

PANEL DISCUSSION:

REGULATION OF ALTERNATIVE RELIGIONS
BY LAW OR PRIVATE ACTION:
CAN AND SHOULD WE REGULATE?

DEAN NORMAN REDLICH, MODERATOR

OPENING REMARKS OF DEAN NORMAN REDLICH: Last year we heard why pornography had the effect of degrading women. In response, however, a classic free speech defense against any laws restricting obscenity was offered which refused to explore the extent to which it might be possible for society to combat some of the negative anti-feminist aspects of pornography consistent with traditional first amendment values. This morning, also, some of the speakers spoke of the evils and harms of cults; yet other speakers gave impassioned and eloquent defenses of the first amendment values which prevented the regulation of these cults. I hope that we will attempt to reconcile these positions this afternoon.

For those who are critical of cults (I will call this the "anti-cult" position), I hope that our speakers will try precisely to address the issue, "What would one do about it?" What laws might be passed to deal with what are perceived as the evils, the problems, and the harmful effects of cults? On the other side are those who have expressed so strongly the first amendment values. I would like them to address the question whether enforcement of traditional religiously neutral laws, applying to criminal conduct, is an effective weapon against the harmful consequences of cult activities. The question also must be addressed whether cults pose such a unique problem that such laws are ineffective against them.

The first person I would like to call on is the Director of the Commission of Law and Social Action of the American Jewish Congress, and a distinguished alumnus of the NYU Law School, Nathan Dershowitz.

OPENING REMARKS OF NATHAN DERSHOWITZ: Thank you. I *will* try to stay somewhat within the parameters suggested by Dean Redlich but I will take a piece from one side and a piece from the other side in doing so. If I had to categorize myself as pro-cult or anti-cult (a distinction I find inappropriate), I think I would call myself anti-cult. If you ask me whether I agree with the first amendment analysis of Leo Pfeffer or Jeremiah Gutman, however, I would agree completely with their analysis. In short, therefore, I am anti-cult and yet fully supportive of this first amendment analysis.

To my mind, however, that is only the beginning of the problem. I think Mr. Gutman really cheated when he said, "Enforce the law against the cult group." That is where I find the problem. Over the last two years, I have received innumerable calls from people who are ex-cult members, or people

who have their children within cult groups. The real question is, "How do you get the U.S. Attorney, how do you get the local sheriff, how do you get the courts to enforce the criminal law appropriately against certain of these cult groups?" Let me give you just two or three examples of what I'm talking about.

I received one telephone call from a woman in California. She had been a member of a cult group and had been told to marry, whom to marry, and married. She had a child while she was with the group. After a couple of years she decided to leave. She tried to leave with her child but she was physically prevented from doing so. Finally one night, she sneaked out with her child and went to California from the east coast. While in California, her purported husband came, kidnapped the child and brought him back to the east coast. After much difficulty, she got a court order in California giving her custody, went to the east coast, and had the court there order that the child be turned over to her. (Her husband was not with the cult group at that time, but the child had been left there.)

This eleven-year-old child had been maimed, abused, and was compelled to work; it was just a horror story. Although the court order was served by the sheriff, the child had disappeared. You must realize that this woman had no money. The reason she had no money is that all of the money that she had made while she worked for the group was taken by it. This has been going on now for years. She is trying to get the sheriff to go onto the property to get the child but she cannot get the child without a court order. When she tries to get into court, she cannot get it to act quickly enough because the rules are different. The rules that she finds being applied by the cult group are different from the rules that she is trying to play by. The question thus becomes, "How do you enforce the law?"

I remember one telephone call from a person who had a friend who was kidnapped off the streets. She went to the police station and explained the situation. The police asked who had done it. When she explained that it was a cult group, the police refused to get involved.

That is the kind of problem I am talking about. It is easy to say, "Enforce the law." The question becomes how can this be done practically. What recommendation do you make to someone who says, "My twelve-year-old child is being held. I've tried every legal means. Who do I turn to?" After years of trying, I still do not know the answer to this question.

I think that is *part* of the problem. There are a lot of other problems, but I would really like to see some discussion on a practical level, of what one can do under these circumstances, because I think some of the groups are playing by different rules than the rules that I think we should be playing by. Thank you.

DEAN REDLICH: Next, the National Program Director of the Anti-Defamation League of B'nai B'rith, Mr. Theodore Freedman.

OPENING REMARKS OF THEODORE FREEDMAN: Thank you. I first am going to make a disclaimer by letting you know that I am not an attorney but a

clinical psychologist. I therefore can look at the problem from a somewhat different vantage point. I would say that, as a matter of principle, my views would be with those who claim that existing regulations are adequate in dealing with the problems of cults. Implicit in the panel topic, at least for me, is not the question of whether regulation of alternative religions by law or private action is necessary, but whether *special* regulations are necessary.

From my vantage point, there are also very serious social, psychological, and societal problems posed by the cults. As I hear people talking about the need for additional legal remedies, or the promulgation of various deprogramming activities, implicit in what is being suggested is not simply an effort to intervene in a particular case. Many people are looking for some kind of legal action that will, by magic, have a therapeutic effect as it removes these strange, troublesome, problematic religious movements from the American scene.

I think that the private sector has a major responsibility in dealing with some of these problems. That is not to suggest that lawyers should not counsel clients and seek a remedy within existing statutes, but I think that if one is to compete ideologically with the cults (which is really what is at stake in the final analysis), it is not the law, but the private sector of individuals and religious bodies that must compete with those contrary groups in American society that are reaching out for a whole variety of people, whether they be the Moonies, or the Children of God, or less esoteric, less authoritarian groups.

DEAN REDLICH: We will next hear from Jonathan Rosner, who is a practicing lawyer, and for many years has been a distinguished member of our adjunct faculty teaching trial practice advocacy.

OPENING REMARKS OF JONATHAN ROSNER: Thank you. I share some of the views expressed by the two previous speakers. I agree with Mr. Dershowitz that the discussions this morning, in terms of the platitudes and theories, are things that none of us could really disagree with. I also have to agree with Mr. Freedman that the private sector, rather than government, has to get deeply involved. The problem that I have in dealing with the cult issue is that it seems the law is suffering from a culture lag. Neither our legislatures nor our courts have yet come to grips with the new technology that falls under the penumbra of brainwashing and thought reform. We have not even started to develop legal definitions that would give the courts guidance for things such as thought reform and behavior modification. To suggest, therefore, as Mr. Freedman does, that our private institutions have to deal with "alternative religions," is only half of the problem because, again, as Mr. Dershowitz has pointed out, they will be dealing with those problems in the historical context of the free exchange of ideas as protected by the first amendment.

From my experience, having represented ex-cult members, the cults are religions which do not operate in the free marketplace of ideas. Their use of behavior modification techniques prevents this. The courts and legislature, therefore, must define more precisely what is being protected. It is not merely the exchange of ideas nor the availability of a religion or an "ism," but the

free and voluntary access to it by the individual. The vital significance of the constitutional protection of religion will be diluted by a degree of tolerance that accepts the practice of acts which leave society helpless to protect itself. I am not talking about beliefs; I am talking about acts. Our law *does* have to catch up with the fact that acts are being pursued by institutions in the name of religion which remove the question of freedom, and remove the question of voluntariness, in accepting beliefs.

DEAN REDLICH: Thank you, Jonathan. I think at some point we will have to come back to you and to Nat. Now that you both have said that somebody ought to do something, one has to address the question of "What?" We will have a few minutes to think about that. Now to Patrick M. Wall, another practicing lawyer and another member of our adjunct faculty.

OPENING REMARKS OF PATRICK M. WALL: Part of the problem is that perhaps this colloquium has been mislabeled. I think there is an initial acceptance of the view that some of the cults we are talking about are in fact religions. In my opinion, they are not. Rather, they are guises that enable people who are truly evil to rip off and defraud persons who are in a bad time of life. I will give you an example. There is a group called the Way International, a supposed religion. A fellow in California was hit by a car. He became a quadriplegic. He got \$1,250,000 in settlement. He happened to come in contact with the brother of the leader of the Way International who persuaded him that by tithing, in this case, he would be guaranteed the use of his arms and legs within a year. They therefore asked for some \$245,000 or \$250,000, I forget the exact amount, 15%, in any event, of one and a quarter million.

The fellow said, "Well, look, you know, the lawyers took one-third of my settlement, so I only have about \$800,000 and I wonder if that 15% could be applied to net, not gross." One of the elders of this religion said that he would have to check it out. He came back half an hour later and said that he had had a conversation with God and God was interested in gross and not net. That young man signed, with a pencil in his teeth, a check for approximately \$250,000 to give to the group. It turned out a year later, as you might suspect, he was still in the wheelchair and he was somewhat disillusioned, so he had to bring a lawsuit. He ultimately got back the \$250,000. Now, if that is religion, then I am a monkey's uncle, and a lot of frauds are being committed in the name of religion. I am not saying that I am anti-cult; it depends on what the cult is doing. If the cult is engaged in defrauding people, I am against it. Anybody can believe anything he wants to believe. If people are being taken advantage of, however, that is a different story.

I had occasion a few years ago to try a case here in New York County where a client of mine was charged with unlawful imprisonment. He and the parents of a cult member grabbed the kid right off the Columbia University campus. It was his first criminal prosecution, and we called a lot of witnesses. One of them was Dean Kelley, at that time a high-ranking official in the National Council of Churches, who was allowed to testify that, in his opinion,

what had happened in this case was a blatant violation of first amendment rights.

On cross-examination, Dean Kelley was asked whether or not he had any children. He said that he had a daughter of eighteen. I said, "Suppose your daughter should come to you and tell you that she had been 'born again,' that she had found a 'true religion,' and that she truly believed in this religion." "I would be very happy for her." I said, "Suppose that you found that this religion is one where you 'test your faith' by having a snake bite you because obviously God is going to be protecting you and you will not die." I went on, "Suppose you were present when she reached into the basket to pull the snake out and put it close to her. Do you think you might commit what might ordinarily be an assault and knock the snake out of her hand?" He said, "I would prefer not to answer that question." By so saying, it seems to me that he answered it.

Mr. Gutman, earlier today, talked about the "doctrine of justification." He gave it a somewhat narrower definition than the courts have; he also asked whether or not any prosecutor had ever tried to prevent that doctrine from being given to an American jury in those cases where they finally do get reported, and he suggested that none had. The fact of the matter is, the prosecutors have tried to prevent that doctrine from reaching the jury and they have failed. All he has to do is take a look at 532 F.2d 142, the case of the United States against Theodore Roosevelt Patrick, Jr.,¹ and he will find that the prosecutor opposed the doctrine of justification. The doctrine of justification was not created recently by some wild-eyed liberals or conservatives. The doctrine is about 800 years old and it is very simple. It says that if you are confronted with a choice to either obey the law as it is written or have some evil consequence flow from obedience to the law, you take a look at what values are sought to be protected and at what will happen if you follow the law to the letter, and you make a rational, intelligent judgment as to which is worse. Is it worse to run across the street against the red light, when there are no exceptions to the statute, to pick up a little girl from in front of a truck, or do you follow the law and let the girl die? I suggest to you that those who have become slaves to the first amendment have allowed terrible harm to come to persons whom they not only love, but to whom they have some responsibility whether they are 21 or 31. The doctrine of justification lives and it will continue to live. I will put it as bluntly as I can when I tell you what I have told every judge before whom I have tried one of these cases, and that is, I have a son and if one of these cults got ahold of him, and prevented him from using his talents, and had him sweep floors and give up scholarships and things like that, I would not wait two years; I would not wait one year. I know some very nasty people that I have represented. I would make a phone call and I would

1. U.S. v. Patrick, 532 F.2d 142 (9th Cir. 1976).

have two guys knocking on the door of that cult the next day and I would have my son back. I will go before any American jury on that and let the people decide. You know there is a sixth amendment, the right to trial by jury, as well as a first amendment, and I do not intend to become a fool of the first amendment by allowing people who are ecclesiastical ripoffs to hide behind it. I will take a test written by almost anybody, including the ACLU, on what my views are on freedom of religion, and I guarantee you that I would score very highly on that test, maybe as high as Mr. Gutman.

OPENING REMARKS OF JEREMIAH GUTMAN: I did not know that I would come back to New York University Law School to take a quiz. I will agree with one thing that Pat has said and that is that it was an outrageous example. To carry to its logical extension the doctrine that Pat advocates would bring us anarchy, because what he is saying is that if I believe that my child is in danger, not of immediately being run over by a truck, but of having the dedication to intellectual and academic achievements which I have attempted to foster in that child diverted to some other use, rather than attempt to persuade, rather than attempt to use processes of law, rather than attempt to use normal orderly processes, I should call up a couple of guys in the Mafia or whatever group of unpleasant persons he had reference to, and encourage *them* to commit further acts of violence in retaliation for what I perceive as an act of violence to my child's mind.

This is a definition of anarchy: individual violence in response to disapproved acts eliminates the necessity for government. I agree that there are times when government cannot act, like removing the child from the onrushing horses. Sure, this would be appropriate, but it is not appropriate to take the law into one's own hands except in true emergency situations. The analogy that my child's ideology, my child's devotion, my child's ambitions are being destroyed, diverted, or changed in a way of which *I* disapprove creates an emergency situation is absurd, and I think that a judge who gives that instruction to the jury has made an error.

PATRICK WALL: I had a case in Seattle where a mother and father, having had a close and pleasant relationship with their twenty-year-old daughter, lost her to a cult. After a while they went and visited their daughter. The daughter had sores all over her face and was unkempt. The mother tried to persuade the daughter to come to the doctor, because of what was obviously a bad infection. The daughter said she would. An Elder came into the room and suggested that would show a lack of faith in God; her diet could not be the reason why she had those sores. This was a lovely group called the Church of Armageddon. This group had a ritual where they would sit in a large group and hold hands, with one or more of the members holding on to live electric cords. One by one, people left the circle, thus increasing the amount of electricity going through the remaining persons, who were obviously going through a "religious" test. Also, the children in this group who wet their beds or were disobedient were locked in closets.

Now, *maybe* the emergency was not that great. I would prefer, however, to give a rather liberal definition to "emergency," because if the parents of these children had known what the facts were and had been musing for a while as to whether this was really an emergency, they might be musing about that over the coffin of their child. I say, "The hell with that." If somebody poses that kind of a threat to someone that I love and have responsibility for, I am not going to go look up precedent in law books. If I am strong enough, I will go there myself; even if I am not strong enough, I will go. The fact is, the judges who know what these cases are about have given them to the jury and a jury has yet to convict them.

DEAN REDLICH: Mr. Anthony, I will call you in a second. I would just like to ask both previous speakers to explain why it is that you both made reference to the first amendment. Given the hypotheticals that Mr. Rosner has posed, if a parent comes in, acting individually, or through a contact person, and breaks down the door and gets the child back, and then is prosecuted or civilly sued for trespass, or whatever it may be, why is that a first amendment issue? What has the government done that triggers a first amendment freedom of religion or establishment clause issue?

MR. GUTMAN: I need a bit more information. If all I have is the hoodlum being engaged by the parent to take the child or adult out of an association because of the objection by the parent to the nature of the beliefs of that association, I believe we can make out a conspiracy under section 1985 of the Civil Rights Act.

DEAN REDLICH: With no state involvement at all?

JEREMIAH GUTMAN: With section 1985 I do not believe you need state involvement; all you need is a class-based animus. The courts have held that an animosity to a group because of its religious affiliation is sufficient.

DEAN REDLICH: The Supreme Court has never held that prosecution under section 1985, subdivision 3, totally divorced from any kind of state action, is constitutionally permissible. In every one of the cases with which they have dealt, there has been *some*: usually a conspiracy involving access to state facilities, but a purely private conspiracy has never been decided under section 1985(3). I now wish to hear from Mr. Anthony and then we will give the panel some more chances in the course of answering questions from the audience.

OPENING REMARKS OF DICK ANTHONY: I have been advocating a counseling approach as well as an educational approach to correcting abuses. I am doing that because I am not a lawyer; I am a clinical psychologist by training. I do have some experience with respect to these movements. Based upon that knowledge, I cannot see how we can extrapolate a pattern from any one religious group to new religious groups in general such that opposition to all so-called cults would be supportable by the courts. The people who have

argued that way, such as Richard Delgado, cite references from a small number of scholars, who usually are not scholars of religion, but are members of departments of clinical psychology who have clinical involvement with parents whose children are members of cults. Citation to this literature does not afford any sort of meaningful condemnation of any specific category of groups. Utopian communal movements that segregate individuals from social involvement are the types of groups that reap the most controversy. But even with this sort of group, some have primarily beneficial effects while others have primarily negative effects. Even within the ones that have largely negative effects, however, not all members are affected negatively. Some people are helped. The incongruence between characteristics of a movement and characteristics of individuals are such that it would be impossible to go into a court of law and, prior to any negative effects having occurred, say with the kind of certainty that is needed for legal intervention that this particular group is going to harm this particular individual.

Now, if this is true, and I think it will be shown to be true, then what sort of intervention is possible? Ted Freedman suggested that intervention should come from the private sector. I think it should come from the private sector, but that public support for scholarship on new religions would be helpful as well. Studies would be helpful with respect to community education and for counseling; if such research were then interpreted to fit the individual case, one could spell out to individuals the negative effects of certain groups and the effects of different types of groups upon different types of people. This should help people attracted to new groups to think through these issues and decide whether membership in a group would be beneficial or not, depending on the individual case. Only to the extent that the government supports research and counseling strategies should the public sector be at all involved.

DEAN REDLICH: What I would like to do before turning the discussion over to questions from the audience is to point out that the only panelist who seems to be relatively comfortable at this moment is Mr. Gutman, who would apply the law in a religiously neutral manner, whereas the other panelists seem to be somewhat uncomfortable with this solution but they have not come forward with alternate suggestions. They suggest that a religiously neutral application of the law does not deal with a variety of practical problems. I cannot believe that the law would be completely satisfied with the notion of self-help being the ultimate answer, although it is a way of keeping lawyers well-occupied. Advocating self-help is not satisfying as an ultimate answer to the evils that have been so eloquently described. I would now like to turn to the audience for questions. The panelists can correct me and each other in the course of at least *appearing* to answer the questions.

DICK ANTHONY: The voluntary turnover rate in the new groups is high. It is highest among the utopian communal movements which segregate members from normal social processes. For instance, one researcher found a voluntary defection rate of 75% in the Unification Church. That is, in any given year

75% of the members may leave voluntarily. Deprogramming those who for one reason or another have not yet left voluntarily usually involves converting them from one type of movement to another; that is, deprogramming is really conversion to the anti-cult movement. This disguises the member's original motives for joining the group, which usually has something to do with a moral confusion very common in contemporary society. Thus what happens when somebody goes into a cult-like organization is similar to what happens when one goes through the deprogramming process. The anti-cult group becomes another group which the member can rely on for simple answers to complex problems. Whereas the cult blamed all the convert's problems on the larger society, the anti-cult movement blames all its members' problems on the cult. The original problem of the person's own moral confusion and consequent vulnerability to authoritarianism, however, still is not dealt with. That is why I advocate a counseling approach. I would not absolve individuals of responsibility for their membership in these movements. Individuals should understand where their vulnerability comes from, take responsibility for it, and achieve over a period of time a mature and responsible resolution of their original problems. Rather than scapegoating cults, we must help these individuals with their personal problems. To do otherwise is to ignore the true nature of the situation.

JONATHAN ROSNER: Most of what we are talking about can be handled within the standard first amendment approach to the issue. Even the *beliefs* of the Church of Scientology, and all of the rest of the organizations that are called "cults," are not what I would call "offensive." What I find offensive is the *conduct* that then leads to behavior modification and then to deprogramming. I get the sense that a lot of people are offended by deprogramming. I would ask you why are you offended by deprogramming when it is merely the opposite of what the cult does to initiate its members. When the traditional religions lose adherents, you will not find family members having to have those adherents deprogrammed. We must ask what it is in terms of the coercion of brainwashing or mind control that requires deprogramming. It is not a question of first amendment *beliefs*, it is a question of *conduct* that we term "brainwashing."

JEREMIAH GÜTMAN: The facts are just not as you say, Mr. Rosner. To say that deprogramming exists to fill a need created by programming is to play with words which were created by the people who invented the profession. The fact of the matter *is*, as Dick Anthony just pointed out, that about 75% of those people who do join these religions *leave* very quickly. Many leave during the first few months; in fact, many leave during the first few weeks because the demands are so high that they cannot make it. Nonetheless, they *leave*, and *they* do not require deprogramming and they are *not* deprogrammed. The number of people who are deprogrammed, while it has run into thousands insofar as we know (Ted Patrick himself claims 1600 or so), is exponentially *smaller* than the number of people who, in fact, have *voluntarily* left. People

leave the Hare Krishnas during the first few weeks because they cannot get up at five o'clock in the morning and chant whatever has to be chanted and take cold showers, and so on. People leave the Unification Church because they find that the asceticism and the high rules of personal denial of comfort, and so forth, are more than they want to put up with. The same is true of many, many of these religions. Deprogramming is *not* required. It is the rare case when deprogramming is *applied* and to say it is required is to so fulfill its own definition.

NATHAN DERSHOWITZ: Today, there is no neutral application of law when it comes to religion. The law simply is not applied at all. When you say, therefore, "Let's apply the criminal law to these groups," it is a waste of time because it simply is not being done. If you saw somebody being kidnapped off the streets of New York City and you went up to a police officer and said, "That person was kidnapped by the Unification Church," the cop simply would not go after him. Now, that is what I think is part of the problem. The minute law enforcement officials are told a religious group is involved, they refuse to act. If you go into court, and claim that the activities that are engaged in by this group are the same as those of the Mafia, the difference in the application of the law is clear. I went down to Congress about a year and a half ago (before Jonestown) and the Congressmen just were not interested *at all* in certain kinds of problems. As to what was happening in religion, they simply did not want to get involved.

What I am looking for *is* this neutral application of law which would *require* that religious groups have certain things investigated. I don't want to use religion as a shield that will allow these groups to engage in certain gross criminal activities; I think that is what is happening today. Certain gross criminal activities are being engaged in, and we are *afraid* to investigate because we say it is religion. That cannot be justified in terms of the first amendment.

DEAN REDLICH: Can anyone on the panel or in the audience come forward with a suggestion as to how the government can deal with these abuses in a way which does not raise serious first amendment problems? So far, I have not heard any such suggestion. Dick Anthony has suggested that the government support research and community education counseling programs on new religious movements. It is a very important role and it might have a significant impact on these issues. If there were any implication that the counseling would be compulsory, however, you would find me in the opposition.

DICK ANTHONY: Well, you would find *me* in the opposition also. I am not suggesting that the government require individuals to participate in counseling. Don't forget, however, that these movements have a voluntary annual turnover rate as large as 75% in some groups. The people in them are extremely ambivalent towards them. They may leave one and go on to another one, and then get involved in the anti-cult movement for a while. Then they may go on and join a different cult. They go from group to group until they finally either grow out of the original problem or until they get some decent counseling. I

am suggesting that counseling which was specifically designed to address the problems to which these groups are catering would attract substantial voluntary participation and would thus often short-circuit this cycle before it really gets established.

AUDIENCE COMMENT: Where does your 75% figure come from?

DICK ANTHONY: It comes from, among other places, a nationwide survey on the Unification Church. There is consensus among scholars of these groups that they have a substantial voluntary turnover rate. I have not seen this con- tested in the research literature. It is a generally accepted trend.

JONATHAN ROSNER: I have some sympathy with your observations about counseling but you are still talking about beliefs. The thing, however, that distinguishes some of the organizations we call cults is the absence or loss of freedom. As long as Mr. Gutman is defending the first amendment, let me ask him a question. You are aware, no doubt, of the cases that have been brought by a lot of these so-called cults seeking, in effect, damages for allegedly de- famatory remarks about the beliefs or practices of the cults. Based on the research I have done, I have not found any reported case where the recog- nized, older religions have brought actions in any court of the United States, seeking to silence discussion about their beliefs or practices. Where do you stand on that kind of a problem?

JEREMIAH GUTMAN: I disagree with that policy of using defamation suits in the way you describe. I have gone on record as favoring the abolition of the defamation laws in their entirety, so that I certainly disapprove of their use as a means of attempting to silence adverse criticism. I do not believe, however, that whether or not an organization uses, or as you would say, abuses, the defamation law has anything to do with whether or not it is a religion. I believe that I am entitled to attempt, by any means short of force or threat of force, to convince you of the rectitude of my belief, whether it is a religious belief or something else, as long as I do not lock you in a room, or threaten you with violence, or something like that. As long as you are free to walk away, and, believe me, I may attempt by peer pressure, by shame, by threatening you with divine retribution (as distinguished from breaking your arm), I may use all of these methods. If I succeed in convincing you that my ideas are correct in whole or in part, I have done nothing wrong; I have exercised my first amendment right, and you have exercised your first amend- ment right by listening to me, evaluating, and either accepting or rejecting what I have to say.

AUDIENCE COMMENT: But don't you think that there is an element of mental coercion involved? Haven't these groups obliterated the free will of their dev- otees?

JEREMIAH GUTMAN: What you are asking us to debate now is the concept of free will, which is a profound theological question, the answer to which I do

not know, although I know many theories about it. I do not believe that, short of the kind of physical element that I was talking about, *i.e.*, real force or the threat thereof, the state can control or limit in any way the means by which I try to persuade you in the area of religion. If I am trying to sell you a product, they can prevent me from lying about it, but if I tell you that God will strike you dead unless you accept my views, they cannot stop me from making that kind of a threat.

AUDIENCE COMMENT: But let us assume you are correct. What then do you say, having convinced a court that a cult has a first amendment right to act as it does? Do you shut off other people's first amendment rights to persuade a devotee back, by not letting him listen to the radio, by not letting him watch television and by not letting him read newspapers, and by cutting him off from his family? How about that?

JEREMIAH GUTMAN: I am saying that this country was fathered by people in the Jonathan Edwards tradition, who told our forefathers that, if they did not go to church on Sunday, they would suffer eternal damnation and the fires of hell and brimstone; I think that Jonathan Edwards' right to do that exists today.

DICK ANTHONY: I just want to say that the covert issue here, in much of the questioning that is going back and forth, is really the issue of brainwashing and whether it exists in new religions; and, if these groups do brainwash, should some kind of legal intervention occur.

Brainwashing is primarily a metaphysical and philosophical concept. However, it does have some vague empirical implications and some research has been done on whether new religions brainwash. Let me say that most of the research shows that the movements do not brainwash. Those who claim that new religions brainwash contend that converts do not have pre-existing motives for conversion—but are just walking down the street and get turned into zombies. Research shows, however, that people do have pre-existing motives for conversion. People join authoritarian groups because they want them and feel that they need them. Other research has shown that intellectual and emotional functioning does not differ significantly between present and former members, nor between deprogrammed and voluntary ex-members. This is contrary to what one would expect if descriptions of cult members as brainwashed zombies were accurate.

On the issue of the ease of voluntary defection from these movements, Solomon has shown that when deprogrammed ex-members and voluntary ex-members are compared, only the deprogrammed ex-members believe they were brainwashed in the first place. The voluntary ex-members had no trouble leaving and they did not experience their original conversions as having occurred against their will. In other words, all the evidence for brainwashing in these movements comes only from reports of deprogrammed as opposed to voluntary ex-members. I would argue that those deprogrammed ex-members in actuality

have been converted to a new religious perspective, that of the anti-cult movement. Part of the theology of that new perspective is that brainwashing exists in the groups in which they were formerly members. The testimony of deprogrammed ex-members is the only evidence which has been cited to support the notion of brainwashing in these groups. And it is spurious evidence because it comes from a heavily biased sample. Other people have reported that it takes much longer for deprogrammed ex-members than it takes for voluntary ex-members to get over their attachment to various kinds of authoritarianism or to authoritarian groups. In short, the scholarly literature does not support *at all* the finding that these groups brainwash. It also shows that deprogramming is not helpful therapy.

AUDIENCE COMMENT: I think the justification defense is simply an easy way to get at religion, at *any* religion. It leads to vigilantism and is an excuse to use violence. I would just like Mr. Gutman and Mr. Wall to comment on this kind of justification.

PATRICK WALL: First of all, I think at the beginning I indicated that I was not talking about all cults. Secondly, I mentioned the quadriplegic to support my principle that I think a lot of people who are simply charlatans and rogues are pretending to be religious; I find it very difficult to believe that a truly religious person would have taken that \$250,000 from the fellow in the wheelchair.

I am not stating that there ought to be vigilantes; I am saying that when no constitutional law can solve the problem, you are *not* going to stop parents from taking children in danger out of the kind of groups that pose that kind of danger. I am telling you right now, moreover, that if a cult did it to a kid of mine, I would be the first to try and combat it. You can scream all you want about the first amendment, but it is *not* a first amendment issue. These groups can believe *anything* they want, and they can get my child, or your child, to *believe* anything they want. When they start taking *advantage* of them however, if it is *my* child, they are not going to get away with it.

JEREMIAH GUTMAN: I think a distinction has to be made which has not been made. It may well be that you can establish that certain cult leaders are charlatans. If, indeed, you can prove that they *are* making factual misrepresentations, and separating people from their property or otherwise acting improperly, legal remedies are available. If I choose, despite all your evidence, however, to believe that a cult leader is indeed the enunciator of the "Next Coming," which is going to be next week and I want to be ready, *I have the right to do so* and can reject your proof. The first amendment protects that right, so you must distinguish between the right of the individual to be deceived, even if you can prove the deception.

As a matter of fact, according to Pat's own story, the law does work. When this person lied factually to the victim and separated him from a quarter of a million dollars, the processes of the law were adequate and the judgment of recovery was entered.

AUDIENCE COMMENT: Well, I have been listening all day today. The first question that Dean Redlich presented does not seem to have been answered yet. My question is, "Why not a statute?" We need a law aimed directly at these cults' evil activities. We are not here to decide what people can believe, or what is a "good" religion and what is a "bad" religion.

DEAN REDLICH: The issue that the panel is trying to confront is whether one can adopt a statute which is applicable to all types of situations, or to all questions of drug abuse, or to all questions of criminal conduct, but which is tailored, in effect, to deal with the situation of the cults. It would probably be very difficult to frame such a statute without running afoul of first amendment considerations.

NATHAN DERSHOWITZ: I have seen half a dozen drafts of these types of statutes. I cannot think of one that has come close to avoiding some of the more difficult constitutional problems. They are clearly unconstitutional because they attempt to cover everything. Another alternative is available. I would be much more willing to enforce existing law than I think existing governmental agencies are willing to. I would face the wrath of the established religions, who are the ones who are putting the pressure on *not* to have these laws enforced. If you're talking about certain tax investigations, for example, the fear is, "Don't investigate any religious group because automatically you will be running afoul of the first amendment." I would be more willing to have a freer examination of the use of tax-exempt money. In other words, I think that there is a lot of unfortunate activity that is hidden behind certain tax-exemption privileges. Thus, I would let the organized religions suffer the consequences if they abuse tax exemptions. That is one direction in which I would definitely move. I think that can be done.

I also believe that when somebody calls me, I am not in a position to tell him or her to violate the law. I wonder, however, whether even Jerry, if parents called and told him that they were going to go grab their child, would really give them a rousing speech, advising them not to get their child back. I think that you would say, "Look, do what you have to do; do not get *me* involved in it." I think there is a lot to that.

JEREMIAH GUTMAN: I do not think I would say that because first of all, I would question very closely what it is that the parent *thinks* the parent knows about what is going on with that child. If the parent has been reading a lot of anti-cult literature and is confusing the breathing of noxious fumes from a plastic bag with membership in the Hare Krishnas or the Unification Church, or whatever the group involved is, I would say that maybe the parent does not have the facts and ought not to be engaging in private vigilante actions based upon speculations. In most of the cases (I think in *all* of the cases of which I am aware), the dangers are in the imaginations of the parents and not in the reality of the situation of the church member.

AUDIENCE COMMENT: I just do not think you have evidence for the way you are talking. I have a right to deprogram. I think you would be on my side after you were given all of the information that I have.

JEREMIAH GUTMAN: That might well be so. I would examine facts.

DEAN REDLICH: I am just going to take two more questions.

AUDIENCE COMMENT: I think you should be ashamed of yourselves. I cannot imagine how you can ignore these desperate parents. With all your education and expertise there must be something you can do. We have been waiting for *years* and have received absolutely no protection. Where can your hearts be? Who will help us? We have been forced to take desperate steps to help our own children. This certainly is not the responsibility of the parents. Please do not say that it is our imagination. Our children truly are being destroyed and you *must* do something about it.

Where *are* our children? I have not seen mine or heard from them in eight months. I do not know if they are alive or dead. I just wish that I had had the opportunity to learn the law that you have had. I would look deep inside my heart if I were you, Mr. Gutman. I have looked deep inside mine. It took me five years to decide finally to deprogram my son. I have had to move, but I could not find the group. I paid for it with money I earned myself. Mr. Rosner and Dean Redlich are persons who seem willing to open their thinking and look at a new set of circumstances. We need *help*. Do not be complacent. We have waited so long. Do not stand against us because you see it your way and I see it my way. Can't you, a clinical psychologist, do something?

DICK ANTHONY: Could I ask you if your children went into hiding after you hired the deprogrammers or before? There's been quite a lot of research that has shown that much of the conflict between parents and their children arises *after* the deprogrammers are hired. I can understand your concern for your son, but I just want to suggest that deprogramming usually drives families apart rather than bringing them together.

AUDIENCE COMMENT: Yes, my son did go into hiding after deprogramming. Nonetheless, the deprogramming was essential; he was being controlled by us but he managed to get away.

DICK ANTHONY: I want to point out my views on this. I really am worried that people do not see that deprogramming often has the result of driving families further apart. People go to deprogramming but they have not dealt with the original problem. They therefore cannot be successfully deprogrammed. They will only become attached to another cult, or will go back to the same cult; in any case, they will not stay away from an authoritarian group. That is why I am proposing some really competent counseling, not by deprogrammers, who usually are not trained in psychiatry or clinical psychology and really have no competence to deal with these issues.

AUDIENCE COMMENT: But your plan will take years to be put into effect, and the treatment will take too long.

DICK ANTHONY: No, no, we will start it next fall. It has to be somewhat long-term or it will not work; it would just produce the kind of results that are produced when you use deprogrammers. My program *will* be utilized; people who go into these movements are often very aware that they need help. They would voluntarily utilize methods which seem to address their problems. If those methods do not seem indiscriminately anti-religious to them, they *will* use them.

AUDIENCE COMMENT: But that still does not solve the problem completely. The law must be forced to address the situation.

JEREMIAH GUTMAN: You want some free legal advice? You think you know who is holding your son? Bring a proceeding in the nature of a writ of habeas corpus and make this group come in. If they do not produce your son, the judge will put them in jail until they do. How about that? In a case in Pennsylvania, we just used this approach the other way around. Someone was kidnapped by the parents and a professional deprogrammer. The parents were brought in by a Pennsylvania Supreme Court judge and told to bring their son before the court so it could determine whether or not he wanted to be where he was. The parents refused; the judge threatened to put them in jail. The parents then produced their son.

DEAN REDLICH: It is unquestionably true that we are focusing on an issue with which the law does appear to provide very inadequate answers. We can perhaps leave on that note; we must not allow ourselves to forget the human anguish that may well be the price we pay for adherence to the first amendment.

Let us adjourn, and thanks to all of you.