

LEGAL CONSIDERATIONS: REGAINING INDEPENDENCE AND INITIATIVE

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Excerpted from [*Recovery From Cults, Help For Victims of Psychological and Spiritual Abuse*](#)

Controversies between zealots and society are not new. They go back to the establishment of the social contract and relate to many of its subsequent implications. Aspects of the controversies surfaced during the period of accommodation between ideological monarchies and the middle classes and during the period of division between secular and ecclesiastical authority with divergent claims to fealty. The controversies renew from time to time when beliefs of individuals or groups are so strong that they lead them to ignore or violate secular law. These conflicts arise over a wide range of legal issues that arouse strong passions and, consequently, particularly stimulate zealots of many different stripes. Examples include the injustice of racially discriminatory laws, conflicts over right-to-lifers' attacking abortion clinics, and orchestrated efforts to nullify laws offensive to a particular group for ideological or economic reasons. In contemporary society, controversies relating to destructive, totalistic cults have expanded markedly during the past 15 years.

When I first started to speak out about cults approximately 10 years ago, I was one of an extremely small group of lawyers who were willing to address cultic groups' broad range of challenges to individual freedom and personal liberty. The podium had in fact been largely forfeited to a strident, well-organized clique of "civil libertarian" experts who discoursed at length upon the inviolability of the First Amendment and the rights, vulnerabilities, and vitality of so-called new religious movements.

Those who challenged totalistic groups were concerned with the deception and manipulation of recruits and members and the existence of psychological, financial, and sometimes even physical abuse within the groups without informed consent. The critics' priorities were education and deterrence. Critics believed that individuals could be quickly and decisively deprived of their ability to think critically and to make independent judgments and that the process of deprogramming could restore cultists' ability to independently choose a general course of conduct that could either involve return to the group or to their pre-group life-style and values.

Early debates focused on a number of questions: Did these groups obtain membership through volitional though nontraditional religious conversions or through coercive manipulation or fraudulent tactics that deprived the new member of his or her freedom of choice? Could totalistic groups, in claiming members' complete allegiance and obedience, demand and enforce termination of all familial communications? Could such a group require a member to isolate children and grandchildren from family members outside the organization? Was action initiated by perceived emotional and physical risk of a new member justified by necessity in the face of criminal charges of kidnapping when a group member was involuntarily removed from the group? Did counseling of any kind, whether consensual or nonconsensual, violate civil rights of members of totalistic groups, who claimed they were being subjected to faith-breaking presentations? Did religious motivation immunize noncriminal injurious activities? In short, legal analysis and discussion addressed at length questions of irrational conversion, the nature of free will and volition, and the extent of protection that should be afforded to bizarre religious groups. These questions were addressed by, among others, Delgado (1977, 1979, 1982), Dressler (1979), Lucksted and Martell (1982), and Shapiro (1983).

Recently, however, using the First Amendment as an absolute icon has become more difficult. It is now generally accepted that the right to religious freedom does not confer upon anyone the concomitant right to injure another or deprive persons of freedom under the guise of religious motivation. Indeed, recent decisions appear to have given more weight to the primacy of other socially validated concerns, such as monogamy, family structure, and the prohibition of mind-altering drugs, over the desire to engage in a religious practice.

In recent years it has become far more evident that destructive cultic groups are not limited to those who claim religious bonds. The same issues arise and must be dealt with when a leader exercising power and control over members requires politically correct ideas, dictates behaviors for achieving psychological or physical well-being, or prescribes an absolute course of subordinate conduct in order to become wealthy, healthy, or wise.

As the field has broadened so has its perspective lengthened so as to consider legal problems arising after

a person emerges from a cult and struggles to regain independence and a sense of self-worth. I have personally dealt with several dozen such people for whom such concerns were primary. A person's ability to help former cult members deal with the legal issues that arise is necessarily predicated on an understanding of the process to which they were subjected. In this chapter I examine such legal issues rather than look back to the older debates in this area.

ROLE OF LAW IN THE RECOVERY PROCESS

After a person leaves a totalistic group, he- or-she often turns first to the question of how to restore the essential legal trappings of individual independence. First and foremost, the person addresses changes that occurred in his or her family during the period of group involvement.

Marriage

Dissolving a marriage entered into while a member of a group to someone who has remained in the group is frequently a first order of business. This is not always easy, because sometimes the spouse is physically inaccessible (geographically or otherwise) to the one who left the group. On the other hand, the spouse who remains in the group may not wish to stay married either since retention of ties to someone outside the group poses a potential danger to the group, as it may provide a source of outside information and disruption encroaching upon the leader's ability to control the member remaining in the group. Continuation of the marriage may also prevent a new union with another group member.

First, the ex-member should determine whether the marriage was legally contracted or merely ceremonial. If the marriage was legal, there are various ways to dissolve it, usually by divorce or annulment. No-fault consensual divorce is the most common method, but annulment is sometimes available when it can be proved that the marriage was not entered into knowingly or voluntarily or that there was fraud in its inducement. Since some ex-members will want an annulment rather than a divorce because of religious values and moral precepts, the possibility of annulment should be fully explored. In a recent case, an annulment was granted based on a professional's testimony that the marriage had been ordered by the cult leader, and therefore the marriage had not been entered into with the couple's free will and consent.

Children

A second aspect of family structure that often must be addressed deals with children. Child custody, visitation rights, education, and religious practices are among issues that may arise (Greene, 1989; Kandel, 1987/1988). Cases dealing with the dissolution of marriages of persons with mixed religious faiths offer guidance and legal precedent.

If the ex-member seeks legal custody, visitation rights, or restrictions on the cult member's activities, much will hinge on expert testimony about the practices of the group and their effects on the child. Depending on a child's age and circumstances, it may be shown that the group's practices may be harmful to the child's best interest. With proper use of expert testimony, decisions have been made in which the parent emerging from the group has been granted sole custody and, in some instances, limitations have been placed upon the child's contacts with the parent remaining in the destructive group, or participation in the group's activities.

It is necessary to carefully document actual and prospective harm before going into a judicial hearing (Greene, 1989; Kandel, 1987/1988). Sometimes agreements are able to be reached between spouses when there is a cooperative willingness to deal with the best interests of the children. I am aware of many cases in which membership in a group has not so dominated the views of parents that they are unable to perceive the jeopardy to their children's welfare posed by the children's continued participation in certain of the group's practices.

A difficult issue receiving current attention is how to treat children who have spent major developmental portions of their lives in a group that restricted their ability to interact with people in the outside world. Very little study has been done to document this problem (see Chapter 17, *Children and Cults*, in the book [Recovery From Cults](#)). Further study is needed, and comparisons to other groups living in separate communities may be helpful.

The law is on the edge of establishing the rights of grandparents to have communication with their

grandchild. The thrust and pace of this development in the law differs from state to state, in some instances relying on statutes, in others being a matter of case-by-case decisions. These issues arise most frequently when parents are members of a group and grandparents, who are not members, seek communication or contact with their grandchild and enrichment of their grandchild's life through exposure to extended families. Issues also arise when grandparents discover serious deficiencies in the medical treatment or education their grandchild receives in or because of the practices of the group.

The decisive legal issue is the welfare of the grandchild. What is important is the development of the law and its recognition of the value of communication between children and all members of their families, including grandparents, even in the face of parental opposition. While much is left uncertain, this recognition should give great hope to the grandparent in this situation who is hoping to gain access to the grandchild. I also believe, although I know of no legal authority, that one should not reject out of hand a potential assertion of aunts' and uncles' rights asserted by a sibling of a parent in a cult.

Severing Contractual Commitments

It is usually necessary to sever cult-related contractual commitments made while the person was a cult member. For example, the member's lawyer may have been chosen by the group as a way of subordinating that person's rights to group control. This lawyer may primarily represent the group's best interests. Termination of that lawyer-client relationship as soon as possible is essential, for it places shackles upon the will of the emerged person.

While this may seem self-evident, I offer as an example a bizarre case in suburban New York. The judge in that case asserted that by the act of discharging a group-chosen lawyer, a former cult member may have evidenced a lack of independence of will. During this contest the group-chosen lawyer, against the expressed intent of the ex-member, sought to stir up claims against the ex-member's parents and interfered with her relationship with her newly chosen lawyer. The judge ordered her to have a psychiatric examination to determine her mental capacity. Despite arguments that firing one's lawyer is not a sign of insanity, the woman was compelled to undergo a psychiatric examination. Luckily it all worked out, but it was a humiliation the ex-member should never have been subjected to.

Another area of concern may be contracts that the person signed as a group member, some of which by their terms last millions of years. An objective reading will show that it is absurd to think that these contracts are legally enforceable documents. However, when a person emerges from a totalistic commitment, he or she needs to be assured that these contracts are legally unenforceable. In order to free the person from the oppressive fear that the contracts constitute morally or legally binding obligations, it is also important to explain to the ex-member why the contracts are not legally valid, so the person can view them in a newly independent rational context, restoring his or her respect for the legal system and deepening the person's understanding of his or her exploitation by the group.

It is very important that all contracts made as a group member be reviewed by a lawyer before the ex-member continues to honor them. Some contracts may be voidable because the person was fraudulently induced to sign them, or because the contract requires the person to perform illegal acts or unenforceably restricts the person from taking desired action. Sometimes the group will seek to pressure a former member to ratify a contract by asking the ex-member to honor a commitment as a demonstration of goodwill. If a former member, after leaving a group, continues to carry out his or her duties under a contract, a court might rule that the contract has been ratified, even though it could have been avoided. This might occur, for example, when the group bills the former member for "unpaid" donations and the person pays these bills after leaving the group. Contracts may also require unenforceable donations of services or agreements to commit or refrain from certain activities.

It is essential that ex-members be able to turn to a lawyer and supporter of their own choosing. Nothing should be done between the ex-member and the group without consulting counsel.

Recoupment of Financial Losses

After severing their contractual burdens, former cult members often try to recoup the financial losses they incurred during membership. For example, a member may have been underpaid as an employee of one of the group's businesses, may have been swindled out of money, or may have paid money for services that were not completely used.

Group businesses must comply with applicable regulations and labor laws. Groups operate gas stations,

fur shops, newspapers, restaurants, printing plants, publishing houses, and sell flowers and books. These businesses must observe minimum wage laws and laws governing hours and conditions of employment.

Numerous former members have won legal redress based on the group's noncompliance with these laws, but claims must be made promptly because of short statutes of limitations. In this area government agencies, such as state and federal Departments of Labor, will frequently aid in the formulation of a claim and effect a recovery; in such an instance, a lawyer is needed only to guide the complainant through the appropriate state agencies. Additionally, an injury that may have been incurred as a result of unsafe conditions of employment may provide grounds for appropriate recourse and may likewise be enforced by state agencies. Losses may have been incurred through job exploitation, such as fraudulently induced donations or investments in a cult-related enterprise based on sales representatives.

Alternatively, the member may have paid money to be set up in a business franchise using the name of the group or a name owned by the group. In such circumstances, the ex-member may be legally entitled to full reimbursement if the group failed to comply with applicable laws at the inception of the arrangement. Additionally, if a legally required "cooling-off" period was not granted to allow the member to change his or her mind, certain types of contracts may be void. In cases where the member was given a "license" to use some of the trappings of the group or its "technologies," failure to comply with state laws may invalidate the agreement. In other cases, where the ex-member prepaid for services never received, the ex-member may be able to recoup part of the money attributable to the unused portion of the services.

In no circumstances should financial losses be abandoned; a lawyer should review the matter to see if legal recourse exists. However, the law does not provide a right to the recoupment of all losses. An honest case assessment should be made before an ex-member heads down the oftentimes costly road of litigation, seeking a large recovery for real but nonrecoverable loss. There are some losses that are simply too hard to prove or too remotely connected to a wrongful act to be able to be recovered through the courts. That does not mean the injury and pain of loss is not real. It merely means that the law's reach does not extend as far as the greedy grasp of a destructive group.

Emotional or Consequential Loss

In many instances the most severe loss that a member has suffered is an emotional damage incurred as a consequence of abuse. In such cases recovery of damages is extremely difficult and often speculative. Again, this does not mean that the injury is not real. What it means is that these cases may not readily be settled by the group, and the time from inception to financial recovery may stretch out over many, many years. Lawyers will be very reluctant to take on such litigation because of the expense in prosecuting it. While some lawyers do accept cases based upon sharing in a recovery, most will reject such an arrangement where the recovery is long deferred or requires too much time and expense to achieve. Also, during the process of litigation cult groups seek to make recovery of a judgment extremely difficult so that even a victory may not be translated into dollar recoupment. In recent periods we have seen a number of significant recoveries against cult groups go up and down on appeal in the highest courts of the Supreme Court, while a plaintiff who has won verdicts remains uncompensated.

An additional factor in undertaking such litigation is the emotional stress and strain upon the former cult member. The cult, in their defense, will not hesitate to assert that the group was not the cause of the plaintiff's pain and loss. In doing so, the cult will use - to its benefit and to the detriment of the former member - whatever private and confidential information it has regarding the ex-member and his or her families, friends, and acquaintances.

The time necessary for the ex-member's participation in the litigation, as we know, can often be substantial and dragged out over long periods of time, providing yet another impediment to the process of recovery and the ability of the former member to reorganize his or her life.

I do not unqualifiedly discourage litigation, and note that a few people made it work for them by achieving appropriate legal redress for harm done, and others have gained a significant degree of self-esteem by having the opportunity to confront their oppressor in the legal arena.

BROADER SOCIETAL ISSUES

In addition to the immediate legal issues that arise when a member leaves a destructive group, there are larger social questions as well.

Abuse of Women and Children

Within totalistic groups there is a pattern of victimization of the weak by the strong. Most prevalent is the systematic abuse of women and children (see Chapters 17, Children and Cults, and Chapter 18, Ritualistic Abuse of Children in Day-Care Centers, in the book [Recovery From Cults](#)) through the exercise of arbitrary power and the demand for perfect performance. The very first resolution unanimously adopted by the Interfaith Coalition of Concern about Cults in the New York metropolitan area was the condemnation of the abuse of women and children by destructive totalistic groups.

It has become clear that the perpetration of such abuse is not limited to religious groups. Exploitation of the weak, the naive, the credible, and the vulnerable is an issue troubling our society and other societies worldwide. Groups working to protect victims of destructive cults are working more closely with groups representing those victimized by other forms of familial or societal abuse.

In a number of states, governmental action has been successful in extricating children from abusive groups to save them from further injury. In some instances, courts have supported the government's interest in the health and welfare of minors over the opposition of a parent who submits to the group leader's unquestioned authority with unconditional obedience. Other cases, unfortunately, have not succeeded in rescuing these children. Significant controversy still remains concerning the denial of medical treatment to children (see Chapter 17, Children and Cults, in the book [Recovery From Cults](#))

Progress with respect to sexual abuse and victimization of women has been slow. More and more evidence of this type of abuse has surfaced, much of it related to abuses of power and destructive rituals.

Many Varieties of Abusive Groups

The years of public education undertaken by critics of totalistic groups have increased public awareness of the destructive consequences for those who surrender their own independent judgment to cultic groups. Education and publicity have also increased awareness of the risk in abusive psychological groups that are not full-fledged cults. Indeed, such abusive practices may occur in groups that seek a good purpose, such as a cure for drug abuse or weight reduction. Similarly, we have become more aware of abusive techniques in psychological well-being groups, "sport clubs," and certain masters or "Svengalis" in the arts. Nothing more graphically illustrates the irrelevance of the cults' professed purposes than the examination of the variety of subject matters covered by them. Power and profit are the sole unifying common elements.

Political Threats

A flickering of awareness of the political threat to our society posed by totalistic and cult-controlled groups is developing. Activities of the New Alliance Party, Lyndon LaRouche's political parties and front groups, and Transcendental Meditation's Natural Law Party have recently sparked meaningful debate. All these groups siphon support from federal sources. The Unification Church has come under scrutiny for its politically active front groups and its funding of ultraconservative political organizations here and abroad. Additionally, attention has been directed toward the practices of a number of groups that seek to create or cleanse society on religious or ethnic grounds, and seek to co-opt and corrupt with cash offers in exchange for power and control.

Religious Groups

During this period of time many conventional religions have become aware and concerned about groups that have become abusive. Concern about them and the harm they foist upon their members frequently has become a subject of discussion among mainline religious leaders (see Chapter 12, Guidelines For Clergy, in the book [Recovery From Cults](#)). Hopefully, this concern evidences a trend away from using religious motivation as an immunity toward a recognition of civic responsibility regardless of religious motivation.

Economic Power and the Legal System

Totalistic groups wield economic power and use it for social and legal leverage. There is no counting the number of people who have discovered that holding a valid legal right is worthless against a group that can make it economically impractical to enforce. As a lawyer, I am keenly aware of the deficiency in our

legal system when one side has a "deep pocket" of economic resources. An opponent with fewer resources may be prevented from obtaining justice because of a seemingly limitless horde of opposing lawyers imposing overwhelming costs and obtaining interminable delays.

I have been approached by many people who possess written acknowledgment that sums are due them from certain groups, yet they cannot enforce their rights because the legal fees would cost more than the amount involved. Sometimes groups are willing to spend far more than is at issue to defeat and delay recovery on a claim, just to deter others.

It is not that a new set of laws is needed. Totalistic groups can be brought within the legal system rather than allowed to remain outside or above it. Totalistic groups are not entitled to special treatment or protection. They should become responsible members of our community.

THE PRESENT AND THE FUTURE

The role of the legal system in addressing problems arising out of the presence of destructive cults in our society has gone through a period of slow evolution. Existing legal modalities have been adapted to deal with the problems created by destructive cults (Rosedale, 1989). In reaching these conclusions significant controversies remain concerning the following: relationships among family members, the balance between church and state, the preservation of individual liberty and freedom of thought, and the application of laws governing fraud and misrepresentation without regard to the motive of the person or group committing these acts.

In many instances the legal system comes up short of being just. It is hobbled by the economic cost of enforcing legal rights. It is limited by the effort required to cut through the use of myth and the perversion of language common to totalistic groups. An example of this appeared in an exchange of letters (Rosedale, 1992; Small, 1992) in *The American Lawyer* after its publication of an article (Home, 1992) about the Church of Scientology's legal representation. A lawyer who had represented the church pointed out that in his view the differences between the Church of Scientology and ordinary litigants was that the church made decisions "as a matter of principle" and was willing to litigate over principle more vigorously than other citizens. His statement is morally neutral until you determine what the principle is. If the "principle" is to crush dissent or financially punish critics by using the legal system as a weapon, then the morally neutral statement becomes a road map for oppression. When I confronted a lawyer about his tolerance of his client's criminal conduct in a Scientology-related case, he told me, "You do what you have to do to win." So much for "principle."

I understand all too well that the decisions of totalistic groups to fight their critics to the death may be a matter of principle. That principle is anathema in our pluralistic society and in an adversarial legal system which still requires commitment to the survival of the disenfranchised.

The legal system provides some aid to those in the process of recovery and disengagement from totalistic groups. It does not provide emotional satisfaction in redressing a wrong, nor does it adequately compensate for harm done. However, over a period of time it has enabled people who left totalistic groups to at least partly pull themselves out of the morass that they have entered into, to readjust their family relationships, to complete their severance, and to impose upon the totalistic groups a degree of accountability previously unknown. In this, the system has performed a useful function, provided its limitations are acknowledged and understood. As we move forward, I hope that the law will continue to address the wrongs that have occurred and that it will be an instrument of private redress and a vehicle for the reformation of behavior through accountability.

CHECKLIST FOR POST-CULT LEGAL ISSUES

Family Issues

Marriage

- ✓ Does the ex-member want to dissolve a marriage to someone still in the cult?
- ✓ Was the marriage legally binding or just ceremonial?
- ✓ If legal marriage, can it be annulled because it was induced by fraud or coercion?
- ✓ If not, is it possible to obtain a divorce?

Children

- ✓ Are there or does the ex-member anticipate child custody conflicts with a spouse in the group?
- ✓ What custody arrangement is in the best interest of a child who has one parent in a cult and one parent who has left the group?
- ✓ Would custody or visitation by the parent in the group be harmful to the child because of the group's practices? If so, testimony by expert witnesses is crucial for success in court.
- ✓ Do the grandparents wish to have contact with a grandchild, one or both of whose parents are in a restrictive group?

Financial Issues

Contracts

- ✓ Are there loans, obligations, or contracts that ought to be reviewed, either to avoid further obligations or to recover past payments? This should be done as soon as possible by a lawyer of the ex-member's choosing. The ex-member should be advised how to respond to pressure from the group to fulfill a contract.
- ✓ Did the former member enter into damaging contracts with the group that are legally unenforceable?

Financial Losses

- ✓ If the ex-member worked in a group business, has the group violated wage and hour laws? Was the ex-member appropriately paid for services rendered to the group? Because legal deadlines for pursuing these types of claims are short, the ex-member must act rapidly.
- ✓ If the former member signed a contract giving the group money or property, were state laws regulating contracts (such as the required "cooling-off" period) violated so that the contract is void?
- ✓ Does the ex-member believe he or she might have been misled, defrauded, or otherwise exploited in business dealings with the group or its leader?
- ✓ Is the group interfering with contractual arrangements between the ex-member and persons remaining in the group?

Physical and Psychological Abuse

- ✓ Is the group violating laws that protect children and adults from physical abuse?
- ✓ Is the government empowered to remove children from abusive groups?
- ✓ Does the ex-member have reason to believe that he or she suffered unusually severe emotional distress or residual physical injuries as a result of the group involvement?

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