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Religious Deprogramming: A Solution Through Judicially Appointed Guardians

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Abstract

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KEYWORDS: religious, appointed, guardians

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Introduction

Conflicts between parents and children concerning values have long been fought. This is exemplified by the religious deprogramming controversy. In recent years children have been breaking with their tradition and joining unorthodox religious cults.¹ Parents, concerned for their children's welfare, have been physically abducting them and subjecting them to religious deprogramming. This process forces the children to relinquish their membership and repudiate their beliefs.

The first section of this note will discuss recruiting techniques and alleged brainwashing practices applied by the cults. The second will analyze and discuss the current self-help method of deprogramming and the cases involving its legality. The third section will recommend and discuss the feasibility of using both the guardianship statutes and the thirteenth amendment's slavery prohibitions as possible solutions to the problems of self-help.

I. Cults, Recruiting and Brainwashing

Religious cults have been under substantial attack by the public recently, due mainly to recruiting techniques² and what has been perceived as their members' zombie-like appearance.³ The underlying issue is the cult's alleged use of brainwashing.

Brainwashing is a term coined to describe the mind-altering tech-

1. This note concerns religious cults such as: The Children of God, The Unification Church, The Church of Armageddon, The International Society of Krishna Consciousness, and others.

2. See *infra* notes 27-31 and accompanying text.

3. See, e.g., Rice, *The Pull of Sun Moon*, N.Y. Times, May 30, 1976, Sunday Magazine, at 8 ("Those who observe Moonies closely often notice a glassy spaced-out look, which, combined with their everlasting smiles, makes them resemble tripped out freaks." *Id.* at 23.).

niques practiced by Koreans with prisoners of war during the Korean Conflict. The fact that this mind-alteration does occur has yet to gain full acceptance in the United States. This was most evident in both the Manson Family⁴ and Patty Hearst⁵ trials. In both cases, the defense contended and the court heard evidence that brainwashing would mitigate liability. The fact that this evidence was accepted indicates that the courts will give some credence to brainwashing even though guilty verdicts were returned in both.

Those who acknowledge the detriments of brainwashing find it reprehensible since it destroys the mind's ability to function under its own will, or to its full capacity.⁶

The criteria established to identify brainwashing include: isolating the person to be brainwashed, severing ties with his past, depriving him of sleep, fatiguing his body, changing his diet, playing on the member's feelings of guilt and shame, changing language, keeping the cults' central beliefs secret from the recruit, and others.⁷

The cults seem to employ most, if not all of these methods. There is evidence indicating that the cults isolate new recruits and do not

4. In the Tate-Labianca murders committed by the Manson Family, Charles "Tex" Watson, tried separately from the rest of the Family, pled not guilty by reason of insanity since "he was simply an unthinking zombie programmed by Charles Manson." V. BUGLIOSI with C. GENTRY, HELTER SKELTER 627 (1974). In defense of this claim "Tex" called eight psychiatrists, but the District Attorney's cross-examination showed "Tex" was in "complete command of his mental faculties." *Id.* at 626-27.

5. See, Mathews & Cook, *Patty's Defense*, NEWSWEEK, March 1, 1976, at 20; Fraker, Kasindorf & Camper, *What Is Brainwashing?*, NEWSWEEK, March 1, 1976, at 31; Mathews, Kasindorf & Cook, *Patty On Trial*, NEWSWEEK, Feb. 2, 1976, at 24.

6. See, e.g., Delgado, *Religious Totalism: Gentle and Ungentle Persuasion Under The First Amendment*, 51 S. CAL. L. REV. 1 (1977) ("The recruit's impaired intellectual functioning appears to reflect a loss of many I.Q. points. . . ." *Id.* at 14).

7. See, W. SARGANT, BATTLE FOR THE MIND, A PHYSIOLOGY OF CONVERSION AND BRAINWASHING (1957) (for an application of Sargant's factors to the Children of God, see REPORT SUBMITTED BY CHARITY FRAUDS BUREAU, FINAL REPORT ON THE ACTIVITIES OF THE CHILDREN OF GOD, TO HON. LOUIS J. LEFKOWITZ ATTORNEY GENERAL OF THE STATE OF NEW YORK (1974) [hereinafter cited as FINAL REPORT].); R. LIFTON, THOUGHT REFORM AND THE PSYCHOLOGY OF TOTALISM: A STUDY OF BRAINWASHING IN CHINA (1961) (for an application of Lifton's factors to today's religious cults, see C. STONER & J. PARKE, ALL GOD'S CHILDREN 172-76 (1977); E. SCHEIN WITH I. SCHNEIER & C. BARKER, COERCIVE PERSUASION (1961).

permit them to contact family or friends.⁸ They are often denied the opportunity to read a newspaper.⁹ If parents attempt to see their child, he is often hidden from them.¹⁰ Many cults have their members take on new biblical names to further sever ties with the past.¹¹

Most cults also rely heavily on fatigue and sleep deprivation during both the recruiting and membership periods. Days start before dawn and run till after midnight for the recruit. They are filled with such activities as lectures on theology, calisthenics, sports, chanting and prayer.¹² For the fully-inducted member, it is long days of recruiting and fundraising.¹³

8. See, Rice, *supra* note 3, at 23 (“There is neither time nor opportunity for phoning or writing relatives or friends.”). See also, FINAL REPORT, *supra* note 7, at 42 (“Generally, [Children of God] elders intercepted mail addressed to members who either never received it or received it in censored form, with portions deleted. . . .members were required to leave all outgoing mail unsealed for censorship and posting. . . .”).

9. One ex-moonie said that “I asked about getting a newspaper and they told me, ‘No. Newspapers are full of negativity and are not useful in our life.’ I thought that was ridiculous and I said so, but I didn’t argue, because it wouldn’t have mattered.” C. STONER & J. PARKE, *supra* note 7, at 170.

10. See, e.g., FINAL REPORT, *supra* note 7, at 22-23, where one ex-member of the Children of God testified:

They then persuaded me to hide in another loft next door . . . I heard my parents come up and I heard them scream and everything and the cops came—and I stayed there until my parents left the building . . . I heard my mother asking Abram and Ruth where I was and Abram denied by presence at the Children of God and stated I left the Children of God and they did not know where I was.

Id.

11. See, e.g., FINAL REPORT, *supra* note 7, at 24 (“The use of bible names also obviously serves as a new identity for a [Children of God] member, which reinforces the concept of severing all ties, both familial and societal.”).

12. See, e.g., Rice, *supra* note 3, at 23. “An exhausting and rigid schedule leaves little time for sleep and none for private reflection. Recruits get a daily dose of six to eight hours of mind-numbing theology based on Moon’s ‘Divine Principle.’” *Id. Accord*, FINAL REPORT, *supra* note 7, at 38. A former member of the Children of God testified: “I was so constantly kept busy the entire time . . . that I didn’t have time to think about anything else but what they had planned for me. . . .from the time I got up in the morning until I went to bed at night, which was usually very late.” *Id.*

13. See, e.g., Rice, *supra* note 3, at 23-24 (“[Moonies] put in grueling dawn-dusk days recruiting and fundraising.”); Kennedy & Kennedy, *The Devil’s Work*, PENTHOUSE, March, 1982, at 53 (“I worked alone—no salary either—and spent eigh-

There is also evidence that the cults play on members' feelings of guilt and shame. One ex-member of the Church of Armageddon said

she felt "[l]ike the world's most rotten person. They told me the sores all over my body (scabies caused by mites that bury themselves under the skin and lay eggs there) were caused by my own sinfulness and would go away only when I began to lead a more obedient pure life."¹⁴

This play on guilt and shame drives some members to self-mutilation.¹⁵ It is alleged one member "committed suicide because he didn't consider himself worthy of the Moon cause."¹⁶

Many cults change words and phrases in the recruits' language and quote the bible out of context, making the cultist spend many intensive study hours.¹⁷ In addition, they often keep the central beliefs of their doctrine secret from the recruit to further confuse him.¹⁸

The fact that the cults make use of these methods leading to brainwashing does little to explain how this phenomena occurs. Dissatisfied with previous studies in this respect, Flo Conway and Jim Siegelman, after an extensive four year investigation,¹⁹ sought to explain the physiological effects these factors have on the brain when practiced by the cults. The authors explain that the brain is an information storage device which operates holographically. A holograph is a mathematical

teen hours a day, seven days a week and 365 days a year to get donations for the Unification Church." *Id.* at 52-53.)

14. C. STONER & J. PARKE, *supra* note 7, at 109.

15. Delgado, *supra* note 6, at 16.

16. 122 CONG. REC. H1390, 1392 (1976) (statement of Rep. Wilson) (Representative Wilson read an article previously run in the National Enquirer by Jan Goodwin, *Multimillionaire Minister Woos Children From Their Families To Beg For Him On The Streets*, which quoted New York psychiatrist Dr. Ernest Giovanoli).

17. For example, in the Children of God, "stress is placed upon intensive memorization of selected biblical verses, taken out of context." FINAL REPORT, *supra* note 7, at 29. See also, C. STONER & J. PARKE, *supra* note 7, at 175 ("Each religious cult has created an entire new language and teaches adherents meaning of words in their language.").

18. See, e.g., C. STONER & J. PARKE, *supra* note 7, at 174-75 ("Implicit in this concept is the idea that the cult's resulting laws of morality are absolute, and therefore must be followed automatically." *Id.* at 174.).

19. F. CONWAY & J. SIEGELMAN, SNAPPING (1978).

model to store three-dimensional information in two dimensions photographically, from which the three-dimensional image can be reconstructed.²⁰

The original theorist of the holographic model of the brain, neurologist Karl Pribram, has explained that under this model "we can store things in our brains in terms of various frequencies of information. Then we can read out the information in either linear or spatial fashion. . . . space and time are not in the brain; they are read out of it."²¹

Conway and Siegelman show that experience can alter the brain's basic hologram,²² that which determines how information is read out. Thus, the interplay of the aforementioned criteria which establish brainwashing will cause the brain to have a holographic crisis. At this exact moment, which Conway and Siegelman call the moment of snapping,²³ there will be a "sudden drastic alteration of an individual's entire personality"²⁴ and, "if he remains in an alien setting with little or no connection to his former life . . . his personality will almost certainly be refashioned in the image of his new surroundings, and his awareness . . . with that of people around him."²⁵ "In the wake of snapping the individual's ability to question and to act suffer dramatic impairment. At the same time, he becomes almost wholly vulnerable to suggestion and command."²⁶

This vulnerability to suggestion has been taken to such extremes as killing.²⁷ Who among us can forget Jim Jones leading 900 zombie-

20. *Id.* at 118. See also PRIBRAM, *LANGUAGES OF THE BRAIN: EXPERIMENTAL PARADOXES AND PRINCIPLES IN NEUROPSYCHOLOGY* (1971).

21. F. CONWAY & J. SIEGELMAN, *SNAPPING* 121 (1978) (reporting interview with Karl Pribram).

22. *Id.* at 125-33. This experience comes to the brain in terms of "information". "Deprived of information, the brain ceases functioning normally; starved to extremes it goes altogether haywire." *Id.* at 127.

23. *Id.* at 134.

24. *Id.*

25. *Id.* at 136-37.

26. *Id.* at 155.

27. An ex-member of the Children of God said:

I was told by an older member that if my leaders told me to kill someone, I would have to kill someone, but I hesitated on that and asked them why? . . . He said 'Well, we are not under the law and we are responsible only to our leaders, who are responsible to God for us'.

eyed people to commit suicide in Guyana.²⁸

Many libertarians believe that allowing people to put themselves at the command of others is a price we must pay for living in a free society.²⁹ Critics of the cults may also believe this in principle, but counter that it is the unconsensual nature of the cults' recruiting, and subsequent brainwashing, which they find so offensive.³⁰

Cult recruiters are told to "watch on the streets and campuses for the lonely"³¹ who are considered more prone to suggestion. The recruiter will then act as a loving friend³² just willing to listen, often even

FINAL REPORT, *supra* note 7, at 33.

It was also claimed that the Tate and Labianca murders committed by the Manson Family were a result of Manson's brainwashing the members of his family. *See* V. BUGLIOSI, *supra* note 4.

28. *See, e.g.*, Mathews with Harper, Fuller & Nater, *The Cult of Death*, NEWSWEEK, Dec. 4, 1978, at 38; N.Y. Times, Nov. 27, 1978, at A1 ("authorities put the final count of the number of dead at the Jonestown Commune at 909").

29. *See, e.g.*, Kelly, *Deprogramming and Religious Liberty*, CIV. LIB. REV., July-Aug. 1977, at 23 ("A part of religious liberty is the right of all of us to make what seem to others to be foolish choices, to be hoodwinked or to be exploited for the sake of what seems to us to be the truth." *Id.* at 31.).

30. This requirement of consent is clearly in line with traditional notions of liberty. As libertarian John Stuart Mill has written:

this then is the appropriate region of human liberty. It comprises, first, the inward domain of consciousness; demanding liberty of conscience, in the most comprehensive sense; liberty of thought and feeling; absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral or theological. . . . Secondly, the principle requires liberty of tastes and pursuits; of framing the plan of our life to suit our own character; of doing as we like, subject to such consequences as may follow: without impediment from our fellow creatures, so long as what we do does not harm them, even though they should think our conduct foolish, perverse or wrong. Thirdly, from this liberty of each individual, follows the liberty, within the same limits, of combination among individuals; freedom to unite, for any purpose not involving harm to others: the persons combining being supposed to be of full age, and not forced or deceived.

J. S. MILL, *On Liberty!* in JOHN STUART MILL, A SELECTION OF HIS WORKS 16-17 (Robson ed. 1966).

31. C. STONER & J. PARKE, ALL GOD'S CHILDREN 6 (1977) ("[B]ackpack and guitar case were symbols of rootlessness and therefore those carrying them were special targets for recruitment.").

32. *See, e.g., id.* at 6-7.

denying affiliation with the cult.³³

The recruiting process is separated into a number of stages so that even when the recruit gives consent, it is only to the next step in the process.³⁴ “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.”³⁵

II. Brainwashing and the First Amendment: Must They Coexist?

Despite claims that cults practice brainwashing and that resultant harms exist, the cults have claimed that their practices are not subject to interference since they are protected by the first amendment.³⁶

Parents have sought to deny this protection by contending that cults are not “bona fide religious groups [but rather their] primary and motivating purposes are economic and political gain.”³⁷ The defendants

33. *See, e.g., id.* at 27 (“[C]ult recruiters may carefully avoid or even deny that the group is a religion.”).

34. *See, e.g., id.* at 7 (“[R]ecruits rarely decide to become Moonies. They just evolve into Moonies by putting off the decision.”).

35. Delgado, *supra* note 6, at 55. *See also*, FINAL REPORT, *supra* note 7, at 28 (“This initial period of indoctrination may last up to five days, isolated from all outside influences, and culminates in the new ‘convert’ . . . signing the ‘Revolutionary Sheet’. Here he agrees to turn over all his income, present and future, to the [Children of God] and consents to have his mail opened.”).

36. U.S. CONST. amend. I, which provides that: “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. . . .”

37. Rankin v. Howard, 527 F. Supp. 976, 977 (D. Ariz. 1981) (“[D]efendants . . . contend that the Unification Church is not a bona fide religious group but that its primary and motivating purposes are economic and political gain.”).

This claim is not without factual substance however. As a result of an investigation into the activities of the Children of God by its Charity Frauds Bureau, the New York Attorney General concluded that: “In view of the testimony . . ., one is led to the irresistible presumption that fund gathering by Children of God is largely intended for the personal gain of the leadership and for proselytizing new converts who in turn serve as additional fund gatherers and contributors.” FINAL REPORT, *supra* note 7, at 13.

Nor is the Children of God the only cult this practice is associated with. “The average Moonie takes in \$50 to \$200 a day; the more successful can make up to \$500. Every penny is turned in to the team leader who turns it over to the church.” Rice, *supra* note 3, at 24. *See also*, Kennedy & Kennedy, *supra* note 13, at 53 (“When I was

made just such a contention about the Unification Church in the deprogramming case of *Rankin v. Howard*.³⁸ However, the court in *Rankin* found *United States v. Ballard*³⁹ controlling on this issue, and, as such, held that “there can be no inquiry as to whether a religious group is bona fide.”⁴⁰ It was in *Ballard*, where Justice Douglas had proclaimed:

Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law.⁴¹

eighteen, I brought in \$90,000 a year for my church, the Unification Church of Rev. Sun Myung Moon.”).

38. 527 F. Supp. 976.

39. 322 U.S. 78 (1944).

40. *Rankin*, 527 F. Supp. at 978. *But see*, *Van Schaick v. Church of Scientology of Cal., Inc.*, 535 F. Supp. 1125 (D. Mass. 1982), where a former member of the church brought an action against it alleging fraud, intentional infliction of emotional distress, breach of contract, violation of Fair Labor Standards Act, and a class action for treble damages under the Racketeer Influenced and Corrupt Organizations Act. The court said that “[a]lthough we agree that the Free Exercise Clause protects all religions, old and new, alike once its protection attaches, in determining whether that protection applies courts may require a newer faith to demonstrate that it is, in fact, entitled to protection as a religion.” *Id.* at 1144. *Compare* *Wisconsin v. Yoder*, 406 U.S. 205 (1972), where the Supreme Court found the application of Wisconsin’s compulsory education laws to Amish children beyond the eighth grade unconstitutional as a violation of the first amendment’s free exercise clause *with* *F. & F. v. Duval County*, 273 So. 2d 14 (Fla. 1st Dist. Ct. App. 1973), where the Florida court found that a self-ordained minister of the “Covenant Church of Jesus Christ” could not avoid the state compulsory education laws by teaching his children at home. In *Yoder*, the court drew attention to the fact that the Amish’s “religious beliefs and what we would today call ‘life style’ have not altered in fundamentals for centuries.” 406 U.S. at 205. In *F. & F.* on the other hand, the Florida court found the fact that the church was not established in Florida and the lack of the minister to hold services for anyone other than his children to bear on the issue. 273 So. 2d at 18. *See generally*, Note, *Toward a Constitutional Definition of Religion*, 91 HARV. L. REV. 1056 (1978).

41. *Ballard*, 322 U.S. at 86-87. Although *Ballard* prohibited examination of the truth of one’s beliefs, it did permit an examination into whether those beliefs were held in good faith. As such, *Ballard* may be interpreted to allow a determination of whether the cults are bona fide religious groups or economically and politically motivated.

If, then, religion is subject to protection, and it is not open to question whether these cults are religious, can anything be done to alleviate the harms accruing from the brainwashing practices of the cults?

This question has recently faced a number of parents. Upon balancing a perceived harm to their children against the freedom of religion claim, many parents expend great sums of money to have their children abducted and subjected to religious deprogramming.⁴²

42. Deprogramming is a practice whereby the child is kidnapped, taken to a motel room and then a marathon encounter ensues. Ted Patrick, the world-famous deprogrammer, says: "Essentially it's just talk. I talk to the victim, for as long as I have to." T. PATRICK with T. DULACK, *LET OUR CHILDREN GO!* 75 (1976). One of the standard tools used for deprogramming is Chapter 22 in Robert Lifton's book, *Thought Reform and the Psychology of Totalism: A Study of Brainwashing* (*supra* note 7) since it "seems to be written about today's religious cult recruiting and indoctrination practices instead of some far-off Oriental prison camp." C. STONER & J. PARKE, *supra* note 31, at 172. Patrick also claims to make use of the Bible, putting passages the cults took out of context back into context, forcing the child to "read the whole chapter from where it was taken." T. PATRICK, *supra*, at 78.

Patrick does say that "[w]hen a victim is exceptionally vigorous, it may even mean a measure of physical restraint," *Id.* at 75, but, "the child is rarely held in custody by the parents and [Patrick] for longer than three days. Usually it takes Patrick less than one day to deprogram a person. I've managed to do it on occasion in an hour." *Id.* at 76.

But see, LeMoult, *Deprogramming Members of Religious Sects*, 46 *FORDHAM L. REV.* 599 (1978), where he describes deprogramming in a much different light.

The deprogramming process begins with abduction. Often strong men muscle the subject into a car and take him to a place where he is cut off from everyone but his captors. He may be held against his will for upwards of three weeks. Frequently, however, the initial deprogramming only lasts a few days. The subject's sleep is limited and he is told that he will not be released until his beliefs meet his captors' approval. Members of the deprogramming group, as well as members of the family, come into the room where the victim is being held and barrage him with questions and denunciations until he has recanted his newly found religious beliefs.

Id. at 603-04. LeMoult says that deprogramming "is far more like 'brainwashing' than the conversion process by which members join various sects." *Id.* at 606. He especially draws attention to the sudden break that Patrick describes during a deprogramming session (*See* T. PATRICK, *supra* at 79 ("the moment when that happens is always unmistakable")). *Compare* with F. CONWAY & J. SIEGELMAN, *supra* notes 23-26 and accompanying text.). Patrick counters "I do not brainwash. I ask questions, basically, and I try to show the victim how he has been deceived. Whereas, in the cult indoctrination, everything possible is done to prevent the person from thinking, in deprogramming I do

While a great many of these deprogrammings have freed members from the grips of the cults,⁴³ many which have failed have ended in litigation. In these cases, it has been the children who have brought suit against their parents and deprogrammers, alleging both tort claims and federal civil rights statute violations. These causes of action must be resorted to because the first amendment requires state action, and applies only to Congress and the federal government, or to the states through the due process clause of the fourteenth amendment.⁴⁴ Where parents carry out the deprogramming themselves state action is clearly lacking.⁴⁵

Two recent parental deprogramming cases, both of which turned on the court's belief in the validity of strikingly similar arguments, have come down on opposite sides of the fence. Since the United States Supreme Court has denied certiorari in both cases, it appears unlikely that any uniformity will be developed in the near future.

The first of these cases, *Ward v. Connor*,⁴⁶ upheld a complaint

everything I know how to start him thinking." T. PATRICK, *supra*, at 76.

43. Ted Patrick claims to have "deprogramm[ed] and arranged for deprogramming of over one thousand Americans." T. PATRICK, *supra* note 42, at 37.

44. U.S. CONST. amend. XIV § 1. *Cantwell v. Connecticut*, 310 U.S. 296 (1940) (free exercise clause); *Everson v. Board of Educ.*, 330 U.S. 1 (1947) (establishment clause).

45. This is not always true however. Where parents have been using guardianships, there is significant involvement of the judiciary, which has been held to constitute state action. *See, e.g., Shelley v. Kraemer*, 334 U.S. 1 (1948) (judicial enforcement of a discriminatory restrictive covenant).

Where there has been an overstepping of judicial bounds, suits have been filed under 42 U.S.C. § 1983, for discriminatory conspiracies under color of state law. *See, e.g., Rankin v. Howard*, 633 F.2d 844 (9th Cir. 1980) (son sued parents and judge). *See also, Cooper v. Molko*, 512 F. Supp. 563 (N.D. Cal. 1981) (Police officer knew of kidnapping for deprogramming but did not take any action. "Plaintiff has sufficiently alleged state action in violation of § 1983 to sustain a cause of action against Defendant police officers." *Id.* at 568). *But see, Orlando v. Wizel*, 443 F. Supp. 744 (W.D. Ark. 1978) ("there is no contention that the parents and [professional deprogrammer] 'conspired' with the State Police or Judge, . . . A state, merely by providing a forum and a means of enforcing regularly issued court orders, does not 'color' the action of private litigants with state action." *Id.* at 748.).

46. 657 F.2d 45 (4th Cir. 1981), *cert. denied*, *Mandelkorn v. Ward*, 455 U.S. 907 (1982). For a complete discussion of *Ward* see Comment, *Civil Rights: A Civil Remedy for Religious Deprogramming Victim under 42 U.S.C. § 1985(3)*, 21 WASHBURN L. J. 663 (1982).

which alleged that parents are liable for conspiring to deprogram their children under 42 U.S.C. section 1985(3).⁴⁷ The second case, *Peterson v. Sorlien*,⁴⁸ found the parents of a member of The Way Ministry not liable for false imprisonment and intentional infliction of emotional distress in their deprogramming attempt. Although the causes of action are different, both cases turned on the level of credence the court gave to the claim that the parents acted out of concern for the well-being of their child.

In *Ward*, the court was confronted with 42 U.S.C. section 1985(3), the Ku Klux Klan Act. This statute was originally enacted in

47. This statute reads:

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support to advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C.A. § 1985(3) (West 1981).

48. 299 N.W.2d 123 (Minn. 1980), *cert. denied*, 450 U.S. 1031 (1981). For a complete discussion of *Peterson* see Comment, *When parents, or their agents, acting under the conviction that the judgmental capacity of their adult child is impaired, seek to extricate that child from what they reasonably believe to be a religious or pseudo-religious cult, and the child at some juncture assents to the actions in question, limitations upon the child's mobility do not constitute meaningful deprivations of personal liberty sufficient to support a judgment for false imprisonment—Peterson v. Sorlien*, 299 N.W.2d 123 (Minn. 1980), *cert. denied*, 101 S. Ct. 1742 (1981), 30 EMORY L.J. 959 (1981).

1871 to stop Ku Klux Klan violence against the newly freed blacks⁴⁹ but little attention was paid to it until 1971, when the case of *Griffin v. Breckenridge*⁵⁰ found state action unnecessary, allowing the statute to reach purely private conspiracies. To find liability the statute requires that the defendants must have conspired for the purpose of depriving the plaintiff "of the equal protection of the laws, or of equal privileges and immunities under the laws."⁵¹ In order to give effect to section 1985(3) yet avoid interpreting it as a general federal tort law, *Griffin* found the statute's language to require a showing of intent—that the defendants acted out of some "class-based, invidiously discriminatory animus."⁵²

To find a deprogramming attempt actionable under section 1985(3), it must be decided whether religious affiliation is the type of class *Griffin* intended to protect. The *Ward* court, in deciding that religion was a protectable class, was confronted with a split of authority. The trial court in *Ward*,⁵³ which was reversed on appeal, had found that the voluntary joining and leaving of a church did not result in the requisite "discrete, insular and immutable characteristics,"⁵⁴ that are

49. See generally, Wildman, 42 U.S.C. § 1985(3)—A Private Action to Vindicate Fourteenth Amendment Rights: A Paradox Resolved, 17 SAN DIEGO L. REV. 317 (1980); Note, *The Class-Based Animus Requirement of 42 U.S.C. § 1985(c): A Suggested Approach*, 64 MINN. L. REV. 635 (1980); Comment, *The Deprogramming of Religious Sect Members: A Private Right of Action Under Section 1985(3)*, 74 N.W. U. L. REV. 229 (1979) [hereinafter cited as Comment, *The Deprogramming of Religious Sect Members*]; Comment, *Civil Rights: A Civil Remedy for Religious Deprogramming Victim under 42 U.S.C. § 1985(3)*, 21 WASHBURN L.J. 663 (1982); Comment, *Civil Rights: A Federal Remedy Against Private Class Discrimination Under 42 U.S.C. § 1985(3) (1970)—Griffin v. Breckenridge*, 403 U.S. 88 (1971), 47 WASH. L. REV. 353 (1972).

50. 403 U.S. 88 (1971). *Griffin* upheld a complaint which allowed blacks from Mississippi to recover under 42 U.S.C. § 1985(3) from a group of white citizens for allegedly conspiring to deprive them of the right to interstate travel, despite the absence of state action.

51. 42 U.S.C.A. § 1985(3) (West 1981).

52. *Griffin*, 403 U.S. at 102.

53. *Ward v. Connor*, 495 F. Supp. 434 (E.D. Va. 1980), *rev'd*, 657 F.2d 45 (4th Cir. 1981), *cert. denied*, *Mandelkorn v. Ward*, 455 U.S. 907 (1982).

54. *Ward*, 495 F. Supp. at 437. This test was originally established in *Bellamy v. Mason's Stores, Inc.*, 368 F. Supp. 1025 (E.D. Va. 1973), *aff'd*, 508 F.2d 504 (4th Cir. 1974), where the court denied relief for discrimination to a member of the Ku Klux

inherent in classifications such as race, national origin and sex.⁵⁵ This point was expressly countered, however, in *Baer v. Baer*,⁵⁶ another parental deprogramming case, where Judge Williams stated that:

While religious status may differ from racial status, because it is not a congenital and inalterable trait, membership in a minority religious group, like membership in a minority racial group, has often excited the fear, hatred and irrationality of the majority. Two thousand years of human history compellingly prove that no easier road to martyrdom is found than in adherence to an unpopular religious faith.⁵⁷

The *Ward* circuit court followed this approach and found religion a protectable class,⁵⁸ under section 1985(3). The mere fact, however, that religion is protectable does not give rise to parental liability for their deprogramming efforts. It must still be shown that the conspiracy was the result of some "invidiously discriminatory animus"⁵⁹ due to membership in this type of religious class.⁶⁰

Several trial courts, including the *Ward* district court, have found this discriminatory animus clearly lacking since "[i]t is readily apparent . . . that defendants were motivated to act . . . by their concern for the well-being of a loved one."⁶¹ These rulings were ignored by the

Klan who lost his job due to his affiliation with that group.

55. *Ward*, 495 F. Supp. at 437.

56. 450 F. Supp. 481 (N.D. Cal. 1978).

57. *Id.* at 491.

58. The *Ward* court based their decision primarily upon the legislative history to the forerunner of § 1985(3), the Civil Rights Act of 1871. The court quoted Senator Edmunds during the debates preceding that statute, where he said: "[I]f in a case like this, it should appear that this conspiracy was formed against this man because he was a Democrat, if you please, or because he was a Catholic, or because he was a Methodist, . . . then this section could reach it. Cong. Globe, 42d Congress, 1st Sess. 567 (1871)." *Ward*, 657 F.2d at 48.

59. *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971).

60. *Ward*, 657 F.2d 45.

61. *Ward*, 495 F. Supp. at 438. *See also*, *Weiss v. Patrick*, 453 F. Supp. 717 (D.R.I. 1978) ("In fact, it was shown, and this Court finds, that Defendants' actions were primarily, if not entirely, motivated by the maternal concerns of Plaintiff's mother" *Id.* at 724.); *Slyn v. Slyn*, No. 79-3468, slip op. at — (N.D. Ill. 1980) ("There is no invidiously discriminatory animus here. Defendants were motivated, not by their

Ward circuit court, which ruled that “the complaint sufficiently charge[d] that the defendants were motivated to act as they did not only because they found the plaintiff’s religious beliefs intolerable, but also because of their animosity towards the members of the Unification Church.”⁶²

This dichotomy of whether parents’ liability emanated from “their concern for the well-being of a loved one”⁶³ or “animosity toward the members of the . . . church”⁶⁴ was settled in favor of a reasonableness standard in a well-reasoned decision by the Supreme Court of Minnesota. In that case, *Peterson v. Sorlien*,⁶⁵ a member of The Way Ministry sued her parents for false imprisonment and intentional infliction of emotional distress for their efforts in deprogramming her. The court denied relief, choosing to establish a reasonableness standard, holding

that when parents or their agents, acting under the conviction that

dislike of a particular religious group, but by concern for the well-being of a family member.” *Id.* at ____).

Although speaking in the context of minor children and compulsory education law the Supreme Court has commented that: “The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.” *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

62. *Ward*, 657 F.2d at 49. This is in agreement with at least one commentator, who has said:

The fact that the defendants are personally concerned about the plaintiff does not destroy the class-based nature of their animus. There is no specific intent requirement in section 1985(3). Defendants may believe they are doing good and actually helping the plaintiff. However, if their concern is caused by a deep-seated hostility toward the plaintiff’s chosen religion and lifestyle, this seems the very essence of “class-based animus”—a stereotyped view of the class as having no constitutional rights, which inspires the defendant to act illegally and unconstitutionally, as in *Griffin*.

Comment, *The Deprogramming of Religious Sect Members*, *supra* note 49, at 241. *But see*, *Weiss v. Patrick*, 453 F. Supp. at 724 (“[Plaintiff’s] actions which resulted in her combination with Defendants, arose not from her abhorrence of the Unification Church *per se*, but rather arose directly from the solicitude which a mother holds for her daughter’s health and well-being.”).

63. *Ward*, 495 F. Supp. at 438.

64. *Ward*, 657 F.2d at 49.

65. 299 N.W.2d 123 (Minn. 1980), *cert. denied*, 450 U.S. 1031 (1981).

the judgmental capacity of their adult child is impaired, seek to extricate that child from what they reasonably believe to be a religious or pseudo-religious cult, and the child at some [later] juncture assents to the actions in question, limitations upon the child's mobility do not constitute meaningful deprivations of personal liberty sufficient to support a judgment of false imprisonment.⁶⁶

If brainwashing is to be considered a "public wrong", and deprogramming is necessary to rectify that "wrong", *Peterson* is perhaps a reasonable rule which provides some relief from the problem.

Giving a license to kidnap and deprogram children, however, is a potential "time bomb". The Minnesota Supreme Court recognized this in formulating *Peterson*, cautioning that "owing to the threat that deprogramming poses to public order, we do not endorse self-help as a preferred alternative."⁶⁷

Consider a hypothetical case in which parents kidnap their lesbian daughter and have her raped in an effort to deprogram her of her sexual preferences.⁶⁸ Although these parents would likely be found liable under *Peterson*, the girl was still forced to go through a rape due to what some parents would consider, a parental license to deprogram. "Indeed, according to the Gospel of Mark, Jesus was a candidate for 'deprogramming' since his own family thought he was berserk and his religious leaders said he was possessed of the devil."⁶⁹

66. *Peterson*, 299 N.W.2d at 129. A very similar argument has been used to plead a defense of necessity where the deprogrammer has been charged with kidnapping. See, e.g., *United States v. Patrick*, 532 F.2d 142 (9th Cir. 1976), where the district court's rulings were held unreviewable because of double-jeopardy. In that case, the district court found that a parent may legally kidnap an adult child for deprogramming based upon necessity and: "[w]here parents are, as here, of the reasonable belief that they were alone not physically capable of recapturing their daughter from existing, imminent danger, then the defense of necessity transfers or transposes to the constituted agent, the person who acts upon their behalf under such conditions." *Id.* at 145. *But see*, *People v. Patrick*, 126 Cal. App. 3d 952, 179 Cal. Rptr. 276 (Ct. App. 1981) (necessity defense not allowed in the absence of a showing of an emergency situation and that the agent reasonably believed a need for criminal action existed).

67. *Peterson*, 299 N.W.2d at 129.

68. Although this author has been told such a case has occurred, numerous hours of research have proven fruitless in finding it.

69. H. Cox, *Playing the Devil's Advocate, as it Were*, N.Y. Times, Feb. 16, 1977, at A25, col. 1.

III. Must We Settle for a Reasonableness Standard? Some Suggested Solutions

If the goal of solving the problems inherent in parental deprogramming is to take the power of deciding whether to deprogram away from parents, and put it in the hands of some other decision-making body, then first amendment⁷⁰ obstacles must be overcome.⁷¹

The cults and their supporters claim that freedom to practice their religion is protected by the first amendment. However, if brainwashing is part of their religious practice, should it be similarly protected? The Supreme Court has recognized that not everything associated with the practice of a religion is constitutionally protected. Justice Roberts, speaking for a majority of the Court in *Cantwell v. Connecticut*,⁷² wrote that “[T]he [First] Amendment embraces two concepts—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the benefit of society.”⁷³

Commentaries have been critical of *Peterson* for this reason.

Taken to its logical extreme, . . . if Lutheran parents become upset that their child has converted to Roman Catholicism and has entered a monastery, the parents are justified in extricating the adult child. According to *Peterson*, to avoid liability in such a case, the parents need only confine the child, subject him or her to harangues and threats of commitment to mental institutions or other manner of “persuasion”, until the child assents.

Comment, *supra* note 48, at 1004-05.

70. U.S. CONST. amend. I.

71. The first amendment provides “that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . .” *Id.* Besides applying to the federal government, these provisions have been found to apply to the states through the due process clause of the fourteenth amendment as part of “[t]he fundamental concept of liberty embodied in that amendment. . . .” *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) (free exercise clause). *See also*, *Everson v. Bd. of Educ.*, 330 U.S. 1 (1947) (establishment clause).

72. 310 U.S. 296.

73. *Id.* at 303-04. “Thus, religious operations that endanger public safety, threaten disorder, endanger the health of a member, or drastically differ from societal norms may be regulated or prohibited.” *Turner v. Unification Church*, 473 F. Supp. 367, 372 (D.R.I. 1978), *aff’d per curiam*, 602 F.2d 458 (1st Cir. 1978). *Accord*, *Prince v. Massachusetts*, 321 U.S. 158 (1943) (“The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the

If a state were to attempt to regulate brainwashing as religious conduct, the regulation "must be so exercised as not, . . . [to] unduly . . . infringe the protected freedom."⁷⁴ Although procedures could be established to strike this delicate balance, there are those who find this unlikely:

If the state were allowed to determine that proselytizing resulting in conversion were really "brainwashing" it would be questioning the validity of a religious experience and thus, as a result, the underlying validity of the religion. It would also be invading the highly protected area of free speech. Such a determination would violate the free exercise, establishment, and free speech clauses of the first amendment.⁷⁵

Since any deprogramming regulation will of necessity encroach upon

latter to ill health or death." *Id.* at 166-67.).

In *Turner*, it was alleged that brainwashing on the part of the Unification Church arose to the level of involuntary servitude (for a complete discussion of this claim see *infra* notes 121 through 144 and accompanying text). The court found that *Cantwell* allowed examination of these claims in view of the fact that it "is unquestionably an act which has a serious adverse effect upon one of the Church's followers and constitutes conduct that violates the most fundamental tenets of both American society and the United States Constitution." *Turner*, 473 F. Supp. at 372.

But can belief and action truly be separated? In *Wisconsin v. Yoder*, 406 U.S. 205 (1972), where a challenge was made to that state's compulsory education laws, Chief Justice Burger stated: "This case . . . does not become easier because respondents were convicted for their 'actions' in refusing to send their children to the public high school; in this context belief and action cannot be neatly confined in logic-tight compartments." *Id.* at 220. This language was later quoted in *Katz v. Superior Court*, 73 Cal. App. 3d 988, 141 Cal. Rptr. 234 (1st Dist. Ct. App. 1977), an action to set aside five conservatorship orders granted for religious deprogramming. The court said further: "When [it] is asked to determine whether that change was induced by faith or by coercive persuasion is it not investigating and questioning the validity of that faith?" *Id.* at 987, 141 Cal. Rptr. at 255. "The total picture disclosed must be tested by principles applicable to the regulation of acts of religious organizations and their members." *Id.* at 988, 141 Cal. Rptr. at 256.

74. *Cantwell*, 310 U.S. at 304.

75. LeMoult, *supra* note 42, at 614. See also, Note, *Conservatorships and Religious Cults: Divining A Theory of Free Exercise*, 53 N.Y.U. L. REV. 1247 (1978) ("A member relies on the sect leaders for guidance and follows their commands unquestioningly due to a belief that the leaders articulate the will of God. That belief is inextricably bound up with the member's will and thought." *Id.* at 1283.).

some first amendment rights, it must be in furtherance of a compelling state interest.⁷⁶ The state has such an interest in promoting the health, safety, and welfare of its citizens.⁷⁷ Deprogramming, in seeking to promote the mental health of brainwashed members by removing the effects of brainwashing, is just such an interest. Further, if brainwashing has induced self-mutilation,⁷⁸ murder⁷⁹ and mass-suicide⁸⁰ can anyone truly say that it is not in the states' interest to regulate such activity?

If governmental regulations were made applicable to deprogramming, it would put the government in a position of *forcing* a person to accept treatment against his will. Doesn't each individual, however, have the right to do with his own body as he sees fit? While this right does exist as part of the right to privacy,⁸¹ it is not absolute.⁸² Since

76. See *Sherbert v. Verner*, 374 U.S. 398, 406 (1962); *People v. Woody*, 61 Cal. 2d 716, 394 P.2d 813, 40 Cal. Rptr. 69 (1964) ("[T]he state may abridge religious practices only upon a demonstration that some compelling state interest outweighs the defendants' interests in religious freedom." *Id.* at 718, 394 P.2d at 815, 40 Cal. Rptr. at 71.).

77. See, e.g., *Jacobson v. Massachusetts*, 197 U.S. 11 (1905) (compulsory vaccination laws). See also, *Roe v. Wade*, 410 U.S. 113 (1973) ("State's important, and legitimate interest in the health of the mother, the 'compelling' point in the light of present medical knowledge is at approximately the end of the first trimester. . . . [F]rom and after this point, a State may regulate the abortion procedure to the extent that the regulation reasonably relates to the preservation and protection of maternal health." *Id.* at 163.).

78. See *supra* note 15 and accompanying text.

79. See FINAL REPORT, *supra* note 27 ("I was told by an older member that if my leaders told me to kill someone, I would have to kill someone." *Id.* at 33.).

80. Mathews, *supra* note 28 (Jonestown slayings).

81. See, e.g., *Roe v. Wade*, 410 U.S. 113 (1973) (mother has a right before viability to decide whether to have an abortion); *Guardianship of Roe*, — Mass. —, 421 N.W.2d 40 (1981) ("competent individual has the right to refuse . . . treatment." *Id.* at —, 421 N.W.2d at 51.); *Matter of Quinlan*, 70 N.J. 10, 355 A.2d 647 (1976) ("[Constitutional right of privacy] is broad enough to encompass a patient's decision to decline medical treatment under certain circumstances, in much the same way as it is broad enough to encompass a woman's decision to terminate pregnancy under certain conditions." *Id.* at 40, 355 A.2d 663.), *cert. denied*, 429 U.S. 922 (1976); *Satz v. Perlmutter*, 362 So. 2d 160 (Fla. 4th Dist. Ct. App. 1978) (competent terminal patient has a right to refuse extraordinary treatment as part of his constitutional right of privacy), *approved*, 379 So. 2d 359 (Fla. 1980) ("[C]ompetent adult patient, with no minor dependents, suffering from a terminal illness has the constitutional right to refuse or discontinue extraordinary medical treatment where all effected family members con-

this right has been held to be a fundamental one,⁸³ however, a compelling governmental interest must be shown before it can be intruded upon.⁸⁴ Here too, this compelling interest is the promotion of the health, safety and welfare of its citizens.

Since the claim of brainwashing assumes the person is unaware he's been brainwashed, would such a person be in a position to decide if he should be treated by deprogramming to have this condition removed, or is he incompetent to rationally reach such a decision? While incompetence is generally thought of as the result of age, disease or infir-

sent." *Id.* at 360.).

The privilege of privacy is extremely important for both the individual and society. It is necessary for individuality and the consciousness of individual choice in life. Without solitude, which allows one to know what he thinks and feels, the individual cannot achieve more than a primitive sense of self. Independence and personal strength, as well as the diversity of thought that arises from nonconformity, are desirable traits in a social system. They result in leadership and creative surges that are essential for social progress. Moreover, by enabling an individual to maintain degrees of intimacy and distance, privacy is an integral aspect of personal liberty, freedom and dignity. It places the individual in control of his own destiny, thus allowing him to maximize his own creativity and desires. The meaning of love, trust, and friendship are enhanced when the individual is able to make his own decisions. Privacy both promotes purity of individual decisions regarding the nature of one's relationships and assures that these relationships are maintained.

A. SLABY & L. TANCREDI, COLLUSION FOR CONFORMITY 34 (1975).

82. See, e.g., *Roe v. Wade*, 410 U.S. 113 (1973) (after viability, state can proscribe abortion); *Schmerber v. California*, 384 U.S. 757 (1966) (blood withdrawal to analyze alcohol content despite verbal refusal); *Buck v. Bell*, 274 U.S. 200 (1927) (sterilization of inmates who have a hereditary form of insanity or imbecility); *Jacobson v. Massachusetts*, 197 U.S. 11 (1905) (compulsory vaccination). But see, *Rochin v. California*, 342 U.S. 165 (1952) (compulsory stomach pumping to search for drugs found violation of due process as "conduct that shocks the conscience" *Id.* at 172.).

83. See, e.g., *Wade*, 410 U.S. at 155; *Doe v. Bolton*, 410 U.S. 179 (1973) ("[The freedom to care for one's health and person,] though fundamental, [is] likewise subject to regulation on a showing of 'compelling state interest'." *Id.* at 213. (Douglas, J., concurring)).

84. See, e.g., *Wade*, 410 U.S. 113. See also, *Shapiro v. Thompson*, 394 U.S. 618 (1969) (fundamental right to travel); *Loving v. Virginia*, 388 U.S. 1 (1967) (fundamental right to marry); *Cantwell v. Connecticut*, 310 U.S. 296, 311 (1940) (freedom of religion).

imity,⁸⁵ can the physiological effects of brainwashing be much different?⁸⁶

The Supreme Court has held that to confine a non-dangerous mental incompetent without treatment is unconstitutional as a violation of due process.⁸⁷ The Court has yet to determine, however, whether a non-dangerous mental incompetent is denied due process if treated against his will.

The United States Supreme Court was asked, in *Mills v. Rogers*,⁸⁸ to determine whether "an involuntarily committed mental patient has a constitutional right to refuse treatment"⁸⁹ The Court vacated the judgment of the Circuit Court of Appeals⁹⁰ and remanded the case for further proceedings⁹¹ to determine what effect an intervening Supreme Judicial Court of Massachusetts opinion, *Guardianship of Roe*,⁹² might have on the case.⁹³ The Court's decision to remand was based upon the fact that "it is distinctly possible that [the state] recognizes liberty interests of persons adjudged incompetent that are broader than those protected directly by the Constitution of the United States."⁹⁴ In re-

85. See, e.g., *Taylor v. Gilmartin*, 686 F.2d 1346 (10th Cir. 1982) ("When using the terms 'mentally incompetent', 'incompetent' and 'incapable' . . . , these are defined as including one who is not adjudicated insane but, because of old age, disease, weakness of mind or other reasons, is unable without assistance to adequately care for his person or property and, therefore could be deceived by artful or designing persons." *Id.* at 1351.), cert. denied, 51 U.S.L.W. 3533 (Jan. 18, 1983). See generally 41 AM. JUR. 2D *Incompetent Persons* § 1-7 (1968).

86. But see, *LeMoult*, *supra* note 42. "One would search in vain to find 'brainwashed zombies' listed in any of the standard texts on mental disorders." *Id.* at 630.

87. *O'Connor v. Donaldson*, 422 U.S. 563 (1975). The Supreme Court has also held that "[t]he mere fact that [a person] has been committed under proper procedures does not deprive him of all substantive liberty interests under the Fourteenth Amendment." *Youngberg v. Romeo*, 102 S. Ct. 2452, 2458 (1982). "Respondent thus enjoys constitutionally protected interests in conditions of reasonable care and safety, reasonably non-restrictive confinement conditions, and such training as may be required by these interests." *Id.* at 2463.

88. 102 S. Ct. 2442 (1982).

89. *Mills*, at 2448.

90. *Id.* at 2452.

91. *Id.*

92. — Mass. —, 421 N.E.2d 40 (1981).

93. *Mills*, at 2452.

94. *Id.* at 2450.

gard to those rights protected by Massachusetts' laws, the Court found this so "[e]specially in the wake of [*Guardianship of Roe*]."⁹⁵ As such, it appears the Court is tacitly approving *Guardianship of Roe* as having met at least minimal due process standards.

Guardianship of Roe involved the forcible treatment of a non-institutionalized incompetent with anti-psychotic drugs. The court began their inquiry with the precept that "[a]bsent an overwhelming State interest, a competent individual has the right to refuse . . . treatment."⁹⁶ The court held that this right was not lost due to incompetence, but rather the question was: who may exercise it?

The court found the following factors to weigh heavily in its decision that "in order to accord proper respect to this basic right of all individuals . . . a judicial determination of substituted judgment must be sought."⁹⁷ A determination of substituted judgment would require the courts to decide what "that" person *would* do if given the choice, as opposed to the court deciding what they think "that" person *should* do.⁹⁸ Those factors the court relied upon in reaching this decision were:

95. *Id.* at 2450.

96. *Guardianship of Roe*, at —, 421 N.E.2d at 51. While a competent individual can refuse treatment, incompetent individuals have even been denied the opportunity to consent in extreme situations. See *Kaimowitz v. Michigan Dept. of Mental Health*, 42 U.S.L.W. 2063 (Cir. Ct. Wayne Cty., Mich., July 31, 1973), where it was held that "involuntarily detained mental patients cannot give informed and adequate consent to experimental psychosurgical procedures on the brain." *Id.* at 2064.

97. *Guardianship of Roe*, at —, 421 N.E.2d at 51-52.

98. The Massachusetts court

emphasize[d] that, the determination is *not* what is medically in the ward's best interests—a determination better left to those with extensive medical training and experience. The determination of what the incompetent individual would do if competent will probe the incompetent individual's values and preferences and such an inquiry in a case involving anti-psychotic drugs is best made in courts of competent jurisdiction.

Id. at 52 (emphasis original). *But see*, *Youngberg v. Romeo*, 102 S. Ct. 2452 (1982) ("[T]here certainly is no reason to think judges or juries are better qualified than appropriate professionals in making [treatment] decisions." *Id.* at 2462.).

This dichotomy has been exemplified by the terminally ill "right to die" cases. In *Matter of Quinlan*, 70 N.J. 10, 355 A.2d 647 (1976), the highly publicized case where a 22 year old girl, Karen Quinlan, was in a comatose state and her parents sought to have her removed from a life supporting respirator, the Supreme Court of New Jersey held:

“(1) the intrusiveness of the proposed treatment, (2) the possibility of adverse side effects, (3) the absence of an emergency, (4) the nature and extent of prior judicial involvement, and (5) the likelihood of conflicting interests.”⁹⁹ Applying these factors to religious deprogramming, we see that: the intrusions to both liberty and first amendment freedom of religion are great;¹⁰⁰ there is a substantial possibility of harm if the wrong person is deprogrammed since deprogramming is trying to effect

Upon the concurrence of the guardian and family of Karen, should the responsible attending physicians conclude that there is no reasonable possibility of Karen’s ever emerging from her present comatose condition to a cognitive, sapient state and that the life-support apparatus now being administered to Karen should be discontinued, they shall consult with the hospital “Ethics Committee” or like body of the institution in which Karen is then hospitalized. If that consultative body agrees that there is no reasonable possibility of Karen’s ever emerging from her present comatose condition to a cognitive, sapient state, the present life-support system may be withdrawn and said action shall be without any civil or criminal liability therefor on the part of any participant, whether guardian, physician, hospital or others.

Id. at 54, 355 A.2d at 671. *But see*, Superintendent of Belchertown State School v. Saikewicz, 373 Mass. 728, 370 N.E.2d 417 (1977), where the Supreme Judicial Court of Massachusetts rejected the *Quinlan* “Ethics Committee” approach, taking “a dim view of any attempt to shift the ultimate decision-making responsibility away from the duly established courts of proper jurisdiction. . . .” *Id.* at 758, 370 N.E.2d at 434. The court went further, saying that “such questions . . . require the process of detached but passionate investigation and decision that forms the ideal on which the judicial branch of government was created.” *Id.* at 759, 370 N.E.2d at 435. As such, the court held a judicial determination of substituted judgment was necessary.

99. Guardianship of Roe, at —, 421 N.E.2d at 52. The court gave a number of additional factors which also were considered:

Among them are at least the following: the extent of impairment of the patient’s mental faculties, whether the patient is in the custody of a State institution, the prognosis with the proposed treatment, the complexity, risk and novelty of the proposed treatment, its possible side effects, the patient’s level of understanding and probable reaction, the urgency of decision, the consent of the patient, spouse, or guardian, the good faith of those who participate in the decision, the clarity of professional opinion as to what is good medical practice, the interests of third persons, and the administrative requirements of any institution involved.

Id. (quoting Matter of Spring, — Mass. —, 405 N.E.2d 115, 121 (1980)).

100. *See supra* notes 36-41, 70-80 and accompanying texts (first amendment); and notes 81-103 and accompanying text (liberty).

thought processes and holographic patterns of the brain;¹⁰¹ deprogramming does not arise in an emergency setting since members have usually been with the cult for a period of time;¹⁰² and finally, conflicting interests such as freedom of religion are great.¹⁰³ Consequently, it seems likely that, for decisions determining whether to deprogram, the criteria set forth in *Guardianship of Roe* would require a judicial determination of substituted judgment. The court in *Guardianship of Roe*, however, did not decide that anyone could be treated where a judicial determination was made. In that case, a guardian had previously been appointed so that there was already an adjudication of incompetence.

Guardianship Statutes

The application of guardianship statutes to deprogramming has been advocated by many.¹⁰⁴ This approach permits parents to petition a court to be appointed as guardians for deprogramming purposes and the court can then determine what, if any, treatment should take place. The success of obtaining court appointed guardianships, however, varies because different states require different standards of incompetence to be met before a guardian will be appointed.

This was exemplified in two recent cases. In California, the case of *Katz v. Superior Court*¹⁰⁵ overturned the trial court's orders which had granted guardianships to the parents of five members of the Unification Church for deprogramming purposes. The court found that under the applicable state statutes, "in the absence of such actions as render the adult believer himself gravely disabled . . . , the processes of this state

101. See *supra* notes 19-28 and accompanying text.

102. See, e.g., *People v. Patrick*, 126 Cal. App. 3d 952, —, 179 Cal. Rptr. 276, 282 (Ct. App. 1981) (Necessity defense was not allowed in the absence of an emergency. "After some seven years of alleged cult membership, any imminent harm threatening [the member], if it existed at all, was of a character not justifying the violent action undertaken by the [Parents] with Patrick's help.").

103. See *supra* notes 36-41, 70-80 and accompanying texts.

104. See, e.g., Delgado, *supra* note 6, at 88. In California, guardianship orders were obtained for five members of the Unification Church, although they were later set aside. See *Katz v. Superior Court*, 73 Cal. App. 3d 952, 141 Cal. Rptr. 234 (1st Dist. Ct. App. 1977).

105. 73 Cal. App. 3d 952, 141 Cal. Rptr. 234.

cannot be used to deprive the believer of his freedom of action and to subject him to involuntary treatment."¹⁰⁶

In Oklahoma, where the standard to be applied is whether "the alleged incompetent is incapable of 'taking care of himself and managing his own property',"¹⁰⁷ the Tenth Circuit Court of Appeals, in *Taylor v. Gilmartin*,¹⁰⁸ found the issuance of conservatorship orders to parents for deprogramming improper. In that case, it was the failure to follow proper procedure and to produce evidence showing incompetency which were at fault. It is entirely possible that if these circumstances were different, the conservatorship would have been upheld.

If a state does not have a guardianship statute applicable to deprogramming, its legislature should consider enacting one. Despite the obstacles posed by the first amendment¹⁰⁹ and the due process clause's right to refuse treatment,¹¹⁰ a deprogramming statute would be less intrusive than allowing parents to engage in self-help¹¹¹ and less offensive than requiring a brainwashed person to remain that way.

If such a statute were enacted, procedural safeguards must be included so that it would not violate due process. Although "due process is flexible and calls for such procedural protections as the particular situation demands,"¹¹²

[w]hen the state participates in deprivation of a person's right to personal liberty . . . at a minimum, due process requires that the person receive a hearing after adequate written notice of the basis for the proposed action; an opportunity to appear in person and to present evidence in his own behalf; the right to confrontation by, and the opportunity to cross-examine, adverse witnesses; a neutral and detached decision maker; findings by a preponderance of the evidence and a record of the proceeding adequate to permit meaningful judicial or appellate review.¹¹³

106. *Id.* at 988-89, 141 Cal. Rptr. at 256.

107. *Taylor v. Gilmartin*, 686 F.2d 1346, 1351 (10th Cir. 1982), *cert. denied*, 51 U.S.L.W. 3533 (Jan. 18, 1983).

108. *Id.*

109. *See supra* notes 36-41, 70-80 and accompanying texts.

110. *See supra* notes 81-103 and accompanying text.

111. *See supra* notes 42-69 and accompanying text.

112. *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

113. *In re Roger S.*, 19 Cal. 3d 921, 937-38, 569 P.2d 1286, 1296, 141 Cal.

These safeguards are in line with the goals a deprogramming statute would seek to achieve—the undoing of unconsensual brainwashing and minimal intrusiveness to personal liberty.

At the proceedings, the judge questions the victim, observes his demeanor and hears psychiatric testimony. 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. The treatment proceeds, under the supervision of the court, which may question the treating physician, observe progress or order the treatment discontinued.¹¹⁴

In *Guardianship of Roe*, the Massachusetts court recognized the serious impact of deciding whether to treat a person against his will. The court therefore “set forth . . . guidelines to be followed in order to ensure accuracy and consistency in [such] proceedings. . . .”¹¹⁵

(1) *The ward's expressed preferences regarding treatment.* . . .
Even if the ward lacks capacity to make treatment decisions, his stated preference is entitled to serious consideration. . . .

. . . .

Rptr. 298, 308 (1977). See also, *Guardianship of Roe*, — Mass. —, —, 421 N.E.2d 40, 47 (1981) (“[P]reponderance of the evidence standard is the appropriate standard to be applied . . . a conscientious judge, being mindful of the adverse social consequences which might follow an adjudication of mental illness, will subject an individual to guardianship only after carefully considering the evidence and indicating those factors that persuade him.”). But see, *Addington v. Texas*, 441 U.S. 418 (1979) (civil involuntary commitment for an indefinite period of time requires “clear and convincing” level of proof).

114. Delgado, *supra* note 6, at 91.

115. *Guardianship of Roe*, at —, 421 N.E.2d at 61. Such guidelines are necessary considering the implications of extraordinary treatment:

The awesome moral problem of these treatments is confused by the fact that the individuals so treated may in most cases be incapable of objecting to the treatment after it has occurred. In his altered state, the patient is pleasant and happy; he has no recollection of his prior condition and is therefore incapable of asserting any objections he might have to the treatment, be they physical, philosophical, or recalcitrant. The new personality is reformed and even artificial, almost as if a new soul had been transplanted into an old body.

N. KITTRIE, *THE RIGHT TO BE DIFFERENT* 388 (1971).

- (2) *The ward's religious beliefs.* . . .

 (3) *The impact upon the ward's family.* . . .

 (4) *The probability of adverse side effects.* . . .

 (5) *The consequences if treatment is refused.* . . .

 (6) *The prognosis with treatment.* . . .¹¹⁶

These factors should facilitate deprogramming efforts while prohibiting society from imposing upon both religious rights protected by the first amendment and the member's right to privacy. "In short, if an individual would, if competent, make an unwise or foolish decision, the judge must respect that decision as long as he would accept the same decision if made by a competent individual in the same circumstances."¹¹⁷

Despite such procedural safeguards, deceptive practices of the cults might render any action impossible. In view of these deceptive practices, the deliberate hiding of members from their parents¹¹⁸ and the total disregard of the law by some of the cults,¹¹⁹ many advocate an ex-parte hearing to ensure that guardianship orders are issued. Considering the intrusions of an ex-parte order to personal liberty it is recommended that a two-stage proceeding be adopted. The first stage could

116. *Guardianship of Roe*, at —, 421 N.E.2d at 57-58.

117. *Id.* at —, 421 N.E.2d at 60 n.20.

118. One ex-member of the Children of God has testified:

They then persuaded me to hide in another loft next door . . . I heard my parents come up and I heard them scream and everything and the cops came—and I stayed there until my parents left the building . . . I heard my mother asking Abram and Ruth where I was and Abram denied my presence at the Children of God and stated I left the Children of God and they did not know where I was.

FINAL REPORT, *supra* note 7, at 22-23 ("Our files are replete with the testimony of parents and ex-members of similar incidents." *Id.* at 23.).

119. For instance, a "Moses Letter" entitled "Public Relations" which is used by the Children of God for leadership training, proclaimed: "You can ask to see the warrant—make sure who it's for, and while you are stalling, someone else can inform the disciple involved who then has a perfect right to run out the back door if he wants to." FINAL REPORT, *supra* note 7, at 16.

be a "probable cause" ex-parte hearing to bring the member within the jurisdiction of the court. The cults could then be legally compelled to produce the member at the second stage. It is at this second-stage proceeding where the court can determine if guardianship orders shall be issued. If the court does issue such orders, then a later additional proceeding would be required, after all the evidence is in, to determine whether to permit the deprogramming.

In view of the fact that "due process is flexible"¹²⁰ and depends upon the situation, an initial ex-parte hearing to confer jurisdiction should not be violative. The state interests in alleviating brainwashing and thereby promoting the health, safety and welfare of its citizens should substantially outweigh the inconvenience that would accrue to a member not in need of deprogramming by making him appear in court.¹²¹

120. *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

121. Such a balancing of interests is the test usually applied to procedural due process questions. The test was given in *Mathews v. Eldridge*, 424 U.S. 319 (1976):

[I]dentification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id. at 335. This language was later quoted in *Smith v. Organization of Foster Families*, 431 U.S. 816 (1977) and *Parham v. J. R.*, 442 U.S. 584 (1979).

In *Bartley v. Kremens*, 402 F. Supp. 1039 (E.D. Penn. 1975), *vacated*, 431 U.S. 119 (1976), a balancing of state against individual interests led the court to mandate a civil probable cause hearing within 72 hours of commitment of minors. While the case was vacated as moot, due to an intervening legislative change, a similar balancing of interests should permit the court to take jurisdiction before a decision of whether to deprogram is made.

Such a system has already been used for deprogramming. *See Religious Cults Newest Magnet for Youth*, U.S. NEWS AND WORLD REPORT, June 14, 1976, at 52 ("On at least one occasion, sheriff's deputies have gone out in the pre-dawn hours to pick up the person, so the commune does not have time to spirit him away." *Id.* at 54.).

Thirteenth Amendment's Slavery Prohibitions

A blanket approach might be developed to effectively prevent brainwashing. As a result of a Grand Jury investigation, the People of the State of New York, in *People v. Murphy*,¹²² charged two leaders of the Hare Krishna movement with *unlawful imprisonment*. The basis for this charge was that:

through "mind control", brainwashing, and/or "manipulation of mental processes" the defendants destroyed the free will of the alleged victims, obtaining over them mind control to the point of absolute domination. . . .¹²³

While the charge was dismissed "on the ground of insufficient legal evidence"¹²⁴ it is possible that the argument was proper but that instead of *unlawful imprisonment*, the charge should have been thirteenth amendment slavery violations.¹²⁵

If the New York District Attorney, and others, are correct in claiming that brainwashing gives such "control to the point of absolute domination"¹²⁶—is this not slavery? Compare this basis for the New York case with the modern definition of slavery given in *United States v. Ingalls*:¹²⁷

A slave is a person who is wholly subject to the will of another, one who has no freedom of action and whose person and services are wholly under the control of another and who is in a state of compulsory service to another.¹²⁸

Professor Richard Delgado has found a number of similarities between the cults' practices and those practices which previous courts

122. 98 Misc. 2d 235, 413 N.Y.S.2d 540 (N.Y. Sup. Ct. 1977).

123. *Id.* at 239-40, 413 N.Y.S.2d at 543.

124. *Id.* at 243, 413 N.Y.S.2d at 545-46.

125. U.S. CONST. amend. XIII, § 1, which provides that: "Neither slavery nor involuntary servitude, except as a punishment for crime . . . , shall exist within the United States. . . ." *Id.* For a complete discussion of this claim, see Delgado, *Religious Totalism As Slavery*, 9 N.Y.U. REV. L. & SOC. CHANGE 51 (1980).

126. *Murphy*, at 239-40, 413 N.Y.S.2d at 543.

127. 73 F. Supp. 76 (S.D. Cal. 1947).

128. *Id.* at 78.

have found give rise to a thirteenth amendment claim. For example,

Cultists often are recruited by force and deception, then removed to isolated surroundings from which escape is difficult. . . . Doubts, "improper" thoughts, or insufficient fund-raising may be punished by forcing the recruit to "pay indemnity" and undergo physical self-mortification. . . .

. . . .
 . . . Work assignments are made by the leaders, who control every detail of the convert's life, including residence, meals, hours of sleep, even choice of marital partner. . . . Recruits work 12-14 hour work days, seven days a week. All the proceeds are turned over to the cult leaders. . . .¹²⁹

Courts have found combinations of the following practices to constitute slavery: maintaining farm and field hands with little chance of escape by charging exorbitant expense charges for food and rent which were set against their pay,¹³⁰ threatening to disclose a thirty-eight year old morals charge to authorities,¹³¹ threatening violence,¹³² insufficient food,¹³³ and long hours.¹³⁴

It is clear that at least for involuntary servitude, "the law takes no account of the means of coercion,"¹³⁵ so that brainwashing, if sufficiently proven, may well be enough to constitute slavery. If this charge

129. Delgado, *supra* note 125, at 58-59.

130. *See* United States v. Booker, 655 F.2d 562 (1st Cir. 1981); United States v. Bibb, 564 F.2d 1165 (5th Cir. 1977), *cert. denied*, 435 U.S. 1007 (1978).

131. *Ingalls*, 73 F. Supp. at 77 (defendant threatened to have slave committed to prison because of adultery and an abortion 38 years ago).

132. *Bibb*, 564 F.2d at 1168 ("Each victim testified that he did not leave Ivory Lee Wilson's employ because he feared that he would be physically harmed by the defendants."). *See* *Booker*, 655 F.2d 562 (defendants were severely beaten).

133. *Bibb*, 564 F.2d at 1168 ("There is evidence that the food furnishèd to her by defendant was of substantially lower standard than that common to servants generally.").

134. *Id.*

135. *Id.* at 1167-68 ("Various combinations of physical violence and of threats of physical violence for escape attempts are sufficient"); *Bernal v. United States*, 241 F. 339 (5th Cir. 1917) ("The law takes no account of the amount of the debt or the means of coercion." *Id.* at 342.), *cert. denied*, 245 U.S. 672 (1918); *Pierce v. United States*, 146 F.2d 84 (5th Cir. 1944), *cert. denied*, 324 U.S. 873 (1945), *reh'g denied*, 157 F.2d 848 (5th Cir. 1946), *cert. denied*, 329 U.S. 814 (1947).

of slavery were to be accepted, the cult could not claim protection of its practices by the first amendment. In *Turner v. Unification Church*,¹³⁶ the Unification Church made just such a claim in defense of an ex-member's charge of involuntary servitude. The court responded:

The alleged involuntary servitude is unquestionably an act which has a serious adverse effect upon one of the church's followers and constitutes conduct that violates the most fundamental tenets of both American society and the United States Constitution. The Unification Church cannot seek the protection of one constitutional amendment while it allegedly deprives citizens the protection of other constitutional guarantees.¹³⁷

The plaintiff's claim was eventually dismissed, as a claim upon which relief could not be granted.¹³⁸ The problem was that rather than asking to be released from a state of involuntary servitude, the plaintiff asked for damages for a previously terminated servitudinal relationship.

Professor Delgado, who originally espoused use of a thirteenth amendment claim, found the amendment's categorical approach most appealing. "[I]f a particular practice constitutes slavery, it is prohibited,"¹³⁹ so that, "one need not show that the slaves are unhealthy, incompetent, or in danger of becoming insane; it is enough to show that they are slaves."¹⁴⁰ While this approach provides an easy method to attack brainwashing, and therefore the cults, it completely overlooks the individual's right to privacy and his first amendment right to freely practice the religion of his choice.

Moreover, the claim that mind control is a form of slavery under the thirteenth amendment is based upon the supposition that brainwashing, a psychological concept, renders the victim subject to the master's control. To use Delgado's theory that we no longer have to show incompetency or unhealthiness due to the thirteenth amendment's categorical approach would be to use flawed reasoning. This is so because brainwashing presupposes incompetency or lack of health. Were

136. 473 F. Supp. 367 (D.R.I. 1978).

137. *Id.* at 372.

138. *Id.* at 375-76.

139. Delgado, *supra* note 125, at 53.

140. *Id.* at 55.

it otherwise, we could not explain how the slaves were compelled to be slaves since there was no physical compulsion.

Professor Delgado seeks use of the thirteenth amendment to effectuate his own ideals. As he himself writes: "The thirteenth amendment's prohibition of human bondage offers a method by which our instinctive reaction to such cases can be made legally cognizable. Our intuitions should respond to fundamental notions about the way in which we, as a society, wish to live. We do not want slavery."¹⁴¹ Although we do not want the cults to use brainwashing techniques, can we allow our intuitions to get the better of us? We must respect the first amendment freedoms¹⁴² and the individual's right to privacy.¹⁴³ While brainwashing will not be protected under either of these constitutional guarantees, the Constitution demands that this brainwashing be fully proven before we send a "lynch mob" after the cults.

Instead of seeking to use the thirteenth amendment in a vacuum to rectify brainwashing by the cults, it seems far more palatable to use the policies against slavery as a further compelling state interest to overcome both the first amendment and right to privacy obstacles in using guardianship-type statutes, thus more fully protecting individual freedoms.

Present remedies have proven insufficient to prevent the use of brainwashing techniques and have only provided relief after the fact. If claims of slavery are proven the thirteenth amendment's enforcement statutes¹⁴⁴ provide penal sanctions which should deter cults from using such techniques in the future, thus buttressing the guardianship and deprogramming post hoc solutions.

Conclusion

There is persuasive evidence that religious cults brainwash their members. This, combined with deception in the recruiting phase, raises a strong doubt as to whether these members are exercising their free will. This brainwashing may actually constitute a form of slavery.

Parents, distressed over seeing their loved ones in such a state, find

141. *Id.* at 61.

142. *See supra* notes 36-41, 70-80 and accompanying texts.

143. *See supra* notes 81-103 and accompanying text.

144. These include 18 U.S.C.A. §§ 1581-87 (West 1976).

themselves in a dilemma. Should they take action on their own, attempting a rescue, or should they stand idly by as their child deteriorates? A number of parents have chosen self-help, kidnapping and deprogramming their children at the risk of being held liable for depriving their child of his civil rights.

Recognizing the parents' dilemma, the Supreme Court of Minnesota adopted a reasonableness standard, under which parents cannot unconditionally kidnap their children. The parents, to avoid liability, must have acted upon a reasonable belief that deprogramming was necessary. In view of the child's civil rights, and the fact that parents are unlikely to be able to objectively evaluate whether their actions are reasonable, it is far better to take the power to decide such a course of action from the parent and vest it in the judiciary. The court can weigh all sides and the child is provided the opportunity to be heard. If the court does determine that deprogramming will take place, it will set the parameters. This can best be effectuated through use of guardianship-type statutes. Moreover the thirteenth amendment's enforcement statutes can provide penal sanctions against cult leaders if slavery by brainwashing is proven.

Ira Jason Schacter