

# THE YAKUNIN VS. DVORKIN TRIAL AND THE EMERGING RELIGIOUS PLURALISM IN RUSSIA

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## ABSTRACT

*This article examines the sociological and historical context of an important legal case which took place in 1997 in Moscow and involved so-called "sects and cults" operating in Russia. The case was a libel action brought against Alexander Dvorkin, a functionary of the Moscow Patriarchy of the Russian Orthodox Church, who had published some extremely damning material about a number of newer and smaller faiths in Russia. The plaintiff was the Committee for Protection of Human Rights, headed by noted Soviet dissident, Father Gleb Yakunin.*

*The article discusses the court proceedings in a wider socio-historical context, showing the ways in which this case revealed some important aspects of the contemporary religious situation in Russia, and in particular the controversies over legitimacy of new religious phenomena. This involves an analysis of ideological and socio-political resources available to the competing sides, types of evidence presented by them to the court, and the impact of these on the judiciary. Finally, the discussion and conclusion show that the development of religious pluralism in Russia is an outcome of a complex relationship between the country's socio-historical legacy, including its legal culture, the present political and cultural trends, and the contradictory impact of the West.*

## I. INTRODUCTION

A much publicized libel case, *Yakunin vs. Dvorkin* took place in Moscow in April and May of 1997. It involved as plaintiff a Russian human rights organization headed by noted Soviet dissident Father Gleb Yakunin and as defendant Alexander Dvorkin, a

functionary of the Moscow Patriarchy of the Russian Orthodox Church who was also chief activist of the anti-cult movement (ACM) in Russia.<sup>1</sup>

Our purpose here is to present a brief sociological and historical analysis of aspects of emerging religious pluralism in post-communist Russia, using this major case as a vehicle and illustration. We will not offer a systematic account of all the legal issues this case posed, although there will be discussion of evidentiary issues and other matters that affect such cases. One major segment of the article will examine the various resources 'new religious movements' (NRMs) and their opponents may draw on in legitimizing their positions in contemporary Russia. In particular, we will analyze the ways in which the opposing sides draw on Russia's socio-historical legacy. Another aspect is their use of the contemporary liberalizing trends, one perhaps unexpected side of which is the exposure to Western controversies over religious innovation. Finally, examination of the Russian situation and this particular case will demonstrate that one important aspect of pluralistic accommodation of diverse religious groups within a society is the availability of balanced and objective knowledge of these groups. In this sense, knowledge produced by Western social science has generally been misconstrued or ignored in the debate on NRMs in Russia, which may have long-term consequences for the kind of pluralism that is emerging in the country.

## II. THE SOCIAL AND HISTORICAL SITUATION OF RELIGION IN RUSSIA

Historically, Russia always was a religiously diverse country, with a multitude of ethno-religious groups, such as Muslims, Jews, Catholics, Protestants, Buddhists, and Shamanists. Dukhobors ('Fighters for Spirit'), Molokans ('Milk-Drinkers') and

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<sup>1</sup>The two authors of this paper were involved directly in the case as witnesses for the plaintiff. See their article discussing the background of the change of law in Russia: Marat Shterin and James Richardson, "Local Laws Restricting Religion in Russia: Precursors of Russia's New National Law," *Journal of Church and State*, 1998, 40: 319-341. For more background of the Russian situation, see Marat Shterin, "Legislating on Religion in the Face of Uncertainty", in James Gallighan and Marina Kurkchiyan, *Law and Informal Practices in Post-Communist Society*, Oxford: Clarendon Press, forthcoming 2002, and Marat Shterin, "New Religions in the New Russia", *Nova Religio*, 2001 4(2): 310-21. On the impact of the Western 'cult controversies', see Marat Shterin and James Richardson, "Effects of the Western Anti-Cult Movement on the Development of Laws Concerning Religion in Post-Communist Russia", *Journal of Church and State*, 2000, 42: 247-71. On other court cases involving NRMs in Russia, see James Richardson and Marat Shterin, "Minority Religions and Social Justice in Russian Courts", *Social Justice Research*, 1999, 12(4): 393-408.

Khristovery ('Believers in Christ') are examples of Russian sectarian movements. Russian educated classes were always receptive to Western religious innovation, for example Spiritualism and Pietism in the nineteenth century, and also produced their own 'spiritual exports', such as Elena Blavatski's Theosophy. Finally, in the 1970s in large Soviet cities there appeared semi-underground groups of neo-Buddhists, devotees of Krishna, and others.

However, before the 1990s religion and religious organizations had a tumultuous history in Russia. The 'legitimation formula' of the Russian Imperial State stipulated an inextricable unity of "Autocracy, [Russian] Orthodoxy and Nationality". The Russian Imperial Legal Code allowed non-Orthodox groups to practice their religion, but imposed various types of restrictions on their civil rights. Proselytism among ethnic Russians was a criminal offence. After a short period of hopes for liberalization that followed the introduction of the "Edict of Toleration" (1905), the 1917 Bolshevik Revolution proved to be a turning point in religious policy.

The seven decades-long Soviet official atheist policy was undoubtedly a unique social experience that combined enforced secularism and communist ideological indoctrination. One well-known aspect of this was institutionalized destruction of religion, which included repression of clergy, demolishing of church buildings, and legal restrictions on public display of religious feelings and symbols.<sup>2</sup> However, another aspect of the atheist policy was the enforced introduction of what Christel Lane described as a 'political religion' intended to re-socialize people into 'constructors of communism' by uniting them around a set of prescribed ideas, symbols and rituals.<sup>3</sup>

Anti-religious policy was a crucial aspect of the Soviet modernization that purported to create a new advanced society, but did this by significantly limiting and controlling all aspects of social experience. The legal system was a vital instrument of the

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<sup>2</sup>According to some data, between 1917 and 1939 the number of open Russian Orthodox churches in Russia (excluding other Soviet republics) was reduced from 50,000 to 200, and some 80, 000 priests, monks, and nuns were killed by the communist state. See, Nathaniel Davis, *A Long Walk to Church: A Contemporary History of Russian Orthodoxy*, Boulder: Westview Press, 1995, pp. 11-13.

<sup>3</sup> See, Christel Lane, *The Rites of Rulers. Ritual in Industrial Society: the Soviet Case*, Cambridge: Cambridge University Press, 1981.

Soviet modernizing project. It delivered 'communist' or 'socialist' justice that treated whole social groups as deviant because of their 'wrong' class, ethnic origin, political views, or religion.

The results of the Soviet religious policy are not as obvious as they might have seemed to some not long ago. It appears, however, that some aspects of traditional religious identity, and in particular ethno-religious links, survived through all the vicissitudes of Soviet history. Moreover, not only the Russian Orthodox Church and other religious institutions were forced to adapt to, and compromise with, the Soviet regime, but also at times the Soviet authorities found it expedient to modify their policy in order to accommodate religious sensibilities of the population.<sup>4</sup> Hence a mixture of 'thaws' and repression in religious policies developed, sometimes implemented by the same Soviet leader.

The introduction of the 1990 Law on Freedom of Religions was one of the last, and perhaps most decisive, liberalizing legislative reforms under Gorbachev. Until 1997, this Law remained in force in the Russian Federation. For the first time in Russian history, practicing religion was declared "the unalienable right of Russian citizens" and this also applied to all those residing in Russia, irrespective of their citizenship. The law stipulated strict separation between Church and State, the latter's ideological neutrality, and equal rights of all faiths, regardless of their origins and size.

One immediate result of the 1990 Law was the formation and rapid diversification of Russia's 'religious market'. This manifested itself in a variety of forms: resurgence of the Russian Orthodox Church and religions of ethnic minorities, missionary activities of their co-religionists from abroad (Muslim, Catholic, Jewish, and Buddhist), and proselytizing efforts of religions that were new to Russia, such as some varieties of more established Western Protestant evangelicals and NRMs. However, this diversity was still far from being genuine pluralism, i.e. mutual accommodation and legitimization of diverse religious expressions within a particular society. In the controversies that ensued foreign proselytism became a hotly disputed issue, with a number of Russia's regions introducing their own local laws favoring their historical religions and restricting

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<sup>4</sup> Stalin's partial collaboration with the Moscow Patriarchy during the Great Patriotic War is a conspicuous instance of this.

missionary activities of newcomers. NRMs became the main subject of these controversies and the chief target of the local laws.<sup>5</sup>

As far as 'cult controversies' are concerned, Russia was by no means unique among other nations. Certain aspects of some NRMs may cause concern among some members of the public. Their membership profile (mainly younger generation), their innovative beliefs and practices, their financial arrangements, and their high expectations of commitment and consistency may be at odds with what is expected of conventional religious behavior. However, many of these features are not unusual if taken in comparative historical and sociological perspectives. Much of the controversies over NRMs in the West was due to the fact that these disparate religions were lumped together and presented as a generic category of 'destructive cults'.<sup>6</sup> Indeed, a few Western governments have come up with damning reports and legislative measures on 'sects' and 'cults'.<sup>7</sup> It has been argued that the factual and conceptual bases of these governmental activities were more than questionable.<sup>8</sup>

NRMs tend to be small and sometimes not readily accessible to the general public. Eileen Barker, a noted British scholar of NRMs, showed that different interested groups are likely to perceive and conceptualize NRMs in different ways. Depending on these groups' aims and intentions, they are likely to gain access to different sources of knowledge of NRMs and select different features and facts about these religions.<sup>9</sup> In

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5 See, Marat Shterin and James Richardson, "Local Laws. on Religion in Russia: Precursors of Russia's National Law", *Journal of Church and State*, 1998, 40:319-41; for a different but complementary view, see Lauren Homer and Lawrence Uzzell, "Federal and Provincial Religious Freedom Laws in Russia: A Struggle For and Against Federalism and Rule of Law", *Emory International Law Review*, 1998, 12: 247-312.

6 See, Jane Dillon and James Richardson, "The Cult Concept: A Politics of Representation Analysis", *Sizygy*, 1994, 3: 185-97.

7 See, James Richardson, "Minority Religions, Religious Freedom, and the New Pan-European Political and Judicial Institutions", *Journal of Church and State*, 1995, 37: 39-60; Marat Shterin and James Richardson, "Effects of the Western Anti-Cult Movement..."; and James Richardson and Massimo Introvigne, "'Brainwashing' Theories in European Parliamentary and Administrative Reports on 'Cults' and 'Sects'", *Journal for the Scientific Study of Religion*, 2001, 40 (2):143-68

8 See, Massimo Introvigne and Gordon Melton, *Pour en Finir avec les Sectes. Le Débat sur le Rapport de la Commission parlementaire*, Paris: Dervy, 1996.

9 See, Eileen Barker, "The Scientific Study of Religion? You Must Be Joking!", *Journal for Scientific*

particular, understanding of NRMs by their committed opponents, including anti-cult groups, tends to be in sharp contrast with what social scientists find in their empirical studies. The details of these differences are discussed below.

### **III. A NOTE ON LIBEL PROCEEDINGS AND THEIR SOCIOLOGICAL SIGNIFICANCE.**

James Beckford, another noted British sociologist, commented that controversies over NRMs throw "...into sharp relief many assumptions hidden behind legal, cultural, and social structures. The operation of many NRMs has, as it were, forced society to show its hand and to declare itself.<sup>10</sup> In this respect, an analysis of the treatment of NRMs within the Russian legal system can show some important aspects of, and contradictory trends in, the emerging society, such as the competing concepts of individual religious liberty versus public good and state interest.

Libel legal actions can be particularly revealing. Such cases are adversarial in their nature, and judges make their decision on the basis of evidence presented by the two sides, supposedly with no extra data available to the court. This means that during the proceedings each side will try to construct a *legal narrative* representing its position, and the judicial decision is taken on the balance of probabilities, i.e. which side's legal narrative the court finds more plausible. (In Russia, the court consists of the Presiding Judge and two assessors who make their decision and then announce it with their reasons in the form of a written judgement.) Examining such cases throws light on sociological factors at work in the production and evaluation of evidence in cases involving minority religions. The courtroom becomes a place of competition between different understandings of NRMs with the principals in the case mobilizing whatever resources available to them for the presentation of evidence. This involves finding evidence, employing the professional expertise of lawyers, and persuading individual experts to come forth and participate in the case as witnesses and advisors. Also, there are often attempts at mobilizing support from those who are not directly involved in the case. This

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*Study of Religion*, 1995, 34(3): 287-310.

<sup>10</sup> James Beckford, *Cult Controversies: The Societal Response to the New Religious Movements*, London: Tavistock 1985, p. 11.

appeal for external support reflects the expectation that the judiciary may pay attention not only to evidence, but also to the social standing of the parties.<sup>11</sup>

#### **IV. THE ESSENCE OF THE CASE AND STRATEGIES OF THE PARTIES**

The case was brought by the Committee for the Protection of Freedom of Conscience, led by well-known Soviet dissident Father Gleb Yakunin. Alexander Dvorkin, chief ideologist of the anti-cult movement in Russia, was named as defendant. In 1995 Dvorkin wrote a booklet "The ten questions to a recruiter. A manual for those who do not want to be recruited". In his booklet Dvorkin lists a number of minority religions (the Mormons, Jehovah's Witnesses, International Society for Krishna Consciousness (ISKCON), Unification Church (UC), Scientology, and others) which he describes as "totalitarian sects" which are in essence "mafioso structures" (p.9). He further claimed that the groups expose their members to "constant violence; from beating to rape"(p. 5), and he stated that they would not stop short of "lying, stealing, misleading people, using mind control on their co-believers... and...even get rid physically of those who are in their way" (p. 9). Finally, 'totalitarian sects' present particular danger to the fledgling post-communist State as they may "not only recruit unsuspecting youth, but seize power" (p. 7).

The grounds for the libel action were that the organizations mentioned by Dvorkin were officially recognized under the 1990 law by the Russian state (i.e. registered with the Ministry of Justice) and did not have any record of criminal activity in Russia which would allow someone to question their reputation so blatantly. Accordingly, in the Committee's view, Dvorkin's allegations could be regarded as libelous. Thus, the plaintiffs presumed that the NRMs whose rights they undertook to defend must be evaluated on the basis of what they had actually done within Russia, instead of on the basis of anti-cultist inspired generalized claims made about actions elsewhere. The

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<sup>11</sup> Michael Cooney, "Evidence as Partisanship", *Law and Society Review*, 1994, 28(4):853. For a discussion of sociological factors involved in a major successful libel case in another post-communist country, Hungary, see, James Richardson, "New Religions and Religious Freedom in Eastern and Central Europe", in Irena Borowik and Grzegorz Babinski (eds.), *New Religious Phenomena in Eastern and Central Europe*, Krakow: Nomos 1995., pp. 257-82.

political profile of the plaintiff and the anti-cult activities of the defendant were important aspects of the suit.

Father Yakunin was a prominent political dissident who first came to the attention of Soviet politicians and the Moscow Patriarchy in 1965 when he and another priest, Nikolai Eshliman, wrote open letters to both the Soviet authorities and Patriarch Aleksii I, the then head of the Church. The first letter protested the failure of the government to follow Soviet laws guaranteeing religious freedom, citing many instances of violation of such laws. The second letter argued on theological and moral grounds that the Church should take a more oppositional stance towards the Soviet State.<sup>12</sup> For their actions Yakunin and Eshliman were banned by the Moscow Patriarchy from exercising priestly functions. After years of other quite public dissident activities, Yakunin was arrested in 1979 and sentenced to five years imprisonment, to be followed by five years of internal exile. In 1987 he was released from his sentence, one of the many signs of changes under *Perestroika*. Yakunin became one of the leaders of the political movement "Democratic Russia", and was later elected member of the Duma, the Russian parliament.

However, Yakunin continued to be a staunch critic of the Moscow Patriarchy, exposing its collaboration with the Soviet regime and alleged corruption in the new Russia. This posture put him in conflict with the Church's hierarchy, especially after his refusal to abide by the Patriarch's order which forbade the clergy's engagement in political activities. As a result, he was first defrocked and then excommunicated from the Russian Orthodox Church and, in a controversial move, passed under jurisdiction of the Ukrainian Orthodox Church.

Alexander Dvorkin emigrated from Russia in 1977 and eventually came to the United States. He attended the St. Vladimir's Seminary and Fordham University in New York City, where he specialized in church history. Dvorkin then had a short stint working for Western broadcasting institutions. In December 1991 he returned to Russia and set up the St. Irenaeus of Lyon Information Center (SILIC) which was initially affiliated with the Moscow Patriarchy's Department of Education and Catechization. He claimed expertise in the issue of 'totalitarian sects', and often referred to his close connections

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<sup>12</sup> See Jane Ellis, *The Russian Orthodox Church: A Contemporary History*, London and New York: Routledge 1998, pp. 292-5.

with Western anti-cult circles, and in particular with the well-known (in these circles) Dialogue Center in Denmark and Germany.

Before proceeding, we must consider one significant legal peculiarity of this court case that may have partly affected its outcome. It can be argued in strictly legal terms the Committee was not entitled to bring the case because it was not directly affected by the booklet, and thus had no legal standing. In order to pursue the case against Dvorkin initially the Committee had to persuade at least one group or an individual member to enter the case as plaintiff- an action which the organizations loathed to undertake, apparently for fear of further antagonizing the Moscow Patriarchy. After some negotiation, two members of ISKCON and a number of Scientologists filed an action against Dvorkin, only to withdraw immediately before or at the beginning of the court case. This withdrawal left the Committee "holding the bag". In order to pursue their claim two members of the Committee had recourse to what may be termed a 'legal fiction' claiming their membership in all the groups mentioned in his booklet. Quite unexpectedly, the Court issued a ruling accepting this claim, which allowed the case to proceed.<sup>13</sup>

The opponents in the case adopted different strategies that stemmed from emphasis on different values, a different approach to law, and different understanding of the nature of NRMs. For the plaintiff Committee, the case was primarily about freedom of religion as was guaranteed in the 1990 Law. They thought, naively perhaps, that this Law provided strong support for their stance. The recent history of the development of considerable religious freedom in Russia gave further encouragement, and, moreover, the Committee saw their action as an attempt to counter the growing political tendency to limit that freedom. Legally, in their view, the case should have been limited to claims about actions of the named groups in Russia and not elsewhere. As a result the Committee assumed that the technical truth of the groups not having been convicted of violating any Russian laws would be sufficient to make the case that Dvorkin's writings were libelous.

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<sup>13</sup> Obviously a question can be raised about the motivations of the Court in entertaining this legal fiction. The unusual decision demands explanation but to date no satisfactory explanation has been forthcoming.

Defendant Dvorkin, after being challenged with the libel action, admitted that there was little legal proof that the groups named had violated any Russian laws.<sup>14</sup> However, he claimed that each of the groups was part of a particular type of organization, an international "destructive cult", and thus presented dangers associated with them elsewhere. He said that during court proceedings he would show evidence for this from Russia. Dvorkin also referred to these groups as "totalitarian sects", a term with heavy negative connotations in post-communist Russia. The defendant further claimed that his booklet was an exercise of his right to spread information and warn society against potentially dangerous phenomenon. Thus in his defense Dvorkin adopted a reference to the basic values of freedom of speech and press, a position with a degree of appeal in post-communist Russia. However, as his offending statements were in fact generalizations based on Western anti-cult sources, to the uniformed observer the defendant was faced with a daunting task of having *to create* during the court proceedings a negative general image of *all NRMs* mentioned in his booklet, and show that it was applicable to their operation in Russia. In particular, he had to provide evidence that the groups named had histories of legal problems in the West. By implication, this defense was heavily reliant on evidence from Western anti-cult circles. However, in his choice of strategy, the defendant went even further than his initial assertions in the booklet. In his statements immediately before and during the court proceedings he essentially redefined the case by presenting it as one in which the Russian Orthodox Church was challenged by "totalitarian sects".

For all their differences, however, the plaintiffs and the defendant shared one feature in their approach to NRMs: they saw these groups in rather simplistic terms as being either 'totally wrong' or rather unproblematic. The defendant was trying to promote a predominantly negative and threatening image of new religions that defined them as a threat to the Church, to the political integrity of the country, and to individual well-being. The plaintiffs were presenting a rather benevolent and harmless image of the

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<sup>14</sup> By the time of *Yakunin vs. Dvorkin* there had been only one legal decision concerning an NRM. The Aum Shinrikyo lost a *civil* case in Moscow brought against it by anti-cult groups of parents. However, the decision of the Moscow court poses a number of serious questions concerning the use of evidence against that NRM as well as about why the anti-cult groups had any legal standing to bring that case. See, Richardson and Shterin, "Minority Religions and Social Justice...", pp. 394-6.

phenomenon of NRMs, stressing that they were not a threat to Russia and its citizens. Thus, both sides made *generalizations* about a phenomenon which, from the strictly academic perspective, defies simplification and generalization.<sup>15</sup>

The judges had a crucial choice early in the case of deciding between two options. The NRMs portrayed by Dvorkin in his booklet could be regarded on their own merit as Russian organizations which were responsible only for what they might have done in Russia. Or the organizations could be assumed to be a part of the international "destructive cult" networks described by Dvorkin, which would make evidence from international experts and others potentially relevant as well as broaden the scope of the trial considerably. The judge ruled at the outset of the case that international expert witnesses could be invited by both sides, thus, by implication, accepting the defendant's supposition that the court was dealing with an international problem, and that the evidence from elsewhere was relevant and probative, and could therefore be applicable to NRMs operating in Russia.<sup>16</sup> Furthermore, also by implication, the Court took on itself to decide on matters of truth about a range of the extremely complex religious phenomena.

Thus, the stage was set for this libel action to become a battleground between opposing perspectives on NRMs. However, the case was much more than a simple "garden variety" libel case. Considering Russia's political climate of the time and the nature of the defendant's claims that he was defending the Russian Orthodox Church against the sects' "struggle for domination in Russian society", it is possible to suggest that the NRMs became a pawn in a much larger game involving major cultural and political forces in Russia.<sup>17</sup> However, the irony of the situation was that in order to

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15 As elsewhere, there are hundreds of smaller religious groups in Russia (see Shterin, "New Religions in the New Russia"). These groups differ among themselves in many ways, and they change over time. Also, groups may be somewhat different in different societal contexts, with a group being well-established in some countries, but being small and missionary oriented in others. The Mormons, which were included in the list of "destructive cults" and "totalitarian sects" in Dvorkin's booklet, illustrate this kind of diversity. Thus any effort to promote a monolithic image, either completely positive or negative, of new religious (or "cults and sects") in a court case such as this one is fraught with problems.

16 This is the reason that the second author, Richardson, who has studied new religions in the West for nearly 30 years, was invited by the plaintiff to come to Russia and testify on the results of that research. Shterin testified as an expert from within Russia on the basis of his comparative study of NRMs in Russia and England.

17 NRMs have been forced to play the role of pawn in larger political battles in other former communist countries as well as in the West. For example, the Hare Krishna successfully brought a libel action in

'protect' Russian cultural values and social integrity the defendant chose recourse mainly to carefully selected Western notions and interpretations.

## **V. MOBILIZATION OF EXTERNAL SUPPORT BY THE PRINCIPALS.**

Donald Black argues that in any legal action the principals' social and cultural status strongly influences their chances of success because high status "creates its own gravitational field".<sup>18</sup> On the other hand, the socially inferior are likely to encounter difficulties in attracting support *because* of their inferior status. Moreover, while legal professionals tend to regard evidence as a direct reflection of what happened, sociologists are usually more aware that evidence is "mediated by the parties' relationships and social standing".<sup>19</sup>

These observations have interesting implications for the trial in question. In the transitional post-communist society social and cultural status is often a matter of contention; hence the principals' engagement in the "politics of representation" in order to *assert* their status. This was particularly evident in the defendant's attempts to take advantage of the political and cultural trends to heighten his own status and diminish that of his chief opponent, a prominent political figure. In this sense, the dice seem to be loaded in his favor.

An analysis of the defendant's actions and publications before and during the proceedings shows that he actively sought to associate his cause with that of the Russian Orthodox Church. As was already discussed, one way of achieving this was to *present the case* as one in which the Church was challenged by "totalitarian sects" and "destructive cults". The defendant repeatedly drew attention to the support he allegedly had from the Church, as indicated by his position with the Church, messages of support offered by

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Hungary. Their success derived in large part from their being supported by more liberal political forces in Hungary. The liberals viewed the effort to suppress the Krishna as yet another attempt by conservative political forces, including the Catholic Church, to regain power. See, James Richardson, "New Religions and Religious Freedom in Eastern and Central Europe"; and James Richardson, "Legal Status of New Religions in the United States," *Social Compass*, 1995, 42: 249-264 for a discussion of episodes in the U.S. where NRMs were used for political purposes by others.

<sup>18</sup> Donald Black, *The Social Structure of Right and Wrong*, San Diego: Academic Press, 1993, p.127.

<sup>19</sup> Cooney, "Evidence as Partisanship", p. 853.

people associated with the Church, and most of all by the very virtue of his struggle against the 'sects'.<sup>20</sup> Several factors facilitated this tactic.

The very fact that plaintiffs brought the case of behalf of a range of NRMs was used by the defendant to tar them all with the same brush as an alliance of 'totalitarian sects', the image then frequently referred to by the media. The fact that the main plaintiff, Father Gleb Yakunin, was apparently at odds with the Moscow Patriarchy was itself enough in the minds of many (including journalists) to cause them to accept a negative definition of the plaintiffs.

Although there were no official pronouncements on the part of the Moscow Patriarchy in relation to the court case, nevertheless the defendant's claim *sounded* credible to many and was readily disseminated by the media. This credibility owes much to the previous stance of the Church towards NRMs. The most powerful statement in this respect had been the Bishops Council's declaration in December of 1994, which stated that all "sects" and "pseudo-religions" destroy "the traditional foundations of life that have been formed under influence of the Orthodox Church, and the moral and spiritual ideal that we all share, and threaten the integrity of our national consciousness and cultural identity".<sup>21</sup>

It is noteworthy that from the beginning some Church officials were present in the case both formally and informally, demonstrating their support for the defendant at the key moments of the trial. On the insistence of Dvorkin the Department of Education and Catechization joined the defense. Most strikingly, at the end of the trial, just prior to summation, a Bishop from the Moscow Patriarchy appeared in full religious garb to testify for the defense. Before starting his testimony, he requested permission to offer a "blessing" to the court on behalf of the Patriarch. Permission was granted. In what might have looked like a dramatic coincidence, immediately after his blessing and testimony, the judge ruled from the bench in favor of the defendant, thus ending the five week trial unexpectedly. Also, when the case was heard on appeal there were many representatives

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<sup>20</sup> This representation of the case is obvious from the title of the book Dvorkin published after the trial: Alexander Dvorkin (ed.), *Sekty Protiv Tserkvi: Protsess Dvorkina* ["Sects Against the Church: Dvorkin Trial"], Moscow: Moscow Patriarchy Publishing House (2000).

<sup>21</sup> Reprinted in Dvorkin (ed.), *Sekty Protiv Tserkvi...*, pp. 507-09.

of the Church, many of them in official ecclesiastical garb, in the courtroom. A number of them also carried icons and placards urging the court to maintain the trial court decision. And the Moscow City Appeal Court did just that, in short order.

The Church seems to have found itself in a difficult situation in which it could not openly support the position of the defendant without itself jeopardizing credibility by virtue of ties to the defendant.<sup>22</sup> But the Church also could not dismiss what was presented by him as the Church's own position, since the defendant had been involved in constructing that very policy. The entire case was quite potentially explosive from the point of view of the Moscow Patriarchy, which had, after all, defrocked the leading plaintiff in the case, Father Gleb Yakunin.

Most of the Russian mass media were 'natural allies' of the defendant, sharing a confluence of interests characteristic of the interaction between the media and the anti-cult circles, which can be found elsewhere.<sup>23</sup> In fact, the defendant, acting in his capacity as an 'expert on sects' affiliated with the Moscow Patriarchy, had been the main purveyor of exposés about new religions for the media. He then would draw on the negative media images of NRMs which had, to a considerable degree, been of his own making. The media mostly repeated the defendant's own "dangers-from-the-sects-to-society-and-church" story, with few efforts to obtain information independent of the defendant.<sup>24</sup> These dangers were taken for granted and were part of the "everyday stock of knowledge" of a large section of the public. Thus the anti-cult ideas became hegemonic within Russian culture.<sup>25</sup>

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22 At one point in the trial the defendant attacked a Hare Krishna member who was filming the proceedings, causing a minor injury to the Krishna member. The second author witnessed this attack, which occurred immediately after he testified. Later that day the defendant and the Krishna devotee were taken to the militia station to clarify the situation in which the attack occurred. Although no legal action followed this episode, this kind of behavior would perhaps give pause to anyone or any organization the defendant was claiming as a supporter.

23 See discussion of these interests in Marat Shterin and James Richardson, "The Effects of the Western Anti-Cult Movement... "

24 See, for example, Mark Deich, "Delaite Bol'she Deneg!" ["Make more Money!"], *Moskovski Komsomolets*, 19.02.1997.

25 See Jane Dillon and James Richardson, "The 'Cult' Concept...".

The defendant also was in a more advantageous situation in terms of mobilizing international support for his position. At the disposal of the defendant was a readily available network of people, some of whom were devoting their lives to combating 'cults' anywhere in the world. This was the case because of organizational ties of the defendant with the Western anti-cult circles, in particular with the long-standing "counter-cult" organization in Denmark known as the Dialogue-Center operated by Johannes Aagaard, a theologian.<sup>26</sup> He also had good contacts in Germany where a number of Lutheran clergy, including well known Thomas Gandow, had official church appointments to monitor smaller religious sects, and to publicize the peril they allegedly posed for German society. Both these anti-cult activists from the West consulted with and testified on behalf of the defendant in the trial.<sup>27</sup> The defendant extensively used the considerable stock of exposés about new religions accumulated by the Western anti-cult movement over the years. It was essentially a Western, and more specifically German, anti-cult *interpretation* of the whole phenomenon of NRMs which was the basis and inspiration of the defendant's claims, as presented in his booklet.<sup>28</sup> And this Western anti-cult inspired view was widely disseminated by the Russian media.

No such support structure was readily available for the plaintiffs in the case. While there are international human and civil rights organizations that might, by virtue of their charters, be interested in the plight of minority faiths in Russia, the timing and rapid development of the case did not make it feasible to count on such organizations for support. Also, most such organizations might define attacks on very small and unpopular religious groups in Russia as a minor problem in the grand scheme of things. Moreover, some civil rights organizations chose not to involve themselves in the case precisely because they regarded defending controversial religious groups as an unpopular cause that might diminish their standing in Russia and elsewhere.

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26 For a differentiation of "counter" and "anti" cult groups, see Massimo Introvigne, "The Secular Anti-Cult and the Religious Counter-Cult Movements: Strange Bedfellows or Future Enemies?", in Robert Towler, ed., *New Religions and the New Europe*, Aarhus, Aarhus University Press, 1995, pp. 32-54.

27 Pastor Gandow, in a conversation with one of the authors (Richardson), stated that the Moscow Patriarchy was paying his expenses to attend the trial and testify.

28 See Shterin and Richardson "Effects of the Western Anti-Cult Movement..." for a full discussion of the defendant's reliance on Western Anti-cult sources.

The lack of any active support from international human and civil rights groups or from more experienced legal prowess of specific religious groups that had been attacked by Dvorkin (discussed below) hampered the plaintiff Committee immensely. Indeed, they did not even have an attorney representing them, in part for want of financial support, but also because of the complexities of the case as well as the participation of representatives of the Moscow Patriarchy. One of the Committee members, Lev Levinson, acted as counsel for the group during the trial. Levinson was a founding member of the Committee. He had also served as a key staff person for the Duma Committee on Religious Organizations. But Levinson's determination and extensive knowledge in the areas of religion and law could only in part make up for the lack of expertise in the very complicated and specialized areas of libel law and New Religious Movements. After the case was lost and an appeal filed, there was some assistance at that level from a prominent attorney in Moscow who had been associated with the case initially. The appeal was lost, however.

One might expect, given the judge's authorization of use of Western material in the case, that the vast amount of Western scholarly research on NRMs would be a major resource for the plaintiff, as this research undercuts most of the claims of serious abuse and threat from these groups.<sup>29</sup> Several considerations precluded much impact from accessing such resources, however. One is the huge amount of media attention paid to tragic, even if isolated events, such as the use of sarin gas in the Tokyo subway by some members of Aum Shinriki and the suicides and murders of the Solar Temple group in Europe and Canada, or the suicide of 39 members of the Heaven's Gate group in San Diego. Nearly everyone has heard of some or all of these recent rare but tragic events, information about which can be used to build a case that the 'cults' are a major threat to society, if the idiosyncratic nature of these events is overlooked.<sup>30</sup>

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29 For reviews of some of this research see Jeffrey Hadden and David Bromley, eds., *Cults and Sects in America* Greenwich: CT: JAI, 1993; Eileen Barker, *The Making of a Moonie: Brainwashing or Choice?*, Oxford: Blackwells, 1984; Eileen Barker, *New Religious Movements: A Practical Introduction*, London:HMSO, 1989; David Bromley and James Richardson (eds), *The Brainwashing/Deprogramming Controversy*, New York: Edwin Mellen, 1983; James Richardson, "Clinical and Personality Assessment of Participants in New Religions", *The International Journal for the Psychology of Religion*, 1995, 5: 145-170.

30 The point is not to dismiss these tragic events, but to recognize that the groups involved in them represent a minuscule minority of all newer and smaller faiths. To paint all minority religions as a major

Another problem was the simple matter of timing and expense. Bringing Western experts in requires close timing and at least minimal funding for essential travel expenses. A third, and perhaps crucial, consideration is that presentation of academic findings in legal settings involves many difficulties (discussed below) and usually has not had much positive impact for the newer religions engaged in such actions. Such cases have often resulted in losses for those minority faiths, although there are exceptions to this general rule.<sup>31</sup> So, although the plaintiffs were forced by the Judge's decision to offer evidence from Western sources, at least some involved with the case understood that the odds were long against that kind of evidence having much impact on the judges in the case.

The generalizing and internationalizing of the case by the defendant and the Court led to a dilemma for the plaintiffs. The Committee sought to defend the rights of a whole range of different minority religions, which in itself was a difficult undertaking, and by doing so the Committee inadvertently facilitated the defendant's conspiratorial claims. This difficulty was partly why leaders of the NRMs mentioned by Dvorkin were hesitant about entering the case, lest they be bracketed by the media and the Court with other 'bad groups'. Their hesitance was further reinforced by the strong *impression* of Russian Orthodox Church involvement. As was already noted, open rivalry with an influential institution such as the Moscow Patriarchy was not the intention of those individual members or their membership groups. Among other things, these factors effectively deprived the plaintiffs of the potential support from those minority religions that are known for their legal prowess. Thus, representatives of the Jehovah's Witnesses were

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threat on the basis of these episodes is extreme overgeneralization from a very narrow data base, a fact that policy makers in Russia as well as in other countries have often overlooked.

31 For discussions of some of these cases in America see: Dick Anthony, "Religious Movements and Brainwashing Litigation: Evaluating Key Testimony", in Tom Robbins and Dick Anthony, (eds.), *In Gods We Trust*, New Brunswick: NJ: Transaction, 1990, pp. 295-344; Dick Anthony and Tom Robbins, "Law, Social Sciences and the 'Brainwashing' Exception to the First Amendment," *Behavioral Sciences & the Law*, 1992 10: 5-29; James Richardson, "Cult/Brainwashing Cases and the Freedom of Religion," *Journal of Church and State*, 1991, 33: 55-74; James Richardson, "Public Opinion and the Tax Evasion Case of Reverend Moon," *Behavioral Sciences & the Law* 1992, 10: 53-63. James Richardson, "Legal Status of Minority Religions in the United States,". For an analysis of some "brainwashing" cases outside the U.S. see James Richardson, "'Brainwashing' Claims and Minority Religions Outside the United States: Cultural Diffusion of a Questionable Concept in the Legal Arena," *Brigham Young University Law Review*, 1996: 873-904, 1996. For a more optimistic view of the overall situation of minority faiths in the U.S. see James Richardson, "Minority Religions in the U.S.: Lessons for Germany?," presented at conference on New Religions in Marburg, Germany, 1998.

present in the court throughout the trial, but did not take part in the case, even though they were named by Dvorkin in his booklet as one of the "totalitarian sects".<sup>32</sup>

Plaintiffs' actions showed that they made comparatively little effort to affect public opinion through use of the media, although some publications in two relatively popular newspapers (*Moskovskie Novosti* and *Russkaya Mysl'*) presented their position. Communication with the plaintiffs suggested that they understood that a strongly negative image of NRMs ('totalitarian sects') had already been established, in part by the previous publications of, and references to, the defendant himself in his capacity as an anti-cult apologist tied to the Church. They were of the view that there was little to be done about the issue of educating the public, and that the media in general would be unwilling to publish coverage challenging this image sanctioned by the Moscow Patriarchy. They believed, however, that the expected positive outcome of the case would provide the media with an alternative framework for looking at the issue of NRMs.

As a result of these several factors, the plaintiffs were essentially on their own in carrying the case. And their limited resources made the outcome of the case almost a foregone conclusion. We now turn to a more detailed analysis of the various types of evidence proffered in the case, more clearly to demonstrate what happened as the case developed, and why the scholarly reports from the West were of little moment in the case within the context of contemporary Russia.

## **V. EVIDENCE OFFERED BY BOTH SIDES IN THE CASE.**

Certain types of evidence are usually featured in cases involving NRMs. This includes evidence

- 1) from the principals themselves;
- 2) from those claiming "first hand" knowledge, i.e. some kind of *personal experience* in dealing with NRMs as members, ex-members, friends, or family relations, commonly parents;
- 3) from mental health professionals who claim expertise in assessing the psychological 'normality' of involvement in NRMs,

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<sup>32</sup> On the Jehovah's Witnesses proclivities to involve themselves in litigation, see Pauline Cote and James Richardson, "Disciplined Litigation, Vigilant Litigation, and Deformation: Dramatic Organizational Change in Jehovah's Witnesses", *Journal for the Scientific Study of Religion*, 2001, 40: 11-25.

- 4) from professional clergy and theologians who claim expertise in assessing the theological aspects of NRMs;
- 5) from sociologists who claim knowledge based on empirical sociological research.

*Evidence from the Principals* The principals in legal disputes are likely to provide the largest amount of, and the most partisan, evidence.<sup>33</sup> In defamation actions, the plaintiff will often claim that the defendant has selected incorrect or irrelevant evidence, and the defendant will try to select evidence suggesting the opposite. However, in the trial in question the libels were in fact *generalizations* made by the defendant concerning whole movements and not focused on specific individuals. Partly for this reason, an unintended consequence of the plaintiffs' legal action was a major switch in the burden of proof, with the defendant pressing his offending images of the NRMs and the plaintiffs attempting to counter them.

The plaintiffs regarded the defendant's allegations about the criminal behavior of the NRMs operating in Russia as groundless because they assumed that this was contrary to the facts. As key evidence they produced a letter from the office of the General Prosecutor of the Russian Federation confirming the absence of successful prosecutions in cases involving alleged illegal behavior of members of NRMs.<sup>34</sup> However, the defendant attempted to find further unfavorable evidence from both inside and outside Russia and create a convincing 'legal narrative' which would enhance the plausibility of his initial allegations. Throughout the trial, the defendant constructed this legal narrative on the assumption that the NRMs belonged to a particular generic category of 'totalitarian sects' as opposed to a 'genuine' religion. Moreover, he even proposed a 'theoretical' distinction between these two types.<sup>35</sup> Thus, the defendant attempted to construct

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<sup>33</sup> Michael Cooney, "Evidence as Partisanship", p. 837

<sup>34</sup> *Letter No 27/2-359-69 as of March 1997 of the Office of the General Prosecutor of the Russian Federation.*

<sup>35</sup> In his opening speech, Dvorkin said: "From the philosophical-theological viewpoint, it can be said that the main interest of the member of a traditional religious organization is directed towards God, i.e. transcendental reality. On the contrary, the interests of the member of a non-traditional totalitarian sect are entirely concentrated on the personality of its leader and on the organization itself; for this reason they are called pseudo-religious organizations" (Dvorkin, *Secty protiv Tserkvi*, p. 104).

boundaries for the legal dispute within which the plaintiffs would need to respond to the allegations. The defendant then fed selected pieces of 'negative' evidence into this legal narrative. The boundaries and the selectivity in constructing the image of small and not readily accessible groups might leave an impression of coherence. Importantly, however, the unrelated pieces of evidence might look coherent within the interpretative boundaries – 'cult vs. genuine religion' - suggested by the defendant, but would acquire different meanings if each NRM is seen as a separate and complex social phenomenon in a concrete social and cultural context.

Here again, the defendant took advantage of the fact that the plaintiffs contested his allegations over a range of NRMs. Treating them all within the single category of 'totalitarian sects', he sought to create a generalized image by aggregating and over-generalizing negative evidence about different NRMs in different countries, accumulated by the international anti-cult networks over decades. This generalized image was attuned to anxieties about the possible threat of these NRMs to almost every aspect of Russian society.

An analysis shows that the Court allowed the legal debate to be conducted within the framework suggested by the defendant. Thus, the plaintiffs' insistence that the debate should revolve around concrete facts related to actual NRMs in Russia was rejected by the Court, as was their protest over the use of the term 'sects' which in that context had obvious derogatory connotations. Further, cross-examination by Dvorkin and questions from the judges tended to focus on the presumed negative side of the NRMs, thus effectively eliciting responses within the 'cult vs. genuine religion' framework.<sup>36</sup> Issues about the positive attractions and functions of the NRMs for their members, or more neutral aspects of their life, were largely ignored.

*Evidence based on 'personal experience'.* Experiences of members of a small group, such as an NRM, are not readily accessible to an outsider, nor are the reactions of their relatives, friends or colleagues. Although there could be a variety of experiences and reactions, we can expect that the principals in an adversarial court proceeding would

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<sup>36</sup> Thus, the Court protested when in his testimony one of the present authors, Shterin, attempted to draw comparisons between some practices of NRMs and those of 'traditional religions'.

select and present only those accounts of personal experiences which support their overall legal narrative. As a result, testimonies from two opposing perspectives were offered to the court. These are summarized as 'ideal types' in the following table:

**Table 1. Selection of witnesses with "personal experience".**

| <i>FOR DEFENDANTS</i>   | <i>FOR PLAINTIFFS</i>  |
|---|--|
| Relatives, including parents, of members of NRMs with negative attitudes. | Relatives, including parents of members of NRMs with positive attitudes. |
| Ex-members of NRMs with 'negative experience'.                            | Current members of NRMs with 'positive experience'.                      |

The witnesses who related their 'personal experience' were selected by the plaintiffs and defendant who knew them and shared their perspective. Most of the witnesses for the defendant had links with parental anti-cult groups which were co-operating with Dvorkin. The testimonies from relatives undoubtedly reflected real problems in the families, which could have a variety of causes. In all cases the witnesses emphasized their anxieties about what they perceived as the converts' disengagement from conventional behavior and lifestyles. However, the expression of this basic grievance would not be sufficient for legal purposes - it was necessary to phrase it as a *coerced* disengagement fraught with serious risks for the individual and society. All the witnesses for the defendant insisted on only one possible interpretation, namely that their problems were caused by the "sects". They drew

sharp boundaries between the 'normal' world and that of 'sects' by using terms such as victims, zombies, slaves, loss, tragedy, rescue, and break-up of the family, by which they defined their own and their children's experiences. Usually, these accounts described a family conflict already affected by interpretations derived from contact with an anti-cult group or its literature. Many instances of behavior which would normally be seen as undesirable but within a 'normal' range were presented as evidence of psychological coercion by NRMs.

According to most witnesses for the defendant, the initial approach of parents - puzzlement, anger or *laissez-faire* - later gave way to extreme alarm after they had 'learned' about 'cults' through contacts with anti-cult groups such as parental committees, anti-cult centers, or from the mass media. The consequent adversarial actions undertaken by the witnesses typically included appeals to state agencies, or involuntary treatment by a psychiatrist, or both. In the family of one witness, the rift between father and daughter was exacerbated by the father's attempt to deliver her forcibly to a psychiatric hospital. According to two other witnesses, their only grievance was the sons' involvement with the Unification Church (UC) about which they learned from anti-cult sources. One of these witnesses made many complaints to the local criminal prosecutor about the "criminal nature" of the UC.<sup>37</sup>

None of the defendant's witnesses provided any evidence of forcible disengagement from the family. Instead, they tended to see disengagement as the act of participation in groups which were "not of our faith", "foreign" or which showed "fascist ideology". In some cases they made accusations that all "totalitarian sects" intended to "destroy our Motherland, our country", or "subjugate" their relatives to "foreign leaders". They saw this as sufficient to label these NRMs "criminal". One witness would have preferred her son, who lived at home, to be an Orthodox monk than a member of the UC. Most witnesses were certain that participation in these groups could only be the result of deception and pressure from their leaders, including techniques which they described as "coding" or "zombification" which led to behavior which they perceived as "strange". In this way, the rhetoric of their testimonies,

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<sup>37</sup> All the references and citations from *Yakunin vs. Dvorkin* are based on the transcript of the tape recordings that were made during that case, with the permission of the Presiding Judge. A copy of the final Judgement is available (personal archive of the first author).

but not the evidence they provided, matched the rhetoric of the defendant's narrative about the risks for Russian society in general.

*Evidence from mental health professionals.*<sup>38</sup> Evidence from mental health professionals is scientific to the extent that it is based on acceptable scientific procedures, methods and theories. In so far as this evidence was specific to clinical psychology and psychiatry, it is beyond our present analysis. However, two general points can be made. The first concerns the ways in which generalizations were made about the psychological and psychiatric effects of participation in the NRMs. The witnesses for the defence insisted that they had sufficient scientific data to conclude that the NRMs had negative effects on their members. However, close examination shows that what they defined as 'evidence-gathering sessions' was, in fact, something different. Thus, Dr. Yuri Polishchuk's account was a model description of a biased sample:

I was looking for those who had been admitted to psychiatric hospitals with diagnoses such as psychosis, and I also used information from parents about those patients' involvement with sects. I was searching for such admissions [to psychiatric hospitals]. Further, some psychiatric centers knew about my interest and kept me informed about such matters and referred such patients to me. But most importantly, I kept being approached by parents whose children showed abnormal behavior after having been involved in sects.

Another witness for the defence, Dr. Evgeni Volkov, admitted to having done no empirical research on NRMs. Instead, he put forward his version of the concepts of 'brainwashing' and 'mind-control' which were entirely based on the Western anti-cult publications, in particular those of Margaret Singer.<sup>39</sup> He speculated that "if a person's mind

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<sup>38</sup> For a critical assessment of psychiatric and psychological studies of participants in NRMs, see, James Richardson, "Psychological and Psychiatric Studies of New Religions", in Lawrence Brown (ed.), in *Advances in the Psychology of New Religions*, New York: Pergamon (1985), pp. 209-223; and James Richardson, "Clinical and Personality Assessment...".

<sup>39</sup> Margaret Singer is one of the major anti-cult clinical psychologists who had testified in over 40 trials as of several years ago. In one of her most-cited publications she admits that 78% of 200 plus of those she claimed to have done therapy with were former members of 'cults' who had been forcibly deprogrammed. Also, her therapy sessions were quite directive in nature, designed to cause people to change their opinion of the former group of membership; see Margaret Singer, "Coming out of the Cults", *Psychology Today*, 132: 72-82. For a contrasting view of the effects of deprogramming, see Trudy Solomon, "Integrating the 'Moonie' Experience" in Thomas Robbins and Dick Anthony (eds.), *In Gods We Trust*, New Brunswick, NJ: Transaction (1981), pp. 275-94, and for a thorough critique of Singer's scholarship and testimony see Dick Anthony, "Evaluating Key

is systematically subjected to pressure, this person becomes a cultic personality", which means "leading an unconscious existence" and having "an artificial personality". In both cases these witnesses used sweeping definitions of what they regarded as 'cults', or 'totalitarian sects', which allowed them to regard many common expressions of religiosity as essentially pathological.

Another problem was that, however valuable evidence from psychiatrists or psychologists might be within their own area of expertise, they cannot address other issues concerned with NRMs, such as their belief-system, leadership structure, financial basis, interpersonal networks, and changes that occur over time in these groups. Study of these aspects would normally require using sociological methods. Nevertheless, the witnesses for the defendant apparently felt comfortable offering highly speculative *generalizations* in which the complexity of the NRMs was reduced to references to the immoral motivation of their leaders, which were often reminiscent of the concepts of normality in Soviet psychiatry. Thus, Prof. Polishchuk, asserted that normality was more associated with conformity - with abiding by the "accepted norms, morality, and legal requirements". Norms, according to him, are "fixed in the Christian religion" or, previously, in the "communist moral code". "Sectarian ideology" being nonconformist, is necessarily antisocial. Contributing to the defendant's line, Polishchuk asserted that nonconformity is likely to lead to criminal behavior. He did not offer any explanations of how people join NRMs, vaguely *assuming* that "something like mechanisms of programming" existed. In tune with the general ideology of Russian anti-cultism, Polishchuk used emotional language which conveyed the image of sectarianism "sweeping over Russia" and threatening "to destroy the psychological health of the nation".

*Evidence from Church representatives.* Testimonies of the representatives of the mainline churches in cases involving NRMs might raise the suspicion that they would display strong partisanship because of the theological basis of their approach to these groups. However, having a particular theological perspective need not preclude objectivity, providing the aim is understanding or description of these groups. Nevertheless, religious

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Testimony...", and James Richardson, "Cult/Brainwashing Cases and the Freedom of Religion...".

tradition or official policy of a particular church may limit a cleric's approach to, or public pronouncements on, NRMs. It seems obvious that by calling representatives from the Russian Orthodox Church as witnesses, the defendant sought to use the status of the dominant religious institution and its current ecclesiastical position which emphasized the 'spiritual risks' of participation in, and the proliferation of, 'sects'.

The Church's representatives tended to use a mixture of cultural, political, and psychological, rather than theological, arguments. One of the witnesses called the defendant "the most active champion of the Russian Orthodox Church and of the Russian people in general" and asserted that 'totalitarian sects' were an "aggressive phenomenon which was alien to our country". As we mentioned earlier, the culmination of this strong partisanship was the appearance of Archbishop Tikhon of Bronnitsa who claimed that he had the official "blessing from the Patriarch" to make his statement. After having blessed the courtroom with the Judge's permission, he asserted that the "sects purposefully undermine the centuries-long traditions and foundations of our people" and present a "threat to the physical and spiritual health of our citizens", and in particular young people.

The testimonies of the Church representatives did not contain evidence on the issue of possible libel, which was at the center of the legal dispute. The assumption that the theological position of Church representatives had general relevance to that issue may raise serious questions about the acceptance of their testimonies by the Court.

*The academic vs. the anti-cult perspective.* As was already mentioned, the position of the defendant in the Moscow case was almost entirely based on Western anti-cult material, which he believed was fully applicable to the Russian setting. In this sense, it was a unique case in which the two perspectives on NRMs – the academic and the anti-cult - were set in direct confrontation within the framework of a libel case.<sup>40</sup> Table 2 clarifies the

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<sup>40</sup> The defendant's side was presented by two well-known West European activists of the anti-cult movement Prof. Johannes Aagaard from Denmark, and Pastor Thomas Gandow from Germany. Prof. Crippas who represented the General Synod of the Greek Orthodox Church and Clare Champalion, an anti-cult activist from France, also appeared as defendant's expert witnesses, although they did not have any qualifications in any academic or practical area associated with NRMs. Three Russian scholars Dr. Dmitri Furman, Dr. Sergei Ivanenko and the present author, and two Western academics Prof. Eileen Barker and Prof. James Richardson appeared as expert witnesses for the plaintiffs. Our analysis mainly focuses on the evidence given by Aagaard and Gandow on the one hand, and Barker and Richardson on the other because, first, their testimonies are representative of the two main trends in the Western debate on the NRMs, and, second, the bench paid most

differences in approach of the witnesses from the two sides. Some examples are given in the footnotes.

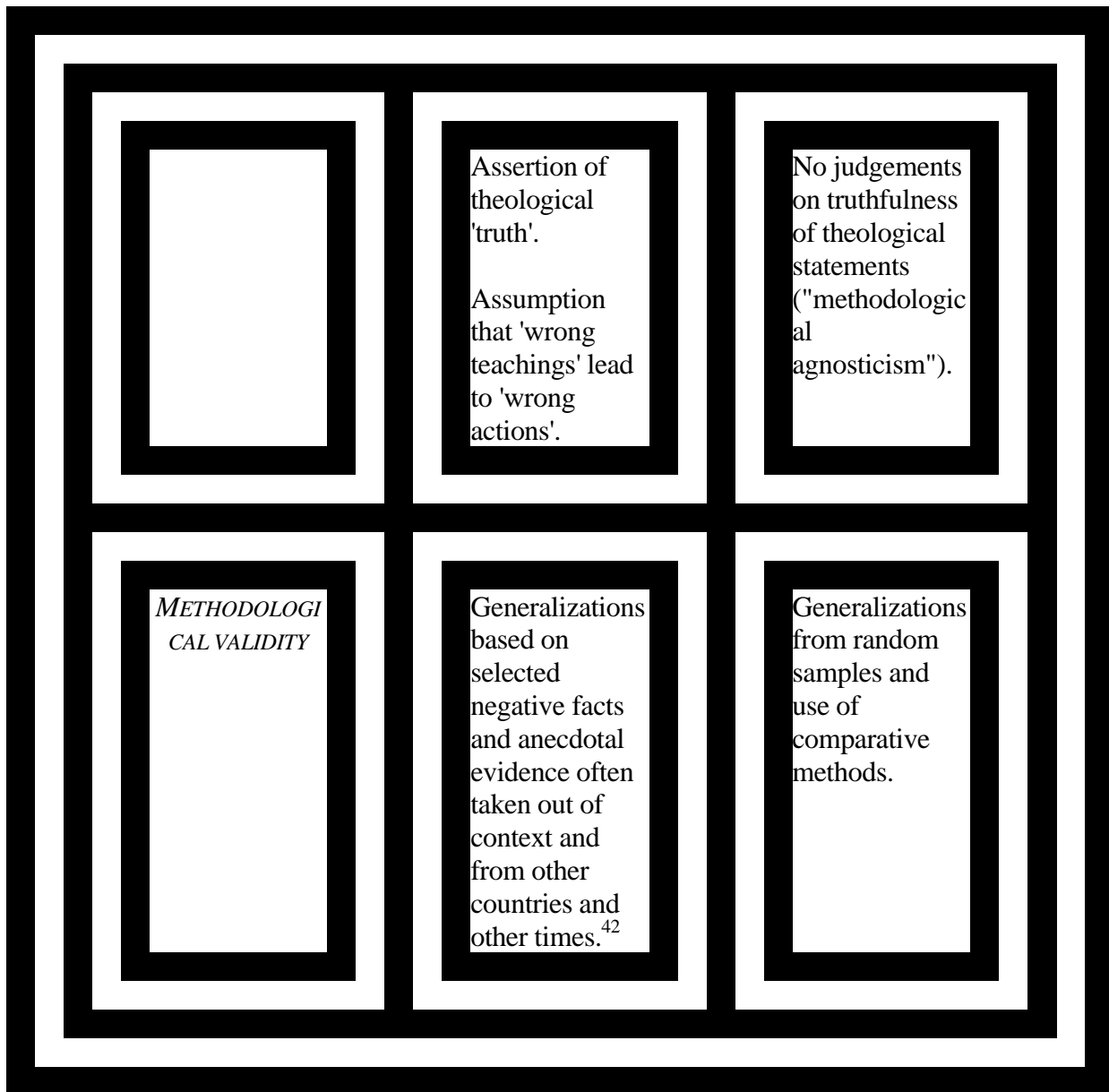
**Table 2. Approach to Evidence Offered by the Experts in *Yakunin vs. Dvorkin*.**

| <i>CHARACTERISTICS OF EVIDENCE</i> | <i>DEFENDANT'S SIDE</i>  | <i>PLAINTIFFS' SIDE</i>                                      |
|------------------------------------|--|--|
| <i>NATURE</i>                      | Largely based on theological and normative considerations      | Sociological scientific evidence based on academic research. |
| <i>TYPE</i>                        | Generalizations on theological or moral grounds. <sup>41</sup> | Generalizations from empirical academic research             |

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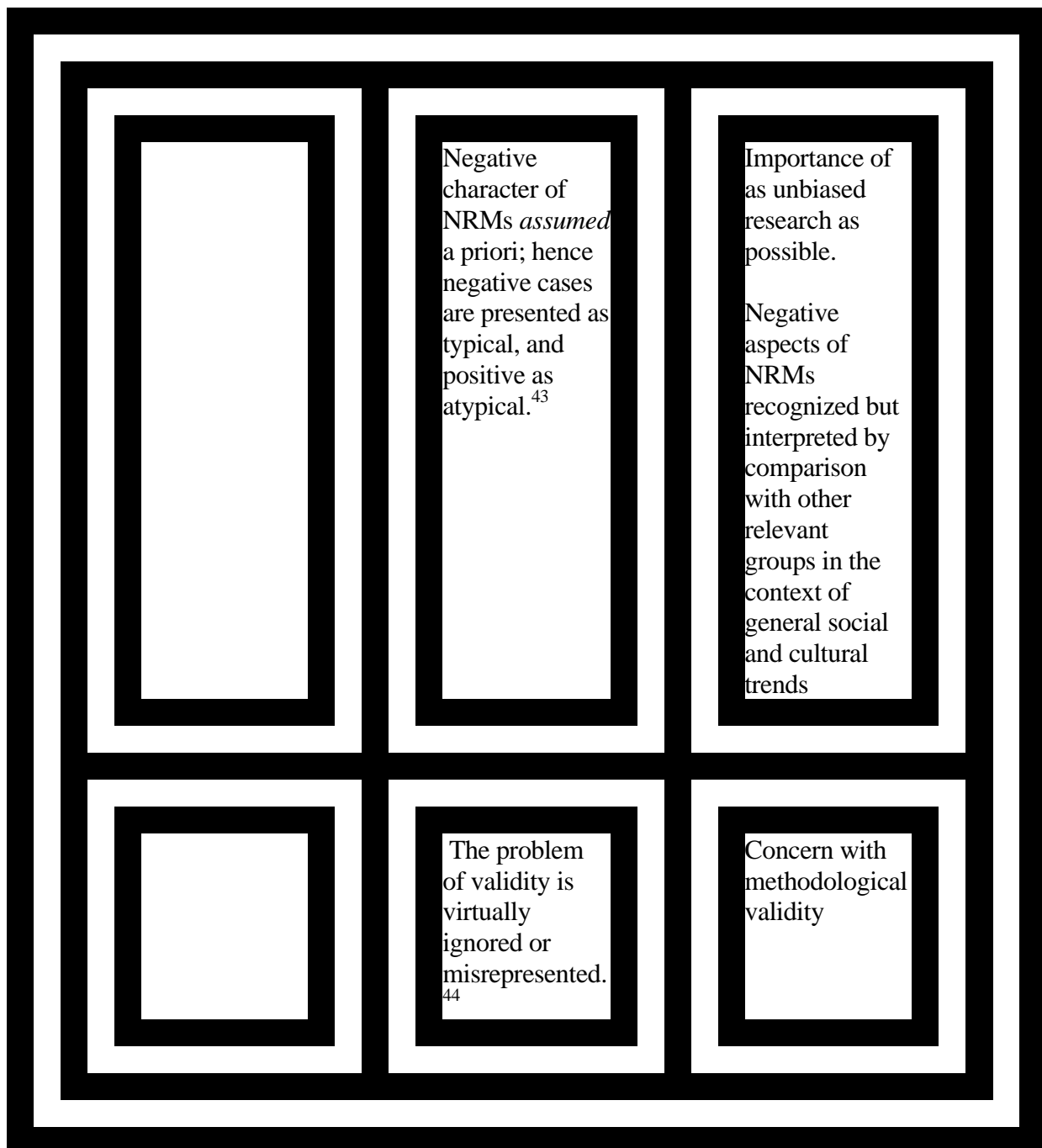
attention to them.

<sup>41</sup> Aagaard speculated that the Krishna devotees' belief that the world ought to be run by Brahmins was sufficient to support his generalization that the NRMs "are waiting for the day when they will be able to seize power". Similar allegations were made by Gandow.



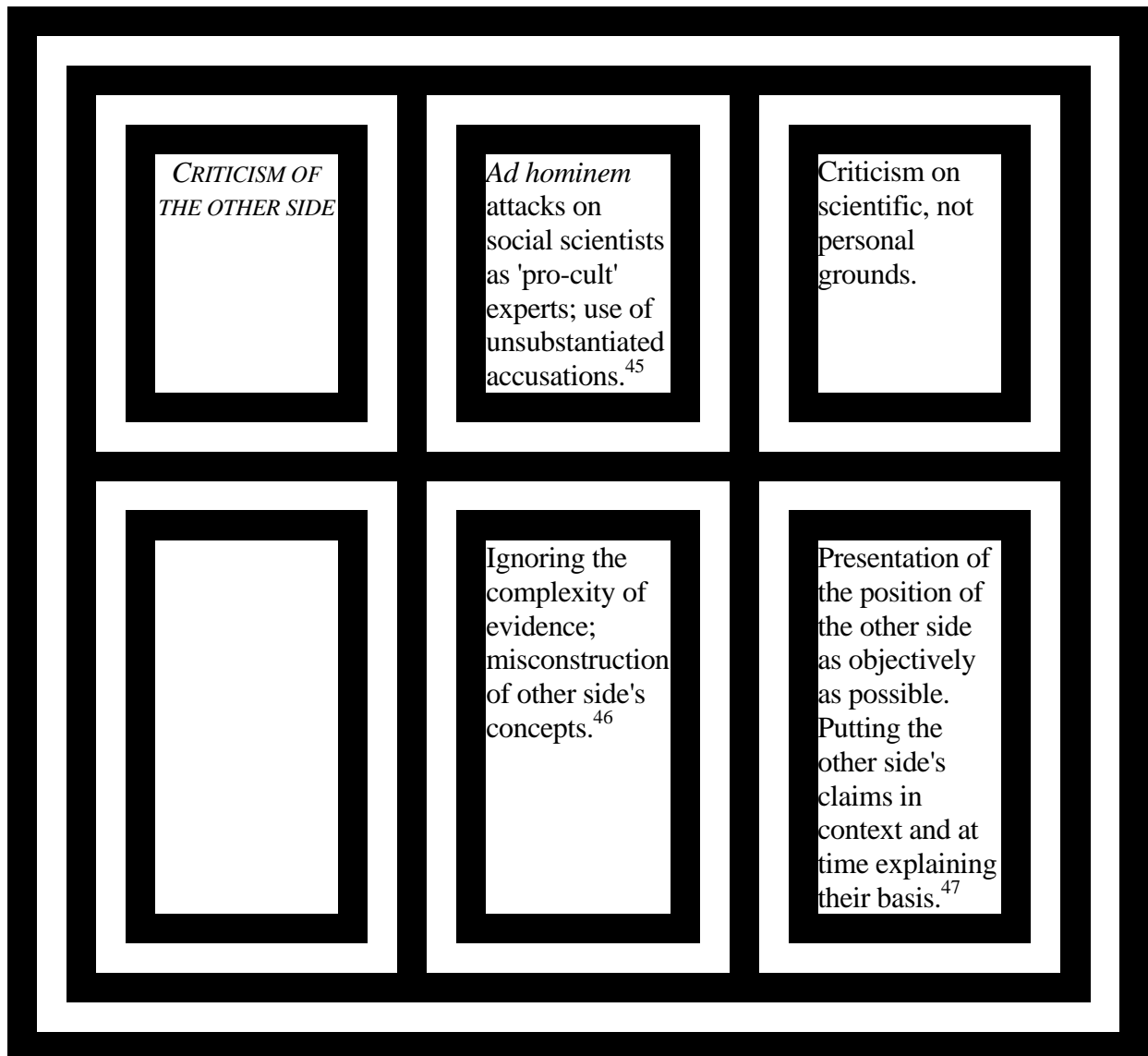

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42 Both key witnesses in the Moscow trial, Gandow and Aagaard, were prepared to support the defendant's general allegations by referring to selected negative examples, often of an anecdotal nature, sometimes unrelated to the NRMs in question. Thus, in support of Dvorkin's allegation about coercion used by the NRMs, Gandow referred to such cases as the tragedy of Jim Jones' People's Temple, a trial against "two Scientologists" who allegedly tried to retain an unnamed woman, a trial against "an ex-member of The Family", the existence of an arms factory in Korea owned by Rev. Moon, and a trial of a few members of ISKCON in Germany who allegedly kept "weapons". In addition, he referred to examples which were not relevant to the discussion, such as the activities of Ananda Marga. Aagaard often supported the defendant's allegations by redefining their meaning. Thus, when confirming the correctness of the allegation of coercion, he offered as evidence his allegations about "the system of psychological coercion" by the Jehovah's Witnesses, or "the system of sexual coercion" by The Family.



<sup>43</sup> This is more characteristic of Gandow's approach which denies any changes in the NRMs. A curious example is his statement in testimony: "How can I trust that [the Krishnas] have changed if they are still collaborating with Scientologists?" Aagaard did not deny positive changes in the NRMs but presented them as atypical.

<sup>44</sup> Aagaard insisted that "the only scientific approach is openly to state your intentions". He also insisted that "religion can only be understood from within, not from the outsider perspective".

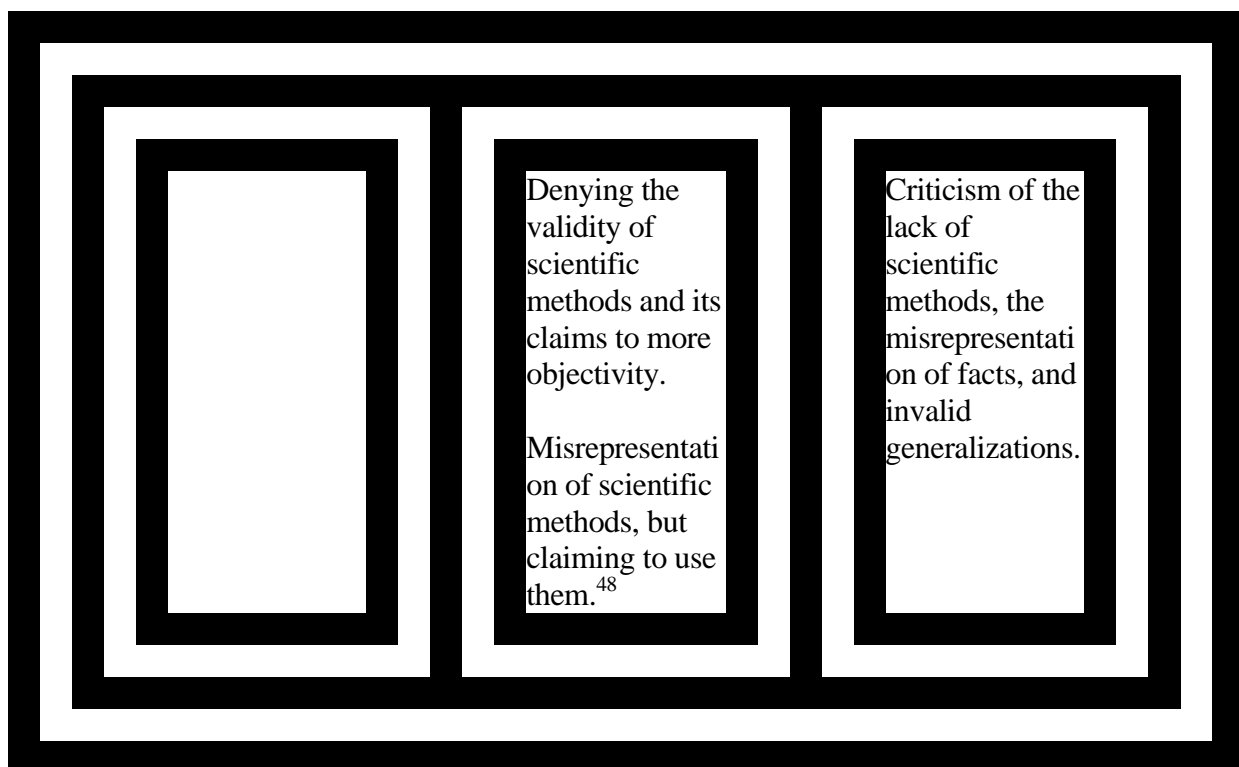



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45 Although Aagaard's testimony contained unsubstantiated attacks on academics and their methods, straightforward *ad hominem* attacks were more characteristic of Gandow's testimony which contained speculations about improper material interests of academics in their study of NRMs.

46 Aagaard described the "typical" sociological approach to the study of religion as "neo-positivistic" which treated people as "butterflies which can be pinned down and studied".

47 Key expert witnesses for the plaintiff's side did not deny the validity of some of the evidence from the anti-cult perspective. Moreover, its usefulness for our understanding of, and approach towards NRMs was stressed by Eileen Barker. However, the several expert witnesses for the plaintiffs also pointed to the basic methodological flaws in the anti-cult approaches and their potentially negative effect on attitudes and policies towards these groups.



One important aspect of the trial was the use by the defense of the negative official responses to NRMs, which included some selectively presented (or even misrepresented) decisions of governments, pan-European institutions, and law courts.<sup>49</sup> These decisions reflected the range of anti-cult approaches to NRMs. In fact, the Western anti-cult witnesses in the Moscow trial attempted to enhance the status of their approach to NRMs by referring to these decisions as official support of their claims.<sup>50</sup>

The anti-cult witnesses in the Moscow trial also had to deal with the difficulties posed by the development of the academic perspective on the NRMs. These difficulties

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<sup>48</sup> Both key witnesses for the defendant in the Moscow trial made disparaging and sweeping remarks about the methods used in sociological studies of NRMs. Thus, Aagaard described the method of overt participant observation as "dishonest as it often involves the observer going against his or her conscience". He also insisted that "those who pretend that they are neutral are simply lying... Those who pretend they are objective surely have a hidden agenda". Particularly outrageous seems the parallel he drew between the accounts of NRMs by academic participant observers and visits to the German concentration camps by journalists from neutral countries.

<sup>49</sup> See Richardson, "Minority Religious, Religious Freedom and the Pan-European Institutions", and Shterin and Richardson, "The Effects of the Western Anti-Cult Movement...".

<sup>50</sup> This was especially characteristic of the testimonies from the witnesses Gandow and Krippas.

were typically tackled by avoiding clear answers to questions about doubtful or discredited theories, such as brainwashing, or by claiming expertise in specialized areas of academic research, or, most commonly, by *ad hominem* attacks on their opponents. There was also a great deal of blatant partisanship. This might be expected given the strong ideological and organizational connections between the defendant and his witnesses. Thus, Dvorkin's brochure that led to the libel action contained, without attribution, whole passages from Gandow's speech in the Russian Duma in February, 1995. This partisanship expressed itself in the witnesses' willingness to support every allegation made by the defendant by referring to purely anecdotal and irrelevant evidence, or without providing any evidence.

The trial exhibited the problems of presenting scientific, and in particular social scientific evidence, for legal purposes.<sup>51</sup> The relevance of academic reasoning is not always obvious to lawyers and others in a legal setting, as the methodological issues are often beyond their scope and expertise, especially if they involve such esoteric notions as "brainwashing".<sup>52</sup> In their testimonies, academic expert witnesses usually report the results of their research but are given little opportunity to explain the underlying methodology, which is crucial for assessing the validity of their findings. Thus, most academic witnesses in the Moscow case questioned the current relevance of the generalizations based on isolated cases that occurred in the early histories of some of the NRMs. The academics stressed that caution was needed in generalizing from isolated individual instances to an entire NRM or from one NRM to all NRMs. However, these arguments were either dismissed or ignored in cross-examinations and judicial decision making.

Partisanship was another problem for the academic witnesses. As Michael Cooney argues, consent to testify for one of the principals in a legal case usually implies some degree of intimacy with that side and some measure of obligation to "repay the confidence

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51 For a general discussion of the problems of using social scientific evidence for legal purposes, see, John Monahan and Lawrence Walker, *Social Science in Court*, New York: Westbury Foundation (1995). See also James Richardson, Gerald Ginsburg, Sophia Gatowski and Shirley Dobbin, "Problems in Applying Daubert to Psychological Syndrome Evidence", *Judicature*, 1995, 79: 10-7; also Sophia Gatowski, Shirley Dobbin, James Richardson, Christopher Nowlin and Gerald Ginsburg, "Diffusion of Scientific Evidence: A Comparative Analysis of Admissibility Standards in Australia, Canada, England and the United States", *Expert Evidence*, 1996 4: 86-92.

52 See Gerald Ginsburg and James Richardson, "'Brainwashing' Testimony in Light of Daubert", in Helen Reece (ed.), *Law and Science* (Oxford University Press), 1995:10-17.

placed in the expert witness by the person calling him, with supporting testimony".<sup>53</sup> This issue is particularly acute in cases involving NRMs. The defence in the case attempted to link the issue of partisanship and the status of academic witnesses and their testimonies by raising questions and doubts about why anybody should study, let alone testify for, such unpopular groups. As with the other types of witnesses for the plaintiffs, the academic witnesses had to face the negative publicity directed against NRMs. In contrast, the anti-cult testimonies were well attuned to this negative publicity about the perceived threats posed by "cults and sects."

One could argue that accusations of partisanship brought against the academic witnesses were not justified. Their consent to testify about the NRMs was based on a belief that the academic knowledge they possessed was relevant to the case before the court. Their testimonies were based on academic studies which were publicly available and open to refutation. The negative or problematic aspects of NRMs were not denied by the academic witnesses, when they were verifiable. Rather, these negative features were weighed against the known and identifiable facts and trends, and comparison with other social groups. In other words, these witnesses did not deny the validity of some of the evidence given from the anti-cult perspective, but questioned the reliability of generalisations based on selective evidence. For professional reasons, most academics feel an obligation to communicate their knowledge to the outside world in a balanced way.<sup>54</sup> It is difficult to see this role as implying partisanship.

*Judicial evaluation of the evidence* It seems obvious that the judiciary faces considerable difficulty in reaching a legal decision about social groups which were often unfamiliar to them before the trial or known only from controversial coverage in the media. The outcome of the case was that the Court found the 'legal narratives' of the defendant more plausible. Why? Is it likely that it could have found otherwise?

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<sup>53</sup> Cooney, "Evidence as Partisanship", p. 848.

<sup>54</sup> See, Barker, "Sociology of Religion?.."; James Richardson, "The Accidental Expert", 1998, *Nova Religio* 1: 31-43.

One might point to judicial flaws in both cases and suspect some form of “legal partisanship.” Indeed, it has been argued that partisanship in this case amounted to gross violation of the rules of evidence.<sup>55</sup> However, our prime focus here is on the sociological factors which were involved in the evaluation of evidence. Our argument is that the bench shared certain assumptions with the defendant, which resulted in a form of judicial or legal partisanship.

An analysis of the Judgement shows that it is based on certain normative assumptions about what constitutes 'normal' religion and hence implied that there were boundaries between 'genuine' and 'bogus' religions. Thus, it refers to a 'theoretical' distinction between 'world religions' and 'totalitarian sects', with the latter embracing all the NRMs as a single entity.<sup>56</sup> It paints a fearsome picture of 'totalitarian sects' by uncritically lumping together various excerpts from decisions of courts of law and governmental bodies, accounts of personal experience and journalistic descriptions, which related to different times, places, groups and situations. The generalizations from these documents are used as though they were applicable to all the NRMs.<sup>57</sup> This inevitably resulted in imputing guilt by association.

The Judgement grossly misrepresents more complex accounts from the academic witnesses. Moreover, it uses the evidence provided by these witnesses in a partisan fashion by selecting only the negative facts or distorting what was actually said (e.g. Judgement: 56; 58; 70; 76; 104-6). The Judgement completely ignores the academic critique of the key governmental documents such as the Report to the French Assembly, or reports of the

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55 See Galina Krylova, *Svoboda Sovesti Na Vesakh Pravosudia* ["Freedom of Conscience on the Scales of Justice"], Moscow: Olimp 1998, pp. 78-95.

56 Referring to the experts from the Ministry of Internal Affairs, the Judgement (p.90) states that those who belong to one of the world religions are united by a common understanding of moral and spiritual values and principles, whereas the sectarians [are united] by the authority of [their] teacher and personal relationship with other members of the sect.

57 The following is a characteristic example of the ways in which the Judgement (p. 24) makes its generalizations: In many countries the activities of the non-traditional religious organizations have been shown to be linked to violations of human rights, both in relation to their members and in relation to other people; this has been subject to discussion not only among legal authorities but also among governments and pan-governmental institutions. Galina Krylova (1998:78), the religious rights lawyer, comments that, from the legal viewpoint, this approach is a gross violation of the key legal principle that evidence should be directly related to the subject of the legal dispute.

Russian Ministries of Internal Affairs and Health. Moreover, the Judgement uncritically incorporated much of the *ad hominem* attacks on some of the academic witnesses by their opponents (e.g. Judgement: 77; 108-9). At the same time, it gave full credence to the evidence provided by the witnesses from the defence, ignoring the refutation of much of this evidence by the witnesses from the plaintiffs.

Further, the bench failed to recognize the three underlying features of the defendants' 'legal narrative': the selectivity of evidence, the circularity of the argument, and the "recycling" of evidence. Circularity refers to the fact that the defendants' position was supported by the accounts of their witnesses who either reported experiences already affected by the anti-cult position (almost all parental or ex-members' accounts), or assumed the negative nature of 'cults' and supported that view by selective evidence (testimonies from the anti-cult experts). References to the Western anti-cult sources make up more than half of the entire Judgement and the rest of the document contains many references to Russian sources which were based on the same Western sources in most cases. In this way the Russian defendant recycled much of the selective evidence already utilized in the anti-cult generalizations in the West and presented them as independent data. In fact, the generalizations contained in the Western sources, particularly a few governmental and pan-European decisions, were made on the basis of the anti-cult interpretations and should be seen as the partial endorsement of a viewpoint and not as *primary* evidence of the NRMs' antisocial behavior. Moreover, the Moscow Court supported the defendant's interpretation of pan-European documents as saying that NRMs had a general criminal nature, although this is absent from those documents, which present typically a more balanced perspective.

Moreover, the Judgement goes beyond the issue of the defendant's right to hold and disseminate his opinion about NRMs. It effectively endorsed this opinion in the form of a legal decision, which opened the way to establishing an additional legal category of social deviance. Concluding the trial, the Presiding Judge expressed her personal concern about the scale of the 'cult problem' in Russia, which, according to her, she only discovered during the proceedings. She seems to have overlooked that this concern reflected more the ways in which the defence constructed and the bench accepted 'the problem' than its actual scale and nature. In fact, the context of the 'cult controversies' in Russia placed great pressure on the judges as their decision was linked to a number of highly politicized issues.

## VI. CONSEQUENCES OF THE DECISION.

The judgement of the Russian court provided a reference point for those officials and politicians who were promoting the new restrictive Law on Freedom of Conscience in 1997.<sup>58</sup> The decision served to legitimize the extreme and generalized anti-cult approach to NRMs, putting emphasis on their supposed criminal nature and their 'danger to the nation', and was a further encouragement to use the legal system to pursue social grievances about NRMs. In 2000 the Moscow Patriarchy published a book edited by Dvorkin which contained all the negative material and the Court decision from *Yakunin vs. Dvorkin*. The book was addressed to "state organs [and] Orthodox parishes and brotherhoods". However, the impact of the Moscow case on government policies was somewhat limited by countervailing tendencies, such as the constitutional provisions guaranteeing religious freedom, a more liberal approach among some government officials, and pressure from the West.<sup>59</sup>

## VII. DISCUSSION<sup>60</sup>

The analysis of the evidence presented to the court by the experts shows that radically different views about NRMs were presented to the court by witnesses for the two sides, thus allowing the court to pick and choose, based on factors other than the scientific validity of the evidence. It is clear from this case and from others in Russia and elsewhere that political, sociological, and cultural considerations can and do often overcome strictly

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<sup>58</sup> See, for example, the direct reference to this court case in A. Loginov, "Dvoinei Standard Politiki i Very" ["Double Standard in Politics and Faith"], *Rossiyskie Vesti*, 23 July, 1997. At the time, the author was responsible for relations with religious organizations in the Presidential Administration. For an excellent legal analysis of the 1997 Law, see Cole Durham, Jr. and Lauren Homer "Russia's 1997 Law on Freedom of Conscience and Religious Associations: an Analytical Appraisal", *International Emory Law Review*, 1998, 12:101-246.

<sup>59</sup> After the 1997 Law was passed, some NRMs mentioned in Dvorkin's brochure feared that the results of the trial be used to deny them reregistration under the new Law. In general, this did not happen, and some of them were among the first to be reregistered.

<sup>60</sup> For further illustrations for the points we make in this section, see James Richardson and Marat Shterin, "Minority Religions and Social Justice...". See also, Galina Krylova, "The Jehovah's Witnesses Case in Moscow", Presented at the 13th International Conference of The Center for the Study of New Religions (CESNUR), Bryn Athyn, PA, June, 1999.

evidentiary rules and issues in cases involving unpopular religious groups. Using the general social constructionist perspective the following points are worth highlighting:

1. Judicial systems vary greatly in terms of their independence from influence by other institutions within a given society. Thus, it seems clear that the lower level court in Moscow became the focus of considerable attention from the Moscow Patriarchy, and was subject to certain political pressures, and from the media. Thus there may have been a lack of autonomy of the judicial system demonstrated in how this case was handled. Political and cultural forces were operating that may have, at least temporarily, overpowered the independence of the court.

2. Judicial systems may not clearly distinguish between scientific and non-scientific evidence concerning religious groups, especially when faced with external pressures. Thus, in certain contexts, courts are prone to treat the two types of evidence equally, or worse yet, to grant greater probative value to sensationalist anti-cult, but unscientific oriented testimony. The proceedings of the Moscow court case leaves one with the impression that anything may be deemed acceptable as scientific evidence, suggesting that this Russian court, for whatever reason, was somewhat unsophisticated in dealing with such matters as scientific evidence about religious groups, especially unpopular ones. This is not a problem unique to this Russian court, however, as there is evidence that normal evidentiary thresholds may be lowered or ignored as well in other countries when unpopular groups or personages are involved in legal matters.<sup>61</sup>

3. Related to the issue of evidentiary criteria is the status of the proffered expert witness. It is difficult to expect that most judges would be sufficiently equipped academically to handle the problem of validity and reliability of complex social scientific evidence.<sup>62</sup> They inevitably rely on the expert opinion. But who is to be regarded as experts

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61. See James Richardson, "Minority Religions ('Cults') and the Law: Comparisons of the United States, Europe, and Australia," *University of Queensland Law Journal* 1995, 18:183-207, for discussion of such instances in Australia, and see a general discussion of problems with so-called "brainwashing" cases in James Richardson, "A Social Psychological Critique of 'Brainwashing' Claims About Recruitment to New Religions," in Jeffrey Hadden and David Bromley (eds), *Handbook of Sects and Cults in America*, Greenwich, CT:: JAI, 1993. Also see, James Richardson, "Discretion and Discrimination in Legal Cases Involving Controversial Religious Groups and Allegations of Ritual Abuse, in Rex Ahdar (ed.), *Law and Religion* (Aldershot, UK: Ashgate), 2000, 111-132.

62 For evidence of the lack of sophistication of judges in the U.S. on issues concerning science, see Sophia Gatowski, Shirley Dobbin, James Richardson, Gerald Ginsburg, Mara Merlino, and Veronic Dahir, "Asking the

and in which fields? For instance, the sociologists of religion who testified in *Yakunin vs. Dvorkin* never claimed expertise in Christian Lutheran theology, but a noted Lutheran pastor from Germany and a theologian from Denmark who testified for the defendant indulged in wholesale criticism of sociological methods. In this particular case he referred to himself as a "theological sociologist" in an apparent effort to criticize normal academic sociology as well as to self-credential himself as a sociologist with special knowledge. His testimony was offered from a theological and normative perspective, but the difference between that view and the social scientific perspective appeared to be lost on judges and others, including the media. It is our contention that the tension between the sociological and theological perspectives can exist, and even be useful, but the different areas of expertise should be clearly distinguished, especially in courts of law.

4. Those bringing the case, the plaintiff Committee, also may have suffered from a major perspective problem themselves, in that they misread the possibilities of success in the case. In their somewhat idealistic dependence on the literal wording of the 1990 law granting freedom of religion in Russia, they underestimated the complexity of issues related to NRMs and the growing strength of anti-cult sentiments in Russia. Hindsight makes it quite apparent that bringing the case may well have played into the hands of those who would limit religious groups in Russian society.

## VIII. CONCLUSIONS.

The court case just discussed seems indicative that in the mid-1990s Russian society was undergoing a major change in its understanding of the legitimacy of various religious groups and their practices. On the one hand, the constitutional and other legal foundations of religious freedom and pluralism remained in place. On the other, by the time of the trial the equality of religions and individual freedom of religion had ceased to be indisputable concepts. Reference to *tradition* was increasingly prominent and it was used to justify differential treatment of different religions by the media, general public, and state institutions, including the legal system. The social environment which in the early 1990s

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Gatekeepers: A National Survey of Judges on Judging Expert Evidence in a Post-*Daubert* World," *Law and Human Behavior* 2001, 25: 433-458. There is no reason to think, that judges in Russia are any better prepared on these matters.

seemed favorable to new religions, including ones from the West, had changed radically in a few years. Also, the activities of some of the new religious phenomena, especially aggressive proselytizing, although being, by and large, within legal limits, had caused considerable anxieties on the part of the Russian Orthodox Church and some other sections of society. The Church, with its general rejection of any kind of proselytism in Russian territory, and the anti-cult groups, became the major constructor of a negative image of all new religions operating in Russia. This negative image was essential to efforts to reassert a dominant position by the Church.

The Western ACM was very instrumental in providing the interpretative framework for defining NRMs as anti-social and supplying information in support of this view. The outcome of *Yakunin vs. Dvorkin* was a good illustration of the fact that the exported negative image of Western NRMs constructed by the Western anti-cult movement was being forced upon NRMs in Russia. Evidence about good acts and legal behavior of the groups in Russia was disregarded by the Court, which wrote an opinion that reads in large part like an anti-cult tract many parts of which could have come from elsewhere in the West. It can be argued that Western anti-cult concepts were used to de-legitimize unpopular religious groups. Thus this trial and all the activities involved in it worked to limit pluralistic accommodation of new social phenomena within Russian society.

The court case was an attempt to defend NRMs within the ideological framework of the 1990 Law in a situation in which the general climate in society had considerably changed towards reassertion of what was seen as traditional views and values. Furthermore, the Law itself was criticized and often ignored on the grounds that it was at odds with "the Russian tradition".<sup>63</sup> However, the trial may also have familiarized some members of the Russian public, including officials, with more balanced views on NRMs, based on academic research and other experiences with NRMs.<sup>64</sup> Some federal and regional officials intimated to the first author that the published material from the case made them realize the complexity of NRMs and helped them to overcome the one-sided perspective they

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<sup>63</sup> For a full discussion of socio-cultural factors that affected the recent history of religion and law in Russia, see Marat Shterin, "Legislating on Religion...".

<sup>64</sup> In his testimony for the defence in the Moscow trial, Aagaard defined himself as a "theological sociologist" presumably referring to his approach to the NRMs according to their relationship to 'true Christianity'.

previously had. The usual source of this material was the book by Galina Krylova, *Svoboda Religii Na Vesakh Pravosudia...* It is noteworthy that, despite the outcome of the case, some of the groups named by Dvorkin were reregistered under the new 1997 Law. Finally, since *Yakunin vs Dvorkin*, the Russian Constitutional Court has, on several occasions, ruled in favor of minority religious groups, opening the way to reregistration of some evangelical Christian groups and, most recently, the Salvation Army. There is evidence to suggest that such decisions, which work in favor of religious pluralism in Russia, were based on increased knowledge of minority groups. Perhaps, the evidence presented by the plaintiff's side in *Yakunin vs Dvorkin* had some indirect positive effect. It also showed a variety of possible approaches, both official and unofficial, to religious innovation, which can be found in different societies. Nevertheless, in the present socio-political climate, this knowledge seems unlikely to outweigh the overwhelming influence of the anti-cult images and concepts.