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Piercing the Religious Veil of the So-Called Cults

Since the horror of Jonestown, religious cults have been a frequent subject of somewhat speculative debate. Federal and state governments, and private groups alike have undertaken exhaustive studies of these "cults" in order to monitor and sometimes regulate their activities, and to publicize their often questionable tenets and practices. The author offers a comprehensive overview of these studies, concentrating on such areas as recruitment, indoctrination, deprogramming, fund raising, and tax exemption and evasion. Additionally, the author summarizes related news events and profiles to illustrate these observations, and to provide the stimulus for further thought and analysis as to the impact these occurrences may have on the future of religion and religious freedom.

I. INTRODUCTION

An analysis of public opinion would likely reveal that the existence of religious cults¹ is a relatively new phenomenon, but historians, social scientists and students of religion alike are quick to point out that such groups, though cyclical in nature, have similarly prospered and have encountered adversity for centuries.² The United States has recently experienced a marked increase in

1. As a portion of this comment's title suggests, there is great difficulty and reluctance in characterizing and defining those groups whose beliefs may be considered less traditional or out of the mainstream of orthodox theology. In addition, the "church" itself is generally not as accepted, or as established, as what might be considered the conventional *religions* such as; the Buddhist, Catholic, Islamic, Jewish, or Protestant faiths. Many terms and adjectives, some of which include sect, cult, anti-establishment religion, unconventional, and bizarre, have been used to identify and classify such groups. The significance of this problem of terminology and semantics will be addressed later as it is often determinative whether constitutional protection is to be afforded a particular group. See notes 173-77 *infra* and accompanying text. It should also be noted that many cults take issue in not being classified a bonafide *religion* and find any label such as cult to be derogatory and discriminatory. However, in light of the on-going debate of religion versus cult as a legitimate legal issue, and for ease of clarity and uniformity of discussion, the popular term, cult, will be used herein whenever reference is made to one of these groups.

2. Historically, periods of unusual turbulence are often accompanied by the emergence of cults. Following the fall of Rome, the French Revolution and again during the Industrial Revolution, numerous cults appeared in Europe. The westward movement in America swept a myriad of religious cults toward California. In the years following the Gold Rush, at least 50 utopian cults were established here. Most were religious and lasted on the average about 20 years; the secular variety usually endured only half that long.

THE ASSASSINATION OF REPRESENTATIVE LEO J. RYAN AND THE JONESTOWN, GUYANA, TRAGEDY; REPORT OF A STAFF INVESTIGATIVE GROUP TO THE COMMITTEE ON FOREIGN AFFAIRS H.R. REP., 96TH CONG., 1ST SESS. 274 (1979).

the number of such groups.³ Their prevalence, especially in California, would seem to indicate a golden age of religious liberty, yet a further sampling of popular opinion would likely disclose growing opposition to and virtual intolerance of many such groups. This assertion merits credibility as religious cults have repeatedly found themselves involved in litigation and have been a target of considerable negative media coverage.

The factor most likely responsible for present anti-cult sentiment, is deprogramming controversy.⁴ Although the issue of deprogramming will be dealt with at some length, it should be noted at the onset that it may be considered as a "religious Watergate" in that it has served as a springboard for cult opponents to inquire into and "expose" other alleged questionable practices. This undertaking, however, has encountered strong opposition by representatives of the various cults and religious libertarians who are quick to assert the protections of the first amendment—the cornerstone of religious freedom in the United States.⁵ Notwithstanding the acknowledgement of religion as a basic right and its occupation of a preferred status,⁶ various government committees and agencies, both state⁷ and federal,⁸ have

3. Authorities are in disagreement as to the number of cults in the United States. One sociological study has traced and documented the appearance of about 1,300 new religious cults in America since 1965. Rudin, *The New Prestigious Cults and the Jewish Community*, 73 RELIGIOUS EDUC. 350 (May/June 1978). See generally J. MILTON, *THE ENCYCLOPEDIA OF AMERICAN RELIGIONS* (1978) for a compilation of 1,203 religious groups in the United States; J. MILTON, *A DIRECTORY OF RELIGIOUS BODIES IN THE UNITED STATES* (1977).

4. The term deprogramming embraces two concepts, the first requires that an individual undergo an indoctrination of a cult's beliefs, the second involves a third party's efforts to remove or "wash away" the effects of the indoctrination. The third party generally acts at the request of a concerned parent but without the consent of the subject individual, and as a result frequently encounters resistance and must therefore apply physical force to subdue the cultist. The physical removal and detention of the individual in order to restore him to the values he held prior to indoctrination have prompted cults to accuse the deprogrammers of kidnapping and false imprisonment. The deprogrammers euphemistically describe their course of conduct as a "rescue" of those who were programmed or brainwashed by suspect organizations. These allegations and other related issues will be expanded in the sections concerning proselytizing and deprogramming.

5. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." U.S. CONST. amend. I. This article will be primarily concerned with the free exercise clause.

6. Those rights enumerated in the first amendment, inclusive of religion, are deemed so basic and understood so as to constitute the foundation of personal liberty and may be contravened only by the most compelling of state interests.

7. Included among the reports conducted by various states are: VT. SEN. COMM. FOR THE INVESTIGATION OF ALLEGED DECEPTIVE, FRAUDULENT AND CRIMINAL PRACTICES OF VARIOUS ORGANIZATION IN THE STATE, REPORT, 54th Biennial Sess. (1977) [hereinafter cited as THE VERMONT REPORT]; THE FINAL REPORT OF THE CHARITY FRAUDS BUREAU ON THE ACTIVITIES OF THE CHILDREN OF GOD TO THE HON. LEWIS J. LEFKOWITZ, ATT'Y, GEN. OF N.Y. (1974) [hereinafter cited as THE LEFKOWITZ REPORT]; CAL. SEN. SELECT COMM. ON CHILDREN AND YOUTH, IMPACT OF CULTS

conducted formal and informal inquiries into the cult phenomenon. The purpose of these inquiries can be to determine if any irregularities do in fact exist, or alternatively, to insure that religious freedom is not abridged.

A preliminary appraisal of the legislative reports indicate that they, as an investigative body, are indeed concerned with the information disclosed, but feel that additional factfinding is necessary⁹ before any affirmative action is undertaken. The various legislatures have been wary of becoming overly intrusive into constitutionally protected areas, fearing the desecration of a symbol of American freedom. Such apprehensiveness may seem superfluous and even shocking when one remembers the murder of a United States Congressman along with three members of his fact finding entourage, and the mass suicide that took the lives of 909 members of the People's Temple cult in Jonestown, Guyana.¹⁰

ON TODAY'S YOUTH (1974) [hereinafter cited as THE CALIFORNIA COMMISSION ON YOUTH]. In addition to these state reports, there is legislation pending before the Illinois, Massachusetts, New York, and Pennsylvania legislatures concerning such matters as mind control and fund raising activities of religious cults. The aforementioned reports and bills will be discussed throughout the course of this comment.

8. The following inquiries conducted by congressional committees will be examined: THE ASSASSINATION OF REPRESENTATIVE LEO J. RYAN AND THE JONESTOWN, GUYANA TRAGEDY, REPORT OF A STAFF INVESTIGATIVE GROUP TO THE COMMITTEE ON FOREIGN AFFAIRS, H.R. REP., 96th Cong., 1st Sess. (1979) [hereinafter cited as THE JONESTOWN REPORT]; *Information Meeting on the Cult Phenomenon in the United States: Unofficial Hearings Before a Jt. Comm.*, 96th Cong., 1st Sess., (1979) reprinted by American Family Foundation, Inc. [hereinafter cited as *Hearings on the Cult Phenomenon*]; SUBCOMMITTEE ON INTERNATIONAL ORGANIZATIONS OF THE COMM. ON INTERNATIONAL RELATIONS H.R. 95th CONG., 2D SESS., THE INVESTIGATION OF KOREAN-AMERICAN ACTIVITIES (Comm. Print 1978) [hereinafter cited as THE INVESTIGATION OF KOREAN-AMERICAN ACTIVITIES].

9. The conclusions and recommendations of the following reports all indicate a desire for various agencies to conduct specialized investigations into matters within the purview of their respective jurisdiction *i.e.*, the question of an institution's tax exempt status would be determined by the Internal Revenue Service, a determination of possible violation of currency and banking laws would be made by the Department of Treasury, and an inquiry into possible social security fraud would be conducted by the Social Security Administration. See THE JONESTOWN REPORT, *supra* note 8, at 8 for a list of the ten federal departments and agencies that were requested to submit information and documents from their files relating to the People's Temple cult; THE INVESTIGATION OF KOREAN-AMERICAN ACTIVITIES, *supra* note 8, at 390; THE LEFKOWITZ REPORT, *supra* note 7, at 65.

10. On Saturday, November 18, 1978, members of the People's Temple cult opened fire on a congressional delegation (CODEL) at the Port Kaituma airport, killing Congressman Leo J. Ryan and three members of his fact-finding team. Hours later 909 members of the cult ingested a poison containing cyanide at the Temple settlement known as Jonestown.

Notwithstanding the apparent absence of a well defined position on the question regarding the validity of cults as a bonafide religion, the mere fact that government investigative bodies have now taken the initiative has produced a legitimate concern for those accused of operating under the veil of religious activity.

While the primary thrust of this article is not an historical treatment of the free exercise clause, it is nonetheless necessary to examine initially some cases which address the belief-action dichotomy. While this concept will be explored more thoroughly later, for introductory purposes it may simply be described as the fundamental concern of all potential legislative or judicial inquiries into the cult question. The third section will focus on the indoctrination of religious converts and the converse process of deprogramming. The primary aim of that section will be to determine who is engaged in reprehensible conduct, and to examine possible solutions to this relatively novel field of legal issues. The third section provides an overview of the financial involvements and philosophical underpinnings of several religious cults. There has been speculation that inquiry into these areas may disclose that the professed aims and purposes of many groups are actually secular rather than religious in nature.

II. IN PURSUIT OF RELIGIOUS LIBERTY: AN HISTORICAL PERSPECTIVE

The fact that religious freedom has been virtually guaranteed¹¹ in this country may be one reason for the advent of so many cult-like groups in recent years. The mere fact that the beliefs promulgated by these groups seem somewhat strange, off-beat or bizarre does not prevent the adherents to such practices from enjoying the freedoms guaranteed by the free exercise clause. As one commentator cautioned:

Most, if not all, of the behavior associated with the so-called cult religious movements will seem bizarre and mystifying only to those largely innocent of any knowledge of church history or, indeed, of human history. What we are seeing in these groups today is not something new, but something old; a phenomenon sometimes labeled *conversion*.¹²

Regardless of one's familiarity with religious history, sharp differences do arise when the question of varying religious doctrines and practices is posed.

11. "It is basic that no showing merely of a rational relationship to some colorable state interest would suffice; in the highly sensitive constitutional area, '[O]nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation,'" *Sherbert v. Verner*, 374 U.S. 398, 406 (1963) (citations omitted).

12. Kelly, *Deprogramming and Religious Liberty*, 4 *CRV. LIB. REV.* 23, 28 (July/Aug. 1977).

The United States Supreme Court, in recognizing the inflammatory possibilities in this area developed what might be termed the belief-action dichotomy. "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."¹³ In espousing this principle, the court conceded that it could decide neither the sincerity nor the validity¹⁴ of the belief, but maintained that conduct would still be subject to regulation to the extent necessary to insure the protection and welfare of the general public. It is this basic precept that enables the courts and legislatures to examine, with the necessary constitutional support, various religious activities. Mere inquiry into activity is not sufficient to remove one's conduct from the ambit of constitutional protection. In order for the state to permissibly regulate religious conduct, it must meet the three-pronged balancing test set forth in *Sherbert v. Verner*.¹⁵ The first of which asks whether the government has imposed a burden upon the free exercise of religion. The second prong questions whether that burden is justified by a compelling state interest.¹⁶ The final step looks for other alternatives that may be resorted to which are less restrictive in nature.

A. *A True Test of Faith*

An examination of some of the leading cases involving snake-

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

14. In *United States v. Ballard*, 322 U.S. 78 (1944), the defendants in promoting the "I Am" movement were convicted in the district court of using the mails to defraud others in the solicitation of funds and the recruitment of members, however, the sole issue decided by the jury was whether the indicted defendants believed their representations to be true. Included among these representations was that they could heal ailments and cure diseases. The Supreme Court stated that the sincerity of religious beliefs should not be at issue.

But on whichever basis that court rested its action, we do not agree that the truth or verity of respondents' religious doctrines or beliefs should have been submitted to the jury. Whatever this particular indictment might require, the First Amendment precludes such a course, as the United States seems to concede. . . . Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs.

Id. at 86.

15. 374 U.S. 398 (1963).

16. All courts must employ a strict scrutiny standard of review in determining the constitutionality of religious conduct. "[L]egal restrictions cannot be applied to religious practices, as they can in much of the secular realm, merely on a showing of a rational relationship between the regulation imposed and the legitimate end sought." *Founding Church of Scientology of Washington v. U.S.*, 409 F.2d 1146, 1155 (D.C. Cir. 1969).

handling and the use of drugs by various groups which have held themselves out as religions will illustrate not only the application of the *Sherbert* balancing test, but may also provide some insight as to whether some of the more publicized cults¹⁷ discussed herein merit scrutiny regarding the ultimate issue of operating behind a protected religious veil. One of the prime goals of this section will be to demonstrate that the determination of the existence of a protective religious veil was often the underlying concern of the court in arriving at its decision. It should be noted that the various courts did not speak in terms of a religious cloak or veil, but searched for a central tenet or fundamental belief that served as the basis behind the unorthodox practice.

The southern United States has been the scene of litigation in several cases where the practice of snakehandling was considered integral to church existence. Notwithstanding a devotee's strict adherence to such beliefs, state courts, in four early decisions,¹⁸ prohibited such conduct on the basis of state statutes. In each instance, the statute was enacted to insure the safety and welfare of the congregation.¹⁹

Churches such as "The Holiness Church" contended that the free exercise of their religious beliefs had been infringed upon for no apparent reason. Indicative of the nature and strength of these beliefs was the feeling that a believer had entered the "Paragon of Truth" by allowing poisonous snakes to entwine around one's neck and body. A person who had been "annointed" would not be bitten, or if bitten, would suffer no adverse physical reaction because participation in this ritual was testimonial of one's sincerity in belief.²⁰

Despite any precautions²¹ the church followed, the policy of the court reflected the belief-action dichotomy of *Cantwell*. Alterna-

17. Those cults which will receive more than casual reference in this comment are, The Alamo Christian Foundation, The Children of God, The Founding Church of Scientology, The International Society for Krishna Consciousness, The People's Temple, The Synanon Foundation, Inc., and the Unification Church.

18. *Hill v. State*, 38 Ala. App. 404, 88 So. 2d 880 (1956); *Lawson v. Commonwealth*, 291 Ky. 437, 164 S.W.2d 972 (1942); *State v. Massey*, 229 N.C. 734, 51 S.E.2d 179 (1949); *Harden v. State*, 188 Tenn. 17, 216 S.W.2d 708 (1949).

19. The statute that was relied on in *Harden v. State*, was typical of the statutory language in other jurisdictions. "It shall be unlawful for any person, or persons, to display, exhibit, handle or use any poisonous or dangerous snake or reptile in such a manner as to endanger the life or health of any person." Tenn. Code Ann. § 39-2208 (1975).

20. It should be noted that participants in this ritual went on a roped-off stage while those who preferred not to handle the snakes remained in their seats. Church members were spaced at various intervals to prevent the snakes from escaping into the audience. *Harden v. State*, 188 Tenn. 17, 20, 216 S.W.2d 708, 709 (1949).

21. See note 20 *supra*.

tively the right to believe in snakehandling is absolutely protected but the right to practice that form of worship was not. The conduct was then declared unlawful on the basis of either a clear and present danger²² standard or a grave and immediate danger²³ theory.

The *Sherbert* balancing test was first utilized in *Ex rel. Swann v. Pach*.²⁴ In this case "The Holiness Church of God in Jesus Name" was enjoined from any further snakehandling and/or the drinking of strychnine, the result of two deaths during a test of faith ritual.²⁵ The court struggled to find a less restrictive stance,²⁶ so as not to fully restrain the church, but concluded that the handlers had become entranced to the point of hysteria so that they were not always cognizant of their actions. Consequently, the Tennessee Supreme Court felt it was necessary to condemn the manner of worship though the belief itself was condoned.²⁷

The southwestern United States and California were the scenes of numerous prosecutions that considered the question whether the possession and use of what would otherwise be unlawful drugs could be constitutionally protected means of sacramental worship. The California Supreme Court, in the landmark case of

22. *Thomas v. Collins*, 323 U.S. 516, 530 (1945); *Cantwell v. Connecticut*, 310 U.S. 296, 308 (1940).

23. *Board of Education v. Barnette*, 319 U.S. 624, 642 (1943).

24. 527 S.W.2d 99, 110 (Tenn. 1975).

25. *Id.* at 103; *Los Angeles Times*, Oct. 30, 1973, at 27, col. 1.

26. We gave consideration to limiting the prohibition to handling snakes in the presence of children, but rejected this approach because it conflicts with the parental right and duty to direct the religious training of his children. We considered the adoption of a "consenting adult" standard but, again, this practice is too fraught with danger to permit its pursuit in the frenzied atmosphere of an emotional church service regardless of age or consent. We considered restricting attendance to members only, but this would destroy the evangelical mission of the church. We considered permitting only the handlers themselves to be present, but this frustrates the purpose of confirming the faith to non-believers and separates the pastor and leaders from the congregation. We could find no rational basis for limiting or restricting the practice, and could conceive of no alternative plan or procedure which would be palatable to the membership or permissible from a standpoint of compelling state interest.

527 S.W.2d at 114.

27. For further discussion on the snake-handling cases see Comment, *State ex rel. Swann v. Pach: Self-endangerment and the First Amendment*, 65 KY. L.J. 195 (1976); Comment, *Snakehandling and Freedom of Religion*, 1976 WASH. U.L.Q. 353; Note, *First Amendment—Free Exercise of Religion—Application of Sherbert Test to Prohibit Snakehandling During Public Worship*, 25 KAN. L. REV. 585 (1977); Recent Cases, 29 VAND. L. REV. 495 (1976).

People v. Woody,²⁸ addressed this issue when a group of Navajo Indians of the Native American Church were arrested for the unauthorized possession of peyote. The defendants contended that "peyote embodies the Holy Spirit and that those who partake of peyote enter into direct contact with God."²⁹ It was further argued that "members of the church regard peyote also as a 'teacher' because it induces a feeling of brotherhood with other members. . . ."³⁰ The court was careful to inquire into the defendant's adherence to his belief rather than the nature of the belief itself.³¹ A three-fold determination was then made concerning the use of drugs; peyote was part of a recognized and well established church; it constituted the sacramental portion of their ceremony; and its prohibition would inhibit the practice of their religion. The court stated that "Since the use of peyote incorporates the essence of the religious expression, the first weight is heavy. Yet the use of peyote presents only slight danger to the state and to the enforcement of its laws; the second weight is relatively light. The scale tips in favor of the constitutional protection."³² It becomes readily apparent that the primary defense to such a drug charge was that the use or possession³³ must be integral to a bonafide pursuit of religious faith which is not dangerous to the public health, safety or morals.

A different result was arrived at in *State v. Bullard*.³⁴ The defendant, a member of the Neo-American Church, was convicted for possession of marijuana and peyote despite claims that "peyote is most necessary and marijuana is most advisable in the

28. 61 Cal. 2d 716, 394 P.2d 813, 40 Cal. Rptr. 69 (1964).

29. *Id.* at 720, 394 P.2d at 817, 40 Cal. Rptr. at 73.

30. *Id.* at 721, 394 P.2d at 817, 40 Cal. Rptr. at 73.

31. We do not doubt the capacity of judge and jury to distinguish between those who would feign faith in an esoteric religion and those who would honestly follow it. "Suffice it to say that trial courts will have to determine in each instance, with whatever evidence is at hand, whether or not the assertion of a belief which is protected by the First Amendment is *in fact* a spurious claim." Thus the court makes a factual examination of the bona fide of the belief and does not intrude into the religious issue at all; it does not determine the nature of the belief but the nature of defendants' adherence to it.

Id. at 726, 394 P.2d at 821, 40 Cal. Rptr. at 77 (citations omitted).

32. *Id.* at 727, 394 P.2d at 821, 40 Cal. Rptr. at 77. See also *State v. Whittingham*, 19 Ariz. App. 27, 28, 504 P.2d 950, 951 (1973), *cert. denied*, 417 U.S. 946 (1974) which stated "*peyote is, in fact, central and primary to the ceremony The congregation prays to and through the peyote, which is ingested by the members of the congregation*" (emphasis in original).

33. In *Whitehorn v. State*, 561 P.2d 539 (Okla. Crim. App. 1977), peyote was discovered while a vehicle was stopped due to an inspection of defects. The court, in reversing the conviction of the member of the Native American Church, extended constitutional protection to include possession of the drug as well as its sacramental use.

34. 267 N.C. 599, 148 S.E.2d 565 (1966).

practice of [his] church's beliefs."³⁵ The court's admitted skepticism as to the validity of such a belief in this particular fact situation did not constitute error because the primary concern was defendant's health and welfare. The court noted that defendant had ingested enough peyote to "produce hallucinating symptoms similar to those produced in cases of schizophrenia, dementia praecox, or paranoia"³⁶ and was therefore not in violation of his constitutional rights to forbid possession of the drug, even though that possession was under the guise of his religious practice.

The Neo-American Church was the subject of another prosecution. In *United States v. Kuch*, an ordained minister of the church was indicted for unlawfully obtaining and transferring marijuana, and for the illegal sale, delivery and possession of LSD.³⁷ These substances were claimed to be "the true Host of the Church", but the court upon inquiry into the church's fundamental tenets, determined that this was not a legitimate assertion of religious beliefs.

Each member carries a 'martyrdom record' to reflect his arrests. The Church symbol is a three-eyed toad. Its bulletin is the 'Divine Toad Sweat.' The church key is, of course, the bottle opener. The official songs are "Puff the Magic Dragon" and "Row, Row, Row Your Boat. . . .

The seal has a three-eyed toad in the center . . . and across the bottom is the church motto: Victory over Horseshit!³⁸

The district court further noted that even if there was evidence of a belief in a supreme being or an appearance of a religious discipline the defendant's contentions were without merit since the acts were "done in the name of or under the impetus of religion."³⁹

An examination of the case law outlined in this historical perspective indicates that the state has imposed and is likely to continue to impose limitations on the free exercise of religion upon a showing of a compelling threat to the public's health, safety, wel-

35. *Id.* at 602, 148 S.E.2d at 568.

36. *Id.* at 604, 148 S.E.2d at 569.

37. 288 F. Supp. 439 (D.D.C. 1968).

38. *Id.* at 444-45.

39. *Id.* at 445. See also *Leary v. United States*, 383 F.2d 851 (5th Cir. 1967), *rehearing denied*, 392 F.2d 220 (5th Cir. 1968), *cert. granted*, 392 U.S. 903 (1968). Dr. Timothy Leary admitted he purposely violated the law since it conflicted with his beliefs. His conviction was affirmed as sincerity of belief and creed were not at issue in the trial. "It has been strongly propounded that this 'police power' will prevail over an individual's right to freely practice his religious beliefs where the practice involves criminal conduct." *Kennedy v. Bureau of Narcotics and Dangerous Drugs*, 459 F.2d 415, 417 (9th Cir. 1972) (Crocker, J., concurring).

fare, or morals. In order to avoid any such restraints, the religion must demonstrate that the activity is integral or basic to the practice of its faith. However, even upon such an assertion, the court may garner evidence if it feels that the activities are being conducted while under the guise of a religion. This is particularly true in cases where there are allegations of criminal activity.

In light of the facts surrounding the aforementioned cases, it seems reasonable for one to maintain that those religions which engage in snakehandling or sacramental drug worship⁴⁰ are certainly unconventional. Some may even characterize them as cults. However, in the sections that are to follow, some patent differences will be shown that will distinguish those groups from the cults that are the immediate concern of state and federal inquiries.

III. THE RECRUITMENT AND INDOCTRINATION PHASE

A goal commonly shared by many cults is to increase the number of adherents within its rank and file. Swelling membership rosters indicate a general acceptance of the group's particular beliefs and will aid in recruiting new converts. However, the recruiting methods employed by various cults and the criticism spawned by those methods may prove to be the anathema of their very existence. The cult's staunchest opponents are frequently the parents⁴¹ or close relatives of the minors or young adults who have been proselytized. The parents, who often become dismayed when confronted with the new lifestyle that their son or daughter has chosen, are often prompted to attempt to verbally dissuade the devotees from further associations with the cult. However these efforts often prove futile and the parent's energies are then re-channeled into such self-help remedies as forcible removal of the individual from the cult. The ensuing battle is generally waged on two fronts when efforts are made to deprogram the individual and allegations of kidnapping and brainwashing are ex-

40. Included among the numerous articles written on the use of drugs and freedom of religion are: Weiss & Wizner, *Pot, Prayer, Politics and Privacy: The Right to Cut Your Own Throat in Your Own Way*, 54 IOWA L. REV. 709 (1969); Comment, *LSD and Freedom of Religion*, 1 U.S.F. L. REV. 131 (1966); Comment, *The Drug Religions and the Free Exercise Clause*, 1 U. OF TOL. L. REV. 202 (1969); Note, *Constitutional Law: Whitehorn v. State: Peyote and Religious Freedom in Oklahoma*, 5 AM. INDIAN L. REV. 229 (1977); Recent Decisions, 20 CASE W. RES. L. REV. 251 (1968).

41. Numerous groups, primarily composed of parents, have organized in an effort to seek the return of their sons and daughters from various religious cults. The following are some of the groups: The Citizens Engaged in Reuniting Families, Inc. (CERF); The Freedom of Mind, Inc.; The Return to Personal Choice, Inc.; and The Parents Committee to Free Our Sons and Daughters from the Children of God (FREECOG).

changed between the deprogrammers and the religious cult.⁴²

The deprogramming controversy is extremely volatile in nature and encompasses several constitutional questions including the freedom of religion, the freedom of speech, and the right to privacy. In addition to these fundamental rights, a host of other issues are addressed, some of which include false imprisonment, kidnapping, intentional infliction of emotional distress, and conservatorship proceedings. Since all of these issues are an outgrowth of the proselytization process, a careful examination of the recruiting and deprogramming methods will be made to determine which of the cults or deprogrammers are engaging in reprehensible conduct.

Although cults such as The Children of God, the International Society for Krishna Consciousness, and the Unification Church are composed of a wide cross section of people from varying economic and social backgrounds,⁴³ the bulk of the membership is comprised of college age persons. It is frequently argued that the cults seek people who are in a state of particular vulnerability, lonely people such as students just entering or leaving college or about to take exams or the solitary traveler wandering aimlessly through a bus station. Others contend that "[y]oung people often come to the religious group during a period of heightened uncertainty, in a period of life characterized by anxiety about career, sexuality, intimacy and/or the "meaning of life."⁴⁴ The initial impression that one receives is favorable inasmuch as the cult

42. See note 4 *supra*.

43. Ted Patrick, the most well known deprogrammer, see note 66 *infra*, characterized the cult participant as being almost exclusively white, "and a large majority are Roman Catholics and Jews. Middle to upper-middle class. Some of them have family problems; others don't. Some are psychotic; most are not. A number of them were intensely religious before joining a particular cult; an equal number had no interest in religion whatever." T. PATRICK & T. DULACK, *LET OUR CHILDREN GO!* 182 (1976). Some dissimilar characteristics were found to be evidenced by members of the People's Temple. Although there were some members of the upper middle class who were college educated, many were blacks that were both young and poor. The greatest percentage of members interestingly were the elderly. A strong fundamentalist religious background was prevalent, but the younger members were attracted to the People's Temple largely due to the altruistic and idealistic social causes that underlie the cult's principal philosophy. *THE JONESTOWN REPORT*, *supra* note 8, at 19. For further discussion on the principal philosophy of Jim Jones and the People's Temple, see notes 190-201 *infra*, and accompanying text.

44. Gordon, *The Kids & The Cults*, 6 *CHILDREN TODAY* 24, 27 (July/Aug. 1977). The author, a research psychiatrist and a consultant to the National Institute of Mental Health, commented that a young person's "search for deeper experience

seems to provide a sense of togetherness and belonging, an opportunity to acquire new ideals and to espouse novel principles. However, the prospect of establishing new friendships soon becomes secondary as those who show promise in becoming a convert undergo intensive training sessions.⁴⁵

Critics point out that it is during the indoctrination period that grave injustices are perpetrated on the unwary.⁴⁶ Although the actual methods of indoctrination may differ among the numerous cults, certain basic elements seem to be held in common.⁴⁷ In fact, the findings of the Zablocki Committee, which compiled *The Jonestown Report*, categorically classified the tactics of People's Temple leader Jim Jones as "recognized strategies of brainwashing."⁴⁸ A review of the elements of brainwashing reveals that a primary requirement is the necessity to isolate the⁴⁹ individual from all reminders of his past. In many cults, this is the first step taken. The potential recruit is severed from all sources of information and memory. The cult leadership then acts as the sole source of knowledge, wisdom, information and guidance. An exacting daily regimen⁵⁰ is vital to enable leadership to obtain the

and a more meaningful way of life is one that we should encourage and guide, not diagnose and restrict." *Id.* See also N.Y. Times, May 30, 1976, 36, at 8, col. 1.

45. The Unification Church members, often referred to as the Moonies, have indoctrination workshops lasting three, seven and twenty-one days, respectively. One does not make a commitment to the group until the training sessions are completed. Harrison, *The Struggle for Wendy Helander*, MCCALL'S, Oct., 1979, at 90. The Children of God required all new disciples to take three months basic training. THE LEFKOWITZ REPORT, *supra* note 7, at 4. However, some cults require an early statement of intent before one is exposed to that group's teachings.

46. "By the time the recruit realizes what he or she is really involved in, he is so confused and disoriented from weekends or weeks of long seminars, sleeplessness, constant frenzied activity, non-nutritious food, and 'love-bombing' that he may not have the will to refute the group at that point." Rudin, *The New Prestigious Cults and the Jewish Community*, 73 RELIGIOUS EDUC. 350, 355 (May/June 1978).

47. Two researchers who testified during the *Hearings on the Cult Phenomenon*, *supra* note 8, at 47, stated that "we found that nearly every major cult makes suggestions or commands the individuals to surrender, to let go, to relinquish hold upon his will, to stop thinking and questioning, or merely to let things flow." In addition to their appearance before the congressional information meeting on the cult phenomenon, the researchers have authored a highly controversial book on cult indoctrination methods. See F. CONWAY & J. SIEGELMAN, SNAPPING, AMERICA'S EPIDEMIC OF SUDDEN PERSONALITY CHANGE (1979).

48. THE JONESTOWN REPORT, *supra* note 8, at 17.

49. *Id.* at 18.

50. *Id.* Reflective of the repitious and gruelling nature of a "training session" is the following description of routine employed by the Children of God.

The technique used is to first capture the curiosity and then the mind and intellect of prospective members. This process is stepped up until the subject is virtually helpless. The technique consists of several disciples in continuous and long sessions, cornering the prospect and by argumentation, interspersed with Biblical quotations wear him down both mentally and physically.

necessary respect and obedience of the convert. The effectiveness of the above requisites is often contingent upon degree and intensity of the physical pressure⁵¹ exerted on the individual. These pressures normally consist of food and sleep deprivations, but occasionally encompass severe beatings. Along with such physical deprivations is the assertion of control over another's thought processes, "[b]y manipulation and constant monitoring of thought processes, by making younger members uncomfortable and exposed to psychological cruelties such as bodily deprivation of all sorts and forced memorization of biblical passages, a total assault on the psyche is accomplished."⁵² A common tactic designed to exert mental pressure is to "generate and then exploit a sense of guilt."⁵³ The berating of the disciples for refusing to relinquish life's material rewards serves a two-fold purpose. First, it further establishes the leadership's control over the individual and secondly, the cult, generally enriches itself by appropriating the property⁵⁴ of the disciple.

The latter strategy, when employed, is not only an effective means of indoctrination but is equally useful in maintaining control over the convert, since that person is now financially dependent upon the cult. Other methods utilized to enable a cult to exercise dominance include the use of "struggle meetings". At Jonestown, for example, all recalcitrant members were pressured into confessing wrongdoings against the cult. Integral to acquiring any evidence of wrongdoing were two plans which illustrate the sophistication of the Reverend Jones' behavior modification program. His intelligence network would keep detailed records of each member. Jones would then confront the accused with knowledge of an action which the latter was unaware had been observed by other cult members, thereby demonstrating a "mystical awareness" of surrounding activities. The second plan involved instilling within each of the followers a mistrust of one other. This quelled most criticism since everyone feared being turned in by another. "The system was so effective that children turned in their own parents, . . . informed on sisters, and hus-

THE LEFKOWITZ REPORT, *supra* note 7, at 31.

51. THE JONESTOWN REPORT, *supra* note 8, at 18.

52. THE LEFKOWITZ REPORT, *supra* note 7, at 31.

53. THE JONESTOWN REPORT, *supra* note 8, at 18.

54. This has been a lucrative means of acquiring great economic wealth. For further discussion on the appropriation of an individual's personal and sometimes familial assets, see notes 149-53 *infra*, and accompanying text.

bands and wives reported on spouses.”⁵⁵ A technique utilized by the Children of God was to have all new converts write out their past history and to encourage them regarding them to emphasize or exaggerate past “use of drugs, criminal involvement and other self-incriminating acts.”⁵⁶ Parents were then convinced that their son or daughter’s welfare would be best served by remaining with the cult.

The above description of some of the methods implemented by the cults are especially alarming because authorities in the area of brainwashing and behavior modification have likened such techniques to those used by the Chinese and North Koreans during the Korean War.⁵⁷ However, simply establishing the requisite elements and depicting a horror-filled scene will not insure that judge or jury will be convinced as to any infringement on one’s free will. Regardless of the terminology used, the activities alleged, (brainwashing, coercive persuasion, or thought reform) remain difficult to describe due to the qualitative and quantitative nature of the process.⁵⁸ The lack of legislative enactments⁵⁹ to

55. *Id.*

56. THE LEFKOWITZ REPORT, *supra* note 7, at 4.

57. See R. LIFTON, THOUGHT REFORM AND THE PSYCHIATRY OF TOTALISM: A STUDY OF “BRAINWASHING” IN CHINA 68 (Norton ed. 1961); the author, a professor of psychiatry at Yale University, describes the process as a series of steps that the individual undergoes beginning with an assault on identity, and continuing with establishment of guilt, self-betrayal, arrival at a “breaking point,” lenience and opportunity, compulsion to confess, reinterpretation of the past, re-education, acceptance and reward, final confession, and rebirth. The individual would likely be exposed to sleep and other physiological deprivations as well as guilt manipulation. In commenting on the Jonestown tragedy, Lifton elaborated on the influence that charismatic or messianic leaders wielded over his adherents. Again, the methods and the result appear similar to that discussed above. Lifton, *The Appeal of the Death Trip*, N.Y. Times, Jan. 7, 1979, § 6 (Magazine), at 26. See generally M. HYDE, BRAINWASHING AND OTHER FORMS OF MIND CONTROL (1977) (discussing mind control and religious cults); W. SARGANT, BATTLE FOR THE MIND, A PHYSIOLOGY OF CONVERSION AND BRAINWASHING (1957) (techniques of religious conversion); E. SCHEIN, COERCIVE PERSUASION A SOCIO-PSYCHOLOGICAL ANALYSIS OF THE BRAINWASHING OF AMERICAN CIVILIAN PRISONERS BY THE CHINESE COMMUNISTS (1961).

58. *Katz v. Superior Court*, 73 Cal. App. 3d 952, 972, 141 Cal. Rptr. 234, 246 (1977).

59. There are no statutes *per se* which address brainwashing or coercive persuasion. Former section 1751 of the California Probate Code, which enumerates reasons for the appointment of a conservator, states in pertinent part:

Upon petition . . . the superior court . . . shall appoint a conservator of the person and property or person or property of any adult person who . . . 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 decisioning persons* (emphasis added).

1957 Cal. Stats., ch. 1902, § 1 (current version at CAL. PROB. CODE § 1751 (West 1979)). As will later be shown, the conservatorship statute has been relied on by deprogrammers to enable them to remove the effects of the cult indoctrination while under court imposed protection. See notes 92-97 & 104-07 *infra*, and accom-

curb such activities reflects both the inability to define what is a very subjective concept and the reluctance to make a conclusive determination on the question of whether the exercise of one's free will has been deprived.

The latter aspect is further compounded inasmuch as one must not lose sight of the free exercise clause of the first amendment. Any intervention in the indoctrination process may actually constitute an interference with a willing participant's voluntariness. If an individual freely submits to the indoctrination process, it would then be difficult to allege coercive persuasion regardless of how extreme or unconventional the teachings of the religion might be.⁶⁰ Cult opponents would quickly point out, however, that if a disciple has been effectively programmed, he would not be cognizant of whether he or she has been harmed or has become a product of a deceptive behavior modification program.⁶¹ Therefore, it becomes a "righteous objective," at least in the eyes of those favoring deprogramming, to peaceably dissuade⁶² the converts and enable them to have the opportunity to decide

panying text. However in *Katz v. Superior Court*, 73 Cal. App. 3d 952, 141 Cal. Rptr. 234 (1977) such a procedure was declared unconstitutional.

There has been a resolution introduced in Pennsylvania which is designated to "ascertain whether or not the Unification Church or other entities mentioned above recruit and/or retain their membership by way of techniques which undermine voluntary consent, involve the use of duress, interfere with free will or otherwise involve improper mind control practices . . ." Pa. H. Res. 20 (1979).

60. *Board of Education v. Barnette*, 319 U.S. 624, 642 (1944); *Cantwell v. Connecticut*, 310 U.S. 296, 303-04 (1940); *Reynolds v. United States*, 98 U.S. 145, 166 (1878); *Watson v. Jones*, 80 U.S. 679 (13 Wall. 1871). See note 5-6 *supra* on issue of voluntariness as addressed by the recent resolution to initiate an investigation into mind control techniques. See PA. H. RES. No. 20 (1979).

61. 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 (italics added).

People v. Murphy No. 2012/76 (N.Y. Sup. Ct. March 16, 1977). A grand jury had indicted two Hare Krishna leaders for first degree unlawful imprisonment. The charges were dismissed.

62. In *Weiss v. Patrick*, 453 F. Supp. 717, 722 (D.R.I. 1978) the defendant deprogrammer was said to

have the right which all citizens have, to peaceably dissuade Plaintiff of her particular religious views, provided they use no form of unlawful compulsion to effect their purpose To hold otherwise would be to deny Defendants their First Amendment right to freedom of speech, one of the very rights which Plaintiff herself asserts as the basis of her civil rights claim.

The First Amendment does not act as a barrier to religious expression. It safe-

whether they have been the victim of deceptive mind control practices.

This may seem very equitable, but the cults raise some legitimate questions as to the peacefulness of the persuasion, and whether the disciple has voluntarily submitted to the deprogramming.

IV. DEPROGRAMMING: HAS IT BEEN JUSTIFIED?

The facts surrounding a typical deprogramming scenario⁶³ reveal two or three individuals working in concert to execute a carefully thought out plan whereby an unsuspecting devotee is forcibly placed in an awaiting car which is destined for a location unlikely to be discovered by the cult. Upon arrival, the convert is generally placed in a room which can be locked only from the outside. It is not uncommon to find windows boarded up so as to prevent escape, and large amounts of food on hand to minimize the necessity to travel to and from the site. Once inside, the convert typically attempts either to ignore the exhortations of the deprogramming team or begins chanting or reciting biblical passages in order to reestablish his or her ties with the cult.⁶⁴ Barring escape, the deprogramming generally lasts three to five days,⁶⁵ primarily consisting of an unrelenting discourse on why association with the cult should be terminated. According to deprogrammers, they have enjoyed excellent success⁶⁶ in "en-

guards the right to exchange ideas. *Rowan v. United States Post Office Dept.*, 397 U.S. 728, 736 (1970).

63. For differing accounts of a deprogramming session see C. EDWARDS, *CRAZY FOR GOD* (1979); T. PATRICK & T. DULACK, *LET OUR CHILDREN GO!* (1976); Harrison, *The Struggle for Wendy Helander*, *MCCALL'S* Oct., 1979, at 87. Even the Columbia Broadcasting System has filmed an actual deprogramming attempt as it was in progress. See *THE CALI-COMMISSION ON YOUTH*, *supra* note 7, at 83.

64. In order to re-instate one's faith, or to prevent it from faltering under pressure designed to do otherwise, the cults instruct their members to reinforce their thought processes and eradicate all doubting influences. The Hare Krishna are instructed to chant mantras. The Way International accomplishes this through a process of "speaking in tongues." The Divine Light Mission engages in Transcendental Meditation and the Unification Church performs a similar process known as cantering. *Hearings on the Cult Phenomenon*, *supra* note 8, at 47-48.

65. T. PATRICK & T. DULACK, *LET OUR CHILDREN GO!*, 24 (1976).

66. Ted Patrick, a former Special Representative for Community Relations in San Diego and Imperial Counties, is one of the most ardent supporters of deprogramming and has been a frequent witness at government inquiries into the cult phenomenon. He claims to have deprogrammed 1,500 individuals. Harrison, *The Struggle for Wendy Helander*, *MCCALL'S*, Oct., 1979, at 91. Joe Alexander, a former car salesman, claimed 600 deprogrammings with only six of those returning to the cult. Sage, *The War on the Cults*, *HUMAN BEHAVIOR* 40, 44 (Oct. 1976). There have been some allegations that deprogramming has evolved into a financially successful business. It is believed that fees for deprogramming may run as high as \$25,000. LeMoult, *Deprogramming Members of Religious Sects*, 46 *FORDHAM L. REV.* 599 (1978). Others estimate the cost between \$10,000 and \$14,000 plus ex-

couraging" the individual to renounce his faith. However, the number of lawsuits in which the deprogrammers and/or parents have been named as a defendant is indicative that not all were consenting subjects. This section will provide an overview of the case law centering on this controversy and will examine several suggested remedies.

If the foregoing scenario were juxtaposed with the alleged proselytization methods of the cults, some striking comparisons⁶⁷ might be made. A conclusion which would certainly beckon debate is that both sides might be guilty of the very same improprieties that form the basis of their respective allegations. A less than tenuous issue for the court to address, were it not lacking legislative or judicial pronouncement,⁶⁸ would regard the question of which party is guilty of brainwashing or behavior modification. Instead, the courts have heard charges of conspiracy, kidnapping, false imprisonment, intentional infliction of emotional distress, and assault and battery. The defendants,⁶⁹ for the most part, have been the deprogrammers and/or the parents who enlisted their assistance.

The first judicial examination of the forcible removal of minors and young adults from religious cults occurred in *People v. Patrick*.⁷⁰ In that case, Ted Patrick was acquitted of unlawful impris-

penses. Kelly, *Deprogramming and Religious Liberty*, 4 CIV. LIB. REV. 23, 26 (July/Aug. 1977). One family spent \$40,000 on deprogramming costs and legal fees. N.Y. Times, May 30, 1976, § 6 (Magazine), at 8. Originally, Ted Patrick would ask his clients to pay only his expenses. He remarked in a 1975 article that he took \$10,000 a year for his involvement. *Prison for Patrick?*, TIME June 16, 1975, at 70. Another source of support for deprogramming has been donations. A rehabilitation center for deprogrammed persons, The Freedom of Thought Foundation, in Tucson, Arizona, received \$105,000 in donations largely from parents. This center is also a tax-exempt foundation.

67. An analysis of the indoctrination and deprogramming methods may lead one to conclude that such aspects as isolation, exacting daily regimens, physical deprivations, the exploitation of guilt, and repetitive exhortations of doctrines are common to both. For expanded discussion on these procedures, see note 57 *supra* and accompanying text. Hence, it may seem paradoxical that one group becomes enraged at the other for their course of conduct.

68. See note 56 *supra* and accompanying text, *People v. Iskcon, Inc.*, Nos. 2114-76, 2012-76 (N.Y. Sup. Ct.) 123 CONG. REC. H 8683 (daily ed. Aug. 4, 1977) (Remarks of Rep. Gimino).

69. In *People v. Murphy*, No. 2021-76, slip op. (Sup. Ct. N.Y. Mar. 16, 1977); *People v. Conley*, Crim. No. 2114-76, slip op. (Sup. Ct. N.Y. Oct. 1, 1976). The defendants were leaders of a cult. In each instance the indictment was dismissed on the basis of insufficient evidence.

70. No. N-320779 (Crim. Ct. N.Y. Aug. 6, 1973); See also LeMoult, *Deprogramming Members of Religious Sects*, 46 FORDHAM L. REV. 599, 625-27 (1978). It is in-

onment as the prosecution failed to disprove the applicability of the asserted justification defense.⁷¹ The reliance upon a justification defense is an admission that the defendant did engage in the conduct. It has proven invaluable to deprogrammers, such as Ted Patrick, and has formed the basis of their strategy.⁷² This was effectively illustrated in *United States v. Patrick*,⁷³ where the Court of Appeals for the Ninth Circuit considered the following questions before dismissing the government's appeal on the basis of the double jeopardy clause.⁷⁴ "One, may a parent legally justify kidnapping an adult child upon necessity grounds. . . ." ⁷⁵ In answering affirmatively, the court acknowledged the defense of necessity,⁷⁶ but noted that "the availability of the defense turns

interesting to note that the author, John B. LeMoult, represented Daniel Voll, the Yale student who was subjected to the deprogramming. N.Y. Times, Aug. 7, 1973, at 15, col. 4.

71. N.Y. PENAL LAW § 35.10 (McKinney 1975) states in pertinent part:

The use of physical force upon another person which would otherwise constitute an offense is justifiable and not criminal under any of the following circumstances:

1. A parent, guardian or other person entrusted with the care and supervision of a person under the age of twenty-one or an incompetent person, . . . may use physical force, but not deadly physical force, upon such person when and to the extent that he reasonably believes it necessary to maintain discipline or to promote the welfare of such person.

72. From my research into the subject, I was reasonably well assured that a parent would not be prosecuted for kidnapping his own child, especially if the child was a minor. With that in mind, I began to formulate the basis of my approach to seizing the children and deprogramming them. The first rule was always to have at least one of the parents present when we went to snatch somebody. The parents would have to make the first physical contact; then, no matter who assisted them afterwards, it would be the parents who were responsible. And if a parent was not committing a crime by seizing his or her child, no one else could be considered an accessory to a crime.

T. PATRICK & T. DULACK, LET OUR CHILDREN GO! 65 (1976).

73. 532 F.2d 142 (9th Cir. 1976).

74. Ted Patrick was acquitted by the trial court of violating the Federal Kidnapping Act which states in pertinent part: "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 . . . shall be punished by imprisonment for any term of years or for life." 18 U.S.C. § 1201 (1976) (emphasis added). Cf. *Miller v. United States* 138 F.2d 258 (8th Cir. 1943), *cert. denied*, 320 U.S. 803 (1941), where it was held that it was possible for a parent to be convicted of kidnapping his or her own child where that child has a legal right to freedom.

75. 532 F.2d at 145.

76. Defendant Patrick based his defense on necessity or a "choice of evils" defense:

(1) Conduct which the actor believes to be necessary to avoid an evil to himself or to another is justifiable, provided that:

- a) The evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged; and
- b) neither the Code nor other law provides exceptions or defenses dealing with the specific situation involved; and
- c) a legislative purpose to exclude the justification claimed does not otherwise plainly appear.

upon the parent's reasonable cause to, and that they do in fact have sufficient belief that the child . . . was in imminent danger."⁷⁷ The court then queried whether such a defense was transferable to an agent of the parents and held "[w]here parents are, as here, of the reasonable and intelligent belief that they were alone not physically capable of recapturing their daughter from existing, imminent danger, then the defense of necessity transfers or transposes to the constituted agent, the person who acts upon their behalf under such conditions."⁷⁸ A caveat which should be noted is that the defense of necessity will be precluded if the child has been emancipated.⁷⁹ As a result, parents have alternatively resorted to conservatorship proceedings⁸⁰ to give a deprogrammer the opportunity to remove the effects of the indoctrination process.

The Colorado Court of Appeals in *People v. Patrick*⁸¹ held that the trial court properly refused instruction⁸² on the "choice of evils" defense since there was no showing of imminent public or private injury to the converts requiring emergency action. Although Patrick was acquitted of the conspiracy and second degree kidnapping charges, he was convicted of false imprisonment⁸³ for

MODEL PENAL CODE § 3.02 (Tent. Draft No. 8, 1958).

77. 532 F.2d at 145.

78. *Id.*

79. Emancipation is primarily a termination of parental rights and responsibilities. The parent's conduct and intent are particularly important. Emancipation may occur by implication of surrounding circumstances as well as by operation of law. *Martinez v. Southern Pacific Co.*, 45 Cal. 2d 244, 288 P.2d 868 (1955); *Gillikin v. Burbage*, 263 N.C. 317, 139 S.E.2d 753 (1965); *Niesen v. Niesen*, 38 Wis.2d 599, 157 N.W.2d 660 (1968). Attaining the age of 21 is not *ipso facto* emancipation, however. The child may at that age emancipate himself by separating from his parents and refusing all assistance in the form of care, custody and earnings.

80. See notes 93, 102-07 *infra*, and accompanying text.

81. 541 P.2d 320 (Colo. App. 1975).

82. The appellate court refused to review the alleged error in failing to give the jury instruction because counsel for the defendant did not register an objection at the time of trial.

83. False imprisonment is a lesser included offense of the charge of second degree kidnapping. The defendant did not object to this jury instruction either. The primary difference between kidnapping and false imprisonment is that the former is the unlawful detention of the individual by force or fraud and the victim is thereafter carried away. To constitute false imprisonment one need only show an unlawful detention against the victim's will. See CAL. PENAL CODE § 207 (West 1970); *Cf.* California's child stealing statute CAL. PENAL CODE § 278 (West. Supp. 1979). For jurisdiction of a criminal action constituting kidnapping, false imprisonment, seizure for slavery, child stealing, or abduction, see CAL. PENAL CODE § 784 (West Supp. 1979). Ted Patrick was also convicted by false imprisonment in Orange County, California for the attempted deprogramming of a Hare Krishna wo-

detaining the two women for two days. As one legal commentator stated, "The obvious reason for this failure to prosecute is that the "purpose" of deprogramming-kidnapping is not one of the traditional purposes, *i.e.*, ransom, use of a hostage, white slavery, or sexual abuse."⁸⁴ If this is an accurate assessment of the government's attitude toward the prosecution of kidnapping then a serious threat has been posed to the concept of voluntariness⁸⁵ as it relates to the free exercise of religion.

In *Weiss v. Patrick*,⁸⁶ the plaintiff, a twenty three year old member of the Unification Church filed an action under 42 U.S.C. § 1985(3)⁸⁷ alleging a conspiracy to deprive her of the freedom of speech, religion, association, travel and her right to be secure in her person. She testified, "that defendant Patrick told her she was out of her 'right mind,' that she had been deprived of her free will, and was worshipping Satan. She was advised that they were going to take as long as it was necessary to force her to change her mind."⁸⁸ Having realized that the defendants were prepared to use force if necessary, she decided to feign the effects of a successful deprogramming. The court, somewhat suspicious of the plaintiff's testimony,⁸⁹ found no improper action or coercion on behalf of the defendant. The complaint was dismissed⁹⁰ and it

man who was confined for several hours. Patrick was sentenced to sixty days in jail and three years on probation. L.A. Times, June 6, 1975, at 31, col. 2. His sentencing in California violated the terms of his probation imposed by the Colorado Court of Appeals. Bail was set at \$25,000 and Patrick was then sentenced to eight months in jail. T. PATRICK & T. DULACK, *LET OUR CHILDREN GO!* (1976). Judgments have been recovered in suits against deprogrammers in *Peterson v. Sorlien*, No. 727258 (4th Dist. Minn., Dec. 5, 1977) (a \$10,000 judgment for intentional infliction of emotional distress); and *Helander v. Patrick*, No. 159062 (Conn. Super. Ct. Sept. 8, 1976). For information on these cases see LeMoult, *Deprogramming Members of Religious Sects*, 46 *FORDHAM L. REV.* 599, 636, n.290 (1978).

84. LeMoult, *Deprogramming Members of Religious Sects*, 46 *FORDHAM L. REV.* 599, 629 (1978).

85. In *Chatwin v. United States*, 362 U.S. 455, 457 (1946) the defendants, three members of the Mormon faith, persuaded a 15 year old mentally retarded girl that a celestial or "plural marriage" was essential to her salvation and as a result she "entered into a cult marriage" with defendant Chatwin, a 68 year old widower. The State of Utah declared her a ward of the court upon learning that she was pregnant. However, two months later she was convinced by the defendant to consummate her marriage legally and to run away with Chatwin. She was transported from Utah to Juarez, Mexico where the civil ceremony was performed and then resided with the defendant for two years in Arizona. It was contended that the girl was decoyed from parental authority in light of her diminished mental capacity. The court, however, reversed the federal kidnapping charges as there was no willful intent to confine her against her will through either force, fear, or deception.

86. 453 F. Supp. 717 (D.R.I. 1978).

87. 42 U.S.C. § 1985(3) (1976).

88. 453 F. Supp. at 719.

89. *Id.* at 721.

90. The complaint was dismissed on the basis that plaintiff had failed to estab-

was stated, "[a]bsent a situation where one is truly a captive listener, the balance of the scales tips in favor of those wishing to communicate." The solution then for a listener whose sensibilities are injured by offensive or insulting speech is simply to close his or her ears or to depart.⁹¹

In *Baer v. Baer*,⁹² the plaintiff, a member of the Unification Church, filed an action against his parents and the Freedom of Thought Foundation⁹³ for violation of sections 1983, 1985(3) and 1986 of the Civil Rights Act.⁹⁴ In order to state facts sufficient to constitute a cause of action under 42 U.S.C. § 1583, one must show that "the defendants have acted under color of state law or authority, and have deprived the plaintiff of a right, privilege or immunity secured by the Constitution and the laws of the United States."⁹⁵ It was contended that the defendant acted in concert with state officials because a state court had appointed the parents as conservator. It was after the court issued the order that the plaintiff was "abducted" by the Freedom of Thought Foundation and was taken into custody with the assistance of the local police.⁹⁶ The district court stated that it was well established that

lish an infringement of her civil rights where no evidence of compulsion to renounce her tenets was found.

91. Such a statement reflects the defendant's right to peaceably dissuade the plaintiff of the newly acquired faith. See note 62 *supra*.

92. 450 F. Supp. 481 (N.D. Cal. 1978).

93. The Freedom of Thought Foundation contended that it was in the "legal deprogramming" business. *Id.* at 485. It was legal insofar as they did not abduct the cultist until the parents possessed a court order appointing them conservator of their son. The foundation is a rehabilitation center that is staffed by a psychologist and two attorneys. The rules of the center are as follows: it prohibits all sexual activity between unmarrieds, smoking is discouraged, wine is served at some meals, bible reading is discouraged, but non-sectarian prayers may be read. The most significant feature is that the participants are free to leave the center after thirty days. L.A. Times, Jan. 3, 1977 at 1, col. 1. Interestingly, this thirty day period coincides with the duration of most orders appointing a conservator; otherwise contempt sanctions would be imposed on the foundation. Nevertheless the cults do not have a similar option for its recruits. Deprogrammers note that even if the disciples were free to leave after a certain period of time, they would choose to remain. This choice would be tainted as it may be a decision which is the product of brainwashing.

94. 42 U.S.C. §§ 1983, 1985(3), 1986 (1976).

95. 450 F. Supp. at 485.

96. The police were acting in good faith to insure that the court order was properly implemented. The court surmised that the police would be liable if it could be shown that they acted in bad faith and were instrumental in the actual abduction. *Id.* at 489-90. Ted Patrick was involved in one deprogramming where it is implied that were it not for an intentional lack of police involvement, the abduction would not have been possible. T. PATRICK & T. DULACK, LET OUR CHILDREN

“the fact that in the deprivation resort was had to the courts of the state does not supply the necessary state action.”⁹⁷ The court also rejected all arguments contending that a joint participation or conspiracy method would establish that the defendant acted under color of state laws. However, there were no allegations “that the private defendant and the public official (neither police or judge) acted with a common understanding or ‘meeting of the minds’ to deprive plaintiff of his constitutional rights.”⁹⁸

Although the federal district court did not find a factual basis to state a claim under 42 U.S.C. 1985(3),⁹⁹ the decision in *Baer* is significant in that the complaint was recognized as alleging sufficient facts to establish a class-based *animus* and that a religious group may be considered a class for purposes of 1985(3).¹⁰⁰

This dispute has many of the earmarks of a case involving racial discrimination. . . . A fair and reasonable reading of the complaint demonstrates the Foundation singled out Lawrence Baer because of his status as a member of such a group, namely The Unification Church, and not because of his individual beliefs. In other words, his class status is not created by the mere fact plaintiff possesses the right to freedom of religion, as do all persons, but rather by the fact that he is a member of a fringe or minority religious group. It is defendant's abhorrence of his group that motivates them to deprogram individuals such as plaintiff. For those reasons, and

Go! 153-54 (1976); see also CALIFORNIA COMMISSION ON YOUTH, *supra* note 7, at 83. The action of the police has at times been characterized as state action and would thus serve as an adequate basis to allege a deprivation of one's civil rights, 42 U.S.C. § 1983 (1976). One commentator suggests that state action has been prevalent throughout the deprogramming controversy. Initially, state action was considered passive as police refused to intervene in abductions sensing it to be a family matter. Prosecutors would decline to prosecute admitted abductors and kidnapers, and grand juries would refuse to indict such individuals. With the use of conservatorship proceedings and writs of habeas corpus, state action was termed more active and overt. Kelley, *Deprogramming and Religious Liberty*, 4 CIV. LIB. Rev. 23, 27 (July/Aug. 1977).

97. 450 F. Supp. at 486;

Because the courts are open to all persons, the state confers no power upon any one individual that another does not possess. . . . In petitioning the Marin County Superior Court for an *exparte* conservatorship order defendants were exercising a power not conferred by statute upon a select few but upon all citizens of the state.

Id. Accord, *Brown v. Dunne*, 409 F.2d 341 (7th Cir. 1969). If a judge overstepped his authority or was engaged in conduct outside the power of his judicial office, then there may be grounds to state a cause of action.

98. 450 F. Supp. at 487.

99. The court states the requisite elements which must be shown in order to state a claim of a private conspiracy to interfere with an individual's civil rights based on 42 U.S.C. § 1985(3) (1976).

(1) A conspiracy to go in disguise on the highway or on the premises of another; (2) for the purpose of depriving a person or class of persons of the equal protection of the laws; or of equal privileges and immunities under the laws; (3) an overt act in furtherance of the conspiracy resulting in; (4) injury to the person or to property or deprivation of any of the rights or privileges of a citizen.

450 F. Supp. at 489 (citations deleted).

100. *Id.* at 490.

because the legislative history does not indicate otherwise, this court concludes that religious discrimination can be encompassed by the terms of 1985(3).¹⁰¹

The above supports the contention that deprogrammers do not differentiate between cults. All such groups are deemed bad and must be dealt with in a similar fashion.

In *Baer*, the plaintiff described the conservatorship statute "as a 'cover' for the commission of tortious conduct by which defendants 'knowingly and fraudulently misused the conservatorship/guardianship process' and that defendants' 'ulterior purpose' in so misusing state process was to obtain custody of plaintiff . . . and subject him to brainwashing and mind control in an effort to dissuade him of his religious beliefs."¹⁰² The California Court of Appeal, subsequent to Dr. and Mrs. Baer's appointment as conservator, held in *Katz v. Superior Court*¹⁰³ that deprogramming conducted by means of a conservatorship order violated the conservatee's right to religious freedom. The court further held that section 1751 of the California Probate Code was too vague:

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 fields 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.¹⁰⁴

The court reasoned that the intended application of the statute was to insure the protection and management of the conservatee's property. The statute was amended¹⁰⁵ to reflect those intentions. Thus, the deprogrammers were dealt a severe setback, insofar as being able to conduct *legal* deprogrammings. However,

101. *Id.* at 491.

102. *Id.* at 487. The American Civil Liberties Union is a little more poignant in their remarks. "The use of conservatorship laws to deprogram someone is the most serious problem of religious liberty to this country today." N.Y. Times, Jan. 1, 1978, at 24, col. 1.

103. 73 Cal. App. 3d 952, 141 Cal. Rptr. 234 (1977). The parents of five adult children who were members of the Unification Church obtained court orders appointing themselves as the conservators of their children. The application for appointment of a temporary conservator which stated the grounds is set out in its entirety. *Id.* at 962 n.7; 141 Cal. Rptr. at 239 n.7. See also N.Y. Times, June 20, 1977, at 18, col. 4; The Alamo Christian Foundation sought a writ of protection from the Arkansas Supreme Court to set aside a thirty day custody order over four of its adult members, N.Y. Times, July 1, 1977, at 8, col. 6. The order was set aside.

104. *Id.* at 870, 141 Cal. Rptr. at 274.

105. See CAL. PROB. CODE § 1751 (West Supp. 1974).

a Vermont senate committee recommended the adoption of legislation which would allow *ex parte* appointments of temporary guardians.¹⁰⁶

Perhaps if the proceeding was not of an *ex parte* nature the outcome in *Katz* would have been different. However, proponents of the conservatorship/guardianship method would likely remind the court that a full hearing would be futile in that the devotee would naturally argue in opposition to the order due to his "brainwashed" state of mind. Rebuttal might suggest that the only way to show an absence of mind control is to renounce the religion altogether. Thus, an impasse is reached. If the courts were both able and willing to supervise¹⁰⁷ the deprogramming to insure that the procedure is conducted in a peaceable manner with the ultimate goal of allowing the individual to choose his or her own course of action then the perception of deprogramming would be somewhat less tainted.

The conservatorship proceeding has not been the only remedy suggested to resolve the proselytization-deprogramming dispute. Professor Delgado¹⁰⁸ submits that there are essentially two types of remedies: preventive and post-induction. The latter has been discussed as it primarily encompasses the conservatorship and deprogramming proceedings as well as the tort actions of false imprisonment, assault and battery and the intentional infliction of emotional distress. However, the former offers some novel yet debatable solutions. It should be noted that since the source of the problem lies with the individual's association with the cult, the proposed remedies, being preventive in nature, could be construed as being somewhat stacked against the cult where they provide all potential recruits with the opportunity to terminate their relationship if they so desire. The first recommendation is that all proselytizers identify¹⁰⁹ themselves as such in addition to their affiliation. The constitutionality of this theory is suspect

106. See THE VERMONT REPORT, *supra* note 7, at 5.

107. The supervision might be in the form of court appointed psychologists or psychiatrist present during the deprogramming procedure. However it is no secret that the court does not like to involve itself in a supervisory capacity as its impartiality becomes jeopardized and its workload would increase significantly.

108. Richard Delgado, a professor at the University of Washington School of Law, has written articles dealing with the subject of coercive persuasion as it relates to religious proselytizing, Delgado, *Religious Totalism: Gentle and Ungentle Persuasion Under the First Amendment*, 51 S. CAL. L. REV. 1 (1977), [hereinafter cited as *Religious Totalism*], and as a defense of a "brainwashed" defendant, Delgado, *Description of Criminal States of Mind: Toward a Defense Theory for the Coercively Persuaded ("Brainwashed") Defendant*, 63 MINN. L. REV. 1 (1978). He has also testified at the information meeting on the cult phenomenon held in Washington on February 5, 1979. See *Hearings on the Cult Phenomenon*, *supra* note 8, at 57.

109. *Religious Totalism*, *supra* note 108, at 73.

particularly if one examines the case of *Wulp v. Corcoran*¹¹⁰ in which the court held that the requirements that a newspaper vendor procure and wear a badge is unconstitutional in the absence of an important government interest. The court's rationale is based on the feeling that the interest advanced is outweighed by the consequent fear of reprisals that forced identification may entail. In light of the hostility that the subject of religion sometimes provokes,¹¹¹ the likelihood of such reprisals seems great.

A second preventive measure is the inclusion of a cooling-off period¹¹² in the indoctrination process whereby prospective members are required to leave the cult to reflect on their experience and then decide whether to return to the group for additional indoctrination. Professor Delgado admits that such a measure would be disruptive of the indoctrination process,¹¹³ but more importantly it is challenged on the basis that it would amount to legislative intermeddling and would be violative of the establishment and free exercise clauses as well as the freedom of association.¹¹⁴

Perhaps the most interesting of these prophylactic standards is the "living will." The following is an example of one such will as subscribed by a "Moonie" during an attempted deprogramming:

If in any event the Unification Church or any other cult or sect psychologically kidnaps me back I am requesting immediate action by the authorities to come and physically remove me from the cult, as, regardless of what I may say or do, I will not be acting of my own free will.¹¹⁵

110. 454 F.2d 826 (1st Cir. 1972).

111. 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 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.

Cantwell v. Connecticut, 310 U.S. 296, 310 (1940).

112. See *Religious Totalism*, *supra* note 108, at 74.

113. *Id.*

114. This belief reflects the position of the American Civil Liberties Union as stated by their director, Jeremiah S. Gutman. See *Hearings on the Cult Phenomenon*, *supra* note 8, at 71.

115. Harrison, *The Struggle for Wendy Helander*, *McCALL'S*, Oct. 1979, at 88. One month after being "rescued" by her parents Wendy Helander returned to the "Moonies." The parents then sought a writ of habeas corpus alleging the requisite physical and involuntary restraint. The Unification Church, on the advice of their counsel, refused to produce her in court. Despite testimony from several ex-Moonies that they were thankful for their respective deprogrammings, the case was dismissed. *Id.* at 88-89. See *Helander v. Salonen*, Civ. No. HC7-75 (Sup. Ct.

Although this device may guard against the temptation of re-joining the cult, its purported significance might reflect the following: "I now know what the truth is, and if I should ever change my mind, please forcibly remove me from the group I may hereafter join and bring me back to the truth as I now perceive it."¹¹⁶ It is questionable whether the "living will" is an accurate indication of the subscriber's intent. One must remember that the strain of the recruitment and deprogramming processes is likely to leave many in a confused state with their only desire being an end to the whole ordeal. In addition to these reasons, the living will may deprive the cult of an equal right to peaceful persuasion as derived from the freedom of speech.

A final preventive remedy would be the licensing of all persons qualified to engage in the legitimate use of behavior modifications techniques. Any violation of such a restriction would constitute not only practicing psychiatry or psychology without a license,¹¹⁷ but would be tantamount to an infringement on the right to privacy.

The situation as it presently stands is undoubtedly an exasperating experience for all those closely concerned. Deprogrammers contend that the free exercise of religion is not at issue, but rather the source of their antipathy are the methods used to entice membership and belief. It is the position of this author that deprogramming is as bad as the illness itself. The onus is upon the courts and the legislature to take a stand so as to prevent the perpetration of any further misdeeds. Whatever solution is proposed, it is essential that it fall within the parameters as set forth in *Sherbert v. Verner*.¹¹⁸

Any further escalation of this already war-like conflict is certain to spell defeat for one institution. That institution is not the church but rather the nuclear families of those involved. Perhaps it was this concern which motivated Judge Vavuris, who sat at the trial court level in *Katz v. Superior Court*,¹¹⁹ to remark:

Family Div., D.C., Sept. 23, 1975). The parents later "rescued" their daughter a second time. However, she again returned to the church, whereupon lawsuits were initiated which resulted in a judgment against the parents for \$60,000. A \$9,000,000 suit has been filed against the deprogrammers and Citizens Engaged in Reuniting Families, Inc. [hereinafter cited as CERF], an organization comprised of parents whose primary purpose is to "rescue" children from the cults.

116. This was the statement of Jeremiah S. Gutman in rebuttal to the recommendations submitted during the information meeting on the cult phenomenon. See *Hearings on the Cult Phenomenon*, *supra* note 8, at 72.

117. See *Religious Totalism*, *supra* note 108, at 76. Many states have such statutes which prohibit the unauthorized practice of psychiatry and psychology. Any violation would be considered a misdemeanor. *Id.* at 76, n.386.

118. 374 U.S. 398 (1963); see notes 15 & 16 *supra* and accompanying text.

119. 73 Cal. App. 3d 952, 141 Cal. Rptr. 234 (1977).

'It's not a simple case. As I said, we're talking about the very essence of life here, mother, father, and children. There's nothing close in our civilization. This is the essence of civilization. The family unit is a microcivilization. That's what it is. A great civilization is made of many many great families, and that's what's before this court. It's not the regular run-of-the-mill case that involves some money, or some kind of damage. It is the very essence of life.'¹²⁰

The family unit and its rights and privileges has been the subject of much litigation.¹²¹ The control and custody of a child by his or her parents has been determined to be a constitutionally protected right.¹²² It has even been suggested that there is a fundamental right to family integrity.¹²³ Thus, in assessing the competing interests, one must take into account the possible ramifications regarding the family structure that might result from this display of overt aggression.¹²⁴

V. THE UNDERLYING GOALS AND PURPOSES—ARE THEY RELIGIOUS?

Upon examination of the facts and circumstances surrounding the deprogramming controversy, it becomes apparent that numerous cults have been engaged in other activities that could possibly jeopardize their status as religious institutions and deprive them, not only the protection of the first amendment, but also of the

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

121. In *May v. Anderson*, 345 U.S. 528, 533 (1953), the Court held "the Fourteenth Amendment liberty included a parent's immediate right to care, custody, management and companionship of minor children." In *Prince v. Massachusetts*, 321 U.S. 159, 166 (1944) it was stated: "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." The Court in *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925), added that the parents have a liberty interest in directing the upbringing and education of their children. In *Reynolds v. United States*, 98 U.S. 145 (1898), the Court upheld an infringement of a Mormon's practice of polygamy as the viability of the family institution was threatened. *Contra*, *Schupp v. Unification Church*, 435 F. Supp. 603 (D. Vt. 1977), (parents sought the removal of their adult daughter from the Unification Church alleging various wrongs had been committed by the organization and that the daughter was incompetent to make any important decisions. The district court held that there was no right to recover for the alienation of an estranged adult child's affections.).

122. *Newton v. Burgin*, 363 F. Supp. 782, 785 (W.D.N.C. 1973).

123. *Roe v. Connecticut*, 417 F. Supp. 769 (M.D. Ala. 1976); *Alsager v. District Court of Polk Cty.*, 406 F. Supp. 10, 15 (S.D. Iowa 1975).

124. New members of the Children of God were taught at the outset that they must hate their parents. Cult leadership advocated physical violence, secreting of children from their parents, and the monitoring of all mail and phone conversations if it facilitated total alienation of the child from his family. THE LEFKOWITZ REPORT, *supra* note 7, at 20-24, 42-44.

power to influence and to proselytize new members. Such a consequence would undoubtedly have a disturbing impact on their day to day operations, possibly to the extent of rendering the group incapable of sustaining itself.

Perhaps feeling powerless to investigate such a highly subjective issue as deprogramming, various legislatures and government agencies have directed their concern toward an examination of alleged questionable practices. A probe of this nature would simultaneously elucidate on the ultimate issue of whether some of these groups have in fact been operating only under the guise of religious freedom. A categorization of all the activities to be examined would be difficult at best. For purposes of organization, however, this section will primarily focus on the cult's accumulation of wealth and the underlying beliefs and principles which induce their involvement in practices of a secular and sometimes illegal nature.

A. Accession to Wealth

It is not an uncommon sight to see members of various cults standing on city street corners or airport terminals seeking donations or selling their literature. This has been a lucrative practice that has sustained numerous groups and has enabled them to meet their operating expenses. Although some cults are more demanding¹²⁵ of their members than others, most view long working hours as a pre-requisite.¹²⁶ Some of the methods utilized have re-

125. In *Turner v. Unification Church*, 473 F. Supp. 367 (D.R.I. 1978), *aff'd*, 602 F.2d 458 (1st Cir. 1979), the plaintiff alleged that she was induced into joining the church and was forced to work long hours in exchange for food and shelter. She claimed that she was held in peonage and involuntary servitude in violation of 18 U.S.C. §§ 1581 & 1583 (1970). The court recognized that the free exercise clause did not immunize the church from such causes of action. "The Unification Church cannot seek the protection of one constitutional amendment while it allegedly deprives citizens the protection of other constitutional guarantees." *Turner v. Unification Church*, 473 F. Supp. at 372. However, relief was denied as plaintiff failed to state facts sufficient to constitute a cause of action and there was no indication that Congress intended to award damages for suits filed under the aforementioned causes of action. See Letter from Benjamin R. Civiletti, Assistant Attorney General to Representative Giaimo, 123 CONG. REC. H8683 (daily ed. Aug. 4, 1977). The Turner decision raises speculation that churches may impose inordinate demands in regard to solicitation on members, especially young children. It is interesting to note that included among the occupations prohibited to minors under age sixteen are begging and peddling. However, such prohibitions do not apply if the minor is used or is employed by a church. CAL. LAB. CODE § 1308 (West Supp. 1979).

126. According to some ex-members of the Unification Church, "fundraisers are required to fill a quota of \$100 a day, no matter how many hours of work this requires and no matter what ruses they use to sell their wares." Harrison, *The Struggle For Wendy Helander*, MCCALL'S Oct., 1979, at 88. A former member of the Children of God commented before a state senate commission that every member has to solicit at least six hours a day regardless of weather conditions in order to fulfill their quotas. "Most people bring in about \$40 a day and there are about 3,000

sulted in numerous complaints because solicitors are encouraged to use fraud¹²⁷ or to physically restrain and touch unconsenting individuals¹²⁸ until they give a donation. Such tactics have prompted municipalities and state legislatures to enact ordinances and statutes restricting any activities that could be construed as harassment. However, a great number of these restrictions have been declared unconstitutional since they have adversely affected first amendment rights of free speech¹²⁹ without furthering important or substantial government interests.¹³⁰ One restriction frequently imposed was to confine all solicitors to a booth¹³¹ so as to minimize congestion of thoroughfares at public

of them. That will give you some idea of the amount of money they are handling, but the kids don't eat good. If you don't get your literature out and your money in then you're not allowed to eat." THE CALIFORNIA COMMISSION ON YOUTH, *supra* note 7, at 97. Susan Alamo, former member and daughter of the founders of the Alamo Christian Foundation testified that members received inadequate food and medical attention, lived in chicken coops, and were exposed to beatings whereas her parents regularly ate at the finest restaurants. *Id.* at 68. The lack of adequate housing and medical attention may be countered by asserting the protections of health and safety codes. See, e.g., CAL. HEALTH & SAFETY CODE § 310 (West 1979).

127. Unification Church members have admitted that they have "sold candy and dried flowers for a non-existent drug program and non-existent programs for underprivileged children." N.Y. Times, Feb. 19, 1976, at 18, col. 1.

128. The Board of Airport Commissioners in Los Angeles was granted a temporary restraining order against the Hare Krishna for such tactics as obstructing the free movement of airport travellers and the pinning of hand-made flowers on unconsenting individuals. L.A. Times, Feb. 9, 1979, § 2, at 8, col. 4.

129. The United States Supreme Court reversed the conviction of a Jehovah's Witness for breach of peace, finding the arrest to be violative of not only the defendant's guarantee of religious liberty but also his right to free speech. The defendant would play a record describing the literature he was distributing. The record, however, was highly critical of the Roman Catholic faith of which the listeners were members. Upon assessing the hostile environment that was created, he stopped the record and moved elsewhere. The Court examined the methods and circumstances surrounding the incident and determined that there was no nuisance or disturbance of the peace. *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

130. The city's or state's interest must be balanced against the religious "duty" to solicit funds. The interest of the former must be substantial in order to outweigh any restrictive effect on the first amendment, *International Society for Krishna Consciousness of Atlanta v. Eaves*, 601 F.2d 809 (5th Cir. 1979); No compelling public purpose was found to justify a restriction of the religious ritual known as *sanskirtan*, which encompasses the distribution of literature and the solicitation of donations, *United States v. Silberman*, 464 F. Supp. 866 (M.D. Fla. 1979); City policemen were enjoined from preventing public chanting and the solicitation of funds by a religious group, *International Society for Krishna Consciousness v. Conlisk*, 374 F. Supp. 1010 (M.D. Ill. 1973).

131. *International Society For Krishna Consciousness v. Bowen*, 456 F. Supp. 437 (S.D. Ind. 1978), *aff'd*, 600 F.2d 667 (7th Cir. 1979) (The state actually raised six government interests justifying the confining of the Hare Krishnas to the booth, but the court felt that less restrictive alternatives were available which would pro-

gatherings such as state or county fairs. However, the courts were not convinced of the compelling nature of the restrictions when weighed on a balancing scale which considers time, place, or manner.¹³² In *ISKCON v. Bowen*,¹³³ the court affirmed the district court's injunction against any further confinement to a booth of religious members engaged in soliciting. In doing so, the court also accepted the four conditions¹³⁴ imposed on the injunction. These conditions could be interpreted as achieving some of the principal safeguards desired by those concerned with harassment or deceptive practices. The conditions included a requirement that solicitors wear identification cards and not represent their activities as being sponsored by or connected with the fair, and a ban on the touching of unconsenting persons or holding them as a "captive audience" while waiting in line for a performance or attraction. Notwithstanding the proviso, the Krishnas were able to continue their fundraising activities. This of course, was their foremost concern.

Religious cults have also been successful in challenging ordinances which accord a licensor unbridled discretion in the granting or the denying of permits to conduct fundraising activities. The language comprising these regulations have typically been found to be overbroad or vague.¹³⁵ The licensor, in acting without the guidance of well defined procedural safeguards,¹³⁶ might im-

tect the interests); *Contra*, *ISKCON v. Evans*, 440 F. Supp. 414 (S.D. Ohio 1977) (all exhibitions, religious or otherwise, were confined to a booth).

132. An example of a time restriction would be to impose a curfew on all solicitations after 9:00 P.M. The foregoing illustration of confinement of fundraising activities to a booth is typical of a place restriction. The manner that fundraising may proceed might be dictated by a requirement that all solicitors identify themselves. All time, place and manner restrictions which infringe upon fundamental rights and liberties must demonstrate a compelling state interest in order to justify such an intrusion.

133. 600 F.2d 667 (7th Cir. 1979).

134. *Id.* at 669.

135. Mr. Justice Reed opined:

If all expression of religion or opinion, however, were subject to the discretion of authority, our unfettered dynamic thoughts or moral impulses might be made only colorless and sterile ideas. To give them life and force, the Constitution protects their use. No difference of view as to the importance of the freedoms of press or religion exists. They are "fundamental personal rights and liberties".

Jones v. Opelika, 316 U.S. 584, 594 (1942); *McMurdie v. Doult*, 468 F. Supp. 766 (N.D. Ohio 1979); *People v. Fogelson*, 21 Cal. 3d 158, 577 P.2d 677, 145 Cal. Rptr. 542 (1978).

136. In *Freedman v. Maryland*, 380 U.S. 51 (1965) appellant was convicted of showing a film without submitting it for the prior approval of the Maryland State Board of Censors. The Court stated that the statute,

[R]equiring a license before one may exercise his right to expression, must contain four procedural safeguards. The licensor must expeditiously act on a permit. This time period should be specified by statute. The licensor should initiate proceedings for a temporary restraining order and a permanent injunction upon revocation or denial of the permit. If a prior

pose a prior restraint¹³⁷ on the exercise of the first amendment freedoms. The Unification Church has found it more efficient to challenge ordinances of this nature by initiating what is known as a combination suit,¹³⁸ whereby several small municipalities are joined into a single action.

Through the litigation initiated by the Hare Krishnas, the number of public forums now available to religious fundraising has expanded to include airports,¹³⁹ fairgrounds,¹⁴⁰ and government property.¹⁴¹ Notwithstanding these cult successes, the conflict appears to be far from resolution as there are bills currently before the New York¹⁴² and Massachusetts¹⁴³ legislatures, each seeking to regulate some aspect of the solicitation process.

One group,¹⁴⁴ perhaps impatient with the legislative process, has engaged in its own form of self-help by shadowing members of the Krishna movement who are soliciting funds. In trailing the solicitors, the group discourages all potential donors from making

restraint results, it should preserve the status quo for as brief a period as possible. Lastly, a prompt judicial decision should be guaranteed.

ISKCON v. Rochford, 585 F.2d 263, 271-72 (7th Cir. 1978); ISKCON v. Kearnes, 454 F. Supp. 116 (E.D. Cal. 1978).

137. "[A] law subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority is unconstitutional." *Shuttlesworth v. Birmingham*, 394 U.S. 147, 150-51 (1969).

138. The courts have generally been receptive to such suits as it saves time and reduces the cost of litigating several separate actions.

139. *Contra International Society For Krishna Consciousness v. Lentini*, 461 F. Supp. 49 (E.D. La. 1978). An ordinance prohibiting solicitation in the airport was held unconstitutional.

140. *International Society For Krishna Consciousness v. Bowen*, 600 F.2d 667 (7th Cir. 1979). An ordinance confining solicitation to a fairground booth was found unconstitutional.

141. *United States v. Silberman*, 464 F. Supp. 866 (M.D. Fla. 1979). Defendant, in fulfillment of his religious obligation, engaged in solicitation on property under the exclusive jurisdiction of the United States Department of the Interior, was acquitted for knowingly and willfully soliciting donations on federal property without a permit.

142. The bill introduced in New York, although not confining itself solely to solicitation, would require all organizations which engage in solicitations to register with the appropriate state authority and comply with any state request to review financial records pertaining to the fundraising activities. The bill's author expects stiff opposition to both of these proposals. 2 THE ADVISOR, Feb. 1980, at 3.

143. The Massachusetts version is a bill devoted entirely to secular fundraising as implemented by the Unification Church and the International Society For Krishna Consciousness. Mass. S. Res. No. 1828 (1979). See also 1 THE ADVISOR, Aug. 1979, at 3.

144. The Lovingway Pentecostal Church actively interfered with solicitations at an airport in Denver, Colorado. 2 THE ADVISOR, Feb. 1980, at 4.

contributions by characterizing the cult fundraising activity as a "lucrative con game."¹⁴⁵ Although the Krishnas were successful¹⁴⁶ in enjoining this type of interference, it is incidents such as this which breed confrontation and may be indicative of the turbulence which lies ahead. In another showing of discontent with cult solicitation methods, twenty of the nation's major airports have taken steps to restrict solicitation activities, as they await passage of Federal Aviation Administration Abatement bill.¹⁴⁷ One such airport has displayed prominent red, white and blue signs throughout the facility stating, "Religious groups, in an exercise of their First Amendment rights are distributing flowers and literature and soliciting donations. Their activities are not endorsed by the airport."¹⁴⁸ Passive interference of this character will likely pass constitutional muster because it still enables the group to pursue its religious tenets.

Solicitation of donations is probably the primary means of obtaining financial support for many of the religious groups. However, some have augmented their wealth through periodic tithing by its members or through an appropriation of member's assets upon indoctrination into the cult. The latter has served only to exacerbate the already volatile deprogramming issue. Converts regularly transfer all their assets to the cult on either the promise of salvation¹⁴⁹ or for fear of reprisal by their respective idols or gods.¹⁵⁰ These threats are given only in the event the convert appears reluctant to sign a written agreement¹⁵¹ assigning

145. *Id.*

146. The preliminary injunction required the Pentacostals to stay at least ten feet away from the Krishna fundraisers. *Id.*

147. An amendment to the noise abatement bill passed the Senate on May 1, 1979. The amendment required the FAA to consider regulations requiring identification of those soliciting or distributing literature, limitation of individuals engaged in such activities not to exceed a reasonable number to insure free movement and operation of the airport, confinement of solicitation activities to limited areas, and the prohibition of unobtrusive conduct and all sound amplification devices used to assist in the fundraising process. H.R. 2440, 96th Cong., 1st Sess. (1979) (amending 49 U.S.C. § 170 (1970) (as amended)).

148. N.Y. Times, Dec. 22, 1976, at 31, col. 1.

149. A quadriplegic was recruited by the Way International and was allegedly asked to give fifteen percent of a \$1,400,000 settlement he received as a result of a car accident. The Way had promised the convert that he would walk within a year. The same individual later made out a will leaving all his money to the religious group. The Way denied all charges. N.Y. Times, Jan. 23, 1979, at 16, col. 3.

150. "The consequences of holding back money from the movement are the heavy judgments of God—in this case, DEATH (V-5, 10). If you don't want to give all, don't join in the first place (V-4)." THE LEFKOWITZ REPORT, *supra* note 7, at 11 (emphasis added). The quoted material is an excerpt from a "Moses Letter" which is the guiding pronouncement of faith in the Children of God, *see* Nelson v. Dodge, 76 R.I. 1, 68 A.2d 51 (1949) (religious leader obtained a gift by instilling fear in the donor).

151. Illustrative of such an agreement is the following language disclosed from

his material wealth to the group. After the agreement is signed it is not unusual for the group to encourage the members to obtain additional monies from parents or other close relations.¹⁵² This in itself might not be objectionable to the parents, were the money generated for the support and maintenance of their child, but according to one legislative report, the income derived is "directed to the key leaders for their personal use and enjoyment."¹⁵³ Cult opponents contend that the acquisition of this wealth may not be the product of an act of free will as the new adherent is in a state of heightened vulnerability as a consequence of the indoctrination process.

When it was learned that nearly \$2,500,000¹⁵⁴ was found in cash at Jonestown, Guyana, following the mass suicide of members of the People's Temple, and the revelation of an Internal Revenue Service audit that the Church of Scientology had removed nearly \$4,225,000 out of several Swiss Bank accounts, a sum later found on the yacht belonging to the Church's founder,¹⁵⁵ reasonable suspicions are raised as to the source of their accumulations. The findings of the subcommittee organized to investigate Korean-

an investigation of the Children of God. Each new member "promises to give all my goods and income—present and future." THE LEFKOWITZ REPORT, *supra* note 7, at 10. This is supportive of the "forsake all" doctrine, where new disciples must dispense with their material possessions in an effort to foster financial stability for the movement. To insure that the member does not squander or conceal his assets, "[T]he new member is ordered to return to his home usually accompanied by an 'elder', and to withdraw his bank account, gather his personal belongings and bring them back to the COG commune." *Id.* at 11.

152. Members of the Children of God are instructed in special letter-writing classes designed to obtain money and supplies from their parents to run the commune. *Id.* at 12. One parent, a medical doctor, noted that his diabetic son needed immediate medical attention, suggested that he have a checkup. The son, a member of the Hare Krishna, indicated "he would not talk to his father unless his father wrote out a check for \$20,000 to the president of the New York Temple; otherwise, he would have nothing to do with his father." *People v. Murphy*, 98 Misc.2d 235, 238, 413 N.Y.S.2d 540, 542 (1977).

153. This finding was based on the testimony of parents and former members of the Children of God. THE LEFKOWITZ REPORT, *supra* note 7, at 10.

154. THE JONESTOWN REPORT, *supra* note 8, at 441. The report indicated that one possible source of the money was due in large part by the fact that there were 199 Social Security annuitants residing at the South American settlement. This effectively meant that there was \$37,000 per month being contributed to the maintenance of the settlement. *Id.* at 32, 314. This raises the possibility that a portion of the Reverend Jim Jones' estimated \$12,000,000 fortune may in part be derived by possible violation of Social Security regulations. A Social Security annuitant cannot transfer or assign his rights or monies as enumerated by 42 U.S.C. § 407 (1976).

155. 2 THE ADVISOR, Feb., 1980, at 2.

American relations¹⁵⁶ noted numerous financial arrangements involving the Unification Church that permits conjecture that these so-called religious institutions are engaged in activities outside the parameters authorized by their charters which qualify them as a tax exempt institution.¹⁵⁷

An examination of the economic enterprises admittedly¹⁵⁸ affiliated with the Unification Church provides justification for its being characterized as a multi-national corporation.¹⁵⁹ However, principal figures within the Moon organization are instructed to disavow any inter-relationship of the various corporate entities, and if possible, they are advised to obfuscate their involvement. The Unification Church has been found to have vested interests in the following businesses: a ginseng tea factory,¹⁶⁰ fishing and shipping industries,¹⁶¹ a pharmaceutical company,¹⁶² a bank,¹⁶³

156. See generally THE INVESTIGATION OF KOREAN-AMERICAN RELATIONS, *supra* note 8.

157. See I.R.C. § 501(C)(3). Despite being denied a tax exempt status, the Children of God solicited donations advising the public that the donations were deductible. They did recommend to at least one benefactor that he should make all contributions to "Youth for Truth, Inc.," a tax exempt non-profit corporation of which known Children of God leaders were designated as corporate officers and directors. The investigative committee stated: "These facts lead to the inescapable conclusion that Youth for Truth, Inc. is both an alter-ego and conduit of Children of God for the single purpose of funneling contributions to COG. *The Lefkowitz Report, supra* note 7, at 14-15. For further discussion of the tax exempt status of religious cults, see notes 170-95 *infra*, and accompanying text.

158. "The Master Speaks," the name of the internal publication of the Unification Church, has made explicit references that their involvement in manufacturing, international trade, defense contracting and other business related activities together comprised what were known as "family businesses." THE INVESTIGATION OF KOREAN-AMERICAN RELATIONS, *supra* note 8, at 325-26, 372.

159. *Id.* at 313:

The Moon Organization controls numerous large and small businesses throughout the world and is constantly expanding into new business fields. These organizations are set up under a variety of names and often employ holding companies and other complex corporate structures so that their relationship to the overall Moon movement is not always apparent to a casual observer. However, the subcommittee found extensive evidence that many business enterprises—regardless of name or legal structure—are an integral part of the Moon Organization and are used interchangeably with its nonbusiness components.

Id. at 325.

160. The importation of tea was one of Moon's initial business ventures in the United States. Moon and his wife, Mary, owned thirty-five percent of the stock. *Id.* at 329.

161. The fishing and shipping industries were expanded in Alabama and Virginia largely through the use of funds provided by the Unification Church International, the worldwide component, as distinguished from the local church organizations. *Id.* at 331. It should be noted that the plant in Norfolk, Virginia closed down in 1979; however, its employees were transferred to other International Seafoods' plants in Alabama, California, Alaska, and Massachusetts. 3 THE ADVISOR, Dec., 1979, at 4.

162. The Korean Government charged several officers of the Il Hwa Pharmaceutical Co. "with conspiring to evade over \$12 million in taxes. . . ." One means

two titanium industrial companies,¹⁶⁴ and a military defense contracting firm.¹⁶⁵ As will later be shown with the non-business organizations of the Unification Church, a pattern emerges revealing a structure manned by interlocking¹⁶⁶ directors, officers, and stockholders who freely funnel corporate funds back and

by which this was accomplished was by donating money to the Unification Church. The president of the company was at that time also the chairman of the board of the Unification Church and later became director of the Unification Church International. THE INVESTIGATION OF KOREAN-AMERICAN RELATIONS, *supra* note 8, at 328.

163. The Diplomat National Bank was organized in 1975, with approximately "fifty-three percent of the bank's actual initial capitalization owned by persons affiliated with the Moon Organization." *Id.* at 378. The source of a portion of the funds was traced to the personal checking account of Sun Myung Moon despite elaborate attempts to launder the money. *Id.* The Unification Church International was one of the single largest depositors in the bank but later was enjoined for attempting to obtain a controlling interest by disguising the funds used to purchase stock. 1 THE ADVISOR, August 1979, at 4. The Securities and Exchange Commission charged the bank, a prominent colleague of Moon, and the President of the Republic of Korea, Tongsun Park, with obtaining a greater than five percent interest in the stock, thereby contravening the bank's charter. It should be noted that in this particular instance President Park stated he was unaware of the Unification Church's investment. THE INVESTIGATION OF KOREAN-AMERICAN RELATIONS, *supra* note 8, at 384-85.

164. The Unification Church became active in the titanium market. In fact, Moon himself was chairman of the board and owned 90.5 percent of the stock in the Dong Hwa Titanium Industrial Co. A Unification Church publication stated that it had taken over its operation and was being "managed and operated mostly by UC members." THE INVESTIGATION OF KOREAN-AMERICAN RELATIONS, *supra* note 8, at 327-38.

165. The Unification Church, by virtue of ownership of fifty-three percent of the shares of Tongil Industries Company, had a controlling interest in the firm which manufactured M-16 rifles, anti-aircraft weapons and parts for a grenade launcher. This enterprise has had various defense contracts with the Korean Government, but according to the findings of the investigative report, it has negotiated ostensibly on behalf of that government. Agents of the Moon organization sought permission from Colt Industries, an American corporation, to export M-16 rifles manufactured in Korea. These weapons were "manufactured under a co-production agreement approved by the U.S. government, which puts M-16 production under the exclusive control of the Korean Government. Despite this, Moon Organization representatives appeared—apparently on behalf of the Korean government—to negotiate an extension of the agreement." *Id.* at 387-88. An executive branch task force, which was organized as a result of the investigation into Korean-American relations, is to launch an inquiry into "[w]hether there have been attempts to violate, or violations of, the Arms Export Control Act. . . ." *Id.* at 391.

166. A State Department investigation concluded that the major executives in the aforementioned business concerns were trained at Tongil Industries and that "all important shareholders were active UC members." *Id.* at 327 (emphasis added). An examination of the structure and organization of the Children of God discloses David Berg, who calls himself "Moses" and "King David," as the leader. His wife and four children together with their spouses are next in authority. As was exemplified by the Unification Church, a few of the larger benefactors of the

forth among the various business entities to maximize investment potential.

The Unification Church is probably the most diversified in its method of generating income; however, groups such as the Synanon Foundation¹⁶⁷ and the Ethiopian Zion Coptic Church¹⁶⁸ also have aroused suspicion as to the source of this wealth. As for the latter, these suspicions have since transformed into criminal indictments for the smuggling of 105 tons¹⁶⁹ of marijuana. Certainly conduct of an illegal nature does not immunize a religion, bona fide or otherwise, from regulation by the state. Regardless of whether or not the income producing activities are legal, the methods utilized and the business relationship created may establish evidence as to the underlying motivations of the organization in question.

A. *The Tax Exempt Status of Religious Organizations*

A common recommendation of the committees¹⁷⁰ organized to look into the cult phenomenon was to conduct further fact-finding to determine whether the subject organization has participated in activities inconsistent with their tax-exemption status. Section 501 of the Internal Revenue Code¹⁷¹ exempts religious organizations from taxation provided they meet the qualifications as enumerated in subsection (c)(3).¹⁷² In essence, there are four

Children of God have also been vested with decision-making responsibilities. THE LEFKOWITZ REPORT, *supra* note 7, at 6.

167. Synanon was founded in 1958 as a center for the rehabilitation of those suffering from alcoholism or drug abuse. As a result of effective public relations campaigns and some generous benefactors, it has turned into a \$20,000,000 business which has made formal efforts to incorporate as a religion. THE JONESTOWN REPORT, *supra* note 8, at 433. *See also* N.Y. Times, Jan. 12, 1978, at 17, col. 6.

168. The Ethiopian Zion Coptic Church partake in regular use of marijuana claiming it to be an integral part of their religion. A Dade County Circuit Court found that marijuana was given to children and adults alike, whether or not they were members of the church. 3 THE ADVISOR, Dec. 1979, at 4.

169. Although the indictment states that the 105 tons of marijuana was smuggled over the course of several years, it seems highly unlikely that the cult consumed that amount for its personal use.

170. *See, e.g.*, THE JONESTOWN REPORT, *supra* note 8, at 36; *Hearings on the Cult Phenomenon*, *supra* note 8, at 21; INVESTIGATION OF KOREAN-AMERICAN RELATIONS, *supra* note 8, at 390.

171. "An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502, 503 or 504." I.R.C. § 501(a).

172. The subsection reads in pertinent part:

The following organizations are referred to in subsection (a):

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious . . . purposes, . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as

conditions, each of which, if violated, would seriously jeopardize their tax-exempt status. Initially, the church must be organized and operated exclusively for religious purposes. Secondly, no part of their net earnings are to be used for the benefit of any private individual. Thirdly, no *substantial* part of their activities are to involve the use of propaganda or attempts to influence legislation. Lastly, the religion is not to participate in, or intervene in any political campaign on behalf of any candidate for public office.¹⁷³

Application of the statutory provision poses a two-fold problem as the Internal Revenue Service offers little guidance in defining what constitutes a religious organization, and there are few objective standards available to measure or monitor church activities.

Aside from incurring problems associated with the equal protection clause, commentators appear to be in agreement in their discouragement of any distinction between the more established religions and a cult.¹⁷⁴ Yet, this does not elucidate either on what constitutes a religious organization, or on the nature of religion.¹⁷⁵

otherwise provided in subsection (h), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

I.R.C. § 501(c)(3); Those groups organized after October 9, 1969, must give notice to the Secretary of the Treasury that it is applying for a tax exempt status. I.R.C. § 508(a).

173. For purposes of organization and ease of discussion, the third and fourth conditions will be addressed at notes 196-264 *infra*, and accompanying text.

174. In a Letter dated Jan. 25, 1979, from Norman Dorsen, responding in his capacity as Chairman of the Board of Directors of the American Civil Liberties Union to Representative Clement J. Zablocki, as Chairman of the Committee on Foreign Affairs stated:

[W]e question any legal distinction between "cults" and "bonafide religious groups." Such distinctions for the purpose of authoring a government investigation seem no more justified than those between "bonafide political groups" and "fringe" or "splinter" groups. What should govern a decision to launch an investigation is evidence of criminal or other illegal conduct, not the content of a belief system, or vague suspicions of criminal conduct that may be based on fear and unpopularity.

Reprinted in THE JONESTOWN REPORT, supra note 8, at 282.

Mr. Chairman, I would also like to alert and give signal that those who may appear with simple and very precise definitions delineating cults from religion should be looked at with great care, because any criteria that I have read or become acquainted with tends to over-simplify a very complex problem, because what is perhaps a cult in one person's eyes may be a very dedicated, sincere religion in another person's eyes.

Hearings on the Cult Phenomenon, supra note 8, at 7 (statement by Senator Mark Hatfield).

175. Efforts by the courts in defining religion have resulted in numerous interpretations. The magnitude of such an endeavor is reflected in the following quote:

The Commissioner of the Internal Revenue Service implied that such a determination is made on a case by case basis through application of several factors which seemingly typify churches. Included among the characteristics are a distinct legal existence, a recognized creed and form of worship, established places of worship, and regular services attended by a devoted congregation.¹⁷⁶ However, case law does make it clear that belief in a supreme being or supernatural power is not essential in order to qualify for a tax exemption.¹⁷⁷

The Internal Revenue Code¹⁷⁸ specifically excludes churches and their integrated auxiliaries¹⁷⁹ from filing an annual tax return. Instead they must file an annual information return which statutorily prescribes the subject areas which require response. The return must set forth: (1) gross income, (2) the costs attributable to such income, (3) expenditures for exempt purposes, (4) a balance sheet, (5) total contribution, and the names and addresses of substantial contributors, (6) the names and addresses of highly compensated employees, (7) the compensation and other payments made to those employees described above, and (8) any disbursements made to influence legislation if the organization elects to come under the political expenditure limitations of section 501(h).¹⁸⁰ The information contained within the annual infor-

[t]o define religion, it is important to understand the criteria being used. For example, does religion involve a belief in a Supreme Being? Is it possible or necessary to define such a term? Does religion necessarily involve an institutional structure? To what extent is it relevant that an individual or group labels or refuses to label a particular belief religious? Must religion involve beliefs at all? Must it involve some sort of ritual? Must its adherents meet, regularly or otherwise? Must there be worship, meditation or designated leaders who perform specified roles? Judicial opinions, while grappling at times with all of these problems, have treated extensively only the problem of belief in a Supreme Being, no opinion has weighed the relative importance of all of these factors.

Boyan, *Defining Religion In Operational And Institutional Terms*, 116 U. PA. L. REV. 479, 481 (1968); see also Whelan, "Church" In the Internal Revenue Code: The Definitional Problems, 45 FORDHAM L. REV. 885 (1977).

176. Commissioner Jerome Kurtz listed in a January speech 14 characteristics used in arriving at a determination. For an analysis of the address, see THE JONES-TOWN REPORT, *supra* note 8, at 528. The United States Supreme Court will undoubtedly scrutinize any Internal Revenue Service interpretation of what embodies a recognized creed and form of worship.

177. Circuit Judge Warren Burger noted that the court did not rule on the question whether the petitioner was a religious society or church in the ecclesiastical sense. *Washington Ethical Society v. District of Columbia*, 249 F.2d 127, 29 (D.C. Cir. 1957). See also *Fellowship of Humanity v. County of Alameda*, 153 Cal. App. 2d 673, 315 P.2d 394 (1957).

178. I.R.C. § 6033.

179. An "integrated auxiliary of a church" is an organization exempt from taxation as described in section 501(c)(3). The organization must be controlled by or associated with a church and their principal activity is exclusively religious. *Treas. Reg. § 1.6033-2(g)(5)(i-iii)*.

180. I.R.C. § 6033(b).

mation return presently serves as the primary means of periodic review. Once a return is filed, it is then included in the Exempt Organization Master File,¹⁸¹ which also includes information pertaining to its prior returns and its exemption status.

The power to audit a church is severely restricted by section 7605(c).¹⁸² That provision prohibits the examination of a church's books of account to determine whether such organization may be engaged in the carrying on of an unrelated trade or business activity *which is subject to tax* pursuant to section 511.¹⁸³ An examination may commence if the church is notified in advance of the investigation but only "to the extent necessary to determine whether such organization is a church . . . [and] to the extent necessary to determine the amount of tax imposed. . . ."¹⁸⁴ Thus, the church maintains its tax exempt status and is taxed only on the income derived from any unrelated trade or business venture. However, their tax exempt status does become imperiled if it is determined not to be a church or an integrated auxiliary.¹⁸⁵ It seems apparent that accountability is low and may thus have been the impetus to establish a special branch within the Internal Revenue Service to monitor and coordinate tax exempt organizations.¹⁸⁶

The advantages of being designated a church for tax considerations should appear obvious; however, to illustrate the attractiveness as well as the benefits derived from such a designation, one need only consider the "tax revolt" incited as a result of the influx of "mail order" ministers that were ordained upon the remittance of a fee.¹⁸⁷ The revolt was intensified when the New York State Board of Equalization threatened to initiate legal action against

181. *See generally* [1978] 3 INTERNAL REVENUE MANUAL EXEMPT ORGS. HANDBOOK (CCH) 20,525, 20,555.

182. I.R.C. § 7605(c).

183. *Id.* See also I.R.C. § 511.

184. I.R.C. § 7605(c).

185. "Organizations which are integrated auxiliaries include a men's or women's organization, a religious school (such as a seminary), a mission society, or a youth group." Treas. Reg. § 1-6033-2(g)(5)(iv).

186. For an extended discussion on monitoring of church institutions and other tax exempt organizations, see Note, *The Internal Revenue Service As A Monitor of Church Institutions: The Excessive Entanglement Problem*, 45 FORDHAM L. REV. 929 (1977).

187. A check for twenty dollars sent to the Universal Life Church would purchase a Doctor of Divinity degree. An additional ten dollars would "earn" an individual a Ph.D. N.Y. Times, Jan. 16, 1977, § 1, at 30, col. 1. It was ironic when Senator S.I. Hayakawa of California, after hearing previous discussion on the sub-

the tax assessor in Ulster County¹⁸⁸ for his liberal granting of tax exemptions to those ordained as ministers by the Universal Life Church.¹⁸⁹ There were a reported 236 taxpaying residents in the rural community of Hardenburgh, New York who became ministers in the church in protest of rising property taxes caused largely in part by the purchase of large estates by such tax exempt organizations as the Zen Buddhists, the Tibetan Monks, the Unification Church, the Roman Catholic Church and a transcendental meditation group.¹⁹⁰ The property taxes of the "innocent" residents had risen as much as 300 and 400 percent over the course of six years¹⁹¹ to offset the acquisitions of the aforementioned groups being removed from the tax rolls. It should be noted that the primary reason in being ordained was not an overwhelming desire to profess a new faith, but to reduce taxes and expose an ever-increasing problem.¹⁹² However, such a motivat-

ject of mail-order ministries during a congressional information meeting remarked:

The remarks reminded me of something I have forgotten for a long time. That is I am an ordained minister in the Universal Life Church. (Laughter.)

Something like 10 or 12 years ago a friend of mine sent in 10 bucks to the headquarters in Modesto and got me a certificate that ordained me as a minister. . . .

What has alarmed me very, very much is that other people who claim to be ministers under the Universal Life Church have been reported in the press as having performed marriages, officiated at funerals, acted as legitimate clergy in all sorts of situations, and apparently are accepted as such.

HEARINGS ON THE CULT PHENOMENON, *supra* note 8, at 19.

188. *Id.* This problem was also prevalent in New Jersey and Pennsylvania. N.Y. Times, Dec. 17, 1978, § 11, at 30, col. 5.

189. N.Y. Times, Jan. 16, 1977, § 1 at 30, col. 1. The Universal Life Church is a California based organization that had allegedly ordained 6,000 ministers in the span of five months. This same church had obtained notoriety in the 1960's when hundreds of young men became ministers in order to circumvent the draft. N.Y. Times, Jan. 30, 1977, § 8, at 1, col. 1.

190. N.Y. Times, Oct. 24, 1976, § 1, at 41, col. 5. The groups previously enumerated purchased property in Hardenburgh and neighboring areas. As an indication of the apparent wealth and the taxes avoided by these organizations, the following are some of the details surrounding the transactions: The Zen Buddhists purchased 1,500 acres for \$75,000 and then built a \$2,900,000 monastery; the Tibetan Monks purchased an 880 acre estate for \$1,300,000; and the transcendental meditation group, which grossed over \$20,000,000 selling Vedic mantras, assumed a \$900,000 mortgage on a resort hotel located on a 613 acre estate. The article further noted that 31 percent of all assessed property located in New York State fell under one of the tax exempt categories. N.Y. Times, Jan. 30, 1977, § 8, at 1, col. 1. In a 1976 article, it was stated that the "total tax exempt wealth of religious organizations exceeds \$117 billion and total religious organization income from all sources tops \$20 billion annually." *Tax Revolt Brews*, 29 CHURCH AND STATE, 222, 222-23 (Nov. 1976) (citing LOWELL & LARSON, THE RELIGIOUS EMPIRE (1976)).

191. N.Y. Times, Oct. 24, 1976, § 1, at 41, col. 5.

192. In 1968, 15 percent of all assessed property in Sullivan County, New York was tax exempt. Within eight years the amount of tax-free property had increased to 42 percent. *Tax Revolt Brews*, 29 CHURCH AND STATE, 222 (Nov. 1976). See note 190 *supra*.

ing influence should not support a request for tax exempt status as it does not meet the criteria of being organized and operated exclusively for religious purposes.¹⁹³

An examination of the nature of the income producing activities of the cults heretofore discussed, as viewed through Section 501(c)(3) of the Internal Revenue Code, raises sufficient doubt so as to legitimize any inquiry into the tax exempt status of these organizations. Particular attention should be directed to the professed purpose of the organization as delineated by the terms of the articles and whether the net earnings have augmented the income of any individual, particularly those of the charismatic leaders.¹⁹⁴ It is against this background that the financial endeavors as previously discussed, and the socio-political doctrinal learnings that will be the subject of the next section, that will provide the basis for a review of the tax exempt status of cults. It has been suggested that a periodic review be conducted so as to insure that the originally stated purposes and objectives are still being fulfilled.¹⁹⁵ Any withdrawal of a cult's tax exempt status could be interpreted as being fatal as their ability to hold themselves out as a church would be seriously jeopardized, if not extinguished, and the likelihood of securing future contributions would be greatly impaired as donations would no longer be tax deductible.

B. The Socio-Political Underpinnings of Cults

Although the cults are adamant in their claims of being a religious institution and hence deserving of first amendment protection, a review of some of the underlying principles which have often dictated a cult's course of conduct might reveal otherwise. The socio-political beliefs of the cult leadership are often reflected

193. I.R.C. § 501(c)(3). The Federal Tax Regulations state:

An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities; activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in section 501(c)(3).

Treas. Reg. § 1-501(c)(3)-1(b)(iii).

194. See note 154 *supra*. Although not every component of the Moon enterprises is a tax exempt organization, the Unification Church appears instrumental in the daily operations of the various front organizations. Moon has acquired a great deal of wealth as a result of his stockholdings and solicitation efforts on behalf of the Unification Church. The threshold issue concerns the derivations of his wealth. Is it a product of his involvement with the Unification Church?

195. THE JONESTOWN REPORT, *supra* note 8, at 36.

by the teachings espoused and the policies implemented. Those secular interests may not constitute *la raison d'être* but are subordinate to the extent that it casts doubt on their true intentions. Granted, this does not empower any inquiry to proceed devoid of the limitations of the belief-action dichotomy as espoused by *Cantwell v. Connecticut*,¹⁹⁶ but there is a clear line of demarcation between religious beliefs and socio-political beliefs. Surely the first amendment protects all forms of beliefs; however, it does not advocate the assertion of one ideology shrouded by or under the guise of another. To do so would be analogous to condoning fraud or misrepresentation. In any event, an organization claiming religious status and enjoying the protections and privileges accorded thereby should remain apolitical. The religion should refrain from adopting contravening philosophies and ideologies that would undermine their status as a church and not become, in effect, a hybrid interest group. The focus of this section is to disclose some of the secular goals and purposes of the cults and their consequent conduct. For purposes of organization, each cult will be discussed separately.

1. The People's Temple

The notoriety of the People's Temple Church will long be remembered from the mass suicide that took place in Jonestown, Guyana, and not from its support for such social causes as the welfare of the elderly, racial integration, and rehabilitation of alcoholics and drug addicts.¹⁹⁷ However, these were the concerns that inspired their leader, the Reverend Jim Jones, and served as the foundation for the group's existence. It is believed that the People's Temple was more socially idealistic than most cults.¹⁹⁸ Ironically, there were no religious trappings or placards. As one observer posited: "If Jonestown was a religious colony, why did it have no church, no chapel, no place of prayer? It had a day-care center, a school, a clinic. The religion of Jonestown was explicitly and unequivocally socialism, not Christianity."¹⁹⁹ When one considers even the cult's name, The *People's Temple*, it has socialist connotations. The Jonestown settlement was located in Guyana, a country with socialist leanings. In fact, there was speculation that Jones was negotiating with the Soviet Union for a new domicile for his movement.²⁰⁰ This is supported in theory by Jones'

196. 310 U.S. 296, 310-11 (1940).

197. THE JONESTOWN REPORT, *supra* note 8, at 16.

198. N.Y. Times, Jan. 7, 1979, § 6, at 26.

199. THE JONESTOWN REPORT, *supra* note 8, at 495.

200. *Id.*

will²⁰¹ which bequeathes his estate to the American Communist Party in the event that his wife and the children, those of whom were not specifically disinherited, do not survive. These findings led the House Committee on Foreign Affairs to conclude:

Although People's Temple may have been a bonafide Church in its Indiana and early California origins, it progressively lost that characterization in almost every respect. Rather, by 1972 and following in progressive degrees, it evolved into what could be described as a sociopolitical movement under the direction and inspiration of its founder and director and the Marxist-Leninist Communist Philosophy he embraced. People's Temple was in the end a Socialist structure devoted to socialism. Despite the fact, People's Temple continued to enjoy the *tax-exempt status* it received in 1962. . . .²⁰²

Jones actively sought the support of political leaders and other influential members of the community in an effort to gain a favorable reputation for his church. However, Jones suffered extreme paranoia²⁰³ and envisioned a mounting conspiracy against him that eventually prompted him to establish a settlement in Guyana. Perhaps it was this paranoia which consequently induced the People's Temple to engage in activities allegedly in violation of federal custom²⁰⁴ and currency laws,²⁰⁵ fostered charges of blackmail,²⁰⁶ and to smuggle large quantities of behavior controlling drugs.²⁰⁷ Certainly, if the foregoing does not shed grave

201. *Id.* at 482.

202. *Id.* at 20 (emphasis added).

203. *Id.* at 18.

204. During the aftermath of the communal suicide, forty firearms were uncovered which were unmistakably identified by their serial numbers as being smuggled from the United States in false bottom crates marked agricultural supplies. *N.Y. Times*, Dec. 3, 1978, at 30, col. 1. Both the United States Custom Service and Interpol had received reports of illegal gun shipments in violation of the Arms Export Control Act. 22 U.S.C. § 2778 (1976).

205. In light of the large amount of cash found at Jonestown, which for the most part was comprised of social security checks, it was believed to be illegally transported as all persons moving cash in or out of the United States which is in excess of \$5,000 must fill out a Treasury report. *See generally* 31 U.S.C. §§ 1051-1143 (1976). *See* note 154 *supra*, and accompanying text.

206. The recordings of a sexual liaison between Guyana's Ambassador to the United States and a member of the Church were periodically turned over to ranking Guyanese government officials in an effort to influence temple and government relations. In another instance of political pressure exerted upon the Guyanese Government was a custody battle being waged between a former temple member and Jim Jones over that ex-member's son. Jones was ordered by courts in the United States by writ of *habeas corpus* to produce the child, but Jones phoned a Guyanese official and was reported to have threatened mass suicide if the Guyanese courts did not foster delay. *THE JONESTOWN REPORT*, *supra* note 8, at 312.

207. Officials recovered a large supply of depressants including Quaaludes, Demerol, Valium, Morphene and nearly 11,000 doses of Thorazine, a drug usually

doubts as to the less than spiritual nature of the church, then the ambush of the congressional delegation and the mass suicide should empower an investigation to proceed.²⁰⁸

2. The Children of God

As a result of the adverse report prepared by the Charity Frauds Bureau,²⁰⁹ The Children of God was forced to leave the United States and seek refuge in England and in parts of Northern Europe.²¹⁰ The tenets of the cult were espoused by means of "Moses Letters," which were characterized as "lesson plans and selected biblical passages [used] to alienate a new 'convert' from parents, government, former religious affiliation, education and society in general."²¹¹ The leadership distributed certain letters for public consumption, but only the less acerbic ones. Public exposure of the writing entitled, "America the Whore,"²¹² would have the likely effect of ostracizing a sizeable portion of the American public. Another example of Children of God doctrine is the "Moses Letter," entitled "The Amerikan Way,"²¹³ which dis-

given to calm patients with extreme mental problems. Medical authorities commented that such drugs could cause numerous reactions such as hallucinations, disorientation, speech disturbances, emotional euphoria, and depression. N.Y. Times, Dec. 29, 1979, at 13, col. 1. The Jonestown Report, *supra* note 8, at 455. The cyanide, which was the poison ingested during the mass suicide, was received two days before Congressman Leo Ryan's fact finding mission arrived in Guyana. *Id.* at 26.

208. Mr. Chief Justice Waite opined:

Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice? . . . Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.

Reynolds v. United States, 98 U.S. 145, 166-67 (1878).

209. THE LEFKOWITZ REPORT, *supra* note 7.

210. N.Y. Times, Aug. 13, 1972, § 1, at 54, col. 1.

211. The Lefkowitz Report, *supra* note 7, at 20. For numerous examples reflective of the subject areas enumerated *see id.* at 20-26.

212. A portion of the doctrine states: "It's time for the rape of America, but they're trying to respect her! She doesn't deserve respect: *She's an old Whore!*" *Id.* at 25.

213. If one sniper on the roof of a hotel in New Orleans can pin down six hundred policemen, think of what a sniper on the roof of every hotel in New Orleans could have done. In every city in the United States, along with all those communistic, socialistic workmen of the oppressed classes and the oppressed races with nowhere to throw the switches and to dyna-

cusses the likely impact of government sabotage or national conspiracy.

The cult leadership encouraged the demise of such institutions as the family and all forms of government through policies more typical of a counterculture rather than a religious institution. Illustrative of doctrines designed to debilitate the family structure include the following: hatred of parents,²¹⁴ the secreting members from parents,²¹⁵ incest,²¹⁶ spouse swapping,²¹⁷ coerced marriages,²¹⁸ and prostitution.²¹⁹ Indicative of attempts to disrupt the influence of governments are the publication of conspiratorial philosophies,²²⁰ obstruction of justice,²²¹ and the falsification of ministerial exemptions so as to avoid the draft.²²²

3. The Synanon Foundation

The Synanon Foundation²²³ has received considerable media coverage as a result of its founder being arrested for conspiracy and solicitation to commit the murder of a Los Angeles attorney who had previously recovered a \$300,000 judgement against that organization for false imprisonment, kidnapping, and brainwashing.²²⁴ In another incident, also retaliatory in nature, Syna-

mite the water and to destroy the gas and all the rest. Do you realize what a fairly organized sudden sabotage attack could do to America?

THE CALIFORNIA COMMISSION ON YOUTH, *supra* note 7, at 92-93. This was a quoted passage of the letter entitled "The Amerikan Way" as read by a father whose son was a member of the Children of God.

214. THE LEFKOWITZ REPORT, *supra* note 7, at 20-24.

215. *Id.* at 22-24.

216. The "Moses Letter" entitled "Revolutionary Sex" assumes a "positive position on incestuous behavior, youthful intercourse and the non-sanctity of marriage and family." *Id.* at 45-54.

217. *Id.* at 46.

218. *Id.* THE CALIFORNIA COMMISSION ON YOUTH, *supra* note 7, at 92.

219. Prostitution has been used not only as an income producing activity but also as a recruitment device to attract young males. THE JONESTOWN REPORT, *supra* note 8, at 476-77.

220. See notes 205-06 *supra*.

221. Church members are instructed to disregard service of process or to jump bail. A "Moses Letter" entitled "Public Relations" teaches the following: "You can ask to see the warrant—make sure who it is for, and while you are stalling, someone else can inform the disciple involved, who then has a perfect right to run out the back door if he wants to." THE LEFKOWITZ REPORT, *supra* note 7, at 16-17.

222. A former member of the cult testified that the leader, David Berg, would "use his own ordination to ordain others without bringing them before a church board for approval, just signing his name to ordain other boys that were not entitled to ordination, so they could evade the draft." *Id.* at 18.

223. See also note 162 *supra*.

224. The founder, Charles Dederich, was implicated when a police raid on a

non threatened to disrupt²²⁵ a California State Health Department investigation into alleged child abuse, and to determine whether the foundation was licensed as a community care or health facility. Conduct of this nature may frustrate formal attempts to incorporate as a religion.

Synanon, like the Children of God, have encouraged mass divorces and the exchanging of marital partners.²²⁶ It is currently a defendant in a civil suit²²⁷ in which such programs are challenged. Included among other courses of action is the allegation that male members are compelled to have vasectomies in an effort to prevent future childbirth. The former rehabilitation center for alcoholics and drug addicts has undergone some obvious transformation, none of which appear to be organized or operated exclusively for religious purposes.²²⁸ Can the inference be made that these attempts at securing formal recognition as a religion are merely efforts to conceal their social programs. The crucial question, however, is whether programs of this nature, which have uncertain, if any, religious import, should be scrutinized before formal recognition is granted. It would seem that the public's health, safety, welfare and morals are at stake in the outcome of such a determination.

4. The Founding Church of Scientology

The Founding Church of Scientology is based on the theory of Dianetics²²⁹ which is described as a "practical science which can cure many of the ills of man."²³⁰ It is believed that much individual suffering can be alleviated through a therapeutic process

Synanon headquarters produced a tape recording of conversations concerning a retaliatory attack on the plaintiff's attorney, Paul Morantz. Morantz was bitten by a rattlesnake that was placed in his mailbox. N.Y. Times, Dec. 3, 1978, at 29, col. 1.

225. Charles Dederich was quoted as saying, "We're going to put them (Health Department Employees) [sic] under an investigation situation they don't dream of." L.A. Times, Oct. 7, 1977, § 1, at 3, col. 5.

226. Nearly 230 couples were reported to have filed for divorce in compliance with a three-year experimental program initiated by the foundation. L.A. Times, Dec. 12, 1977, § 1 at 22, col. 1; *Ross v. Synanon Foundation, Inc.*, No. WEC 53716 (Sup. Ct. L.A. Cty., filed May 16, 1978). The plaintiffs in this matter were asked to end a 32 year marriage and take new partners.

227. *Id.* Among the other causes of action alleged were intentional infliction of emotional distress, breach of contract, battery, and wrongful eviction. One plaintiff claimed that he was coercively persuaded to donate money and upon refusing to contribute any further resources, he was then assaulted.

228. I.R.C. § 501(c)(3); *see* notes 172-93 *supra*, and accompanying text.

229. Man is said to possess a reactive mind and an analytic mind. The latter is said to be infallible whereas the former is capable of "human misjudgments which create social problems and much individual suffering." The theory is designed to relieve the individual from these encumbrances. *Founding Church of Scientology v. United States*, 409 F.2d 1146, 1151 (D.C. Cir. 1969).

230. *Id.*

known as "auditing" which improves not only an individual's frame of mind, but can promise the curing of such physical ailments as arthritis, dermatitis, asthma, some coronary difficulties and ulcers.²³¹ L. Ron Hubbard, the founder upon whose writings the movement is based, claims "kinship between his theories and those espoused by Eastern religions, especially Hinduism and Buddhism."²³² Although some Scientologists were reluctant to move toward formal recognition as a religious organization sensing it was an attempt to legally conceal the movement's activities,²³³ the church was incorporated in 1955. The chief activity of the church, as reported in *Founding Church of Scientology v. United States*,²³⁴ was auditing. They would conduct this therapy at "substantial fees"²³⁵ and offer for sale various publications pertaining to the church's philosophies. Despite an attempt by the United States Attorney to condemn the therapeutic process, the publications and the marketing thereof, as false and misleading, the court of appeals found that the Scientologists had made out an un rebutted *prima facie* case that they were in fact a religion²³⁶ and were not guilty of violating any federal laws.

A former Scientologist claimed that she had been defrauded by the church as promises to improve her life remained unfulfilled despite spending \$3000 on auditing course fees. This allegation of fraud, compounded by charges of intentional infliction of emotional distress and engaging in outrageous conduct which produced lasting psychological repercussions contributed to an Oregon jury awarding a verdict in excess of \$2 million.²³⁷ The plaintiff was involved with the Church for only four months but

231. *Id.* at 1152. See also L. HUBBARD, SCIENTOLOGY: A HISTORY OF MAN 21 (4th ed. 1961).

232. *Founding Church of Scientology v. United States*, 409 F.2d at 1152.

233. Judge Skelly Wright surmised: "From the literature of the movement in evidence at trial, it appears that the move toward formal religious organization disturbed some adherents of Scientology, who seem to have regarded it as an attempt to provide a legal cloak for the movement's activities." *Id.*

234. 409 F.2d 1146 (D.C. Cir. 1969).

235. A flat rate of \$500 was assessed for the 25 hour course. This was the price as of the date of trial. *Id.* at 1152-53.

236. The court noted that the organization was staffed by licensed ministers who followed the professed teachings of the group. "The fact that it postulates no deity in the conventional sense does not preclude its status as a religion." *Id.* at 1160 & n. 45. The court further noted that the government chose not to contest the finding of that the church was in fact a religion. *Id.* at 1160.

237. The total amount of the award was \$2,067,002.00 of which \$1.9 million constituted punitive damages. *L.A. Times*, Aug. 16, 1979, § 1, at 24, col. 1.

was still concerned about her safety as members of the church had been harassing her ever since her departure.²³⁸ The Church of Scientology has filed an appeal but now faces a similar class action suit which seeks \$200 million.²³⁹

The harassment tactics employed by the Scientologists are part of a "fair game" policy²⁴⁰ used to silence their critics. In *Allard v. Church of Scientology*,²⁴¹ the plaintiff, a former director of disbursements for the church, sued for malicious prosecution and was awarded \$100,000, one half of which constituted punitive damages. The plaintiff had expressed a desire to leave the church, but was told by a high ranking church official "that if he left without permission, he would be fair game and "you know we'll come and find you and we'll bring you back, and we'll deal with you in whatever way is necessary."²⁴² The former Scientologist, only one of two men who knew the combination of a safe, was accused by the church of the grand theft of Swiss francs and various traveler's checks. However, the court found that he had only taken some records to demonstrate the church's improper accounting procedures. Upon his departure, he promptly turned the documents over to the Internal Revenue Service. In an effort to re-

238. The plaintiff, having been acquainted with the retaliatory policies of the church, became emotionally distressed upon seeing Scientologists stationed outside her home in addition to receiving correspondence from church members she did not know. 1 THE ADVISOR, Aug., 1979, at 1; Valley News, Aug. 17, 1979, at 14, col. 1.

239. A former Scientologist of seven years claims that she was defrauded of \$13,000 in auditing fees. She states that she was brainwashed into believing she required the therapy sessions. Consequently, she has filed a class action suit in a federal court on behalf of all those who have suffered psychological abuse and who have had their wealth appropriated by the church. The action seeks damages for fraud and restitution of course fees. 2 THE ADVISOR, Feb. 1980, at 2.

240. This policy states that an individual that was determined to be either an "enemy" or a "suppressive person," "may be deprived of property or injured by any means by any Scientologist without any discipline of the Scientologist. May be tricked, sued or lied to or destroyed." *Allard v. Church of Scientology*, 58 Cal. App. 3d 439, 443 n.1, 129 Cal. Rptr. 797, 800 n.1 (1976). Another example of the fair game policy was contained in a confidential board policy letter. It recommended that the church always attack hostile critics through a press release and never defend or deny the accusations. The letter further advised, "[s]pot who is attacking us, . . . 'start investigating them promptly for FELONIES or worse using our own professionals, not outside agencies' 'The routine is: whisper of a bad story, get a lawyer, threaten suit, totally discredit.'" . . . THE JONESTOWN REPORT, *supra* note 8, at 474.

241. 58 Cal. App. 3d 439, 129 Cal. Rptr. 797 (1976).

242. *Id.* at 444, 129 Cal. Rptr. at 800. Paulette Cooper, the author of the book entitled, *THE SCANDAL OF SCIENTOLOGY*, has been the frequent victim of vexatious conduct. Aside from being sued twice in England for her book, recently released court documents reveal that the church framed her into becoming a prime suspect of a series of bomb threats. 3 THE ADVISOR, Dec., 1979, at 3. See also *Church of Scientology of California v. United States Dep't of Justice*, No. 76-2506 (9th Cir. Nov. 8, 1979) (published in 79 L.A. Daily Journal D.A.R. 137).

cover punitive damages, plaintiff sought to introduce into evidence policy statements reflective of the fair game doctrine. The church contended that the admission of such evidence would constitute prejudicial error. Nevertheless, the court admitted the evidence after the church was unable to prove that the fair game policy had ceased to exist.

As a corollary to the fair game policy, the Church of Scientology has conspired, by means of burglary, to steal numerous documents from the Internal Revenue Service and the United States Department of Justice.²⁴³ The documents pertained to government investigations of the church. In an effort to retrieve the information, the Federal Bureau of Investigation conducted simultaneous raids on Scientology headquarters in Washington, D.C. and in Los Angeles. Although the Los Angeles raid was the only one held constitutional,²⁴⁴ nine Scientologists, including the wife of the founder, were found guilty of conspiring to burglarize and infiltrate government agencies.²⁴⁵ The public release of the seized documents revealed numerous other plans designed to break in other government offices throughout the United States and England so as to enable them to monitor any probes into church operations.²⁴⁶ Such surreptitious operations leads one to query what it is that the church wishes to conceal.

5. The Unification Church

The financial enterprises affiliated with the Unification Church unveil a network of corporate activity managed by interlocking directorships, officers and stockholders designed to generate income, and to facilitate the implementation of church policies through its non-business oriented front organizations.²⁴⁷ "The numerous churches, businesses, committees, foundations and other groups associated with Sun Myung Moon emerged as parts of what is essentially one worldwide organization, under the central-

243. The conspiracy was part of a four year program to burglarize and bug government agencies so as to keep one step ahead of any investigations. A battle with the Internal Revenue Service over the tax exempt status of the group precipitated the plan. L.A. Times, Oct. 27, 1979, at 2, col. 1.

244. The search in Washington, D.C. amounted to a general exploratory search and was thus held unconstitutional. *In re Search Warrant*, 572 F.2d 321 (D.C. Cir. 1977), cert. denied, 435 U.S. 925 (1978). See also Nat'l L. J., Sept. 10, 1979, at 3, col. 1.

245. L.A. Times, Oct. 27, 1979, § 1, at 2, col. 1.

246. 3 THE ADVISOR, Dec., 1979, at 3.

247. See notes 158-66 *supra*, and accompanying text.

ized direction and control of Moon."²⁴⁸ The charismatic leader, who claims to be a saint sent by God,²⁴⁹ seeks to establish a world wide "Theocracy."²⁵⁰ Although this goal is unquestionably religious in scope, it is contradicted by actions which appear to be clearly political.

Victory over communism is Moon's most pressing political objective. This he proclaims will be accomplished in a final battle set up by God involving the United States, Russia, China, North Korea, South Korea, and Japan.²⁵¹ He cautioned, however, that church related aspects must be emphasized. "We cannot quite proclaim our movement as a church on the foundation of the V.O.C. (Victory Over Communism) ideology . . . We must, at any cost, let the people know that United thought, our philosophy, is based on our theological doctrine. Otherwise, we cannot connect the V.O.C. movement with our church movement."²⁵² Thus, Moon established the Freedom Leadership Foundation in the United States. The foundation is a non-profit educational organization, supported financially by the Unification Church, dedicated to "advance the cause of freedom in the struggle against communism."²⁵³ It was hoped that this organization would serve as the political arm of the church and gain influence and control over various American institutions.²⁵⁴ In 1976, a former president of

248. INVESTIGATION OF KOREAN-AMERICAN RELATIONS, *supra* note 8, at 313.

249. Moon enhanced his own reputation as a charismatic leader through self-adulation. The following are examples of his quotations which are designed to usurp total control over his adherents.

"I am your brain."

"What I wish must be your wish."

"My mission is to make new hearts, new persons."

"Of all the saints sent by God, I think I am the most successful one."

"The time will come . . . when my words will almost serve as law. If I ask a certain thing, it will be done."

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

Rice, *Messiah From Korea Honor They Father Moon*, 9 PSYCH. TODAY 36, 39, (Jan. 1976).

250. A worldwide theocracy would abolish the separation of church and state and fall under the direction of God. THE INVESTIGATION OF KOREAN-AMERICAN RELATIONS, *supra* note 8, at 314. The basic tenet of the Unification Church is "to prepare the world for the return of Christ. The sole mission of the Unification Church is to bear witness to the revelation and to lay a foundation for the Kingdom of God on Earth." Gilles, *Reverend Sun Myung Moon: "Heavenly Deception"?*, 12 TRIAL 22-25 (Aug. 1976).

251. If the inevitable battle does occur, the Unification Church, according to Moon, will defend their native South Korea from any North Korean invasion. THE INVESTIGATION OF KOREAN-AMERICAN RELATIONS, *supra* note 8, at 314.

252. *Id.* at 339.

253. *Id.* at 320.

254. Aside from seeking political and economic influence in the United States, Moon aggressively sought to enlist the support of numerous colleges and universities. He was also instrumental in organizing two international science conferences

the foundation testified before a subcommittee that Moon "wanted to acquire enough influence in America to be able to dictate policy on major issues to influence legislation, and move into electoral politics."²⁵⁵ Consequently, members of the foundation and The Unification Church actively campaigned for candidates²⁵⁶ supportive of their cause and engaged in demonstrations to prevent the possible withdrawal of American armed forces from Korea.²⁵⁷ This reverence for Korea and Moon's apparent affability with various American politicians²⁵⁸ portrayed him as a powerful and influential leader which thereby earned him the support of the Korean government.

Moon's ties with the Republic of Korea government and the Korean Central Intelligence Agency are complex and necessarily discreet. In addition to the awarding of a government defense contract²⁵⁹ to a Moon business enterprise, various front organizations have received monetary support to conduct projects such as Radio of Free Asia,²⁶⁰ The Little Angels dance troupe,²⁶¹ and to counter activities of pro-North Korean organizations. Although the emphasis of the programs are directed against communism, it was hoped that such endeavors would yield a positive impact on Korean-American relations. Such a result would insure contin-

that attracted numerous scholars and academicians. It was believed that this would enhance his reputation in the educational community. *Id.* at 320-21.

255. *Id.* at 312.

256. *Id.* at 345-46. *See also* I.R.C. § 501(h).

257. When it appeared likely that the United Nations command was going to disband their operations in Korea, the Unification Church began a fast in front of the United Nations building and lobbied against such a course of action. INVESTIGATION OF KOREAN-AMERICAN RELATIONS, *supra* note 8, at 346-47.

258. Various church publications display photographs of Moon meeting with Eisenhower, Thurmond, Humphrey, Kennedy, and Nixon. *Id.* at 320-21. The church also ran a full page advertisement in support of Nixon during the impeachment proceedings. *Id.* at 338.

259. *See* note 164 *supra*.

260. "Radio of Free Asia" was used to broadcast anti-communist principles into various communist countries. INVESTIGATION OF KOREAN-AMERICAN RELATIONS, *supra* note 8, at 357.

261. The Little Angels were a children's dance group which served as an official representative of the Korean Government. Moon was optimistic that the group could provide him access to various political figures as they performed internationally. *Id.* at 359-61. There was speculation that the Little Angels were used to circumvent federal currency restrictions by each carrying less than \$5,000 on their person so as to avoid the requirement of filing a Treasury report. Although the above remains conjecture, other prominent members of Moon's organization have admitted violating the currency laws in order to channel funds between organizations. *Id.* at 337.

ued American support of Korean political, military, and economic objectives.²⁶²

Moon's desire to establish a world theocracy is somewhat tainted by the subordination of his religious concerns and the elevation of his political and financial ambitions. The inner movement of personnel among the various sixty front organizations obscures the professed religious goals. One former member noted, "On any one day, I could act as a representative of the United Family [Church] and pass out literature for it and then turn around at a moment's notice and disseminate political brochures for the FLF."²⁶³ Individuals who have aligned themselves with Moon for purely religious reasons are in effect devoting their energies for a politically and economically motivated movement legitimated by peripheral religious concerns.

The proceeding examination has focused on five of the most widely publicized cults. Each of these groups have either obtained, or are presently seeking, a tax exempt status as a group organized and operated exclusively for religious purposes. However, the facts indicate that a substantial part of their respective activities are in furtherance of secular purposes which are not enumerated by Section 501(e)(3) of the Internal Revenue Code. If this is correct, then the tax exempt status of that organization should be withdrawn.²⁶⁴ Undoubtedly, efforts will be made to rationalize any extra-religious involvement as necessary to the accomplishment of their religious purposes. Unfortunately a grave injustice is being perpetrated on those individuals who are members of these groups on the basis of their religious convictions. Many have labored ardously for goals that are characterized as being religious. In effect they have been used as pawns, vital to the implementation of political and social programs as dictated by the leadership.

C. *The Need to Investigate*

It has been nearly six years since the initial reports on cult activities were released from California and New York.²⁶⁵ Since then, numerous state and federal committees have convened to

262. The apparent influence that the Reverend Sun Myung Moon has had on Korean-American relations is reflected by the fact that of the nearly 450 pages that comprise the report of the Subcommittee on International Organizations, nearly 20% is devoted to a fact-finding report on the Moon organization. THE INVESTIGATION OF KOREAN-AMERICAN RELATIONS, note 8 *supra*.

263. *Id.* at 334.

264. Treas. Reg. § 1.501(c)(3)-1(a). The regulations state: "[i]n order to be exempt . . . an organization must be both organized and operated *exclusively* for one or more of the purposes specified in this section" (emphasis added). *Id.*

265. See note 7 *supra*.

gather evidence and hear testimony on the many inter-related issues of this national problem. Some investigations²⁶⁶ have, at the outset, issued a disclaimer noting that their capacity is unofficial and are gathered only to determine whether further inquiry is necessary. Other investigations are reluctant to extend into delicate constitutional areas for fear of trespassing on the rights and privileges accorded to religious organization.²⁶⁷ The groups being subjected to investigation have on the other hand claimed that the aggregate effect of all these "witchhunts" and negative media exposure has produced a chilling effect on their activities. They further caution that any attempts to legislate would be tantamount to a bill of attainder and be violative of the equal protection clause. Can one thus characterize the current state of the controversy as being at a hiatus or even a stalemate? Neither the critics of, nor the proponents for, cults would be satisfied with such a contention. They are remindful that the recruitment-deprogramming war still rages. The onus is thus on the courts and legislatures to address the issues.

Until recently the states have taken the initiative in probing cult activities for any irregularities. Some inquiries have been very broad in scope while others have confined their emphasis to a single church or issue.²⁶⁸ The very magnitude of the contro-

266. *Hearings on the Cult Phenomenon*, note 8 *supra*; THE CALIFORNIA COMMISSION ON YOUTH, note 7 *supra*.

267. *E.g.*, "The issue of People's Temple's status as a 'church' is also significant in connection with First Amendment protection it sought and received. Obviously the latter issue is a difficult and complex matter beyond the purview of this committee and its investigation." THE JONESTOWN REPORT, *supra* note 8, at 20. The conclusion of the report compiled by the Charity Frauds Bureau is also reflective: "Despite the facts outlined, no direct action by the Attorney General can be undertaken at this time against the COG because of the constitutional protection of the First Amendment." THE LEFKOWITZ REPORT, *supra* note 7, at 64.

268. Examples of state legislative activity in 1979 reveals that issues related to mind control and fundraising are the primary areas under scrutiny. The Illinois House of Representatives adopted a resolution to hold hearings throughout the state on both of these matters. 1 THE ADVISOR, Aug., 1979, at 3. See also Pa. H.R. Res. No. 20 (1979). Massachusetts has set up a similar Commission. However, that Commission has confined its investigation to problems related to secular fundraising activities of religious organizations. 1 THE ADVISOR, Aug., 1979, at 3. The New York State Assembly is considering several separate bills. The focus of the initial proposal is to create a special committee under the auspices of the Office of Mental Health, to study cult recruiting practices to determine whether there are any hazardous or detrimental effects on children or young adults. N.Y. H.R. No. 6085 1979-80 Sess. Other bills include a proposed conservatorship statute and various provisions restricting solicitation of contributions from the general public statutes. 2 THE ADVISOR, Feb. 1980, at 3.

versy merits federal involvement. The committee empowered to investigate Korean-American relations remarked: "For several years a few states in the U.S. have attempted to cope with the Moon organization despite inadequate resources and without the coordination that only the Federal Government can provide."²⁶⁹ However, not every federal agency is willing to devote its energies to the problem, and those that do, have yet to suggest any course of action. The United States Department of Justice which investigated only 30 of 400 complaints²⁷⁰ concerning cults over a four year period states that they can do little to respond to allegations of brainwashing. The department has expressed its opinion, stating, "[e]vidence that sect members do not have the capacity to exercise a free will is inconclusive."²⁷¹ It was added that although the support of the Federal Bureau of Investigation would be enlisted upon a showing of illegal conduct, they recommended that remedies other than federal criminal sanctions be sought.²⁷²

The Committee on Foreign Affairs of the United States House of Representatives has on two occasions formed an executive task force comprised of various federal agencies to delve into the Moon and Jonestown matters. Although their efforts have not seen fruition, they suggest that violations of state and federal laws have occurred and that possible ulterior motives, other than religion, may be the motivating force behind some cult operations.²⁷³ The solution that appears most tenable at this point in time is the possible withdrawal of a cult's tax exempt status. Such a decision would be decided by the courts. In the meantime, it is important that all involved continue to educate²⁷⁴ themselves on the issues so as to acquire a better understanding of the phenomenon.

The role of the judiciary has been mainly confined to litigate civil suits requesting damages for improper conduct on the part of either deprogrammers and/or the cult. Otherwise there has been a noticeable absence of appellate case law especially on the crucial question as to whether a particular group, in the ecclesiastical sense, constitutes a religion. Certainly any attempt to decide

269. THE INVESTIGATION OF KOREAN-AMERICAN ACTIVITIES, *supra* note 8, at 439.

270. THE JONESTOWN REPORT, *supra* note 8, at 388.

271. 123 CONG. REC. H8683 (daily ed. Aug. 4, 1977) (remarks of Rep. Giaimo).

272. *Id.* "It continues to be the position of the Criminal Division that allegations of "brainwashing," "mind control," "thought reform" or "coercive persuasion" would not support a prosecution under the Federal kidnapping statute." 123 CONG. REC. H8683 (daily ed. Aug. 4, 1977) (letter from Benjamin R. Civiletti, Asst. Attorney General to Representative Giaimo).

273. See THE INVESTIGATION OF KOREAN-AMERICAN RELATIONS, *supra* note 8, at 390-93.

274. *Id.* at 1160.

such an issue will be closely monitored to avoid any encroachment into questions pertaining to the veracity of one's religious beliefs. The language in *Founding Church of Scientology v. United States*,²⁷⁵ may be instructive:

Not every enterprise cloaking itself in the name of religion can claim the constitutional protection conferred by that status. It might be possible to show that a self-proclaimed religion was merely a commercial enterprise, without the underlying theories of man's nature or his place in the Universe which characterize recognized religions. Though litigation of the question whether a given group or set of beliefs is or is not religious is a delicate business, our legal system sometimes requires it so that secular enterprises may not unjustly enjoy the immunities granted to the sacred. When tax exemptions are granted to churches, litigation concerning what is or what is not a church will follow. When exemption from military service is granted to those who object on religious grounds, there is similar litigation. When otherwise proscribed substances are permitted to be used for purposes of worship, worship must be defined. The law has provided doctrines and definitions, unsatisfactory as they may be to deal with such disputes.²⁷⁶

Thus, so long as there is no threat to the public's health, safety, welfare or morals, or any violation of a criminal statute, the court will serve as the religion's most steadfast guardian of first amendment rights and privileges. In light of the foregoing, it is somewhat ironic that a "maligned" cult does not submit to a thorough investigation. This would enable them the opportunity to legitimize the professed purposes of the group and remove any doubt as to it being a bonafide religion. The unwillingness to yield to public scrutiny in the face of publicity engenders further suspicion.

VI. CONCLUSION

As the prospects of a challenge to the validity of certain cults as a religious institution appear more likely, it is uncertain when

275. This was the specific recommendation of the Jonestown investigative committee. The remarks of the investigative committee urged familiarization with all issues, especially those associated with mind control:

Regrettably, too little is known about the phenomenon of cults or the dynamics and methods of such groups and their leaders. Within the mental health community, research and focus on the issue have been minimal and literature is almost nonexistent. It is not unreasonable to conclude, in fact, that cult groups in the United States tend to thrive because of this lack of understanding and information.

We therefore recommend, on an urgent basis, that the professional scientific community undertake a concentrated program of research and training aimed at understanding questions in this area.

THE JONESTOWN REPORT, *supra* note 8, at 37.

276. 409 F.2d 1146, 1160 (D.C. Cir. 1969).

that confrontation will materialize. A sense of fraternalism has enveloped several cults as an alliance²⁷⁷ has been formed to weather any impending conflict. Such strategy may be an act of despair, however, it exemplifies acute foresight. Cults are cognizant that if a religious veil is exposed and consequently pierced, *stare decisis* will generate the demise of other similar groups.

Accusations of irresponsible inquisitions are as of yet unfounded. The first amendment, and more specifically, the free exercise clause, will guard against legislative and judicial indiscretions. Examination into cult activity to date, has proceeded with all due respect for the rights and privileges afforded by the first amendment. Unconventional and peculiar beliefs have not been at issue. Scrutiny of such beliefs would typify a persecuting and intolerant nation. However, investigation into conduct and professed purposes cannot be equated as an affront of an inviolable freedom of religion. The mood of the courts and legislatures must reflect a belief that "secular enterprises may not unjustly enjoy the immunities granted to the sacred"²⁷⁸ and not stagnate under misapplied concepts of benevolent neutrality.

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277. The Children of God, The Founding Church of Scientology, and The Unification Church formed the Alliance for the Preservation of Religious Liberty (APRL). It has also been reported that Synanon has donated supplies and equipment to the People's Temple and has had dealings with the International Society For Krishna Consciousness. THE JONESTOWN REPORT, *supra* note 8, at 433.

278. 409 F.2d 1146, 1160 (D.G. Cir. 1969).