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## CULTS AND CONVERSION: THE CASE FOR INFORMED CONSENT

Richard Delgado\*

### INTRODUCTION

Extremist groups' use of powerful techniques of coercive persuasion ("brainwashing")<sup>1</sup> to produce obedient followers raises per-

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<sup>1</sup> "Coercive persuasion" is a term used by social psychologists and psychiatrists to describe forcibly induced changes in belief and value orientation. *E.g.*, *Peterson v. Sorlien*, 299 N.W.2d 123, 126 (Minn. 1980), *cert. denied*, 450 U.S. 1031 (1981) (defining coercive persuasion); R. LIFTON, *THOUGHT REFORM AND THE PSYCHOLOGY OF TOTALISM* (1961); E. SCHEIN, *COERCIVE PERSUASION* (1961). In general, coercive persuasion has been studied in two settings: (i) field studies of prisoners of war, victims of Chinese "revolutionary universities," captives of outlaw groups, and religious cults; and (ii) laboratory studies of isolation, physiological depletion, peer pressure, and cognitive dissonance. For examples of the former, see E. SCHEIN, *supra*; Lifton, *Home By Ship: Reaction Patterns of American Prisoners of War Repatriated from North Korea*, 110 AM. J. PSYCHIATRY 732 (1954); Schein, *The Chinese Indoctrination Program for Prisoners of War*, 19 PSYCHIATRY 149 (1956); Strassman, Thaler, & Schein, *A Prisoner of War Syndrome: Apathy as a Reaction to Severe Stress*, 112 AM. J. PSYCHIATRY 998 (1956); J. Segal, *Therapeutic Considerations in Planning the Return of American Prisoners of War to Continental United States* (U. S. Navy, Neuropsychiatric Research Unit, Rep. No. 72-37) (1973). See also V. BUGLIOSI & C. GENTRY, *HELTER SKELTER* (1974) (trial of Manson cultists); J. MEERLO, *RAPE OF THE MIND* (1956); W. SARGANT, *BATTLE FOR THE MIND* 91-153 (1957) (religious conversion); *THE TRIAL OF PATTY HEARST* (1976) (reprint of trial transcript) [hereinafter cited as *HEARST TRIAL*]; Delgado, *Religious Totalism: Gentle and Ungentle Persuasion under the First Amendment*, 51 S. CAL. L. REV. 1 (1977), and sources cited therein (psychologists and psychiatrists describe emotional effects of membership in religious cult groups) [hereinafter cited as *Delgado, Religious Totalism*]. For examples of the latter type of study, see, e.g., L. FESTINGER, *A THEORY OF COGNITIVE DISSONANCE* 84-97 (1957); Asch, *Studies of Independence and Conformity: I. A Minority of One Against a Unanimous Majority*, 70 PSYCHOLOGY MONOGRAPHS No. 416 (1956); Chodoff, *Effects of Extreme, Coercive & Oppressive Forces*, in 3 AMER. HANDBOOK OF PSYCHIATRY 384

plexing issues of criminal responsibility,<sup>2</sup> free will,<sup>3</sup> and the limits of governmental intervention.<sup>4</sup> At times, such conditioning has been raised defensively, as in the trials of Patty Hearst<sup>5</sup> and Larry Layton,<sup>6</sup> and the courts-martial of returning POWs.<sup>7</sup> At other

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(S. Arieti ed. 1966); Lilly, *Mental Effects of Reduction of Ordinary Levels of Physical Stimuli on Intact Healthy Persons*, 5 PSYCH. RES. REP. 1 (1956); Milgram, *Some Conditions of Obedience and Disobedience to Authority*, 18 HUM. REL. 57 (1965); Milgram, *Group Pressure and Action Against a Person*, 69 J. ABNORMAL PSYCHOLOGY 137 (1964); Group for the Advancement of Psychiatry, Symposium No. 3: Factors Used to Increase the Susceptibility of Individuals to Forceful Indoctrination 90-93 (1956); *id.*, Symposium No. 2: Illustrative Strategies for Research on Psychopathology in Mental Health 14, 18-20, 98-103 (1956). See also Shapiro, *Legislating the Control of Behavior Control: Autonomy and the Coercive Use of Organic Therapies*, 47 S. CAL. L. REV. 237 (1974) (summarizing capabilities of physically controlling behavior of captive populations).

Although there is some disagreement over the theoretical model that best accounts for the mental and emotional changes of brainwashing, there is substantial agreement that concentrated application of certain techniques facilitates them. The techniques include: (1) isolation of the victim and control over his environment; (2) control over information and communication; (3) physiological depletion through inadequate sleep, diet, and sanitation; (4) repetitious tasks, singing, and chanting; (5) manipulation of guilt and anxiety; (6) threats of annihilation, physical or spiritual, for failure to identify with the captors; (7) degradation of and assaults on the self; (8) peer pressure, often applied through "struggle sessions"; (9) forced acts of self-betrayal and betrayal of former group norms; (10) alternation of harshness and kindness. See generally *Peterson v. Sorlien*, 299 N.W.2d 123, 126 (Minn. 1980), *cert. denied*, 450 U.S. 1031 (1981); Delgado, *Ascription of Criminal States of Mind: Toward a Defense Theory for the Coercively Persuaded ("Brainwashed") Defendant*, 63 MINN. L. REV. 1, 2-3 (1978) [hereinafter cited as *Delgado, Ascription*].

<sup>2</sup> It has been argued that persons who have undergone involuntary subjection to a regime of forceful conversion should be entitled to a defense to criminal charges arising from acts induced by the conversion. *E.g.*, Delgado, *Ascription*, *supra* note 1; Lunde & Wilson, *Brainwashing as a Defense to Criminal Liability: Patty Hearst Revisited*, 13 CRIM. L. BULL. 341 (1977). See also cases cited notes 5-7 *infra*.

<sup>3</sup> Compare Delgado, *Ascription*, *supra* note 1, with Dressler, *Professor Delgado's "Brainwashing" Defense: Courting a Determinist Legal System*, 63 MINN. L. REV. 335 (1979) (defense of coercive persuasion incompatible with free-will premise of criminal justice system).

<sup>4</sup> *E.g.*, Delgado, *Religious Totalism*, *supra* note 1 (intervention permissible); Comment, *"Mind Control" or Intensity of Faith: The Constitutional Protection of Religious Beliefs*, 13 HARV. C.R.-C.L. L. REV. 751 (1978) (middle-of-the-road position); Note, *Conservatorships and Religious Cults: Divining a Theory of Free Exercise*, 53 N.Y.U. L. REV. 1247 (1978) (intervention not permissible).

<sup>5</sup> *United States v. Hearst*, 412 F. Supp. 863, 866, 880, 883-84 (N.D. Cal. 1976); *HEARST TRIAL*, *supra* note 1. See also *Peterson v. Sorlien*, 299 N.W.2d 123, 126 (Minn. 1980), *cert. denied*, 450 U.S. 1031 (1981) (young woman's coercive persuasion at hands of religious cults justified her forcible deprogramming; defense of "consent" upheld); see notes 147-59 and accompanying text *infra*.

<sup>6</sup> *United States v. Layton*, 519 F. Supp. 942, 946, 959 (N.D. Cal. 1981).

<sup>7</sup> *E.g.*, *United States v. Olson*, 20 C.M.R. 461 (A.C.M.R. 1955), *aff'd*, 7 C.M.A. 460, 22 C.M.R. 250 (1957); *United States v. Batchelor*, 19 C.M.R. 452 (A.C.M.R. 1954), *aff'd*, 7 C.M.A. 354, 22 C.M.R. 144 (1956); *United States v. Fleming*, 19 C.M.R. 438 (A.C.M.R.

times, allegations of coercive persuasion have induced state action, such as legislation<sup>8</sup> or court orders<sup>9</sup> aimed at prohibiting or reversing extreme forms of conditioning.

Earlier commentary has explored the criminal responsibility of the coercively persuaded defendant,<sup>10</sup> as well as numerous problems raised by proposals to regulate the proselytizing and conversion activity of "cult"<sup>11</sup> groups like the Unification Church,

1954), *aff'd*, 7 C.M.A. 543, 23 C.M.R. 7 (1957). See also N.Y. Times, Apr. 28, 1954, at 16, col. 3 (prosecution of Col. Schwable not brought because of finding of intense pressures applied during captivity).

<sup>8</sup> E.g., New York State Assembly, *Public Hearing on Treatment of Children by Cults* (Amer. Fam. Foundation Reprint, Aug. 9-10, 1979) [hereinafter cited as *New York Hearings*]; *Hearings, Vermont Senate Comm. for Investigation of Alleged Deceptive, Fraudulent and Criminal Practices of Various Organizations in the State* (Aug. 18, 1976) [hereinafter cited as *Vermont Hearings*]; STAFF REPORT, INVESTIGATIVE GROUP TO THE COMMITTEE ON FOREIGN AFFAIRS, U.S. HOUSE OF REPRESENTATIVES, *THE ASSASSINATION OF REPRESENTATIVE LEO J. RYAN AND THE JONESTOWN, GUYANA TRAGEDY*, 96th Cong., 1st Sess. 36-37 (1979) [hereinafter cited as *JONESTOWN REPORT*]. See also Note, *High Demand Sects: Disclosure and the Free Exercise Clause*, 15 NEW ENG. L. REV. 128 (1979) (proposing disclosure legislation).

<sup>9</sup> E.g., *In re Surber*, No. G-946 (Ariz., Pima County, Super. Ct. Oct. 24, 1975); *In re Petri*, No. NCP 5267B (Cal., L.A. County, Super. Ct. Mar. 1, 1976). But see Comment, *To Keep Them Out of Harm's Way? Temporary Conservatorships and Religious Sects*, 66 CALIF. L. REV. 845 (1978) (criticizing use of conservatorships to "deprogram" religious cultists).

<sup>10</sup> E.g., Delgado, *Ascription*, *supra* note 1; Dressler, *supra* note 3; Lunde & Wilson, *supra* note 2.

<sup>11</sup> The term "cult" is used herein nonpejoratively, i.e., in its dictionary sense, "a system of religious worship or ritual . . . devoted attachment to, or extravagant admiration for, a person, principle, etc. . . . [A] group of followers; sect." WEBSTER'S NEW WORLD DICTIONARY 358 (college ed. 1966).

The major religious cults are identified and described in J. RUDIN & M. RUDIN, *PRISON OR PARADISE: THE NEW RELIGIOUS CULTS* 31-97 (1980) (Unification Church, Krishna Consciousness, The Way, Alamo Foundation, Divine Light Mission, Church of Armageddon/Love Family, Children of God, and Church of Scientology). It was recently estimated that one to three million U.S. citizens are members of such groups. Briggs, *New Spiritual Organizations Considered Likely to Last*, N.Y. Times, June 22, 1977, at A15, col. 1; *Religious Cults: Newest Magnet for Youth*, U.S. NEWS & WORLD REP., June 14, 1976, at 52 (Gallup poll suggests six million Americans have had some contact with transcendental meditation, three million with charismatic renewal, three million with "mysticism," and two million with "Oriental religions."). See also Beckford, *A Korean Evangelistic Movement in the West*, in *Acts of the 12th International Conf. for the Sociology of Religion* 319, 321-23 (1973) (Unification Church has branches in all European countries and has large following in Korea and Japan); Davis & Richardson, *A More Honest and Objective Look at the Children of God*, in *Soc'y for the Scientific Study of Religion, Annual Meeting 1* (1975) (Children of God cult operates in over 65 countries); Address by Paul B. Rose, Member of Parliament, *Official Record* (Oct. 22, 1975) (growing concern over Unification Church activities in England).

The recent growth of cultism in the Western world perhaps can be explained as the product of rapid social change and resulting anxiety among members of society. E.g., J. CLARK,

People's Temple, and The Way.<sup>12</sup> This Article analyzes one aspect of the latter controversy—the proposal to recognize a requirement of disclosure in religious conversion<sup>13</sup> similar to that imposed in medicine and human experimentation.<sup>14</sup> Under the proposed rule, religious proselytizers would be free to convert, indoctrinate, and condition members of the public only after disclosing certain information to them, and obtaining their assent. As with informed consent requirements in general, the principal aim of such a rule is to strike a balance between the legitimate interests of converters<sup>15</sup> and the rights of potential converts to select their own religion or nonreligion.

Values of self-determination already play a significant role in the debate about religious cultism. On a rhetorical level, defenders of these groups ask why young adults should not be free to join whatever religious organizations they desire.<sup>16</sup> Opponents respond that free choice is exactly what these groups deny.<sup>17</sup> Constitutional analysis of state intervention raises consent issues,<sup>18</sup> as do tort and

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M. LAGONE, R. SCHECTER, & R. DALY, *DESTRUCTIVE CULT CONVERSION: THEORY, RESEARCH AND TREATMENT* 44 (1981) (loss of "cultural confidence") [hereinafter cited as *DESTRUCTIVE CULT CONVERSION*]; West & Delgado, *Psyching out the Cults' Collective Mania*, Los Angeles Times, Nov. 26, 1978, pt. VII, at 1 (cults' growth fastest in periods of social transition).

<sup>12</sup> See note 4 *supra*.

<sup>13</sup> An informed consent requirement was suggested in Delgado, *Religious Totalism*, *supra* note 1, at 50-61, 73-74. See also Note, *supra* note 8 (proposing statutory disclosure remedy).

<sup>14</sup> The doctrine of informed consent in medicine and human experimentation requires that the physician or experimenter describe the proposed treatment in advance and obtain the subject's consent. See, e.g., *Canterbury v. Spence*, 464 F.2d 772 (D.C. Cir.), *cert. denied*, 409 U.S. 1064 (1972); *Cobbs v. Grant*, 8 Cal. 3d 229, 244, 502 P.2d 1, 10, 104 Cal. Rptr. 605, 514 (1972); J. KATZ, *EXPERIMENTATION WITH HUMAN BEINGS* 540-608 (1972). Generally, the doctor must disclose all material information that the patient likely would need to make an intelligent decision, including the diagnosis, prognosis, alternative treatments and their costs and risks.

<sup>15</sup> See text accompanying notes 167-224 *infra*.

<sup>16</sup> E.g., Gutman, *Extemporaneous Remarks*, 9 N.Y.U. REV. L. & SOC. CHANGE 69, 71 (1979); Robbins, *Religious Movements, The State and the Law: Reconceptualizing "The Cult Problem"*, 9 N.Y.U. REV. L. & SOC. CHANGE 33 (1979).

<sup>17</sup> E.g., A. RUDIN & M. RUDIN, *PRISON OR PARADISE? THE NEW RELIGIOUS CULTS* (1980); Conway & Siegelman, *Information Disease: Have Cults Created a New Mental Illness?*, SCI. DIG., Jan. 1982, at 86; Rudin, *The Cult Phenomenon: Fad or Fact?*, 9 N.Y.U. REV. L. & SOC. CHANGE 17 (1979).

<sup>18</sup> First amendment analysis requires that governmental interests of the highest order justify any official measure that impinges on religious liberty. E.g., *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972); *Sherbert v. Verner*, 374 U.S. 398, 403, 407 (1963). Although some of the interests advanced in the cult controversy are broad, societal ones—danger to the family as an institution, or the risk of violence, see, e.g., Delgado, *Religious Totalism*, *supra* note 1, at

criminal actions brought by cult members after unsuccessful deprogrammings,<sup>19</sup> and suits by ex-members against cult leaders for unlawful imprisonment, slavery, intentional infliction of emotional distress, and fraud.<sup>20</sup>

This Article argues that these autonomy values, already invoked by both sides of the debate, should be extended and institutionalized in the form of a requirement of informed consent to religious conversion. First, it will show that such a requirement is necessary to prevent injury to specific interests of converts, as well as plausible, in that the context in which it is proposed recognizes and protects disclosure and freedom-of-choice values. It explains why such a requirement has not been developed, and why it is appropriate for it to be recognized now. A composite model of the cult-joining process, drawn from descriptions of the recruiting practices of cult groups, is then put forth and analyzed to identify the points where consent problems arise. Final sections consider the remedies available to enforce an informed consent requirement, possible objections to such a requirement, and answers to those objections.

### I. NECESSITY AND PLAUSIBILITY OF AN INFORMED CONSENT REQUIREMENT

Proponents of an informed consent requirement in a novel area should be able to show: (1) that the requirement is needed to avoid injury to legally protected interests; (2) that autonomy values are recognized in the setting in which the requirement is urged; and (3) that the current absence of such a requirement does not imply

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26-36,—the majority of the interests concern only the individual victim, e.g., *id.* at 10-25 (precipitation of psychiatric disorders; guilt, suicide, and self-mutilation; maturational arrest; physical disease and injury; and impairment of autonomy). Our legal system is averse to describing as a "harm" an event that the victim incurs voluntarily or does not perceive as a harm. See generally, *id.* at 49-62. It is therefore necessary to assess the extent to which the subjects of cultic recruiting and conditioning undergo them willingly and consensually. *Id.* (limitations on the decisions to join based on voluntariness).

<sup>19</sup> E.g., *United States v. Patrick*, No. CR-74-320-S (W.D. Wash. Dec. 11, 1974); *Peterson v. Sorlien*, 299 N.W.2d 123 (Minn. 1980), *cert. denied*, 450 U.S. 1031 (1981).

<sup>20</sup> E.g., *United States v. Carr*, No. CR-79-195-D (M.D.N.C. filed Oct. 31, 1979) (three members of the Church of God and True Holiness pled guilty to charges of holding church members in state of slavery); *Turner v. Unification Church*, 473 F. Supp. 367 (D.R.I. 1978) (unsuccessful civil action by ex-member for damages for maintaining her in involuntary servitude); *Christofferson v. Church of Scientology*, \_\_\_ P.2d \_\_\_ (Or. App. 1982) (reversing and remanding \$1,500,000 judgment for fraud and outrageous conduct); *Dettling, Husband Awarded \$400,000 in Cult Suit*, *Akron Beacon J.*, July 16, 1977, § A, at 3, col. 1.

a social judgment that it should not exist.

A. *Harms That May Be Averted by Means of an Informed Consent Requirement*

Psychological studies, legislative hearings, civil and criminal actions, and first-person accounts by former cultists indicate that a number of harms may befall members of these groups. These include: physical injury from malnutrition, inadequate sleep, overwork, and inattention to medical needs;<sup>21</sup> pecuniary loss;<sup>22</sup> psychological injury, including guilt, suicide, maturational arrest, psychosis and neurosis;<sup>23</sup> impairment of autonomy and decisional

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<sup>21</sup> *New York Hearings*, *supra* note 8, at 11-12 (child abuse); *id.* pt. II at 117-18, 175-77 (deaths, beatings, malnutrition); *Vermont Hearings*, *supra* note 8, at 16 (extreme sleep deprivation), 43-45 (hepatitis untreated because Satan, not germs, caused disease), 63 (low-protein, high-carbohydrate diet); JONESTOWN REPORT, *supra* note 8, at 17-18; R. ENROTH, YOUTH, BRAINWASHING AND THE EXTREMIST CULTS 64 (1977) (80-100 members living in rodent-infested house, but "these discomforts were . . . to make us strong"); *id.* at 88-89 (electric current from wall socket transmitted among circle of members holding hands, as test of faith); *id.* at 125 (deaths from ritual inhalation of toluene); C. STONER & A. PARKE, ALL GOD'S CHILDREN 106-08 (1978) (starving cult members during cold winter told "to meditate and concentrate on each grain of rice"; one member who lost 40 pounds explained that drugs sustained them through the winter); *id.* at 138 (medical treatments rejected as non-spiritual). See also *People v. Florence*, No. 8699, *People v. Patrick*, No. 8688, *People v. Sacks*, No. 8686, record at 27 (Cal., Fullerton Co. Mun. Ct. May 6, 1975) (offer of proof of defendants, reciting that Hare Krishna follower, after working in streets, fainted in presence of mother; on reviving declared that her body consisted of nothing but stool and urine and was of no concern to her); National Ad Hoc Committee, *The Unification Church: Its Activities and Practices*, A Meeting of Concerned Parents, A Day of Affirmation and Protest (transcript of meeting held by Senators Dole and Buckley, in Washington, D.C., April 30, 1976) [hereinafter cited as *Dole-Buckley Meeting Report*]; *id.* pt. 1, at 25 (loss of sensation in feet and toes from long hours of proselytizing); *id.* pt. 2, at 11 (untreated eye condition); *id.* at 15, 54 (untreated ovarian cyst so large woman appeared pregnant), 61 (improperly set broken limb); Conway & Siegelman, *supra* note 17, at 88 (extreme weight gain or loss; menstrual dysfunction in women, loss of secondary sex characteristics in men; malnutrition; abnormal skin conditions).

The physiological depletion suffered by cult members may be compared with that experienced by POW and concentration camp victims. See, e.g., J. SEGAL, *LONG-TERM PSYCHOLOGICAL AND PHYSICAL EFFECTS OF THE POW EXPERIENCE: A REVIEW OF THE LITERATURE* 8-27 (1973) (robotization of emotions, premature aging, loss of menstrual function, suicide, psychiatric disorders); Chodoff, *supra* note 1; Sargant & Shorvon, *Acute War Neurosis*, 54 *ARCHIVES OF NEUROLOGY & PSYCHIATRY* 231, 236 (1945).

<sup>22</sup> JONESTOWN REPORT, *supra* note 8, at 18; Conway & Siegelman, *supra* note 17, at 88 ("modest sample donated more than \$1.3 million of their own savings and possessions . . . average gift: \$3,250 . . . and brought in another \$5.7 million"); Delgado, *Religious Totalism*, *supra* note 1, at 44-45 (cults require members to donate all material possessions to group).

<sup>23</sup> American Psychiatric Association, *Comm. on Nomenclature and Statistics*, *Diagnostic*

capacity;<sup>24</sup> and loss of opportunity by the convert for normal personal, career, and social development.<sup>25</sup>

and Statistical Manual of Mental Disorders, disorder 300.15, at 260 (3d ed. 1980) ("persons who have been subjected to periods of prolonged and intense coercive persuasion . . . while the captive of terrorists or cultists") [hereinafter cited as DSMMD III]; *New York Hearings*, *supra* note 8, at 11-13, 29 (psychological and emotional abuse of children); *id.* pt. II, at 66-67 (suicide); *id.* pt. III, at 7-11 (child abuse in Jonestown); *Vermont Hearings*, *supra* note 8, at 13, 17 (testimony of John Clarke, M.D., Professor of Psychiatry, Harvard Medical School) (classic psychotic or neurotic disease; impairment of reality testing; stereotyped speech and thought); DESTRUCTIVE CULT CONVERSION, *supra* note 11, at 5, 16, 17, 20-22; R. ENROTH, *supra* note 21, at 74 (self-mortification to purge self of sins, including five-day fasts); C. STONER & A. PARKE, *supra* note 21, at 218 (robot-like writing); Conway & Siegelman, *supra* note 17, at 88, 90, 92 (disturbances of awareness, perception, and memory; recurring nightmares; hallucinations and delusions; inability to think and make decisions; suppression of imagination); *Cultism and the Young*, FRONTIERS OF PSYCHIATRY, Sept. 1, 1976, at 2, col. 2 (psychological regression) [hereinafter cited as FRONTIERS OF PSYCHIATRY]; Water, *Tammy Doesn't Live Here Anymore*, BOSTON MAG., Nov. 1975, at 99 (immersing hands into snow "until they couldn't feel any longer"); Dole-Buckley Meeting Report, *supra* note 21, pt. 1, at 33 (schizophrenia or borderline psychosis resulting from cult experience); *id.* pt. 2, at 7, 14, 57, 71 (guilt manipulation); Transcript, NBC "Weekend," May 17, 1975 (youth at Unification Church training center committed suicide by lying down on tracks in path of oncoming train).

The psychological and maturational effects of the cult experience are similar to those observed in POW concentration camp cases. See, e.g., R. LIFTON, THOUGHT REFORM AND THE PSYCHOLOGY OF TOTALISM: A STUDY OF "BRAINWASHING" IN CHINA (1961); Bettelheim, *Individual and Mass Behavior in Extreme Situations*, 38 J. ABNORMAL & SOC. PSYCHOLOGY 417, 444-47 (1943) (POWs regressed to infantile states); Farber, Harlow, & West, *Brainwashing, Conditioning and DDD (Debility, Dependency and Dread)*, 20 SOCIOLOGY 271, 275 (1957) (creation of regressed states); Klonoff, McDougall, Clark, Kramer, & Horgan, *The Neuropsychological, Psychiatric, and Physical Effects of Prolonged and Severe Stress: 30 Years Later*, 163 J. NERVOUS & MENTAL DISEASE 246, 248 (1976).

<sup>24</sup> E.g., DESTRUCTIVE CULT CONVERSION, *supra* note 11, at 21-23 (impaired decisionmaking ability; paralysis of the will); Conway & Siegelman, *supra* note 17, at 90 ("I felt broken, shattered and terrified"; "it hurts to think, physically aches"; "was taught to think of my mind as the enemy"); Dole-Buckley Meeting Report, *supra* note 21, pt. II, at 27, 34, 62 (normal, high-achieving youths turned into submissive "zombies," unable to make decisions unaided), 14, 18, 27, 32, 45, 62, 64 (glassy-eyed stare, fixed smile, programmed-sounding speech; stereotyped, robot-like responses; dullness; loss of emotional responsiveness); DSMMD III, *supra* note 23 (recognizing cultic thought reform syndrome).

These responses, too, may be compared with those encountered in the POW syndrome. See, e.g., *Communist Interrogation, Indoctrination and Exploitation of American Military and Civilian Prisoners: Hearing Before the Permanent Subcomm. on Investigations of the Senate Comm. on Government Operation*, 84th Cong., 2d Sess. 25 (1956) (dullness, fatigue, loss of mental clarity); J. MINDSZENTY, MEMOIRS 105, 110, 112-14 (1974) (Roman Catholic Cardinal reported confusion, indifference, loss of reality after prolonged interrogation and severe beatings at hands of Communist captors). See generally Schein, *Reaction Patterns to Severe Chronic Stress in American Army Prisoners of War of the Chinese*, 13 J. SOC. ISSUES No. 3, at 21-30 (1957).

<sup>25</sup> E.g., *New York Hearings*, *supra* note 8, at 18-21, pt. II at 118, 122; JONESTOWN REPORT,



Not every cultist suffers these harms, or regards them as such. Some thrive under the demands of cult life; others rise to positions of leadership, where they wield influence and power over religious empires. Many find contentment, even joy in the group and view any costs associated with their conversion as acceptable.<sup>26</sup> Others, however, leave cult life—voluntarily, by expulsion, or by forcible retrieval and deprogramming—sick, angry, and disillusioned.<sup>27</sup> Many state that, had they known of the group's identity or nature, they would not have joined.<sup>28</sup>

These risks, comparable in many ways to those of nonconsensual medical treatment or human experimentation,<sup>29</sup> suggest the need for similar legal protection. Informed consent rules exist, in part, to protect persons against risk.<sup>30</sup> The existence of risk in religious conversion is thus one ground in favor of such a rule in that setting.

### B. The Setting—Insiders, Outsiders, and the Government

It is necessary next to examine the setting in which a disclosure/

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*supra* note 8, at 18; C. STONER & A. PARKE, *supra* note 21, at 5-31, 121-33; Dole-Buckley Meeting Report, *supra* note 21, pt. 2, at 11, 14, 24, 36, 62 (marriage partners chosen; careers abandoned; college education discontinued). See generally Conway & Siegelman, *supra* note 17, at 90 (lasting health problems, long-term emotional difficulties; 14% suffered severe cognitive disorders lasting up to eight years); Delgado, *Religious Totalism*, *supra* note 1, at 44-45.

<sup>26</sup> *E.g.*, DESTRUCTIVE CULT CONVERSION, *supra* note 11, at 6 (personality changes consequent to cult joining vary from one individual to another; effect is a complex interaction among milieu, pre-existing personality, and treatment by fellow cultists).

<sup>27</sup> *E.g.*, New York Hearings, *supra* note 8, at 27-28; DESTRUCTIVE CULT CONVERSION, *supra* note 11, at 18-23 (psychological problems of ex-members); Conway & Siegelman, *supra* note 17, at 88, 90 (lasting effects of cult membership; full rehabilitation required up to eight years, with average time more than 16 months. "My life was blown to bits by the experience . . . I never knew such bewilderment, pain, and feeling on the brink of insanity."); Delgado, *Religious Totalism*, *supra* note 1, at 10-16 (psychological illness resulting from cult affiliation) 16-17 (guilt, anger, depression).

<sup>28</sup> New York Hearings, *supra* note 8, at 22-23, 34, 50; *id.* pt. II, at 26-27; Conway & Siegelman, *supra* note 17, at 38-41.

<sup>29</sup> Patients or experimental subjects may suffer physical or psychological harm and experience mortification on learning the nature of the experiment or treatment. See generally J. KATZ, EXPERIMENTATION WITH HUMAN BEINGS (1972). Informed consent requirements are designed to permit subjects to decide for themselves whether to incur the former type of risk and to eliminate the latter completely.

<sup>30</sup> See generally *Cobbs v. Grant*, 8 Cal. 3d 229, 243-44, 502 P.2d 1, 9-10, 104 Cal. Rptr. 505, 513-14 (1972) (informed consent requirement for medical procedures exists to permit patients to choose to incur or not incur risks).

consent requirement is proposed to see whether it is consistent with the values recognized therein. In some settings, an informed consent requirement would be inappropriate or pointless,<sup>31</sup> while in others, important interests in physical or psychological integrity are at stake, making such a requirement both plausible and desirable.<sup>32</sup>

Values of self-determination are deeply rooted in our societal views and legal treatment of religion. Although some religions stress passive values such as faith, suspension of disbelief, and uncritical discipleship,<sup>33</sup> the legal system has always required that religions treat each person *as though* commitment to membership is an affirmative act that is his or hers alone to make.

The early framers saw religious freedom in these terms.<sup>34</sup> For example, in drafting the preamble to Virginia's statute on religious freedom, Jefferson wrote: "God made man's mind free, and deliberately chose that religion should be propagated by reason and not by coercion."<sup>35</sup> Locke, whose writings strongly influenced the early colonists, regarded freedom of choice as an essential ingredient of religious liberty. He characterized religion as "the inward persuasion of the mind,"<sup>36</sup> and a church as a "voluntary society of men, joining themselves together of their own accord."<sup>37</sup>

Modern case law also protects truth-telling in religious matters, although the scope of required disclosure varies. Some recent cases treat religiously motivated deception no differently from ordinary fraud, perhaps on the theory that fraudulent behavior cannot be

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<sup>31</sup> Informed consent would serve no purpose in situations that present no threat to self-determination or autonomy interests. Consider, e.g., a proposal to require a child's consent to receive education; a proposal to require an adult's consent to be greeted by his or her friends.

<sup>32</sup> See, e.g., *Canterbury v. Spence*, 464 F.2d 772 (D.C. Cir.), cert. denied, 409 U.S. 1064 (1972); *Cobbs v. Grant*, 8 Cal. 3d 229, 502 P.2d 1, 104 Cal. Rptr. 505 (1972) (doctrine of informed consent exists to safeguard patient's interest in self-determination and to avoid unwanted intrusions on personal integrity).

<sup>33</sup> See, e.g., J. KNOX, *WORKS OF JOHN KNOX* (D. Laing, ed. 1895); J. CALVIN, *COMMENTARIES* (1979); M. BUBER, *BETWEEN MAN AND MAN* (1965); see also note 134 *infra*.

<sup>34</sup> L. PFEFFER, *CHURCH, STATE AND FREEDOM* 147, 610 (1967) (freedom to disbelieve and to attack religion); W. SWEET, *RELIGION IN COLONIAL AMERICA* 339 (1942) (Madison urged protection of freedom of religion to promote a "multiplicity of sects").

<sup>35</sup> J. BLAU, *CORNERSTONES OF RELIGIOUS FREEDOM IN AMERICA* 74-75, 78-79 (1949).

<sup>36</sup> J. LOCKE, *A LETTER CONCERNING TOLERATION* 17-18 (1950).

<sup>37</sup> *Id.* at 20.

religious.<sup>38</sup> Other cases apply a "sincerity" test, under which religious persons or groups may utter falsehoods if they sincerely believe that the utterances constitute religious truth.<sup>39</sup> A middle-of-the-road position, illustrated by *Founding Church of Scientology v. United States*,<sup>40</sup> probably represents the majority view in insider-outsider dealings.<sup>41</sup> *Founding Church* concerned the FDA's seizure of allegedly mislabeled E-meters<sup>42</sup> used by the organization for "clearing" adherents. The court found that: "[I]n order to raise a religious defense to a charge of false statement [here misbranding], the person charged with the alleged misrepresentation must have explicitly held himself out as making religious as opposed to medical, scientific or otherwise secular, claims."<sup>43</sup> Thus, Scientology was permitted to market E-meters, and to make exaggerated claims for their therapeutic efficacy, so long as it did so in religious terms. If the Church had marketed the devices in secular terms—had failed to hold itself out as a religion—the mislabeling would have been punishable.<sup>44</sup>

Case law concerning insider-insider relations shows a less sustained concern over exploitation and nondisclosure, perhaps because members are deemed to have impliedly consented to normal transactions within the group. Even here, however, courts have developed doctrine to protect church members against overreaching by persons in leadership positions. Holding religious advisors to be "fiduciaries,"<sup>45</sup> courts have carefully examined gifts, wills, and other transfers of property by members that inured to the leaders'

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<sup>38</sup> *United States v. Kuch*, 288 F. Supp. 439 (D.D.C. 1965); see *United Methodist Council v. Superior Court*, 439 U.S. 1369, 1372-73 (1978); see also notes 196-97 and accompanying text *infra*.

<sup>39</sup> *United States v. Rasheed*, 663 F.2d 843 (9th Cir. 1981); see also *United States v. Ballard*, 310 U.S. 78 (1944).

<sup>40</sup> 409 F.2d 1146 (D.C. Cir. 1969).

<sup>41</sup> For discussion of insider-outsider fraud, see generally L. TRIBE, *AMERICAN CONSTITUTIONAL LAW* § 14-11, at 861-62 (1978); Weiss, *Privilege, Posture, and Protection: "Religion" in the Law*, 73 YALE L.J. 593 (1964).

<sup>42</sup> E-meters are primitive galvanometers used by Scientology to detect an emotional reaction by an individual undergoing conditioning.

<sup>43</sup> 409 F.2d at 1164.

<sup>44</sup> *Id.* at 1162.

<sup>45</sup> *E.g.*, *Caspari v. First German Church of the New Jerusalem*, 82 Mo. 649 (1884), *aff'd* 12 Mo. App. 293 (1882). See also Delgado, *Religious Totalism*, *supra* note 1, at 52-54 (abuse of a fiduciary capacity).

benefit.<sup>46</sup>

In church-government cases centering around various types of religious exemption, courts have also imposed requirements of honesty and disclosure. Thus, schooling,<sup>47</sup> drug,<sup>48</sup> tax,<sup>49</sup> and selective service<sup>50</sup> decisions hold that, to qualify for an exemption, a religious group or adherent must possess the requisite belief sincerely and not merely as a cover to gain the desired benefit.

A small body of authority suggests that a right against imposed religiosity exists independent of any physical or psychological harm that might result from it. In *Campbell v. Cauthron*,<sup>51</sup> for example, inmates in a penal institution had been exposed to volunteer religious witnesses on Saturday and Sunday. Permitted to enter the prison by the administration, the witnesses sang, prayed, and preached to their captive audience. The Eighth Circuit forbade these practices, holding that "[f]orced inculcation . . . even by volunteer witnesses, would . . . contravene the Free Exercise Clause."<sup>52</sup> Prison officials were required to "take steps . . . to insure that no inmate is subjected to forced religious indoctrination."<sup>53</sup>

Forced-expression cases, decided under other portions of the first amendment, also suggest that nonconsensual inculcation of religious values is constitutionally offensive. Recent examples are *Wooley v. Maynard*,<sup>54</sup> which struck down a statute under which a state's motto ("Live Free or Die") was inscribed on every automobile license plate, and *Torcaso v. Watkins*,<sup>55</sup> which held unconstitutional an oath of office requiring an affirmation of God. *School*

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<sup>46</sup> See note 45 *supra*.

<sup>47</sup> *E.g.*, *Wisconsin v. Yoder*, 406 U.S. 205, 235-36 (1972).

<sup>48</sup> *E.g.*, *Leary v. United States*, 383 F.2d 851 (5th Cir. 1967), *rev'd on other grounds*, 395 U.S. 6 (1969); *People v. Woody*, 61 Cal. 2d 716, 394 P.2d 813, 40 Cal. Rptr. 69 (1964).

<sup>49</sup> See *Washington Ethical Soc'y v. District of Columbia*, 249 F.2d 127, 129 (D.C. Cir. 1957); *Fellowship of Humanity v. County of Alameda*, 153 Cal. App. 2d 673, 692-93, 315 P.2d 394, 406 (1957).

<sup>50</sup> *United States v. Seeger*, 380 U.S. 163, 185 (1965).

<sup>51</sup> 623 F.2d 503 (8th Cir. 1980).

<sup>52</sup> *Id.* at 509.

<sup>53</sup> *Id.*

<sup>54</sup> 430 U.S. 705 (1977).

<sup>55</sup> 367 U.S. 488 (1961). See also *Everson v. Board of Educ.*, 330 U.S. 1 (1946) (allowing public reimbursement to parents of funds to transport children to Catholic schools); *Board of Educ. v. Barnette*, 319 U.S. 624 (1943) (holding mandatory flag salutes unconstitutional as applied to children whose religious beliefs forbade saluting "graven images").

*District of Abington Township v. Schempp*<sup>56</sup> declared, in dictum, that the government may not invade the "citadel of the individual heart and mind,"<sup>57</sup> either to aid or oppose religion. *Prince v. Massachusetts*<sup>58</sup> refused to permit religious evangelists to force their children to accompany them during street proselytizing, in part because the children were too young to make religious choices for themselves.<sup>59</sup> Although one must be cautious against overgeneralizing based on dicta in first amendment cases,<sup>60</sup> these decisions suggest that the right of an individual to make choices in matters of religious affiliation and belief is entitled to constitutional protection. If so, an informed consent requirement would be an obvious and natural way of guarding that right.

### C. Current Absence of an Informed Consent Requirement

The proponent of an informed consent requirement in a novel setting must not only show that the requirement is plausible and helpful, but also that society has not already considered and impliedly rejected it. It might be argued that, if a requirement of informed consent to religious conversion were desirable, it would already exist—religions and conversions have been part of human experience for thousands of years.

Two considerations, however, suggest that this negative inference should not be drawn. First, until recently, religious groups recruited relatively openly and honestly. It is unlikely that an early Christian, a Renaissance-era Catholic, or a contemporary evangelical could have been inducted without knowing that the group he or she was joining was religious.<sup>61</sup> This is no longer true of all groups.<sup>62</sup> Moreover, if a traditional-type religious recruiter misrepresented his or her cause, the problem had a simple solution: the

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<sup>56</sup> 374 U.S. 203 (1963).

<sup>57</sup> *Id.* at 226.

<sup>58</sup> 321 U.S. 158 (1944).

<sup>59</sup> "Parents may be free to become martyrs themselves. But it does not follow that they are free . . . to make martyrs of their children before they have reached the age . . . when they can make that choice for themselves." *Id.* at 170.

<sup>60</sup> See generally L. TRIBE, *supra* note 41, ch. 14, at 812-85 (indicating mercurial, context-sensitive nature of religious liberty cases, especially in the last two decades).

<sup>61</sup> E.g., W. JAMES, *THE VARIETIES OF RELIGIOUS EXPERIENCE* (1902) (naive, "open" approach of many religious proselytizers); PAUL'S LIFE AND LETTERS (S. Sperry ed. 1955).

<sup>62</sup> See text accompanying note 28 *supra*; Conway & Siegelman, *supra* note 17, at 86; Gillis, *Sun Myung Moon: "Heavenly Deception,"* TRIAL PRAC. 22 (Aug. 1979).

recruit, on learning of the misrepresentation, could simply leave. With present-day cults, this option may not be available. After luring the convert-to-be to a "guest lecture," "work camp," or "Peace Corps" meeting,<sup>63</sup> some cult organizations apply classic techniques of coercive persuasion to minimize the chances that the recruit will defect once the group's identity is known.<sup>64</sup> This combination—deception to gain a foothold and coercive persuasion to consolidate it—presents dangers that the legal system has only begun to confront.

Another reason to reject any negative historical inference relates to the increased understanding of the mechanisms of psychological manipulation and the recent knowledge that cults use these manipulative techniques.<sup>65</sup> Before the recent studies of Lifton,<sup>66</sup> Meerlo,<sup>67</sup> Schein,<sup>68</sup> West,<sup>69</sup> and others,<sup>70</sup> little was known about coercive persuasion of the sophisticated type employed by cult organizations.<sup>71</sup> The legal system lacked the understanding necessary to frame rules, or even to appreciate the need for innovation. Early efforts to restrain cultic abuses thus relied on models of physical domination—unlawful imprisonment, kidnapping, intentional infliction of emotional distress, slavery, and peonage.<sup>72</sup> But

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<sup>63</sup> See Delgado, *Religious Totalism*, *supra* note 1, at 38-40 (deception in the recruitment process).

<sup>64</sup> See notes 82-95 and accompanying text *infra*.

<sup>65</sup> *Id.*; DSMMD III, *supra* note 23.

<sup>66</sup> R. LIFTON, *supra* note 23, at 4-5 (1961); Lifton, *supra* note 1.

<sup>67</sup> J. MEERLO, *RAPE OF THE MIND* (1956).

<sup>68</sup> E. SCHEIN, *supra* note 1; Schein, *supra* note 1.

<sup>69</sup> Farber, Harlow, & West, *supra* note 23.

<sup>70</sup> See sources cited note 1 *supra*.

<sup>71</sup> Certainly, psychiatric knowledge of a mental condition or phenomenon need not be complete for it to be applied by courts; see generally Delgado, *Ascription*, *supra* note 1, at 24. For example, the modern test of insanity, dating back to the trial of Daniel M'Naughten, was intended by the judges in that case merely to restate prior law existing since 1724. Yet, as of 1880, a treatise of psychiatry offered a classification scheme in which insanity was said to be caused by "moral influences," "intellectual overwork," and "masturbation." J. BROWNE, *THE MEDICAL JURISPRUDENCE OF INSANITY* 131 (1880). The legal system chose, nevertheless, to exculpate defendants on the basis of markedly rudimentary medical knowledge because paradigmatic cases of insanity were recognizable and moral intuitions called for exculpation. Delgado, *Ascription*, *supra* note 1, at 24.

<sup>72</sup> *E.g.*, *United States v. Carr*, No. CR-79-195-D (M.D.N.C. filed Oct. 31, 1979) (slavery prosecution; three members of Church of God and True Holiness pleaded guilty to charges of holding members in slavery); *Turner v. Unification Church*, 473 F. Supp. 367 (D.R.I. 1978), *aff'd*, 602 F.2d 458 (1st Cir. 1979) (damages action for involuntary servitude dismissed); *Schuppin v. Unification Church*, 435 F. Supp. 603 (D. Vt. 1977) (civil suit for alien-

these have proven effective only in extreme cases of exploitation.<sup>73</sup> More subtle means of mental and physical manipulation require new approaches.

## II. THE CULT-JOINING PROCESS

### A. A Paradigm

Judicial and legislative records, as well as first-person accounts of cult experiences, draw a composite picture of the process by which a typical young person becomes a member.<sup>74</sup> Usually, the youth is just above the age of majority and is physically and psychologically normal.<sup>75</sup> The home life is ordinary; there is no apparent pathology of any sort.<sup>76</sup> The youth is often a college student, or at some other "in-between" period of his or her life—uncertain, at loose ends, anxious (all normal experiences).<sup>77</sup>

The approach is made by an experienced cult recruiter of the opposite sex. Approaching the target individual at a college dormitory, social function, library, or bus stop, the recruiter smiles, makes eye contact, and strikes up a conversation on a disarming topic suggested by the location, the recruit's clothing, books, or equipment.<sup>78</sup> The proselytizer is taught to concentrate on youths

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ation from family and involuntary servitude dismissed); *People v. Murphy* (N.Y. Crim. Ct. Mar. 18, 1977) (Justice Leahy) (criminal prosecution of Hare Krishna leaders for unlawful imprisonment of followers by psychological means dismissed).

<sup>73</sup> *United States v. Carr*, No. CR-79-195-D (M.D.N.C. filed Oct. 31, 1979) (guilty plea to holding church members in state of slavery); Delgado, *Religious Totalism*, *supra* note 1, at 93-97 and cases cited therein; Delgado, *Religious Totalism as Slavery*, 9 N.Y.U. REV. L. & SOC. CHANGE 51 (1979). These remedies are only available when cult leaders perpetrate torts or crimes in the process of recruiting or indoctrinating members.

<sup>74</sup> See generally JONESTOWN REPORT, *supra* note 8, at 17-19; DESTRUCTIVE CONVERSION, *supra* note 11, at 8-18 (similarities among cults and conversion practices); *id.* at 44-62 (theoretical model of cult joining); Delgado, *Religious Totalism*, *supra* note 1, at 38-41.

<sup>75</sup> *Vermont Hearings*, *supra* note 8, at 13 (psychiatrist's description of "adaptive" group of indoctrinees); DESTRUCTIVE CULT CONVERSION, *supra* note 11, at 28; R. ENROTH, *supra* note 21, at 154-56; Shapiro, *Destructive Cultism*, 15 AM. FAM. PHYSICIAN 80, 81, 83 (Feb. 1977).

<sup>76</sup> See note 75 *supra*.

<sup>77</sup> *Vermont Hearings*, *supra* note 8, at 13; DESTRUCTIVE CULT CONVERSION, *supra* note 11, at 10; Shapiro, *supra* note 75, at 81, 93; FRONTIERS OF PSYCHIATRY, *supra* note 23, at 1. A few cults diverge from this pattern; Jones' Peoples Temple recruited mature persons and retirees; the Children of God sect recruits blue-collar persons.

<sup>78</sup> *E.g.*, R. ENROTH, *supra* note 21, at 102 ("We had the whole thing choreographed . . . . The . . . purpose was to put the hook in, to discover what would grab them emotionally."); Shapiro, *supra* note 75, at 81; Smith, *Inside a Moonie Camp: A Weekend at Boonville*

who are alone or who look preoccupied.<sup>79</sup> The recruiter next elicits a subject of concern to the target, such as war, race, poverty, the impersonality of the university, or the moral ambiguities of modern life.<sup>80</sup>

The recruiter professes interest and surprise: by coincidence, he or she belongs to a group that has the same concern. The friends share a house together near the campus. Just that evening, in fact, they are holding a dinner and discussion. There will be a guest speaker and a free meal. The recruit is urged to attend.<sup>81</sup>

At the meeting, the target person finds himself or herself surrounded by other smiling young people of about the same age who demonstrate great interest in his or her clothes, ideas, and experiences. He or she is showered with flattery, smiles, handholding, and feigned affection. Later, a rousing speech is given on a vague but stimulating topic, and a simple meal is eaten.<sup>82</sup> The group does not identify itself.<sup>83</sup> At the end of the initial meeting, the group

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*Training Center*, S.F. Chronicle, Dec. 11, 1975, at 1, col. 1 (use of "love bombing" or cynical flattery to win members—"I was told I looked intelligent, had a happy face, my sweater was beautiful, my shoes were nice, and I was unique"); Galper, *Indoctrination Methods of the Unification Church* (Mar. 13, 1977) (paper presented at annual meeting, Calif. State Psychol. Ass'n) ("high level of affective arousal is generated and maintained"). See also *Unification Church, 120-Day International Training Center* (Barrytown, N.Y.) Workshop Manual at 338 (love bombing to consolidate membership) (undated, on file with author) [hereinafter cited as *Unification Church Workshop Manual*].

<sup>79</sup> *Vermont Hearings*, *supra* note 8, at 64-65; *DESTRUCTIVE CULT CONVERSION*, *supra* note 11, at 10; R. ENROTH, *supra* note 21, at 158 (recruiters develop "uncanny" knack for identifying vulnerable youths); C. STONER & A. PARKE, *supra* note 21, at 6, 21; *FRONTIERS OF PSYCHIATRY*, *supra* note 23, at 1; Dole-Buckley Meeting Report, *supra* note 21, pt. 2, at 35.

<sup>80</sup> *E.g.*, TIME, June 14, 1976, at 48-49; Dole-Buckley Meeting Report, *supra* note 21, pt. 2, at 11, 12, 16, 17, 21, 24, 37, 40.

<sup>81</sup> *E.g.*, *DESTRUCTIVE CULT CONVERSION*, *supra* note 11, at 10-11; C. STONER & A. PARKE, *supra* note 21, at 6-8; Rasmussen, *The Moon Treatment*, HARPER'S WEEKLY, Dec. 1, 1975, at 3, col. 2; Galper, *supra* note 78, at 2-7.

<sup>82</sup> *New York Hearings*, *supra* note 8, pt. II, at 63-65; *DESTRUCTIVE CULT CONVERSION*, *supra* note 11, at 11; Delgado, *Religious Totalism*, *supra* note 1, at 40, 55 & n.301.

<sup>83</sup> *New York Hearings*, *supra* note 8, at 22-23; *id.* pt. II, at 110-12, 165-67; *Vermont Hearings*, *supra* note 8, at 78; R. ENROTH, *supra* note 21, at 42-43, 100-01, 158; Rice, *The Pull of Sun Moon*, N.Y. Times, May 30, 1976 (Magazine), at 23; Galper, *supra* note 78, at 4 ("target individual . . . generally has no awareness that he is participating in training activities of an aggressive proselytizing religious organization until the conclusion of the weekend rural camp experience . . . There are no signs in the exterior building facade or on the interior walls that identify the center."). Some cult groups may use concealment sporadically, at certain times and for certain purposes. Compare Conway & Siegelman, *supra* note 17, at 86 (Hare Krishna conversion ceremonies unmistakably religious) with text accompanying notes 178-87 *infra* (Hare Krishna found by court to use disguises and false identification in fund-



pressures the new person to attend a longer (often three-day) workshop in the group's country retreat.<sup>84</sup> The workshop is presented as an opportunity for the recruit and his or her new-found friends to "get to know each other better" and for him or her to learn more about the group.

At the retreat, held in an isolated setting, the recruit encounters additional warmth and friendship, but also a barrage of speakers, classes, songs, chanting, games, and "struggle sessions."<sup>85</sup> There is little time for rest, privacy, and reflection; a more experienced cult member accompanies the recruit at all times. Diet and hours of sleep are severely restricted, while a constant sensory barrage and nonstop activity maintain the recruit in a state of narrowed attention.<sup>86</sup>

Topics such as the spiritual world, guilt, salvation, and the identity of the organization and its leader are introduced in carefully staged sequences, as the cult perceives that the recruit is "ready" for them, and in physical circumstances designed to make withdrawal difficult and unlikely.<sup>87</sup> If the recruit expresses doubts, or shows curiosity about the group or its objectives, he or she is told to suspend them, as these matters will be addressed later.<sup>88</sup> When the person finally does gain this information, he or she is unable to act because of impaired judgment resulting from sleep deprivation,

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raising at state fair).

<sup>84</sup> E.g., Vermont Senate Judiciary Committee, Transcript, Mar. 10, 1976, at 22-23 [hereinafter cited as Vermont Senate Judiciary Committee]; JONESTOWN REPORT, *supra* note 8, at 17; Galper, *supra* note 78, at 2, 4-7.

<sup>85</sup> JONESTOWN REPORT, *supra* note 8, at 17-18.

<sup>86</sup> *New York Hearings*, *supra* note 8, at 22-23, 27-28; *id.* pt. III at 12-18; Vermont Senate Judiciary Committee, *supra* note 84, at 19; JONESTOWN REPORT, *supra* note 8, at 17; R. ENROTH, *supra* note 21, at 159; Delgado, *Religious Totalism*, *supra* note 1, at 55-56; Dole-Buckley Meeting Report, *supra* note 21, pt. 2, at 12, 14; see HEARST TRIAL, *supra* note 1, at 256-57 (sensory overload, including continuous tapes, chantings, frenetic activity, singing, drills). See also R. ENROTH, *supra* note 21, at 14, 39-40, 59; J. MINDSZENTY, *supra* note 24, at 105, 110, 112-14 (1974); C. STONER & A. PARKE, *supra* note 21, at 159; Galper, *supra* note 78, at 6 (absence of opportunity for privacy, reflection); Unification Church Workshop Manual, *supra* note 78, at 63, 74, 75 (fasting, hunger, weakness); cf. Shapiro, *supra* note 75, at 83; Galper, *supra* note 78, at 1 (trance-like states, exhaustion, borderline consciousness).

<sup>87</sup> *New York Hearings*, *supra* note 8, at 159-64; DESTRUCTIVE CULT CONVERSION, *supra* note 11, at 12; Delgado, *Religious Totalism*, *supra* note 1, at 12-14, 55-56, and sources cited therein.

<sup>88</sup> *Vermont Hearings*, *supra* note 8, at 17; JONESTOWN REPORT, *supra* note 8, at 17; Rasmussen, *supra* note 81, at 3, col. 1, at 18, col. 1. See generally R. LIFTON, *supra* note 22, at 66-83 (prisoners taught to feel guilty, repress doubts).

peer pressure, guilt, and excitement.<sup>89</sup> The final act of commitment is made when the young person, isolated from friends and family, and surrounded by cohorts who press him or her to make a commitment, is anxious about sin, identity, and salvation, and frantic for a framework within which to solve these frightening problems.<sup>90</sup>

If the target person commits himself or herself to the group, additional indoctrination takes place. Physiological depletion, anxiety, isolation, and repetitious lecturing and chanting serve further to distance the individual from earlier behavior and thought; meanwhile, cult leaders press him or her to reorganize life into simplistic patterns of right and wrong, good and evil, us and them.<sup>91</sup> The person's past recedes in his or her memory, replaced with a new, intense preoccupation with the group and its part in cosmic struggles.<sup>92</sup>

The convert's estrangement from the past is accelerated by shifts in language and thought patterns. Words acquire new meanings. Critical thinking is discouraged, along with humor and metaphor. Converts are taught to feel, not to think; to obey, not to reason.<sup>93</sup> When the process has continued for a number of weeks or months, the recruit may be deemed ready for the duties of a full-time member: fundraising on the streets, work in a cult-operated business, or scavenging for edible garbage.<sup>94</sup> The new member ap-

<sup>89</sup> *New York Hearings*, *supra* note 8, at 159-64; *JONESTOWN REPORT*, *supra* note 8, at 17-18; *DESTRUCTIVE CULT CONVERSION*, *supra* note 11, at 13-14; Delgado, *Religious Totalism*, *supra* note 1, at 40-41, and sources cited therein.

<sup>90</sup> *DESTRUCTIVE CULT CONVERSION*, *supra* note 11, at 13; Delgado, *Religious Totalism*, *supra* note 1, at 40-41.

<sup>91</sup> *New York Hearings*, *supra* note 8, at 243-45; *id.* pt. III at 39-42; *JONESTOWN REPORT*, *supra* note 8, at 17-18; R. ENROTH, *supra* note 21, at 162; C. STONER & A. PARKE, *supra* note 21, at 175. See also *HEARST TRIAL*, *supra* note 1, at 257, 317 (inculcation of black-white, we-they world view); R. LIFTON, *supra* note 23 (same). See also E. SCHEIN, *supra* note 1, at 131-33, 139 (dissociation from past).

<sup>92</sup> Compare sources cited in note 91 *supra*, with *HEARST TRIAL*, *supra* note 1, at 257-58, 288, 298, 300 (identity change under pressure).

<sup>93</sup> *New York Hearings*, *supra* note 8, pt. II, at 243-45; *JONESTOWN REPORT*, *supra* note 8, at 18; *DESTRUCTIVE CULT CONVERSION*, *supra* note 11, at 14-16; R. ENROTH, *supra* note 21, at 15; Conway & Siegelman, *supra* note 17, at 86 ("techniques . . . rely on the use . . . of . . . deceptive and distorted language, artfully designed suggestion and intense emotional experience, crippling tactics aggravated by physical exhaustion and isolation"); Dole-Buckley Meeting Report, *supra* note 21, pt. 1, at 32.

<sup>94</sup> *New York Hearings*, *supra* note 8, at 28; *id.* pt. II, at 122-23; C. STONER & A. PARKE, *supra* note 21, at 5-31, 121-33; Dole-Buckley Meeting Report, *supra* note 21, pt. II, at 11, 14,

pears simplistic in his or her thinking patterns, stereotyped in his or her responses, unresponsive to relatives and former friends, and indifferent to events in the outside world.<sup>95</sup> He or she has become a cultist.

### *B. The Paradigm Analyzed: Consent-Negating Features in Cultic Induction*

The above account contains several features that call into question the adequacy of the convert's consent.

1. *Traditional Consent-Negating Elements.* Cult conversion practices often include such traditional consent-negating features as deception, coercion, physical or mental debility,<sup>96</sup> and abuse of a fiduciary relationship.<sup>97</sup> In determining consent in extra-risky settings, modern courts have looked to additional factors: the irreversibility of the process or change, its intrusiveness or far-reaching quality, and the unpredictability of effect.<sup>98</sup> As these are often

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24, 36, 62; *id.* pt. I, at 24.

<sup>95</sup> *E.g.*, *New York Hearings*, *supra* note 8, at 25-29; *DESTRUCTIVE CULT CONVERSION*, *supra* note 11, at 16-17; R. ENROTH, *supra* note 21, at 121 (cognitive process "scrambled"); Dole-Buckley Meeting Report, *supra* note 21, pt. II, at 14, 18 (robot-like responses, "glassy-eyed stare," behavior like that of a "retarded person"); Galper *supra* note 78 (cognitive inflexibility, blunted affect, shallow "programmed-in" responses).

<sup>96</sup> *Coercion.* See *California Senate Select Committee on Children and Youth: Hearing on the Impact of Cults on Today's Youth* 26-27 ("your head will be severed from your shoulders" if you leave), 67, 96 (threats of violence if member leaves) [hereinafter cited as *Dymally Hearings*]; *New York Hearings*, *supra* note 8, pt. II at 163 (physical threats); *Vermont Hearings*, *supra* note 8, at 59-60 (leaving would doom herself, her siblings, and parents to "fifteen generations . . . of hell"); R. ENROTH, *supra* note 21, at 59 (member would become insane, turn into a homosexual, or be "turned over to a reprobate mind" if he left sect); Conway & Siegelman, *supra* note 17, at 88 ("physical punishment, reported by approximately one in five respondents, included beatings, starvation, physical bondage . . . and long hours of humiliating and degrading labor. 'I was beaten, harassed and locked in a room,' said one woman who had tried to leave a cult and had succeeded only on a second attempt"); Rofes, *I was Brainwashed by the Followers of Rev. Sun Myung Moon (But I Wised Up)*, *Harvard Crimson*, Sept. 30, 1975, at 4, col. 1 (cult brother would break both the member's legs if necessary to prevent his defection from the group). *Deception.* See, e.g., *Vermont Hearings*, *supra* note 8, at 78; R. ENROTH, *supra* note 21, at 158; C. STONER & A. PARKE, *supra* note 21, at 167; Gillis, *supra* note 62; Dole-Buckley Meeting Report, *supra* note 21, pt. II at 11, 12, 16, 21, 24, 37, 40 (false ads, front groups, misrepresentation of organization). *Exploitation of physical or mental debility.* *Vermont Hearings*, *supra* note 8, at 63; R. ENROTH, *supra* note 21, at 49, 64; Dole-Buckley Meeting Report, *supra* note 21, pt. I at 24, 27, pt. I at 25; Galper, *supra* note 78, at 1. See generally notes 89-90 and accompanying text *supra*.

<sup>97</sup> See notes 45-46 and accompanying text *supra*, and sources cited therein.

<sup>98</sup> See generally *Kaimowitz v. Department of Mental Health*, No. 73-19434-AW (Mich.

present in the cult-joining situation,<sup>99</sup> the case for an informed consent requirement strengthens.

2. *Unique Elements in Cult Conversion.* There are other elements peculiar to the cult-joining process that have not yet been discussed by courts. One is the cults' maintenance of an inverse relationship between capacity and knowledge, the two key ingredients of informed consent.<sup>100</sup> At early stages, the recruit's decisional capacity is relatively intact. He or she may be anxious about some adolescent crisis, lonely, or confused, but is generally not clinically incompetent or pathological.<sup>101</sup> However, knowledge of the cult's identity and of the obligations of membership is missing. If this information were disclosed at the time of initial contact, many recruits would react by leaving.<sup>102</sup> The cult therefore keeps these elements secret until the recruit can be expected not to react negatively.<sup>103</sup> Information is parceled out only as the cult perceives that the person has lost the capacity to respond according to his or her ordinary frame of reference.<sup>104</sup> Knowledge and capacity are thus maintained in inverse proportion.

A second, related feature unique to cult-joining is segmentation of induction into steps or stages, with only nominal consent given by the recruit before progressing from each stage to the next.<sup>105</sup>

Cir. Ct. Wayne County, July 10, 1973), reprinted in 2 PRISON L. REF. 433, 473 (1973); Shapiro, *supra* note 1, at 262-69.

<sup>99</sup> See notes 21-25, 91-95 and accompanying text *supra* (far-reaching changes) and notes 28, 78-83 *supra* (subject's unawareness of these future changes). See also *Vermont Hearings*, *supra* note 8, at 67-68 (low probability of return); R. ENROTH, *supra* note 21, at 95-96, 120, 200 (difficulty or impossibility of cultist's leaving on his or her own); N.Y. Times, Mar. 5, 1973, at 1, col. 3, at 19, col. 5 (intervention necessary because power of cults over followers is overwhelming); Rofes, *supra* note 96, at 3, col. 1 (of 70 attenders, Harvard journalist was only one to leave at end of Moon training camp); Dole-Buckley Meeting Report, *supra* note 21, pt. II, at 21, 61 (members unable to leave of own will).

<sup>100</sup> See generally Delgado, *Religious Totalism*, *supra* note 1, at 54-55.

<sup>101</sup> See notes 75-77 and accompanying text *supra*.

<sup>102</sup> E.g., C. STONER & A. PARKE, *supra* note 21, at 167-72; Delgado, *Religious Totalism*, *supra* note 1, at 54.

<sup>103</sup> See notes 87-90 and accompanying text *supra*; R. ENROTH, *supra* note 21, at 42-43; 100-01; Smith, *supra* note 78, at 11, col. 1 (unpalatable information imparted in staged sequence); Galper, *supra* note 78, at 1-5.

<sup>104</sup> See note 103 *supra*.

<sup>105</sup> See Delgado, *Religious Totalism*, *supra* note 1, at 55-56 (giving example of physician who obtains patient's consent to a series of treatments, the cumulative effect of which is concealed from that patient; and citing cases that suggest that the nondisclosing physician is guilty of malpractice).

Thus, at the time of initial contact with the recruiter, the recruit consents to go to the evening gathering. At the first meeting, he or she consents to attend a longer retreat. Toward the end of the retreat, he or she agrees to sign up for an even longer workshop. At each stage, the intensity of the indoctrination and the convert's dependence on the group increase.<sup>106</sup> The ultimate effect is a commitment to a journey, each step of which is nominally consented to, but whose ultimate destination is concealed until the penultimate step—at which point the individual has been so prepared that committing his or her life and fortune to the group seems a small and insignificant step.<sup>107</sup> Both features—the maintenance of an inverse relationship between knowledge and capacity, and the segmentation of the joining process—deprive the convert of the chance to exercise a fully autonomous decision to join or not to join.

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<sup>106</sup> See, e.g., Vermont Senate Judiciary Committee, *supra* note 84, at 22-23; C. STONER & A. PARKE, *supra* note 21, at 6-8; Galper, *supra* note 78, at 2 ("potential recruit is invited to attend a dinner . . . . At the conclusion of the . . . dinner he is invited to participate in a weekend experience in an isolated rural setting . . . . At the conclusion of the weekend experience recruits are invited to stay on at the camp for a week-long training session"), 4-7 (information parceled out as initiation proceeds).

<sup>107</sup> *New York Hearings*, *supra* note 8, at 73-83; Rice, *supra* note 83, at 23 (recruit reaches critical moment "worn out from lack of sleep, numbed by endless lectures, cut off from family or friends, and softened up by the embracing warmth of the group"); *id.* at 23-24 ("You just begin to feel high. After seven days of fatiguing your body and manipulating your mind, they hook you, and you stay on.").

See also note 105 *supra*, comparing cult induction process to course of medical treatment, each step of which is approved by the patient but the ultimate effect of which is concealed by the doctor. Moral intuitions, and a small body of case law, suggest that the nondisclosing physician commits malpractice.

Can the cult induction process be compared to the experience, familiar to everyone, of falling in love? In romance, the two individuals begin as strangers who through a series of steps become more intimately associated. As the relationship progresses, barriers are lowered, critical judgment suspended. Unpleasant facts about the love object are overlooked or minimized. There is, though, a significant difference between romance and cult induction. In love, both parties ordinarily know where things lead. Where one does not, we call the acts of the other "seduction," and sometimes make them illegal, e.g., R. PERKINS, *CRIMINAL LAW* 158-66 (2d ed. 1969); W. PROSSER, *HANDBOOK OF THE LAW OF TORTS* 884 (4th ed. 1971). Similarly, we condemn the romancer who fails to disclose significant facts about himself or herself (that he or she is already married, impotent, a felon, has a venereal disease, etc.), at the beginning of the relationship. Cult induction, then, predicated as it often is on deception, cannot be compared to ordinary romance.

### C. Policy Analysis

As has been seen, cultist conversion activity poses dangers to the physical health and emotional well-being of some persons without full consent.<sup>108</sup> We have also seen that the informed consent requirement is a plausible way of addressing these problems and is consistent with the liberty values of the religion clauses. In considering whether to institute such a requirement, we reasonably might wish to know further: (1) how well the policy values of informed consent would be served by enforcing such a requirement in religious conversion, and (2) how well the requirement would function in relation to the nonliberty values of the religion clauses.

Informed consent requirements serve a number of purposes: protecting the individual's interest in psychic or bodily integrity; preserving a sense of shared venture between the consent-giver and the consent-obtainer; and promoting visibility and scrutiny of the treatment in question.<sup>109</sup> Requiring informed consent in religious proselytizing would promote each of these values. Insisting that the future cultist be offered information about the cult advances the goal of personal control over major decisions; it promotes closer identification between proselytizers and their targets, and encourages shared decisionmaking power. By requiring disclosure, and allowing tort suits where disclosure is not made, public awareness of cult conversion and its consequences should increase.<sup>110</sup>

In addition to the generalized disclosure/free-choice values discussed earlier,<sup>111</sup> many of the underlying values of the religion clauses would be further advanced by an informed consent require-

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<sup>108</sup> This is not to suggest that the model fits all cases of cult joining, only that it describes many such cases. Some youths may join a cult fully aware of its identity and the conditions of membership. Others may arrive at this knowledge by induction, early in the proceedings. In neither such case does an informed consent problem arise. The same is, of course, true of medical treatment — some patients may not be fully informed by their physicians, yet accept treatment knowledgeably and voluntarily, having gotten the pertinent information elsewhere. Others may waive informed consent. Neither of these specific factors counts against a general requirement of informed consent to medical procedures; neither should the occurrence of voluntary or informed cult-joining count against the requirement urged here.

<sup>109</sup> J. KATZ, *supra* note 14, at 540-608.

<sup>110</sup> An informed pre-inductee might, for example, seek advice from others or learn about the cult by reading. If informed consent is not obtained, he or she may bring suit. See notes 130-31 and accompanying text *infra*. Both consequences will increase public scrutiny and awareness of cultic recruiting and indoctrination practices.

<sup>111</sup> See notes 34-60 and accompanying text *supra*.

ment. These values include strife avoidance,<sup>112</sup> neutrality,<sup>113</sup> religious pluralism,<sup>114</sup> avoidance of "ignorance and corruption,"<sup>115</sup> and protection of liberty of conscience.<sup>116</sup>

An effective informed consent requirement should lessen societal strife in several ways. At present, the only forms of redress available to a disenchanted leaver are to become a deprogrammer,<sup>117</sup>

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<sup>112</sup> *E.g.*, Committee for Public Education v. Nyquist, 413 U.S. 756, 794 (1973); Lemon v. Kurtzman, 403 U.S. 602 (1971). L. TRIBE, *supra* note 41, § 14-12, at 868.

<sup>113</sup> *E.g.*, L. TRIBE, *supra* note 41, § 14-4, at 821-23, and cases cited therein.

<sup>114</sup> *E.g.*, Zorach v. Clauson, 343 U.S. 306, 313 (1952); L. PFEFFER, CREEDS IN COMPETITION (1958); L. TRIBE, *supra* note 41, at 816, 834; 2 THE WRITINGS OF JAMES MADISON 183-91 (G. Hunt ed. 1901).

<sup>115</sup> M. HOWE, THE GARDEN AND THE WILDERNESS 6 (1965); P. MILLER, ROGER WILLIAMS: HIS CONTRIBUTION TO THE AMERICAN REVOLUTION 89, 98 (1953); 9 THE WRITINGS OF JAMES MADISON 487 (G. Hunt ed. 1910); Gianella, *Religious Liberty, Nonestablishment and Doctrinal Development: Part II, The Nonestablishment Principle*, 81 HARV. L. REV. 513, 517 (1968).

<sup>116</sup> *E.g.*, L. TRIBE, *supra* note 41, § 14-12, at 886; Freeman, *A Remonstrance for Conscience*, 106 U. PA. L. REV. 806 (1958).

<sup>117</sup> Deprogrammers provide nonstop confrontational therapy, often in locked motel rooms, aimed at restoring independence of thought and breaking the hold of the cult. *See, e.g.*, T. PARTICK, LET OUR CHILDREN GO (1976); Delgado, *Religious Totalism*, *supra* note 1, at 78-88. Ted Patrick (nicknamed "Black Lightning" by cultists), the developer of deprogramming methods, claims to have successfully deprogrammed over 1000 individuals over the past decade.

Many deprogrammers are themselves ex-cult members. A deprogramming typically begins by the deprogrammer's challenging the adherent's trust in the religious leaders in an attempt to show the subject that he or she has been duped or deceived. Delgado, *Religious Totalism*, *supra* note 1, at 78. The deprogrammer may demonstrate that the leader has a long criminal record, or lives a life of opulence, in violation of the sect's rules. *Id.*; *see also* Conway & Siegelman, *supra* note 17, at 92. He or she may point out inconsistencies in the cult's teaching, or between its teachings and its practices. He or she may attempt to demonstrate to the cultist that particular teachings are factually false—for example, that the cultist's parents hate him or her and wish him or her spiritual harm. Deprogrammers often adopt a scathing, forceful, or sarcastic tone, but physical force and brutality appear to be rare. Delgado, *Religious Totalism*, *supra* note 1, at 79.

The cultist often responds angrily, or passively, or by pretending not to hear. *E.g.*, Peterson v. Sorlien, 299 N.W.2d 123, 127 (Minn. 1980), *cert. denied*, 450 U.S. 1031 (1981), discussed at notes 147-59 and accompanying text *infra*. Others try to block the deprogrammer's message by chanting, singing, or performing rhythmic movements designed to maintain a trance state. Delgado, *Religious Totalism*, *supra* note 1, at 79, and sources cited therein. The deprogrammer often succeeds eventually in engaging the subject in a dialogue, sometimes in an angry one. Once the individual "opens up," the deprogramming proceeds rapidly, as layers of shallow responses and programmed-in values are peeled away. Finally, there comes a "breaking point"—an emotional moment when the subject laughs, cries, embraces those present, and expresses gratitude for being retrieved. *Id.* at 79-80. *See* Conway & Siegelman, *supra* note 17, at 90. There often follows a period of emotional instability, depression, and mood changes, during which the ex-cultist adjusts to life outside the sect.

campaign actively against cults, or try to persuade a government agency to "investigate" them.<sup>118</sup> A private action in tort, based on the informed consent doctrine, would provide the recruit with a direct, legal remedy. In addition, the only recourse presently open to parents of recruits is abduction and deprogramming.<sup>119</sup> If the radical changes brought about in their children were seen as freely chosen, many parents would be less alarmed, and retaliation and self-help should diminish.

At the same time, the goal of official neutrality with respect to religious affairs would be advanced, as a value-neutral<sup>120</sup> criterion of consent would replace existing criteria more prone to subjectivity and bias.<sup>121</sup> Informed consent would also promote religious pluralism, by which a sect must "flourish [according to] . . . the appeal of its dogma."<sup>122</sup> By denying aggressive religious factions access to recruiting techniques that bypass the decision-making faculties of would-be adherents, the requirement protects the "free market" values of the religion clauses.<sup>123</sup> Furthermore, it helps pre-

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Although there are few credible statistics available, a majority of deprogrammings seem to be successful. The duration of the actual event varies from a few hours to a few days. Conway & Siegelman, *supra* note 17, at 92.

<sup>118</sup> The author is aware of at least 10 federal and state agencies and legislative committees that have received petitions or been the objects of letter-writing campaigns by constituents. Generally, these demand that the authorities "investigate" the groups in question and find ways to curb their "brainwashing" practices.

<sup>119</sup> Abduction and deprogramming, as well as the "defense of necessity" entered when retrieval fails and prosecution results, are described in Delgado, *Religious Totalism*, *supra* note 1, at 78-88.

<sup>120</sup> An objection that finding a given commitment to a cult group nonconsensual inevitably disparages the group's values and teachings is answered in notes 220-23 and accompanying text *infra*.

<sup>121</sup> The defense of necessity, for example, invites the factfinder to decide whether the deprogrammer's and parents' attempted abduction was necessary to avert a greater evil than that which would result from their intervention. The comparison of the two evils invites decisions based on evidence of the bizarre quality of the religion or the lifestyle of the group. Conservatorship statutes often permit the assertion of authority over a person who is found likely to be deceived or preyed upon by designing persons, or who is unable to manage his or her affairs. See Delgado, *Religious Totalism*, *supra* note 1, at 88-91. These vague criteria can easily be manipulated. The proposed informed-consent requirement, by contrast, focuses the court's attention on a single, objective event: the proselytizer's disclosure, or lack thereof, of certain information. This more neutral criterion seems less likely to be manipulated for or against the religious group by a factfinder unsympathetic (or sympathetic) to it.

<sup>122</sup> *Zorach v. Clauson*, 343 U.S. 306, 313 (1952).

<sup>123</sup> Pluralism in religious matters is endangered if religious groups are able to entrap members without their conscious choice.



vent exploitation and corruption in religious recruitment,<sup>124</sup> and protects integrity of conscience.<sup>125</sup> The requirement would thus promote the concerns that underlie disclosure/consent requirements, as well as those that animate the religion clauses.

### III. FRAMING AND EFFECTUATING THE INFORMED CONSENT REQUIREMENT

We have seen that a requirement of informed consent is needed; we now turn to the specific form such a requirement would take. Because the constitutional interests of proselytizers are at stake,<sup>126</sup> the requirement should be no more onerous than that which is necessary to protect the recruit's interests in free choice.<sup>127</sup> It would seem that both interests can best be accommodated by a requirement of interactive consent,<sup>128</sup> mediated by the recruit so as to give him or her control over the scope of disclosure. The recruiter's initial duty would be to offer material information at the point when conversion activity begins.<sup>129</sup> Not every individual will wish to hear it; some will wish to delay the receipt of information; some will want more information, others less. If the subject expresses an interest in learning detailed information about the group's practices, the converter would be under a duty to disclose it. If the convert indicates a desire not to receive information, however, the proselytizer's duty is discharged and conversion activity can proceed.

What would constitute the required initial disclosure? The converter should, at a minimum, be required to reveal that the group is religious, to give its most widely known name or identity, and to

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<sup>124</sup> It avoids ignorance by requiring that the proselytizer offer information to the subject; it avoids corruption by depriving the cult or proselytizer of an incentive to practice concealment or misrepresentation, as some now do. See notes 28, 64-71 and accompanying text *supra*.

<sup>125</sup> It does so by assuring that persons do not affiliate with groups or adopt values that they would not if permitted to make a considered decision.

<sup>126</sup> The proselytizer desires to recruit new members in order to make his or her religious group larger and more powerful, or to bring enlightenment to nonbelievers. If motivated by a sincere religious conviction, this desire is entitled to *prima facie* constitutional protection. See notes 167-70 and accompanying text *infra*.

<sup>127</sup> *Sherbert v. Verner*, 374 U.S. 398, 407 (1963) (least restrictive alternative requirement in religious liberty cases); *Cantwell v. Connecticut*, 310 U.S. 296, 306-07 (1940).

<sup>128</sup> See generally Comment, *When the Truth Can Hurt: Patient-Mediated Informed Consent in Cancer Therapy*, 9 U.C.L.A.-ALASKA L. REV. 143 (1980) (proposing a similar requirement).

<sup>129</sup> See note 166 *infra* (when conversion begins).

offer to provide further information. From this point on, the convert controls the scope of inquiry, with the converter's only duty being to respond honestly and fully to all questions, or to discontinue the conversion attempt.

If a cult breaches the duty to obtain informed consent, and the individual succeeds in disengaging from the organization, he or she can sue in tort.<sup>130</sup> General damages would be recoverable for the affront of involuntarily imposed religiosity; special damages would be available for any lost wages, medical expenses, loss of consortium, and emotional distress. If the failure to inform is willful, punitive damages should be available as well. If the principal remedy—private actions in tort—proves inadequate, legislatures could enact further protection: a “cooling off” period, a requirement that religious proselytizers wear identification badges, or provisions for the filing of documents requesting rescue.<sup>131</sup> In addition, educational authorities could launch campaigns designed to acquaint school-age youth with the recruitment patterns of cult groups and make them aware of their legal rights.<sup>132</sup>

After an individual proceeds nonconsensually to membership, the analysis becomes more problematical. Private suits can be brought only after the recruiter breaches the requirement and the harm materializes. If, however, the breach and the subsequent inculcation of cultic values are successful, there will be no plaintiff to bring suit: the victim's preference rationales will be altered so that he or she identifies with cult values and perceives the earlier non-consensual induction as harmless and perhaps even necessary to free him or her from the shackles of the material world.<sup>133</sup>

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<sup>130</sup> The tort could be called “fraud,” “misrepresentation” (see W. PROSSER, *supra* note 107, at 683-736), or “unprivileged induction.”

<sup>131</sup> For a discussion of these remedies, see Delgado *Religious Totalism*, *supra* note 1, at 73, 74, & 77-78.

<sup>132</sup> E.g., Delgado, *Religious Totalism*, *supra* note 1, at 74-75 (proposing similar remedy).

<sup>133</sup> Thus, the dilemma arises: “the very factors of stress, coercion, and psychic bombardment that cast doubt on the validity of consent can also give rise to a new, if temporary, identity on the parts of the individuals whose consent is under examination.” Delgado, *Religious Totalism*, *supra* note 1, at 57; see also *Peterson v. Sorlien*, 299 N.W.2d 123, 128 (Minn. 1980), *cert. denied*, 450 U.S. 1031 (1981) (The “cult conditioning process induces dramatic and non-consensual change giving rise to a new temporary identity on the part of the individuals whose consent is under examination.” Impaired volitional capacity was a result. “As such, the question of . . . consent becomes a function of time.”)

The literature on coercive persuasion contains numerous references to wide-ranging value and identity changes resulting from the combined pressures of totalistic environments. See

In many cases, the conversion will be temporary, and will "wash away" if the individual is deprogrammed or simply removed from the cult setting for a brief period.<sup>134</sup> When this happens, the person's desires vary as a function of time and relief from reinforcement. At time A, the individual professes to be happy as a cult member and demands to be left alone. At time B—perhaps only a few hours later—he or she expresses relief and gratitude over being freed.<sup>135</sup> To make matters even more difficult, both choices will seem "rational" in that the individual can justify them by reference to broader values he or she holds or claims to hold.<sup>136</sup> The

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generally R. ENROTH, *supra* note 21, at 12, 38 ("like a fog . . . like a dream"), 83-84, 161-63 (new person, new values); Dole-Buckley Meeting Report, *supra* note 21, pt. II, at 16 ("radical change"), 30 ("totally changed person"), 39 ("personality transformation"), 40 ("marked change"), 43 ("complete reversal"), 68 ("radical change . . . totally different person—dehumanized"). See also HEARST TRIAL, *supra* note 1, at 298; R. LIFTON, *supra* note 23, at 5, 11, 66, 83 (rebirth, molding of new identity) (testimony of Dr. Martin Orne, psychiatrist) (one forgets who one is; dissociation sets in), 317-35 (testimony of Dr. Robert Lifton, psychiatrist) (assault on personal identity); Lifton, *Psychiatric Aspects of Chinese Communist Thought Reform*, in Group for the Advancement of Psychiatry, Symposium No. 4, *Methods of Forceful Indoctrination: Observations & Interviews* 238, 247-48 (1957) (shifts in belief and self so great as to warrant conclusion that change of identity has occurred). See generally Comment, *The Limits of State Intervention: Personal Identity and Ultra-Risky Actions*, 85 YALE L.J. 826, 837 & n.51 (1976) (citing studies indicating that trauma and disaster victims disidentify with their earlier selves).

<sup>134</sup> Compare Delgado, *Religious Totalism*, *supra* note 1, at 58-59, and sources cited therein (temporary quality of programmed-in religious responses in cult settings), with R. LIFTON, *supra* note 23, at 86-151; HEARST TRIAL, *supra* note 1, at 258-72 (testimony of Louis J. West); *id.* at 318-21 (testimony of Robert J. Lifton) (fading of inculcated values once individual is freed from the coercive/reinforcing environment).

<sup>135</sup> *New York Hearings*, *supra* note 8, pt. II at 184-85; R. ENROTH, *supra* note 21, at 121 ("It's wonderful to be able to wake up in the morning and say, 'Thank God, I can do what I want today.'"); T. PATRICK, *supra* note 117, at 79 (1976) (like waking up from a nightmare); TIME, June 14, 1976, at 50 ("I felt as though a light had been turned on in the room and a burden lifted from my shoulders. I really was free."); Chicago Tribune, Aug. 11, 1975, § 3 (Tempo), at col. 2, at 3, col. 4 ("like coming out of prison . . . My life had been totally taken away. I was a robot. What a fantastic joy it was to be a person again!").

<sup>136</sup> The cultist, while with the group, might reason as follows:

- (1) I value spiritual development;
- (2) Membership in \_\_\_\_\_ is necessary for my spiritual development;
- (3) The loss of personal liberty, health, etc., resulting from membership is trivial by comparison to the spiritual gain;
- (4) I find it irrelevant that the group acted deceptively or wrongfully in procuring my membership.

The ex-cultist, once freed from the group, might reason as follows:

- (1) The group manipulated and tricked me into joining;
- (2) While with the group I was in a state of thought reform and had no free will;
- (3) My earlier statement of preference was itself programmed in;

choices are thus neither insane nor incompetent, just variable.

How should courts treat these situations of rapidly fluctuating preference? One possibility would be to treat time-variable consent as evidence of selective incompetence, as some courts have done in amputation cases, and appoint a proxy decisionmaker.<sup>137</sup> Another would be to adopt a "first in time" or "last in time" approach, in which the original or most recent values of the person in question are respected.<sup>138</sup> A third approach would disregard justice considerations and make the decision on utilitarian grounds.<sup>139</sup> A fourth approach would decide on grounds of intrapsychic freedom, or long-term autonomy: when in doubt, opt for the treatment that most respects the individual's potential for autonomous exercise of his or her faculties.<sup>140</sup> A fifth approach would assume that a person can have only one "real" preference over a very short time-span, and endeavor to provide criteria for determining what that preference is.<sup>141</sup> A final approach would attempt, by counseling or care-

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(4) I am glad I am now free to make my own choices. I prefer autonomy values over religious values, particularly if these latter are not freely chosen by me.

<sup>137</sup> See, e.g., *Department of Human Servs. v. Northern*, 563 S.W.2d 197, 209-10 (Tenn. Ct. App. 1978) ("In the present case, this Court has found the patient to be lucid and apparently of sound mind generally. However, on the subjects of death and amputation of her feet, her comprehension is blocked, blinded or dimmed to the extent that she is incapable of recognizing facts which would be obvious to a person of normal perception.").

<sup>138</sup> On behalf of the cult-period assertions, it could be argued that these should predominate since they are religiously-based, are expressed by a competent adult, and our society ought to prefer these to any others, particularly if it appears that these others might be influenced by deprogramming, or some other form of "counterbrainwashing." On behalf of the post-release expressions, it could be argued that these correspond most closely with the values the individual held over the majority of his or her life, and that subsequent profession of those values constitutes an express repudiation of those uttered while within the cult. Cf. Delgado, *Religious Totalism*, *supra* note 1, at 77-78 ("battle of the forms").

<sup>139</sup> Cf. Shapiro, *supra* note 1, at 237, 283 (discussing moral basis for compelling organic treatment, a "sort of forced 'investment' in autonomy"). Shapiro writes: "From the perspective of classical utilitarian ethics . . . in the collision between freedom from state coercion and freedom from madness the latter should prevail, for the result is greater functionality." Shapiro, however, questions this result as possibly unjust. *Id.* at 284.

<sup>140</sup> Cf. *id.* at 283-88.

<sup>141</sup> The most likely criteria would seem to be continuity with long-held beliefs (allowing, of course, for gradual evolution and maturation), and authenticity, the notion that the value or preference "represents" the individual holding the value or preference. It must be emphasized that these criteria would be applied only in the troublesome situations of rapidly oscillating consent and when there is an indication that "abnormal" influences were in operation. These influences would include extreme physiological deprivation, deception, guilt manipulation, total control by others of the individual's environment and channels of communication, etc. See note 96 and accompanying text *supra*. The criteria could not be used to

fully controlled deprogramming,<sup>142</sup> to move the wavering individual to a neutral third ground, from which he or she would be able to evaluate the two choice systems and decide freely between them.<sup>143</sup>

The difficulty with all postinduction remedies is that, unlike preinduction remedies and especially informed consent, they operate in the realm of religious belief.<sup>144</sup> Preinduction remedies only affect conduct, as they regulate the recruiter-recruit relationship at a time before belief is formed and conversion fixed. As is discussed more fully later,<sup>145</sup> religiously motivated conduct is regulable on a

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neutralize changes wrought by insight, education, reflection, miracles, reading, or ordinary persuasion. See generally Delgado, *Ascription*, *supra* note 1, at 25-28 (responding to the drawing-the-line problem); Delgado, *Religious Totalism*, *supra* note 1, at 63-73 (same).

<sup>142</sup> See Delgado, *Religious Totalism*, *supra* note 1, at 85-88, suggesting limitations on deprogramming: (1) that it be carried out only pursuant to a judicial order and finding that the individual is incompetent or under mind control; (2) that deprogramming not proceed unless milder measures have first been attempted; (3) that therapies not be aimed at destroying religious faith or belief; (4) that therapy not be aimed at reuniting the individual with his family or at convincing him to accept an alternative lifestyle (e.g., return to college); (5) that therapy end as soon as the individual is restored to capacity and is able to make choices; (6) that the post-treatment individual be free to return to the group; (7) that deprogramming be carried out only under the supervision of a licensed psychologist or psychiatrist and under judicial supervision.

<sup>143</sup> Cf. Katz, *The Right to Treatment—An Enchanting Legal Fiction?*, 36 U. CHI. L. REV. 755, 778-79 (1969) (discussing suggestion that incompetents be treated involuntarily only to the point at which they are able to understand their condition and accept or reject further treatment).

<sup>144</sup> Guardianship, conservatorship, and civil commitment proceedings have been employed to remove and treat cultists. See generally Delgado, *Religious Totalism*, *supra* note 1, at 88-91. Proposed legislation in two states would provide a remedy expressly tailored to cult-like conditioning. Senate Bill 524, to be considered by the Oregon Legislative Assembly during its 1981 Regular Session, provides for a temporary guardian of any person incapacitated by reason of undue influence of a person or group. Undue influence can be shown by evidence of: deception; deprivation of privacy, rest, medical care, and opportunity to communicate with others; and impairment of mental and physical independence. It can be manifested by: impairment of individual thought or action; loss of spontaneity or originality in behavior and speech; regression to child-like levels of behavior; extreme dependence; and sudden changes in personality.

In 1980, both houses of the New York state legislature enacted a similar bill, but the governor of the state vetoed it. The bill has been redrafted and will be introduced during the next session. It would amend the state mental hygiene law by adding a new article providing for temporary guardians for persons who have undergone nonconsensual changes manifested by: drastic physical and psychological deterioration; abrupt abandonment of values and goals; blunted emotional responses; regression; physical changes; reduction of decisional capacity; and psychopathological changes, which may include dissociation, obsessional thinking, and loss of cognitive flexibility. (Draft bills on file with author).

<sup>145</sup> See notes 167-73 and accompanying text *infra*.

showing of compelling state interest. Religious belief, on the other hand, is highly, perhaps absolutely, protected. Should protection of religious belief extend to belief that is inculcated through disapproved means and without a conscious, informed choice on the part of the believer? An argument can be made that appellate decisions protecting free choice in religious matters<sup>146</sup> imply that unchosen belief is not protectable, or at least not protected absolutely. The issue seems never to have been litigated and should be regarded as an open question.

The only decision by a higher level court dealing with religious manifestations of questionable origin and authenticity is *Peterson v. Sorlien*,<sup>147</sup> a December 1980 decision of the Minnesota Supreme Court. In *Sorlien*, the parents of a young cultist tricked her into leaving the cult to visit the home of a family friend.<sup>148</sup> There, she was confined and confronted with a team of deprogrammers who attempted to engage her in "reality-inducing therapy." For three days, the young woman strenuously objected, adopting the fetal position and blocking her ears with her fingers to avoid hearing what the deprogramming team and her parents were saying.<sup>149</sup> Later, she talked with the deprogrammers, reconsidered her choice of religious lifestyle, and remained with the parents and deprogrammers, roller skating, taking trips, shopping, playing softball, swimming, and picnicking.<sup>150</sup> She had many opportunities to escape, but did not do so. Later, she initiated contact with her boyfriend, a cult member, with the object of convincing him also to leave the group. A meeting was arranged, but subsequently the young woman rejoined the cult and filed a civil suit against her parents for unlawful imprisonment.<sup>151</sup>

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<sup>146</sup> See notes 33-60 and accompanying text *supra*.

<sup>147</sup> 299 N.W.2d 123 (Minn. 1980), *cert. denied*, 450 U.S. 1031 (1981).

<sup>148</sup> 299 N.W.2d at 127.

<sup>149</sup> *Id.* at 127.

Initially, Susan was unwilling to discuss her involvement; she lay curled in a fetal position . . . plugging her ears and crying while her father pleaded with her to listen to what was being said. This behavior persisted for two days during which she intermittently engaged in conversation, at one point screaming hysterically and flailing at her father.

<sup>150</sup> *Id.* "But by Wednesday, Susan's demeanor had changed completely; she was friendly and vivacious and that night slept in an upstairs bedroom. Susan spent all day Thursday reading and conversing . . . and on Saturday night went roller-skating. On Sunday she played softball at a nearby park . . . ."

<sup>151</sup> *Id.*

The court found that at least 13 of the young woman's 16 days outside the cult had been spent voluntarily with her parents and deprogrammers,<sup>152</sup> and that during her stay in the cult the woman had acquired a new temporary identity.<sup>153</sup> The court found that "cult indoctrination . . . is predicated on a strategy of coercive persuasion that undermines the capacity for informed consent,"<sup>154</sup> that in such settings "consent becomes a function of time,"<sup>155</sup> and that other social institutions do not undermine consent so extensively.<sup>156</sup> Under these circumstances the court found the young woman's acquiescence "dispositive"<sup>157</sup> and announced a new test of consent in cult situations: where the parents remove the child "and the child at some juncture assents to the actions in question," the entire course of conduct is deemed consensual and no unlawful imprisonment occurs.<sup>158</sup> The United States Supreme Court denied certiorari.<sup>159</sup>

#### IV. OBJECTIONS TO A DUTY OF INFORMED CONSENT

Objections could be directed toward both the feasibility and constitutionality of a requirement of informed consent.

##### A. *Objections Based on Feasibility*

Feasibility-related objections to a duty of informed consent include that religion is not rational and that an interruption to obtain informed consent will render conversion impossible.

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<sup>152</sup> *Id.* at 128.

<sup>153</sup> Because, it is argued, the cult conditioning process induces dramatic and non-consensual change giving rise to a new temporary identity on the part of the individuals whose consent is under examination, Susan's volitional capacity prior to treatment may well have been impaired. Following her readjustment, the evidence suggests that Susan was a different person, "like her old self."

*Id.* The "it is argued" passage evidently refers to Delgado, *Religious Totalism*, *supra* note 1, at 57. Telephone interview with Jeffrey Brooke, attorney, in Phoenix, Ariz. (Feb. 27, 1981).

<sup>154</sup> *Id.* at 129.

<sup>155</sup> *Id.* at 128: "As such, the question of Susan's consent becomes a function of time." Compare Delgado, *Religious Totalism*, *supra* note 1, at 58 (consent a function of time).

<sup>156</sup> "While we acknowledge that other social institutions may utilize a degree of coercion in promoting their objectives, none do so to the same extent or intend the same consequences. Society, therefore, has a compelling interest favoring intervention." 299 N.W.2d at 129.

<sup>157</sup> *Id.* at 128.

<sup>158</sup> *Id.* at 129.

<sup>159</sup> 450 U.S. 1031 (1981).

1. *Irrational Nature of Religious Experience.* It might be argued that religion is not rational and that a requirement of informed consent, which assumes a cognitive model, is therefore inapposite.<sup>160</sup> Persons do not decide to become adherents to religions by weighing their respective advantages and disadvantages; they commit themselves out of faith, obedience, and discipleship.<sup>161</sup>

Although some religious groups may view conversion as an involuntary act,<sup>162</sup> it does not follow that they may use methods of induction that abridge consent. The legal system is not required to adopt the religious group's view of conversion. Allowing religious proselytizers to define their own limits invites abuse, and is unnecessary. In the closely related area of public fundraising, courts have imposed limits to control religiously based fraud.<sup>163</sup> The requirement of interactive consent seems no more onerous than these other rules and is aimed at protecting an interest of even greater importance.

2. *Disruptive Effect of the Requirement.* It could also be argued that an informed consent requirement would constitute an unreasonable barrier to religious conversion, as any break in the proceedings would slow the emotional momentum, "destroy the mood," and make conversion difficult or impossible.<sup>164</sup>

If the brief delay necessary to give informed consent causes some persons to decide not to proceed to membership, this is an acceptable price to pay to protect against the even greater evil of nonconsensual conversion. Cult followers may disagree, believing that the person who rejects conversion loses something of inestimable value. This weighing of costs and benefits, however, is not theirs to make. The Constitution directs that choices of religious belief and affilia-

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<sup>160</sup> Cf. W. JAMES, *VARIETIES OF RELIGIOUS EXPERIENCE* (1936); R. OTTO, *THE IDEA OF THE HOLY* (1929); P. TILlich, *THE DYNAMICS OF FAITH* (1957) (religious commitment and belief not primarily cognitive in nature).

<sup>161</sup> See note 160 *supra*.

<sup>162</sup> *Id.*

<sup>163</sup> See notes 40-50 and accompanying text *supra*; see also notes 174-91 *infra*.

<sup>164</sup> Cf. Testimony of Jeremiah Gutman, Hearings held by Senators Dole, Fish, and Zarin-sky, Washington, D.C., February 9, 1979 (attacking this author's proposal for a requirement of self-identification by religious converters) (hereinafter cited as Gutman); *Pro and Con: Federal Intervention in Cults?*, U.S. NEWS & WORLD REP., Dec. 11, 1978, at 29, col. 2 (interview with Dean M. Kelley) (intervention dangerous and unpredictable); *id.* at 30, col. 2 (opposing cooling-off period).



tion be made by the individuals directly concerned.<sup>165</sup> Others may disagree with these choices, but are required to respect them.<sup>166</sup>

### B. Constitutional Objections

Another group of objections attacks the constitutionality of informed consent under the first amendment.

1. *Free Exercise of Religion.* A requirement of disclosure interferes with the free-exercise right of recruiters by imposing restrictions on the way they induct new members.<sup>167</sup> Informed consent requirements in medicine and human experimentation also interfere with the right of doctors and researchers to practice medicine or carry out research, but, unlike religion, these areas are not expressly protected by the Constitution.

Restrictions on religiously motivated conduct are not unconstitutional *per se*, but are subject to a balancing test in which the court weighs the state's interest in restricting liberty against the religious person's or group's interest in performing the acts in question.<sup>168</sup> The religious interest ordinarily will receive broad protection,<sup>169</sup> but this is lessened to the extent that courts determine the underlying motivation to be insincere,<sup>170</sup> or the conduct noncentral<sup>171</sup> to

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<sup>165</sup> See notes 33-60 and accompanying text *supra*.

<sup>166</sup> A final objection based on feasibility is that the requirement would be difficult to enforce, since it could be difficult to tell when, in an ordinary conversation between a convert and a convert, conversion begins. This objection seems easily answered. If a convert strikes up a conversation, on a bus for example, on a neutral subject, the informed consent requirement does not arise. As soon as the conversation moves in the direction of interesting the convert in making contact with the group, see text accompanying notes 74-95 *supra*, the offer of disclosure must be made. The line-drawing problems posed seem no more difficult than they do in medical or psychological experimentation, where it may sometimes be necessary to determine when "treatment" and "experimentation" begin and end.

<sup>167</sup> Sincerely motivated religious behavior is protected against arbitrary state interference. See generally L. TRIBE, *supra* note 41, ch. 14 (Rights of Religious Autonomy).

<sup>168</sup> See *Wisconsin v. Yoder*, 406 U.S. 205, 214 (1972); *Sherbert v. Verner*, 374 U.S. 398 (1963) (balancing test applied in free exercise of religion cases).

<sup>169</sup> *Wisconsin v. Yoder*, 406 U.S. at 215. *West Virginia Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). See generally L. TRIBE, *supra* note 41, §§ 14-6 to -7 at 826-34.

<sup>170</sup> *Wisconsin v. Yoder*, 406 U.S. 205, 235 (1972); *Welsh v. United States*, 398 U.S. 333, 342-44 (1970); *United States v. Seeger*, 380 U.S. 163, 185 (1965); *People v. Woody*, 61 Cal. 2d 716, 726, 394 P.2d 813, 820-21, 40 Cal. Rptr. 69, 76-77 (1964).

<sup>171</sup> *E.g.*, *Wisconsin v. Yoder*, 406 U.S. 205, 215-19 (1972); *People v. Woody*, 61 Cal. 2d 716, 394 P.2d 813, 40 Cal. Rptr. 69 (1964) (peyote as central ingredient of California Indians' religious system); see also *Leary v. United States*, 383 F.2d 851, 860 (5th Cir. 1967), *rev'd on other grounds*, 395 U.S. 6 (1969) (marijuana not a necessary element of Hindu religion, hence its use not protected under first amendment).

the system of belief and practice. For its part, the state's interest must be legitimate, compelling,<sup>172</sup> and achievable by no less onerous means.<sup>173</sup>

(a) *Compelling state interest.* Two related state interests support a requirement of disclosure: the interest in averting nonconsensual religious conversion, and the interest in protecting the public against secondary effects of fraudulent religious proselytizing. As mentioned earlier, case law and constitutional theory demand that religious choices not be imposed; such choices are left to the individual.<sup>174</sup> Imposed or nonchosen religiosity is constitutionally and morally offensive.<sup>175</sup> Protection of free choice in religious matters would thus appear to constitute a compelling state interest.

A state may also wish to protect the public against the indignation and demoralization that can result from deceptive religious recruitment. This interest was cited in dicta in *United States v. Ballard*<sup>176</sup> and *Cantwell v. Connecticut*,<sup>177</sup> and received explicit protection in more recent cases stemming from Hare Krishna activity in airports and at county fairs. Although most of these cases have centered around dishonest fundraising rather than recruiting of new members, the state interests are similar in the two areas.

*International Society for Krishna Consciousness, Inc. v. Barber*,<sup>178</sup> decided by the Northern District of New York in August 1980, is a recent example. In *Barber*, the director of a county fair and others were sued for restricting members of the Hare Krishna sect from soliciting freely among the public and for confining the cult's aggressive proselytizing (called "Sankirtan") to a booth.<sup>179</sup> The sect charged that the restriction was unreasonable and violated their civil rights under 42 U.S.C. § 1983.

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<sup>172</sup> See *Yoder*, 406 U.S. at 215 (1972); *Sherbert v. Verner*, 374 U.S. 398, 407 (1963).

<sup>173</sup> *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972).

<sup>174</sup> See notes 34-46, 51-59 and accompanying text *supra*.

<sup>175</sup> *Id.*

<sup>176</sup> 322 U.S. 78, 86, 88 (1944) (good or bad faith with which defendants held religious beliefs properly submitted to jury, although truth or verity of those beliefs could not be so submitted).

<sup>177</sup> 310 U.S. 296, 306 (1940) ("Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public. . . . Without a doubt a State may protect its citizens from fraudulent solicitation.").

<sup>178</sup> 506 F. Supp. 147 (N.D.N.Y. 1980).

<sup>179</sup> *Id.* at 150.

The court found that the sect had engaged in a pattern of deceptive practices extending over a period of years. The Krishnas wore disguises, such as that of Santa Claus, violated their agreement with the fair officials to wear identification badges, and slurred the word "Krishna" to make it sound like "Christian."<sup>180</sup> They invented fake purposes and nonexistent programs, told young couples that they had been selected as the best-looking couple on the fairgrounds and would receive a prize, and deliberately miscounted change by folding bills in half.<sup>181</sup> They hid their identification badges, or wore badges belonging to other groups.<sup>182</sup> They focused on the handicapped, servicemen, young couples with children, and others deemed easy "marks,"<sup>183</sup> and sold records with photographs of leading recording stars on the cover, although the contents consisted only of Krishna chants and wails.<sup>184</sup>

The Krishnas defended these practices by characterizing Sankirtan as their religious duty. Further, even if the member of the public did not know that he or she was giving to a religious organization, the member received a spiritual benefit—the greater the donation, the larger the benefit.<sup>185</sup> The Krishnas justified their deception by religious paternalism: "It is the task of the doctor or the mother to give . . . the medicine because she knows it's best. So we are approaching conditioned souls because they in their own right will not turn to Krishna."<sup>186</sup> Among themselves they described nonbelievers as "diseased," "dogs," or "misguided," who needed to be relieved of their material possessions as the first step toward attaining spirituality.<sup>187</sup>

The Krishnas' arguments were unavailing. The court found that the state has a compelling interest in regulating fraudulent speech, even under religious auspices.<sup>188</sup> Moreover, the booth restriction was a reasonable means of insuring "authentic[ity] and honest[y]"

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<sup>180</sup> *Id.* at 158-63; see also *New York Hearings*, *supra* note 8, pt. II at 81.

<sup>181</sup> 506 F. Supp. at 161-63.

<sup>182</sup> *Id.* at 161-62. "Sadly, still another group that is 'targeted' is the handicapped." *Id.* at 161 (citing incident with young woman afflicted with cerebral palsy).

<sup>183</sup> *Id.* at 159, 161.

<sup>184</sup> *Id.* at 162 (woman "was startled to discover that her Stevie Wonder album sounded like a 'cat in heat'").

<sup>185</sup> *Id.* at 153, 158.

<sup>186</sup> *Id.* at 156.

<sup>187</sup> *Id.* at 158.

<sup>188</sup> *Id.* at 169-71.

in the Krishnas' dealings with the public.<sup>189</sup> Criminal prosecutions for fraud were not less onerous alternatives; the fluidity and mobility of the attenders at county fairs made it unlikely that a victim would remain to press charges.<sup>190</sup> Other federal decisions have ordered similar protection for the public against deceptive religious fundraising.<sup>191</sup> A common remedy is a requirement that the group identify itself or wear badges.†

(b) *The cult's or recruiter's interest.* The interest of religiously motivated persons or groups in expressing their beliefs by action is entitled to considerable deference in our constitutional scheme of values.<sup>192</sup> It is not protected absolutely, though courts will seek to accommodate it when doing so does not require sacrificing an even greater social value.<sup>193</sup> The degree of protection is lessened, however, when a court finds that the motivation behind the act is insincere or nonreligious,<sup>194</sup> or when the conduct is not a central element or tenet of the group's doctrine or way of life.<sup>195</sup>

(i) *Sincerity.* A court could find that a cult's interest in inducing conversion without informed consent is insincere. First, it could hold that, in this setting, deception and nondisclosure establish insincerity.<sup>196</sup> In opposition, the recruiter's organization might argue that its religion compels deceptive recruitment, and that its

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<sup>189</sup> *Id.* at 171.

<sup>190</sup> *Id.* at 170-71.

<sup>191</sup> *E.g.*, *Heffron v. ISKCON*, \_\_\_ U.S. \_\_\_, 101 S. Ct. 2559 (1981); *Haynes v. Metropolitan Gov't of Nashville*, 478 F. Supp. 9 (M.D. Tenn. 1979); *ISKCON v. Evans*, 440 F. Supp. 414 (S.D. Ohio 1977).

† *Barber* was recently reversed, 650 F.2d 430 (2d Cir. 1981). Shortly afterward, however, the Supreme Court upheld as a valid time, place, or manner restriction a similar rule in effect at a state fair in Minnesota. *Heffron v. ISKCON*, \_\_\_ U.S. \_\_\_, 101 S. Ct. 2559 (1981). *Heffron* thus reinstates booth rules aimed at regulating disruption and fraud in heavily trafficked, confined public places, *id.* at 2565 n.13, 2567. See also *id.* at 2569 (Brennan, J., concurring in part and dissenting in part); *Larson v. Valente*, 50 U.S.L.W. 4411, 4416, 4418 n.30 (U.S. April 21, 1982).

<sup>192</sup> See sources cited note 169 *supra*.

<sup>193</sup> See sources cited note 168 *supra*.

<sup>194</sup> See sources cited note 170 *supra*.

<sup>195</sup> See sources cited note 171 *supra*.

<sup>196</sup> Thus, the dishonesty of the act would be taken as evidence of its nonreligious orientation. See *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571 (1942) (questioning whether extremely antisocial acts could be religious in any sense of the term). The argument risks being circular: religious acts cannot be dishonest; therefore, if an act is dishonest, it cannot be religious.

members are following this mandate sincerely.<sup>197</sup> The court then would be faced with deciding whether sincere religious deception is legally protected.<sup>198</sup> The weight of case law, reviewed earlier,<sup>199</sup> suggests it is not.

Insincerity could also be found if a court determined that the dominant motive of a group or sect in recruiting new members is nonreligious—financial or political, for example.<sup>200</sup> Conscientious objector and other exemption-related cases show that an admixture of political or economic motives will weaken a free exercise claim.<sup>201</sup> Since many cults are intensely preoccupied with money and power,<sup>202</sup> and shape their recruiting accordingly,<sup>203</sup> a court could find the requisite sincerity missing.

(ii) *Centrality*. Another element that courts consider in decid-

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<sup>197</sup> See, e.g., *ISKCON v. Barber*, 506 F. Supp. 147 (N.D.N.Y. 1980); notes 185-87 and accompanying text *supra* (members of Hare Krishna sect argued that practice of "Sankirtan" required that they proselytize aggressively and dishonestly in order to relieve nonbelievers of burden of material goods and objects that prevented their spiritual progress).

<sup>198</sup> At this point in the inquiry, we are not examining the interest that outsiders have in not being deceived by dishonest recruiters or in avoiding the harm of imposed religiosity. See notes 157-73 and accompanying text *supra*. Rather, we are looking at recruitment from the perspective of the recruiter and attempting to ascertain the degree of deference that courts should afford this activity under the constitutional balancing test.

<sup>199</sup> See notes 40-59 and accompanying text *supra*.

<sup>200</sup> E.g., *Welsh v. United States*, 398 U.S. 333, 342-44 (1970); *United States v. Seeger*, 380 U.S. 163, 165-66 (1965); *Washington Ethical Society v. District of Columbia*, 249 F.2d 127 (D.C. Cir. 1957). See also *Founding Church of Scientology v. United States*, 409 F.2d 1146, 1160 (D.C. Cir.), *cert. denied*, 396 U.S. 963 (1969).

<sup>201</sup> See note 200 *supra*.

<sup>202</sup> Moon's organization, with its publicized ties to a foreign government and possible involvement in political and intelligence operations in this country, seems especially vulnerable. E.g., *N.Y. Times*, Aug. 5, 1977, at A9, col. 1 (Fraser Subcommittee identified possible Korean CIA ties, South Korean official involvement with Unification Church efforts to mobilize public opinion on behalf of President Nixon, then facing impeachment demands); *N.Y. Times*, May 25, 1976, at 1, col. 6, at 16, col. 2 (ties with South Korean government, Korean CIA).

Moon's organization, in common with most other cults, is also intensely interested in amassing material wealth. E.g., *TIME*, June 14, 1976, at 50 (Unification Church considering purchase of Empire State Building); *N.Y. Times*, May 25, 1976, at 16, col. 7 (church spent more than \$5 million in purchase of New Yorker Hotel as U.S. headquarters); Dole-Buckley Meeting Report, *supra* note 21, pt. 2, at 7, 35, 45, 47 (Scientology training course costs members \$5,000 to \$20,000); (Hare Krishna fundraisers berated by their leaders for only raising \$150 per day). See generally Delgado, *Religious Totalism*, *supra* note 1, at 44-45 (economic aims).

<sup>203</sup> Heirs and others likely to come into wealth are especially likely to be recruited. See Delgado, *Religious Totalism*, *supra* note 1, at 45 & nn.251-52.

ing the degree of deference due free exercise claims is centrality.<sup>204</sup> The closer a course of conduct comes to the theological core of a religion, the more sympathetically courts will view claims for exemption.<sup>205</sup> Because regulating nonconsensual recruitment does not endanger the ability of a religious group to exist, preach, conduct its ceremonies, or adhere to its system of beliefs, it seems unlikely that a court would characterize the group's nonconsensual recruiting techniques as a central element or practice. Admittedly, a group deprived of the ability to recruit nonconsensually loses a powerful method of increasing its size; however, ordinary means of recruitment—preaching, revivals, advertising, door-to-door canvassing, and handing out leaflets—remain available to it. The group's interest in using extraordinary rather than ordinary means of induction would not seem to constitute a "central" element in the constitutional sense.<sup>206</sup>

(c) *Least restrictive alternative.* If the state's interest is strong enough to prevail over the group's interests, the means by which it acts still must be no more onerous than necessary.<sup>207</sup>

(i) *Preinduction remedies.* It is difficult to conceive of an effective means of assuring free choice in religious affiliation less onerous than a requirement of disclosure. Informed consent of the proposed interactive variety is less intrusive than that applied in other areas,<sup>208</sup> in that the scope of disclosure is as narrow as the subject desires. When the target person desires to be converted, the brief delay required to inform him or her of the group's identity and religious nature would constitute only a momentary interruption and might be necessary in any event.

(ii) *Postinduction remedies.* As was observed earlier, because the postinduction individual is unlikely to sue for relief, after-the-fact remedies have doubtful effectiveness unless they provide for third-party initiative.<sup>209</sup> The principal methods of enforcing an in-

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<sup>204</sup> See note 171 and sources cited therein *supra*.

<sup>205</sup> *Id.*

<sup>206</sup> See generally Delgado, *Religious Totalism*, *supra* note 1, at 46-47 (Centrality—The Requirement of a Core Belief).

<sup>207</sup> See note 173 and accompanying text *supra*.

<sup>208</sup> Informed consent in medical settings requires that the physician give the patient fairly detailed information about diagnosis, prognosis, and alternative treatments. See generally sources cited note 32 *supra*.

<sup>209</sup> See note 110 and accompanying text *supra*.

formed consent requirement in the postinduction period are relatively onerous, however.<sup>210</sup> Some courts, therefore, may find unremediable a violation of the consent requirement where such violation has led to a successful conversion. Early case law and legal literature are widely split.<sup>211</sup>

2. *Excessive Entanglement.* A further concern is that a requirement of informed consent poses risks of excessive entanglement. Designed to protect both free exercise and nonestablishment values, the prohibition against excessive entanglement bars interference of religious and state authorities with each other's spheres of influence.<sup>212</sup> In our case, the concern would focus on what has been called "administrative entanglement"—the unnecessary intrusion of regulatory procedures into the spiritual realm.<sup>213</sup> This entanglement is likely to be found when the government invades an important area of church autonomy or governance,<sup>214</sup> acts from no clearly neutral principle,<sup>215</sup> or resorts to dogma or doctrine in resolving a dispute.<sup>216</sup>

An informed consent requirement would seem unlikely to contravene the rule against excessive entanglement. Unlike intervention in property disputes, defrockment, or challenges among splinter groups,<sup>217</sup> a court's enforcement of an informed consent requirement does not invade an area of church governance or authority; the cult's organizational/doctrinal integrity is not endangered to any significant extent.<sup>218</sup> Further, the principle on which

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<sup>210</sup> See Delgado, *Religious Totalism*, *supra* note 1, at 86-88 (proposing guidelines to curb possible abuses of deprogramming).

<sup>211</sup> *E.g.*, *United States v. Patrick*, No. CR-74-320-S (W.D. Wash. Dec. 11, 1974) (self-help deprogramming legitimated by emergent circumstances—defense of necessity upheld); *People v. Patrick*, 541 P.2d 320 (Colo. 1975) (rejecting deprogramming or its necessity); Delgado, *Religious Totalism*, *supra* note 1, at 85-92 (deprogramming permissible when carried out with judicial supervision); Note, *Conservatorships and Religious Cults: Divining a Theory of Free Exercise*, 53 N.Y.U. L. Rev. 1247 (1978).

<sup>212</sup> *E.g.*, *L. TRIBE*, *supra* note 41, § 14-12, at 865 (requirement is "born of a desire to minimize government intrusion into the religious realm" and to insure "that secular and religious authorities not interfere excessively with one another's respective spheres of choice and influence").

<sup>213</sup> See generally *id.* at 869-71 (defining administrative entanglement as governmental practices that coerce or subvert core religious practices).

<sup>214</sup> See *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94 (1952).

<sup>215</sup> See *Presbyterian Church v. Hull Church*, 393 U.S. 440, 449 (1969).

<sup>216</sup> *E.g.*, *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713 (1976).

<sup>217</sup> See cases cited notes 214-16 *supra*.

<sup>218</sup> The church is deprived of a single option—that of obtaining new members by means

the court proceeds—that individuals should have the right to choose their beliefs and affiliations—is religiously neutral.<sup>219</sup> Finally, in finding a breach of informed consent in a given transaction between a believer and a nonbeliever, the court is not required to decide among competing religious principles or dogmas. The only matter to be determined is a nonreligious one—whether the target person received the information he or she was due. The requirement of informed consent would therefore seem unlikely to contravene the prohibition against excessive entanglement.

3. *Disparagement of Religious Belief.* Courts, like all arms of government, are constitutionally barred from questioning the verity of religious doctrine. The leading case, *United States v. Ballard*,<sup>220</sup> in holding that the truth of religious claims could not be presented to the jury in a mail fraud case, declared:

Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. . . . [I]f one could be sent to jail because a jury in a hostile environment found those teachings false, little indeed would be left of religious freedom.<sup>221</sup>

Thus, although the *Ballard* jury properly could decide whether the defendants believed that they could perform miracles and transmit messages to and from God, it could not be permitted to decide whether these beliefs were, in fact, true.

More recently, a California appellate court held that a conservatorship order, granted to remove members of the Unification Church for deprogramming, violated the prohibition against evaluating church doctrine.<sup>222</sup> “When the court is asked to determine whether that change [of lifestyle] was induced by faith or by coer-

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of coercive persuasion—while the individual victim loses many options—the ability to marry, to follow a career, to associate with friends and family, and to make autonomous decisions about all these matters.

<sup>219</sup> It is religiously neutral in the sense that it neither favors nor impedes religion, nor advantages one religion over another. It is thus neutral in the same way in which a requirement of informed consent in medical procedures is medically neutral—it favors no theory of medicine over another, nor seeks to impede or promote medical values. It only aims at giving patients the choice among the various medical options that may be open to them.

<sup>220</sup> 322 U.S. 78 (1944).

<sup>221</sup> *Id.* at 86-87.

<sup>222</sup> *Katz v. Superior Court*, 73 Cal. App. 3d 952, 141 Cal. Rptr. 234 (1977).



cive persuasion, is it not in turn investigating and questioning the validity of that faith?"<sup>223</sup>

Would an informed consent requirement constitute an impermissible disparagement of the validity of religious doctrine? To ascertain whether it would, let us for the moment detach the question from the religious context and consider it instead in connection with consent to medical procedures. Suppose a critic of informed consent to medical experimentation argued that the requirement derogates medical authority and expertise, questions the scientific basis of medical judgments, and hence should not be imposed. This criticism would be seen as fundamentally misguided. Informed consent is required in medical treatments and human experimentation, not because we fear that the doctor's judgment is likely to be medically erroneous, but because the decision to undergo treatment is one that is for the patient alone to make.

The doctor is competent to tell the patient his or her diagnosis and prognosis, as well as the various forms of treatment and their costs and benefits. The doctor's expertise ends at this point. The patient then must decide whether to incur the costs of treatment in the hope of achieving certain gains. With regard to this decision, the physician has no peculiar competence. One patient may prefer the risk of rapid death at the gain of some days or weeks of mental clarity, unclouded by drugs or debilitating treatment. Another might cling to life more tenaciously, willing to risk pain, mental disorganization, or disfigurement in return for a higher probability of cure. Respect for human values and personal autonomy dictate that these decisions be lodged with the individual patient.

The situation is no different with respect to religion. The would-be converter is free to present religious claims to anyone who will listen. He or she is free to attempt to convince others to abandon friends, family, careers, previously held values, loyalties, and property, for life in a religious commune or sect. Courts must permit them to do this; but they need not allow believers to impose lifestyles or values on persons who do not choose them. With respect to this decision, religious converters have no special competence, and their interest in a rapid and easy conversion must give way to the right of potential converts to make their own decisions.

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<sup>223</sup> *Id.* at 988, 141 Cal. Rptr. at 255.

4. *Freedom of Speech.* If an informed consent requirement is constitutionally permissible under the religion clauses, it should also be permissible under the free speech clause of the first amendment. An informed consent procedure only interferes with the converter's right to speak with would-be converts if they would otherwise refuse to speak with the recruiter. It is difficult to maintain that proselytizers have a constitutional right to engage in extended conversation with persons who do not wish to speak with them. When a would-be convert does, in fact, wish to speak with the converter and become converted, the obstacle of a momentary delay to give informed consent would be *de minimis*.<sup>224</sup>

### CONCLUSION

The current debate about the proselytizing methods of religious cults is highly polarized. Critics emphasize the dangers of cult membership and the deviousness of the techniques cults use to induce it, arguing that these factors justify harsh action aimed at the cults. Cult apologists, on the other hand, argue that no remedy is necessary or even constitutionally permissible, and that the occasional damaged victim is the price we all pay for religious liberty.

This Article proposes a moderate solution that concedes the right of cults to exist and to proselytize, but seeks to insure that the decision to join a cult is made by, not for, the individual convert. The solution, a convert-mediated requirement of informed consent, would require that religious proselytizers disclose key information to target persons before initiating conversion attempts. Most mainstream religious groups, and a few cults, already do this; the requirement would affect only those that do not. The principal enforcement mechanism would be private suits for damages.

The proposed requirement, although novel, would be consistent with the historic values of the religion clauses, as well as with those of informed consent generally. Moreover, it can be defended

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<sup>224</sup> The requirement does not affect the content of the proselytizing message; it only affects the manner of presentation. The burden it places on proselytizers is slight—a brief delay for self-identification. Comparable burdens on communications have been upheld, e.g., *Adderley v. Florida*, 385 U.S. 39 (1966) (prohibition of protests by public at a jail); *Breard v. Alexandria*, 341 U.S. 622 (1951) (ordinance prohibiting solicitation of business door-to-door without prior invitation of homeowner). See also *Martin v. Struthers*, 319 U.S. 141, 148 (1943) (dictum): "A city can . . . by identification devices control the abuse of the privilege by criminals posing as canvassers."

against criticism that it is unfeasible and would impermissibly entangle the state with religious affairs. It represents the least onerous method of protecting individuals' decisionmaking authority and guarding against unwanted or imposed religiosity. It promises to lessen social strife and self-help. It is a remedy to which courts and counsel should give careful attention.