
Law, Social Science and the "Brainwashing" Exception to the First Amendment*

Dick Anthony, B.A. and Thomas Robbins, Ph.D.

Litigation in the "cult wars" has shifted from "deprogramming" cases to civil suits by ex-converts based on "brainwashing" claims, and to criminal defenses claiming incapacity due to cultic brainwashing. Early cases were decided on the basis of first amendment derivations barring judicial inquiries into conversion processes and religious authenticity. In 1988 the California Supreme Court carved out a narrow exception to this doctrine to be applied to circumstances where "coercive persuasion" is combined with concealment of a group's identity. The Court's opinion entailed characterizations of the process and consequences of brainwashing which are problematic from the standpoint of social science. Several key questions must be resolved before brainwashing theories can make a constructive contribution to litigation involving religious groups. These questions relate to broader issues involving the nature, causes and indicators of *involuntariness*, and the closely related problem of *drawing the line* or identifying the exact point on a continuum beyond which the means or intensity of indoctrination becomes *incapacitating*. Although the 1988 California decision did not resolve these issues, they were considered from 1988-91 by several courts making procedural rulings on the admissibility of "expert" testimony on brainwashing/psychological coercion. A concluding section relates this legal to the duality of 'soft' vs. 'hard' determinism in social science.

This paper deals with "brainwashing" and related concepts (coercive persuasion, mind control, thought reform, etc.) and the criteria for the admissibility of theories employing such concepts in litigation involving religious and therapeutic movements or "cults". Whatever their denotation, which is not always clear, concepts such as brainwashing or mind control connote *involuntariness*. They suggest a distinctive form or influence or psychotechnology which creates involuntary attitudinal and behavioral sequences. A scientific theory which explains such an influence process must, in order to be admissible, enable analysts (and legal authorities) to clearly

* This paper represents the first publication from a longer project on coercive persuasion, religious movements and the law, which will culminate in a monograph by Mr Anthony. Dick Anthony is a doctoral candidate in the inter-area studies (psychology and religion) program of the Graduate Theological Union, Berkeley, CA. Mr Anthony has served as a professional consultant to lawyers and religious groups involved in "brainwashing" litigation. Thomas Robbins is a Research Associate at the Santa Barbara Centre for Humanistic Studies. Correspondence may be addressed to Mr Anthony at 809 Evelyn Avenue, Albany, California 94706, USA.

distinguish brainwashing as a coercive process that creates involuntariness from other, less incisively coercive, processes, that is, to "draw the line" (Delgado, 1977, pp. 63-72) between groups which thoroughly brainwash from less potent or pernicious groups.

Anthony has developed an approach to evaluating the admissibility of brainwashing testimony, based upon evaluating the theories employed within such testimony relative to their purported theoretical foundation, that is, generally accepted research on Communist thought reform, with respect to the key issues of involuntariness and drawing the line. The approach which he has developed for this purpose has been expressed in an earlier publication (Anthony, 1990a) as well as in *amicus curiae* briefs, pretrial motions, and appeal briefs in cases wherein he has served as an advisor to professional associations or as a consulting expert to lawyers representing religious groups.¹ (He has also submitted a declaration under penalty of perjury outlining this approach in the Fishman case, see below pp. 27-30.) The present paper will review the effect this approach has had in clarifying the issue of the admissibility of brainwashing testimony in the various cases in which it has been presented to courts making determinations on the issue.

CULTS, BRAINWASHING AND THE FIRST AMENDMENT

The "cult wars" have been raging for practically two decades and have produced substantial litigation as courts have sought to balance the rights and legitimate interests of controversial movements, present and former devotees ("cult victims"), alarmed relatives and friends of devotees, the public and the state (Anthony, 1990a; Bohn & Gutman, 1989; Barker, 1986; Beckford, 1985; Delgado, 1989; Richardson, 1991; Robbins & Beckford, in press; Robbins, Shepherd, & McBride, 1985; Spear, 1979-80). Central to this litigation has been the claim that unsuspecting recruits to certain movements have been subjected to insidious processes of psychological coercion which have the effect of involuntarily transforming their identities and, moreover, effacing their capacity to rationally monitor and evaluate their continued participation in such sinister groups (Conway & Siegelman, 1978; Ofshe & Singer, 1986; Singer, 1978; Singer & West, 1980). This claim has been vigorously contested and debunked as prejudicial, unscientific or repressive by other observers (Bromley & Richardson, 1983; Robbins & Anthony, 1982; Schefflin & Opton, 1978).

Through the very early 1980s most of the litigation involving alleged "brainwashing" in "cults" developed in connection with the enterprise of *deprogramming*. Deprogramming is a process in which allegedly mind controlled or "programed" converts to cults are dramatically "rescued" (often abducted) and presented with arguments

¹ Anthony has served as a consulting expert to lawyers with respect to writing pretrial motions or appeal briefs on the issue of the admissibility of brainwashing testimony in: *Molko and Leal v. Holy Spirit Association* (1983, 1986, 1988); *Waltersheim v. Church of Scientology of California* (1986, 1989); *George v. ISKCON* (1988); *Kropinski v. World Plan Executive Council*. (1988); *Jorgensen v. Community Chapel* (1989); and *Greene and Ryan v. Maharishi Mahesh Yogi et al.* (1991). He served as a consultant to the Society for the Scientific Study of Religion for the purpose of coauthoring, with James Richardson, an *amicus curiae* brief on the admissibility of brainwashing testimony in *George v. ISKCON* (1988). He also served as an advisor to the society for the Scientific Study of Religion and gave an invited presentation to the American Sociological Association with respect to their cosponsorship of an *amicus curiae* brief in *Molko and Leal v. Holy Spirit Association* (1988). In addition, as noted in the text, he submitted a declaration under penalty of perjury in *U.S. v. Fishman* (1990).

against their continued participation. Such arguments usually involve allegations that converts have been brainwashed and thus that they are being held in cults against their will. Ironically, in view of the allegations of coercion in cults, such rescued converts are frequently physically confined during the deprogramming process, and the methods of persuasion are sometimes harsh and confrontational (Robbins & Anthony, 1986). Through the mid-1980s numerous law review and other scholarly papers discussed such extra-legal "vigilante" deprogramming (Babbitt, 1979; Grim, 1980; Pierce, 1980; Shepherd, 1985) and/or attempts to "legalize" deprogramming through temporary guardianships or conservatorships granted to parents of adult devotees—the latter becoming a particularly popular topic for articles (Anthony, 1979–80; Aronin, 1982; Bromley, 1983; Delgado, 1977, 1984; LeMoult, 1978; Robbins, 1985; Shapiro, 1982, 1985; Shepherd, 1983).

In the last decade, legal action and scholarly commentary involving new religions has gradually shifted from the topic of deprogramming to the area of civil suits. These suits are usually brought by ex-devotees claiming to have been manipulated, psychologically coerced, unduly influenced, traumatized and disoriented in cults. They demand compensation related to a variety of tort abuses, most commonly false imprisonment, intentional infliction of emotional distress, and fraud. Commentary on such actions is accumulating (Anthony, 1990a; Delgado, 1982, 1989; Littell, 1989; Richardson, 1991, in press; Robbins & Beckford, in press). An even more recent trend in cult/brainwashing litigation entails the use of claims involving brainwashing and/or disorientation as the basis for insanity or diminished capacity defenses on behalf of ex-devotees accused of criminal misconduct. [Arguably this development can be traced back to the famous Patty Hearst case (Schefflin & Opton, 1978, pp. 68–85).] In such cases as well as in ex-member civil actions and deprogramming cases, a key procedural issue appears to be the admissibility of expert testimony on brainwashing and psychological coercion under the *Frye* rule and equivalent standards (Anthony, 1990a; DeWitt & Richardson, 1990; Richardson, 1991, in press).²

Challenging Received First Amendment Doctrines

In order to understand the relationship between psychological/legal rationales for applying restraints on religiotherapy movements and constitutional protections of freedom of religion, it is important to note that the role of *deception* is highlighted in many of the formulations of those who argue the irrelevance of constitutional safeguards where cults are concerned (Delgado, 1977, 1982, 1984; Rosenzweig, 1979; Singer & West, 1980). In the influential formulation of Delgado (1977, 1982) the basic components of voluntariness, *knowledge* and *capacity* are said to be manipulated in such a manner that the convert never simultaneously possesses both properties. Competent new recruits are deceived as to the identity and nature of the group.

² The *Frye* principle, *Frye v. United States* (1923), holds that the theory from which experts make their deductions "must be sufficiently established to have gained general acceptance in the particular field in which it belongs". As interpreted in later cases, particularly *United States v. Amaral* (1973), the standard requires that four conditions be satisfied: (1) a proper expert, (2) a proper subject, (3) an application of an explanatory scientific theory that is "generally accepted" in the scientific community (some civil courts employ a lesser standard of "substantially accepted"), and (4) greater probative than prejudicial or emotive effect. See DeWitt and Richardson (1990) and Richardson (1991, in press) for discussions of the *Frye* standard and cult/brainwashing litigation.

By the time the veil of deception falls, the neophyte, traumatized and disoriented by sleep deprivation, bad nutrition, exhausting labor, emotional manipulation and seductive pseudosolidarity, no longer retains a capacity to rationally evaluate the desirability of further group involvement. His (or her) participation is thus essentially involuntary. The combination of *harm* (including psychological damage) to converts and involuntariness constitutes, in Delgado's view, a basis for some mode of state intervention (Delgado, 1977, 1982; Robbins, 1985). State intervention does not infringe upon freedom of belief, because involuntary belief is not really belief in any authentic sense, and the first amendment was never intended to protect pseudo-belief of this sort.

Key early cases did not respond favorably to such arguments. In *Katz v. Superior Court* (1977), temporary guardianship granted to parents of "Moonies" for the purpose of enforced deprogramming were dismissed by an appellate court (LeMoult, 1978). In the early hearings of *Molko and Leal v. Holy Spirit Association* (1983, 1986), superior and appellate courts granted summary dismissal (later partly reversed) of suits by ex-"Moonies" charging false imprisonment, fraud and intentional infliction of emotional distress.

These decisions in *Katz* and *Molko and Leal* were made on received libertarian first amendment grounds. These grounds arise from well-known cases such as *U.S. v. Ballard* (1944) and *U.S. v. Founding Church of Scientology* (1969). Doctrines such as "The Law Knows No Heresy" were transferred from cases such as *Ballard* to *Katz*. *Katz* was a California case which established an influential precedent forbidding the use of conventional guardianship and conservatorship statutes to legalize the involuntary deprogramming of persons who are not "gravely disabled". The *Katz* case was much commented on (Anonymous, 1978; Bernick, 1978; LeMoult, 1978; Shepherd, 1983), and was cited in *Molko* and later cases. Thus in *Katz* the court suggested that when it was asked to determine whether a shift of religious belief "was induced by faith or by coercive persuasion is it not in turn investigating and questioning the validity of that faith?" (*Katz* pp. 987-88, quoted in LeMoult, 1978, p. 617). Religious beliefs and indoctrinational religious speech acts were viewed as inextricably interrelated such that questioning the authenticity *qua* spontaneity or consensual origins of religious belief was deemed tantamount to questioning its validity or the wisdom of its acceptance, which is beyond the scope of legal scrutiny. Religious fraud has thus been considered nonjusticiable to the degree that allegedly fraudulent claims are indeed grounded in religion (Heins, 1981). In this connection, although Justice Douglas' majority opinion in *Ballard* allowed a test of the sincerity as opposed to the validity, of challenged religious claims, Burkholder (1974) notes that the influence of the position taken by Justice Jackson in dissent, that the question of sincerity is equivalent to a question of believability (and thus of validity), increased in repute in the two decades after *Ballard*, such that, "the guarantee of religious freedom means for many that neither the truth or falsity of religious beliefs, nor the good or bad faith with which they are held, can become legal issues" (Burkholder, 1974, p. 33).

Nevertheless, over the years and in the context of well-publicized scandals and "cult atrocities" involving such groups as Synanon, the Peoples Temple and the Bhagwan Rajneesh movement, which some have blamed on cultic brainwashing (Wooden, 1981), the view has gained ground that, in applying the first amendment, courts must take account of psychologically "coercive" conditions of "thought con-

trol" which undercut the voluntariness of conversion processes within manipulative authoritarian cults (Ofshe & Singer, 1986; Singer & Ofshe, 1990) and should perhaps properly mitigate the constitutional protection granted to some religious "exercise" which is not truly *free* (Delgado, 1984; see also Stander, 1987). These ideas have become particularly popular and formidable when they have been disassociated from the controversial "remedy" of physically coercive, confrontational processes of "deprogramming" (Delgado, 1982; Rosenzweig, 1979). Arguing for "disclosure legislation" which would curb cultic deception and thus "represent a valid secular regulation of the 'manner of recruitment' to protect the public from fraud", Rosenzweig (1979) maintains:

The novelty which "brainwashing" poses should not prevent legislative or judicial recognition of identifiable and effective methods employed to undermine rational thought and critical capacities. The law as an evolving body must adapt to technical developments in psychological theory as well as those of the physical sciences. The whole of the first amendment presupposes the autonomous and independent exercise of rights exercised therein. To the extent that deception vitiates the integrity of choice, and "thought control" vitiates autonomy, such legislation would vindicate rather than derogate the purposes underlying religious freedom (p. 158).³

It is noteworthy in this connection that the highly interdependent formulations of legal theorist Richard Delgado (see above) and clinician Margaret Singer (Ofshe & Singer, 1986; Singer, 1978, 1990; Singer & Ofshe, 1990; Singer & West, 1980) constitute an affirmation that there exists a specific psychotechnology which can *involuntarily transform beliefs and loyalties* and which can clearly be distinguished from other, less powerful, processes of social influences.⁴ As such these formulations imply a sort of loophole in the first amendment. The constitutional prohibition against an inquiry into the validity and authenticity of faith arguably does not apply if the faith in question is not voluntarily held or has been coercively imposed (Delgado, 1984). The rationale for state intervention is even stronger if there has been an enduring *loss of capacity*, which, if both coerced and sufficiently devastating, might even legitimate coercive deprogramming (Shapiro, 1983, 1985).⁵ More "moderate" remedies such as compensatory civil suits (Delgado, 1982) may appear even more

³ See Richardson (1986) for the history of a nearly successful attempt to enact disclosure legislation, arguably aimed primarily at the Church of Scientology and employing a "consumer protection" rationale, in Nevada in the mid-1980s.

⁴ The important discussion by Singer and West (1980) cites Delgado's legal theories. Singer has testified in over 40 cases, many of them civil suits by ex-devotees developed in accordance with the views set forth by Delgado (1982). Analyses such as that of Singer and Ofshe (1990) of "the production of casualties" through cultic rituals may be developed in part to bolster the prospects of future tort actions on behalf of alleged victims and casualties in hearings which frequently feature testimony by Singer and Ofshe in support of plaintiffs.

⁵ Shapiro (1983, 1985), responding to Delgado (1977), argues that only an individual's ceasing to be a "person" in the sense of losing a capacity to affirm a belief, if coercively induced, can justify the application of involuntary deprogramming or counterindoctrinative counseling, given the absolute freedom of belief. Most allegations of coercive and nonconsensual belief/identity transformation, in Shapiro's view, actually only specify a coercive change of identity ("he's become a different person") rather than an actual loss of personhood/capacity. The "new person" still enjoys freedom of belief and the right to refuse involuntary treatment.

plausible given coerced orientational shifts and some impairment of personal autonomy.

The arguments by Delgado, Rosenzweig, and others suggest a way, based on "science", of getting around the received libertarian doctrine protecting religious speech acts related to beliefs and creating a barrier to legal treatment of religious fraud. Legal and "scientific" facts cannot be considered in mutual isolation, particularly when "brainwashing" assertions are present.

THE CALIFORNIA HIGH COURT AND *MOLKO*

In *Molko and Leal v. Holy Spirit Association* (1988) the State Supreme Court, by a 6:1 margin overturned the decisions of two lower courts granting summary dismissal of actions against the Unification Church for fraud and intentional infliction of emotional distress, while upholding the lower courts' summary dismissal of the charge of false imprisonment. The *Molko* decision marks a significant shift in the treatment of cult/brainwashing issues away from interpreting these questions as purely legal-constitutional matters and toward seeing legal and scientific issues as fundamentally interrelated, given certain factual circumstances.

The trial and intermediate courts responded favorably to a summary judgement motion which argued for an extension of the reasoning of the 1977 *Katz* decision to civil suits involving brainwashing claims against religious groups. The brainwashing argument was seen by the lower courts as a constitutionally impermissible judgement on the authenticity of the Unificationist faith. In contrast, the majority California State Supreme Court opinion, expressed by Judge Stanley Mosk, suggests a gap in the constitutional armor protecting religiously indoctrinative speech acts. In Justice Mosk's view coercive persuasion is not in and of itself objectionable or bereft of constitutional protection when religiously based. With respect to fraud and emotional distress—the allowable causes of action in *Molko*—it is not coercive persuasion *per se*, but rather its combination with deliberate and blatant *deception* in terms of the studied concealment of the basic identity of the Church and its training center prior to the administration of coercive persuasion that is properly actionable. "For it is one thing", writes Mosk, "when a person knowingly and voluntarily submits to a process involving coercive influence, as in a monastery or a seminary . . . but it is quite another when a person is subjected to coercive persuasion without his knowledge and consent" (*Molko*, 1988, p. 60). Mosk contrasts the issue facing the court in *Molko* with the question which the court had to answer in *Katz*: whether it could "question the validity" of an allegedly brainwashed devotee's faith. In *Molko*, "The legal question is simply whether a religious organization can be held liable on a traditional cause of action for deceiving nonmembers into subjecting themselves, without their knowledge or consent, to coercive persuasion".

The challenge here, as we have stated, is not to the church's teachings or to the validity of a religious conversion. The challenge is to the Church's practice of concealing its identity in order to bring unsuspecting outsiders into its highly structured environment (*Molko*, p. 59).

Justice Mosk and his colleagues in the majority in *Molko* have thus established a fairly narrow circumstances—deliberate concealment of the identity of the organiza-

tion—which deprives religious speech acts involving coercive persuasion of the protection they would otherwise receive under the first amendment. This is indeed a slender exception to the *Katz* doctrine of the constitutional impermissibility of evaluating the authenticity of (even allegedly “coerced”) faith.⁶

Despite the apparent narrowness of the exception to received constitutional interpretation carved out in *Molko*, the decision of the State Supreme Court reversing the grant of summary judgment has been received with significant alarm by defenders of the rights of religious minorities (Littell, 1989; Post, 1989; Richardson, in press). Parenthetically, although Judge Mosk’s opinion reiterates several times the vital significance of the deliberate concealment of the group’s identity, it is conceivable that the *Molko* decision could end up being interpreted more broadly to widen the range of insupportable “deception”, and increase the number of items which must be disclosed by a group to shield it from a suit by an ex-devotee for fraud or emotional distress. The increasing emphasis by some scholars on the putatively dangerous quasihypnotic processes and associated disorders which can arise from cultic practices such as repetitive chanting, meditation rituals or guided visualizations (Singer & Ofshe, 1990), may presage such a strategy. Although this line of thought was rejected by a California appellate court in a case involving Hare Krishna, *George v. ISKCON* (1989), the appellate opinion was decertified by the State Supreme Court (Richardson, in press). One barrier to generalizing the notion of cultic “deception” beyond the concealment of a group’s identity may be the increasing entanglement of claims about deception and damage with implicit derogation of the validity of religious doctrine. It is difficult to separate evaluation of the effects of belief (or rituals which make beliefs seem compelling) from evaluation of belief itself. Thus, in *Murphy v. ISKCON* (1991) the Massachusetts Supreme Court drastically reduced an award against the Hare Krishnas on the grounds that testimony placed the defendants in a position of having to attempt to prove that their beliefs are worthy of respect.

MOLKO AND THE EVALUATION OF EXPERT SUBMISSIONS ON BRAINWASHING

In rejecting summary judgment, the Court did not clearly face the issue of the scientific status of the declarations on brainwashing by clinicians Singer and Benson offered by the plaintiffs. The court rejected constitutional arguments for excluding the declarations as well as arguments positing an alleged conflict between the declarations of the plaintiffs and that of Singer and Benson. In a footnote (*Molko*, p. 56, n. 13), the Court evinced procedural grounds for declining to consider additional

⁶ It is possible to argue that the recent U.S. Supreme Court decision in *Employment Division v. Smith* (1990), which arguably weakens the constitutional protection of religious-free exercise by throwing out the “compelling state interest” regulatory standard, makes an “exception” to the constitutional protection of religion unnecessary, that is, “brainwashed” religious conversion can be routinely justiciable. There are indications, however, in the Court’s opinion in *Smith* that *Ballard* is still operative and religious “expression” and speech acts are still granted substantive protection, although the opinion is not unambiguous (Laycock, 1990). Delgado (1984) maintains that only *free* (as opposed to coerced cultic) exercise is constitutionally protected!

arguments which were put forward by the defendants for exclusion of the declarations. Finally, the constitutional grounds for excluding brainwashing submissions were considered (and rejected), "in terms not of the declarations but of the brainwashing theory itself", because "we find the basic theory is amply stated in the plaintiffs' own declarations" (*Molko*, p. 55).

It seems clear, then, that the State Supreme Court's reversal of the lower courts' grant of summary judgment *did not prejudge the question of the scientific admissibility of the testimony on the alleged brainwashing of the plaintiffs*, which would have been offered by plaintiffs' experts, Drs Singer and Benson, had not a settlement precluded the case from coming to trial. In terms of the *Frye* rule, which generally governs the admissibility of expert testimony in federal courts and (in various modified forms) in many state courts, the State Supreme Court opinion may indeed have certified that the Singer-Benson testimony would have a *proper subject*, that is, the facts adduced by the experts could not be excluded *a priori* on legal or constitutional grounds. The Court did not consider (and did not need to consider for summary judgment purposes) whether "proper experts" were involved, whether the brainwashing theory was "generally acceptable" in the scientific community, or whether the testimony would be "more probative than prejudicial". Yet these questions about the testimony continually being offered in a growing number of cases involving claims about brainwashing are now, as a result of the *Molko* decision, of enhanced relevance. The impact of the *Molko* precedent will surely be to reinforce the perceived interdependence of legal and social scientific principles in the adjudication of "brainwashing" and psychological coercion claims. *Molko* has identified a circumstance (initial concealment of a group's identity) in which coercive persuasion as a fact pattern is relevant and its meaning and effects can be addressed by a social scientist *qua* "expert".

***Molko* on the Nature of Brainwashing**

In the majority opinion the judge in *Molko* tries to avoid pronouncing definitively on the various controversies surrounding "brainwashing", particularly its *effectiveness* and whether it requires a context of physical force, restraint or brutality, and, moreover, whether "certain religious groups" employ brainwashing. "We need not resolve the controversy; we need only conclude that the existence of such views compels the conclusion [that plaintiff's brainwashing claims creates a factual issue: were they brainwashed?] which, if not precluded by other considerations, precludes a grant of summary judgement" (*Molko*, p. 55). Yet this argument may cut both ways, that is, regarding the "scientific" issue, *the existence of controversy may work against the admissibility of testimony*, particularly if a "generally accepted" standard is used.

Despite Judge Mosk's overt evenhandedness and agnosticism, his opinion characterizes brainwashing in such a way that certain arbitrary quasiempirical statements about brainwashing are made which, as we shall see, connect up with key variables which discriminate different models of systematic coercive-manipulative influence or "thought reform" (Anthony, 1990a). As we shall argue later, these variables specify the questions which need to be answered if brainwashing ideas are to be of sufficient relevance and stature to be constructively applicable in court. The answers that a theory gives to these questions define its position relative to the

issues of involuntariness and of drawing the line between coercive persuasion and normal processes of social influence.

Quoting Webster's *Ninth New Collegiate Dictionary* (1987, p. 175), Mosk defines brainwashing as "a forcible indoctrination to induce someone to give up basic political, social or religious beliefs and attitudes and to accept contrasting regimented ideas" (*Molko*, p. 54). Mosk notes that the particular methods of indoctrination vary, but, now quoting a 1980 Minnesota deprogramming case (*Peterson v. Sorlien*, 1980) [on *Peterson*, see Grim (1980) and Robbins 1985)], he affirms that in essence brainwashing:

is fostered through the creation of a controlled environment that heightens the susceptibility of a subject to suggestion and manipulation through sensory deprivation, physiological depletion, cognitive dissonance, peer pressure and a clear assertion of authority and dominion. The aftermath of brainwashing is a severe impairment of autonomy and [of] the ability to think independently which induces a subject's unyielding compliance and the rupture of past connections, affiliations and associations (*Peterson v. Sorlien*, 1980, quoted in *Molko*, p. 54).

The Webster-Mosk term, "*forcible indoctrination*" (our emphasis) might appear to suggest the necessity of *physical* coercion. At any rate brainwashing is forceful: someone is "induced" to give up his or her basic beliefs. Brainwashing thus pertains to *beliefs*: it is about giving up basic beliefs and being induced to accept "contrasting, regimented ideas"—not just any ideas but ideas which "contrast" with one's prior "basic beliefs" which one is induced to relinquish. One accepts "regimented" ideas uniformly conformed to in an extreme group with a "controlled environment" which heightens suggestibility to manipulation. The ideas one accepts after indoctrination are surely *not* ideas one was initially *predisposed* to accept, that is, ideas convergent with the basic beliefs one is now induced to part with. Brainwashing thus runs roughshod over predispositions. Finally, the consequence of brainwashing is a severe impairment of personal autonomy and of the ability to think independently. Brainwashed indoctrinees are defective thinkers who lack the capacity to think for themselves. They would appear to have nearly become sort of zombies and robots.

Judge Mosk is here *producing quasiscientific judgments about the nature of an alleged social process*, which social scientists need not necessarily accept, as they may have to accept his characterization of the legal situation in California. For example, authorities such as Robert Lifton (1961) and Edgar Schein (1961), whom Mosk characterizes as "highly respectable" experts whose views are central to the plaintiffs' case (*Molko*, p. 54), actually reject the term "brainwashing" precisely because of its connotation of an all-powerful demiurge which totally overpowers one's will (see especially Lifton, 1961, p. 4; see also Anthony, 1990a). Lifton and Schein are also characterized in *Molko* (p. 54) as attesting to the effectiveness of brainwashing, although Schein, an expert on Chinese coercive persuasion of Korean War POWs, actually thought, as do a number of scholars, that the Chinese program was relatively ineffective (Schein, 1959, p. 332; see also Anthony, 1990a; Schefflin & Opton, 1978).

The majority opinion in *Molko* is committed, however, to an "involuntarist" conception of brainwashing in which loss of capacity robs indoctrinees of control over their own ideation. This makes possible fulfillment of the condition of "justifiable reliance" in an action for fraud (*Molko*, p. 53), that is, the initially deceived plaintiffs

had actually joined the Unification Church only *after* they had discovered the group's identity, but by then they were allegedly *incapacitated*. There is an obvious application here of Delgado's theory of the inverse relationship of "knowledge" and "capacity" in cultic indoctrination, which creates a situation such that recruits are at all times either deceived or incapacitated (Delgado, 1977, cited in *Molko*, p. 54) and thus cannot give informed consent to what they undergo (Delgado, 1982).

As we have seen, brainwashing, as conceived in the *Molko* opinion, involves a radical loss of capacity and an *involuntary* commitment. Only this kind of a theory could meet the condition of justifiable reliance in fraud litigation, since the plaintiffs were admittedly undeceived when they formally joined the Church, and thus could only be still influenced by the initial deception if, prior to gaining knowledge, they had become incapacitated. The implication would appear to be that incapacity is *irreversible* (Delgado, 1982), or at least enduring, and also quick-acting. Incapacitation must be a fairly *rapid process*, otherwise one might come to possess knowledge before one was deprived of the ability to make use of such information, and there would be a kind of "window" of informed consent. By implication *the precise point at which capacity was lost can and must be identified*.

What is "incapacity" here? What does it mean to say that one is incapable of evaluating one's further involvement in a group? How does brainwashing induce such an incapacity and how do we know a devotee is no longer capable of rational monitoring of organizational commitment? There are two possible approaches here. One approach is a *tautological* approach. If one "loves" someone, one may truly be unable to leave that person; similarly, any "deep believer" (Shapiro, 1983, 1985) may be by definition incapable of shedding his religious beliefs or religious identity. But this approach is trivial and it does not discriminate between different modes of decision making. Yet this trivial tautology may lurk behind other more prepossessing assertions, that is, what may be seen by some as brainwashing may also be viewed as mere intensity of faith (Shapiro, 1978). The second approach discriminates or "draws the line" in terms of identifying some kind of defective thinking or inferior, nonautonomous thought processes amounting to "severe impairment . . . of the ability to think independently . . ." (*Molko*, p. 54).

The confusion of the two approaches is indicated in Delgado's statement that the cult "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*" (Delgado, 1982, p. 551, our emphasis). So incapacity therefore, turns out to be an inability to employ one's prior frame of reference, and, presumably, a brainwashed devotee would be distinguished by his or her not employing his/her old frame of reference. Yet a shift of frame of reference or "universe of discourse" is a frequent meaning of "conversion" itself (Snow & Machalek, 1984) whether or not it has been "induced". The second approach collapses back into the trivial tautology. A shift of frame of reference is the empirical indicator of lost capacity, but any "convert" is by definition incapable of seeing things as he or she once saw them. Evidence of conversion is automatically evidence of brainwashing, given a sufficiently pejorative view of the conversion outcome (Shapiro, 1978).

The notion of loss of autonomy and inability to think independently ought to be testable. Yet despite all the suggestive references to distorted or defective thought processes, no clear empirical standards have really been forthcoming. Opponents of "cults" tend to infer coercion from the fact of conversion plus recitations (e.g.,

from ex-devotees) regarding the groups' methods.⁷ Indeed, Judge Mosk appears to consider any structured regimen or systematic indoctrination process in a disciplined communal sect, or even a monastery (*Molko*, p. 60), problematic when it is combined with concealment of a movement's identity. This combination is said to create a triable issue of fact which a court is not constitutionally barred from addressing. But this does not resolve the issue of *how we are to answer this query*. There is no definitive and clearly bounded "syndrome" or trait complex from which a brainwashed condition may be inferred (Lund & Segal, 1987; Reich, 1976). There is, moreover, no consensus on various vital issues involving the effectiveness of brainwashing, the necessity of physical coercion, the nature and degree of "coercive" influence essential to produce involuntariness via incapacity, the role of indoctrinees preconversion predispositions, the definition and significance of distorted thought, etc. Delgado (1977, 1982) and Judge Mosk make certain key assumptions in these areas, but these issues were not formally resolved in *Molko*. In fact these variables discriminate two different kinds of models of manipulative social influence.

IDENTIFYING CRUCIAL VARIABLES

An influential paper by Anthony (1990b), building upon an earlier analysis developed for an Amicus brief in *George v. ISKCON* (Amicus, 1988),⁸ reviewed the history of brainwashing theories (see also Scheffin & Opton, 1978, pp. 22–105) and formulated key variables which discriminated earlier, crude and mechanistic or "robot" theories of brainwashing from the more sophisticated manipulative social influence ("coercive persuasion", "thought reform") models of Schein (1961) and Lifton (1961). Anthony (1990a; Amicus, 1988) contends that the testimony regularly presented in court over the past decade by Margaret Singer and several colleagues has been strikingly convergent with the earlier "robot" models, although she and her colleagues have claimed to be applying the theories of Schein and Lifton; moreover, their published scholarly work has diverged somewhat from their court testimony and has presented more complex and sophisticated formulations (Ofshe & Singer, 1986; Singer & Ofshe, 1990; Singer, 1990). Limitation of space precludes us from presenting the details of this argument here, and our emphasis will be mainly on specifying the differentiating factors or variables.

It should be noted, however, that the "robot" models tend to be particularly characterized by use of the "brainwashing" term, explicitly rejected by Schein and Lifton, and by an emphasis on the overwhelming of a totally dominated subject's will. The brainwashing model was originally formulated by Edward Hunter (1951, 1960), a journalist and publicist for the CIA, who claimed that brainwashing is so effective a technique of extrinsic mental coercion that a person could be transformed into a sort of zombie or robot. "The aim is to create a mechanism in flesh and blood, with new beliefs and new thought processes inserted into a captive body" (Hunter, 1960, p. 309). Also significant have been the cruder social science formula-

⁷ Commenting on the Singer-Benson declaration, the *Molko* trial court found, "Both doctors . . . seemed to have reasoned backwards from their disapproval of . . . [the Church's] methods to the conclusion that plaintiffs were not thinking freely because they were persuaded by them" (quoted in *Molko*, 1986, n. 9).

⁸ Dick Anthony and James Richardson worked on the brief with lawyers. Key sections written by Anthony in part anticipated the analysis of Anthony (1990a) and the argument here.

tions of Sargent (1957), who linked religious revivalism and Pavlovian conditioning, and especially, Farber, Harlow and West (1957). Farber, Harlow and West, whose conditioning model emphasized debilitation, traumatic stress and induced defective thought patterns in allegedly brainwashed American POWs, and thematized "the 3 Ds", Dependency, Debility and Dread. Farber *et al.* were criticized by Schein (1961, pp. 205–211), but their "3-D" model has strongly influenced Dr Singer, whose court testimony on cultic mind control in the early 1980s expanded their 3D model into a presentation of the "5-Ds": Deception, Debility, Dread, Dependency and Desensitization (Singer, 1983; Anthony, 1990a, pp. 307–316).

In general, the "robot" models can be defined in terms of polarities regarding the interrelated factors discussed below.

Effectiveness of Brainwashing (Conversion)

We have seen that Mosk cites Lifton and Schein regarding the "amazingly effective" quality of brainwashing (*Molko*, p. 54), although Schein appears to actually have considered the communist Chinese program to be a relative "failure" at least, "considering the effort devoted to it" (Schein, 1959, p. 332; Anthony, 1990a, p. 302). A key question which must be addressed is what is actually changed as a result of brainwashing? For Judge Mosk, as we have seen, brainwashing entails a shift from one's prior "basic beliefs" to another set of "sharply contrasting" beliefs organized in a rigid, "regimented" system. Yet others suggest that the changes are more *behavioral* than ideological. Schein saw genuine ideologist change or *conversion*, as opposed to trivial acts of collaboration, to be quite rare among American POWs, a view also taken by Lund and Wilson (1977, p. 348) and Schefflin and Opton (1978). There is a range of opinion as to what really changes in a "though reform" situation and what the indoctrinators really intend to accomplish. In general, the more simplistic and mechanistic ("robotic") the model, the more almost superhumanly effective brainwashing is said to be and the more its impact is said to be directly on *belief*.

Predisposing Motivational Factors

This issue is closely related to the conversion premise, that is, if postindoctrinational change involves forsaking "basic beliefs" and adopting "contrasting" beliefs (*Molko*, p. 54), then the possibility that converts have significant predispositions which are convergent with and prepare them for cultic ideological patterns is more or less excluded. Thus Delgado tends to trivialize predispositional factors by viewing them as mere vulnerabilities or susceptibilities, that is, buttons which manipulative indoctrinators push. Thus the cult proselytizer "elicits a subject of concern to the target such as war, race or poverty . . . or the moral ambiguities of modern life" (Delgado, 1982, pp. 546–7). Judge Mosk (*Molko*, p. 55) notes, that, "according to the theory of coercive persuasion", the latter, "operates, in part, by first amplifying the subjects' concerns and anxieties and then providing a means of satisfying them". Thus, the converts' pertinent predispositions are merely "concerns and anxieties" manipulated by the group rather than dynamic independent factors underlying commitment. However, nontrivial predisposing motives were found to be vital to the influence process by both Lifton (1961, pp. 117–132, 207–222) and Schein (1961, pp. 104–

110), that is, the conversion process was not wholly *extrinsic* and involuntarist as posited by the cruder models which thus downplay predisposing factors. (See Richardson, 1985, for a review of research indicating that conversion to new religions is generally based upon active motives rather than the passive effects of conversion techniques.)

Deception and Defective Thinking

The ability to "think independently" is impaired as a consequence of brainwashing (*Molko*, p. 54). Dr Singer has testified that, through continuous repetitive "chanting where she was *trained not to think* while she was with the [Hare] Krishnas", Robin George was put in a condition in which, "she has her mind get off the track and go blank" (Singer, 1983, p. 6325, our emphasis). (See Richardson, 1991, for a discussion of Singer's testimony in the George trial and in related cases.) Defective thought is related to disassociated states and hypnotic processes. It is also related to *deception*, which is a functional equivalent of defective thinking in shielding converts from truth, that is, *false belief* is seen as leading persons to join or remain in an extreme group.

Disassociation and Hypnotic Suggestion

This emphasis is closely related to defective thought. It is also related to suggestibility/susceptibility themes brought out in *Molko* (p. 54). Schein (1959, p. 437; 1961, p. 237) repudiates the notion that coercive persuasion involves disassociation, hypnosis and mental distortions. Rather, coercive persuasion attempts to produce "ideological behavioral change in a fully conscious, mentally intact individual" (Schein, 1959, p. 437). However, the recent scholarly formulations of Singer on cultic coercion (Singer & Ofshe, 1990; Ofshe & Singer, 1986) increasingly stress hypnotic states, and her testimony has stressed "Atypical Disassociative Disorder" (ADD) from DSM, III (Singer, 1983), although other mental health professionals consider ADD to be an overly vague category (Lund & Segal, 1987).

Debilitation and Stress

This theme, prominent in the Debility-Dependency-Dread (3D) formulation of Farber *et al.* (1957), and also stressed by Delgado (1977, 1982), is closely related to both defective thinking and hypnodisassociation, as converts are thought to actually become *too debilitated to think straight*. However, in the communist POW context, physical debilitation was so severe that one-third of the POWs died, yet Schein found that among the survivors, the clarity of their thought processes had not been diminished. Singer (1983) testified that serious debilitation and resulting impairment can be produced by a Hindu vegetarian diet and related physical practices.

Harm

This is a key variable which is not featured in the analysis of Anthony (1990a), but which is essential to justify state intervention (Delgado, 1977). The *Molko* majority opinion cites Delgado (1977) and seems to accept his notions as the great risk

of cult involvement, that is, some individuals who undergo coercive persuasion "emerge unscathed, many others develop serious and sometimes irreversible physical and psychiatric disorders . . ." (*Molko*, p. 60). Various clinical and psychometric studies of devotees of well-known "cults" (Ross, 1983; Ungerleider & Wellisch, 1979) have found little or no personality disorder or cognitive impairment. A special class of "harmful" groups ("cults") is posited but on what grounds and with what boundaries?

Physical Coercion and Drawing the Line

These two items are closely interrelated because physical coercion represents one possible (and relatively objective and tangible) way of drawing the line, which, however, Singer, Delgado, and other workers reject. There is a controversy over whether Schein and Lifton, as "classic" experts on "thought reform" (Lifton's term) and "coercive persuasion" (Schein's term), think that brainwashing requires physical threat or restraint, although Mosk assumes that they do reject a physicality cutting point (*Molko*, pp. 54–55) and cites Schefflin and Opton (1978) as having a different view.⁹ (Anthony (1990b) reviews the controversy in his declaration in *Fishman*.) In his testimony in the Hearst case, Lifton appears to employ a physical threat/brutality cutting point in differentiating involuntary-incapacitating brainwashing from less potent and more common manipulative social influence (Lifton, 1976, pp. 327–328; see also Anthony, 1990a, p. 305). However, Singer (1983) affirms that a nonphysical line can be drawn on the basis of the intensity and pervasiveness of social conditioning, yet she offers no theoretical grounds for the basis on which an objective independent observer could make that determination.

It might be thought, following some suggestive passages in *Molko* (pp. 59–60), that *deception* alone could "draw the line" once it is acknowledged that many, including some quite reputable groups, use coercive persuasion. Yet, since the *Molko* plaintiffs and other "Moonies" generally joined the Church only after they ceased to be deceived, Delgado's argument as to *postdeception incapacity* and involuntariness is crucial to provide "justifiable reliance" for an action for fraud (Delgado, 1977, 1982). The "boundary" of (or "cutting point" for) *incapacitating* indoctrination must thus be clarified apart from the question of deception.

EVALUATING THE ADMISSIBILITY OF BRAINWASHING TESTIMONY

Robert Lifton (1961, p. 4) notes that there exists a false and misleading image of "brainwashing" as an all-powerful demiurge and a method for "achieving total control over the human mind". Loose usage of this lurid term, "makes the word a rallying point for fear, resentment, urges toward submission, justification for failure, irresponsible accusation, and for a whole gamut of emotional extremism" (Lifton, 1961, p. 4). Thus, juries often appear quite eager to believe that strange and unpopular "cults" employ all-powerful and illegitimate practices to enslave recruits and

⁹ At least one important case not directly involving cults, that is, *United States v. Kosminski*, reached a decision on the admissibility of brainwashing testimony that interpreted Lifton's thought reform theory as requiring the presence of extreme physical coercion before it is relevant. See below, pp. 29–30.

impose on them what are perceived as otherwise unbelievable notions. The trials of ex-member suits against unconventional religious movements for harms accomplished via mind control, "are generally characterized by attempts to incite fear and hatred of a strange faith" (Laycock, 1990, pp. 45-46). Thus, "such cases provide minimum opportunities for judges to control juries" (Laycock, 1990, p. 65). In this context the gate-keeping function of the (particularly appellate) judiciary becomes vital, and careful scrutiny must be applied to proffered expertise in this legally novel area.

Recently a number of cases have generated procedural conflicts regarding the admissibility of testimony (usually that of psychologist Margaret Singer and sociologist Richard Ofshe) about brainwashing under the *Frye* standard or its equivalents. The testimony has been excluded in several cases, for example *U.S. v. Fishman* (1990), *Greene and Ryan v. Maharishi Mehes Yogi* (1991) and judgments depending on such testimony have been overturned on appeal because of its having been inappropriately admitted in others, for example *George v. ISKCON* (1988), *Kropinski v. World Plan Executive Council* (1988). Anthony served as a consultant in these cases and some version of the argument developed in this paper has been presented to the court in each of them, for example in pretrial motions, appeal or *amicus curiae* briefs, or in his own declaration, or through submission of his article (1990a) on this issue (Richardson, 1991, in press).

Before discussing a key case, *U.S. v. Fishman* (1990), we will list points that appear to be more or less accepted, at least in terms of lip service, by all parties including those judging the procedural motions concerning admissibility: (a) the work of Schein and Lifton is primary, "foundational scholarship" in the area of brainwashing, coercive persuasion, etc.; (b) the transfer of this work from its original Maoist, state-sponsored, totalitarian context to formally voluntary American associations such as religious movements needs to be independently evaluated; (c) there needs to be independent research on the involuntary and incapacitating quality of social processes in "cults"; (d) the theories and models put forward in this area must be capable of "drawing the line" on objective, theoretical grounds; and (e) the theory must be based on scientific research as opposed to merely intuitive applications of theory from other domains.

Key issues involve the formal agreement of Singer and Ofshe's theories with Lifton and Schein's foundational work (e.g., the argument over physical coercion as a salient cutting point for Schein and Lifton), and the scientific adequacy of Singer and Ofshe's application of their vision of Lifton and Schein's theories to a radically new context of religious and therapeutic voluntary associations. Implied data sources and methodological operations for assessing these points are: (a) formal interpretation of Lifton and Schein's work (cf. Richardson & Kilbourne, 1983); (b) evaluation of the scientific adequacy of the transfer of their theories to a new setting; (c) the positions of relevant professional associations with respect to the scientific adequacy of theories used in brainwashing testimony; and (d) investigating the conformity of Singer and Ofshe's theories to other scholarly work on controversial religiotherapy movements [for surveys of recent studies, see Barker, 1986; Galanter, 1989; Richardson, 1985; Robbins, 1988; Rochford & Purvis, 1989; Snow & Machalek, 1984].

In addressing the admissibility problem, Judge Jensen in *Fishman* (see below) tended to take into account only the issues of the formal relationship of Singer's and Ofshe's testimony to Lifton's and Schein's theories and of the position of pro-

fessional associations on the scientific status of Singer's and Ofshe's testimony. (The positions that professional associations took on this issue, however, were based at least partially upon an assessment that Singer's and Ofshe's testimony deviated from its purported theoretical base.) Singer and Ofshe tended to respond to criticisms almost exclusively in terms of the issue of the conformity of their testimony to its purported theoretical foundation (and only to the physical coercion issue) and to ignore other questions. The Fishman decision, then, would seem to indicate that an approach to evaluating brainwashing testimony which focuses upon the formal agreement or disagreement between such testimony and research on Communist brainwashing can help to resolve the issue of its admissibility.

The Fishman Procedural Ruling

Fishman, a member of the Church of Scientology, embezzled money and was tried in federal court. His counsel wished to employ criminal defenses of insanity and diminished capacity based on the argument that the defendant, initially unstable, was subsequently deeply disoriented and impaired by cultic brainwashing such as to undercut his responsibility for the criminal acts he perpetrated. The importance of the Fishman case is partly in terms of its "dialectical" quality with regard to the law and social science interface. Multiple declarations were sequentially submitted by both sides which interactively responded to each other in such a manner as to evolve an ordered dialogue.

Responding in part to Anthony's earlier paper (1990a), Singer and Ofshe focused primarily on the interpretation of Schein and Lifton and the question of physicality as a brainwashing boundary or cutting point. Letters from Schein and Lifton were produced in which the writers maintained that their theories were intended to apply both to persons who were physically abused and to those who were not. Anthony's (1990b) response was to clarify the nature of physical coercion and point out that deviant Chinese intelligentsia formally "volunteering" for reeducation (and studied by Lifton) were still under physical coercion, which is intrinsic to the nature of a militarized, totalitarian society with a brutal, dictatorial regime. Indeed, Ofshe and Singer have elsewhere (1986, p. 8) acknowledged indoctrinees' residual anxiety over the "potential for physical abuse" in Maoist-Stalinist thought reform programs. Anthony (1990a, 1990b) has also noted that reliance on certain chapters in the work of Schein (1961, pp. 269-282) and Lifton (1961, pp. 436-461), which speculatively apply their theories to Western settings and institutions, will undercut *line drawing* because the foundational scholars, particularly Schein, in his book, *Coercive Persuasion*, identified elements of coercive persuasion in conventional and noncontroversial groups and institutions such as college fraternities, conventional religious orders or mainline Christian denominations. It would seem, then, that conceptualizations based on Schein must either highlight those of his statements which appear to identify physical captivity as a defining property of coercive persuasion (Schein, 1959, 1961, pp. 124-127) or else accept the other statements which seem to treat coercive persuasion as pervasive in many conventional structures (Schein, 1961, pp. 260-282). Reliance on these latter statements will inhibit line-drawing. "As generally used", Ofshe and Singer have acknowledged elsewhere (1986, p. 20), "'coercive persuasion' connotes a substantial reliance on physical abuse and imprisonment."

In his opinion on the procedural motion to exclude the Singer–Ofshe testimony in *Fishman*, Judge Jensen accepted the major outlines of Anthony’s analysis of the inadmissibility of brainwashing testimony as expressed in his declaration (1990b), and in his book chapter that was submitted as an appendix to his declaration (1990a). Although Jensen did not accept the contention that physical force was an absolute cutting point in the foundational theories, he, nevertheless, interpreted the views of Schein and Lifton in terms of a *continuum* of coerciveness with extreme physical coercion as one pole and ordinary social influence as the other. (See Anthony, pp. 304–307, especially footnote 17.)

Jensen rejects, moreover, the contention that Lifton’s and Schein’s theories have provided a foundation whereby Ofshe and Singer “can pinpoint with scientific accuracy the degree of nonphysical coercion necessary to overcome the free will of a person having a certain personality composite” (Memorandum Opinion, p. 13). Without physical force as a boundary, there is no natural or objective cutting point as to when coercive persuasion is potent enough to overcome free will. “There is no consensus within the scientific community regarding whether the deprivation of free will occurs in these [nonphysically coercive] circumstances” (Memorandum Opinion, p. 14). In this connection, Jensen noted Dr Lifton’s “own reservations regarding the application of coercive persuasion theory to cults” (Memorandum Opinion, p. 14; Lifton, 1987, pp. 218–219).

“Thought reform is a complex and controversial topic within the scientific community, and the defendant bears the burden of establishing a scientific basis, reliability, and general acceptance of his proffered testimony” (Memorandum Opinion, pp. 14–15). The defendant could not meet this burden in part because it appeared that the “Singer–Ofshe thesis” was not accepted in either the American Sociological Association (ASA) or the American Psychological Association (APA). Both the ASA and APA had originally signed on to briefs supporting the defendants at different stages of the *Molko* litigation. Both associations subsequently withdrew their signatures, either for procedural reasons (APA), or for reasons which did not indicate to Jensen a repudiation of the original position (ASA, see Memorandum Opinion, p. 11).

The APA had appointed a task force headed by Dr Singer to consider contemporary manipulative influence techniques, however, after the Singer report was received and evaluated by outside reviewers, it was *rejected* by the APA and has not been released (Anthony, 1990a). “The APA found that Dr Singer’s report lacked scientific merit and that the studies supporting its findings lacked methodological rigor” (Memorandum Opinion, 1990, p. 10). Seemingly following arguments in submission by Anthony (1990a, 1990b) on behalf of the prosecution, Judge Jensen concluded that, “the scientific community has resisted the Singer–Ofshe thesis applying coercive persuasion to religious cults” (Memorandum Opinion, 1990, p. 11) and that the Frye standard criteria had not been met. Dr Ofshe was barred from testifying and Dr Singer, an experienced clinician, was allowed to testify as to Mr Fishman’s mental state but not as to cultic mind control. Fishman subsequently elected to plea bargain.

Additional Procedural Rulings

United States v. Kosminski (1987), involved a federal prosecution for involuntary servitude in which the alleged victims, who were mildly retarded, worked for a Michi-

gan family (this was not a "cult" case). The state presented Dr Strock as an expert witness on the "captivity syndrome", which was identified as a specification of Lifton's concept of thought reform. The circuit court majority found that the testimony of Dr Strock had been wrongly admitted, "because a foundation was not laid to establish its conformity with a generally accepted theory" (*Kosminski*, p. 1194). Judge Krupansky's concurring opinion identified physical captivity and "the ever present threat of force or even death" as a factor contributing to the transformation of indoctrinees studied by Lifton (*Kosminski*, p. 1204). Krupansky also stressed that the courtroom is not a laboratory and that testimony about psychological coercion and its effects on susceptible persons must conform to certain standards. The Supreme Court, which affirmed the decision of the Sixth Circuit, did not address the admissibility of testimony issue but explicitly rejected the government's attempt to broaden the conception of involuntary servitude to include psychological coercion (*United States v. Kosminski* (1988)). Such inclusion would criminalize a wide range of daily activity and might jeopardize "a religious leader who obtains personal services by means of religious indoctrination".

In *Kropinski v. World Plan Executive Council* (1988), a civil suit which involved Transcendental Meditation, the Circuit Court of Appeals for the District of Columbia decided that the trial court had wrongly admitted Dr Singer's testimony. Invoking the "general acceptance" criterion of the Frye standard, the court noted that "Kropinski, however, has failed to provide any evidence that Dr Singer's particular theory, namely that techniques of thought reform may be effective in the absence of physical threats or coercion, has a significant following in the scientific community, let alone general acceptance" (*Kropinski*, p. 957). The court ordered a retrial.

Green and Ryan v. Maharishi Mahesh Yogi et al. (1991), was a continuation of the *Kropinski* suit. Judge Gasch ruled that proffered testimony from Singer and Ofshe was inadmissible and quoted much of the reasoning of Judge Jensen in *Fishman*, for example, giving substantial weight to the apparent rejection of Singer's theories by the APA. The Court declined to employ the standard of a "generally accepted" theory, but concluded that the Singer-Ofshe testimony could not be admitted even under the relaxed alternate standard of "sufficient acceptance".

Additional substantive rulings may also be relevant, particularly *Meroni v. Holy Spirit Assn* (1986), in which the appellate court overturned the acceptance of a claim of psychological injury based on brainwashing on behalf of a deceased former Moonie. The Court maintained that a plaintiff needs to present evidence either of false imprisonment or of having been subjected to violence and torture in order to legitimate a tort action based on brainwashing or mind control theory.

CONCLUSION

The *Molko* majority's formulation regarding the qualified permissibility of litigation over religious brainwashing is an ingenious argument, which, following Delgado (1977, 1982), creates a narrow loophole in the first amendment. Yet it is partly based on misreadings of "brainwashing" and foundational scholarship in this area, and it may end up as a *cul de sac* since it has recently proven difficult to qualify expert testimony on brainwashing for admission. The courts which have dealt with this procedural issue have tried to come to grips with vital "scientific" questions,

which Judge Mosk's *Molko* opinion dealt with assumptively or by declaring that it need not resolve such issues in evaluating summary judgement.

In our view, the attempt of some proponents of brainwashing theories to demonstrate involuntariness as a result of social influence, and to, moreover, provide a calculus whereby degree of voluntariness is demonstrated in relation to types of influence, is unrealistically utopian. This is notwithstanding that in a sense the project of modern social science, particularly in its Enlightenment origins, has been to liberate man from the domination of retrogressive forces, particularly religion, which has often been seen as a source of involuntariness and a threat to personal autonomy, from which an individual would be liberated by "the science of freedom" (Gay, 1969). [This view of religion had been present in the cruder early models of brainwashing such as Sargent (1957), who saw evangelical revivalism as a mode of brainwashing, and who commenced his studies after noting similarities between conversions to early Methodism and Pavlovian experiments with dogs, and was also present in the nineteenth century "counter-subversive" campaigns against Mormons, Catholics and Freemasons (Robbins & Anthony, 1979).]¹⁰

The unrealistically utopian character of Singer's and Ofshe's claim to be able to scientifically demonstrate a black and white distinction between the limitation on optimal autonomy produced by cults and that resulting from other forms of social influence, can be illustrated by the interplay between two variables: (1) the type of social determinism claimed by their robot perspective (hard determinism) as opposed to that demonstrated in Lifton's and Schein's theoretical perspectives (soft determinism); and (2) the general scientific standing of robot perspectives, and other hard deterministic perspectives, that is, low, as opposed to the general scientific standing of Lifton's and Schein's theories and other perspectives that lend themselves to interpretation in terms of soft determinism, that is, generally high.

Moore (1984, pp. 348-388, and throughout) has argued that most generally accepted theories in psychiatry and the other social and behavioral sciences do not demonstrate limitations on autonomy that are incompatible with practical reasoning and legal responsibility. The "soft determinism" of contemporary psychiatry and the other social sciences uncovers and seeks to remedy the "normal" forces which limit personal autonomy in terms of unconscious motives, dysfunctional families, poverty, class domination, etc. Through a close reading of the uses of generally accepted forms of social science in a legal context, Moore has demonstrated that they are seldom relevant to determining legal incapacity. To extrapolate: dysfunctionality in social groups is such a generic problem that it seems rather unlikely that "cults" are really qualitatively different from dysfunctional families, corporate bureaucracies, youth gangs, racial prejudice and the paralyzing "culture of poverty" in terms of constraining voluntariness and limiting human potential.

As Anthony's analysis demonstrates, (1990a, 1990b) the views of Lifton and Schein on the limitations on optimal autonomy produced by thought reform generally fall within this category of soft determinism. The effect of coercive persuasion in

¹⁰ Anthony (1990a) argues that a variety of this simplistic positivist orientation, which is implicitly anti-religious, is to some degree characteristic of Dr Singer's perspective and her condemnation of the cultic "world of magic and primitive thinking" (Singer, 1978, p. 14). See particularly Singer (1984).

limiting the optimal selfdetermination of a small percentage of the people exposed to it is undesirable, according to Lifton and Schein, but it does not thereby exculpate those affected by it from legal and moral responsibility for their behavior.

In this respect, then, Lifton's and Schein's theories are similar to psychoanalysis, which Moore sees as the paradigm instance of a softly deterministic psychiatric theory which is fully compatible with the traditional notion of free will which underlies Anglo-American jurisprudence. This should be expected with respect to Lifton's theory, since Lifton is himself a psychoanalyst, and he regards his theory of psychological totalism as a particular application of the psychoanalytic paradigm with respect to socialization into fundamentalist religious and political groups.

The form of undesirable social influence that psychoanalysis is more generally intended to highlight is poor parenting, but Freud himself extended his concepts from the nuclear family to religious, political and educational groups as well as the military (Freud, 1960). As with nonoptimal parenting, then, one's autonomy may be somewhat reduced by exposure to totalistic ideologies, as it may also be by exposure to an unfair class system or socialization into a juvenile gang. One's legal responsibility for one's behavior is no more lost in the totalistic situation, however, than it would be with these other undesirable forms of influence.

That Lifton intends his theory of psychological totalism to be interpreted in this softly deterministic way is illustrated by a recent book (Lifton & Markusen, 1990) in which he has argued that both German Nazism (pp. 54–58) and American "nuclearism" (pp. 87–97) are examples of ideological totalism. Both German support for Nazism and American sentiments favoring the use of nuclear weapons have in their respective eras been majority ideological positions within their societies. It hardly seems tenable to argue, then, that Lifton means us to believe that commitment to these ideological orientations is distinctively involuntary relative to other undesirable social values.

Moreover, in discussing the crimes against humanity committed by Nazi doctors who are in the grip of psychological totalism, Lifton explicitly says that in spite of the partially unconscious nature of their motivation, the Nazi doctors nevertheless continue to bear moral and legal responsibility for their deeds. See Lifton, 1990, p. 107, "however it happened and at whatever level of awareness, Nazi doctors were responsible for their choice of evil". See also Lifton, 1986, pp. 423, 424, "To live out the doubling [a form of split personality associated with ideological totalism] and call forth the evil is a moral choice for which one is responsible, whatever the level of consciousness involved. By means of doubling, Nazi doctors made a Faustian choice for evil: in the process of doubling, in fact, lies an overall key to human evil."

In the light of such sentiments, when Lifton argues that cults sometimes involve commitment to ideologies similar to ideological totalism (1987), he does not appear to intend us to believe that commitments to such perspectives are distinctively involuntary in a legal sense. If those participating in German Nazism and American nuclearism as expressions of ideological totalism are morally and legally responsible for their commitments, then one would presume that members of cults are also. This is consistent with Lifton's position that his concept of totalism is not appropriate

as a basis for legal testimony against cults of the sort at issue in this paper (Anthony, 1990a, pp. 324–325; Lifton, 1987, pp. 218, 219).¹¹

Moore also argues that certain types of mechanistic explanations of human behavior, for example, behavioristic psychology, are incompatible with the traditional view of persons as responsible for their behavior that underlies our legal system. Moore refers to the extreme absence of autonomy that is asserted by these positions as “hard determinism”. Because Singer’s and Ofshe’s robot perspective interprets cultic influence as undermining personal autonomy so completely that it eliminates converts’ responsibility for their decisions to join religious groups, it falls within Moore’s category of hard determinism. However, according to Moore, such perspectives are no longer taken seriously in the academic world, either in their philosophical expression, that is, logical positivism, or in their social scientific expression, that is, behaviorism. Unlike the softly deterministic perspectives advocated by Schein and Lifton, then, which fall within the contemporary philosophical and scientific mainstream, Singer’s and Ofshe’s theories fall within a class, that is, behavioristic hard determinism, that is no longer taken seriously in the academic world.

It should be noted that the issues of the constitutionality of brainwashing testimony and of the general scientific acceptability of theories used in such testimony work in opposite directions *vis-à-vis* the issue of admissibility when the categories of hard versus soft determinism are taken into account. The Singer/Delgado theory that religious beliefs established through cultic brainwashing is an exception to the absolute constitutional protection of religious belief, works only in relation to brainwashing theories that are interpreted as establishing a qualitatively distinctive loss of autonomy, that is, hard determinism. Although such theories, for example, Singer’s and Ofshe’s theory of cultic brainwashing, might be acceptable on constitutional grounds, they run afoul of Frye standard considerations because they do not have general, or even substantial acceptance in the relevant scientific communities.

Softly deterministic theories such as Lifton’s and Schein’s, on the other hand, might meet standards of scientific acceptability when applied to cults, particularly if their transfer from Communist thought reform to the new empirical domain were to be established on the basis of methodologically rigorous scientific research. Such softly deterministic theories of diminished autonomy as a result of cultic influence, however, would not properly survive constitutional analysis because they could not establish that belief in cultic ideologies was qualitatively different from other religious and political beliefs from the standpoint of being involuntary.

The proper role of research assessing the resemblance of the theologies of religious groups to totalitarian ideologies, then, would appear to be in its effect on the religious marketplace rather than in brainwashing trials. As indicated above, this would appear to be Robert Lifton’s own perspective. In recent articles (1985, 1987, 1991), he maintains that, “the cults are not primarily a psychiatric problem, but a social and historical issue . . .”

¹¹ On the other hand, Lifton did argue in his testimony in the Patty Hearst case that because Hearst was a victim of thought reform, she was thereby not legally responsible for robbing a bank. The simplest way to explain this apparent inconsistency is to argue that Lifton believes that ideological totalism is incompatible with legal and moral responsibility only when it is accompanied by extreme physical coercion as it was in Patty Hearst’s situation. This interpretation seems consistent with Lifton’s own way of distinguishing between legally relevant thought reform, and parallels to it in nonphysically coercive social processes, as expressed in his testimony in the Hearst case (see Anthony, 1990a, pp. 304–305; 1990b).

... but I don't think the problem is best addressed legally. It is best addressed educationally. There have been repercussions already from increased knowledge about cults. This is one reason why the cults have increased difficulty, in some cases, obtaining members (Lifton, 1985, p. 69).

Future research on such movements can contribute to this "education", but, hopefully, the impact of such research will be in the free marketplace of ideas rather than upon increased governmental regulation of religious ideas or on the outcome of trials such as those described in this article. Ultimately this marketplace is distorted if movements are jeopardized by heavy compensatory and punitive awards based on the premise that the precise point of induced involuntariness and incapacity in a formally voluntary and nonviolent context has been definitively pinpointed. Groups which emphasize a particular value at the expense of other values, including tolerance and civility, may tend toward fanaticism and inflict on their devotees a partial loss of freedom and a possible stifling of human potential. Yet if the State forbears to devastate these groups with giant civil awards, and, moreover, protects their right to hold beliefs and transmit them through peaceful social influence, it will contribute to the insulation of the sphere of values from government regulation and strengthen the barrier to any monolithic "establishment" of an orthodoxy favored by the state and/or an aroused majority. As James Madison pointed out in his defense of the constitution in the Virginia Ratification Convention, a multitude of militant, intolerant sects actually constitutes a guarantee of religious liberty, as no group can overcome the others and impose its dogma or a majoritarian tyranny on the broader society (Alley, 1985, p. 71).¹²

REFERENCES

- Alley, R. (Ed.). (1985). *James Madison on liberty*. Amherst, NY: Prometheus Books.
- Amicus Curiae. (1988). Brief for the Society for the Scientific Study of Religion, *et al.* filed with the California Appeal Court, for case No. D007153, 29 February.
- Anonymous. (1978). Conservatorships and religious cults: Divining a theory of free exercise. *New York University Law Review*, 53, 1247-89.
- Anthony, D. (1979-80). The fact pattern behind the deprogramming controversy. *New York University Review of Law and Social Change*, 9(1), 73-90.
- Anthony, D. (1990a). Religious movements and brainwashing litigation: Evaluating key testimony. In T. Robbins & D. Anthony (Eds.), *In gods we trust* (pp. 295-344). New Brunswick, NJ: Transaction.
- Anthony, D. (1990b). Declaration of Dick Anthony, United States v. Steven Fishman. Filed October 10, San Francisco.
- Aronin, D. (1982). Cults, deprogramming and guardianship: A model legislative proposal. *Columbia Journal of Law and Social Problems*, 17, 163-285.
- Babbitt, E. (1979). The deprogramming of religious sect members: A private right of action under Section 1950(3). *Northwestern Law Review*, 74(2), 229-54.
- Barker, E. (1986). Religious movements: Cult and anticult since Jonestown. *Annual Review of Sociology*, 12, 329-46.
- Beckford, J. (1985). *Cult controversies*. London: Tavistock.
- Bernick, M. (1978). To keep them out of harms way? Temporary conservatorships and religious sects. *California Law Review*, 16, 834-59.

¹² Finke (1990) suggests that the noted religious diversity and vitality which characterizes the United States as well as American religious individualism are products of the long-time relative deregulation of the American "religious market". The increasing volume of "free exercise" litigation in which so many religious movements are becoming enmeshed is causing questions to begin "to arise on the persistence of an unregulated market" (Finke, 1990, p. 625).

- Bohn, T., & Gutman, J. (1989). The civil liberties of religious minorities. In M. Galanter (Ed.), *Cults and religious movements*. Washington, DC: American Psychiatric Association.
- Bromley, D. (1983). Conservatorships and deprogramming. In D. Bromley & J. Richardson (Eds.), *The brainwashing-deprogramming controversy* (pp. 267-93). New York: Edwin Mellen.
- Bromley, D., & Richardson, J. (1983). *The brainwashing-deprogramming controversy*. New York: Edwin Mellen.
- Burkholder, J. (1974). The law knows no heresy: Marginal movements and the courts. In I. Zaretsky & M. Leone (Eds.), *Religious movements in contemporary America* (pp. 27-50). Princeton, NJ: Princeton University Press.
- Conway, F., & Siegelman, J. (1978). *Snapping: America's epidemic of sudden personality change*. Philadelphia: Lippincott.
- Delgado, R. (1977). Religious totalitarianism: Gentle and ungentle persuasion under the first amendment. *Southern California Law Review*, 51, 1-99.
- Delgado, R. (1979-80). Religious totalitarianism as slavery. *New York Review of Law and Social Change*, 9(1), 58-68.
- Delgado, R. (1982). Cults and conversions: The case for informed consent. *Georgia Law Review*, 16(3), 533-574.
- Delgado, R. (1984). When religious exercise is not so free: Deprogramming and the constitutional status of coercively induced belief. *Vanderbilt Law Review*, 37, 5.
- Delgado, R. (1989). Options for legal intervention. In M. Galanter (Ed.), *Cults and new religious movements*. Washington, DC: American Psychiatric Association.
- DeWitt, J., & Richardson, J. (1990). *Expert testimony in cult/brainwashing cases and the Frye/relevancy controversy*. Paper presented at the meeting of the Society for the Scientific Study of Religion, Virginia Beach, Virginia.
- Employment Division v. Smith, 110 S. Ct. 1595 (1990).
- Farber, I. E., Harlow, H. F., & West, L. J. (1957). Brainwashing, conditioning and the DDD (Debility, Dependency and Dread) syndrome. *Sociometry*, 29, 271-85.
- Finke, R. (1990). Religious deregulation: Origins and consequences. *Journal of Church and State*, 32, 501-510.
- Founding Church of Scientology v. United States, 409 F. 2d 1146. (D.C. Cir. 1969).
- Freud, S. (1960). *Group psychology and the analysis of the ego*. New York: Bantam.
- Frye v. United States, 293 F. (D.C. Cir. 1923).
- Galanter, M. (Ed.). (1989). *Cults and religious movements*. Washington DC: American Psychiatric Association.
- Gay, P. (1969). *The enlightenment: An interpretation of the science of freedom*. New York: Norton.
- George v. International Society for Krishna Consciousness, No. D007153 (Cal. App. 4th Dist 1988). decert. vacated. 109 S. Ct. 1299 (1989).
- Green and Ryan v. Maharishi Mahesh Yogi et al. U.S.D.C. No. 87-0015 and 0016 (1991).
- Grim, N. (1980). Tort liability: Religious cult members and deprogramming attempts. *University of Akron Law Review*, 15(1), 165-74.
- Heins, M. (1981). Other peoples' faith: The Scientology litigation and the justiciability of religious fraud. *Hastings Constitutional Law Quarterly*, 9, 241-257.
- Hunter, E. (1951). *Brainwashing in Red China*. New York: Vanguard.
- Hunter, E. (1960). *Brainwashing: From Pavlov to powers*. New York: The Bookmaster.
- James, G. (1986). Brainwashing: The myth and the actuality. *Thought Quarterly*, 61, 241-257.
- Jorgenson v. Community Chapel and Bible Training Center et al. King County Washington Superior Court (1989).
- Katz v. Superior Court, 73 Cal. App. 3d 952, 141 Cal. Rptr. 234, modified, 74 Cal. App. 3d 582 (1977).
- Kropinski v. World Plan Executive Council, 853 F. 2d 948 (D.C. Cir. 1988).
- Laycock, D. (1990). The remnants of free exercise. *Supreme Court Review* 1990. Reprinted for private distribution, Chicago, IL: University of Chicago Press.
- LeMoult, J. (1978). Deprogramming members of religious sects. *Fordham Law Review*, 46, 599-634.
- Lifton, R. (1961). *Chinese thought reform and the psychology of totalitarianism*. New York: Norton.
- Lifton, R. (1976). Testimony in the trial of Patty Hearst. *The Trial of Patty Hearst*. San Francisco: The Great Fidelity Press.
- Lifton, R. (1985). Cult processes, religious liberty and religious totalitarianism. In T. Robbins, W. Shepherd, & J. McBride (Eds.), *Cults, culture and the law* (pp. 59-70). Chico, CA: Scholars Press.
- Lifton, R. (1987). *The future of immortality and other essays for a nuclear age*. New York: Basic Books.
- Lifton, R. (1991, February). Cult formation. *Harvard Mental Health Letter*.
- Lifton, R. & Markusen, E. (1990). *The genocidal mentality: Nazi holocaust and nuclear threat*. New York: Basic Books.
- Littell, F. (1989). Religious freedom in contemporary America. *Journal of Church and State*, 31(2), 219-230.

- Lofland, J., & Skonovd, L. N. (1981). Conversion motifs. *Journal for the Scientific Study of Religion*, 20(4), 373-85.
- Lund, D., & Segal, H. (1987). Psychiatric testimony in "cult" litigation. *Bulletin of the American Academy of Psychiatry and the Law*, 15(2), 205-210.
- Lund, D., & Wilson, T. (1977). Brainwashing as a defense to criminal liability. *Criminal Law Bulletin*, 13, 341-382.
- Memorandum Opinion of Judge Jensen in *U.S. v. Fishman* (1990). Case No. CR-88-0616-DLJ. No. Cal. (see *U.S. v. Fishman*).
- Meroni v. Holy Spirit Assn., 119 App. Div. 2d 200, 506 NYS 2d (1986).
- Molko and Leal v. Holy Spirit Assn., SF Superior Ct. No. 769-529 (1983).
- Molko and Leal v. Holy Spirit Assn., 179 Cal. App. 3d 450 (1986).
- Molko and Leal v. Holy Spirit Assn., 762 P. 2d 46, 252 Cal. Rptr. 122 (1988).
- Moore, M. S. (1984). *Law and psychiatry: Rethinking the relationship*. Cambridge: Cambridge University Press.
- Murphy v. International Society for Krishna Consciousness of New England, Inc., 409 Mass. 842 (1991).
- Ofshe, R., & Singer, M. (1986). Attacks on peripheral vs. central elements of self and the impact of thought reforming techniques. *Cultic Studies Journal*, 3(1), 2-24.
- Peterson v. Sorlien, 299 N.W. 2d 123 (1980).
- Pierce, K. (1980). Cults, deprogrammers and the necessity defense. *Michigan Law Review*, 80, 271-311.
- Post, S. (1989). The Molko case: Will freedom prevail? *Journal of Church and State*, 31, 451-464.
- Reich, W. (1976). Brainwashing, psychiatry and the law. *Psychiatry*, 39, 400-403.
- Richardson, J. (1985). The active vs. passive convert: Paradigm conflict in conversion/recruitment research. *Journal for the Scientific Study of Religion*, 24, 163-179.
- Richardson, J. (1986). Consumer protection and deviant religion. *Review of Religious Research*, 28(2), 168-179.
- Richardson, J. (1991). Cult/brainwashing cases and freedom of religion. *Journal of Church and State*, 33(1), 55-74.
- Richardson, J. (in press). Coercion in the courts: Brainwashing allegations and religious proselytizing. *Free Inquiry*.
- Richardson, J., & Kilbourne, B. (1983). Classic and contemporary applications of brainwashing models. In D. Bromley & J. Richardson (Eds.), *The brainwashing-deprogramming controversy* (pp. 29-45). New York: Edwin Mellen.
- Robbins, T. (1985). New religious movements, brainwashing and deprogramming: The view from the law journals. *Religious Studies Review*, 11(4), 361-370.
- Robbins, T. (1988). *Cults, converts and charisma*. Newbury Park, CA: Sage.
- Robbins, T., & Anthony, D. (1979). Cults, brainwashing and counter-subversion. *The Annals of the American Academy of Political and Social Science*, 446, 78-92.
- Robbins, T., & Anthony, D. (1982). Deprogramming, brainwashing and the medicalization of religion. *Social Problems*, 29(3), 284-296.
- Robbins, T., & Anthony, D. (1986). Deprogramming. In J. Childress & J. Macquarrie (Eds.), *The Westminster dictionary of Christian ethics*. Philadelphia: Westminster.
- Robbins, T., Shepherd, W., & McBride, J. (1985). *Cults, culture and the law*. Chico, CA: Scholars Press.
- Robbins, T., & Beckford, J. (in press). Religious movements and church-state issues. *Religion and the Social Order*, 3.
- Rochford, E. B., & Purvis, S. (1989). New religions, mental health and social control. *Research in the Social Scientific Study of Religion*, 1.
- Rosenzweig, C. (1979). High-demand sects: Disclosure legislation and the free exercise clause. *New England Law Review*, 15, 128-159.
- Ross, M. (1983). Clinical profile of Hare Krishna devotees. *American Journal of Psychiatry*, 140, 4.
- Sargent, W. (1957). *Battle for the mind*. New York: Doubleday.
- Schefflin, A., & Opton, E. (1978). *The mind manipulators*. New York: Paddington Press.
- Schein, E. (1959). Brainwashing and totalitarianization in modern society. *World Politics*, 2, 430-441.
- Schein, E. (1961). *Coercive persuasion*. New York: Norton.
- Shapiro, R. (1978). Mind control or intensity of faith: The constitutional protection of religious beliefs. *Harvard Civil Rights-Civil Liberties Law Review*, 3, 751-797.
- Shapiro, R. (1983). Of robots, persons and the protection of religious beliefs. *Southern California Law Review*, 56(6), 1277-1318.
- Shapiro, R. (1985). Indoctrination, personhood and religious beliefs. In T. Robbins, W. Shepherd, & J. McBride (Eds.), *Cults, culture and the law*. Chico, CA: Scholars Press.
- Shepherd, W. (1982). The prosecutors reach: Legal issues stemming from the new religious movements. *Journal of the American Academy of Religion*, 50(2), 187-214.
- Shepherd, W. (1985). *To secure the blessings of liberty: American constitutional law and the new religious movements*. Baltimore: Scholars Press (also distributed by Crossroads Press).

- Singer, M. (1978). Therapy with ex-cult members. *Journal of the National Association of Private Psychiatric Hospitals*, 9(4), 14-18.
- Singer, M. (1983). *Testimony in Robin and Marcia George v. International Society of Krishna Consciousness of California et al.*, 25-75-65, Orange County California Superior Court.
- Singer, M. (1984, March/April). [Interview]. *Spiritual Counterfeits Newsletter*, 2.
- Singer, M. (1990). Psychotherapy cults. *Cultic Studies Journal*, 7(2), 101-126.
- Singer, M., & Ofshe, R. (1990). Thought reform programs and the production of psychiatric casualties. *Psychiatric Annals*, 20(4), 188-93.
- Singer, M., & West, L. J. (1980). Cults, quacks and non-professional psychotherapies. In H. I. Kaplan & B. J. Sadock (Eds.), *Comprehensive textbook of psychiatry*, III. Baltimore: Wilkins and Wilkins.
- Somit, A. (1968). Brainwashing. In D. Sills (Ed.), *International encyclopedia of the social sciences* (pp. 138-142). New York: Macmillan and The Free Press.
- Snow, D., & Machalek, R. (1984). The sociology of conversion. *Annual Review of Sociology*, 10, 167-90.
- Spear, R. (Ed.). (1979-80). Colloquium: Alternative religions: Government control and the first amendment. *New York Review of Law and Social Change*, 9, 1.
- Stander, F. (1987). Some rigors of our time: The first amendment and real life and death. *Cultic Studies Journal*, 4(1), 1-17.
- Ungerleider, T., & Wellisch, D. K. (1979). Coercive persuasion (brainwashing), religious cults, and deprogramming. *American Journal of Psychiatry*, 136, 3, 279-82.
- United States v. Amaral, 488 F. 2d 1148 (9th Cir. 1973).
- United States v. Ballard, 322 U.S. 72 (1947).
- United States v. Fishman, 743 F. Supp. (N.D. Cal. 1990).
- United States v. Kosminski, 108 S. Ct. 2151 (1988).
- Wallsheim v. The Church of Scientology of California, L.A. Sup. Ct. 1986.
- Wallsheim v. The Church of Scientology of California, 260 Cal. Rptr. 331 (1989).
- Wooden, K. (1981). *The children of Jonestown*. New York: McGraw-Hill.