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When Courts Come Knocking At The Cult's Door: Religious Cults And The First Amendment

by CRAIG ANDREWS PARTON*

I

Introduction

[T]he wrong of these things, as I see it, is not in the money the victims part with half so much as in the mental and spiritual poison they get. But that is precisely the thing the Constitution put beyond the reach of the prosecutor, for the price of freedom of religion or of speech or of the press is that we must put up with, and even pay for, a good deal of rubbish . . . .

Justice Jackson in United States v. Ballard.¹

Nathan² is a second semester freshman at Indiana University. One day while studying in the university commons, Nathan is approached by Jodi, an affable female who also claims to be a student. The conversation revolves around several subjects of concern to Nathan—the arms race, world hunger, and the moral dilemmas of life.³ Jodi explains that she belongs to a group that, oddly enough, has the same concerns as Nathan. By coincidence, the group is having a dinner and discussion that very evening.

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¹ 332 U.S. 78, 95 (1944).
³ See Smith, Inside the Boonville Training Center: A Weekend with Moonies, San Francisco Chron., Dec. 11, 1975, at 1, 10, col. 1 (recruit subject to "love bombing" in order to lower resistance — "I was told I looked intelligent, had a happy face, my sweater was beautiful, my shoes were nice, and I was unique."); Delgado, supra note 2, at 546 n.78; C. Stoner & J. Parke, All God's Children 6-8 (1977) (cult proselytizers often take advantage of adolescent idealism).
Nathan attends the gathering and meets several people who act as though Nathan were a long-time family friend. After dinner, Nathan sits spellbound as a charismatic lecturer speaks on the precise issues that Nathan finds most significant and disturbing. The name of the group is never mentioned. Nathan is invited to a three-day workshop where, it is promised, he will get final answers to his questions.

At the retreat, the level of the activities quickens at a calculated pace. Though there are a plethora of stimulating lectures, Nathan finds himself playing games, singing, chanting, and interacting in small-group "therapy sessions." It never strikes Nathan as peculiar that he is rarely left alone to reflect on the viewpoint being presented. Whenever Nathan inquires as to the nature of the group and its "leader" he is told that all his questions will eventually be answered at the final meeting on Sunday night.

By Sunday night, Nathan has reached an emotional zenith. He does not realize that he has slept a total of only eight hours all weekend and has only eaten two meals each day. As far as he is concerned, he has met a group of like-minded people who display a complete acceptance of his views and lifestyle.

When the time for a decision arrives, Nathan is ready. He totally commits himself to the group and enters into a monastic-type lifestyle. He moves into the group house, begins listening to hours of taped lectures by the leader, solicits funds and new recruits for the organization, and survives on three hours of sleep a day. Nathan gets a new haircut and begins to wear

4. See Note, To Keep Them Out of Harm's Way? Temporary Conservatorships and Religious Sects, 66 CALIF. L. REV. 845, 847 (1978) ("Unification Church recruiters often approach persons on the street — especially persons who appear lonely or depressed — and speak to them about a loving communal group. The recruiters invite prospective members to a church house for dinner; prospective members are then told how much they are loved and needed, and are made to feel part of a special group whose mission is to save the world").

5. See R. ENROTH, supra note 2, at 102 ("We had the whole thing choreographed... The... purpose was to put the hook in, to discover what would grab them emotionally."); Lenz, supra note 2, at 41.

6. See Konte, Looking For God In All The Wrong Places, San Francisco Chron., Sept. 15, 1985 (This World), at 10, col. 2 (An ex-Unification Church member commented, "I'd been isolated mentally, isolated physically, isolated culturally. There was no breathing space").

7. See Note, supra note 4, at 847.

8. See Driver, Why A Portland Jury Awarded $39 Million In Damages Against One of the World's Most Profitable Cults, WILLAMETTE WEEK, May 90, 1985, at 7 (concerning training techniques of L. Ron Hubbard's Church of Scientology: "The kids
distinctive clothing. His relationship with his parents increasingly deteriorates as all ties with his past are systematically cut off.\textsuperscript{9} Conversion is complete.

Nathan's case is repeated hundreds of times each day. The extreme demands, and often questionable recruiting practices, of religious cults\textsuperscript{10} have spurred a barrage of legal attacks.

This note will outline the contours of that attack and the implications these efforts have for the first amendment's protection of religious expression. Particular attention will be given

\textsuperscript{9} See Rudin, \textit{supra} note 8, at 25 (cults undermine "all past psychological support systems" and may even forbid contact with parents); Peterson v. Sorlien, 299 N.W.2d 123, 126-27 (Minn. 1980), \textit{cert. denied}, 450 U.S. 1031 (1981) (woman involved with cult called "The Way International" exhibited a decline in academic performance, severe exhaustion and irritability, and "increasing alienation from [her] family"); Christofferson v. Church of Scientology, 57 Or. App. 203, 208, 644 P.2d 577, 582 (1982), \textit{cert. denied}, 459 U.S. 1206 (1983) (Scientology member told to "handle her parents" or else "disconnect" from them—for more on Christofferson, see infra note 27).

\textsuperscript{10} Any discussion of religious cults immediately forces one against seemingly insurmountable definitional problems. The term "cult" is often used as a pejorative by those who have an interest in identifying nonorthodox belief systems. See Wood, \textit{New Religions and the First Amendment}, 24 J. CH. & STATE 455, 460 (1982) ("The use of the term 'cult,' which is a pejorative word used to denigrate new religions, has no place in American law").

For purposes of this note, "cult" will be defined as any religious group that differs in some significant respect, as to belief or practice, from those religious groups which are regarded as the normative expressions of religion in our culture. See Pfeffer, \textit{Equal Protection for Unpopular Sects}, 9 N.Y.U. REV. L. & SOC. CHANGE 9, 10 (1979-1980) ("In reality, every new faith group challenging existing faiths is condemned and fought by the established faiths."); W. MARTIN, THE KINGDOM OF THE CULTS 11 (1985) (Martin is widely considered to be one of the leading authorities on the theology of the cults); Delgado, \textit{When Religious Exercise Is Not Free: Deprogramming and the Constitutional Status of Coercively Induced Belief}, 37 VAND. L. REV. 1071, 1072 n.2 (1984); Aronin, \textit{Cults, Deprogramming, and Guardianship: A Model Legislative Proposal}, 17 COLUM. J.L. & SOC. PROBS. 163 n.1 (1982).

Moreover, cults are characterized by devoted attachment to a person or principle, and most are religious in nature. Peterson v. Sorlien, 299 N.W.2d 123, 126 (Minn. 1980), \textit{cert. denied}, 450 U.S. 1031 (1981) ("The word 'cult' is not used pejoratively but in its dictionary sense to describe an unorthodox system of belief characterized by [g]reat or excessive devotion to some person, idea, or thing." (quoting WEBSTER'S NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 552 (1976)). \textit{See also} Case Comment, \textit{Tort Liability for Cult Deprogramming}, 43 OHIO ST. L.J. 465, 466 (1982).
to a recent proposal by UCLA law professor Richard Delgado that would require religious groups to obtain a recruit's "informed consent" before proceeding with proselytizing. The note argues that existing civil and criminal remedies provide adequate tools with which to deal with the abuses of religious cults, and that recently proposed remedies, such as court-ordered conservatorships granted for the purpose of deprogramming a cult member, are a severe threat to civil liberties in general and religious freedom in particular.

The second section of this note is necessarily critical of cult practices. One who is interested only in researching the abuses of the cults will find much grist for his mill. However, the point of such a cataloguing of horrors is two-fold: (1) it aids in understanding the burgeoning call for some type of statutory or constitutionally-based control of cult practices; and (2) it may provide some assurance to my critics that I am well aware of the truly frightening aspects of many of today's cults and yet still advocate the vigorous application of first amendment principles to this controversial area.

If it can be said that many are the law journal articles and notes which have built up a legal strawman in order to destroy him with equally spurious refutations, then this note may suffer from a reverse malady. In an attempt to present the abuses of the cults that have resulted in a wide variety of legal responses, this note may appear to have proven too much. Many may read the section entitled "Cults As Power Brokers" and conclude that drastic legal remedies, such as those proposed by some academics, are indeed warranted. However, one should constantly query whether such abuses can be adequately addressed under existing civil and criminal remedies without the inevitable result of such "solutions"—emasculcation of the first amendment.

II
Cults As Power Brokers

Cults enjoyed a precipitous rise in popularity in the late 1960s and 1970s as spiritual seekers swarmed to religious systems that offered acceptance, purpose, and philosophical coherence

11. The popularity of cults in the late 1960s has been traced to the indiscriminate American love affair with any type of human potential movement. Case Comment, supra note 10, at 465-66.
in a world which seemed devoid of all three. The 1970s ushered in the so-called “culture of narcissism”\(^\text{12}\) which, when combined with incidents such as the Jonestown tragedy,\(^\text{13}\) seriously eroded the appeal of individuals or groups that asked for severe self-sacrifice.

The 1980s, however, have brought a resurgence in the vitality of the cult population.\(^\text{14}\) Estimates of the number of cult groups range from a minimum of 200 to as many as 3000, with a total population of about three million.\(^\text{15}\) These cults often wield a financial and political power which many find disturbing.\(^\text{16}\)

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\(^{13}\) See Wood, supra note 10, at 457 (“The Jonestown massacre of 18 November 1978, involving Jim Jones and his People’s Temple movement, accelerated an attitude of popular unacceptability toward new religions”).

\(^{14}\) This recent growth in the cult population has been linked with the personal instability caused by the current “social transition.” See J. CLARK, M. LAGONE, R. SCHECTER & R. DALY, DESTRUCTIVE CULT CONVERSION: THEORY, RESEARCH AND TREATMENT 44 (1981) (loss of “cultural confidence” has resulted in increasing cult popularity); L. STREIKER, THE GOSPEL TIME BOMB: ULTRAFUNDAMENTALISM AND THE FUTURE OF AMERICA 174 (1984) (“Religious cults and ultrafundamentalist sects arose as part of our stumbling in the midst of political assassinations, racial violence, inflation, the Vietnam war, the counterculture, women’s liberation, and the failings of technology. Cults and sects articulate the national confusion, build upon the confusion, and, each in their own way, attempt to transcend the confusion.”); West & Delgado, Psyching Out the Cults’ Collective Mania, Los Angeles Times, Nov. 26, 1978, Part VII at 1, col. 1 (culits grow fastest in periods of social turbulence and transition).

\(^{15}\) See F. CONWAY & J. SIEGELMAN, SNAPING: AMERICA’S EPIDEMIC OF SUDDEN PERSONALITY CHANGE 12 (1978) (at least three million past and present cult members); Grafstein, Messianic Capitalism: The Invisible Hand That Feeds The Cults, THE NEW REPUBLIC, Feb. 29, 1984, at 14 (approximately 3000 cults, with membership estimated at anywhere between three and thirteen million); Lenz, supra note 2, at 41 (approximately 3000 cults).

\(^{16}\) The net worth of L. Ron Hubbard’s Church of Scientology has been put at $400 million, with its assets including a 57 acre estate in England, six buildings in California (including the Cedars of Lebanon Hospital complex), and a large vessel named Apollo. See Grafstein, supra note 15, at 15; Driver, supra note 8, at 7; Rudin, supra note 8, at 22 n.28. It is now apparently settled that the reclusive Mr. Hubbard died in February of 1986. See Hopkins, The Founder of Scientology Is Dead At 74, CHRISTIANITY TODAY, March 7, 1986, at 52.

Rev. Moon’s Unification Church assets include ownership of 10 Uruguayan newspapers, $75 million in New York real estate (including a 48 acre estate in Westchester County, New York and a 255 acre estate in Tarryton, New York), a printing company, restaurants, fishing companies, and, oddly enough, an armaments manufacturing company. In addition, Moon and the Church have a political voice by way of their ownership of The Washington Times. See Grafstein, supra note 15, at 15-16; Rudin, supra note 8, at 27 n.66 (citing Warren, Moonies: Millions of Members — and Dollars, Chi. Sun-Times, July 8, 1979, at 1); Rudin, supra note 8, at 21 n.28. For an account of Rev. Moon’s problems with the Internal Revenue Service, see Religious Martyr or Tax Cheat?, U.S. NEWS & WORLD REPORT, May 28, 1984, at 14.

The International Society for Krishna Consciousness (known as the Hare Krishnas) owns farms in India, Italy, France, England, Canada, Brazil, Australia, and New Zea-
Commensurate with their financial wealth, today’s cults display what many consider to be an alarming amount of power and control over the lives of their devotees. This combination of financial and psychological power is a distinguishing mark of today’s cults.17

In addition, the following characteristics tend to typify the modern-day cults:

1. Cult members swear a total allegiance to a single “enlightened” leader who in turn provides rules for daily life.18

2. Criticism is frowned on within cults, and the groups are often anti-intellectual, stressing emotional experience. Submission to the leader and his teaching is of foremost importance.19

3. Familial dependence on the cult leaders is fostered by isolating devotees from healthy contact with the world and by convincing the follower that all answers are found within the four corners of the cult.20

4. A consistent dosage of nonsensical verbiage is hurled at

land, as well as six farms in the United States. In addition, the cult owns a gold-leaf and marble temple in West Virginia worth millions of dollars and numerous buildings in Los Angeles, as well as estates in West Germany and England. The Hare Krishnas recently completed a $8 million dollar palace in Northern California. See Grafstein, supra note 15, at 15; Rudin, supra note 8, at 21 n.28.

The Way International owns $8 million dollars worth of property in seven states, as well as its own police department and weapons training center at its 155 acre center in Knoxville, Ohio. See Grafstein, supra note 15, at 15; Rudin, supra note 8, at 21 n.28.

The now deported Bhagwan Shree Rajneesh’s 64,000 acre estate in Antelope, Oregon (Rancho Rajneesh) housed Rajneesh International Meditation University, the Rajneesh Buddhafied Garage, the Rajneesh Boutique, the Rajneesh Bakery and Cafe, the Rajneesh Restaurant and Nightclub, and Hotel Rajneesh and Air Rajneesh. The cult also owned 68 Rolls Royces. The Bhagwan’s empire is now in shambles after the guru was forced to leave this country permanently after pleading guilty to charges of violating immigration laws. See Karlen, Bhagwan’s Realm, NEWSWEEK, Dec. 3, 1984, at 34; Grafstein, supra note 15, at 14-16; Karlen, Busting the Bhagwan: The Swami of Sex Is Arrested in North Carolina, NEWSWEEK, Nov. 11, 1985, at 26; Farewell To Rancho Rajneesh, TIME, Dec. 9, 1985, at 38.

17. Rudin, supra note 8, at 24-25; Panel Discussion: Effects of Cult Membership and Activities, 9 N.Y.U. REV. L. & SOC. CHANGE 91, 107 (1980-81) (D. Richards, moderator) (Volume 9 of the New York University Review of Law and Social Change was devoted solely to the problems related to religious cults and is an invaluable source for anyone working in the field).

18. See Case Comment, supra note 10, at 466.

19. C. STONER & J. PARKE, supra note 3, at 4; Aronin, supra note 10, at 172 (veteran cult members bombard the convert with affection when unquestioning obedience is shown).

20. See F. CONWAY & J. SIEGELMAN, supra note 15, at 170; Rudin, supra note 8, at 25-26; Aronin, supra note 10, at 176.
devotees, resulting in the psychological vulnerability of the recruits. Guilt manipulation is commonplace, and some cults even threaten to use the "confessions" of the member for blackmail purposes if the convert ever leaves "the flock." 

5. Followers may spend enormous amounts of time each week soliciting funds. New converts sometimes become slave-labor, and are rewarded for their efforts by receiving the "privilege" of watching their leader drive by in a Rolls Royce.

6. Cults are often highly sexist and anti-family. Women are seen as reproductive machines, and are often relegated to subordinate positions. The cult group is the family and thus biological family bonds are discouraged. Children are sometimes severely disciplined.

7. Cults view themselves as involved in a world struggle against evil and thus they teach that the ends usually justify the means. Cult members are often encouraged to practice deceit, and to use fraudulent methods in order to solicit contributions and secure converts.

21. See C. Edwards, Crazy For God 31 (1979) (A former Unification Church member relates how helpless and vulnerable he felt during a game he played while being recruited: "During the entire game our team chanted loudly, 'Bomb with Love, Blast with Love,' as the soft, round balls volleyed back and forth. Again I felt lost and confused, angry, remote, and helpless, for the game had started without an explanation of the rules").

22. The Church of Scientology has reportedly practiced a method of blackmail quite regularly. Disclosures made by Scientologists to "counselors" were "maintained in special files and used to control the Scientologists as long as they remained in the organization and — if they decided to leave — even afterward." Driver, supra note 8, at 6.

23. See Karlen, supra note 16, at 34 (Rajneesh owned 68 Rolls Royces); Konte, supra note 6, at 10, col. 1, 4 (one former Unification Church member recalls selling flowers for 19 hours at one stretch. Another recounts making $100 to $200 a day selling flowers during the week, and making as much as $500 a day on weekends. She later concluded, "I didn't want to subject somebody else to this degrading lifestyle. Subsequently, I realized that maybe, just maybe, I had more of a calling in life than selling dead roses").

24. Rudin, supra note 8, at 27 n.65 (citing Flynn, The Subordinate Role of Khrishna Women, Rocky Mountain News, April 10, 1979, at 42 (women forced to do degrading menial tasks)).

25. A 14-year-old in the Church of God claimed she was raped when she disobeyed a church leader. See Rudin, supra note 8, at 28.

Children in the Church of Armaggedon who wet their beds or who were disobedient were locked in closets. See Panel Discussion: Regulation of Alternative Religions By Law or Private Action: Can and Should We Regulate?, 9 N.Y.U. Rev. L. & Soc. Change 109, 114 (1979-80) (Redlich, moderator); Rudin, supra note 8, at 28. Jim Jones had disobedient children and teenagers disciplined with electric shocks. See Rudin, supra note 8, at 28.

26. For example, ex-Church of Scientologists who criticize the church may be la-
A more thorough cataloguing of cult practices would be an effort beyond the scope of this note. Examples of deceptive cultic practices are legion, and provide a glimpse into the motives and practices of those at the highest echelons of many of the leading cults in this country. Indeed, they serve to explain the current barrage of legal attacks seen today.

III

The Cults In The Dock

Prosecutions of this character easily could degenerate into religious persecution.


belled “fair game.” According to a policy letter from the late L. Ron Hubbard, those who are fair game may be deprived of property or injured by any means by any Scientologist. Former members may be “tricked, sued, lied to or destroyed.” See Driver, supra note 8, at 7; Lerner, Is Ron Hubbard Dead?, NEWSWEEK, Dec. 6, 1982, at 125 (Hubbard’s son says the “fair game doctrine” began in 1967 and the security and intelligence network of the church is run like the Nazi’s SS corps).

27. Julie Christofferson Titchbourne’s experience with the Church of Scientology serves as an illustration of the worst in cult practices. Testimony at trial revealed that Ms. Christofferson came in contact with the Church while in Portland in 1975. Scientology members encouraged Julie to enroll in an “introductory communications” course. Christofferson was told that L. Ron Hubbard, the mastermind behind the course, had a degree from George Washington University and had attended Princeton. In addition, Scientologists told Christofferson that Hubbard chose to live on a subsistence income.

At trial, evidence was produced showing that Hubbard completed less than two years at GWU, and that he received numerous D’s and F’s. Further testimony revealed that Hubbard had never attended Princeton and that his Ph.D was from a mail-order diploma mill. The claim that Hubbard lived on a subsistence income was refuted when a former Hubbard aide testified that during a six-month period in 1982 he personally supervised the transfer of $34 million from church coffers to the personal account of L. Ron Hubbard. Leeson, $39M Verdict in Scientology Case Reversed, NAT’L L.J., Aug. 12, 1985, at 5, col. 1, 6.

Christofferson's original suit was remanded for a new trial by the Oregon Court of Appeals. Christofferson v. Church of Scientology, 30 Or. App. 203, 644 P.2d 577 (1982), cert. denied, 459 U.S. 1206 (1983). The new trial resulted in a $39 million jury verdict against the Church of Scientology. See Driver, supra note 8, at 1. The verdict was set aside by Judge Donald Londer on the grounds that Christofferson’s attorney made prejudicial statements in his closing argument. A new trial was ordered. See Leeson, supra, at 5, col. 1.

Hubbard’s own son called his father “one of the biggest con men of this century.” Lerner, supra note 26, at 125. See also Scientology’s Profits, CHRISTIAN CENTURY, Sept. 26, 1984, at 865, col. 2 (quoting the comments of Los Angeles County Superior Court Judge Paul G. Breckenridge, Jr., made after a lengthy trial involving Scientology members: “The evidence portrays a man [Hubbard] who has been virtually a pathological liar when it comes to his history, background and achievements”).

28. 322 U.S. 78, 95 (1944).
A. Deprogramming As A Legal Catharsis

The legal response to the cults has come from a variety of aggrieved parties. The remedy often sought by the parents of those involved in cults is that of deprogramming.29

In the late 1970s, the American Civil Liberties Union estimated that five to ten deprogrammings occurred each week.30 Ted Patrick, a San Diego-based deprogrammer, boasts of deprogramming over 2000 cult members.31 His method is seen as reliable (over ninety percent never return to that particular cult32) and swift (deprogramming normally takes from three to fifteen days33).

Notwithstanding their effectiveness, Ted Patrick’s techniques display an alarming disregard for the dignity of the people he is deprogramming. It is not uncommon for brutal force to be used to abduct the cult member, followed by the basest sort of “reverse brainwashing.”34 Patrick prides himself on his use of profanity and force in deprogramming, and his impressive statistics seem to support his exorbitant fees.35 Recent studies, however, indicate that those who leave cults via deprogramming are more apt to become involved again in an authoritarian religious group than those who leave the group

29. Case Comment, supra note 10, at 468.
32. However, Dr. John G. Clark, Assistant Clinical Professor of Psychiatry at Harvard Medical School, claims that some cult members reach a point at which they cannot be returned to normality, and thus are subject to joining one cult after another. Buel, The Cults In Court, 2 CAL. LAW. 56, 57-58 (July/August 1982).
33. Case Comment, supra note 10, at 469.
34. Buel, supra note 32, at 61 (“In a sworn affidavit widely circulated by the Unification Church, Andrew Wilson (a New York follower of Reverend Moon) charges Patrick with describing Moon (in a deprogramming session) as Satan incarnate, a pimp and a snake, and of accusing Wilson of being insane, a zombie and a prostitute”).
35. Patrick recounts the response of Ed Painter, an assistant in deprogramming, to a cult member’s attempted escape: “At this, Ed Painter got furious and cocked his arm as if to lay Ed [the cult member] out cold. I managed to push him out of the way just in time.” While pinning the cult member to the wall, Patrick said, “You listen to me! You so much as wiggle your toes again, I’m gonna put my fist down your throat.” T. PATRICK & T. DULACK, supra note 31, at 189.

Lowell Streiker records an interesting conversation that he had with Harley Davis, a former Patrick aide: “Do you know how much Ted [Patrick] was making?” Davis asked. Without pausing for a response from me, he declared, “One year he declared $191,000 on his income tax. He lied. His take was more than twice that. Deprogramming is strictly a cash business.” L. STREIKER, THE FUNDAMENTALIST TIME BOMB: ULTRAFUNDAMENTALISM AND THE FUTURE OF AMERICA 17 (1984).
Deprogramming efforts have been the source of much litigation. Cult members have even been successful in alleging a cause of action under the Civil Rights Act of 1871 (also known as the Ku Klux Klan Act), with damages being awarded under 42 U.S.C. section 1985(3). In an action under section 1985(3), a plaintiff must show that a conspiracy has taken place for the purpose of depriving him, or a class in which he is a part, of the equal protection of the law. The most difficult hurdle in a section 1985(3) suit is showing that the defendant’s actions constitute a “class-based, invidiously discriminatory animus.” In addition, the type of constitutional violation envisioned in section 1985(3) has been held by the courts to include the right to interstate travel and the prohibition against involuntary servitude contained in the

36. Clinical psychologist Dick Anthony, who has had wide exposure to those who have gone through deprogramming, made the following statement at the New York University colloquium on Alternative Religions: “I want to point out my views on this. I really am worried that people do not see that deprogramming often has the result of driving families further apart. People go to deprogramming but they have not dealt with the original problem. They therefore cannot be successfully deprogrammed. They will only become attached to another cult, or will go back to the same cult; in any case, they will not stay away from an authoritarian group.” Panel Discussion, supra note 25, at 123. However, Margaret Singer, Professor of Psychology at the University of California, Berkeley, has counselled over 7000 cult members, and has concluded that those who underwent deprogramming are far healthier than those who quit on their own. See Buel, supra note 32, at 58.

37. The full text of the statute is as follows:

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 or 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.


thirteenth amendment.\textsuperscript{39}

However, in \textit{Ward v. Conner},\textsuperscript{40} the Court of Appeals for the Fourth Circuit expanded the class of persons protected by the statute to include an adult member of a religious group who was kidnapped and held captive by his parents in an attempt to deprogram him of his aberrant beliefs. The Fourth Circuit held that section 1985(3) applies to private conspiracies which interfere with a person’s religious beliefs when the conspiracy is motivated by a discriminatory animus. Parental concern for the welfare of their child was held not to be a sufficient defense to the finding of discriminatory animus.\textsuperscript{41}

Similarly, in \textit{Baer v. Baer},\textsuperscript{42} a United States district court found that a religious class (the Unification Church) was protected under section 1985(3), but resisted finding that the statute prevented parents from kidnapping their child out of a religious cult. This type of interference, opined the court, was not the type of obstacle to interstate travel envisioned in \textit{Griffin v. Breckenridge},\textsuperscript{43} a seminal Supreme Court case dealing with the section 1985(3) cause of action.

Cult members have been largely unsuccessful in obtaining relief under 42 U.S.C. section 1983.\textsuperscript{44} Section 1983 allows recov-
ery for deprivations of constitutional rights by one acting under “color of law.” Courts will not hold that judges who, in good faith, grant temporary conservatorships to parents (which result in the deprogramming of the child involved in a religious cult), have acted under “color of law” for purposes of section 1983. In addition, police officers who assist in carrying out a court order to remove a cult member from the group are normally given at least partial immunity from prosecution.

Thus, it is evident that a cause of action under the Civil Rights Act may be stated if the proper set of circumstances exist. Indeed, it is imperative that courts continue to expand the recovery available to cult members under section 1985(3).

B. Conservatorships—A Parent’s Salvation?

Since the law regarding the legality of deprogramming is unsettled, those interested in reasserting control over a cult member have resorted to other legal means to accomplish deprogramming. Frequently these attempts have taken the form of court-ordered conservatorships.

Statutes exist in every state which authorize court-appointed conservatorships or guardianships. Courts were initially reluctant to use conservatorship statutes as a basis for permitting parents to deprogram their children. However, several states


47. In California, a conservatorship may be imposed on any adult person, who is “unable properly to provide for his or her own personal needs for physical health, food, clothing or shelter . . . .” CAL. PROB. CODE § 1801 (West Supp. 1986). Typical of other guardianship statutes is the Delaware statute that states that a guardian may be appointed for the mentally infirm or those with physical incapacity that renders them in danger of “becoming the victims of designing persons.” DEL. CODE ANN. tit. 12 § 3914 (Supp. 1984).

The Delaware statute contains similar wording to that of the previous California law. However, in Katz v. Superior Court, 73 Cal. App. 3d 952, 981, 141 Cal. Rptr. 234, 245 (1977), the California Court of Appeal found this language unconstitutionally broad, and refused to use it to sanction the attempt by parents of five Unification Church members to obtain guardianships over their children.

48. BRANDON, NEW RELIGIONS, CONVERSIONS AND DEPROGRAMMING: NEW FRONTIERS OF RELIGIOUS LIBERTY 33 (The Center for Law and Religious Freedom, Jan. 1982) (monograph) (“Due to the gradual realization of courts and law enforcement officials of not only the dangers of deprogramming but also the illegality of private or
have passed laws specifically designed to give courts the power to appoint guardians on behalf of incompetent or incapacitated persons.49

Typical of the more aggressive postures taken by a legislature is the example of the Arizona temporary guardianship law.50 Under Arizona law, a guardian may be appointed for anyone so mentally impaired that they “lack sufficient understanding or capacity to make or communicate responsible decisions concerning [their] person.”51

Under Arizona law, a judge may waive the notice and hearing requirements of the guardianship laws if an “emergency situation” arises, necessitating the appointment of a temporary guardianship.52 The thirty day temporary guardianship procedure is a ready vehicle for parents looking for legal authority to abduct their children and deprogram them out of aberrant belief systems. The Arizona statute has in fact been used for this precise purpose.53 At least seven other states54 also use temporary guardianship statutes as a means of removing cult members for the purpose of deprogramming.

The Arizona statute presents significant due process concerns and may be subject to constitutional challenge under the fourteenth amendment.55 The expansive use of conservator-

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49. The Georgia guardianship statute provides for the appointment of a guardian for “incapacitated” adults “to the extent that [they] lack sufficient understanding or capacity to make significant responsible decisions concerning their persons or to the extent that they are incapable of communicating them.” GA. CODE ANN. § 49-601 (1). (Harrison Supp. 1986).

50. ARIZ. REV. STAT. ANN. § 14-5101 to -5310 (Supp. 1986).
51. Id. § 14-5101(1).
52. Id. § 14-5310.
54. Maryland, Illinois, Colorado, Kansas, Oklahoma, Texas, and New Mexico.
55. It has been argued that, at a minimum, a temporary guardianship proceeding should be preceeded by notice, that an adversary hearing should be held within two to three days of the granting of the guardianship, and that the ward should be represented by counsel. See Note, supra note 53, at 1120-21.
ships or guardianships as tools for the suppression of the free exercise of religion should be of concern to all civil libertarians. Cult members may have a legitimate cause of action under the fourteenth amendment when such statutes result in their abduction and deprogramming.

C. Richard Delgado’s “Final Solution:” Informed Consent

One of the most vocal proponents of legal intervention against cults is U.C.L.A. law professor Richard Delgado. Delgado has written extensively on the problems of deprogramming, conservatorships, cult practices, and religious freedom.56

Delgado’s proposals reflect his increasing concern that current legal remedies are ineffective in dealing with the abuses of the cults. In the late 1970s, Delgado suggested that a criminal defense of “brainwashing” should be available to cult members who had been forced to join a cult and had subsequently committed crimes. He reasoned that mens rea was lacking when a cult member committed crimes since those crimes were often attributable to the coercive influence of the cult.57 As Delgado stated, the “coercively persuaded defendant’s choice to act criminally was not freely made and, indeed, appears to be not his choice at all.”58 Of course, the defendant must show that coercive persuasion occurred in the first place in order for the “brainwashing” defense to be sustained. This, however, is not an insurmountable obstacle for Delgado since he tends to view religious conversion as suspect.59

In 1980, Delgado discussed the possibility of developing a


57. This theory of a “transferred mens rea” defense has come under sharp criticism. Commentators have pointed out that such a defense obscures the principle of free will which underlies the criminal justice system. See Dressler, Professor Delgado’s “Brainwashing” Defense: Courting A Determinist Legal System, 63 MINN. L. REV. 335, 341-49 (1979) (“[m]ens rea is not absent in cases of coercive persuasion. Although theories of the etiology of coercive persuasion abound, all are premised on the view that the captive comes to share the captor’s view, and later commits supportive crimes, because he wants — that is, intends — to commit the acts. The intent itself may derive from any one of various psychological sources but the mens rea is clearly present.” (footnote omitted)).

58. See Brainwashed, supra note 56, at 10.

59. See infra note 123 and accompanying text.
unique, constitutionally-based action against religious cults.\textsuperscript{60} Though courts had intimated about the use of such an action based on the thirteenth amendment’s anti-slavery provision,\textsuperscript{61} Delgado provided the philosophical framework for such an argument. Delgado’s “slavery analysis” has the advantage of providing a categorical injunction against certain behavior regardless of whether the cult member acquiesced in his or her treatment by the cult.\textsuperscript{62} By relying on the thirteenth amendment’s prohibition of slavery, difficult determinations of whether “brainwashing” or “coercive persuasion” has occurred can be avoided.\textsuperscript{63}

However, the most drastic legal intervention proposed by Delgado is that religious proselytizers obtain “informed consent” before engaging in practices that may result in conversion.\textsuperscript{64} Delgado suggests that though such consent need not be obtained in all encounters, it should be required whenever the “psychological integrity”\textsuperscript{65} of the potential convert is at stake or “self determination” or “autonomy interests”\textsuperscript{66} are threatened. Delgado claims that such a requirement was not needed before

\textsuperscript{60} See Slavery, supra note 56.

\textsuperscript{61} In Turner v. Unification Church, 473 F. Supp. 367, 371 (D.R.I. 1978), aff’d, 602 F.2d 458 (1st Cir. 1979), the court held that the first amendment’s free exercise clause does not immunize the religious cult leaders from causes of action which allege involuntary servitude or intentional tortious activity.

\textsuperscript{62} See Jones v. Alfred H. Mayer Co., 392 U.S. 409, 411, 443 n.78 (1968); see generally United States v. Reynolds, 235 U.S. 133 (1914); Slavery, supra note 56, at 53.

\textsuperscript{63} In Turner, 473 F. Supp. at 367, the court addressed the “slavery analysis” in the context of a 19 year-old woman who became involved with Reverend Moon and the Unification Church. Turner alleged that due to fear and coercion, she was forced to work long hours in “compulsory service” soliciting money and selling flowers, candy, and tickets at Unification rallies. Apparently, Ms. Turner received no compensation for her efforts other than food and shelter. She alleged that she was the recipient of grave physical, emotional, and economic harm. Among other claims, Turner alleged a cause of action under the thirteenth amendment. The Turner court was unwilling to imply a civil cause of action based on the thirteenth amendment. However, the court was clear that it did have the power to create such a remedy, but that it was not “prudent or appropriate” in this case. See Turner, 473 F. Supp. at 374. The court found that state tort law provided adequate remedies for the plaintiff. In addition, the court refused to imply a civil cause of action from several federal anti-peonage statutes. Id.

\textsuperscript{64} See Delgado, supra note 2 at 537.

\textsuperscript{65} Just when a potential convert’s “psychological integrity” is threatened is difficult to pinpoint. Here lies the crux of the problem, though. There seems to be no way of realistically determining when the requirement of informed consent is triggered.

\textsuperscript{66} Delgado, supra note 2, at 541 n.31 (“Informed consent would serve no purpose in situations that present no threat to self-determination or autonomy interests”).
the current rise of "hard-core" cults. He thus contends that recent awareness of cult techniques makes it mandatory that they be controlled in such a drastic fashion.

Delgado sees the cult indoctrination process as a series of stages. At each stage of involvement, the devotee learns more about the cult. Simultaneously, however, certain coercive and psychologically emasculating factors deprive the devotee of the requisite capacity to choose for himself. The result is that a "knowledge-capacity" equilibrium is never reached. When the devotee has the maximum ability to choose for himself, he is given a minimum amount of knowledge about the group. By the time the devotee has the proper amount of information concerning the goals and techniques of the cult, he is psychologically unable to extricate himself.

Informed consent, argues Delgado, will enhance both spiritual and physical integrity and will promote disclosure and honesty on the part of the cult member. A private action in tort, based on informed consent, would provide a legal remedy for those who previously lacked such recourse. Delgado claims that governmental neutrality would be maintained because the criterion for informed consent would be value neutral.

Delgado has attempted to specify the context in which the requirement of "informed consent" is triggered. The cult recruiter's initial duty is to offer material information at the point at which "conversion activity" begins. If you ask when such activity can be deemed to begin, Delgado has this response: "If a convert strikes up a conversation, on a bus for ex-

67. Id. at 544-46.
68. See Slavery, supra note 56, at 54-55; R. ENROTH, supra note 2, at 42-43; Smith, supra note 3, at 1, col. 3 (distasteful information given at timed intervals).
69. See Delgado, supra note 2, at 552 ("At each stage, the intensity of the indoctrination and the convert's dependence on the group increases. The ultimate effect is a commitment to a journey, each step of which is nominally consented to, but whose ultimate destination is concealed until the penultimate step — at which point the individual has been so prepared that committing his or her life and fortune to the group seems a small and insignificant step." (footnote omitted)).
70. Id. at 553 ("Informed consent requirements serve a number of purposes: protecting the individual's interest in psychic or bodily integrity; preserving a sense of shared venture between the consent-giver and the consent-obtainer; and promoting visibility and scrutiny of the treatment in question." (footnote omitted)).
71. Delgado contends that the informed consent requirement focuses on a single, objective event: the proselytizer's disclosure, or lack of disclosure, of information. See Delgado, supra note 2, at 55 n.121. This, however, seems to avoid the larger question since it cannot be assumed that the proselytizer needed to provide certain information in the first place.
ample, on a neutral subject, the informed consent requirement does not arise. As soon as the conversation moves in the direction of interesting the convert in making contact with the group, offer of disclosure must be made.”

Thus, if the potential devotee expresses a desire for more detailed information, the cult member is required to furnish a true response. But if the individual does not indicate an interest in getting more information, conversion activity can proceed.

At this stage, Delgado would require the proselytizer to reveal the name of his group, and to express the fact that the organization is religious. After this initial revelation, the cult member would also be required to respond “honestly and fully” to all questions.

If this private action in tort, based on informed consent, is determined not to be viable as a remedy, Delgado suggests several other anti-cult measures. Courts could demand a “cooling off” period in which a new convert would be required to leave the cult for a few days in order to offset any coercive persuasion that may have forced him to have originally joined the cult. In addition, Delgado argues that cult members should wear identification badges, and that educational authorities should warn school-age youths of the recruitment techniques of religious proselytizers.

The remedies proposed by Richard Delgado, though severe, have fallen on the fertile soil of distraught parents of cultists and overzealous district attorneys. However, traditional tort
remedies have normally been available to both ex-cult members and their parents. For example, fraud actions may serve as a harness on groups that base their proselytizing on misrepresentation. Other groups actually use force or the threat of force to keep converts from leaving,\(^7^9\) and thus may be subject to tort actions based on assault and battery. A remedy based on false imprisonment is available for those who have been confined against their will, and who do not perceive a way of escape from the cult.\(^8^0\)

Finally, the tort of intentional infliction of emotional distress may be a means of recovery for ex-cult members against cults which have used outrageous means to intentionally inflict emotional distress on a cult member. Parents may even be able to recover by showing that some cults teach their members to "disown" their parents.\(^8^1\)

As the power, influence, and corruption of cults has been exposed, there has been a corresponding increase in the potential legal remedies available. A host of criminal, constitutional, and civil actions have been suggested to meet what is perceived as a life or death struggle against these religious proselytizers. However, before rushing headlong into a crusade against cults, anticultists would do well to pause and reflect on whether they are building their house of remedies on the ashheap of the first amendment.

\(^7^9\) See Aronin, supra note 10, at 172 ("Even where there are no physical barriers to departure, psychological pressure and considerations resulting from the remoteness of the location may combine effectively to prevent the recruit from leaving until the cult allows him to do so." (footnotes omitted)); C. Edwards, supra note 21, at 78-79; C. Stoner & J. Parke, supra note 3, at 169.

\(^8^0\) For application of the tort of false imprisonment to deprogramming attempts, see Case Comment, supra note 10, at 479.

\(^8^1\) Courts can be reluctant, however, to grant relief to a parent based on this theory. In Meroni v. The Holy Spirit Association for the Unification of World Christianity, 125 Misc. 2d 1061, 480 N.Y.S.2d 706 (1984), the court sustained a demurrer to a father's action based on intentional infliction of emotional distress. Plaintiff's son had committed suicide after becoming a member of the Unification Church. The court held that the defendant's actions were not intentionally directed at the victim's father, and therefore not actionable, as such.
The Constitution and the Cults

The first amendment to the Constitution is the central focus in any discussion of the problem of modern day religious proselytizing. Commentators generally agree that this country was formed on the basis of a strong commitment to religious toleration. While no single theory prevailed as to how church and state should relate, there was a general consensus among the founding fathers that religious expression should be allowed to flourish, and that Congress should tread lightly in this sensitive area.

However, it was not until 1940, in Cantwell v. Connecticut, that the Supreme Court applied the free exercise clause of the first amendment to the states. In Cantwell, the Court said:

Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. . . . [T]he 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 protection of society.

The term “religion” had a fairly precise meaning in nineteenth century American jurisprudence. In Davis v. Beason, the Court tied the term “religion” to a theistic view of God, holding that the term “has reference to one’s views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will.”

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83. Three theories were proposed as a basis for the religion clauses: (1) the “wall of separation” concept by which the state was to be kept from any significant interplay with religion; (2) the separation of church and state to protect the church from the corrupting influence of the state, thus allowing government to aid, but not infringe, on religion; and (3) governmental abstinenice from any intolerance vis-a-vis religious belief, thereby allowing a free exchange in the marketplace of ideas. See 1 A. Stokes, Church & State in the United States 380 (1950); Everson v. Board of Education, 330 U.S. 1, 16 (1947); Kurland, Of Church and State and the Supreme Court, 29 U. Chi. L. Rev. 1, 4 (1961).
85. 310 U.S. 296 (1940).
86. Id. at 303-04.
87. 133 U.S. 333 (1890).
88. Id. at 342.
In Torcaso v. Watkins, the Supreme Court had a direct opportunity to define religion for purposes of the first amendment. Torcaso involved a constitutional challenge to a Maryland statute which required state officials to declare a belief in God in order to hold state office. The Court unanimously rejected this requirement, and held that neither the state nor federal government can make belief in God the litmus test for religious belief under the first amendment. As a consequence of this holding, the concept of religion now includes nontheistic beliefs.

Thus, in United States v. Seeger, the Court found that religious beliefs need not encompass theistic faith provided that they are "sincere religious beliefs which are based upon a power or being, or upon a faith, to which all else is subordinate or upon which all else is ultimately dependent." The Supreme Court case of United States v. Ballard typifies the Court's reluctance to rule on the truth or falsity of a religious belief. The defendants in Ballard were indicted and convicted for using, and conspiring to use, the mails to defraud. Guy Ballard, founder of the "I Am" movement, claimed to be a divine messenger for the "ascertained master," Saint Germain. Ballard alleged that he had supernatural powers of healing. As a result, Ballard felt "moved" to solicit memberships and contributions for the "I Am" movement.

The Supreme Court, in reversing the court of appeals, held that the truth of a religious representation may not be judged in an action for fraud. As Justice Douglas opined, the first amendment allows one to "maintain theories of life and of death and of the hereafter which are rank heresy to followers of the orthodox faiths.

90. Id. at 495.
92. Id. at 176. See also Welsh v. United States, 398 U.S. 333 (1970) (where the Supreme Court held that purely ethical or moral beliefs were parallel to belief in a Supreme Being, and were thus "religious" beliefs for purposes of interpreting a statute allowing exemption from combat for those who objected on religious grounds).
93. 322 U.S. 78 (1944).
94. Id. at 79-80.
95. Id. at 86.
96. Id. For an intriguing look at the Ballard case and the propriety of demanding "sincerity" as an element of religious belief, see Heins, Other People's Faith: The Scientology Litigation and the Justiciability of Religious Fraud, 9 Hastings Const. L.Q. 153 (1981).
The Constitution, however, does not forbid the government from restricting religious practice. Beginning with the anti-polygamy decisions in the nineteenth century, the Court has never countenanced illegal behavior masquerading as "religious belief." For instance, state courts have upheld convictions for use of the hallucinogenic drug peyote even though such use was for "religious purposes." Similarly, the Fifth Circuit rejected Dr. Timothy Leary's claim that the use of marijuana was a formal requisite for the practice of Hinduism, and thus protected by the first amendment. Citing Davis v. Beason, the court held that "[c]rime is not the less odious because sanctioned by what any particular sect may designate as religion."

The state may infringe on an individual's free exercise of religion if there is a compelling state interest and such regulation is within the state's constitutional power. Thus, while religious groups may believe that they should deceive the public in order to solicit funds, such practices are properly subject to state regulation. As the Court stated in Sherbert v. Jer-
ner, "While the freedom to harbor religious beliefs is absolute, the freedom to engage in religious practices is not."

The standard of "compelling state interest" has been given definitional substance by the Court. Such a restriction of first amendment protections may be allowed if: (1) there is a conflicting governmental interest of such importance as to be deemed compelling; and (2) there is no alternative for protecting that interest other than to limit the free exercise of religion. A compelling state interest is not shown merely by demonstrating that a certain religious belief is illogical, incomprehensible, or inconsistent. In short, the Court has attempted to embrace the principle, first enunciated in Cantwell, that the freedom to believe is absolute while the freedom to act is not.

The various proposals designed to limit cult activity hold serious ramifications for first amendment freedoms. At least one commentator has argued that "legal deprogramming" through court-ordered conservatorships is simply a process of forcing children to repudiate beliefs which their parents deem unacceptable. Such activity is considered by many, however, to be socially useful, and thus not coercive.

Terms like "brainwashing," "coercive persuasion," and "in-
formed consent"¹¹¹ are nebulous terms at best, and provide the broadest basis possible for intervention.¹¹² Notions of free will are ignored as cult members take on the status of automatons—persons who have not chosen a lifestyle and philosophy, but are the passive subjects of manipulation. Such a view leads to a type of legal paternalism where the state, acting in its parens patriae capacity, "saves" all those involved in aberrant religious organizations.¹¹³ Terms like "mind control" and "brain-washing" evoke images of mental incompetence, and thus become vehicles by which cult members may be both stigmatized and controlled.¹¹⁴ Such a focus shifts attention to the subjective and previously protected domain of individual religious belief.

V

God In The Dock¹¹⁵

Parents and ex-cult members are being given increasingly greater legal remedies to combat forms of religious expression that previously were seen as protected by the first amendment. It is clear that religious expression should be protected, while fraudulent and illegal cult practices should continue to be the subjects of traditional civil and criminal remedies.¹¹⁶ However,


¹¹² Robbins, supra note 111, at 37 ("Mind control thereby becomes a borderline concept, whose use permits the stigmatization of cults and the advocacy of control measures (for example, court-ordered deprogramming)").

¹¹³ The Constitution does not, however, forbid government from acting on the basis of a determination that religious beliefs are injurious. In Mayock v. Martin, 157 Conn. 56, 245 A.2d 574 (1968), cert. denied, 393 U.S. 111 (1969), the court held that it did not offend a person's first amendment rights to detain them in a mental institution on the ground that they held injurious religious beliefs. Mayock, a self-proclaimed prophet, had already taken out one of his eyes (in thanksgiving for a revelation) and severed one of his hands (done as a result of a "covention" with God). There was a medical determination that Mayock would probably harm himself further if not restrained. Query whether Jehovah's Witnesses have a constitutional right to refuse medically necessary blood transfusions. See Comment, Their Life Is In The Blood: Jehovah's Witnesses, Blood Transfusions and the Courts, 10 N. Ky. L. REV. 281, 300 (1983).

¹¹⁴ See Robbins, supra note 111, at 38 (the acceptance of these concepts "continues a disturbing trend away from assigning responsibility to the individual for his acts").

¹¹⁵ C.S. Lewis, the eminent Oxford scholar and author, first coined this phrase to express how contemporary man has changed in his view of his own position before any Deity. See C.S. LEWIS, GOD IN THE DOCK: ESSAYS ON THEOLOGY AND ETHICS (1970).

¹¹⁶ See supra note 27.
government support of forced deprogramming is constitutionally indefensible.

Illegal abductions are often viewed as purely family matters. Thus, judges and juries are reluctant to find a parent liable for the forced abduction of his child.\(^{117}\) It is reasoned that, based on a "choice of evils" criterion, parents often act on a reasonable belief that the health and well-being of their children is at stake.\(^{118}\) Thus, the truth or falsity of religious beliefs is ruled on, and courts continue to usurp formerly sacrosanct ground. Such a result does violence to the first amendment and the pronouncements of the Supreme Court in *Ballard* and *Cantwell* that the truth or falsity of religious beliefs is not within the purview of the courts.

Conservatorships should be allowed only if the cult member is found to be "gravely disabled" or "severely incapacitated."\(^{119}\) Furthermore, mere involvement in a cult which has debatably harmful effects on one's health should not subject one to court-ordered conservatorship—it is the right of a devotee to choose a lifestyle that others consider harmful. The state should not be involved in determining optimum levels of spiritual health. In short, Richard Delgado's view that cult members should be rescued from slavery and coercive persuasion, whether they want help or not, should be seen as an authoritarian challenge in its own right.

The ambiguity in terminology puts the constitutionality of many guardianship statutes in doubt. These statutes invite

\(^{117}\) Buel, *supra* note 32, at 61 ("Civil judgments against deprogrammers are relatively rare, criminal convictions even rarer, and when damages are awarded, critics of deprogramming say, they are usually too small to discourage similar conduct by other families"). See also Robbins, *supra* note 111, at 39-40.

\(^{118}\) In *People v. Patrick*, 126 Cal. App. 3d 952, 179 Cal. Rptr. 276 (1981), the defendant asserted the defense of necessity to charges of false imprisonment and kidnapping, arising out of his abduction of a cult member for purposes of deprogramming. Ted Patrick, the defendant, claimed that since the subjective belief of the cult member's parents as to the danger to their daughter was justifiable, Patrick himself was entitled, as the parent's agent, to the necessity defense. The court rejected this claim, holding that Patrick took no action to independently assure himself that the daughter was a member of a cult or that forcible abduction and deprogramming was the only reasonable alternative available. See generally Arnolds and Garland, *The Defense of Necessity in Criminal Law; The Right to Choose the Lesser Evil*, 65 J. CRIM. L. & CRIMINOLOGY 289 (1974).

\(^{119}\) Temporary conservatorships were originally developed to protect the interests of the elderly and senile. Such statutes are subject to great abuse if applied to "aberrant" youth involved in religious cults. See Mitchell, *The Objects of Our Wisdom and Our Coercion: Involuntary Guardianship for Incompetents*, 52 S. CAL. L. REV. 1405, 1407-1408 (1979); Robbins, *supra* note 111, at 41.
courts to examine the validity of religious beliefs, and are subject to a challenge based on the first amendment. The evisceration of the Constitution inevitably results when the truth or falsity of religious beliefs are put in the dock. An example of a statute that would have posed a serious threat to the Cantwell and Ballard line of cases was the proposed anti-conversion statute in New York. The statute defined “[a]brupt and drastic alteration of basic value and lifestyle” as suspect behavior.\textsuperscript{120} Commentators were quick to point out that such a definition would surely include “born-again” Christians, charismatic movement members, and certain Roman Catholic and Episcopal renewal group members.\textsuperscript{121}

Hostility to all religious belief, save that of the most anemic, noncontroversial type, can be seen in many of the recent anticult proposals. Delgado has gradually increased the severity of his suggestions, culminating in the proposal for “informed consent.”\textsuperscript{122} Moreover, Delgado’s writings demonstrate a hostility to even the most traditional and historically accepted forms of religious expression. For example, he cites the works of John Calvin and John Knox as illustrations of men who stressed passive acceptance of religious beliefs akin to that advocated by modern cult leaders.\textsuperscript{123} Many would doubtless find such a characterization of these two leaders of the Protestant Reformation alarming.

Delgado appears to accept the fact that people may not be involved in a cult because of coercive persuasion.\textsuperscript{124} However,

\begin{itemize}
\item \textsuperscript{120} New York Assembly Bill 7912-B, March 31, 1981, cited in Aronin, supra note 10, at 201. For an in-depth look at the New York Bill, see Aronin, supra note 10, at 201-209.
\item \textsuperscript{121} Brandon, supra note 48, at 51-52 (Though Brandon’s comments were directed at anti-conversion bills in general, and an Ohio anti-conversion statute specifically, they are equally on target as to the New York law).
\item \textsuperscript{122} See supra note 56 and accompanying text.
\item \textsuperscript{123} See Delgado, supra note 2, at 554 (Delgado appears to be grossly misinformed about both Knox and Calvin. Faith, for these two men, was not a passive act void of critical inquiry. Religious commitment for these classical Protestant Reformers was the highest act of intelligent self-determination, since it was based on “good and convincing evidence” for the historicity of the Christian claims. If Delgado finds the cultic shadow in the life and writings of Knox and Calvin, historic Protestantism itself must surely be suspect. For insight on the Protestant Reformers, see P. Schaff, The Creeds of Christendom, 203-09 (6th ed. 1983); 2 K. S. Latourette, A History of Christianity, 689-998 (1975); 9 The New Schaff-Herzog Encyclopedia of Religious Knowledge, 417-25 (1912), s.v. Reformation.
\item \textsuperscript{124} See Delgado, supra note 2, at 540 (“Many find contentment, even joy in the group and view any costs associated with their conversion as acceptable.” (footnote omitted)).
\end{itemize}
what Delgado gives with the right hand he takes away with the left. Even though one says he is voluntarily involved with a religious group, Delgado would allow actions under the thirteenth amendment to force these “deceived” believers to be released. Under this view, there is little reason why those in monasteries and nunneries would not be subject to such actions under the thirteenth amendment.

This points out the central difficulty in the attempt to limit cult proselytizing—the effort to distinguish a cult from a “legitimate” religion for first amendment purposes. “Cults” are subject to control but “religions” are immune. Therefore, cults must be distinguished from “legitimate” religions for first amendment purposes. Such a distinction is a chimerical dream. As commentators have pointed out, the cults of 100 years ago are the established religions of today. Distinctions based on such differences in terminology are repulsive to first amendment values. The inevitable result is that religious belief will be brought before the bar of secular justice.

VI
What Hath God Wrought?

The practices of religious cults have resulted in a myriad of legal responses. While this note has attempted to point out the grave dangers these responses pose for first amendment freedoms, there are still at least two lessons to be learned from the current onslaught against cults.

First, religious practice has never been seen as being immune from criminal and civil liability. As the case law demonstrates, litigation based on traditional tort remedies such as fraud and false imprisonment will and should be brought against offending religious groups. It is becoming increasingly evident that courts and juries are growing impatient with attempts by cults and religious groups to veil illegal and culpable activity in the guise of “religious practice.”

Second, while the backlash against cults may be understandable, our nation was founded on the concept that religious positions, no matter how bizarre or indefensible, should be allowed to compete in the marketplace of ideas. By removing religious cults from that marketplace, we necessarily place our impri-

126. Reynolds, 98 U.S. 145; Davis, 133 U.S. 333.
matur on certain acceptable types of religious expression. There is little, though, to prevent courts from someday holding that acceptable "orthodox" religious viewpoints are based on coercive persuasion, and thus illegal.\textsuperscript{127}

This note is then a plea—a plea to parents, district attorneys, judges, and practitioners, who in an attempt to deal with repulsive religious beliefs and practices have failed to heed the ancient parable that speaks of those who toiled long and hard to rid their house of a demon, only to later find that seven more had returned to fill the vacancy.\textsuperscript{128}

In attempting to rid society of the alleged "demon" of the cults, parents and officers of the court would do well to look at what may be coming in the back door.

\textsuperscript{127} For a particularly disturbing example of a self-proclaimed "cult expert" who appears more than willing to support the control of "extreme" religious groups, see L. Streiker, \textit{The Gospel Time Bomb: Ultrafundamentalism and the Future of America} (1984).

\textsuperscript{128} \textit{Matthew} 12:45 (King James).