necessary to avoid"). Some states employ an "objective" standard in which the evil confronted must actually exceed the harm resulting from intervention. *E.g.*, N.Y. PENAL LAW § 35.05(2) (McKinney 1975); see W. LAFAYE & A. SCOTT, HANDBOOK ON CRIMINAL LAW 381 (1972) (violation justified "if the harm which will result from compliance with the law is greater than that which will result from violation of it").

break the law, or obey the law and permit a greater harm.<sup>433</sup> Accordingly, the remedy is not applicable where the actor has available a third choice that would have averted the evil without violating a statute.<sup>434</sup> The defense is thus available only when a parent or other rescuer can demonstrate that no legal remedies were available.<sup>435</sup>

Trial courts that have entertained such cases have split widely. Some, faced with expert testimony concerning the harmfulness of cult life, have permitted the defense to go forward.<sup>436</sup> Others have denied the defendants an opportunity to present such a defense,<sup>437</sup> often out of a concern that doing so would violate religious liberty.<sup>438</sup> In those cases where the defense has been permitted to go forward, it generally appears to have been believed by the jury, as these cases have usually resulted in acquittal.<sup>439</sup>

Because of the development of remedies that do not require the parent to take the law into his own hands, it seems likely that the defense of necessity will recede in importance in the future. In the meantime, however, one observation may be made concerning its appropriate use.

The fear that permitting a defense of necessity uniquely raises first amendment problems is unnecessary. The harm that mind control techniques can cause has been documented in a number of legislative and attorney-general reports,<sup>440</sup> and is supported by a substantial body of psychological and psychiatric literature.<sup>441</sup> Thus, the courtroom is unlikely to hear statements that have not already appeared elsewhere. Moreover, the defense of necessity will not ordinarily be aimed at religious belief as

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433. See W. LAFAVE & A. SCOTT, *supra* note 432, at 381. If the child is an unemancipated minor, the parent may simply reassert his right to custody; indeed, the parent, if he knows his son or daughter is being exposed to hazardous conditions inside the cult, may be under an affirmative duty to rescue the child. W. PROSSER, *supra* note 156, § 56, at 342. For parents' right to control religious training of their minor children, see *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

434. W. LAFAVE & A. SCOTT, *supra* note 432, at 387.

435. Notes 454-76 and accompanying text *infra*.

436. See, e.g., *United States v. Patrick*, No. CR-74-320-S (W.D. Wash. Dec. 11, 1974) (upholding defense of necessity); *People v. Patrick*, No. N-320-778 (N.Y. Crim. Ct. Mar. 30, 1973); N.Y. Times, July 24, 1973, at 42, cols. 1, 2, reported in part in T. PATRICK, *supra* note 27, at 154-80.

437. See, e.g., *People v. Florence*, No. 8699, *People v. Patrick*, No. 8688, *People v. Sacks*, No. 8686, Court Transcript (Fullerton (Cal.) Mun. Ct. May 6, 1975); *People v. Patrick*, 541 P.2d 320 (Colo. 1975).

438. See note 437 *supra*.

439. See, e.g., *People v. Patrick*, No. N-320-778 (N.Y. Crim. Ct. Mar. 30, 1973), reported in part in T. PATRICK, *supra* note 27, at 154-80.

440. See generally *Vermont Hearings*, *supra* note 16; LEEKOWITZ REPORT, *supra* note 16.

441. Notes 47, 79, 83, 88-89, 99, 101, 103, 105, 130-33 *supra*.

such,<sup>442</sup> but rather at practices that are utilized to expand the numbers and power of groups that happen to be religious. Religious practice or conduct has historically been afforded a much lower standard of protection than religious belief and is subject to a balancing test in which the harmfulness of the practice is weighed against the interest of the group in practicing it.<sup>443</sup> This inquiry, which courts have pursued countless times, involves considerations no different from those likely to be considered in a defense of necessity.

Permitting the defense to go forward thus raises no insurmountable problems under first amendment doctrine. The defense will involve hearing expert testimony by psychologists, psychiatrists, and ex-cult members with regard to the practices of the group in question. The judge can easily bar any material he deems scandalous, extraneous, or prejudicial.

b. *Assessment of deprogramming*: Whether pursued through legal channels or as part of a self-help rescue attempt, deprogramming or other similar forms of confrontation therapy may well prove to be the only way certain victims can be retrieved from a state of mind control. If so, such therapy will best avoid conflict<sup>444</sup> with first amendment principles if it is maintained within certain guidelines:

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442. Note 432 and accompanying text *supra*.

443. Note 42 and accompanying text *supra*.

444. Although there are clear differences between deprogrammers and cult conditioners both in motives and methods, as well as in the type of changes that each produces, there are a number of disconcerting similarities, particularly in case of lay deprogrammers such as Ted Patrick. Physical or legal coercion is necessary to the beginning of a deprogramming, for the cult member cannot be induced to enter into the process voluntarily. Deception is sometimes used to initiate contact between the deprogramming team and the subject. Deception may be employed during the deprogramming itself; Ted Patrick, for example, sometimes tells young cultists that the process may take months, when in fact it is normally accomplished in a few hours or days. T. PATRICK, *supra* note 27, at 24-25. Deprogramming, like cult conditioning, can only be accomplished in a controlled environment. Locked rooms are essential, and unless the room is located on an upper story, all windows are sealed to prevent escape. The shouts or protests of the subject must not be heard by police or passersby who might choose to intervene and disturb the deprogramming. At times, Ted Patrick limits the hours of sleep of his subjects, allegedly in order to provide greater continuity to the process. *Id.* at 76-77; ALL GODS CHILDREN, *supra* note 9, at xiv (cult members reported being "deprived of sleep").

At times, some deprogrammers adopt a totalistic view toward the cult, reminiscent of the "we-they" attitude of cults toward life outside the commune. Positive aspects of cult membership, if there are any, are ignored, and the ideals and leaders of the cult are ridiculed and attacked. The deprogrammer may tear up images of the cult's leader, T. PATRICK, *supra* note 27, at 189, draw a Devil's caricature on his photograph, *id.* at 24, or insult him ("Moon is a pimp . . . and you're nothing but a male prostitute," *id.* at 23). Practices such as trance-like dancing or speaking in tongues are mimicked and mocked.

Ted Patrick sometimes accompanies psychological attacks with the use of physical force. Though he argues that these actions are used only in response to violence by the subject, they

(1) Involuntary deprogramming should not proceed unless there has been a prior judicial determination that the individual is incompetent or under mind control.<sup>445</sup>

(2) Therapy should not proceed until milder measures, including removal to a neutral environment for a period of time, have failed.<sup>446</sup>

(3) Therapy should not be aimed at destroying or questioning the content of the individual's religious beliefs or the truth value of such beliefs.<sup>447</sup>

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may also be used to frighten him into paying attention. The deprogramming of one Hare Krishna member, for example, began with the forcible cutting of his pigtail, the mark of membership. *Id.* at 187-88.

The manipulation of guilt and anxiety that characterizes cult indoctrination also has its counterpart in Ted Patrick's arsenal. The subject's feelings of guilt toward his family are sometimes stirred up and pressed by the deprogrammer. *Id.* at 33-36. Guilt over failure to achieve in life may be exploited by the deprogrammer's charges that the cultist is throwing his life away. After the "breaking point" is reached, the young subject is kept away from cult associations and kept busy, preferably in the company of other ex-cult members in order to establish peer pressure to continue to reject the cult. It is even thought, by Patrick, wisest to "[k]eep him away from the Bible." *Id.* at 35.

Patrick's methods are clearly among the most extreme and are rejected by many other deprogrammers. *See* notes 425-28 *supra*. Even so, it must be conceded that there are clear differences between his approach and that of religious cults.

The intent in deprogramming is to produce an autonomous individual able to make independent choices. The deprogrammer—and, generally, the parent as well—does not maintain control of the subject after the process is finished. There is no continuing financial gain to the deprogrammer, even though he may have received several thousand dollars for a few days' work. Parental motives in deprogramming may at times be less unselfish, particularly if they exert pressure on the child to become conformist or achievement-oriented. In general, though, most parents appear to tolerate deviant lifestyles by ex-cult members as long as these appear to be freely chosen by the individual.

445. *See* notes 454-76 and accompanying text *infra* (description of conservatorship-guardianship remedy).

446. *Christian Sci. Monitor*, Feb. 9, 1977, at 7, cols. 1, 2 (author proposes that conservatorship remedy could be made fairer by requiring that young cultists "be placed in a neutral environment where they can't be propagandized by either side").

447. An assault on religious belief—as opposed to conduct—would, of course, be subject to the most intense scrutiny. *Cantwell v. Connecticut*, 310 U.S. 296 (1940); *see* note 42 *supra*. It could be argued that the Constitution's protection of free exercise of religion should be understood to include only religion that is chosen freely—*i.e.*, that the phrase "free exercise of religion" means "exercise of free religion." *See* notes 265-67 and accompanying text *supra* (Jeffersonian view of religious freedom); *cf.* *United States v. Jakobson*, 325 F.2d 409, 415 (2d Cir. 1963) ("The freedom which the Constitution protects is the freedom to exercise the religion of one's choice").

This assertion gains plausibility from the observation that the values implanted in the victim could just as easily be ideological, *see* *HEARST*, *supra* note 6 (military-political); note 4 *supra* (POW cases), or those of a drug-criminal subculture, *see* *BUGLIOSI*, *supra* note 5. Conscientious objector cases, however, demonstrate that religious values are *sui generis* and not interchangeable with political values, economic theories, philosophical systems, or a merely personal moral code. *Welsh v. United States*, 398 U.S. 333, 342-44 (1970); *United States v.*

(4) Therapy should not be aimed at reuniting the individual with his parents or at convincing him to adopt a conventional set of values or lifestyle.<sup>448</sup>

(5) Therapy should be terminated as soon as it becomes apparent that the individual has been freed of mental restraints and is able to accept or reject further treatment.<sup>449</sup>

(6) If the therapist perceives that the individual has recovered his freedom of choice and is physically able to function outside the treatment site, the therapist should ask the individual where he chooses to go and offer to assist him in making travel arrangements. If the therapist feels it desirable to ask the individual if he would like to return to his parents, he should also ask him whether he wishes to return to the cult. He should make clear to the individual that he is free to go wherever he chooses.<sup>450</sup>

(7) If the therapist believes the individual would be helped by participation in group counseling with other ex-cult members, he should first ascertain that the orientation of any group he recommends is therapeutic, rather than political or dogmatically anticult.<sup>451</sup>

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Seeger, 380 U.S. 163, 165-66 (1965). Since the values implanted as a result of cult conditioning are, at their inception, interchangeable with these other nonprotected belief systems, it could be argued that it is anomalous to afford them any greater protection once implanted into the mind of the nonconsenting recipient. See note 242 *supra*.

Even if the values implanted are held to be religious and hence protectible, it may appear impossible to determine whether they are the victim's own. See HEARST, *supra* note 6, at 258, 260, 288 (forced adoption of an alternate personality); text accompanying notes 306-23 *supra* (identity change in cult members).

Since most deprogrammers claim to avoid any direct attack on religious belief, these arguments could only be tested in the presumably rare case in which a deprogrammer exceeded the usual bounds and set out to obliterate an adherent's religious belief itself.

448. One clinical psychologist writes that it is essential for the deprogrammer to resist the possible pressure from parents or others that the child be "re-programmed," rather than deprogrammed. "I feel a clinical obligation to permit the ex-cult member the opportunity to choose whatever value system he desires so long as . . . he is utilizing ego functioning and is testing out reality and not responding to a socially-induced psychotic state." Letter from Gilmartin, *supra* note 88. Ensuring that deprogramming is carried out only by trained professionals and under the supervision of the court can limit the possibility that deprogramming will serve illegitimate or abusive ends.

449. Cf. Katz, *The Right to Treatment—An Enchanting Legal Fiction?*, 36 U. CHI. L. REV. 755, 778-79 (1969) (discussing suggestion that treatment of incompetents should continue only until they are able to understand their condition and accept or reject further treatment).

450. Cf. Letter from Gilmartin, *supra* note 88 (youth should be free to choose whatever value system he desires).

451. Some "rehabilitation centers" are centers of anticult activity as well. E.g., ALL GODS CHILDREN, *supra* note 9, at 285 ("many . . . programs . . . serve simply to keep the subject busy and reinforce . . . antagonism toward the cult"). For a description of programs offering a more objective approach, see *id.* at 286-89.

(8) Whenever possible, deprogramming should be carried out by licensed psychologists or psychiatrists, or by lay individuals working under the supervision of a psychologist or psychiatrist.

(9) Involuntary deprogramming should be carried out only pursuant to a court order and with periodic reporting to the court.<sup>452</sup>

(10) The court hearing that results in a deprogramming order should be accompanied by due process protection, including the right of the individual to appear, to be represented by counsel, and to present witnesses on his own behalf.<sup>453</sup>

## 2. *Conservatorship and Guardianship*

All states have mental health, probate, or conservatorship provisions that permit family members, interested persons, or the state to take control over an incompetent person.<sup>454</sup> Sometimes these provisions also provide for temporary or emergency guardianships or conservatorships of brief duration following a hearing at which the moving party establishes the individual's need for protection.<sup>455</sup> At the end of the period, typically 20 or 30 days, the individual and his guardian or conservator reappear in court, at which time the judge decides whether the control should continue.<sup>456</sup>

Beginning in 1975, a team consisting of a court psychologist and two attorneys working for the prosecutor's office in Pima County, Arizona, have utilized conservatorship proceedings<sup>457</sup> to achieve the release of nearly two

452. Notes 454-76 and accompanying text *infra* (conservatorship remedy).

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

454. See *id.* at 266-302 (collection of state statutes).

455. CAL. PROB. CODE § 2201 (West Supp. 1977) (temporary conservatorship of the person of an incompetent in emergency situations); UNIFORM PROB. CODE § 5-310 (temporary guardianship for period not to exceed 6 months); C.J.S. *Guardian and Ward* § 11, at 28 (temporary guardianships). Some judges have ordered temporary conservatorships in cult cases even in the absence of a statute, under the "inherent powers of the court" to protect those under disability. *E.g.*, Wash. Post, Oct. 10, 1976, at B-1, col. 1 (description of situation in which judge appointed a temporary guardianship) reprinted in ACLU DEPROGRAMMING CONFERENCE, *supra* note 157, at 166. At the time of writing, the Vermont legislature, after extended hearings, see generally *Vermont Hearings*, *supra* note 16, was reported to be considering enacting a temporary conservatorship statute that would enable parents or friends to extricate cult children ensnared in psychologically harmful environments, Telephone interview with Eric Schupp, attorney, at Essex Junction, Vt. (Nov. 14, 1977) (on file with author). Several other states were reportedly considering similar legislation, N.Y. Times, Feb. 6, 1977, at 27, col. 1, and a bill was being drafted in Congress aimed at preventing psychological enslavement, *id.* See also NEWSWEEK, Feb. 21, 1977, at 44 (at least three states in addition to Vermont are considering conservatorship statutes).

456. See, e.g., CAL. PROB. CODE §§ 1754, 2201 (West Supp. 1977).

457. *E.g.*, *In re Petri*, No. NCP 5267B (L.A. County (Cal.) Super. Ct. Mar. 1, 1976); *In re*

dozen cult members pursuant to legal process.<sup>458</sup> The prosecutors help families obtain a writ of habeas corpus ordering the cult authorities to produce the member for a court hearing on the issue of the member's competency.<sup>459</sup> In order to prevent the cult's hiding the victim or transferring him to a distant commune, local sheriff's deputies may serve the writ without advance notice and in the early morning hours.<sup>460</sup> Then, testimony on radical behavioral and mentational changes is given to persuade the judge to issue a temporary conservatorship order.<sup>461</sup> During the ensuing conservatorship period, the cult member is questioned by a hired deprogrammer working under the direction of the court psychologist.<sup>462</sup> At the end of the period, the member is free to return to the cult. Of the first nearly two dozen members deprogrammed, only one has chosen to return.<sup>463</sup> The procedure has been upheld by local courts in Arizona,<sup>464</sup> although challenges are in progress in other states,<sup>465</sup> and a California appellate court recently declared deprogramming carried out under a state conservatorship statute unconstitutional under the circumstances of the case.<sup>†</sup> The team has successfully

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Coleman, No. 16386 (Mendocino County (Cal.) Super. Ct. Dec. 3, 1975); *In re Surber*, No. G-946 (Pima County (Ariz.) Super. Ct. Oct. 24, 1975).

458. U.S. NEWS & WORLD REP., June 14, 1976, at 53-54; Christian Sci. Monitor, Feb. 9, 1977, at 7, cols. 1, 2; L.A. Times, Jan. 3, 1977, pt. 1, at 1, col. 1, at 3, col. 1; Letter from Trauscht, *supra* note 253.

459. U.S. NEWS & WORLD REP., *supra* note 458.

460. *Id.*

461. *Id.*

462. *Id.*

463. *Id.*; cf. L.A. Times, Jan. 3, 1977, pt. 1, at 11, col. 1 (reports a 96% success (nonreturn) rate for first 70 persons released).

464. NEWSWEEK, Feb. 21, 1977, at 44 (upheld by five courts).

465. *E.g.*, *Leal v. Trauscht*, No. 484579-9 (Alameda County (Cal.) Super. Ct., filed Aug. 20, 1976). See also ACLU DEPROGRAMMING CONFERENCE, *supra* note 157, at 158-63 (attorney in *Leal* explains basis of his contention that use of California conservatorship proceedings in deprogramming cases is abusive. These include that (1) the law was designed with the aged in mind; (2) cult cases do not constitute emergency situations sufficient to justify abbreviated procedure, including issuance of temporary order without notice to conservatee; (3) his adversary has avoided a court test of the legitimacy of the procedures. The attorney concludes that while cults may utilize questionable recruiting tactics, *id.* at 163, this does not justify a rescue attempt since the "right of a person to change his religion has always been central to the American understanding of religious liberty.")

† *Katz v. Superior Court*, 1 Civ. 41045 (Ct. App. Cal. 1st Dist. Oct. 6, 1977). A California trial court, after hearing testimony from both sides, had issued a conservatorship order in the case of the "Moonie Five," slip opinion at 1a; N.Y. Times, Mar. 25, 1977, at A1, col. 1, at A9, col. 3. Superior Court Judge S. Lee Vavuris's order specified that deprogramming might be carried out, but required that the parents be physically present during such proceedings. N.Y. Times, *supra*. The Court of Appeal subsequently issued a stay and ordered that no deprogramming be carried out pending further hearings, slip opinion at 2. In the meantime, however, four of the five youths changed their minds and decided to remain with their parents, slip opinion at 49-50; NEWSWEEK, Apr. 25, 1977, at 83.

In *Katz* the Court of Appeal vacated the order with respect to the remaining members,

performed extrications of cult members in California, Texas, New Mexico, Arizona, and Washington, D.C.<sup>466</sup>

Given the resistant nature of mind control and the very low probability that a victim will leave the cult without outside assistance,<sup>467</sup> a remedy like conservatorship for individuals already inside the group appears to be unavoidable. As carried out by the Arizona prosecutor's team, it also seems to accord with the least-restrictive-alternative requirement.<sup>468</sup> The order will

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finding that:

- (1) The provisions of the state's conservatorship statute (since amended) were too vague to be applicable in the context of this case, slip opinion at 20;
- (2) The trial court utilized an improper standard of proof, slip opinion at 36, 40 (testimony sustained conclusion that conservatees had been subjected to coercive persuasion, but failed to show they were "gravely disabled");
- (3) Since it had not been shown that the conservatees were "gravely disabled," the state had no compelling interest in the protection of health sufficient to override the cultists' interest in remaining with the group, slip opinion at 48-49.

Thus, "under the circumstances of this case," the appointment of temporary conservators violated the religious liberty of the remaining members, slip opinion at 5a.

Counsel for the parents were planning an appeal to the California Supreme Court. Telephone interview with Carl Shapiro, attorney, in San Anselmo, Cal. (Oct. 17, 1977) (on file with author).

466. Ariz. Daily Star, Feb. 19, 1976, at 1-C, col. 1.

467. *Vermont Hearings*, *supra* note 16, at 67-68 (low probability of return); R. ENROTH, *supra* note 14, at 200 (low turnover after first weeks in cult); Rofes, *supra* note 106, at 3, col. 1 (of 70 attenders, author was only person to leave Moon training camp); N.Y. Times, Mar. 5, 1973, at 1, col. 3, at 19, col. 5 (ex-member says outside intervention is necessary because power of cults over members is overwhelming); The Oregonian, May 15, 1977, at B-1, col. 1 (college student writing senior thesis on Unification Church succumbed to pressures to join); J. Andrews, *supra* note 100, at 1-2; Letter from Clark, *supra* note 106 (cult control is not self-limiting and tends to continue over very long period even without apparent reinforcement); Meeting Report, *supra* note 14, pt. 2, at 21 ("unable to leave on their own free will"), 61 (same).

Mr. Andrews describes the results of a single weekend session conducted by the Unification Church in California. The group of recruits consisted of 20 Stanford University students, of whom 18 accepted the Church's offer to continue to the next step, a week-long session. Andrews considers commitment to the week-long session as the watershed, since almost all who remain through this stage continue with the group indefinitely. J. Andrews, *supra* note 100, at 11; see J. LOFLAND, *supra* note 64, at 220 (no "total convert" ever defected from sect); Rasmussen, *supra* note 227, at 3, col. 1, at 19, col. 2 (80% of those who attended initial workshop became converted "Moonies"); Open letter from Merritt, *supra* note 22 (aware of only two individuals who were able to leave cults without some form of outside assistance); cf. HEARST, *supra* note 6, at 251 (Catholic Cardinal "broke," and made confessions that he was an American spy and a criminal after 5 weeks of coercive indoctrination in communist prison), 263 (effectiveness of Chinese re-education program), 323 ("If one's captors are sufficiently determined . . . they can break down anyone"). But see ALL GODS CHILDREN, *supra* note 9, at 106, 238, 244-45, 250, 280, 304 (reporting some voluntary defections); Briggs, *supra* note 26, at A-15, cols. 1, 3 (dropout rate reported "high").

468. Note 325 *supra*. The grounds on which guardianship and conservatorship orders will issue traditionally have included: (1) dissipation of property, e.g., *Gardella v. Gardella*, 50 R.I. 210, 146 A. 621 (1929); (2) susceptibility to influence or deception, e.g., *In re Coburn*, 165 Cal. 202, 131 P. 352 (1913); and (3) "unsound mind," e.g., *Indiana ex rel. Cook v. Circuit Court*, 193 Ind. 20, 138 N.E. 762 (1923). See UNIFORM PROB. CODE § 5-401 (inability to manage property

not issue unless a *prima facie* case is established that the victim has been deprived of his free will and is under the control of others.<sup>469</sup> The order provides for the conservatee to be produced in court immediately upon removal from the cult.<sup>470</sup> Although the writ is issued following an *ex parte* proceeding, this procedure is justified by the demonstrated propensity of cults to conceal the individual upon receiving notice that legal action is contemplated.<sup>471</sup> At the proceeding the judge questions the victim, observes his demeanor, and hears psychiatric testimony.<sup>472</sup> If conservatorship orders issue, they spell out the powers of the parent or conservator, including the location and type of any treatment to be given.<sup>473</sup> The treatment proceeds under the supervision of the court, which may question the treating physician, observe progress, or order the treatment discontinued.<sup>474</sup> At the end of the conservatorship period, the conservatee is again brought into court, questioned by the judge, and permitted to make his own choice concerning his future.<sup>475</sup>

Thus, the procedure at each stage provides protections designed to ensure that the individual's autonomy is respected and that the therapy aims only at restoration of freedom of choice. The confinement continues only for a limited period of time, under conditions monitored by the court. Individuals who have been rehabilitated by such means have praised them, stating that "When the moral issue lies in preserving the freedom to choose and associate with whom we want, our parents are correct in allowing the kids to decide. The church takes that right away."<sup>476</sup>

### 3. *A Contract-Based Remedy—Mutual "Reassessments"*

A recent development is the use of a mutual reassessment procedure to prompt reconsideration of a recruit's decision to join the organization.<sup>477</sup> In

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and affairs due to reasons such as mental illness, physical illness, or confinement; risk of dissipation of property).

469. See generally notes 458-59 and accompanying text *supra*.

470. E.g., *In re Surber*, No. G-946 (Pima County (Ariz.) Super. Ct. Oct. 24, 1975) (order for writ of habeas corpus).

471. Vermont Senate Judiciary Committee, *supra* note 58, at 17 ("unsworn testimony of former Unification Church member"); U.S. NEWS & WORLD REP., June 14, 1976, at 53-54.

472. U.S. NEWS & WORLD REP., *supra* note 471, at 54.

473. E.g., *In re Petri*, No. NCP 5267B (L.A. County (Cal.) Super. Ct. Mar. 1, 1976) (order provides for counseling, examination, and treatment by psychiatrists and psychologists); *In re Coleman*, No. 16386 (Mendocino County (Cal.) Super. Ct. Dec. 3, 1975) (order provides that conservator shall have power to take conservatee into personal custody and obtain medical and psychiatric treatment within the county).

474. Interview with Michael Trauscht, attorney, in Tucson, Ariz. (Oct. 7, 1976) (on file with author).

475. *Id.*; see note 455 *supra*.

476. Melvold, *supra* note 55, at C-1, col. 4.

477. ALL GODS CHILDREN, *supra* note 9, at 234-39, 241, 243; Stoner & Parke, *supra* note 427.

this procedure, a parent or friend who seeks to question a cult member's membership in the organization approaches the member with the promise of a bargain: *e.g.*, "If you intend to spend the rest of your life in that group, you owe us a week (or two weeks) of your time."<sup>478</sup> The resulting meetings are carried out not under lock and key, but voluntarily, with each side attempting to listen and understand the other's position.<sup>479</sup> Often, parents find it necessary to modify their own views during the encounter and agree to changes in the parent-child relationship.<sup>480</sup> An East Coast rabbi reports over 100 "rescues" that resulted in this manner,<sup>481</sup> although the approach appears to be feasible only during the first few days or weeks of the young person's involvement with the cult, since after that time the relationship is so cemented as to be unsusceptible to modification by voluntary means.<sup>482</sup> The remedy also depends on the cult's willingness to permit the member to meet with the parents, a willingness which is unlikely to be forthcoming if the group suspects the parents plan to attempt a deconversion. Although this remedy offers the promise of avoiding some of the harsher and more objectionable features of involuntary deprogramming, it appears likely to prove useful only in a limited number of cases.

#### 4. Remedies Against the Cult or Cult Leaders

While self-help and conservatorship remedies are aimed at the child, other remedies are directed at cult leaders or the cult itself. These include civil remedies, such as tort actions and actions for equitable relief, and prosecution of cult elders under a variety of criminal statutes.

a. *Civil remedies:* (i) *Tort actions:* Actions in tort can be brought either on the child's behalf for damages sustained while in the cult,<sup>483</sup> or in the parent's name for damages to the child or to the parent-child relationship.<sup>484</sup> Among the theories under which actions have been or could be brought on behalf of an ex-member suing in his own capacity are false

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478. ALL GODS CHILDREN, *supra* note 9, at 241; Stoner & Parke, *supra* note 427, at 18, col. 2.

479. Note 478 *supra*.

480. Interview with Carol Stoner, in Philadelphia, Pa. (Dec. 28, 1976) (on file with author).

481. *Id.*; ALL GODS CHILDREN, *supra* note 9, at 241.

482. See ALL GODS CHILDREN, *supra* note 9, at 244.

483. Notes 484-86 *infra*. Tort actions have also been filed by cult members against parents and deprogrammers. *E.g.*, notes 484-86 *infra*; TIME, Jan. 24, 1972, at 46 (Children of God sued Texas officials and the mother of 18-year-old member for \$300,000 for committing the member to mental institution).

484. *E.g.*, N.Y. Times, May 5, 1976, at 82, col. 2 (parent suing Unification Church for holding daughter in compulsory service while alienating her from her family).

imprisonment,<sup>485</sup> intentional infliction of emotional distress,<sup>486</sup> assault and battery,<sup>487</sup> and actions under various federal civil rights statutes.<sup>488</sup> In at least one case, a parent sued for damage to family relations<sup>489</sup> and for a declaration of the rights and competencies of the parties. Apart from actions for the recovery of property, there are no recoveries of money damages known at the time of writing, although a number of civil suits are pending.<sup>490</sup>

Although actions for damages cannot substitute for a missing child or fully compensate the victim for the loss of months or years spent in the cult, such actions have a number of advantages. First, they can exert an important deterrent effect on cults, many of which are strongly oriented toward financial power.<sup>491</sup> Second, since tort law is relatively free of doctrinal constraints,<sup>492</sup> these actions can serve as a testing ground or laboratory for legal and factual issues that may ultimately be incorporated into legislative solutions.<sup>493</sup> Finally, the after-the-fact nature of tort remedies limits governmental involvement to cases of actual or alleged abuse, thus reducing the regulatory impact on the groups affected and avoiding the specter of prior restraint.<sup>494</sup>

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485. Interview with James Mongeon, attorney, in West Newton, Mass. (Feb. 25, 1977) (on file with author) (action to be filed on behalf of 13-year-old girl inducted from her family into a Hare Krishna temple).

486. See *Schupp v. Unification Church*, No. 76-87 (D. Vt., filed May 3, 1976).

487. *Id.* (in count I, defendants are alleged to have forced the victim to do their bidding "under constant threats and fear, which destroyed her ability to resist their wishes").

488. *Id.* (alleging violations of the following federal statutes: 18 U.S.C. § 1581 (1966) (peonage); 18 U.S.C. § 1583 (1966) (enticement into slavery); 18 U.S.C. § 2421 (1970) (white slavery); 42 U.S.C. § 1983 (1974) (constitutional tort)). Conceivably, constitutionally based tort actions could also be brought on first amendment grounds, see Shapiro, *Legislating Control*, *supra* note 1, at 237, 253-76 (right of mentation protected by first amendment), or on fifth amendment grounds, for deprivation of liberty. No actions appear to have been brought under either of these theories.

489. *Schupp v. Unification Church*, No. 76-87 (D. Vt., filed May 3, 1976). See Dettling, *Husband Awarded \$400,000 in Cult Suit*, *Akron Beacon J.*, July 16, 1977, at A-3, col. 1 (Akron husband whose family were "lured away" by leaders of religious cult awarded \$400,000 in damages for alienation of affection).

490. Notes 483-85, 488 *supra*. The charitable immunities doctrine has been repudiated in most jurisdictions and would appear to pose little obstacle to a successful lawsuit. W. PROSSER, *supra* note 156, § 133, at 992-96.

491. Notes 248-55 and accompanying text *supra*.

492. *E.g.*, W. PROSSER, *supra* note 156, § 1, at 3 (ability of tort law to accommodate new forms of injury, unhampered by rigid categories), § 1, at 6 (purpose to impose liability on behavior that is "socially unreasonable"), § 3, at 14-15 (torts as "battleground of social theory"; primary purpose "to make a fair adjustment of the conflicting claims of the litigating parties"), § 4, at 19-20 (ability of tort law to shed anachronistic rationales and accommodate social change).

493. See generally Peck, *The Role of the Courts & Legislatures in the Reform of Tort Law*, 48 MINN. L. REV. 265 (1963).

494. See generally *Cantwell v. Connecticut*, 310 U.S. 296, 304-06 (1940) (state may not

(ii) *Actions for the return of money or objects donated to the cult:* Most cults insist that the new member, on joining, immediately contribute all his worldly possessions to the group and its leaders.<sup>495</sup> Under this requirement, recruits have donated automobiles, stereo sets, bank accounts, college tuition money, books, clothing, motorcycles, and other objects.<sup>496</sup> Since cults generally refuse to return these objects on demand,<sup>497</sup> actions may be filed for the return of the property.<sup>498</sup> Although collection may present difficulties, there are several legal theories on which such suits may be based. Gifts to religious advisors have been set aside when advisors took advantage of their authority to exact "gifts" from individuals over whom they exercised a pastoral function or with whom they had a fiduciary relationship.<sup>499</sup> If the property is unavailable or if none was donated, an ex-member may sue for lost time and wages, or for the underlying suppression of mental autonomy.<sup>500</sup> If the money or property was given in return for a promised tangible benefit, such as a cure, and the benefit never materialized, an action for breach of contract might arise.<sup>501</sup>

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deny the right to disseminate religious views, but may enact general and nondiscriminatory legislation).

495. See note 148 and accompanying text *supra*.

496. *E.g.*, Waters, *supra* note 15, at 99 (watches, stereo sets, stocks and bonds); Weekend, *supra* note 24, at 24 (college money); *Dymally Hearing*, *supra* note 16, at 56 (cars); Interview with F.J.R. by Aaron Klein, attorney, in Tampa, Fla. (undated transcript) (on file with author) (cars, motorcycles, boats); Meeting Report, *supra* note 14, pt. 2, at 44 (bank account), 54 ("giant rummage sale to convert all their belongings to cash"), 59 (selling all her sterling silver wedding presents), 66 (car, possessions, and funds).

497. *E.g.*, LEFKOWITZ REPORT, *supra* note 16, at 12 (ex-members of Children of God not permitted to take back their possessions upon leaving cult).

498. See ALL GODS CHILDREN, *supra* note 9, at 101, 106 (suits for return of objects and money); Interview with J.A., attorney, in Seattle, Wash. (Feb. 9, 1977) (on file with author) (attorney drafting complaint in action for return of donated property); *cf. St. Mary's Quadriplegic Sues The Way, the Wierwilles*, *supra* note 252, at 2, col. 4 (contract action by quadriplegic accident victim who had been persuaded to pay cult a portion of his insurance proceeds in return for their applying spiritual forces to effect a cure).

499. Corrigan v. Pironi, 48 N.J. Eq. 607, 23 A. 355 (1891); Brown v. Father Divine, 173 Misc. 1029, 18 N.Y.S.2d 544, *aff'd*, 260 App. Div. 443, 23 N.Y.S.2d 116, *reh. denied*, 260 App. Div. 1006, 24 N.Y.S.2d 991 (1940); Nelson v. Dodge, 76 R.I. 1, 68 A.2d 51 (1949) (presumption of undue influence when religious leader obtained gift by means of threats of damnation).

500. Schupp v. Unification Church, No. 76-87 (D. Vt., filed May 3, 1976) (suit for lost wages and damages for mental harm inflicted). A suit for suppression of autonomy—essentially, theft of a portion of the victim's personality—could be compared to cases involving incompetent organ transplant donors, the loss of volitional and cognitive portions of the mind being analogized to the damage sustained by an incompetent donor who stands to lose a kidney. *Cf. Strunk v. Strunk*, 445 S.W.2d 145, 150 (Ky. App. 1969) (Steinfeld, J., dissenting) ("The ability to fully understand and consent is a prerequisite to the donation of a part of the human body").

501. *St. Mary's Quadriplegic Sues The Way, the Wierwilles*, *supra* note 252, at 2, col. 4 (quadriplegic accident victim sued cult for failure to provide cure, in consideration for which he had transferred a portion of his insurance proceeds).

b. *Criminal remedies*: Most of the tort remedies discussed in the previous section also have criminal analogues. These include prosecutions of cult leaders for unlawful imprisonment,<sup>502</sup> kidnaping,<sup>503</sup> and violation of federal statutes forbidding peonage and slavery.<sup>504</sup> Although actions have

502. See MODEL PENAL CODE § 212.3 (Proposed Official Draft 1962) ("A person commits a misdemeanor if he knowingly restrains another unlawfully so as to interfere substantially with his liberty"). "Restraint" may be carried out by words, or even by a mere assertion of authority, if the victim submits, R. PERKINS, *supra* note 274, at 172-73.

503. MODEL PENAL CODE § 212.1 (Proposed Official Draft 1962) ("A person is guilty of kidnaping if he . . . unlawfully confines another for a substantial period in a place of isolation, with any of the following purposes: (a) to hold for ransom or reward . . . ; or (c) . . . to terrorize the victim or another"); see *Chatwin v. United States*, 326 U.S. 455, 460 (1946) (15-year-old girl taken for purposes of marriage by a Mormon Church member; Court stated that physical or mental restraint can amount to kidnaping and that religious beliefs do not absolve one from charges of kidnaping). See also Borowitz, *supra* note 135. There have been a number of kidnaping prosecutions, in cases unrelated to religious cults, under "inveigling" statutes in which the crime of kidnaping was held to include that carried out by deception, e.g., *People v. De Leon*, 109 N.Y. 227, 16 N.E. 46 (1888); *State v. Rivers*, 84 Vt. 154, 78 A. 786 (1911), or threats, e.g., *United States v. Bazzell*, 187 F.2d 878 (7th Cir. 1951). It has been proposed that the federal government utilize the existing kidnaping statute, 18 U.S.C.A. § 1201 (Supp. 1977) (defining the crime of kidnaping to include confining, inveigling, and decoying), to prosecute cult leaders. Schuppin, *Areas of Government Involvement in Cults & Pseudo Religious Organizations* 2-3 (undated) (on file with author); see Letter from Richard L. Thornburgh, Assistant Attorney General, Criminal Division, U.S. Department of Justice, to Robert N. Giaimo (Sept. 7, 1976) (on file with author). Concerning the plausibility of utilizing kidnaping or false imprisonment statutes to punish cult leaders for maintaining their victims in a state of coercive mind control, see, e.g., Sage, *supra* note 99, at 47 (psychologist asserts that the individuals are "held against their will because the cognitive and volitional state known as will is removed from the individual"); SUNY Memo, *supra* note 135 (cult front group denied campus status because, among other reasons, it is likely to engage in activities that result in "superseding of free choice" of students). See generally notes 129-52 and accompanying text *supra* (impairment of autonomy and decisionmaking capacity).

504. 18 U.S.C. §§ 1581, 1583-1585, 2421 (1970). At the time of writing there are no known cult-related prosecutions for violation of these statutes, although a civil action recently filed in Rhode Island District Court appears to be premised, in part, on involuntary servitude. It is also possible that the criminal analogue of 42 U.S.C. § 1985(3) (1970), 18 U.S.C. § 241 (1970), could be used to prosecute private conspiracies to violate first amendment rights. See *Action v. Gannon*, 303 F. Supp. 1240, 1245-46 (E.D. Mo. 1969), *modified in part*, 450 F.2d 1227 (8th Cir. 1971) (*en banc*) (human rights demonstrators who disrupted church members' service violated church members civil rights); Comment, 47 N.Y.U.L. REV. 585, 592 (1972).

Reported instances indicate that cult leaders may subject victims to actual kidnappings. E.g., Keller, *Moonies Attraction: Frightening Beauty*, *The Oregonian*, May 15, 1977, at 1, cols. 1, 3.

Saturday morning she asked them to drop her off at the Oakland bus depot for her return to Santa Cruz. Instead, they drove north toward International Ideal City Ranch in Boonville, a Moonie retreat in Northern California. Barbara started to object, then went along: "Inside I figured 'Well, I guess a decision has been made for me.'"

The unannounced detour, she would learn, was nothing unusual . . . : "I know people who were tied up and brought back to the church and taken places against their will."

*Id.*; cf. *United States v. Ingalls*, 73 F. Supp. 76 (S.D. Cal. 1947) (victim forbidden to leave house; forced to do menial work; given an inadequate diet and no compensation; compelled to

been brought successfully against cult leaders for violations other than those arising from maintaining members in a state of mind control—among them, violations of the immigration law,<sup>505</sup> panhandling statutes,<sup>506</sup> and health and safety violations<sup>507</sup>—at the time of writing only a handful of criminal actions are known to have been brought based on brainwashing.<sup>508</sup>

In one case,<sup>509</sup> parents had abducted two young members of a Hare Krishna temple and attempted a deprogramming, which failed when the young persons escaped and returned to the cult.<sup>510</sup> The sect's leaders persuaded the two to cooperate in bringing charges against the parents and deprogrammers. The case was heard by a grand jury, which refused to indict; the grand jury instead indicted the cult leaders for maintaining the two in a state of unlawful imprisonment by psychological means. The charge was later expanded to include extortion, based on an attempt by the cult leader to obtain \$20,000 from one of the families on the threat that they would never see their son again.<sup>511</sup> On a motion to inspect the minutes of the grand jury, the presiding judge rejected the prosecution's theory of the case and dismissed the indictment.<sup>512</sup> Although the court conceded that intensive psychological indoctrination such as that alleged to have been utilized in connection with the two young people may prove devastating<sup>513</sup> and "cause an inability to think, to be reasonable or logical,"<sup>514</sup> and "may even destroy healthy brain cells,"<sup>515</sup> the court held that this does not constitute a crime.

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remain by threats that if she left she would be confined in a prison or mental institution; victim was wholly subject to will of defendant; defendant held victim in slavery in violation of statute); Keller, *supra* at 5, col. 1 (possible peonage/unfair labor relations; Unification Church-run businesses employ members, some of whom are willing to work up to 15 hours a day; because Moon's sect had tax-exempt status it could not be stated how much money is earned in this manner). See generally Peonage Cases, 123 F. 671 (D.C. Ala. 1903); City of Milwaukee v. Horvath, 31 Wis. 2d 490, 495, 143 N.W.2d 446, 448 (involuntary servitude is broader than slavery; it includes "a condition of enforced compulsory service of one to another"; prohibition of slavery is aimed at any "state of voluntary or compulsory subjection to a master," and has as its target "those forms of compulsory labor akin to African slavery that in practical operation, would tend to produce like undesirable results"), *cert. denied*, 385 U.S. 970 (1966); see also Order of St. Benedict v. Steinhäuser, 234 U.S. 640 (1913) (administrator challenged as "servitude" a religious order's rule that members donate all wealth for life).

505. Note 235 *supra*.

506. Note 195 *supra*; see note 190 *supra*.

507. Note 183 *supra*.

508. See text accompanying notes 509-16 *infra*.

509. People v. Murphy (N.Y. Crim. Term Pt. 3, Mar. 18, 1977) (Justice Leahy) (transcript).

510. *Id.*

511. Interview with Michael Schwed, Assistant District Attorney, in Queens, N.Y. (Dec. 28, 1976).

512. People v. Murphy (N.Y. Crim. Term Pt. 3, Mar. 18, 1977) (Justice Leahy) (transcript).

513. *Id.*

514. *Id.*

515. *Id.*

Thus, the court held that present criminal laws do not proscribe proselytizing or regimented religious practices in the absence of fraud, deception, intimidation, or restraint.<sup>516</sup>

In cases involving clear-cut fraud or coercion, indictments should withstand scrutiny. The Supreme Court has held that religious beliefs do not absolve one from liability under kidnaping laws.<sup>517</sup> The same should be true in prosecutions for false imprisonment and involuntary servitude. The remedy, however, is relatively onerous. Long prison sentences are possible;<sup>518</sup> thus it is likely that successful prosecution will only be feasible in cases where the abuse is extreme and the harm clear-cut. Also, the sheer number of possible cases poses a potential burden on law enforcement authorities and courts<sup>519</sup> that considerably exceeds that imposed by civil remedies, such as conservatorship or guardianship, which utilize streamlined procedures and nonjury trials, and which rely on private parties to supply much of the motivating power and energy.

Nevertheless, in proper cases criminal prosecutions offer a potent weapon for discouraging psychic mayhem. New legislation, similar to that in effect in other countries<sup>520</sup> dealing with the threat of private use of coercive persuasion, would make criminal remedies even more feasible. A number of groups have urged the adoption of such new statutes by the federal government or amendment of current kidnaping statutes to include kidnaping carried out exclusively by mental means.<sup>521</sup>

### CONCLUSION

A review of the literature suggests that religion-motivated thought reform is occurring, that it affects substantial numbers of young persons and their families, and that the medical, psychological, and societal harms it causes are severe. Although recruitment and indoctrination are carried out under colorably religious auspices, the right to constitutional protection is diminished because of insincerity and deception, and because thought reform techniques are not essential to the continuing survival of the religious groups

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516. *Id.*

517. *Chatwin v. United States*, 326 U.S. 455, 460 (1946).

518. *E.g.*, N.Y. PENAL LAW §§ 70.15, 135.05 (McKinney 1975) (second degree unlawful imprisonment, punishable by term of up to one year); *id.* §§ 70.00, 135.10 (first degree unlawful imprisonment, punishable by term of up to four years); *id.* §§ 70.00, 135.20 (second degree kidnaping, punishable by term of up to 25 years). Section 135.10 is the section under which the New York Hare Krishna case, note 509 *supra*, is being brought.

519. *See* note 24 *supra*.

520. *See* Borowitz, *supra* note 135 (crime of plagio, involves the stealing of a human being, of his personality, or of a product of his personality).

521. *See* note 503 *supra*.

involved. Since the harms produced are frequently inflicted on unconsenting individuals, the state may interfere without violating the principle that consensual, self-regarding action should be free from state regulation. A variety of remedies are available, ranging from simple preventive requirements to procedures aimed at returning a victim to his former condition. Diagnostic procedures are available that enable the examiner to distinguish, within an acceptable margin of error, between the individual who is in the cult pursuant to mind control and the individual who remains there by free choice. Moreover, it is possible to differentiate the harmful thought control practiced by such cults as the Unification Church, Hare Krishna, and the Children of God from other, milder forms of influence traditionally tolerated within our society.

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

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