

Cult/Brainwashing Cases and Freedom of Religion

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“Cult cases” have attracted considerable attention from the legal profession, scholars in several disciplines, the media, and the general public in recent years, as different types of legal action have been initiated involving new religions—popularly called cults—as parties. Hundreds of “cult cases” have been filed in courts around the country, concerning issues as varied as solicitation ordinances, tax status of such groups, zoning regulations, and violations of labor laws. Several “cult cases” have reached the United States Supreme Court.¹

A specific “cult” case which deserves special attention might be called the “cult/brainwashing” case. This involves cases which allege that a person has been “brainwashed” into joining a group and participating in activities in which the person otherwise would not join, except for the alleged brainwashing and subsequent “mind control.” Such allegations have been made as part of a defense for false imprisonment claims in civil cases (or for criminal charges of kidnapping) sometimes made against parents of participants or their agents, the deprogrammers.² Brainwashing allegations are sometimes a part of conser-

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1. See *Heffron v. ISKCON* (452 U.S. 640, 1981); *Alamo Foundation v. Secretary of Labor* (722 F.2d 397, Aff'd by Sup. Ct., No. 83-1935, 23 April 1985); *Larsen v. Valenti*, (456 U.S. 228, 1982). *Heffron* and *Larsen* involved solicitation regulations; *Alamo* dealt with application of federal labor law to religious groups.

2. In *Eilers v. Coy*, (582 F. Supp. 1093, 1984) a Minneapolis federal district court case in which the author was an expert witness for the plaintiff, involved a twenty-seven-year-old man suing deprogrammers and his mother for false imprisonment and violation of constitutional rights because of the kidnapping and attempted deprogramming of him and his wife. The wife's deprogramming was successful

vatorship cases in which parents are seeking control of children who have joined so-called cults, even though the children may be of age.³

The most successful use of brainwashing/mind control allegations has been by disaffected ex-members suing their former membership group or group leaders for false imprisonment, intentional infliction of emotional distress, or other torts. Such suits may have been filed alleging ordinary, traditional torts, but these are actually "stalking horses" for what is in effect a newly developing tort—"brainwashing," "thought reform," or "coercive persuasion."⁴

and she later divorced Eilers and testified for the defense. The case resulted in a directed verdict for the plaintiff on the false imprisonment claim. See Thomas Robbins et al., *Cults, Culture, and the Law* (Chico, CA: Scholars Press, 1985), 225-26 for discussion of *Eilers*. Another case in which the author testified as a prosecution witness, *People v. Brandyberry*, District Court, Denver, Colo. / 87CR 2056 (1989), involved second-degree kidnapping charges against deprogrammers who had kidnapped a twenty-nine-year-old female member of the Unification Church in Denver. The case resulted in an acquittal for the defendants.

3. Edward Shapiro was a member of the Hare Krishna whose father, Eli Shapiro, filed suit in 1973, to gain control of his son's financial and health matters (Edward was diabetic). He succeeded in being named temporary conservator for his son, a status that lasted for four years. In 1976, the father attempted to be named temporary and permanent guardian for Edward, and was granted temporary guardianship, placing Edward in a mental hospital for evaluation (*Shapiro v. Shapiro*, Middlesex, Mass. Probate Ct., no. 471085, 1976). However, the father was ultimately unsuccessful in his effort to be named permanent guardian of his son. Professionals from a Massachusetts mental hospital in which the son had been incarcerated refused to agree with testimony by psychiatrist John Clark that the son was incapacitated due to his membership in Hare Krishna. Clark was later censured by the Massachusetts Board of Medical Examiners for his testimony and depositions in this case. Note that Eli Shapiro authored one of the first articles attempting to define participation in a new religion (cult) as a mental problem. See Eli Shapiro, "Destructive Cultism," *American Family Physician* 15 (February, 1977):80. In *Katz v. Superior Court*, 73 Cal. App. 3d 952, 141 Cal. Rptr. 234 (1977), parents of four members of the Unification church sought successfully at the trial level to obtain temporary conservatorships to allow their children to be deprogrammed. However, the decision was overturned by the California Appeal Court, in a ruling that quelled the growing use of conservatorship laws for such purposes around the country.

4. These terms are often used interchangeably, but have different origins and meanings. "Brainwashing" derives from journalist Edward Hunter's popular book, *Brainwashing: From Pavlov to Power* (New York: The Bookmailer, 1956), describing efforts of the Chinese Communists to resocialize citizens. "Thought reform" derives from the work of Robert Lifton, *Thought Reform and the Psychology of Totalism: A Study of "Brainwashing" in China* (New York: W.W. Norton & Co., 1963), who studied communist resocialization in China, using a case study, psychoanalytic oriented approach. "Coercive persuasion" was the name of a book by Edgar Schein et. al., *Coercive Persuasion* (New York: W.W. Norton & Co., 1961), which examined Korean prisoner of war turncoats from a social psychological per-

Considerable success has derived from the use of brainwashing theories in civil cases; several multi-million dollar verdicts have been awarded to plaintiffs.⁵ This success seems based in major part on expert psychological testimony that brainwashing, thought reform, or coercive persuasion is practiced on participants in cults. Recruitment practices of a group may be likened to resocialization efforts in Korean prisoner of war camps or Chinese Communist efforts at thought reform of citizens after the Chinese Communists took over in 1949. More recent versions of the brainwashing argument have been offered that equate psychological coercion allegedly practiced in new religious groups to these earlier physically coercive methods.⁶

This type of testimony is of concern for a number of reasons. Proponents of freedom of religious expression claim that religious freedom is jeopardized by such testimony; freely chosen beliefs and practices may be disallowed by accusations that participants were tricked into participating. Some sociologists and others believe that social change may be stifled by efforts to control or stamp out exotic religions, through the use of brainwashing-based tort actions. Legal theorists are concerned about the legal system when individuals, for whatever reason, may be defined as not responsible for their actions. The brainwashing-based "diminished capacity" perspective being developed in cult cases has important implications for the criminal area as well, since individual responsibility is the cornerstone of crimi-

spective. See J.T. Richardson and B. Kilbourne, "Classical and Contemporary Applications of Brainwashing Models: A Comparison and Critique," in D. Bromley and J.T. Richardson eds., *The Brainwashing/Deprogramming Controversy* (New York: Edwin Mellen, 1983), and Dick Anthony, "Religious Movements and Brainwashing Litigation: Evaluating Key Testimony," in Thomas Robbins and Dick Anthony, eds., *In Gods We Trust*, 2d rev. ed. (New Brunswick, N.J.: Transaction Books, 1990), 295, for more thorough discussions of these terms.

5. *Wollersheim v. Scientology* (260 Cal. Rptr. 331, 1989) resulted in a verdict of over \$30 million, which is now on appeal; *Mull v. Church Universal and Triumphant*, heard on appeal as *Church Universal and Triumphant v. Witt*, cert. denied, No. 89-672 (1989), resulted in a \$1.5 million verdict; and *Christofferson v. Scientology* (57 Or. App. 203, 644 P.2d 577), resulted in a verdict of \$39 million later thrown out by the judge. *George v. ISKCON*, Cal. App., unreported (1989), cert. requested, No. 89-1399 (1989), a case described herein in more detail, resulted in an initial verdict of \$32 million.

6. See Richard Ofshe and Margaret Singer, "Attacks on Peripheral Versus Central Elements of Self and Impact of Thought Reforming Techniques," *Cultic Studies Journal* 3 (Spring/Summer, 1986):3, for the most cogent version of this argument. Testimony by Singer often falls short of representing this version of the position, however (see Anthony, "Evaluating Key Testimony").

nal law in this country.⁷

Expert testimony supporting brainwashing theories of recruitment has also upset many members of scholarly and research communities doing research on new religions (especially those from psychology and sociology of religion). There is grave concern that a few psychologists, psychiatrists, sociologists, and others willing to offer support for the brainwashing view are ignoring or misrepresenting large amounts of scholarly work done on recruitment to and participation in the new religions.⁸ The disquiet has prompted some unusual actions, including filing of *amicus curiae* ("friend of the court") briefs by scholars and professional associations in three appeals of cult/brainwashing cases.⁹

7. One recent effort to use a brainwashing-based defense in a criminal trial was rebuffed in *U.S. v. Fishman* (No. CR-88-0616-DLJ, N. Dist. Cal., 1990). See conclusions section of this article for discussion of this important decision.

8. See Gene James, "Brainwashing: The Myth and the Actuality," *Thought* 61 (June 1986): 241; Anthony, "Evaluating Key Testimony," James T. Richardson, "The Active vs. Passive Convert: Paradigm Conflict in Conversion/Recruitment Research," *Journal for the Scientific Study of Religion* 21 (1985):163; James T. Richardson, "Uses and Misuses of Psychology in Cult Brainwashing Cases," presented at the annual meeting of Western Psychological Association, Reno, NV (1989); Thomas Robbins, *Cults, Converts, & Charisma* (Beverly Hills, CA: Sage, 1988); David Bromley and James T. Richardson, eds., *The Brainwashing/Deprogramming Controversy* (New York: Edwin Mellen, 1983); and Brock Kilbourne and James T. Richardson, "Psychotherapy and New Religions in a Pluralistic Society," *American Psychologist*, 39 (1984): 237.

9. The first "scholars" *amicus* brief was filed in the *Molko and Leal v. Holy Spirit Association*, 46 Cal. 3d 1092, 762 P.2d 46 (1988), cert. denied, 109 S. Ct. 2110 (1989), which was on appeal to the California Supreme Court after the Trial Court granted a summary judgment motion (upheld by the California Appeal Court) dismissing the suit by two former members who had been deprogrammed out of the Unification Church, and later claimed they were brainwashed into joining. The brief was filed by the American Psychological Association and about two dozen scholars, mostly sociologists and psychologists of religion. The American Psychological Association eventually withdrew its support, but the brief remained before the court. A second *amicus* brief was sponsored in the appeal of *George v. ISKCON*, the main "case study" herein. The brief was filed with the California appeal Court by the Society for the Scientific Study of Religion and about twenty individual scholars. This effort appears to have had some impact on the decision reached by that court to disallow directly brainwashing-based claims.

A third *amicus* brief was filed by the Society for the Scientific Study of Religion and the American Sociological Association, along with over fifty individual scholars in support of request to the Supreme Court for review of the ruling of the California Supreme Court in the *Molko/Leal* case to allow a trial. The United States Supreme Court on 22 May 1989 decided not to review the decision of the California Supreme Court. Afterward the American Sociological Association withdrew from sponsorship of the brief, but the issue was by then moot.

SPECIFIC CASE STUDY

This article will use one particular "cult brainwashing" case—*George v. ISKCON*—as illustration of how these cases develop and the issues involved in them.¹⁰ The *George* case involved a suit against a relatively new (within the American context) religious group—the Hare Krishna, or ISKCON (International Society of Krishna Consciousness)—by a former member. The member, twenty-three at the time of the trial, first had contact with ISKCON in California at age fourteen, and had joined when she was fifteen, in part to leave her parents. The ISKCON group had initially taken her in, and had even aided her in hiding from her parents. After much effort by the parents to get her back, ISKCON officials encouraged the young woman to return home after two years in the group. Her father, who had a history of heart trouble, died of a heart attack a few months after she returned home, a development that apparently played a major role in the case. Concern about his daughter allegedly contributed to her father's death, leading to a "wrongful death" tort claims in the law suit. After the young woman came back home to California she had contact with what is referred to in the scholarly literature as the "anti-cult" network,¹¹ and converted to fundamentalist Christianity. She and her mother decided to sue ISKCON several years after she returned home, claiming intentional infliction of emotional distress, false imprisonment, and wrongful death, among other torts. The crux of the case, however, was the claim that the Krishna group had "brainwashed" George into participating.

DIRECT PSYCHOLOGICAL TESTIMONY

A key part of the testimony to support the plaintiffs' claims was furnished by a relatively well-known clinical psychologist—Margaret Singer—who testified for two full days, with a resulting transcript of two hundred seventy-eight pages in length.¹²

Dr. Singer used the term brainwashing freely in the course

10. Cal. App., unreported (1989), cert. requested, No. 89-1399 (1989).

11. Anson Shupe, Jr. and David Bromley, *The New Vigilantes* (Beverly Hills, CA: Sage, 1980).

12. Dr. Singer is a clinical psychologist in private practice who earns a considerable portion of her income from cult cases. She has been an adjunct professor at the University of California at Berkeley, but has never held a paid or tenured-track position there. See H. Newton Malony, "Anticultism: The Ethics of Psychologists' Reactions to New Religions," presented at annual meeting of the American Psychological Association (New York, 1987) and Anthony, "Evaluating Key Testimony" for more details on Singer's career.

of testimony, tying what had happened to the plaintiff to Russian purge trials, communist actions with Korean prisoners of war and "thought reform" in China after 1949. A theory of "Systematic Manipulation of Social Influences" (SMSI) was presented which supposedly demonstrated that the plaintiff had been brainwashed and suffered mind control in ISKCON, a conclusion reached after only two contacts with the plaintiff.¹³ Months before the trial Singer had spent four-and-one-half hours with the young woman, her mother, and her brother, plus there had been a meeting the Sunday prior to the trial for "most of the day." Since the young woman was fourteen when she first contacted ISKCON and sixteen when she left, this means that the psychologist was seeing her six years after she left the group. Singer also claimed to have read school records and reports of two psychologists retained by the plaintiff, along with reports by an investigator of interviews with friends and school teachers who had known the plaintiff in her earlier life prior to joining ISKCON.

Lengthy testimony by the expert painted a picture of a well-adjusted, bright young woman, on her way to becoming a responsible, well-adjusted adult, until she encountered ISKCON. No problems were mentioned during direct testimony; a reading of the direct testimony transcript leaves an impression of a perfect teenager who was a member of a perfect all-American family before she encountered ISKCON. One is reminded of the "Little Red Riding Hood" tale from children's literature.

Part of Singer's testimony focused on "free will," or lack thereof, under circumstances of participation in ISKCON. She said that the plaintiff suffered from "weakness of will" and did not exercise freedom of choice when she left home to join ISKCON. George was alleged by Singer to be a "very naive girl" as a result of leading a sheltered life, which made her especially vulnerable to manipulations by ISKCON.

Singer argued that SMSI works best when people are

13. Dr. Singer explained the theory of "Systematic Manipulation of Social Influences" (SMSI) with a flair for alliteration by presenting a theory of "five d's." These included *deception* of the person, making them feel totally *dependent* on the organization, which *debilitates* them because of group control, which leads to *dread* "both within the organization and dread of the outside world." Lastly, the person becomes *desensitized* so they "no longer fully use their old conscience in making decisions about conduct." This "5 d" theory was presented as if it had strong scientific underpinning, well-supported by research of scholars in relevant fields of study, which is not the case (see amicus briefs mentioned in n. 9 and Anthony, "Evaluating Key Testimony").

friendly; thus, the physical coercion found in Korean prisoner of war and Russian purge trials was unnecessary, a crucial point since the Korean prisoner of war and Russian purge trials situation always involved physical coercion. Singer also said that the plaintiff's threatening to run away from home at age thirteen was just being a typical teenager and that her attending an ISKCON meeting with a good friend who later joined before the plaintiff did was unimportant. Singer further testified that the plaintiff's "will was overborne" by her spending one weekend at an ISKCON temple.

Then Singer's testimony shifted to a diagnosis of the "psychological disorders" suffered by the plaintiff. The witness, who had carried a copy of the American Psychiatric Association's *Diagnostic and Statistical Manual* (DSM III), (3rd ed.) to the stand, responded by claiming three disorders were present in the plaintiff: "Identity Disorder," "Post-traumatic Stress Disorder," and "Atypical Dissociative Disorder." The witness said, "These are a direct and near result from her time spent in the Krishna organization."

A long discussion of these disorders then followed, which included considerable selective quoting directly for the DSM-III. Singer concluded that "it is my professional opinion that (the plaintiff) meets these criteria and the ways that I arrived at my professional opinion are the standard and acceptable ones in my profession." Later Singer said the woman needed "prolonged psychological or psychiatric treatment," and that she suffered from a "weakness of the mind."

CROSS-EXAMINATION OF PSYCHOLOGICAL EXPERT

Cross-examination of Singer by defense counsel revealed a different interpretation of the events involving plaintiff's participation. On the issue of the witness having so little contact with the plaintiff long after her participation in ISKCON, the following exchange took place:

Attorney: In other words, do you think that in examining somebody by talking to them in an effort to determine their state of mind that it is not important whether you examine them eight years after the event or eight days after the event?

Expert: I can't answer it with a yes or no answer. Sorry.

Attorney: This time I will let you go ahead and do it one way or the other.

Expert: No.

Attorney: So you have answered it with "no"?

Judge: Mr. Morgan is inviting you to expand on your answer, if you wish.

Attorney: Let me clarify. Is the time within which you examined somebody or interviewed them following the event of coercive persuasion in any way important?

Expert: No.

Attorney: So it doesn't matter if you were going to examine me as to whether or not I was coercively persuaded to join the Boy Scouts, doesn't matter whether you examine me now or when I was, say, twelve and a half?

Expert: That's right.

The defense attorney also criticized the witness for not making a written report of her findings. He forced her to admit that, contrary to standard practice, no tape recording was made of the four-to-five hour interview, which was the expert's first contact with the plaintiff, occurring less than a year before the testimony. The expert witness also admitted that no standardized psychological tests were administered to the plaintiff during the two brief sessions with her.

When work of other scholars contradicting the expert's conclusions about the meaning of participation in ISKCON was raised by counsel, the work was dismissed as inaccurate or just opinion. When confronted with an article reporting a study of ISKCON members which appeared in the prestigious *American Journal of Psychiatry*, Singer stated that one could not trust self-report instruments such as the widely-used MMPI (which was used in the study of all forty-two ISKCON members of an ISKCON ashram), and that you also could not depend on those scoring the instruments.¹⁴ Singer claimed to have interviewed seven ISKCON members in depth, and stated that her study was "quite comparable," and could possibly be published if she desired to do so.

Singer discounted any claim that the plaintiff had a real religious experience or conversion to ISKCON. Singer defined a religious conversion as being "whatever a person feels is a reli-

14. Michael Ross, "Clinical Profiles of Hare Krishna Devotees." *American Journal of Psychiatry* 140 (April 1983):4.

gious conversion," and refused to allow any credence to the plaintiff's earlier testimony that she had a conversion. The expert witness also refused to acknowledge that the plaintiff's history of visiting a number of religious groups (many with her mother), including over twenty visits to an ISKCON local temple, and having had a conversion experience at a Billy Graham Crusade at age twelve, had any implications for her later involvement with ISKCON. The fact that participating in ISKCON had developed out of following the lead of her best friend was also not deemed important. According to Singer, the plaintiff had gotten involved with ISKCON because of brainwashing and coercive persuasion. The plaintiff had not followed the lead of her best friend, had not been encouraged by her mother, and had not exercised her free will in leaving home and affiliating with ISKCON.

Singer was also adamant in refusing to admit that the plaintiff might have undetected bias in the two interviews because of her interest in the present suit. It is well known that concern about malingering should always be present in evaluation sessions, particularly where the person who is being evaluated is self-interested in the outcome of a proceeding. However, Singer indicated that the plaintiff was "trying to be honest with me," and that she did accomplish "honesty."¹⁵

Another surprising segment of testimony involved the witness' opinion of the impact of parental actions on the plaintiff. Prior to the plaintiff's leaving home her parents had forced her to stop religious practices, including chanting, eating a vegetarian diet, wearing a sari and a certain hair arrangement, and using an altar in her home. The parents even destroyed her altar and other religious artifacts. The fact that this type of strong parental reaction might have provoked the plaintiff to consider joining ISKCON was not admitted by Singer. Also, when the plaintiff was returned home from staying in an out-of-state ashram, her parents apparently burned her copy of the *Bhagavadgita*, along with her sari, and forced her to remove her prayer beads. The plaintiff was chained to a toilet for two weeks, apparently out of fear that she would run away if not

15. Also Singer claimed the plaintiff was having difficulty with dating and relating to males. Apparently unknown to Singer, the plaintiff was involved in a serious relationship with someone and has since married. Nonetheless, Singer stated in testimony, "It is my opinion that a twenty-three-year-old woman, who is as attractive and pleasant as (the plaintiff), would normally, at age twenty-three be making plans to either live independently or be thinking about possibly meeting a person and marrying them and starting her own family."

restrained (the chain was long enough to allow use of her adjoining bedroom). Initially, Singer refused to agree that being chained to the toilet by her parents was of any psychological significance, and finally did so only reluctantly. The witness also stated that it was unimportant that the prayer beads had been taken away and possibly burned by the parents. These actions, coupled with other physical violence against the plaintiff, occurred just prior to the plaintiff's running away to ISKCON, but the witness was convinced that it was the lure of ISKCON, rather than the pressures and problems of home, that led to this action on the plaintiff's part and the subsequent difficulties she experienced.

SUMMARY OF SINGER'S POSITIONS

Dr. Singer is considered the leading pro-brainwashing psychologist who testifies in cult-related cases. She has testified in over forty cases, usually at considerable length, and with apparent success. Her testimony in *George* allows a thorough examination of positions that she is willing to take on the record in such cases. A summary of Singer's positions presented in *George* include the following:

1. The witness showed no qualms about mixing terms like brainwashing and coercive persuasion and in linking situations of Korean prisoners of war, Chinese Communist thought reform, and Russian purge trials to methods of recruitment used in ISKCON. However, Singer emphasized that the brainwashing/coercive persuasion process does *not* require physical coercion, and may actually be more effective without it, a position at odds with the bulk of scholarly evidence on recruitment to new religions, as well as the tradition of research on thought reform and coercive persuasion.
2. The witness had no reservations about making quite specific assessments of present mental disorders based on experiences of the plaintiff from years past, and in drawing strongly worded conclusions about past behavior causes, in spite of limited and recent contact with the person being evaluated.
3. The witness showed little appreciation or knowledge of the substantive findings of other research in relevant areas of research, and of different research methodologies.
4. The witness discounted the impact on the plaintiff's behavior of her best friends' behavior and of the strong negative reaction of the parents to the plaintiff's religious practices and beliefs.

5. The witness refused to acknowledge that religion and religious practices and beliefs are involved, and that the psychological theories offered have implications for freedom of religion.

6. The witness used terms like "free will" and "weakness of mind" as if they are technical terms in psychology and psychiatry.

7. The witness used the DSM-III in ways that differ from original intent, made assessments from limited evidence, and claimed that several disorders were derivative of the same experiences by the plaintiff.

8. The witness refused to acknowledge possible biases or malingering of the subject being interviewed, assuming that honesty can be discerned easily in a client, even if the client is involved in a lawsuit with possibly large monetary damages.

9. The witness presented an idealized, traditional view of "normal" families, and what "normal" teenagers and young adults are like. She seemed quite unwilling to consider alternative values and lifestyles, and the idea that such alternatives might be freely chosen.

SIMILAR CASES

Most observers of the *George* trial viewed Singer's testimony as crucial in a \$30+ million original jury verdict for the plaintiffs (later reduced to \$9.7 million by the trial judge). Regrettably, this case was not an isolated incident, however. Singer testifies and consults frequently in such cases, and should be given considerable credit for initiating this newly developing area of tort law. Her testimony is usually quite consistent across cases, no matter which group is being sued. Brainwashing and related psychotechnological terms are used to describe what happens when someone joins a group and the personality damage that is caused for the participant.¹⁶

In one recent case, *Wollersheim v. Church of Scientology*, Singer presented her usual brainwashing-based theories of cult participation at considerable length.¹⁷ She also stated in deposition prior to the trial that her mind would not be changed about

16. In one cult brainwashing case occurring in 1989 in Seattle, Singer filed an initial expert opinion statement similar to those she had submitted in other cult cases. However, when she arrived at the deposition and noted the presence of Dick Anthony, a consultant who opposes such testimony, she talked with her accompanying counsel and then stated that she would not be discussing the term "brainwashing" in her deposition.

17. 260 Cal. Rptr. 331 (1989), cert. pending, No. 89-1361. See discussion of *Wollersheim* in Malony, "Ethics of Psychologists."

the application of her theories to the group, even if it was found that all ex-members interviewed were lying. During a trial-preparation interview with plaintiff Wollersheim years after his involvement with the group, Singer made the following comment: "Absolutely, you were a victim. I would like to help you feel more comfortable learning more and more about thought reform programs and attributing outwardly to (Scientology) the bad stuff that you know they did. Let me go upstairs and bring you down some stuff."¹⁸ This psychologist admitted in cross-examination in *Wollersheim* that her behavior in the evaluation session was something less than neutral. The expert claimed to be using "education therapy," even though supposedly retained to evaluate the plaintiff. The *Wollersheim* jury awarded \$32 million to the plaintiff; the case is currently on appeal.

Another "cult brainwashing" case also involving Dr. Singer—*Molko and Leal v. Unification Church*—was appealed in 1990 to the United States Supreme Court.¹⁹ This case involved two people, both legally of age, who had voluntarily joined the Unification Church, but later claimed they were under the influence of brainwashing and mind control when they decided to join. They were abducted by agents hired by their parents, and then were convinced to leave the group through deprogramming. Later they filed suit against the group, claiming the usual torts, with the case being based on brainwashing theories. The trial court, after receiving affidavits from two plaintiffs' experts, including Singer, granted a motion to dismiss the case. San Francisco Superior Court Judge Stuart Pollak issued a rare, strongly worded, thirty-page opinion critical of the affidavit testimony of the two expert witnesses, claiming their opinions "are veiled value judgments concerning the entire outlook of the Unification Church."²⁰ In a footnote, Judge Pollack said: "Both doctors examined the plaintiffs long after the events in question. They do not reach their opinion concerning the Plaintiffs' state of mind based upon a contemporaneous examination independent of their views of Unification Church methods, but seem to have reasoned backwards from their disapproval of those methods to the conclusion that Plaintiffs were not thinking freely because they were persuaded by

18. Quoted in Malony, "Ethics of Psychologists."

19. 46 Cal. 3d 1092, 762 P.2d 46 (1988), cert. denied, 109 S. Ct. 2110 (1989). See Stephen Post, "The *Molko* Case: Will Freedom Prevail?" *Journal of Church and State* 31 (Autumn 1989):451.

20. Unreported opinion of the Superior Court of California.

them."²¹

This trial court decision was upheld by the California Court of Appeals in another strongly worded opinion. In dealing with the fraud and deceit claims of plaintiffs, the court of appeals said: "If liability could be imposed in such circumstances, any disaffected adherent of a religion could bring suit alleging that he had been 'brainwashed' by the religious organization, and courts would become entangled in determining which adherents acted out of true faith and which were subject to 'mind control.' This result is clearly at odds with the First Amendment."²²

The decision of the court of appeals was, however, eventually overturned by the California Supreme Court, which gave explicit support to brainwashing theories in its decision, and even quoted some anti-cult literature in its opinion. The ruling was appealed to the United States Supreme Court, but that Court refused to grant review of the decision of the California Supreme Court. Thus, it appears that the implicit new brainwashing cause of action used in the *George* case has at least some indirect positive sanction by the United States Supreme Court.²³

RESOLUTION OF THE *GEORGE* CASE

The *George* case has now gone through two levels of appeal. The California Court of Appeals granted judgment for the defense on parts of the trial court judgment resting overtly on brainwashing theories, but left intact other parts of the judgment and \$2.9 million of the initial award.²⁴ The brainwashing issue remains in the background of the case, however, through the intentional infliction of emotional distress claim of George's mother. That claim would seem to rest on the fact that ISKCON recruited the daughter. If so, this represents another

21. Ibid., n.5.

22. 179 Cal. App. 3d 450 (1986).

23. There are important differences between *George* and *Molko and Leal* which could mean limitations on brainwashing as a ground for legal action. *George* involved a minor, with the group apparently assisting in her concealment from parents, while *Molko and Leal* involved allegations of deception in recruitment of legal adults. The United States Supreme Court could treat the minor status of *George* and alleged concealment as functional equivalents of deception alleged in *Molko and Leal*.

24. The California Appeal Courts allowed the wrongful death claim of the daughter to stand, but disallowed her other claims. The Court allowed the tort claims by George's mother for wrongful death, libel, and intentional infliction of emotional distress to stand. Damages totaled \$2,910,000 (which accrues interest from date of award).

quite worrisome application of brainwashing theories in tort litigation, that being on behalf of those who have had loved ones join new religions.

The case was appealed to the same California Supreme Court that had accepted brainwashing-based theories in its ruling in the *Molko and Leal* case. The California Supreme Court let the decision of the court of appeals stand, but took the unusual position of disallowing its publication as an official court opinion, thus averting the appearance of an open conflict between the two courts on the brainwashing issue.

George is currently being considered by the United States Supreme Court, which will decide soon whether to grant full review of the case. Meanwhile, the United States Supreme Court has granted a stay in execution of the judgment against ISKCON, which now totals some 5 million dollars, including accrued interest. The case has attracted considerable comment, including international attention. The concern of Krishna leaders and politicians in India which was discussed in a *Los Angeles Times* article, dated 18 April 1990, is based on the fact that paying such a large judgment would force the Hare Krishna to sell most of its United States assets, thereby severely limiting its activities here, or even leading to closure of its operations.

CRITIQUE OF SINGER'S POSITION

As indicated, a number of scholars, especially from disciplines of sociology and psychology of religion, have taken issue with the testimony offered by Margaret Singer and others of her persuasion. Perhaps the most concise statement of the position adopted by those opposing Singer appears in the amicus curiae brief filed in the *George* case by the Society for the Scientific Study of Religion, along with a number of individual signatories, including several past presidents and other officers of the Association for the Sociology of Religion, the Society for the Scientific Study of Religion, Division Thirty-Six of the American Psychological Association (Psychology of Religion), the International Society for the Sociology of Religion, and the American Academy of Religion.²⁵ This brief, filed with the California Court of Appeals may have influenced the court to limit the application

25. Amicus Curiae brief of Society for the Scientific Study of Religion, et al., filed with the California Appeal Court, for case No. D007153, 29 February 1988. This brief—and the other two “scholars’ briefs”—were drafted by the present author and Dick Anthony, with the assistance of several others. Copies available from the author.

of brainwashing-based theories in this case. However, it should be noted that similar arguments made before the California Supreme Court and the United States Supreme Court in the *Molko and Leal* cases were to no avail. Nonetheless, summarizing those arguments against brainwashing-based tort theories of recruitment to new religions may be instructive.

The *George* amicus brief opened with a claim that brainwashing testimony should be disallowed because it fails to meet the criteria set down years ago in the famous *Frye* case that scientific opinion cannot be presented in a court unless there is general agreement within the relevant scientific community concerning the conclusions being offered.²⁶ This crucial rule of procedure is widely used in the American legal system, but it is sometimes ignored in the so-called “soft sciences” such as psychology. The amicus brief, on behalf of scholars whose work has been systematically ignored or ridiculed by brainwashing proponents, called for a rigorous application of the *Frye* principle to the so-called cult cases.

The brief further claimed that Singer misrepresents the tradition of research out of which terms like “thought reform” and “coercive persuasion” come. She ignores the fact that these earlier studies focus on physical coercion and fear as motivators, and that even when using such tactics the earlier efforts were not very successful. With great facility, Singer moves quickly from situations of physical force to those where none is applied, claiming that these “second generation” thought reform techniques using affection are actually more effective than the use of force in brainwashing people to become members. Thus, Singer is criticized for claiming to stand squarely on the tradition of research developed by scholars such as Edgar Schein and Robert Lifton, while she shifts the entire focus to non-coercive situations quite unlike those encountered in Communist China or Korean prisoner of war camps.

The brief points out, as well, that Singer ignores a vast amount of research supporting the conclusion that virtually all who participate in the new religions do so voluntarily, and for easily understandable reasons. No magical “black box” of brainwashing is needed to explain why significant numbers of young people chose, in the 1960s and 1970s, to abandon their place in society and experiment with alternative life styles and beliefs. Many youth were leaving lifestyles that they felt were hypocriti-

26. *Frye v. United States*, 293 F. 10113 (D.C. Cir., 1923).

cal, and experimenting with other ways of life that they found to be more fulfilling, at least temporarily. Particularly noteworthy, but ignored by Singer, are the extremely high attrition rates of all the new religions. These groups are actually very small in numbers (the Hare Krishna and the Unification Church each have no more than two to three thousand members nationwide), which puts the lie to brainwashing claims. If "brainwashing" practiced by new religions is so powerful, why are the groups experiencing so much voluntary attrition, and why are they so small?

Singer's psychological assessment of members of the new religions is also criticized for its poor methodology, as are her results and conclusions, which are at odds with that of most other scholars. Considerable research reported in refereed scholarly journals and other sources supports the idea that the new religions may be serving an important ameliorative function for American society. The groups may be functioning as "half-way houses" for many youth who have withdrawn from society, but still need a place to be until they decide to "return home." Participation in some new religions has been shown to have demonstrable positive effects on the psychological functioning of individuals, a finding that Singer refuses to acknowledge.

Last, but by no means least, Singer's use of the American Psychiatric Association's *Diagnostic and Statistical Manual* (DSM-III) is severely criticized.²⁷ She misapplies the categories of the DSM-III, and allows her personal anti-religious and anti-Krishna bias to influence her conclusions. Using her approach to applying the DSM-III, virtually anyone in a religious group would be suspect of some mental disorder. That may be the position held by Singer, but it probably was not the intent of those who developed this major diagnostic tool.

DISCUSSION AND CONCLUSIONS

These brainwashing cases are very troubling from the perspective of freedom of religion. Through the testimony of Margaret Singer and a few others, the "gloss of science" has been lent to legal attacks on new and nonconventional religions. Such brainwashing-based testimony apparently serves as a major basis for large damage awards in civil actions, and it has also been used successfully to defend in some criminal cases deriving

27. *Diagnostic and Statistical Manual-III* (New York: American Psychiatric Association, 1980).

from kidnapping and deprogramming of members of the newer religions. Why this occurs is important to understand, and bears further study.²⁸ The following brief thoughts are offered to suggest some lines of research.

There is much negative sentiment against so-called "cults" in the general population, as evidenced by poll data and other information.²⁹ The general population is wary and even frightened of these new religions and what they are perceived to be doing in our society. Jurors drawn from the general population may feel that they can play a key role in efforts to control such deviant groups in our society. The general public apparently believes in the notion of brainwashing, as evidenced by television programs and films that assume a "Manchurian Candidate" approach to behavior, the growing use of the term in everyday parlance, and research data.³⁰ These beliefs and attitudes, could well be acted out in the form of sizeable damage awards in civil cases, especially if given positive sanction by expert witnesses who apparently disapprove of religious experimentation and variety.³¹ Indeed, this may have occurred in the *George* case and others.

28. See Jeffrey Pfeifer, "The Psychological Framing of Cults: Semantic Representations and Cult Evaluations," presented at annual meeting of the Society for the Scientific Study of Religion, Salt Lake City (1989), and John DeWitt and James Richardson, "Expert Testimony in Cult Brainwashing Cases and the Frye/Relevancy Controversy," presented at annual meeting of the Society for the Scientific Study of Religion, Virginia Beach, VA (1990).

29. A Gallup Poll done last year revealed that 62% of those surveyed in a nationwide telephone survey in January 1989 stated that they would not like sects or cults as neighbors. This figure was much higher than any other ethnic or religious group surveyed. These and similar data are discussed in James T. Richardson, "Definitions of Cult: From Sociological/Technical to Popular/Negative," presented at the American Psychological Association annual meeting, Boston (1990).

30. See Pfeifer and DeWitt and Richardson papers from n. 28 for data relevant to negative connotations of the term "brainwashing."

31. Obviously the same theoretical logic may be applicable in criminal cases in which prejudice against cults and a belief in brainwashing are given scientific sanction by expert opinion such as described herein. This may have been illustrated recently in *People v. Brandyberry* (District Court, Denver, CO #87CR 2056, 1988), a case against deprogrammers of a twenty-nine-year-old woman kidnapped in Denver and taken to another state for deprogramming. She eventually escaped her captors and the district attorney brought second-degree kidnapping charges. The defendants used a "choice of evils" defense, based on alleged brainwashing done to the deprogramme by the Unification Church, with Dr. Singer serving as the major defense witness. After a four-week trial involving considerable discussion of beliefs and practices of the Unification Church, the defendants were acquitted. The "choice of evils" defense was eventually ruled unacceptable by the Colorado Supreme Court (XIV Brief Times Reporter 1534, Colo. App., No. 88CA1741, 1990), which is a victory as precedent for future cases in Colorado.

The ideas just stated might be presented schematically as shown in Figure I:

Figure I
Interaction of Bias, Misinformation, and "Scientific" Support in Civil Brainwashing Cases

Bias against "cults" by jurors + Belief in reality of "brainwashing" by jurors	+	"Scientific" support from expert testimony	=	Plaintiff victory and large award, or successful defense in kidnapping cases
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What meaning can be drawn from these developments? It seems clear that many members of the general public, serving on juries throughout the land, are willing to accept brainwashed-based theories as a justification for limiting recruitment and other activities of newer religious groups, especially those labeled as "cults." Thus the tactic of the Anti-Cult Movement to use the legal system in its efforts to control cults seem to be successful, at least in part. Thus, more legal actions may appear that will have a chilling effect on recruitment by nonconventional religions, as well as that of more traditional religious groups. If such theories can be used successfully against so-called "cults," they can probably be used against other less popular, but more traditional, high-demand religions as well.

The legal status of brainwashing-based cases is at best unclear, leading some legal scholars and others to think that the United States Supreme Court might use the *George* case to make a statement on cases based on brainwashing theories. As indicated, the United States Supreme Court has a decision pending to review the *George* case. That Court may find the controversy over cult recruitment useful in its apparent continued movement toward limiting application of freedom of religion in American society. As discussed elsewhere, there seems to be a discernable pattern of such limitation in "cult cases" that have reached the United States Supreme Court in recent years.³² The recent peyote case (*Smith v. Oregon*) continues this pattern.³³ There also seems to be a complementary pattern in the Court's actions in other religion cases, such as those concerning state support for parochial schools, which shows a marked ten-

32. James T. Richardson, "Changing Times: Religion, Economics, and the Law in Contemporary America," *Sociological Analysis* 49 (December 1988):1S.

33. 110 S. Ct. 1595 (1990).

dency to change traditional notions about separation of church and state, allowing more state support for such activities.³⁴ The same Supreme Court that seems less willing to support traditional ideas of freedom of religion, thus limiting the right to participate in newer religions, also appears more willing to support expansion of traditional religion. The overall impact of this dual pattern is to allow more control of the new groups and more indirect and even direct state support for traditional ones. Such a possibility, coupled with the aforementioned apparent willingness of the general public to limit religious experimentation, should give everyone considerable pause.

There is a ray of hope concerning brainwashing-based cases. Not all such cases result in automatic victories for those propounding such theories as a basis for their legal action. Sometimes judges grant summary judgment motions (as in *Molko and Leal*) or directed verdict motions (as in *Eilers v. Coy*),³⁵ or make other decisions that reject the use of brainwashing-based positions in conservatorship cases (as in *Shapiro* or *Katz*).³⁶ However, such precedents could be easily undone, as shown with the ultimate disposition in *Molko and Leal*, by actions of higher courts that sanction brainwashing-based actions.

Of more promise are two recent decisions in the federal court system, one involving a criminal matter and the other civil. The criminal case (*United States v. Fishman*) involved criminal charges for mail fraud against Fishman, who was a member of the Church of Scientology during part of the time of his questionable activities.³⁷ The defendant used an insanity defense, claiming incapacitation due to brainwashing allegedly used on him by Scientology. Fishman attempted to have Singer testify on his behalf, as well as Dr. Richard Ofshe, a sociologist who shares many of her views of new religions. The government attorney made a strong effort to preclude such testimony, making use of materials developed by scholars and others opposed to Singer's brainwashing-based testimony. This effort to stop such testimony was successful, after a substantial pre-trial evidentiary hearing in which testimony was taken from both sides and many documents were submitted to the court. Judge

34. James E. Wood, Jr., "Separation Vis-à-vis Accommodation: A New Direction in American Church-State Relations?" *Journal of Church and State* 31 (Spring 1989):197.

35. See *Eilers v. Coy*.

36. See *Shapiro*, note 3 above.

37. Memorandum Opinion, case No. CR-88-0616-DLJ, Northern District of California.

D. Lowell Jensen of the Northern District of California, in his order of 13 April 1990, chose to apply the *Frye* standard, and said that the theories of Singer and Ofshe "regarding the coercive persuasion practiced by religious cults are not sufficiently established to be admitted as evidence in federal courts of law."³⁸ The defendant, after this ruling, chose to plea bargain, thus settling the matter. After this action by the defendant, Singer and Ofshe sought to have the ruling on the evidentiary question vacated, since the case was now moot. However, Judge Jensen refused to vacate his order, which therefore stands as a precedent for future cases.

The *Fishman* decision cited one important precedent that should be noted. In *Kropinski v. World Plan Execution Council-U.S.*, the court of appeals unanimously reversed a trial court decision for the plaintiff in a case in which Singer had been allowed to testify about her theories of brainwashing and coercive persuasion.³⁹ This case involved a disaffected former Transcendental Meditation practitioner who sued TM, claiming that he had been brainwashed into participating. In sending the case back for further hearings on the evidentiary question, the court of appeals stated that the plaintiff "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."⁴⁰

The *Kropinski* decision, which may have been essential to the later *Fishman* ruling, is the first time Margaret Singer has been successfully challenged in her long career of offering brainwashing theories in cult cases, and thus, it represents a remarkable event in the history of such cases. If the United States Supreme Court takes into account the decisions in *Fishman* and *Kropinski*, as it decides what to do about *George*, then perhaps there is hope for those who value religious freedom in America.⁴¹

38. Ibid. at 14.

39. 853 F.2d 948 (D.C. Cir., 1988).

40. Ibid. at 957.

41. A number of scholars, including this author, have worked on this issue for several years. However, it should be said that the efforts of Dick Anthony have been particularly central. He was a consultant on the *Kropinski* and *Fishman* cases, and has done the most informed writing on the controversy; see Anthony, "Evaluating Key Testimony."