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Deprogramming Members of Religious Sects

Cover Page Footnote

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DEPROGRAMMING MEMBERS OF RELIGIOUS SECTS

JOHN E. LeMOULT*

I. INTRODUCTION

The conflict between established cultures and new religions is an ancient one. It is parallel to and part of the conflict of the generations, the parent-child struggle, youth's quest for identity through conversion, and age's need to preserve meaning and purpose through established values. It is also part of the ongoing friction between established socio-political institutions and the new ideas that transform those institutions.

In times past, society's intolerance of new religions was easily implemented. Early Christians were crucified. Later, members of Christian sects perceived as heretical were burned at the stake, or tortured into submission. Puritans were harried out of England. Quakers, Mormons, Jehovah's Witnesses, Black Muslims, and many others have suffered different forms of religious persecution in America. It is nothing new.¹

What is new is the way some members of modern society have chosen—in a supposedly enlightened age of first amendment religious freedom—to fight new religious ideas. It is called "deprogramming." It consists of taking adherents of religious groups against their wills, confining them, and subjecting them to intense mental, emotional, and sometimes physical pressures until they renounce their religious affiliation.² Deprogramming raises profound questions about religious liberty, privacy, and freedom from parental control. The courts and legislatures are just beginning to deal with these questions. This Article will attempt to discuss some of the background factors involved, as well as recent developments in the law.

In order to understand the legal issues surrounding deprogramming, it is necessary to take a look at new religious movements and sects, as well as at "deprogrammers" and the methods they employ. This Article will consider: 1) the current "high demand" religious groups, and their process of conversion; 2) the deprogrammers and their techniques of behavior modification; 3) the constitutional rights of members of religious sects; 4) the constitutional rights of minors; 5) the legality of

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1. See generally W. Marnell, *The First Amendment 1-48* (1964); L. Pfeffer, *Church, State, and Freedom 6-27* (1953).

2. See notes 30-43 *infra* and accompanying text.

abduction and restraint for the purpose of deprogramming; 6) the use of conservatorship proceedings for the purpose of accomplishing deprogramming; and 7) civil suits, a counterattack by targets of deprogramming.

II. BACKGROUND

A. *New Religious Sects*

The emergence of new religious sects in America attracting thousands of young adherents every year³ would lead one to believe we are undergoing a religious revival. But this is probably not true. There have always been new religious sects, and the diversity in beliefs of the new groups makes the concept of a unified "revival" unlikely. What is probably happening is that middle class young people are beginning to move away from established churches to unorthodox high demand,⁴ often authoritarian, sects springing up all over the country.⁵

Fundamentalist, evangelical, pentecostal, or charismatic sects which for decades have practiced "born again" Christianity in Southern Baptist churches, among "Holy Rollers," in black rural churches, and in the faith healing hills of Bible Belt America are now attracting the college educated children of suburban Catholics, Protestants, and Jews.⁶ Likewise, the practices of Zen Buddhism, Yoga, Hindu chanting, Transcendental Meditation, Sufi dancing, and Sikh vegetarianism which formerly attracted only a few western urban intellectuals, are now attracting the sons and daughters of Scarsdale, Oak Park, Shaker Heights, and Grosse Pointe.⁷

The reasons for this shift of middle class youth away from established churches to these new sects are too complex to discuss thoroughly here. Certainly there is a need for an inner-directed, more authoritarian, and less social-conscious Christianity.⁸ But the move of

3. Gordon, *The Kids and the Cults*, Children Today, July/Aug. 1977, at 24, 24.

4. Dean Kelley describes high demand religions, where the ordinary members make substantial commitments of time and energy to their faith, rather than just attending services once a week or on special occasions, in D. Kelley, *Why Conservative Churches Are Growing* 47-59 (Harper & Row ed. 1977).

5. *Id.* at 20-27; see Black, *The Secrets of the Innocents: Why Kids Join Cults*, Woman's Day, Feb. 1977, at 91, 166; Gordon, *The Kids and the Cults*, Children Today, July/Aug. 1977, at 24, 24.

6. H. Cox, *Turning East* 93-95 (1977); see B. Graham, *The Jesus Generation* 14-16 (1971); *Religion: The New Rebel Cry: Jesus is Coming!*, Time, June 27, 1971, at 56. See generally Briggs, *Report Finds Evangelical Churches Continue To Grow as Others Decline*, N.Y. Times, Apr. 29, 1977, at A14, col. 1.

7. See, e.g., H. Cox, *Turning East* 7-21 (1977); Briggs, *Despite Rigors, Buddhism Continues To Win Adherents in U.S.*, N.Y. Times, Feb. 4, 1976, at 35, col. 1; *Religion: Yogi Bhajan's Synthetic Sikhism*, Time, Sept. 5, 1977, at 70; *Behavior: The TM Craze: Forty Minutes to Bliss*, Time, Oct. 13, 1975, at 71; *Religion: The Power of Positive Non-Thinking*, Newsweek, Jan. 7, 1974, at 73.

8. See D. Kelley, *Why Conservative Churches Are Growing* (Harper & Row ed. 1977).

many young people away from Christianity and Judaism toward such groups as the International Society for Krishna Consciousness, the Divine Light Mission of Maharaj Ji, and many other eastern religions of a communal type suggests that they are looking for companionship, a sense of participation, a direct experience, a return to nature, and authority that they have not found in their established religions.⁹ Now that the political and social battles of the civil rights and antiwar movements have died down, young people searching for absolute answers are investing their energy and commitment in religions.

Deprogrammers and some parents are convinced that all of these new sects are part of a mass conspiracy (sometimes said to be Communist¹⁰) to brainwash young people¹¹ and turn them into "zombies." The deprogrammers lump all different kinds of groups together, making no effort to differentiate the beliefs or practices of the many disparate groups.¹² The charge is made that the new groups have psychologically kidnaped their new devotees, depriving them of their free will,¹³ so that only the most drastic measures can "rescue" them from this bondage.¹⁴

The measures employed by deprogrammers include kidnaping, physical restraint, and enforced behavior modification or "brainwashing" of the very kind they accuse religious sects of practicing.¹⁵ Deprogrammers justify these methods on the theory that the young people are "programmed" by the "cults," and that all the deprogrammers are doing is bringing them back to reality.¹⁶

Parents are disturbed not only by the new theological beliefs of their offspring, but also, and perhaps more so, by the changes in their attitudes and appearances. Pot-smoking, motorcycle-riding kids become serene quoters of Scripture or oriental tracts. Young people doff sweaters, sneakers, and blue jeans for ties, jackets, long skirts, or flowing saffron robes.¹⁷ Parents assume their once normal offspring have lost their minds, been "brainwashed."¹⁸ But what has clearly

9. See H. Cox, *Turning East* 91-110 (1977).

10. *Religion: Kidnaping for Christ*, *Time*, Mar. 12, 1973, at 83, 84.

11. See, e.g., Ericson & MacPherson, *How Free Should Religious Freedom Be? Are the Children of God Brainwashed?*, *Christian Herald*, Oct. 1973, at 32; Perlez, *Is It a Kidnap or Is It a Rescue?*, *N.Y. Post*, Mar. 5, 1973, at 57, col. 1.

12. E.g., T. Patrick with T. Dulack, *Let Our Children Go!* 20, 281 (1976).

13. *Id.* at 75-76.

14. See *Religion: Defreaking Jesus Freaks*, *Newsweek*, Mar. 12, 1973, at 44.

15. E.g., T. Patrick with T. Dulack, *Let Our Children Go!* 63 (1976); see notes 32-43, 60-67 *infra* and accompanying text.

16. E.g., T. Patrick with T. Dulack, *Let Our Children Go!* 67-68, 76-77 (1976).

17. See, e.g., *id.* at 43, 107, 118; Clines, *About New York: Religious Freedom vs. Parental Care*, *N.Y. Times*, Nov. 1, 1976, at 78, col. 1.

18. E.g., *Religion: The Freedom To Be Strange*, *Time*, Mar. 28, 1977, at 81. One possible

happened is that the young people have undergone a thing called conversion.¹⁹

To most Christian groups, conversion is a sudden infusion of grace into the soul, a new birth, accepting Jesus as one's personal Savior.²⁰ To eastern religions, it is a slower opening to the awareness of God within oneself, or the universal Self or Soul or Consciousness underlying all Being. It is achieved through chanting, yoga, or some form of meditation, and through the abandonment of the lower self (the ego with its base desires). By means of detachment, one attains a higher state of enlightenment and oneness with the essence of the world around him.²¹

The conversion experience has been well described by William James in *The Varieties of Religious Experience*.²² He considers it a crystallizing of unconscious aims and wishes, previously "incubated" in "cold" centers of the mind, and suddenly becoming "hot"—brought to the surface by some crisis or experience and occupying the center of one's thoughts and activities.²³ James says this happens particularly to people in their teens, and that certain psychological and emotional changes are characteristic of all conversions.²⁴ The fact that a dramatic change takes place in a converted youth is neither new nor sinister. It may simply be a case of arriving at a new identity, perhaps a "negative identity" with respect to the role offered as proper and desirable in one's family.²⁵

No one has proved that any religious sect which has been the target

explanation for parents' opposition to new religious sects may be the rejection of materialistic values by some of these sects. In this success and status oriented society, the true religion is often the acquisition of money, material goods, and power. Religions that eschew such goals attack the most dearly held values of the depression era generation and hit a raw nerve of hostility.

19. See Kelley, *Deprogramming and Religious Liberty*, Civil Liberties Review 23, 28-29 (July/Aug. 1977).

20. See, e.g., C. Colson, *Born Again* 110, 130 (Spire ed. 1977); B. Graham, *How To Be Born Again* 154-69 (1977).

21. See, e.g., C. Humphreys, *The Buddhist Way of Life* 111-22 (1969).

22. W. James, *The Varieties of Religious Experience* 157-206 (New American Library ed. 1958).

23. *Id.* at 161-62, 186-87; see *id.* at 157-206.

24. "The age is the same, falling usually between fourteen and seventeen. The symptoms are the same,—sense of incompleteness and imperfection; brooding, depression, morbid introspection, and sense of sin; anxiety about the hereafter; distress over doubts, and the like. And the result is the same,—a happy relief and objectivity, as the confidence in self gets greater through the adjustment of the faculties to the wider outlook. In spontaneous religious awakening, apart from revivalistic examples, and in the ordinary storm and stress and moulting-time of adolescence, we also may meet with mystical experiences, astonishing the subjects by their suddenness, just as in revivalistic conversion." *Id.* at 164.

25. See E. Erikson, *Identity* 172-73 (1968).

of deprogramming engages in physical restraint, abduction, or any other such practice.²⁶ What is probably true of most such groups is that they offer warmth, friendship, authority, and a prescribed course of conduct laced with plenty of dogma.²⁷ No doubt there are serious efforts to influence the thinking of the new adherent, but these are clearly not "brainwashing,"²⁸ since the adherent is free to depart if he chooses.²⁹

B. *Deprogrammers and Deprogramming*

The new, and I believe dangerous, element in this conflict between parents and children is "deprogramming." Deprogrammers are people who, at the request of a parent or other close relative, will have a member of a religious sect seized, then hold him against his will and subject him to mental, emotional, and even physical pressures until he renounces his religious beliefs.³⁰ Deprogrammers usually work for a fee, which may easily run as high as \$25,000.³¹

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.³² He may be held against his will for upwards of three weeks.³³ Frequently, however, the initial

26. See *Editorial: Deprogramming and Religious Liberty*, 29 *Church & State* 212, 230 (1976).

27. See, e.g., Flaste, *Parents/Children: Dealing with Appeal of Religious Sects*, *N.Y. Times*, Apr. 22, 1977, at B4, col. 1; Gordon, *The Kids and the Cults*, *Children Today*, July/Aug. 1977, at 24, 26.

28. In *Helander v. Salonen*, the Superior Court of the District of Columbia dismissed a habeas corpus petition by the parents of a member of the Reverend Moon's Unification Church. *Helander v. Salonen*, No. HC 7-75, slip op. at 15 (D.C. Super. Ct. Sept. 23, 1975). After hearing conflicting testimony by psychiatrists on the question of whether Wendy Helander was "committed, detained, confined, or restrained from [her] lawful liberty" (D.C. Code Encycl. § 16-1901 (West 1973)) by means of mind control exercised over her by leaders of the Unification Church, the court found that there was insufficient evidence to warrant issuance of a writ. *Id.* at 13-14. The psychiatrist called by respondents testified that Miss Helander was "healthy," "normal," "extremely confident with people," and "able to resist the suggestions of others." *Id.* at 11. For a discussion of brainwashing, see notes 60-67 *infra* and accompanying text.

29. See *Editorial: Deprogramming and Religious Liberty*, 29 *Church & State* 212, 230 (1976); notes 123-26 *infra* and accompanying text.

30. Kelley, *Deprogramming and Religious Liberty*, *Civil Liberties Review* 23, 23-26 (July/Aug. 1977).

31. Chandler, *Tucson Center: Bringing the Cultists Back*, *Los Angeles Times*, Jan. 3, 1977, at 1, col. 1, 3, col. 3; see *Religion: Prison for Patrick?*, *Time*, June 16, 1975, at 70. The average cost of a deprogramming by those connected with the "Freedom of Thought Foundation" in Tucson, Arizona, is \$9,700. *Deprogrammer Defends Method*, *Nat'l Courier*, Apr. 1, 1977, at 17, col. 2.

32. For a description by deprogrammer Ted Patrick of his abductions of certain members of religious sects, see T. Patrick with T. Dulack, *Let Our Children Go!* 73-74, 95-102 (1976).

33. One twenty-six-year-old woman targeted by deprogrammers said she was held captive for

deprogramming only lasts a few days.³⁴ The subject's sleep is limited,³⁵ and he is told that he will not be released until his beliefs meet his captors' approval.³⁶ 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.³⁷

Such deprogramming is described by deprogrammer Ted Patrick in his book, *Let Our Children Go!*³⁸ He told one victim, "I can stay here three, four months. Even longer. Nobody's going anywhere."³⁹ He admits using "Mace" on people who try to interfere with an abduction,⁴⁰ limiting the sleep of the victim,⁴¹ hiring thugs to help him with his kidnappings,⁴² and using real violence on a member of the Hare Krishna sect.⁴³

seventy-five days before she succeeded in escaping. Sage, *The War on the Cults*, Human Behavior, Oct. 1976, at 40, 40.

34. See *Religion: Defreaking Jesus Freaks*, Newsweek, Mar. 12, 1973, at 44.

35. E.g., T. Patrick with T. Dulack, *Let Our Children Go!* 76 (1976).

36. E.g., Roberts, *Cult "Deprogrammers" May Face OC Jury*, Anaheim Bull. (California), Dec. 9, 1974, at A3, col. 3.

37. See, e.g., Kaufman, *Saving Your Children from Salvation*, N.Y. Magazine, Apr. 16, 1973, at 55, 56.

38. T. Patrick with T. Dulack, *Let Our Children Go!* (1976).

39. *Id.* at 24.

40. *Id.* at 70, 223.

41. *Id.* at 76.

42. *Id.* at 181.

43. *Id.* at 188-89:

"Get me a pair of scissors,' I [Patrick] said.

"Scissors? What for?"

"First thing we're going to do is cut that knot of hair off his head.'

"Ed came to attention. 'What? Who are you? What right do you have to go cutting my hair? I have a right to wear this. It's part of my religion. I'm a legal adult. I'm twenty years old.'

"Shut up and sit down,' I told him. 'Just shut your mouth and listen.'

"I won't listen. I don't have to listen. I want to leave!"

"Well, you're not going to leave. Where's those scissors?"

"Four of his relatives held him down and I cut off the tuft of hair they all wear on the back of their heads and I removed the beads from around his neck. As soon as we let him up, he started chanting again at the top of his voice, 'Hare Krishna, Hare Krishna, Hare Hare, Hare . . . ' Then he saw my tape recorder on a table, seized it, and smashed it to bits on the floor. Then he made a dash for the door, but was intercepted by the others in the adjoining game room.

"In the game room Dr. Shapiro had a lot of lovely and expensive art objects and souvenirs he'd collected over the years and Ed began smashing them, one by one, just ripping the place apart, chanting all the while. I hadn't seen such violent energy since Wes Lockwood. I figured the treatment ought to be the same as it was for Wes, so I took him by the arms and flung him into a corner up against the wall, and I said, 'All right, you hatchet-head [_____], you move out of there and I'll knock your [_____] head off.'

"But he wriggled out of my grasp and ran across the room, screaming, 'Get the [_____] out of this house! Don't touch me!'

One would ask where deprogrammers get the authority to make these cosmic judgments about religious sects. What qualifications do they have to adjudge persons "brainwashed" or to apply dangerous methods of enforced behavior modification? Is this a group of psychiatrists, theologians, and social scientists? No. Ted Patrick, for example, says he is a high school dropout.⁴⁴ His only training appears to be a working knowledge of the Christian Bible.⁴⁵ There is no evidence that he knows anything about eastern religions.⁴⁶ Nor are there indications that other deprogrammers are qualified to make judgments about the mind, the soul, God, or the Unborn, Unoriginated, Unformed One.⁴⁷

Since Ted Patrick began deprogramming people in San Diego in 1971,⁴⁸ the deprogramming movement has grown tremendously.⁴⁹ Patrick claims that he does not deprogram for a profit, but has his expenses paid by the parents who enlist his aid.⁵⁰ Deprogramming has, however, become a somewhat costly proposition.⁵¹ People around the country have organized "underground deprogramming networks"⁵² with pro-deprogramming chapters in various cities.⁵³ One lawyer in

"At this, Ed Painter got furious and cocked his arm as if to lay Ed out cold. I managed to push him out of the way just in time. 'Easy, Ed. Never mind. Just cool it.'

"Then I picked Ed up by the front of his robes and marched him backwards across the room, slamming him bodily against the wall. 'You listen to me! You so much as wiggle your toes again, I'm gonna put my fist down your throat!' His eyes got bigger and bigger with fear. He sat down abruptly. I had a picture of Prabhupada and I tore it up in front of him and said, 'There's the no good [—— ———] you worship. And you call him God!' The usual line of approach.

"Inside of an hour, he was out of it. The Krishnas are easy."

In a suit for false imprisonment and other torts on account of attempts to deprogram Wendy Helander (*see note 28 supra*), she was awarded a judgment of \$5,000 against Ted Patrick. The Court commented: "The modus operandi adopted by the defendant and his associates—luring the plaintiff away from the Unification Church premises by deception, attempting to 'deprogram' her by crude, callous, and brow-beating tactics, shifting her from place to place and confining her against her will,—smacks more of a fictional television melodrama, rather than a real-life incident." *Helander v. Patrick*, No. 15 90 62, slip op. at 2 (Conn. Super. Ct. Sept. 8, 1976).

44. T. Patrick with T. Dulack, *Let Our Children Go!* 231 (1976).

45. *Id.* at 226-35.

46. *See id.*

47. *See Sage, The War on the Cults*, *Human Behavior*, Oct. 1976, at 40, 44, 46.

48. T. Patrick with T. Dulack, *Let Our Children Go!* 64-68 (1976).

49. *See Sage, The War on the Cults*, *Human Behavior*, Oct. 1976, at 40, 40.

50. T. Patrick with T. Dulack, *Let Our Children Go!* 77 (1976).

51. *See note 31 supra* and accompanying text.

52. *See, e.g., Religion: Kidnaping for Christ*, *Time*, Mar. 12, 1973, at 83, 83; International Foundation for Individual Freedom, Memorandum (Apr. 22, 1977), on file with Fordham Law Review. This organization planned a conference "to bring together representatives of all of the regional and local groups of parents of present and former cult-members, ex-members of cults, and citizens informed about the mind controlling techniques of destructive cults." *Id.*

53. Deprogramming: Documenting the Issue 12-13 (prepared for the American Civil Liberties Union Conference on Religious Deprogramming, in New York City, Feb. 5, 1977).

Tucson, Arizona, has formed a tax-exempt foundation with the purpose of making Tucson the "deprogramming center of the country."⁵⁴ All too often, deprogrammers are able to kidnap members of religious organizations without interference by police and local officials—even with their cooperation⁵⁵—and smoothly transport them to places where they can be confined for rapid brainwashing.⁵⁶ Free-lance deprogrammers are operating around the country and cashing in on the profit making potential of deprogramming.⁵⁷

Deprogrammers are able to produce many young people who have been deprogrammed and who will testify to the benefits of deprogramming. They will claim that their minds were enslaved and that they have been brought back to reason.⁵⁸ I think that this phenomenon is explained by two factors. First, the deprogramming usually reunites the young people with their parents and brings about the kind of reconciliation and attention that many of these young people have been seeking all of their lives. Suddenly, they find out that their parents are concerned about them. The prodigal's return to the family fold is usually more than enough to compensate for the loss of a new-found religious belief which may have been, in part, a rebellion against the parents in the first place.⁵⁹

Second, the method of deprogramming is really a form of counter-conversion, a system of behavior modification intended to change the victim's beliefs and make him conform to religious beliefs and practices acceptable to his parents.⁶⁰ It is far more like "brainwashing" than the conversion process by which members join various sects. The restraint, deprivation of sleep, constant talk, denunciation, alternation of tough and easy talk, emotional appeals, and incessant questioning finally cause a break in the will, giving the deprogrammer a certain

54. Sage, *The War on the Cults*, Human Behavior, Oct. 1976, at 40, 48. Those in charge of the foundation assert that it is not used for actual deprogramming, but merely as a "rehabilitation center" for those who have already been deprogrammed. Often persons at the foundation are still under a court's conservatorship order, however, and are not free to leave. See generally *Deprogramming Update*, 31 Church & State 35, 35, 38 (1978).

55. See, e.g., *Patrick Trial Involves N.Y. Official*, Wash. Post, Aug. 3, 1973, at A3, col. 1; note 69 *infra* and accompanying text.

56. E.g., Affidavit of Pam Fanshier, in *Deprogramming: Documenting the Issue 108* (prepared for the American Civil Liberties Union Conference on Religious Deprogramming, in New York City, Feb. 5, 1977).

57. See Robbins, *Even a Moonie Has Civil Rights*, The Nation, Feb. 26, 1977, at 238, 238-40.

58. See, e.g., T. Patrick with T. Dulack, *Let Our Children Go!* 281 (1976).

59. See Dulack, *Foreword* to T. Patrick with T. Dulack, *Let Our Children Go!* 5-6 (1976); *Editorial: Fraternity, Liberty, Equality*, N.Y. Times, Mar. 28, 1977, at 28, col. 1.

60. Compare T. Patrick with T. Dulack, *Let Our Children Go!* 16, 67, 76-79, 97, 149 (1976), with J. Meerloo, *The Rape of the Mind* 30, 74, 84-86, 91-92 (Universal Library ed. 1961).

power over the victim.⁶¹ The "break" described in Patrick's book⁶² is not unlike the break described by Dr. Joost A. M. Meerloo, in his book on brainwashing,⁶³ as having been suffered by victims of Nazi interrogation.⁶⁴ The result of deprogramming may well be the kind of "[s]ubmission to and [p]ositive [i]dentification with the [e]nemy"⁶⁵ described by Dr. Meerloo of POW subjects of brainwashing:⁶⁶

As has already been mentioned, the moment of surrender may often arrive suddenly. It is as if the stubborn negative suggestibility changed critically into a surrender and affirmation. What the inquisitor calls the sudden inner illumination and conversion is a total reversal of inner strategy in the victim. From this time on, in psychoanalytic terms, a parasitic superego lives in man's conscience, and he will speak his new master's voice. In my experience such sudden surrender often occurred together with

61. See T. Patrick with T. Dulack, *Let Our Children Go!* 16, 67, 76-79, 97, 149 (1976).

62. See *id.* at 35, 79, 106.

63. J. Meerloo, *The Rape of the Mind* (Universal Library ed. 1961).

64. "Several victims of the Nazi inquisition have told me that the moment of surrender occurred suddenly and against their will. For days they had faced the fury of their interrogators, and then suddenly they fell apart. 'All right, all right, you can have anything you want.'

"And then came hours of remorse, of resolution, of a desperate wish to return to their previous position of firm resistance. They wanted to cry out: 'Don't ask me anything else. I won't answer.' And yet something in them, that conforming, complying being hidden in all of us, was on the move.

"This sudden surrender often happened after an unexpected accusation, a shock, a humiliation that particularly hurt, a punishment that burned, a surprising logic in the inquisitor's question that could not be counterargued." *Id.* at 75. Compare *id.* with the following description of a successful deprogramming, given by the subject more than a year later: "[E]ventually you get taunted into discussions and I got taunted into them and into reasoning with them.

"What caused me to break was such a stupid thing . . . I can't even remember what it was, just some silly point. Somebody sent them a newspaper clipping about the group, and I said 'no, it's not true, prove it to me!' I was beginning to doubt—they had put so many doubts in my head . . . And Ted [Patrick] said, 'Well, I can't prove it to you, I've got the proof out in the car. . . .' It was the frustration of not knowing and finally for some reason, I started breaking down, crying, for no reason at all, I just began to break down and hugged me [*sic*], and my father thought that I was totally free . . . [.] I decided what I would do was just pretend at that point that I was free of the whole thing. Then I would pretend I was going through with the whole thing, and when they got to a point where they could trust me, I would try to escape[.]

"A lot of kids try and do that, . . . what happens is that once you've already begun that emotional breakdown, it all unravels itself and eventually you've all unraveled to the same old person you were before you ever [joined the religious sect].

. . . .
 "Next morning [my father wanted me to give him some information about another member of my church]. I wouldn't tell him. I got really upset because I was afraid they were going to go and kidnap him . . . I got upset and almost wanted to kill myself. [I poked my arms through the plate glass window, which] sliced my right arm just about in half . . ." Hall, *The True Vision of Wes Lockwood*, *Yale Daily News Magazine*, May 1, 1975, at 12, 27-28. The reconciliation with the young man's captors was subsequently completed, and he later testified against his former religious associates. *Id.* at 28.

65. J. Meerloo, *The Rape of the Mind* 91 (Universal Library ed. 1961).

66. *Id.* at 84-85.

hysterical outbursts into crying and laughing, like a baby surrendering after obstinate temper tantrums. The inquisitor can attain this phase more easily by assuming a paternal attitude. As a matter of fact, many a P.O.W. was courted by a form of paternal kindness—gifts, sweets at birthdays, and the promise of more cheerful things to come.⁶⁷

III. THE LEGAL RIGHTS OF DEPROGRAMMERS' TARGETS

A. *The Rights of Sects and Their Members*

The constitutional right of people to practice their own religion, no matter how unorthodox, or how unacceptable to parents, relatives, and friends, has recently been the subject of several cases involving conflict between deprogrammers and religious groups.

The constitutional issue arises because deprogramming does not take place in a vacuum outside the realm of legal encounter. Abduction, unlawful restraint, physical assault, deprivation of sleep, and enforced behavior modification do not in themselves involve state action when carried out by private individuals. But when the state condones or assists such action, constitutional rights are being violated.⁶⁸

Deprogrammers have often received the tacit, if not open, support of local police, the FBI, and the courts.⁶⁹ In his book, Ted Patrick calls for legal action to stop "the cults."⁷⁰ Such action has been considered in at least six state legislatures.⁷¹ There have also been McCarthy-like

67. *Id.* at 91. The counter-conversion process carried out by deprogrammers may very well impose upon the victim a new identity, one acceptable to the parents, and hostile to the religious group. Long after the deprogramming trauma has worn off, the identity remains. It is necessary for integration of the personality. Identity is vital to the sense of self that each person must have, and it must be supported by overt action. The deprogrammed youth may feel a powerful need to attack his former religion, not because it is evil, but because he cannot live with his new identity unless he does.

68. In Hale, *Force and the State: A Comparison of "Political" and "Economic" Compulsion*, 35 Colum. L. Rev. 149 (1935), the author observes that constitutional proscriptions apply not only to actions taken by a state, but also to actions which it compels or condones. *Id.* at 149. It might be unconstitutional, for instance, if a state withdrew a remedy from private individuals, such as a right to recover damages for trespass to property, even though the state's only role was inaction, and the injurious acts were committed by private parties. *Id.* at 179

69. *E.g.*, T. Patrick with T. Dulack, *Let Our Children Go!* 144 (1976); Address by Michael Trauscht, Int'l Ass'n of Chiefs of Police Conference, in Miami Beach, Fla. (Sept. 27, 1976); *see* note 55 *supra* and accompanying text.

70. T. Patrick with T. Dulack, *Let Our Children Go!* 259-64 (1976).

71. *Parent-Child Conflict on Religion Now Touches Variety of Groups*, N.Y. Times, Jan. 1, 1978, at 24, col. 1. A resolution was introduced into the Pennsylvania General Assembly to establish a committee to "study, investigate, and report to the House, on the activities of the pseudo-religious cults in Pennsylvania and their effect on the Commonwealth's citizens," and on their fund-raising activities. Pa. H. Res. No. 37, 1977 Sess. 2 (Mar. 2). This committee was to be given full subpoena power and authorized to administer oaths and affirmations. *Id.* The preamble to this resolution stated that the organizations "allegedly lure young people into their movements by using mind control or mental manipulation and coercion." *Id.* at 1. The Pennsylvania Catholic Conference opposed the

"investigations" of religious "cults" which have resulted in no prosecutions, but involved plenty of character assassination.⁷²

Recently, in New York City, a Queens County grand jury handed down an indictment against Hare Krishna leaders on the theory that they had unlawfully imprisoned their members through "mind control."⁷³ In California, a judge granted conservatorships⁷⁴ over adult members of a religious sect, allowing deprogrammers to do their

resolution, and called such efforts "hazardous to religious liberty in general." Pennsylvania Catholic Conference, *Legislation Aimed at Religious Cults Poses Serious Threat* (Oct. 1977), on file with Fordham Law Review. The Conference asked, "If the legislators may use their subpoena and other investigative powers against one group which it says is 'pseudo' religious, what is to prevent their proceeding against any other religious group?" *Id.* It added, "We are sympathetic to attempts by the Legislature to deal with the very perplexing problem that certain groups are causing young people and their families. But the Conference believes that it is not possible to deal with such matters legislatively." *Id.*

A Vermont Senate committee issued a report recommending the adoption of a bill which would permit the ex parte appointment of a temporary guardian for a person "unable to properly care for himself or his property." Vt. Sen. Comm. for the Investigation of Alleged Deceptive, Fraudulent and Criminal Practices of Various Organizations in the State, Report, 54th Biennial Sess. 5 (Jan. 1977); see note 146 *infra* and accompanying text. The report stated that during the five days the committee held hearings, charges were made primarily against the Unification Church, and also against the Children of God and Hare Krishna. *Id.* at 2. A second bill recommended by the committee as a result of the hearings would have regulated charitable fundraising. *Id.* at 3.

There has also been discussion in Congress on this subject. On August 4, 1977, Representative Giaimo indicated that he had been studying how to apply federal criminal laws to alleged brainwashing by religious groups. He noted that the matter is very perplexing, but concluded that "because of the constitutional issues involved, any attempt to draft legislation to encompass within the criminal statutes 'brainwashing' or 'mind control' will be considered unfavorably by the very department which would have to enforce the law." 123 Cong. Rec. H8683 (daily ed. Aug. 4, 1977). See also Letter from Benjamin R. Civiletti, Assistant Attorney General, Criminal Division of the Justice Department, to Congressman Robert N. Giaimo, reprinted in 123 Cong. Rec. H8683-84 (daily ed. Aug. 4, 1977).

In a letter from Richard Thornburgh of the Justice Department to Congressman Giaimo, the Justice Department noted that it "cannot conduct a general inquiry into the activities of a religious organization. There first must be an allegation of a violation of Federal law." Letter from Richard L. Thornburgh, Assistant Attorney General, Criminal Division of the Justice Department, to Congressman Robert N. Giaimo (Sept. 7, 1976), reprinted in 123 Cong. Rec. H10051-52 (daily ed. Sept. 14, 1976). The letter discussed possible violations of federal law resulting from the activities of the churches, such as violations of the antislavery and forced labor statutes, but observed that these statutes are generally inapplicable to services performed for a religious group. *Id.* at H10051-52. The letter concluded, "In view of the more stringent burden of proof required in criminal prosecutions, it seems clear that aggrieved parents would have a greater likelihood of success in pursuing civil remedies rather than requesting criminal prosecutions." *Id.* at H10052.

72. See, e.g., *Religion: Children of "Moses,"* Newsweek, Oct. 28, 1974, at 70; *Lefkowitz Lists Charges on Sect,* N.Y. Times, Oct. 14, 1974, at 37, col. 1.

73. *People v. Murphy*, No. 2012/76, slip op. at 8 (N.Y. Sup. Ct. Mar. 16, 1977). The indictment was dismissed. *Id.* at 14.

74. *Katz v. Superior Court*, 73 Cal. App. 3d 952, 956 & n.1, 141 Cal. Rptr. 234, 235 & n.1 (1st Dist. 1977).

work.⁷⁵ In a New York prosecution of Ted Patrick for unlawful imprisonment several years ago,⁷⁶ the trial judge allowed the defendant, as part of an effort to prove the defense of justification, to probe and ridicule the most deeply held beliefs of a religious group.⁷⁷

At issue is the question of whether the courts are ever allowed to consider the truth or falsity of any religious belief. Furthermore, there is the question of whether the courts are allowed to determine that an individual's religious conversion was not voluntary, but resulted from an alleged exercise of mind control. At the heart of the constitutional issue is the nexus between the free exercise clause of the first amendment and several other basic constitutional rights, particularly that of free speech.

Deprogramming, as a type of outlaw vigilante action, arose because of parents' inability to charge religious sects with violation of any known laws. Though deprogrammers charge new religious groups with fraud,⁷⁸ they have not legally proved this.⁷⁹ A church or religious group's practice of accepting voluntary contributions from adult members can hardly be defined as fraud. Among the thousands of sects condemned by deprogrammers, there may be some which are in it only for the money, but generally these groups are dedicated and sincere—whether or not one accepts their creeds.⁸⁰

Parents' real concern is not with any allegedly illegal action on the part of various sects, but with the process by which new members are proselytized and then confirmed in their beliefs by leaders of the groups. That process is speech. Preaching, praying, chanting, teach-

75. *Parents Win Custody of 5 Members of Moon's Church*, N.Y. Times, Mar. 25, 1977, at A1, col. 1. For a discussion of the issuance of these conservatorship orders, held by the appellate court to be unconstitutional, see notes 263-88 *infra* and accompanying text.

76. *People v. Patrick*, No. N-320779 (N.Y. Crim. Ct. Aug. 6, 1973); see notes 206-24 *infra* and accompanying text.

77. *See Patrick Acquitted in Seizure of Youth*, N.Y. Times, Aug. 7, 1973, at 24, col. 5.

78. T. Patrick with T. Dulack, *Let Our Children Go!* 20 (1976).

79. The primary specific act portrayed as fraudulent towards the plaintiff in the complaint in *Turner v. Unification Church* was that plaintiff "was promised that she would be helping to create a better world." Complaint at 4, *Turner v. Unification Church*, No. 75-0424 (D.R.I., filed Dec. 19, 1975). Plaintiff alleged that as a result of being induced to join the Unification Church she was "held in peonage and involuntary servitude." *Id.* at 1. She sought the value of her services, *id.* at 4, on the theory that the Unification Church is a commercial enterprise, "not an establishment of religion within the meaning of the First and Fourteenth Amendments," *id.* at 1-2. Religious organizations may, of course, be liable for traditional common law torts, including false imprisonment. *See Whittaker v. Sandford*, 110 Me. 77, 85 A. 399 (1912); *Gallon v. House of Good Shepherd*, 158 Mich. 361, 122 N.W. 631 (1909); Note, *People v. Religious Cults: Legal Guidelines for Criminal Activities, Tort Liability, and Parental Remedies*, 11 Suffolk U.L. Rev. 1025, 1037-46 (1977).

80. *See Cox, Playing the Devil's Advocate, As It Were*, N.Y. Times, Feb. 16, 1977, at A25, col. 1.

ing, and meditating all constitute practices heavily protected by the Constitution.

The 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."⁸¹ The freedom to act may be restricted, but we must distinguish between those acts which constitute "speech," those acts protected by other sections of the Constitution, and those acts falling outside of constitutional protection. Any state invasion of a member of a disfavored sect's right to believe not only interferes with his free exercise of religion as guaranteed by the first amendment, but also is an unconstitutional establishment of religion. When the state applies differential treatment to various religious beliefs, there is an establishment of religion.⁸² Interference with disfavored religious beliefs by judicial inquiry as to the truth or falsity of those beliefs or by suppression of members' religious speech is, therefore, a violation of both aspects of the first amendment.

The Supreme Court has on several occasions indicated that the first amendment forbids the courts to consider the truth or falsity of a religion. Former Justice Douglas has written:

"The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect." . . . 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.⁸³

In *United States v. Seeger*,⁸⁴ the Supreme Court recognized that when Congress required belief in a "Supreme Being" to qualify a person for conscientious objector status, it did not allow local draft boards to inquire into the truth of anyone's belief.⁸⁵ "The validity of what he believes cannot be questioned,"⁸⁶ said former Justice Clark. The Court asked only whether "the claimed belief occup[ies] the same place in the life of the objector as an orthodox belief in God holds in the life of one clearly qualified for exemption."⁸⁷ This could include "deeply held moral, ethical, or religious beliefs."⁸⁸

81. *Cantwell v. Connecticut*, 310 U.S. 296, 303-04 (1940).

82. *Abington School Dist. v. Schempp*, 374 U.S. 203, 216 (1963).

83. *United States v. Ballard*, 322 U.S. 78, 86-87 (1944) (quoting *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 728 (1871)).

84. 380 U.S. 163 (1965).

85. *Id.* at 184-85.

86. *Id.* at 184.

87. *Id.*

88. *Welsh v. United States*, 398 U.S. 333, 344 (1970).

Courts may in certain situations consider the sincerity with which religious precepts are held,⁸⁹ but such an inquiry must be cautious so as not to encroach on the protected area of truth or falsity.⁹⁰

In the realm of action, the state may interfere with those practices of religious groups which pose a threat to the rights of others or the good order of society.⁹¹ While one may question the value judgments by which the courts have arrived at their sometimes conflicting rulings, one recognizes the validity of the underlying judicial premise by which the courts have upheld various kinds of legislative restrictions on religious groups. Thus, the Supreme Court has upheld the application of laws against polygamy,⁹² Sunday closing laws,⁹³ compulsory vaccination laws,⁹⁴ and child labor laws,⁹⁵ despite a claim that the free exercise of religion was thereby violated. Other courts have allowed criminal prosecution for drug-related offenses, despite a claim that the drugs were part of a religion.⁹⁶ A free exercise of religion argument was rejected in cases involving fraudulent securities activities⁹⁷ and the handling of poisonous snakes⁹⁸ in violation of statutory prohibitions. Courts have split on requiring submission to blood transfusions.⁹⁹

In the cases where courts have interfered with the activities of religious groups, the interference has usually involved traditional standards for public health, safety, and education.¹⁰⁰ Even in these

89. *United States v. Seeger*, 380 U.S. 163, 185-87 (1965); *United States v. Ballard*, 322 U.S. 78, 81-84 (1944).

90. *United States v. Kahane*, 396 F. Supp. 687, 698 (E.D.N.Y. 1975).

91. *Reynolds v. United States*, 98 U.S. 145, 166-67 (1879).

92. *Id.*

93. *Braunfeld v. Brown*, 366 U.S. 599 (1961).

94. *Jacobson v. Massachusetts*, 197 U.S. 11 (1905).

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

96. *United States v. Kuch*, 288 F. Supp. 439 (D.D.C. 1968); *People v. Mullins*, 50 Cal. App. 3d 61, 123 Cal. Rptr. 201 (1st Dist. 1975); *State v. Bullard*, 267 N.C. 599, 148 S.E.2d 565 (1966), *cert. denied*, 386 U.S. 917 (1967). *Contra*, *People v. Woody*, 61 Cal. 2d 716, 394 P.2d 813, 40 Cal. Rptr. 69 (1964).

97. *SEC v. World Radio Mission, Inc.*, 544 F.2d 535 (1st Cir. 1976).

98. *Hill v. State*, 38 Ala. App. 404, 88 So. 2d 880 (1956); *Lawson v. Commonwealth*, 291 Ky. 437, 164 S.W.2d 972 (1942); *Harden v. State*, 188 Tenn. 17, 216 S.W.2d 708 (1948).

99. *Compare In re President & Directors of Georgetown College, Inc.*, 331 F.2d 1000, 1007-10 (D.C. Cir.), *cert. denied*, 377 U.S. 978 (1964), *with In re Estate of Brooks*, 32 Ill. 2d 361, 372-73, 205 N.E.2d 435, 441-42 (1965). *See* Byrn, *Compulsory Lifesaving Treatment for the Competent Adult*, 44 *Fordham L. Rev.* 1, 10-13, 17-19 (1976).

100. *See, e.g., Muhammad Temple of Islam—Shreveport v. City of Shreveport*, 387 F. Supp. 1129, 1134 (W.D. La. 1974), *aff'd*, 517 F.2d 922 (5th Cir. 1975); *Lawson v. Commonwealth*, 291 Ky. 437, 441-42, 164 S.W.2d 972, 973-74 (1942); *State v. Massey*, 229 N.C. 734, 735, 51 S.E.2d 179, 179-80, *appeal dismissed sub nom. Bunn v. North Carolina*, 336 U.S. 942 (1949).

areas, however, the courts have leaned towards tolerance where it could not be shown that the act or omission caused real injury.¹⁰¹ "[O]nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation."¹⁰²

The area in which courts, particularly the Supreme Court, have granted the widest latitude to religious sects is that of expression. Indeed, early Supreme Court decisions upholding the rights of religious groups rested on the free speech guarantees of the first amendment rather than on the free exercise clause. In *Lovell v. City of Griffin*,¹⁰³ and *Schneider v. New Jersey*,¹⁰⁴ the Court allowed Jehovah's Witnesses to distribute religious tracts on the basis of the free speech clause.¹⁰⁵ In *West Virginia State Board of Education v. Barnette*,¹⁰⁶ the Court upheld the right of a child to refuse, on religious grounds, to salute the flag, but again based its decision on free speech grounds.¹⁰⁷

Finally, in *Cantwell v. Connecticut*,¹⁰⁸ the Court brought the free speech and free exercise clauses together to protect the right of Jehovah's Witnesses to go door-to-door proselytizing, playing records, distributing literature,¹⁰⁹ and performing those very types of actions that today's deprogrammers condemn. Like the so-called "cults" which are attacked by deprogrammers, the Jehovah's Witnesses were not engaged in any action violating traditional standards of health, safety, or education.¹¹⁰ The Court noted:

We find in the instant case no assault or threatening of bodily harm, no truculent bearing, no intentional discourtesy, no personal abuse. On the contrary, we find only an effort to persuade a willing listener to buy a book or to contribute money in the interest of what Cantwell, however misguided others may think him, conceived to be true religion.¹¹¹

The complaint against Cantwell was essentially no different from the deprogrammers' complaint against the "cults," *i.e.*, that he used speech to indoctrinate others into a false religion, and to wean them

101. See, e.g., *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Fowler v. Rhode Island*, 345 U.S. 67 (1953); *Marsh v. Alabama*, 326 U.S. 501 (1946); *Murdock v. Pennsylvania*, 319 U.S. 105 (1943).

102. *Sherbert v. Verner*, 374 U.S. 398, 406 (1963) (quoting *Thomas v. Collins*, 323 U.S. 516, 530 (1945)).

103. 303 U.S. 444 (1938).

104. 308 U.S. 147 (1939).

105. *Id.* at 164-65; 303 U.S. at 451-53.

106. 319 U.S. 624 (1943).

107. *Id.* at 632-42.

108. 310 U.S. 296 (1940).

109. *Id.* at 301.

110. *Id.* at 310.

111. *Id.*

away from the established, respectable religions of the day. The Court answered:

In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy.¹¹²

The act of speech by which religious groups attract, induct, and indoctrinate members must, of necessity, be protected under the *Cantwell* doctrine.¹¹³ If any such groups teach their adherents to separate from family, abandon worldly goods, forfeit a college education, despise political and social institutions, or denounce other religions, that teaching is protected free expression. The teachers may not be prosecuted for teaching; legal sanctions which would ordinarily protect their followers from deprogramming cannot be lifted because the adherents listen; and the state may not condone or assist deprogrammers of those who choose to accept the teaching.

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.¹¹⁴ 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.

This matter is squarely presented in the novel New York case of *People v. Murphy*.¹¹⁵ The *Murphy* case grew out of an effort by a Hare Krishna woman to bring charges against her mother and a private detective who had aided in seizing her.¹¹⁶ She was held for four days of deprogramming.¹¹⁷ In her testimony before the grand

112. *Id.*

113. See *International Soc'y for Krishna Consciousness, Inc. v. Conlisk*, 374 F. Supp. 1010, 1012, 1018 (N.D. Ill. 1973) (city enjoined from preventing Hare Krishna member from public proselytizing); *International Soc'y for Krishna Consciousness, Inc. v. City of New Orleans*, 347 F. Supp. 945, 946-48 (E.D. La. 1972) (city ordinance prohibiting religious solicitation of donations unconstitutional as applied); *In re Conversion Center, Inc.*, 388 Pa. 239, 245, 130 A.2d 107, 110 (1957) (peaceful efforts at conversion of one faith's members to another faith protected).

114. *Katz v. Superior Court*, 73 Cal. App. 3d 952, 987-88, 141 Cal. Rptr. 234, 255-56 (1st Dist. 1977).

115. No. 2012/76 (N.Y. Sup. Ct. Mar. 16, 1977).

116. *Id.*, slip op. at 3.

117. *Id.*

jury, the woman's mother said her daughter was a victim of "mental kidnapping" by the International Society for Krishna Consciousness (Iskcon Inc.), and that she was only "rescuing her."¹¹⁸ The grand jury declined to indict the private detective or the parent, then heard testimony on Iskcon, Inc.¹¹⁹ Subsequently, the grand jury handed down an indictment charging two Krishna leaders and Iskcon, Inc., with restraining the Krishna woman and another member who was unsuccessfully deprogrammed¹²⁰ "under circumstances that exposed them to a risk of serious physical injury."¹²¹ The language was based upon the wording of section 135.10 of the New York Penal Law which deals with first degree unlawful imprisonment.¹²² Justice John J. Leahy identified the issue as follows:

The entire crux of the argument propounded by the People is that through "mind control", "brainwashing", and/or "manipulation of mental processes" the defendants destroyed the free will of the alleged victims, obtaining over them mind control to the point of absolute domination and thereby coming within the purview of the issue of unlawful imprisonment.¹²³

Justice Leahy then analyzed the law of unlawful imprisonment and pointed out that there was no evidence that the Hare Krishna members had been subject to either physical restraint or deception.¹²⁴ Like other converts to the new religious sects, they had freely and voluntarily chosen this radically different way of life.¹²⁵

The court rejected the prosecution's argument that the daily ritual chanting and other activities of the Krishna movement constituted a form of intimidation and restraint over the members.¹²⁶ Justice Leahy noted that cases allowing prosecution for unlawful imprisonment involving "psychologically induced confessions, mental disease or defect, hypnosis to destroy a free will, intoxication, and coverture"¹²⁷ were

118. *Id.*

119. *Id.* at 3-4.

120. The attempted deprogramming of this member, Ed Shapiro, is described in T. Patrick with T. Dulack, *Let Our Children Go!* 186-97 (1976).

121. *People v. Murphy*, No. 2012/76, slip op. at 6 (N.Y. Sup. Ct. Mar. 16, 1977). Iskcon, Inc., and one of its leaders were also indicted for attempted grand larceny in the first degree. *Id.*

122. N.Y. Penal Law § 135.10 (McKinney 1975).

123. *People v. Murphy*, No. 2012/76, slip op. at 8 (N.Y. Sup. Ct. Mar. 16, 1977).

124. *Id.* at 8-9, 12-13.

125. *Id.* at 8-9; *cf.* *Chatwin v. United States*, 326 U.S. 455 (1946) (reversing the kidnaping conviction of a sixty-eight-year-old Mormon). In the latter case, Chatwin was accused of luring a fifteen-year-old girl from her home state for the purpose of "celestial marriage" according to the Mormon creed. *Id.* at 457. The Court found that the evidence showed a voluntary act by the girl, rather than abduction by Chatwin, and that the federal kidnaping statute required abduction against the will of the victim. *Id.* at 464.

126. *People v. Murphy*, No. 2012/76, slip op. at 8-9 (N.Y. Sup. Ct. Mar. 16, 1977).

127. *Id.* at 12-13.

not applicable to the charges brought against the Hare Krishnas. He found that in every case, the defendants were seeking to compel their victims to perform an illegal act by illegal means, such as false representation.¹²⁸

Justice Leahy indicated that he understood the hurt felt by loved ones whose children had given up their worldly possessions, social contacts, and former way of life for a new religion,¹²⁹ but came down on the side of allowing individuals to choose their own path to salvation. "Religious proselytizing and the recruitment of and maintenance of belief through a strict regimen, meditation, chanting, self-denial and the communication of other religious teachings cannot under our laws—as presently enacted—be construed as criminal in nature and serve as a basis for a criminal indictment."¹³⁰

Finally, the court, recognizing the seriousness and novelty of the issues before it, made this declaration:

It is at this juncture the court sounds the dire caveat to prosecutorial agencies throughout [*sic*] the length and breadth of our great nation that *all* of the rights of *all* our people so dearly gained and provided for, under the Constitution of the United States and the Constitutions of all States of our Nation shall be zealously protected to the full extent of the law. The entire and basic issue before this court is whether or not the two alleged victims in this case, and the defendants, will be allowed to practice the religion of their choice—and this must be answered with a resounding affirmation.¹³¹

The same issue, *i.e.*, whether religious sects use "mind control" to restrain their members, was later presented in the California case of *Katz v. Superior Court*.¹³² That case involved the use of temporary conservatorship proceedings to gain custody of adult members of the Unification Church of the Reverend Sun Myung Moon. They were then to be deprogrammed.¹³³ One of the issues that arose in the case was whether the orders granted by the lower court, which initially allowed the members of the Moon Church to be turned over to deprogrammers,¹³⁴ constituted a violation of their first amendment right to religious freedom.¹³⁵ The parents contended that religious freedom was not involved, but that "the sole issue [was] whether or not the

128. *Id.* at 13.

129. *Id.* at 11.

130. *Id.* at 11-12. The indictment for attempted grand larceny in the first degree was also dismissed. *See id.* at 2, 14.

131. *Id.* at 9.

132. 73 Cal. App. 3d 952, 141 Cal. Rptr. 234 (1st Dist. 1977).

133. *See Parents Win Custody of 5 Members of Moon's Church*, N.Y. Times, Mar. 25, 1977, at A1, col. 1.

134. *Id.*; *see Katz v. Superior Court*, 73 Cal. App. 3d 952, 956 & n.1, 141 Cal. Rptr. 234, 235 & n.1 (1st Dist. 1977).

135. *Id.* at 983, 141 Cal. Rptr. at 253.

conservatees [had] been deprived of their reasoning powers by artful and designing persons."¹³⁶ The court indicated that an inquiry into such a matter could in itself constitute a violation of first amendment freedoms:

Evidence was introduced of the actions of the proposed conservatees in changing their life style. When the court is asked to determine whether that change was induced by faith or by coercive persuasion is it not in turn investigating and questioning the validity of that faith? At the same time the trier of fact is asked to adjudge the good faith and bona fideness of the beliefs of the conservatees preceptors. If it be assumed that certain leaders were using psychological methods to proselytize and hold the allegiance of recruits to the church or cult, call it what we will, can it be said their actions were not dictated by faith merely because others who engaged in such practices have recanted? The total picture disclosed must be tested by principles applicable to the regulation of acts of religious organizations and their members.¹³⁷

The court noted that there may be "a compelling state interest in preventing fraud under the guise of religious belief,"¹³⁸ but said that the first amendment applied to the religious *acts* as well as beliefs of unorthodox sects.¹³⁹ For the practices of a religious group to be regulated, they must pose "some substantial threat to public safety, peace or order."¹⁴⁰ The court found no such grounds for governmental regulation in the case of the voluntary religious conversion of the followers of the Reverend Moon. The court said: "We conclude that in the absence of such actions as render the adult believer himself gravely disabled as defined in the law of this state, the processes of this state cannot be used to deprive the believer of his freedom of action and to subject him to involuntary treatment."¹⁴¹

The American Civil Liberties Union has condemned deprogramming as a violation of first amendment rights.¹⁴² The Annual Convention of

136. *Id.* at 983-84, 141 Cal. Rptr. at 253.

137. *Id.* at 987-88, 141 Cal. Rptr. at 255-56 (footnote omitted).

138. *Id.* at 988, 141 Cal. Rptr. at 256.

139. *Id.* at 984, 141 Cal. Rptr. at 253 (citing *Sherbert v. Verner*, 374 U.S. 398, 402-03 (1963)).

140. *Id.* at 984, 141 Cal. Rptr. at 253.

141. *Id.* at 988-89, 141 Cal. Rptr. at 256. As broad as this standard might seem, it is within the scope of first amendment rights as previously defined. Some courts have held that an adult may refuse life-sustaining medical treatment, on religious grounds, even though death may result. See note 99 *supra* and accompanying text.

142. "ACLU opposes the use of mental incompetency proceedings, temporary conservatorship, or denial of government protection as a method of depriving people of the free exercise of religion, at least with respect to people who have reached the age of majority.

"Modes of religious proselytizing or persuasion for a continued adherence that do not employ physical coercion or threat of same are protected by the free exercise of religion clause of the First Amendment against action of state laws or by state officials. The claim of free exercise may not be overcome by the contention that 'brainwashing' or 'mind control' has been used, in the absence of evidence that the above standards have been violated." Prichard, *Deprogramming and the Law app.*

the New England Psychological Association, the National Council of Churches, the World Fellowship of Religions, and professionals in theology and psychology have also condemned deprogramming for the same reason.¹⁴³

The issue is not likely to die with these cases, the first of their kind. The deprogrammers still have the sympathy of police, the courts,¹⁴⁴ and, probably, the general populace.¹⁴⁵ There have been serious efforts to obtain legislation which would make it easy for an individual to be forcibly removed from a religious group which deprogrammers consider to practice brainwashing.¹⁴⁶ The next step, of course, would be to outlaw various practices of the religious groups themselves. Consider the possibility of a law which would outlaw brainwashing. How would such a law be applied? Would the court be entitled to prohibit the Hare Krishna movement from engaging in ritual chanting? Could pentecostal religious sects be prohibited from speaking in tongues, fundamentalists from memorizing Bible verses? Could practitioners of Transcendental Meditation, or other types of meditation, be prohibited from reciting mantras, counting their breaths, or practicing yoga?

If there were to be laws against brainwashing, such laws would have to be particularly and carefully drawn.¹⁴⁷ They would have to prohibit abduction, physical restraint, involuntary subjugation to indoctrination, deprivation of sleep, and lengthy and consistent efforts to break the will of the subject.¹⁴⁸ It is doubtful that any religious group

A (American Civil Liberties Union Rep. Jan. 1978) (quoting a statement adopted by the ACLU National Board in March 1977).

143. Deprogramming: Documenting the Issue 183-86, 191-97 (prepared for the American Civil Liberties Union Conference on Religious Deprogramming, in New York City, Feb. 5, 1977); Cox, *Playing the Devil's Advocate, As It Were*, N.Y. Times, Feb. 16, 1977, at A25, col. 1. For a discussion of deprogramming in light of religious principles, see J. Yamamoto, *The Puppet Master* 99-103 (1977).

144. See note 69 *supra* and accompanying text.

145. See, e.g., Bilgore, *Could You Be Brainwashed?*, *Glamour*, Jan. 1977, at 96; Black, *The Secrets of the Innocents: Why Kids Join Cults*, *Woman's Day*, Feb. 1977, at 91; Edwards, *Rescue from a Fanatic Cult*, *Reader's Digest*, Apr. 1977, at 129, condensed from *Medical Economics*, Nov. 1, 1976.

146. See, e.g., Vt. Sen. Comm. for the Investigation of Alleged Deceptive, Fraudulent and Criminal Practices of Various Organizations in the State, Report, 54th Biennial Sess. 4-6 (Jan. 1977). This report recommends the adoption of a bill which would allow a temporary guardian to be appointed for an individual, without notice to the individual. The guardian could then "subject the ward to appropriate psychiatric treatment," *i.e.*, deprogramming. *Id.* at 5. For a discussion of such use of guardianship or conservatorship proceedings, see notes 263-88 *supra* and accompanying text. Other legislative activity is described in note 71 *supra*.

147. Such laws could not violate freedom of speech and the right to hear guaranteed by the first amendment. U.S. Const. amend. I; *Kleindienst v. Mandel*, 408 U.S. 753, 762-63 (1972).

148. For a discussion of brainwashing techniques, see notes 60-67 *supra* and accompanying text.

could ever be prosecuted under such a law,¹⁴⁹ and the effect of this law would most likely be to impale the deprogrammers on their own sword. For it is they, and not the religious groups, who engage in such practices.¹⁵⁰

B. *The Rights of Minors*

The rights of minors present a special problem. Some of the adherents of new religious groups are under the legal age of majority.

At common law, the age of majority is twenty-one, and that age prevails in all but those states which have changed it by statute.¹⁵¹ In New York, a "minor" or "infant," for most purposes, is anyone under the age of eighteen.¹⁵² A minor cannot emancipate himself. The only legal means for emancipation are through some act or omission on the part of the parents,¹⁵³ or through one of the statutes which create an automatic emancipation upon the happening of a given event, *e.g.*, a marriage.¹⁵⁴

Traditionally, the religious training and upbringing of minor children has been solely within the parents' control.¹⁵⁵ The courts have generally taken a position of noninterference with the right of the parent to direct the religious upbringing of the minor child.¹⁵⁶ It has even been held that a court has no power to decree that children be allowed to attend the church of their choice rather than the one attended by the parent.¹⁵⁷

This does not necessarily mean that parents have always had the right to interfere with their minor child's freedom of conscience. The old case of *In re Guertin's Child*¹⁵⁸ expresses the traditional limits of parental authority:

If the parent should reach the conclusion that the attendance of his child upon the

149. See, *e.g.*, *People v. Murphy*, No. 2012/76, slip op. at 10-11 (N.Y. Sup. Ct. Mar. 16, 1977).

150. See notes 60-67 *supra* and accompanying text.

151. *Jones v. Jones*, 72 F.2d 829 (D.C. Cir. 1934); *United States v. Flowers*, 227 F. Supp. 1014 (W.D. Tenn. 1963), *aff'd*, 331 F.2d 604 (6th Cir. 1964); *Sternlieb v. Normandie Nat'l Sec. Corp.*, 263 N.Y. 245, 188 N.E. 726 (1934).

152. N.Y. Dom. Rel. Law § 2 (McKinney 1977).

153. *Murphy v. Murphy*, 206 Misc. 228, 133 N.Y.S.2d 796 (Sup. Ct. 1954); *Bates v. Bates*, 62 Misc. 2d 498, 310 N.Y.S.2d 26 (Fam. Ct. 1970); *Gillikin v. Burbage*, 263 N.C. 317, 139 S.E.2d 753 (1965); *Detwiler v. Detwiler*, 162 Pa. Super. Ct. 383, 57 A.2d 426 (1948); *Parker v. Parker*, 230 S.C. 28, 94 S.E.2d 12 (1956).

154. *Lawson v. Brown*, 349 F. Supp. 203 (W.D. Va. 1972); *People v. Sherman*, 9 Ill. App. 3d 547, 291 N.E.2d 865 (1973), *rev'd on other grounds*, 57 Ill. 2d 1, 309 N.E.2d 562 (1974).

155. *People ex rel. Portnoy v. Strasser*, 303 N.Y. 539, 544, 104 N.E.2d 895, 898 (1952).

156. *Mester v. Mester*, 58 Misc. 2d 790, 296 N.Y.S.2d 193 (Sup. Ct. 1969); *Paoletta v. Phillips*, 27 Misc. 2d 763, 209 N.Y.S.2d 165 (Sup. Ct. 1960).

157. *In re Guardianship of Faust*, 239 Miss. 299, 123 So. 2d 218 (1960).

158. 5 Alas. 1 (1887).

ministration of any particular religious instructor is not conducive to its welfare, he may prohibit such attendance, and confine it to such religious teachers as he may deem most likely to give it proper instruction, and to secure its welfare here and its eternal happiness in the world to come. *He cannot force it to adopt opinions contrary to the dictates of its own conscience. He may not compel it, against its own convictions of right, to become a member of any religious denomination;* but after it has been initiated with its own free will into the religious communion to which its parent belongs, he may lawfully restrain it during its legal infancy from placing itself under the religious control of a minister or priest whose opinions do not meet its parent's approbation. The authority of the parent over the youth and inexperience of his offspring rests on foundations far more sacred than the institution of man.¹⁵⁹

The law regarding the constitutional rights of minors is, however, beginning to develop, and the day may come when parents can no longer restrain their unemancipated children from associating with members of a religious group they disapprove. Surely the parents will continue to retain the right to keep their minor children from leaving home to live in religious communes, but the widening recognition of rights of minors may prohibit outright interference with freedom of conscience.

Conscience and religious belief are fundamentally private matters, and interference with them constitutes an interference with the developing right of privacy. In *Planned Parenthood v. Danforth*,¹⁶⁰ the Supreme Court declared unconstitutional a Missouri statute which required the written consent of a parent before an abortion could be performed on an unmarried woman under the age of eighteen.¹⁶¹ Justice Blackmun stated: "Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights."¹⁶²

The *Danforth* case, as well as several other cases,¹⁶³ were based upon the fundamental right of privacy. This was also the theory behind a recent Supreme Court decision declaring unconstitutional the New York statute which prohibited the sale of contraceptives to minors.¹⁶⁴

159. *Id.* at 2 (emphasis added).

160. 428 U.S. 52 (1976).

161. *Id.* at 72-75.

162. *Id.* at 74.

163. *Bellotti v. Baird*, 428 U.S. 132 (1976); *Poe v. Gerstein*, 517 F.2d 787 (5th Cir. 1975), *aff'd sub nom. Franklin v. Fitzpatrick*, 428 U.S. 901 (1976); *Foe v. Vanderhoof*, 389 F. Supp. 947 (D. Colo. 1975); *Wolfe v. Schroering*, 388 F. Supp. 631 (W.D. Ky. 1974), *modified*, 541 F.2d 523 (1976); *Doe v. Rampton*, 366 F. Supp. 189 (D. Utah 1973), *vacated and remanded*, 410 U.S. 950 (1973); *Breese v. Smith*, 501 P.2d 159 (Alas. 1972); *State v. Koome*, 84 Wash. 2d 901, 530 P.2d 260 (1975) (en banc).

164. *Carey v. Population Servs. Int'l*, 97 S. Ct. 2010 (1977).

The logical extension of the principles of the *Danforth* and *Carey v. Population Services International*¹⁶⁵ cases is that although parents may retain the right to regulate their minor children's religious upbringing, they may not invade the constitutional right of privacy by inflicting "deprogramming" on their children, provided appropriate state action is found. There is a substantial difference between religious guidance and heavyhanded methods of behavior modification.

IV. THE LEGALITY OF ABDUCTION

A. Criminal Cases

The book *Let Our Children Go!*,¹⁶⁶ by deprogrammer Ted Patrick with Tom Dulack, states:

[D]eprogramming is the term, and it may be said to involve kidnapping at the very least, quite often assault and battery, almost invariably conspiracy to commit a crime, and illegal restraint. Patrick disputes the charge that saving children from a cult entails illegal behavior; in any event, he contends that no alternative exists.¹⁶⁷

A principal reason police have often refused to take any action against deprogrammers is that a family member is always involved.¹⁶⁸ To the police, this can make the affair a "family matter" which should either be referred to the family courts or dealt with in civil courts.¹⁶⁹ The FBI has, at times, expressed similar views.¹⁷⁰

The federal kidnaping statute¹⁷¹ applies to "[w]hoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when: (1) the person is willfully transported in interstate or foreign commerce"¹⁷² The phrase "or

165. *Id.*

166. T. Patrick with T. Dulack, *Let Our Children Go!* (1976).

167. *Id.* at 63.

168. *See, e.g., id.* at 65.

169. *See, e.g., id.* at 140-45, 175.

170. One special agent of the FBI commented, "A father can't kidnap his own child." *"Love Family" in New Mixup*, Seattle Post-Intelligencer, Mar. 13, 1974, at A1, col. 4. The case the agent referred to later resulted in a federal prosecution of Ted Patrick, the woman's abductor, for kidnaping, though he was acquitted. *N.Y. Times*, Dec. 13, 1974, at 52, col. 3. The judge held that parental abduction of their adult daughter was justified, and that Patrick as their agent received the benefit of any defense the parents would have. T. Patrick with T. Dulack, *Let Our Children Go!* 202-03 (1976).

In 1973, the writer of this Article made repeated attempts to obtain FBI action against deprogrammers. He was met with resistance and an attitude that such conduct by family members or persons hired by them was not really criminal.

171. 18 U.S.C.A. § 1201(a) (West Supp. 1977).

172. *Id.* (emphasis added).

otherwise" means that federal law recognizes kinds of kidnappings other than kidnaping for ransom. In most deprogramming cases, the people being kidnaped are not minors,¹⁷³ and therefore the defense available to a parent does not come into play. Moreover, even if the parent has the defense, it should not apply to nonfamily deprogrammers.¹⁷⁴ Nevertheless, there has been only one known federal prosecution under the kidnaping statute for an abduction for purposes of deprogramming.¹⁷⁵

The obvious reason for this failure to prosecute is that the "purpose" of the deprogramming-kidnaping is not one of the traditional purposes, *i.e.*, ransom, use as a hostage, white slavery, or sexual abuse. Federal officials apparently have decided to pass over acts which may not fall into the usual category of socially reprehensible conduct.

However, the Supreme Court has held that kidnaping within the meaning of the federal statute need not be for pecuniary benefit or any other illegal purpose.¹⁷⁶ Circuit courts have held that the kidnaping need not be for ransom or reward, or some other illegal purpose, and that a specific purpose need not be charged or proved in a kidnaping case.¹⁷⁷ There is no requirement that the victim of a kidnaping be harmed.¹⁷⁸ Under federal law, it is possible for a parent to be convicted of kidnaping his or her own child where that child has a legal right to freedom.¹⁷⁹

In *Miller v. United States*,¹⁸⁰ the mother and the stepfather of a married seventeen-year-old girl abducted her for the purpose of forcing her to live with them and work for them. Prior to her marriage, the girl had lived with her grandfather. The court upheld the conviction of the stepfather against the claim that he was simply aiding his wife in assuming control of her daughter.¹⁸¹

It is not a defense that the motive of the kidnaper is pure, or that well-meaning persons have abducted a child for its own benefit. In

173. *Editorial: Deprogramming and Religious Liberty*, 29 Church & State 212, 212 (1976).

174. *Cf. Miller v. United States*, 138 F.2d 258 (8th Cir. 1943), *cert. denied*, 320 U.S. 803 (1944) (stepfather may be prosecuted for kidnaping married seventeen-year-old step daughter).

175. *United States v. Patrick*, No. CR 74-320 S (W.D. Wash. Dec. 11, 1974), *appeal dismissed*, 532 F.2d 142 (9th Cir. 1976).

176. *United States v. Healy*, 376 U.S. 75, 82 (1964); *Gooch v. United States*, 297 U.S. 124, 128 (1936).

177. *Hall v. United States*, 410 F.2d 653, 659-60 (4th Cir.), *cert. denied*, 396 U.S. 970 (1969); *Loux v. United States*, 389 F.2d 911, 916 (9th Cir.), *cert. denied*, 393 U.S. 867 (1968); *United States v. Bentley*, 310 F.2d 685 (6th Cir. 1962).

178. *De Herrera v. United States*, 339 F.2d 587, 588 (10th Cir. 1964).

179. *Miller v. United States*, 138 F.2d 258 (8th Cir. 1943), *cert. denied*, 320 U.S. 803 (1944).

180. *Id.*

181. *Id.* at 260-61.

United States v. Atchinson,¹⁸² the defendant had abducted a five-year-old child in the belief that the child was being mistreated by its parents. There was no evidence that the child was harmed by the defendant, and, on the contrary, there was evidence that the defendant was motivated by concern for the child's well-being.¹⁸³ The court upheld a federal conviction for kidnaping, and a sentence of six years' imprisonment.¹⁸⁴

The degree to which abduction for the purpose of deprogramming can be prosecuted under state law varies from state to state. Generally, the common law crime of kidnaping has been expanded to include the crime of false imprisonment. The elements of the crime depend upon the particular wording of the statute.¹⁸⁵

As a general rule, one can be prosecuted for kidnaping, or unlawful imprisonment, without any proof that the act was performed for financial gain or for some other illegal purpose.¹⁸⁶ The purpose of the kidnaping is usually immaterial.¹⁸⁷ The purpose of the abduction may serve as a factor of aggravation,¹⁸⁸ or may be used in determining the punishment.¹⁸⁹ An evil intent may be specifically required for prosecution on account of kidnaping.¹⁹⁰ As to first degree kidnaping, New York would appear to be such a state.¹⁹¹

New York combines kidnaping and unlawful imprisonment under the same article of the Penal Law.¹⁹² The key terms are "restrain" and "abduct." One is guilty of kidnaping if he "abducts" a person.¹⁹³ One is guilty of unlawful imprisonment if he "restrains" another person.¹⁹⁴

182. 524 F.2d 367 (7th Cir. 1975).

183. *Id.* at 368.

184. *Id.* at 371.

185. *State v. Evans*, 72 Idaho 458, 462-64, 243 P.2d 975, 977-78 (1952).

186. *See, e.g., State v. Tillotson*, 85 Kan. 577, 117 P. 1030(1911), *appeal dismissed*, 232 U.S. 728 (1914).

187. *State v. Taylor*, 82 Ariz. 289, 294, 312 P.2d 162, 166 (1957); *People v. Trawick*, 78 Cal. App. 2d 604, 606, 178 P.2d 45, 47 (3d Dist. 1947); *State v. Wallace*, 259 Iowa 765, 774, 145 N.W.2d 615, 621 (1966); *McGuire v. State*, 231 Miss. 375, 381, 95 So. 2d 537, 540(1957); *State v. Berry*, 200 Wash. 495, 516, 93 P.2d 782, 791 (1939).

188. *E.g., State v. Rollins*, 8 N.H. 550 (1837).

189. *E.g., Arrington v. State*, 3 Ga. App. 30, 59 S.E. 207 (1907).

190. *State v. Weir*, 506 S.W.2d 437 (Mo. 1974).

191. N.Y. Penal Law § 135.25 (McKinney 1975) requires death or evil intent as an element in first degree kidnaping. *See also* N.Y. Penal Law § 135.00(2) (McKinney 1975). For second degree kidnaping, however, there is no similar requirement. *See* N.Y. Penal Law § 135.20 (McKinney 1975).

192. N.Y. Penal Law §§ 135.00-.75 (McKinney 1975).

193. *Id.* §§ 135.20, .25.

194. *Id.* §§ 135.05, .10. These terms are defined in § 135.00 of the Penal Law as follows: "1. 'Restrain' means to restrict a person's movements intentionally and unlawfully in such manner as to

In New York there is a crucial distinction between "kidnaping" and "unlawful imprisonment." It is the distinction between "genuine kidnaping" and those many other types of abduction or restraint which include lesser offenses against the rights of the unwilling victim.¹⁹⁵

It seems doubtful that the acts of deprogrammers would fulfill the specific intent requirement of New York's first degree kidnaping statute.¹⁹⁶ First degree kidnaping requires either death; or intent to injure, sexually abuse, or terrorize a person, or to collect ransom, advance a felony, or interfere with a governmental function.¹⁹⁷ Second degree kidnaping, however, simply requires that the victim be abducted.¹⁹⁸ Although second degree kidnaping requires a criminal intent,¹⁹⁹ it appears that intent to abduct is sufficient, without regard to the motive.²⁰⁰ Thus, a second degree kidnaping prosecution in New York of those who abducted a person for deprogramming would appear to be in order.

In any New York prosecution for kidnaping, it is an affirmative defense that "(a) the defendant was a relative of the person abducted, and (b) his sole purpose was to assume control of such person."²⁰¹ Hence, a New York kidnaping charge could not be successfully brought against a person who abducted a relative for deprogramming. The statutory defense does not extend, however, to unrelated abduc-

interfere substantially with his liberty by moving him from one place to another, or by confining him either in the place where the restriction commences or in a place to which he has been moved, without consent and with knowledge that the restriction is unlawful. A person is so moved or confined 'without consent' when such is accomplished by (a) physical force, intimidation or deception, or (b) any means whatever, including acquiescence of the victim, if he is a child less than sixteen years old or an incompetent person and the parent, guardian or other person or institution having lawful control or custody of him has not acquiesced in the movement or confinement.

"2. 'Abduct' means to restrain a person with intent to prevent his liberation by either (a) secreting or holding him in a place where he is not likely to be found, or (b) using or threatening to use deadly physical force.

"3. 'Relative' means a parent, ancestor, brother, sister, uncle or aunt." N.Y. Penal Law § 135.00 (McKinney 1975).

195. See J. Zett, 8 N.Y. Criminal Practice ¶ 71.2[1] (1977); Commission Staff Comments on Revised Penal Law, article 135, Gilbert Criminal Law and Procedure 2a-138 (1977).

196. N.Y. Penal Law § 135.25 (McKinney 1975).

197. *Id.* Intent to manipulate a third party's conduct is also included. *Id.*

198. *Id.* § 135.20.

199. *People v. Weiss*, 252 App. Div. 463, 465, 300 N.Y.S. 249, 254 (2d Dep't 1937), *rev'd on other grounds*, 276 N.Y. 384, 12 N.E.2d 514 (1938).

200. See N.Y. Penal Law § 135.20 note (McKinney 1975) (Practice Commentaries). "[Second degree kidnaping] falls somewhat short of the behavior exclusively covered by the first degree offense and should not be penalized as [first degree kidnaping, an A-1 felony]." *Id.* The Practice Commentaries gives "child stealing by a love-starved woman" as an example of kidnaping that would support a second degree, but not a first degree, conviction. *Id.*

201. *Id.* § 135.30

tors. In most states a parent cannot be charged with kidnaping his own child.²⁰² But where a parent does not have legal custody, he can be guilty of kidnaping.²⁰³

In New York, the less serious offense of unlawful imprisonment also appears to be applicable to abduction for the purpose of deprogramming. For unlawful imprisonment to constitute a first degree offense, the restraint must expose the victim to a "risk of serious physical injury."²⁰⁴ This might apply if an abduction for deprogramming were particularly violent. Second degree unlawful imprisonment occurs when the defendant "restrains" another person.²⁰⁵

Ted Patrick has escaped conviction in New York for second degree unlawful imprisonment of a person aged twenty.²⁰⁶ In a case involving his attempt to abduct Daniel Voll for deprogramming,²⁰⁷ Patrick claimed he was only helping the parents of the young man save him from an injury greater than the seizure of Voll.²⁰⁸ He asserted the justification defenses in sections 35.05(2) and 35.10(1) of the New York Penal Law.²⁰⁹

The first of these defenses, that in section 35.05(2),²¹⁰ requires an "emergency situation" in which public or private injury is "imminent."²¹¹ Even if one accepts the dubious proposition that membership in a particular religious group caused "injury," could such injury be deemed "imminent" requiring emergency measures?²¹² The other jus-

202. *Wilborn v. Superior Court*, 51 Cal. 2d 828, 337 P.2d 65 (1959); *State v. Elliott*, 171 La. 306, 131 So. 28 (1930); *Biggs v. State*, 13 Wyo. 94, 77 P. 901 (1904).

203. *Wilborn v. Superior Court*, 51 Cal. 2d 828, 337 P.2d 65 (1959); *People v. Hyatt*, 18 Cal. App. 3d 618, 96 Cal. Rptr. 156 (4th Dist. 1971); *Hicks v. State*, 158 Tenn. 204, 12 S.W.2d 385 (1928).

204. N.Y. Penal Law § 135.10 (McKinney 1975).

205. N.Y. Penal Law § 135.05 (McKinney 1975). Second degree unlawful imprisonment is a class A misdemeanor. *Id.*

206. "*Deprogrammer*" *Patrick Cleared*, Wash. Post, Aug. 7, 1973, at A3, col. 7; see T. Patrick with T. Dulack, *Let Our Children Go!* 167-68, 180 (1976).

207. *People v. Patrick*, No. N-320779 (N.Y. Crim. Ct. Aug. 6, 1973).

208. T. Patrick with T. Dulack, *Let Our Children Go!* 167-68 (1976). One of Voll's fingers was dislocated in the struggle that ensued when Patrick and Voll's father attempted to abduct Voll. Assault charges were initially filed against Patrick. Kaufman, *Saving Your Children from Salvation*, N.Y. Magazine, Apr. 16, 1973, at 55, 57-58. The judge later directed the jury to acquit Patrick on the assault charge, as there was no evidence that Patrick, and not Voll's father, was responsible for the dislocated finger. Voll did not press charges against his father. See *Patrick Trial Involves N.Y. Official*, Wash. Post, Aug. 3, 1973, at A3, col. 1.

209. Interview with Juan U. Ortiz, former assistant district attorney, in New York City (Feb. 13, 1978); see *Patrick Acquitted in Seizure of Youth*, N.Y. Times, Aug. 7, 1973, at 24, col. 5.

210. N.Y. Penal Law § 35.05(2) (McKinney 1975).

211. *People v. Brown*, 70 Misc. 2d 224, 333 N.Y.S.2d 342 (Sup. Ct. 1972).

212. Section 35.02(2) of the New York Penal Law, which contains this justification defense, is derived from § 3.02(1)(a) of the Model Penal Code adopted by the American Law Institute. It is based on the concept of "necessity," i.e., the avoidance of an evil greater than the evil sought to be

tification defense, in section 35.10(1), allows a parent or someone else assigned to care for a person under twenty-one to use physical force, but not deadly physical force, as he reasonable believes it necessary for the discipline or welfare of the young person.²¹³ Both of these justification defenses are general defenses which must be disproved beyond a reasonable doubt by the prosecution.²¹⁴

At the time of this prosecution of Patrick, the age of majority in New York was twenty-one,²¹⁵ and section 35.10(1) applied to the parent of a "minor."²¹⁶ Since the attempt to abduct Voll occurred two weeks prior to his twenty-first birthday,²¹⁷ he would have been considered a minor unless emancipated. The prosecuting attorney, Juan U. Ortiz, argued that Voll, who had been living on his own, was emancipated.²¹⁸

The trial judge allowed the jury to get deeply involved in value judgments about the rightness or wrongness of Voll's religion.²¹⁹ The result was a trial of Voll's religion, rather than of Ted Patrick. The defense was permitted to introduce wide-ranging evidence in an attempt to ridicule the devoutly held beliefs of Voll's evangelical Protestant fellowship.²²⁰ No evidence was offered to show that this group

prevented by the law defining the offense charged. See Model Penal Code § 3.02(1)(a), at 45 (Proposed Official Draft, 1962) ("imminent danger" means reasonable grounds for apprehending that injury is about to occur). Thus, a defendant who claimed the plaintiff was about to kill him was not justified in shooting the plaintiff where plaintiff had broken the entrance door to the house, but defendant was safe upstairs. *Barbagallo v. Americana Corp.*, 32 App. Div. 2d 622, 299 N.Y.S.2d 626 (1st Dep't), modified on other grounds, 25 N.Y.2d 655, 254 N.E.2d 768, 306 N.Y.S.2d 466 (1969).

213. N.Y. Penal Law § 35.10(1) (McKinney 1975).

214. *People v. Steele*, 26 N.Y.2d 526, 528, 260 N.E.2d 527, 528, 311 N.Y.S.2d 889, 891 (1970); N.Y. Penal Law § 35.00 note (Practice Commentaries) (McKinney 1975).

215. See ch. 1030, 1965 N.Y. Laws (current version at N.Y. Dom. Rel. Law § 2 (McKinney 1977)).

216. Ch. 1030, 1965 N.Y. Laws (amended 1974). The statute was subsequently amended to substitute "a person under the age of twenty-one" for "a minor person." Act of June 15, 1974, ch. 930, § 1, 1974 N.Y. Laws (codified at N.Y. Penal Law § 35.10(1) (McKinney 1975)).

217. See *Patrick Acquitted in Seizure of Youth*, N.Y. Times, Aug. 7, 1973, at 24, col. 5.

218. Interview with Juan U. Ortiz, former assistant district attorney, in New York City (Feb. 3, 1978).

219. See *Voll Tells Kidnap Trial of His Conversion*, N.Y. Post, July 26, 1973, at 22, col. 1.

220. See *Religious "Deprogramming" at Issue in N.Y. Assault Trial*, Wash. Post, July 30, 1973, at A2, col. 1. At one point in the cross-examination of a defense witness, defense counsel objected to a question as to the number of people Patrick had deprogrammed. The following exchange occurred between the judge, Bruce Wright, and defense counsel: "[DEFENSE COUNSEL]: Your Honor, I'm going to object because I think we're going far afield to the specific issues in this case.

"THE COURT: When did you think we began to go far afield?

"[DEFENSE COUNSEL]: I think probably in my opening.

"THE COURT: This is cross examination. I will allow it." Transcript of Proceedings pt. jury II, at 134, *People v. Patrick*, No. N-320779 (N.Y. Crim. Ct. Aug. 6, 1973).

was engaged in anything unlawful or even mildly improper.²²¹ Instead, it was the fundamental theological beliefs and practices of the group that came under the court's scrutiny.

The defense argued that Patrick, hired by Voll's parents, was their agent, and should have the benefit of the general defenses under section 35, if available to the parents, who were not on trial. The prosecution argued that these were personal defenses and should not apply to hired abductors—just as the defense of one conspirator does not shield a co-conspirator. The judge, however, instructed the jury that Patrick could claim those general defenses available to the parents.²²² Since these defenses must be *disproved* by the prosecution *beyond a reasonable doubt*,²²³ extraordinary latitude is given to hired assailants if the agency theory is accepted. Patrick was acquitted.²²⁴

The application of the defense of justification under section 35.05(2) of the New York Penal Law, requiring an emergency situation, to the attempted abduction of Voll is a perversion of the intent of the New York Legislature in enacting this section. The Temporary Commission on the Revision of the New York Penal Law indicated that the section should be narrowly construed so as to apply to areas of "*technically criminal* behavior which virtually no one would consider improper."²²⁵ Illustrative is the burning of real property to prevent a forest fire, or confining a person to halt an epidemic. It does not justify such things as mercy killings committed out of disagreement with "the morality or advisability of the law."²²⁶ By logical extension, it does not apply to

221. *See Patrick Acquitted in Seizure of Youth*, N.Y. Times, Aug. 7, 1973, at 24, col. 5.

222. Interview with Juan U. Ortiz, former assistant district attorney, in New York City (Feb. 13, 1978).

223. *See* note 214 *supra* and accompanying text.

224. *Patrick Acquitted in Seizure of Youth*, N.Y. Times, Aug. 7, 1973, at 24, col. 5. Professor Juan U. Ortiz, adjunct associate professor at Fordham Law School, was the prosecuting attorney in this case. He commented: "It was clear that [Voll's fellowship] was on trial. I was placed in the position where I had to defend the fellowship. In fact, I felt more like a defense attorney than a prosecutor . . . I thought it was a fascinating case. I was outraged by this type of conduct [the attempted abduction of Voll] and took a very personal interest in it . . . I felt great sympathy with the parents' position. But the fears of the parents were misplaced. I think that if the parents had known the facts at the time of the trial, they would have testified for the prosecution. Even if the parents' fears had been justified, Ted Patrick should not have been able to use those fears in his own defense . . . I'm really proud and glad that I was the first one in the country to prosecute Patrick—even though he was acquitted. This was a first step taken to protect the religious freedom of targets of deprogramming." Interview with Juan U. Ortiz, former assistant district attorney, in New York City (Jan. 27, 1978).

225. N.Y. Penal Law § 35.05 note (McKinney 1975) (Practice Commentaries) (emphasis added); *see* *People v. Brown*, 70 Misc. 2d 224, 229, 333 N.Y.S.2d 342, 348-49 (Sup. Ct. 1972).

226. Commission Staff Notes to Proposed New York Penal Law § 65.00(2), Gilbert Criminal Law and Procedure 2A-46 (1977); 7 J. Zett, *New York Criminal Practice* ¶ 65.1[3], at 65-8 (1977).

abductions committed out of disagreement with the "morality" or advisability of the protection the first amendment provides to religious practices carried out by an individual. Traditionally, the defense of "justification" or "necessity" applied only where the defendant was forced to act by reason of physical forces of nature rather than acts of other human beings.²²⁷

In the subsequent case of *United States v. Patrick*,²²⁸ a federal district judge in the State of Washington, on a motion by the defendant, dismissed kidnaping charges against Ted Patrick on a mixed theory of "justification" and lack of criminal intent.²²⁹ The court seemed to ignore the fact that under the federal kidnaping statute "motive" or "purpose" is not a defense,²³⁰ and that in any event the defenses available to a parent should not be available to the parent's agent.²³¹

More recently, courts have begun to disallow the defense of justification in prosecutions for false imprisonment of a target of deprogramming. In Orange County, California, a court sentenced Ted Patrick to a year in prison, with all but sixty days suspended, on account of his false imprisonment of a member of the Hare Krishna sect.²³²

227. W. LaFave & A. Scott, *Handbook on Criminal Law* § 50, at 381 (1972).

228. No. CR 74-320 S (W.D. Wash. Dec. 11, 1974), *appeal dismissed*, 532 F.2d 142 (9th Cir. 1976).

229. The charge was the kidnaping of Kathie Crampton from a religious commune called Love Israel. The judge, Walter T. McGovern, held as follows:

"THE COURT: All right, it is indicated by both sides that the questions before the Court are as follows:

"One, may a parent legally justify kidnapping an adult child upon necessity grounds here alleged.

"My answer to that is in the affirmative, that there is such a common law defense and I so find.

....

"Does the availability of the defense turn upon the parents' mere belief that a set of circumstances exist or, rather, must it be demonstrated that the circumstances in fact exist?

"My answer to that question is that the availability of the defense turns upon the parents' reasonable cause to, and that they do in fact have sufficient belief to consider that the child, Kathie Crampton, was in imminent danger.

....

"The parents who would do less than what Mr. and Mrs. Crampton did for their daughter Kathie would be less than responsible, loving parents. Parents like the Cramptons here, have justifiable grounds, when they are of the reasonable belief that their child is in danger, under hypnosis or drugs, or both, and that their child is not able to make a free, voluntary, knowledgeable decision to stay within the so-called community." Transcript of Proceedings at ____, *United States v. Patrick*, No. CR 74-320 S (W.D. Wash. Dec. 11, 1974), *appeal dismissed*, 532 F.2d 142 (9th Cir. 1976).

230. See discussion of federal kidnaping statute and defenses at notes 171-74 *infra* and accompanying text.

231. See note 174 *supra*. See also *Wilborn v. Superior Court*, 51 Cal. 2d 828, 337 P.2d 65 (1959); *State v. Brandenburg*, 232 Mo. 531, 134 S.W. 529 (1911) (disputes between parents over custody of their offspring).

232. T. Patrick with T. Dulack, *Let Our Children Go!* 267, 275-76 (1976).

The court held, as a matter of law, that the defense of justification could not be introduced at trial.²³³

In Denver, Colorado, where Patrick was charged with false imprisonment of two young women who were not then members of any religious sect,²³⁴ the appeals court affirmed the conviction²³⁵ despite Patrick's argument that there were sufficient facts presented at trial to prove justification.²³⁶ The appeals court noted that the proper procedure for proving such a defense is to make an offer of proof, out of the presence of the jury, and let the court rule whether such a defense is available.²³⁷ On the central question, the court ruled: "First, for the 'choice of evils' defense to be available there must be an imminent public or private injury about to occur which requires emergency action. See § 18-1-702(1), C.R.S. 1973. Here, there was no evidence of such a situation"238

The defense of justification, or "choice of evils," is obviously improper in such prosecutions for a violent crime against the person like kidnaping, false imprisonment, assault, or one of the other possible crimes which might arise out of deprogramming. Aside from the question of "emergency" or "imminence," there is the more central question of "injury." As *United States v. Ballard*,²³⁹ *Katz v. Superior Court*,²⁴⁰ and *People v. Murphy*²⁴¹ make clear, it is beyond the competence of the courts (including juries) to determine the truth or falsity of any religious belief or practice.²⁴² To argue that a particular religious practice causes mental "injury" to the young adherent is to challenge the first amendment. Only where it can be shown (*in camera*) that some other real injury such as fraud, assault, restraint, or abduction has occurred should such a defense be allowed.

B. *Conservatorship Proceedings: Kidnaping by Court Order*

In an effort to avoid the civil and criminal pitfalls of their profession, deprogrammers have turned to conservatorship proceedings as a

233. See *id.* at 275.

234. Moore, *Terror in Denver*, Liberty, Mar./ Apr. 1975, at 8, 11. The women were raised in strict Greek Orthodox homes, but had rejected that way of life for a more independent one. "We only wanted to be independent," said one, "to live our own lives. They [their parents] wanted us to move back into their homes and let them tell us what to do." *Id.* at 9. Patrick, in league with the women's parents, attempted to deprogram the women. Both were over twenty-one years of age. *Id.* at 9-11.

235. *People v. Patrick*, 541 P.2d 320 (Colo. App. 1975).

236. *Id.* at 322.

237. *Id.*

238. *Id.*

239. 322 U.S. 78 (1944).

240. 73 Cal. App. 3d 952, 141 Cal. Rptr. 234 (1st Dist. 1977).

241. No. 2012/76 (Sup. Ct. Mar. 16, 1977).

242. See notes 83-90 *supra* and accompanying text.

means of legally gaining control over their victims. Conservatorship proceedings are designed to preserve the property "of persons who are unable to manage their own affairs . . . because of debilitating factors which create a condition falling short of incompetency . . ." ²⁴³

Under the laws of most states, it would be impossible to have a young person, enthralled by his new path to salvation, declared incompetent or mentally ill. One would search in vain to find "brain-washed zombies" listed in any of the standard texts on mental disorders. Indeed, the things parents complain of most—renunciation of worldly things, total dedication to the group or group leader, change in personality, flat affect, serenity, and apparent rejection of family and former friends—do not fit within any of the categories of mental disease. ²⁴⁴

Generally, the requirements for appointment of a guardian or committee and a judicial declaration of incompetence are a privation of reasoning faculties, ²⁴⁵ or an inability to act with discretion in the ordinary affairs of life. ²⁴⁶ In some states, it is necessary that a person be declared legally insane before a guardianship can be imposed. ²⁴⁷ Generally, however, an inability to protect oneself or to manage one's property will suffice. ²⁴⁸ Irrespective of the legal standard, however, "incompetency" is a strong term carrying strong implications.

Not so with conservatorship. There the implication of mental illness is substantially eliminated, and the onus of "incompetency" avoided. A conservator can be appointed simply because the conservatee is unable to manage his property by reason of some disabling factor, which need not amount to incompetence or justify the imposition of a committee-ship. ²⁴⁹

243. Recommendation of N. Y. Law Revision Comm'n to the Legislature, 1971 N.Y. Laws 2338.

244. See American Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders 5-13 (2d ed. 1968).

245. Parrish v. Peoples, 214 Minn. 589, 9 N.W.2d 225 (1943); *In re* Guardianship of Blochowitz, 135 Neb. 163, 280 N.W. 438 (1938); *In re* Guardianship of Winnett, 112 Okla. 43, 239 P. 603 (1925).

246. Richardson v. Richardson, 217 Iowa 127, 250 N.W. 897 (1933); *In re* Estate of Johnson, 286 Mich. 213, 281 N.W. 597 (1938); Parrish v. Peoples, 214 Minn. 589, 9 N.W.2d 225 (1943); *In re* Bearden, 86 S.W.2d 585 (Mo. App. 1935); Harrelson v. Flournoy, 229 Mo. App. 582, 78 S.W.2d 895 (1934); *In re* Guardianship of Blochowitz, 135 Neb. 163, 280 N.W. 438 (1938); *In re* Keiser, 113 Neb. 645, 204 N.W. 394 (1925); Hagins v. Redevelopment Comm'n, 275 N.C. 90, 165 S.E.2d 490 (1969); *In re* Guardianship of Prince, 379 P.2d 845 (Okla. 1963).

247. Caple v. Drew, 70 Kan. 136, 78 P. 427 (1904); Harrelson v. Flournoy, 229 Mo. App. 582, 78 S.W.2d 895 (1935).

248. *In re* Keiser, 113 Neb. 645, 204 N.W. 394 (1925); *In re* Guardianship of Green, 125 Wash. 570, 216 P. 843 (1923).

249. See, e.g., *In re* Schnelle, 74 Misc. 2d 226, 227, 343 N.Y.S.2d 245, 247 (Sup. Ct. 1973); *In re* Emerson, 73 Misc. 2d 322, 325-26, 341 N.Y.S.2d 390, 393 (Sup. Ct. 1973).

Deprogrammers have seized upon this device to obtain court orders giving them control over the target. There is now in circulation a "Legal Deprogramming Kit" with forms entitled "Petition for Appointment of Temporary Guardian," "Order Appointing Temporary Guardian for Junior Doe, Order Setting Hearing To Show Cause and Injunction," and sample medical and other attachments.²⁵⁰ One psychologist teamed up with two lawyers who specialize in such "legal" deprogrammings to provide them with appropriate testimony.²⁵¹ Once the court order has been obtained, the target may be seized by a sheriff and police, then turned over to deprogrammers.²⁵²

The psychiatric testimony offered in such proceedings can be of somewhat dubious quality, drawing on the faith of the true believer in deprogramming.²⁵³ While the case of *People v. Murphy*²⁵⁴ was pending in the Supreme Court for Queens County, New York, the father of one of the persons involved in the case attempted to have his adult Hare Krishna son declared incompetent. This was not a conservatorship proceeding, but was similar in purpose. The psychiatrist who testified on the father's behalf had observed the son, and stated that the son's lack of signs of mental disorder was the firmest indication that he was a victim of mind control.²⁵⁵

New York's conservatorship statute²⁵⁶ is taken from the Uniform Probate Code.²⁵⁷ Like most conservatorship statutes, it deals only with the question of conserving the *property* of someone under a disability.²⁵⁸ The civil rights of the person over whom the proceeding is brought are specifically protected.²⁵⁹ Indeed, the very purpose of such a proceeding is to avoid the interference with civil rights which might

250. Legal Deprogramming Kit, in American Civil Liberties Union, "Deprogramming: A Book of Documents 139 (June 3, 1977).

251. Sage, *The War on the Cults*, Human Behavior, Oct. 1976, at 40, 46-48. The psychologist, however, after being named as a defendant in a civil suit by the target of an unsuccessful deprogramming effort, took a position against deprogramming. *Deprogrammers on the Defensive*, 31 Church & State 16 (1978).

252. E.g., Sage, *The War on the Cults*, Human Behavior, Oct. 1976, at 40, 49.

253. Such testimony is usually given by a psychiatrist who has never examined the proposed conservatee. See, e.g., *Orlando v. Wize*, No. 77-2091, slip op. at 3 (W.D. Ark. Jan. 5, 1978). Were there to be an examination, the target would have notice of the proceeding and might be able to defend himself or escape. See notes 268-69 *infra* and accompanying text.

254. No. 2012/76 (N.Y. Sup. Ct. Mar. 16, 1977).

255. Affidavit in Support of Motion to Dismiss Indictment, by Eugene Harley, at 10 (Dec. 9, 1976), *People v. Murphy*, No. 2012/76 (N.Y. Sup. Ct. Mar. 16, 1977).

256. N.Y. Mental Hyg. Law §§ 77.01-.41 (McKinney 1976 & Supp. 1977).

257. Uniform Probate Code §§ 5-401 to -431.

258. N.Y. Mental Hyg. Law § 77.01 (McKinney 1976).

259. Section 77.25(a) of the N.Y. Mental Hygiene Law (McKinney 1976) reads in part: "A conservatee shall not be deprived of any civil right solely by reason of the appointment of a conservator, nor shall such appointment modify or vary any civil right of a conservatee . . ."

be encompassed in a declaration of incompetency or civil commitment. In its legislative memorandum accompanying New York's conservatorship statute,²⁶⁰ the legislature stated:

The conservatorship procedure provides a flexible means for protecting the property of persons with serious debility and gives the court the power to set limits upon the authority of the conservator and to insure that the conservatee has an adequate allowance for his personal needs. *The civil rights of the conservatee are not affected.* The title to the conservatee's property remains in him and the conservatee has the power to dispose of his property by will if he possesses the requisite testament capacity. *Adequate procedures are incorporated to protect the constitutional rights of the person who is the subject of the proceeding.*²⁶¹

Parents and deprogrammers have obtained a number of orders of temporary guardianship, or conservatorship, and have used the temporary control gained over sect members as an opportunity to deprogram them.²⁶² There has, however, been very little judicial discussion of the legality of using conservatorship proceedings to strip a person of the legal rights which would ordinarily protect him from deprogramming.

The leading case on such use of conservatorship proceedings—the first, and so far the only significant judicial analysis of this practice—is *Katz v. Superior Court*.²⁶³ There, the California appellate court had to rule upon the validity of temporary orders of conservatorship granted by the lower court over several members of the Unification Church, all over twenty-one years of age.²⁶⁴ The California conservatorship statute in effect at the time the orders were granted²⁶⁵ provided that a conservator could be appointed over a person “likely to be deceived or imposed upon by artful or designing persons.”²⁶⁶ Lawyers for the parents used this language to justify orders allowing them temporary control over the unwilling “Moonies.”²⁶⁷ The case was unusual in that the proposed conservatees were given notice of the proceedings and allowed to present testimony in a hearing which lasted eleven days.²⁶⁸ Generally, when an order of temporary conservatorship is sought for

260. Legislative Memorandum, 1972 N.Y. Laws 3290.

261. *Id.* (emphasis added).

262. *See, e.g.*, notes 263-88 *supra* and accompanying text.

263. 73 Cal. App. 3d 952, 141 Cal. Rptr. 234 (1st Dist. 1977).

264. *Id.* at 956 & n.1, 976, 141 Cal. Rptr. at 235 & n.1, 248.

265. *See id.* at 960 & n.5, 141 Cal. Rptr. at 237 & n.5.

266. *Id.* at 960 n.5, 141 Cal. Rptr. at 237 n.5 (citing Act of July 6, 1957, ch. 1902, § 1, 1957 Cal. Stats. 3306, as amended by Act of Aug. 16, 1972, ch. 988, § 3, 1972 Cal. Stats. 1798). This language was deleted from the statute by an amendment effective July 1, 1977. Act of Sept. 29, 1976, ch. 1357, § 25, 1976 Cal. Stats. 5986.

267. 73 Cal. App. 3d at 972-73, 141 Cal. Rptr. at 245-46.

268. *Court Will Resume Deprogramming Case*, N.Y. Times, Apr. 11, 1977, at 18, col. 1.

purposes of deprogramming, the target is not notified, to prevent him from mounting a successful defense or escaping.²⁶⁹

The conservatorship statute in California permits the appointment of a conservator "with or without notice as the court or judge may require, upon a verified petition establishing good cause."²⁷⁰ Ex parte conservatorship proceedings allowed under California law are similar to those in certain other states.²⁷¹ In ex parte proceedings, the parents and deprogrammers can come into court with affidavits by cooperating psychiatrists or psychologists, and obtain temporary power over the sect member without any opportunity for the member to respond with his or her own psychiatric evidence and personal testimony.²⁷² Having secured the temporary order, the deprogrammers will often achieve victory, since it may take no more than a few days to deprogram someone. In the *Katz* case, deprogramming began very soon after the temporary conservatorship orders were granted by the lower court.²⁷³ Though the appellate court quickly moved to ban deprogramming, two of the five young people renounced the Unification Church one day after the appellate court's order was issued.²⁷⁴

The appellate court in *Katz* noted, "The [lower] court's orders following the hearing . . . contain no findings of fact which would disclose the ground or grounds on which the orders were based."²⁷⁵ The court below had issued orders appointing conservators without finding that the conservatees were insane, incompetent, or unable to manage their own property.²⁷⁶ Apparently, it was enough for the lower court that the young people had joined an unorthodox religious sect, and that the parents were concerned about their welfare. The judge stated:

It's not a simple case. As I said, we're talking about the very essence of life here,

269. See, e.g., Order Appointing Temporary Guardianship of the Person and Granting Powers to the Petitioner, *In re* Guardianship of Seidenberg, No. 58547 (Md. Cir. Ct. Feb. 24, 1977). On the request of the parent of the proposed ward, the records of the petition were sealed "until the Court further directs." Request for Order Directing the Clerk of Court To Seal the Records, *In re* Guardianship of Seidenberg, No. 58547 (Md. Cir. Ct. Feb. 24, 1977).

270. Cal. Prob. Code § 2201 (West Cum. Supp. 1977).

271. See, e.g., Ill. Ann. Stat. ch. 3, § 113 (Smith-Hurd Cum. Supp. 1977); Mass. Ann. Laws ch. 201, § 2 (Michie/Law. Co-op Cum. Supp. 1977); Miss. Code Ann. § 93-13-251 (1972).

272. See note 269 *supra* and accompanying text.

273. See *Custody Rule Upheld for Moon Disciples*, N.Y. Times, Mar. 29, 1977, at 16, col. 1; *Around the Nation: Moon Church Adherents Talk to Deprogrammers*, N.Y. Times, Mar. 28, 1977, at 18, col. 6.

274. *Two Members of Moon Church Quit After Talk with "Deprogrammers,"* N.Y. Times, Mar. 30, 1977, at A17, col. 1.

275. 73 Cal. App. 3d at 963, 141 Cal. Rptr. at 240.

276. *Id.*, 141 Cal. Rptr. at 240.

mother, father and children . . . This is the essence of civilization. [¶] The family unit is a micro-civilization. That's what it is. [¶] A great civilization is made of many, many great families, and that's what's before this Court.

. . . .
One of the reasons that I made this Decision, I could see the love here of a parent for his child, and I don't even have to go beyond that.²⁷⁷

One clinical psychologist who had examined the members of the Unification Church on behalf of their parents testified, in the words of the court, that what she observed in them "did not fit into any class under headings offered in a standard psychiatric and psychological diagnostic and statistical manual."²⁷⁸ She expressed her opinion that members of the Unification Church were objects of coercive persuasion by the Church.²⁷⁹ A psychiatrist hired by the parents expressed a similar view as to coercive persuasion, and seemed concerned about the young people's change in "affects," their "limited ability towards abstractions," and the influence apparently exerted on them by "an outside authority."²⁸⁰ A clinical psychologist who testified on behalf of the proposed conservatees stated that all were normal based on the tests he had conducted. These tests, he said, would reveal symptoms found in prisoners of war, but did not show such symptoms in this case. He specifically repudiated certain symptoms relied upon by the parents' experts.²⁸¹

The court found that the orders of conservatorship should not have been granted on the evidence, even if given the interpretation most favorable to the parents.²⁸² It did not need to rest its determination on this ground, however, because it held that the "likely to be deceived . . . by artful and designing persons"²⁸³ language of the statute was too vague to be used to remove an adult's freedom.²⁸⁴ The court emphasized that statutes, whether civil or criminal, which interfere with fundamental constitutional rights must be certain in their application:

As applied in the present case an individual seeking salvation through religion or associating in a social or political cause cannot tell whether or not he will be placed in the custody of another on charges that he has been deceived by artful and designing persons. When such charges are laid, the court or jury in examining the precepts and associates selected by the proposed conservatee has no better standards under which to evaluate the latter's conduct. Finally, there may be severe inroads on the individual's

277. *Id.* at 963 n.8, 141 Cal. Rptr. at 240 n.8.

278. *Id.* at 978, 141 Cal. Rptr. at 250.

279. *Id.* at 978-79, 141 Cal. Rptr. at 250.

280. *Id.* at 976-77, 141 Cal. Rptr. at 248-49.

281. *Id.* at 980, 141 Cal. Rptr. at 250.

282. *Id.* at 959, 141 Cal. Rptr. at 237.

283. *Id.* at 960 n.5, 141 Cal. Rptr. at 237 n.5.

284. *Id.* at 970-71, 141 Cal. Rptr. at 244-45.

freedom to practice his religion, and to associate with whom he pleases because of the threat of proceedings such as this.²⁸⁵

The court held that the granting of such conservatorship orders violated the church members' constitutional right to religious freedom.²⁸⁶ It noted that courts have no special competence to judge the validity or invalidity of one's chosen religion, or the process by which one arrives at this belief.²⁸⁷ The statute at issue was totally inappropriate when applied to matters of faith and belief:

Although the words "likely to be deceived or imposed upon by artful or designing persons" may have some meaning when applied to the loss of property which can be measured, they are too vague to be applied in the world of ideas. In an age of subliminal advertising, television exposure, and psychological salesmanships, everyone is exposed to artful and designing persons at every turn. It is impossible to measure the degree of likelihood that some will succumb. In the field of beliefs, and particularly religious tenets, it is difficult, if not impossible, to establish a universal truth against which deceit and imposition can be measured.²⁸⁸

The *Katz* case made plain the truly illegal nature of "legal deprogramming" through conservatorship proceedings. Nevertheless, deprogrammers will surely continue in their attempts to use legally sanctioned means to accomplish their goal.

C. *A Response: Civil Suits by Deprogrammers' Targets*

For many victims who seek redress after abduction by deprogrammers, criminal prosecution is too harsh a remedy. While they may wish to prosecute deprogrammers, they may be unwilling to charge their parents with criminal acts. Moreover, how do they get around the indifference of police and prosecutors? In addition, those seized by court order cannot press criminal charges. The solution may be bringing a civil tort action, and seeking protective and injunctive orders.

At just about every stage of the deprogramming process there are acts committed by the relatives, deprogrammers, and other participants which could lead to civil liability. A number of actions have been commenced against such persons,²⁸⁹ and judgments have been recov-

285. *Id.* at 970, 141 Cal. Rptr. at 244.

286. *Id.* at 959, 141 Cal. Rptr. at 237.

287. *Id.* at 985-87, 141 Cal. Rptr. at 254-55.

288. *Id.* at 970, 141 Cal. Rptr. at 244 (footnote omitted).

289. *E.g.*, *Parsons v. Parsons*, No. 77-2932-T (D. Mass., filed Sept. 28, 1977); *Bavis v. McKenna*, No. H77-793 (D. Md., filed May 20, 1977); *Helander v. Patrick*, No. 77 Civ. 2401 (S.D.N.Y., filed May 16, 1977); *Lofgren v. Von Wald*, No. 4-77-115 (D. Minn., filed Mar. 25, 1977); *Walford v. Hughes*, No. 76 3597 DWW (C.D. Cal., filed Nov. 18, 1976).

ered.²⁹⁰ Several actions are still in progress and awaiting trial.²⁹¹ While parents may have a defense to criminal charges of kidnaping and false imprisonment, there is generally no immunity to tort actions by their offspring.²⁹²

The act by which a victim of deprogramming is originally seized would generally constitute an assault and battery²⁹³—sometimes a serious one.²⁹⁴ There may also be assault and battery at other times during the ordeal.²⁹⁵ The physical restraint imposed upon the unwilling victim

290. *E.g.*, *Peterson v. Sorlien*, No. 727258 (4th Dist. Minn. Dec. 5, 1977) (action for damages for intentional infliction of emotional distress and for a protective injunction by Susan Peterson, a member of a group called The Way of Minnesota, which resulted in damages against two deprogrammers of \$4,000 and \$6,000); *Helander v. Patrick*, No. 15 90 62 (Conn. Super. Ct. Sept. 8, 1976) (Wendy Helander, a member of the Unification Church, granted \$5,000 judgment against deprogrammer Ted Patrick with the statement, "The modus operandi adopted by the defendant and his associates—luring the plaintiff away from Unification Church premises by deception, attempting to 'deprogram' her by crude, callous, and brow-beating tactics, shifting her from place to place and confining her against her will,—smacks more of a fictional television melodrama, rather than a real-life incident." *Id.*, slip op. at 2.)

291. *See* note 289 *supra*.

292. *France v. A.P.A. Transport Corp.*, 56 N.J. 500, 267 A.2d 490 (1970); *Howell v. Perri*, 60 Misc. 2d 871, 304 N.Y.S.2d 156 (Sup. Ct. 1969); *Falco v. Pados*, 444 Pa. 372, 282 A.2d 351 (1971); *see* *Wood v. Wood*, 135 Conn. 280, 63 A.2d 586 (1948); *Lancaster v. Lancaster*, 213 Miss. 536, 57 So. 2d 302 (1952); *Groh v. W.O. Krahn, Inc.*, 223 Wis. 662, 271 N.W. 374 (1973) (three cases dealing with emancipated offspring); *cf.* *Gelbman v. Gelbman*, 23 N.Y.2d 434, 245 N.E.2d 192, 297 N.Y.S.2d 529 (1969) (parent allowed to bring a tort action against his offspring).

293. *See* W. Prosser, *Handbook of the Law of Torts* §§ 9-10, at 34-41 (4th ed. 1971).

294. *E.g.*, Ted Patrick's description of seizing Wes Lockwood for deprogramming: "Wes had taken up a position facing the car, with his hands on the roof and his legs spread-eagled. There was no way to get him inside while he was braced like that. I had to make a quick decision. I reached down between Wes's legs, grabbed him by the crotch and squeezed—hard. He let out a howl, and doubled up, grabbing for his groin with both hands. Then I hit, shoving him headfirst into the back seat of the car and piling in on top of him." *T. Patrick with T. Dulack, Let Our Children Go!* 96 (1976).

295. The complaint in *Lofgren v. Von Wald*, No. 4-77-115 (D. Minn., filed Mar. 25, 1977) contains the following allegations regarding the manner in which Nancy Dee Lofgren, a member of a Christian fellowship, was treated during deprogramming: "23. While she was held in the Moller and Amundson houses, Plaintiff, with the knowledge of and pursuant to the intentions of the other Defendants, was subjected to 'deprogramming' by Defendants Margaret Moller, Kevin Morgel, Audrey Moller, and Glen Amundson. During the 'deprogramming,' said Defendants subjected Plaintiff to a constant barrage of abusive and obscene language, disgraceful and false accusations, ridicule of her religious beliefs, physical assault, and threats that she would be kept a prisoner [*sic*] and subjected to such treatment until she renounced her religion and adopted the religious beliefs of the Defendants.

"24. At one point during Plaintiff's 'deprogramming,' Defendant Veronica Morgel picked Plaintiff up and dragged her about the room, while taunting her with obscene and humiliating statements. Plaintiff did not consent to this physical assault on her person. Defendant Veronica Morgel forced Plaintiff to stand until Plaintiff appeared to faint. On numerous other occasions Defendant Veronica Morgel inflicted unconsented physical contact on Plaintiff.

"25. At one point in Plaintiff's 'deprogramming,' Defendant Kevin Morgel violently slapped

would certainly constitute unlawful imprisonment.²⁹⁶ The intense psychological pressure placed upon the victim would constitute intentional infliction of emotional distress,²⁹⁷ particularly because it is accompanied by false imprisonment and invasion of privacy. Some complaints charge a separate tort of invasion of privacy.²⁹⁸ Suits have also been brought charging abuse of process²⁹⁹ and medical malpractice³⁰⁰ on account of parents', deprogrammers', or medical personnels' participation in conservatorship or civil commitment proceedings.

The use by deprogrammers of conservatorship proceedings or other civil actions such as a declaration of incompetency, appointment of a guardian or committee, or habeas corpus, gives rise to the possibility that the victim can bring an action under the federal civil rights statutes.³⁰¹

Plaintiff, inflicting a bloody nose and a cracked lip. On another occasion, Defendant Kevin Morgel violently sat on Plaintiff's lap and blew his breath in her face.

"26. At one point in Plaintiff's 'deprogramming,' Defendant Audrey Moller attacked Plaintiff, attempting to force open Plaintiff's eyes, dug her fingers into Plaintiff's neck, and forced her against a piece of furniture in the Moller home." Complaint at 7.

296. See W. Prosser, *Handbook of the Law of Torts* § 11 (4th ed. 1971). Complaints against deprogrammers have charged assault, battery, false imprisonment, and intentional infliction of emotional distress. *E.g.*, Complaint at 18-19, 21, *Parsons v. Parsons*, No. 77-2932-T (D. Mass., filed Sept. 28, 1977); Complaint at 18-19, *Bavis v. McKenna*, No. H77-793 (D. Md., filed May 20, 1977); Complaint at 6-12, *Helander v. Patrick*, No. 77 Civ. 2401 (S.D.N.Y., filed May 16, 1977); Complaint at 4-12, *Lofgren v. Von Wald*, No. 4-77-115 (D. Minn., filed Mar. 25, 1977); First Amended Complaint at 8, *Walford v. Hughes*, No. 76 3597 DWW (C.D. Cal., filed Nov. 18, 1976).

297. W. Prosser, *Handbook of the Law of Torts* § 12, at 51-60 (4th ed. 1971).

298. *E.g.*, Complaint at 19-20, *Parsons v. Parsons*, No. 77-2932-T (D. Mass., filed Sept. 28, 1977); Complaint at 19, *Bavis v. McKenna*, No. H77-793 (D. Md., filed May 20, 1977); First Amended Complaint at 8, *Walford v. Hughes*, No. 76 3597 DWW (C.D. Cal., filed Nov. 18, 1976). See generally W. Prosser, *Handbook of the Law of Torts* § 117, at 802-18 (4th ed. 1971).

299. *E.g.*, Complaint at 20-21, *Parsons v. Parsons*, No. 77-2932-T (D. Mass., filed Sept. 28, 1977); Complaint at 17-18, *Bavis v. McKenna*, No. H77-793 (D. Md., filed May 20, 1977).

300. *E.g.*, Complaint at 11-12, *Lofgren v. Von Wald*, No. 4-77-115 (D. Minn., filed Mar. 25, 1977) (cause of action against medical director of mental institution for malpractice, negligent supervision of his employees, and strict liability for his employees' torts; and against nurse and social worker for medical malpractice); First Amended Complaint at 18-22, *Nichols v. Galper*, No. 402875 (Cal. Super. Ct., filed Aug. 16, 1977) (cause of action against clinical psychologist in charge of deprogramming for medical malpractice with respect to the "treatment" accorded plaintiff by persons under the psychologist's supervision, and for breach of duty to apprise the court granting the conservatorship order of plaintiff's competency).

301. 42 U.S.C. §§ 1983-1986 (1970). Section 1983 gives a private right of action for deprivation of rights under color of state law: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." *Id.* § 1983.

Sections 1985(2) and (3) allow for private redress against those who conspire to deprive a person of the equal protection of the laws, or to thwart the course of justice or cause injury to bring about such

This theory has been pleaded in a number of complaints against de-programmers.³⁰² The concept revolves around the use of the courts and court officers, including sheriffs, to accomplish a denial of the plaintiff's basic rights to freedom of religion, association, privacy, and speech.

Under section 1983, private parties may not be sued for acts which are not performed "under color of law."³⁰³ But where the private act is performed pursuant to authority granted by state law³⁰⁴ or in collabora-

deprivation: "(2) . . . If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

"(3) . . . 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." *Id.* § 1985(2), (3).

Section 1986 makes liable those who know of such a wrong and could prevent it, but do not do so: "Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action . . ." *Id.* § 1986.

302. Complaint at 2, *Parsons v. Parsons*, No. 77-2932-T (D. Mass., filed Sept. 28, 1977); Complaint at 3, *Bavis v. McKenna*, No. H77-793 (D. Md., filed May 20, 1977); Complaint at 2, *Helander v. Patrick*, No. 77 Civ. 2401 (S.D.N.Y., filed May 16, 1977); Complaint at 1-2, *Lofgren v. Von Wald*, No. 4-77-115 (D. Minn., filed Mar. 25, 1977); First Amended Complaint at 2, *Walford v. Hughes*, No. 76 3597 DWW (C.D. Cal., filed Nov. 18, 1976).

303. *United States v. Guest*, 383 U.S. 745, 754 (1966).

304. *Scott v. Vandiver*, 476 F.2d 238 (4th Cir. 1973).

tion with state officials,³⁰⁵ a suit may be brought. Private detectives can be sued under section 1983.³⁰⁶ Of course, police³⁰⁷ and sheriffs³⁰⁸ can be sued under section 1983, but not for executing court orders regular on their face³⁰⁹ or carrying out private pursuits outside the scope of official duties.³¹⁰

Section 1985 permits actions against private persons for conspiracies which involve no state action.³¹¹ Under this theory, private conspirators were subject to an action where they broke up a religious service, thereby interfering with the congregation's freedom of religion.³¹² Thus, the right of action under section 1985(2) and (3) may be more accessible to plaintiffs than that under section 1983.³¹³

The New York Family Court Act confers jurisdiction on the family court over actions constituting disorderly conduct, harassment, menacing [*sic*], reckless endangerment, [and] an assault or an attempted assault between spouses or between parent and child or between members of the same family or household."³¹⁴ The court has the power to issue an order of protection,³¹⁵ and violation of such an

305. *United States v. Guest*, 383 U.S. 745, 755-56 (1966); *Grow v. Fisher*, 523 F.2d 875, 877 (7th Cir. 1975); *Fulton v. Emerson Elec. Co.*, 420 F.2d 527, 530 (5th Cir. 1969).

306. *E.g.*, *DeCarlo v. Joseph Horne & Co.*, 251 F. Supp. 935 (W.D. Pa. 1966) (a statute gave detectives a right to arrest which they would not have had at common law).

307. *Hampton v. United States*, 425 U.S. 484, 490 (1976).

308. *Hesselgesser v. Reilly*, 440 F.2d 901 (9th Cir. 1971).

309. *Haigh v. Snidow*, 231 F. Supp. 324, 326 (S.D. Cal. 1964).

310. *Screws v. United States*, 325 U.S. 91, 111 (1945); *Stengel v. Belcher*, 522 F.2d 438, 440-41 (6th Cir. 1975), *cert. dismissed*, 429 U.S. 118 (1976).

311. *See, e.g.*, *Weise v. Syracuse Univ.*, 522 F.2d 397, 408 (2d Cir. 1975); *Dry Creek Lodge, Inc v. United States*, 515 F.2d 926, 931 (10th Cir. 1975); *Miles v. Armstrong*, 207 F.2d 284, 286 (7th Cir. 1953).

312. *Central Presbyterian Church v. Black Liberation Front*, 303 F. Supp. 894 (E.D. Mo. 1969)

313. *In Orlando v. Wizek*, No. 77-2091 (W.D. Ark. Jan. 5, 1978), a civil rights action brought under § 1983 against parents and those who assisted them in their attempt to gain custody of their adult offspring for deprogramming, the complaint was dismissed. The court held that the deprogrammer, parents' attorneys, and psychiatrists, on whose affidavits the ex parte custody orders were issued, were not acting under color of state law. *Id.*, slip op. at 4-5. The court also noted that the state judge who issued the ex parte custody orders was not acting in the clear absence of jurisdiction and was immune from suit. *Id.* at 7-9. Since the Arkansas state police officer who took custody of the young people pursuant to the state judge's order no longer had custody, the action for injunctive relief sought against him was dismissed as moot. *Id.* at 10. The plaintiffs had not sought money damages against the officer, since they believed he acted in good faith. *Id.* Plaintiffs did not plead a cause of action under § 1985, however. *Id.* at 1. Furthermore, they were never actually subjected to deprogramming. *Id.* at 3. At the time the plaintiffs brought this action in federal district court, the guardianship orders issued against plaintiffs were under consideration by the Arkansas Supreme Court, which had stayed these orders. *Id.* at 9. Hence, several factors make this case a unique one.

314. N.Y. Fam. Ct. Act § 812 (McKinney Supp. 1977). This jurisdiction is exclusive when a child under 18 is involved; otherwise criminal court jurisdiction is also available *Id.*

315. *Id.* §§ 841(d), 842 (McKinney 1975).

order is contempt of court.³¹⁶ A number of other states have family or domestic relations courts with similar powers.³¹⁷

V. CONCLUSION

Deprogrammers have received much favorable publicity in the media,³¹⁸ and from all appearances have a thriving business. They do not oppose the principle of religious liberty, they say, but merely want to make sure that everyone has the opportunity to espouse beliefs which they consider acceptable—even if that means holding persons against their wills and forcing them to listen. Many people have persuaded themselves that to accept or condone deprogramming is not inconsistent with upholding religious liberty, or liberty in general. Sensibilities which would be quickly aroused if “religious freaks” were not involved have been lulled into complacency by the strong accusations leveled against targeted groups—even though these accusations remain substantially or totally unproven.

Abandoning legal protections for a particular segment of society whose beliefs are disapproved is a dangerous experiment. Deprogramming has been used to change not only religious beliefs, but also political³¹⁹ and social attitudes.³²⁰ A powerful weapon is being formed which can render anyone with a relative who opposes his lifestyle vulnerable to a judicial determination as to whether he can continue it—even though he is a peaceable citizen who has broken no laws. Can we afford to say nothing when we see young people being stuffed into cars, locked up in motel rooms, accused, and manhandled because they will not espouse the goals of society at large?

The responsibility for answering this question has largely fallen to the courts. Some courts have said yes, violence may be used to break a religious affiliation perceived as mentally injurious. Others have condemned illegal means used by deprogrammers. Fortunately, the most recent judicial decisions have rejected the claims of justification asserted by the deprogrammers, and have vindicated the constitutional right to practice the religion of one's choice—however unorthodox it may seem to others.

316. *Id.* § 846.

317. *See, e.g.*, Miss. Code Ann. § 93-15-1 (1972); N.J. Stat. Ann. § 9:2-9 (1976); S.C. Code § 20-11-40 (1976); Wis. Stat. Ann. §§ 48.40-43 (West Cum. Supp. 1977).

318. *See, e.g.*, Black, *The Secrets of the Innocents: Why Kids Join Cults*, *Woman's Day*, Feb. 1977, at 91; Edwards, *Rescue from a Fanatic Cult*, *Reader's Digest*, Apr. 1977, at 129, *condensed from Medical Economics*, Nov. 1, 1976.

319. *See 19-Year-Old Member of Marxist Unit "Deprogrammed" and in Parents' Care*, *N.Y. Times*, July 27, 1974, at 59, col. 1.

320. *See Phillips, The Deprogrammer*, *Christian Life*, Nov. 1974, at 44, 54, 56 (Greek women who sought to break from Greek tradition).