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Volume 11 | Number 4

Article 4

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9-1-1978

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#### Recommended Citation

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# DEPROGRAMMING RELIGIOUS CULTISTS

## I. INTRODUCTION

Religious groups with varied beliefs and practices have existed in society throughout history, as have the conflicts between parents and their offspring affiliating with emerging sects. Seventeenth century England, with groups including the Puritans, the Quakers, the Ranters, the Seekers, the Levelers and the True Levelers, is an example of a society experiencing the growth of numerous religious groups. The response in England to this proliferation of religious groups was hostility and repression, which led groups such as the Quakers and Puritans to the new colonies in pursuit of an environment where they would be free to practice their chosen religion. The response by parents to their sons' and daughters' conversion to new religions has sometimes been active, even extreme, resistance.<sup>1</sup>

American society is currently going through a similar dilemma, in that significant numbers of young people are becoming involved with a variety of new religious groups.<sup>2</sup> Members of the newer sects, many of whom were college students prior to becoming affiliated with a particular group, are drawn primarily from middle class families.<sup>3</sup> While the proportion and intensity of participation in these groups may generate a societal concern for the future, that concern must be considered separately from the more pressing conflict between a parent and an adult child's religious associations. Both public and parental concern have arisen in response to the tendency of some sects to require the complete devotion of their followers to the groups' purposes. Some groups ap-

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1. Legends claim that in the twelfth century Giovanni Bernadone, before he became Francis of Assisi was disinherited by his family because of his church related activities. St. Thomas Aquinas is claimed to have been confined in a room with a prostitute by his family in their effort to dissuade him from joining the Dominican order. Kelley, *Deprogramming and Religious Liberty*, CIV. LIB. REV., JULY/AUGUST, 1977, at 23, 28-29 [hereinafter cited as Kelley].

2. Estimates of the number of new religious groups range between 200 and 1000, to which it has been reported one million to three million young, primarily college age people belong. *Religious Cults*, U.S. NEWS & WORLD REP., June 14, 1976, at 52 [hereinafter cited as *Religious Cults*].

3. See generally *The Darker Side of Sun Moon*, TIME, June 14, 1976, at 48 (discussing the Unification Church and its source of membership). The Unification Church is used as an example of the groups involved in this area of conflict because it is one of the most widely known and publicized. Similar facts and circumstances may be equally applicable to a variety of other groups having followers in the United States.

pear to encourage, even require, a break with family and past associations and activities.<sup>4</sup> A portion of the alienation of group members from their families is fostered by fear on the part of some group members that they may be subjected to the experience of involuntary deprogramming.

Further opposition from parents stems from a distrust of the group's motives and methods. The atmosphere of conflict has become emotionally charged by claims that religious groups are "brainwashing" their followers.<sup>5</sup> Parents have responded by seeking to have their children<sup>6</sup> deprogrammed.<sup>7</sup> It is primarily the use of deprogramming that has transformed the struggle between the generations from a private, familial dispute into a legal battle being waged in courts across the country. A legal means to accomplish deprogramming has been sought through the use of the guardianship or conservatorship provisions of various states,<sup>8</sup> or by writ of habeas corpus. In the absence of a court order awarding custody, some families, or individuals hired by them, have abducted their relatives and subjected them to the deprogramming process.<sup>9</sup> A number of these incidents have given rise to civil and criminal actions by the proposed subjects of deprogramming.<sup>10</sup> At the core of this conflict is the right of adults to freely choose and practice a religion, however objectionable to their families.

Thus paper will inquire into the purposes of the statutes allowing the appointment of a guardian or conservator, and the constitutionality of their application against adult children who are members of religious groups. It will also discuss the remedies available to persons subject to

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4. See, e.g., Rice, *Honor Thy Father Moon*, PSYCH. TODAY, January 1976, at 36, 40 (discussing the separation from family and friends of members of the Unification Church) [hereinafter cited as Rice].

5. Kelley, *supra* note 1, at 23.

6. The term "children" or "child" is used in this comment to indicate the familial relationship between the parties and not their age. The members of religious organizations discussed in this comment are over the age of majority, which is in many cases eighteen years old. See, e.g., CAL. CIV. CODE § 25.1 (West Supp. 1978).

7. Deprogramming is a term first used by Ted Patrick to describe a technique he initiated. "The object of the deprogrammer is to restore new converts of unorthodox religious groups to society by dissuading them from their new-found beliefs." T. PATRICK, LET OUR CHILDREN GO (1976) at 24 [hereinafter cited as PATRICK].

8. See generally CAL. PROB. CODE § 1851 (West Supp. 1978) (conservator); OHIO REV. CODE ANN. § 2111.02 (Page 1976) (guardian); OKLA. STAT. tit. 58, § 853 (West 1971) (guardian); VT. STAT. ANN. tit. 14, § 2692 (1974) (guardian).

9. H. Richardson, Deprogramming: Documenting the Issue (February 5, 1977) (unpublished compilation of documents and articles prepared for the American Civil Liberties Union and The Toronto School of Theology Conferences on Religious Deprogramming) [hereinafter cited as Richardson].

10. See section IV *infra*.

extrajudicial actions taken by their families in attempting to deprogram them.

## II. THE CULTS

There are numerous modern religious sects which follow a wide variety of beliefs.<sup>11</sup> There are, however, significant similarities in the leadership and lifestyles of many of these groups. The Unification Church is one of the largest<sup>12</sup> and probably the best known of the newer sects. It is typical of those groups whose members have been subjected to deprogramming.<sup>13</sup>

The Unification Church is headed by a charismatic leader, Sun Myung Moon, who founded the church in his native land of Korea.<sup>14</sup> Reverend Moon is referred to by his followers as the "spiritual father" of the "unified family" of church members,<sup>15</sup> and in this capacity he dictates the beliefs and behavior required of his followers.<sup>16</sup> Moon's control ranges from management of the church's multimillion dollar enterprise<sup>17</sup> to selecting mates for his followers.<sup>18</sup> Control of relation-

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11. There are between 200 and 1,000 new cults claiming one million to three million American members. *Religious Cults*, *supra* note 2.

The Unification Church follows basic Christian teachings, as interpreted by Rev. Sun Myung Moon in his work *THE DIVINE PRINCIPLE*. S. MOON, *THE DIVINE PRINCIPLE* (1960). The International Society for Krishna Consciousness holds beliefs which are Hindu in origin. Additionally, there are groups such as the Church of Scientology and Children of God whose sources are outside of the established religions.

Other religious groups whose members have been subjected to the work of deprogrammers include: The Divine Light Mission, Love Israel, The New Testament Missionary Fellowship, Brother Julius and Tony and Susan Alamo's Christian Foundation. Worthing, *Deprogramming and Religious Freedom*, CHURCH & STATE, May 1977, at 10, 11 [hereinafter cited as Worthing]. See generally PATRICK, *supra* note 7 (describing incidents involving the deprogramming or attempted deprogramming of members of these groups).

12. The Unification Church claims to have a membership of 10,000 to 30,000 in the United States. Rice, *supra* note 4, at 36.

13. For other descriptions of the new religious cults, see Note, *Legal Issues in the Use of Guardianship Procedures to Remove Members of Cults*, 18 ARIZ. L. REV. 1095, 1098-1100 & nn. 17-38 (1976) [hereinafter cited as *Legal Issues*]; Note, *Abduction, Religious Sects and the Free Exercise Guarantee*, 25 SYRACUSE L. REV. 623, 624-27 & nn. 7-22 (1974).

14. See *Life With Father Moon*, NEWSWEEK, June 14, 1976, at 60 [hereinafter cited as *Life With Father Moon*]; Rice, *supra* note 4, at 36.

15. *Religious Cults*, *supra* note 11, at 52. See also *Life With Father Moon*, *supra* note 14, at 61.

16. Reverend Moon claims to have divine inspiration to lead the world and requires of his followers absolute obedience to his dictates. See generally Rice, *supra* note 4, at 39-40; *The Darker Side of Sun Moon*, TIME, June 14, 1976, at 48, 49.

17. The Unification Church has extensive real estate holdings which include Reverend Moon's mansion and headquarters near Tarrytown, New York. These holdings also include a variety of business enterprises owned and operated by the church. *Life With Father Moon*, *supra* note 14, at 65; Rice, *supra* note 4, at 39, 45.

ships among members is an additional device to insure complete devotion to Reverend Moon's dictates.<sup>19</sup>

Full time members<sup>20</sup> of the Unification Church live spartan communal lives in church-owned centers containing sexually segregated dormitories.<sup>21</sup> All basic needs are provided for by the church,<sup>22</sup> eliminating the necessity for self-reliance or decision making by church members. The highly regimented life style does not permit any drugs or alcohol to be used, and all sexual activity is forbidden until after a member has put in seven years of service.<sup>23</sup> Daily life for full time followers of Reverend Moon consists of up to sixteen hours of fund raising and recruiting of new members.<sup>24</sup> The balance of their time is spent in prayer, scripture study and exercise, leaving only five or six hours for sleep.<sup>25</sup> This structured existence leaves little time or energy for outside activities or for the maintenance of family ties. If a member's family opposes his or her commitment to the church, the member is told that this is the work of Satan.<sup>26</sup>

Families of members of religious sects have charged that the groups are using brainwashing techniques to acquire and maintain members.<sup>27</sup> In two instances, the courts have had the opportunity to examine evi-

18. Members of the Unification Church are permitted to marry only another church member, selected by Reverend Moon. Couples who are already married when they join the church may be separated and assigned to distant locations. Children of members are raised apart from natural parents and taught that Reverend and Mrs. Moon are their true parents. *Life With Father Moon*, *supra* note 14, at 65; Rice, *supra* note 4, at 42, 45.

19. See Rice, *supra* note 4, at 42, 45.

20. Estimates indicate that there are between 2,000 and 10,000 full time members of the Unification Church in the United States. Rice, *supra* note 4, at 36. Others are "followers" who maintain outside jobs or go to school and participate in church activities on nights and weekends. *Id.* at 40.

21. *Id.* at 40-41.

22. *Id.* at 40.

23. *Id.* at 42.

24. Gillis, *Rev. Sun Myung Moon: "Heavenly Deception?"*, TRIAL, Aug. 1976, at 22, 24.

25. *Id.* Church members raise funds for the group by selling a variety of items on streets and in shopping centers or by working in church run businesses. *Life With Father Moon*, *supra* note 14, at 65; Rice, *supra* note 4, at 45.

26. Rice, *supra* note 4, at 40.

The New Testament is frequently quoted as suggesting that the rift in families brought on by allegiance to a religious cult is traditionally an experience of established religions as well: Do not think that I have come to bring peace on earth; I have come not to bring peace, but a sword. For I have come to set a man against his father, and a daughter against her mother . . . . He who loves father or mother more than me is not worthy of me

. . . .  
*Matthew 10:34-38.*

27. *Katz v. Superior Court*, 73 Cal. App. 3d 952, 141 Cal. Rptr. 234, *modified*, 74 Cal. App. 3d 582 (1977) (modified on other grounds). See also note 28 *infra*, and cases cited therein.

dence to substantiate claims of mind control or brainwashing; but in both cases the claims were found to be without merit.<sup>28</sup> A journalist who investigated the Unification Church found no evidence that the elements of force and captivity, usually associated with the term brainwashing, were present.<sup>29</sup> Instead, several psychiatrists have posited that the highly persuasive techniques employed to make church members accept new ideas and beliefs are more properly termed "conversion."<sup>30</sup>

### III. DEPROGRAMMING

Parents who disagree with their child's devotion to a cult are often convinced that their only hope for saving their son or daughter is deprogramming. Deprogramming is a method designed and often practiced by lay people<sup>31</sup> to force a subject to renounce religious be-

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28. *People v. Murphy*, Nos. 2114/76, 2012/76 (N.Y. Supreme Court, March 16, 1977) (dismissing criminal charges against International Society for Krishna Consciousness); *Helander v. Salonen*, No. HC 7-75 (D.C. Super. Ct., September 23, 1975) (denying habeas corpus petition by parents seeking to force Unification Church to produce their daughter for a hearing).

29. Rice, *supra* note 4, at 47.

30. Psychiatrist Marvin Ziporyn has stated that "[b]rainwashing is a myth perpetrated on the American public. People can be propagandized and taught new ideas, but that's not brainwashing." *What is Brainwashing?*, NEWSWEEK, March 1, 1976, at 31. A similar point of view was expressed by psychiatrist L.J. West, M.D., Professor and Chairman, Dept. of Psychiatry, U.C.L.A. School of Medicine. U.C.L.A. Center for Health Sciences, Neuropsychiatric Institute: Colloquia on Behavioral Sciences, *Coercive Persuasion, Deprogramming and the New Religions*, Jan. 23, 1978 [hereinafter U.C.L.A. Colloquium].

Dr. Thomas Szasz contends that, "'brainwashing' and 'mind control' are metaphors that express disapproval of the way in which someone has been influenced by someone else." NATION, Feb. 26, 1977, at 241. Dr. West, a psychiatrist who examined Patty Hearst to aid in the preparation of the unsuccessful brainwashing defense to criminal charges, stated that the term brainwashing was never used by any of the psychiatrists who examined her. *Id.*

On the other hand, Dr. William Sargant, a British expert on brainwashing, in a discussion relating to Patty Hearst, claims that a forced conversion or brainwashing is possible when a person's nervous system is put under constant pressure. *What is Brainwashing?*, *supra*, at 31.

The term brainwashing was first used to describe a technique employed by the Chinese after Mao Tse Tung gained power. It was used for the purpose of changing the views held by the Chinese Nationalists. The term came into more popular use in the United States in the 1950's following the return of American prisoners of war in Korea. The term again received publicity when it was advanced as a defense to criminal charges against Patty Hearst. *Id.*

Herbert Hendin, a Columbia University psychoanalyst who conducts studies of youth for the Center of Policy Research, attributes cult membership not to brainwashing, but to a failure in family life or a difficulty in adjusting to or coping with the outside world. *Religious Cults*, *supra* note 11, at 53.

31. Deprogrammers have varied backgrounds and are not necessarily mental health experts. Ted Patrick was formerly Governor Ronald Reagan's Special Representative for

liefs.<sup>32</sup> Deprogrammers contend that this process is justified by the fact that a cult member has been "psychologically kidnapped" and is a member against his or her free will.<sup>33</sup> Thus, they claim that they are not doing something to the person, but rather undoing it.<sup>34</sup> The apparent flaw in this justification is that often the religious conversion that they seek to reverse was freely sought by the convert and was accomplished without force or violence.<sup>35</sup> Deprogramming techniques, on the other hand, may involve physical abuses. Indeed, deprogramming may be more similar to what some experts would consider brain-washing than the actual conversion.<sup>36</sup>

The initial step in deprogramming is gaining physical control over the person to be deprogrammed and confining that person to an area from which any attempt to escape may be prevented. This can be particularly difficult since some group members live in hiding due to a fear of being kidnapped for the purpose of deprogramming.<sup>37</sup> A common method employed to gain physical control involves waiting for the subject to appear alone on a street or other public place. The convert can then be physically forced into a car and taken to a site chosen by the deprogrammer. Another technique is to devise a fictitious story, possibly one involving a family illness or death, which will draw the subject out of hiding.<sup>38</sup> The site of a deprogramming is, in some instances,

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Community Relations in Southern California. Patrick, *supra* note 7, at 37. Joe Alexander is a former used car salesman who works primarily for the Freedom of Thought Foundation, a deprogramming center in Tucson, Arizona. *Id.*

32. The term deprogramming was first used by Ted Patrick to describe his technique. "The object of the deprogrammer is to restore new converts of unorthodox religious groups to society by dissuading them from their new-found beliefs." PATRICK, *supra* note 7, at 24.

33. Worthing, *supra* note 11, at 13.

34. *Id.*

35. See note 28 *supra* and accompanying text.

36. See notes 37-45 *infra* and accompanying text.

37. Affidavits of several members of the Unification Church and the New Education Development (an associated group of followers of the Reverend Moon) related their fear of future deprogramming attempts. Some members live in hiding or refuse to have contact with their families. Others are afraid that their parents will seek the assistance of deprogrammers, and that they will be kidnapped. Amended Petition For a Writ with Supporting Memorandum of Points and Authorities at 2-4, *Katz v. Superior Court*, 73 Cal. App. 3d 952, 141 Cal. Rptr. 234 (1977) (citing Exhibit H, Declaration of Lawrence Baer) [hereinafter cited as *Petition for Writ*].

38. *E.g., id.* In Patrick, *supra* note 1, the author reported the description of one specific incident as follows:

Suddenly Lockwood grabbed the boy without warning and hurled him headfirst into the front seat . . . Wes was grappling with his father, and beginning to yell . . . Wes came bolting out into the street next to the car, shrieking and waving his arms, yelling at the top of his voice, "Help! Help! They're kidnapping me! Call the police! Help me!" . . . 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

secured against anticipated escape attempts by the subject through the use of a second floor room, with windows nailed shut, all doors locked, and all telephones removed.<sup>39</sup> The deprogrammer may be assisted by former cult members and other assistants, chosen primarily for their size and strength.<sup>40</sup>

Once the cultist is restrained, a variety of deprogramming techniques are applied, all aimed at forcing a rejection of the new religious beliefs. To reduce resistance, the deprogramming subject may be denied food and sleep,<sup>41</sup> while the deprogrammers propose a barrage of questions regarding the cult's beliefs and practices.<sup>42</sup> This is to demonstrate inconsistencies which deprogrammers claim exist in the theology of many religious cults. Attacks are also made on the motives of cult leaders for their use of members to amass wealth, and for the grief caused to par-

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hands. Then I hit, shoving him headfirst into the back seat of the car and piling in on top of him.

*Id.* at 96.

39. Patrick, *supra* note 7, at 78, 102, 205.

40. *Id.* at 217 (describing the "heavies" recruited to assist Ted Patrick as "Hell's Angels type[s]" who were "built like . . . linebacker[s]"). See H. Richardson, *supra* note 9, at 52.

41. Specifically, the subject may be deprived of food and given only water for a period of several days. In some cases, the subject may not be permitted to sleep at all during the deprogramming. To preclude sleeping, the subject may be packed in ice, forced to stand, or thrown into the air and allowed to fall. To reduce psychological resistance, shame may be induced by stripping the subject naked, forcing him or her to stand and be scrutinized by the deprogrammer and others who are present. The subject is never allowed to be alone, even while using the bathroom.

The subject may be beaten, but it is advised that such punishment "should be administered with as little bruising as possible, [avoiding] fractures or internal injuries." Such acts as cutting the subject's hair which is worn in a particular manner as a religious practice may also be employed.

Despite the acknowledgment of numerous claims of homosexual and heterosexual rapes by deprogrammers, the manual insists that this is only "the application of aggressive sex by the Technician." This is justified as having some beneficial effect on the relationship between the subject and deprogrammer. *Deprogramming the Constructive Destruction of Belief, A Manual of Technique*, reprinted in Richardson, *supra* note 9, at 53, 55 [hereinafter cited as *Manual*].

42. The subject of deprogramming is continuously subjected to a stream of high-volume advice and derogatory statements about religious beliefs, practices and leaders. The uses to which money is put are questioned; it is asserted that pain is being caused to the subject's family, religious leaders are degraded, and it is argued that the subject has no free will and that he or she is being used as a prostitute for the church, which is only interested in money. Should an attempt to resist by prayer or chant occur, the subject's mouth may be packed with ice cubes.

Another frequently employed technique is the destruction of religious objects and scriptures by whatever method the subject is likely to find most shocking. Deprogrammers may go so far as to use pictures of a religious leader as toilet paper. Whatever technique is employed, there will be no cultist materials available for the subject to read once he or she becomes susceptible to alternate beliefs. *Id.* at 53-54.



ents and family by virtue of the cultist's devotion.<sup>43</sup>

The successful completion of this phase of deprogramming generally produces a docile, lifeless and frightened individual who has completely rejected any religious affiliation.<sup>44</sup> The subject is then returned to the parents for resocialization in a manner desired by the family.<sup>45</sup>

#### IV. LEGAL PROCEDURES UNDER WHICH PARENTS SEEK CUSTODY

Once an individual reaches majority age, the legal authority of the parent ceases.<sup>46</sup> From that time on, no person may be physically restrained by anyone who does not claim the power to do so under some statutory provision.<sup>47</sup> Thus, parents seeking access to a child of majority must pursue some legal procedure to gain control of their child for purposes of deprogramming.

##### A. *Habeas Corpus*

One method pursued by parents has been a petition for writ of habeas corpus. This writ requires a showing of facts which demonstrate that one is "restrained from his lawful liberty."<sup>48</sup> If the writ is

43. *Id.*; Petition for a Writ, *supra* note 37, Exhibit H at 5, 9.

44. The Technician can easily recognize the completion of Phase One by:

- 1) The docility of the subject.
- 2) The blankness in the subject's eyes.
- 3) The general lifelessness of the subject.
- 4) Abject fear.
- 5) The total renunciation of the cult formerly adhered to by the subject and vilification of its leaders and senior members, including signed statements renouncing beliefs.
- 6) A growing realization by the subject that he has finally triumphed over his former irrationality.

Manual, *supra* note 41, at 54.

45. Phase Two is entered into with the return of the subject. During this time, known as "floating," the subject should be kept fully occupied by his parents or close relatives.

Re-moulding or re-education of the subject is left entirely in the hands of the clients. The Technician should, of course, be willing to offer his advice to the clients if it is required. In the event of progress through Phase Two proving to be slow or difficult (*sic*) the subject can be returned to Phase One at the Technician's discretion. As the subject has yet to find his feet and think for himself he/she is still vulnerable and susceptible (*sic*) to contacts from the cult. The subject should not be permitted to answer phone calls from the cult or meet members for some time. It is best that he is accompanied by at least one parent or relative as much as possible during this stage.

*Id.* at 55.

46. In California the age of majority is 18 years. CAL. CIV. CODE § 25.1 (West Supp. 1978).

47. See, e.g., CAL. CIV. CODE § 204 (West 1954) providing in part: "The authority of a parent ceases . . . [u]pon . . . [the child's] attaining majority."

48. See, e.g., CAL. CIV. CODE § 43 (West 1954) providing in part: "[E]very person has, subject to the qualifications and restrictions provided by law, the right of protection from bodily restraint or harm, from personal insult, from defamation, and from injury to his personal relations."

issued, it requires that the party claimed to be detaining another produce that person in court so that a judge may inquire into the cause of the "commitment, detainer, confinement or restraint."<sup>49</sup> If the court finds that the subject of the writ has been wrongfully denied liberty, the individual is typically discharged by the judge.<sup>50</sup> Since the individual would most likely then return to the cult, the efficacy of this procedure is highly doubtful.

The case of *Helander v. Salonen*<sup>51</sup> is illustrative of the inappropriate use of habeas corpus by parents who seek to reverse their child's religious conversion.<sup>52</sup> The petitioners in *Helander* contended that their eighteen year old daughter was unable to exercise her liberty due to psychological pressure imposed by the Unification Church.<sup>53</sup> The court focused its inquiry on whether the church used "any impermissible psychological methods in order to commit, detain, confine, or restrain Miss Helander."<sup>54</sup> In making this determination the court was able to examine the internal operations and methods of the religious organization.<sup>55</sup> After evaluating the practices of the church, the court found that Helander was not being deprived of her liberty by the church.<sup>56</sup> The parents' claim that their daughter was a victim of hypnosis or thought control was not supported by the evidence.

Even if a court were to find sufficient evidence to require a church or cult to produce one of its members, habeas corpus would not be an adequate remedy for parents. The ultimate aim of parents is the reversal of their offspring's conversion. This is the object of deprogramming and can only be accomplished if parents and deprogrammers can gain physical control of the convert. Habeas corpus permits an exami-

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49. D.C. CODE § 16-1901 (1973). Federal habeas corpus provisions, 28 U.S.C. §§ 2241-2255 (1970), require that the petitioner or subject of the petition be in the custody of a governmental entity; however, most state habeas corpus statutes apply to situations in which one's liberty is restrained in any manner. *E.g.*, CAL. PENAL CODE § 1473 (West Supp. 1978); ARIZ. REV. STAT. § 13-2001 (1956).

50. D.C. CODE § 16-1901 (1973).

51. No. HC 7-75 (D.C. Super. Ct., Sept. 23, 1975).

52. *Legal Issues*, *supra* note 13, at 1104 n. 73.

53. No. HC 7-75, at 4. The writ in this case was sought under D.C. CODE § 16-1901 (1973), which provides in relevant part:

(a) A person committed, detained, confined, or restrained from his lawful liberty within the District, under color or pretense whatever, or a person in his behalf, may apply by petition to the appropriate court, or a judge thereof, for a writ of habeas corpus to the end that the cause of commitment, detainer, confinement, or restraint may be inquired into.

54. No. HC 7-75, at 4.

55. *Id.* at 7.

56. *Id.* at 13, 14. The court noted, however, that it was careful not to include any evaluation of theology or personal belief. *Id.* at 6.

nation of the legality of a restraint imposed on one's freedom. It cannot, however, impose another form of restraint in its stead, such as parental detention.

### *B. Guardianship and Conservatorship*

The more common method by which parents have sought control of their adult children is guardianship or conservatorship. Many state probate codes provide for a restriction of the activities of certain individuals by appointment of a guardian or conservator of the person or property or both.<sup>57</sup> Such appointment is most commonly allowed for a person who is "incompetent"<sup>58</sup> or "incapacitated."<sup>59</sup>

Guardianship and conservatorship are distinctly separate statutory remedies, but have substantially similar objectives. Many states have only one provision for the appointment of a guardian. Guardianship exists primarily for the protection of property, and provides for the "care of a person who is unable to care for himself."<sup>60</sup> It generally requires a finding that the proposed ward is incompetent.<sup>61</sup>

57. *Id.* at 13.

58. *See, e.g.*, CAL. PROB. CODE § 1751 (West Supp. 1978) (conservator); OKLA. STAT. ANN. tit. 58, § 851 (West Supp. 1977-78) (guardian).

59. *See, e.g.*, OKLA. STAT. ANN. tit. 58, § 851 (West Supp. 1977-78). This statute provides for the appointment of a guardian of an incompetent person on petition of a relative or friend. The words "incompetent," "mentally incompetent" and "incapable" as used in this section and § 852 mean

any person, who though not insane, is, by reason of old age, disease, weakness of mind, or from any other cause, unable, unassisted, to properly manage or take care of his property, and by reason thereof would be likely to be deceived or imposed upon by artful or designing persons.

*Id.* *See also In re Guardianship of Bogan*, 441 P.2d 972, 974 (1968).

CAL. PROB. CODE § 1751, providing for appointment of a conservator, contained substantially similar language prior to its amendment on July 1, 1977.

60. States including Colorado (COLO. REV. STAT. 1973, § 15-14-304 (1976)) and Arizona (ARIZ. REV. STAT. § 14-5304 (1975)) have statutes modeled after the UNIFORM PROBATE CODE which states: "The Court may appoint a guardian as requested if it is satisfied that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the person of the incapacitated person." UNIFORM PROBATE CODE, ART. V § 5-304 (1977).

"[I]ncapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person.

*Id.*, § 5-101(1).

61. *Katz v. Superior Court*, 73 Cal. App. 3d 952, 965, 141 Cal. Rptr. 234, 241 (1977), *modified*, 74 Cal. App. 3d 582 (1977) (modified on other grounds) (quoting *In re Coburn*, 165 Cal. 202, 216-17, 131 P. 352, 358 (1913)); CAL. PROB. CODE § 1460 (West Supp. 1978); UNIFORM PROBATE CODE ART. V § 5-304 Comment.

Some states also provide for the appointment of a conservator.<sup>62</sup> The distinction between the two forms of appointment is that a guardian cares for the person, while the conservator controls the estate of one who is incompetent.<sup>63</sup> In California, guardianship requires a finding of incompetency,<sup>64</sup> while conservatorship provides for the same control over the person and property without the label of incompetency.<sup>65</sup>

It should be noted that all of the statutes providing for such appointments are contained in their respective state's probate code. It is clear from the stated purpose of these statutes and the context in which they are found that guardianship and conservatorship statutes were designed to provide protection for those unable to manage themselves or their financial affairs. These provisions were clearly not intended to restrict an individual's choice of religious beliefs or life-style. Some families have nevertheless attempted to use these statutory provisions by filing an *ex parte* petition,<sup>66</sup> claiming that their son or daughter has been "psychologically kidnapped," "brainwashed," or is the "victim of mind control."<sup>67</sup> Groups working in support of deprogramming provide families of cult members with standardized forms for conservatorship.<sup>68</sup> These standardized forms contain allegations that the church

62. *E.g.*, CAL. PROB. CODE § 1751 (West Supp. 1978); ARIZ. REV. STAT. ANN. § 14-5410 (1975).

63. *E.g.*, ARIZ. REV. STAT. ANN. § 14-1201(6), (18) (1975).

64. CAL. PROB. CODE § 1460 (West Supp. 1978).

65. REPORT OF SENATE INTERIM JUDICIARY COMMITTEE 1957, 1 APPENDIX TO CALIF. SENATE 487 (Reg. Sess. 1957); W. JOHNSTONE & G. ZILLGITT, CALIFORNIA CONSERVATORSHIPS 3 (1968). The purpose expressed in the legislative history was to eliminate the reluctance of many elderly or infirm persons to guardianship by removing the stigma of being labeled "incompetent," to provide greater flexibility by allowing an individual to initiate the appointment and select his or her own conservator and to extend greater flexibility in the management of estates. *Id.*

66. Some states allow appointment of a temporary guardian or a temporary conservator. *E.g.*, COLO. REV. STAT. § 15-14-310 (1973) which states, "If an incapacitated person has no guardian and an emergency exists, the court may exercise the power of a guardian or may appoint a temporary guardian pending notice and hearing."

CAL. PROB. CODE § 2201 (West Supp. 1978) provides in relevant part:

On or after the filing of a petition for the appointment of a conservator, the court, with or without notice as the court or judge may require, upon a verified petition establishing good cause therefor, . . . may appoint a temporary conservator of the person and estate or person or estate of any person . . . .

In cases where *ex parte* hearings are conducted, the proposed ward may have neither notice nor opportunity to oppose the appointment. The manner in which these provisions have been used raise some question as to the adequacy of the procedural due process safeguards. *See, Legal Issues, supra* note 13, at 1114.

67. *Katz v. Superior Court*, 73 Cal. App. 3d 952, 962 n.7, 141 Cal. Rptr. 234, 239 n.7 (1977).

68. Richardson, *supra* note 9, at 141, 143-50. There is a nationwide network of groups working in support of deprogramming and the use of legal process to effect it. These groups

to which the proposed ward belongs has used "coercive methods" to effect the conversion, including "sleep and food deprivation, enforced isolation and prohibition from communication with friends and family and other psychological manipulations."<sup>69</sup> The petition further alleges that the proposed ward is presently in the state but that petitioners fear that he or she will imminently leave the state.<sup>70</sup> This is apparently intended as an allegation of good cause, which is necessary prior to the appointment of a temporary guardian or conservator. The petition has a further advantage, in that it can be made without allowing the ward an opportunity to effectively oppose the petition.<sup>71</sup> If, as a result of such a petition, the requested order is issued, making a member of a religious organization a ward of his or her parent, the order may be effective for up to thirty days.<sup>72</sup> The order also enables the guardian or conservator to gain physical custody of the ward, which is the first step toward effecting a deprogramming.

The case of *Katz v. Superior Court*<sup>73</sup> is illustrative of the issues which arise when an attempt is made to apply conservatorship to adult members of a religious group. Although the section of the California Probate Code under which this action was originally brought has since been amended,<sup>74</sup> the relevant language<sup>75</sup> is identical to that found in

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have been known to contact parents of cult members to solicit their hiring of deprogrammers. *Id.* at 36. These groups include: Citizens Engaged in Freeing Minds, Citizens Engaged in Reuniting Families, Individual Freedom Foundation Interim "Direct Action Program," Free COG, Citizens Freedom Foundation. *Id.* at 17 (showing the groups, their relationship to deprogrammers and lines of financial support).

69. Richardson, *supra* note 9, at 146.

70. *Id.*

71. See statutes cited at note 66, *supra*.

72. See, e.g., CAL. PROB. CODE § 2206 (West Supp. 1978).

73. 73 Cal. App. 3d 952, 141 Cal. Rptr. 234, *modified*, 74 Cal. App. 3d 582 (1977).

74. CAL. PROB. CODE § 1751 (Stats. 1957, ch. 1902, § 1, as amended Stats. 1972, ch. 988, § 3, effective August 16, 1972) formerly provided for appointment of a conservator of any adult person who by reason of advanced age, illness, injury, mental weakness, intemperance, addiction to drugs or other disability, or other cause is unable properly to care for himself or for his property, or who for said causes or for any other cause is likely to be deceived or imposed upon by artful or designing persons . . . .

The current version of CAL. PROB. CODE § 1751 (West Supp. 1978) (operative July 1, 1977) provides that a conservator of the person of an adult shall be appointed for one who "is unable properly to provide for his personal needs for physical health, food, clothing or shelter . . . ."

75. Although the trial court did not make clear the ground on which the appointment of conservators was granted, the court of appeal concluded that the basis for the order was the portion of the statute that allowed such appointment for one who is "likely to be deceived or imposed upon by artful or designing persons." *Katz v. Superior Court*, 73 Cal. App. 3d 952, 963, 141 Cal. Rptr. 234, 239-40 (1977).

other state codes<sup>76</sup> and in other states' proposed legislation.<sup>77</sup> In the *Katz* case, the parents of five members of the Unification Church were granted temporary conservatorship over their children—all of whom were over the age of 21.<sup>78</sup> The petitioner-parents each alleged that the appointment of a temporary guardian was necessary because the "proposed ward [was] deprived of the ability to manage his person, [was] likely to be deceived by persons of artful and cunning design, and [was] in grave need of immediate psychiatric or other counseling."<sup>79</sup> By the time the case reached the appellate court, three of the five original petitioners had removed themselves from the case<sup>80</sup> because their child had been deprogrammed.

The court recognized that deprogramming involved involuntary confinement and conduct analogous to psychiatric treatment. It stated that imposition of such treatment was beyond the powers of the conservatorship requested in this case, and could only be effected by imposition of a conservatorship under the California Welfare and Institutions Code provision for conservatorship for gravely disabled persons.<sup>81</sup> Thus, even in instances where a conservator is validly appointed under the California Probate Code, deprogramming is beyond the powers of such conservator. The court went on to hold that the portion of the statute relied upon was unconstitutionally vague when applied, as in this instance, to the realm of ideas where the result would be "to deprive an adult of his freedom of action. . . ."<sup>82</sup> After reviewing conflicting testimony on the likelihood that the proposed wards were subject to imposition or deception due to brainwashing, the court concluded that they were not sufficiently disabled to warrant deprivation of their liberty.<sup>83</sup> Although the "likely to be deceived" language was

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76. See, e.g., OKLA. STAT. ANN. tit. 58, § 851 (West Supp. 1977-78) (annotation quoting from *In re Guardianship of Bogan*, 441 P.2d 972, 974 (1968)).

77. AN ACT TO ADD 14 V.S.A. CHAPTER 112 RELATING TO EMERGENCY CONSERVATORSHIP 1977—S.49 has been passed by the Vermont State Senate and is currently under consideration by the Vermont Assembly. The stated purpose of the proposed act is "to authorize the appointment of temporary guardians in emergency cases upon evidence that the person to be protected is unable to properly care for himself or his property, and, under supervision of the court, to do so without notice to the person to be protected." The grounds for appointment include evidence that the proposed ward "lacks capacity to make a responsible decision concerning his person or property, or who for said causes or for any other is likely to be deceived or imposed upon by artful or designing persons . . . ."

78. 73 Cal. App. 952, 962-63, 141 Cal. Rptr. 234, 239-40 (1977).

79. *Id.* at 962, 141 Cal. Rptr. at 239.

80. *Id.* at 958, 141 Cal. Rptr. at 236.

81. *Id.* at 961 n.6, 141 Cal. Rptr. at 238 n.6.

82. *Id.* at 971, 141 Cal. Rptr. at 245.

83. A psychiatrist and psychologist who examined the proposed wards on behalf of their

found invalid in this case, the possibility exists that this language may be upheld under a different factual situation.

In another jurisdiction, there was testimony that during initial contacts with the Unification Church, the groups true identity<sup>84</sup> and relationship to Rev. Moon is not revealed. Only after the prospective member has become involved to some degree is he told about the church.<sup>85</sup> There is no indication that members are physically coerced or restrained, so that when the Church's full identity is made known, a potential member might freely choose to disassociate themselves from the group. Yet, there are indications that their introduction to the church is not accompanied by a full disclosure of its identity. Although this delay may not be sufficient to comply with a statutory requirement of deception, it is potentially misleading. Society has expressed a growing concern for the protection of consumers through increased legislation directed toward consumer affairs. Federal and state legislation has been enacted to ensure truth in advertising and packaging.<sup>86</sup> The purpose of this legislation is to protect consumers by ensuring that they are provided complete and accurate information upon which to base decisions in a free market. Surely the marketplace of ideas and religious philosophies is as needful of an informed public as is the commercial area. It would thus seem entirely reasonable to require that religious associations, in making representations, conform

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parents testified that they found symptoms that were the result of coercive persuasion, another term for brainwashing. These terms were said to refer to techniques that are usually used on people in captivity. They involve withholding food or sleep and causing fear and anxiety in the person, causing them to lose their own identity and assume that of the captor. These experts did not find symptoms that corresponded to any standard diagnosis of mental disturbance or recognized disease. *Id.* at 977-78, 141 Cal. Rptr. at 249-50.

Evaluations of experts on behalf of the proposed wards concluded that they exhibited symptoms attributable to "devotion to a religious belief." One expert claimed that the theory of "coercive persuasion was speculative" and not supportable in this type of situation, in the absence of drugs, hypnosis or physical captivity. *Id.* at 979, 141 Cal. Rptr. at 250.

84. The court in *Katz* discusses testimony of a former member of the Unification Church who claimed that "names such as 'New Educational Development' and 'New Ideal Development' and 'International Ideal City Project' were used to overcome the reluctance of some prospects to at first attend dinners or seminars held by the church." *Id.* at 974-75, 141 Cal. Rptr. at 247.

85. In *Katz* it was found that new members were not told of the group's connection with the Unification Church of Rev. Moon "until the prospect had been with the group for a period of time." *Id.* at 979, 141 Cal. Rptr. at 250. Other accounts of the testimony indicate that, although not informed of its true identity in initial contacts, that "by the time one reaches the decision to join the Church, he or she is well aware of the theology and leadership structure of the Church." Petition for Writ *supra* note 37, at 9-10 (citing attached Exhibit "F," Declaration of Margaret C. Crosby).

86. *E.g.*, 15 U.S.C. §§ 1451 and 1601-1665 (1970); CAL. BUS. & PROF. CODE § 301 (West Supp. 1978).

to a standard of disclosure similar to that required in the marketing of products. No freedom of activity would be sacrificed if such groups were required to identify themselves when soliciting members. Furthermore, such a requirement already exists with respect to the solicitation of funds.

## V. FIRST AMENDMENT BARRIER TO DEPROGRAMMING

The organizations whose members are most frequently the subject of state court proceedings aimed at allowing deprogramming clearly fall within the legal definition of "religious" organization.<sup>87</sup> Most groups maintain a belief in a Supreme Being, and follow a strict moral code with a scripture or liturgy setting forth their beliefs.<sup>88</sup> Even though many of the groups adhere to rather orthodox beliefs, the test defining a "religion" for purposes of first amendment protection does not necessarily require such beliefs. It is only required that the claimed belief occupy the same place in the life of the one claiming it as would a more orthodox belief in a Supreme Being.<sup>89</sup> Clearly, this test has been met in most of the cases involving an attempt to deprogram.

With this in mind, it should be noted that freedoms relating to religious preferences are protected from governmental interference by the first and fourteenth amendments to the United States Constitution.<sup>90</sup>

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87. Various definitions of "religion" have been posited:

- (1) a belief, not necessarily referring to supernatural powers;
- (2) a cult, involving a gregarious association openly expressing the belief;
- (3) a system of moral practice directly resulting from an adherence to the belief; and
- (4) an organization within the cult designed to observe the tenets of belief. The content of the belief is of no moment.

*Fellowship of Humanity v. County of Alameda*, 153 Cal. App. 2d 673, 693, 315 P. 2d 394, 406 (1957). *Accord*, *Saint Germain Foundation v. County of Siskiyou*, 212 Cal. App. 2d 911, 916, 28 Cal. Rptr. 393, 395 (1963).

88. Some organizations follow traditional Christian beliefs and use the Bible, such as: Divine Light Mission, New Testament Missionary Fellowship, Tony & Susan Alamo's Christian Foundation. The Unification Church's beliefs have a strong Christian background and are set forth in the Divine Principle. The International Society for Krishna Consciousness derives its teachings from ancient works of the Vedas. Commonly, these groups require a rigid adherence to behavioral standards, including no drugs, alcohol, sex, a minimum of sleep and food, and a great deal of prayer, fund raising and proselytizing. *Religious Cults*, *supra* note 2, at 53.

89. *United States v. Seeger*, 380 U.S. 163, 184 (1965). Such operational standards are necessary to provide the flexibility needed to deal with religious developments in a pluralistic society. See, e.g., Boyan, *Defining Religion in Operational and Institutional Terms*, 116 U. PA. L. REV. 479, 498 (1968).

90. U.S. CONST. amend. I provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." The fourteenth amendment makes this protection of religious freedom applicable to the states. *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1939).



The constitutional protection of freedom to believe is absolute.<sup>91</sup> One is free to hold beliefs, no matter how unpopular they may appear to others,<sup>92</sup> without being required to prove the truth or validity of those beliefs. No court has the power to determine that one belief has a greater value or validity than another.<sup>93</sup> Such a determination would indicate a preference for one religion over another, and thus violate the establishment clause of the first amendment.<sup>94</sup> A court may, however, examine the sincerity with which religious beliefs are held in a proper case.<sup>95</sup>

The application of state statutes to cult members provides the element of state action needed to raise the issue of constitutional infringement. State conservatorship and guardianship statutes restrict the liberty of the ward.<sup>96</sup> The guardian or conservator is given custody and control of the ward.<sup>97</sup> As such, guardians and conservators can effectively preclude cult members from participating in cult activities.

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

92. Freedom of thought, which includes freedom of religious belief, is basic in a society of free men. It embraces the right to maintain theories of life and death and of the hereafter which are rank heresy to followers of orthodox faiths. Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real 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. Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with the duty of determining whether those teachings contained false representations. The miracles of the New Testament, the Divinity of Christ, life after death, the power of prayer are deep in the religious convictions of many. If one could be sent to jail because a jury in a hostile environment found those teachings false, little indeed would be left of religious freedom.

United States v. Ballard, 322 U.S. 78, 86-87 (1943) (citation omitted). *Accord*, Braunfeld v. Brown, 366 U.S. 599 (1961); David v. Beason, 133 U.S. 333, 342 (1889).

93. The religious view espoused by respondents might seem incredible, if not preposterous, to most people. But if those doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with religious beliefs of any sect. When the triers of fact undertake that task, they enter a forbidden domain. United States v. Ballard, 322 U.S. 78, 87 (1943). *See also* Wisconsin v. Yoder, 406 U.S. 205, 223-24 (1972); Fowler v. Rhode Island, 345 U.S. 67, 69-70 (1953); West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 652 (1942); Cantwell v. Connecticut, 310 U.S. 296, 305 (1939).

94. *Everson v. Board of Educ.*, 330 U.S. 1 (1947). In *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940), the Court stated: "Freedom of conscience and freedom to adhere to such religious organizations as the individual may choose cannot be restricted by law."

95. In a case where fraud is alleged, the court may determine whether the professed beliefs are held in good faith. United States v. Ballard, 322 U.S. 78 (1944); *Cantwell v. Connecticut*, 310 U.S. 296, 306 (1940).

96. *E.g.*, CAL. PROB. CODE §§ 1851-1853 (West Supp. 1978). Section 1851 states in part: "Every conservator of the person of a conservatee has the care, custody and control of the conservatee . . ."

97. CAL. PROB. CODE § 1851 (West Supp. 1978).

Hence, the State is an active participant in this restriction of liberty through the state court which appoints a guardian or conservator.<sup>98</sup>

Guardianship and conservatorship statutes are exercises of a state's police power. Such statutes are analogous to penal ordinances prohibiting behavior which conflicts with the state's interest in protecting public health, safety and welfare.<sup>99</sup> This type of state action is distinguishable from judicial enforcement of the wishes of private parties concerning property or persons *already* under the custody or control of those parties. A property owner who seeks to exclude trespassers from his property has a right of control over that property which does not depend on judicial orders. A conservator or guardian has no pre-existing right of control,<sup>100</sup> and acquires control only by virtue of a judicial order.<sup>101</sup> Parents claiming the need for protective state action may not rest their claim solely on their child's adherence to any religion. Religious affiliation alone cannot be the basis of a finding that one is incompetent or otherwise in need of protection. Such a finding would require an assessment of the value or validity of an individual's beliefs and would therefore violate the establishment clause of the first amendment.<sup>102</sup>

State regulations infringing on religious freedom in the area of conduct can be justified by "some compelling state interest."<sup>103</sup> However, such compelling interests can be protected only by those methods least

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98. See notes 58-83 *supra* and accompanying text.

99. It is true that activities of individuals, even when religiously based, are often subject to regulation by the States in the exercise of their undoubted power to promote the health, safety, and general welfare, or the Federal Government in the exercise of its delegated powers. But to agree that religiously grounded conduct must often be subject to the broad police power of the State is not to deny that there are areas of conduct protected by the Free Exercise Clause of the First Amendment and thus beyond the power of the State to control, even under regulations of general applicability.

*Wisconsin v. Yoder*, 406 U.S. 205, 220 (1972) (citations omitted).

100. *E.g.*, *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

101. See note 47 *supra* and accompanying text.

102. See notes 92-93 *supra* and accompanying text.

103. *Sherbert v. Verner*, 374 U.S. 398 (1963). In *Sherbert*, the Court stated: "It is basic that no showing merely of a rational relationship to some colorable state interest would suffice; in this highly sensitive constitutional area '[o]nly the gravest abuse endangering paramount interests, give occasion for permissible limitation.'" 374 U.S. at 406 (citation omitted). *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 639 (1943).

More recently, the test for constitutionality has been set forth in *Committee for Pub. Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756 (1973). A law must reflect a clear, secular legislative purpose; it must neither advance nor inhibit religion as its primary effect; and it must not entail excessive entanglement with religion. 413 U.S. at 773. See Note, *Religious Beliefs and the Criminal Justice System: Some Problems of the Faith Healer*, 8 *LOY. L.A.L. REV.* 396, 400 n.20 (1975).

burdensome to religious freedom.<sup>104</sup> States have power to enact legislation protecting against substantive threats to public safety, peace or order.<sup>105</sup> The state interests must outweigh the individual's interest in religious freedom before criminal sanctions or civil orders can be found valid.<sup>106</sup>

The practice of religion by an individual is clearly infringed upon when a guardian or conservator is appointed or deprogramming is initiated.<sup>107</sup> This infringement is not merely an incidental effect of valid secular statutes because it can easily be avoided by the actions of state courts in limiting appointments of guardians and conservators to situations for which the statutes were intended.<sup>108</sup> Where the purpose of the appointment of a guardian or conservator is to enable deprogramming of a cult member, the question is whether the appointment is aimed at validly restricting religious conduct, rather than at alteration of religious beliefs with restriction of conduct being only incidental to that aim.<sup>109</sup>

States may have compelling interests in protecting the health of cult members<sup>110</sup> and in preventing fraud when religious beliefs are not sincerely held by those attempting to recruit or manipulate members.<sup>111</sup> However, neither of these interests has been found to exist when parents have sought court permission to deprogram.<sup>112</sup> In *People v.*

104. *U.S. v. Robel*, 389 U.S. 258 (1967); *Braunfeld v. Brown*, 366 U.S. 599, 607 (1961). In *Robel*, the Court stated:

[W]hen legitimate legislative concerns are expressed in a statute which imposes a substantial burden on protected First Amendment activities, Congress must achieve its goal by means which have a less drastic impact in the continued vitality of First Amendment freedoms.

389 U.S. at 258.

105. *Wisconsin v. Yoder*, 406 U.S. 205, 230 (1972); *Sherbert v. Verner*, 374 U.S. 398, 403 (1963).

106. *United States v. Ballard*, 322 U.S. 78 (1944); *Katz v. Superior Court*, 73 Cal. App. 3d 952, 988-89, 141 Cal. Rptr. 234, 256 (1977). The criteria used in the balance include:

- 1) The necessity of the particular practice to the central core of the belief system.
- 2) The degree or impact the behavior has on society as a whole.
- 3) The bona fide nature of the individual's belief.

*See, e.g., Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Sherbert v. Verner*, 374 U.S. 398 (1972); *Founding Church of Scientology of Washington v. United States*, 409 F.2d 1146 (D.C. Cir.), *cert. denied*, 396 U.S. 963 (1969) (misleading labeling law inapplicable to religious literature which might otherwise be applied to secular materials); *People v. Woody*, 61 Cal. 2d 716, 394 P.2d 813, 40 Cal. Rptr. 69 (1964) (prohibiting use of peyote).

107. *See* notes 31-45 *supra* and accompanying text.

108. *See* notes 57-83 *supra* and accompanying text.

109. *See* note 99 *supra* and accompanying text.

110. *See* note 106 *supra* and accompanying text.

111. *Id.*

112. *See* notes 52-56 *supra* and accompanying text.

*Murphy*,<sup>113</sup> the New York Supreme Court responded to an attempted criminal indictment against the Hare Krishna movement (Iskon, Inc.). The court found:

Not only no legal foundation or precedent for same but a concept that is fraught with danger in its potential for utilization in the suppression—if not outright destruction—of our citizens' right to pursue, join and practice the religion of their choice, free from a government created, controlled or dominated religion, as such right is inviolately protected under the First Amendment to the Constitution of the United States . . . .

It is at this juncture the court sounds the dire caveat to prosecutorial agencies throughout the length and breadth of our great nation that *all* of the rights of *all* of 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. The First Amendment to the United States Constitution prohibits the establishment of religion by our federal legislators. Neither congress nor the states may establish a religion or compel individuals to favor one religion over the other. This precept was set forth by the forefathers of our country in the most explicit and unequivocal language in the articles in addition to and in amendment of the Constitution of the United States. . . .

Our country is a pluralistic society in religion. The First Amendment of the Constitution of the United States lays the foundation of the full play and interplay of *all* faiths. The freedom of religion is not to be abridged because it is unconventional in its beliefs and practices, or because it is approved or disapproved of by the mainstream of society or more conventional religions. Without this proliferation and freedom to follow the dictates of one's own conscience in his search for and approach to God, the freedom of religion will be a meaningless right as provided for in the Constitution.<sup>114</sup>

The degree to which the physical health of adherents is affected by their religious practices has not been conclusively demonstrated to have reached the state of severe disability necessary to warrant state infringement of religious freedom. Nor is it established that, on balance, the state would have the ability to protect against religious practices which might be found unhealthful.

The issue of fraud has likewise not been raised directly. Claims that cult leaders and followers do not maintain good faith beliefs in their

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113. Nos. 2114/76, 2012/76 (N.Y. Sup. Ct., March 16, 1977).

114. *Id.* at 8-10.

religious teachings have not been supported. No former cult members who have been deprogrammed and returned to their families have brought actions against cult leaders or followers claiming fraud. If fraud were used in the recruitment of cult members, it might be actionable under criminal statutes.<sup>115</sup> However, where individuals voluntarily subject themselves to the discipline of a religious group without fraudulent inducement, criminal prosecutions would violate the group members' constitutional rights.<sup>116</sup>

Though it is painful for families to be separated physically and ideologically from a loved one who has chosen to follow a different faith and lifestyle, the problem is beyond the power of the legal system to solve. The solution to the conflict between parents and children over choices of religious life must be sought in the social process. If our culture is producing increasing numbers of young people who are disenchanted with existing social and political and religious institutions,<sup>117</sup> the remedy is not to impose legal barriers to their pursuit of alternatives. If there is a remedy, it must be discovered by defining the source of the disaffection.

Possibly, the needs of some individuals are best met by allowing them to participate in the structured lifestyles of the cults. The pattern of disenchantment, if it proves to be a growing phenomenon,<sup>118</sup> may have unfortunate political and social consequences. The input to society from the segment of college educated, middle class youth who join cults would be lost. However, a family has no legal right to insure that its young will be molded into a form acceptable to its elders. To suggest such a right would destroy the fundamental right of adults to believe as they choose, and would force the courts to determine the value or validity of religious beliefs in violation of the first amendment.

## VI. REMEDIES FOR SUBJECTS OF DEPROGRAMMING

The most obvious legal measure available to members of religious sects subjected to threats of deprogramming is to oppose petitions for guardianship or conservatorship. In cases where the petition is

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115. *United States v. Ballard*, 322 U.S. 78 (1977); *Katz v. Superior Court*, 73 Cal. App. 3d 952, 971, 141 Cal. Rptr. 234, 245 (1977).

116. See note 105 *supra* and accompanying text.

117. It has not yet been determined whether participation in newer religious organizations is a growing pattern. One study of the phenomenon is currently being done by J. Thomas Ungerleider, M.D., of the University of California Medical School.

118. J. Thomas Ungerleider, M.D. has suggested that participation in various newer religions may be motivated by factors similar to those which led to the popularity of the "drug culture" and "hippies" of the 1960's. *U.C.L.A. Colloquium*, *supra* note 30.

granted the ward may have a civil action against those who were made custodians for deprivation of constitutional rights.<sup>119</sup> However, it is likely that, in the majority of instances, deprogramming is carried out without the assistance of judicial action.<sup>120</sup> In a number of such cases, people who have been involuntarily subjected to the deprogramming process, and later returned to their cults, have brought civil actions against their parents and deprogrammers.<sup>121</sup> There have also been criminal charges brought against the deprogrammers.<sup>122</sup> Thus, while the legal system may not hold a solution to the problem of the aggrieved families, it does afford some remedies for the violation of the rights of cult members.

Deprogramming, being a process wherein the subject may be forcibly restrained in a room or house,<sup>123</sup> certainly gives rise to a cause of action for civil or criminal false imprisonment.<sup>124</sup> There is ample support for the contention that one has been deprived of one's freedom of movement without consent when the individual is taken by force, fighting and yelling, to a place chosen by another.<sup>125</sup> Confinement is obvious in instances where people are kept in a house or motel room under constant watch and told that they will be restrained there for as long as it takes to get them to renounce their chosen faith.

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119. 42 U.S.C. § 1983 (1970) provides:

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.

120. A "successful" deprogramming results in an individual leaving the religion they have adopted and returning to their families. As a result, no further action is taken, and it is not currently known in how many instances this may have occurred. Cf. Richardson, *supra* note 9, at 63-127 (giving accounts of unsuccessful deprogrammings).

121. Damage actions have been brought in federal court in several states for civil rights violations and in state courts under state tort claims. See, e.g., *Deprogramming: The Cults Fight Back*, CHRISTIANITY TODAY, June 17, 1977, at 36; Letter from Margaret C. Crosby, Staff Counsel, ACLU Foundation of Northern California, Inc. (October 20, 1977).

122. Most notable is deprogrammer Ted Patrick, who has been convicted in California and Colorado of charges including false imprisonment and assault. He has been acquitted of the same charges in New York and Washington where defenses of necessity were successful. Richardson, *supra* note 9, at 138-40. See also Patrick, *supra* note 7, at 155-80.

123. See note 39 *supra* and accompanying text.

124. False imprisonment in a civil action generally requires nonconsensual, intentional restraint of one's freedom of movement by the defendant. See W. PROSSER, *THE LAW OF TORTS* 42-49 (4th ed. 1971). An intentional nonconsensual confinement by force or threat of force is generally considered an act of false imprisonment. R. PERKINS, *CRIMINAL LAW* 129-34 (1957) [hereinafter cited as Perkins]. It may also be defined as "the unlawful violation of the personal liberty of another." CAL. PENAL CODE § 236 (West 1970).

125. E.g., Patrick, *supra* note 7 (detailing various incidents).

Some of the more physically abusive deprogramming techniques may also give rise to criminal or civil actions for assault and battery.<sup>126</sup> Those who participate in the deprogramming, in either the planning or effectuating stages, may also be subject to criminal sanctions for kidnapping. There have been incidents where an individual has been seized and transported to another country for deprogramming, although, more commonly, the deprogramming is conducted in the same state or in another state convenient to family and deprogrammers. In any of these situations there may be sufficient grounds for a charge of kidnapping.<sup>127</sup>

There is, however, no effective legal device for preventing such events from occurring. Parents who perceive their children's religious conversions to be the result of some sinister force which destroys their child's potential or personality may be willing to take such measures as seeking the services of a deprogrammer, regardless of the possibility of legal action that may ensue if the deprogramming fails. Parents of these converts have an emotionally, if not legally, appealing position. They are understandably hurt and confused by their child's rejection of the family's beliefs and way of life, and fearful when the beliefs and lifestyle adopted are completely foreign. Although this parental dilemma is understandable, it is not sufficient to justify some of the forceful methods used. Once an individual has reached adulthood, he or she is responsible for the direction his or her life will take. Parents have at least eighteen years to mold a child into accepting family values and norms. If, after that time, the child chooses a life that is different, that is the right of the adult. To suggest otherwise would be to create unlimited responsibility and control over each succeeding generation by the preceding one.

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126. A criminal assault and battery may require no more than an intentional nonconsensual offensive touching of another. *See Perkins, supra* note 124, at 107-08; W. PROSSER, *THE LAW OF TORTS* 34-41 (4th ed. 1971).

127. 18 U.S.C. § 1201 provides in pertinent part:

(a) Whoever 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;

(c) If two or more persons conspire to violate this section and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life.

18 U.S.C. § 1201 (1978); *see also* CAL. PENAL CODE § 207 (West 1970).