



Academic Excellence Program

Orientation Materials

BRIEFING CASES

***[CONTAINS ASSIGNMENT FOR CLASS ON BRIEFING CASES
SCHEDULED DURING THE WEEK OF AUGUST 15, 2011]***

Table of Contents

	Page
I. Letter of Welcome.....	1
II. Recommended Summer Reading List.....	3
III. Briefing Cases.....	5
IV. Assignment for Week of August 15, 2011.....	6
V. Case 1: <u>Peterson v. Sorlien</u>	7
VI. Sample Brief.....	14
VII. Case 2: <u>Eilers v. Coy</u>	16



June 1, 2011

Dear Incoming First Year Student:

Congratulations on being selected for admission to New England Law | Boston. We hope that you will enjoy your studies here and that you will graduate from this law school prepared to enter an exciting and honorable field. We write to introduce you to the law school's Academic Excellence Program (AEP).

This year, the AEP continues its mission to provide extensive resources to help students succeed academically in law school. First, in both the Fall and Spring Semesters, the AEP will offer weekly, one-hour classes for all 1Ls. In early fall, these classes focus on fundamental law school study skills. Later that semester, the classes are structured to help you prepare for mid-year exams by working with actual law school multiple choice and essay problems (which are *very* different from undergraduate tests). In late November, the AEP will offer a "Mock Exam," in which you will work through an actual, ungraded Torts exam.

In the Spring Semester, the AEP will continue to offer weekly classes, concentrating directly upon the subjects 1Ls will be studying. For instance, as you study Criminal Law, we will work in AEP class with criminal law essay problems, using the cases you discuss in your Criminal Law course. You will then have the opportunity to write out the essay exam answers, send them to AEP faculty, and receive private, individualized feedback. Also, one-to-one academic counseling is available to students who seek to maximize their exam performance.

The AEP includes other resources, such as a graded, for-credit "Legal Analysis" class for 2Ls and a graded, for-credit "Advanced Legal Analysis" class for graduating seniors to help them prepare for the bar examination. But, in your first year of law school, the AEP concentrates on the fundamental skills necessary for law school success. To get involved, you need only sign up for the AEP course page on TWEN (you will get a TWEN password during Orientation), download the syllabus, and attend the AEP classes.

To help you get started in law school, the Orientation program includes a lecture on briefing cases. Case briefs are important study tools, and briefing is a skill that requires some work. Accordingly, this packet includes instructions on how to brief cases, two appellate cases we will discuss in the lecture, and an assignment sheet. Please be prepared with that assignment when you attend Orientation.

In the meantime, welcome to New England. If you have any questions about Orientation or law school in general, please do not hesitate to contact either of us.

Sincerely,

Louis N. Schulze, Jr.
Associate Professor of Law &
Director, Academic Excellence
Program

Elizabeth M. Bloom
Academic Excellence Professor &
Assistant Director, Academic
Excellence Program

Recommended Summer Reading List

Many students have asked if there are books they can read over the summer to help prepare them for law school. The books listed below provide a mix of information students might find useful. You DO NOT have to read all of these. In fact, it is unlikely that these specific materials will be discussed in Orientation. Instead, this list is meant to help you get a sense of the substance of law school, if you are so inclined to prepare yourself in this way.

These books are available at many local and national bookstores, as well as from on-line sources, such as www.amazon.com and www.barnesandnoble.com. They are also available, along with the books required in your courses, at Tufts Health Sciences and New England Law | Boston Bookstore, 116 Harrison Avenue, Boston, MA 02111.

- I. The following books help prepare students for the law school experience. They discuss the study skills necessary for the study of law and contain advice for new law students.

Andrew J. McClurg, 1L of a Ride: A Well-Traveled Professor's Roadmap to Success in the First Year of Law School (Thomson West 2009)

Herbert N. Ramy, Succeeding in Law School, 2nd Edition (Carolina Academic Press 2010) (available in paperback)

Ruth Ann McKinney, Reading Like a Lawyer: Time Saving Strategies for Reading Law Like an Expert (Carolina Academic Press) (available in paperback).

- II. The following books give a contextual introduction to the subjects studied in the first year of law school.

***Torts Stories*, by Robert L. Rabin and Stephen D. Sugarman (Foundation Press, 2003)**

***Contract Stories*, by Douglas G. Baird (Foundation Press, 2006)**

***Civil Procedure Stories*, by Kevin M. Clermont (Foundation Press, 2008)**

***Property Stories*, by Gerald Korngold and Andrew P. Morriss (Foundation Press, 2009)**

***Constitutional Law Stories*, 2d, by Michael C. Dorf (Foundation Press, 2009)**

- III. The following novels are about actual legal cases. They provide a good overview of the legal system and its operation. They also may be required or recommended in some first year courses.

Jonathan Harr, A Civil Action (Random House 1995) (hardcover, also available in paperback);

Richard Kluger, Simple Justice: the History of Brown v. Board of Education and black America's struggle for equality (originally published 1976) (available in many editions from several publishers);

Anthony Lewis, Gideon's Trumpet (Vintage Reissue Edition 1989) (available in many editions from several publishers);

Gerald Stern, The Buffalo Creek Disaster (originally published 1976) (available in many editions from several publishers).

Briefing Cases

A case brief is a written summary of a case. This skill requires you to read an appellate court decision carefully and then summarize it in your own words. As you prepare for class each day, you should brief the cases assigned for that particular class. Additionally, case briefs are useful for reviewing course materials and for preparing an outline of the course.

Before you brief a case, you should read the case until you thoroughly understand it. Also, make sure to explain the case in your own words. Do not quote the language of the court unless it is critical for stating the rule derived from the case. Remember, briefing a case is a way of ensuring that you understand it.

Generally, a brief should contain the following sections:¹

1. Title of the case, its date, the name of the court, and the place where the opinion may be found (such as the page in the casebook).
2. Identities of the parties.
3. Procedural history: How did this case reach this court? What litigation events are necessary to the decision this court is being asked to make?
4. Facts: What are the legally significant facts? What facts determine the outcome of the case at this level?
5. Issue(s): What is the issue on appeal? Be precise. There may be more than one issue on appeal.
6. Holding and the rule derived from the case: How did the court rule on the issue? This is often a yes or no answer. What rule of law comes from this case?
7. Reasoning: What is the rationale of the court for its holding?
8. Judgment or order of the court: What did the court do as a result of its holding?
9. Dissent/ Concurrence. If any of the judges wrote a dissent or concurrence, what information or analysis do you find relevant?
10. Comments: This is the place to critique the case or to state your opinion about what this case decided. What were the underlying policy considerations in this case? What do you think about this case? Was it a good or bad decision?

As you become more comfortable with briefing cases, you will develop your own style and process. Use the system that works best for you. Remember, it is not necessary to create the "perfect brief." Your goal is to create briefs that help you understand the material, participate in class discussions, and study for examinations.

¹ Some of your other first year professors may suggest alternative formats for briefing cases in their classes.

Assignment for Week of August 15, 2011

1. Read and brief the attached case of Peterson v. Sorlien. Then compare your brief with the sample brief provided in these materials.
2. Read and brief the attached case of Eilers v. Coy. We will discuss this brief at the class on case briefing during the week of August 15, 2011.

Case 1

299 N.W.2d 123
Supreme Court of Minnesota.
Susan Louise PETERSON, Appellant,
v.
Paul SORLIEN, Respondent,
Norman Jungclaus, et al., Respondents,
Michele Perkins, Respondent.
No. 48721.

Oct. 24, 1980.

SHERAN, Chief Justice.

This action by plaintiff Susan Jungclaus Peterson for false imprisonment and intentional infliction of emotional distress arises from an effort by her parents, in conjunction with other individuals named as defendants, to prompt her disaffiliation from an organization known as The Way Ministry.

At trial, the Hennepin County District Court directed a verdict in favor of defendant Paul Sorlien, plaintiff's former minister, finding the evidence proffered against *126 him insufficient as a matter of law. The jury returned a verdict exonerating Mr. and Mrs. Jungclaus and the other remaining defendants of the charge of false imprisonment; however, the jury found defendants Veronica Morgel and Kathy Mills liable for intentional infliction of emotional distress, assessing against each of them \$1 compensatory damages and \$4,000 and \$6,000 respectively as punitive damages.

Plaintiff asserts that the trial court erred by 1) failing to grant a judgment notwithstanding the verdict on the claim of false imprisonment; 2) permitting the admission of evidence concerning her involvement in The Way and its activities; 3) instructing the jury that in assessing plaintiff's credibility it could consider whether others than plaintiff were participating in the expense of the litigation; 4) directing a verdict in favor of Paul Sorlien; and 5) denying her motion to amend the complaint to substitute the proper names of defendants previously identified as John Doe, James Roe, Jane Doe and Mary Roe and to add a new cause of action.

We find that if the trial court erred in its jury instruction which outlined the factors that could be considered in assessing plaintiff's credibility and by failing to permit the substitution of proper names for defendants otherwise identified in the complaint, these errors were not of a fundamental magnitude. In all other respects, we affirm the determination of the district court.

Viewing the evidence in the light most favorable to the prevailing defendants, this case marks the emergence of a new cultural phenomenon: youth-oriented religious or pseudo-religious groups which utilize the techniques of what has been termed "coercive persuasion" or "mind control" to cultivate an uncritical and devoted following. Commentators have used the term "coercive persuasion," originally coined to identify the experience of American prisoners of war during the Korean conflict to describe the cult-induction process. The word "cult" is not used pejoratively but in its dictionary sense to describe an unorthodox system of belief characterized by "(g)reat or excessive devotion or dedication to some person, idea, or thing." Webster's New International Dictionary of the English Language Unabridged 552 (1976).

Coercive persuasion is fostered through the creation of a controlled environment that heightens the susceptibility of a subject to suggestion and manipulation through sensory deprivation, physiological depletion, cognitive dissonance, peer pressure, and a clear assertion of authority and dominion. The aftermath of indoctrination is a severe impairment of autonomy and the ability to think independently, which induces a subject's unyielding compliance and the rupture of past connections, affiliations and associations. See generally Delgado, Religious Totalism: Gentle and Ungentle Persuasion under the First Amendment, 51 S.Cal.L.Rev. 1 (1977). One psychologist characterized the process of cult indoctrination as "psychological kidnapping." Id. at 23.

At the time of the events in question, Susan Jungclaus Peterson was 21 years old. For most of her life, she lived with her family on a farm near Bird Island, Minnesota. In 1973, she graduated with honors from high school, ranking second in her class. She matriculated that fall at Moorhead State College. A dean's list student during her first year, her academic performance declined and her interests narrowed after she joined the local chapter of a group organized internationally and identified locally as The Way of Minnesota, Inc.

The operation of The Way is predicated on the fund-raising activities of its members. The Way's fund-raising strategy centers upon the sale of pre-recorded learning programs. Members are instructed to elicit the interest of a group of ten or twelve people and then play for them, at a charge of \$85 per participant, a taped introductory course produced by The Way International. Advanced tape courses are then offered to the participants at additional cost, and training sessions are conducted to more fully acquaint recruits with the orientation of the group and the obligations of membership. Recruits must contribute a minimum of 10 percent of their earnings to the organization;*127 to meet the tithe, student members are expected to obtain part-time employment. Members are also required to purchase books and other materials published by the ministry, and are encouraged to make larger financial contributions and to engage in more sustained efforts at solicitation.

By the end of her freshman year, Susan was devoting many hours to The Way, listening to instructional tapes, soliciting new members and assisting in training sessions. As her sophomore year began, Susan committed herself significantly, selling the car her father had given her and working part-time as a waitress to finance her contributions to The Way. Susan spent the following summer in South Dakota, living in conditions described as appalling and overcrowded, while recruiting, raising money and conducting training sessions for The Way.

As her junior year in college drew to a close, the Jungclauses grew increasingly alarmed by the personality changes they witnessed in their daughter; overly tired, unusually pale, distraught and irritable, she exhibited an increasing alienation from family, diminished interest in education and decline in academic performance. The Jungclauses, versed in the literature of youth cults and based on conversations with former members of The Way, concluded that through a calculated process of manipulation and exploitation Susan had been reduced to a condition of psychological bondage.

On May 24, 1976, defendant Norman Jungclaus, father of plaintiff, arrived at Moorhead to pick up Susan following the end of the third college quarter. Instead of returning to their family home, defendant drove with Susan to Minneapolis to the home of Veronica Morgel. Entering the home of Mrs. Morgel, Susan was greeted by Kathy Mills and several young people who wished to discuss Susan's involvement in the ministry. Each of those present had been in some way touched by the cult phenomenon. Kathy Mills, the leader of the group, had treated a number of former cult members, including Veronica Morgel's son. It was Kathy Mills a self-styled

professional deprogrammer, to whom the Jungclauses turned, and intermittently for the next sixteen days, it was in the home of Veronica Morgel that Susan stayed.

The avowed purpose of deprogramming is to break the hold of the cult over the individual through reason and confrontation. Initially, Susan was unwilling to discuss her involvement; she lay curled in a fetal position, in the downstairs bedroom where she first stayed, plugging her ears and crying while her father pleaded with her to listen to what was being said. This behavior persisted for two days during which she intermittently engaged in conversation, at one point screaming hysterically and flailing at her father. But by Wednesday Susan's demeanor had changed completely; she was friendly and vivacious and that night slept in an upstairs bedroom. Susan spent all day Thursday reading and conversing with her father and on Saturday night went roller-skating. On Sunday she played softball at a nearby park, afterwards enjoying a picnic lunch. The next week Susan spent in Columbus, Ohio, flying there with a former cult member who had shared with her the experiences of the previous week. While in Columbus, she spoke every day by telephone to her fiance who, playing tapes and songs from the ministry's headquarters in Minneapolis, begged that she return to the fold. Susan expressed the desire to extricate her fiance from the dominion of the cult.

Susan returned to Minneapolis on June 9. Unable to arrange a controlled meeting so that Susan could see her fiance outside the presence of other members of the ministry, her parents asked that she sign an agreement releasing them from liability for their past weeks' actions. Refusing to do so, Susan stepped outside the Morgel residence with the puppy she had purchased in Ohio, motioned to a passing police car and shortly thereafter was reunited with her fiance in the Minneapolis headquarters of The Way. Following her return to the ministry, she was directed to counsel and initiated the present action.

1. Plaintiff seeks a judgment notwithstanding the verdict on the issue of false imprisonment, alleging that defendants unlawfully interfered with her personal liberty by words or acts which induced a reasonable apprehension that force would be used against her if she did not otherwise comply. [Durgin v. Cohen, 168 Minn. 77, 209 N.W. 532 \(1926\)](#). The jury, instructed that an informed and reasoned consent is a defense to an allegation of false imprisonment and that a nonconsensual detention could be deemed consensual if one's behavior so indicated, exonerated defendants with respect to the false imprisonment claim.

The period in question began on Monday, May 24, 1976, and ceased on Wednesday, June 9, 1976, a period of 16 days. The record clearly demonstrates that Susan willingly remained in the company of defendants for at least 13 of those days. During that time she took many excursions into the public sphere, playing softball and picnicking in a city park, roller-skating at a public rink, flying aboard public aircraft and shopping and swimming while relaxing in Ohio. Had Susan desired, manifold opportunities existed for her to alert the authorities of her allegedly unlawful detention; in Minneapolis, two police officers observed at close range the softball game in which she engaged; en route to Ohio, she passed through the security areas of the Twin Cities and Columbus airports in the presence of security guards and uniformed police; in Columbus she transacted business at a bank, went for walks in solitude and was interviewed by an F.B.I. agent who sought assurances of her safety. At no time during the 13-day period did she complain of her treatment or suggest that defendants were holding her against her will. If one is aware of a reasonable means of escape that does not present a danger of bodily or material harm, a restriction is not total and complete and does not constitute unlawful imprisonment. Damages may not be assessed for any period of detention to which one freely consents. See [Davis & Allcott Co. v. Boozer, 215 Ala. 116, 110 So. 28 \(1926\)](#); [Restatement \(Second\) of Torts s 36, Comment a \(1965\)](#); 4 Minnesota Practice JIG II, 504 G-S (2d ed.1974).

In his summation to the jury, the trial judge instructed that to deem consent a defense to the charge of false imprisonment for the entire period or for any part therein, a preponderance of the evidence must demonstrate that such plaintiff voluntarily consented. The central issue for the jury, then, was whether Susan voluntarily participated in the activities of the first three days. The jury concluded that her behavior constituted a waiver.

We believe the determination to have been consistent with the evidence. See [Faniel v. Chesapeake & Potomac Telephone Co.](#), 404 A.2d 147 (D.C.1979); [Schneckloth v. Bustamonte](#), 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973); F. Harper & F. James, *The Law of Torts* s 3.10, at 235 (1956). Were the relationship other than that of parent and child, the consent would have less significance.

To determine whether the findings of the jury can be supported upon review, the behavior Susan manifested during the initial three days at issue must be considered in light of her actions in the remainder of the period. Because, it is argued, the cult conditioning process induces dramatic and non-consensual change giving rise to a new temporary identity on the part of the individuals whose consent is under examination, Susan's volitional capacity prior to treatment may well have been impaired. Following her readjustment, the evidence suggests that Susan was a different person, "like her old self." As such, the question of Susan's consent becomes a function of time. We therefore deem Susan's subsequent affirmation of defendants' actions dispositive.

In [Weiss v. Patrick](#), 453 F.Supp. 717 (D.R.I.), aff'd, 588 F.2d 818 (1st Cir. 1978), cert. denied, 442 U.S. 929, 99 S.Ct. 2858, 61 L.Ed.2d 296 (1979), the federal district court in Rhode Island confronted a situation similar to that which faces us. Plaintiff, a devotee of the Unification Church, brought an action for false imprisonment against individuals hired by her parents to prompt her disassociation from the church. Because*129 plaintiff's mother was dying of [cancer](#), the church authorities permitted her to join her family for the Thanksgiving holiday. Met at the airport by her mother, she testified that she was restrained against her will in the home of one of the defendants and subjected to vituperative attacks against the church until she seized an opportunity to flee. Despite the evidently traumatic experience sustained by plaintiff, the district court found that she failed to demonstrate a meaningful deprivation of personal liberty, reasoning that "any limitation upon personal mobility was not her primary concern."Id. at 722. In so reasoning, the court underscored a parental right to advocate freely a point of view to one's child, "be she minor or adult." To assure freedom, the court observed, "the right of every person 'to be left alone' must be placed in the scales with the right of others to communicate."Id. (quoting [Rowan v. United States Post Office Department](#), 397 U.S. 728, 736, 90 S.Ct. 1484, 1490, 25 L.Ed.2d 736 (1970)).

In light of our examination of the record and rules of construction providing that upon review the evidence must be viewed in a manner most favorable to the prevailing party, [Kuehl v. National Tea Co.](#), 310 Minn. 48, 245 N.W.2d 235 (1976), we find that a reasonable basis existed for the verdict exonerating defendants of the charge of false imprisonment. Although carried out under colorably religious auspices, the method of cult indoctrination, viewed in a light most favorable to the prevailing party, is predicated on a strategy of coercive persuasion that undermines the capacity for informed consent. While we acknowledge that other social institutions may utilize a degree of coercion in promoting their objectives, none do so to the same extent or intend the same consequences. Society, therefore, has a compelling interest favoring intervention. The facts in this case support the conclusion that plaintiff only regained her volitional capacity to consent after engaging in the first three days of the deprogramming process.

As such, we hold that when parents, or their agents, acting under the conviction that the judgmental capacity of their adult child is impaired, seek to extricate that child from what they reasonably believe to be a religious or psuedo-religious cult, and the child at some juncture assents to the actions in question, limitations upon the child's mobility do not constitute meaningful deprivations of personal liberty sufficient to support a judgment for false imprisonment.[\[FN1\]](#) But owing to the threat that deprogramming poses to public order, we do not endorse self-help as a preferred alternative. In fashioning a remedy, the First Amendment requires resort to the least restrictive alternative so as to not impinge upon religious belief. [Cantwell v. Connecticut, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed.2d 1213 \(1940\).](#)[\[FN2\]](#)

[FN1.](#) Plaintiff in her motion for a judgment notwithstanding the verdict stated that she wished to recover only nominal damages against her parents. This court has held that a judgment for defendant will not be reversed on appeal simply to allow a plaintiff to recover nominal damages. [Erickson v. Midland Nat'l Bank & Trust Co., 205 Minn. 224, 285 N.W. 611 \(1939\).](#)

[FN2.](#) While we decline at this time to suggest a particular alternative, we observe that some courts have permitted the creation of temporary guardianships to allow the removal of cult members to therapeutic settings. If the individuals desire, at the end of the conservatorship they may return to the cult. Actions have also been initiated against cult leaders on the basis of criminal liability. See generally Delgado, *supra*, at 73-97.

* * * * *

WAHL, Justice (dissenting in part, concurring in part).

I must respectfully dissent. In every generation, parents have viewed their children's religious and political beliefs with alarm and dismay if those beliefs were different from their own. Under the First Amendment, however, adults in our society enjoy freedoms of association and belief. In my view, it is unwise to tamper with those freedoms and with longstanding principles of tort law out of sympathy for parents seeking to help their “misguided” offspring, however well-intentioned and loving their acts may be. Whether or not, as the majority opinion asserts, The Way of Minnesota, Inc. is a “youth-oriented,” “pseudo-religious group” which pursues its “fundraising strategy” in such a way as to inflict physical and psychological harm on its members, emphasis on this characterization beclouds the purely legal issues which are presented by this appeal.

The first of those legal issues is whether, as a matter of law, any of the defendants in this case are guilty of false imprisonment of the plaintiff. The elements of the tort of false imprisonment are (1) words or acts by defendant intended to confine plaintiff, (2) actual confinement, and (3) awareness by plaintiff that she is being confined. [Blaz v. Molin Concrete Products Co., 309 Minn. 382, 244 N.W.2d 277 \(1976\).](#) Any imprisonment “which is not legally justifiable” is false imprisonment, [Kleidon v. Glascock, 215 Minn. 417, 10 N.W.2d 394 \(1943\)](#); therefore, the fact that the tortfeasor acted in good faith is no defense to a charge of false imprisonment. Accord, [Strong v. City of Milwaukee, 38 Wis.2d 564, 157 N.W.2d 619 \(1968\).](#) Thus, although the majority opinion correctly concludes that evidence concerning the activities of The Way and the impact of those activities upon plaintiff may have been relevant to the question of whether defendants acted so willfully and maliciously as to justify an award of punitive damages, such evidence has little bearing on the issue of defendants' liability for false imprisonment.

The unrebutted evidence shows that defendant Norman Jungclaus, the father of the 21-year-old plaintiff in this case, took his adult daughter, kicking and screaming, to a small bedroom in the basement of the Morgel home on Monday, May 23. Norman Jungclaus admitted that she did not go with him willingly. Plaintiff curled up on the bed, plugged her ears, and cried. Defendant Perkins testified that plaintiff screamed and cried and pleaded with several people to let her go, but her pleas were ignored. This situation continued until 3 a. m. Tuesday. At one point that morning, plaintiff flew at her father, and he held her arms around her from the back, in his words, “for maybe a half an hour, until she calmed down again.” Plaintiff testified that defendant Mills told her papers had been drafted to commit her to Anoka State Hospital if she continued to refuse to cooperate with the “deprogramming.”

In its memorandum accompanying the order denying plaintiff's motion for judgment notwithstanding the verdict, the trial court stated:

It should be noted that there must be considerable room for doubt concerning that portion of the verdict finding that Norman Jungclaus did not participate in a false imprisonment. The evidence is unrebutted that he picked up his 21-year-old daughter Susan and took her into the basement without her permission or consent, and against her will. She remained there several days. However, Plaintiff stated that she was not seeking *134 compensatory damages against her parents, and only \$1.00 in punitive damages.

In that light, judgment notwithstanding verdict as to false imprisonment would be of no significance in the matter of compensatory damages. And whether or not Mr. Jungclaus's act was done maliciously or willfully so as to justify \$1.00 punitive damages is clearly a matter for determination by the jury; and not the Court. Hence, judgment notwithstanding verdict against Norman Jungclaus as to false imprisonment must be denied. On practical grounds, a new trial will not be ordered for a potential \$1.00 recovery in any event.

Thus, the trial court refused to grant judgment against Norman Jungclaus because any damages awarded would be insignificant. However, plaintiff's complaint sought not only money damages but an injunction against further interference with her freedoms of religion, association, and expression. The value to plaintiff of a judgment in her favor, while not monetary, is nevertheless significant.

The majority opinion finds, in plaintiff's behavior during the remainder of the 16-day period of “deprogramming,” a reasonable basis for acquitting defendant Jungclaus of the false imprisonment charge for the initial three days, during which time he admittedly held plaintiff against her will. Under this theory, plaintiff's “acquiescence” in the later stages of deprogramming operates as consent which “relates back” to the events of the earlier three days, and constitutes a “waiver” of her claims for those days. Cases cited by the majority do not lend support to this proposition. Bustamonte addressed the meaning of “voluntary consent” to the search of an automobile by police in the context of a challenge based on Fourth Amendment grounds. In *Faniel* the court found that an employee, who was given a ride to her home by company personnel who intended to recover unauthorized electrical equipment, had not proved an absence of lawful consent sufficient to sustain a finding of false imprisonment.^[FN1]

^{FN1}. Indeed, [People v. White, 53 Mich.App. 51, 218 N.W.2d 403 \(1974\)](#), affirming the defendant's conviction for attempted kidnapping, held that later consent does not relate back to previous acts by defendant. [Id. at 55-56, 218 N.W.2d at 405.](#)

Moreover, Weiss does not lend support to the majority's finding. While it is true that in Weiss the plaintiff testified that she was forcibly detained against her will, the court found her testimony not credible. Id. at 721. The court there found only that parents

“have the right which all citizens have to peaceably dissuade Plaintiff of her particular religious views, provided they use no form of unlawful compulsion to effect their purpose. What occurred here was simply an effort, in private, to persuade a willing listener to disavow the tenets of the Unification Church.” * * *

It is clear that Plaintiff has the right to be free of any coercive attempt to speak with her * * *.

Id. at 722.

Certainly, parents who disapprove of or disagree with the religious beliefs of their adult offspring are free to exercise their own First Amendment rights in an attempt, by speech and persuasion without physical restraints, to change their adult children's minds. But parents who engage in tortious conduct in their “deprogramming” attempts do so at the risk that the deprogramming will be unsuccessful and the adult children will pursue tort remedies against their parents. To allow parents' “conviction that the judgmental capacity of their (adult) child is impaired (by her religious indoctrination)” to excuse their tortious conduct sets a dangerous precedent.

Here, the evidence clearly supported a verdict against Norman Junglaus on the false imprisonment claim, and no reasonable basis existed for denying judgment notwithstanding the verdict. The trial court's holding in this regard should be reversed.

* * * * *

Sample Brief

1. **Title and Citation:** Peterson v. Sorlien, 299 N.W.2d 123 (Minn. 1980).
2. **Identities of the Parties:** Plaintiff (P) Peterson was a 21-year-old college student. Defendants (D) were Peterson's parents, former minister, and other individuals who tried to cause P to leave a religious organization known as The Way Ministry.
3. **Procedural History:** P sued for false imprisonment and intentional infliction of emotional distress (IIED). Jury verdict and judgment for Ds on the false imprisonment issue and for P on the IIED issue. P seeks a judgment notwithstanding the verdict (JNOV) on the issue of false imprisonment.
4. **Facts:** On May 24, 1976, P's father arrived to pick P up from college and brought P to professional deprogrammer's house in Minneapolis to extricate her from a "pseudo-religious" group called The Way. P remained with the deprogrammers for sixteen days. Initially P was unwilling to discuss her involvement in The Way. For the first two days she lay curled in a fetal position plugging her ears and crying, intermittently engaging in conversation and at one point screaming hysterically and flailing at her father. On the third day her demeanor changed, and she became friendly and lively. During the remaining thirteen days she took many public excursions, playing softball, roller skating, and picnicking at a public park. She then flew to Columbus, Ohio where she shopped, swam, and relaxed before later returning to Minneapolis. Upon her return, she refused to sign an agreement releasing her parents from liability for their past week's actions. She then flagged down a police car and returned to The Way, apparently at the urging of her fiancé who was also a member of the group.
5. **Issue:** Did the trial court err in failing to grant a JNOV when the jury found that P's behavior after the first three days of her detention operated as "voluntary consent," thus defeating P's claim for FI?
6. **Holding and Rule:** No. When parents (or agents) believe that the judgmental capacity of their adult child is impaired and seek to remove that child from what they reasonably believe to be a cult, and the child at some point assents to the actions, limitations upon the child's movement do not constitute "meaningful deprivations of personal liberty" sufficient for false imprisonment.
7. **Court's Reasoning:** P's behavior during the first three days must be considered in light of her actions in the remainder of the period; she only regained her volitional capacity to consent after engaging in the first three days of the deprogramming. Had P desired, numerous opportunities existed for her to alert authorities of her detention. There were police officers at her softball game in Minneapolis and security guards at the airport when she flew to Ohio. In addition, she went to a bank, went on walks, and was interviewed by an FBI agent who sought assurances of her safety. At no time during the thirteen-day period did P complain of her treatment or suggest that she was being held against her will. "If one is aware of a reasonable means of escape that does not present a danger of bodily or material harm, a restriction is not total and complete and does not constitute unlawful imprisonment."
8. **Judgment:** Judgment of the trial court affirmed.

- 9. Dissent in part, concurrence in part (Wahl):** The evidence clearly supported a verdict against P's father on the false imprisonment claim, and no reasonable basis existed for denying JNOV. The elements of false imprisonment are (1) words or acts by defendant intended to confine plaintiff, (2) actual confinement, and (3) awareness by plaintiff that she is being confined. Any imprisonment which is not legally justifiable is false imprisonment. Thus, the fact that D acted in good faith is no defense to a charge of false imprisonment. There is no legal support for the majority's position that P's acquiescence in the later stages of deprogramming operated as consent for the first three days, thus constituting a waiver of her claims for those days. Parents who disagree with their adult offspring's religious beliefs may exercise their own First Amendment rights by speech and persuasion without physical restraints to change their adult children's minds. But parents may not engage in tortious conduct in deprogramming attempts without risking that they will fail and their adult children will pursue remedies in tort against them.
- 10. Comments:** Although it stated that society has a compelling interest favoring intervention, the court made clear that it was not endorsing the practice of deprogramming and that self-help was not the preferred alternative.

Case 2

582 F.SUPP. 1093

William **EILERS**, Plaintiff,

v.

Deborah Ann **COY**, et al., Defendants

Civ. No. 4-82-1329.

United States District Court

D. Minnesota

Fourth Division.

March 6, 1984.

MEMORANDUM AND ORDER

MacLAUGHLIN, District Judge.

The plaintiff in this case, William Eilers, has moved the Court to enter a directed verdict against the defendants on his claims that the defendants falsely imprisoned him and violated his civil rights during a deprogramming attempt in 1982. Both sides have submitted briefs on the question and the Court has heard oral argument.

After careful consideration the Court has decided as follows:

1. Plaintiff's motion for a directed verdict on the issue of false imprisonment is granted and the Court holds, as a matter of law, that plaintiff William Eilers was falsely imprisoned without legal justification.

* * * * *

FACTS

The evidence in this case has established the following facts. The plaintiff William Eilers and his pregnant wife Sandy were abducted from outside a clinic in Winona, Minnesota in the early afternoon of Monday, August 16, 1982, by their parents and relatives and by the defendant deprogrammers who had been hired by the parents of the plaintiff and his wife. The plaintiff was 24 years old at the time and his wife Sandy was 22. The couple was living on a farm near Galesville, Wisconsin and had traveled to Minnesota for Sandy's pre-natal examination.

At the time of the abduction, Bill and Sandy Eilers were members of the religious group Disciples of the Lord Jesus Christ. There is ample evidence that this group is an authoritarian religious fellowship directed with an iron hand by Brother Rama Behera. There is also evidence that Bill Eilers' personality, and to some extent his appearance, changed substantially after he became a member of the group. These changes were clearly of great concern to members of the

plaintiff's family. However, other than as they may have affected the intent of the parents of Bill and Sandy Eilers in the actions they took in seizing Bill and Sandy, the beliefs and practices of the Disciples of the Lord Jesus Christ should not be, and are not, on trial in this case.

While leaving the Winona Clinic on August 16, 1982 the plaintiff, who was on crutches at the time due to an earlier fall, was grabbed from behind by two or more security men, forced into a waiting van, and driven to the Tau Center in Winona, Minnesota.² Forcibly resisting, he was carried by four men to a room on the top floor of the dormitory-style building. The windows of this room were boarded over with plywood, as were the windows in his bathroom and in the hallway of the floor. The telephone in the hallway had been dismantled.

The plaintiff was held at the Tau Center for five and one-half days and subjected to the defendants' attempts to deprogram him. Shortly after his arrival at the Tau Center, and after a violent struggle with his captors, the plaintiff was handcuffed to a bed. He remained handcuffed to the bed for at least the first two days of his confinement. During this initial period, he was allowed out of the room only to use the bathroom, and was heavily guarded during those times. On one occasion, the plaintiff dashed down the hall in an attempt to escape, but was forcibly restrained and taken back to the room. After several days of resistance, the plaintiff changed tactics and apparently pretended to consent to his confinement.

The defendants and the plaintiff's relatives had agreed in advance of the abduction that the plaintiff would be kept at the Tau Center for one week, regardless of whether the plaintiff consented to their actions. At no time during the week was the plaintiff free to leave the Tau Center, nor at any time were reasonable means of escape available to him. Three of the eight people hired by the parents were designated "security men." These individuals, described by witnesses as at least six feet tall and weighing over 200 pounds, guarded the exits on the floor at all times.

On the evening of Saturday, August 21, 1982, as the plaintiff was leaving the Tau Center to be transported to Iowa City, Iowa for further deprogramming, he took advantage of his first opportunity to escape and jumped from the car in which he was riding. Local residents, attracted by the plaintiff's calls for help, assisted the plaintiff in making his escape and the police were summoned.³

The evidence has also shown that within three weeks before the abduction occurred, the plaintiff's relatives had contacted authorities in Trempealeau County, Wisconsin in an attempt to have the plaintiff civilly committed. Family members have testified that they believed the plaintiff was suicidal because of a letter he had written to his grandmother before joining the Disciples of the Lord Jesus Christ in which he wrote that demons were attacking his mind and telling him to kill himself rather than go to the Lord. Defendants' Exhibit A at 13-14. Joyce Peterson, a psychiatric social worker, interviewed the plaintiff in person on July 26, 1982. After interviewing the plaintiff and consulting with the Trempealeau County Attorney, Peterson informed the plaintiff's relatives that no legal grounds existed in Wisconsin for confining the

² After dropping the plaintiff at the Tau Center, one of the family members drove the van to a location eight miles outside of Winona and left it there.

³ The plaintiff's wife Sandy stayed with the deprogrammers and has not returned to the group Disciples of the Lord Jesus Christ of which the plaintiff is still a member. She has since divorced the plaintiff and has sole custody of the couple's infant son.

plaintiff because he showed no signs of being a danger to himself or to others. The defendants in this case were aware of that information at the time they abducted and held the plaintiff.

DISCUSSION

In considering the plaintiff's motion for a directed verdict, the Court is required to view the evidence in the light most favorable to the defendants and to resolve all conflicts in the evidence in the defendants' favor. Dacev. ACF Industries, Inc., 722 F.2d 374, 375 (8th Cir.1983). A directed verdict motion should be granted only when reasonable jurors could not differ as to the conclusions to be drawn from the evidence. Id.

The plaintiff has alleged two main causes of action against the defendants: false imprisonment and conspiracy to deprive the plaintiff of his constitutional rights in violation of 42 U.S.C. s 1985(3). These claims will be discussed separately.

A. False Imprisonment

The plaintiff's first claim is that the defendants' conduct in confining him at the Tau Center constituted false imprisonment for which the defendants had no legal justification. False imprisonment consists of three elements:

- 1) words or acts intended to confine a person;
- 2) actual confinement; and
- 3) awareness by the person that he or she is confined.

Blaz v. Molin Concrete Products Co., 309 Minn. 382, 385, 244 N.W.2d 277, 279 (1976); Restatement (Second) of Torts s 35 (1965).

The evidence in this case has overwhelmingly established each of the elements of false imprisonment. By their own admission, the defendants intended to confine the plaintiff for at least one week. While the defendants maintain that their purpose was to help the plaintiff, it is not a defense to false imprisonment that the defendants may have acted with good motives. Malice toward the person confined is not an element of false imprisonment. Strong v. City of Milwaukee, 38 Wis.2d 564, 567, 157 N.W.2d 619, 621 (1968); Witte v. Haben, 131 Minn. 71, 74, 154 N.W. 662, 663 (1915); W. Prosser, Law of Torts 48 (4th ed. 1971).

There is also no question that the plaintiff was actually confined. Relying on the Minnesota Supreme Court's decision in Peterson v. Sorlien, 299 N.W.2d 123, 129 (Minn.1980), cert. denied, 450 U.S. 1031, 101 S.Ct. 1742, 68 L.Ed.2d 227 (1981), the defendants contend that there was no actual confinement because there is evidence that the plaintiff consented to the defendants' actions, at least by the fourth day of his confinement.⁴ The plaintiff, in contrast, has

⁴ In Peterson, the parents of 21-year-old Susan Jungclaus Peterson engaged deprogrammers to extricate their daughter from The Way Ministry. Peterson resisted the deprogramming for two or three days, but from then on stayed with her deprogrammers willingly for the next 13 days. At the end of the 16-day period, Peterson returned to The Way Ministry, apparently at the urging of her fiancé who was also a member of the group.

Peterson then brought an action for false imprisonment against her parents, the deprogrammers, and others. After a finding for the defendants, the plaintiff appealed. Affirming the judgment for the defendants, the Minnesota Supreme Court ruled:

[W]e hold that when parents, or their agents, acting under the conviction that the judgmental capacity of their adult child is impaired, seek to extricate that child from what

testified that he merely pretended to consent in order to gain an opportunity to escape. The plaintiff's apparent consent is not a defense to false imprisonment. Many people would feign consent under similar circumstances, whether out of fear of their captors or as a means of making an escape. But in this case, unlike the Peterson case relied on by the defendants,⁵ it is undisputed that the plaintiff was at no time free to leave the Tau Center during the week in question, nor were any reasonable means of escape available to him. Under these circumstances, the Court finds, in agreement with many other authorities, that the plaintiff's apparent consent is not a defense to false imprisonment. 32 Am.Jur.2d False Imprisonment s 15 (1982); Restatement (Second) of Torts s 36 (1965). The Court therefore holds, as a matter of law, that the plaintiff has proven the necessary elements of false imprisonment.

The next question is, given that the defendants falsely imprisoned the plaintiff, were their actions legally justified so as to preclude liability for false imprisonment? As justification for their actions, the defendants rely on the defense of necessity. They claim that the confinement and attempted deprogramming of the plaintiff was necessary to prevent him from committing suicide or from otherwise harming himself or others. See State v. Hembd, 305 Minn. 120, 130, 232 N.W.2d 872, 878 (1975).

they reasonably believe to be a religious or psuedo-religious cult, and the child at some juncture assents to the actions in question, limitations upon the child's mobility do not constitute meaningful deprivations of personal liberty sufficient to support a judgment for false imprisonment. 299 N.W.2d at 129 (footnote omitted). The court made clear, however, that it was not endorsing the practice of deprogramming:

[O]wing to the threat that deprogramming poses to public order, we do not endorse self-help as a preferred alternative. In fashioning a remedy, the First Amendment requires resort to the least restrictive alternative so as to not impinge upon religious belief. Cantwell v. Connecticut, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed.2d 1213 (1940). 299 N.W.2d at 129 (footnote omitted).

⁵As the Minnesota Supreme Court noted in its opinion, the plaintiff in Peterson had ample opportunities to escape, yet willingly chose to stay with her deprogrammers:

The record clearly demonstrates that Susan willingly remained in the company of defendants for at least 13 of [the 16] days. During that time she took many excursions into the public sphere, playing softball and picknicking in a city park, roller-skating at a public rink, flying aboard public aircraft and shopping and swimming while relaxing in Ohio. Had Susan desired, manifold opportunities existed for her to alert the authorities of her allegedly unlawful detention; in Minneapolis, two police officers observed at close range the softball game in which she engaged; en route to Ohio, she passed through the security areas of the Twin Cities and Columbus airports in the presence of security guards and uniformed police; in Columbus she transacted business at a bank, went for walks in solitude and was interviewed by an F.B.I. agent who sought assurances of her safety. At no time during the 13-day period did she complain of her treatment or suggest that defendants were holding her against her will. Peterson v. Sorlien, 299 N.W.2d 123, 128 (Minn.1980), cert. denied, 450 U.S. 1031, 101 S.Ct. 1742, 68 L.Ed.2d 227 (1981). In contrast, the plaintiff in this case was confined to the Tau Center, under guard, at all times and had no similar opportunities to escape.

The defense of necessity has three elements.⁶ The first element is that the defendants must have acted under the reasonable belief that there was a danger of imminent physical injury to the plaintiff or to others.⁷ State v. Johnson, 289 Minn. 196, 199-200, 183 N.W.2d 541, 543 (1971); People v. Patrick, 126 Cal.App.3d 952, 961, 179 Cal.Rptr. 276, 282 (1981); People v. Patrick, 541 P.2d 320, 322 (Colo.App.1975); Restatement (Second) of Torts s 892(D) comment a (1979).

It is not clear that such a danger existed on August 16, 1982. The alleged threats of suicide made by the plaintiff were contained in a letter dated June 14, 1982, and that letter recounted impressions the plaintiff had had some time earlier. Moreover, Joyce Peterson, the psychiatric social worker who personally interviewed the plaintiff on July 26, 1982, concluded in her report, and reported to the plaintiff's relatives, that the plaintiff was not dangerous to himself or to others. Nevertheless, viewing the evidence in the light most favorable to the defendants, the Court will assume for purposes of this motion that the plaintiff was in imminent danger of causing physical injury to himself or to others.

The second and third elements of the necessity defense are intertwined. The second element is that the right to confine a person in order to prevent harm to that person lasts only as long as is necessary to get the person to the proper lawful authorities. See State v. Hembd, 305 Minn. 120, 130, 232 N.W.2d 872, 878 (1975) (dictum); Annot., 92 A.L.R.2d 580 (1963). The third element is that the actor must use the least restrictive means of preventing the apprehended harm. People v. Patrick, 126 Cal.App.3d 952, 960, 179 Cal.Rptr. 276, 282 (1981); W. LaFave and A. Scott, Criminal Law 387 (1972); cf. Peterson v. Sorlien, 299 N.W.2d 123, 129 (Minn.1980) (where religious beliefs are implicated, first amendment requires resort to least restrictive alternative).

In this case, the defendants' conduct wholly fails to satisfy either of these elements of the necessity defense. Once having gained control of the plaintiff, the defendants had several legal options available to them. They could have:

- 1) turned the plaintiff over to the police;
- 2) sought to initiate civil commitment proceedings against the plaintiff

pursuant to Minn.Stat. s 253B.07 (1982);

- 3) sought professional psychiatric or psychological help for the plaintiff with the possibility of emergency hospitalization if necessary pursuant to Minn.Stat. s 253B.05 (1982).

⁶The elements of the necessity defense in the criminal context, see Model Penal Code s 3.02, are analyzed in Arnolds and Garland, The Defense of Necessity in Criminal Law: The Right to Choose the Lesser Evil, 65 J.Crim.L. & Crim. 289 (1974).

⁷For the purposes of this motion, the Court will assume that the defendants, as agents of the plaintiff's parents, are entitled to rely on the beliefs of the parents in this regard. See United States v. Patrick, 532 F.2d 142, 145 (9th Cir.1976) (trial court held beliefs of parents transfer to agents; issue not raised on appeal). But see People v. Patrick, 126 Cal.App.3d 952, 962, 179 Cal.Rptr. 276, 282-83 (1981) (agents must personally believe in justifiability of their actions and must "take all appropriate steps necessary to investigate the reasonableness of the beliefs held by their principals in order to convince themselves of the necessity of criminal action").

At no time did the defendants attempt, or even consider attempting, any of these lawful alternatives during the five and one-half days they held the plaintiff, the first five of which were business days. Instead, they took the plaintiff to a secluded location with boarded-up windows, held him incommunicado, and proceeded to inflict their own crude methods of "therapy" upon him--methods which even the defendants' own expert witness has condemned. Well aware that the police were searching for the plaintiff, the defendants deliberately concealed the plaintiff's location from the police.

It must be emphasized that the Minnesota Legislature has prescribed specific procedures that must be followed before a person can be deprived of his or her liberty on the basis of mental illness. Minn.Stat. s 253B.07 et seq. (1982); see generally Janus and Wolfson, *The Minnesota Commitment Act of 1982: Summary and Analysis*, 6 Hamline L.Rev. 41 (1983). Those procedures include examination of the proposed patient by qualified professionals, Minn.Stat. s 253B.07, subd. 1 (1982), and a judicial determination that the proposed patient is dangerous and in need of treatment, *id.*, subd. 6. Manifold procedural protections, including the right to counsel, Minn.Stat. s 253B.03, subd. 9 (1982), are afforded the proposed patient at all stages of this civil commitment proceeding. Obviously, none of these protections were afforded the plaintiff in this case.

Minnesota law also provides that, in situations where there is not time to obtain a court order, a person may be admitted or held for emergency care and treatment in a hospital, without a court order, upon a written statement by a licensed physician or psychologist that the person is mentally ill and is in imminent danger of causing injury to himself or to others. Minn.Stat. s 253B.05, subd. 1 (1982). The defendants in this case--unlicensed and untrained individuals--made no effort to obtain any such statement from a licensed physician or psychologist.

The defendants' failure to even attempt to use the lawful alternatives available to them is fatal to their assertion of the necessity defense. Where the Legislature has prescribed specific procedures that must be followed before a person can be deprived of his or her liberty on the ground of mental illness, not even parents or their agents acting under the best of motives are entitled to disregard those procedures entirely.⁸

⁸The author of one of the most thorough legal analyses of the subject of deprogramming has reached the following conclusions:

(1) Involuntary deprogramming should not proceed unless there has been a prior judicial determination that the individual is incompetent or under mind control.

(2) Therapy should not proceed until milder measures, including removal to a neutral environment for a period of time, have failed.

....
(8) Whenever possible, deprogramming should be carried out by licensed psychologists or psychiatrists, or by lay individuals working under the supervision of a psychologist or psychiatrist.

(9) Involuntary deprogramming should be carried out only pursuant to a court order and with periodic reporting to the court.

(10) The court hearing that results in a deprogramming order should be accompanied by due process protection, including the right of the individual to appear, to be represented by counsel, and to present witnesses on his own behalf.

Delgado, *Religious Totalism: Gentle and Ungentle Persuasion Under the First Amendment*, 51 S.Cal.L.Rev. 1 (1977) (footnotes omitted).

The Court has assumed for the purposes of this motion that the defendants were justified in initially restraining the plaintiff based upon their belief that he was in imminent danger of harming himself or others. But even under those circumstances, the defense of necessity eventually dissipates as a matter of law. No specific time limit can be set, because the period during which an actor is acting out of necessity will vary depending on the circumstances of each case. In this particular case, however, where the defendants held the plaintiff, a 24-year-old adult, for five and one-half days with no attempt to resort to lawful alternatives available to them, the Court could not sustain a jury verdict in the defendants' favor on the issue of false imprisonment. Accordingly, the Court rules as a matter of law that the plaintiff was falsely imprisoned without justification. The issue of what amount of damages, if any, the plaintiff suffered from this false imprisonment is a question for the jury.

B. Section 1985(3)

* * * * *

C. Conclusion

This will not be a popular decision. While the Court has substantial sympathy for the feelings and reactions of the parents of Bill and Sandy Eilers, this Court is sworn to uphold the law and the Constitution of the United States. **If the basic rights of an American citizen are not recognized in a federal court by a federal judge, where will they be recognized?**

Based on the foregoing, **IT IS ORDERED** that the plaintiff's motion for a directed verdict is granted as to his claim for false imprisonment (Count IV of the Second Amended Complaint). . . . The plaintiff's motion is in all other respects denied.